

Main Street Needs Section 101 to Stay Intact.

UNITED for
PATENT REFORM

Congress Should Reject Efforts to Upend Patent Eligibility — and Focus on Fixes That Help Main Street.

United for Patent Reform's members — automakers, hotels, restaurants, retailers, and financial and IT service providers — keep Main Street running and know firsthand the threat abusive patent suits from non-practicing entities ("patent trolls") pose to American businesses and consumers.

For years, UFPR members faced lawsuit threats over ordinary business practices simply because they were done on a computer, a scanner, or the internet. That changed in 2014, when a unanimous Supreme Court in *Alice Corp. v. CLS Bank* reaffirmed that abstract ideas — including business methods — cannot be patented. *Alice* stopped trolls from profiting off invalid e-commerce patents, cutting unproductive litigation and saving businesses and consumers billions in legal costs.

That protection is now at risk. The Patent Eligibility Restoration Act (PERA) and similar proposals would undo *Alice* and reopen the door to the same abuses — a particular danger as businesses adopt AI, since routine practices that merely "apply AI" could become patentable again. Rather than overturning *Alice* and centuries of settled law, Congress should focus on efforts to improve patent quality, fight abuse, and deliver relief to the businesses actually being targeted.

Congress Should Reject Expanding Patent Eligibility Beyond *Alice*

Here is what patent litigation would look like if Section 101 protections were rolled back:

Restaurants could expect to be sued over online picture menus. A NPE brought a suit against several restaurants claiming that the use of picture menus on a computer violated its patent. Mere days after the Supreme Court decided *Alice*, the trial court threw out the patent and ended the lawsuit. Rolling back Section 101 protections would make this patent valid again.

Retailers would be sued for emailing package tracking updates. A collection of patents about vehicle tracking was used to target over 800 companies, mostly small businesses, for providing basic package tracking information to customers through email. The NPE asserting the patents collected more than \$15 million over eight years. In 2017, these patents were found invalid under Section 101, ending the abuses.

All kinds of businesses would be sued for suggesting additional goods or services. Prior to the *Alice* ruling, companies that used computerized methods for recommending additional goods or services to shoppers based on the original product of interest could be sued for patent infringement. In 2014, the asserted patent was thrown out under Section 101, with the court finding that the marketing method was "as old as commerce itself."

Businesses would be sued for advertising on the internet. In 2009, a non-practicing entity sued several companies for infringing a patent related to advertisements shown before users view online content. Thanks to the *Alice* ruling, the patent was invalidated as abstract.

Whatever interests these patents advanced, technological advances were not among them. Reopening the door to patents like these would fuel abusive litigation against American businesses. But it does not have to be this way — Congress can address the real problems facing patent owners and Main Street businesses alike without touching Section 101.

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What Congress Should Do Instead? Help Stop Abusive Patent Litigation Targeting Main Street

Two fixes get at the real problem — no need to touch Section 101:

- ✓ **Restore access to IPR** — The USPTO has gutted IPR — the process that saved American businesses \$2 billion in legal fees — instituting fewer than 20% of petitions and letting abusive litigation climb back toward the same levels as before the America Invents Act. Congress should restore the PTAB's role in institution decisions and pass legislation to fully revive IPR.
- ✓ **Stop duplicative Main Street lawsuits** — Retailers and end users are getting sued instead of the manufacturers who actually built the product. Courts should pause those suits when the manufacturer is already fighting the same claims. Congress can help by putting in place a customer stay mandate to end duplicative lawsuits against retailers and end users.

Congress Should Restore IPR and Stop Duplicative Lawsuits Against Main Street.

About United For Patent Reform

UFPR is a broad coalition of diverse American businesses advocating for a patent system that enhances patent quality, advances meaningful innovation, and protects legitimate American businesses from abusive patent litigation. Collectively, its members represent over 90 million U.S. employees, a figure that accounts for nearly two-thirds of private sector jobs in the U.S. For more information, visit unitedforpatentreform.com.

