

QUALITY PATENTS COALITION

September 17, 2024

The Honorable Richard Durbin, Chairman
The Honorable Lindsay Graham, Ranking Member
The Senate Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senators Durbin and Graham:

On behalf of the members of the Quality Patents Coalition (QPC)¹ we are writing to express our strong opposition to two bills which have been noticed for markup at an upcoming Executive Business Committee meeting: S. 2220, The “PREVAIL Act” and S. 2140, the “Patent Eligibility Restoration Act.” The QPC is organized around the principles of enhanced patent quality through improved application examination and access to meaningful post-grant review proceedings. Unfortunately, these bills undermine each of those principles by unwinding the critical and carefully balanced policy created by the America Invents Act and significantly weakening standards for patent eligibility.

The combined effect of the Patent Eligibility Reform Act (PERA) and PREVAIL Act would be to open the flood gates of low-quality patents and leave the technology developers and end-users in cases involving these patents without the opportunity to avail themselves of the Inter Partes Review (IPR) process, which was created by Congress as a less costly and less time-consuming alternative to district court litigation. This would mark a return to the years following the 1998 *State Street* decision, when low-quality business method patents were issued by the hundreds unleashing over a decade of frivolous patent litigation involving low-quality business method patents. Further weakening of patent eligibility standards only aggravates the problems created by the loophole in the IPR process that effectively immunizes holders of otherwise subject-matter-invalid patents from

¹ American Bankers Association, Bank Policy Institute, The Clearing House Association, Independent Community Bankers Association, Electronic Transactions Association.

administrative review because petitioners are prohibited from challenging patent subject matter eligibility under Section 101.

Rather than pursue legislation that would pick winners and losers in the patent system, we urge you to support patent reforms aimed at enhancing the quality of issued patents and strengthening the IPR process by closing the Section 101 loophole.

The PREVAIL Act would shield low-quality patents from review by experts at the PTO. For too long, patent trolls and foreign operators have been able to use low-quality patents to exact settlements from operating companies in both the services and manufacturing sectors. Non-practicing entities (NPEs), including those funded by hidden and overseas interests, often target relatively small and local businesses who use innovative technology with patent infringement allegations in efforts to extract nuisance settlements. Ensuring that company (and ultimately, consumer) resources are not diverted to pay ill-gotten rents to those leveraging low-quality IP is a critical component of the reforms enabled by the AIA. PREVAIL would create new procedural rules that shield owners of invalid patents, establish new evidentiary standards that tie the hands of PTAB judges, limit who can challenge patents through the IPR process (further encouraging NPEs to target small businesses without the resources or sophistication to rebuff confusing patent infringement allegations), and prohibit the consideration of prior art that can serve as key evidence in invalidating patents which never should have been issued.

On behalf of the diverse membership of the Quality Patent Coalition we urge you to support balanced solutions that enhance patent quality and provide equal access to the re-examination process by opposing these two bills.

Thank you for your consideration. We look forward to the opportunity to discuss these matters with you.

Best Regards,

The Quality Patents Coalition

CC: Members, Senate Committee on the Judiciary