

October 14, 2022

Katherine K. Vidal
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office
United States Patent and Trademark Office
600 Dulany Street
Alexandria, Virginia 22314

**RE: Request for Comments Regarding the Patent Subject Matter Eligibility
Guidance [Docket: PTO-P-2022-0026]**

Dear Under Secretary and Director Vidal:

The Alliance for Automotive Innovation (“Auto Innovators”) is pleased to submit comments to the United States Patent and Trademark Office (“USPTO”) in response to its request for comments on its Patent Subject Matter Eligibility Guidance (“Guidance”). Auto Innovators appreciates the USPTO’s ongoing commitment to stakeholder engagement on patent eligibility and various other patent-related matters.

Auto Innovators is the singular, authoritative, and respected voice of the automotive industry. Auto Innovators represents the manufacturers that produce nearly 98 percent of cars and light trucks sold in the U.S., original equipment suppliers, technology companies, and other value-chain partners within the automotive ecosystem. Representing approximately 5.5 percent of the country’s GDP and responsible for roughly 10 million jobs, the automotive industry is the nation’s largest manufacturing sector.

Automotive companies – as inventors, large patent holders, and manufacturers – invest significantly in research and development and produce innovative advancements to bring the next generation of breakthrough automotive and mobility technologies to consumers. High quality patents are essential not only to protecting the robust investments that automotive companies make in emerging technologies, but also in assisting the industry with achieving important environmental and safety goals. Strong intellectual property rights remain critical to the transformation of personal mobility and the creation of a cleaner, safer, and smarter transportation future.

As the USPTO noted in its June 2022, report to Congress entitled, “Patent Eligible Subject Matter: Public Views on the Current Jurisprudence in the United States,”¹ stakeholders

¹ United States Patent and Trademark Office, “Patent Eligible Subject Matter: Public Views on the Current Jurisprudence in the United States,” June 2022: [USPTO Subject Matter Eligibility - Public Views](#).

prefer clarity, predictability, and consistent application in the overall patent system, including the law on patent eligibility. USPTO's current guidance on patent subject matter eligibility, as well as current jurisprudence on this topic, does not negatively impact the automotive industry's ability to innovate in the United States. The current guidance and jurisprudence have struck the right balance to incentivize innovation and improve patent quality through examination. While emerging technologies like artificial intelligence and quantum computing may necessitate updates to patent subject matter eligibility guidance and/or jurisprudence in the future, Auto Innovators asserts that current practice in the patent eligibility space helps to prevent the issuance of improper patents and to resolve questions of validity.

The automotive industry recommends that the USPTO and other policymakers prioritize patent quality efforts instead. Automotive companies face frequent lawsuits alleging infringement of patents that should not have been issued. While courts may eventually find these patents invalid, the time and costs associated with such litigation is staggering. Targeted efforts to increase the overall quality of issued patents would reduce the number of low-quality patents that can hamper innovation. Specific recommendations include:

- **Pre-Issuance:** Reform the current count system to shift focus to maximizing patent quality rather than maximizing the rate of rendered patentability decisions. Allot patent examiners additional time and provide them with access to state-of-the-art search tools to examine patent applications.
- **Post-Issuance:** Protect and preserve post-grant proceedings, such as *inter partes review* ("IPR") to provide a fair, efficient, and cost-effective mechanism to evaluate and reassess whether an issued patent is valid.
- **Enhance IPR:** Expand IPR to cover additional grounds of invalidity, which could include indefiniteness or lack of written description.
- **Discretionary Denials:** Limit the use of discretionary denials in post-grant proceedings, including 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 USPTO during prosecution of the patent in question.

Auto Innovators considers efforts to strengthen patent quality a higher priority than any potential changes to USPTO's patent subject matter eligibility guidance. While there are linkages between patent subject matter eligibility and patent validity, the current volume of patent applications and issued patents continue to exacerbate existing challenges and subject automotive companies and those in other sectors to patent litigation alleging infringement of low-quality patents, increasing costs to innovators and the U.S. innovation economy alike.

Auto Innovators looks forward to continuing to work with the USPTO on patent-related matters of importance to the automotive industry. Thank you for the opportunity to provide this input.

Sincerely,

Tara Hairston

Tara Hairston
Senior Director, Technology, Innovation, & Mobility Policy

