July 13, 2026

The Honorable Chuck Grassley
Chairman
Senate Committee on the Judiciary
135 Hart Senate Office Building Washington, DC 20510

The Honorable Dick Durbin
Ranking Member
Senate Committee on the Judiciary
711 Hart Senate Office Building
Washington, DC 20510

The Honorable Thom Tillis
Chairman Intellectual Property Subcommittee
Senate Committee on the Judiciary
113 Dirksen Senate Office Building Washington,
DC 20510

The Honorable Adam Schiff
Ranking Member Intellectual Property Subcommittee
Senate Committee on the Judiciary
112 Hart Senate Office Building
Washington, DC 20510

Re: Letter of Patent Law and Innovation Scholars in Support of the Patent Eligibility Restoration Act (PERA)

Dear Chairman Grassley, Ranking Member Durbin, Chairman Tillis, and Ranking Member Schiff::

We write as academics who study patent law and innovation to encourage the Committee to advance the Patent Eligibility Restoration Act (PERA). PERA would strengthen U.S. competitiveness in high-tech industries by clarifying Section 101 of the Patent Act, which over time has been transformed from a simple filter for patent eligibility into a much broader test that Congress never intended.

Congress originally enacted Section 101 as a coarse screen to serve as a first test for patent eligibility. From the 1952 Patent Act until 2010, courts understood Section 101 to reach "anything under the sun that is made by man," and not surprisingly, American innovation flourished during that period.

However, in the 2010s, a quartet of Supreme Court decisions—*Bilski v. Kappos*, *Mayo Collaborative Services v. Prometheus Laboratories*, *Association for Molecular Pathology v. Myriad Genetics*, and *Alice Corp. v. CLS Bank*—effectively displaced the statutory text with judicially created exceptions to patent eligibility. These rulings turned Section 101 into a two-step test that appears nowhere in the statute and whose key terms—"abstract idea" and "inventive concept"—the Court has never defined.

Since then, lower courts and the USPTO have applied that test inconsistently, denying protection to diagnostic methods, computer-implemented inventions, and other long-patentable subject matter. Further, the Supreme Court has refused multiple opportunities to clarify, despite requests from the Federal Circuit and the Solicitor General under multiple administrations. The result is that inventors,

examiners, and investors can no longer reliably predict what is patent-eligible.[1] Even in cases where patent eligibility remains clear, it is often narrower in scope than recognized by America's global rivals.[2]

These developments have been bad for business and for innovation. In a survey of 475 venture capital and private equity investors, 74 percent said patent eligibility is an important consideration in investment decisions, and 62 percent said their firms are less likely to invest where patents are unavailable, with the sharpest effects in biotechnology and medical devices.[3] Between 2004 and 2017, patent-intensive industries' share of U.S. venture capital fell from over half to roughly 28 percent of total U.S. VC funding.[4]

Technologies critical to U.S. national competitiveness and national security have faced the most serious consequences. *Mayo* and *Myriad* cast doubt on protection for diagnostics, stunting research and development in biotechnology and genetic research.[5] In artificial intelligence, new empirical evidence shows that AI patents are significantly more likely to be invalidated than comparable patents, driven principally by Section 101.[6]

China, in the meantime, has broadened eligibility for AI and other computer-implemented inventions. Its AI patent filings nearly tripled between 2019 and 2024 while U.S. filings remained flat—a gap that bears directly on American competitiveness in a defining technology.[7]

The Patent Eligibility Restoration Act would strengthen American innovation and competitiveness in these critical areas. It would eliminate the vague exceptions and two-step test established by recent Supreme Court rulings, replacing them with clear statutory exclusions while keeping basic knowledge and unmodified natural materials free for all. It would leave intact the requirements of novelty, nonobviousness, and enablement/written description under Sections 102, 103, and 112.

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1 Kristen Jakobsen Osenga, *Restoring Predictability to Patent Eligibility* (IPPI: The IP Policy Institute, Mar. 2025); Kristen Jakobsen Osenga, *Fact Sheet: Patent Eligibility Restoration Act of 2025 (PERA)* (IPPI, updated Oct. 15, 2025). On the Court's refusals to take up the issue despite such requests, see *Athena Diagnostics, Inc. v. Mayo Collaborative Servs.*, 927 F.3d 1333 (Fed. Cir. 2019) (en banc denial with eight separate opinions urging clarification), and the Solicitor General's amicus briefs in *American Axle & Mfg., Inc. v. Neapco Holdings LLC*, No. 20-891 (May 2022), and *Hikma Pharms. USA Inc. v. Vanda Pharms. Inc.*, No. 18-817 (Dec. 2019).

2 Mark A. Cohen, Testimony Before the Subcomm. on Intellectual Property, S. Comm. on the Judiciary, Hearing on the Patent Eligibility Restoration Act, at 2–9 (Oct. 8, 2025) (contrasting China's broadening of eligibility for AI, software, and diagnostics-related inventions with U.S. narrowing; more than 1,300 U.S. applications abandoned after *Alice-Mayo* rejections had counterpart patents granted in China or Europe); Kevin Madigan & Adam Mossoff, *Turning Gold to Lead: How Patent Eligibility Doctrine Is Undermining U.S. Leadership in Innovation*, 24 GEO. MASON L. REV. 939 (2017), revised (2018). Kevin Madigan & Adam Mossoff, *The Value of Public Data: Update to Turning Gold to Lead*, (June 28, 2018).

3 David O. Taylor, *Patent Eligibility and Investment*, 41 Cardozo L. Rev. 2019 (2020).

4 Mark F. Schultz, *Declining Patent Reliability and Venture Capital Reallocation*, in Bringing Medicines to Life: How Intellectual Property Enables Innovation in the Life Sciences (Cambridge Univ. Press, forthcoming 2026).

5 Emily Michiko Morris, *A Response to 'Another Legislative Attempt to Revive Gene Patenting,'* Bill of Health, Petrie-Flom Center, Harvard Law School (Aug. 26, 2022); see also Schultz, supra note 4 (interview evidence on diagnostics and personalized medicine).

6 Amy Semet, *An Empirical Study of Artificial Intelligence Patent Litigation* (Univ. at Buffalo School of Law, working paper 2026).

7 Cohen, supra note 2, at 7–8, 11 (China's annual AI patent filings rose from 59,054 in 2019 to 188,757 in 2024; U.S. filings remained between 31,000 and 35,000).

PERA would not make everything patentable—but it would make eligibility predictable so that firms can again invest in cutting-edge innovation in the United States.[8] We urge the Committee to advance this critical bill.

Respectfully submitted,

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[8] See Osenga, *Restoring Predictability to Patent Eligibility*, supra note 1, at 3–4.

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