

Support the Restoring America's Leadership in Innovation Act

Recent legislation and court decisions have all but destroyed what once was the world's "gold standard" patent system, established by our Founders within our U.S. Constitution. Unless something is done soon, our Patent System will be pretty much ravaged, and with it, the American Dream.

Representative Thomas Massie (R-KY) has [introduced](#) legislation that would put a halt to and reverse many of the adverse changes to our patent system; [HR 5874](#), the Restoring America's Leadership in Innovation Act (RALIA).

LEGISLATIVE CHANGES

One key aspect of Massie's bill is the elimination of the Patent Trial and Appeal Board (PTAB), an unconstitutionally established administrative tribunal, known as "the [patent death squad](#)," along with getting rid of the inter partes review (IPR) and post-grant review (PGR) PTAB proceedings. Since the America Invents Act of 2011 (AIA) was enacted and the PTAB was established, Big Tech and multinational corporations, including those controlled by the Chinese Communist Party (CCP), have been using the IPR and PGR extensively to virtually steal the patent rights of independent inventors and innovative small businesses and startups.

The devastation to our system due to the PTAB [invalidating 84%](#) of the over 3,000 patents they have reviewed (including those that had been in force for years and achieved industry success) has been immense. Aside from destroying people's financial lives and businesses that had been operating prosperously, Startups are no longer able to secure adequate investment to bring their innovation to market due to the uncertainty involved. Eliminating the PTAB would help ensure that there is a level playing field for all; the independents and startups as well as the large corporations.

A couple of other detrimental AIA provisions that would be abolished are first-to-file, returning our patent system to the quite successful first-to-invent, as well as restoring an inventor's one-year grace period before being compelled to file for a patent, allowing time needed to secure investment and to perform further R&D to ensure product quality for the filed patent.

The Massie bill would eliminate patent applications from being published by the USPTO, reverting to publishing once a patent is actually issued. Another huge AIA-era aspect that has plagued inventors in the legal arena occurs with the RALIA by restoring the presumption of validity of USPTO-issued patents and their claims.

JUDICIAL CHANGES

The RALIA would reverse the catastrophic U.S. Supreme Court (SCOTUS) decision rendered in the Oil States Energy Services v. Greene's Energy Group case. The PTAB had taken away patents from Oil States that had been in force for over a decade. Oil States took it to court and ended in front of the SCOTUS. Their decision, emboldened by the US DOJ brief stating "Patents have always been understood as privileges or franchises," directly violates wording in [Article I Section 8 Clause 8](#) of our U.S. Constitution, which unequivocally states that the discoveries of inventors are "exclusive Rights."

Another positive change in the RALIA would be ensuring substantive patentability criteria of novelty, usefulness, and obviousness are contemplated separately from patent eligibility determinations. This alone would bring greater certainty and reliability to issued patents, particularly for computer-implemented inventions and biotechnological inventions.

A separate anti-inventor SCOTUS decision issued in the eBay v. MercExchange case would essentially be reversed. That ruling, basically denying legitimate patent holders any substantial permanent injunctive relief against infringers, opened the door for those who stole a patent to continue producing and selling their knock-off product and making substantial profits from their illegal goods. Massie's bill would effectively restore an inventor's exclusive patent rights and their ability to defend their innovations by putting a halt to infringement.

VERDICT

Our once-great patent system has been dying under the AIA and the PTAB, coupled with horrendous court decisions.

Change is not just needed, it is necessary and vital.

For the good of our country, especially economically through regaining our innovative preeminence, the Restoring America's Leadership in Innovation Act must be passed.

The bill is co-sponsored by Louie Gohmert (R-TX1), Tom McClintock (R-CA4) and Paul Gosar (R-AZ4).