USPTO's Patent Policy Shift – Undermining US Industrial Capacity and the Manufacturing Workforce

This report documents how US Patent and Trademark Office (USPTO) – by refusing to correct its own patent examination errors – is undermining national policy goals of rebuilding US industrial capacity and growing well-paid manufacturing jobs for American workers.

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.

The USPTO has heavily curtailed access to IPR. The USPTO policy shift blocks manufacturers and others from accessing IPR even when they present compelling evidence that a patent claim is invalid. The USPTO policy shift favors non-practicing entity (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 patents to attack manufacturers and other productive companies in US courts.

USPTO's Actions Undermine US Industrial Reshoring Efforts

Reshoring US production already requires enormous upfront capital: specialized equipment, land, labor, and infrastructure. Manufacturers face substantial regulatory, equipment, and financing demands – effectively turning every new facility into a high-risk, multi-billion-dollar capital bet. The manufacturing sector remains in contraction territory, with declining construction spending for new industrial facilities and substantial reductions in US manufacturing investment.

The USPTO policy shift layers aggressive patent litigation on top of these pressures. When a manufacturer knows that launching a product may trigger lawsuits based on invalid, overly broad, or abstract patents, it must factor not only engineering and capital costs into its business plan, but years of potential litigation, discovery burdens, and settlement pressure. NPE litigation correlates with lower venture capital investment, declines in startup formation, reduced patenting activity, and measurable drops in R&D spending – effects that are particularly damaging in manufacturing, where margins are tighter and investment cycles longer.

USPTO's Actions Favor Financial Speculators Over US Manufacturers and US Workers

NPEs have sued 1,500 manufacturers – more than any other type of firm – in recent years. The economic toll is staggering: NPEs impose roughly $29 billion per year in direct litigation costs, over $4.3 billion in damages in 2024 alone, and in one notorious example, a foreign-financed NPE secured a $2.18 billion verdict against Intel on a patent later found invalid. Defending a single case can cost a manufacturer up to

$4.5 million in district court and up to $8 million at the ITC – capital that could otherwise support hiring, automation, plant expansion, and workforce development. Job losses for small manufacturers are estimated at ten jobs in a typical plant to defend even a single lawsuit.

USPTO's Actions Favor Foreign-Backed NPEs Over US Manufacturers and US Workers

The impact of the USPTO policy shift falls hardest on US industry and US workers, 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-U.S. persons, accounting for over 90% of the patent cases filed by that group. Some NPEs are Chinese-linked, such as PurpleVine IP, a Shenzhen-based litigation investment firm, which has been documented funding US patent suits against semiconductor manufacturers. Similarly, Russian interests have used litigation finance to evade US and UK sanctions, with the US Treasury Department confirming to Congress that third party litigation funding is used to evade sanctions.

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 (noted above). Another Fortress-backed NPE shell company recently attacked another semiconductor company that manufactures chips in Texas.

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: Collectively, NPEs are striking at the heart of US economic and national security, using their US patents to attack thousands of productive US companies – with 29.6% of NPE attacks aimed at manufacturers and 22.8% of NPE attacks aimed at high technology and other service providers.

USPTO's March 11 Memorandum on "US Manufacturing and Small Business Use of AIA Proceedings" Primarily Benefits Litigation Financiers and NPEs

On March 11, 2026, the USPTO Director issued a memorandum purporting to favor US manufacturing and small business interests. The memo does the opposite. Under 35 USC § 314(a), the Director is to institute an IPR whenever there is a "reasonable likelihood" that the petitioner will prevail on at least one patent claim. This is a merits-only, validity-focused standard. The Director's memo replaces this statutory standard with new set of administrative hurdles to IPR institution that continue to shield invalid patents from review.

The Director's memo is also an act of constitutional overreach. For years, a small group of lawmakers have sought – and repeatedly failed – to enact legislation imposing restrictive standing requirements for IPR petitions. Congress has consistently declined to do so. Rather than accept that legislative judgment, the Director now imposes similar restrictions unilaterally and in direct conflict with § 314(a)'s express mandate.

The Director's new test is also rigged to fail the very companies it claims to protect. To secure a favorable IPR institution decision, a US manufacturer facing a lawsuit from an NPE over an invalid patent must now prove not only that at least one patent claim is likely invalid, but also that its products satisfy the Director's highly restrictive domestic manufacturing criteria. Any foreign component sourcing or processing – the norm for US manufacturers operating at scale – risks disqualifying the petitioner entirely.

The Director's memo does not expand protections for manufacturers or small businesses — it confiscates a congressionally guaranteed right to merits-based IPR review, replaces it with a narrower discretionary benefit the Director controls, and then asks the victims of that substitution to be grateful for the exchange.