November 5, 2025

The Honorable Russell Vought
Director
U.S. Office of Management and Budget
725 17th Street Northwest
Washington, District of Columbia 20503

Acting Administrator Jeffrey Clark
Office of Information and Regulatory Affairs
U.S. Office of Management and Budget
725 17th Street Northwest
Washington, District of Columbia 20503

Re: Request for Economic Analysis of USPTO's Proposed Rulemaking on PTAB Procedures

Dear Director Vought and Acting Administrator Clark:

On behalf of ACT | The App Association (App Association), we write to urge the Office of Information and Regulatory Affairs (OIRA) to conduct a thorough economic analysis of the U.S. Patent and Trademark Office's (USPTO) proposed rules and policy changes concerning the Patent Trial and Appeal Board (PTAB). We are concerned that the Administration has not adequately assessed the full economic impact of these proposals, which are clearly economically significant under Executive Order 12866 and would impose significant costs on the U.S. economy, stifle innovation, and harm American small businesses.[1]

The App Association represents small U.S. software and connected technology firms that develop new products across consumer and enterprise use cases, enabling the rise of the internet of things (IoT). Today, the domestic ecosystem we represent—the app economy—is valued at $1.8 trillion and is responsible for 6.1 million American jobs. For our members, a robust, accessible, and efficient *inter partes* review (IPR) process at the PTAB is not merely a procedural detail; it is a critical tool for preserving competition, deterring abusive litigation, and ensuring that innovation is not stifled by weak patents.

The USPTO's recent Notice of Proposed Rulemaking (NPRM) and policy directive outlined in the October 17, 2025, Open Letter "Bringing the USPTO Back to the Future: Return of Institution," would effectively dismantle the IPR system as a meaningful check on patent quality.[2] Critically, the proposed rules create insurmountable barriers to access that will drastically reduce the number of IPR challenges filed and litigated at the PTAB, forcing cases into slower, more costly venues.

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[1] Exec. Order No. 12,866, 58 Fed. Reg. 51,735 (Oct. 4, 1993), as amended.
[2] Revision to Rules of Practice Before the Patent Trial and Appeal Board, 90 Fed. Reg. 48,335 (proposed Oct. 17, 2025); Bringing the USPTO Back to the Future: Return of Institution Authority under 35 U.S.C. §§ 314 and 324 to the Director, USPTO (Oct. 17, 2025), https://www.uspto.gov/sites/default/files/documents/open-letter-and-memo_20251017.pdf.

These procedural hurdles are compounded by a dangerous shift in governance. The centralization of authority to institute IPR reviews within the Office of the Director politicizes a process designed to be an impartial adjudication by technical experts. For small businesses that rely on the PTAB as a shield against costly, abusive patent assertions, these changes would raise costs, deter valid challenges, and replace a balanced process with a politicized and opaque one.

The current IPR process, established by the Leahy-Smith America Invents Act (AIA), increases the likelihood of settlement in parallel proceedings and provides a faster, less costly alternative to district court litigation.[3] A recent analysis found that both the filing of an IPR petition and the PTAB's decision to review or deny a petition increases the likelihood of settlement of district court litigation, confirming that IPR has a complementary effect on litigation, as Congress hoped at the time of IPR's creation.[4]

Another key advantage of the IPR system is its expedited timeline. The process is bound by strict statutory deadlines, compelling the PTAB to conclude proceedings with a final written decision within 18 to 24 months.[5] This efficient, expert forum not only provides quicker certainty for all parties but also conserves valuable judicial resources by resolving complex patent validity questions outside the non-specialized district courts.[6] This stands in stark contrast to district court litigation, where it takes, on average, two and a half years to get to trial, with final judgements taking even longer.[7] Even in one of the fastest districts—the Western District of Texas—the median time to trial is approximately two years.[8]

The cost disparity is equally stark. According to the American Intellectual Property Law Association (AIPLA), in 2022 the median cost for an IPR through appeal is approximately

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[3] Christian Helmers & Brian Love, Patent Validity and Litigation, Evidence from U.S. Inter Partes Review, 66 J. OF L. & ECON. 1, 22 (2020) (last revised July 2025) (finding that "that both events—the filing of an IPR petition and the PTAB's subsequent decision to institute or deny the petition—increase the likelihood of settlement.); Kevin J. Hickey & Christopher T. Zirpoli, *The Patent Trial and Appeal Board and Inter Partes Review*, CONG. RSCH. SERV. (May 28, 2024), https://www.congress.gov/crs-product/R48016 ("The administrative procedures are more streamlined than civil litigation, with average legal costs typically in the hundreds of thousands of dollars (as opposed to millions).").

[4] Helmers & Love, *supra* note 3, at 22, 24.

[5] 35 U.S.C. §§ 314(b), 316(a)(11).

[6] An academic study found that patent validity rulings at the PTAB are affirmed on appeal to the U.S. Court of Appeals to the Federal Circuit significantly more often than those from district courts—in fact, district courts are reversed 2.5 times more frequently. The study concludes that this higher rate of affirmation is due to the PTAB judges' technical expertise. In fact, when the PTAB is reversed, it is typically for being too favorable to patent owners. Matthew G. Sipe, *Experts, Generalists, Laypeople—and the Federal Circuit*, 32 HARV. J.L. & TECH. 576 (2019).

[7] Jason E. Stach & Jeffery A. Freeman, District Court or the PTO: Choosing Where to Litigate Patent Invalidity, FINNEGAN (Mar. 2014), https://www.finnegan.com/en/insights/articles/district-court-or-the-pto-choosing-where-to-litigate-patent.html.

[8] Angela Morris, *How Top US Patent Courts Compare on Median Time-To-Trial Statistics*, IAM (June 27, 2022), https://www.iam-media.com/article/how-top-us-patent-courts-compare-median-time-trial-statistics.

$500,000 for electrical, computer, and mechanical patents.[9] In contrast, district court litigation is more expensive, with median costs ranging from $600,000 for lower-stakes cases to a staggering $3.6 million when over $25 million is at risk.[10] These litigation costs can be devastating for a small business and increase even more when facing an non-practicing entity.[11] By providing a more affordable alternative, the PTAB directly reduces the financial barrier for small businesses to defend themselves against invalid patent assertions.

The cost savings created by the PTAB have generated substantial economic benefits. An independent analysis by the Perryman Group quantified these benefits from 2014–2019.[12]

- **Direct Cost Savings**: The PTAB process saved an estimated **$2.644 billion in direct litigation costs**, averaging about **$262,200 per case**.
    - **Direct Cost Savings due to IPRs, specificall**y:
        - $1.676 billion when an IPRs resulted in a stay in litigation; and
        - $121.231 million when an IPR was conducted parallel to district court proceedings.
- **Broad Economic Gains:** These savings, representing a net gain in efficiency, circulated through the economy, leading to:
    - An increase of $2.95 billion in U.S. gross product.
    - $1.41 billion in personal income.
    - Nearly 13,500 job-years of employment.
- **Sector-Specific Impact:** The manufacturing sector, a cornerstone of the U.S. economy, saw the largest gains, with an estimated increase of $1.41 billion in gross product and more than 5,100 job-years.

The proposed changes would reverse these gains and could, in fact, reduce the amount of research and development (R&D) spending and patent filings from the tech industry.[13] By making the IPR process more difficult and less predictable, the rules would embolden the

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[9] *Id.* at 63.
[10] AIPLA, REPORT OF THE ECONOMIC SURVEY 2023 at 61 (Oct. 2023).
[11] *Id.* at 62 (reporting the median cost of defending a patent infringement suit against an NPE as $750,000 for lower-stakes cases and $3.875 million when over $25 million is at risk).
[12] *An Assessment of the Impact of the America Invents Act and the Patent Trial and Appeal Board on the US Economy*, PERRYMAN GRP. (June 25, 2020), https://www.perrymangroup.com/publications/report/an-assessment-of-the-impact-of-the-american-invents-act-and-patent-trial-and-appeal-board-on-the-us-economy/.
[13] Christian Helmers & Brian J. Love, *Patent Law Reform and Innovation: An Empirical Assessment of the Last 20 Years*, 79 INT'L REV. OF L. & ECON. 1, 20 (2023) (last revised July 2025) (finding a positive association between the availability of PTAB proceedings (starting in 2012) and both R&D expenditures and patent filings by firms that innovate in tech classes where PTAB has been most active.")

assertion of low-quality patents, forcing small companies to choose between costly settlements or even more costly district court litigation.

The USPTO's new NPRM for PTAB processes clearly meets the threshold for economically significant regulatory action and therefore requires comprehensive review by OIRA. We believe a rigorous OIRA review will confirm that the costs of these proposed reforms—measured in lost innovation, reduced business activity, and vanished jobs—would far outweigh any purported benefits. We strongly urge you to exercise your oversight authority to ensure a comprehensive economic analysis is completed and to recommend that the USPTO withdraw these detrimental proposals.

We welcome the opportunity to meet with you to discuss our views and how we can assist the Administration moving forward.

Respectfully submitted,

Morgan Reed

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President

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