

# Senate IP Leader Plans Push To Pass Patent '101 Eligibility Bill

By [Ryan Davis](#) · [Listen to article](#)

*Law360* (October 8, 2025, 9:43 PM EDT) -- Sen. Thom Tillis, R-N.C., the leader of the Senate's intellectual property subcommittee, said Wednesday that before he leaves Congress in just over a year, one of his primary goals will be to advance his long-gestating bill to make more inventions eligible for patents.

Tillis, who is [not seeking re-election](#) in 2026, said at a hearing of the Senate Judiciary Committee's IP subcommittee that he wants to have the [Patent Eligibility Restoration Act](#) ready for a panel vote during the current Congress.

"I kind of hope this is the last hearing on PERA before a markup. I'm going to do everything I can to move this bill," Tillis said.

[U.S. Supreme Court](#) decisions in recent years that put limits on what is eligible for a patent under Section 101 of the Patent Act have left the law "confused, constricted, and unclear," Tillis said. He added that he believes that if the issue is not addressed, the U.S. will cede its title as a global leader in intellectual property rights to other countries.

"We can't let that happen," he said. "And under my watch, which incidentally is over the next 452 days, it will be one of my top priorities."

The Patent Eligibility Restoration Act, which was [first introduced](#) in 2022 with a [revised version](#) put forward in May, would effectively overrule court decisions establishing "judicial exceptions" to patent eligibility. Those exceptions prohibit patents on inventions directed to things like abstract ideas, natural phenomena and laws of nature.

The bill's sponsors have argued courts and the [U.S. Patent and Trademark Office](#) have struggled to determine what those broad concepts encompass, so the measure would instead set narrower categories of inventions that are not eligible for patents by statute if they are claimed "as such," including mathematical formulas and mental processes.

The ranking member of the IP subcommittee, Sen. Adam Schiff, D-Calif., said he was taking a cautious approach to the bill, saying that it's important for companies in fields like artificial intelligence and biotechnology to have clarity on what is eligible for a patent, but "as members of Congress, we must ensure that we are striking the right balance."

If patents are available on ways of duplicating preexisting processes using a computer, "it could have the reverse effect of stifling innovation rather than encouraging it," Schiff said. Likewise, if a company is able to "monopolize a medical diagnostic test without guardrails, that could lead to less patients receiving proper treatment, as opposed to more," he said.

"It's our job to figure out the proper balance between encouraging investments in innovation and ensuring that as many Americans are able to reap the benefits of that innovation as possible," Schiff said.

Two co-sponsors of the Patent Eligibility Restoration Act, Sens. Mazie Hirono, D-Hawaii, and Chris Coons, D-Del., spoke in favor of it. Hirono said the Supreme Court "created this chaos," noting that calls for the justices to provide more clarity on which inventions are patent eligible have "fallen on deaf ears," as the court has denied dozens of petitions on the issue.

"So here we are with a bill that would create some level of certainty into a system that I think is really important, especially in the medical research area," she said.

Coons noted that he and Tillis held a [series of hearings](#) with dozens of witnesses in 2019 to lay the groundwork for the bill, and told his colleagues "let's work together to try and help clear the thicket of Section 101 jurisprudence."

The panel heard from numerous supporters of the bill at Wednesday's hearing, including two former USPTO directors, David Kappos and Andrei Iancu, and representatives of Novartis and [Dana-Farber Cancer Institute](#), along with two critics.

Kappos said "the U.S. is living with doctrinal chaos in patent eligibility," with a "roller coaster" of conflicting rulings on what is patent eligible that have made it challenging for companies to plan and secure investment.

Passing the bill, which would set out specific types of inventions that would not be patent eligible, rather than broad categories now used by the courts, would allow for stable and coherent decision-making, Kappos said. Yet inventions would still have to be novel, non-obvious and fully disclosed before a patent could be granted, and those issues are governed by precedent that is easier to apply than vague standards for patent eligibility, he said.

"Weak or over-broad patents would still be rejected, but for the right reasons, not through an unpredictable, distorted Section 101," Kappos said.

One critic of the bill, Mike Lemon, vice president of legal affairs at [National Retail Federation](#), said the retail industry is concerned that the Patent Eligibility Restoration Act would again permit patents on basic concepts implemented on a computer, like online shopping carts, that have been declared ineligible for patenting under Supreme Court decisions like [Alice v. CLS Bank](#) from 2014.

Proponents of the bill "argue that Alice created uncertainty, but the evidence shows otherwise," he said. "In reality, it is PERA that would create uncertainty by sweeping away decades of settled law."

Requirements of patent law like novelty and non-obviousness existed before the high court ruling, but they didn't prevent patent lawsuits that retailers believe were frivolous, Lemon said. He urged lawmakers not to hope that those provisions "somehow magically start to work better than they've worked in the past."

Tillis appeared unmoved by that concern, saying the bill is only about ensuring that more inventions are eligible for patents, and "isn't that a good thing?" The measure would not impact whether an invention meets the other criteria for obtaining a patent, he said.

"I want to get more in the pipeline, and I'm trusting that the ultimate decision on whether or not to grant a patent has sufficient guardrails," he said.

Under PERA, mathematical formulas and processes that are performed solely in the human mind or occur in nature independent of human activity would not be patent eligible, along with unmodified human genes or natural materials as they exist in nature.

However, the bill specifies that genes or natural materials could be patented if they are purified, enriched or otherwise altered by human activity.

Processes that are "substantially economic, financial, business, social, cultural, or artistic" would not be patent eligible under the bill. It would also require patent eligibility determinations to be made by considering the claimed invention as a whole, and without regard to whether an element of the invention is routine or conventional, which is now often a focus of eligibility decisions.

Tillis said he wants to try to address the concerns of everyone who is worried about the bill, "but I think on the whole, it's balanced and needed, and I'm going to work hard to get it done."