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Fact Sheet:
Patent Eligibility Restoration Act of 2025 (PERA)

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- On May 1, Senators Tillis (R-NC) and Coons (D-DE) and Representatives Kiley (R-CA) and Peters (D-CA) introduced the Patent Eligibility Restoration Act of 2025 in their respective houses on Congress. The bill is a modified version of one that was presented during the 118th Congress.
- Senators Blackburn (R-TN) and Hirono (D-HI) joined as co-sponsors on June 17, 2025.
- The bill overturns a string of patent eligibility opinions from the Supreme Court that weakened patent rights and made intellectual property protection uncertain, particularly for the very types of inventions that are driving the US economy today.[1]
    - For example, the current understanding of patent eligibility cases excludes from patent protection inventions that are diagnostic methods. The inability to patent diagnostic methods could hinder our ability to respond to the next pandemic.[2]
    - The Supreme Court opinions have also wreaked havoc on the patent eligibility of business-method and computer-related inventions—the very type of innovation that underlies nearly every sector and technology area.[3]
    - The only clear result from this string of Supreme Court opinions is uncertainty as to what inventions are patent eligible. Uncertainty hinders investment in innovation in these spaces.[4]

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[1] *See, e.g.,* Kristen Osenga, *Institutional Design for Innovation: A Radical Proposal for Addressing § 101 Patent-Eligible Subject Matter*, 68 AM. U.L. REV. 1191, 1199-11 (2019) (explaining the uncertainty caused by the Supreme Court's patent eligibility jurisprudence); Mark F. Schultz, *The Importance of an Effective and Reliable Patent System to Investment in Critical Technologies*, Alliance for US Startups and Inventors for Jobs (July 2020), (summarized and linked by David Ward at https://cip2.gmu.edu/2020/08/25/mark-schultz-weaker-patent-protection-leads-to-less-venture-capital-investment/).

[2] *See, e.g.,* Sharon Walker, Wanda French-Brown, & Meghan Rachford, *COVID-19 Underscores Diagnostic Patent Eligibility Problems*, LAW360 (May 13, 2020), *available at* https://www.law360.com/articles/1271238/covid-19-underscores-diagnostic-patent-eligibility-problems.

[3] *See, e.g.,* Jay P. Kesan & Runhua Wang, *Eligible Subject Matter at the Patent Office: An Empirical Study of the Influence of* Alice *on Patent Examiners and Applicants*, 105 MINN. L.REV. 527 (2020).

[4] David O. Taylor, *Patent Eligibility and Investment*, 41 CARDOZO L. REV. 2019, 2083-85 (2019) (noting that the uncertainty created by the Supreme Court decisions has had a negative impact on innovative companies' value, as well as decisions to invest in innovation).

  - Other innovative countries, including China[5] and those in Europe, have less restrictive patent eligibility rules than the United States does, potentially allowing those countries to become more innovative than the United States.
- PERA specifically
  - Eliminates judicially created exceptions to patent eligibility;
  - States that, unless explicitly listed, any invention or discovery that "can be claimed as a useful process, machine, manufacture, or composition of matter" is eligible for patenting (a);
  - Explicitly lists as not eligible in paragraph (b):
    - A mathematical formula not part of another invention (b)(1)(A)
    - A mental process performed solely in the human mind (b)(1)(C)
    - An unmodified gene, either as exists in the human body (b)(1)(D) or has been isolated from the human body but not otherwise changed (b)(2)(B)
    - An unmodified natural material as exists in nature (b)(1)E)
    - A process that is "substantially economic, financial, business, social, cultural or artistic" (b)(1)B)
      - Adding a non-essential reference to a computer does not make an otherwise ineligible process eligible
      - However, if that process cannot be practically performed without the use of a machine (including a computer), it is eligible (b)(2)(A); and
  - Ensures that other requirements of patentability, such as §§ 102, 103, and 112, are not imported into patent eligibility analysis (c)(1)(B)(iv).
- The bill does not open up eligibility for all inventions—see the very specific list of exclusions—nor does it eliminate the rigorous examination of patent applications for other requirements of patentability, including novelty, non-obviousness, and written description.
- The bill does, however, go a long way towards addressing the ambiguity the Supreme Court has injected into the patent eligibility inquiry, allowing for more certain investment in innovation.[6]
- For more information, see Kristen Jakobsen Osenga, *Restoring Predictability to Patent Eligibility.*

[5] *The Patent Eligibility Restoration Act – Restoring Clarity, Certainty, and Predictability to the U.S. Patent System*, 117th Cong. (2025) (statement of Mark A. Cohen, Senior Technology Fellow, Asia Society of Northern California and Senior Fellow, University of Akron School of Law). https://www.judiciary.senate.gov/imo/media/doc/4539f98c-f893-95c0-3976-2519d3d06087/2025-10-08%20-%20Testimony%20-%20Cohen1.pdf

[6] *See* David O. Taylor, *Patent Eligibility and Investment*, 41 CARDOZO L.R. 2019, 2027-2030 (2020) (reporting results of a survey that indicate patent eligibility has significant impact on investment).