

117TH CONGRESS
2D SESSION

S. 4734

To amend title 35, United States Code, to address matters relating to patent subject matter eligibility, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2022

Mr. TILLIS introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 35, United States Code, to address matters relating to patent subject matter eligibility, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Patent Eligibility Res-
5 toration Act of 2022”.

6 **SEC. 2. PATENT ELIGIBILITY.**

7 (a) IN GENERAL.—Chapter 10 of title 35, United
8 States Code, is amended—

9 (1) in section 100—

1 (A) in subsection (b), by striking “includes
2 a new use of a known process” and inserting
3 “includes a use, application, or method of man-
4 ufacture of a known or naturally-occurring
5 process”; and

6 (B) by adding at the end the following:

7 “(k) The term ‘useful’ means, with respect to an in-
8 vention or discovery, that the invention or discovery has
9 a specific and practical utility from the perspective of a
10 person of ordinary skill in the art to which the invention
11 or discovery pertains.”; and

12 (2) by amending section 101 to read as follows:

13 **“§ 101. Patent eligibility**

14 “(a) IN GENERAL.—Whoever invents or discovers
15 any useful process, machine, manufacture, or composition
16 of matter, or any useful improvement thereof, may obtain
17 a patent therefor, subject only to the exclusions in sub-
18 section (b) and to the further conditions and requirements
19 of this title.

20 “(b) ELIGIBILITY EXCLUSIONS.—

21 “(1) IN GENERAL.—Subject to paragraph (2), a
22 person may not obtain a patent for any of the fol-
23 lowing, if claimed as such:

24 “(A) A mathematical formula, apart from
25 a useful invention or discovery.

1 “(B) A process that—

2 “(i) is a non-technological economic,
3 financial, business, social, cultural, or ar-
4 tistic process;

5 “(ii) is a mental process performed
6 solely in the human mind; or

7 “(iii) occurs in nature wholly inde-
8 pendent of, and prior to, any human activ-
9 ity.

10 “(C) An unmodified human gene, as that
11 gene exists in the human body.

12 “(D) An unmodified natural material, as
13 that material exists in nature.

14 “(2) CONDITIONS.—

15 “(A) CERTAIN PROCESSES.—Notwith-
16 standing paragraph (1)(B)(i), a person may ob-
17 tain a patent for a claimed invention that is a
18 process described in such provision if that proc-
19 ess is embodied in a machine or manufacture,
20 unless that machine or manufacture is recited
21 in a patent claim without integrating, beyond
22 merely storing and executing, the steps of the
23 process that the machine or manufacture per-
24 form.

1 “(B) HUMAN GENES AND NATURAL MATE-
2 RIALS.—For the purposes of subparagraphs (C)
3 and (D) of paragraph (1), a human gene or
4 natural material that is isolated, purified, en-
5 riched, or otherwise altered by human activity,
6 or that is otherwise employed in a useful inven-
7 tion or discovery, shall not be considered to be
8 unmodified.

9 “(c) ELIGIBILITY.—

10 “(1) IN GENERAL.—In determining whether,
11 under this section, a claimed invention is eligible for
12 a patent, eligibility shall be determined—

13 “(A) by considering the claimed invention
14 as a whole and without discounting or dis-
15 regarding any claim element; and

16 “(B) without regard to—

17 “(i) the manner in which the claimed
18 invention was made;

19 “(ii) whether a claim element is
20 known, conventional, routine, or naturally
21 occurring;

22 “(iii) the state of the applicable art,
23 as of the date on which the claimed inven-
24 tion is invented; or

1 “(iv) any other consideration in sec-
 2 tion 102, 103, or 112.

3 “(2) INFRINGEMENT ACTION.—

4 “(A) IN GENERAL.—In an action brought
 5 for infringement under this title, the court, at
 6 any time, may determine whether an invention
 7 or discovery that is a subject of the action is el-
 8 igible for a patent under this section, including
 9 on motion of a party when there are no genuine
 10 issues of material fact.

11 “(B) LIMITED DISCOVERY.—With respect
 12 to a determination described in subparagraph
 13 (A), the court may consider limited discovery
 14 relevant only to the eligibility described in that
 15 subparagraph before ruling on a motion de-
 16 scribed in that subparagraph.”.

17 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 18 The table of sections for chapter 10 of title 35, United
 19 States Code, is amended by striking the item relating to
 20 section 101 and inserting the following:

“101. Patent eligibility.”.

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