



# INVENTORS

## DEFENSE ALLIANCE

## SETTING THE RECORD STRAIGHT

### DEFENDING INVENTORS' ACCESS TO CAPITAL

#### The Growing Problem: “Efficient Infringement”

**America's inventors are under attack.**

Deep-pocketed corporations are increasingly stealing patented technology and designs owned by startups, small businesses, and individual inventors, knowing that these smaller rivals typically can't afford the long, costly lawsuits necessary to enforce those patents in court.

This tactic is unethical. But from a financial standpoint, it often works – which is why it has become known as “efficient infringement.”

#### The Emerging Solution: Financial Partnerships

In recent years, inventors have found a way to fight back. By partnering with financial firms, they're able to afford the steep legal bills associated with defending their patents. If the inventors ultimately prevail, their investors may earn a return.

These partnerships are perfectly ethical. They're no different than an individual finding a lawyer who will work on contingency in a medical malpractice or wrongful termination case.

The access to capital enables inventors to leverage their intellectual property in order to fight the big guys on a level playing field. This helps ensure that cases are decided on the merits, not by who has the deepest pockets.

#### The Policy Debate: Efficient Infringers Seek to Block These Partnerships

Efficient infringers don't like this new state of affairs, of course. So in Congress and in state legislatures, they're working with special interest groups to make it harder for inventors to access outside funding – and spreading lies about these partnerships.

If policymakers block inventors from accessing the funding necessary to defend their rights, patents won't be worth the paper they're printed on. And the whole economy will suffer.

Patent litigation is notoriously expensive. Cases can drag on for years and legal fees can snowball into the tens of millions of dollars. Most individual inventors, startups, and small businesses can't take on deep-pocketed infringers alone.

Innovators deserve the flexibility to defend their rights, regardless of whether they choose to fund lawsuits out of their own pockets, sell a share of their IP rights to raise money, or seek “third-party litigation financing” from a firm that fronts the legal fees.

Learn more at [www.InventorsDefense.org](http://www.InventorsDefense.org)

# DEBUNKING MYTHS

## **Myth 1 – Partnerships Lead to Frivolous Claims**

Efficient infringers and their allies insinuate that outside financiers lead to more frivolous litigation. But that's not true.

Data clearly shows that patent litigation financing [does not](#) lead to an increase in patent litigation. In fact, the number of patent infringement lawsuits initiated in U.S. District Courts has trended downward since 2013, even as the number of new patents granted has risen each year.

Investors only make money when innovator plaintiffs either win in court, or are so likely to win that efficient infringers settle and pay a licensing fee. Financiers have every incentive to only fund cases where real infringement occurred.

## **Myth 2 – Foreign Countries Use Infringement Suits for Nefarious Purposes**

Infringers claim foreign governments and companies routinely fund U.S. patent lawsuits to access rival firms' confidential information or distract and burden American innovators. But there is zero evidence of foreign meddling in patent litigation – and current law and existing authorities within the executive and judiciary branches protect Americans from foreign rivals seeking to exploit the system.

Concerns around the disclosure of confidential data are misplaced. It'd make no sense for foreigners to fund infringement lawsuits in the hopes that designs and trade secrets would somehow be disclosed in court filings – especially since foreign governments like China have much more direct means of obtaining American IP through espionage, forced technology transfers, cyberattacks, and other forms of theft.

Additionally, protective orders already restrict access to sensitive information in infringement cases to a limited group. These orders, which are negotiated between plaintiffs and defendants, prevent unauthorized parties from accessing proprietary details. Sharing such information with unauthorized parties would constitute a breach of the legally enforceable protective order, and would likely carry serious consequences.

As to concerns around national security, the Committee on Foreign Investment in the United States (CFIUS) already evaluates foreign investments to assess potential impacts. Critics are mistaken to argue that litigation funding somehow aids China or other infringers. In reality, the opposite is true: Financial support enables small inventors to pursue claims against large infringers, including those based in China.

Finally, claiming that investor-backed patent litigation is a “distraction” or “burden” absolves infringers of responsibility. Crucially, if an inventor's case lacks merit, it will not proceed.

## **Myth 3 – Disclosure Requirements Would Prevent Abuse**

Some lawmakers have suggested new disclosure requirements.

But the Supreme Court and Administrative Office of the U.S. Courts has repeatedly and correctly rejected calls for automatic disclosure mandates, recognizing that they'd disadvantage plaintiffs by exposing their legal strategies and financial resources, distract from the merits of the case, and add additional paperwork to an already lengthy and expensive process. Infringers could – and would – use information gleaned from mandated disclosures to pressure investors supporting their opponents.

Disclosure requirements offer no real benefits, but would make it harder for inventors to access the financing they need to defend their rights against very real instances of infringement.

The funders of a lawsuit are irrelevant to the merits of the lawsuit itself.



**About the Inventor's Defense Alliance** The Inventors Defense Alliance is a nonpartisan, nonprofit, 501(c)(4) advocacy organization that works to build support for inventors' rights, safeguard justice, and protect access to capital. Learn more at [www.InventorsDefense.org](http://www.InventorsDefense.org).