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(Original Signature of Member)

118TH CONGRESS
2D SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

Mr. KILEY introduced the following bill; which was referred to the Committee on _____

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 2024”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) As of the day before the date of enactment
2 of this Act, patent eligibility jurisprudence inter-
3 preting section 101 of title 35, United States Code,
4 requires significant modification and clarification.

5 (2) For many years after the original enact-
6 ment of section 101 of title 35, United States Code,
7 the Supreme Court of the United States and other
8 courts created judicial exceptions to the wording of
9 that section, thereby rendering an increasing number
10 of inventions ineligible for patent protection.

11 (3) Efforts by judges of district courts and
12 courts of appeals of the United States to apply the
13 exceptions described in paragraph (2) to specific cir-
14 cumstances have led to extensive confusion and a
15 lack of consistency—

16 (A) throughout the judicial branch of the
17 Federal Government and Federal agencies; and

18 (B) among patent practitioners.

19 (4) Many judges of the United States Court of
20 Appeals for the Federal Circuit and of various dis-
21 trict courts of the United States have explicitly ex-
22 pressed the need for more guidance with respect to
23 the meaning of section 101 of title 35, United States
24 Code, and many patent owners, and persons that en-
25 gage with patent owners, complain that the interpre-

1 tation of that section is extremely confusing and dif-
2 ficult to discern and apply with any confidence.

3 (5) Under this Act, and the amendments made
4 by this Act, the state of the law shall be as follows:

5 (A) All judicial exceptions to patent eligi-
6 bility are eliminated.

7 (B) Any invention or discovery that can be
8 claimed as a useful process, machine, manufac-
9 ture, or composition of matter, or any useful
10 improvement thereof, is eligible for patent pro-
11 tection, except as explicitly provided in section
12 101 of title 35, United States Code, as amend-
13 ed by this Act, as described in subparagraphs
14 (D) and (E) of this paragraph.

15 (C) Sections 102, 103, and 112 of title 35,
16 United States Code, will continue to prescribe
17 the requirements for obtaining a patent, but no
18 such requirement will be used in determining
19 patent eligibility.

20 (D) The following inventions shall not be
21 eligible for patent protection:

22 (i) A mathematical formula that is
23 not part of an invention that is in a cat-
24 egory described in subparagraph (B).

1 (ii) A mental process performed solely
2 in the mind of a human being.

3 (iii) An unmodified human gene, as
4 that gene exists in the human body.

5 (iv) An unmodified natural material,
6 as that material exists in nature.

7 (v) A process that is substantially eco-
8 nomic, financial, business, social, cultural,
9 or artistic.

10 (E) Under the exception described in sub-
11 paragraph (D)(v)—

12 (i) process claims drawn solely to the
13 steps undertaken by human beings in
14 methods of doing business, performing
15 dance moves, offering marriage proposals,
16 and the like shall not be eligible for patent
17 coverage, and adding a non-essential ref-
18 erence to a computer by merely stating, for
19 example, “do it on a computer” shall not
20 establish such eligibility; and

21 (ii) any process that cannot be prac-
22 tically performed without the use of a ma-
23 chine (including a computer) or manufac-
24 ture shall be eligible for patent coverage.

1 **SEC. 3. PATENT ELIGIBILITY.**

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

4 (1) in section 100—

5 (A) in subsection (b), by striking “includes
6 a new use of a known process” and inserting
7 “includes a use, application, or method of man-
8 ufacture of a known or naturally-occurring
9 process”; and

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

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

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

17 **“§ 101. Patent eligibility**

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

24 “(b) ELIGIBILITY EXCLUSIONS.—

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

4 “(A) A mathematical formula that is not
5 part of a claimed invention in a category de-
6 scribed in subsection (a).

7 “(B)(i) Subject to clause (ii), a process
8 that is substantially economic, financial, busi-
9 ness, social, cultural, or artistic, even though
10 not less than 1 step in the process refers to a
11 machine or manufacture.

12 “(ii) The process described in clause (i)
13 shall not be excluded from eligibility for a pat-
14 ent if the process cannot practically be per-
15 formed without the use of a machine or manu-
16 facture.

17 “(C) A process that—

18 “(i) is a mental process performed
19 solely in the human mind; or

20 “(ii) occurs in nature wholly inde-
21 pendent of, and prior to, any human activ-
22 ity.

23 “(D) An unmodified human gene, as that
24 gene exists in the human body.

1 “(E) An unmodified natural material, as
2 that material exists in nature.

3 “(2) CONDITIONS.—For the purposes of sub-
4 paragraphs (D) and (E) of paragraph (1), a human
5 gene or natural material shall not be considered to
6 be unmodified if the gene or material, as applicable,
7 is—

8 “(A) isolated, purified, enriched, or other-
9 wise altered by human activity; or

10 “(B) otherwise employed in a useful inven-
11 tion or discovery.

12 “(c) ELIGIBILITY.—

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

16 “(A) by considering the claimed invention
17 as a whole and without discounting or dis-
18 regarding any claim element; and

19 “(B) without regard to—

20 “(i) the manner in which the claimed
21 invention was made;

22 “(ii) whether a claim element is
23 known, conventional, routine, or naturally
24 occurring;

1 “(iii) the state of the applicable art,
2 as of the date on which the claimed inven-
3 tion is invented; or

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

6 “(2) INFRINGEMENT ACTION.—

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

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

20 (b) TECHNICAL AND CONFORMING AMENDMENT.—

21 The table of sections for chapter 10 of title 35, United
22 States Code, is amended by striking the item relating to
23 section 101 and inserting the following:

 “101. Patent eligibility.”.