



1156 15th St NW
Suite 502
Washington, DC 20005
www.sbtc.org

October 30, 2022

*Robert Schmidt
Kevin Burns
Co-Chairmen*
The Honorable Adam Smith, Chairman
Committee on Armed Services
2216 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Mike Rogers, Ranking Member
Committee on Armed Services
2216 Rayburn House Office Building
Washington, D.C. 20515

*Jere Glover
Executive Director*

Subject: SBTC Concern with Pride in Patent Ownership Act (S.2774 or PPOA) Add-On to the 2023 NDAA

*Larry Nannis
Treasurer*

Dear Chairman Smith and Ranking Member Rogers:

*Matt Oristano
Mid-Atlantic
Regional Chair*

I am writing to express the concern of the group of patenting small businesses about the possible inclusion of patent language also known as S. 2774, the Pride in Patent Ownership Act (PPOA) in the NDAA conference report. This rider on the FY 2023 National Defense Authorization Act (NDAA) will harm small inventing businesses and will hurt the warfighter by being antithetical to businesses that support warfighters and the department of defense. We urge you to voice objection to including this language in the conference report.

*Ash Thakker
Southeast
Regional Chair*

*Mary Delahunty
Southwest
Regional Chair*

*Russ Farmer
Mountain
Regional Chair*

The Small Business Technology Council (SBTC) – a council of the National Small Business Association – advocates on behalf of the 6,000 Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) companies. These SBIR/STTR companies produce more patents than all the American universities combined. SBTC strongly supports the 2023 NDAA but cannot support adding additional provisions that degrade the patent rights of small company inventors.

*Michael Browne
Pacific
Regional Chair*

*Roy Keller
State Liaison*

S. 2774 is not relevant to the NDAA. It would significantly dilute patent rights of small business inventors who are attempting to enforce their rights. The PPOA imposes a recordation filing deadline on patent owners. The legislation penalizes missing a tight statutory deadline for patent recordation. There is no proposed ability to correct an error and willful patent infringers are given a free pass. This will help foreign entities and large international corporate infringers, leaving American small businesses inventors to suffer.

*Paul Donovan
Michael Squillante
NIH Committee
Co-Chairs*

*Ash Thakker
Phase III Committee
Chair*

*Russ Farmer
DCAA Committee
Chair*

While well intentioned, the American Invents Act of 2011 unleashed a torrent of unintended consequences that have significantly undermined the ability of small businesses in the U.S. to patent and enforce their hard-earned inventions. Add to that SCOTUS rulings which have constrained patent eligibility in areas of innovation now understood to be of tremendous strategic importance to the U.S. – areas like Artificial Intelligence, diagnostics, and innovations that affect the warfighter. And small businesses in the U.S. have been placed at an even further disadvantage in attracting capital, especially as compared to their foreign counterparts. Small company technology innovation, once the strength of the U.S. economy, has been suffering tremendously as these formerly prolific sources of innovation, and the investors which

*Jonathan Kaplan
Patent Committee
Chair*



underwrite them, are discouraged by the state of the domestic U.S. patent system. S. 2774 will make matters even worse for American innovation.

There is ample proof of this continued patenting companies decline. [“The share of global venture capital activity captured the United States](#) has fallen from more than 95 percent in the mid-1990s to 71 percent in 2012 to half [50%] in 2017” and then to 44.9% in 2021. This represents over a 30% decline since the passage of the AIA. Furthermore, average patent licensing royalty rates, an important measure of our technical standing globally, have dropped from over 7% in 2010 (before the AIA) to about 4.3% in 2017, a drop of about 39%.¹ We need a return to important principles and respect for Intellectual Property rights for all to be able to regain small business confidence in the U.S. Patent system.

Unfortunately, a new change is being proposed to add onto the 2023 NDAA that will further degrade the ability of small businesses to obtain strong, enforceable patent rights and allow large international businesses, including those from countries like China, to trample on American small business patent rights. The language of this change to the House NDAA is the same as that proposed in the Pride in Patent Ownership Act (PPOA), S. 2774. If you don't already know about it, see this article: [The Pride in Patent Ownership Act is Big Tech Boondoggling \(ipwatchdog.com\)](#)

The SBTC, as a grass roots organization, can help you put a face on the terrible impact of the current poor state of the U.S. patent system. We would be happy to provide you with powerful personal stories of small business American innovators who, in the past (when U.S. patents were strong and respected in commerce) were able to leverage their investment in innovation and achieve the American Dream. But now that these property rights have been dangerously diminished, small businesses can no longer leverage these rights to withstand the onslaught of competition from larger and increasingly international companies who simply copy from them with impunity. *Efficient Infringement* allows large international companies to conduct *Corporate Infanticide* on inventing small businesses.

Once again, the SBTC applauds the 2023 NDAA and looks forward to working with you to strengthen patent property rights. If asked to testify or provide other information on the problems with S.2774, we would be glad to do so.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert N. Schmidt", written in a cursive style.

Robert N. Schmidt, Co-Chair
Small Business Technology Council

¹ Jack Lu, IPR Tax, Alice Shock, and the Dynamics of Licensing Market (2008-2017), Data Source: *High Tech Deal Term & Royalty Rate Survey Report, 2017*, Licensing Executives Society USA and Canada, March 2019.