

February 24, 2023

The Honorable Kathi Vidal  
Under Secretary of Commerce for Intellectual Property and  
Director of the U.S. Patent and Trademark Office  
600 Dulany St  
Alexandria, VA 22314

Dear Director Vidal,

On behalf of the Bayh-Dole Coalition, I write in response to the United States Patent and Trademark Office's October 4, 2022 request for comments on "proposed initiatives directed at bolstering the robustness and reliability of patents."

The Bayh-Dole Coalition is a diverse group of innovation-oriented organizations committed to celebrating and protecting the Bayh-Dole Act. Our members stand united against misguided efforts to undermine the law by twisting its intent.

Passed in 1980, Bayh-Dole transformed America's technology transfer system by enabling universities, nonprofit research centers, and small businesses to own, patent, and license inventions that were supported by federal funding. Prior to the law, tens of thousands of technological breakthroughs gathered dust on the proverbial laboratory shelf. Today, Bayh-Dole is credited with supporting the creation of more than 15,000 startups and more than 6.5 million jobs.

We thank the USPTO for the opportunity to provide constructive input on the state of the U.S. patent system, which plays an essential role in technology transfer, licensing agreements, and investment incentives.

Innovation rests on reliable, predictable patent protections. Those protections are the only assurance an investor has when risking capital to help bring an invention out of a federally funded lab and to the marketplace. Indeed, the very first words of the Bayh-Dole Act state: "It is the policy and objective of the Congress to use the patent system to promote the utilization of inventions arising from federally supported research and development..."

Commercializing federally-funded inventions is a high-risk endeavor, much more likely to fail than to succeed. It can easily take more than a decade and hundreds of millions — or even billions — of dollars for a company to turn an invention into a commercial good. Nearly 70% of academic inventions are licensed to small companies, most of whom are required to raise significant amounts

of venture funding to operate. Without strong, reliable patents, these companies and their backers simply cannot undertake this risk. Our system of innovation rests on the foundation of our patent system, which has made us the most innovative nation in human history. That is no small achievement and should never be taken for granted.

The RFC is premised on the notion that America's patent system needs a major overhaul — and that there is a pressing need to “improve patent quality.”

Nothing could be further from the truth. There's no evidence to suggest that patents are any less “robust” or “reliable” than they have been in the past. Nor is there any evidence showing that the proposed changes to USPTO regulation and practice would fix any particular problem shown to exist. The USPTO's strict standards for granting patents remain rooted in the statutory requirements of utility, novelty, and non-obviousness.

Advancing the mistaken narratives prompting the RFC sows uncertainty and rocks investor confidence. We know, at least anecdotally, that the initiatives proposed in the RFC are already discouraging investment in sponsored research and university tech transfer, thus depriving Americans of life-changing — or even life-saving — innovations waiting to be discovered.

None of this is to say that the U.S. patent system is perfect or that there isn't room for improvement. For one, the USPTO could work with Congress to clarify which inventions are patent eligible. A series of court cases have created uncertainty about whether certain products, including certain medical diagnostics, can be patented at all.

We thank you for the opportunity to comment on this important matter. We share your goal of promoting both innovation and competition. As you craft and implement new initiatives in the coming months, we hope you will consider working with the Bayh-Dole Coalition.

Sincerely,



Joseph P. Allen  
Executive Director  
Bayh-Dole Coalition