

Amending Patent Eligibility

David Taylor

The Supreme Court's recent decisions applying the judicially-created exceptions to the statutory subject matter categories listed in 35 U.S.C. § 101 have had a significant impact on the patent system, including lower courts and the U.S. Patent and Trademark Office as well as attorneys and patent agents drafting patent applications. Some have suggested that this impact is positive, that these decisions have improved the quality of patent applications and issued patents and reduced abusive patent litigation. Others, however, suggest that the impact has been negative, that these decisions have focused on inappropriate policies, created chaos, and unnecessarily reduced the incentive to invent. In this paper, I consider how Congress might amend the patent statute to maintain improvements in patent quality and the reduction in abusive patent litigation, but also to focus on appropriate policies, to provide more certainty, and to ensure the incentive to invent. In particular, I analyze several options for revising the existing statutory language.