

June 18, 2025

Dear Republican Senator/Representative:

The signatories below, comprised of public policy, grassroots, and free enterprise organizations, write to express our support for the Promoting and Respecting Economically Vital American Innovation Leadership (PREVAIL) Act (S. 1553, H.R. 3160), the Patent Eligibility Restoration Act (PERA; S. 1546, H.R. 3152), and the RESTORE Patent Rights Act (S. 708, H.R. 1574). We urge your support for this legislation.

The PREVAIL Act would secure private property rights to inventions and give quiet title, which is crucial for commercialization of and investment in patented innovations. That will boost the United States's competitive edge, especially in emerging and standardized technologies important to our economic and national security. PREVAIL would reform the Patent Trial and Appeal Board (PTAB) by adding procedural and due-process guardrails to reduce abuses of the administrative patent challenge system. These changes would protect patent owners from infringers' ability to game the PTAB system through repeated challenges, even when a court of law has already upheld that patent's validity, and inordinate PTAB discretion to tilt the process.

PREVAIL would help alleviate the damage to our patent system, to inventors (such as those who have testified before the Senate and House Judiciary Intellectual Property Subcommittees in recent years) who face the prospect of lost commercial traction during what is supposed to be their exclusive ownership and use of their invention, and from the erosion of property rights in the patent arena. Further, the legislation would mitigate the public's misgivings regarding this administrative body.

The PERA Act would fully eliminate judicially created exceptions to patent eligibility. It would restore the congressionally intentional breadth of the section 101 threshold question as to what is patent-eligible subject matter, including of a "useful process." This bill would prohibit examiners, courts, the Patent Trial and Appeal Board, or others from considering substantive patentability requirements (sections 102, 103, and 112) or from fixating on a patent claim apart from the invention as a whole in a 101 threshold determination regarding a specific invention or discovery. PERA would settle the current disquiet of uncertain patent eligibility among courts.

The RESTORE Patent Rights Act would result in courts again enjoining ongoing patent infringement after a patent is proven valid and being infringed. This would remedy the adverse way in which federal courts have applied the U.S. Supreme Court's 2006 *eBay v. MercExchange* case. Over the past two decades, courts have created a categorical rule of denying permanent injunctions against proven infringers. This development denies the wronged party justice. It also stands diametrically opposite two centuries of historical precedent and practice. In short, RESTORE would provide patent owners the

same equitable relief available in cases involving all other forms of property, including other forms of intellectual property.

These three bills would bolster the reliability, certainty, and strength of American patents. They would clarify and refine elements of the patenting process, making it easier for legitimate patent claims to reach fruition and withstand what would become fairer, more consistent, impartial scrutiny once granted.

We strongly urge your support by cosponsoring the bipartisan, bicameral PREVAIL, PERA, and the RESTORE Patent Rights Acts. We look forward to working with you to advance this legislation to enactment.

Respectfully,

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Executive Director
Conservatives for Property Rights

Kevin L. Kearns
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