

December 22, 2025

The Honorable Howard W. Lutnick
Secretary
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

John Squires
Under Secretary of Commerce for Intellectual Property
and Director of the U.S. Patent and Trademark Office
600 Dulany St
Alexandria, VA 22314

Dear Secretary Lutnick and Director Squires,

We write with serious concerns regarding the Administration's reported proposal to drastically overhaul the patent ecosystem by forcing patent holders to pay between one and five percent of their invention's overall value to file for a patent.¹ Currently, inventors are charged flat fees, typically no higher than \$10,000. A fee of between one and five percent of a patent's value could cost individual inventors millions of dollars and transform the existing flat filing fee structure into a speculative and prohibitive bar to innovation for start-ups and other small-to-mid-size businesses. The very nature of patent valuation is subjective, risk-laden, and without guarantees. Taxing a patent's potential rather than its actualized worth will necessarily lead some inventors to forego developing their ideas and some companies to forego investing in research and development in the United States.

While Section 10(a) of the America Invents Act ("AIA") temporarily allows the United States Patent and Trademark Office ("USPTO") to set or adjust its fees, the statute also provides clear limits on that authority.² Fees may be set only to recover the aggregate estimated costs to the USPTO for processing, activities, services, and materials relating to patents and trademarks. Additionally, as explained in the USPTO's final rule published on November 20, 2024, entitled "Setting and Adjusting Patent Fees During Fiscal Year 2025," the Director's authority to initiate, set, or adjust fees under Section 10 of the AIA will expire on September 16, 2026, without additional action from Congress.³

This proposal to charge inventors a value-based tax to file their patents not only extends beyond the limits of USPTO's authorities, it also serves to undermine policy efforts to promote innovation in the United States. At a time when the USPTO should be taking steps to ensure the United States continues its reign as the worldwide leader in innovation, taxing ideas would drive innovation abroad to China and Europe, where inventors and business owners know their

¹ Amrith Ramkumar, *Trump Administration Weighs Patent System Overhaul to Raise Revenue*, WALL ST. J. (July 28, 2025), https://www.wsj.com/politics/policy/patent-system-overhaul-18e0f06f?st=u7c8gy&reflink=desktopwebshare_permalink.

² Leahy-Smith America Invents Act, Pub. L. No. 112-29, § 10(a), 125 Stat. 284 (2011)

³ *Setting and Adjusting Patent Fees During Fiscal Year 2025*, 89 Fed. Reg. 91898 (Nov. 20, 2024) (codified as amended in 37 C.F.R. §§ 1, 41, 42).

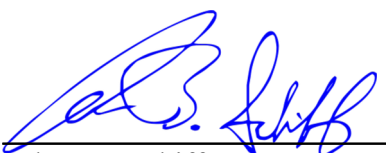
inventions would be protected. Larger businesses will move their research and development dollars overseas and start-ups may opt not to waste time investing in innovation at all. The United States cannot risk trampling on start-ups and small businesses in an effort to raise revenue that's statutorily required to be spent at the USPTO anyway.

A one to five percent valuation-based patent filing tax would also encourage companies to protect their most valuable inventions as trade secrets instead of using the patent system. Such a realignment would likely decrease revenue at USPTO while simultaneously preventing the information sharing in the IP ecosystem that is required when inventors file patents.

The framers enshrined the right to patent inventions in Article 1, Section 8, Clause 8 of the U.S. Constitution, writing that such a right was necessary, "[t]o promote the Progress of Science and useful Arts."⁴ The patent tax currently under consideration at USPTO and the Department of Commerce would be a roadblock to that progress and leave the United States' intellectual property ecosystem worse off than it has been since the Framers first wrote those precious words. We strongly encourage you not to move forward with any proposal that would tie patent filing fees to a valuation of the patent because such a proposal would be tantamount to an innovation tax levied on American inventors.

As members of the Senate Judiciary Subcommittee on Intellectual Property, we respectfully request a briefing on this issue no later than January 9, 2026. We would appreciate a response to this letter no later than January 30, 2026. Thank you for your attention to this matter.

Sincerely,



Adam B. Schiff
United States Senator



Sheldon Whitehouse
United States Senator



Mazie K. Hirono
United States Senator



Peter Welch
United States Senator

⁴ U.S. Const. art. I, § 8, cl. 8.