

Proposed Legislative Changes to Section 101 of the Patent Act

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On May 22, 2019, U.S. Senators Thom Tillis (R-NC) and Chris Coons (D-DE), Chair and Ranking Member of the Senate Judiciary Subcommittee on Intellectual Property, and Representative Doug Collins (R-GA), Ranking Member of the House Judiciary Committee, Hank Johnson (D-GA), Chairman of the House Judiciary Subcommittee on Intellectual Property and the Courts, and Steve Stivers (R-OH) released a bipartisan, bicameral draft bill that would reform Section 101 of the Patent Act. This draft bill text is not final and is subject to additional revision. The stated goal of releasing the draft bill is to solicit feedback.

To view the draft bill text, click [here](#).

Section 101 of the Patent Act controls the types of inventions that are eligible for patent protection.

35 U.S.C. § 101 Inventions Patentable:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

This provision has caused confusion and uncertainty among inventors, attorneys, and judges over the years. The Supreme Court has held that there are exceptions to subject matter eligibility that are not described in Section 101. These exceptions include natural laws, natural phenomena, and abstract ideas. Patents may not be granted on these exceptions; however, patents may be granted to novel processes and structures that are based upon these exceptions. It has proven difficult to distinguish between a patent claim that is attempting to embody an abstract idea or a natural phenomenon and a patent claim that is attempting to embody a patentable application of that same idea or phenomenon.

Many intellectual property stakeholders have long called for the elimination of these judicially created exceptions to subject matter eligibility, which essentially ignores the power granted to Congress to create patent law.

The draft bill explicitly states that “the provisions of section 101 shall be construed in favor of eligibility”, and that “No implicit or other judicially created exceptions to subject matter eligibility, including ‘abstract ideas,’ ‘laws of nature,’ or ‘natural phenomena,’ shall be used to determine patent eligibility under section 101, and all cases establishing or interpreting those exceptions to eligibility are hereby abrogated.”

Additionally, the draft bill would add a subsection to Section 100 defining “useful” as “any invention or discovery that provides specific and practical utility in any field of technology through human intervention”.

Feedback on the draft text should be emailed to IntellectualProperty@tillis.senate.gov.
For questions about this or other intellectual property-related issues, please contact:

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