117TH CONGRESS
2D SESSION

S. _____

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

Mr. TILLIS introduced the following bill; which was read twice and 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Patent Eligibility Restoration Act of 2022''.

SEC. 2. PATENT ELIGIBILITY.

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

(1) in section 100—

(A) in subsection (b), by striking ''includes a new use of a known process'' and inserting ''includes a use, application, or method of manufacture of a known or naturally-occurring process''; and

(B) by adding at the end the following:

''(k) The term 'useful' means, with respect to an invention or discovery, that the invention or discovery has a specific and practical utility from the perspective of a person of ordinary skill in the art to which the invention or discovery pertains.''; and

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

''§ 101. Patent eligibility

''(a) IN GENERAL.—Whoever invents or discovers any useful process, machine, manufacture, or composition of matter, or any useful improvement thereof, may obtain a patent therefor, subject only to the exclusions in subsection (b) and to the further conditions and requirements of this title.

''(b) ELIGIBILITY EXCLUSIONS.—

''(1) IN GENERAL.—Subject to paragraph (2), a person may not obtain a patent for any of the following, if claimed as such:

''(A) A mathematical formula, apart from a useful invention or discovery.

"(B) A process that—

"(i) is a non-technological economic, financial, business, social, cultural, or artistic process;

"(ii) is a mental process performed solely in the human mind; or

"(iii) occurs in nature wholly independent of, and prior to, any human activity.

"(C) An unmodified human gene, as that gene exists in the human body.

"(D) An unmodified natural material, as that material exists in nature.

"(2) CONDITIONS.—

"(A) CERTAIN PROCESSES.—Notwithstanding paragraph (1)(B)(i), a person may obtain a patent for a claimed invention that is a process described in such provision if that process is embodied in a machine or manufacture, unless that machine or manufacture is recited in a patent claim without integrating, beyond merely storing and executing, the steps of the process that the machine or manufacture perform.

"(B) HUMAN GENES AND NATURAL MATERIALS.—For the purposes of subparagraphs (C) and (D) of paragraph (1), a human gene or natural material that is isolated, purified, enriched, or otherwise altered by human activity, or that is otherwise employed in a useful invention or discovery, shall not be considered to be unmodified.

"(c) ELIGIBILITY.—

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

"(A) by considering the claimed invention as a whole and without discounting or disregarding any claim element; and

"(B) without regard to—

"(i) the manner in which the claimed invention was made;

"(ii) whether a claim element is known, conventional, routine, or naturally occurring;

"(iii) the state of the applicable art, as of the date on which the claimed invention is invented; or

"(iv) any other consideration in section 102, 103, or 112.

"(2) INFRINGEMENT ACTION.—

"(A) IN GENERAL.—In an action brought for infringement under this title, the court, at any time, may determine whether an invention or discovery that is a subject of the action is eligible for a patent under this section, including on motion of a party when there are no genuine issues of material fact.

"(B) LIMITED DISCOVERY.—With respect to a determination described in subparagraph (A), the court may consider limited discovery relevant only to the eligibility described in that subparagraph before ruling on a motion described in that subparagraph.".

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

"101. Patent eligibility.".