Senators Reintroduce Patent Eligibility, PTAB Reform Bills - Law360

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By Dani Kass · *Listen to article*

Law360 (May 2, 2025, 6:59 PM EDT) -- U.S. Sens. Thom Tillis and Chris Coons on Thursday brought back two significant patent reform bills from last term that overall aim to make invalidating patents more difficult.

The Promoting and Respecting Economically Vital American Innovation Leadership Act and Patent Eligibility Restoration Act received significant attention when introduced in 2023, and the former made it through the Senate's intellectual property subcommittee in November before stalling.

PREVAIL's terms include making patent challengers choose between the Patent Trial and Appeal Board and district court, requiring the board to use the higher standard of proof currently used in district courts and adding a standing requirement.

The bill was introduced by Coons, D-Del., Tillis, R-N.C., Sen. Dick Durbin, D-Ill., and Sen. Mazie Hirono, D-Hawaii. A companion bill in the House was filed by Reps. Nathaniel Moran, R-Texas, and Deborah Ross, D-N.C.

Tillis chairs the Senate Judiciary Committee's subcommittee on intellectual property, and both Coons and Hirono are members. Moran and Ross are members of the House's equivalent subcommittee.

"The PREVAIL Act makes commonsense changes to our patent system that will increase transparency, safeguard patents, eliminate duplicative legal proceedings, and encourage American inventors to design and create," Tillis said in a statement. "We must restore faith and confidence in the Patent Trial and Appeal Board."

PERA, which had also been introduced in 2022, would reset a decade of precedent on what

is considered eligible under Section 101 of the Patent Act.

The U.S. Supreme Court handed down a series of rulings on eligibility starting in 2010 and culminating in 2014's Alice Corp. v. CLS Bank, holding that abstract ideas can't be patented without an added inventive concept.

How to interpret Alice has been a constant question since, and there have been inconsistent rulings as a result. Nearly everyone in the patent community — from Federal Circuit judges to U.S. Patent and Trademark Office directors to practicing attorneys — has been asking for clarity for years, and have not received it from the justices.

"When American innovators know their ideas are eligible for patent protection, they take the risks that push us into the future – whether that's the next medical test or the latest AI technology," Coons said in a statement. "PERA restores clarity to the law on what can be patented and what cannot – guidance that federal courts have been requesting for years and that the Supreme Court has refused to provide."

The generic-drug industry in particular does not support the bills, with Patients For Affordable Drugs Now saying the limits on challenging patents would harm patients.

"These dangerous bills would further rig the patent system in favor of the pharmaceutical industry," Executive Director Merith Basey said in a Thursday statement. "At a time when one in three Americans can't afford their prescriptions, Congress should be working day and night to lower prices, but instead, Senators Tillis and Coons are siding with Big Pharma and helping the industry further entrench its power at the expense of patients."

The Computer & Communications Industry Association likewise opposed the bills, saying they "would primarily benefit hedge and sovereign wealth funds that invest money to sue actual inventors, hindering innovation and raising prices on American companies and consumers."

"PERA would expand patentability to a level never before seen — fundamentally changing the U.S. patent system," CCIA patent counsel Josh Landau said in a statement. "The bill would make it easier to obtain weak patents that patent trolls can use against innovators, leading to widespread litigation that needlessly drives up prices of consumer goods and medications."

US*Made likewise said the "only clear winners" are "drug companies, patent trolls, and litigation investors through which America's enemies wage patent lawfare proxy wars."

A statement released by Tillis, Coons and House co-sponsors Kevin Kiley, R-Calif., and Scott Peters, D-Calif., included a series of support, including from two former Federal Circuit judges.

"In my former court, which hears patent cases on appeal, concurring and dissenting opinions in patent eligibility cases have proliferated," retired Judge Kathleen O'Malley said. "Veteran jurists have described the state of affairs as 'incoherent,' 'unclear,' 'fraught,' and 'inconsistent.' The Patent Eligibility Restoration Act would return clarity to patent eligibility law and encourage continued innovation in key emerging technologies."

Other supporters included the Innovation Alliance, the Alliance of U.S. Startups & Inventors for Jobs, AUTM, the American Intellectual Property Law Association, Nokia, Sisvel and the Council for Innovation Promotion.

"The Innovation Alliance applauds Senators Tillis and Coons and Representatives Kiley and Peters for sponsoring the Patent Eligibility Restoration Act, which will provide much needed predictability and clarity to the hopelessly confused law of patent eligibility," the organization said in the joint statement. "The Supreme Court has provided no workable framework to guide patent owners or the courts, and it has repeatedly refused to clarify the law, rejecting requests by the Federal Circuit and others to do so time and again. Investment dollars are flowing out of the United States as a result, jeopardizing the future of America's innovation economy. It is past time for Congress to act."

--Editing by Kelly Duncan.