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INTELLECTUAL PROPERTY

Patent Office Should Define Quality, Reassess Incentives, and Improve Clarity

GAO Highlights

Highlights of GAO-16-490, a report to the Chairman, Committee on the Judiciary, House of Representatives

Why GAO Did This Study

Resolving disputes over patent infringement and validity in court often costs millions of dollars. Legal scholars and economists have raised concerns about an increase in the numbers of low quality patents—such as those that are unclear and overly broad—which may lead to an increase in patent infringement suits and can hinder innovation by blocking new ideas from entering the marketplace.

GAO was asked to review issues related to patent quality. GAO examined (1) recent trends in patent infringement litigation and (2) what additional opportunities exist, if any, to improve patent quality. GAO reviewed relevant laws and agency documents; analyzed patent infringement litigation data from 2007 through 2015; conducted a survey of a generalizable sample of USPTO examiners; and interviewed officials from USPTO and knowledgeable stakeholders, including legal scholars, technology companies, and patent attorneys, among others.

What GAO Recommends

GAO makes seven recommendations, including that USPTO more consistently define patent quality and articulate that definition in agency documents and guidance, reassess the time allotted for examination, analyze the effects of incentives on patent quality, and consider requiring applicants to use additional clarity tools. USPTO generally agreed with GAO's findings, concurred with the recommendations, and provided information on steps officials plan to take to implement the recommendations.

View GAO-16-490. For more information, contact Frank Rusco at (202) 512-3841 or ruscof@gao.gov.

What GAO Found

GAO found that district court filings of new patent infringement lawsuits increased from about 2,000 in 2007 to more than 5,000 in 2015, while the number of defendants named in these lawsuits increased from 5,000 to 8,000 over the same period. In 2007, about 20 percent of all defendants named in new patent infringement lawsuits were sued in the Eastern District of Texas, and by 2015 this had risen to almost 50 percent. According to stakeholders, patent infringement suits are increasingly being tried in the predominantly rural Eastern District of Texas, likely due to recent practices in that district that are favorable to the patent owners who bring these infringement suits. GAO also found that most patent suits involve software-related patents and computer and communications technologies. Several stakeholders told GAO that it is easy to unintentionally infringe on patents associated with these technologies because the patents can be unclear and overly broad, which several stakeholders believe is a characteristic of low patent quality.

The U.S. Patent and Trademark Office (USPTO) has taken actions to address patent quality, most notably through its Enhanced Patent Quality Initiative, but there are additional opportunities for the agency to improve patent quality. For example, USPTO does not currently have a consistent definition for patent quality articulated in agency documents and guidance, which would be in line with federal internal-control standards and best practices for organizational performance. Most stakeholders GAO interviewed said they would define a quality patent as one that would meet the statutory requirements for novelty and clarity, among others, and would be upheld if challenged in a lawsuit or other proceeding. Without a consistent definition, USPTO is unable to fully measure progress toward meeting its patent quality goals. Additionally, USPTO has not fully assessed the effects of the time allotted for application examinations or monetary incentives for examiners on patent quality. Specifically, most stakeholders GAO interviewed said that time pressures on examiners are a central challenge for patent quality. Based on GAO's survey of patent examiners, GAO estimates that 70 percent of the population of examiners say they do not have enough time to complete a thorough examination given a typical workload. According to federal standards for internal control, agencies should provide staff with the right structure, incentives, and responsibilities to make operational success possible. Without assessing the effects of current incentives for examiners or the time allotted for examination, USPTO cannot be assured that its time allotments and incentives support the agency's patent quality goals. Finally, USPTO does not currently require applicants to define key terms or make use of additional tools to ensure patent clarity. Federal statutes require that patent applications use clear, concise, and exact terms. Based on a survey of patent examiners, GAO estimates that nearly 90 percent of examiners always or often encountered broadly worded patent applications, and nearly two-thirds of examiners said that this made it difficult to complete a thorough examination. Without making use of additional tools, such as a glossary of key terms, to improve the clarity of patent applications, USPTO is at risk of issuing patents that do not meet statutory requirements.