



9 May 2017

The Honorable Donald J. Trump
President of the United States
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20500

The Honorable Wilbur Ross
Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

Dear President Trump and Secretary Ross,

IEEE-USA represents several hundred thousand engineers, scientists, inventors, and entrepreneurs – owners and employees of both small start-ups and large U.S.-based businesses – whose livelihoods depend upon a strong patent system. Technology entrepreneurs are substantially responsible for creating the largest percentage of new, high paying jobs, and are key contributors to economic recovery and U.S. competitiveness in the global markets. To ensure the continued success of American innovators, it is imperative that the U.S. Patent & Trademark Office maintain a patent system that reassures investors, and enables legitimate actors to assert their patent rights. We urge you to consider a director who believes in strong patent rights for all inventors, high patent quality, and a system that balances the rights of patent owners with the need to defend against allegations of intellectual property (IP) rights violations.

An unbalanced patent system diminishes the value of intellectual property and dis-incentivizes investment in the ideas of future inventors and innovators. Reforms to address truly abusive bad actors must be carefully targeted to avoid collateral damage to good-faith actors. Nondiscriminatory access to the legal system to enforce and defend their property rights is vital to the continued success of American technology companies and their domestic research and development operations.

Since 2005, changes to the U.S. patent system have both weakened intellectual property rights and discriminated against certain IP holders and classes of IP. These changes have also rebalanced the patent system in favor of large, multinational companies and market incumbents, and discriminated against the newer, smaller companies that create disruptive innovations and jobs here in the US.

Our patent system does need improvement and we agree that thoughtful proposals targeting the real problems are necessary. IEEE-USA supports efforts to permanently end fee diversion to ensure the USPTO has the resources it needs to grant high quality patents; we support continuing the pilot program which

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provides the judiciary with authority to tailor judge assignments and staff training to improve patent litigation efficiency; and we support ensuring patent venue reform that reflects both plaintiff and defendant concerns.

However, IEEE-USA cautions against introducing rules that would be specific to patent litigation and which do not apply to other areas of U.S. civil procedure. We are concerned that legislative or court remedies which purport to address abuse, but instead broadly reduce the availability or enforceability of IP rights, or tip the balance in favor of technology users at the expense of innovators and patent owners, risk incorporating inequities into the U.S. justice system. IP litigation can be expensive in time, effort and resources, but IP litigation is no different than other, equally expensive, complex litigation. Evidence does not show that patent litigation is rampant, nor does it show that it is being abused any more than other civil litigation.

Creating new procedures for attacking validity of issued patents, with lower burdens of proof and different claim construction rules, has eroded confidence in all patents, resulting in a significant reduction in the value of the primary asset of young companies. Changing the fundamental deadlines for filing patent applications—in a way that appears neutral, but in practice rewards large market incumbents and penalizes innovative startups—has been a contributor to the 50 percent fall in formation of new companies.

A functioning patent system must be both fair and perceived to be fair. Discrimination is corrosive to the innovation economy. Nondiscriminatory access to the legal system for enforcing and defending IP property rights is essential for investors, without which, commercial activity, innovation, and American job creation will be inhibited.

We appreciate the steps your administration has taken to support and strengthen the U.S. economy. and we hope that you will keep this purpose in mind when appointing new leadership to the USPTO.

Sincerely,



Karen S. Pedersen, P.E., F.N.S.P.E.
2017 President, IEEE-USA