May X, 2024

Chairman Chris Coons
Intellectual Property Subcommittee
218 Russell Senate Office Building
Washington, D.C. 20510

Ranking Member Thom Tillis
Intellectual Property Subcommittee
113 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senators Coons and Tillis:

The signatories below, comprised of public policy, grassroots, and free enterprise organizations, understand that the Senate Judiciary Committee will soon bring up both the Promoting and Respecting Economically Vital American Innovation Leadership (PREVAIL) Act (S. 2220, H.R. 4370) and the Patent Eligibility Restoration (PERA) Act (S. 2140) for consideration. We applaud your leadership on these two bills, and we urge the committee to support this legislation.

The PREVAIL Act would secure private property rights to inventions and give quiet title, which is crucial for commercialization of and investment in patented innovations. That will boost the United States's competitive edge, especially in emerging and standardized technologies important to our economic and national security. S. 2220 would reform the Patent Trial and Appeal Board (PTAB) by adding procedural and due-process guardrails to reduce abuses of the administrative patent challenge system. These changes would protect patent owners from infringers' ability to game the PTAB system through repeated challenges, even when a court of law has already upheld that patent's validity, and inordinate PTAB discretion to tilt the process.

PREVAIL would help alleviate the damage to our patent system, to inventors (such as those who have testified before the Senate and House Judiciary Intellectual Property Subcommittees in the past two years) who face the prospect of lost commercial traction during what is supposed to be their exclusive ownership and use of their invention, and from the erosion of property rights in the patent arena. Further, the legislation would assure the public's misgivings regarding this administrative body.

The PERA Act would fully eliminate judicially created exceptions to patent eligibility. It would restore the congressionally intentional breadth of the section 101 threshold question as to what is patent-eligible subject matter, including of a "useful process." This bill would prohibit examiners, courts, the Patent Trial and Appeal Board, or others from considering substantive patentability requirements (sections 102, 103, and 112) or from fixating on a patent claim apart from the invention as a whole in a 101 threshold determination regarding a specific invention or discovery. PERA would settle the current disquiet of uncertain patent eligibility among courts.

These two bills would bolster the reliability, certainty, and strength of American patents. They would clarify and refine elements of the patenting process, making it easier for legitimate patent claims to reach fruition and withstand what would become fairer, more consistent, impartial scrutiny once granted.

We strongly urge the committee to report out S. 2220 and S. 2140 with a wide bipartisan margin, and we look forward to working with you to advance this legislation to enactment.

Respectfully,

James Edwards
Executive Director
Conservatives for Property Rights

Grover Norquist
President
Americans for Tax Reform

Ed Martin
President
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