

November 11th, 2021

The Honorable Patrick J. Leahy  
Chairman  
Senate Judiciary Committee  
United States Senate  
224 Russell Senate Office Building  
Washington, DC 20510

Dear Chairman Leahy:

As a group of US small inventors we appreciate your interest in the innovation economy. The signers of this letter represent more than 100,000 small inventors and hundreds of millions in revenue. However, we weren't asked to provide input into your proposed changes to the post-issuance review proceedings established by the Leahy-Smith America Invents Act (AIA) – and it shows.

From Onion Goggles to life saving medical devices and vaccines innovation of all sorts is what drives our economy. In fact, this effect on our economy is the reason that the right to a patent is the only explicit right in the Constitution. And the importance of invention is the reason that during the first Congress the room next to the Senate chamber contained all of the important inventions of the day. Innovation has set us apart from other countries, and policies that make it harder to innovate, harder to defend intellectual property, and harder to profit from intellectual property do nothing to advance the US economy and put the economy into cruise control at best and a fatal economic stall at worst.

While we understand the idea of building a faster, cheaper, and more accurate solution to determining patentability, the PTAB has become known as a patent death squad instead of an example of efficient government. And the proposed changes in the Restoring the America Invents Act only look to make these problems worse -- by weaponizing the US government against inventors, by codifying pre-emptive access to PTAB even when the patent is already being challenged in federal court, and creating an environment that is even friendlier to patent infringers.

Allowing the US Government to employ an administrative tribunal run by government employees that aren't bound by the same rules that surround the normal judicial process – is both something that the Supreme Court has ruled against and an action that would put small inventors at an even bigger disadvantage than at present. And forcing post-grant proceedings to continue despite actions in the courts calls into question the original purpose of these new post-grant processes. The post grant proceedings created by the AIA were intended to make the IP lawsuits cheaper and easier. However, in practice they have become just another tool that patent infringers use to tie up inventors and steal their intellectual property. The decision in the *Fintiv* case at least made it clear that infringers shouldn't be able to necessarily use both venues at the same time. A policy that ignores the *Fintiv* decision, and goes in the other direction, is a direct attack on our innovation economy.

Changes are needed in the patent system if we are going to compete with China and the rest of the world, but the changes that are needed involve making patents stronger, restoring the value of patents in the eyes of investors, and returning the incentive for individuals to risk everything to develop a better mousetrap.

We are happy to discuss changes that would be good for the system – we are happy to provide examples of how post-issuance proceedings are being abused. We are happy to do anything that we can to make the system better, more affordable, more efficient, and more dependable. Unfortunately, the current proposals do not check any of those boxes. Thank you for your time and your consideration.

Sincerely,

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