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 $75 billion in R&D each year, generating technological advances protected by their more than 175,000 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.[1] 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 unwarranted litigation and licensing demands, drive up cost and uncertainty for creators of new technology, and create the risk of anticompetitive or abusive assertions. To reduce the issuance of low-quality patents, it is critical that the U.S. Patent and Trademark Office (PTO) be given sufficient resources to perform rigorous examinations. The PTO should also adopt more stringent examination standards to ensure that the patents it grants are clear, limited to the scope of the applicant's actual invention, and reflect true advances in technology.

IPRs are balanced

- Only 32% of decisions result in a patent being cancelled

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 issued. IPRs allow the PTO to correct its errors in granting invalid patents by providing a cheaper, faster alternative to litigation. IPR has proven to be a balanced procedure. Invalidation rates at the Patent Trial and Appeal Board have been steadily falling and only about 32% of decisions result in the patent being cancelled.[2] This is less than the 43% invalidation rate reported for district court litigation,[3] and lower than the 79% rate in German revocation proceedings[4] and the 69% rate in oppositions at the European Patent Office.[5] IPR is

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[1] HTIA members include Adobe, Amazon, Cisco, Dell, Google, Intel, Oracle, Microsoft, and Salesforce.
[2] Of 4952 decisions, 1601 resulted in all claims being found invalid. USPTO Trial statistics (December 2018) https://www.uspto.gov/sites/default/files/documents/trial_statistics_201812.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] Peter Hess, Tilman Muller-Stoy, Martin Wintermeier. "Are patents merely 'paper tigers'?" MittdtschPatAnw (2014): 439-452. https://www.bardehle.com/fileadmin/Webdata/contentdocuments/broschures/Patent_Papiertiger.pdf.
[5] European Patent Office. "Searches, examinations, oppositions" https://www.epo.org/about-us/annual-reports-statistics/annual-report/2017/statistics/searches.html#tab4.

used selectively to correct erroneous patent grants, enabling parties to avoid wasting millions of dollars in litigation over invalid patents. It is working as Congress intended, and the facts do not justify any weakening of IPR procedures.

MAINTAINING THE RULE AGAINST PATENTING ABSTRACT IDEAS

For more than 150 years, U.S. courts have interpreted Section 101 of the Patent Act to prohibit patenting of abstract ideas. In 2014, the Supreme Court unanimously reaffirmed this rule in *Alice* v. CLS Bank, rejecting an approach that would have allowed the patenting of business methods and other non-technological concepts simply because they were implemented on a computer. The clarity brought by the *Alice* decision has benefited the technology industry. Advances in software and computer technology remain patentable. But patents on broadly stated ideas that provide no technological solution – and pose a risk of 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 2018

Innovation in the tech sector is thriving in the wake of *Alice*. Growth of R&D investment in the software and internet industry outpaced overall R&D growth, doubling in the wake of *Alice*.[6] Last year, VC funding of software startups hit a historic high of $45 billion, 40% more than in 2014, and – according to the National Venture Capital Association – 2018 was a "banner year" for VC funding across all sectors.[7]

The PTO's own data show that *Alice* has had only a small impact on inventors' ability to obtain patents. A recent academic study of that data found that overall rejection rates have risen only modestly and that much of that increase was driven by rejections of business method claims. The result, as noted by the authors, is that "the vast majority of inventions examined by the office are not significantly impacted by 101."[8]

Abstract ideas struck down by *Alice*:

- Bingo games
- Coupon programs
- On-line menus

Despite these facts and strong support for the *Alice* decision from high-tech and other sectors, some have proposed legislation that would reverse the rule against patenting abstract ideas and effectively eliminate all meaningful limitations on eligibility. Doing this would allow patents on everything from football plays to marriage proposals and bingo games. And it would allow patents on vague, poorly defined concepts that would preempt, rather than promote, innovation. This would be disastrous for both the patent system and the economy, which is why every major patent regime in the world limits patenting to inventions in recognized fields of technology. It would be a serious mistake for the U.S. to do otherwise.

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

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[6] PWC, 2018 Global Innovation 1000 Study (October 2018), https://www.strategyand.pwc.com/media/file/2018-Global-Innovation-1000-Fact-Pack.pdf.
[7] National Venture Capital Association, Venture Monitor, 4Q 2018, https://files.pitchbook.com/website/files/pdf/4Q_2018_PitchBook_NVCA_Venture_Monitor.pdf.
[8] 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?abstract_id=3267742.