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Bill To Tackle IP Diversity Gap Passes Senate Committee

By **Britain Eakin**

Law360 (April 29, 2021, 5:45 PM EDT) -- A bill intended to boost the participation of historically underrepresented groups in the U.S. intellectual property system is headed to the full Senate after the Senate Judiciary Committee passed it with bipartisan support Thursday morning.

The Inventor Diversity for Economic Advancement Act, or IDEA Act, would enable the U.S. Patent and Trademark Office to voluntarily collect information about an applicant's gender, race, military or veteran status. According to the bill, that information would be submitted confidentially and wouldn't be considered during the patent examination process.

Sponsors of the IDEA Act contend that allowing the patent office to collect the demographic data is essential to better understanding the root of the gender and diversity gap in the IP system so that it can be addressed. One of the bill's Republican cosponsors, Sen. Thom Tillis of North Carolina, stressed during the hour-long business meeting that closing the diversity gap is key to maintaining U.S. global competitiveness.

"We need to understand that we are suffering an economic loss by not having more people engaged in the system. Take a look at China, take a look at the ground they're gaining on innovation," Tillis said. "And I think that this bill, providing the ability for the USPTO to get data that will better prepare us to identify how we get out into those communities and encourage more people to participate, is very important."

According to the most recent USPTO statistics, only 22% of patents list a woman as an inventor, and women make up just 13% of all inventors. Meanwhile, those of Hispanic descent are granted patents at half the rate of white applicants, while data on other underrepresented groups is less clear, in part because the USPTO hasn't been able to collect demographic information from patent applicants.

The IDEA Act has broad grassroots support, including from Invent Together, a coalition focused on increasing diversity in the patent sector. Holly Fechner, the group's executive director, urged the full Senate to pass the act shortly after the committee vote.

"The IDEA Act is a crucial step toward ensuring that our nation's inventors have equal access to the benefits of patenting, regardless of gender, race or income," Fechner said in a statement. "It will also help ensure that we use the full measure of our talent to compete globally."

First introduced in July 2019, the bill failed to make it out of the committee last Congress, but was reintroduced in March. One of its co-sponsors, Sen. Mazie Hirono, D-Hawaii, blamed earlier inaction on the bill on hostility from the Catholic Church, which she said objected to questions in the survey that were based on sexual orientation, along with opposition from Sen. Ted Cruz, R-Texas.

The new version of the bill removed language that would have allowed the USPTO to gather information on sexual orientation, ethnicity, age, national origin, educational level and disability. In lieu of requiring the USPTO to collect information on these factors, the new bill allows the USPTO to add "any other demographic category that the director determines appropriate."

Cruz proposed two amendments ahead of the bill vote, neither of which passed. One of them would have removed the language from the bill giving the USPTO director authority to discretionarily add other demographic categories.

Cruz suggested giving the USPTO director such broad authority would open the door to abuse and social engineering. Tillis, who opposed the amendment along with the majority of the committee members, brushed off that concern.

"Obviously if we have any agency head that is apparently using this for social engineering ... or for some other nefarious purpose, we can hold them accountable for that," Tillis said. "But I'd like to create a flexible platform, particularly when all we're really trying to do here is get more creatives into the system as early as possible to improve our competitiveness."

The committee also passed the Artistic Recognition for Talented Students, or ARTS Act, during Thursday's meeting, which will also head to the full Senate. The ARTS Act would waive various fees at the U.S. Copyright Office for artistic works that win certain competitions sponsored by Congress, like the annual congressional student art competition for high school students.

--Additional reporting by Andrew Karpan. Editing by Alex Hubbard.

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