

Inter partes review (IPR) is a procedure for challenging low-quality patents, *i.e.*, those that should not have issued in the first place. With IPR, a third-party can go back to the patent office's **Patent Trial and Appeal Board (PTAB)** and petition it to take a second look at a patent. The PTAB can then assess whether the patent was (in)correctly granted, and specifically whether the patent fails to claim a truly new invention.

Congress created IPR—by an overwhelming majority, after almost a decade of careful consideration—to improve patent quality, weed out invalid patents that hinder innovation, and reduce abusive litigation. And for years, IPR had been working as intended. Yet recent policy changes unfortunately cabined access to IPR. Congress and the patent office should restore IPR so it can continue to serve startups and innovators across the country.

What it means for startups:

Startups cannot afford to spend a lot of time and money on patent litigation. IPR offers a **more efficient & affordable alternative for challenging low-quality patents**. Bad actors (variously called “patent trolls,” non-practicing entities (NPEs), or assertion entities) routinely use low-quality patents and the threat of litigation to coerce startups into settling frivolous infringement allegations. And established companies can also use patent litigation to distract startups and slow down or stall new market entrants.

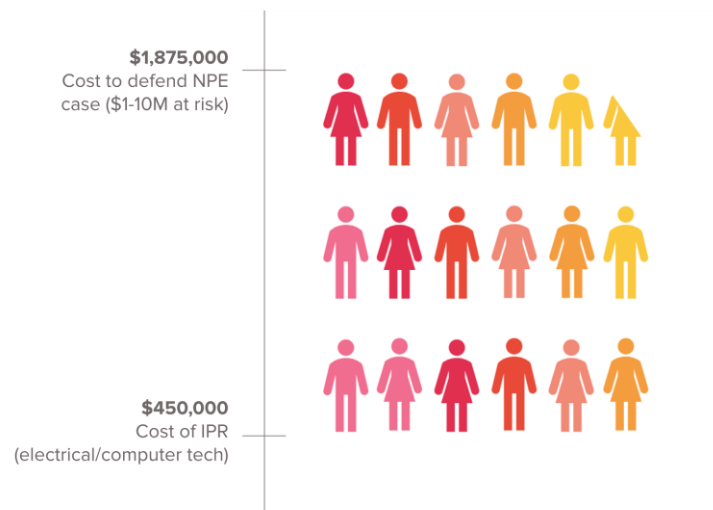
*“Earlier this year [an NPE] sued us, and at the same time sued several of our competitors and suppliers, trying to assert a meaningless patent It was a nuisance because **we had to pause our development and spend resources defending a meritless suit.**”*

- Tony Hyk, CEO, TheraTec¹

Startups accused of infringing even low-quality patents report significant operational impacts—they have to delay or forgo hiring, experience difficulty attracting customers & investors, and sometimes have to shut down business lines or close up shop altogether.² The average seed-stage startup raises \$1.2 million—an investment that has to last almost two years. And while most startups have (far) less financing,³ the cost of defending one NPE court case can easily exceed \$1.8 million.

IPR costs an order of magnitude less.⁴ By reducing the cost of challenging low-quality patents, IPR has helped **level the playing field**.

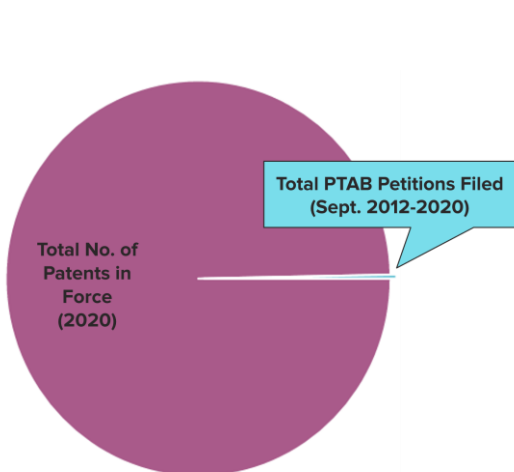
Cost Comparison: IPR vs. District Court



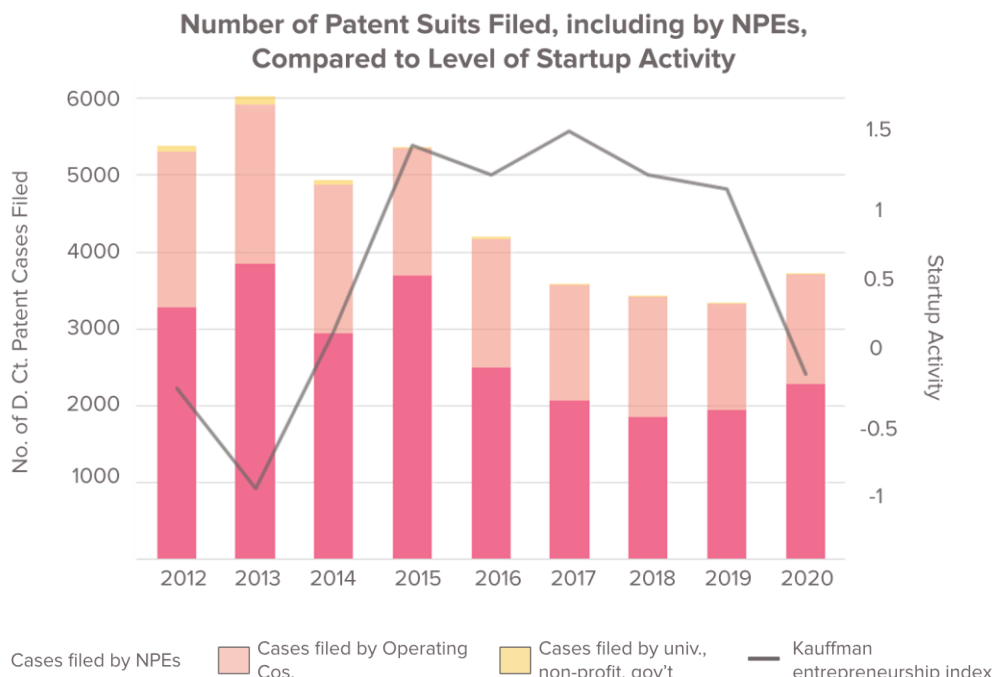
The difference between the median cost of defending an NPE litigation and the median cost of filing an IPR is \$1,425,000. The average software engineer salary hovers around \$80,000/year across the country. Meaning the money saved by filing a successful IPR, as opposed to defending in court, could cover the salary of more than 17 engineers.

Patent review has been a success:

Over 12,000 petitions have been filed with the PTAB. That is a very small fraction of the nearly 4 million active U.S. patents.⁵ Yet, **thanks to IPR, companies report fewer frivolous patent demands.**⁶ Studies estimate that **innovators have saved over \$2 billion** thanks to PTAB review, it has led to a **\$2.95 billion increase in U.S. business activity**, and to the **creation of over 13,500 job years.**⁷ Despite its successes, critics mischaracterize the PTAB as a “death squad.” In reality, an exceedingly small portion of patents are challenged before the PTAB while innovators across the nation still enjoy its substantial benefits. Indeed, since IPR went into effect in 2012, abusive NPE litigation started to decline as startup activity simultaneously increased.⁸



Fewer than 0.4% of all patents have been challenged before the PTAB



“The [IPR] system is really important, . . . When IPR isn’t there to invalidate a bad patent, startups are looking at \$2 million in costs. That creates a big disincentive to fight back against frivolous claims.”

- Joshua Montgomery, Founder, Mycroft AI⁹

Stemming abuse by strengthening IPR:

When Congress created IPR, it put a critical defense within reach for startups and smaller tech companies. However, in recent years the patent office instituted policies restricting access to IPR. Pursuant to these policies, the PTAB is increasingly refusing to institute otherwise-meritorious IPRs for purely procedural reasons. As a result, more low-quality patents remain in force, it is easier to bring frivolous cases to court, and startups are facing more (and more expensive) abusive patent litigation.

Bottom line: The PTAB has proven to be an accessible venue for resolving problems of abusive litigation and low-quality patents that should not have issued. This promotes both patent quality and confidence in the U.S. patent system. And when there are fewer low-quality patents that can be weaponized against startups, innovation thrives. Congress should preserve and bolster, not chip away at, the PTAB and IPRs.

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