

Client Alert

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Patent Reform Off the Table for Now

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Yesterday, Senate Judiciary Committee Chairman Patrick Leahy (D-VT) announced that he was taking his patent reform bill off the agenda. As a result, it is unlikely that Congress will pass patent reform legislation this year.

Senator Leahy's bill, the Patent Transparency and Improvements Act (S. 1720), had been the leading Senate bill directed at curbing abusive litigation by patent trolls. Yesterday's shelving of the bill follows repeated delays over the past two months in the Judiciary Committee's anticipated markup of the bill, as Committee members worked behind the scenes to resolve contentious issues. (See our previous alert [here](#).) Senator Leahy had suggested in recent weeks that the parties were close to a compromise, but his [press release](#) yesterday stated there was "not sufficient support behind any comprehensive deal."

The House of Representatives overwhelmingly passed its version of patent reform legislation, the Innovation Act (H.R. 3309), last December. Senator Leahy noted that the Judiciary Committee had heard "repeated concerns" that the House bill, which was broader than his Senate bill in several respects, would impose "severe unintended consequences on legitimate patent holders who employ thousands of Americans." On contentious issues, such as fee-shifting provisions, critics have argued that the recent legislative proposals could adversely impact innovative small companies and independent inventors. The debate underscores the challenges of drafting legislation specifically targeted at patent trolls and their litigation conduct.

Supporters of patent reform have indicated they will continue their efforts to enact federal patent troll legislation, with a focus on pending House and Senate bills targeting patent troll demand letters. As Congress shifts its attention to the upcoming midterm elections, and with the summer recess approaching, it will become increasingly difficult for such efforts to result in legislation this year. In the meantime, twelve states have now enacted their own laws directed at bad-faith patent demand letters, and similar legislation is pending in several other states.

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