

The Honorable John A. Squires
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office
600 Dulany Street
Alexandria, VA 22314

RE: Docket No. PTO-P-2025-0025

Dear Director Squires:

We appreciate the opportunity to submit a comment in response to the notice of proposed rulemaking (NPRM) issued by the U.S. Patent and Trademark Office (USPTO) regarding Revision to the Rules of Practice Before the Patent Trial and Appeal Board (PTAB).¹ As leading voices in Congress on patent policy, we support the Proposed Rule and appreciate the USPTO taking this important step. We also encourage you to support our bipartisan, bicameral bill—the *Promoting and Respecting Economically Vital American Innovation Leadership* (PREVAIL) Act ([S.1553/H.R.3160](#))—which will permanently reform PTAB procedures to make them more fair for inventors.

As the Proposed Rule rightly recognizes, Congress established the PTAB as part of the 2011 *America Invents Act* (AIA) to provide a quick and cost-effective alternative to district court patent litigation for resolving disputes over patent validity.² However, in practice, the PTAB operates as an additional forum for challenging patents. The vast majority of PTAB proceedings take place in parallel to another case involving the same patent or patents in another forum such as federal district court or the U.S. International Trade Commission (ITC). In addition, the same party can file multiple petitions against the same patent, allowing challengers multiple chances to invalidate patents and increasing costs for patent owners who must repeatedly defend their intellectual property rights against the same party.

Congress did not intend for the PTAB to be an additional forum for challenging patents. In fact, Congress made clear in enacting the AIA that the PTAB should not be used “for harassment or a means to prevent market entry through repeated litigation and administrative attacks” and that “[d]oing so would frustrate the purpose of the [PTAB] as providing quick and cost effective alternatives to litigation” and ultimately undermine innovation by “divert[ing] resources from the research and development of inventions.”³

Returning the PTAB to its core purpose as an alternative to district court patent litigation is why we introduced the PREVAIL Act. The PREVAIL Act makes commonsense reforms to the PTAB to promote fair treatment for inventors, improve efficiency, and ensure the USPTO has the

¹ Revision to Rules of Practice Before the Patent Trial and Appeal Board, 90 Fed. Reg. 48335 (proposed Oct. 17, 2025) (to be codified at 37 C.F.R. pt. 42).

² See *id.*; see also H.R. REP. NO. 112-98, at 48 (2011).

³ H.R. REP. NO. 112-98, at 48 (2011); see also S. REP. NO. 110-259, at 72 (As a result of repeated patent challenges, the “uncertainty over the patent would limit the ability of inventors to attract capital investment and further develop their innovation and bring it to the marketplace.”).

resources it needs to effectively administer a patent system that promotes American innovation and enables U.S. inventors to better compete in the global innovation ecosystem.

Although the NPRM and the PREVAIL Act take slightly different approaches, both the bill and the Proposed Rule would:

- Eliminate repetitive challenges by the same party on the same patents;
- End duplicative challenges and parallel proceedings in multiple tribunals, requiring a party to choose whether to bring a challenge in the PTAB or another forum, like federal district court or the ITC; and
- Reduce inconsistency between tribunals and improve efficiency by providing an inventor “quiet title” when a final judgment has been entered on the validity of a patent claim.

A future USPTO Director may repeal or alter a PTAB regulation. Indeed, USPTO Directors over the last decade have taken different approaches to implementing PTAB procedures. Inventors need certainty and predictability to justify investment in new research and development. To that end, we seek your support of the PREVAIL Act to make permanent the type of PTAB reform the USPTO seeks to achieve with this NPRM.

We appreciate the USPTO’s efforts to ensure that the PTAB meets its congressional intent. We look forward to engaging with the USPTO to advance our mutual interest in ensuring fairness, efficiency, and predictability in patent disputes. Thank you for considering our comments.

Respectfully,



Chris Coons
United States Senator



Thom Tillis
United States Senator



Nathaniel Moran
Member of Congress



Deborah Ross
Member of Congress