

Strong Patents Drive Innovation

Issue Background

Strong patents are the lifeblood of the biotechnology industry. They are critical in ensuring a steady stream of capital to biotechnology companies developing innovative medicines, alternative energy sources and insect- and drought-resistant crops. And they are essential to the technology transfer process that leads from inventions in the lab to products on the shelves.

A number of changes over the last decade have weakened the U.S. patent system, from Supreme Court decisions to the unintended consequences of the post-grant administrative process at the U.S. Patent and Trademark Office, known as *Inter Partes Review* (IPR). The result is that the U.S. patent system has rapidly fallen to 12th place worldwide, according to the U.S. Chamber of Commerce's rankings.

IPR proceedings are being misused by generic drug manufacturers to create a form of double jeopardy, where the same patent can be upheld by a federal court and then invalidated by the PTO. This type of legal strategy harms patients in the long run by dampening investment in already risky biomedical innovation. Many patent law experts, including those who supported the creation of IPR, now recognize that it needs to be reformed to protect the integrity of the patent system.

The majority of biotechnology companies are small businesses that have no products on the market, and thus their research and development activities are funded through massive amounts of private sector investment over many years, sometimes even decades. Without strong, predictable and enforceable protections for patented inventions, investors will shy away from investing in biotech innovation, degrading the ability to provide solutions to the most pressing medical, agricultural, industrial and environmental challenges facing our nation and the world.

Policy Position

BIO supports balanced reforms to reduce abusive patent practices, while strengthening the strong incentives necessary to sustain our nation's global leadership in biotechnology innovation and the creation of high-wage, high-value jobs throughout our country. The STRONGER Patents Act of 2017 helps begin the process of achieving that critical balance.

This legislation cracks down on false or deceptive patent demand letters, ensures urgently-needed fairness and finality in PTO post grant proceedings, eliminates diversion of PTO user fees, and helps American research-intensive companies protect their investments in innovation.

BIO supports the STRONGER Patents Act of 2017 and will continue to advocate for passage of legislation to curb abusive patent practices, while strengthening the ability of patent owners to defend their inventions and businesses against infringement.

Key Points

- ✓ The STRONGER Patents Act of 2017 will bring important fixes to the patent system that prevent abuse, protect legitimate patent rights, and improve our patent examination process.
- ✓ U.S. courts should treat a patent like any other property right by preventing ongoing infringement after a court determines the patent to be valid.
- ✓ Inventors' patent application fees should stay at the USPTO – not diverted to fund government spending.
- ✓ IPR abuses create unfavorable investment prospects in already risky biomedical innovation and undermine the carefully balanced and successful Hatch Waxman system.