



## Patent Reform

### Overview

Patent ownership is an incentive to innovation and a basis for the contributions of technological advancement to economic growth. As the U.S. increasingly becomes a high-tech economy, the importance of patents grows significantly as the frequency by which they are sought and enforced grows with each passing year. Patent rights are not self-enforcing and patentees who wish to compel others to observe their rights often do so through litigation in the federal courts.

The proliferation of “non-practicing entities” (NPEs), often known as patent trolls, has been one of the central factors driving debate around patent reform in recent years. NPEs do not manufacture products or provide services, but rather have the primary business model of purchasing patents and then threatening or bringing patent infringement litigation against alleged infringers.

Because patent litigation is risky, disruptive, and expensive, the majority of defendants settle regardless of the merits of the cases brought by NPEs. Furthermore, NPEs set royalty demands strategically well below litigation costs to make the business decision to settle an obvious one. The net result of all this frivolous activity has led to a tax on innovation and undermined the incentives to invest in startup companies.

### Position

Significant venture capital investment is based on the existence of patents to protect an emerging company’s innovative idea and deter competitors from stealing their idea. Without a strong patent system that acts as a deterrent on infringement, further investment in patent-reliant technology will decline.

NVCA supports patent reform legislation that will target abusive behavior, but is concerned that legislative proposals from previous Congresses would create

unintended consequences that will discourage investment in startups working on breakthrough technologies and lifesaving cures.

Specifically, NVCA is concerned with three specific areas:

- **Fee Shifting** – Recent proposals would increase the risk of patent litigation for startups by creating an overly broad fee-shifting standard that gives a significant advantage to large incumbent companies and even large patent trolls that have the financial resources to engage in litigation in ways startups simply cannot match.
- **Joinder** – Setting a disturbing precedent, H.R. 9 from the 114th Congress provides not only that startups would be on the hook for legal fees if they lose in patent litigation, but so too would their venture capital investors if the portfolio company goes bankrupt.
- **Discovery & Pleadings** – Further stacking the deck against small startups, recent proposals would increase the cost of patent litigation by creating unnecessary requirements in pleadings and opportunities for expensive delays during the discovery process.

A patent is only as strong as the owner's ability to enforce it and the awareness of others of that ability. NVCA believes abusive patent litigation practices must be solved so as not to deter investment in patent-reliant startups, but we must be mindful not to create unintended consequences that would pose a threat of the entrepreneurial ecosystem.