
Comments of
MEMA, The Vehicle Suppliers Association
to the
U.S. Patent and Trademark Office
on the
Notice of Proposed Rulemaking titled Revision to Rules of Practice
Before the Patent Trial and Appeal Board
Docket No. PTO-P-2025-0025
December 2, 2025

1. Introduction

MEMA, The Vehicle Suppliers Association (MEMA) respectfully submits these comments in response to the U.S. Patent and Trademark Office's (USPTO) Notice of Proposed Rulemaking (NPRM) titled *Revision to Rules of Practice Before the Patent Trial and Appeal Board*.¹ The NPRM proposes significant changes to 37 C.F.R. §42.108 governing the institution of inter partes review (IPR) proceedings before the Patent Trial and Appeal Board (PTAB). **These changes would materially impact the ability of vehicle suppliers to rely on IPRs to challenge questionable patents. Accordingly, MEMA respectfully urges the USPTO to withdraw or substantially revise the NPRM.**

MEMA is the leading trade association in the United States for vehicle suppliers, parts manufacturers, and remanufacturers, with over 900 member companies across Tier 1, Tier 2, Tier 3, and the aftermarket. These companies design and manufacture the technologies, components, systems, and parts that support the production, maintenance, and safe operation of nearly 300 million vehicles on U.S. roads.² Suppliers form the backbone of U.S. mobility, innovation, and advanced manufacturing. They directly employ hundreds of thousands of Americans and support millions of additional jobs nationwide.

The motor vehicle industry, including vehicle suppliers, relies on IPRs to protect against assertions of invalid patents. Almost the entirety of these IPR petitions are in response to lawsuits that seek millions of dollars, frequently hundreds of millions. Additionally, 90 percent of infringement lawsuits against motor vehicle companies are brought by non-practicing entities (NPEs), commonly known as "patent trolls." NPEs are typically shell companies that do

¹ *Revision to Rules of Practice Before the Patent Trial and Appeal Board*, 90 Fed. Reg. 48,335 (Oct. 17, 2025).

² See MEMA industry data (on file with MEMA).

not make any products, provide any services, or conduct any research. At present, IPRs are the most reliable and accurate mechanism for reviewing patents involving advanced technology. Without IPRs, vehicle suppliers could end up paying hundreds of millions to NPEs in litigation costs, damages, settlements, and/or royalty payments. Ultimately, this will take away from investments that could be spent on research and development, and on building more manufacturing facilities within the United States.

As vehicle systems become increasingly software-defined with connectivity, cybersecurity, sensing, and digital diagnostics playing central roles, the supplier base faces escalating exposure to patent litigation. This includes litigation brought by NPEs which now account for a substantial share of patent infringement suits filed against the motor vehicle industry and vehicle suppliers, particularly those involving electronics, software interfaces, telematics, and replacement parts. For many small and mid-sized suppliers, the costs of defending such suits in court are not sustainable.

For more than a decade, IPRs before the PTAB has been the only cost-effective, expert mechanism available to suppliers of all sizes to challenge the validity of patents asserted by NPEs and others. Congress created PTAB proceedings in the Leahy-Smith America Invents Act (AIA) to provide “a viable, efficient alternative to litigation for weeding out bad patents”³ and to improve patent quality by allowing expert evaluations of prior art and claim scope. Without PTAB review, vehicle suppliers across all Tiers face litigation burdens that are financially infeasible and threaten innovation and investment.

MEMA is concerned that the NPRM would significantly restrict access to IPRs through a series of non-statutory conditions and categorical bars. These changes conflict with the structure and purpose of the AIA, would dramatically strengthen the leverage of NPEs, and risk shifting substantial costs onto suppliers and the broader U.S. manufacturing base.

2. The Proposed Rule Conflicts with the America Invents Act and Would Dramatically Strengthen NPE Leverage Over Suppliers.

The AIA establishes IPRs as merits-based proceedings governed by statutory criteria.⁴ Congress intended IPRs to be accessible whenever statutory criteria are met, and it designed estoppel in 35 U.S.C. § 315(e) to apply only after a final written decision and only to grounds raised or reasonably available.

The NPRM would significantly restrict suppliers’ access to IPRs by imposing a mandatory stipulation that requires practitioners to waive all 35 U.S.C §§ 102-103 defenses in district court and the International Trade Commission (ITC) if an IPR is instituted. This requirement is inconsistent with the AIA’s carefully crafted estoppel framework in 35 U.S.C. §315(e), which applies only after a final written decision and only to grounds raised or

³ H.R. Rep. 112-98, 165, 2011 U.S.C.C.A.N. 67, 113.

⁴ 35 U.S.C. §§ 311-319.

reasonably available. By contrast, the NPRM imposes front-loaded estoppel that Congress did not authorize.

For suppliers, the practical effect is clear: filing an IPR becomes risky to consider. This is precisely the outcome that NPEs seek. NPEs benefit when defendants are denied access to IPRs and are forced into expensive litigation where the cost of defense becomes the primary pressure point. This enables NPEs to obtain inflated settlements unrelated to the merits of the asserted patent.

Suppliers across all tiers experience this pressure. Tier 1 suppliers face high-exposure suits involving integrated systems, while Tier 2 and Tier 3 suppliers face claims targeting subcomponents, manufacturing methods, or embedded software elements. Aftermarket suppliers face NPE challenges involving replacement parts, remanufacturing, and diagnostic tools. Under the NPRM, NPEs would have multiple new procedural advantages enabling them to bypass the PTAB.

Suppliers face unique exposure because they integrate complex electronics and software into vehicle systems and frequently are pulled into litigation after an OEM or another supplier has already been sued. This “later-sued defendant” position makes access to PTAB particularly critical. The NPRM’s categorical bars would sharply restrict access to IPR even when suppliers possess stronger prior art or have no control over earlier litigation strategies.

3. The Proposed Rules Creates a Disproportionate Impact on Suppliers and Supply-Chain Defendants

The NPRM’s proposed categorical bars, blocking IPR when certain prior litigation or administrative outcomes exist, would provide NPEs with a powerful procedural weapon. NPEs frequently sue large entities first knowing that early litigation, even if partial or procedurally constrained, could trigger the NPRM’s proposed “one and done” rules. Later-sued suppliers along the supply chain would then be categorically denied IPR access regardless of their prior art, legal defenses, or financial exposure.

Moreover, unrelated defendants may make litigation or settlement decisions based on circumstances that do not apply to other entities in the supply chain. Under the NPRM, these unrelated decisions could forever bar IPRs for all later-sued suppliers, contrary to Congress’s intent and basic fairness principles. This dynamic is particularly harmful for smaller suppliers who often enter litigation late and lack control over earlier defense strategies.

The NPRM also proposes a “parallel proceedings” bar, which requires PTAB to deny IPR institution whenever a court sets an early trial date, even if unrealistic, modified, or strategically manipulated. NPEs intentionally choose fast-moving jurisdictions to obtain aggressive trial schedules. Under the NPRM, these manufactured schedules would automatically block PTAB review, even if the schedules shift by months or years.

4. Economic Impact on U.S. Suppliers and Manufacturers

Patent litigation imposes substantial costs on vehicle suppliers, which reduces capital available for domestic engineering, tooling, investments, and facility modernization. Without IPR access, suppliers' only option is to advance complex patent validity challenges in district court. For many smaller or mid-sized suppliers, this is not feasible. Patent trolls will leverage this by increasing settlement demands. Because suppliers operate at every level of the motor vehicle ecosystem, the NPRM's effects cascade across OEMs, integrated systems providers, subcomponent manufacturers, and aftermarket businesses. NPE-imposed costs ultimately reduce competitiveness, delay technological deployment, raise vehicle prices, and weaken U.S. supply-chain resilience.

5. Conclusion

For these reasons, MEMA respectfully urges the USPTO to withdraw or substantially revise the NPRM. The proposed rules would significantly strengthen the position of NPEs and undermine the essential function of PTAB review. By limiting suppliers' ability to challenge invalid patents, the NPRM would increase litigation costs, encourage forum shopping, impose disproportionate burdens on small and mid-sized manufacturers, and divert capital away from U.S. innovation and manufacturing. In addition, the NPRM conflicts with the AIA and limits supplier access to expert technical review.

MEMA stands ready to assist the USPTO in developing balanced rules that preserve IPR access and reflect the realities of NPE litigation targeting the U.S. motor vehicle supply chain. For any questions concerning these comments, please contact Jennifer Lewis at jlewis@mema.org, Carter Salwin at csalwin@mema.org, or Emily Sobel at esobel@mema.org.