

US INVENTOR

Innovators, Inventors, Dreamers, and Builders

Crisis in American Innovation

How the Decline of the U.S. Patent System is Killing Creativity

Article 1, Section 8 of the U.S. Constitution states: *The Congress shall have the Power . . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.*

Our nation's founders intended this provision to protect individual inventors and encourage innovation and economic development. But recent acts by Congress have weakened patent protections for inventors, resulting in a serious decline in innovation and a serious threat to America's economic growth and competitiveness. Policymakers must address the defects in the U.S. patent system to prevent further damage to our economy.

Some critical issues weakening our patent system require immediate attention:

- Large multinational corporations are infringing on the rights of individual inventors, universities and research laboratories. When inventors challenge the illegal use of their intellectual property, they are labeled as “patent trolls.” The power of large corporations prevents small innovators from securing their property rights.
- Since 2006, legislative initiatives and legal challenges have substantially weakened our patent system, resulting in a significant decline in U.S. startups. At the same time, China has strengthened its patent system. The U.S. is falling far behind China in new business ventures.
- The myth of “patent trolls” is promoted by large multinational corporations to intimidate individual inventors and prevent them from launching legal challenges to patent infringement.
- Software patents represent almost 50 percent of all patent applications and are the most vulnerable to patent infringement by large corporations.
- The America Invents Act of 2011 and the establishment of the Patent Trial and Appeal Board have made it more difficult for individual inventors to challenge large corporations on patent infringement.
- The U.S. Supreme Court in *Alice v. CLS Bank* created an exception to Section 101 of 35 USC 101 called the *abstract idea*. However, the courts provided no definition of what constitutes an abstract idea, causing confusion among inventors about what is actually patentable.

To reverse the decline in the U.S. patent system, Congress must take immediate action to:

1. Repeal or amend the America Invents Act to strengthen the ability of patent holders to challenge those who infringe on their legitimate patents.
2. Eliminate the Patent Trial and Appeal Board.
3. Amend 35 USC 101 to provide a workable definition of the so-called *abstract idea*.

These actions will create a more level playing field between independent inventors and multinational corporations and will help halt the decline in U.S. innovation, thereby promoting economic development and job growth.