**Appendix A:**

**Quotes about the current state of patent eligibility law from some of the most knowledgeable individuals and organizations in patent law and innovation policy**

**Hon. Kimberly Moore (Circuit Judge, CAFC):** “A disturbing amount of confusion will surely be caused by this opinion, which stands for the proposition that claims can be ineligible as directed to a natural law even though no actual natural law is articulated in the claim or even the specification.”[[1]](#footnote-1)

**Hon. Todd M. Hughes (Circuit Judge, CAFC):** “I, for one, would welcome further explication of eligibility standards in the area of diagnostics patents. Such standards could permit patenting of essential life saving inventions based on natural laws while providing a reasonable and measured way to differentiate between overly broad patents claiming natural laws and truly worthy specific applications.”[[2]](#footnote-2)

**Hon. Richard Linn (Circuit Judge, CAFC):** “But for the sweeping language in the Supreme Court’s Mayo opinion, I see no reason, in policy or statute, why this breakthrough invention should be deemed patent ineligible.”[[3]](#footnote-3)

**Hon. S. Jay Plager (Circuit Judge, CAFC):** “The law, as I shall explain, renders it near impossible to know with any certainty whether the invention is or is not patent eligible. Accordingly, I also respectfully dissent from our court’s continued application of this incoherent body of doctrine.”[[4]](#footnote-4)

**Hon. Alan D. Lourie (Circuit Judge, CAFC):** “The laws of anticipation, obviousness, indefiniteness, and written description provide other filters to determine what is patentable. But we do not write here on a clean slate; we are bound by Supreme Court precedent. . . . Accordingly, as long as the Court’s precedent stands, the only possible solution lies in the pens of claim drafters or legislators. We are neither.”[[5]](#footnote-5)

**Hon. Pauline Newman (Circuit Judge, CAFC):** “The court’s rulings on patent eligibility have become so diverse and unpredictable as to have a serious effect on the innovation incentive in all fields of technology.”[[6]](#footnote-6)

**Hon. Timothy Dyk (Circuit Judge, CAFC):** “I share the concerns of some of my colleagues that a too restrictive test for patent eligibility under 35 U.S.C. § 101 with respect to laws of nature (reflected in some of the language in *Mayo*) may discourage development and disclosure of new diagnostic and therapeutic methods in the life sciences, which are often driven by discovery of new natural laws and phenomena.”[[7]](#footnote-7)

**Hon. Paul R. Michel (Circuit Judge, ret’d, CAFC):** “If I, as a judge with 22 years of experience deciding patent cases on the Federal Circuit’s bench, cannot predict outcomes based on case law, how can we expect patent examiners, trial judges, inventors and investors to do so?”[[8]](#footnote-8)

**Sen. Thom Tillis (R-NC):** “Why would anyone in their right mind risk millions if not billions of dollars to develop a product when they have no idea if they’re eligible for protection? From a business perspective, it simply isn’t worth the risk for many endeavors.”[[9]](#footnote-9)

**Sen. Chris Coons (D-DE):** “Today, U.S. patent law discourages innovation in some of the most critical areas of technology, including artificial intelligence, medical diagnostics, and personalized medicine.”[[10]](#footnote-10)

**Former Rep. Doug Collins (R-GA):** “Upgrading the patent eligibility test is critical if we want American innovation to continue to lead worldwide.”[[11]](#footnote-11)

**Hon. David Kappos (former USPTO Director):** “Our current patent eligibility law truly is a mess. The Supreme Court, Federal Circuit, district courts, and USPTO are all spinning their wheels on decisions that are irreconcilable, incoherent, and against our national interest.”[[12]](#footnote-12)

**Noel Francisco (former U.S. Solicitor General):** “The Court’s recent Section 101 decisions have fostered substantial uncertainty.”

**Prof. Mark Lemley:** “The law of patentable subject matter is a mess.”[[13]](#footnote-13)

**U.S. Chamber of Commerce:** “This has led to considerable uncertainty for innovators and the legal community, as well as an overly cautious and restrictive approach to determining eligibility for patentable subject matter in areas such as biotech, business methods, and computer-implemented inventions.”[[14]](#footnote-14)

**Congressional Research Service:** “The number of opinions in *Athena* indicates that although the judges are divided on what should be done in view of current Supreme Court precedent, they view the section 101 issue as extremely important.”[[15]](#footnote-15)

1. *American Axle & Mfg., Inc. v. Neapco Holdings, LLC*, 966 F.3d 1347, 1357 (Fed. Cir. 2020) (Moore, J., dissenting). [↑](#footnote-ref-1)
2. *Athena Diagnostics, Inc. v. Mayo Collaborative Services, LLC*, 927 F.3d 1333, 1337 (Fed. Cir. 2019)(Hughes, J., concurring). [↑](#footnote-ref-2)
3. *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1381 (Fed. Cir. 2015) (Linn, J., concurring). [↑](#footnote-ref-3)
4. *Interval Licensing LLC v. AOL, Inc.*, 896 F.3d 1335, 1348 (Fed. Cir. 2018) (Plager, J., concurring-in-part, dissenting-in-part). [↑](#footnote-ref-4)
5. *Athena Diagnostics*, 927 F.3d at 1334 (Lourie, J., concurring). [↑](#footnote-ref-5)
6. *American Axle*, 966 F.3d at 1357 (Newman, J., dissenting in denial of rehearing *en banc*). [↑](#footnote-ref-6)
7. *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 809 F.3d 1282, 1287 (Fed. Cir. 2015) (Dyk, J., concurring in the denial of the petition for rehearing en banc). [↑](#footnote-ref-7)
8. *Hearing Before the Subcomm. on Intellectual Prop. of the S. Comm. on the Judiciary*, 116th Cong. (2019) (statement of Hon. Paul R. Michel). [↑](#footnote-ref-8)
9. Richard Llyod, *Unprecedented Congressional engagement on patent eligibility reform, but don’t bet on a rush to legislation*, IAM, <https://www.iam-media.com/law-policy/series-congressional-hearings-point-unprecedented-engagement-101>. [↑](#footnote-ref-9)
10. Press Release from Sen. Chris Coons, Sens. Coons and Tillis and Reps. Collins, Johnson, and Stivers Release Section 101 Patent Reform Framework (Apr. 17, 2019), https://www.coons.senate.gov/news/press-releases/sens-coons-and-tillis-and-reps-collins-johnson-and-stivers-release-section-101-patent-reform-framework. [↑](#footnote-ref-10)
11. *Id.* [↑](#footnote-ref-11)
12. *Hearing Before the Subcomm. on Intellectual Prop. of the S. Comm. on the Judiciary*, 116th Cong. (2019) (statement of David J. Kappos). [↑](#footnote-ref-12)
13. *Patentable Sybject Matter Reform: Hearing Before the S. Comm. on the Judiciary*, 116th Cong. (2019) (testimony of Mark A. Lemley, Stanford Law School), <https://www.judiciary.senate.gov/imo/media/doc/Lemley%20Testimony.pdf>. [↑](#footnote-ref-13)
14. <https://www.judiciary.senate.gov/download/kilbride-testimony>. [↑](#footnote-ref-14)
15. Cong. Research Serv., LSB10344, *Judges Urge Congress to Revise What Can Be Patented* (2020), <https://crsreports.congress.gov/product/pdf/LSB/LSB10344/5>. [↑](#footnote-ref-15)