



January 28, 2022

The Honorable Gina M. Raimondo
Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

Dear Secretary Raimondo,

As the chief legal officers of some of America's most dynamic and innovative companies, we write to express concern about the administration of the U.S. patent system over the last few years, and to highlight an important issue we hope you will address as soon as possible.

Collectively, the businesses we serve own hundreds of thousands of U.S. patents, employ over 275,000 American workers, and develop and build many of the nation's most advanced products—technology and equipment on which much of the U.S. economy relies. We are keenly aware of the interplay between America's intellectual property system, technological innovation, and the nation's manufacturing infrastructure. Unfortunately, due to actions recently taken by the PTO, the system is now out of balance and requires immediate intervention.

The most acute challenge is the previous PTO director's unilateral imposition of a rule (the "NHK-Fintiv rule") that unfairly denies companies access to PTO inter partes review proceedings. These proceedings are an essential pillar of the America Invents Act, a law passed with overwhelming bipartisan support and signed into law by President Obama. Yet the NHK-Fintiv rule effectively wrote these vital protections out of the law (and did so with no public notice or comment).

This has caused—and continues to cause—immediate and irreparable harm to American innovators and manufacturers. The rule enables plaintiffs to manipulate the system through forum shopping and deny defendants access to agency proceedings that would assess the validity of what are often weak or invalid patents asserted against them. In fact, the policy is allowing litigation financiers—entities (increasingly foreign) that contribute nothing to American innovation and competitiveness—to obtain judgments for hundreds of millions and even billions of dollars based on patents that never should have issued.

There is no question that this is inflicting long-term harm on America's economy and national security. An industrial economy cannot function without a reliable system for adjudicating intellectual property rights. Particularly for the most complex and valuable technologies, PTO post-issuance reviews often are the only forum for obtaining an accurate and informed assessment of whether an asserted patent makes a valid claim to a technology.

Investing the billions of dollars that it costs to develop and manufacture an advanced product is not viable when there is no dependable system for evaluating the many patents that can and will be asserted against it. The current patent-review and litigation chaos undoubtedly has deterred some

direct investment in the United States. If left unchecked, it will ultimately undermine American leadership in technology and advanced manufacturing and the good-paying jobs those sectors create.

The patent system plays a critical role in rewarding research and development and thereby promoting technological innovation and economic growth. But to serve these goals, the PTO must follow the law. For the sake of the nation's economy, its technological leadership, and workers across our country, we ask that you immediately repeal the NHK-Fintiv rule and restore needed balance to America's patent system.

Sincerely,

/s/ Steven R. Rodgers
Executive Vice President and General Counsel
Intel Corporation

/s/ Jason Erb
Vice President and Chief Legal Officer
Hyundai Motor America

/s/ David Hyman
Chief Legal Officer
Netflix

/s/ Sean Edgett
General Counsel
Twitter

/s/ Adam Rosman
Chief Administrative Officer and Chief Legal Officer
Fiserv, Inc.

/s/ Stephen Kay
Senior Vice President and General Counsel
Roku

/s/ Doug Kramer
General Counsel
Cloudflare

/s/ Peter Kaes
General Counsel
Rapid7

/s/ Jennifer Farac
General Counsel & Corporate Secretary
Sierra Wireless

/s/ Troy Lester
Chief Patent Counsel
Acushnet Company

/s/ Craig Glidden
Executive Vice President, Global Public Policy,
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/s/ Sean Moriarty
Executive Vice President and General Counsel
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/s/ Francisco R. Sanchez
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/s/ Rob Beard
Senior Vice President, General Counsel and
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Micron Technology

/s/ Michael Cheah
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/s/ Kate Kozlowski
Executive Vice President, General Counsel,
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Argo AI

/s/ Pasquale Aliberti
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Morse Micro Inc.

/s/ Brent Elswick
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Mycroft AI