

# The bi-partisan IDEA Act: a great idea, or pointless data gathering?

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Innovation is one of the cornerstones of any great nation's success, including the United States of America.

However, recognition for innovations is often credited to certain individuals to the exclusion of others, or certain individuals are freely given access to and encouraged to participate in the innovation process, while others lack access and even in some cases are discouraged from participating.

Several data points support this proposition, including studies that have found:

- Only 22 percent of all U.S. patents list a woman as an inventor and women make up fewer than 13 percent of all inventors listed on patents in 2019;
- Black and Hispanic college graduates apply for and are awarded patents at half the rate of their white counterparts; and
- Americans born into the top 1 percent of family income are 10 times more likely to obtain a patent in adulthood than those born into families in the bottom half of income.

It can certainly be argued that innovation is stifled as well as the greatness and economic growth of a nation when all individuals are not afforded equal access to the process of innovation and in fact are not encouraged to participate.

One study by Harvard researchers found that we would have four times as many inventors in America today if we closed these gaps. Dr. Lisa Cook at Michigan State University found that including more women and African Americans in the early stages of innovation could increase annual U.S. GDP by almost \$1 trillion.

Legislation is being proposed in Congress as one step toward addressing this disparity of having such a low number of women and diverse ethnic groups who are participating in the patent process or the process of innovation.

The Inventor Diversity for Economic Advancement Act, or simply the IDEA Act, is a proposed bipartisan act of Congress that directs the United States Patent and Trademark Office (USPTO) to collect on a voluntary self-reporting basis and report demographic information about each inventor listed on a patent application. The thought

is that, in order to correct a problem, one has to first be able to measure and monitor the problem.

## The IDEA Act and its origin

The IDEA Act was originally introduced in the U.S. House of Representatives on July 25, 2019, as H.R. 4075. This bill was introduced in the 116th Congress, which met from Jan. 3, 2019, to Jan. 3, 2021. The legislation was not voted on, hence it was not passed by the end of the congressional session and was cleared from the books. The bill was reintroduced in the subsequent session by a bipartisan group of senators and representatives who have reintroduced the IDEA Act (Inventor Diversity for Economic Advancement [IDEA] Act of 2021). There are Senate and House versions of the bill -- S.632 and H.R.1723, respectively.

Right now, the USPTO does not ask inventors for any demographic information other than residence contact information and country of residence. The legislation, if adopted, requires the USPTO director to collect inventor information on gender, race, military or veteran status, and any other demographic category that the director determines appropriate. Under the provision, inventors would not be required to submit the information, and any submissions would be kept confidential and separate from the application. However, non-personally identifiable demographic information could be available for data analysis and for an annual report from the USPTO.

The sponsors for the legislation are:

- S.632. Sponsor: Sen. Mazie Hirono; co-sponsors: Sens. Tom Tillis, Chris Coons, Patrick Leahy, Chuck Grassley.
- H.R.1723. Sponsor: Rep. Nydia Velázquez; co-sponsor: former Rep. Steve Stivers.

As of the writing of this article, the proposals are now before the respective judiciary committees. Sen. Leahy is the chair of the Subcommittee on Intellectual Property, and Sen. Tillis is the ranking member. In the House, intellectual property does not have its own committee this session, but rather is part of the Subcommittee on Courts, Intellectual Property, and the Internet chaired by Rep. Hank Johnson. Rep. Darrell Issa is the ranking member.

An excerpt from the Senate Bill is as follows:

To amend chapter 11 of title 35, United States Code, to require the voluntary collection of demographic information for patent inventors, and for other purposes.

1 *Be it enacted by the Senate and House of Represent-*  
2 *atives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Inventor Diversity for  
5 Economic Advancement Act of 2021” or the “IDEA Act”.

1 **SEC. 2. COLLECTION OF DEMOGRAPHIC INFORMATION FOR**  
2 **PATENT INVENTORS.**

3 (a) AMENDMENT.—Chapter 11 of title 35, United  
4 States Code, is amended by adding at the end the fol-  
5 lowing:

6 **“§ 124. Collection of demographic information for**  
7 **patent inventors**

8 “(a) VOLUNTARY COLLECTION.—The Director shall  
9 provide for the collection of demographic information, in-  
10 cluding gender, race, military or veteran status, and any  
11 other demographic category that the Director determines  
12 appropriate, related to each inventor listed with an appli-  
13 cation for patent, that may be submitted voluntarily by  
14 that inventor.

15 “(b) PROTECTION OF INFORMATION.—The Director  
16 shall—

17 “(1) keep any information submitted under sub-  
18 section (a) confidential and separate from the appli-  
19 cation for patent; and

20 “(2) establish appropriate procedures to en-  
21 sure—

22 “(A) the confidentiality of any information  
23 submitted under subsection (a); and

24 “(B) that demographic information is not  
25 made available to examiners or considered in  
26 the examination of any application for patent.

Like many other government programs, it would empower the USPTO to collect such data on a voluntary basis, and require the USPTO to report on any such data provided.

This report would identify the total number of patent applications, and the total number of issued patents, according to the following:

- Gender of each named inventor;
- Race of each named inventor;
- Military or veteran status of each named inventor;
- Country of residence; and
- For U.S. inventors, the state of residence of each named inventor.

The IDEA Act has provisions regarding access to any information disclosed. The USPTO would be required to establish procedures to ensure confidentiality of the information, the information would be exempt from disclosure under Section 552(b)(3) of the Freedom of Information Act, 5 U.S.C.A. § 552(b)(3), and no personally identifying information could be disclosed in any reports.

Again, the Act appears to be recognized as the first step toward achieving a non-discriminatory and equitably accessible U.S. patent system, making sure it is available to all Americans without limit and in fact encourages the participation of all in the process of innovation in the U.S. Information and knowledge are always important tools for understanding and solving any problem.

As discussed previously, the bill was first presented in July 2019, and it followed Rep. Steve Chabot's (R-OH) introduction of the Study of Underrepresented Classes Chasing Engineering and Science (SUCCESS) Act in 2018, H.R. 6758 – SUCCESS Act. The Chabot bill asked the USPTO, in consultation with the administrator of the Small Business Administration, to study and provide recommendations to promote the participation of women, minorities and veterans in entrepreneurship activities and the patent system. A key finding of that study is that there isn't enough available data to support legislation and policy changes that will foster inclusivity in the innovation process. There is at least some indication that the Chabot predecessor bill is one of the underpinnings and sparks that was the initial motivation that inspired the IDEA Act.

However, there are other predecessor acts, like the 2011 America Invents Act, under which the USPTO Patent Pro Bono Program was launched to provide greater access to the patent system to those who would not otherwise be able to afford the process. This program came into full fruition as part of a White House initiative during the Obama administration that funded an effort to have volunteer pro bono efforts in all 50 states.

There are also recent discussions in the legal community regarding the lack of diversity amongst the members of the patent bar and how the numbers are even worse than the lack of diversity in the legal profession as a whole.

The American Bar Association (ABA) recently published an article on this topic: "Diversity in Patent Law: A Data Analysis of Diversity in the Patent Practice by Technology Background and Region," *Landslide*, Vol. 13, No. 1, September/October 2020.

These and other factors have fostered an environment conducive for the IDEA Act. In 2016, a Senate Small Business Committee and Entrepreneurship hearing was convened to hear from national experts, including experts from the National Science Foundation (NSF) and local stakeholders regarding the importance of promoting more women and minorities in the STEM workforce (science, technology, engineering and math). All of the above prior legislations, government initiatives and legal forums may have contributed at least in part to the motivation of the IDEA Act.

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In 2019, Sen. Hirono reintroduced a legislative plan to increase opportunities for women and minorities in STEM. This included two bills that would improve diversity and competitiveness in the STEM workforce by making sure women and minority students have opportunities to succeed. The bill was revived after a similar effort failed during the previous term.

The previous version of the IDEA Act included provisions for collecting data on sexual orientation, ethnicity, age, national origin, educational level and disability, and at least some of these categories raised concerns. The current version requires the collection of only gender, race and military or veteran status.

The IDEA Act further provides that any such information provided by an applicant will be kept "confidential and separate from the application for patent" — a provision that would help avoid implicit biases during the patent examination process.

A study published in *Nature Biotechnology* in 2018 by Kyle Jensen, Balazs Kovacs, and Olav Sorenson, reported that some outcomes in prosecution of some patents are biased against inventors having female names.

Studies have shown that gender-blind evaluations help eliminate gender bias. The same should be true for those named as inventors on a patent application, and keeping inventor names "confidential and separate from the application for patent" would be in keeping with the proposed protections of the IDEA Act.

### **Potential impact if bill passes**

The IDEA Act will provide information needed to better understand and address the patent disparities among women, people of color and other underrepresented groups. However, to be clear, the bill in and of itself is not crafted to directly improve the disparities in the patent system. The bill is simply a tool to provide information so that solutions can be developed.

This bill provides the ability to the USPTO to collect and analyze data that will better provide information regarding trends, identify communities that are not participating in the patenting process, and help determine where various innovation communities should

focus. The IDEA Act can be one piece of the puzzle that provides a picture of the barriers facing women and diverse ethnic groups that inhibit access to or discourage participation in the innovative process. The fruits of this legislation, if passed, can act as a tool for reaching out into the communities that don't appear to have access to or are simply not participating in the patenting process and encouraging and equipping more people from those communities to participate.

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If passed, the bill also will provide relevant data supportive of the conversation around diversity in STEM, the patent process and innovation more generally. Our nation is the home of millions upon millions of innovators. This stems from the heart and core of our nation, which is a nation of innovation, as the very ideals that undergird our republic are innovative. The data resulting

from the IDEA Act will assist policy makers at the local, state and federal levels to implement policies and legislations to support underrepresented groups in applying for patents and, more generally, participating in the process of innovation and STEM.

Allowing greater access to all individuals can be a shot in the arm that boosts our nation's innovation ecosystem. Our nation is a leader in research and development of innovative technologies, but the best research and technology require the best minds regardless of the demographic, particularly in the growingly competitive international environment. The data reported annually can also be a report card of sorts to determine if any policy changes are positively impacting diversity in the patent process and innovation more generally. If the data is analyzed and used to develop legislation, policies and investments directed at increasing the access for and participation of diverse communities, it will inevitably be an economic driver.

Innovators and entrepreneurs are positive disrupters in our society that bring about positive change and improvements in our everyday life and drive our economy. The more disrupters we have driving economic growth, the better off our nation will be.

#### About the author



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