

THE AMERICA INVENTS ACT

PROMOTING AMERICAN INNOVATION, CREATING AMERICAN JOBS, GROWING AMERICA'S ECONOMY

Why The America Invents Act Is Good For Small Businesses

The America Invents Act will protect small business patent holders from harassment by infringers.

The America Invents Act will make it more difficult for large patent infringers to harass a patent owner through continuous administrative challenges of the patent, or through challenges that have no likelihood of success. Large corporations often use this tactic to avoid license fees or to discourage an infringement suit. For small business patent owners and independent inventors, this tactic can make enforcement of their patents infeasible.

- The America Invents Act **increases the threshold** for instituting an inter partes reexamination to require the challenger to at least present evidence raising a “reasonable likelihood” that its challenge would be successful before a proceeding is instituted by the Patent and Trademark Office (PTO).
- The America Invents Act **prohibits successive challenges** using ex parte reexamination.
- The America Invents Act **provides a process for the PTO to make its determination within one year** – far faster than in challenges today.

These reforms give greater certainty to small businesses, which often are not financially able to enforce their patent rights efficiently when confronted with serial and harassing challenges to their patents.

The America Invents Act will reduce fees for small business patent applicants.

The America Invents Act will **require the PTO to provide a 50 percent reduction in fees for small business** and will create a new “micro-entity” designation for truly small and independent inventors. This new micro-entity class will receive a 75 percent reduction in fees, which will greatly benefit start-ups and new inventors.

Together, **these provisions ensure that the PTO's need to collect fees for services is not done on the backs of small businesses**, which will be able to afford patent protection better than today.

The America Invents Act will eliminate interference proceedings, which are often costly to small businesses.

The America Invents Act will eliminate interference proceedings as the method for determining the right to a patent between competing inventors in favor of a derivation proceeding. In an interference proceeding under the current first-to-invent system, two inventors claiming entitlement to a patent on similar inventions must demonstrate through verified lab notebooks who invented first.

This costly proceeding is almost always won by larger corporations. The last time a small business won a single interference proceeding was 2007. A derivation proceeding is far simpler, and does not require meticulous notes by the inventor because the key date is the date of application.

The America Invents Act will improve overall patent quality.

The America Invents Act will improve patent quality overall. Roughly half of all patents in litigation have claims invalidated. **When there are too many patents in the system that are not able to withstand court scrutiny, it is harder for small business to license their inventions or prevent others from infringing** – and, as a result, more difficult to raise capital from investors.