



Proposal for Debate: Should the U.S. Congress give Patent Owners the Benefit of a Foreign Jurisdiction’s Determination Regarding Subject-Matter Eligibility?

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§ 1. SHORT TITLE.

This Act may be cited as the “Promoting Patent Harmonization Act of 2022” or “PPH Act of 2022”.

§ 2. LIST OF FOREIGN PATENT JURISDICTIONS.

(a) INITIAL PUBLICATION. Within 6 months of the enactment of this Act, and each year thereafter, the Director of the U.S. Patent & Trademark Office (“Office”) shall publish in the *Federal Register* a list identifying at least 3 foreign patent jurisdictions that, in the Director’s opinion—

- (1) offer a high level of patent protection for inventions in all fields of technology; and
- (2) award patents only for inventions that—
 - (A) are capable of industrial application; or
 - (B) solve a technical problem using a technical solution.

(b) ANNUAL REVIEW. Each year following the initial publication of the list in subsection (a), the Director shall review the list to determine whether to add or remove jurisdictions based on the criteria set forth in subsection (a). The number of jurisdictions identified on the list in any year may not be less than 3.

§ 3. SAFE HARBOR FOR DOMESTIC PATENTS.

(a) BENEFIT OF FOREIGN PATENTABILITY FINDING. In any proceeding before a court or federal agency, a claim in a U.S. patent or U.S. patent application (“domestic claim”) may not be held invalid or rejected, as the case may be, for lack of subject-matter eligibility under 35 U.S.C. § 101, if—

- (1) the domestic claim substantially corresponds with a claim that was indicated to be allowable by a foreign patent jurisdiction;
- (2) at the time the foreign patent jurisdiction made its indication of allowability in paragraph (1), the foreign patent jurisdiction was identified on the list in section 2; and
- (3) as a result of the indication of allowability in paragraph (1), the Director granted a request to examine the domestic claim under any [Patent Prosecution Highway program](#)^[1] in which the Office and the foreign patent jurisdiction participated.

(b) FINAL DETERMINATION. No person may challenge the Director’s determination—

- (1) identifying, adding, or removing any foreign patent jurisdiction on the list in section 2;
- (2) finding that the domestic claim substantially corresponds with the claim indicated to be allowable under subsection (a)(1); and
- (3) granting the Patent Prosecution Highway request under subsection (a)(3).

¹ See Patent Prosecution Highway, <https://www.uspto.gov/patents/basics/international-protection/patent-prosecution-highway-pph-fast-track> (last updated Dec 8, 2021).