



RESPONSE OF THE ALLIANCE OF U.S. STARTUPS AND INVENTORS FOR JOBS (USIJ) TO OSTP REQUEST FOR INFORMATION (FR Doc. 2025-21150)

(Submitted electronically to the Office of Science and Technology Policy)

The Alliance of U.S. Startups and Inventors for Jobs (USIJ) appreciates the opportunity to respond to the Office of Science and Technology Policy (OSTP) Request for Information (“RFI”) regarding *“policy updates that aim to accelerate the American scientific enterprise, enable groundbreaking discoveries, and ensure that scientific progress and technological innovation benefit all Americans.”* USIJ strongly supports efforts to strengthen – indeed to “restore” – the U.S. innovation ecosystem, which, over the last ten or fifteen years, has been allowed to atrophy in the face of massive lobbying and public relations campaigns waged by entrenched incumbents threatened by marketplace disruption, typically brought by more innovative startups. History tells us that when Federal policies are properly aligned with the objectives described in the RFI, those policies will enhance American scientific leadership, improve technology commercialization, and support a dynamic, globally competitive economy.

USIJ is a coalition of nearly 30 inventors, startups, venture capital investors, entrepreneurial companies, research institutions, and technologists whose work depends fundamentally on **a reliable and predictable U.S. patent system** and an **economic environment conducive to early-stage innovation**. Our members are active in the most strategically important sectors of the U.S. economy—including **semiconductors, medical devices, biotechnology, AI systems, cybersecurity, cloud and networking technologies, and advanced manufacturing**—and are collectively responsible for breakthrough technologies that frequently originate in small labs, garages, universities and startup incubators.

USIJ submits these comments to emphasize a central theme: **To a much greater extent than many government officials and policy makers seem fully to grasp, America’s scientific leadership depends on the strength of its intellectual property (“IP”) system and the ability of disruptive startups and smaller companies to compete on fair terms.** While large incumbents can do many things well – mass marketing, building global supply chains, creating distribution channels both domestically and worldwide – major breakthroughs and disruptive innovation are rarely created by such companies. Rather, it is the smaller, more nimble companies that have both the freedom and the incentive to develop entirely new directions and categories that disrupt existing technologies.

These comments are entirely consistent with previous filings that USIJ has made before the FTC, DOJ, USPTO, and ITC, and we incorporate those positions herein. Our comments also are

consistent with positions USIJ has asserted in numerous amicus briefs filed in all levels of the Federal judicial system.¹

I. The Innovation Ecosystem Depends on Reliable, Enforceable Intellectual Property Rights.

The RFI highlights the need for policies that accelerate research, innovation, and commercialization—particularly for high-risk, breakthrough technologies with long development cycles. This objective cannot be achieved without ensuring that American inventors, startups and investors can rely on the patent system to raise capital needed for growth and to prevent the wrongful misappropriation of new technologies that our weakened patent enforcement invites. Once it is clear that a new invention is feasible to implement, the temptation to copy it is economically compelling for large incumbents, which have a powerful advantage over a smaller company or a startup as a result of established brands and infrastructure for engineering, manufacturing, and distribution already in place. Without reliable and enforceable patents, there is often no reason to try to compete with an incumbent, because the likelihood of failure becomes prohibitive.

Across multiple submissions to Federal agencies and to Federal courts, USIJ has documented the systematic erosion of patent reliability and its disastrous consequences wrought for early-stage innovation. Examples abound, but the most serious are as follows:

- The decision of the *Supreme Court in eBay v. MercExchange LLC*, 547 U.S. 388 (2006), which held that injunctions in patent cases should be based on the same factual showings as for injunctions in other types of cases, a ruling that made it effectively impossible for a startup or other small company to obtain injunctions to prevent the theft of innovative new technology. A concurring opinion by Justice Roberts noted that injunctions following an adjudication of infringement were almost routine for two centuries, noting that often “a page of history is worth a volume of logic.” He further observed that patent owners would often find it difficult to satisfy the conditions imposed by the Supreme Court. (*Id.* at 394-96). The patent statute makes clear that a patent owner is granted an “exclusive right” to exploit the patented invention, and the *eBay* decision simply ignores that statutory provision.² Until Congress reasserts control of the U.S. patent system and corrects decisions such as *eBay*, the wisdom of investing time and resources into obtaining patents will remain highly questionable.
- Other Supreme Court decisions have been equally disastrous for startups and small innovative companies. Commencing in 2012, the Supreme Court undertook a series of decisions addressing the types of inventions that are eligible for patent, yet again ignoring

¹ All of the above comments and briefs can be found on the USIJ website – www.usij.org – under the News and Research tabs.

² 35 U.S.C. §154(a) (“... **right to exclude** others from making, using, offering for sale, or selling the invention throughout the United States”).

the clear language of the patent statute that had been in place for more than 200 years.³ In 35 U.S.C. §101, Congress specified that machines, articles of manufacture, compositions of matter, processes, and improvements on any of those are “eligible” for patent protection, assuming the invention otherwise meets the rigid guidelines spelled out in Sections 102, 103 and 112. The Supreme Court in its superior wisdom, however, decided to create “judicial exceptions” to the unambiguous eligibility requirement specified by Congress, the net effect being to render thousands of issued patents invalid and unenforceable.

- In 2011, Congress enacted the Leahy-Smith America Invents Act (“AIA”) (Public Law 112 – 29), which created a procedure called Inter Partes Review or IPR, through which members of the public are permitted to challenge the validity of issued U.S. patents before the Patent Trial and Appeal Board (“PTAB”) created within the USPTO. These IPRs, while originally intended as a faster and cheaper alternative to district court litigation in determining patent validity, have proven in practice to be extremely injurious to small companies and highly beneficial to large incumbent infringers. In recent *Comments Supporting USPTO’s Proposed PTAB Reforms*, submitted in response to USPTO’s Notice of Proposed Rulemaking *Revision to Rules of Practice before the Patent Trial and Appeal Board*, USIJ identified several salient features of IPRs that allow infringers to use these procedures as a tool to harass and abuse small patent owners – namely through multiple challenges that can be brought by the same infringer against the same claim, challenges to the validity of a patent after it has been adjudicated as valid by a district court, and challenges filed by surrogates whose purpose is to conceal the real identity of the infringer and protect against estoppel. The USIJ document expresses strong support for the proposed rule change currently being considered by USPTO, and we urge OSTP to support it as well.⁴
- Academic and economic research developed by USIJ demonstrates that **venture investment in patent-intensive sectors has fallen dramatically** as certainty in patent rights has declined—dropping from more than 50% in 2004 to just 28% by 2017.⁵
- Further, in USIJ’s submission to the 2025 *FTC/DOJ Listening Sessions on Lowering Americans’ Drug Prices Through Competition*, we noted that efforts to weaken patent rights under the pretext of “patent thickets” or “junk patents” lack empirical grounding,

³ *Bilski v. Kappos*, 561 U.S. 593 (“While these [implied] exceptions are not required by the statutory text, they are consistent with the notion that a patentable process must be ‘new and useful.’”); *Alice Corp. v. CLS Bank*, 573 U.S. 208 (2015); *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012).

⁴ <https://usij.org/wp-content/uploads/2025/12/USIJ-Response-Request-for-Comment-on-NPRM-12.2.25.pdf>.

⁵ <https://usij.org/usij-releases-report-on-the-importance-of-an-effective-and-reliable-patent-system-to-critical-technologies>.

and that startups—not large incumbents—produce more than half of breakthrough high-tech inventions in the United States⁶.

OSTP should affirm that a strong patent system is foundational to research commercialization, technology transfer, and scaling scientific innovation.

II. The United States Must Strengthen the Integrity of Early-Stage Innovation Markets

Innovation does not occur in static markets; rather, it emerges from **dynamic competition between new entrants and incumbents**, often years before consumer-facing products exist. As we explained in our response to the FTC’s RFI in response to President Trump’s April 9, 2025 Executive Order on *Reducing Anti-competitive Regulatory Barriers*:

- Early-stage innovation requires recognition that “competition” in innovation markets involves **future potential markets**, not just present ones. Traditional antitrust tools do not adequately account for the innovation-driven aspects of these markets.
- Predatory strategies such as “**efficient infringement**”—where large corporations knowingly use patented technologies, expecting litigation to be too slow or expensive for startups to pursue—deprive researchers and technologists of the returns needed to sustain innovation.
- Regulatory or judicial uncertainty in IP enforcement can distort innovation markets and “create unnecessary barriers to entry” for startups and individual inventors.

OSTP and other segments of the Federal government need to recognize the critical significance of innovation and the need for startups and small companies to be protected from predatory conduct by large incumbents with whom they would like to compete. A 2023 report of the National Economic Council entitled “The Economics of Investing in America,” notes that startups and small to medium sized companies are the **primary source of innovation** in this nation – not the entrenched corporate giants that falsely claim that role. The NEC report states:

The evidence is clear that new small and medium-sized businesses are drivers of innovation. Yet when a few firms (or one single firm) dominate a market, they can stifle and stymie disruptive startups and other new businesses⁷.

In the same vein, a 2022 report of the National Bureau of Economic Research entitled, “Of Academics and Creative Destruction: Startup Advantage in the Process of Innovation⁸,” (pp. 4-5), adds that:

First, startup innovation will be more valuable and ultimately more impactful than that of either universities or large firms, and second, startups will generate innovations that are more radical and disruptive than those of incumbent firms. We provide descriptive statistics consistent with these hypotheses using a sample of patents generated in the

⁶ https://usij.org/wp-content/uploads/2025/12/USIJ-Comments-Re_-FTC DOJ-Listening-Session-1.pdf

⁷ <https://bidenwhitehouse.archives.gov/wp-content/uploads/2023/07/Economics-of-Investing-in-America.pdf>

⁸ https://www.nber.org/system/files/working_papers/w30362/w30362.pdf

vicinity of the top 25 research universities in the United States from 2000 to 2015. ... Overall, our findings suggest that startup innovation is qualitatively different from the innovation in other organizational settings: there is a clear “startup advantage” in the quality and impact of startup patents relative to established firms.

OSTP should ensure that federal innovation policy acknowledges these realities and incorporates IP and competition dynamics into national science and technology strategy.

III. OSTP Should Support Ongoing USPTO Reforms that Restore Patent Reliability

USIJ strongly supports the reforms initiated by the USPTO under the Trump Administration, including:

1. **Rescission of the Biden Administration’s “compelling merits” test**, which had allowed institution of PTAB trials even after federal courts upheld patent validity.
2. **Reinstatement of Fintiv and Sotera frameworks**, offering clearer guardrails against serial PTAB challenges.
3. **Reform of PTAB workload and institution practices** to align PTAB review with district court standards and reduce duplicative litigation burdens on inventors.

OSTP should explicitly recognize that patent quality and patent reliability are not in tension. Effective early examination, robust enforcement, and reduced duplicative challenges are all necessary for a functional innovation ecosystem.

IV. Federal Policy Should Address the Startup “Innovation Chasm”

The **USIJ White Paper, Unlocking American Innovation**, provides a comprehensive agenda for policymakers that aligns directly with OSTP’s mission.⁹ Key findings relevant to this RFI:

- **“Growth Tech”—our term for early-stage high-tech companies**—face massive structural disadvantages in competing with Big Tech incumbents with established brands, manufacturing and distribution infrastructure, and overwhelming cash reserves, market positions, and lobbying influence.
- **Weakened IP governance has made it harder for startups to attract early investment**, especially in fields central to national competitiveness such as AI, medical devices, cybersecurity, and semiconductors.
- **Global competitors—particularly China—are investing heavily in patent-intensive sectors** while the U.S. system has become “less predictable, less reliable, and less attractive for long-term private investment.”

OSTP should recognize these conditions and adopt federal strategies that:

- **Reduce commercialization barriers.**

⁹ <https://usij.org/wp-content/uploads/2025/02/USIJ-Unlocking-American-Innovation-Whitepaper-11-RM.pdf>.

- **Strengthen technology transfer pipelines from universities and federal labs.**
- **Address market asymmetries that disadvantage startups.**
- **Ensure federal agencies adopt procurement and R&D policies that favor domestic innovators.**

V. Overall Recommendations for OSTP Across the U.S. Innovation Lifecycle

1. Strengthen Patent Rights and Reduce Barriers to Enforcement

- Support USPTO reforms curbing serial PTAB challenges and abusive tactics by Big Tech incumbents.
- Encourage Congress to advance the PREVAIL Act, Patent Eligibility Restoration Act, and Restore Patent Rights Act (as highlighted in the USIJ white paper).¹⁰

2. Promote Technology Transfer While Preserving Bayh-Dole Integrity

- Reject expansive reinterpretations of march-in rights that would destabilize university-based startups. This uncertainty has already discouraged investment, particularly in life sciences.

3. Support Small Innovators in Federal R&D and Procurement Programs

- Use federal R&D, SBIR, and procurement vehicles to accelerate startup participation in critical technologies.
- Ensure that federal programs do not indirectly favor incumbents who can absorb delays, litigation, or regulatory uncertainty.

4. Adopt Strong Federal Competition Policy to Protect Disruptive Innovation

- Emphasize that antitrust enforcement should recognize and address harms to early-stage innovation through efficient infringement, calculated to overwhelm startups by infringing their patents and taking advantage of huge cash reserves to make litigation prohibitively expensive.
- Reject policy frameworks built on unsubstantiated claims about “patent thickets” or “junk patents” that risk weakening incentives for small inventors.

¹⁰ <https://usij.org/wp-content/uploads/2025/11/USIJ-2025-PREVAIL-Statement-1.pdf>;
<https://usij.org/wp-content/uploads/2025/11/FOR-IMMEDIATE-RELEASE-PERA-2025-1.pdf>;
<https://usij.org/wp-content/uploads/2025/02/USIJ-Unlocking-American-Innovation-Whitepaper-11-RM.pdf> (pp.4-5).

5. Prioritize National Security and Economic Competitiveness in IP Policy

- Recognize that long-term scientific leadership requires robust IP protections to counter global competitors engaging in IP theft, compulsory licensing, or state-subsidized infringement.

Conclusion

OSTP's leadership in shaping a national vision for science and technology comes at a pivotal moment. U.S. leadership depends not only on federal research funding but also on the **private-sector innovation engine powered by inventors, entrepreneurs, and high-growth startups**.

For that engine to function, the United States must maintain:

- **A reliable patent system**
- **A fair competitive environment**
- **Clear and stable policy signals**
- **Stronger pathways for commercialization and scale**

USIJ stands ready to work with OSTP, the White House, and federal agencies to advance policies that unlock American innovation, restore global competitiveness, and ensure that the next generation of breakthrough technologies is created—and commercialized—here in the United States.

Respectfully submitted,

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