

QUALITY PATENTS COALITION

October 18, 2021

The Honorable Patrick Leahy
The Honorable John Cornyn
United States Senate
Washington, DC 20510

Dear Senators Leahy and Cornyn:

On behalf of the members of the Quality Patents Coalition (QPC) we are writing to express support for the “Restoring the America Invents Act.” The legislation addresses several critical matters that have a bearing on patent quality. The QPC is organized around the principles of enhanced patent quality through improved application examination and access to meaningful reexamination programs and your bill, if enacted, would make meaningful improvements on these fronts.

The 2011 America Invents Act (AIA) created a set of opposition proceedings designed to offer a means to challenge a patent’s validity in a proceeding that was cheaper and faster than district court litigation. At the outset, both the inter partes review program (IPR) and the covered business method review program (CBM) performed according to Congressional intent. However, over time administrative actions by the Patent and Trademark Office (PTO) and several court decisions have limited the AIA’s effectiveness as it relates to patent reexamination proceedings. Your bill takes steps to restore the integrity of AIA by, e.g., limiting discretionary denials which too often have rendered the AIA’s post-grant proceedings unavailable to defendants.

In addition, your bill addresses the *Arthrex* decision rendered by the US Supreme Court which concluded that decisions by the Patent Trial and Appeal Board (PTAB) must be subject to review by the PTO Director. The bill allows the Director to rehear PTAB decisions, directly addressing the Appointments Clause issue, but requires any decision by the Director to be issued in a separate written opinion. The public will therefore be aware which decisions are being made by PTAB judges and which are being made by a politically appointed and accountable Director. This transparency is both appropriate and necessary.

The proposals and other proposals embodied in your bill constitute a meaningful and necessary update to the AIA. To that end, we encourage you to examine other areas where the AIA could

be updated or improved. For example, the QPC believes that better patent quality can be achieved through a more rigorous initial examination of patent applications, and that patents should be challengeable through a reexamination proceeding on all grounds and against the best prior art -- which is currently not the case in the wake of the expiration of the CBM program.

While there is much work to do to ensure the integrity of the AIA, we strongly support your bill and look forward to working with you on this and other aspects of patent reform moving forward.

Best regards,

American Bankers Association
American Transaction Processors Coalition
The Clearing House Association
Bank Policy Institute
Electronic Transactions Association
Engine
Independent Community Bankers of America
National Restaurant Association