

PATENT ELIGIBILITY RESTORATION ACT OF 2022

Senator Thom Tillis (R-NC)

SECTION BY SECTION

Section 1: Short Title

Section 2: Definitions

“Process” means process, art or method, and includes a use, application, or method of manufacture of a known or naturally-occurring process, machine, manufacture, composition of matter, or material.

“Useful” means that an invention or discovery has a specific and practical utility from the perspective of a person of ordinary skill in the art.

Section 3: Patent Eligibility

35 U.S.C. Section 101 is amended so that whoever invents or discovers any useful process, machine, manufacture, or composition of matter, or any useful improvement thereof, may obtain a patent, subject only to certain exclusions, and to the further conditions and requirements of this title.

Regarding exclusions, a patent may not be obtained for the following claimed subject matter: (1) a mathematical formula, apart from a useful invention or discovery; (2) a process that (2a) is a non-technological economic, financial, business, social, cultural or artistic process – though a claimed invention that is a process, per (2a), embodied in a machine or manufacture shall be eligible unless the machine or manufacture is recited without integrating, beyond merely storing and executing, the process steps that are to be performed by the machine or manufacture thereon; (2b) is a mental process performed solely in the human mind; or (2c) occurs in nature wholly independent of and prior to any human activity; (3) an unmodified human gene as it exists in the human body; (4) an unmodified natural material as it exists in nature.

Patent eligibility under this section shall be determined by considering the claimed invention as a whole, and without discounting or disregarding any claim element. Furthermore, eligibility shall be determined solely under this section, and without regard to: the manner in which the claimed invention was made; whether a claim element is known, conventional, routine, or naturally occurring; the state of the art at the time of invention; or any other consideration of sections 102, 103, and 112 of this title. Finally, eligibility of a patented invention or discovery may be determined in a civil action at any time, including on motion of a party when there are no genuine issues of material fact. The court in such an action may consider limited discovery relevant only to eligibility before ruling on such motions.