

February 5, 2026

The Honorable Howard W. Lutnick
Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

RE: Ensuring USPTO Policies Support U.S. Crypto Innovation & Leadership

I. Summary

The Crypto Council for Innovation (“CCI”)¹ respectfully writes to express serious concern regarding certain recent policies and actions of the U.S. Patent and Trademark Office (“USPTO”) that create real, immediate risk for American companies at the forefront of innovation.

At the outset, CCI recognizes that the Department of Commerce (the “Department”), under your leadership, has taken important steps to embrace digital assets and blockchain as critical drivers of U.S. economic competitiveness. For example, your support for publishing key economic statistics, such as Gross Domestic Product, on public blockchain infrastructure underscores blockchain’s ability to enhance transparency, data integrity, and public trust.² CCI also appreciates your leadership as a member of the President’s Working Group on Digital Asset Markets (“PWG”), including the PWG’s Report on Digital Asset Markets, which provided a clear and robust blueprint to ensure continued U.S. leadership in digital assets and further acknowledged that “digital assets and blockchain technologies can revolutionize not just America’s financial system, but systems of ownership and governance economy-wide.”³

CCI also strongly believes that digital assets represent one of the most significant innovations in finance—and beyond—with the existing ability and continued potential to enhance ownership

¹ 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.

² James Hunt, *US Government Begins Distributing Key Macroeconomic Data on Public Blockchains, Including Bitcoin, Ethereum, and Solana*, Murtuza, (August 28, 2025), <https://www.theblock.co/post/368631/us-government-data-public-blockchains>. (“We are making America’s economic truth immutable and globally accessible like never before, cementing our role as the blockchain capital of the world.”).

³ *Strengthening American Leadership in Digital Financial Technology* at 5, available at <https://www.whitehouse.gov/crypto/>.

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, not abusive patent litigation. 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 concern regarding recent USPTO policy 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 run directly counter to this Administration’s stated goal of keeping the United States as the global leader in crypto and next-generation technology.

In brief, recent actions by the USPTO have significantly constrained one of the most effective mechanisms to challenge improperly issued patents—*inter partes* review (“IPR”). The centralization of IPR institution authority in the Director now plays a determinative role in whether the PTAB will even consider a petition. A newly-proposed framework would require companies to waive fundamental and core invalidity defenses merely for seeking PTAB review.⁴ 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, these changes make it dramatically harder, and in many cases impossible, for real innovators to efficiently defend themselves against meritless claims. And for crypto, 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. This means one lawsuit can be weaponized against an entire ecosystem.

Meanwhile, opaque and foreign-funded litigation financing continues unchecked, creating the real possibility that patent suits can be used as tools of economic pressure or foreign influence. There is insufficient transparency into who is bankrolling these cases or why, and that is a national security issue, not just an IP one.

If the current policies stand, the message to innovators is clear: build elsewhere. We respectfully urge the Administration to restore fair and consistent access to the PTAB; to reject any rules that penalize crypto companies, including rules related to seeking review; to adopt measures that enhance transparency around litigation funding; and to establish a crypto working group within

⁴ CCI submitted a comment letter to USPTO’s notice of proposed rulemaking on December 2, 2025, available here: <https://cryptoforinnovation.org/wp-content/uploads/2025/12/Crypto-Council-for-Innovation-CCI-Comment-Letter-to-USPTO-regarding-NPRM-1.pdf>.

the USPTO so industry stakeholders have a structured forum for providing input on patent issues unique to foundational and distributed technologies—ensuring policies are informed, practical, and innovation-friendly.

CCI believes that the United States must maintain a patent system that rewards genuine innovation while providing efficient mechanisms to challenge invalid or meritless claims—not one that diverts growing industries into slow, costly, and avoidable litigation at the expense of hiring engineers and building new technologies. This is essential to economic growth, the creation of high-quality jobs, and the preservation of U.S. leadership in blockchain, digital assets, and the broader crypto economy. It is 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.”⁵ Unfortunately, that vision is currently being undermined by actions taken within the USPTO itself.

To address these challenges, CCI offers the below recommendations to restore fair and meaningful access to the PTAB and IPR, bolster transparency, and ensure the United States continues to lead on crypto.

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

The USPTO has implemented a series of changes that make it dramatically harder for companies to challenge weak patents.

A. The Director now personally 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”) entirely in the hands of the Office of the Director, rather than referring those decisions to PTAB panels comprised of administrative patent judges who are patent-law specialists with deep technical expertise in the relevant fields.⁶ Under this framework, the Director will make a determination to institute IPR based on discretionary considerations, the merits, or other non-discretionary considerations and issue a summary notice decision accordingly.⁷ This centralization creates a significant bottleneck that restricts access to

⁵ Executive Order 14178 (Jan. 23 2025)(“Strengthening American Leadership in Digital Financial Technology”), <https://www.whitehouse.gov/crypto/>.

⁶ 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 (hereinafter, “October Memorandum”).

⁷ October Memorandum at 2.

PTAB review and injects uncertainty into a process that historically relied on an independent expert-driven process.⁸

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

Under the recent notice of proposed rulemaking,⁹ PTAB will not institute an IPR unless the petitioner stipulates that, if review is instituted, neither the petitioner nor any real party in interest or privy will assert *any* invalidity grounds under 35 U.S.C. §§ 102 and 103 in any parallel district court or International Trade Commission (“ITC”) proceeding. In other words, as a condition of accessing IPR, petitioners must forego arguing in court that a patent is invalid due to lack of novelty (that is, that the claimed invention was already publicly available) or obviousness (that is, the claimed invention would have been obvious to a person of ordinary skill in the relevant art).¹⁰ Because § 311(b) prohibits relying on product prior art challenges in IPR proceedings,¹¹ the proposed rule 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.¹²

In the crypto 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 *and* any parallel litigation proceeding would eliminate the primary mechanism for invalidating weak or overbroad claims that target foundational blockchain and cryptographic protocols.

⁸ *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.

⁹ 37 CFR Part 42, Notice of Proposed Rulemaking Re: Revision to Rules of Practice before the Patent Trial and Appeal Board (October 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=. Proposed § 42.108 “Institution of *inter partes* review. Section 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.”

¹⁰ *See* 35 U.S.C. § 102 (providing an invalidity defense based on lack of novelty); *See* 35 U.S.C. § 103 (providing an invalidity defense due to obviousness).

¹¹ *See* 35 U.S.C. 311(b) (“A petitioner in an *inter partes* review may request to cancel as unpatentable 1 or more claims of a patent only on a ground that could be raised under section 102 or 103 *and only on the basis of prior art consisting of patents or printed publications.*)(emphasis added).

¹² Historically, petitioners only waived invalidity arguments based on certain patents and printed publications (known as the *Sotera* stipulation). But now the USPTO would require companies to also waive product-based invalidity defenses, the very ones the companies are legally forbidden from raising in an IPR.

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

In July 2025, USPTO issued a memorandum providing that it will strictly enforce 37 C.F.R. § 42.104(b)(4) (“Rule 104(b)(4)”), requiring IPR petitioners to map every claim limitation to prior art patents or printed publications and barring 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 fill in missing elements.¹³ Any IPR petition that attempts to rely on general knowledge *shall* be denied. This rigid enforcement precludes critical evidence that is essential to evaluating patent validity and exposing 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.

III. Harm to the Crypto Ecosystem

Without 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 American engineers hired, fewer American products built, slower American innovation, and ultimately fewer American jobs in the digital asset sector.

The patent system—under its current configuration—is quietly suppressing 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.¹⁴

¹³ 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 (hereinafter, July Memorandum).

¹⁴ These concerns are not theoretical. For example, 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. ECC is a foundational technique used for digital signatures and key generation across virtually all blockchain protocols, including Bitcoin. Under Malakie’s theory, simply verifying and signing Bitcoin transactions with ECC-based keys is itself infringing, effectively treating routine network participation as a patent violation. Because Bitcoin has no single owner to target, Malakie instead targeted miners as proxies for the network itself. If Malakie’s theory holds, any company operating a wallet, node, or exchange, could face similar litigation exposure. *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>. *See also* *Pardalis Technology Licensing, LLC v. Coinbase*, 7:25-cv-00457, (W.D. Tex. 2025)(where expired patents from the early 2000s, originally directed at livestock tracking, were repurposed to allege infringement by blockchain operations).

Under current USPTO policies, crypto firms are effectively unable to challenge these patents through the PTAB, even where the invalidating prior art is clear. As a result, the companies 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.

IV. Foreign Litigation Funding Concerns

As USPTO Director John Squires testified before the Senate Judiciary Subcommittee on Intellectual Property, opaque foreign funding of patent litigation poses “significant national security concerns.”¹⁵ Moreover, per a recent USPTO memo, “foreign state actors have sought to manipulate U.S. IP systems, including administrative challenges before the PTAB, to weaken or misappropriate U.S. technological leadership.”¹⁶ Meanwhile, Congress has identified foreign entities that may have been leveraged by the Chinese government to engage in surveillance and corporate espionage against U.S. targets.¹⁷ A clear and consistent disclosure regime identifying who is funding patent claims would strengthen national security and safeguard U.S. innovators from predatory or exploitative litigation.

V. Recent § 101 Guidance Harms the Crypto Ecosystem

We appreciate the Director’s acknowledgement that crypto inventions are patentable when they meet the statutory requirements. However, explicitly calling out “crypto” in recent § 101 guidance sends a dangerous signal.¹⁸ It implies reduced scrutiny for patents merely characterized as crypto-related, at both examination and post-grant stages. This signaling actively invites abuse.

Lowered scrutiny incentivizes patentees to relabel old, expired, or unrelated patents as “crypto” in order to target the crypto industry. The *Pardalis v. Coinbase Global* litigation illustrates the risk: decades-old, expired patents with no meaningful connection to modern cryptographic systems are being weaponized against crypto companies.

¹⁵ 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.

¹⁶ *See* Memorandum from Director John A. Squires Re: Precedential designation of *Corning Optical Communications RF, LLC v. PPC Broadband Inc.*, IPR2014-00440 at 2 (Oct. 28, 2025).

¹⁷ *See id.* at 3 (noting “Congress also has expressed concern that one frequent petitioner could have been used by the Chinese government to ‘track the locations of Federal employees and contractors, build dossiers of personal information for blackmail, and conduct corporate espionage.’”) (quoting *TikTok Inc. v. Garland*, 604 U.S. 56, 74 (2025)).

¹⁸ *See, e.g.*, Memorandum from Director John A. Squires, Subject Matter Eligibility Declarations (Dec. 4, 2025), <https://www.uspto.gov/sites/default/files/documents/smeds-corps.pdf>.

This problem will rapidly compound. In an environment of relaxed examination standards, generative AI tools will be used to mass-produce low-quality patent applications that are facially plausible but substantively weak. Without rigorous, technology-neutral scrutiny, these AI generated filings will flood the system. Once issued, they will be extraordinarily difficult, if not impossible, to unwind at scale, imposing lasting costs on innovators, the USPTO, and the courts.

Issuing weak patents that are ultimately invalid under current law does not advance U.S. innovation or competitiveness. These patents can be acquired and asserted by both domestic and foreign actors, creating systemic drag rather than strategic advantage.

VI. Policy Recommendations

To address these significant concerns and to support the Administration's goal of ensuring the U.S. remains the crypto capital of the world, CCI respectfully recommends the following:

Restore Predictable and Fair PTAB Access:

- The USPTO should issue rulemaking or guidance to reaffirm that expired or facially invalid patents remain eligible for IPR and clarify that patents covering distributed and systemic technologies are able to access PTAB review on the merits.
- 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.

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

- The USPTO should not adopt its proposed rule to require petitioners to forgo invalidity challenges under 35 U.S.C. §§ 102 or 103 in any parallel court proceeding to access IPR, or any other rule that would penalize petitioners for seeking IPR institution.
- Further, USPTO should withdraw its July Memorandum limiting reliance on general knowledge, including expert testimony, in IPR petitions.

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. Director Squires has appropriately already implemented this for petitioners. For the same reasons he demanded this transparency from challengers, comparable disclosure should apply to litigation funders and patentees asserting claims against U.S. companies.

Section 101 Guidance: Reaffirming Rigor and Technology Neutrality:

- The USPTO should promptly clarify its § 101 guidance to restore rigorous, technology-neutral scrutiny and eliminate any suggestion that patents labeled as “crypto” receive different treatment. Eligibility must be grounded in the statute and settled precedent, with claim-specific analysis.

Establish a USPTO Crypto Working Group:

- The USPTO should establish a working group on patent quality and emerging technology policy (“Working Group”). The Working Group should provide a structured forum between the USPTO, industry, and innovators to improve patent quality, PTAB accessibility, and inform USPTO policies on issues unique to crypto and emerging technology.

CCI appreciates the Department’s attention to these issues. We respectfully request that the Department adopts the above reforms to strengthen patent quality, preserve meaningful access to PTAB and IPR, and promote 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 stands ready to assist in developing policies that advance responsible innovation and ensure continued U.S. leadership.

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Respectfully,



Ji Hun Kim
Chief Executive Officer
Crypto Council for Innovation



George S. Leonardo
Policy Counsel
Crypto Council for Innovation