

January 24, 2024

President Joseph R. Biden
President of the United States
1600 Pennsylvania Avenue, NW
Washington, DC 20002

Dear President Biden:

Your administration's decision to apply march-in rights under the Bayh-Dole Act of 1980 has created grave concerns among the undersigned academics, professors, economists and scholars. These individuals, who have expertise in fields ranging from intellectual property (IP) to health care to economic policy and an array of other sectors, are opposed to the government forcing inventors under duress to license their IP rights to others. This action will weaken IP rights and undermine fundamental principles that have made the American IP system the golden standard for supporting domestic innovation.

While lower drug prices are the stated reason behind this expansion of march-in rights, the consequences of the administration's actions will chill pharmaceutical innovation. Worse, the application of march-in rights will not be confined to one industry. The draft guidelines being developed by the Biden Administration cover all inventions produced by R&D funded by any government agency. Many critical sectors of the United States' supply chain will be threatened if patent owners are compelled to license IP rights on federally funded inventions. History indicates that increased risks to the property rights that drive private investment and small business growth will unreasonably limit availability of the invention to the public by eliminating incentives to innovate.

IP rights provide a necessary safeguard to entrepreneurs and investors who take significant risks bringing new products to the marketplace. The assurances provided by patent protection give these good faith actors the security they need to fill holes in the market with products that benefit the well-being of every American. This vital component of the nation's economic infrastructure should not be overturned by misguided attempts to solve drug pricing issues that can be addressed in other ways.

Opening the door to march-in rights will reduce the pace of marketplace competition for innovative new products. Reducing competition in this way will both exacerbate existing shortages and enable market incumbents to inflate their product pricing. The threat of compulsory licensing destroys the confidence of small business owners who have faith in, but no proof of, their product's value in the marketplace.

We, the undersigned, are also convinced that the exercise of march-in rights under Bayh-Dole would give unscrupulous business incumbents the ability to tip the scales of the marketplace. By filing march-in petitions, they could eliminate their competition, allowing them to price-gouge in unprecedented ways. This would stagnate the economy for no measurable benefit.

We urge you to conduct an open dialogue with all stakeholders – including the academic community, industry experts, and policymakers – to find a more balanced and equitable solution that better upholds the integrity of our patent system.

Thank you for considering our perspective on this crucial matter.

Sincerely,

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