

AIPLA

American Intellectual Property Law Association

September 16, 2024

The Honorable Richard J. Durbin
Chair
Committee on the Judiciary
U.S. Senate
152 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Lindsey O. Graham
Ranking Member
Committee on the Judiciary
U.S. Senate
211 Russell Senate Office Building
Washington, D.C. 20510

RE: Support for S. 2140, Patent Eligibility Restoration Act, S. 2220, PREVAIL Act, and S. 4713, IDEA Act

Dear Chair Durbin and Ranking Member Graham:

The American Intellectual Property Law Association (“AIPLA”) is pleased to support three key pieces of intellectual property legislation set for markup this week: S. 2140, the Patent Eligibility Restoration Act; S. 2220, the PREVAIL Act; and S. 4713, the IDEA Act. Each of these bills addresses critical issues within the U.S. patent system and advances our shared goal of fostering innovation, economic growth, and inclusion.

AIPLA is a national bar association of approximately 7,000 members including professionals engaged in private or corporate practice, in government service, and in the academic community. AIPLA members represent a wide and diverse spectrum of individuals, companies, and institutions involved directly or indirectly in the practice of patent, trademark, copyright, trade secret, and unfair competition law, as well as other fields of law affecting intellectual property. Our members represent both owners and users of intellectual property. Our mission includes helping establish and maintain fair and effective laws and policies that stimulate and reward invention while balancing the public’s interest in healthy competition, reasonable costs, and basic fairness.

S. 2140, the Patent Eligibility Restoration Act, is crucial in addressing the uncertainty and unpredictability resulting from the Supreme Court’s subject-matter eligibility decisions over the past two decades. AIPLA supports this bill because it eliminates the judicial exceptions to patent eligibility and clarifies that any useful process, machine, manufacture, or composition of matter, or useful improvement thereof, should be patentable, subject only to specific exclusions in the bill. We believe that restoring clarity to patent eligibility will incentivize investment across various fields of technology, including emerging technologies, thereby maintaining our nation’s position as an economic and technological leader.

S. 2220, the PREVAIL Act, includes several changes that AIPLA has long supported to enhance procedural protections in proceedings at the Patent Trial and Appeal Board (PTAB) to align more closely with those in district court litigation. This bill introduces key reforms such as applying a presumption of validity for challenged patents and changing the burden of proof for petitioners to the clear and convincing evidence standard. While we fully support these efforts

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to improve the implementation of the America Invents Act of 2011 (AIA), we also recommend further clarifications to certain sections to ensure the legislation achieves its intended balance between patent holder rights and protection against abusive practices.

S. 4713, the IDEA Act, is a significant step forward in promoting diversity within the U.S. patent system. AIPLA supports the bill's authorization for the USPTO to collect demographic data voluntarily from patent applicants, including gender, race, and military or veteran status. This data collection is essential to identify underrepresentation in the patent system and to develop targeted strategies to address these gaps. Encouraging a more inclusive innovation ecosystem is critical to harnessing the full creative potential of all inventors, which will strengthen the U.S. economy.

We commend the sponsors and co-sponsors of these bills for their commitment to improving the U.S. intellectual property landscape. AIPLA urges the Committee on the Judiciary to advance these important pieces of legislation swiftly. By supporting these bills, we can foster a more robust, fair, and inclusive patent system that encourages innovation and growth across all sectors of our economy.

Thank you for considering our views. We look forward to working with the Committee members and staff as the legislative process moves forward.

Sincerely,

A handwritten signature in blue ink that reads "Ann M. Mueting". The signature is written in a cursive, flowing style.

Ann M. Mueting
President
American Intellectual Property Law Association

CC: Members of the Senate Judiciary Committee