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A New Dawn for Patent Owners? Breaking Down the PERA and PREVAIL Acts of 2025

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In a move that could reshape the U.S. patent landscape, Congress has reintroduced two major pieces of legislation: the Patent Eligibility Restoration Act (PERA) of 2025 and the Promoting and Respecting Economically Vital American Innovation Leadership Act (PREVAIL) Act. Both bills purport to restore clarity, strength and global competitiveness to the U.S. patent system—longstanding priorities for patent owners across industries.

Here we break down what each bill proposes and what it could mean for innovators if passed in its current form.

The PERA Act

Senator Thom Tillis has introduced the PERA Act in the Senate. The bill is aimed at reforming the framework for determining patent subject matter eligibility.

Under current law, a claimed invention must fall within one of four statutory categories: processes, machines, manufactures, or compositions of matter. Additionally, a claim must not be directed to a judicial exception—such as laws of nature, physical phenomena, or abstract ideas—unless the claim, as a whole, amounts to "significantly more" than the exception. Courts have referred to these exceptions as "the basic tools of scientific and technological work," warning that "monopolization of those tools through the grant of a patent might tend to impede innovation more than it would tend to promote it." *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*.

To assess patent eligibility, courts apply a two-step framework: first, they determine whether the claim is directed to a judicial exception. If not, it is eligible. If it is, the court considers whether the claim includes additional elements that amount to an inventive concept—essentially, whether it provides a technological advancement.

Under the PERA Act, the following categories of inventions remain ineligible for patent protection:

- A mathematical formula not integrated into a claimed invention;
- A mental process performed solely in the human mind;
- An unmodified human gene as it exists in the human body;
- An unmodified natural material as it exists in nature;
- A process that is primarily economic, financial, business, social, cultural, or artistic in nature.

However, all other judicial exceptions to patent eligibility would be eliminated. Any invention or discovery that can be claimed as a useful process, machine, manufacture, or composition of matter—or any useful improvement thereof—would be eligible for patent protection, except for the exclusions above. The PERA Act also clarifies that "any process that cannot be practically performed without the use of a machine (including a computer) or manufacture shall be eligible for patent coverage."

Key changes under the PERA Act include:

1. The ability to incorporate mathematical formulas into patent claims;
2. The ability to claim basic concepts when implemented on a computer that leverages its computational capabilities;
3. The ability to isolate human genes or natural materials and claim them as inventions.

If enacted, the PERA Act would bring clarity and predictability to the shifting landscape of subject matter eligibility case law and could significantly expand the scope of IP protection across industries. Companies with robust patent portfolios, or those innovating in areas involving abstract ideas or natural phenomena, may gain valuable new opportunities to protect their technologies. With clearer eligibility standards, investors are more likely to back IP-heavy startups.

Strategic considerations in anticipation of the PERA Act:

- Audit current patent portfolios and consider filing continuation applications to expand claim scope where appropriate;
- Revisit previously abandoned ideas that were deemed patent ineligible under current law and evaluate filing new applications;
- Prepare for increased patent litigation due to a broader range of enforceable patents and stronger IP positions;

- Anticipate longer and more complex litigation, with fewer avenues for early dismissal based on subject matter ineligibility.

The PREVAIL Act

The PREVAIL Act is another pending Senate bill with the potential to substantially impact patent litigation in the U.S., particularly proceedings before the Patent Trial and Appeal Board (PTAB).

Key provisions include:

1. A for-profit entity must have standing to file an inter partes review (IPR) petition. This includes actively engaging in—or having a bona fide intent to engage in—conduct that could result in an infringement claim, the right to bring a declaratory judgment action, or having been sued;
2. A petitioner may only file one IPR per patent, unless new allegations of infringement arise and other criteria are met;
3. The burden of proof to invalidate issued claims will shift to "clear and convincing evidence," aligning with the standard in federal court. Substitute claims, however, will still be evaluated under a "preponderance of the evidence" standard;
4. Claims will be interpreted according to their ordinary meaning to a person of ordinary skill in the art, considering the prosecution history—again, mirroring the federal court standard;
5. PTAB panels must consist of three members, be free from supervisory influence, and exclude any judge involved in the decision to institute the IPR.

The PREVAIL Act aims to curb serial and repetitive challenges at the PTAB, offering greater predictability for patent owners and a fairer process for all parties involved. A more balanced system would encourage substantive innovation rather than procedural maneuvering.

Implications of the PREVAIL Act:

- Filing an IPR will require a more thorough evaluation of standing and pre-litigation posture;
- Petitioners will need to be strategic when selecting which claims to challenge, particularly when facing patents with a large number of claims and strict page limits;

- The elevated burden of proof may reduce both the number of instituted reviewsand post-institution claim invalidations;
- Greater independence between the institution decision-maker and trial panel may limit the value of the institution decision as a roadmap for trial preparation.

Preparing for Change

Together, the PERA and PREVAIL Acts signal a legislative effort to strengthen the rights of patent owners, restore consistency to administrative proceedings, and encourage innovation across critical sectors—from software and biotech to semiconductors and medical devices.

While passage is not guaranteed, companies should prepare now. Proactive measures could offer a significant competitive advantage in the evolving patent landscape. Strategic investments today may yield strong IP positions tomorrow.

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