PATENTS

Why it matters to startups:

Patent quality is essential to innovative, high-tech startups. High-quality patents can be a valuable asset for many emerging companies. Low-quality patents—those that claim things that were already known or that are written in vague, overbroad terms that are difficult to understand—on the other hand, lack value and can fuel abusive litigation that harms startups. Unfortunately, many startups will only interact with the patent system in the context of abusive litigation. For example, patent assertion entities—also known as "patent trolls"—use patents to try to coerce startups to take quick settlements, knowing startups cannot afford costly patent litigation. Competitors can also use patent litigation to distract startups and slow down or stall new market entrants. Weak and overbroad patents are especially easy to misuse because they can be asserted against many startups' basic activities. Startups benefit when the U.S. Patent and Trademark Office (USPTO) and the courts weed out weak and overbroad patents.

KEY TAKEAWAYS:

- Startups need patent laws that protect truly new inventions and prevent the issuance of low-quality patents that stifle innovation.
- Policymakers must focus on patent quality; preserve tools to clear out weak, overbroad, low-quality patents; and foster affordable mechanisms for startups to defend themselves in frivolous or abusive lawsuits.

What policymakers can do:

Patent law has been improving for startups and innovation. Developments in the past decade have leveled the playing field in litigation and given startups easier and cheaper defenses when weak or overbroad patents were asserted. Policymakers should prioritize patent quality—not falling into the trap of placing quantity over quality—and avoid legislative or policy changes that could upset the existing balance or give bad actors more leverage over startups. Congress and the USPTO should seek ways to improve the quality of U.S. patents and ensure affordable ways to weed-out low-quality patents. For example, the 2011 America Invents Act created a procedure through which the USPTO can take a second look at patents and cancel those that never should have been granted. Around the same time, the Supreme Court decided key cases confirming that abstract ideas performed on a computer are not patent-eligible and that startups cannot be sued for infringement in far-flung corners of the country. Despite these successes, in recent years some have sought to overturn improvements, including by making it more difficult to have the USPTO take a second look at a patent that has already been granted. Policymakers should instead preserve the progress made over the past decade and further endorse tools that promote quality and reduce costs of defending against costly, frivolous patent lawsuits.

STARTUP SPOTLIGHT

Petcube

(San Francisco, Calif.)
Andrey Klen, Co-Founder

Petcube keeps owners connected to their pets with cameras that offer real-time video monitoring.

"[A] patent troll tried to sue us on the premise that they invented basic laser tracking technology. But that patent was overthrown after another company, which was also accused of infringement, challenged its invalid claims. Young companies worry about attacks from patent trolls a lot."