

# Federal Circuit Judges and USPTO Directors Agree: **SECTION 101 PATENT ELIGIBILITY LAW IS BROKEN, AND CONGRESS CAN FIX IT**



Hon. Kimberly A. Moore  
CHIEF CIRCUIT JUDGE

**“All twelve active judges of this court urged the Supreme Court to. . . provide us with guidance [on patent eligibility].”**

*Am. Axle & Mfg., Inc. v. Neapco Holdings*, 977 F.3d 1379, 1382 (Fed. Cir. 2020) (Moore, J., concurring).



Hon. Alan D. Lourie  
CIRCUIT JUDGE



Hon. Pauline Newman  
CIRCUIT JUDGE

**“[T]he law needs clarification by higher authority, perhaps by Congress. . . . Section 101 issues certainly require attention beyond the power of this court.”**

*Berkheimer v. HP Inc.*, 890 F.3d 1369 (Fed. Cir. 2018) (Lourie, J., joined by Newman, J., concurring in part).

**“I encourage Congress to amend the Patent Act once more to clarify that it meant what it said in 1952.”**

*Athena Diagnostics, Inc. v. Mayo Collaborative Servs., LLC*, 927 F.3d 1333, 1371 (Fed. Cir. 2019) (O'Malley, J., dissenting).



Hon. Kathleen O'Malley  
CIRCUIT JUDGE  
(RET.)



Hon. S. Jay Plager  
SENIOR CIRCUIT JUDGE

**“The law . . . renders it near impossible to know with any certainty whether the invention is or is not patent eligible.”**

*Interval Licensing LLC v. AOL, Inc.*, 896 F.3d 1335, 1348 (Fed. Cir. 2018) (Plager, J., concurring in part).

**“[T]he abstract idea exception is almost impossible to apply consistently and coherently.”**

*Smart Systems Innovations, LLC v. Chicago Transit Auth.*, 873 F.3d 1364 (Fed. Cir. 2017) (Linn, J., dissenting in part).



Hon. Richard Linn  
SENIOR CIRCUIT JUDGE



Hon. Todd M. Hughes  
CIRCUIT JUDGE



Hon. Sharon Prost  
CIRCUIT JUDGE

**“[H]ow fraught the issue of § 101 eligibility [is]. . . . [F]urther explication of eligibility standards . . . might come from Congress.”**

*Athena Diagnostics, Inc. v. Mayo Collaborative Servs., LLC*, 927 F.3d 1333, 1363 (Fed. Cir. 2019) (Hughes, J., joined by Prost, C.J., and Taranto, J., concurring).

**“[O]ur § 101 jurisprudence has largely ignored Congress' explicit instruction. . . . Your only hope lies with the Supreme Court or Congress.”**

*Athena Diagnostics, Inc. v. Mayo Collaborative Servs., LLC*, 927 F.3d 1333, 1363 (Fed. Cir. 2019) (Moore, J., joined by O'Malley, Wallach, and Stoll, J., dissenting).



Hon. Kimberly A. Moore  
CHIEF CIRCUIT JUDGE



Hon. Kathleen O'Malley  
CIRCUIT JUDGE (RET.)



Hon. Richard Taranto  
CIRCUIT JUDGE



Hon. Evan Wallach  
SENIOR CIRCUIT JUDGE



Hon. Kara Stoll  
CIRCUIT JUDGE



David Kappos (D)  
FMR. USPTO DIRECTOR

**“It is time for Congress to fix America's law of patent subject matter eligibility.”**

David J. Kappos, Written Testimony to the U.S. Senate Judiciary Subcommittee on Intellectual Property (Jan. 19, 2024).

**“Only Congress can restore a clear, modern statutory rule for patent eligibility.”**

Andrei Iancu, Written Testimony to the U.S. Senate Judiciary Subcommittee on Intellectual Property (Oct. 8, 2025).



Andrei Iancu (R)  
FMR. USPTO DIRECTOR