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House Moves on Bill to Reform the PTAB



EILEEN MCDERMOTT

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“PTAB has been used as a cudgel against patent holders, including small inventors without the financial resources to defend their IP in multiple fora, and the PREVAIL Act addresses this issue.” – David Kappos, C4IP

Less than one week after a bipartisan group of senators introduced the Promoting and Respecting Economically Vital American Innovation Leadership Act (PREVAIL) Act of 2023, the House yesterday introduced a companion bill. The bill is also sponsored on a bipartisan basis by Representatives Ken Buck (R-CO) and Deborah Ross (D-NC).

Following the introduction of the PREVAIL Act by Senators Chris Coons (D-DE), Thom Tillis (R-NC), Dick Durbin (D-IL) and Mazie Hirono (D-HI) last week, Jamie Simpson, who is the Council for Innovation Promotion's (C4IP) Chief Policy Officer and Counsel and Former Chief Counsel for the House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet, told IPWatchdog that it will be



important to monitor whether the House introduces companion legislation in the coming weeks. She noted that “it’s really promising that the Chair and Ranking Member of the Senate IP Subcommittee are behind these bills. We’re getting closer to a chance of something happening.”

The House version of the bill would, like the Senate version, “require standing for PTAB challengers and limit repeated petitions challenging the same patent; Harmonize PTAB claim construction and burden of proof with federal district court; End duplicative patent challenges by requiring a party to choose between making its validity challenges before the PTAB or in district court; and increase transparency by prohibiting the [U.S. Patent and Trademark Office] USPTO director from influencing PTAB panel decisions,” according to the [congress members’ press release](#).

“In the decade since PTAB’s creation, this venue has not always provided innovators and patent owners with the protections they were promised in the *AIA*,” said Ross. “I’m proud to introduce the *PREVAIL Act* with Senator Coons, Senator Tillis, and Representative Buck to institute much-needed reforms to the PTAB and create a fairer system for inventors, researchers, and investors that supports our thriving innovation economy in North Carolina and beyond.”

Buck said: “The *PREVAIL Act* makes commonsense reforms to the Patent Trial and Appeal Board (PTAB) by safeguarding patents and removing duplicative legal proceedings, thereby encouraging American innovation.”

Both the Innovation Alliance and C4IP issued statements of support yesterday, echoing their comments from last week and urging the House and Senate to act swiftly.

“Representatives Buck and Ross’ introduction of the *PREVAIL Act* in the House demonstrates widespread, bipartisan support for common-sense reforms to the PTAB,” said Former USPTO Director Dave Kappos, who is now board co-chair of C4IP.

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Eileen McDermott is the Editor-in-Chief of IPWatchdog.com. Eileen is a veteran IP and legal journalist, and no stranger to the intellectual property world, having held editorial and managerial positions at [\[...see more\]](#).

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