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Tillis, Coons Announce New Bipartisan Support for Legislation to Restore American Innovation

WASHINGTON, D.C. – Today, Senators Thom Tillis (R-NC) and Chris Coons (D-DE) announced that Senators Marsha Blackburn (R-TN) and Mazie Hirono (D-HI) have joined the *Patent Eligibility Restoration Act* (PERA) as cosponsors. This bipartisan, bicameral legislation will restore patent eligibility to important inventions across many fields while also resolving legitimate concerns over the patenting of mere ideas, the mere discovery of what already exists in nature, and social and cultural content that everyone agrees is beyond the scope of the patent system. It also affirms the basic principle that the patent system is central to promoting technology-based innovation.

“In recent years the Supreme Court has expanded judicial exceptions to such a degree that patent eligibility has gone from being a coarse filter to a fine one – resulting in U.S. inventors being unable to obtain patents in areas where our economic peers offer protections, such as for diagnostic medicine and for artificial intelligence,” **said Senator Tillis**. “Patent eligibility is but one of four criteria that determines whether a patent application can be issued as a patent. PERA will expand the aperture of patent eligibility – it does not automatically render something patentable – and will ensure that the U.S. does not shut the door to innovations that is welcomed by the patent systems of our economic peers. We cannot allow the U.S. to fall behind on the global stage and I’m glad to see more of my Senate colleagues recognize this pressing need.”

“When American innovators know their ideas are eligible for patent protection, they take the risks that push us into the future – whether that’s the next groundbreaking medical test or the latest AI technology,” **said Senator Coons**. “PERA restores clarity to the law on what can be patented and what cannot – guidance that federal courts have been requesting for years and that the Supreme Court has refused to provide. I’m excited to welcome my colleagues from both sides of the aisle to this bill. This is another step toward providing America’s inventors with the stable legal foundation they need to produce the cutting-edge technologies that power our economy.”

“Our patent system must fuel innovation and secure America’s competitive edge over adversaries like Communist China,” **said Senator Blackburn**. “The bipartisan *Patent Eligibility Restoration Act* would restore patent eligibility for important inventions across many critical fields to ensure America remains ahead of the curve when it comes to technological innovation.”

“A series of Supreme Court decisions restricting patent eligibility have constricted American innovation,” **said Senator Hirono**. “The *Patent Eligibility Restoration Act* will help clarify patent eligibility law, encouraging technological innovation to help ensure that our country does not fall behind on innovation. Importantly, this legislation only affects patent *eligibility*, it does nothing to affect the many other requirements for *patentability*.”

Background:

Unfortunately, due to a series of Supreme Court decisions, patent eligibility law in the United States has become confused, constricted, and unclear in recent years. This has resulted in a wide range of well-documented negative impacts – inconsistent case decisions, uncertainty in innovation and investment communities, and unpredictable business outcomes.

As of 2021, all 12 then-sitting judges of the United States Court of Appeals for the Federal Circuit lamented the state of the law. Witnesses and stakeholders from a wide array of industries, fields, interest groups, and academia have testified and submitted comments confirming the uncertainty and detailing the

detrimental effects of patent eligibility confusion in the United States. There is now widespread bipartisan agreement in Congress and across all recent Administrations that reforms are necessary to restore the United States to a position of global strength and leadership in key areas of technology and innovation, such as medical diagnostics, biotechnology, personalized medicine, artificial intelligence, 5G, and blockchain.

The *Patent Eligibility Restoration Act* achieves this critical goal by restoring patent eligibility to important inventions across many fields, while also resolving legitimate concerns over patenting of mere ideas, the mere discovery of what already exists in nature, and social and cultural content that everyone agrees is beyond the scope of the patent system, which is a system aimed at promoting technology-based innovation. As a general approach, the *Patent Eligibility Restoration Act* maintains the existing statutory categories of eligible subject matter, which have worked well for over two centuries, but eliminates the overly malleable set of current judicial exceptions – replacing them with five specific, defined statutory exclusions. By eliminating and replacing the current judicial exceptions, the *Patent Eligibility Restoration Act* provides predictable patent eligibility for important computer-implemented technological developments and medical advances, creating a solid bedrock for America's innovation future.