

# **Sign our Petition – State of the Patent System and Required Legislation**

# State of the Patent System and Required Legislation

Our U.S. patent system no longer encourages investment in new technologies.

Patents are now liabilities for inventors. Our USPTO discourages the creation of new technologies by enabling big corporations to crush startups and inventors.

*Congress must act to stop this damage to our economic engine and the American Dream.*

## **Eliminate the Patent Trial and Appeals Board (PTAB)**

The PTAB is a tribunal within the U.S. Patent and Trademark Office (USPTO) that treats issued patents as a public right, not a property right. PTAB's invalidate at least one claim in more than 95% of the **ISSUED** patents reviewed rendering most patents valueless for funding at an early stage. Invalidating just one claim can neuter the enforceability of the entire patent. Big corporations are filing multiple PTAB procedures on the same patent driving the cost of defending it into millions of dollars and scaring investors. The PTAB must be eliminated so patents can attract investment at early stages.

## **Eliminate the “Abstract Idea” Exception to Patentable Subject Matter**

Supreme Court decisions changed the meaning of “patentable subject matter” by creating three exceptions to patentable

subject matter: abstract ideas, natural phenomena, and laws of nature.

The abstract idea exception is creating chaos by failing to define what is or is not an abstract idea. Today what is patentable is completely in the eye of the beholder and often different branches of government come to different conclusions on the validity of the same patent.

Abstract idea exceptions mean patents have virtually no value in valuations of early stage startups.

### **Restore Injunctions and Injunctive Relief**

Injunctive relief was the default judgment for infringement for over 200 years serving as a strong deterrent to patent infringement, and was the basis for projecting the future value of a patent at the earliest stages. Patents are critical to attracting investment to commercialize technology.

In 2006 a Supreme Court decision, *eBay v. MercExchange* effectively eliminated injunctive relief. Investors cannot project the future value of a patent, and as a result investment in patents has dropped. With the most powerful deterrent now removed, “efficient infringement” exists.

### **End Track I Examination in the USPTO**

Track I examination was created to speed examination in exchange for additional fees. While marketed as a tool for small entities to get patent protection faster, most small entities cannot afford the higher fees. Big corporations can, and are the primary users of Track I examination.

## Return to “First-to-Invent” from “First-to-File”

First-to-invent changing into a first-to-file system created the opportunity for unscrupulous people to steal inventions by filing for patent protection ahead of the actual inventor. Inventors must now file for patent protection as soon as possible before disclosing it to anyone to determine the invention’s viability, marketability or costs. This adds upfront costs for unproven inventions to the people least able to afford it. First-to-file is discouraging inventors to the point of abandoning the patent system.

While we have damaged our patent system, China has strengthened theirs. Today, China leads the world in new patent filings. Large amounts of venture capital that once fueled early stage startups in the U.S. have moved to China. As a result, startups are fleeing to China.

*Congress must act to correct this damage to allow the U.S. to succeed in the modern innovative world.*

## State of the Patent System and Required Legislation

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