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Citizen Outreach

AMERICAN ASSOCIATION of SENIOR CITIZENS

The Honorable Howard Lutnick
Secretary of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

June 27, 2025

Dear Secretary Lutnick:

We sincerely appreciate your and President Trump's continuing efforts to fix the many problems left to you by the Biden Administration. We know you are dealing with an array of significant challenges and applaud the work you have done thus far. We write to bring to your attention another example of Biden Administration injustice that we believe merits your prompt attention.

The undersigned conservative organizations are strong supporters of property rights and applaud the steps the Administration has already taken to support a strong patent system which drives tremendous innovation and economic activity. We are extremely concerned about the Biden Administration's tolerance of the abuse of the Inter Partes Review (IPR) process, and urge you to take immediate steps to remedy those matters.

This matter concerns the United States patent system, the integrity of which has been eroded by misguided policies heavily influenced by opponents of strong property rights. We applaud the work of the Acting Director of the United States Patent and Trademark Office (USPTO), Coke Morgan Stewart, who has demonstrated bold leadership in swiftly rescinding Biden Administration policies that enabled large companies to weaponize the administrative state against American inventors and entrepreneurs.

For example, former USPTO Director Kathi Vidal created an arbitrary and widely criticized "compelling merits" standard in a June 21, 2022 policy memo, which she wielded to institute administrative proceedings against issued patents that Article III courts previously had found valid and infringed. Acting Director Stewart rescinded that policy on February 28, 2025, and she has vacated proceedings against patent owners that would not otherwise have been instituted.

Yet despite all of this progress, it has come to our attention that the USPTO continues to defend two of the most egregious and high-profile applications of the repudiated "compelling merits" standard. These cases are currently pending before the United States Court of Appeals for the Federal Circuit: *VLSI Tech. LLC v. OpenSky Indus., LLC & Intel Corp.*, Nos. 23-2158, 23-2159 (Fed. Cir.), and *VLSI Tech. LLC v. Patent Quality Assurance LLC & Intel Corp.*, Nos. 23-2298, 23-2354 (Fed. Cir.). The USPTO has intervened in these appeals to defend the decisions of the Biden Administration, but should—in our view—request immediate remands to the agency.

In these cases, former Director Vidal personally intervened and handed Intel Corporation—her former client—an unwarranted opportunity to revive challenges to VLSI Technology LLC's patents previously rejected by the PTAB after a jury determined that Intel infringed those patents and owed VLSI billions of dollars in damages. These *inter partes* review (IPR) patent challenges never should have been permitted in the first place. They were requested by mysterious shell entities and—in Director Vidal's own words—abused "the IPR process, the patent

system, and the [USPTO]." *See OpenSky Indus., LLC v. VLSI Tech. LLC*, IPR2021-01064, Paper 102 (PTAB Oct. 4, 2022); *Patent Quality Assurance, LLC v. VLSI Tech. LLC*, IPR2021-01229, Paper 102 (PTAB Dec. 22, 2022). Former Director Vidal should have terminated those proceedings.

But that is not what she did. Instead, former Director Vidal expressly invoked her "compelling merits" standard to enable statutorily time-barred petitioner Intel Corporation to step into the shoes of these shell entities. She also suppressed and sealed an anonymous whistleblower report linking Intel to one of these abusive shell entities. That result is not only legally suspect, but also plainly unfair. Intel already had attempted to challenge these same patents during the first Trump Administration. Intel lost and was statutorily barred from bring further challenges. Moreover, a jury found the patent infringed to the tune of over $2 billion in damages, and an Article III court also rejected Intel's validity challenges.

Acting Director Stewart has not only rescinded the policy underlying this miscarriage of justice, she also stated her disagreement with these outcomes. In a brief recently submitted to the Federal Circuit in the pending appeals, the USPTO unequivocally states that "the current Acting Director would not have similarly decided this case, particularly in view of the fact that [petitioner] had engaged in serious misconduct and the fact that the joined party was otherwise time barred and had prior IPR petitions denied . . . ." We fail to understand how the PTO continues to defend these Biden Administration decisions that countenance "serious misconduct."

We ask that you consider directing the agency to request an immediate remand of these matters from the Federal Circuit back to the USPTO. Once these cases are remanded, the agency can conduct a full and honest investigation under the authority granted to it, consistent with the facts and the law, free of the political influence and manipulation that has created this situation. Indeed, we take no position on the ultimate merits, but believe proceedings from the government should be fair and free of abuse, misconduct, and gamesmanship. Further, it is not too much to ask that the PTO understand who or what is bankrolling Open Sky and PQA.

By securing remand of these cases to the USPTO, you will have restored integrity to the process, struck a blow against swamp culture, and reverse the abuses allowed during the Biden Administration. Conducting a thorough investigation will send a powerful message to abusers of the patent system: the Trump Administration will hold those who engage in "serious misconduct" accountable and such parties will no longer be allowed to run roughshod over the inventors and entrepreneurs whose ingenuity and investment propel innovation.

We applaud your and President Trump's leadership in addressing the very significant problem of government agencies being captured by special interests and taking actions contrary to the interests of American workers, taxpayers, and our economy. You have made important progress in the Administration's early days, and we look forward to seeing more in the days ahead.

We thank you in advance for your consideration of this important matter.

Sincerely,

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CC: Coke Morgan Stewart, Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office