USPTO's Patent Policy Shift – Promoting Financial Speculation in USPTO's Own Errors

This report documents how the Director of the US Patent and Trademark Office (USPTO) has steered the USPTO to favor financial speculators and so-called non-practicing entities (NPEs). Tilting the litigation playing field in favor of entities that buy up weak or invalid patents to sue productive US companies, USPTO is now refusing to correct its own patent examination errors, despite a statutory obligation to make such corrections if it finds a "reasonable likelihood" that an issued patent claim is invalid in conjunction with an Inter Partes Review (IPR) petition.

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. The primary beneficiaries are the foreign sovereign wealth funds, hedge funds, and the 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.

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 USPTO to correct its own errors before they cause greater harm.

USPTO has heavily curtailed access to IPR. USPTO's actions block companies from accessing IPR even when they present compelling evidence that a patent claim is invalid. USPTO's actions favor NPE patent plaintiffs – a type of patent litigant that "hold patents but do not produce or sell any goods or services based on those patents." NPEs use their US patents to attack productive US companies in US courts.

Requiring USPTO to follow the law and correct its own errors would go further than any other measure to restore the integrity of the IPR process, reduce the attack surface available to NPEs and adversaries, and protect American industry from litigation attacks involving invalid patents.

USPTO's Actions Favor NPEs over Productive US Companies and US Workers

NPEs are not small inventors defending their intellectual property. They are usually shell companies – often created and funded by large institutional investors and foreign sovereign wealth funds – with no presence in US manufacturing or other production. A Federal Trade Commission study into such patent assertion entities covered 22 entities, 327 affiliates, and more than 2,100 holding companies, documenting a web of shells designed to obscure who is actually behind the litigation. Such entities routinely threaten to sue dozens, hundreds, or even thousands of targets on the same patent, while creating layered structures that make it difficult or impossible for targeted US businesses to identify their true adversary.

USPTO's Actions Facilitate Opaque Patent Litigation Finance

As a rule, NPEs do not invent; they speculate. Thus, it is not surprising that 69 percent of NPE-asserted patents are purchased from corporate assignees. This NPE business model is only made stronger when

NPEs can acquire discounted, low-quality, or invalid patents and weaponize them in court litigation before their weaknesses are exposed. This is why USPTO's growing refusal to correct its own examination errors via the IPR process is so destructive to US industry. Every discretionary denial is a policy choice to leave an unreviewed, likely-invalid patent in the hands of speculators to attack productive companies in the US.

NPEs now bring over 50% of all US patent suits, and patent litigation now accounts for over 32% of all new third-party litigation finance commitments – the single largest funding category. Meanwhile, the PTAB's IPR institution rate has collapsed from 72% in Q3 2024 to just 35% in Q3 2025, meaning nearly two-thirds of facially meritorious petitions are now turned away without review – leaving those patents intact and available to NPE speculators to deploy against US industry.

USPTO's Actions Promote Litigation Attacks Against US Companies

The impact of the USPTO policy shift falls hardest on US industry, given that 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, particularly NPEs.

The USPTO policy shift substantially strengthens the ability of such NPEs and other foreign interests to attack US interests: Between 2021 and 2023, 4 of the top 5 NPEs were either based outside the US or ultimately owned by non-US persons. Some NPEs are Chinese-linked, such as PurpleVine IP, a Shenzhen-based litigation investment firm, which has been documented funding US patent suits against non-Chinese semiconductor and electronics companies. Similarly, Russian entities have used litigation finance to evade US and UK sanctions, with the US Treasury Department confirming to Congress that third party litigation funding is a Russian approach to circumventing US sanctions.

However, the problem is much larger than China or Russia: A GAO report documented NPE funding from Saudi Arabia and France, while other NPEs draw funding from the UAE, Japan, Canada, Latin America, and beyond. For example, Fortress Investment Group – a prominent NPE funder – manages $6.8 billion in litigation finance assets and is controlled by a sovereign wealth fund based in the UAE. It was a Fortress-backed NPE shell company that secured the $2.18 billion verdict against Intel on a patent later found to be invalid. Another Fortress-backed NPE shell company recently attacked another semiconductor company that manufactures chips in Texas. (Remarkably, USPTO has sided with this NPE in litigation, urging a Texas court to enjoin US-based chip manufacturing, despite the NPE having no US manufacturing capacity or workers).

The problem of foreign-backed NPEs is compounded by structural opacity: even nominally US-incorporated NPEs can be layered shell companies concealing foreign control. Generally speaking, NPEs face no legal obligation to disclose their funding sources or beneficial owners, leaving courts, defendants, and the public effectively blind to who is actually waging these campaigns against American industry.

This much is clear: With USPTO's help, NPEs are striking at the heart of US economic and national security, using their US patents to attack thousands upon thousands of productive US companies – with 29.6% of NPE attacks aimed at manufacturers, 22.8% of NPE attacks aimed at high technology and similar service providers, and the remainder aimed at companies in agriculture, construction, energy, finance, forestry, insurance, mining, real estate, retail, transportation, and other sectors.