Business Software Alliance

September 2, 2026

The Honorable Darrell Issa, Chairman
The Honorable Hank Johnson, Ranking Member
Subcommittee on Intellectual Property
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Re: September 2, 2026, House Judiciary Subcommittee on Intellectual Property Hearing on the "Renewal of USPTO Fee Setting Authority: Giving Full Effect to the America Invents Act"

Dear Chairman Issa and Ranking Member Johnson:

On behalf of the Business Software Alliance (BSA), I write regarding the Committee's hearing titled "Renewal of USPTO Fee-Setting Authority: Giving Full Effect to the America Invents Act." BSA reiterates our longstanding concerns with the U.S. Patent and Trademark Office (USPTO) approach to *inter partes* review proceedings before the Patent Trial and Appeal Board (PTAB).[1]

BSA believes today's discussion should not be limited to fee levels alone; fee-setting authority is also tied to whether USPTO is using its resources and authorities to implement the America Invents Act as Congress intended, including the post-issuance review tools Congress created to improve patent quality and reduce unnecessary litigation.

First, we remain highly concerned that USPTO has, since 2025, pursued an approach to IPR institution that Congress never authorized under the "reasonable likelihood" standard of 35 U.S.C. § 314(a). Both the volume of IPR petitions filed and the rate at which they are granted have collapsed as a result of the USPTO's restrictive new policies. The IPR petition filing rate has plummeted from an average of 110 per month in 2024 to a low of 15 in April of this year. At current filing rates, the USPTO will receive fewer than 350 IPR petitions this year, a decrease of nearly 75% compared to the more than 1,300 petitions that were filed in 2024. The petition grant rate (commonly referred to as the "institution rate") has also dropped dramatically, decreasing from a historical range of 60%-70% in most years to a fiscal-year average of about 38%.[2] That fiscal-year average understates the current rate of decline: among the first petitions decided under the new bifurcated procedure adopted by Director Squires in October 2025, the institution rate was only 14% for Q4 of 2025.[3] At the current rates, between 50 and 100 IPRs will be instituted each year, a 90% reduction from the annual average of 790 during the prior decade (FY2015 to FY2024).

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[1] BSA is the global trade association of the enterprise software industry, representing companies that are leaders in artificial intelligence, cybersecurity, cloud computing, quantum, and other breakthrough technologies. Representing thousands of American inventors and their employers – together holding hundreds of thousands of patents in a sector vital to US economic and national security – BSA members are long-standing supporters of the US intellectual property (IP) system. As innovators and patent holders, BSA members have a direct and substantial stake in each of the post-issuance mechanisms Congress has established to review granted patents.

[2] USPTO, *PTAB Trial Statistics* (June 2026), https://www.uspto.gov/sites/default/files/documents/Trial_Stats_June_2026.pdf

[3] RPX, *Q1 in Review* (April 2026), https://www.rpxcorp.com/wp-content/uploads/sites/3/2026/04/RPX-Q1-in-Review-April-14-2026.pdf

Second, USPTO's actions have been exceptionally controversial. For example, its October 2025 Notice of Proposed Rulemaking (NPRM) drew more than 11,100 public comments, of which 97% of all submissions and 90% of unique comments opposed the rule.[4] Opponents span the American economy: opponents include domestic automakers; leading US-based semiconductor companies; patient groups; affordable medicine groups; small business groups; small inventor groups; members of Congress who authored the America Invents Act; and former USPTO officials, among others.

Third, USPTO's actions are imposing economic costs on the US economy. For example, USPTO's October 2025 NPRM proposes a rule that is similar to one rejected during the Biden Administration, which an economic analysis projected would cause a net drop of $482 million in domestic business activity and a $202 million increase in government costs.[5] A similar, but less restrictive proposal in 2015 was scored by CBO at $1.3 billion in additional costs over ten years.[6] Likewise, allowing the USPTO to continue dismantling the IPR process may be even more costly to the US economy. Over the 2014–2019 period alone, cost savings associated with AIA/PTAB proceedings are estimated to have generated $2.95 billion in US gross product and nearly 13,500 job-years of employment, with the largest gains — $1.41 billion in gross product and almost 5,100 job-years — concentrated in manufacturing. USPTO's actions would substantially reverse those gains.[7]

Fourth, USPTO's actions impose costs on productive US enterprises,[8] including small businesses,[9] primarily for the benefit of litigation speculators[10] and foreign non-practicing entities (NPEs).[11] USPTO's actions systematically weaken US patent quality,[12] impede the Administration's AI policies,[13] and heighten national security concerns about foreign exploitation of judicial discovery to access sensitive US technology.[14]

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[4] Unified Patents, *Stakeholders Overwhelmingly Oppose Agency Proposals that Would Restrict Access to Inter Partes Review* (December 18, 2025), https://www.unifiedpatents.com/insights/2025/12/17/the-public-has-spoken-again

[5] Perryman Group, *The Potential Economic Costs to the US Government of Discretionary Denial of Inter Partes Review Based on Criteria such as the NHK-Fintiv Rules* (August 2023), https://www.perrymangroup.com/media/uploads/report/perryman-the-potential-economic-costs-to-the-us-government-of-discretionary-denial-of-inter-partes-review-based-on-criteria-such-as-the-nhkfintiv-rules-08-25-23.pdf

[6] Wall Street Journal, *Drug-Industry Rule Would Raise Medicare Costs* (Aug. 31, 2015), https://www.wsj.com/articles/drug-industry-bill-would-raise-medicare-costs-1441063248

[7] Unified Patents, *UP Quality Initiative (PQI) Releases Economic Report Showing the AIA led to over 13,000 jobs and grew the U.S. economy by $3 billion since 2014* (June 24, 2020), https://www.unifiedpatents.com/insights/2020/6/23/the-perryman-group-releases-economic-report-an-assessment-of-the-impact-of-the-america-invents-act-and-the-patent-trial-and-appeal-board-on-the-us-economy

[8] Coalition for Advanced Manufacturing and Industrial Technology, *USPTO's Patent Policy Shift – Undermining US Industrial Capacity and the Manufacturing Workforce* (2026), at https://www.bsa.org/files/policy-filings/03242026bsausptomanftechind.pdf

[9] Coalition for Advanced Manufacturing and Industrial Technology, *USPTO's Patent Policy Shift – Undermining Individual Inventors and Small- & Medium-Sized Enterprises* (2026) https://www.bsa.org/files/policy-filings/03242026bsausptomanftechsme.pdf

[10] Coalition for Advanced Manufacturing and Industrial Technology, *USPTO's Patent Policy Shift – Promoting Financial Speculation in USPTO's Own Errors* (2026) https://www.bsa.org/files/policy-filings/03242026bsausptomanftechfinspec.pdf

[11] Id.

[12] Coalition for Advanced Manufacturing and Industrial Technology, *USPTO's Patent Policy Shift – Leaving USPTO Errors Uncorrected Weakens the US Patent System* (2026) https://www.bsa.org/files/policy-filings/03242026bsausptomanftecherrors.pdf

[13] Coalition for Advanced Manufacturing and Industrial Technology, *USPTO's Patent Policy Shift — Undermining US AI Leadership and the AI Action Plan* (2026) https://www.bsa.org/files/policy-filings/03242026bsausptomanftechai.pdf

[14] Coalition for Advanced Manufacturing and Industrial Technology, *USPTO's Patent Policy Shift – Undermining US National Security* (2026), https://www.bsa.org/files/policy-filings/03242026bsausptomanftechnatsec.pdf

Fifth, USPTO's actions substantially strengthen the ability of such NPEs and other foreign interests to attack US interests: Between 2021 and 2023, 4 of the top 5 NPEs were either based outside the US or ultimately owned by non-U.S. persons, accounting for over 90% of the patent cases filed by that group.[15] Some NPEs are Chinese-linked, such as PurpleVine IP, a Shenzhen-based litigation investment firm,[16] which has been documented funding US patent suits against semiconductor manufacturers. A GAO report has documented NPE funding from Saudi Arabia and France. One particularly prominent NPE funder is reportedly controlled by a sovereign wealth fund based in the UAE.[17] Generally, NPEs face no legal obligation to disclose their funding sources or beneficial owners, leaving courts, defendants, and the public effectively blind to who is actually waging these campaigns against American industry.[18] Collectively, the NPEs who benefit from USPTO's actions are striking at the heart of US economic and national security, using their US patents to attack thousands of productive US companies – with 29.6% of NPE attacks aimed at manufacturers and 22.8% of NPE attacks aimed at high technology and other service providers.[19]

Sixth, USPTO's claims of perpetual uncertainty from IPR "abuse" are contradicted by USPTO's own data: serial petitions account for a mere 0.3% of all instituted IPRs, while fewer than 350 out of 3.9 million "live" patents (i.e., 0.009%) were even partially invalidated by PTAB.[20]

Finally, we are concerned that USPTO will also seek to restrict access to other post-issuance patent quality review processes, including the post-grant review process and the *ex parte* reexamination process. We have also raised these concerns directly with USPTO.[21]

BSA appreciates the Subcommittee's focus on the policies needed to sustain U.S. technological leadership and we urge you to continue to press USPTO to reverse its one-sided policies that threaten American innovation.

Sincerely,

Joseph Whitlock

Senior Director, Policy
Business Software Alliance (BSA)

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[15] Lex Machina data, as reproduced in a submission to the USPTO PTAB rulemaking docket, citing Lex Machina, *Patent Litigation Report* (2024) [underlying Lex Machina report title and date to be confirmed], https://ptacts.uspto.gov/ptacts/public-informations/petitions/1557430/download-documents?artifactId=jft2Z4NUV3R0EWgHlw6klgf7gQrcezpSuUqHa1G_p4vv09dSpREtmrA

[16] Hearing Before the House Subcommittee on Courts, Intellectual Property, and the Internet (June 12, 2024), https://www.govinfo.gov/content/pkg/CHRG-118hhrg56096/html/CHRG-118hhrg56096.htm

[17] Financial Times, *Mubadala's $3bn Fortress deal clears crucial US regulatory hurdle* (2024) https://www.ft.com/content/3b29763e-62e1-4b23-907d-7da36676fc6b

[18] CSIS, Is Third-Party Litigation Financing a National Security Problem? (2024) https://www.csis.org/analysis/third-party-litigation-financing-national-security-problem

[19] HTS, Non-Practicing Entities - Patent Sources and Litigation Target Characteristics (2023), https://lotnet.com/wp-content/uploads/2023/03/HTS-NPE-Risk-for-Pre-IPO-Companies.pdf

[20] USPTO, *PTAB Trial Statistics - FY24 End of Year Outcome Roundup - IPR, PGR* (2024) https://www.uspto.gov/sites/default/files/documents/ptab_aia_fy2024__roundup.pdf

[21] BSA, *Comments on USPTO NPRM on Ex Parte Re-examinations* (2026), https://www.bsa.org/policy-filings/us-bsa-comments-on-uspto-nprm-on-ex-parte-re-examinations