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As a patent practitioner who works closely with innovative startup companies, growth-stage companies, and individual inventors, I have witnessed first-hand the devastating effects that misplaced patent-eligibility jurisprudence has had on American interests. The historical path to success for innovative start-up companies was to invent, then pursue patent filings, then look for and secure early-stage investment. Now that the Federal Circuit and the Supreme Court have made it so uncertain whether inventions will even be patent-eligible, many of the start-up companies that I work with can no longer secure the early-stage funding that is necessary to see them to the next level. It takes significant resources to bring new ideas to the marketplace. These inventors and small companies dig deep into their own pockets. But without outside investment, their prospects are quite dim. And with the current uncertainty surrounding the patent-eligibility issue, many investors simply refuse to risk their capital on such uncertain outcomes. And many inventors with world-improving ideas, are impeded. They simply give up because the patentability hurdles are now so absurdly high--sometimes after spending considerable personal resources and time. Patent examiners are now blindly copying and pasting boilerplate 35 U.S.C. 101 rejection language into Office Actions without even giving it much thought. When flaws are pointed out in their reasoning, they simply make the Office Action final and essentially dare you to appeal. The Federal Circuit is routinely deeming unique technological advancements to be ineligible, which emboldens patent examiners to provide weak rejections. Moreover, the USPTO is commonly invalidating legitimate patents under IPR proceedings. The situation is untenable for a country that should value the advancement of technology.

What is needed is for section 35 U.S.C. 101 to be re-written to have broad and inclusive patent eligibility. There are times now that I recommend to American inventors not to even bother filing in the United States--that they will have better luck filing for protection and advancing their interests in places like Europe or China. It is personally painful for me to suggest this, given that I'm about as pro-United States as one can be. Europe and other jurisdictions honor the fact that much of the innovation occurring today is found in software solutions, including artificial intelligence, quantum computing, medical diagnosis, self-driving cars, just to name a few. Computer hardware is fine, and important. But there are only so many ways to build a transistor. While hardware patent applications tend to sail through without resistance at the USPTO,

software patent applications are more often than not doomed to failure before the USPTO and courts. This is a bad state of affairs, because again, software is where most innovative advances are found these days, particularly in the United States, which excels in all matters pertaining to computer software.

There has been much mischief among the USPTO, Federal Circuit, and Supreme Court regarding this issue. Within about five years, the patent-eligibility doctrine has been morphed from something that was fairly innocuous and measured, to something that is now absurd, disproportionate, unevenly administered, damaging to US interests, and unfair to inventors and small companies. There have been times where I have been so put out with the situation, that I've considered retiring altogether from my legal practice. I recommend that the U.S. Congress take up this matter with great urgency. The Courts and the USPTO are unlikely to modify their behavior without an Act of Congress.

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