

November 6, 2023

The Honorable Chris Coons
Chairman
Committee on the Judiciary
Subcommittee on Intellectual Property
United States Senate
Washington, D.C. 20510

The Honorable Darrell Issa
Chairman
Judiciary Committee
Subcommittee on Courts, IP, and the Internet
United States House of Representatives
Washington, D.C. 20515

The Honorable Thom Tillis
Ranking Member
Committee on the Judiciary
Subcommittee on Intellectual Property
United States Senate
Washington, D.C. 20510

The Honorable Hank Johnson
Ranking Member
Judiciary Committee
Subcommittee on Courts, IP, and the Internet
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Coons, Chairman Issa, Ranking Member Tillis, and Ranking Member Johnson:

We represent a broad coalition of associations whose members include inventors, patent owners, small businesses, large companies, and academic institutions across the United States. We believe that the strength of the U.S. economy and the ability of the nation to compete globally depend on a reliable patent system that drives research and development (“R&D”) and commercialization of emerging technologies. We strongly support the bipartisan, bicameral Promoting and Respecting Economically Vital American Innovation Leadership (PREVAIL) Act ([S.2220/H.R.4370](#)) introduced by Senators Coons and Tillis and Representatives Buck and Ross, which would advance these goals. **We urge you to pass the PREVAIL Act to reform the Patent Trial and Appeal Board (PTAB) and promote U.S. global technology leadership.**

A fair and reliable patent system is crucial to maintaining our competitive edge in global innovation. Grounded in the Constitution’s intellectual property clause, the U.S. patent system grants inventors defined property rights in their inventions for a limited time in exchange for publicly disclosing these inventions to promote future innovation and commercial activity.

However, abuse of the PTAB has caused inventors to lose confidence that the U.S. patent system will protect their ideas. The America Invents Act established the PTAB in 2011 to provide a cost-effective alternative to federal court litigation for resolving disputes over patent validity.¹ More than a decade later, the PTAB has proven to be an additional forum for patent litigation, and one that has invalidated patents at an alarming rate and forced patent holders to defend their inventions repeatedly in both federal district court and the PTAB.

These changes have diminished incentives to innovate and enabled foreign competitors to overtake the

¹ H.R. Rept. 112-98 (June 1, 2011), at 48 (“While this amendment is intended to remove current disincentives to current administrative processes, the changes made by it are not to be used as tools for harassment or a means to prevent market entry through repeated litigation and administrative attacks on the validity of a patent. Doing so would frustrate the purpose of the section as providing quick and cost effective alternatives to litigation. Further, such activity would divert resources from the research and development of inventions.”).

position of the United States as the global leader in innovation. According to a 2023 study funded by the U.S. State Department and the Special Competitive Studies Project, China now leads in 37 out of 44 key technologies critical and emerging technologies in a range of fields, including defense, space, robotics, energy, biotechnology, AI, and advanced materials.² The study ranked the United States first in only 7 of the 44 technology areas. To compete with China and other countries that seek to take our place as a global technology superpower, the United States must ensure inventors can reliably and effectively enforce their patent rights.

The PREVAIL Act would promote fair treatment of inventors, improve efficiency, and ensure that the USPTO has the resources it needs to effectively administer a patent system that incentivizes American innovation and enables U.S. inventors to compete. By limiting burdensome legal challenges and restoring the predictability of patent rights, the PREVAIL Act allows U.S. inventors to focus their resources on continued innovation.

We thank Senators Coons and Tillis and Representatives Buck and Ross for introducing this important bill, and we look forward to continuing to work with the Congress and the USPTO toward our shared goal of reinforcing the strength and reliability of the U.S. patent system.

Sincerely,

Alliance of U.S. Startups & Inventors for Jobs (USIJ)
Association of American Universities (AAU)
AUTM
Biocom California
Innovation Alliance
Licensing Executives Society (USA and Canada), Inc.
Medical Device Manufacturers Association (MDMA)

cc: Members of the U.S. Senate Committee on the Judiciary
Members of the U.S. House Committee on the Judiciary

² Jamie Gaida, Jennifer Wong Leung, Stephan Robin & Danielle Cave, *ASPI's Critical Technology Tracker: The global race for future power*, AUSTRALIAN STRATEGIC POL'Y INST. (March 2023), https://ad-aspi.s3.ap-southeast-2.amazonaws.com/2023-03/ASPIs%20Critical%20Technology%20Tracker_0.pdf?VersionId=ndm5v4DRMfpLvu.x69Bi_VUdMVLp07jw.