

Patent Eligibility Restoration Act Proposed to Address Longstanding Uncertainty

PUBLISHED ON

August 4, 2022

[A recently introduced bill, the Patent Eligibility Restoration Act](#), could dramatically clarify issues related to patentable subject matter and address the uncertainty that has particularly plagued software and biotechnology inventions. The Act was introduced on Tuesday, August 2 by Senator Thom Tillis (R-NC), the Ranking Member of the Senate Subcommittee on Intellectual Property.

Determining patent eligible from ineligible subject matter in these areas of technology has become increasingly unpredictable over the last 10 years, with case law creating a murky standard that can cause innovators to question whether to pursue valuable protection. Exacerbating the issue, the U.S. Supreme Court recently declined the opportunity to address subject matter eligibility in a high-profile patent case.

The United States Patent and Trademark Office (USPTO) has proposed initiatives to clarify patent eligibility but is ultimately limited in its ability to directly affect the law. One test effort that sought to delay full analysis of eligibility issues - detailed in a prior update [here](#) - ended last month and was only pursued by one-third of the invited participants. In a [report](#) to Congress on patent eligible subject matter on June 24, the USPTO expressed that "across the spectrum, stakeholders generally [agree] that the law on patent eligibility needs to be clear, predictable, and consistently applied".

The Patent Eligibility Restoration Act seeks to clarify the law by specifically enumerating the subsets of inventions that are not eligible for patent protection. Some of these prohibited areas echo the language of previous legislation, case law, and guidance, but the Act seeks to curtail the boundaries of other catch-all exceptions. Most relevantly for software inventions, for example, the Act narrows the exclusions to "non-technological" processes implemented on machines, further specifying that these processes could be eligible for patent protection as long as they claim integrating the process beyond the mere storing and executing of data. The Act would significantly limit the applicability of vague standards and would streamline the patent process for many inventions in critical areas of technology.

The proposed legislation would overhaul patent subject matter eligibility and, despite a largely positive initial reaction from the patent community, will undoubtedly spark significant debate over the coming months. We will closely track the progress of the Patent Eligibility Restoration Act and will provide further updates on debates, potential revisions, and other significant events as necessary.

If you have any questions about patent eligibility or any other intellectual property issue, please contact attorney [Kevin Myhre](#) or any member of the [Barley Snyder Intellectual Property Practice Group](#).

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