

# PATENTS



## What is a patent?

A patent is a limited right, of approximately 20 years, that the government gives to inventors in exchange for sharing their inventions with the public. To obtain a patent, an inventor has to establish that her invention is different from prior technology and has to explain it in sufficient detail that the public can understand. You can use someone else's patented technology if you take a license. However, weak or overbroad patents (that do not adequately describe and claim truly new inventions) should not—but occasionally do—get granted. And some bad actors try to use those low-quality patents to harm startups.

## KEY TAKEAWAYS:

- Startups need balanced intellectual property laws that protect new inventions without stifling innovation.
- To protect startups, Congress and the PTO should prioritize patent quality and preserve mechanisms for weeding out low-quality patents.

## Why does it matter to startups?

Startups drive innovation and many may choose to patent their inventions, but startups are also the first to suffer when weak or overbroad patents are issued. Even though it can be a long and expensive process, many startups apply because high-quality patents can be valuable assets for growing businesses and attracting investment. However, 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,” acquire patents—sometimes in secret—with no intention of making or selling anything. Instead, they 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. Startups benefit when the U.S. Patent and Trademark Office and the courts weed-out invalid patents and only issue or enforce patents that specifically claim truly new inventions.

## Where are we now?

Patent law has overall been getting better for startups and innovation. Recent developments have improved the quality of issued patents and leveled the playing field in litigation by giving startups easier and cheaper defenses when weak or overbroad patents are asserted. For example, the 2011 America Invents Act created inter partes review (IPR) and gave the PTO the ability to review and cancel patents that never should have been issued. By reducing the cost of challenging low-quality patents, IPR helped startups fight back against abuse. At the same time, the Supreme Court has decided key cases—confirming that abstract ideas performed on a computer are not patentable, restoring balance to damages law so startups can innovate without a spurious patent suit pulling their product from the market, and confirming that startups cannot be sued for infringement in far-flung corners of the country.

Despite these successes, some policymakers have sought to overturn recent improvements, including at the PTO. Some recent changes have made it more difficult to challenge weak patents, leaving bad actors with more leverage to harm startups. Instead of unraveling recent progress, further legislative or policy changes should preserve and expand the existing balance and seek more transparency about who owns and controls the lawsuits filed against startups.