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<p>bio news</p> <p>Editors: Kim Coghill, Paul Winters</p> <p>BIO represents more than 1,100 companies, academic institutions, state biotechnology centers and related organizations across the United States and 31 other nations. BIO members are involved in the research and development of healthcare, agricultural, industrial and environmental biotechnology products.</p>		

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Provisions contained in the legislation would dramatically shift patent law in favor of infringers and challengers over innovators. S. 1145 would create a new post-grant opposition system under which a patent repeatedly could be challenged administratively throughout its term, on a broad array of grounds and under a lower standard of proof than in court. The cloud of uncertainty this change will create over the validity of issued patents and intellectual property will be unacceptable to investors. If a patent can be challenged at any time—even years after the patentee and the public have come to rely on it and years after a biotech companies has invested hundreds of millions of dollars to bring a patented invention through clinical trials and regulatory approval—patents will have much less value. Investment predicated upon these patents will likely diminish.

S. 1145 would also change the calculation of damages for patent infringement to reflect the value of the patent's "specific contribution over prior art," rather than—as under current law—the value gained by the infringer by infringing the patented invention. If damages are calculated upon some arbitrary value of a part of an invention, rather than the value of the invention as a whole to the infringing product, infringement may become cheaper than licensing the technology. Infringing a patent could be considered just another cost of doing business.

The Senate bill also fails to truly reform the often-abused doctrine of unenforceability, whereby a perfectly valid patent may be deemed unenforceable because a patent owner failed to provide material information or allegedly misled the PTO during the patent examination process. Patent law experts and the National Academy of Sciences have called for the repeal or reform of this doctrine, which has been described as an "absolute plague" by the federal court of appeals that handles patent litigation. Yet the Senate bill would codify the worst aspects of the current doctrine, rather than restrict its abuse.

Weaken patent protection, as the current legislation would do, and biotech innovation is stifled. Stifle innovation and the world may be deprived of the next biotechnology breakthrough to help save lives, reduce our nation's dependence on foreign oil, feed the hungry, or provide a cleaner environment. The Senate should NOT vote on this legislation until the concerns of the patent-holding community, including the biotechnology industry, have been addressed in the legislation.

Jim Greenwood is president and CEO of BIO.

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