

Testimony of

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Before the

U.S. Senate Judiciary Committee

Subcommittee on Intellectual Property

Hearing on

The Patent Trial and Appeal Board: Examining Proposals to Address  
Predictability, Certainty, and Fairness

June 22, 2022

Good afternoon, Chairman Leahy, Ranking Member Tillis, and distinguished members of the Subcommittee on Intellectual Property. Thank you for this opportunity to discuss the topic of Patent Trial and Appeal Board (PTAB) reform.

GlobalFoundries (GF) is one of the world's leading semiconductor manufacturers, with production in the United States, Germany, and Singapore. Our feature-rich chips enable nearly every sector of the global economy.

Of the five at-scale semiconductor foundries in the world, GF is the only one headquartered in the United States and is a proud longstanding partner and supplier to the U.S. Department of Defense.

The semiconductor industry today involves producing billions of transistors on a single chip and requires the most technically complex manufacturing in the world. GF's success in this industry is due in large part to its innovation. GF's U.S. sites have produced three of the world's top 100 most prolific inventors of all time. Because of radio frequency

(RF) technology innovation developed at GF's Vermont facility, the smartphone in your pocket almost certainly contains GF chips.

Due to the importance of innovation to GF and the critical nature of the chips that we manufacture, America's patent system is exceptionally important to us. As the owner of more than 7,000 U.S. patents and as a U.S.-based manufacturer, GF seeks a fair and balanced Inter Partes Review (IPR) system for both patent owners and petitioners. We count on the patent system to protect our investment in innovation and to prevent our business from being harassed by poor-quality patents.

Every year GF faces infringement claims for patents that had no business being issued in the first place, which needlessly hurts our ability to supply semiconductors to the world. The cost of each semiconductor patent litigation defense can easily reach beyond \$5 million. Resources directed towards such litigation could otherwise be invested in capacity expansion and research and development, supporting job creation.

By passing the America Invents Act over a decade ago, Congress made huge progress in curtailing the abusive patent practices hurting American industry. Allowing for efficient patent review by the technically trained and patent savvy judges of the PTAB provides an efficient and effective tool to defend against poor-quality patents. Bad patents can be dealt with for a fraction of the cost of litigation while good patents can quickly be validated.

Therefore, GF strongly supports efforts to improve the IPR system. The recent Fintiv-factor discretionary denial practice has limited the availability of IPR review and inserted unfairness into the system. For example, defendants can be prevented from challenging a poor-quality patent at the PTAB merely because the district court sets an unrealistically early trial date. Faced with potential denial, defendants must rush to prepare a petition and may not have sufficient time to properly search for prior art, causing them to be estopped from relying on other relevant prior art later.

These early petitions filed within a few months of a district court complaint can create extra work for the PTAB itself. Such petitions generally occur before the patent owner has identified which patent claims it is asserting and how broadly it is construing those claims. Consequently, the PTAB will needlessly spend time reviewing claims that may never be asserted and may construe them for purposes of validity more narrowly than the patent owner will construe them in its infringement case.

The PTAB Reform Act resolves these issues by solidifying the one-year window for bringing IPR petitions, while also ensuring that petitioners are not allowed to bring serial patent challenges. These commonsense proposals provide fairness for both patent owners and petitioners. GF appreciates Congress' commitment to fostering American innovation and strengthening the greatest patent system in the world.

Thank you for allowing me to testify and to share GF's perspective.