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Responses to Questions for the Record from Senator Tillis

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"From Genes to Machines: the Patent Eligibility Debate"

Committee on the Judiciary, U.S. Senate

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Responses to Questions of Senator Thom Tillis:

1. Do you agree that the courts, specifically the Supreme Court, have turned Section 101 from a historically coarse filter into a fine filter?

   Respectfully, I do not agree. The Supreme Court's most recent clarifications of § 101 in *Bilski*, *Myriad*, *Mayo*, and *Alice* did not substantively alter the Court's § 101 jurisprudence that has been largely consistent for most of our country's history. Rather, the *Alice* and *Mayo* cases in particular set forth a procedural and analytical framework to assist in applying the Court's longstanding jurisprudence, especially with respect to patents claiming generic computer implementations of otherwise ineligible subject matter.

   With over a decade of experience, empirical evidence now demonstrates that the result of the Court's recent clarifications of § 101 has been surprisingly cogent and consistent application of its § 101 jurisprudence across the district courts and the U.S. Patent and Trademark Office (USPTO). A recent study has shown that over 85% of district court decisions on patent eligibility, and over 95% of USPTO patent eligibility decisions, have been affirmed on appeal following the Supreme Court's most recent cases.

2. Do you agree that just because an invention is eligible under Section 101, it does not mean that the invention is automatically patentable?

   I agree. The claimed invention must satisfy all of the requirements of patentability, both during prosecution before the USPTO to be granted, and after issuance if validity is challenged during litigation (e.g., because patent examiners may not be able to find important prior art due to resource or time constraints). That is because each and every patentability requirement, including § 101, plays an important role in assuring that U.S. patents and the patent system have appropriate limits "[t]o promote the Progress of Science and useful Arts."[1]

3. Do you agree that there is a need for patent eligibility [reform]?

   The empirical evidence available does not appear to support the proposition that current patent eligibility law suffers from the across-the-board inconsistency and unpredictability that some have ascribed to it. To the contrary, as I've noted,

[1] U.S. Const. art. 1, sec. 8, cl. 8; *see Gottschalk v. Benson*, 409 U.S. 63, 67 (1972) ("Phenomena of nature, though just discovered, mental processes, and abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work."); *Alice Corp. v. CLS Bank Int'l*, 134 S.Ct. 2347, 2354 (2014) ("'[M]onopolization of those tools through the grant of a patent might tend to impede innovation more than it would tend to promote it,' thereby thwarting the primary object of the patent laws." (quoting *Mayo Collaborative Servs. v. Prometheus Labs.*, Inc., 566 U.S. 66, 71, 132 S.Ct. 1289, 1293 (2012))).

empirical studies have revealed a remarkable level of consistency across judicial and USPTO eligibility decisions since the Supreme Court's most recent § 101 cases.

Similarly, the available information does not support the proposition that current patent eligibility law is preventing the patenting of critical technologies like artificial intelligence (AI). In 2023 alone, the USPTO granted nearly 50,000 U.S. patents on AI technologies under current patent eligibility law.[2] AI and other advanced technologies like cybersecurity are among the most active areas of U.S. patenting.[3]

Data regarding global venture capital (VC) investments in the AI sector further demonstrates that U.S. patent eligibility law is not dissuading investment in U.S. innovation in AI, nor it is proving to be a competitive disadvantage against foreign competitors. In 2025, 75% of total global VC funding for AI was invested in U.S. businesses.[4] 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).[5]

As such, I am unaware of any strong empirical evidence supporting a need for major reforms in U.S. patent eligibility law, at least with respect to the sector of the economy that CCIA represents.

4. The latest version of PERA incorporated several changes based on stakeholder feedback. Do you believe that these were good changes to the bill? Why or why not?

As I was not involved in recent feedback or negotiations regarding the Patent Eligibility Restoration Act (PERA), I am unsure which changes were made based on stakeholder feedback. When comparing the 2025 version of PERA[6] to the 2023 version of PERA,[7] for example, a new "rule of construction" was added to indicate that PERA is not intended to alter the doctrine of obviousness-type double patenting.[8] I believe that it is a positive step to signal that PERA does not change the obviousness-type double patenting doctrine.

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[2] 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.
[3] 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.
[4] Org. for Econ. Coop. & Dev., *Venture capital investments in artificial intelligence through 2025*, OECD Pol'y Briefs (Feb. 17, 2026), https://tinyurl.com/y5k829fp.
[5] *Id.*
[6] Patent Eligibility Restoration Act of 2025, S. 1546, 119th Cong. (2025) ("PERA 2025").
[7] Patent Eligibility Restoration Act of 2023, S. 2140, 118th Cong. (2023) ("PERA 2023").
[8] PERA 2025, sec. 4(a).

Additionally, a provision previously included in § 101(b)(1)(B)(ii) (as amended by 2023 PERA)[9] was removed from the codified statute altogether and moved instead to a "rule of construction" that applies not only to processes that are "substantially economic, financial, business, social, cultural, or artistic" (as in 2023 PERA) but also to mathematical formulas "claimed as such."[10] The provision at issue appears to attempt to address generic computer implementation by noting that "the inclusion of pre- or post-solution activity by a computer (or other machine or manufacture) in claim language shall not be sufficient to confer patent eligibility on the claim if that computer (or other machine or manufacture) is not necessary to practically perform the invention."[11]

As an initial matter, I believe that the lack of definitions of many of these terms may be problematic. I agree, however, that addressing generic computer implementation of otherwise ineligible subject matter is vital (though I note that it is already accomplished under current law). Applying a rule addressing generic computer implementation to more types of processes is a positive step, but I have not seen evidence that would justify limiting the rule only to certain mathematical formula claims and certain "substantially economic, financial, business, social, cultural, or artistic" process claims. I also strongly suggest that removing the rule from the codified statute is a backwards step.

[9] PERA 2023, sec. 3(a)(2) (providing for new § 101(b)(1)(B)(ii)).
[10] PERA 2025, sec. 4(b).
[11] *Id.*