



February 28, 2023

The Honorable Kathi Vidal  
Under Secretary of Commerce for Intellectual Property and  
Director, U.S. Patent and Trademark Office  
600 Dulany Street  
Alexandria, VA 22314

RE: Request for Comments on USPTO Initiatives to Ensure the Robustness and  
Reliability of Patent Rights (87 FR 60130)

Dear Director Vidal,

The Alliance of U.S. Startups & Inventors for Jobs (USIJ) respectfully submits this response to your Request for Comments on USPTO Initiatives to Ensure the Robustness and Reliability of Patent Rights.

USIJ is a coalition of over 20 startup companies, along with their investors, executives, inventors, and affiliated research institutions, that have developed numerous breakthrough technologies.<sup>12</sup> The success of these small firms is a direct consequence of the strength of the U.S. patent system, which for more than 200 years has rewarded entrepreneurs who turn unproven ideas into products that change the world.

Our coalition is dedicated to advancing policies that further reinforce and strengthen this system. We are concerned that many of the proposals in the RFC will do the opposite.

From the beginning, the RFC seems to question the quality of the U.S. patent system. The title implies that current patent rights are not "robust," nor "reliable." USPTO's questions suggest the patent system is fundamentally flawed.<sup>3</sup> One might understandably think, after reading the document in its entirety, that patent rights are in need of a complete overhaul.

We disagree.

There is no doubt that the patent system is imperfect. But it has succeeded in making the United States the most innovative country in the world -- just as the Founding Fathers intended. They

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<sup>1</sup> <https://www.usij.org/about>

<sup>2</sup> [https://static1.squarespace.com/static/5746149f86db43995675b6bb/t/63bc40f069b21f775c61b93b/1673281776447/20230103164751803\\_21-757+Brief.AS+FILEDAngen.pdf](https://static1.squarespace.com/static/5746149f86db43995675b6bb/t/63bc40f069b21f775c61b93b/1673281776447/20230103164751803_21-757+Brief.AS+FILEDAngen.pdf) pg. 5

<sup>3</sup> <https://www.federalregister.gov/documents/2022/10/04/2022-21481/request-for-comments-on-uspto-initiatives-to-ensure-the-robustness-and-reliability-of-patent-rights>

viewed intellectual property protection as so vital to the success of the new nation that they enshrined patent rights in the Constitution.

The Founders also recognized that patents should be accessible by the masses, and not just the few large companies with the capital to commercialize an invention. So they intentionally -- not mistakenly -- built a patent infrastructure free from any requirements that innovators develop their inventions or pay burdensome patent fees to protect them.<sup>4</sup>

Because of those decisions, small inventors are driving America's world-leading innovation ecosystem. Roughly 96% of companies in patent-intensive industries are small firms, according to data from the Small Business Administration.<sup>5</sup> Companies with fewer than four employees applied for approximately 270 patents per 1,000 employees in 2016 -- 50 times the rate of large businesses.<sup>6</sup>

Worryingly, some of the initiatives proposed in the RFC threaten to slow this innovation engine and undermine the historical foundation on which small inventors' success has been built.

The RFC asks whether increasing fees for patent applications would "increase patent quality by discouraging filing of patents unlikely to succeed."<sup>7</sup> The suggestion is flawed on two fronts.

First and foremost, there is no widespread patent quality crisis -- so raising fees would constitute an attempt to fix a problem that doesn't exist. The USPTO has generally done a good job ensuring that patents are only awarded for innovations that are truly novel, nonobvious, and useful. For this reason, the patent litigation rate has remained incredibly low -- fewer than two cases per 1,000 patents granted -- over the past century.<sup>8</sup>

Second, raising patent filing fees could preclude thousands of startups, like those we represent, from obtaining a patent.

The average startup has an additional 16 employees and \$10.6 million in sales five years after successfully obtaining a patent, compared to a company without a patent.<sup>9</sup> Erecting barriers to entry into the patent system will lead to fewer jobs created and fewer dollars flowing back into the economy.

These simple facts reinforce what the Founding Fathers knew to be true: a democratic patent system empowers all inventors -- not just those with enormous sums of money -- to innovate. And when small businesses disrupt markets with new ideas, we all benefit.

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<sup>4</sup> <https://ipwatchdog.com/2018/03/05/founders-foster-npes-patent-licensing/id=94255/>

<sup>5</sup> <https://advocacy.sba.gov/2015/06/09/4572/#:~:text=Overall%2C%20approximately%2096%20percent%20of.basis%20than%20the%20national%20average.>

<sup>6</sup> [https://cdn.advocacy.sba.gov/wp-content/uploads/2022/09/13114730/Fact-Sheet\\_Small-Business-Innovation-Measured-by-Patenting-Activity-1.pdf](https://cdn.advocacy.sba.gov/wp-content/uploads/2022/09/13114730/Fact-Sheet_Small-Business-Innovation-Measured-by-Patenting-Activity-1.pdf)

<sup>7</sup> <https://www.federalregister.gov/documents/2022/10/04/2022-21481/request-for-comments-on-uspto-initiatives-to-ensure-the-robustness-and-reliability-of-patent-rights#:~:text=11.%20The%20USPTO,of%20each%20other%3F>

<sup>8</sup> <https://innovationalliance.net/wp-content/uploads/2019/10/Katznelson-Testimony-Senate-Judiciary-Subcommittee-on-IP-Oct-30-2019.pdf> pg. 1

<sup>9</sup> [https://www.cato.org/research-briefs-economic-policy/what-patent-worth-evidence-us-patent-lottery#:~:text=For%20the%20average,bv%2033%20percent\).](https://www.cato.org/research-briefs-economic-policy/what-patent-worth-evidence-us-patent-lottery#:~:text=For%20the%20average,bv%2033%20percent).)

In this spirit, the USPTO should be doing everything in its power to make filing for a patent *easier*, not harder. Nothing would be more American.

We sincerely appreciate the opportunity to weigh in on these important issues. Please let us know if we can be of any further assistance.

Sincerely,

Chris Israel  
Executive Director  
The Alliance of U.S. Startups & Inventors for Jobs