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Exclusive

14 Ex-Lawmakers Tell USPTO Proposed Rules Violate The Law

By [Ryan Davis](#) · [Listen to article](#)

Law360 (December 2, 2025, 7:52 PM EST) -- A group of 14 former members of Congress, including America Invents Act sponsor Patrick Leahy, has told the U.S. Patent and Trademark Office that the agency's proposal to restrict many patent challenges "violates foundational American legal principles and the AIA."

In a letter dated Monday and obtained by *Law360*, the former lawmakers argue that the notice of proposed rulemaking the USPTO released in October "runs afoul of the AIA on multiple fronts," exceeds the office's authority and should be withdrawn.

"Congress alone writes the laws and the executive branch enforces them," the letter says. "In this case, the USPTO does not have the authority to rewrite the AIA — which the undersigned individuals either voted for while serving in Congress or have supported in the years since its passage — or advance an NPRM without adhering to administrative law."

The Leahy-Smith America Invents Act, enacted in 2011, created a system in which patents can be challenged at the Patent Trial and Appeal Board. Leahy, D-Vt., championed the measure during his time in the U.S. Senate.

The USPTO has said the proposed changes would promote efficiency and predictability and that multiple challenges to the same patent "jeopardize the reliability of patent rights and incentives to invest in new technologies." The deadline for public comments on the USPTO's proposal is late Dec. 2.

Under the proposal, anyone filing a challenge under the AIA would have to stipulate to the PTAB that they and any related parties will not challenge the patent's validity on obviousness or anticipation grounds in any other proceeding. But the ex-lawmakers in their letter expressed concern that would mean that petitioners would have to forfeit invalidity arguments that are unavailable in AIA reviews.

"The USPTO does not have the authority to revise the AIA and require parties to waive defenses they cannot raise at the PTAB," the letter says.

The patent office has also proposed a rule under which AIA reviews could not be instituted if the patent claims at issue had been upheld in an earlier proceeding where the claims were challenged as obvious or anticipated, including cases not involving the petitioner. The former lawmakers say that would violate the law.

The letter argues that the USPTO has no power to revise the AIA to "take away a petitioner's right to defend themselves against a meritless patent infringement claim due to a prior lawsuit involving an unrelated third party."

Finally, the USPTO has proposed a rule that reviews would not be instituted if a decision on the patent's validity would be issued in another proceeding, like an infringement trial, before the PTAB's decision would be due.

The former lawmakers noted that the AIA bars petitioners from filing challenges more than a year after they

have been sued, but "the proposed rules would block petitions filed within this eligible window" based on parallel litigation.

"This is a nonstatutory barrier to PTAB access and violates the AIA's intent," they said.

The letter also argues that the USPTO's proposal "includes a number of false assertions," including that the changes would not be economically significant and would not have a notable impact on small entities. The rule would have a "severe, negative economic impact," the ex-lawmakers said.

"It will insulate invalid patents from review, which are frequently being leveraged in patent infringement lawsuits with hundreds of millions and even billions of dollars hanging in the balance," the letter says.

The proposal would particularly affect industries like advanced manufacturing and embolden "predatory" patent assertion entities "to target more vulnerable small- and medium-sized businesses," the ex-lawmakers said. They contend that the proposal needs additional regulatory analysis about its potential effects.

A representative of the USPTO could not immediately be reached for comment Tuesday.

In addition to Leahy, the letter was signed by former Sen. Mark Udall, D-Colo., and former U.S. Reps. Patrick Tiberi, R-Ohio; Collin Peterson, D-Minn.; Jeff Duncan, R-S.C.; Reid Ribble, R-Wis.; Steve Chabot, R-Ohio; Bob Goodlatte, R-Va.; Dick Armey, R-Texas; Peter DeFazio, D-Ore.; Ted Poe, R-Texas; Rick Boucher, D-Va.; Dennis Ross, R-Fla.; and John Mica, R-Fla.

Leahy's other named sponsor on the AIA, former Rep. Lamar Smith, R-Texas, did not sign the letter and has been critical of how the PTAB is largely used by large corporations to challenge patents they are accused of infringing.

--Editing by Alanna Weissman.

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