

December 1, 2025

The Honorable John A. Squires
Director of the U.S. Patent & Trademark Office and
Under Secretary of Commerce for Intellectual Property
U.S. Patent & Trademark Office
600 Dulany Street
Alexandria, VA 22314

Director Squires:

When Congress passed the America Invents Act in 2011 (AIA), it established *inter partes review* (IPR) at the Patent Trial and Appeal Board (PTAB) to offer productive, innovative American companies an efficient means of resolving abusive patent lawsuits. IPR has been a bipartisan policy success. It deters frivolous lawsuits and reduces costs for American companies and consumers, it enhances competition by ridding the market of invalid patents, and it helps make the United States more secure by serving as a shield against intellectual property lawfare conducted or funded by foreign entities.

We are concerned that the NPRM issued by the U.S. Patent and Trademark Office (USPTO) on October 17 (Revision to Rules of Practice Before the Patent Trial and Appeal Board) runs afoul of the AIA on multiple fronts, including:

- The NPRM suggests expanding the types of validity defenses PTAB petitioners are prevented from raising in district court. Instead of only surrendering defenses they “raised or reasonably could have raised” at the PTAB and only after a PTAB “final written decision,” the rule proposes requiring petitioners to forfeit defenses in district court that they barred from raising at the PTAB, immediately upon filing. The USPTO does not have the authority to revise the AIA and require parties to waive defenses they cannot raise at the PTAB.
- The NPRM violates foundational American legal principles and the AIA when it proposes binding PTAB petitioners to any prior litigation regarding the patent in question, regardless of whether the petitioner was a “real party in interest” or “in privity” in those cases. The USPTO again does not have the authority to revise the AIA and take away a petitioner’s right to defend themselves against a meritless patent infringement claim due to a prior lawsuit involving an unrelated third party.
- The AIA lays out clear timelines for when petitioners are allowed to challenge patents via IPR. Petitioners are barred from requesting an IPR if it is more than one year after the date they are served with a complaint alleging patent infringement. The proposed rules would block petitions filed within this eligible window if parallel litigation is likely to conclude before a final written decision. This is a nonstatutory barrier to PTAB access and violates the AIA’s intent.

In addition to being in conflict with the law, the NPRM includes a number of false assertions.

First, the NPRM states that the USPTO has certified that the proposed rule would not have “a significant economic impact on a substantial number of small entities.” As you are aware, patent assertion entity mass litigation efforts against small entities are well documented. A single successful PTAB challenge is often the best means of ending this predatory behavior, sparing hundreds of small entities from baseless accusations. Reducing the circumstances in which patent validity review is viable, as this NPRM does, will undoubtedly embolden assertion entities to target more vulnerable small- and medium-sized businesses.

Second, the NPRM claims the rulemaking has been determined not to be economically significant. Regrettably, if enacted, the proposed rule will have a severe, negative economic impact. It will insulate

invalid patents from review, which are frequently being leveraged in patent infringement lawsuits with hundreds of millions and even billions of dollars hanging in the balance. The consequences of the proposed rule for industries like advanced manufacturing will be significant and detrimental.

The NPRM's ramifications for small entities and economic significance require additional regulatory analysis that has not yet been conducted.

Congress alone writes the laws and the executive branch enforces them. In this case, the USPTO does not have the authority to rewrite the AIA—which the undersigned individuals either voted for while serving in Congress or have supported in the years since its passage—or advance an NPRM without adhering to administrative law. We ask that the NPRM be withdrawn and that the USPTO reconsider the contents of its proposal.

Sincerely,

Patrick Leahy
Former U.S. Senator, VT

Mark Udall
Former U.S. Senator, CO

Patrick Tiberi
Former U.S. Representative, OH-12

Collin Peterson
Former U.S. Representative, MN-7

Jeff Duncan
Former U.S. Representative, SC-3

Reid Ribble
Former U.S. Representative, WI-8

Steve Chabot
Former U.S. Representative, OH-1

Bob Goodlatte
Former U.S. Representative, VA-6

Dick Armey
Former U.S. Representative, TX-26

Peter DeFazio
Former U.S. Representative, OR-4

Ted Poe
Former U.S. Representative, TX-2

Rick Boucher
Former U.S. Representative, VA-9

Dennis Ross
Former U.S. Representative, FL-15 & 12

John Mica
Former U.S. Representative, FL-7