



# Patents



## Key Takeaways

- Startups need balanced intellectual property laws that provide protections for new ideas while preserving a framework that promotes innovation.
- To protect startups, Congress should not make changes to patent laws without careful deliberation, as the current system works well.

## What is a patent?

A patent is a reward that the **government grants an inventor**, generally for 20 years, **for devising an invention**. To get a patent, an inventor must prove that the invention is both **“novel” and “non-obvious,”** meaning that it is different from other similar inventions, as well as **“useful,”** meaning that it has some beneficial use and is operable. If you have a patent, you can sue anyone who misuses, or infringes, your idea without getting permission via a license.

## Why does it matter to startups?

For a startup, protecting the creation of intellectual property is part of building a successful business. Startups frequently apply to have their inventions patented knowing they are building value as well as helping the long-term interests of the public. However, startups need balanced laws that protect new ideas while preserving a framework that promotes innovation. For many startups, the only interaction they’ll ever have with the patent system will come through predatory patent litigation, commonly known as “patent trolling.” Lawyers acquire patents, with no intention of commercializing the invention, and use them to shake down startups for a quick settlement, knowing they cannot afford a court fight. Low quality, ambiguous patents make this practice easier because they could be used against a broad range of companies.

## Where are we now?

In 2011, Congress passed the **Leahy-Smith America Invents Act**, which improved patent quality and gave the U.S. Patent and Trademark Office (USPTO) the ability to weed out bad patents that should not have been issued in the first place. Additionally, the Supreme Court has directly addressed some of the tactics used by patent trolls in cases regarding venue and subject matter eligibility (commonly referred to as Section 101). Since these changes, we have seen a dramatic decrease in patent trolling, a relief for many startups. Confidence in the patent system is increasing and more patent applications were filed in 2016 and 2017 than any other year in history. Congress should proceed with caution in upsetting this balance.

For innovation to flourish, the USPTO must ensure that only truly new inventions are granted a patent. Allowing low-quality patents to flood the patent market depresses confidence in the entire system. If patents are mostly seen as a weapon to terrorize defendants, innovators will be less likely to spend time and money to protect their inventions. To ensure patent quality, Congress needs to protect the gains made over the past decade in two areas.

Questions?

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