

## **The Time to Revive the American Patent System is Now!**

**This past June**, the United States Patent and Trademark Office (PTO) celebrated the grant of the 10 millionth patent since the First Congress, in one of its first acts, passed the Patent Act in April 1790. The Act implemented the mandate in the Constitution itself to "promote the progress of science" by granting "exclusive rights" to inventors of "useful" inventions. The Founders were correct to conclude that a vibrant patent system would encourage rapid economic growth. On the energy of that system, America was transformed from a poor, backward, agrarian country to the leading industrial power on the planet. The grant of each patent marked another step along that impressive journey. So, marking the 10 millionth patent grant is a measure of our national progress and our unprecedented prosperity. It is a reflection of how we got there.

**From the founding of the nation** until very recently, strong patents incentivized the large investments of money, time and talent that made the patent system the main engine of national advance. The reality is that most inventions are very expensive, very risky and very slow. Therefore, continual infusions of investment funds are needed. Patent rights made that possible by assuring investors of a reasonable recovery if the inventions were successful. Successful they were, often creating whole new industries, such as telephones, cars, airplanes, computers and miracle drugs.

No surprise then that our patent system was ranked first globally by the US Chamber of Commerce. It was rightly said that the US system was the "gold standard" and it was widely imitated by other nations. We had perfected the means to attract massive private capital to support innovation.

**But then something happened.** Special interests, just a few dozen companies, most in Silicon Valley, lobbied the Congress and persuaded the Supreme Court to weaken the patent system to save them minor costs in order to further enlarge their astronomical profits. The harm to most start-ups and smaller companies was severe, even life threatening. While the mega-corporations no longer needed strong patents, thousands of other companies did.

The well-funded campaign, led by the FANG companies, Facebook, Apple, Amazon, Netflix and Google, succeeded so well that in 2016 America fell from number 1 in patent strength in the world to number 10, tied with Hungary. Further decline in 2017 dropped us to number 12, tied with Italy. For the first time ever, the US dropped out of the top ten in Bloomberg's global ranking of overall innovation. Start-ups fell 40 percent to a half-century low. Patent values dropped 60 percent, as did investment in early-stage R&D. How, exactly, did this happen?

The Congress created a new, easy way to invalidate patents in the patent office, applying lower standards than used in court. It also added to the staggering costs and delays of protecting patent rights. And, patents were killed at twice the rate in court trials or traditional PTO re-examinations.

Meanwhile, in four Supreme Court decisions from 2010 to 2014 the Court vastly reduced and confused what types of inventions were even eligible for possible patenting. Chaos ensued with patent lawyers unable to predict outcomes and soundly advise business clients, while judges and examiners were unable to apply the new standard fairly and consistently.

**Venture capital firms and other funders reacted** by fleeing innovation for safer alternatives such as entertainment. Capital that used to fund innovation here began to flow overseas to nations with stronger patents and wider eligibility.

In the new, anti-patent environment, many inventors gave up on patents and kept their inventions secret or stopped inventing altogether. Individual inventors, once a quarter of the total, shrank to only 4 percent, one sixth of their prior participation. Smaller companies also suffered greatly. They are the ones most dependent on strong, stable, reliable patent rights. And, they have been responsible for creating most new jobs and industries, most economic growth and most breakthrough innovations. So, we are killing the golden goose.

**Reviving the American Patent System is simple:** reform the new PTO reviews created by the 2011 legislation, ironically called the America Invents Act, and resolve the eligibility mess caused by Court decisions to restore clarity and sanity. Both will require Congress to act.

A patent reform bill has been introduced in both the Senate and House that would fix the reviews, the bipartisan STRONGER Patents Act, by Senator Chris Coons (D-DE) and Congressman Steve Stivers (R-OH). Its passage would restore the system to a great extent. And, if later legislation fixed the eligibility problem, the system would be further strengthened.

But to overcome the massive PR campaign of the FANGs, featuring largely fictional or exaggerated tales of patent "trolls" abusing the system with baseless law suits, leaders in Congress need stories to illustrate the harms of the AIA reviews and Supreme Court cases. That is where the people, YOU, come in. Reforms will be energized by stories of how the weakening of patents has harmed innovators, entrepreneurs and companies of all sizes. We encourage you to share those stories on this website.

**Additionally, contact your representatives in Congress** and urge them to support the STRONGER Patents Act.

**And finally, help to send a strong message to Washington** by contributing to [Protect American Innovation](#): The Campaign for Patent Reform.

**Judge Paul Michel**  
**Retired Chief Judge of the United States**  
**Court of Appeals for the Federal Circuit**