

# Inter Partes Review

## Who We Are

United for Patent Reform (UFPR) is a broad coalition of diverse American businesses advocating for a patent system that enhances patent quality, advances meaningful innovation, and protects legitimate American businesses from abusive patent litigation. Our members are small and large — they range from Main Street, REALTORS®, hotels, grocers, convenience stores, and restaurants to national construction companies, automobile manufacturers, and technology businesses. Collectively, our members represent over 90 million U.S. employees, a figure that accounts for nearly two-thirds of private sector jobs in the U.S.

Low quality patents can be a serious drag on innovation and job creation, and can erode public confidence in the patent system. Congress created a program to help fix that problem when it passed the America Invents Act in 2011: **Inter Partes Review (IPR)**. IPR gives businesses the opportunity to ask the U.S. Patent and Trademark Office (USPTO) to review its initial granting of a patent.

For the more than **350,000 patents issued each year**, busy examiners have just **19 hours on average** to complete a review and mistakes happen. IPR is an important procedure to correct any errors and ensure only valid patents are granted. In doing so, it only impacts a tiny fraction of patents: **99.8% of active patents have never faced an IPR**. Even though IPR has been critically important for American businesses to efficiently fight frivolous claims of patent infringement, **saving litigants \$2 billion in legal fees**, baseless complaints of unfairness in IPR have led to the program being weakened, **leading to a 40% uptick in patent litigation by NPEs from 2018 to 2022**. The USPTO and Congress should defend IPR and stop this trend.

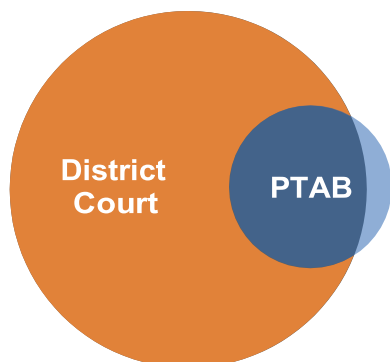
## IPR is a Necessary Tool to Combat Invalid Patents

The concept of IPR is simple. Any member of the public (like a defendant in patent litigation or a manufacturer on behalf of its customers) can ask the USPTO to evaluate whether a patent should have been granted in the first place. The requester submits a petition along with "prior art" to show that someone else invented it first.

A panel of expert administrative patent judges on the USPTO's Patent Trial and Appeal Board (PTAB) then compares the patent and the prior art to decide whether the IPR should move forward, applying a high standard so that only strong petitions are instituted. If instituted, the patent holder and the challenger will make their cases through a written briefing and an oral argument. The IPR ends within one year when the panel of judges issues a final decision.

**40%**  
increase in NPE  
cases from  
2018 to 2022

## Jurisdiction of Patent Challenges



More than 80% of litigations do not involve an IPR challenge.

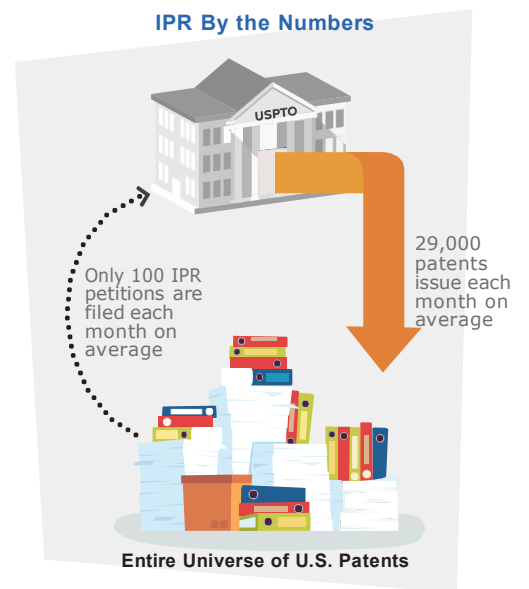


85% of patents in IPR are in litigation.

The realities of the patent examination process and the high number of invalid patents issued make a strong IPR process necessary for American businesses. The USPTO must grant a patent unless a patent examiner can prove it is invalid. But examiners have on average only 19 hours to look for prior art, understand the claimed invention, make a detailed comparison to decide what should be patentable, and engage in a back-and-forth with the applicant. This is not enough time, which causes examiners to miss the best prior art or fail to evaluate it correctly, thus issuing an invalid patent. With record-setting numbers of patent applications being submitted, and more than 350,000 patents being issued each year, IPR is more important than ever.

### IPR Has Been Critically Important to the Country's Small and Main Street Businesses

While Main Street businesses do not typically initiate an IPR themselves, they often benefit from IPRs initiated by their suppliers and service providers challenging patents that could—and often are—asserted directly against Main Street companies. This has benefited all American businesses by addressing invalid patents (more often than not held by foreign companies) so that they can no longer be used to threaten operating companies.



### IPR has been used to invalidate claims from NPEs that sued:



Realtors over the simple concept of mapping



Independent podcasters over the idea of podcasting



16,000 small businesses nationwide over the concept of scanning a document to email

### IPR Has Been Weakened and Abusive Litigation Is Making a Comeback

IPR is integrated into the patent system by statute, and the data shows it has been fair and balanced. IPR's high standard prevents 41% of petitions from moving forward. The opportunities for patent owners to present arguments and evidence supporting validity allows many challenged patents to remain intact. Eighty-seven percent of patents challenged in IPR face only 1 or 2 petitions, debunking claims that "multiple petitions" are a problem.

But the program has been weakened in response to baseless complaints of unfairness. Through new regulations, precedential decisions, and guidance to its judges, it is harder to invalidate patents that never should have been granted. Due to these changes, fewer businesses than ever are considering the IPR process.

NPEs have noticed. **The frequency of patent litigation brought by NPEs is increasing once again, rising by 40% from 2018 to 2022.** These NPEs are threatening small and Main Street businesses with drawn out and costly litigation to spur quick settlements. The USPTO and Congress should defend IPR and stop this trend.