

December 2, 2025

Director John A. Squires  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

**RE: Notice of Proposed Rulemaking Regarding Rules of Practice Before the Patent Trial and Appeal Board**

The Crypto Council for Innovation (“CCI”)<sup>1</sup> appreciates the opportunity to respond to the U.S. Patent and Trademark Office’s (“USPTO”) notice of proposed rulemaking regarding Rules of Practice before the Patent Trial and Appeal Board (“PTAB”).

As an initial matter, CCI strongly believes that digital assets and blockchain systems represent one of the most significant innovations in finance—and beyond—with the existing ability and continued potential to enhance ownership structures, commercial applications, cross-border payments, and transaction processing and settlement. To fully realize the benefits of this technology, entrepreneurs and industry leaders require clear rules that protect innovators, engineers, and builders. With this goal in mind, CCI firmly believes that the United States must maintain a patent system that rewards true innovation while providing efficient mechanisms to challenge invalid or meritless claims. This strategy is essential to promoting economic growth, creating high-quality American jobs, and securing U.S. leadership in digital assets.

Accordingly, CCI respectfully writes to express significant concern regarding the USPTO’s proposed rule (“Proposed Rule”), which would require companies to waive fundamental and core invalidity defenses merely for seeking PTAB review. Because 35 U.S.C. § 311(b) prohibits the use of product prior art as the basis of a ground for invalidating a patent in *inter partes* review (“IPR”), requiring every petitioner to stipulate that it will not raise any invalidity grounds under 35 U.S.C. §§ 102 and 103 in any parallel court proceeding effectively leaves innovators with no forum where they can show what truly existed before a patent was filed.

To be most helpful to the USPTO in crafting innovation-friendly policies, CCI also raises in this letter additional related concerns and policy recommendations regarding recent USPTO policy

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<sup>1</sup> As background, CCI is a global alliance of industry leaders within the digital assets industry committed to promoting the advantages of digital assets while showcasing their potential for transformation. CCI’s members represent various sectors within the digital asset ecosystem and share a common objective: advocating for responsible global regulation of digital assets to unlock economic opportunities, enhancing quality of life, promoting financial inclusivity, safeguarding national security, and countering illicit activities. CCI firmly believes that achieving these objectives necessitates well-informed, evidence-driven policy choices achieved through collaborative participation with regulators and policymakers.

shifts that have quietly hardened the path to the Patent Trial and Appeal Board (“PTAB”) and supercharged Non-Practicing Entity (“NPE”) leverage in ways that unfortunately run counter to this Administration’s stated goal of keeping the United States as the global leader in crypto and next-generation technology.

Specifically, the centralization of IPR institution authority in the Director now plays a determinative role in whether an independent PTAB panel will consider a petition. Additionally, rigid enforcement of Rule 104(b)(4) is excluding critical evidence that is essential to evaluating patent validity and would ordinarily reveal weaknesses in improperly granted claims.

Taken together, the Proposed Rule (if finalized in its current form), centralization of IPR institution authority, and rigid Rule 104(b)(4) enforcement, make it dramatically harder, and in many cases impossible, for innovators to efficiently defend themselves against meritless claims. And for digital assets, where foundational technologies are open-source, community driven, and often not documented in patents, these limits are especially damaging. NPEs already target exchanges, developers, and small contributors simply because no one “owns” or controls decentralized systems; meaning one lawsuit can be weaponized against an entire ecosystem.

Moreover, CCI would encourage the USPTO to consider bolstering transparency around opaque and foreign-funded litigation financing. If left unchecked, patent suits can be used as tools of economic pressure or foreign influence. Additional disclosures regarding litigation funding and foreign ownership or control interests would deter foreign-financed entities from using legacy patents to slow American competitors and protect small U.S. innovators who may lack comparable resources to defend themselves. The insufficient transparency into who is bankrolling patent cases or why is a national security issue, not just an IP one.

In sum, we respectfully urge the USPTO not to adopt the Proposed Rule and reject any rules that may penalize petitioners for seeking PTAB review. It is also critical for the USPTO to restore fair and consistent access to the PTAB and adopt measures that enhance transparency around litigation funding.

These recommendations would boost economic growth, create high-quality jobs, and preserve U.S. leadership in crypto innovation. They are also fully consistent with the Administration’s stated commitment to supporting “the responsible growth and use of digital assets, blockchain technology and related technologies across all sectors of the economy.”<sup>2</sup>

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<sup>2</sup> Executive Order 14178 (Jan. 23 2025)(“Strengthening American Leadership in Digital Financial Technology”), <https://www.whitehouse.gov/crypto/>.

**I. USPTO Actions Are Impeding Innovation, Job Creation, and Startup Growth in the U.S. Digital Asset Sector**

CCI addresses key concerns with the Proposed Rule and related USPTO actions that are posing significant challenges for digital asset companies to challenge weak patents.

**A. The Proposed USPTO Rule would force petitioners to give up legal defenses to obtain PTAB review.**

The Proposed Rule<sup>3</sup> would require every petitioner to stipulate that, if the PTAB institutes review, the petition will not raise *any* invalidity grounds under 35 U.S.C. §§ 102 and 103 in district court or before the International Trade Commission.<sup>4</sup> Section 102 provides an invalidity defense based on lack of novelty (that is, the invention was already patented, published, in public use, on sale, or otherwise publicly available before filing), while Section 103 provides an invalidity defense due to obviousness (that is, where the claimed invention as a whole would have been obvious before the filing to a person having ordinary skill in the relevant art).<sup>5</sup>

This proposal is particularly concerning because 35 U.S.C. § 311(b) already prohibits reliance on product prior art challenges in IPR proceedings. As such, the Proposed Rule would bar companies from asserting certain invalidity defenses in court—even though those same defenses cannot be used at the PTAB. In other words, the proposal would require companies to give up these defenses in court *and* in IPR—leaving innovators with no forum where they can show what truly existed before a patent was filed. Historically, petitioners only waived invalidity arguments based on certain patents and printed publications (known as the *Sotera* stipulation).

In the digital asset sector, where early technologies were built and developed openly, iteratively, and often without patent protection, product prior art is frequently the only meaningful documentation of what existed at a given time. Excluding that evidence from PTAB review eliminates the primary mechanism for invalidating weak or overbroad claims that target foundational blockchain and cryptographic protocols.

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<sup>3</sup> 37 CFR Part 42, Notice of Proposed Rulemaking Re: Revision to Rules of Practice before the Patent Trial and Appeal Board (Oct. 17, 2025), available at [https://public-inspection.federalregister.gov/2025-19580.pdf?utm\\_campaign=subscriptioncenter&utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term=](https://public-inspection.federalregister.gov/2025-19580.pdf?utm_campaign=subscriptioncenter&utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=)

<sup>4</sup> See proposed 37 C.F.R. § 42.108(d) (“*Required stipulation for efficiency. Inter partes* review shall not be instituted or maintained unless each petitioner files a stipulation with the Board and any other tribunal where it is litigating or later litigates regarding the challenged patent, stating that if a trial is instituted, the petitioner and any real party in interest or privy of the petitioner will not raise grounds of invalidity or unpatentability with respect to the challenged patent under [35 U.S.C. 102](#) or [103](#) in any other proceeding.”).

<sup>5</sup> See 35 U.S.C. § 102 (Conditions for patentability; novelty); § 103 (Conditions for patentability; non-obvious subject matter).

**B. The Director now determines whether every single challenge to a patent goes forward.**

On October 17, 2025, the USPTO issued an open letter and memorandum centralizing authority to institute IPR and post grant review (“PGR”) in the hands of the Office of the Director.<sup>6</sup> Under this new framework, the Director personally determines whether each challenge to a patent may proceed—whether based on discretionary factors, the merits, or other non-discretionary considerations—and issues a summary notice of that decision.<sup>7</sup> While we appreciate the USPTO’s commitment to administrative consistency and oversight, this centralization risks creating a bottleneck that restricts access to PTAB review. It also introduces uncertainty into a process that has historically relied on the independence and technical expertise of the PTAB multi-member panels.<sup>8</sup> We respectfully submit that maintaining a meaningful role for these expert panels is essential to ensuring a balanced, efficient, and credible review system.

**C. USPTO enforcement of Rule 104(b)(4) restricts key evidentiary support.**

In July 2025, USPTO issued a memorandum providing that it will enforce 37 C.F.R. § 42.104(b)(4) (“Rule 104(b)(4)”) to prohibit IPR petitioners from relying on expert testimony, applicant admitted prior art, common sense, or other forms of evidence that is not prior art consisting of patents or printed publications, (collectively, “general knowledge”) to supply a missing claim limitation.<sup>9</sup> Any IPR petition that fails to comply with Rule 104(b)(4) *shall* be denied. This rigid enforcement precludes critical evidence that is essential to evaluating patent validity and would ordinarily reveal weaknesses in improperly granted claims, especially in crypto projects where much of the most probative evidence does not reside in legacy patents or printed publications.

**II. Harm to the Digital Asset Ecosystem**

Taken together, the Proposed Rule, October Memorandum, and July Memorandum have significantly increased abusive litigation risks, especially in the case of blockchain technology,

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<sup>6</sup> USPTO Memorandum Re: Director Institution of AIA Trial Proceedings (October 17, 2025), available at [https://www.uspto.gov/sites/default/files/documents/open-letter-and-memo\\_20251017.pdf](https://www.uspto.gov/sites/default/files/documents/open-letter-and-memo_20251017.pdf) (hereinafter, “October Memorandum”).

<sup>7</sup> October Memorandum at 2.

<sup>8</sup> *Id.* at 2 (providing that this memorandum supersedes Interim Processes to the extent that (1) routine decisions on institution will be limited to summary notices, and (2) merit-based decisions on whether to institute petitions will not be referred to a three-member panel of the PTAB). Note: All petitions referred to the PTAB on consideration of the merits and non-discretionary considerations under the Interim Process prior to October 20, 2025 remain with a three-member panel. *Id.*

<sup>9</sup> USPTO Memorandum Re: Enforcement and Non-Waiver of 37 C.F.R. § 42.104(B)(4) and Permissible Uses of General Knowledge in Inter Partes Reviews (July 31, 2025), available at [https://www.uspto.gov/sites/default/files/documents/aapa\\_memo\\_final\\_signed.pdf](https://www.uspto.gov/sites/default/files/documents/aapa_memo_final_signed.pdf) (hereinafter, “July Memorandum”).

where decentralized networks validate transactions, secure data, and achieve consensus. Because no single person owns or controls these systems, plaintiffs have begun suing exchanges, miners, and developers as proxies for an entire ecosystem.

Without meaningful access to the PTAB, every time a meritless patent suit reaches the crypto community, companies are forced to litigate in district court where costs escalate dramatically. Instead of resolving a weak patent claim for tens or hundreds of thousands of dollars through PTAB review, they must spend millions defending it in federal court. Those costs come directly out of engineering and product-development budgets. The result is fewer engineers hired, fewer products built, slower innovation, and ultimately fewer American jobs in the digital asset sector. In this way, the patent system—under its current configuration—quietly suppresses growth in one of the most innovative sectors of the U.S. economy. Moreover, these patent assertions do not merely threaten corporate defendants; they also expose individual developers and inventors, undermining the stability and integrity of the broader financial and technological ecosystem.

### **III. Specific Examples Directly Illustrate the Problem**

The concerns outlined above are not theoretical. In *Pardalis v. Coinbase*, for example, three expired patents from the early 2000s, originally directed at livestock tracking, were repurposed to allege infringement by blockchain operations.<sup>10</sup> Under current PTAB policies, the defendant in this case is effectively unable to challenge these patents through the PTAB, even where the invalidating prior art is clear. As a result, the company must spend millions of dollars on discovery and trial preparation to defend against patents that are likely invalid and/or not infringed—resources that would otherwise support engineering, hiring, and product development.

Similarly, Malakie Innovations, an Irish-based patent-holding company that acquired legacy cryptography portfolios from BlackBerry Certicom, recently sued Marathon Digital Holdings and Core Scientific (among others), alleging infringement of patents related to Elliptic Curve Cryptography (“ECC”) techniques.<sup>11</sup> ECC is a foundational technique used for digital signatures and key generation across virtually all blockchain protocols, including Bitcoin.<sup>12</sup> Because Bitcoin has no single owner to target, Malakie instead targeted miners as proxies for the network itself.<sup>13</sup> If Malakie’s theory holds, any company operating a wallet, node, or exchange, could face similar litigation exposure.

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<sup>10</sup> *Pardalis Technology Licensing, LLC v. Coinbase*, 7:25-cv-00457, (W.D. Tex. 2025).

<sup>11</sup> See *The Trolls Are Coming: Defending Bitcoin Mining From Patent Trolls*, Bitcoin Magazine (June 18, 2025), <https://bitcoinmagazine.com/legal/the-trolls-are-coming-defending-bitcoin-mining-from-patent-trolls>.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

These two cases alone illustrate the severity of the current problem and how the USPTO’s policy posture magnifies it. Notably, Malakie and Pardalis filed their cases in jurisdictions they could strategically select precisely because access to the PTAB has been curtailed.

#### **IV. Foreign Litigation Funding**

As Director John Squires recently testified before the Senate Judiciary Subcommittee on Intellectual Property, opaque foreign funding of patent litigation poses “significant national security concerns.”<sup>14</sup> The USPTO has likewise identified foreign entities that may have been leveraged by the Chinese government to engage in surveillance and corporate espionage against U.S. targets.<sup>15</sup> Establishing a clear and consistent disclosure regime identifying who is funding patent claims would strengthen national security and help protect U.S. innovators from predatory or exploitative litigation practices.

To this end, CCI appreciates Director Squires’s recent decision to restore strict requirements obligating petitioners to identify all real parties in interest before a trial may be instituted.<sup>16</sup> This is an important step toward transparency. However, this measure alone is insufficient. To fully advance the goal of reducing improper foreign influence and increasing accountability, comparable disclosure obligations should also apply to litigation funders and patentees asserting claims against U.S. companies.

#### **V. Policy Recommendations**

To address the significant concerns highlighted above, CCI offers the following recommendations.

##### **Preserve Access to § 102, 103 Defenses and Product Prior Art in IPR Proceedings:**

The USPTO should not adopt Proposed Rule 42.108(d) or any similar proposal that would require petitioners to forgo invalidity challenges under 35 U.S.C. §§ 102 or 103. As noted above,

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<sup>14</sup> USPTO Restores Pre-SharkNinja Requirement for Petitioners to Identify all RPIs Before Institution of Trial, Morgan Lewis, (Oct. 30, 2025) <https://www.morganlewis.com/pubs/2025/10/uspto-restores-pre-sharkninja-requirement-for-petitioners-to-identify-all-rpis-before-institution-of-trial>; See also, Director Squires’ written responses to questions from Senator Grassley for stating “Allowing foreign rivals to bankroll lawsuits against U.S. companies to gain access to our technology is unacceptable.” [https://www.judiciary.senate.gov/imo/media/doc/2025-05-21\\_qfresponses\\_squires.pdf](https://www.judiciary.senate.gov/imo/media/doc/2025-05-21_qfresponses_squires.pdf).

<sup>15</sup> USPTO Restores Pre-SharkNinja Requirement for Petitioners to Identify all RPIs Before Institution of Trial, Morgan Lewis, (Oct. 30, 2025) <https://www.morganlewis.com/pubs/2025/10/uspto-restores-pre-sharkninja-requirement-for-petitioners-to-identify-all-rpis-before-institution-of-trial>.

<sup>16</sup> U.S. Patent & Trademark Office, PTAB De-designates a Decision: *SharkNinja Operating LLC v. iRobot Corp.* (de-designating as precedential *SharkNinja Operating LLC v. iRobot Corp.*, which held that a real party in interest analysis is not required of a trial proceeding) (Sept. 26, 2025), <https://www.uspto.gov/subscription-center/2025/ptab-de-designates-decision>.

the most relevant prior art in the crypto sector often lies in products and technical documentation, not in patents. Limiting their use eliminates key safeguards against frivolous claims against core blockchain protocols, while exposing individual developers and inventors to liability. Relatedly, USPTO should withdraw its July Memorandum limiting reliance on general knowledge, including expert testimony, in IPRs.

#### **Restore Predictable and Fair PTAB Access:**

The USPTO should revise PTAB discretionary-denial guidance to restore predictable and fair access to IPR. This should include guidance reaffirming that expired or facially invalid patents remain challengeable via IPR.

The USPTO should also add a clarifying rule to ensure distributed and systemic technologies are able to access PTAB review on the merits. For example, when claims implicate multiple independent users, systems, or companies—such as fundamental industry processes, foundational technologies, or decentralized networks or consensus systems—those claims should be *presumptively* eligible for PTAB review. Discretionary denial should apply only when the petition fails on the merits.

#### **Require Greater Funding Transparency at PTAB:**

The USPTO should issue a rule requiring both petitioners and patent owners to disclose litigation funding and foreign ownership or control interests. As noted, Director Squires has appropriately already implemented this for petitioners. For the same reasons this transparency is warranted from challengers, comparable disclosure should apply to litigation funders and patentees asserting claims against U.S. companies. Requiring such disclosures would deter foreign-financed entities from using legacy patents to impede U.S. competitors and would help protect smaller American innovators who may lack the resources to defend against strategically funded litigation.

#### **Establish a USPTO Crypto Working Group:**

The USPTO should establish a working group on patent quality and emerging technology policy (the “Working Group”). The Working Group should provide a structured forum between the USPTO, industry, and innovators to improve patent quality and PTAB accessibility. The Working Group could inform USPTO policies by: recommending criteria for when patents claiming fundamental or system-level processes should be eligible for PTAB review; strengthening examiner guidance on emerging technologies and improving access to nontraditional prior art, such as open-source and protocol documentation; and studying the growing role of foreign or

speculative litigation funding in U.S. patent enforcement and developing balanced transparency frameworks.

CCI appreciates the USPTO's attention to these issues. We respectfully request that the USPTO adopt the above reforms to strengthen patent quality, preserve meaningful access to PTAB and IPR, and promote greater transparency in the patent litigation process. We submit that these actions are essential to ensuring that the United States remains the global leader in blockchain, cryptography, and the next generation of finance and computing. CCI welcomes the opportunity to continue engaging with the USPTO on these important issues and stands ready to assist in developing policies that advance responsible innovation and ensure continued U.S. leadership.

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Respectfully,



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