



Engine

Startups Need a Stronger, Fairer Patent System

Patent litigation abuse is a real problem that disproportionately targets and harms startups and small businesses. Patent trolls are armed with poor quality patents and a litigation system that is stacked in their favor. This enables them to extract nuisance settlements with meritless claims often without even setting foot in court. Startups and small companies bear the brunt of this dangerous trend. We need a multi-pronged approach to promote innovation and encourage American economic growth.

Congress

Trolls thrive because of an uneven litigation playing field that incentivizes and rewards those bad actors that bring frivolous claims. Only legislation can change that. Last term, the House overwhelmingly passed the Innovation Act and the President has consistently supported robust reform; Congress must act urgently this year to pass robust and effective legislation that:

- Increases transparency of patent ownership and infringement allegations so startups can understand which patent and what claims are infringed; specifically how the offending product or technology infringes; and who is the real owner of the patent(s) at issue.
- Reasonably limits unnecessary, expensive discovery, which is often leveraged early in a lawsuit to force defendants to settle for a price cheaper than defending an entire case.
- Enables judges to require bad actors to pay the prevailing party's attorney fees and other costs incurred.
- Protects end users of technology from infringement claims by allowing technology manufacturers to step in and defend the allegations.

Current proposals would not hinder an inventor from monetizing, asserting or enforcing valid patents, rather give startups a fair shot at defending themselves against frivolous suits that extort inventors.

The Patent Office

The issuance of poor quality patents is at the very heart of the patent troll problem. The Patent Office must enforce the standards for patentability laid out by the Supreme Court *before* granting a patent. The PTO must also better enforce the statute that limits claiming an invention's function without explaining how it is achieved and demand more clarity in patent applications.

The Courts

The Supreme Court issued several key decisions last year that clarify and strengthen the requirements for patent eligibility. However, even with these rulings, startups still face increasing patent troll threats. Patents last for 20 years, and the Patent Office has been in the business of granting approximately 40,000 software patents annually, so at least hundreds of thousands of them currently exist. The vast majority of these patents won't be reevaluated under recent Supreme Court cases unless someone actually challenges that patent, either in court or at the Patent Office. In the meantime, many remain a threat. While we must ensure that the lower courts faithfully implement the recent Supreme Court rulings, that alone will not be enough.

For more information, see ["Patent Reform in 2015: Building a Stronger, Fairer System for All"](#) (2015).