



American Intellectual Property Law Association

November 14, 2023

The Honorable Christopher Coons
Chair
Subcommittee on Intellectual Property
Committee on the Judiciary
U.S. Senate
226 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Thom Tillis
Ranking Member
Subcommittee on Intellectual Property
Committee on the Judiciary
U.S. Senate
152 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Support for S. 2140, the “Patent Eligibility Restoration Act of 2023”

Dear Chair Coons and Ranking Member Tillis:

The American Intellectual Property Law Association (“AIPLA”) is pleased to support S. 2140, the “Patent Eligibility Restoration Act of 2023.” We appreciate the attention to this important issue, and we encourage the Committee to move forward with this legislation.

AIPLA is a national bar association of approximately 7,000 members including professionals engaged in private or corporate practice, in government service, and in the academic community. AIPLA members represent a wide and diverse spectrum of individuals, companies, and institutions involved directly or indirectly in the practice of patent, trademark, copyright, trade secret, and unfair competition law, as well as other fields of law affecting intellectual property. Our members represent both owners and users of intellectual property. Our mission includes helping establish and maintain fair and effective laws and policies that stimulate and reward invention while balancing the public’s interest in healthy competition, reasonable costs, and basic fairness.

AIPLA supports the passage of S. 2140, the “Patent Eligibility Restoration Act of 2023,” because we believe that the bill addresses the uncertainty and unpredictability resulting from the Supreme Court’s subject-matter eligibility jurisprudence over the past two decades. The lack of certainty and predictability about what is eligible for patenting in the United States has and continues to disincentivize investment in various fields of technology, including emerging technology, risking our nation’s position as an economic and technological leader.

In particular, AIPLA agrees that the judicial exceptions to patent eligibility should be eliminated and that any useful process, machine, manufacture, or composition of matter, or useful improvement thereof, should be patent eligible, subject only to the exclusions set forth in the bill. AIPLA has long supported the fundamental principles that eligibility must be determined by considering the claimed invention as a whole and that the eligibility inquiry is separate and distinct from the patentability requirements of Sections 102, 103, and 112.

We believe S. 2140 is a substantial step forward in addressing the issues regarding Section 101. At the same time, we also recognize that this is the beginning of the legislative process, and

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various stakeholders supporting Section 101 reform continue to discuss the most effective way to make a clean break from the existing, unpredictable judicially created exceptions (i.e., effective abrogation of certain Supreme Court cases). AIPLA greatly appreciates the Committee's attention to this important issue, and we look forward to working with the Committee on the Judiciary on such matters.

Sincerely,

A handwritten signature in blue ink that reads "Ann M. Muetting". The signature is written in a cursive style with a large, looped initial "A" and a long, sweeping underline.

Ann M. Muetting

President

American Intellectual Property Law Association