STATEMENT FOR THE RECORD OF

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BEFORE THE

SUBCOMMITTEE ON INTELLECTUAL PROPERTY
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

"The Patent Eligibility Restoration Act – Restoring Clarity, Certainty, and Predictability to the U.S. Patent System"

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I. Introduction – A Personal Perspective

I am fortunate—indeed, blessed—to even be able to provide this written Statement for the Record. As Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, I thank the Honorable Chair and members of the Subcommittee for the opportunity.

Commuting to work in lower Manhattan under the brilliant blue skies on the morning of September 11, 2001, three times I escaped death. The first time, I walked through the North Tower of 1 World Trade at 8:30 a.m., having good naturedly chided my fellow commuter, neighbor and friend Tommy Cahill to "go make something happen" as he ascended the elevators to the 103rd floor trading desk of Cantor Fitzgerald. I then jumped the NY Waterway ferry downtown and entered my Goldman Sachs office at 1 New York Plaza just as, unbeknownst to me, the first plane struck at 8:46 a.m.

Amidst reports of a "small plane" incident, at 9:03 a.m., I felt a disorienting sensation which I later learned was the percussion wave from the second plane lining up on the South Tower just a few hundred feet over-head, accelerating to 500 mph. I looked just in time to see an eye level wall of flames explode as Flight 175 plowed into its target. I collected myself and ran down 37 flights of stairs and then back uptown to try to find Tommy and also locate my brother-in-law Ed Zier (Eddie's colleagues at Baseline at 1 World Trade perished but he miraculously switched his ticket -- from Flight 93 -- to a later plane having taken the morning off for his daughters' first day of school.[1] At 9:59 a.m., the South Tower collapsed just as I was arriving on the scene and I avoided death a second time.

The third time came as I ran from the debris cloud from the collapse, and avoided being trampled and crushed to death by taking refuge in the South Ferry subway station, which for those who remember was glass-enclosed and above ground.

For the souls who did not escape, it was, as the Mayor put it, "more than we can bear." "Every one a world," as I remember *Wall Street Journal* columnist Daniel Henninger putting it. The terrorists who hijacked commercial aircraft and used them as weapons against the Twin Towers, the Pentagon, and—had they not been stopped by extraordinary heroes—the Capitol itself, were financed and trained by sponsors of terrorism.[2] Their weapons were not only box cutters and airplanes; they were networks of money and ideology, aimed squarely at exploiting our advanced technologies and directed to the heart of American freedom and prosperity.

Before that day, colleagues and I had begun developing the concept of the Risk Data Consortium (RDC). We filed patents modeled after claims held eligible by Judge Rich, the author of the 1952 Patent Act himself, claiming a "hub and spoke" consortium to detect and deter illicit financial activities and suspicious transactions. After that day, on September 12, we knew our mission had changed: America's private sector was now at war against terrorism—and our best weapon and inexhaustible resource was innovation. We filed 40 more patents, expedited by the USPTO as inventions to combat terrorism, built a business and got to work, shoulder to shoulder with the Federal Bureau of Investigation, the intelligence community, and the Department of the Treasury. Together we engaged in what can only be described as a *soft-power war*, with our instruments of that war—encouraged by the government—being patents. Heroically and courageously, our now-Secretary of Commerce Howard Lutnick rebuilt his business with patents, the lasting products of the beautiful minds of his employees, friends and family murdered that day. And we went to war—one that is still being waged this very day. Patents became our shield and sword—tools to create, protect, attract capital and deploy technologies to monitor, track, and counter the financing of terrorism in real time.

I am convinced that I survived to be able to tell this story. To connect the dots between the private sector, national security and our unique-to-the-world, constitutionally enshrined patent system. It is with this context, passion and lived history that I provide this Statement for the Record to the Committee. Patent eligibility is not an abstract debate. It is a matter of national security, of resilience, and of ensuring that America's system of innovation remains robust enough to confront the challenges of the twenty-first century. It is as expansive as the American dream itself and to respectfully borrow from the Marines, "no better friend, no worse enemy."

II. The USPTO After 9/11 – Innovation as a National Security Imperative

In the days and months following the attacks of 9/11, the USPTO rose to meet the moment. Pursuant to provisions of the USA PATRIOT Act,[3] the USPTO expedited review of inventions critical to counter-terrorism. Applications were accelerated.[4] Innovators were encouraged to bring forth new ideas—technologies capable of detecting financial crimes, strengthening communications security, and preventing further attacks. The private sector, empowered by the framework of patent protection, could and did move quickly from concept to deployment.

These were not academic exercises. RDC's patents, designed to counter terrorist financing electronically, became operational tools. For those efforts, our team was honored with Director's Awards from the Federal Bureau of Investigation.[5] These awards signified what we already knew: patents are not just economic instruments. They are instruments of national defense. To suggest otherwise—to say that such inventions should be ineligible for protection under our patent laws—is not only doctrinally wrong. It is cowardice. And cowardice gets no quarter in the Home of the Brave.

III. Defending Expansive Eligibility – Historical and Legal Context

At the heart of our patent system lies Section 101 of Title 35, United States Code, which sets forth the statutory categories of patentable inventions: "Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title." These thirty-six words, deceptively simple yet profoundly expansive, unlock the door to patentability.

Throughout my professional journey, particularly during my time in the financial services industry, I have witnessed firsthand how patent eligibility can either unleash or stifle innovation. Early in the 2000s, debates raged over so-called "business method" patents. Critics dismissed them as unworthy of protection, grafting onto Section 101 an unwarranted "technological arts" requirement that found no basis in the statute's plain language or binding precedent. As I argued in a 2006 article co-authored with Thomas S. Biemer, this limitation was ill-conceived and effectively nullified Supreme Court and Federal Circuit decisions that affirmed the patentability of novel processes in fields like finance. Decisions like in *Ex parte Lundgren*, in which the Board of Patent Appeals and Interferences rejected the notion that pure business processes are ineligible and affirmed that advances in applied economics can promote the progress of science and the useful arts.

Seven years after 9/11, however, patent eligibility came under attack in the courts and we mounted a full-throated defense. We submitted an amicus brief to the Federal Circuit in the *Bilski* case,[6] urging the court to reject narrow categorical exclusions. That brief was influential enough that the court invited us to argue alongside the parties. Our position was simple but profound: patent law must remain expansive if it is to remain true to its statutory text, to its history, and to its constitutional purpose.

The Supreme Court's later decisions in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*[7] and *Alice Corp. v. CLS Bank International*[8] have been widely misinterpreted. Properly read, they do not narrow eligibility beyond the established judicial exceptions—laws of nature, natural phenomena, and abstract ideas. Yet in practice, these decisions have been wielded as bludgeons to exclude entire classes of invention, from financial technologies to artificial intelligence to diagnostics. That is not what the Court intended, and it is certainly not what Congress ever authorized.

Consider Samuel Morse's famous Claim 5 of the telegraph patent,[9] upheld as valid and patent-eligible by the Supreme Court 171 years ago. That claim covered the use of electromagnetism to transmit information at a distance. Critics at the time argued that such a claim was overbroad, too abstract, too untethered to machinery. Yet the Court upheld it, recognizing that applied scientific ideas—when claimed in a practical form—are precisely what our patent system was designed to encourage. Morse's Claim 5 is still law today. To deny its eligibility would be to deny the very foundation of modern telecommunications. Fast forward to the 20th century, and we see similar principles at play in cases like *Diamond* v. *Diehr*, where a process for curing rubber using a mathematical equation was held eligible because it produced a useful, concrete result. These precedents underscore that eligibility should turn on whether an invention integrates abstract ideas into something more—something inventive, practical, and transformative.

Patentable subject matter was once summarized as "*anything under the sun made by man*."[10] Save for perpetual motion machines and the judicial exceptions, the principle was broad, clear, and inclusive. That principle should remain the guiding star today.

Expansiveness is not recklessness. It is fidelity to the text of the statute, to the constitutional design, and to the very spirit of American ingenuity. The drafters of our patent laws understood that human imagination could not be cabined by narrow categories. They chose deliberately broad terms—process, machine, manufacture, composition of matter—so that the law could accommodate technological revolutions unforeseen in their time. Just as their words encompassed the telegraph, the telephone, and the airplane, so too must they encompass the blockchain, the quantum processor, and the diagnostic algorithm. The expansiveness of Section 101 is not a flaw; it is a feature. It is what allows our system to evolve with science and to channel creativity into the marketplace where it creates jobs, spurs investment, and strengthens the nation.

IV. The USPTO Today – A Continuum of Leadership

When I assumed office as Director of the USPTO, I sought immediately to reaffirm our commitment to expansive eligibility. On my first full day in office, I issued the first patents of my tenure: one in distributed ledger technology, the other in medical diagnostics. Both are fields where questions of eligibility have become acute.

At the signing ceremony, I displayed a copy of Samuel Morse's telegraph patent and reminded my colleagues and the public: applied technologies are not curiosities; they are the backbone of American growth. From the telegraph to blockchain, from penicillin to precision diagnostics, from semiconductors to quantum computing, each transformative technology began as an idea that was protected and fostered by the patent system.

As I said then, "The onrush of technology knows no bounds. From crypto and AI to quantum computing and diagnostics, these are applied, patent-eligible technologies driving the frontiers of knowledge." I want inventors and entrepreneurs to know: the USPTO is open for business—not only for the technologies of today, but especially for those of tomorrow.

The USPTO is not just an administrative agency; we are the Department of Commerce's Central Bank of Innovation. Every piece of IP we put into circulation is a potential job, a new business, a competitive advantage, or an investible asset. And yet another win for both society and the Constitutional foresight of our Founders.

V. Doctrinal Clarity – The DeepMind Decision

Just last month, I had the occasion to address these issues directly in *Ex parte Desjardins*, a case involving a machine learning model trained on multiple tasks to mitigate "catastrophic forgetting"—a technical challenge where learning new tasks erodes performance on prior ones.[11] A Board panel had initially rejected the claims as ineligible under § 101, reasoning at too high a level of generality that the invention was merely an "algorithm." On rehearing, the Panel vacated that rejection.

The decision reaffirmed the principles articulated by the Federal Circuit in *Enfish, LLC v. Microsoft Corp.*[12] and *McRO, Inc. v. Bandai Namco Games America Inc.*[13]: software and

artificial intelligence can improve the functioning of computer systems in concrete, technical ways. The claims at issue were directed to training a machine learning model in a way that preserved prior knowledge while learning new tasks—a solution to the technical problem of "catastrophic forgetting." This was not an abstract idea; it was a practical improvement in how computers function.

The decision emphasized a critical point: the proper statutory tools for limiting the scope of patents are §§ 102 (novelty), 103 (obviousness), and 112 (written description and enablement). Section 101 should not be misused as a blunt instrument to exclude entire technological fields. To do so risks disqualifying exactly the kinds of advances America needs most—advances in artificial intelligence, biotechnology, and data science. Artificial intelligence in particular illustrates the stakes: without reliable patent protection, AI start-ups cannot secure the venture capital needed to compete against state-backed giants in China and elsewhere. Eligibility is the difference between an ecosystem of American innovators and a future where leadership in AI is ceded abroad.

VI. National Security, Economic Growth, and Global Leadership

Patent eligibility is not just about legal doctrine or economic incentives. It is a matter of national security, economic growth, and global leadership.

History teaches that innovation is central to America's security. One striking example comes from World War II, where Alfred Loomis and his team at the secret MIT Radiation Laboratory pioneered the development of radar technology. Radar, protected and advanced through patent rights and intensive private sector collaboration, became the decisive innovation that helped the Allies win the Battle of the Atlantic and eventually the war itself.[14] The Cold War era saw similar dynamics: satellite communications, semiconductors, and encryption technologies were all secured by patent rights that encouraged private sector participation in national defense. After 9/11, expedited patents under the PATRIOT Act gave rise to real-time financial monitoring and counter-terrorism systems that complemented the efforts of law enforcement.

Today, we face a new generation of challenges—cybersecurity threats from state actors, the race for artificial intelligence supremacy, the global transition to clean energy, and the emergence of biotechnology capable of rewriting the boundaries of medicine. Each of these fields is at once a commercial opportunity and a national security imperative. Without robust patent protection, private sector innovators will be reluctant to make the sustained investments necessary to compete at the global level.

Economically, expansive patent eligibility ensures that inventors can secure funding, build companies, and generate jobs. The innovation economy is not confined to Silicon Valley; it stretches across every state, from manufacturing hubs to research hospitals, from university laboratories to startup incubators. Every patent issued represents not only a piece of intellectual property but also a potential job, a competitive advantage, a business formed, and an industry strengthened.

Geopolitically, leadership in innovation translates directly into leadership on the world stage. Nations that dominate in emerging technologies wield not just economic power, but diplomatic and military leverage. Artificial intelligence, quantum computing, clean energy, advanced materials—these are the arenas in which the next century's balance of power will be determined.

Narrow eligibility means jobs lost, industries offshored, and adversaries empowered. Expansive eligibility means jobs created, industries built, and America secured. If the United States narrows its view of what is patent-eligible, it will invite competitors to seize the initiative.

Conversely, the upshot of an expansive eligibility regime is clear: the United States secures its inventors' ability to attract investment, builds industries at home rather than ceding them abroad, sustains good-paying jobs in communities across the country, and maintains its edge in the global race for technology. This is not merely economic policy; it is strategic policy. It is how we ensure that the twenty-first century remains, as the twentieth was, an American century.

From a global perspective, our eligibility standards must keep pace with competitors. Countries like China and across Europe have adopted more permissive approaches in areas like AI and business methods, granting patents that fuel their technological ascendancy. If America's system is perceived as overly restrictive, we risk ceding ground in critical sectors. As Director, my priority is to ensure that our unitary patent system serves all walks of inventors, issuing timely, high-quality rights that foster continued innovation, opportunity, and growth.

VII. Conclusion – A Call to Fidelity and Courage

The USPTO was there for us in the days after 9/11. It expedited patents that helped keep our country safe. It empowered the private sector to fight back with ideas and innovation. I am here today for the USPTO—for its mission, for its people, and for the inventors and entrepreneurs it serves.

The law needs to be applied thoughtfully, evenly and expansively as it always has since the Patent Act of 1793. And I will emphasize expansively, as Congress originally intended and as the courts have long understood, but more importantly as our national interest demands now more than ever.

Exclusion is not caution; it is abdication. Inclusion is not excess; it is fidelity. Fidelity to the Constitution's call to "promote the progress of science and the useful arts." Fidelity to the innovators who trust in the system. Fidelity to the nation whose lifeblood is innovation and sets the global bar for security, prosperity and progress.

Twenty four years ago, I told Tommy to "go make something happen." He can't –so we must. Right here, Right now. God bless the souls taken from us on that bright September morning. God bless the inventors who carry forward the torch of progress and lead us forward. And God bless the United States of America.

Endnotes:

[1] Ed Zier, Undaunted: Leadership Amid Growth and Adversity (2021).
[2] National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report* (2004).
[3] USA PATRIOT Act, Pub. L. No. 107-56, 115 Stat. 272 (2001).
[4] Brief of *Amicus Curiae* Regulatory DataCorp, Inc., *In re Bilski*, 545 F.3d 943 (Fed. Cir. 2008) (en banc).
[5] Federal Bureau of Investigation, Director's Award Program.

[6] *In re Bilski*, 545 F.3d 943 (Fed. Cir. 2008) (en banc).
[7] *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012).
[8] *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208 (2014).
[9] *O'Reilly v. Morse*, 56 U.S. (15 How.) 62 (1854).
[10] *Diamond v. Chakrabarty*, 447 U.S. 303, 309 (1980) (noting that Congress intended patentable subject matter to "include anything under the sun that is made by man").
[11] USPTO, *Ex parte Desjardins et al.* (Appeals Review Panel, Sept. 26, 2025).
[12] *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016).
[13] *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299 (Fed. Cir. 2016).
[14] Robert Buderi, *The Invention That Changed the World: How a Small Group of Radar Pioneers Won the Second World War and Launched a Technological Revolution* (1996) (detailing Alfred Loomis and the MIT Radiation Laboratory's decisive role in the invention and deployment of radar).