



Andrei Iancu, Co-Chair
David Kappos, Co-Chair
Judge Paul Michel (Ret.), Board Member
Judge Kathleen O'Malley (Ret.), Board Member
Frank Cullen, Executive Director

February 6, 2024

The Honorable Chris Coons
218 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Thom Tillis
113 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Coons and Ranking Member Tillis,

The Council for Innovation Promotion is a bipartisan coalition dedicated to promoting strong and effective intellectual property rights that drive innovation, boost economic competitiveness, and improve lives everywhere.

We write to express our strong support for the Patent Eligibility Restoration Act of 2023 (PERA), S. 2140, and to applaud the subcommittee's commitment to this legislation with its holding of a hearing on the bill, "The Patent Eligibility Restoration Act – Restoring Clarity, Certainty, and Predictability to the U.S. Patent System" on January 23, 2024.

Witnesses on each of the hearing's two panels made a compelling case for the need to pass this legislation to provide incentives for investment and research in cutting-edge technologies such as medical diagnostics, biotechnology, computer-implemented inventions, blockchain, and artificial intelligence (AI). As most witnesses agreed, reform is needed — not only to benefit Americans' quality of life, support new innovation, new businesses, and good jobs — but to also maintain American competitiveness with our economic competitors, who routinely grant patent protection on these technologies.

Our board's co-chairs, two past directors of the U.S. Patent and Trademark Office, appointed by past Democratic and Republican administrations, were honored to be among the witnesses, and were among those who testified on the immediate need to enact PERA into law:

The current state of the law has caused profound uncertainty amongst inventors, investors, and patent-law practitioners alike. In turn, this uncertainty and confusion has hurt American innovation, competition, and the economy. It also has threatened the Constitutional right to

patent protection — a right that James Madison and the Founders saw as vital to the economic strength and growth of our nation. . . .

Fortunately, PERA provides the legislative vehicle for the United States to correct the state of the law.

— [The Honorable Andrei Iancu](#), Under Secretary of Commerce for Intellectual Property and Director, U.S. Patent and Trademark Office (2018-2021)

Senators Tillis and Coons have proposed sensible and practical legislation that fixes the problems with [patent eligibility] in a calibrated way, moving away from the unduly constrictive, un-administrable test we have been struggling with based on highly subjective concepts like "abstractness", to much more definable, specific and objective tests. . . .

PERA's exclusions from eligibility . . . are clearly defined and easy to apply. Excluded categories include pure mathematical formulas and mental processes, unmodified genes in the human body and unmodified natural material existing in nature. PERA also excludes substantially economic, financial, business, social, cultural or artistic processes, even when followed by language like "do it on a computer", as long as such processes can be practically performed without the use of a machine or manufacture.

The result is legislation that balances ensuring IP protection for those innovations that deserve it, while providing reasonable, tailored, administrable, exceptions to safeguard from inappropriate claims, including claims that attempt to game the system.

— [The Honorable David J. Kappos](#), Under Secretary of Commerce for Intellectual Property and Director, U.S. Patent and Trademark Office (2009-2013)

In sum, PERA is vital, much-needed legislation. It is the result of your offices' leadership and dedication to promoting dialogue and negotiation among stakeholders for a number of years, which has led to this Congress's carefully balanced proposal. We believe the time is now right for the bill to advance to the next stage in the legislative process with a committee markup — and indeed, every

Congress where further action is delayed means America risks falling further behind in the race to be the leader of innovation now and in the future.

C4IP again thanks the subcommittee for its efforts on this important issue and stands ready to assist in any way that it can.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank Cullen", is positioned below the word "Sincerely,". The signature is fluid and cursive.

Frank Cullen

cc:

The Honorable Dick Durbin, Chair of the U.S. Senate Judiciary Committee

The Honorable Lindsey Graham, Ranking Member of the U.S. Senate Judiciary Committee