

# GAO Highlights

Highlights of [GAO-13-465](#), a report to congressional committees

## Why GAO Did This Study

Legal commentators, technology companies, Congress, and others have raised questions about patent infringement lawsuits by entities that own patents but do not make products. Such entities may include universities licensing patents developed by university research, companies focused on licensing patents they developed, or companies that buy patents from others for the purposes of asserting the patents for profit.

Section 34 of AIA mandated that GAO conduct a study on the consequences of patent litigation by NPEs. This report examines (1) the volume and characteristics of recent patent litigation activity; (2) views of stakeholders knowledgeable in patent litigation on key factors that have contributed to recent patent litigation; (3) what developments in the judicial system may affect patent litigation; and (4) what actions, if any, PTO has recently taken that may affect patent litigation in the future. GAO reviewed relevant laws, analyzed patent infringement litigation data from 2000 to 2011, and interviewed officials from PTO and knowledgeable stakeholders, including representatives of companies involved in patent litigation.

## What GAO Recommends

GAO recommends that PTO consider examining trends in patent infringement litigation and consider linking this information to internal patent examination data to improve patent quality and examination. PTO commented on a draft of this report and agreed with key findings and this recommendation.

View [GAO-13-465](#). For more information, contact Frank Rusco at (202) 512-3841 or [ruscof@gao.gov](mailto:ruscof@gao.gov).

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## INTELLECTUAL PROPERTY

### Assessing Factors That Affect Patent Infringement Litigation Could Help Improve Patent Quality

## What GAO Found

From 2000 to 2010, the number of patent infringement lawsuits in the federal courts fluctuated slightly, and from 2010 to 2011, the number of such lawsuits increased by about a third. Some stakeholders GAO interviewed said that the increase in 2011 was most likely influenced by the anticipation of changes in the 2011 Leahy-Smith America Invents Act (AIA), which made several significant changes to the U.S. patent system, including limiting the number of defendants in a lawsuit, causing some plaintiffs that would have previously filed a single lawsuit with multiple defendants to break the lawsuit into multiple lawsuits. In addition, GAO's detailed analysis of a representative sample of 500 lawsuits from 2007 to 2011 shows that the number of overall defendants in patent infringement lawsuits increased by about 129 percent over this period. These data also show that companies that make products brought most of the lawsuits and that nonpracticing entities (NPE) brought about a fifth of all lawsuits. GAO's analysis of these data also found that lawsuits involving software-related patents accounted for about 89 percent of the increase in defendants over this period.

Stakeholders knowledgeable in patent litigation identified three key factors that likely contributed to many recent patent infringement lawsuits. First, several stakeholders GAO interviewed said that many such lawsuits are related to the prevalence of patents with unclear property rights; for example, several of these stakeholders noted that software-related patents often had overly broad or unclear claims or both. Second, some stakeholders said that the potential for large monetary awards from the courts, even for ideas that make only small contributions to a product, can be an incentive for patent owners to file infringement lawsuits. Third, several stakeholders said that the recognition by companies that patents are a more valuable asset than once assumed may have contributed to recent patent infringement lawsuits.

The judicial system is implementing new initiatives to improve the handling of patent cases in the federal courts, including (1) a patent pilot program, to encourage the enhancement of expertise in patent cases among district court judges, and (2) new rules in some federal court districts that are designed to reduce the time and expense of patent infringement litigation. Recent court decisions may also affect how monetary awards are calculated, among other things. Several stakeholders said that it is too early to tell what effect these initiatives will have on patent litigation.

The U.S. Patent and Trademark Office (PTO) has taken several recent actions that are likely to affect patent quality and litigation in the future, including agency initiatives and changes required by AIA. For example, in November 2011, PTO began working with the software industry to develop more uniform terminology for software-related patents. PTO officials said that they generally try to adapt to developments in patent law and industry to improve patent quality. However, the agency does not currently use information on patent litigation in initiating such actions; some PTO staff said that the types of patents involved in infringement litigation could be linked to PTO's internal data on the patent examination process, and a 2003 National Academies study showed that such analysis could be used to improve patent quality and examination by exposing patterns in the examination of patents that end up in court.