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Change on the Horizon?: 2025 Begins With Numerous Patent Bills Pending

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The U.S. patent legal landscape in 2025 is poised for change. The incoming presidential administration is coupled with interim changes in leadership at the USPTO after Kathi Vidal's departure, and several newly vacant, fillable commissioner seat openings at the ITC. Technology such as artificial intelligence—and changing attitudes towards those technologies—are evolving at an accelerating pace.

And, amid that backdrop, many pieces of proposed patent legislation are pending in Congress which could further—or possibly stifle—modern trends in American patent law, and could alter our innovation landscape for years to come. This column surveys that pending patent legislation.

IDEA Act

Inspired by the SUCCESS Act's reporting requirement, the Inventor Diversity for Economic Advancement (IDEA) Act directs the USPTO to collect voluntary, confidential demographic data from inventors and patent applicants, in an effort to promote increased participation of women, minorities, and veterans in the American patent system. S. 632, 117 Cong. §1 (2021).

The IDEA act would include a mechanism for the collection of voluntary, confidential demographic data from inventors and patent applicants, which would be stored entirely independently of individual applications so that the data would not be considered by examiners and would have no impact on an application's success. IDEA passed in the Senate Judiciary Committee with strong support, with a vote of 15-6, and will soon move to a full vote by the Senate.

Proponents have argued that IDEA is necessary because, without the collected data, the USPTO would be left with mere guesswork about this sort of demographic information (e.g., based on normative naming conventions of applicants and/or inventors). U.S. Sen. Mazie Hirono (D-HI), IDEA's co-sponsor, has noted that, as just one example, this type of guesswork may have some significance for names like "Dick or Clark," but not for names like "Corey or Lindsay." *See* Senate Committee on the Judiciary, Executive Business Meeting, 117th Cong. (Apr. 29, 2021) (statement of Senator Mazie Hirono)

Further, IDEA may have tangible positive economic effects, as one study concluded that the U.S. GDP could increase by 4.6%—or nearly $1.3 trillion—by

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increasing the number of patent applicants (including additional women and Black Americans) in the innovation and patenting process. *See*, *e.g.*, Lisa D. Cook & Yanyan Yang, *Missing Women and Minorities: Implications for Innovation and Growth* (2018).

PERA

The issue of subject matter eligibility under 35 U.S.C. §101 has been fraught with uncertainty in recent years, particularly in the wake of the Supreme Court's decision in *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208 (2014), ultimately leading to calls for legislation to help promote uniformity. The Patent Eligibility Restoration Act ("PERA") aims to reform subject matter eligibility under 35 U.S.C. § 101 by codifying existing categories of ineligible subject matter in replacement of all judicially created exceptions—most notably, the *Alice* framework.

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PERA would more clearly categorize ineligible subject matter (e.g., mathematical formulas; fundamental human activity; natural processes and products made independent of human activity; and mental processes) and more accurately predict the likelihood of success of determining ineligible subject matter. *See* S. 2140, 118 Cong. §1 (2023).

This change to the law of subject matter eligibility could make it easier for certain technologies related to, for example, artificial intelligence, cryptocurrency, and certain software inventions—which sometimes can be challenging to patents under current eligibility case law—to be patented on a more widespread basis. Further, PERA would allow for quick determinations and limited discovery concerning §101 issues in patent litigation.

PERA is still awaiting committee voting, but given its focus on §101 and broad concerns about the unpredictability of American jurisprudence in this area, it likely will remain at the fore. If passed, PERA could have a dramatic impact on the future of patenting and patent litigation in the U.S., particularly in software technologies like artificial intelligence and machine learning.

PREVAIL Act

In an 11-10 passing vote in the Senate Judiciary Committee in November of 2024, the Promoting and Respecting Economically Vital American Innovation Leadership ("PREVAIL") Act moved to the Senate for a full vote. This bill, proposed in July of 2023, seeks to narrow the scope of post grant review and *Inter Partes* Review (IPR) proceedings at the Patent Trial and Appeal Board ("PTAB")—measures that for years have been successfully used by accused patent infringers to invalidate patents. *See* S. 2220, 118 Cong. §2 (as amended Dec. 2, 2024).

The PREVAIL act aims to limit the scope of these proceedings by implementing the following key reforms: (1) requiring parties seeking to file IPRs to satisfy the standing threshold required to bring a declaratory action in federal district court (i.e., parties must have been sued or threatened with a patent infringement lawsuit before filing an IPR); (2) increasing the burden of proof to invalidate a patent in these proceedings from the "preponderance of the evidence" standard to the higher "clear and convincing evidence" standard; and (3) creating an additional estoppel defense that would preclude parties from raising invalidity defenses in district court if they could have been raised in an IPR proceeding. These changes could make it more difficult to invalidate patents.

Notably, in an effort to "ensure generic companies and patient advocacy groups explicitly continue to have access to the PTAB to challenge drug patents," PREVAIL was amended to conditionally allow IPR appearances of non-profits, as long as no interested

party (e.g., member, donor, or funding source that could reasonably infringe at least one claim of the challenged patent) is involved.

This amendment also allows those who are currently engaged in, or intend to engage in, potentially infringing conduct to file petitions. This controversial amendment has been subject to fierce and continuous debate, particularly concerning the impact on pharmaceutical patents and maintaining (or even increasing) drug prices. This debate may be crucial in shaping PREVAIL's final proposal and ultimate outcome.

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RESTORE Patent Rights Act

The Realizing Engineering, Science, and Technology Opportunities by Restoring Exclusive Patent Rights Act of 2024 ("RESTORE Patent Rights Act" or simply "RESTORE") was subject to intense debate in a Senate Judiciary Committee hearing in December 2024. RESTORE, a deceptively simple proposal, aims to establish a rebuttable presumption that courts should grant permanent injunctions when a patent is infringed. *See* S. 4840, 118 Cong. §2 (2024).

Proponents argue that a strong stance on injunctive relief and presumptive injunctions are necessary to strengthening patent rights in the U.S., while opponents claim these presumed injunctions would stifle innovation and walk back nearly two-decades of precedent following the Supreme Court's decision in *eBay* that created a stringent four-factor test for injunctions, wherein courts are forced to consider, based on the unique facts of each case, (1) irreparable harm, (2) adequacy of monetary damages, (3) balance of hardships, and (4) the public interest. *See eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388 (2006).

Supporters of the bill have noted that the presumptive threat of injunctions is needed to deter large companies from infringing, as it is often cheaper for these companies to infringe and pay damages later, than to engage in efficient, good-faith licensing negotiations. *See The RESTORE Patent Rights Act: Restoring America's Status as the Global IP Leader*, 118th Cong. (Dec. 18, 2024) (statements of Jacob Babcock, NuCurrent CEO, and Kristen Osenga, Richmond Law School Professor, available at https://www.judiciary.senate.gov/committee-activity/hearings/the-restore-patent-rights-act-restoring-americas-status-as-the-global-ip-leader).

Conversely, those opposing the bill have introduced empirical evidence that non-practicing entities ("NPEs," some of whom are more commonly referred to as "patent trolls") are the parties most frequently affected by the *eBay* limitations—i.e., operating companies that practice their patents often and readily receive injunctive relief when desired. *See id.* (statements of Joshua Landau, Computer & Communications Industry Association, and Jorge Contreras, University of Utah Professor).

Ultimately, given that NPE litigation still makes up a significant portion of U.S. patent litigation each year, and in light of the dramatic impact this bill would have on the U.S. patent system, it is unlikely to garner widespread support, but is still one to watch.

Conclusion

While many of these bills may not see immediate (or even substantial) progress at the onset of 2025 in light of many other more likely priorities of Congress and the new Trump administration, they are all worth watching in the months and years to come. In various different respects, the provisions could have significant and lasting impacts on U.S. patent law and litigation, and on American innovation more broadly.

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