



EAGLE FORUM®

EDUCATION & LEGAL DEFENSE FUND

Founded by Phyllis Schlafly in 1981

info@phyllisschlafly.com

April 30, 2025

The Honorable Chris Coons
218 Russell Senate Office Building
U.S. Senate
Washington, DC 20510

The Honorable Thom Tillis
113 Dirksen Senate Office Building
U.S. Senate
Washington, DC 20510

Dear Senators Tillis and Coons:

Eagle Forum Education & Legal Defense Fund, a nonprofit organization founded by Phyllis Schlafly in 1981, applauds your bipartisan leadership seeking to address disquieting jurisprudence concerning patent-eligible subject matter. Your diligent commitment and efforts have culminated with the **Patent Eligibility Restoration Act (PERA)**.

You are quite familiar with the source of this disrupted area of patent law. The U.S. Supreme Court has eviscerated 35 U.S.C. § 101, particularly concerning medical diagnostics and software. For example, in its *Mayo Collaborative Services v. Prometheus Laboratories* decision, the court conflated patent eligibility with novelty and nonobviousness in relation to method claims. In *Ass'n. for Molecular Pathology v. Myriad Genetics, Inc.*, the court confused composition of matter related to isolated DNA, despite section 101's explicit inclusion of materials and processes among patent-eligible subject matter and the Constitution's use of the word "discoveries" and 101's use of "discovers" in relation to patent eligibility.

In *Alice Corp. v. CLS Bank*, the court virtually eliminated the patenting of software, which *Alice* essentially dismissed as an abstract idea. This continued down the wrong road of the Supreme Court's upholding of the Federal Circuit Court of Appeals' ruling in *Bilski v. Kappos*. In their respective upholding of a Patent Office denial of patent eligibility for a software-based business method patent, the courts effectively overturned the *State Street* machine-or-transformation test, adding complexity and uncertainty regarding business methods and software. In short, courts have ignored plain statutory language and substituted their legislating for Congress's. None of the victim classes of inventions and discoveries should have been rendered ineligible for patents.

The right road to restoring appropriate breadth to section 101 requires policies by which Congress overrules the judicial arrogation of legislative power in this area of the law. It requires returning 101 jurisprudence to the "anything under the sun that is made by man" as the patent-eligible standard. Further, it requires eliminating the many judicially created exceptions; prohibiting courts from creating future patent eligibility exceptions; ensuring that considerations relating to sections 102, 103, or 112 of Title 35 do not enter into 101 determinations; requiring that 101 decisions assess the invention as a whole, rather than specific claims; specifying applied mathematical formulas, computer-implemented inventions, and modified natural or genetic matter as being patent-eligible; drawing a distinction between those types of patent-eligible subject matter and patent-ineligible, naturally occurring human genes and natural matter, a mathematical formula in and of itself, and mental processes. Many of the policies included in PERA would address these issues.

PHYLLIS SCHLAFLY CENTER: 7800 BONHOMME AVE, ST. LOUIS, MO 63105 | (314) 721-1213

OPERATIONS CENTER: PO BOX 618, ALTON, IL 62002 | (618) 462-5415

PHYLLIS SCHLAFLY CENTER, D.C.: 211 C St. NE, Washington, D.C. 20002 | (202) 544-0353

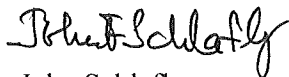
In addition, Eagle Forum Education & Legal Defense Fund observes that certain provisions in PERA would allay concerns about the prospect of human genes being patent-eligible under restored 101. Some opponents of 101 restoration have fomented the claim that reforming 35 U.S.C. section 101 would allow human genes and naturally occurring material to be patented. The apparent intent is to alarm prolife groups and individuals in hopes of actuating them to oppose 101 reform.

As a prolife organization that also is a conservative leader on patent issues, Eagle Forum ELDF reassures fellow proliferators who may have reservations about 101 reform. Laws of nature and naturally occurring substances, including the genes in our bodies, would not be patentable, under current law or reforms such as those in PERA, because the genes do not meet threshold criteria of section 101. Even were there a threshold level of "useful improvement," human genes would fail to be patentable on grounds of novelty and obviousness.

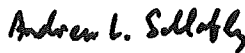
Gene-based diagnostic tests, such as assays, constitute the practical application of a discovery of the correlation between the presence of a certain, isolated gene and the probability of certain disease. These may appropriately be considered for patenting. Such discoveries and inventions do not patent human genes. They do promote human life and are consistent with prolife principles.

In conclusion, Eagle Forum Education & Legal Defense Fund commends your proposals for fixing problems courts have caused by unduly limiting what is regarded as patent-eligible subject matter. Such policies would return 101 to its proper role as a threshold criterion.

Respectfully,



John Schlafly
Treasurer



Andrew L. Schlafly
Counsel



James Edwards
Patent Policy Advisor