

PTAB Needs Reform To Protect Inventors From Larger Cos.

By EB BRIGHT

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A new report from the U.S. Patent and Trademark Office raises fresh questions about the Patent Trial and Appeal Board. The study, which analyzed data on the 20 highest-volume PTAB petitioners, shows that they account for 32% of petitions filed between 2019 and 2024.

Congress created the PTAB in 2011 with the goal of offering companies a way to quickly resolve patent disputes. The idea was to provide a cheaper, more streamlined alternative to the court system.

A faster, less expensive forum for resolving disputes would benefit all companies, of course — but it'd especially benefit startups, which would waste fewer resources on expensive litigation and be able to spend more of their time, money and effort creating new products and jobs.

But for the past decade-and-a-half, corporations have been able to file numerous expensive challenges that can drain these firms' resources and prevent them from growing.

Fortunately, a bipartisan bill currently under consideration — the Promoting and Respecting Economically Vital American Innovation Leadership, or PREVAIL, Act — is giving lawmakers the chance to end corporations' abuse of the PTAB and restore a level playing field for startups by imposing additional requirements on administrative patent validity challenges.

The main problem is that the PTAB allows companies to file repeated, additional challenges to the validity of patents that are already being litigated in court.

The board invalidates patents at a far higher rate than juries do: PTAB final written decisions result in all challenged claims being held unpatentable

about 70% of the time, while conversely, patent owners won outright on infringement and validity in about 46% of patent jury verdicts in 2024. Trial data likewise show that courts found patents to be valid far more often than invalid, by a margin of 122 to 47.

In other words, the same patent is far more likely to survive in court than before the PTAB, making the board a uniquely favorable forum for compa-

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nies accused of patent infringement. The disparity is so stark that former U.S. Circuit Judge Randall Rader famously referred to the PTAB as a "patent death squad" at the American Intellectual Property Law Association's 2013 annual meeting.

The result is that large corporations are increasingly copying startups' patented technology rather than paying to use it legally. This strategy is known as efficient infringement.

Instead of licensing a patented technology, big companies simply copy it. They then file serial PTAB challenges to drain startups of resources, scare off future investment and prolong the dispute until the inventor can no longer afford to fight back, or until a panel declares the invention obvious in hindsight.

A recent review by the USPTO makes clear who is driving this system. According to the USPTO report, between 2019 and 2024, the PTAB was flooded with petitions filed primarily by companies like Samsung, Apple, Meta and Amazon. For firms earning millions

or billions of dollars, the PTAB can be a cost-effective way to avoid licensing patented technology and to squeeze smaller competitors out of the market.

This status quo threatens America's economy. According to a report released by the U.S. Small Business Administration's Office of Advocacy last month, small businesses generate almost two-thirds of new jobs in the U.S. They also account for nearly half of all economic activity, and create many of the new technologies that keep America globally competitive.

But if these smaller companies no longer have confidence that a patent will prevent bigger rivals from stealing their technology, they'll struggle to attract the investors they need to hire more workers, expand their operations, and invent new products and technologies.

Fortunately, federal leaders recognize that this situation is untenable, and that reforms are urgently needed. The Trump administration recently proposed rule changes that would bar the PTAB from reviewing patents that have already been upheld, or are currently being litigated, in court.

And the PREVAIL Act, introduced by Sens. Chris Coons, D-Del., Thom Tillis, R-N.C., Dick Durbin, D-Ill., and Mazie Hirono, D-Hawaii, would codify many of those reforms, so that a future administration couldn't switch PTAB rules back to the status quo, which favors incumbents over startups.

Currently, large corporations can force small inventors to defend the same patent over and over by filing repeated PTAB challenges. They can also force inventors to fight on two fronts at once by using the PTAB to challenge a patent whose validity is already being litigated in federal court.

These rules bolster large petitioners' financial advantages and allow them to strategically stretch patent holders' resources thin. The PREVAIL Act would put a stop to such gamesmanship by prohibiting multiple petitions against the same patent and banning challenges that duplicate ongoing court cases.

The PTAB's rules also allow companies with no stake in the case to join or initiate a challenge, effectively enabling competitors of a patent owner to pool their resources against the patent owner. The PREVAIL Act would prevent that by requiring petitioners to show legal standing, meaning only companies that have been sued for

infringement or threatened with a lawsuit would be able to file a petition.

Finally, the PTAB currently applies a lower burden of proof than district courts do: in inter partes review, a petition need prove unpatentability only by a "preponderance of the evidence," while in district court, invalidity must be proved by the stricter "clear and convincing evidence" standard, which is a fairer standard to guard against hindsight bias.

This arbitrary imbalance has caused inconsistent outcomes and made the PTAB a more favorable forum for accused infringers. The PREVAIL Act would restore fairness and predictability across venues by raising the

PTAB's standard of evidence to match the higher threshold used in the court system.

What was originally designed as a way to quickly resolve patent disputes has become a weapon against small innovators — and the new report from the USPTO is just the latest evidence of this fact.

By passing the PREVAIL Act, Congress can restore the PTAB to its original purpose, as a forum for empowering the small inventors that move America's economy forward.

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