High Tech Inventors Alliance

The Patent Eligibility Restoration Act (PERA)

PERA enables abuse of small businesses. The bill would unleash a flood of abusive litigation against American businesses large and small based on patents that claim ordinary business activities. Under PERA, patents could claim things such as the idea of running a type of business, making an electronic transaction, processing a loan, choosing a price for a product, or advertising goods. PERA's § 101(b)(1)(B)(ii) would allow a patent on *any* "process that is substantially economic, financial, business, social, cultural, or artistic" so long as it "cannot practically be performed without the use of a machine or manufacture." The bill makes clear that it does not require the invention of a new machine or manufacture—PERA prohibits *any* consideration of whether a recited technology is "known, conventional, [or] routine." This means that any business or other ordinary human activity could be patented so long as it "practically" requires the use of some existing technology.

PERA enables abuse of real inventors. Under PERA, patents would not have to claim any advance in technology. Instead, they could simply claim the *idea* of using preexisting technology that was developed by another inventor. PERA would also allow patents to claim the *goal* of solving a problem, while leaving it to others to do the hard work of developing the solution (and making them liable under the patent for "solving the problem"). This harms real inventors and deters investment in research and development.

These are not hypothetical concerns. **Here are examples of real patents that claim nothing more than performing common business tasks using generic devices such as a computer, scanner, or video camera.** While these were found ineligible under current law, each would be valid under PERA:

- ***Creating restaurant menus.*** The Ameranth patent claimed a system for creating restaurant menus for display on a "handheld computing device" or "over the internet." It described only the use of a generic computer and unspecified "application software" to generate menus; it did not describe any specific technology, let alone an actual technological improvement. The patent was used to sue over 100

restaurants, hotels, and fast-food chains before the Federal Circuit found it ineligible in *Apple, Inc. v. Ameranth, Inc.* Under PERA, this patent and thousands of others claiming the use of generic technology in some "business context" would become eligible again.

- ***Using generic scanning technology.*** The Content Extraction patent claimed the idea of digitizing documents using a generic scanner or other device, using preexisting computer technology to "recognize" data from the digitized document and then storing that data electronically. *Content Extraction v. Wells Fargo Bank* held that the patent improperly claimed the abstract idea of collecting, recognizing, and storing information and did not reflect any contribution to technology. Under PERA, this patent would be allowed because it "cannot practically be performed without the use of a machine."

- ***Using off-the-shelf video technology for security monitoring.*** Hawk Technology sued over 200 hospitals, schools, local governments, charities, grocery stores, restaurants, car washes, and other businesses on a patent that claimed the use of generic video and computer technology to allow the remote viewing of surveillance videos. The Federal Circuit held the patent ineligible in *Hawk Technology Systems, LLC v. Castle Retail, LLC*, finding that nothing in the claims "requires anything other than off-the-shelf, conventional computer, network, and display technology for gathering, sending, and presenting the desired information." Had PERA been law, this patent would have been upheld—and could still be used today to sue schools and small businesses.

Patents are supposed to be about advancing technology.
Let's keep it that way—oppose PERA.

About the High Tech Inventors Alliance

HTIA is a nonprofit corporation dedicated to advancing balanced patent policies. Its members are some of the largest recipients of U.S. patents, who collectively invest over $146 billion in research and development each year. HTIA's mission is to promote patent policies that preserve critical incentives to invest in innovation, research, and American jobs. To learn more, visit ***www.hightechinventors.com.***