For Immediate Release
October 9, 2020

Contact: Bo Bartley
bbartley@clsstrategies.com

More Than 50 Companies Urge Congress to Investigate USPTO's Policies that Shield Invalid Patents

Actions harm the economy and run contrary to the 2011 statute Congress enacted, group says

WASHINGTON – Members of the High Tech Inventors Alliance (HTIA) joined with a group of more than 50 companies – including auto, telecommunications and technology businesses – in urging Congress to investigate the United States Patent and Trademark Office's (USPTO) policies that shield invalid patents, leaving them in force to be litigated at significant costs. In letters sent to the Senate and House Judiciary Committees, the companies stressed that these actions harm the economy and run contrary to the promise of the America Invents Act (AIA).

"This failure to consider and cancel invalid patents is one of the primary causes of the significant increase in litigation by non-practicing entities in recent months," the letter states. "Especially given the painful economic downturn due to the COVID-19 pandemic, we believe that Congress and the rest of the federal government should be doing everything within their power to prevent unnecessary and abusive litigation against U.S. companies and employers."

Congress enacted the AIA in 2011, establishing inter partes review (IPR) to provide an alternative to costly court litigation to determine patent validity by enabling the USPTO to correct its own errors. In its first five years, IPR is estimated to have saved $2.31 billion in litigation costs. Despite IPR working as Congress intended, the USPTO has taken a series of actions to weaken IPR by using its purported "absolute discretion" under Section 314(a) to refuse to review patent validity as Congress intended.

A recent report finds that these discretionary denials have grown exponentially over the past three years and are on track to double in 2020. These denials often favor the interests of speculative litigation by shell company plaintiffs, who do not make anything or productively employ anyone, to the detriment of the real-world manufacturers and service providers that are the backbone of the U.S. economy.

"To be clear, these procedural decisions are not based on the merits of the petition, resulting in the denial of *meritorious*, *timely-filed* IPR petitions and leaving invalid patents in force to be litigated," the letter states. "The USPTO's actions degrade IPR proceedings and are a primary, direct contributor to the recent growth in the number of abusive suits brought by non-practicing entities. This is precisely the type of 'counterproductive litigation' that Congress sought to stem by passing the AIA."

In addition, companies call on Congress to request from the Government Accountability Office a report assessing the rapid growth in the number of discretionary denial decisions; the extent to which such decisions result in denial of meritorious petitions that would otherwise have resulted in the institution of an IPR; the effects of the USPTO's policies on the amount and costs of actual or threatened patent infringement litigation; and the economic impact of such policies, specifically including the effect on costs borne by U.S. consumers and businesses.

The full letters can be found here and here.

# # #

The High Tech Inventors Alliance consists of 10 technology companies: Adobe, Amazon, Cisco, Dell, Google, Intel, Microsoft, Oracle, Salesforce and Samsung. These companies collectively invested over $136 billion in research and development last year, hold nearly 300,000 U.S. patent assets and support tens of millions of jobs created as a result of the innovative goods and services its members provide.