

UNITED STATES PATENT AND TRADEMARK OFFICE
600 DULANY STREET
ALEXANDRIA, VA 22314

Re: Revision to the Rules of Practice Before the Patent Trial and Appeal Board

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THE COMMITTEE FOR JUSTICE

Dear Director Squires:

The Committee for Justice (“CFJ”) respectfully submits these comments in strong support of the U.S. Patent and Trademark Office’s (“USPTO’s”) Revision to Rules of Practice Before the Patent Trial and Appeal Board (“NPRM”). These proposed reforms—particularly the restrictions on serial and parallel inter partes review (“IPR”) challenges and the requirement that petitioners stipulate to litigating validity in only one forum—represent an urgently needed course-correction to restore reliability to U.S. patent rights, strengthen American innovation, and fortify the nation’s technological leadership against foreign adversaries, especially the People’s Republic of China.

CFJ commends the Office for continuing and building upon the work initiated under Acting Director Stewart, whose expanded use of discretionary denial authority marked the first serious institutional recognition that IPR had drifted far from Congress’s purpose. Your Administration’s decision to further and formalize these efforts through rulemaking is a major and praiseworthy step toward rebalancing a system whose outcomes have for more than a decade run sharply against patent owners and the American innovation ecosystem.

INTRODUCTION & INTEREST STATEMENT

Founded in 2002, CFJ is a nonprofit legal and policy organization dedicated to the rule of law, the separation of powers, constitutionally limited government, and the protection of individual rights—including the fundamental natural right to private property. Intellectual property (“IP”) rights lie at the intersection of these commitments. Our work spans the judiciary, Congress, the executive branch, and the public square, with a particular focus on administrative law, innovation policy, antitrust, and patent law.

CFJ has previously filed comments and briefs explaining how weakened U.S. patent rights harm innovation, undermine national security, destabilize commercialization, and tilt the competitive landscape toward China. The PTAB's historical pattern of disproportionately invalidating patents has created a pervasive "cloud on title" over issued patents—one that chills investment, weakens technology transfer, and disrupts the constitutional design for securing exclusive rights to inventors.

This NPRM is an important step toward restoring the quiet title inherent in private property rights.

SUMMARY OF CFJ'S POSITION

CFJ strongly supports the proposed rules because they rein in serial and parallel IPR petitions; reduce duplicative validity litigation that Congress never intended the PTAB to replicate; reaffirm Congress's constitutional primacy over patent law under Article I, Section 8, Clause 8; strengthen U.S. national security and technological competitiveness; align USPTO practice with founding-era principles such as natural rights, property rights, and limited government; restore predictability and investment incentives essential for commercialization; and counteract the structural petitioner-favoring biases embedded in IPR as implemented.

CFJ further explains why concerns over judicial scrutiny lack merit: the Constitution grants plenary authority to Congress over patents, and the USPTO operates squarely within those delegated boundaries.

BACKGROUND

PTAB'S DECADE OF SYSTEMIC IMBALANCE

Since its creation in 2011, the PTAB has produced extraordinarily high invalidation rates—far beyond what Congress anticipated and wholly inconsistent with the presumption of validity codified in 35 U.S.C. § 282. Across multiple analyses, the PTAB's final written decisions have invalidated a majority of challenged claims, often between two-thirds and more than four-fifths of the time. These numbers are incompatible with a healthy patent system.

The NPRM itself acknowledges the breadth of the problem: more than half of all IPR petitions are serial challenges; more than eighty percent of IPRs involve parallel district court litigation; repetitive challenges erode reliability even when patents are objectively strong; large technology firms file the majority of petitions; and startups, universities, and small businesses bear a disproportionate share of the harm. These realities confirm what innovators have long understood: as implemented, IPR has functioned not as an efficient alternative to litigation but as a duplicative, serial gauntlet that shifts bargaining power toward well-resourced implementers.

Worse still, China-based or Chinese Communist Party-aligned companies such as Huawei, ZTE, and ByteDance are among the most prolific petitioners at the PTAB, using IPR to

invalidate U.S. patents in strategic technology areas. This dynamic is a national-security failure that Congress never intended when it created the post-grant system.

THE CONSTITUTIONAL FOUNDATIONS FOR STRONG PATENT RIGHTS SUPPORT THESE RULES

A. PATENT RIGHTS ARE NATURAL RIGHTS GROUNDED IN LOCKE, THE DECLARATION, AND THE CONSTITUTION

Patent rights are best understood as natural rights arising from the inventor's labor, consistent with John Locke's Labor Theory of Property. The Declaration of Independence confirms that individuals are endowed with unalienable rights, including the right to acquire and enjoy property. As such, in the United States, government does not grant these rights. Its only role, its existential imperative, is to secure them.

The Constitution implements this philosophy by authorizing Congress "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." This clause gives Congress plenary authority over the rules governing patents. The USPTO, by contrast, wields only the ministerial authority Congress delegates. Congress, via the America Events Act (AIA), gave the USPTO Director broad authority to prescribe regulations establishing and governing IPR and to consider the effect of such regulations on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to timely complete IPR proceedings. Thus, the NPRM's reforms—regulating when and under what circumstances IPR will be instituted—fall squarely within that delegated authority.

B. IPR AND THE PTAB DIVERGE FROM AMERICA'S CONSTITUTIONAL DESIGN

As CFJ has argued in other fora, the erosion of patent reliability over the past two decades—including the creation and expansion of PTAB proceedings—undermines the constitutional design and has turned many patents into paper tigers. The Supreme Court's decision in *Oil States*, which reclassified patents as "public franchises" and permitted their revocation in a non-Article III tribunal, is inconsistent with the original public meaning of the Patent Clause and with historical practice in which patents were treated as private property adjudicated in Article III courts.

Justice Gorsuch correctly observed that American patent holders historically held property in their inventions "by as good a title as the farmer holds his farm." CFJ continues to believe that inter partes review is constitutionally suspect and that patent validity adjudication properly belongs in Article III courts. Within the existing framework, however, the NPRM is an essential corrective step.

RESPONSE TO CONCERNS ABOUT JUDICIAL SCRUTINY

A. CONGRESS HAS PLENARY CONSTITUTIONAL AUTHORITY

The Patent Clause gives Congress complete constitutional authority over patent policy. Congress exercised that authority by creating IPR in the America Invents Act and by delegating discretionary institution authority to the USPTO in 35 U.S.C. §§ 2, 314, 315, and 316. Federal courts have repeatedly recognized that institution decisions are committed to agency discretion and generally not subject to judicial review.

B. USPTO ACTS SQUARELY WITHIN DELEGATED BOUNDS

The NPRM regulates when IPR may be instituted, under what procedural conditions, and how overlapping proceedings should be handled. These are precisely the kinds of procedural matters that Congress expressly delegated to the Office. Far from expanding USPTO authority, the NPRM cabins and disciplines its exercise.

C. COURTS HAVE A LIMITED ROLE

Courts interpret statutes in the context of concrete cases or controversies; they do not set national patent policy. That power is expressly granted to Congress in the Constitution. The NPRM reflects a faithful implementation of Director authority per congressional design. It operates within the statute. It does not attempt to rewrite it. Concerns that these rules will not “survive judicial scrutiny” therefore rest on a misunderstanding of separation of powers and the respective roles of Congress, the courts, and the agency.

INTERNATIONAL COMPETITIVENESS & NATIONAL SECURITY

Weak patents harm not only innovation but also national security. China now leads the United States in dozens of critical technology sectors. Chinese entities have learned to exploit U.S. legal mechanisms, including PTAB proceedings, to invalidate American patents in strategically important fields such as 5G, AI, quantum technologies, and advanced materials.

Strong, reliable patent rights are essential to maintaining U.S. leadership in artificial intelligence, advanced weapon systems, biotechnology, semiconductors, and cybersecurity. By reducing repetitive challenges and restoring greater confidence in the durability of issued patents, the NPRM strengthens American resilience and helps ensure that the United States—not China—remains the world’s premier technology power.

SPECIFIC COMMENTS ON THE REVISIONS TO THE RULES OF PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

A. § 42.108(d) – Mandatory Stipulation

CFJ strongly supports the requirement that IPR petitioners stipulate that, if a trial is instituted, they will not pursue duplicative invalidity challenges under 35 U.S.C. §§ 102 or 103 in other proceeding. This rule restores the intended role of IPR as an alternative to, rather than a supplement for,

district court litigation and prevents petitioners from taking multiple bites at the apple, including in subsequent IPR proceedings.

B. § 42.108(e) – Previously Upheld Claims

CFJ also strongly supports bright-line rules that foreclose repeated attacks (i.e., serial challenges) on claims that have already been upheld in prior USPTO, district court, or International Trade Commission proceedings. Quiet title is essential for commercialization, licensing, and investment. Once claims have survived a full and fair adjudication, they should not be subjected to endless re-litigation at the PTAB. We note with some measure of glee that, by not limiting this provision to the “same” or even “similarly situated” petitioners, it further reduces multiple bites at the apple. By not instituting an IPR on claims previously found valid, it nearly eliminates destructive serial challenges going beyond, in some way, our previous urgings to do so.

C. § 42.108(f) – Parallel Litigation

The proposed rule appropriately avoids duplicative proceedings by declining institution where parallel district court or ITC litigation is likely to resolve validity first. This approach respects the constitutional primacy of Article III courts in adjudicating private property rights and reduces waste for both the parties and the Office.

D. § 42.108(g) – Extraordinary Circumstances

CFJ supports the narrowness of the extraordinary-circumstances exception. PTAB panels should not relitigate new prior art, new experts, or newly packaged legal theories that could have been raised earlier. Limiting the exception to situations such as bad-faith manipulation of earlier proceedings or transformative changes in controlling law promotes stability and predictability in issued patents.

CONCLUSION

The NPRM represents a major step toward restoring reliability, fairness, and constitutional order to the American patent system. It strengthens patent reliability, promotes commercialization and technology transfer, enhances national security, and advances the constitutional objective of “promot[ing] the Progress of Science and useful Arts.”

CFJ continues to believe that the deeper constitutional problems created by *Oil States* remain unresolved and that patent validity adjudication properly belongs in Article III courts. Within the existing framework, however, these proposed rules are a substantial and commendable improvement. CFJ strongly supports finalizing the NPRM without weakening its core reforms. We thank the Office for its careful consideration and stand ready to provide further assistance.

Sincerely,
The Committee for Justice