



February 28, 2018

The Honorable Tom Cotton
United States Senate
124 Russell Senate Office Building
Washington, DC 20510



Dear Senator Cotton,

We, the undersigned nonprofit think tank, research, and public interest organizations write to support the Preserving Access to Cost Effective Drugs (“PACED”) Act of 2018. The Act ensures that the congressional plan for reviewing patent quality cannot be circumvented by an assertion of sovereign immunity. In doing so, it protects key American economic and innovation interests in a strong and balanced system.



Engine

Congress established a patent system in order to promote the public interest in technological progress. Central to that objective are proceedings before the United States Patent and Trademark Office for reviewing the correctness of patent grants. These proceedings, which include inter partes review, were created in 2011 after years of research, investigation, and legislative experimentation. Experience has shown them to be an effective and expedient way to ensure that patents meet the quality requirements that Congress established by law.



Unsurprisingly, owners of patents that would likely fail these quality requirements have sought to exploit loopholes to evade these review proceedings. The assertion of sovereign immunity has become the most controversial of these loopholes, with patent holders “renting” sovereign immunity from Native American tribes in order to escape inter partes review proceedings. The best-known example of this is Allergan’s Restasis patent deal with the Saint Regis Mohawk tribe. However, the problem is not limited to drug patents: software patents originally held by SRC Labs have also been sold to this tribe to exploit the same sovereign immunity loophole.



Public Knowledge

The PACED Act closes this loophole and ensures, to the extent possible, that all patents are equal under the congressional plan for patent review, regardless of the nominal patent owner. The Act thus protects the interests of innovative industries, Main Street businesses, and public interest representatives, all of whom have used inter partes review as a balanced and cost-effective way of determining patent validity.

Most importantly, the PACED Act defends the integrity of the patent system itself. Invalid and low-quality patents that remain in force with no expedient mechanism for reconsideration detract from the legitimacy of all patents and the government that endorses them. A strong patent system is not one that can be manipulated through legal acrobatics of sovereign immunity.

For these reasons, we support the PACED Act and encourage you to take action in support of this legislation.

Sincerely,

The R Street Institute

The Electronic Frontier Foundation

Engine

The American Consumer Institute Center for Citizen Research

Public Knowledge