



High Tech Inventors Alliance:

Promoting balanced and effective innovation policies that protect U.S. inventors, innovation, and jobs.

ABOUT HTIA

HTIA members are some of the most innovative technology companies in the world, creating the computer, software, semiconductor and communications products and services that support growth in every sector of the economy. HTIA members rely on a well-functioning patent system as they collectively invest about \$146 billion in R&D each year, generating technological advances protected by their more than 350,000 patents. HTIA companies also contribute significantly to employment and the economy, providing more than 1.3 million jobs and generating more than \$600 billion in annual revenues. HTIA's mission is to promote balanced patent policies that preserve critical incentives to invest in innovation, R&D, and American jobs.

Core Priorities

- Encourage high quality patents
- Preserve robust Inter Partes Review
- Maintain limitations on patenting abstract ideas and business methods

IMPROVING PATENT QUALITY

Quality is critical to the success of the patent system. Patents that are ambiguous, overbroad, or otherwise invalid harm innovation – not help it. Low quality patents produce unnecessary uncertainty and legal risk for technology creators. Unfortunately, the U.S. lags other major countries in patent quality, making it essential that the U.S. Patent and Trademark Office (PTO) improve its examination practices to ensure patents are clear, cover only the applicant's actual invention and reflect true advances in technology.

PRESERVING ROBUST INTER PARTES REVIEW

In 2011, Congress established Inter Partes Review proceedings (IPR) to restore public confidence in a patent system that was plagued by wasteful litigation over patents that should never have been issued. IPRs allow the PTO to correct its errors in granting invalid patents by providing a less expensive alternative to litigation.

IPRs are balanced

- Only 9% of challenged patents have all claims invalidated

IPR has proven to be a balanced procedure. Invalidation rates at the Patent Trial and Appeal Board (PTAB) have been steadily falling, with fewer than 30% of challenged claims invalidated and fewer than 9% of challenged patents having all claims invalidated.² This is less than the 43% invalidation rate reported for district court litigation³ and significantly lower than the 69% invalidation rate in oppositions at the European Patent Office.⁴ IPR is used selectively to correct erroneously granted patents,

¹ HTIA members include Adobe, Amazon, Cisco, Dell, Google, Intel, Oracle, Microsoft, Salesforce, Micron, and Samsung. More information on HTIA is available at <https://www.hightechinventors.com>.

² Patent Trial and Appeal Board, PTAB Trial Statistics FY20 End of Year Outcome Roundup, at 15 & 17 (2021), https://www.uspto.gov/sites/default/files/documents/ptab_aia_fy2020_roundup.pdf.

³ John R. Allison, Mark A. Lemley & David L. Schwartz, Understanding the Realities of Modern Patent Litigation, 92 TEX. L. REV. 1769, 1801 (2014).

⁴ European Patent Office. "Searches, examinations, oppositions" <https://www.epo.org/about-us/annual-reports-statistics/annual-report/2017/statistics/searches.html#tab4>.

allowing parties to avoid wasting millions of dollars in litigation over invalid patents. It also has broader economic benefits, with one recent study finding that the IPR system has benefitted the U.S. economy by nearly \$2 billion.⁵ IPR is working as Congress intended, and the facts do not justify any weakening of its procedures.

MAINTAINING THE RULE AGAINST PATENTING ABSTRACT IDEAS

For more than 150 years, U.S. courts have interpreted the Patent Act to prohibit patenting of abstract ideas. In 2014, the Supreme Court unanimously reaffirmed this rule in *Alice v. CLS Bank*, again rejecting patent protection for business methods and other non-technological concepts.⁶ Under current law, genuine advances in software and computer technology remain patentable. But patents on abstract ideas that provide no technological advance – and risk preempting future innovation – are not allowed.

Tech sector innovation thriving under *Alice*

- Software R&D doubled in the wake of *Alice*
- VC funding in software hit a historic \$45 billion in 2019

Innovation is thriving after *Alice*. Growth of R&D investment in the software and internet industry has outpaced overall R&D growth, doubling within a few years after *Alice*.⁷ VC funding of software startups rose more than 40% to hit a historic high of \$45 billion in the wake of *Alice*.⁸ The PTO's own data show that *Alice* has had only a small impact on inventors' ability to obtain patents. An academic study of this data concluded that overall rejection rates have risen only modestly, much of the increase was driven by rejections of business methods, and "the vast majority of inventions examined by the office are not significantly impacted by 101."⁹ This was before the adoption of new examination guidance that – according to the PTO itself – further decreased rejections by 25% and reduced uncertainty regarding examination outcomes by 44%.¹⁰

Abstract ideas struck down by *Alice*:

- Bingo games
- Coupon programs
- Computerized restaurant menus

Despite this, some continue to argue for the repeal of all meaningful limitations on subject matter eligibility, which would allow patents to be granted on everything from football plays to marriage proposals. Allowing patent protection on abstract, non-technological ideas would preempt, rather than promote, technological progress. This would be disastrous for innovation and the economy, which is why no other country has ever seriously contemplated taking this unprecedented and reckless action.

For more information, visit www.hightechinventors.com or follow @HiTechInventors on Twitter.

⁵ The Perryman Group, An Assessment of the Impact of the The Inter Partes Review Process under the Patent Trial and Appeal Board on the US Economy (January 2021), <https://www.unifiedpatents.com/insights/2021/2/16/economic-ptab-analysis-demonstrates-post-grant-challenges-save-litigation-costs-regardless-of-stay>.

⁶ 573 U.S. 208 (2014).

⁷ PWC, 2018 Global Innovation 1000 Study (October 2018), <https://www.strategyand.pwc.com/media/file/2018-Global-Innovation-1000-Fact-Pack.pdf>.

⁸ National Venture Capital Association, Venture Monitor, 4Q 2018, https://files.pitchbook.com/website/files/pdf/4Q_2018_PitchBook_NVCA_Venture_Monitor.pdf.

⁹ Colleen Chien and Jiun Ying Wu, Decoding Patentable Subject Matter, 2018 Patently-O Patent L.J. 1 (2018), https://papers.ssrn.com/sol3/papers.cfm?ab-stract_id=3267742.

¹⁰ Office of the Chief Economist, U.S. Patent and Trademark Office, Adjusting to *Alice*, at 1, 6 & 7 (April 2020), https://www.uspto.gov/sites/default/files/documents/OCE-DH_AdjustingtoAlice.pdf.