



Frank Cullen, Executive Director
Andrei Iancu, Co-Chair
David Kappos, Co-Chair
Judge Paul Michel (Ret.), Board Member
Judge Kathleen O'Malley (Ret.), Board Member

September 18, 2024

The Honorable Dick Durbin
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Lindsey Graham
Ranking Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Graham,

In advance of your September 19, 2024, Executive Business Meeting, I am writing to express the Council for Innovation Promotion's strong support for three bills that would advance cutting-edge innovation in the United States: the Promoting and Respecting Economically Vital American Innovation Leadership (PREVAIL) Act, S. 2220; the Patent Eligibility Restoration Act (PERA), S. 2140; and the Inventor Diversity for Economic Advancement (IDEA) Act, S. 4713.

By way of background, C4IP is a bipartisan coalition chaired by two former directors of the U.S. Patent and Trademark Office (USPTO), Andrei Iancu and David Kappos, who served under the Trump and Obama administrations, respectively. Our board also includes two retired judges from the Court of Appeals for the Federal Circuit, former Chief Judge Paul Michel and Judge Kathleen O'Malley. Our mission is to promote strong and effective intellectual property rights that drive innovation, boost economic competitiveness, and improve lives everywhere.

The PREVAIL Act would make several overdue reforms to the Patent Trial and Appeal Board (PTAB). Lawmakers established the PTAB in 2011, but experience over the last dozen years has shown a number of unintended effects and unforeseen problems with how these proceedings were implemented and have worked in practice. For example, while the proceedings were intended to create a more efficient alternative to district court litigation, experience has shown that the parties now litigate the validity of the disputed patents in multiple venues simultaneously.¹ The PREVAIL Act would eliminate such duplicative proceedings, which waste party and government resources and unfairly advantage big, well-funded corporations accused of infringement. The bill would also align PTAB and district

[1] S. 2140, 118th Cong. (1st Sess. 2023).

court standards.² After all, the objective validity of a patent should not depend on the tribunal that assesses it. Plus, the bill adds a number of good-governance measures, such as transparency and ethical requirements for the administrative patent judges.³

The Patent Eligibility Restoration Act (PERA) would clarify that categories of inventions in areas that are critical to maintaining our nation's innovation leadership, but which were rendered patent-ineligible by a series of misguided Supreme Court decisions, do indeed qualify as eligible for patent protection provided that they meet the additional requirements for patentability under Title 35. Uncertainty over which kinds of inventions are eligible for patents has reduced incentives for innovation and investment in cutting-edge fields, including computer software and medical diagnostics. Studies and testimony have repeatedly detailed how researchers are abandoning otherwise promising areas of research because of this legal uncertainty. Enacting PERA would help ensure that the United States can continue to compete with rivals like China and Europe in developing the technologies of the future.⁴

Finally, the IDEA Act would help uncover and address disparities in the patent system which suggest that the United States is not living up to its full innovation potential by requiring the U.S. Patent and Trademark Office to collect, on a voluntary basis, demographic information from patent applicants. Studies have indicated that women and racial minorities, for example, are underrepresented as inventors on U.S. patents. Better information can help policymakers identify reforms that ensure all communities are aware of the patenting process, the patent system, and how to participate in America's vibrant innovation economy.⁵

We all stand to benefit from a more equitable patent system. One study calculated that United States gross domestic product could grow by more than \$1 trillion if more women and Black Americans were included in the innovation system.⁶⁷

[2] Council for Innovation Promotion, *Why C4IP Supports the PREVAIL Act*, (July 5, 2023), <https://c4ip.org/why-c4ip-supports-the-prevail-act/>. A full list of C4IP's other resources relating to PREVAIL is available at this link [<https://c4ip.org/prevail/>].

[3] *Id.*

[4] Council for Innovation Promotion, *Why C4IP Supports the Patent Eligibility Restoration Act (PERA)*, (April 2, 2023), <https://c4ip.org/why-c4ip-supports-the-patent-eligibility-restoration-act-pera/>. A full list of C4IP's other resources relating to PERA is available at this link [<https://c4ip.org/pera/>].

[5] Council for Innovation Promotion, *C4IP Letter RE: IDEA Act*, (September 17, 2024), <https://c4ip.org/wp-content/uploads/2024/09/C4IP-Letter-RE-IDEA-Act.pdf>.

[6] Lisa D. Cook and Yanyan Yang, *Missing Women and African Americans, Innovation, and Economic Growth*, (Jan. 6, 2018), http://www.yanyanyang.com/uploads/5/6/5/2/56523543/aeapinkblack_cookyang.pdf.

[7] Federal Reserve Bank of St. Louis, *Gross Domestic Product*, <https://fred.stlouisfed.org/series/GDP> (last visited Sept. 13, 2024).

These three bills are of vital importance to America's continued economic prosperity and global competitiveness. We appreciate your work to place them on the Committee's agenda in support of innovators across America, and we hope to see these bills reported favorably and become law this Congress. We would be happy to provide any further information that the Committee may find helpful.

Sincerely,

A handwritten signature in black ink, which appears to read "Frank Cullen". The signature is fluid and cursive.

Frank Cullen
Executive Director
Council for Innovation Promotion (C4IP)

cc:

- Sen. Alex Padilla, Member, Senate Committee on the Judiciary
- Sen. Amy Klobuchar, Member, Senate Committee on the Judiciary
- Sen. Chris Coons, Member, Senate Committee on the Judiciary
- Sen. Chuck Grassley, Member, Senate Committee on the Judiciary
- Sen. Cory Booker, Member, Senate Committee on the Judiciary
- Sen. John Cornyn, Member, Senate Committee on the Judiciary
- Sen. John Kennedy, Member, Senate Committee on the Judiciary
- Sen. Jon Ossoff, Member, Senate Committee on the Judiciary
- Sen. Josh Hawley, Member, Senate Committee on the Judiciary
- Sen. Laphonza Butler, Member, Senate Committee on the Judiciary
- Sen. Marsha Blackburn, Member, Senate Committee on the Judiciary
- Sen. Mazie Hirono, Member, Senate Committee on the Judiciary
- Sen. Mike Lee, Member, Senate Committee on the Judiciary
- Sen. Peter Welch, Member, Senate Committee on the Judiciary
- Sen. Richard Blumenthal, Member, Senate Committee on the Judiciary
- Sen. Sheldon Whitehouse, Member, Senate Committee on the Judiciary
- Sen. Ted Cruz, Member, Senate Committee on the Judiciary
- Sen. Thom Tillis, Member, Senate Committee on the Judiciary
- Sen. Tom Cotton, Member, Senate Committee on the Judiciary