

# INVENTOR RIGHTS RESOLUTION

*Our patent system is in crisis. Recent changes to patent laws and Supreme Court decisions have adversely affected inventors such that the requirement in Article I, Section 8 of the Constitution of "securing for limited times to inventors the exclusive right to their discoveries" is no longer achieved. It is nearly impossible to stop an infringer from using an invention without permission, or to make them to pay for the damage caused when they do. The undersigned inventors call on Congress to pass legislation to address these critical issues.*

## ***PTAB – The USPTO Must Stop Taking Back Patents From Inventors***

Patents that are infringed are often contested in the Patent Trial and Appeal Board (PTAB), which is an administrative tribunal within the USPTO, purported to be an alternative to traditional federal courts, and created by the 1011 America Invents Act. To defend a patent costs the inventor several hundred thousand dollars, and usually cannot persuade the PTAB to uphold the patent. Even if the inventor prevails in the first challenge, others are allowed to challenge the same patent over and over again. This has been devastating to inventors and small businesses that rely on patents to protect investments and build businesses. Participation in PTAB reviews should be voluntary at least while the patent is held by the original inventor. If PTAB reviews become a fair alternative to validity challenges in a traditional federal court, then inventors will participate voluntarily. Otherwise, patents that are believed to be invalid can be contested in a traditional federal court, as has always been the case.

## ***INJUNCTIONS – Courts must prohibit use of a patented invention without permission***

In the 2006 eBay decision, the Supreme Court held that in most circumstances a patent cannot prevent an infringer from using the invention. For instance when a large corporation can produce the invention faster, cheaper, or in greater quantities, they are allowed to keep selling in perpetual violation of the patent. Thus the inventor has no say in who gets to use the invention and what they do with it. The inventor cannot determine the price, the quality, the brand, the features, the materials, the factory location, the working conditions, environmental sustainability, or any other concern. Indeed, the inventor is compelled to grant the infringer a license for a royalty amount determined by the court. The eBay decision should be overturned, and the court should issue an injunction ordering the infringer to stop using the invention until they have obtained a license negotiated in good faith with the inventor.

## ***PROFITS – Infringers must not profit by using an invention without permission***

Current law limits most inventors who win in court to only a "reasonable royalty", which in many cases does not cover legal fees and is too little to serve as a deterrent against large corporations with deep pockets. Large corporations simply ignore patents, knowing that few inventors can afford the millions of dollars and many years required to enforce their patents in court. In the rare case that an inventor survives the legal gauntlet, the infringer usually is ordered to share only a small percentage of their profits with the inventor while keeping the rest for themselves. Without penalties infringing is much more profitable as a business strategy than inventing. To restore fairness and respect for patents, infringers should not be allowed to keep their profits made from someone else's invention.

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