



BSA 2026 Patent Policy Agenda

Intellectual property (IP) is the cornerstone of innovation. The enterprise software industry relies on a predictable, well-functioning patent system as a key component of the IP framework.

As IP owners, BSA members pursue patent protection for their inventions, while also making active use of patent office procedures (including post-issuance review mechanisms before the Patent Trial and Appeal Board) to identify overly broad or invalid patent claims and help improve patent quality.

**BSA supports the promotion of innovation and patent quality,
alongside steps to combat abuse of the system by:**



**Improving Patent
Quality at the
Examination Stage**



**Safeguarding
Inter Partes and
Post-Grant Review
Mechanisms Before
the PTAB**



**Addressing
Abusive Third-
Party Litigation
Funding**



**Ensuring that
Standard Essential
Patents Are
Licensed on
FRAND Terms**



**Protecting
Long-standing US
Legal Standards for
Patent Injunctions**

We describe each of these recommendations on the following pages.

**American Innovation Should Set the Global Standard for Quality.
American Patents Should Be the Best in the World.**



Improving Patent Quality at the Examination Stage

Efforts to improve patent quality should remain a priority for the United States Patent and Trademark Office (USPTO). Patents that should not have been issued—for example, those in which the invention claimed is obvious or anticipated—damage the public interest and chill the development of new technologies. America’s science and technology ecosystem does not benefit from a flood of low-quality patents, patents claiming non-inventions, or patents granted to non-inventors. When USPTO issues such patents, non-practicing entities (NPEs)—which now file most US patent suits—can use them to attack productive US companies in court. The relevant metric is *patent quality*—not quantity.

USPTO receives more than 500,000 patent applications each year, while USPTO examiners have an average of only [20 hours](#) to review each application (with just eight hours for prior art search). The US Government Accountability Office has also [found](#) that examiners routinely fail to complete thorough prior art searches due to time pressure. USPTO’s own [Patent Public Advisory Committee](#) confirmed that more than 92 percent of claims invalidated through IPR were invalidated based on prior art that the examiner had never considered.

BSA supports investments in AI to improve prior art searching and other aspects of the examination process. USPTO’s use of new AI and data analytics technologies can enhance patent examiners’ capacity to conduct comprehensive and focused patent searches. AI search and analytics tools at the examination stage and a fully functioning inter partes review system at the post-issuance stage are mutually reinforcing—together, they keep US patent quality at the level required to sustain US technology and AI leadership.



Safeguarding *Inter Partes* and Post-Grant Review Mechanisms Before the PTAB

As innovators and some of the largest patent owners, BSA members have a significant interest in post-issuance procedures to promote patent quality. These include the *inter partes* review (IPR) and post-grant review mechanisms established under the Leahy-Smith America Invents Act (AIA). The overarching goal of these procedures is “to establish a more efficient and streamlined patent system that will [improve patent quality and limit unnecessary and counterproductive litigation costs](#),” given the view “that [questionable patents are too easily obtained and are too difficult to challenge](#).” Post-issuance review procedures are intended to “[strengthen patent quality and reduce costs](#),” given that “[litigation over invalid patents places a substantial burden on US courts and the US economy](#).”

The problem of invalid patent claims being mistakenly issued is not new. When litigated patents are challenged in courts or at the PTAB, they have historically been found to be invalid at a rate of more than 40 percent. This high rate of invalidation confirms that high volumes of patent applications of varying quality and inventiveness present a particular challenge for patent examiners. As stated by one Senator at the time of AIA enactment, “[i]t is unrealistic to believe a patent examiner would know all of the places to look for [relevant] information” at the examination stage, “and even if the examiner knew where to look, it is unlikely he or she would have the time to search all of these nooks and crannies.”

BSA’s overarching priority is for the IPR program to function as Congress intended, namely as a review system to identify invalid patent claims while preserving and strengthening valid patents. The statute conditions institution on a single merits question—whether the petitioner is reasonably likely to prevail

Historically, USPTO has **instituted** roughly 60–70 percent of all IPR petitions. Since 2025, the USPTO has **denied** a substantial majority of all IPR petitions on discretionary grounds without any consideration of the merits. Under this practice, a petitioner who satisfies the statutory ‘reasonable likelihood’ threshold may nonetheless be denied review based on extra-statutory factors. BSA’s view is that this practice is inconsistent with 35 U.S.C. § 314(a) and undermines the core bargain Congress struck in the AIA.

on at least one claim—and identifies no other basis for denial. BSA urges USPTO to adhere to these standards, and we oppose efforts (whether at USPTO or in Congress) to reduce access to these proceedings by erecting new procedural barriers, including new standing requirements or new burdens of proof.

Since 2025, the USPTO has undertaken a policy of denying a substantial majority of IPR petitions to review USPTO errors in granted patents. The USPTO has also issued proposed regulations, memoranda, and guidance documents that further limit IPR access based on highly restrictive extra-statutory procedural criteria that directly conflict with the merits-based institution criteria that Congress wrote into the AIA.

No persuasive public interest rationale supports allowing invalid patent claims to remain in force once they have been brought to the PTAB’s attention.



Addressing Abusive Third-Party Litigation Funding

Third-party litigation funding (TPLF) frequently involves the assertion of patents against companies in critical technology sectors, including 5G, advanced manufacturing, and semiconductors. TPLF funders may channel funding through hedge funds and shell corporations to ensure that their investors remain anonymous.

In January 2025, the GAO reported that foreign sovereign and state-linked entities were among the investors funding US patent litigation through opaque TPLF arrangements. BSA supports Congressional and Executive Branch action to ensure that real parties in interest are disclosed in all forums in which US patents are asserted, and that foreign government or other foreign entity involvement in US patent litigation finance receives appropriate national and economic security scrutiny.

None of the USPTO Director’s restrictions on IPR access is 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, four out of the top five NPEs were based outside the US or ultimately owned or controlled by foreign interests.



Ensuring that Standard Essential Patents (SEPs) Are Licensed on FRAND Terms

Investments in an innovation ecosystem that includes a predictable and efficient framework for SEP licensing can support US technology leadership and innovation and improve the lives of citizens, workers, and consumers at home and abroad. The broad adoption of interoperable standards can advance the creation and use of new technologies to address pressing challenges.

As a general matter, seeking injunctive relief in lieu of good-faith negotiation is inconsistent with the commitment to enter into a license on fair, reasonable, and non-discriminatory (FRAND) terms. This is most apparent in cases in which a potential licensee is willing to take a license and is able to compensate a SEP holder for past infringement and future use of SEPs subject to a voluntary FRAND commitment. However, even when good-faith negotiations fail and the parties cannot agree on alternative dispute resolution or to seek a FRAND determination in a mutually agreeable jurisdiction, monetary remedies will usually be adequate to fully compensate a SEP holder for infringement. Seeking injunctive relief may be justified, in limited circumstances, where—for example—an implementer refuses to pay an adjudicated FRAND royalty.

Given that a key challenge in SEP licensing is the information asymmetry between SEP holders and putative licensees, recent proposals in other jurisdictions to promote transparency in SEP licensing may also warrant review. These include transparency mechanisms regarding aggregate royalty rate calculations, essentiality checks, and FRAND determinations.



Protecting Long-standing US Legal Standards for Patent Injunctions

BSA has been alarmed by the USPTO's promotion of injunctions against US companies that produce goods or services and in favor of NPEs that manufacture nothing in the United States. For example, in 2025 and 2026, the USPTO repeatedly called for patent injunctions in favor of such NPEs against manufacturers in the United States. USPTO's interventions favoring NPEs over productive industrial enterprises appear to be part of a broader effort to undermine the long-standing, unanimous Supreme Court decision in *eBay v. MercExchange*, 547 U.S. 388 (2006).

Injunctions granted to foreign NPEs against US manufacturers appear to be contrary to the Administration's policies. Such injunctions will not "reindustrialize [the] economy or re-shore industrial production;" they will not "encourage and attract investment in our economy;" they will not support a "strong, capable defense industrial base." They will not help the United States.

Such injunctions will do the opposite: They will help our adversaries—eliminating US manufacturing capacity; weakening US technology leadership; granting disproportionate power to foreign-backed NPEs; and increasing US dependence on vulnerable foreign supply chains.

The long-standing Supreme Court standard under *eBay Inc. v. MercExchange* must be protected—ensuring that the "traditional four-factor test applied by courts of equity when considering whether to award permanent injunctive relief to a prevailing plaintiff applies to disputes arising under the Patent Act." The strength in this standard is also found in its adaptability to different circumstances. As the Supreme Court explained, the application of inflexible and categorical rules for or against permanent injunctions is inappropriate. Each case should be evaluated on its facts and the merits. BSA opposes USPTO's call for categorical rules favoring NPEs over productive enterprises in injunction determinations.