

American Businesses Urgently Need Comprehensive Patent Litigation Reform

Despite the recent passage of the America Invents Act, abuse of our patent system continues to grow. Instead of creating new jobs and investing in new technologies, businesses large and small across many industries—including realty, construction, restaurants, retail, hotels, grocers, convenience stores, and restaurants on Main Street—are diverting scarce resources to fighting frivolous lawsuits and overly broad claims made by Patent Assertion Entities (the so-called “patent trolls”).

Reform Must Include:

- **Demand Letter Reform:** Require that patent demand letters include truthful, basic information. Patent trolls send vague and deceptive letters alleging patent infringement to demand unjustified payments from innocent individuals and businesses. Vague demand letters should not serve as evidence that the accused infringer was willfully infringing a patent.
- **Heightened Pleading Requirements:** Require patent owners to explain in detail the basis for the alleged infringement when they file a complaint. Current law does not require that a patent holder explain how a patent is infringed, or even identify the accused product, making it nearly impossible for a target to evaluate the case and decide whether to fight or settle.
- **Customer and End User Protections:** Provide protection for customers and end users from infringement accusations when a manufacturer is the more appropriate defendant. Under current law, you can be sued for infringement if you simply use a product, system or method; cases against users should be stayed when a manufacturer intervenes.
- **Efficient Patent Litigation Procedures:** Make patent litigation more efficient so that weak cases can be dismissed before expensive discovery. Requiring patentees to explain and judges to decide what a patent means at the beginning of a case—the Markman hearing—narrows the case to the actual legal issues in question, drives early resolutions and avoids unnecessary and expensive discovery.
- **Proportional Discovery Requirements:** Require trolls to pay for the discovery they request beyond core documents so that they cannot run up costs just to force a settlement. Since trolls don’t actually produce or create anything, they have few documents to produce and no incentive to be reasonable in their discovery requests. Making trolls responsible for the costs of their discovery requests that go beyond the core documents needed to decide most patent issues will stop unreasonable demands made for negotiation leverage.
- **Fee Shifting:** Require that a losing party who brings a frivolous case pay the other side’s attorney’s fees—and make sure they can pay. Trolls currently have few barriers to litigation with no real cost to their nonpracticing business. However, given that PAEs lose much more often than other patent owners, a stronger presumptive fee-shifting statute and a mechanism to ensure court ordered fee shifting is enforceable will deter nuisance suits.
- **Administrative Alternatives:** Maintain and improve administrative alternatives to litigation. Ensuring access to efficient and fair mechanisms to re-examine questionable patents, by among other things not watering down the PTO’s existing standards will reduce litigation abuses and strengthen the patent system.