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July 9, 2018

Robert Schmidt  
Co-Chairman

Mail Stop: Patent Board  
Director of the United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Jere Glover  
Executive Director

Attn: Vice Chief Administrative Patent Judge Michael Tierney  
[PTABNPR2018@uspto.gov](mailto:PTABNPR2018@uspto.gov)

Larry Nannis  
Treasurer

Subject: PTAB Notice of Proposed Rulemaking 2018 (**Docket number: PTO-P-2018-0036**)

Kevin Burns  
New England  
Regional Chair

Reference: <https://www.federalregister.gov/documents/2018/05/09/2018-09821/changes-to-the-claim-construction-standard-for-interpreting-claims-in-trial-proceedings-before-the>

Matt Oristano  
Joseph Schwartz  
Mid-Atlantic  
Regional Chair

Dear Director Iancu:

Ash Thakker  
Southeast  
Regional Chair

The Small Business Technology Council (SBTC) is the nation's largest association of small, technology-based companies in diverse fields. We are a council of the National Small Business Association ([www.NSBA.biz](http://www.NSBA.biz)) which is the nation's first small-business advocacy organization. NSBA is a staunchly nonpartisan organization with 65,000 members in every state and every industry in the U.S. SBTC advocates on behalf of the 6000 firms who participate in the Small Business Innovation Research (SBIR) program. With less than 1.7% percent of Federal R&D, SBIR/STTR firms have created over 20 percent of America's major innovations, and as many patents as all universities combined; plus we are creating sustainable manufacturing and service jobs in the U.S. Small businesses produce 16 times more patents per employee than large patenting firms, which has a direct correlation with job growth.

Mary Delahunty  
Southwest  
Regional Chair

Russ Farmer  
Mountain  
Regional Chair

Michael Browne  
Pacific  
Regional Chair

The subject proposed rule change is an important start to reversing the devastating effects that the America Invents Act (AIA) has had on American innovation. Since the implementation of the AIA after its passage in December 2011, the United States has fallen from its long-standing position as number one to number 11 in Innovation and number 12 in Patent Strength, behind countries such as France, Sweden, Japan, Great Britain, and Singapore.

Roy Keller  
State Liaison

Paul Donovan  
Michael Squillante  
NIH Committee  
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Ash Thakker  
Phase III Committee  
Chair

Russ Farmer  
DCAA Committee  
Chair

The AIA created the Patent Trial and Appeals Board (PTAB), which former Federal Circuit Chief Judge Randall Rader called "death squads killing property rights." The PTAB allows repeated challenges of already approved patents, interfering with the companies right to utilize their patent. Most patents that had already been granted, but later went through the PTAB trial process have had claims invalidated, but that is not the worst of it. The PTAB delays inventors from obtaining clear title to their inventions. The PTAB can hold up the enforceability of patents by months or years, and has even overturned district court decisions. The life of a patent is limited already, and the PTAB

prevents the immediate commercialization of new innovations. This has negatively affected America's funding of new businesses. In 2006, 81% of the global venture capital came to the US, but since the AIA went into effect, the US's share of global venture capital dropped to 54%. Even worse, early-stage VC funding is imploding, dropping by about half since the AIA took effect. And China is now filing significantly more patent applications than the US.

What this has meant for the American economy is that new inventing companies are not being created nor growing. In fact, in two-thirds of America's metro areas, companies are dying faster than being birthed. This is having a distressing effect on job growth from small companies. Holding a patent increases startup employment by 36%, sales growth by 51%, and probability of securing venture capital funding by 53%. Thus, encouraging strong patents leads to more good paying new jobs.

Revising the rules for claim construction, making them consistent with the Article III Federal Courts following *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc).is a very good first step to making the Patent System Great Again. We strongly support and applaud your efforts in this proposed rule change.

The SBTC is happy to continue our support of the Patent Office and the strengthening of patent rights, particularly for small firms and individual inventors.

Sincerely,  
Small Business Technology Council



Robert N. Schmidt  
Co-Chair