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Senate Committee on the Judiciary  
Subcommittee on Intellectual Property  
244 Dirksen Senate Office Building  
Washington, DC 20510

House Committee on the Judiciary  
Subcommittee on Courts, IP, AI, and the Internet  
2142 Rayburn House Office Building  
Washington, DC 20515

We write on behalf of America's advanced manufacturing and industrial technology base – from [automobiles](#), [semiconductors](#), and [precision machining](#), to [industrial software](#), [AI](#), and [quantum computing](#) – to raise concerns with a deteriorating US patent policy environment. This situation is the result of actions at the US Patent and Trademark Office (USPTO) that systematically favor patent litigation speculators and non-practicing entity (NPE) shell companies over most US industries and most US patent owners.

### Introduction

The member companies of our organizations – spanning every state – [employ more than 90 million US workers](#). Each year, our members invest hundreds of billions of dollars in R&D, accounting for the vast majority of US private sector R&D. Our members are among America's most consequential patent holders, accounting for [90% of US-based patent holders among the top 20 patent grantees](#). Our patents represent decades of R&D and serve as the foundation of US technological leadership and global competitiveness.

USPTO's most recent policy misstep occurred on May 14, with the USPTO Director's precedential decision in [Magnolia Medical Technologies v. Kurin](#). USPTO casts the decision as an effort to restore the Patent Trial and Appeal Board (PTAB) and Inter Partes Review (IPR) process to its congressional design.

It is the opposite. The decision offers a profoundly misleading account of the IPR process – one that distorts the legislative record, overrides congressional intent, and cloaks the real beneficiaries of USPTO policies (i.e., [litigation speculators and NPEs](#)) and the real victims (i.e., [productive businesses targeted by NPEs](#)).

Strip away that obfuscation and what remains is this: [A systematic refusal to correct USPTO's own examination errors](#) in patent claims that even the PTAB's expert judges would agree are reasonably likely to be unpatentable. The practical effect is to tilt the scales in favor of the short-term litigation arbitrage returns that speculators – many of them foreign-backed – extract from invalid patents, and away from the patent quality, manufacturing investment, and long-term innovation that US competitiveness requires.

### Discussion

We raise seven concerns with the precedential *Magnolia* policy decision.

**First**, the foundational premise in *Magnolia* is that IPR was created primarily as an *alternative to litigation*, and that petitioners who are already in court are somehow misusing the process. That premise misreads the legislative record. While the America Invents Act House Report does describe IPR as offering a “quick and cost-effective alternative to litigation,” *Magnolia* takes that phrase out of context and ignores the far more prominent theme running through the same Report: that the statute's overarching goal was “to establish a more efficient and streamlined patent system that will [improve patent quality and limit unnecessary and counterproductive litigation costs](#),” given the view “that [questionable patents are too easily obtained and are too difficult to challenge](#).” The Congressional Record is equally direct: the AIA should “[strengthen patent quality and reduce costs](#),” given that “[litigation over invalid patents places a substantial burden on US courts and the US economy](#).”

Indeed, the Administration's own Solicitor General reiterated in [Oil States Energy Services v. Greene's Energy Group](#) that Congress enacted IPR to “[improve patent quality](#) and restore confidence in the presumption of validity that comes with issued patents” – not to promote litigation by eliminating IPR access.

*Magnolia's* selective reliance on a single subordinate phrase – while ignoring the dominant themes of higher patent quality and reduced litigation over invalid patents – misrepresents the law and congressional intent.

**Second,** *Magnolia's* parallel litigation argument also turns the IPR process on its head. The decision laments that "many petitioners seek AIA review in parallel with litigation," as if that were evidence of bad faith. But who are these petitioners? They are typically companies that have first been targeted with a specious assertion of infringing an invalid patent claim. *Magnolia* blames the victims of these frivolous assertions for invoking their rights to a congressionally-mandated, expert review of USPTO examination errors, while deeming harmless the predatory tactics of NPEs seeking to monetize those errors. USPTO has it exactly backwards. Furthermore, the reason parallel proceedings proliferate is not PTAB; it is that courts in the Eastern and Western Districts of Texas (where most patent litigation occurs) routinely refuse to stay their cases while an IPR petition is pending. (Most other federal courts do grant such stays). The fix is to address federal judicial venue and stay practice – not blocking IPR access.

**Third,** *Magnolia's* IPR abuse arguments distort both applicable law and the statistical record. As a legal matter, Congress legislated AIA safeguards to ensure that IPR proceedings are streamlined and protected against abuse. IPRs are intentionally limited to specific grounds; must conclude within one year; cannot be filed more than one year after a complaint; and trigger estoppel after a final written decision. The statute also empowers USPTO to sanction petitioners who misuse the process. These are not gaps in the law – they reflect a deliberate congressional design.

The statistical evidence, too, is unambiguous: There is no flood of abusive IPR petitions. In fact, "serial" petitions account for a mere 0.3% of all instituted IPRs. In 2024, out of the 3.9 million "live" US patents, fewer than 350 (i.e., 0.009%) were even partially invalidated by PTAB. The bottom line is this: When USPTO sees credible evidence that a patent claim is invalid, blocking IPR review doesn't prevent abusive litigation; it enables it – allowing invalid patents to be weaponized in court contrary to congressional intent.

**Fourth,** *Magnolia's* foreign government petitioner discussion misdirects attention from the larger problem of the many private equity financiers and NPEs that use invalid patents to strategically attack US companies in court. NPEs are often tied to foreign interests: From 2021 to 2023, 4 of the top 5 NPEs were based outside the US or ultimately owned by non-US persons. NPEs have been linked to entities in China, Saudi Arabia, France, and others. For example, Fortress Investment Group has created NPE shells to target US companies in court. Fortress is linked to the sovereign wealth fund of Abu Dhabi. Since USPTO began impeding IPR access, such NPE judicial actions against productive enterprises have risen sharply.

Several cases demonstrate how core US interests are jeopardized due to USPTO's systemic failure to correct its own errors in issued patents via the IPR process. One involves a patent case brought against Micron by Yangtze Memory Technologies Co. Ltd. (YMTC), which sought court-compelled access to Micron's sensitive semiconductor source code after leveraging its USPTO-granted patents to sue Micron in US court. Yet others involve litigation filed by NPE shell entities that obscure their foreign ties. In one such case VLSI Technology LLC – an NPE linked to Abu Dhabi-backed Fortress Investments – mounted a multi-year litigation campaign against Intel. Due in part to USPTO's refusal to institute an IPR, VLSI secured a \$2.18 billion jury verdict against Intel on a patent subsequently found invalid in another case. Finally, foreign entities even transfer patents to (purportedly US) NPEs that target US companies with impunity. Examples include Huawei's reported transfer of patents to litigation speculators that created NPE shell companies to sue companies like Cisco, Fortinet, HPE, Microsoft, S&P Global, and Texas Instruments.

**Fifth,** *Magnolia* conceals the broad, systemic impacts of NPE litigation on productive US companies. NPEs have sued 1,500 US manufacturers and almost as many service providers in recent years. NPEs impose roughly \$29 billion per year in direct litigation costs on their US litigation targets. A single NPE case can cost up to \$4.5 million in district court or \$8 million at the USITC. NPE litigation correlates with lower venture capital investment, declines in startup formation, reduced patenting activity, and drops in R&D spending.

The USPTO's March 11, 2026 Memorandum (referenced in *Magnolia*) deepens these harms. As our coalition explained to USPTO, the Memorandum creates a stark asymmetry: a foreign-backed NPE that manufactures nothing in the United States retains unrestricted access to assert erroneously issued patents against US manufacturers – while those same manufacturers' petitions to correct the USPTO errors may be denied if any portion of their production involves foreign inputs. Under the USPTO framework, a foreign

[NPE's extraction of a settlement from a US manufacturer qualifies as "US manufacturing," while the actual US production activities of a true US manufacturer may not qualify at all.](#)

In 2025, USPTO [denied hundreds of IPR petitions](#) – exposing US industry to NPE predation on an unprecedented scale. When the above-referenced impacts are replicated hundreds of times over, the economy-wide impact becomes material.

**Sixth**, *Magnolia* disregards [congressional concerns](#), including those relating to:

- (1) USPTO favoritism towards litigation speculators and NPEs (Chairman Issa, R-CA);
- (2) Litigation costs imposed on US industry due to IPR access restrictions (Rep. Fitzgerald, R-WI);
- (3) Foreign NPE exploitation of judicial discovery to access US technologies (Rep. Cline, R-VA);
- (4) Impacts of predatory NPE litigation on small businesses (Rep. Lee, R-FL);
- (5) Weak and frivolous patent applications from China and impacts on US industries (Rep. Fry, R-SC);
- (6) "Low quality, overbroad patents ... [that] drive up prices, impede competition, [and] expose businesses to abusive litigation." (Rep. Lofgren, D-CA);
- (7) Foreign manipulation of the US patent system against US interests (Rep. Kamlager-Dove, D-CA).

**Finally**, *Magnolia* fails to address US private sector concerns regarding USPTO's refusal to correct its examination errors through the IPR process. These concerns relate to impacts on:

- (8) [US innovation](#);
- (9) [US AI leadership](#);
- (10) [US advanced manufacturing](#) and [industrial reshoring](#);
- (11) [US small businesses](#);
- (12) [US national security](#);
- (13) Risks of [economic espionage and IP theft](#); and
- (14) Risks of [NPE and adversarial influence in US courts](#).

These concerns are shared widely by US industry and top US patent holders (represented by our organizations), as well as the public (represented by the [90% of public commenters who have written in opposition](#) to USPTO proposals).

## Conclusion

The United States deserves a serious and responsible IP policy that aligns with US strategic, innovation, and economic interests. Those interests would be supported by honest and transparent USPTO responses to concerns raised by congressional, industry, and other private sector stakeholders. Those interests would be supported by a strong, forthright [commitment to ensuring that US patents are the best in the world](#).

Those interests are not supported by misleading policy pronouncements that do not even acknowledge the brewing crisis at the USPTO: systematic deterioration of US patent quality driven by an examination process that averages just 20 hours per application; a standing policy of refusing to institute IPRs to correct the errors that process inevitably produces; and a practice of standing aside while NPEs weaponize those uncorrected patents against US industries in court.

**USPTO is headed in the wrong direction. We call for strong and sustained congressional oversight.**

Respectfully submitted,

- Alliance for Automotive Innovation (AAI)
- Business Software Alliance (BSA)
- High Technology Inventors Alliance (HTIA)
- Software & Information Industry Association (SIIA)
- United for Patent Reform (UFPR)
- US Manufacturers Association for Development and Enterprise (US\*MADE)