

PATENT ELIGIBILITY RESTORATION ACT OF 2022

Senator Thom Tillis (R-NC)

ONE PAGER

Clear, strong, and effective patent incentives are imperative to enable investments in the broad array of innovative technologies that are critical to the economic and global competitiveness of the United States, and to its national security. Unfortunately, due to a series of Supreme Court decisions, patent eligibility law in the United States has become confused, constricted, and unclear in recent years. This has led to inconsistent case decisions, uncertainty in innovation and investment communities, and unpredictable business outcomes.

This has resulted in a wide range of well-documented negative impacts. As of 2021, all 12 judges of the United States Court of Appeals for the Federal Circuit have lamented the state of the law.¹ Witnesses and stakeholders from a wide array of industries, fields, interest groups, and academia have testified and submitted comments confirming the uncertainty and detailing the detrimental effects of patent eligibility confusion in the United States.² And there is now widespread bipartisan agreement in Congress and across all recent Administrations that reforms are necessary to restore the United States to a position of global strength and leadership in key areas of technology and innovation, such as medical diagnostics, biotechnology, personalized medicine, artificial intelligence, 5G, and blockchain.

The Patent Eligibility Restoration Act of 2022 achieves this critical goal by restoring patent eligibility to important inventions across many fields, while also resolving legitimate concerns over patenting of mere ideas, the mere discovery of what already exists in nature, and social and cultural content that everyone agrees is beyond the scope of the patent system, which is a system aimed at promoting technology-based innovation.

As a general approach, the Patent Eligibility Restoration Act of 2022 maintains the existing statutory categories of eligible subject matter, which have worked well for over two centuries, and addresses concerns regarding inappropriate eligibility constraints by enumerating a specific but extensive list of excluded subject matter.

¹ See *Am. Axle & Mfg., Inc. v. Neapco Holdings*, 977 F.3d 1379, 1382 (Fed. Cir. 2020) (Moore, J., concurring in denial of stay of mandate); *Cong. Research Serv., LSB10344, Judges Urge Congress to Revise What Can Be Patented* (2020), <https://crsreports.congress.gov/product/pdf/LSB/LSB10344/5>.

² See, e.g., *Hearing Before the Subcomm. on Intellectual Prop. of the S. Comm. on the Judiciary*, 116th Cong. (2019); *Report to Congress Patent eligible subject matter Public views on the current jurisprudence in the United States* (June 2022).