

ADDRESS THREATS TO THE U.S. PATENT SYSTEM: PROMOTE AMERICAN JOBS AND INNOVATION

The U.S. patent system is burdened by serious problems that undercut its core mission to spur innovation.

1. High issuance of low quality patents.
2. Abuse of invalid U.S. patents by patent assertion entities (PAEs), many of which are owned or controlled by foreign interests.
3. Weakened ability to challenge invalid patents.

Most U.S. Patents Go to Foreign Inventors

Extending U.S. patent protection to inventors from all countries encourages global innovation that benefits all nations, including the U.S. But because U.S. patents can only be enforced against activity in this country, Americans bear the liability, costs and business risk that result from abusive assertions by PAEs. PAEs exist only to assert patents and don't make or sell anything in the U.S. or contribute meaningfully to the American economy.¹ Many PAEs are owned or controlled by foreign interests.

China received more than 30,000 U.S. patents in FY2021,² and is on track to become the largest foreign recipient of U.S. patents by FY2024, with more than 56,000 applications filed in the last reported fiscal year.³ And seven of the top 10 U.S. patent recipients are non-U.S. companies, with two of them based in China.⁴ This includes Huawei, which has been identified by the U.S. Export Administration as "pos[ing] a significant risk of involvement in activities contrary to the national security or foreign policy interests of the United States."⁵

¹ While HTIA's members are all U.S. based, one is the U.S. subsidiary of Samsung, a foreign multinational that was the largest recipient of U.S. patents in 2022. Samsung, unlike foreign-controlled PAEs, makes and sells goods in the U.S., contributing substantially to America's economy.

² USPTO, *Performance and Accountability Report: Fiscal Year 2021*, at 215 (Table 10: Patents issued by the U.S. to Residents of Foreign Countries).

³ *Id.* at 210 (Table 9: U.S. Patent Applications Filed by Residents of Foreign Countries).

⁴ <https://harityllp.com/patent300/>

⁵ *Addition of Certain Entities to the Entity List and Revision of Entries on the Entity List*, 84 Fed. Reg. 43493 (Aug. 21, 2019).

KEY FACTS

U.S. ranks among the
LOWEST
in respect to issuing quality patents.

More than
374,000 U.S. PATENTS
issued in 2021 – nearly double the amount two decades ago.

More than
53% OF U.S. PATENTS
are issued to foreign inventors.

Chinese entities filed more than
56,000
patent applications in U.S. in the last year.

HUAWEI
is one of the top recipients of U.S. patents.

Litigation funding has grown rapidly to
NEARLY ONE-THIRD
of all patent cases

High Issuance of Invalid Patents Harms American Businesses

The U.S. Patent and Trademark Office (USPTO) is ranked second to last among the five major global patent offices with respect to patent quality,⁶ and ranked last for examination accuracy.⁷ It is estimated around half of the software and business method patents issued by the USPTO are invalid.⁸

The U.S. has also adopted policies that have hobbled the Patent Trial and Appeal Board (PTAB), making it more difficult to cancel invalid patents. Invalid patents are too frequently granted and are routinely used against American companies, causing billions of dollars of harm to the U.S. economy.

Foreign-Controlled PAEs Hurt U.S. Businesses and National Competitiveness

PAEs do not innovate, manufacture products, employ workers, or contribute in any meaningful way to the U.S. economy. They exist solely for the purpose of asserting patents against companies making and selling products in the U.S. More and more litigation funding is provided by largely anonymous third parties that we know includes sovereign wealth funds controlled by foreign governments.⁹

For example, PAEs affiliated with the Fortress Investment Group, which is controlled by Japanese conglomerate Softbank, have been especially aggressive in the U.S. One sought more than \$6 billion from Intel, the largest U.S. manufacturer of semiconductors, and was awarded more than \$2 billion based on patents the USPTO concluded were likely invalid.¹⁰ This same PAE abandoned another \$4.1 billion suit against Intel that it had been litigating for nearly five years in part to avoid having to follow the Delaware court's rule and actually disclose its investors.¹¹ Multiple PAEs are facing potential sanctions for their refusal to comply with these rules.

CONGRESS AND REGULATORS MUST ACT

- Require plaintiffs to disclose all third party patent litigation funding.
- Investigate use of front companies to hide the involvement of foreign entities in directing and funding U.S. patent litigation.
- Reject policies that empower foreign PAEs and harm American competitiveness.
- Change how the USPTO resources and conducts examination of patent applications.
- Restore and strengthen the PTAB's ability to review and cancel invalid patents.

About HTIA

The High Tech Inventors Alliance (HTIA) represents leading technology providers and consists of some of the most innovative companies in the world.¹² HTIA exists to promote American innovation and jobs through balanced patent policies and a more efficient, effective, and inclusive patent system. HTIA member companies are some of the world's largest funders of corporate research and development, collectively investing more than \$165 billion in R&D activities annually. They are also some of the world's largest patent owners and collectively own more than 240,000 patents.

⁶ Adam Houldsworth & Bridget Diakun, *Benchmarking 2020 – Europe Holds its Lead but Honeymoon Might be Over for USPTO Head*, IAM (June 8, 2020).

⁷ Gaëtan de Rassenfosse, Adam B. Jaffe and Elizabeth Webster, *Low-quality patents in the eye of the beholder: Evidence from multiple examiners*, Centre for Transformative Innovation Working Paper (Jan. 2016).

⁸ Shawn P. Miller, *Where's the Innovation? An Analysis of the Quantity and Qualities of Anticipated and Obvious Patents*, SSRN Electronic Journal (Feb. 2012); John R. Allison & Mark A. Lemley, *Empirical Evidence on the Validity of Litigated Patents*, 26 AIPLA Q.J. 185, 205 (1998).

⁹ See, e.g., Burford Capital, 2021 Annual Report.

¹⁰ Blake Brittain, "U.S. agency panel says VLSI patent in \$2.2 bln Intel case should be reviewed," Reuters, October 17, 2022.

¹¹ Tobias Mann, "Intel settles to escape \$4b patent suit with VLSI," The Register, Dec. 29, 2022 (reporting that VLSI agreed to a dismissal with prejudice for free and noting that "[i]t appears the case was headed toward dismissal anyway" because VLSI had refused to comply with Chief Judge Connolly's standing order that required it to "disclose the names of VLSI's owners, members, and partners."

¹² HTIA members include Adobe, Amazon, Cisco, Dell, Google, Intel, Oracle, Micron, Microsoft, Salesforce, and Samsung.