

PREVAIL, PERA, RESTORE:

A Triple Threat to U.S. Innovation and Competitiveness

THE BIG PICTURE: A broad coalition of companies and organizations from the technology, retail, financial services, public interest, and generic and biosimilars industries **oppose three damaging patent bills being considered in Congress—PREVAIL, PERA, and RESTORE.**

WHY IT MATTERS: The bills are a gift to foreign patent owners, especially those from China, and would slam American businesses with frivolous lawsuits, thus hiking consumer costs. Many patent trolls are foreign-based and regularly leverage low quality patents to extort U.S. companies for profit, depleting resources and our competitive advantage.

FOLLOW THE MONEY: China's government incentives have driven a surge of patent applications at the USPTO, detailed in a 2021 report from the agency that notes many of these filings are of low quality, driven by non-market factors like subsidies rather than genuine innovation, overwhelming staff and delaying legitimate inventors.

BY THE NUMBERS: The U.S. granted **167,000 patents to foreign entities in 2023**—53% of the USPTO's total. Chinese inventors file 50,000 U.S. patent applications annually. Six of the top 10 U.S. patent recipients last year were foreign, including Huawei at number 5, which is deemed a national security threat and on the Entity List. Of the patents in force in the U.S., 1.8 million are for foreign inventions.

PREVAIL: Preserving billion-dollar mistakes

WHAT IT DOES: PREVAIL would hobble the USPTO's Patent Trial and Appeal Board (PTAB), which was created to improve patent quality and provide U.S. defendants a less expensive alternative to litigation. PREVAIL is a demolition job masked as minor fixes. The lead sponsor of the America Invents Act says it would gut the PTAB rather than improve it.

BY THE NUMBERS: PTAB works and is fair to patent owners. In FY24, patent owners won full victories 34% of the time vs. 26% for challengers, with 32% of cases settling. Only 10% of challenged patents have been fully wiped out by the PTAB—patent owners retained enforceable claims 90% of the time.

THE CATCH: Most PTAB-challenged patents belong to foreign entities, and these patents can only be used against business activities here in the U.S.

WHAT'S AT STAKE: A single foreign-owned patent troll has slammed HTIA's 11 member companies with 100 lawsuits—nearly 50 against a single firm—crushing U.S. competitiveness. Another was awarded a \$2.3 billion judgement against one of America's biggest chipmakers based on patents later found to be invalid.

BOTTOM LINE: Foreign patent owners and trolls get a jackpot weaponizing suspect patents, leaving American innovators vulnerable to abusive litigation on the 1.8 million patents on foreign inventions.

PERA: A recipe for chaos

WHAT IT DOES: PERA claims to fix “rampant uncertainty” over patent eligibility by scrapping 200 years of case law and starting over.

REALITY CHECK: Patent eligibility is actually more predictable than other areas of patent law according to a recent academic study and USPTO internal reviews. **This isn’t about uncertainty—it’s a land grab by patent speculators.**

THE PROBLEM: PERA makes virtually anything patentable. It explicitly allows patenting of “economic, financial, business, social, cultural, or artistic” processes if they involve anything that is man-made. No other country allows this—Europe bans “aesthetic creations” and “business methods”; Brazil blocks “financial” methods and “artistic works.” **PERA is a free-for-all** that would cause chaos in the Patent Office and courts.

WHAT’S AT STAKE: Think patents on everything from TikTok dances to the next Beyoncé album—nothing to do with technology but lots of hold-up value in court.

BOTTOM LINE: PERA is a **solution in search of problem that doesn’t exist** and would cause decades of litigation chaos.

RESTORE: Injunctions gone wild

WHAT IT DOES: RESTORE junks the Supreme Court’s unanimous *eBay v. MercExchange* decision that simply directs the lower courts to apply the same four-factor test for injunctions that they utilize in every other type of case.

WHO WINS: Patent trolls and foreign entities. *eBay* had virtually no effect on companies that provide actual products and services, which still easily get injunctions. **RESTORE is a gift to trolls and foreign patent owners.**

CASE IN POINT: Pre-*eBay*, in *NTP v. RIM*, a troll held up a smartphone maker for a \$612M settlement—nearly 20 times the damages the jury found to be reasonable—on patents the USPTO later found invalid.

WHAT’S AT STAKE: Think of a new **\$20 billion semiconductor fab sitting idle** for a decade because of **one of the thousands** of manufacturing processes used. Or all the 765,000 Ford F-Series trucks sold last year instead rusting away on dealership lots because of one of the truck’s 30,000 components.

BOTTOM LINE: **Billions in cash for trolls and Chinese manufacturers; pain for American consumers and a death knell for efforts to re-shore advanced manufacturing.**

The Big Takeaway

FOREIGN GIVEAWAY: Millions of bad patents for foreign inventions, with no effective way to challenge them, plus automatic injunctions would flood American businesses with litigation, while destroying U.S. innovation and competitiveness.

THE FIX: Scrap these bills and focus on legislation that would benefit *American* competitiveness instead of taxing U.S. businesses with an enormous increase in legal costs and liability and exploding prices for consumers.