



The Honorable Charles Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Richard Durbin
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

October 8, 2025

RE: Strong Opposition to the Patent Eligibility Restoration Act (S. 1546)

Dear Chairman Grassley and Ranking Member Durbin:

We, the undersigned organizations representing startups, independent software developers, and the broader technology innovation ecosystem including end users, write to express our strong opposition to the Patent Eligibility Restoration Act (PERA). This legislation, if enacted, would have dire consequences for American small businesses and independent inventors, stifling the very innovation it purports to promote, particularly in critical fields like artificial intelligence (AI), where clear and balanced patent standards are essential for continued growth and competition.

Our opposition is rooted in a simple, yet urgent, reality: the U.S. patent system is currently being dismantled in a way that disproportionately harms small entities. For over a decade, startups have relied on two crucial tools to defend themselves against low-quality patents that can be weaponized to halt their operations: (1) the efficient post-grant review processes at the Patent Trial and Appeal Board (PTAB), and (2) the patent eligibility guardrails of 35 U.S.C. § 101.

1. The PTAB Safety Valve Has Been Eviscerated, Leaving Small Businesses Exposed.

[As detailed in a recent analysis by Engine](#), recent policy overhauls at the U.S. Patent and Trademark Office (USPTO) have severely restricted access to *inter partes* review (IPR). The

PTAB was established by the bipartisan America Invents Act as a faster, more affordable alternative to federal court for challenging weak patents that should never have been granted in the first place.

However, under then-Acting Director Coke Stewart (now Deputy Director), the USPTO has [implemented a new two-step](#) process that has caused the rate of discretionary denials of IPR petitions to [skyrocket from 15% to 77%](#). Under this new process, an IPR petition is first reviewed by the PTO Director, in consultation with at least three PTAB judges, to determine whether discretionary denial is warranted. Only if the petition advances past this initial stage does a three-member PTAB panel evaluate the challenge on its merits. This means that meritorious challenges to low-quality patents are being blocked at the outset based on procedural factors, not their merits. For a startup, an IPR challenge to a patent threatening its core product is its [Super Bowl](#). Now, the ability to even get on the field has been drastically curtailed. With this vital pathway to patent quality effectively closed, small businesses are left with no affordable defense against frivolous patent litigation.

2. In This Precarious Moment, Gutting Section 101 Would Be Catastrophic.

It is in this context—with the PTAB safety valve shut off—PERA’s effort to eliminate the patent eligibility standards of Section 101 is even more harmful. PERA would not merely “tweak” the law; it would overturn centuries of Supreme Court precedent, from *O’Reilly v. Morse* (1853) to *Alice Corp. v. CLS Bank Int’l* (2014), which have rightly prevented the patenting of abstract ideas, fundamental business practices, and mathematical concepts.

With the PTAB no longer a viable check, PERA would open the floodgates to the very patents that the PTAB and the courts were designed to filter out. It would allow patents on basic business methods, medical correlations, and legal agreements, merely because they involve a generic computer. This would invite a wave of crippling litigation against the small businesses that are the lifeblood of the American economy.

3. For AI Innovation, PERA Is a Recipe for Stagnation, Not Leadership.

Proponents of PERA incorrectly suggest that weakening patent eligibility standards is necessary for U.S. leadership in AI. The opposite is true. AI innovation is uniquely cumulative and collaborative, built on shared, fundamental building blocks like algorithms and mathematical models.

- **Diluting Section 101 would grant monopolies on these basic building blocks**, creating dense patent thickets that force AI startups to navigate a minefield of litigation simply to operate. This acts as a massive innovation tax, diverting precious capital from research and development (R&D) to legal defense.
- **AI’s rapid pace of development** means that by the time a patent on an abstract AI concept is granted, the technology is often obsolete. The patent becomes a lagging, irrelevant monopoly that serves only to block competition.

- **The global context is clear:** our competitors in Europe and China maintain strong defenses against abstract software and business method patents. Unilaterally disarming our eligibility standards would uniquely handicap American small businesses, while our global competitors keep their innovation ecosystems clear of such obstructions.

4. Patents Drive Consolidation and Favor Incumbents.

The current patent system already favors large, well-resourced incumbents who can afford to amass large patent portfolios and engage in expensive, years-long litigation. By simultaneously dismantling the PTAB and expanding patent eligibility through PERA, Congress would be handing a devastating advantage to these largest players. Small businesses and startups, which are vital pipelines for job creation and innovation, would be the primary victims, unable to defend themselves from a tsunami of low-quality patents.

Conclusion

The combination of a hobbled PTAB and an eviscerated Section 101 would be a perfect storm against American small business innovation. We urge you to oppose PERA and to instead focus on restoring the PTAB as the accessible, efficient check on patent quality that Congress intended. The path to U.S. leadership in AI and other critical technologies lies in promoting open competition and protecting our innovators from abusive litigation, not in granting monopolies on the very ideas that form the foundation of future progress.

Respectfully,

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