ALLIANCE FOR AUTOMOTIVE INNOVATION

October 15, 2021

VIA ELECTRONIC FILING

Andrew Hirshfeld
United States Patent and Trademark Office
P.O. Box 1450
Alexandria VA 22313–1450

RE: Request for Information on Patent Eligibility Jurisprudence

Dear Mr. Hirshfeld:

The Alliance for Automotive Innovation ("Auto Innovators") is pleased to submit comments to the Patent and Trademark Office ("Office") in response to its Request for Information on patent eligibility jurisprudence. Auto Innovators appreciates the Office's continued engagement with stakeholders on patent-related matters and welcomes the opportunity to provide input and feedback on this issue.

Auto Innovators is the singular, authoritative, and respected voice of the automotive industry. Focused on creating a safe and transformative path for personal mobility, Auto Innovators represents the manufacturers that produce nearly 99 percent of cars and light trucks sold in the United States. Members of Auto Innovators include motor vehicle manufacturers, original equipment suppliers, technology companies, and others within the automotive ecosystem. The auto industry is the nation's largest manufacturing sector and contributes $1.1 trillion to the United States economy and represents 5.5 percent of the country's GDP. As a significant engine for our nation's economy, the auto sector is responsible for 10.3 million jobs and $650 billion in paychecks.

As you are aware, the auto industry is a leader in innovation and uses cutting-edge advancements, constant creativity, and investments in research and development to bring the next generation of breakthrough automotive and mobility technologies to consumers. Auto companies are inventors, patent holders, and - more importantly - manufacturers that rely on high quality patents to achieve their environmental and safety goals. These patents are essential to protecting the robust investments auto companies make in the new technologies that are transforming personal mobility and helping to create a cleaner, safer, and smarter transportation future.

At present, the state of patent eligibility jurisprudence is not impacting the auto industry's ability to innovate in automotive technologies in the United States. As a result, rather than focusing on patent eligibility, Auto Innovators recommends that the Office and other policymakers prioritize efforts to improve patent quality. Auto companies face frequent lawsuits alleging patent infringement using low-quality patents that never should have been issued. In the end, courts find many of these patents invalid, but patent litigation raises costs and is time consuming. Focused and targeted efforts to increase the overall quality of issued patents would reduce the number of low-quality patents that can be used to hamper innovation.

Specifically, Auto Innovators recommends that the current count system be reformed to shift focus to maximizing patent quality rather than maximizing the rate of rendered patentability decisions. In addition, Auto Innovators proposes that patent examiners be given additional time, and access to state of the art search tools, to examine patent applications.

It is also critical that the *inter partes* review (IPR) process be protected and preserved. The IPR process has worked as Congress intended and provides a fair, efficient, and cost-effective mechanism to evaluate and reassess whether an issued patent is valid. Limiting access to IPR would almost certainly result in higher litigation costs, slower adjudication, and more frivolous lawsuits. That could stifle innovation and dynamism in the auto industry, harming auto manufacturers and consumer alike.

Auto Innovators suggests that, to make IPR a true alternative to district court litigation, IPR be expanded to cover additional grounds of invalidity. These additional grounds could include, for example, indefiniteness or lack of written description. In addition, Auto Innovators strongly supports efforts to limit the use of discretionary denials in IPR to only those instances where the petition raises the same or substantially the same prior art or arguments previously presented and fully argued to the Office during prosecution of the patent in question. Finally, Auto Innovators recommends that the claim construction standard used in IPRs be returned to the broadest reasonable interpretation standard used by patent examiners.

Amending or expanding patent eligibility rules should only be considered after higher priority goals, such as strengthening patent quality, are achieved. Increasing the volume of patent applications and issued patents before taking necessary steps to improve overall patent quality will only exacerbate existing challenges and subject our member companies to more patent infringement attacks from bad actors using low-quality patents.

Thank you for the opportunity to provide this feedback. We look forward to continuing to work with you on this and other patent-related matters important to the auto industry.

Sincerely,

Hilary M. Cain
Vice President
Technology, Innovation, & Mobility Policy