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Developments in Congress on Patent Legislation

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Patent legislation has been an issue of intense interest for **Congress** and industries alike over the past year. The Chairman of the Senate Judiciary Committee recently took **patent legislation** off the committee's agenda in a move that **increases the likelihood that Congress will not pass a patent bill this year**. Democratic Chairman Patrick Leahy of Vermont said that despite almost a year of effort to craft comprehensive legislation, the committee could not strike an appropriate balance to reach consensus between stakeholders focused on curtailing abusive patent litigation and stakeholders that rely on the patent system to protect their inventions.

The issue appeared to have momentum as the House of Representatives passed a patent bill overwhelmingly in December with the support of the White House. But a revised bill stalled repeatedly in the Senate as lawmakers spent countless hours attempting to negotiate an agreement that would have broad bipartisan support. The House bill included sections to shift attorney's fees to the losing party in patent cases, heighten pleading standards, mandate limits on discovery, and stay law suits against certain defendants in favor of other defendants, among other provisions.

In the wake of the demise of a comprehensive patent bill, action continues in the House on a new, more targeted bill. The House Energy & Commerce Committee with jurisdiction over consumer protection laws held a hearing on a draft demand letter bill, the day after Leahy's announcement. The goal of the draft bill is to address unfair and deceptive demand letters. The House committee may consider and vote on that bill as soon as late June. According to Republican Commerce, Manufacturing and Trade Subcommittee Chairman Lee Terry of Nebraska, he is attempting to "thread the needle" to address abusive demand letters while not impinging on First Amendment rights or routine business negotiations.

In the Senate, Chairman Leahy announced that he would bring new legislation to the Senate Judiciary Committee for immediate action if stakeholders reach agreement on a narrower bill to target abusive behavior. Just last month the U.S. Supreme Court issued two opinions giving judges substantially more discretion to order fee-shifting in patent cases, potentially taking that contentious issue off of the table.

With the election fast approaching, time is running out for Congress to act, but stakeholders will be watching Congress closely for renewed signs of patent legislation. Given the amount of interest in and attention to patent legislation over the past year, there will almost certainly be a renewed effort in the next Congress.

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