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Responses to Questions for the Record from Senator Coons

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"From Genes to Machines: the Patent Eligibility Debate"

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Responses to Questions of Senator Chris Coons:

1. In your written testimony you note that any changes to Section 101 should be "narrowly tailored and grounded in evidence."
    - Where do you think the Patent Eligibility Restoration Act (PERA) falls short of that mark?

      The text of PERA itself indicates that the bill is, in large part, based on the premise that current patent eligibility law has caused "extensive confusion and a lack of consistency . . . throughout the judicial branch of the Federal Government and Federal agencies."[1] Empirical evidence has shown that neither the courts nor the U.S. Patent and Trademark Office (USPTO) exhibits such confusion or inconsistency with respect to patent eligibility.[2]

      Federal district court patent eligibility decisions have been affirmed over 85% of the time by the Federal Circuit.[3] If federal judges were truly confused and unable to consistently and predictably apply existing patent eligibility law, one would expect a far lower affirmance rate due to lack of agreement and consistency between district judges, and between trial and appellate judges. And the USPTO's patent eligibility decisions have been affirmed over 95% of the time by the Federal Circuit, further demonstrating that extensive confusion and inconsistency do not exist.[4]

      In addition, judges within the Federal Circuit itself generally agree and think consistently about patent eligibility law. Patent eligibility decisions from the Federal Circuit have one of the lowest dissent rates of any patent issue, with only 6.5% of cases drawing any dissent (i.e., well over 90% of Federal Circuit § 101 decisions are unanimous).[5]

      Given that confusion and inconsistency do not appear to be a major problem with current patent eligibility law, a wholesale rewriting of § 101 does not appear warranted, particularly because replacing it with a number of new legal standards and exceptions that are untested would seem likely to introduce more uncertainty and unpredictability, at least until the courts have decided enough cases over time to create a settled body of law.

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[1] Patent Eligibility Restoration Act of 2025, S. 1546, 119th Cong., sec. 2(3) (2025) ("PERA").
[2] Nikola L. Datzov & Jason Rantanen, *Predictable Unpredictability: The Surprising Administrability of Patent Subject Matter Eligibility*, 110 IOWA L. REV. 667, 716-19 (2025), https://tinyurl.com/2sn5hj7d.
[3] *Id.*
[4] *Id.*
[5] *Id.* at 736-37.

Insofar as PERA is also grounded on the premise that current patent eligibility law disadvantages the United States compared to strategic competitors in critical emerging technologies such as artificial intelligence (AI), and hinders or prevents patenting of such inventions, again the empirical evidence does not support the premise.

In 2023 alone, the USPTO granted nearly 50,000 U.S. patents on AI technologies under current patent eligibility law.[6] AI and other advanced technologies like cybersecurity are among the most active areas of U.S. patenting.[7] Clearly, current patent eligibility law does not prevent innovators from obtaining U.S. patents on AI technology.

Nor has current patent eligibility law reduced investment in research and development (R&D) in the software and information technology sector, including AI. Studies have shown that businesses in this sector were essentially unaffected by the Supreme Court's patent eligibility decisions in 2010-2014 (i.e., from *Bilski* to *Alice*), and actually increased R&D expenditures in the ensuing years.[8]

To the extent that venture capital (VC) firms are a good indicator of what investors believe are the best bets for success, 75% of total global VC funding in 2025 for AI was invested in U.S. businesses.[9] That is more than 12 times the amount invested in the second placed economic zone, the European Union, and 15 times the amount invested in the third placed zone, the People's Republic of China (PRC).[10] Thus, the evidence indicates that global investors believe that the United States is by far the most likely source of AI innovation and success. This evidence belies the narrative that U.S. patent eligibility law, or any aspect of the U.S. patent system in the period leading up to 2025, was a competitive disadvantage compared to the PRC or any other competitor with respect to AI.

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[6] Hanming Fang et al., *China Leads the World in AI Patents, But Still Learns More from America*, STANFORD UNIV. CTR. ON CHINA'S ECON. & INSTS. (May 15, 2026), https://tinyurl.com/3vdwzppa.
[7] Parola Analytics, *2024 Patent Roundup: Top 100 US Patent Owners*, PAROLANEWS (Nov. 12, 2024), https://tinyurl.com/bddtram9; Anaqua, *Anaqua Analysis of USPTO Patenting Statistics 2024* (Jan. 30, 2025), https://tinyurl.com/4zpefhts.
[8] Christian Helmers & Brian J. Love, *Patent Law Reform and Innovation An Empirical Assessment of the Last 20 Years*, INT'L REV. L. & ECON. (Mar. 24, 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4580645; Christian Helmers & Brian J. Love, *Patent Protection and Software Firm Financing*, RESEARCH POL'Y (Jun. 25, 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=560007.
[9] Org. for Econ. Coop. & Dev., *Venture capital investments in artificial intelligence through 2025*, OECD POL'Y BRIEFS (Feb. 17, 2026), https://tinyurl.com/y5k829fp.
[10] *Id.*

Therefore, a wholesale rewrite of § 101 seems unsupported given that it does not appear to be a hindrance to U.S. technological leadership in AI. More targeted measures based on specific problems that are supported by empirical evidence would be the better course with respect to § 101 reform.

- Are there any provisions in PERA that you support?

  Several aspects of PERA could be helpful additions to the patent eligibility law if it is clear they are intended to augment, not replace, current law. For instance, clarifying that "economic, financial, business, social, cultural, or artistic" processes are not eligible would be consistent with, and avoid undermining, existing law. The same is true for the prohibition on any "mental process performed solely in the human mind," for example. These are consistent with current law so long as they are not provided as a replacement for current law.

- What revisions to PERA would you propose or are you suggesting that Congress doesn't need to legislate in this area at all?

  CCIA does not have a current specific proposal to reform § 101. We believe that current patent eligibility law has not been shown to be a hindrance to U.S. innovation in our sector, and is providing significant benefits to U.S. businesses, particularly in the form of protection against litigation based on low quality patents. CCIA stands ready to work with you, and with Congress generally, on any proposal for patent law reform, including further development of § 101 reform proposals like PERA.

2. You testified that any patent reforms should factor in that more than half of U.S. patents are being issued to foreign recipients.
   - Who benefits more from a strong and reliable patent system in the United States: U.S. companies or foreign companies? Why?

     A strong and reliable patent system benefits both U.S. and foreign companies. First, it benefits all patent owners because they are the most directly affected by the patent system. CCIA members, for example, are among the largest owners of U.S. patents. But each year for the past several years, more patents have been issued to foreign entities than U.S. entities. Thus, increasingly more of any benefits intended to help holders of U.S. patents are flowing to foreign companies than U.S. companies.

     A strong and reliable patent system, however, also benefits other stakeholders beyond just patent owners. For example, patent licensees also

benefit when they are able to rely on consistent and settled patent laws so they can reliably evaluate patents to license. Defendants in patent cases benefit, as do patent owners/plaintiffs, when patent law and patent litigation rules operate reliably to accurately distinguish between meritorious claims and unmeritorious claims as well as valid and invalid patents. These benefits also assist both U.S. and foreign companies. However, these benefits help U.S. companies more because they concern the activities that are subject to U.S. patent enforcement, namely making, using, selling, and importing in the United States.[11]

Patents are territorial.[12] **To make, use, sell, or import products or services in the United States, U.S. patents are important. To engage in those activities in the PRC, for example, a U.S. patent is essentially irrelevant and only Chinese patents apply. Thus, the nationality of a patent is relevant not to the nationality of the patent owner but rather to location of the activities subject to the patent's enforcement, i.e., where the making, using, selling, and importing is taking place. Clearly, the vast majority of these activities occurring in the United States, particularly use, is by U.S. companies.**

Therefore, changes to the patent system that favor patent owners benefit all patent owners, which increasingly includes more foreign entities than U.S. entities. Changes to the patent system that promote reliability, fairness, and accuracy in determining which patents can be enforced (e.g., validity), and whom they can be enforced against (i.e., infringement) benefit all stakeholders, but flow more to Americans than to foreign entities because most of the making, using, selling, and importing activities in the United States is performed by U.S. entities.

- Is it your contention that strengthening the U.S. patent system is not advisable because there will be spillover benefits for foreign companies?

  No, that is not my contention, and I appreciate the opportunity to clarify and reaffirm this. Strengthening the patent system is always a positive policy goal that CCIA supports. Strengthening the U.S. patent system, however, is not synonymous with maximizing the strength and value of all U.S. patents at the expense of patent quality, patent litigation accuracy, and the interests of other stakeholders in the patent system.

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[11] *See* 35 U.S.C. § 271(a).
[12] *See Microsoft Corp. v. AT&T Corp.*, 550 U.S. 437, 454–55 (2007).

With respect to U.S. vs. foreign companies' benefits from patent reforms, I believe there are ways to strengthen and improve the U.S. patent system in ways that benefit U.S. companies more than foreign companies. For example, taking steps to ensure that patent validity is adjudicated as accurately, inexpensively, and quickly as possible would disproportionately benefit U.S. companies because the vast majority of the activities that are subject to U.S. patent enforcement—making, using, selling, or importing in the United States—are performed by U.S. companies.

Ensuring that valid patents are determined to be valid quickly, inexpensively, and accurately assists patent owners as well as patent licensees and defendants to more efficiently negotiate patent licenses. Likewise, ensuring that invalid patents are determined to be invalid quickly, inexpensively, and accurately benefits those who are making, using, selling, and importing the relevant products and services, most of whom are American. A healthy, fair, and independent Patent Trial and Appeal Board (PTAB), for example, would help in this regard, particularly given the myriad ways in which Director Squires has acted to influence and weaken the PTAB.

- What are some ways we can promote innovation and investment in research and development in the United States?

  There are many ways to support and boost innovation and investment in R&D in the United States, many of which are not related to patent eligibility or patent law generally. With respect to patent eligibility specifically, ensuring that consistency and predictability continue is critical to provide the certainty that innovators need. CCIA members and American innovators generally are already investing billions to advance U.S. technological leadership in AI, for example, as well as in other critical technology areas. Avoiding pulling the rug out from under them with significant changes to the fundamentals of the U.S. patent system could undermine that effort.

  Some of those changes, for example, have come from the USPTO's various efforts over the past year to weaken and minimize the effectiveness of PTAB. Reversing those changes to restore PTAB would mitigate the damage that has been done in the past year and return to Congress's vision when it passed the Leahy-Smith America Invents Act.