

November 3, 2025

The Honorable Scott Bessent

The Honorable Susie Wiles

The Honorable Kevin Hassett

The Honorable Russell Vought

The Honorable Peter Navarro

We write to express our vehement opposition to recent decisions made by the U.S. Patent and Trademark Office. These policy changes will severely undermine America's ability to manufacture its own products in critical technologies, from semiconductors and telecommunications equipment to automobiles and heavy equipment. They ultimately will make the United States dependent on foreign suppliers for these products. The USPTO's new policies double down on misguided proposals that were made during the Biden Administration—and that were withdrawn after congressional leaders of both parties condemned the proposals as illegal.

The gist of these changes is to make it impossible for U.S. manufacturers to effectively challenge the validity of patents that are being asserted against them in court—despite damages claims that can reach into the billions of dollars. For many decades, at least 40% of U.S. patents have been found invalid when they are tested. This is partly the result of an insufficiently rigorous patent examination process that gives examiners an average of only 17 hours to review an application. It is also the result of USPTO procedures that allow applicants to file an infinite number of requests to reconsider an application, allowing them to wear down an examiner who initially rejects an application. The end result is that a large portion of issued patents are invalid and only claim

things that were already used by industry. And the Patent Office issues an average of 1,000 new patents *every day*.

At the same time, a number of businesses have arisen in recent years that exist solely to assert patents to extract money from companies that manufacture in the U.S. These entities do not make any products of their own and they do not conduct research and development. In most cases, they are simply a shell company owned by a law firm or investment fund that purchases patents on the secondary market to assert in litigation. These entities often pay nominal sums for their patents, assert old or expired patents, and assert them to cover technology that is far beyond the reasonable scope of their claims.

To protect companies that manufacture in the U.S. against assertions of invalid patents, Congress since the 1980s has authorized parties that are sued for infringement to seek validity review at the Patent Office. The current version of these proceedings consists of trials conducted by three Patent Office judges, each of whom has a technical education and a background in patent law. Chapter 32 of title 35 allows a patent to be challenged on all validity grounds during the first 9 months after the patent issues. Chapter 31 allows obviousness challenges throughout the remainder of the 20-year life of the patent and after (an expired patent can be asserted for damages reaching back six years). These chapters also require challenges to be brought within one year after a defendant is sued and bar repeated challenges by the same party.

The statute also requires a challenger to make an up-front showing that there is at least a “reasonable likelihood” that the patent is invalid. If this evidentiary showing is not made, the Patent Office denies review and the whole process is completed within six months. This protects the owners of valid patents by ensuring that

only the strongest challenges—those against patents with demonstrated validity problems—go to a full trial on the merits.

During the Biden Administration, the Patent Office proposed new regulations that would have insulated large swaths of issued patents from these reviews—including patents being asserted in court.ⁱ The Administration proposed a rule barring challenges if infringement litigation was moving “faster” than the validity review. It also proposed to bind litigation defendants to the outcomes of other, unrelated parties’ challenges made years earlier. At a House Judiciary Committee hearing in 2023, leaders of both political parties excoriated the Patent Office’s Director for these proposals, emphasizing that the law already sets the rules and that it was up to Congress to decide if the law should be changed.ⁱⁱ

The interim leadership of the Patent Office has now revived these Biden-era proposals. They have been applying a rule—without any notice or formal rulemaking—that bars validity review if infringement litigation is moving faster than the Patent Office trial. They have barred review based on other, unrelated parties’ earlier validity challenges. And they have decided that any patent that is more than six years old should not be challenged at all, even if it is being asserted in court.

On October 17, the Patent Office published a proposal to enshrine a version of these restrictions in federal regulations. It proposes to adopt the un-American concept of “virtual representation”—that a party loses its rights to defend itself if another, unrelated party earlier mounted an unsuccessful defense. And it proposes to require defendants to waive the right to raise product prior-art defenses in *any* forum as a condition of access to Patent Office review. (Such defenses cannot be raised in *inter partes* review.)

Since April, the Patent Office has been applying these new rules retroactively to reject over 450 patent-validity challenges

without any consideration of their merits. Almost all these challenges involved patents that are being asserted in court; two-thirds involved patents owned by patent-assertion entities that do not make any products. In a typical year, there are about 1200 petitions seeking to challenge a patent. Most problematically, the Patent Office's new policies are on track to effectively shut down all validity review of patents asserted by patent assertion entities against manufacturers in the U.S.

Make no mistake, these Patent Office trials are the *only* reliable and effective mechanism for challenging most invalid patents. In theory, a defendant could attempt to challenge a patent during an infringement trial before a jury. In reality, very few jurors have a technical background that allows them to understand the technology claimed in a patent. In the court where patent assertion entities sue most often, litigation defendants only have 12.5 hours on average to present *their entire case*, which typically must address multiple patents and present evidence on infringement, damages, and other issues. This is not enough time to also teach a lay jury how semiconductors work or how telecommunications systems operate.

As a U.S. district judge in another popular patent litigation venue recently advised, “never, ever, ever, ever, ever offer an obviousness argument to a jury,” as the jury will not understand it.ⁱⁱⁱ The seasoned trial counsel whom manufacturers retain will tell you the same thing. They often advise us not to even bother to present an invalidity-obviousness defense to a jury, no matter how clear it would be to a person grounded in the technology that the patent is invalid.

The signatories to this letter represent the backbone of the U.S. economy. We manufacture products that are critical to the nation's economic well-being and national security. Yet because of ill-advised Patent Office policies, we are now facing *hundreds* of

lawsuits in which we are denied a fair opportunity to defend ourselves—each often with hundreds of millions, and at times billions, of dollars at stake. If these Patent Office policies remain unchecked, they will lead to a systematic looting of the American industrial economy. We urge you to correct these actions and restore the rule of law at the U.S. Patent and Trademark Office.

Sincerely,

Association for Accessible Medicines

ACT|The App Association

Alliance for Automotive Innovation (AAI)

Computer and Communications Industry Association (CCIA)

Consumer Technology Association

Engine

High Tech Inventors Alliance (HTIA)

National Retail Federation

Quality Patents Coalition

Software Information Industry Association (SIIA)

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ⁱ See Changes Under Consideration to Discretionary Institution Practices, Petition Word-Count Limits, and Settlement Practices for America Invents Act Trial Proceedings Before the Patent Trial and Appeal Board, 88 Fed. Reg. 24505, 24507-08 (Apr. 21, 2023).

ⁱⁱ See “Reps. Tell Vidal She Is Overstepping with USPTO Power,” Law360, Apr. 27 2023.

ⁱⁱⁱ “What Judges Want You to Know: Litigate Smarter,” Law360, Feb. 11, 2025 (quoting the Hon. Alan D Albright).