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Pharma, Tech Cos. Back Proposal To Expand Patent Eligibility

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Law360 (June 25, 2019, 9:51 PM EDT) -- A group of 72 companies and trade associations have thrown their support behind a bipartisan proposal to expand patent eligibility, as Congress mulls changes to Section 101 of the Patent Act that would undo high court decisions restricting what types of inventions can be patented.

In a Monday letter to the lawmakers behind the draft bill, the organizations — which include pharmaceutical giant [Bristol-Myers Squibb](#), tech firm [TiVo Corp.](#) and conservative political organizations, as well as a retired U.S. Federal Circuit judge — praised the proposed legislation as “essential to future American innovation and security.”

The organizations said they “enthusiastically endorse the goals” of the draft bill, which was [unveiled last month](#). The proposal has been spearheaded by Sen. Thom Tillis, R-N.C., and Sen. Chris Coons, D-Del., the architects of the legislation, as well as Rep. Hank Johnson, D-Ga., who chairs the House Judiciary’s intellectual property subcommittee, Rep. Doug Collins, R-Ga., ranking member on the House Judiciary’s intellectual property subcommittee, and Rep. Steve Stivers, R-Ohio.

The [proposed legislation](#) would expressly throw out [U.S. Supreme Court](#) decisions such as *Alice* and *Myriad*, which found that abstract ideas, laws of nature and natural phenomena are not patent-eligible. Tillis and Coons have said the lack of clarity about what falls into those categories has created too much legal uncertainty and discourages investment in new technology.

The organizations agreed.

“Unfortunately, recent judicially created loopholes now deny some of our best inventions the patent protection they deserve and are in fact receiving in China, Europe, and elsewhere,” the letter says. “These loopholes currently discourage inventors from pursuing research and development in areas that are critical not only to our future health and prosperity, but also to our security, as other nations invest to beat the United States in the race for the innovations of the future.”

The organizations also emphasized in the letter that naturally occurring materials, such as human

genes, would remain ineligible for patents under the draft legislation “despite well-publicized claims to the contrary.”

This issue has drawn [**strong blowback**](#) from the [American Civil Liberties Union](#), which opposed the proposed legislation in a letter to Congress earlier this month warning that the bill could allow human genes to be patented.

That letter, sent to the same five lawmakers on June 3, also boasted an impressive array of signatories, with more than 100 health care associations backing the letter.

“One hundred and fifty years of case law will be wiped out by this bill and the legal battles central to and correctly decided in each of the cases mentioned will have to be fought again. Patients will again be at risk of lacking access to information about their genes, about their very selves,” the ACLU’s letter says.

Coons and Tillis held a [series of Senate hearings](#) on the proposal earlier this month, gathering feedback on the changes from major companies like [IBM](#) and [Novartis](#). The lawmakers have said they intend to introduce a final version of the bill later this summer.

A House Judiciary Republican aide confirmed on Tuesday that the committee had received the organizations’ letter.

“Reforming Section 101 of the Patent Act will help the U.S. continue to lead the world in innovation,” Collins said in a Tuesday statement. “I look forward to receiving additional feedback from stakeholders to develop a solution that works for everyone as we move forward.”

The other lawmakers to whom the letter was addressed did not immediately return requests for comment late Tuesday.

--Additional reporting by Ryan Davis. Editing by Kelly Duncan.