



**Computer & Communications
Industry Association**

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Written Testimony of

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“From Genes to Machines: the Patent Eligibility Debate”

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Chairman Grassley, Ranking Member Durbin, and distinguished Members of the Committee, my name is J. John Lee, and I serve as the Senior Director, Head of Intellectual Property Policy, at the Computer & Communications Industry Association (CCIA). CCIA is an international nonprofit membership organization representing companies in the computer, Internet, information technology (IT), artificial intelligence (AI), and communications industries.¹ Our members include a diverse array of businesses that employ and serve Americans in all 50 states. Together, CCIA's members employ over a million workers, invest over \$100 billion in research and development (R&D) annually, and generate trillions of dollars for the U.S. economy.²

CCIA was founded in 1972 and has represented some of America's most innovative businesses for over 50 years. From the advent of the internet to the rise of mobile communications, and now the AI revolution, CCIA members have been the tip of the spear for American innovation and technological leadership for decades. In accordance with that record of innovation, CCIA members consistently have been among the top patent recipients in the country.³ For example, nearly half of the American companies in the top 20 patent recipients last year are CCIA members.⁴ Our members have extensive experience with the U.S. patent system and are deeply invested in its success. As the U.S. Senate Committee on the Judiciary (Committee) examines patent subject matter eligibility, I appreciate the opportunity to provide perspectives on behalf of our members.

My testimony will focus on three central aspects of this important topic, which I discuss further below:

1. Patent eligibility limits are a longstanding feature of U.S. patent law that safeguard innovation by preventing patents from monopolizing the basic tools of innovation. For over a century, courts have reliably and predictably applied those limits, and empirical data shows that they continue to do so consistently today.
2. The evidence shows that current eligibility rules have supported—not hindered—American innovation, investment, and technological leadership.
3. Any legislative reforms should be narrowly targeted and preserve protections against abusive patent assertions while providing greater certainty where warranted.

I. Patent Eligibility Limits Are a Foundational Feature of the U.S. Patent System

Much of today's debate over patent eligibility rests on the premise that current Section 101 case law has become so unpredictable that congressional intervention is necessary. The empirical evidence, however, does not support that conclusion. Although recent Supreme Court

¹ Comput. & Commc'ns Indus. Ass'n, *About CCIA*, <https://ccianet.org/about-ccia/>.

² *Id.*

³ Harrity, LLP, *The 2026 Patent 300® List*, <https://harrityllp.com/patent300/>.

⁴ *Id.*

decisions have undoubtedly generated significant discussion, courts and the U.S. Patent and Trademark Office (USPTO) have applied those decisions with a high degree of consistency. One comprehensive study published in the *Iowa Law Review*, examining every Federal Circuit patent eligibility decision from 2012 to 2023, found that district courts were affirmed in 85.3% of Section 101 cases and the USPTO was affirmed in 95.5% of them.⁵ Those are not the hallmarks of a doctrine in disarray. Rather, the data demonstrates that the current framework provides meaningful predictability while continuing a longstanding principle: patents should cover genuine inventions without granting exclusive rights over the fundamental ideas, laws of nature, and natural phenomena upon which future innovation depends. A brief review of the Supreme Court's well-established jurisprudence demonstrates that these principles are not recent judicial innovations, but foundational features of the American patent system.

A. The Constitution and Congress Recognize Patent Rights Must Have Limits

As befitting a nation founded by innovators like Benjamin Franklin and Thomas Jefferson, intellectual property is woven into the Constitution itself. The Founders understood that incentivizing innovation, including via patents, could be an important part of the future vitality of the United States. They also realized that patents must have limits, or else they would obstruct innovation rather than promote it. Limits on eligible subject matter have been enshrined in the U.S. patent system essentially unchanged since Congress passed the Patent Act of 1793.⁶ And the Supreme Court's interpretation of those limits has its origins over 170 years ago.⁷ Those limits have served the country and the goal of promoting innovation well, helping lay the foundation for the Industrial Revolution, the Space Age, modern communications and IT, the Internet and AI, and beyond.

The Founders empowered Congress to establish a patent system, but only “[t]o promote the Progress of Science and useful Arts.”⁸ In recognition of that charge, Congress fashioned a patent system that incentivizes innovation but also imposes important limitations on issued patents. For instance, a patent may not claim subject matter that was already “available to the public,” such as matter that was previously patented, publicly sold or used, or described in a publication.⁹ Allowing a person to have exclusive rights over something that the public has already known and used for years, for example, clearly would not promote the progress of science or useful arts.¹⁰ Similarly, patents are not perpetual¹¹—they expire because future

⁵ Nikola L. Datzov & Jason Rantanen, *Predictable Unpredictability: The Surprising Administrability of Patent Subject Matter Eligibility*, 110 IOWA L. REV. 667, 716-17 (2025), <https://tinyurl.com/2sn5hj7d>.

⁶ Patent Act of 1793, Ch. 11, 1 Stat. 318.

⁷ *Le Roy v. Tatham*, 55 U.S. (14 How.) 156 (1852).

⁸ U.S. Const. art. 1, sec. 8, cl. 8.

⁹ 35 U.S.C. § 102.

¹⁰ See Letter from Thomas Jefferson to Isaac McPherson (Aug. 13, 1813), <https://tinyurl.com/45xke7kt>.

¹¹ 35 U.S.C. § 154.

innovation would be hindered if an invention's benefits and knowledge remained exclusive to the patent's owner(s) forever.

Patents must also claim subject matter that is eligible to be patented, as codified in Section 101 of Title 35.¹² Specifically, a patent must claim a “new and useful *process, machine, manufacture, or composition of matter*, or any new and useful improvement thereof.”¹³ Anything that does not fall within one of those broad statutory categories is ineligible and cannot be patented. This important limitation reflects Congress's recognition that not all things, even if newly discovered or created, would promote the progress of science and useful arts if allowed to be patented and exclusively owned by the patent's owner(s). This statutory language has stayed essentially the same since 1793.¹⁴

B. The Supreme Court's Patent Eligibility Jurisprudence Reflects Longstanding Principles, Not Judicial Activism

The Supreme Court has recognized the importance of limitations on patentable subject matter for well over a century. For example, in *Le Roy v. Tatham* in 1852, the Supreme Court noted: “A principle, in the abstract, is a fundamental truth; an original cause; a motive; these cannot be patented, as no one can claim in either of them an exclusive right.” 55 U.S. (14 How.) 156, 175 (1852). “Phenomena of nature, though just discovered, mental processes, and abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work.” *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972). “[M]onopolization of those tools through the grant of a patent might tend to impede innovation more than it would tend to promote it, thereby thwarting the primary object of the patent laws.” *Alice Corp. v. CLS Bank Int'l*, 134 S.Ct. 2347, 2354 (2014) (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 71, 132 S.Ct. 1289, 1293 (2012)). Thus, as the Supreme Court has understood for most of our country's history, patents on laws of nature, natural phenomena, and abstract ideas would hinder, not promote, scientific and technological progress by blocking the fundamental knowledge and freedom of thought that are necessary for virtually all scientific endeavors.¹⁵ As such, these exceptions fall outside the scope of eligible subject matter set forth by Congress in Section 101.

The Court's reasoning, rooted in the Constitution, has been illuminated by many decades of jurisprudence to create an extensive and cogent body of law that helps participants in the U.S. patent system understand clearly what is, and what is not, patent eligible. These participants include the USPTO, courts around the country, and most importantly the many businesses,

¹² 35 U.S.C. § 101.

¹³ *Id.* (emphasis added).

¹⁴ Compare Patent Act of 1793, Ch. 11, 1 Stat. 318, with 35 U.S.C. § 101.

¹⁵ *Alice*, 134 S.Ct. at 2354; *Benson*, 409 U.S. at 67; see also *Bilski v. Kappos*, 130 S.Ct. 3218, 3231 (2010) (holding that a patent claim was drawn to ineligible subject matter because it “would pre-empt use of this approach in all fields, and would effectively grant a monopoly over an abstract idea”).

including CCIA's members, that innovate and produce the products and services Americans depend on every day.

For example, in *Parker v. Flook*, the Supreme Court held that a patent claiming a mathematical formula was ineligible. 437 U.S. 584, 594-95 (1978). In contrast, in *Diamond v. Diehr*, the Court upheld as eligible a claim to a process for curing synthetic rubber, which involved applying a mathematical formula (the Arrhenius equation) to calculate curing time as one step of that process. 450 U.S. 175, 191-93 (1981). In sum, an abstract idea (e.g., a mathematical formula) or natural law untethered to a specific inventive process is ineligible because it would block all innovation involving that formula or law, whereas a specific inventive process applying the formula or law is eligible because it would only block use of the specific process that the patentee invented.¹⁶

Another illustration of that distinction was decided in *Funk Bros. Seed Co. v. Kalo Inoculant Co.*, where the Court held as ineligible a patent claiming a mixture of multiple naturally-occurring, agriculturally-helpful bacteria. 333 U.S. 127, 130-31 (1948). Thereafter, in *Diamond v. Chakrabarty*, the Court upheld as eligible a patent claiming a bacterium that was genetically modified by the inventor to have new and different properties compared to any naturally occurring bacteria. 447 U.S. 303, 309-10 (1980). Similar to the distinction between *Flook* and *Diehr*, the pair of *Funk Bros.* and *Chakrabarty* makes clear that natural phenomena (similar to abstract ideas) are not patent eligible, whereas the application of a natural phenomenon in a man-made invention is eligible.¹⁷

C. Recent Supreme Court Decisions Applied Longstanding Eligibility Principles and Did Not Create New Ones

Certain critics of current U.S. patent law, and patent eligibility law in particular, contend that a series of Supreme Court decisions beginning in 2010 fundamentally changed Section 101, throwing patent law into uncertainty and chaos. That framing, however, misconstrues both the Court's decisions and history. The principles reflected in those decisions are not modern judicial inventions, but the latest application of longstanding principles and precedents that have shaped American patent law for more than 170 years.

In *Bilski v. Kappos*, the Court struck down patent claims to a business method of hedging risk in commodity transactions. 130 S.Ct. 3218, 3229-31 (2010). Concluding that the patent claimed the abstract idea of hedging risk, the Court relied on its well-established precedents such as *Benson*, *Flook*, and *Diehr* to hold the patent claims ineligible. *Id.*

¹⁶ See *Diehr*, 450 U.S. at 191-93.

¹⁷ See *Chakrabarty*, 447 U.S. at 309-10.

Similarly, in the *Mayo* case, the Court determined that a patent claiming a method of adjusting the dosage of certain drugs was ineligible because it amounted to a claim on a law of nature—the relationship between the dosage of a drug and the level of that drug’s metabolite in the blood (i.e., the chemical resulting from the body’s natural processing of the chemical). 132 S.Ct. at 1294-95. In other words, one cannot patent merely the natural outcome of administering a certain amount of a substance to a human body, or whether a certain amount of a substance is naturally toxic to a human. In reaching this conclusion, the Court again relied on its past precedents, including *Flook* and *Diehr*. *Id.* at 1298-1300.

The Court continued this line of cases in *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, in which claims to human genes were held ineligible when they were claimed as isolated DNA sequences identical to the naturally-occurring sequences in the body, but other claims were upheld as eligible because they claimed sequences that had been altered to remove superfluous parts of the DNA sequence (and, thus, were not identical to the naturally-occurring sequences). 133 S.Ct. 2107, 2116-19 (2013). Once again, the Court relied on and followed its existing precedents, such as *Funk Bros* and *Chakrabarty*. *Id.*

Finally, in the *Alice* case, the Court held ineligible “a method of exchanging financial obligations between two parties using a third-party intermediary to mitigate settlement risk.” 134 S.Ct. at 2355-60. Concluding that the claimed method amounts to an abstract idea implemented on a generic computer, the Court relied on its existing precedents, including *Bilski*, *Flook*, *Diehr*, and *Benson*. *Id.* Far from upending longstanding and settled law on patent eligibility, these recent Section 101 cases generally applied existing precedents, some of which stretch back to the Industrial Revolution or World War II.

Empirical evidence strongly refutes the contention that these recent Supreme Court cases on patent eligibility have led to massively greater uncertainty or unpredictability in patent law. If recent Supreme Court decisions had made Section 101 unpredictable and inconsistent, one would expect a relatively low affirmance rate in Section 101 cases because variability in how judges decide Section 101 issues would be very high. To the contrary, the recent study in the *Iowa Law Review* found that district courts are affirmed in 85.3% of patent eligibility cases, and the USPTO is affirmed in a staggering 95.5% of such cases.¹⁸ In fact, the affirmance rate for patent eligibility was the highest affirmance rate of any patent law issue examined in the study.¹⁹ Further, an analysis of the substance of these decisions indicated that district courts were adjudged to have correctly applied the specifics of Section 101 law (in addition to reaching the correct result) in 81.1% of cases.²⁰ Even among Federal Circuit judges themselves, the *Iowa Law*

¹⁸ Datzov, *supra* note 5, at 716-17.

¹⁹ *Id.* at 719.

²⁰ *Id.* at 727. Specifically, in addition to the 14.7% of cases where the district courts reached the wrong result, only an additional 4.2% of cases involved the district court reaching the right result despite incorrectly applying the

Review study found that the judges dissent at a lower rate in eligibility cases compared to other patent cases, demonstrating that the judges do not find it difficult to agree and be consistent with each other on patent eligibility issues, and belying the narrative that Section 101 law is inconsistent and unpredictable.²¹ In fact, only 6.5% of patent eligibility cases drew a dissent, meaning that in 93.5% of cases the judges were unanimous—hardly a sign of disagreement, inconsistency, or unpredictability.²²

While the Supreme Court’s recent Section 101 decisions certainly represented an important inflection point and sparked substantial debate about their impact on patent law, the evidence undercuts the narrative that they fundamentally changed the law or created unworkable and unpredictable legal rules. Rather, those decisions were a continuation of more than 170 years of case law setting forth patent eligibility limits that are supported by the Constitution, and which “promote the Progress of Science and useful Arts” by preventing the monopolization of the basic building blocks of research and innovation. Further, while patent eligibility has always been a tricky and complex inquiry even before the Supreme Court’s recent cases, empirical evidence shows that participants in the patent system—including the courts and the USPTO—continue to be able to address Section 101 issues consistently and correctly, creating a legal landscape that provides sufficient certainty and predictability for businesses like CCIA’s members to innovate and serve the American people.

II. Existing Eligibility Rules Support U.S. Innovation and Technological Leadership

Empirical evidence suggests that current patent eligibility law, including the most recent Supreme Court precedents, has resulted in a *net increase* to innovation across multiple measures, including patenting, R&D spending, and venture capital (VC) investment across many technology sectors, including AI. The evidence also suggests that U.S. competitiveness in these areas has not been harmed by patent eligibility rules, as seen in the robustness of U.S. leadership in AI innovation.

A. U.S. Innovation Has Continued to Thrive Under Existing Eligibility Rules

Section 101’s limits on patent eligibility are longstanding and have been an integral part of the U.S. patent system during most of our nation’s history of scientific and technological innovation. It stands to reason that they would not be a hindrance to innovation now given that they have helped foster innovation for over a century. Nonetheless, critics of the Supreme Court’s recent Section 101 decisions have argued that they pose a major threat to U.S. innovation

Supreme Court’s case law. USPTO had no such cases, so 95.5% of its Section 101 decisions were determined to be error-free.

²¹ *Id.* at 733-34.

²² *Id.* at 736-37.

in critical and emerging technologies, such as AI, and other important fields of research. Available data shows, however, that these concerns may be overstated.

Far from preventing patenting of AI inventions, the USPTO issues tens of thousands of patents on AI each year, notwithstanding the Supreme Court’s patent eligibility case law.²³ For example, nearly 50,000 U.S. patents on AI technology were granted in 2023 alone.²⁴ In fact, U.S. patent grants in AI have grown the most in the years *following* the Supreme Court’s most recent Section 101 cases, demonstrating that patent eligibility has not been a barrier to AI patents.²⁵ The same is true with other state-of-the-art technologies in our sector, including cybersecurity, user interfaces, and virtual reality, each of which has seen thousands of patents continue to be granted every year.²⁶ And court decisions demonstrate that Section 101 is effectively distinguishing between AI patents that represent real technological innovation,²⁷ and purported AI patents that claim only abstract ideas and mental processes implemented using generic AI technology.²⁸

Other measures of innovation also do not provide evidence of a decline in innovation after the Supreme Court’s most recent patent eligibility cases.²⁹ For example, a recent study found that R&D expenditures in the software/IT industry were either unaffected or actually increased in the years following those cases.³⁰ Thus, the state of patent eligibility law did not dissuade businesses in our sector from investing in R&D and innovation.³¹

To the extent that venture capital (VC) and other investor funding can be used as a rough measure of innovative activity, particularly in critical technology sectors, it seems clear that the current state of patent eligibility law in the U.S. has done little to dampen enthusiasm for investments in, for example, AI companies and startups.³² VC funding for AI firms grew from

²³ Hanming Fang et al., *China Leads the World in AI Patents, But Still Learns More from America*, STANFORD UNIV. CTR. ON CHINA’S ECON. & INSTS. (May 15, 2026), <https://tinyurl.com/3vdwzppa>.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Parola Analytics, *2024 Patent Roundup: Top 100 US Patent Owners*, PAROLANEWS (Nov. 12, 2024), <https://tinyurl.com/bddtram9>; Anaqua, *Anaqua Analysis of USPTO Patenting Statistics 2024* (Jan. 30, 2025), <https://tinyurl.com/4zpefhfs>.

²⁷ *E.g., Sanas.AI Inc. v. Krisp Technologies, Inc.*, No. 3:25-cv-05666-RS, slip op. at 6-12 (N.D. Cal. Feb. 23, 2026) (holding that methods of processing speech for speech recognition using particularized processing steps represented technological improvements to the AI speech processing technology itself and, thus, were patent eligible).

²⁸ *E.g., Dental Monitoring SAS v. Align Tech., Inc.*, No. 2024-2270, slip op. at 9-13 (Fed. Cir. Jul. 7, 2026) (holding that a claim to a method of analyzing dental images using a generic “deep learning device” is an ineligible claim on an abstract idea).

²⁹ Christian Helmers & Brian J. Love, *Patent Law Reform and Innovation An Empirical Assessment of the Last 20 Years*, INT’L REV. L. & ECON. (Mar. 24, 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4580645.

³⁰ *Id.* at 16-18.

³¹ *See also* Christian Helmers & Brian J. Love, *Patent Protection and Software Firm Financing*, RESEARCH POL’Y (Jun. 25, 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5600070 (concluding that the Supreme Court’s *Alice* decision had little impact on software firms).

³² Org. for Econ. Coop. & Dev., *Venture capital investments in artificial intelligence through 2025*, OECD POL’Y BRIEFS (Feb. 17, 2026), <https://tinyurl.com/y5k829fp>.

30% of global VC investments in 2022, to 61% in 2025.³³ Despite U.S. patent eligibility law (or perhaps in part because of it), U.S. firms received 75% of total VC funding for AI firms in 2025, nearly \$200 billion in one year alone.³⁴ The EU (second place with 6%) and the People's Republic of China (third place with 5%) lagged far behind the United States in share of global VC funding for AI.³⁵

These figures also demonstrate that claims of U.S. patent eligibility law detracting from U.S. competitiveness are questionable. To the extent that European or Chinese patent eligibility rules are alleged to be “better” than those in the United States,³⁶ that supposed “advantage” does not appear to have had a substantial impact on investors’ views of which country’s businesses have the most innovative AI technology and, thus, deserve the most investment. Further, this investment has gone to both large companies as well as startups, indicating that patent eligibility rules have not deterred investors from funding a broad spectrum of companies. In fact, this investment has demonstrated the power of American ingenuity (under current patent law). As just one example, U.S. AI firm Anthropic began as an AI startup with just a few employees in 2021,³⁷ and, only five years later, has become the most valuable private company in history, recently raising \$65 billion in series H funding at a valuation of \$965 billion.³⁸

B. Section 101 Provides an Important Safeguard Against Low-Quality Patent Claims and Litigation Abuse

In addition to *not* blocking innovation in AI and other such disciplines, current U.S. patent eligibility law encourages innovation by providing important protections for innovative businesses against spurious litigation brought by patent assertion entities (PAEs).³⁹ Precedents like *Alice* have allowed businesses, particularly smaller businesses, to successfully defend themselves against rent-seeking PAEs wielding low-quality, vague patents covering abstract ideas (such as sorting or organizing data) implemented on generic computers or devices.⁴⁰ The financial toll of predatory patent litigation can be steep or even catastrophic, costing hundreds of thousands or even millions in legal fees and potentially millions more in a settlement, costs that

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ But see Michael Portnov, *AI patent eligibility: observations and lessons for the U.S. and China*, WESTLAW TODAY (Jan. 23, 2024), (providing empirical and anecdotal evidence indicating that obtaining a patent on AI technology from the USPTO may be faster and more reliable than from the Chinese patent office, CNIPA, including with respect to patent eligibility).

³⁷ Devin Coldewey, *Anthropic is the new AI research outfit from OpenAI's Dario Amodei, and it has \$124M to burn*, TECHCRUNCH (May 28, 2021), <https://tinyurl.com/4faueday>.

³⁸ Eva Roytburg, *What's rarer than a unicorn? Anthropic didn't just join the Series H club, it almost became the first \$1 trillion private company ever*, FORTUNE (May 28, 2026), <https://tinyurl.com/f62jy2dc>.

³⁹ See, e.g., Michael Skelps, *Supreme Court's Alice decision protected my small businesses from patent trolls*, THE HILL (July 7, 2016), <https://tinyurl.com/2v2bkykd>.

⁴⁰ *Id.*

can lead directly to lost jobs or higher prices for consumers.⁴¹ Many unscrupulous PAEs target small businesses in particular because they have a much harder time coping with the high cost of litigation, regardless of the merits of the case.⁴² This litigation acts like a regressive tax on U.S. businesses that has a disproportionate impact on small companies.

At the time the Supreme Court stepped in to further clarify the patent eligibility statute, particularly for computer-implemented abstract ideas such as in *Alice*, patent litigation was skyrocketing.⁴³ PAE litigation was estimated as costing businesses nearly \$30 billion per year in direct costs, including litigation costs, with smaller firms affected the most.⁴⁴ This litigation tax was shown to be depressing R&D spending as well as VC investment.⁴⁵

Examples of patent eligibility rules aiding small businesses fighting this litigation tax abound. For instance, crowdfunding platform Gust was sued in 2015 by a PAE, AlphaCap Ventures LLC, asserting three patents claiming various methods of organizing information for investors using generic electronic systems and software.⁴⁶ Ultimately, a district court sided with Gust and held that the asserted patent claims were clearly ineligible subject matter under the Supreme Court's decision in *Alice*, so much so that AlphaCap's lawsuit was frivolous enough to award attorney's fees.⁴⁷

In another example, a nutrition-related software startup, Nutritionix, had its customers targeted in a PAE litigation campaign, which deterred them from doing business with Nutritionix.⁴⁸ The relevant patent claimed a method of meal planning using a generic database system that displayed meal information on a "picture menu."⁴⁹ Fortunately for Nutritionix, one of those customers was able to defeat the patent in court under the Supreme Court's patent eligibility jurisprudence, the court concluding it claimed an abstract idea.⁵⁰

Recent scholarship suggests that the net overall effect of patent eligibility rules, even after the Supreme Court's most recent clarifications of Section 101, has been economically

⁴¹ *Id.*

⁴² *Id.*

⁴³ James Bessen, *The Evidence Is In: Patent Trolls Do Hurt Innovation*, HARV. BUS. REV. (Nov. 2014), <https://tinyurl.com/4szjw6xw>.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Gust, Inc. v. AlphaCap Ventures LLC*, No. 15-cv-6192 (DLC), 2016 U.S. Dist. LEXIS 170118, at *2-4, 17-19 (S.D.N.Y. Dec. 8, 2016).

⁴⁷ *Id.* at *17-24. The court also sanctioned AlphaCap's counsel, Gutride Safier LLP, and awarded attorney's fees against the firm, but the Federal Circuit reversed those sanctions. *AlphaCap Ventures LLC v. Gutride Safier LLP*, No. 2017-2414, slip op. at 2 (Sep. 28, 2018).

⁴⁸ Elec. Frontier Found., *A Startup Runs Into A Patent on Picture Menus*, <https://tinyurl.com/48m45jz8>.

⁴⁹ *Id.*; U.S. Patent No. 6,585,516 B1.

⁵⁰ *DietGoal Innovations v. Bravo Media LLC*, No. 1:13-cv-08391 (PAE), slip op. at 17-26 (S.D.N.Y. Jul. 8, 2014).

positive.⁵¹ In fact, VC funding to the industries most affected by developments in patent eligibility law rose by 42% *after* the Supreme Court's most recent cases, compared to other patent-intensive industries.⁵² This increase was driven primarily by its effect on PAE activity.⁵³ In other words, reducing PAE activity appears to encourage more investment and more innovation, at least as measured by VC funding. Controlling PAEs may also have benefits for national security and U.S. competitiveness as it has been shown that strategic competitors, like the People's Republic of China, are facilitating PAE litigation against American competitors.⁵⁴

III. Changes to Section 101 Should Be Narrowly Tailored and Grounded in Evidence

Although substantial evidence refutes claims that current patent eligibility law has undermined American innovation or competitiveness, CCIA recognizes that Congress has an important role in ensuring that the patent system continues to serve its constitutional purpose. If Congress considers changes to Section 101, those changes should be carefully calibrated with stakeholder input, supported by empirical evidence, and designed to address demonstrated problems while preserving the strengths of the existing framework.

First, reforms should be based on demonstrated problems, not assumptions or conjecture about the operation of the current system. Patent eligibility is a complex area of the law, and proposed changes may have consequences that are difficult to predict. Claims that current Section 101 jurisprudence has created widespread uncertainty or harmed innovation should be evaluated against empirical evidence. Existing data demonstrates that courts and the USPTO have applied Section 101 consistently, supporting American innovation and investment particularly in cutting-edge fields such as AI. Any legislative action should, therefore, be grounded in evidence of actual problems and a clear understanding of how proposed changes would affect the broader innovation ecosystem.

Second, any changes to Section 101 should be narrowly tailored and avoid unnecessarily disrupting a framework that has supported decades of technological leadership. The U.S. patent system has long balanced two objectives: providing meaningful incentives for invention while ensuring that fundamental principles, natural phenomena, and abstract ideas remain available for future innovation. Broad revisions to eligibility standards could unintentionally upset this balance by introducing new uncertainty, creating new litigation over undefined terms, and weakening protections that have benefited innovators across industries. Congress should focus on targeted improvements solely where a proven need exists, rather than sweeping changes to a longstanding area of patent law.

⁵¹ Josh Feng & Peyton Williams, *Abstract Patents and Startup Funding: Evidence from Alice v. CLS Bank*, RESEARCH POL'Y (May 13, 2023), <https://tinyurl.com/3byrz4dc>.

⁵² *Id.* at 24.

⁵³ *Id.* at 24-26.

⁵⁴ *See, e.g.,* Joe Miller, *Chinese-funded lawsuits fuel backlash against litigation financiers*, FIN. TIMES (Nov. 18, 2023), <https://tinyurl.com/twvywsbc>.

Third, reforms should preserve the legal certainty that enables long-term investment in innovation. R&D-intensive industries rely on stable intellectual property rules when making significant investments that may take years to produce results. Recent proposals to amend Section 101 have included new concepts and undefined terms, including references to processes that are “substantially economic, financial, business, social, cultural, or artistic,” or requirements that certain elements be “necessary to practically perform the invention.” While well-intentioned, such language could create additional uncertainty as courts and the USPTO try to interpret new statutory standards. Any legislative changes should minimize ambiguity and provide clear guidance to innovators, investors, courts, and the USPTO.

Finally, any reform effort should preserve Section 101’s important role in preventing abusive patent litigation, and allowing for early dismissal if an ineligible patent is asserted. One of the benefits of current eligibility doctrine is that it provides businesses, particularly smaller companies, with an efficient mechanism to challenge low-quality patents that claim generic implementations of abstract concepts. Weakening these protections could increase incentives for abusive patent assertion activity and divert resources away from R&D and productive investment. Any changes to Section 101 should maintain safeguards against patents that do not represent genuine technological innovation.

IV. Conclusion

On behalf of CCIA’s members, I am deeply grateful for the opportunity to testify before the Committee today. The U.S. patent system has played a central role in fostering generations of American innovation, and any changes to Section 101 should preserve the balance that has made that success possible: rewarding genuine inventions while ensuring that the fundamental building blocks of innovation remain available for future discovery. CCIA looks forward to continuing to work with the Committee as it considers this important issue.