

[Iancu-Backed Group Urges Lawmakers To Support Tillis IP Bill - Law360](#)

# Iancu-Backed Group Urges Lawmakers To Support Tillis IP Bill

By [Britain Eakin](#) · [Listen to article](#)

Law360 (October 20, 2022, 7:39 PM EDT) -- A new group of former [U.S. Patent and Trademark Office](#) directors and Federal Circuit judges has urged lawmakers to ignore "scaremongering" about a bill that would repeal [U.S. Supreme Court](#) precedent the group contends caused "disarray" in the patent system.

The Council for Innovation Promotion, or C4IP for short, urged the chairmen and ranking members of the House and Senate Judiciary committees and their IP subcommittees to support the [Patent Eligibility Restoration Act](#), introduced by Sen. Thom Tillis, R-N.C., in August.

The bill would alleviate some of the "substantial confusion" created by Supreme Court decisions concerning the patentability of business methods, abstract ideas, naturally occurring genetic sequences and diagnostic tests and procedures, C4IP said in an [Oct. 13 letter](#).

"Today, stakeholders almost unanimously agree that the precedents set by these cases threw America's innovation ecosystem into disarray," said C4IP, whose members include former USPTO Directors Andrei Iancu and David Kappos, former Chamber of Commerce official Frank W. Cullen Jr., and retired Federal Circuit Judges Kathleen O'Malley and Paul Michel.

C4IP was [formed last month](#) to counter misinformation the group contends has led to the steady erosion of the U.S. intellectual property system. There is plenty of it surrounding Tillis' bill, their letter said.

For one thing, the proposed legislation has [drawn criticism](#) that it would allow patenting of abstract ideas, laws of nature and human genes. C4IP called that "categorically untrue," saying the text of the bill "explicitly exempts unmodified human genes from patent eligibility."

"Any suggestion that this legislation would allow companies to patent anyone's DNA is simply false," the letter said. "Moreover, the scaremongering claim that human genes have ever been patentable ignores the fact that the entire human genome has been published many times over. That is to say, knowledge of the DNA components of every human gene is available to scientists everywhere, unaffected by any patent, to use and study as they see fit," C4IP said.

The bill would, however, allow medical diagnostic techniques and treatments to be patented, like immunotherapy cancer treatments, according to C4IP. The group attributed a \$9.3 billion drop in investment in diagnostic research and development to the Supreme Court's 2012 decision in [Mayo v. Prometheus](#), which held that a patent covering tests to assess correct dosages for certain medications was invalid for claiming well-understood and routine activity.

The Supreme Court's 2014 decision in [Alice Corp. v. CLS Bank](#) was the final progression in a series of eligibility cases that started with [Bilski v. Kappos](#) in 2010, followed by Mayo two years later and [Association for Molecular Pathology et al. v. Myriad Genetics Inc.](#) in 2013, which held that genes are not patent-eligible.

As more and more eligibility decisions came out from circuit and district courts, patent eligibility became increasingly unpredictable. Judges have not been on the same page about how to decide these cases, and in 2020, the Federal Circuit all but begged the justices to clarify this area of the law.

C4IP said these decisions created a "cloud of uncertainty" that "has decimated the U.S. diagnostics industry." Other important sectors in which the U.S. competes globally — like biotechnology, 5G, blockchain and artificial intelligence — have also suffered as a result, the letter said.

C4IP was joined in its effort to influence lawmakers by University of Akron law professor

Emily Michiko Morris, who also pushed back in a letter of her own on criticism that the bill would allow patenting of human genes. Such criticism, Morris said in the [Oct. 14 letter](#), relies "mostly on narrative and anecdote rather than rigorous empirical evidence."

--Additional reporting by Ryan Davis. Editing by Vaqas Asghar.