



June 17, 2024

The Honorable Kathi Vidal  
U.S. Patent and Trademark Office  
600 Dulany Street  
Alexandria, VA 22314

Dear Director Vidal:

On behalf of the Center for American Principles, I am writing in response to the USPTO's Notice of Proposed Rulemaking on *Patent Trial and Appeal Board Rules of Practice for Briefing Discretionary Denial Issues, and Rules for 325(d) Considerations, Instituting Parallel and Serial Petitions, and Termination Due to Settlement Agreement*.<sup>1</sup>

The Center for American Principles is a nonprofit organization working to protect and promote free markets, individual freedoms, limited government, and the rule of law. As president of the Center, I am profoundly concerned about the proposed rules. By failing to address critical issues, they would continue to stack the deck in favor of Big Tech and other enormous corporations, leaving small-business inventors at a severe disadvantage. Instead of strengthening our property rights system, the proposed rules would undermine the very foundation of our nation's success.

Predictable, enforceable intellectual property rights are vital to fostering innovation and have made the United States a global leader across dozens of industries. The Patent Trial and Appeal Board was set up to provide a swift, fair platform for patent disputes. Yet, it has increasingly become a battleground where well-funded companies can invalidate legitimate patents through a biased process.

In particular, the USPTO proposals do not sufficiently support the 2020 *NHK-Fintiv* precedent. This precedent established a six-factor framework that the Patent Trial and Appeal Board applies when evaluating whether to institute a patent when parallel patent infringement suits are already well underway in federal district courts.

Large corporations have adopted a tactic of engaging smaller competitors in two patent proceedings at once, in different venues, forcing them to back down due to legal costs. *Fintiv* protects small-business innovators from being victimized in this way, which is why it's essential to uphold our patent system. The proposed rules should have codified it.

But that's not the end of the Notice of Proposed Rulemaking's shortcomings. The Notice places no limitations on patent challengers that do not compete in the same market as the patentee. Nor does it limit challenges to under-resourced patent owners trying to bring products to market.

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<sup>1</sup> <https://www.federalregister.gov/public-inspection/2024-08362/patent-trial-and-appeal-board-rules-of-practice-for-briefing-discretionary-denial-issues-and-rules>

The fact that the Patent Trial and Appeal Board has become heavily biased in favor of Big Tech is demonstrated by its track record. According to the USPTO, over 35% of "patents with [AIA] proceedings ending in FY23" were "at least partially invalidated by PTAB."<sup>2</sup> This invalidation rate reveals an arrangement weighted in favor of devaluing intellectual property.

The USPTO must recognize that the current system is flawed. It disproportionately harms small businesses and individual inventors, while weakening fundamental property rights. The proposed rule changes do not address these critical issues, but instead help the large corporations that are eager to undermine our patent system at every opportunity.

The Center for American Principles strongly opposes the Notice of Proposed Rulemaking as it currently stands. We urge the USPTO to reconsider, and to instead implement reforms that will restore fairness and balance to the patent review process. The future of American innovation is at stake.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony Zagotta". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

Anthony Zagotta  
President  
Center for American Principles

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<sup>2</sup> [https://www.uspto.gov/sites/default/files/documents/ptab\\_aia\\_fy2023\\_\\_roundup.pdf](https://www.uspto.gov/sites/default/files/documents/ptab_aia_fy2023__roundup.pdf)