



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

May 27, 2022

The Honorable Mazie K. Hirono
Subcommittee on Intellectual Property
Committee on the Judiciary
United States Senate
109 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Thom Tillis
Ranking Member
Subcommittee on Intellectual Property
Committee on the Judiciary
United States Senate
113 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senators Hirono and Tillis:

Thank you for your letter of April 27, 2022, raising concerns about abuse of the inter partes review (IPR) process. I would like to take this opportunity to address the important policy issues raised by your letter, but will refrain from commenting on any specific pending cases.

First and foremost, we are aligned in our goal to ensure that the IPR process—a process for challenging patents after they issue—“is not abused by parties filing petitions in bad faith and for reasons outside the intent of the America Invents Act.” I took up this policy matter soon after being sworn into my position. I am working with my colleagues at the USPTO on practices and procedures to address this issue in a way that will be fair and deliberative.

Beginning with first principles, our patent system was designed for the public good, and we must stay focused on this. We must ensure our innovation ecosystem works to inclusively incentivize more innovation, including in key technologies; protect that innovation in the United States and worldwide; and bring that innovation to positive impact to create jobs, foster economic prosperity, and promote national security. Opportunistic uses of our system that are not in furtherance of these goals need to be addressed. With these objectives in mind, I will do my best to make sound decisions based on the evidence and due process.

As to the first two questions you posed in your letter, the IPR process, as an important part of our patent system, should serve the public good. A misuse of that process conflicts with both the framers’ original intent and the America Invents Act. The USPTO is revisiting its related practices and procedures to make clear that abuses of the IPR process will not be tolerated. I intend to ensure our system works for its intended purpose and to discourage any behavior that

works at cross-purposes. I will respond further once my USPTO colleagues and I have completed a thoughtful and deliberative consideration of practices and procedures to address these issues. I look forward to working with you on this and other matters to foster more innovation and maintain America's status as an innovation leader.

Sincerely,

A handwritten signature in blue ink that reads "Kathi Vidal". The signature is written in a cursive, flowing style.

Kathi Vidal
Under Secretary of Commerce for
Intellectual Property and Director of the
United States Patent and Trademark Office