

UNITED *for* PATENT REFORM

October 30, 2019

The Honorable Thom Tillis
United States Senate
185 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chris Coons
United States Senate
218 Russell Senate Office Building
Washington, DC 20510

The Honorable Lindsey Graham
United States Senate
290 Russell Senate Office Building
Washington, DC 20510

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, DC 20510

Dear Chair Tillis, Ranking Member Coons, Chair Graham, and Ranking Member Feinstein:

The United States Patent and Trademark Office (PTO) issued a record-setting 336,000 utility patents this fiscal year. The undersigned write to express our concern that, notwithstanding these numbers, the PTO is not giving enough attention to ensuring that the patents it grants are of high quality. Instead, it appears to be focused on weakening one of the best tools it has for promoting quality: Inter Partes Review (IPR).

The PTO must grant a patent unless a patent examiner can prove it is invalid. But examiners have on average only 19 hours to look for prior art, understand the claimed invention, make a detailed comparison to decide what, if anything, should be patentable, and engage in a back-and-forth with the applicant. This is not enough time, so it is not surprising that examiners often miss the best prior art or fail to evaluate it correctly and issue an invalid patent.

Congress addressed this reality through its passage of the America Invents Act (AIA) of 2011 after years of careful bipartisan consideration, debate and negotiation. The AIA created new post-grant review procedures, including the IPR program at the PTO. The intent of Congress in creating IPR was to improve patent quality by allowing the PTO to take another look at patents of questionable validity, which erode public confidence in the patent system and are the primary fuel of patent litigation abuse. With record-setting numbers of patents being granted, IPR is more important than ever.

IPR has given small businesses and Main Street companies the ability to fight frivolous claims of patent infringement, and not give in to the aggressive demands of non-practicing entities (NPE)s. IPR has also brought about significant improvements to patent quality by creating incentives to file better patent applications with the PTO and seek patent claims that cover what was actually invented, not patents that are as broad as possible.

Congress should ensure that the PTO prioritizes patent quality, and as an essential part of doing so, maintains a balanced and effective IPR program so that patents of low quality can be identified efficiently and fairly, and the negative impact of those bad patents on innovation and consumers can be eliminated.

Sincerely,

Handwritten signature of Stephanie Martz in black ink.

Stephanie Martz
Co-Chair, United for Patent Reform
Senior Vice President & General Counsel
National Retail Federation

Handwritten signature of Paul Redifer in black ink.

Paul Redifer
Co-Chair, United for Patent Reform
Senior Director Government Affairs
Cisco