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USPTO's Patent Policy Shift — Undermining US AI Leadership and the AI Action Plan

This report documents how the US Patent and Trademark Office (USPTO) – by refusing to correct USPTO's own patent examination errors – threatens to erode US leadership in artificial intelligence (AI).

The USPTO Director has: (1) undertaken a policy of refusing to grant most petitions to review USPTO errors in granted patents; (2) [proposed regulations](#) in Oct. 2025 that would deny access to IPR based on extra-statutory procedural criteria; and (3) published a March 2026 [Director's memo](#) that would limit IPR access based on highly restrictive criteria relating to company size and profile.

None of these restrictions are permitted by statute. All of them hurt productive companies and their workers in the US. The primary beneficiaries are the foreign sovereign wealth funds, litigation speculators, and the “non-practicing entity” (NPE) shell companies they create. From 2021-2023, [4 out of the top 5 NPEs](#) were based outside the US or ultimately controlled by foreign interests. These speculators are among the few “winners” of USPTO's new policy stance. The broader US economy and American workers stand to lose.

This situation is of serious concern to the above-listed organizations, which represent America's advanced manufacturing and industrial technology base – from [automobiles](#), [semiconductors](#), and [precision machining](#), to [industrial software, AI, and quantum](#), including [small and medium-sized enterprises](#) (SMEs). Collectively, our organizations' member companies employ over 90 million American workers.

The USPTO Should Follow the Law and Correct its Own Errors

The Patent Trial and Appeal Board (PTAB) administers the Inter Partes Review (IPR) process — a streamlined, expert-driven, congressionally-mandated mechanism for correcting invalid patents inside the agency that originally issued them. IPR is a critical safeguard: it costs a fraction of court litigation, avoids invasive judicial discovery, and allows the USPTO to correct its own errors before they cause greater harm.

USPTO has curtailed IPR access contrary to the statutory standard of [35 U.S.C. § 314\(a\)](#), which provides for PTAB review of a patent if there is a “reasonable likelihood” that a petitioner will prevail on at least one patent claim. The PTAB's IPR institution rate collapsed from [72% in Q3 2024 to just 35% in Q3 2025](#); in some months, [the institution rate dropped to 0%](#). USPTO's actions systematically undermine AI Action Plan goals by funneling hundreds of invalid patents into US courts to be asserted – often by foreign-backed entities – against US AI developers, deployers, integrators, and other entities across the AI stack.

How USPTO's Actions Undermine AI Action Plan Goals

The President's [AI Action Plan](#) declares that “it is a national security imperative for the United States to achieve and maintain unquestioned and unchallenged global technological dominance” in AI. USPTO's [proposed regulations](#) (NPRM) and the [March 2026 Director's memorandum](#) (Director's memo) **don't even mention AI – let alone the AI Action Plan** – suggesting that the Director's priorities lie elsewhere. USPTO's policy of refusing to correct its own errors undermines the AI Action Plan in several ways:

- **Pillar I Goal: “Remove Red Tape” – USPTO's actions dramatically increase the risks and costs of US AI innovation.** The Action Plan seeks to promote more cost-effective and efficient US AI development and deployment. USPTO promotes the opposite result by weakening IPR and forcing US AI companies into extended and expensive district court litigation that can cost as much as \$4.5 million per case – compared to just \$100,000-\$350,000 for IPR. NPEs now bring over 50% of all US patent suits, with 41% of targeted startups reporting that NPE litigation caused them to delay hiring, lose firm value, or exit business lines.
- **Pillar I Goal: “Support Next-Generation Manufacturing” and “Restore American Semiconductor Manufacturing” – USPTO's actions undermine advanced manufacturing.** The Action Plan calls for America to “bring semiconductor manufacturing back to US soil” and invest in AI-enabled robotics and manufacturing technology. USPTO is undermining this effort by refusing to correct its own errors via the IPR process. NPE attacks impose roughly \$29 billion per year in

direct litigation costs – capital that could otherwise fund the chip fabs, robotics lines, and AI infrastructure. USPTO has even intervened in patent cases to support injunctions against US chip manufacturing activities – favoring (foreign-backed) NPEs that manufacture nothing in the US.

- **Pillar I Goal: “Protect Commercial and Government AI Innovations” — USPTO is opening the door to trade secret theft.** The Action Plan states it is “essential for the US government to effectively address security risks to American AI companies, talent, intellectual property, and systems.” It directs DOD, DHS, and others to “collaborate with leading American AI developers to enable the private sector to actively protect AI innovations from security risks, including malicious cyber actors.” USPTO is eroding these whole-of-government efforts. Its refusal to correct its own errors via the IPR process forces disputes over invalid patents into district court, where adversary-backed plaintiffs can demand AI source code, AI model weights, chip architectures, and production data through court-ordered discovery. This threat is already materializing in pending court cases.
- **Pillar III Goal: “Establish American AI ... as the gold standard for AI worldwide and ensure our allies are building on American technology”— USPTO is doing the opposite.** The Action Plan calls for the US to establish American AI as the “gold standard” upon which other nations will build. USPTO is doing the opposite by lowering patent examination standards, refusing to correct its own errors, issuing ever more AI patents to Chinese entities, and paying no heed to the sharp rise in (foreign-backed) NPE patents suits against US AI companies.

USPTO Actions Favor NPEs Over AI Action Plan Goals

USPTO policies favor litigation financiers and NPEs above even Trump Administration AI policy priorities. For example, USPTO's [Notice of Proposed Rulemaking \(NPRM\)](#) and the Director's subsequent March 2026 memo (“Director’s memo”) would raise new hurdles to IPR review for US companies across the AI stack, largely benefiting (often foreign-backed) NPEs asserting invalid patents against US AI innovators.

Notably, the NPRM and the Director’s memo contain no references to artificial intelligence, let alone the President’s AI Action Plan. This telling omission underscores that USPTO is making consequential decisions about the US innovation ecosystem without analyzing their impact on America’s most strategically important technology sector or the White House’s AI policy priorities.

The Director’s memo also suggests that he may deny IPR petitions filed by very small entities and vertically integrated manufacturers – effectively denying IPR access to most US companies across the AI stack. That outcome would not only contradict the President’s AI Action Plan, but it would also directly jeopardize US interests as foreign-backed NPEs gain court-ordered access to sensitive US AI-related technologies.

USPTO’s Actions Favor (Many Foreign) NPEs Over US Companies Across the AI Stack

USPTO’s actions harm many companies across the US AI stack: [more than 60% of PTAB reviews are requested by US petitioners](#), while up to 80% of the (weak or invalid) patents at issue are held by Chinese and other foreign-controlled entities. [4 of the top 5 NPEs are based outside the US or ultimately owned by non-US persons](#). Fortress Investment Group — a prominent NPE funder controlling [\\$6.8 billion in litigation finance assets](#) — is owned by a UAE sovereign wealth fund. PurpleVine IP, a [Shenzhen-based litigation investment firm](#), has funded patent suits against chip companies. A [GAO report](#) documented NPE funding from Saudi Arabia and France. These entities do not support US AI leadership; their role is extraction.

US AI Leadership and Strength Depends on High Quality Patents

A common misconception holds that issuing more AI patents – even low-quality patents – is inherently good for US AI leadership. It is not. America’s AI ecosystem does not benefit from a flood of low-quality patents; patents on non-inventions; or patents granted to non-inventors including Chinese state enterprises, foreign NPEs, and litigation financiers. When USPTO issues such patents, these entities use them to attack US companies that are building the AI technology stack. The relevant metric is *patent quality* – not quantity.

The Action Plan calls for America to “remain the leading pioneer” of AI breakthroughs and to “advance the science of AI.” USPTO’s actions undermine this goal: Protecting low-quality AI patents from review does not advance the science of AI – it weaponizes USPTO’s own errors against those who do.