



February 1, 2023

Katherine K. Vidal
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office
United States Patent and Trademark Office
600 Dulany Street
Alexandria, Virginia 22314

RE: Request for Comments on USPTO Initiatives to Ensure the Robustness and Reliability of Patent Rights [[Docket No. PTO-P-2022-0025](#)]

Dear Under Secretary and Director Vidal:

The Alliance for Automotive Innovation (“Auto Innovators”) is pleased to submit comments to the United States Patent and Trademark Office (“USPTO”) in response to its request for comments on its initiatives to ensure the robustness and reliability of patent rights. Auto Innovators appreciates the USPTO’s ongoing commitment to stakeholder engagement on efforts to incentivize and protect new inventions while promoting innovation and competition.

Auto Innovators represents the manufacturers that produce most of the cars and light trucks sold in the U.S., original equipment suppliers, technology companies, and other value-chain partners within the automotive ecosystem. Representing approximately 5 percent of the country’s GDP, responsible for supporting 10 million jobs, and driving \$1 trillion in annual economic activity, the automotive industry is the nation’s largest manufacturing sector.

Automotive companies – as inventors, large patent holders, and manufacturers – invest significantly in research and development and produce innovative advancements to bring the next generation of breakthrough automotive and mobility technologies to consumers. Robust and reliable patent rights are essential to protecting the investments of automotive companies in emerging technologies, as well as in assisting the industry with achieving important environmental and safety goals. While the request for comments focuses primarily on the exchanges between the USPTO and the Food and Drug Administration (“FDA”) on ensuring that the U.S. patent system does not delay generic drug and biosimilar competition while incentivizing innovation, it also raises several patent quality areas that are of interest to the automotive industry. Strong intellectual property rights remain critical to the ongoing transformation of personal mobility and the creation of a cleaner, safer, and smarter transportation future.

Automotive companies face frequent lawsuits alleging infringement of patents that should not have been issued. While courts may eventually find these patents invalid, the time and costs

associated with such litigation is staggering. Proving the invalidity of patents at the litigation stage is both costly and inappropriate. Courts should not be the venue for determining the validity of patents; the USPTO should be. USPTO stakeholders should be able to rely on the judgments made during the patent prosecution process.

As innovators, automotive companies rely on the U.S. patent system to protect their substantial research and development investments. Automotive companies also need to trust the validity of patents as technology implementers. While patent examination continues to grow in complexity, Auto Innovators maintains that targeted efforts to increase the overall quality of issued patents would reduce the number of low-quality patents that can hamper innovation. Examples of such efforts include reforming the current count system to maximize patent quality rather than the rate of rendered patentability decisions, hiring additional patent examiners to reduce the number of applications per examiner, as well as allotting patent examiners additional time and providing them with access to state-of-the-art search tools and training to examine patent applications. Furthermore, Auto Innovators hopes that USPTO will explore whether the initiatives proposed to ensure robust and reliable patent rights in the drug and biologic space can be applied across other technology areas.

In addition to prioritizing patent quality, the automotive industry relies extensively on the USPTO's post-grant proceedings, particularly *inter partes review*, to efficiently settle the validity of patents that companies contend may have been granted in error. As patent holders, automotive companies also have their patents challenged in *inter partes review* petitions, and therefore, the system is fair and equitable. Instead of narrowing access to, or the scope of, *inter partes review* and other post-grant proceedings, Auto Innovators urges the USPTO to strengthen their functionality as alternatives to litigation by ensuring that any meritorious petition can move forward. Auto Innovators also supports enhancing communication between patent examiners and the Patent Trial and Appeal Board ("PTAB"), given the latter's role in post-grant proceedings and evaluating patents to determine whether they were erroneously granted. Such information from PTAB would prove useful in the patent examination process to improve patent quality outcomes.

Thank you for the opportunity to provide input on the importance of robust and reliable patent rights. Auto Innovators is grateful for the USPTO's continued stakeholder engagement on patent-related matters of interest to the automotive industry.

Sincerely,



Tara Hairston
Senior Director, Technology, Innovation, and Mobility Policy