



Conservatives  
for  
Property Rights

September 5, 2023

Senator Thom Tillis  
428 Dirksen Senate Office Building  
Washington, D.C. 20510

Senator Chris Coons  
428 Russell Senate Office Building  
Washington, D.C. 20510

Dear Senators Tillis and Coons:

Conservatives for Property Rights (CPR) supports the Patent Eligibility Restoration Act (PERA, S. 2140) and appreciates your leadership toward restoring the breadth and certainty of what constitutes patent-eligible subject matter.

CPR, a coalition of conservative and libertarian organizations, emphasizes the central importance of private property in all its forms—physical, personal, and intellectual—to human flourishing. Private property rights rank among the unalienable rights the Founders referenced in the Declaration of Independence. Notably, the Founders specified intellectual property (IP) rights in the U.S. Constitution itself. Thus, IP rights transcend conservative and liberal politics.

The Senate IP Subcommittee hearings you held the summer of 2019 built a vast, persuasive record that illustrated the widespread confusion about what is and what is not patent-eligible under section 101 of the Patent Act (35 U.S. Code 101). Those hearings made plain the scope and nature of the problem. Judicially created exceptions that ignore the plain language of the law are particularly responsible. The U.S. Supreme Court, especially, as well as lower courts have compounded patent uncertainty and unreliability. The damage from all the contradictory, judicially created exceptions to patent eligibility costs American innovation, security, and competitiveness.

PERA would tremendously help rectify the current situation. S. 2140 would fully invalidate all judicially created exceptions to patent eligibility. It would restore the congressionally intentional breadth of the section 101 threshold question as to patent-eligible subject matter, including of a “useful process.” This bill would prohibit examiners, courts, the Patent Trial and Appeal Board, or others from considering substantive patentability requirements (sections 102, 103, and 112) or from fixating on a patent claim apart from the invention as a whole in a 101 threshold determination with respect to a specific invention or discovery.

S. 2140 would correct the *Alice-Mayo* nonsense, clarifying how applied mathematical formulae and modified natural or genetic matter most certainly may be patent-eligible, as well as rescuing computer-implemented inventions from judicial lawmaking that has extrastatutorily excluded them. The legislation's enumerated exceptions would differentiate mathematical formulae and mental processes alone, natural or genetic material as found in nature, and certain processes as not patent-eligible due to lack of human intervention. The exclusion of naturally occurring human genes should put an end to the false claim that human beings could be patented.

Thus, CPR is pleased to voice its support for the Patent Eligibility Restoration Act. While we support S. 2140 in its present form, we have a few ideas for consideration as friendly amendments. We stand ready to share those with you, and CPR looks forward to working with you to advance this legislation.

Sincerely,

James Edwards, Ph.D.  
Executive Director  
Conservatives for Property Rights

Kevin L. Kearns  
President  
U.S. Business & Industry Council

James L. Martin  
Founder/Chairman  
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