



At-A-Glance: Balancing Incentives Act & Restoring America's Leadership in Innovation Act

Led by Representatives Marcy Kaptur (D-OH-09) & Thomas Massie (R-KY-04), respectively.
Co-Led by Representatives Thomas Massie & Marcy Kaptur, respectively.
Committee of Jurisdiction for both: Committee on the Judiciary.

Congresswoman Marcy Kaptur has fought for small business and innovation for years and firmly believes these bills would rekindle American leadership in innovation. Congressman Thomas Massie, who personally holds 24 patents, is an advocate for US inventors in their struggle to keep their patents, often in the face of large international companies with vast legal resources. We invite you to join with us in this all-to-rare moment of bipartisanship to protect America's inventors and small businesses and to bolster America's competitiveness on the world stage. These bills, whether passed together or individually, would significantly repair the integrity of patent property rights, which – just like land – must be secure to justify investment.

The American patent system, which sparked invention at an astounding pace and produced life-changing technologies and labor-saving devices only previously dreamed of, has been profoundly, adversely changed. Namely, the private property right in one's invention – the fruit of one's mental labor – has been undermined by courts and by the "America Invents Act". This pair of bills would reverse crucial harms and restore the critical elements of our patent system which serve our nation so well.

American innovation is falling behind the rest of the world. In 2018 [patents filed per capita fell behind China](#) for the first time since data was first collected in 1980. Much of that is because protections for American inventors is slipping. The time, money, and energy invested in creating an invention that can be marketed and sold or used to create and sell a new product is not worth it if the invention can be easily taken away. Originally, patents were tried in court. In 2011 the US [Patent Trial and Appeal Board](#) (PTAB) was formed, and cases that **challenge** patents have since been deferred to that board. In FY23, PTAB [completely invalidated 28% \(see slide 11\)](#) of patents put before them; another 38% settled, were partly invalidated, came to mixed outcomes, or ended in a request for adverse judgement. Only 27% of cases were denied or dismissed, and only 7% determined to be [all patentable](#). Considering only those cases heard (excluding those denied), only [17.1% of patents were fully upheld](#) – **an 82.9% full or partial invalidation rate**. (Fully invalidated: [67.5%](#), partly invalidated [15.4%](#).)

See our [PTAB 101](#) 1-pager for a plain English breakdown of PTAB activities at the bottom of our [press release](#).

[The Balancing Incentives Act \(BIA\)](#); Lead: Marcy Kaptur, **Co-lead:** Thomas Massie

BIA would not abolish the PTAB as the *Restoring America's Leadership in Innovation Act* ("RALIA," below) would, but instead effectively give patent owners the option to have their patents challenged *either* in court *or* at the PTAB. This will naturally encourage PTAB to demonstrate its legitimacy without having to micromanage USPTO or the PTAB. Patent owners will choose to continue to work with PTAB if they view it as fair and legitimate. This bill is compatible with RALIA (for which we also advocate sign-on) in that it presents a method to *balance* the PTAB's authority with court authority while leaving all other provisions in RALIA untouched.

[Restoring America's Leadership in Innovation Act \(RALIA\)](#)

Lead: Thomas Massie, **Co-lead:** Marcy Kaptur

RALIA Reverses the effects of several Supreme Court decisions and of the *America Invents Act*, largely repairing most of the erosion of US patent rights accumulated over the last several decades. Full details below.

The Restoring America's Leadership in Innovation Act would:

- Reaffirm an inventor's property right secured by a US patent.
- Provide appropriate protections for an invention, both during examination and after a patent has issued.
- Restore the means of defending a patented invention against infringers: in court.

Specific provisions of the bill would:

- Remedy *eBay v. MercExchange*:
 - Restore access to an injunction to halt patent infringers from continuing to produce infringing knockoffs of the invention.
- Reverses the US Supreme Court's ruling in *Oil States v. Greene's Energy Group*:
 - Affirm the private property right a patent secures.
- Repeal provisions of the *America Invents Act*:
 - Repeal "first to file" and restore "first to invent" as the criterion for granting a patent.
 - Restore the pre-*America Invents Act* one-year grace period.
 - Limit the consideration of information disclosed to the PTO as "prior art."
 - Restore the requirement of naming the best mode or preferred embodiment in a patent application.
 - Abolish *inter partes* review, post-grant validity proceedings, and the Patent Trial and Appeal Board.
- End diversion of patent application fees away from their purpose at the Patent and Trademark Office, which include timely and quality patent examination.
- Remedy adverse effects from *Bilski v. Kappos*, *Association for Molecular Pathology v. Myriad Genetics*, *Mayo Collaborative Services v. Prometheus Laboratories*, and *Alice Corp. v. CLS Bank*:
 - Restore and clarify patentability of certain scientific discoveries and software inventions.
- Ensure judicial review and the right to de novo judicial review for patent validity determinations.
- Remedy *Impression Products v. Lexmark International*:
 - Clarify property rights in the transferability of patents, including by licensing.
- Strengthen the presumption that an issued patent is valid and protect patents against claims of invalidity, rather than the other way around.

For a 1-page ["PTAB 101" quick guide](#) to the board and surrounding controversy, see the links at the bottom of our [press release](#).

Join **Congresswoman Marcy Kaptur (D-OH-9)** and **Congressman Thomas Massie (R-KY-04)** in support of this set of bipartisan, commonsense, budget-neutral legislation that protects American innovation, business, and competitiveness. If you have any questions or wish to co-sponsor these Acts, please email Alexander.Rytel@mail.house.gov in Congresswoman Kaptur's office, or Marshall.Yates@mail.house.gov in Congressman Massie's office. Thank you.

Organizations that have Endorsed Both Bills

US Inventor

Veterans for Intellectual Property

ADM Tronics Unlimited, Inc.