

What is a patent?

A patent is a limited property 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 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 patent 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 weak and overbroad 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 only consider changes to patent law after careful deliberation and with an eye toward ensuring patent quality.

Why does it matter to startups?

Startups drive innovation and frequently patent their inventions, but are also the first to suffer when weak or overbroad patents are issued. Even though it can be a long 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 (PAEs), also known as “patent trolls,” acquire patents with no intention of commercializing inventions. Instead, PAEs 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 (PTO) and the courts weed-out weak and overbroad patents and only issue or enforce patents that specifically claim truly new inventions.

Where are we now?

Patent law had been improving for startups and innovation. Recent developments leveled the playing field in litigation, and gave startups easier and cheaper defenses when weak or overbroad patents are asserted. Legislative or policy changes could upset the existing balance.

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 level the playing field. Indeed, since IPR went into effect in 2012, abusive PAE litigation had started to decline while startup activity was simultaneously increasing. At the same time, the Supreme Court has 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, some members of Congress and the PTO are seeking to overturn recent improvements. Such changes would give bad actors with weak and overbroad patents more leverage to harm startups.