

# United States Senate

WASHINGTON, DC 20510

## VIA ELECTRONIC TRANSMISSION

March 5, 2021

Mr. Drew Hirshfeld  
Commissioner for Patents  
Performing the functions and duties of the Director  
United States Patent and Trademark Office  
600 Dulany Street  
Alexandria, VA 22314

Dear Mr. Hirshfeld:

We write you today regarding the state of patent eligibility jurisprudence in the United States. Since the Supreme Court's landmark decisions in *Alice Corp. v. CLS Bank International* and *Mayo Collaborative Services Inc. v. Prometheus Laboratories Inc.*, there has been a lack of consistency and clarity in our nation's patent eligibility laws. Our nation has the world's strongest innovation economy, and unless we take steps to provide clarity in the area of patent eligibility, we risk losing our place as the global innovation leader in the twenty-first century.

As you are well aware, the United States consistently leads the world in innovation across multiple sectors, including quantum computing, artificial intelligence, 5G, the internet of things, biopharmaceuticals, precision medicine, and life sciences. Our robust innovation economy ensures American citizens not only receive early access to revolutionary and groundbreaking technology, cures, and treatments, but also retain good, sound jobs and economic growth in these industries.

If the United States is going to continue leading in all of these technology sectors, we can no longer continue to ignore the fact that current eligibility jurisprudence has had a dramatic negative impact on investment, research, and innovation. The lack of clarity has not only discouraged investment in critical emerging technologies, but also led the courts to foreclose protection entirely for certain important inventions in the diagnostics, biopharmaceutical, and life sciences industries. At a time when the United States is struggling to contain and treat the worst global pandemic in more than one hundred years, it is simply astounding that current jurisprudence makes it virtually impossible to obtain many patents in the diagnostic methods and precision medicine sectors.

It is past time that Congress act to address this issue. To assist us as we consider what legislative action should be taken to reform our eligibility laws, we ask that you publish a request for information on the current state of patent eligibility jurisprudence in the United States, evaluate

the responses, and provide us with a detailed summary of your findings. We are particularly interested in learning how the current jurisprudence has adversely impacted investment and innovation in critical technologies like quantum computing, artificial intelligence, precision medicine, diagnostic methods, and pharmaceutical treatments. We ask that you provide your findings no later than March 5, 2022.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact us. We stand ready and willing to work with you to provide long-term certainty in the area of patent eligibility to ensure our role as the world's leading innovation economy continues for years to come.

Sincerely,



Thom Tillis  
United States Senator



Mazie K. Hirono  
United States Senator



Tom Cotton  
United States Senator



Christopher A. Coons  
United States Senator