

# GOP Rep. Blasts 'Unthinkable' Fed. Circ. Drive Shaft IP Ruling

By [Tiffany Hu](#)

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Law360 (October 4, 2019, 9:14 PM EDT) -- In a rare move, the ranking member of the House Judiciary Committee on Friday tore into the Federal Circuit's "unthinkable" decision invalidating a patent related to automobile drive shaft technology, calling on Congress to come up with a new patent eligibility test.

A day after a [split Federal Circuit panel found American Axle & Manufacturing Inc.](#)'s patent invalid for claiming only a natural law, Rep. Doug Collins, R-Ga., issued a statement lambasting the "flawed" decision for failing to protect the invention. Both the circuit and lower courts "misstated the law several times," Collins said, although he did not elaborate on his view.

"Our patent eligibility test is clearly flawed, and the court's decision yesterday ... showcases the inadequacies of this test," Collins said. "It's unthinkable the courts found this invention, a manufacturing process for making a key automotive part, as patent ineligible."

Collins additionally urged Congress to create a new patent eligibility test with the U.S. in mind, saying that it should focus on promoting investment in emerging U.S. technologies and "ensure American inventors aren't at a global disadvantage."

Collins is part of a group of lawmakers who have been working with Sens. Thom Tillis, R-N.C., and Chris Coons, D-Del., on possible legislation to rewrite the law on patent eligibility in order to reduce the number of patents that are found invalid.

The group produced a [draft bill](#) earlier this year that was the subject of several days of Senate hearings in June. The lawmakers [said at the last hearing](#) that they planned to finalize the bill this summer, but it has not yet been introduced.

On Thursday, a split Federal Circuit panel upheld a [February 2018 decision](#) from a Delaware judge who found American Axle's method of making drive shafts inserted with liners to reduce noise and vibrations was not eligible for patent protection.

Writing for the majority, U.S. Circuit Judge Timothy Dyk said patent claims that are directed to a natural law concept and do not specify ways to implement the concept are ineligible under Section 101 of the Patent Act. The judge said this conclusion is supported by [U.S. Supreme Court](#) precedent.

"The claims here simply instruct the reader to tune the liner — a process that ... merely amounts to an application of a natural law to a complex system without the benefit of instructions on how to do so," wrote Judge Dyk, who was joined by U.S. Circuit Judge Richard Taranto in the majority.

Dissenting from the ruling, U.S. Circuit Judge Kimberly Moore said the majority's concern with the patent has "nothing to do with a natural law" and everything to do with a concern that the patent includes enough detail describing how to make or use the invention.

"Respectfully, there is a clear and explicit statutory section for enablement [Section 112]," Judge Moore wrote.

"The majority's validity goulash," she wrote later, "is troubling and inconsistent with the patent statute and precedent. The majority worries about result-oriented claiming; I am worried about result-oriented judicial action. I dissent."

The case dates back to 2015, when American Axle filed a lawsuit against Michigan-based Neapco Holdings alleging infringement. Judge Leonard Stark, the chief judge of the District of Delaware, awarded Neapco judgment after finding the patent was directed to a law of physics known as Hooke's law, which describes the relationship between an object's mass, its stiffness and the frequency at which it vibrates.

American Axle appealed, arguing that tuning a liner to reduce vibrations involves more than just an application of Hooke's law. Maintaining the invention was more complex than that, American Axle also suggested that liners had not previously been used to dampen certain types of vibrations.

"The problem with [American Axle's] argument is that the solution to these desired results is not claimed in the patent," wrote the majority, adding that the Federal Circuit has repeatedly held that features not claimed in the patent are "irrelevant" to the eligibility analysis.

Missing from the patent's claims, the court said, was any physical structure or steps to reduce vibrations.

"The focus of the claimed advance here is simply the concept of achieving that result, by whatever structures or steps happen to work," the court wrote.

The patent at issue is U.S. Patent No. [7,774,911](#).

American Axle is represented by James Nuttall, John Abramic, Katherine Johnson and Robert Kappers of [Steptoe & Johnson LLP](#).

Neapco is represented by J. Michael Huget, Dennis Abdelnour and Sarah Waidelich of [Honigman LLP](#).

The case is American Axle & Manufacturing Inc. v. Neapco Holdings LLC, case number [18-1763](#), in the [U.S. Court of Appeals for the Federal Circuit](#).

--Additional reporting by Matthew Bultman. Editing by Jay Jackson Jr.