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POLITICS

Trump Appointees Are Hijacking the Patent System

Cronyism is threatening American innovation.



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MAY 15, 2025



Credit: Alex Brandon/AP Photo

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Four hundred and eighty-six—that's the **number** of patents attributed to Commerce Secretary Howard Lutnick, who's now the chief overseer of the United States Patent and Trademark Office (USPTO). Going by that number, one might

reasonably assume that Lutnick is one of the most exceptional inventors in modern America. Patents, after all, are supposed to allow such people to benefit from their inspiration and hard work.

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The reality is much different. It's also possible to file junk patents and thereby use the legal system to extract money from legitimate businesses. A significant chunk of Lutnick's portfolio is likely unenforceable, par for the course for

Lutnick, who has a record of being cited for deceiving the USPTO in court. Now, as the man on the inside, the former CEO of Cantor Fitzgerald, a financial services company, can put his thumb on the scale for low-quality patents.

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In 2011, Congress created the Patent Trial and Appeal Board (PTAB) with a simple goal: to serve as a “quality control” check on the U.S. patent system. The PTAB’s inter partes review (IPR) process was designed to swiftly weed out low-quality patents—the kind that stifle competition, inflate consumer prices, and entrench monopolies. But since Trump and Lutnick’s arrival, a quiet bureaucratic coup at the USPTO has undermined this critical safeguard. Acting Director Coke Morgan Stewart has moved to centralize power and gut accountability measures, opening the door to a flood of dubious patents.

What’s more, pending legislation—the Patent Eligibility Restoration Act (PERA) and the PREVAIL Act—threatens to codify these abuses into law. Additionally, the nomination of John Squires as USPTO director risks cementing a system where cronyism trumps innovation. The winners? Big pharmaceutical companies, foreign corporations, hedge funds, and politically connected lawyers—including former USPTO Director Andrei Iancu, who is already cashing in on the chaos he helped create.

The PTAB’s Promise—and Peril

The America Invents Act (AIA), which created the PTAB, was a bipartisan response to a broken patent system. For decades, vague and overly broad patents allowed “patent trolls” to extort small businesses and stifle competition—particularly in the pharma sector. As the Government Accountability Office’s latest report confirms, the PTAB’s quality check remains vital because the USPTO still prioritizes “examination output over the quality of review,” even as studies show 40 percent of litigated patents are invalidated when challenged.

But today, the PTAB’s role is under threat on two fronts: administrative power grabs and dangerous legislation.

In 2020, under Iancu's leadership, the USPTO began chipping away at the PTAB's authority, letting judges deny IPR petitions on vague "discretionary" grounds. Worse, the director—a political appointee—seized unilateral power to override PTAB decisions. Fast-forward to 2025: Under Acting Director Coke Morgan Stewart (Iancu's former chief of staff), the USPTO has doubled down on "discretionary" criteria that shield invalid patents—and their owners—from meritorious challenges. Citing a "**workload management**" crisis the USPTO **itself created by slashing PTAB judges**, Stewart rescinded former Director Kathi Vidal's 2022 guidance, which curbed abusive discretionary denials, and imposed new "Interim Processes" empowering the director to unilaterally deny IPR petitions—even if they establish a patent is likely invalid. Instead of ensuring decisions are based on merit, these processes weaponize nonsensical criteria that overwhelmingly favor patent owners.

For instance, Stewart's rules penalize challengers for using expert testimony—a factor that should support PTAB review, given that its judges are technical experts trained to evaluate such evidence, unlike district court judges and juries. Meanwhile, the longer an invalid patent has been used to extract monopoly profits, the more protected it becomes under Stewart's regime—a perverse incentive that unjustifiably rewards long-term patent abuse. Together, these criteria create a rigged system that protects the owners of invalid patents at the expense of competitors and consumers.

Iancu and Stewart have found willing collaborators in Congress. Sens. Chris Coons (D-DE) and Thom Tillis (R-NC)—**ardent architects of pharma-friendly patent reforms**—are also working overtime to expand and entrench these abuses with the two proposed bills, PERA and PREVAIL. As we **noted** last year, these bills would "fuel Big Pharma's abuse of the patent system and exacerbate the drug-pricing crisis in this country."

PERA would exacerbate the garbage patent crisis by allowing patents on products of nature, abstract ideas, and other non-inventions—think monopolies on human genes or natural remedies. PREVAIL (the Promoting and Respecting Economically Vital American Innovation Leadership Act) would gut public oversight by limiting access to IPR challenges and granting the USPTO director unprecedented power to dismiss valid patent challenges. Together, they'd create a perfect storm: PERA flooding the system with junk patents, while PREVAIL makes them nearly impossible to cancel.

Who Benefits? Follow the Money.

Big pharmaceutical companies have the most to gain from rigging the patent system. Consider Ozempic, Novo Nordisk's blockbuster drug, shielded by patents until 2033. In 2023, generic challengers filed an IPR, and the PTAB agreed the patent was likely invalid. But after its statutory 12-month deadline passed, the USPTO abruptly terminated the case in 2025, at the behest of Novo Nordisk and the generic challengers with which it had settled (on terms the USPTO is keeping confidential). The result? A further seven-year monopoly for Novo Nordisk, costing American patients and payers billions in savings. If PERA were law, such abuses would multiply, as companies expand their monopolies to natural processes (like metabolic pathways targeted by Ozempic).

Hedge funds and patent trolls also profit. Fortress Investment Group's VLSI, a patent assertion entity, secured a \$2.1 billion verdict against Intel using patents never deployed in products. Under Iancu's discretionary denial regime, VLSI dodged PTAB scrutiny. Meanwhile, PREVAIL would codify this rigged system, letting directors protect favored patent owners from review.

The conflicts of interest are blatant. After leaving the USPTO, Iancu returned to Irell & Manella—the same firm that represented VLSI in its lawsuit against Intel. Now at Sullivan & Cromwell, he advises clients on navigating a PTAB system he reshaped. In 2025, Chinese firm Innoscience secured a rare rehearing for a patent already invalidated by the PTAB, citing retroactive rule changes. The USPTO granted a delay to accommodate new counsel—who just happens to be Andrei Iancu.

Iancu is not alone. Consider acting USPTO General Counsel Nick Matich, who represented patent assertion entity Greenthread in an IPR—even transmitting its Director Review request to the PTAB in February 2024. Weeks after Matich was appointed acting GC in April 2025, the USPTO granted Greenthread's request to remand the case for rehearing—despite the PTAB's final decision invalidating its patents. While Matich's name isn't on the final order, given his role, the timing and his deep ties to the case reek of impropriety.

The Myth of “Efficiency” Through Discretion

Proponents claim discretionary denials “increase efficiency” by reducing redundant challenges. That’s nonsense, as the Innoscience and Greenthread debacles make clear. In both cases, the PTAB had already ruled—correctly—that the patents were invalid. Yet the USPTO granted rehearings not because the merits were in doubt, but to nitpick procedural issues about how the reviews were *instituted* years earlier. By reopening closed cases to relitigate long-past institution decisions, the USPTO is doubling down on inefficiency and injustice: The PTAB’s original work is erased, forcing judges to redo proceedings (or worse, letting bad patents linger unchallenged). Meanwhile, patent owners pocket windfalls from monopolies they don’t deserve.

Every rehearing over procedural minutiae wastes taxpayer resources, delays competition, and rewards those gaming the system. If “efficiency” is the goal, the solution is clear: Let the PTAB do its job, free of director meddling and rehearing loopholes.

This dire scenario could worsen if John Squires—founder of Fortress Investment’s patent litigation fund—is confirmed as USPTO director. Squires’s ties to Fortress, a key player in the patent troll ecosystem, raise glaring conflicts. At his confirmation hearing, senators must demand he recuse himself from cases involving former clients. But with PERA and PREVAIL looming, Squires’s nomination takes on existential stakes: A director with a vested interest in patent maximalism, armed with laws that enshrine abuse, could hamper American innovation and exacerbate the country’s drug-pricing crisis.

The Patent Crossroads

The PTAB was meant to be a shield against monopolistic abuse. Instead, it’s becoming a sword for the privileged. PERA and PREVAIL threaten to lock in this decay, sacrificing innovation at the altar of corporate greed.

The stakes extend beyond patents. In an era of mRNA vaccines, AI, and climate tech, strong patent quality controls are vital. Congress must reassert the PTAB’s independence, enforce accountability, and close revolving-door loopholes. The USPTO isn’t a private law firm—it’s a public institution tasked with fostering progress, not protecting monopolists.

Our future depends on getting this right.

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