United States Government Accountability Office

Report to the Ranking Member, Subcommittee on Intellectual Property, Committee on the Judiciary, U.S. Senate

December 2024

INTELLECTUAL PROPERTY

Information on Third-Party Funding of Patent Litigation

GAO Highlights

Highlights of GAO-25-107214, a report to the Ranking Member, Subcommittee on Intellectual Property, Committee on the Judiciary, U.S. Senate

December 2024

INTELLECTUAL PROPERTY

Information on Third-Party Funding of Patent Litigation

Why GAO Did This Study

Patents grant inventors exclusive rights to their inventions for a limited time. To protect these rights, some patent owners have turned to third-party litigation funding to help cover the high costs of patent litigation. Patent litigation can be particularly costly and risky because even after significant investment in filing a patent lawsuit, the patent itself can be invalidated by a court. The high risks and costs of patent litigation have made it an attractive investment opportunity for third-party funders, who provide capital to support litigation in exchange for a share of the potential proceeds.

Some stakeholders have raised questions about the extent of third-party patent litigation funding and the associated economic impacts. Most courts do not require disclosure of such funding arrangements. Thus, publicly available data on litigation funders and third-party financing arrangements remain limited. Some stakeholders have raised questions about how this limited disclosure affects transparency in the judicial process. GAO has reported on the use of third-party funding across litigation more broadly in *Third-Party Litigation Financing: Market Characteristics, Data, and Trends* (GAO-23-105210).

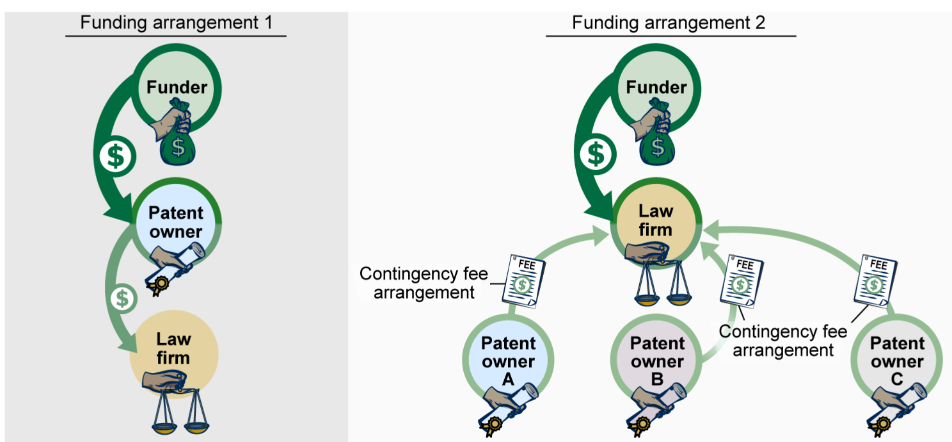
GAO was asked to review recent developments in third-party funding of patent litigation. This report describes selected funders' perspectives on factors that influence patent litigation funding decisions. It also provides information on the extent of patent litigation funding, as estimated by data GAO reviewed and stakeholders GAO interviewed, and challenges in determining the extent of such funding. This report also describes the perspectives of selected stakeholders on the legal and economic effects of patent litigation funding.

What GAO Found

Patent owners can pursue litigation in federal courts if others use their inventions without permission (known as patent infringement). Because patent infringement lawsuits can cost millions of dollars, some patent owners rely on third-party litigation funding. This funding involves an arrangement in which someone who is not named in a lawsuit provides funding to a plaintiff (typically the patent owner) or law firm in exchange for a portion of the proceeds from the lawsuit if it is successful.

Patent litigation funders GAO interviewed identified multiple factors that inform their decision on whether to invest in a particular patent lawsuit. One funder told GAO they prefer cases in which a patent owner shared information about an invention with another company that then used the invention without permission, as this scenario can be compelling to a jury. Funders also said they look to fund lawsuits with strong patents that are not likely to be invalidated during the litigation. Funders use various arrangements to fund patent litigation (see figure). According to stakeholders and GAO's analysis of funding agreements, some funders require that they receive two to three times their investment before the patent owner receives any proceeds from a successful lawsuit.

Examples of Patent Litigation Funding Arrangements



Source: GAO (analysis and icons). | GAO-25-107214

Third-party funded patent litigation has increased significantly since 2019 and now accounts for a substantial proportion of all patent litigation, according to stakeholders GAO spoke with and industry estimates. Most large technology companies GAO interviewed said that more than half of all patent infringement lawsuits filed against them had confirmed or suspected third-party funding. Most of these companies said they typically have dozens of lawsuits filed against them each year.

Stakeholders GAO interviewed noted multiple benefits associated with third-party funding of patent litigation. For example, funders and other stakeholders GAO

GAO conducted semi-structured interviews with selected entities with knowledge of recent developments in third-party funding of U.S. patent litigation. GAO interviewed patent litigation funders, large technology companies, research universities, law firms, district court judges, mediators, individual inventors, and other industry stakeholders.

GAO reviewed 12 patent litigation cases suspected of being third-party funded, and through a search of publicly available information, identified challenges in determining whether these cases were indeed third-party funded. GAO also reviewed selected studies by academic researchers and government agencies. Additionally, GAO reviewed patent litigation funding agreements, financial reports from publicly traded patent litigation funders, and industry estimates of third-party funding in patent litigation.

View GAO-25-107214. For more information, contact Candice N. Wright at (202) 512-6888 or WrightC@gao.gov.

spoke with said third-party funding allows resource-constrained patent owners, such as small companies, to file patent infringement lawsuits that they otherwise could not have filed. University officials and inventors told GAO this funding option is important because, from their perspective, fewer law firms are taking cases under a contingency fee arrangement due to the unique costs and risks of patent litigation.

Stakeholders also identified several challenges associated with third-party funding. Technology companies told GAO that the patents associated with many of these third-party-funded cases have weak infringement claims, and that the companies must incur legal defense costs even though they say these patents are likely to be invalidated. In addition, third-party funders may complicate settlement negotiations, contributing to longer settlement times, according to technology companies, mediators, and a judge GAO interviewed. However, funders GAO interviewed said they structure their funding agreements to allow the plaintiff to settle at any time and to generally incentivize early settlement.

Many stakeholders GAO spoke with, including some funders, were open to some requirements that would mandate that plaintiffs disclose to parties involved in a lawsuit whether the plaintiffs have received third-party funding, given the limited public data on third-party funding.

Stakeholders identified multiple benefits of disclosure requirements, such as:

- **Identifying conflicts of interest.** Several technology companies and other stakeholders GAO interviewed said that disclosure requirements could help judges determine whether they have a conflict of interest, such as a financial interest in a company involved in a lawsuit.
- **Identifying foreign involvement.** Several stakeholders said disclosure requirements may shed light on whether a foreign entity is involved in patent litigation. Some stakeholders said foreign funding might be a strategy to undermine U.S. companies.
- **Facilitating case resolution.** Several stakeholders said that knowing whether a third party is funding a patent infringement case may motivate defendants to pursue settlements, knowing that the plaintiff has ample resources for a lengthy legal battle.

At the same time, stakeholders GAO interviewed identified multiple concerns with disclosure requirements, such as:

- **Relevance to litigation.** Several stakeholders, including multiple funders and district court judges, said that disclosure of the third-party funding is not relevant to the patent litigation and could distract from the merits of the case.
- **Potential biasing of litigation.** Several stakeholders, particularly law firms and funders, said that if disclosure requirements were to include sharing the amount of third-party funding, it may be overly advantageous to defendants because it would reveal the extent of their opponents' financial resources.
- **Burden on court system.** Several stakeholders, including two funders and two district court judges, said that disclosure requirements could increase the cost and length of litigation. For example, it could create additional burdens on the court system, which would need to collect and review the disclosures.

Contents

Abbreviations

AOUSC	Administrative Office of the U.S. Courts
LLC	limited liability corporation
NPE	non-practicing entity
PTAB	Patent Trial and Appeal Board
TPLF	third-party litigation funding
UCC	Uniform Commercial Code
USPTO	U.S. Patent and Trademark Office

U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

December 5, 2024

The Honorable Thom Tillis
Ranking Member
Subcommittee on Intellectual Property
Committee on the Judiciary
United States Senate

Dear Mr. Tillis:

Within the U.S. court system, patent infringement lawsuits enable patent owners to both protect and monetize their intellectual property. Patent infringement occurs when someone makes, uses, sells, offers to sell, or imports a product or process that is covered by a patent without the permission of the patent owner. Pursuing a patent infringement lawsuit, however, can cost the patent owners millions of dollars. To fund these lawsuits, some patent owners rely on third-party litigation funding (TPLF): an arrangement in which someone who is not named in a lawsuit agrees to provide funding to a plaintiff (typically the patent owner) or to the plaintiff's law firm in exchange for a portion of the proceeds from the lawsuit if it is successful. TPLF is typically nonrecourse, meaning that if the lawsuit is not successful, the patent owner or law firm does not have to repay the funding.[1]

TPLF has been well established for decades in other countries, such as Australia and Canada, to help fund various types of litigation, including commercial disputes, class actions, and intellectual property cases.[2] While TPLF gained a foothold in the U.S. around 2010, publicly available data on litigation funders and TPLF arrangements remain limited.

[1]The nonrecourse nature of TPLF distinguishes it from traditional loans, which require repayment of the principal and interest, regardless of the outcome in a case. New York City Bar, *Report to the President by the New York City Bar Association Working Group on Litigation Funding* (New York, NY: Feb. 2020), 4. While TPLF arrangements are typically nonrecourse, recourse arrangements also exist. See, e.g., Sean Thompson, Dai Wai Chin Feman, and Aaron Katz, "United States," in *The Third-Party Litigation Funding Law Review*, 3rd ed., ed. Leslie Perrin (London, UK: Law Business Research, Dec. 2019), 225. We do not include other types of third-party funding for disputes, such as loans from banks, within the scope of this report.

[2]For additional information on the use of TPLF in other countries, see GAO, *Third-Party Litigation Financing: Market Characteristics, Data, and Trends,* GAO-23-105210, (Washington, D.C. Dec. 20, 2022).

Some policymakers have raised concerns about the transparency of TPLF arrangements in patent litigation and the high fees litigation funders charge patent holders. Some stakeholders have expressed concerns that third-party funding may prolong patent infringement lawsuits, generate excessive litigation, or enable foreign entities to undermine the U.S. economy without being noticed. According to a report from the U.S. Chamber of Commerce, there is also growing concern about an influx of foreign-sourced funding supporting U.S. patent litigation against key U.S. companies and industries (including those in defense and other highly sensitive sectors).[3]

However, proponents of third-party funding say it can expand access to the court system for patent owners that otherwise lack the funding needed to pursue their patent assertion claims.[4] The median cost of litigating a patent lawsuit through trial can exceed $3 million depending on the amount of the damages being pursued, according to a 2023 survey by the American Intellectual Property Law Association.[5]

You asked us to review several issues related to TPLF. This report describes recent developments in third-party funding of patent litigation, including: (1) selected funders' perspectives on factors that influence patent litigation funding decisions, (2) stakeholder and data estimates on the extent of patent litigation funding and challenges in determining the extent of such funding, and (3) literature and selected stakeholders' perspectives on the legal and economic effects of patent litigation funding.

To address these objectives, we conducted semi-structured interviews with selected entities with knowledge of recent developments in third-party funding of patent litigation in the U.S. Collectively, we refer to these

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[3]Michael E. Leiter, John H. Beisner, Jordan M. Schwartz, James E. Perry, Skadden, Arps, Slate, Meagher, and Flom L.L.P., "ILR Briefly: A New Threat: The National Security Risk of Third-Party Litigation Funding," (U.S. Chamber of Commerce Institute for Legal Reform, November 2022), https://instituteforlegalreform.com/wp-content/uploads/2022/11/TPLF-Briefly-Oct-2022-RBG-FINAL-1.pdf.

[4]Patent assertion is the act of enforcing patent rights by a patent holder or an entity that has acquired the rights to a patent. In some instances, patent owners may need to actively assert their patents if another firm's product infringes their patents.

[5]American Intellectual Property Law Association, "2023 Report of the Economic Survey," (AIPLA, October 2023).

selected entities as stakeholders, unless otherwise noted. We interviewed the following stakeholders:

- eight patent litigation funders that fund a large proportion of U.S. patent litigation,
- representatives of seven large technology companies that were among the most frequent defendants in patent litigation over the past 5 years,
- representatives of four law firms that had partnered with a third-party patent litigation funder or with knowledge about the use of third-party funding in patent litigation,
- representatives of four universities that had partnered or considered partnering with a third-party patent litigation funder,
- four U.S. district court judges and one magistrate judge from four U.S. districts with high volumes of patent litigation from January 2014 through March 2024,
- three mediators with experience mediating third-party funded patent litigation,
- two individual inventors who used third-party funding for patent litigation,
- eight industry organizations with knowledge of third-party funding in patent litigation,
- four academics with knowledge of or conducting work on third-party funding in patent litigation.

We use “several,” “some,” “many,” “most,” and “almost all” to characterize stakeholder responses. We define “several” as two to 10 responses, “some” as 11 to 19 responses, “many” as 20 to 28 responses, “most” as 29 to 37 responses, and “almost all” as 38 to 45 responses.[6]

We also interviewed officials from three federal agencies: the Administrative Office of the U.S. Courts (AOUSC), the Department of Justice, and the U.S. Patent and Trademark Office (USPTO).

Information gathered from these interviews cannot be generalized to other entities in these stakeholder groups that we did not interview. We selected the stakeholders to provide a broad range of knowledge about

[6]As appropriate, we conducted joint interviews with stakeholders who were coauthors or were affiliated with the same organization. We treated the perspectives gathered at these joint interviews as one interview for the purposes of tallying stakeholder perspectives.

and perspectives on TPLF. We reviewed selected studies by academic researchers and government agencies. We also reviewed legal materials related to TPLF, including federal court rules, proposed legislation, and proposals by industry stakeholders to amend federal court rules. Additionally, we reviewed nine patent litigation funding agreements, financial reports from publicly traded patent litigation funders, and industry and academic estimates on third-party funding in patent litigation. See appendix I for more information on our scope and methodology.

We conducted our work from December 2023 to December 2024 in accordance with all sections of GAO's Quality Assurance Framework that are relevant to our objectives. The framework requires that we plan and perform the engagement to obtain sufficient and appropriate evidence to meet our stated objectives and to discuss any limitations in our work. We believe that the information and data obtained, and the analysis conducted, provide a reasonable basis for any findings and conclusions in this product.

Background

Patent System and Litigation

The U.S. Patent and Trademark Office (USPTO) is the federal agency tasked with granting patents in the U.S. The patent system is a legal framework designed to incentivize innovation by granting inventors exclusive rights to their inventions for a specific period. A patent gives the patent owner the right to "exclude others from making, using, offering for sale, or selling the invention throughout the U.S. or importing the invention into the U.S."[7] When reviewing a patent application, patent examiners at USPTO determine whether the invention claimed in the application meets certain requirements for patentability, such as subject matter eligibility, novelty, non-obviousness, and clarity.[8] For example, an invention must be new from what is known publicly (referred to as "prior art") to meet the novelty requirement.[9]

Patent litigation refers to legal disputes arising from allegations of patent infringement or challenges to the validity of patents. These disputes often

[7]35 U.S.C. § 154(a)(1).

[8]See 35 U.S.C. §§ 101, 102, 103, 112, 131.

[9]See 35 U.S.C. § 102 for a description of prior art for the purposes of patentability. In addition, Chapter 2100 of the Manual of Patent Examining Procedure (MPEP) (9th Edition, Rev. 07.2022, February 2023) provides a comprehensive overview of the standards of patentability.

involve complex legal and technical issues related to cutting-edge technologies. Patent owners have the right to sue alleged infringers for using, making, selling, offering to sell, or importing their patented inventions without permission.[10] If infringement is proven, and any validity challenges are overcome, courts may grant remedies to the patent owner such as injunctions (orders to stop infringing activities) and damages (monetary compensation for losses caused by infringement).

Beyond the courts, accused infringers have two avenues to defend themselves: challenging some or all of the patent claims at the Patent Trial and Appeal Board (PTAB) or through reexamination at USPTO.[11] If the accused infringer chooses to go to PTAB, they decide which claims within a patent to submit for PTAB review. If PTAB agrees to review the challenged patent claims, it will look closely at the scope and meaning of the claims and the relevant prior art that is presented by the challenger, among other things.[12] PTAB can decide to uphold the patent's claims, find some or all of them unpatentable, or allow the patent owner to amend the claims. PTAB's decision affects whether the patent remains enforceable, is modified, or is entirely revoked.[13]

The second option for challenging an issued patent is a USPTO reexamination. This is a process in which USPTO takes a second look at an already-issued patent to make sure it was issued according to its criteria for patentability. This typically occurs when new information was

[10] 35 U.S.C. § 271.

[11] Anyone other than the patent owner can challenge patentability at PTAB. Accused infringers may defend themselves both in court, by proving that claims of an asserted patent are invalid, and also in trial proceedings before PTAB, created by the Leahy-Smith America Invents Act, by challenging the patentability of claims of the patent in question within a specified window of time. Pub. L. No. 112-29, § 6 125 Stat. 284, 299-313 (2011).

[12] Patents usually have several claims which describe details of a given invention. PTAB conducts a number of trial proceedings, including *inter partes* review and post grant review. In *inter partes* review, PTAB reviews the patentability of one or more claims under 35 U.S.C. §§ 102 or 103, and only on the basis of prior art consisting of printed publications including patents and patent applications. See 35 U.S.C. §§ 311-319 & 321-329 and https://www.uspto.gov/patents/ptab/trials for more information. Post grant review proceedings, however, may involve any ground of invalidity that could be raised under 35 U.S.C. § 282(b)(2) or (3).

[13] After PTAB makes its decision on the patentability of the challenged patent claims, either side can appeal to the United States Court of Appeals for the Federal Circuit. See 35 U.S.C. §§ 319 and 329. This court will review PTAB's decision and can either uphold it, reverse it, or send it back to PTAB for further review. If no appeal is made, PTAB's decision stands, which could result in the patent's claims being upheld, amended, or found unpatentable.

found in prior patents and printed publications that might show the invention no longer meets the criteria. After a reexamination, USPTO can cancel one or more claims of an issued patent.

Third-Party Litigation Funding

TPLF is an investment strategy in which an investor who is not named in a lawsuit agrees to provide funding to the plaintiff (the patent owner in this context) or to the plaintiff's law firm in exchange for a portion of the proceeds if the lawsuit is successful.[14] TPLF is typically nonrecourse, meaning that if the lawsuit is not successful, the plaintiff or law firm does not have to repay the funding. TPLF has become more common in the U.S. in the past decade, as we previously reported.[15]

Litigation funders vary in type, size, and investor base. For example, many funders are private entities that specialize in litigation funding. They often obtain investment capital from institutional investors, such as endowments and pension funds. Other firms may be multistrategy funders, which are firms that invest in various markets and assets, such as stocks or real estate. A small number of funders are large, publicly traded companies. Other funders are smaller firms that may be backed by single investors, such as high-net-worth individuals or families, or hedge funds that only occasionally fund litigation.

Disclosure Requirements for Third-Party Litigation Funding

The rise of TPLF has prompted discussions about whether recipients should disclose their funding sources to the other parties in the case. While some states have passed laws requiring disclosure of litigation funding agreements, there is no nationwide requirement that uniformly mandates disclosure of such agreements in federal litigation.[16] As a

[14]TPLF can be provided to both plaintiffs and defendants, but it is more commonly provided to plaintiffs, as they are typically the ones seeking financial assistance to cover the costs of pursing legal action against perceived infringement.

[15]GAO, *Third-Party Litigation Financing: Market Characteristics, Data, and Trends,* GAO-23-105210, (Washington, D.C. Dec. 20, 2022). Third-party litigation funding had been limited to some degree by prohibitions against maintenance, champerty, and barratry, which are common law doctrines that were incorporated into the laws of many states at the time of the nation's founding. Maintenance refers to helping another prosecute a suit; champerty is maintaining a suit in return for a financial interest in the outcome; and barratry is a continuing practice of maintenance or champerty. Many states have begun to relax prohibitions against these common law doctrines, which may have contributed to TPLF's increased acceptance and recent growth.

[16]Because federal courts have jurisdiction over patent cases, it is not clear the extent to which such state disclosure requirements would impact patent cases. Generally, federal courts follow the Federal Rules of Civil Procedure, which have their own disclosure requirements. However, some states, such as West Virginia, have imposed requirements that litigation funders be registered with the state. W. Va. Code § 46A-6N-2.

result, some federal courts have begun scrutinizing litigation funding agreements to assess whether they create improper conflicts of interest – such as if a judge had an investment in the third-party funder that would require a recusal.[17]

Some federal courts, such as the District of New Jersey, as well as one judge in the District of Delaware, have issued requirements that parties identify third-party litigation funders. Most recently, some states have implemented laws affecting litigation funders operating in their states.

Funders Identified Various Factors That Influence Patent Litigation Funding Decisions

Patent litigation funders we interviewed said they consider multiple factors before funding a potential patent lawsuit, such as whether the patent infringement is related to a valuable feature of a product, the strength of the invention story, and other factors. Funders said they thoroughly vet potential patent lawsuits and expect high returns to balance risks unique to patent litigation, such as the potential risk of patent invalidation at the Patent Trial and Appeal Board (PTAB). According to interviews with stakeholders and our analysis of funding agreements, some funders require two to three times their investment before the patent owner begins receiving any proceeds from a successful lawsuit.

Funders Consider Potential for Patent to Be Invalidated and Other Factors to Inform Investment Decisions

Patent litigation funders we interviewed identified multiple factors that inform their decision to invest in patent litigation. Almost all funders we interviewed said they typically fund 5 percent or fewer of the patent litigation cases that they consider. Funders told us they thoroughly vet potential patent cases to help ensure the case will be successful given the unique risks and costs of patent litigation.

[17]Whether a judge's investment in a third-party funder would require recusal depends on if such an investment "could be affected substantially by the outcome of the proceeding." See Code of Conduct for United States Judges, Canon 3C(1)(c).

Perceived Risk of Patent Invalidation by the Patent Trial and Appeal Board

The Patent Trial and Appeal Board (PTAB) exists within the U.S. Patent and Trademark Office and handles disputes with respect to patentability. Funders and law firms we interviewed told us since implementation of PTAB in 2012, the perceived risk of pursuing patent litigation has increased. Because PTAB can be a less expensive way to challenge a patent, those accused of infringing a patent may challenge patent claims in a PTAB trial as part of their litigation defense strategy.

Funders we interviewed said once litigation begins, the defendant, or any other party, can challenge the patent's validity at PTAB. If they prevail, the plaintiff loses the case. Public data from PTAB show that about half of patent claims are deemed unpatentable once PTAB institutes (i.e. agrees to review) a patent challenge.

If the plaintiff's patent survives the validity challenge, they still face the typical hurdles and risks associated with litigation, such as establishing that infringement is occurring and proving damages. Officials from one university we interviewed stated they weigh the risk of their patent claims being declared unpatentable at PTAB before deciding whether to pursue litigation.

Source: GAO | GAO-25-107214

According to some funders, one factor making patent litigation more risky and costly in recent years is the potential invalidation of a patent at PTAB, an administrative body within USPTO that handles patent disputes (see sidebar). Funders and other stakeholders we interviewed said defendants in a patent litigation case regularly challenge a patent's validity as part of their litigation defense strategy, which adds the risk of the patent being invalidated and additional costs to the case.

The length and complexity of patent litigation cases also makes them expensive to pursue. In addition to potential invalidation of a patent by PTAB, one funder said patent litigation is risky and costly because cases typically take 3 to 4 years to go to trial, and 30 percent of successful cases lose on appeal. Some stakeholders, including funders and judges, also said that because patent litigation often involves highly technical subject matter, almost all patent cases require the testimony of expert witnesses to explain complex technologies to judges and juries, which can be costly. For example, one judge we interviewed said many subject matter experts have hourly rates of $850 and can spend hundreds of hours on a typical patent infringement case.

Funders said they consider multiple factors when vetting cases, including:

- **Infringement claims and patent quality.** Funders told us they examine the merits of the patent infringement claim and the quality of the infringed patent when deciding whether to fund a case. Specifically, one funder said they look at whether a potential defendant company is infringing on a patent associated with a valuable or core feature of their product rather than a small nonessential aspect.[18] In addition, funders told us they review the perceived quality of the patent, such as whether the patent is for a breakthrough or foundational technology instead of on a smaller iterative advancement. The quality of the patent can also factor into the likelihood of it being invalidated at PTAB. One funder we interviewed said they favor funding cases with high-quality patents, such as those that are based on established technology with well-

[18]For example, the wrist strap on a smartwatch would be a less essential and valuable component than the wireless communication chips inside the watch, according to this funder.

known royalty rates, such as wireless internet technology, because this can facilitate a quicker, more efficient settlement.[19]

- **Evidence of likely infringement.** Funders we interviewed said they prefer cases with compelling evidence about how the infringement occurred. For example, one funder and one law firm we interviewed shared examples in which a large company willingly chooses to use a patent owner's technology without licensing or paying for it.[20] Some companies assume it will be more cost effective to infringe a patent and pay the potential costs of litigation and possible damages than pay the expenses associated with licensing an invention. One funder told us they prefer cases in which a patent owner shared knowledge of their technology and made numerous attempts to license their invention to a company that then infringes their patent. This funder said this clear infringement scenario can be compelling to a jury.[21]
- **Realistic settlement expectations.** Some funders we interviewed said they consider whether the patent owner has realistic expectations about the value of their patents and the potential settlement amount associated with their case. One funder said if the patent owner has unrealistic expectations about how much their case will ultimately settle for, it could prolong litigation by causing the patent owner to reject settlement offers the funder would consider otherwise reasonable. Funders said working with a patent owner that has realistic settlement expectations is important since funders generally have limited influence on when or whether the patent owner settles the case.[22]

[19]A royalty is a payment made by one party (the licensee) to another party (the licensor) in exchange for the right to use intellectual property, such as a patent.

[20]This strategy of efficient infringement can involve companies weighing the costs and benefits of infringing. Sometimes companies decide it is more economically advantageous to infringe. Licensing agreements outline the terms under which an entity can use a patented invention that is owned by another entity.

[21]Funders also told us that juries often have more favorable impressions of cases when the original inventors are involved in the lawsuit.

[22]While funders told us they do not have control over when a patent owner can settle, one funder we interviewed said they require the patent owner to consult with them before deciding whether to settle. Another funder said while they can offer advice and input to a patent owner regarding settlement, the patent owner is not required to follow the funder's input.

Patent Litigation Insurance

Patent litigation insurance can complement third-party litigation funding by providing additional financial protection in case the patent litigation is unsuccessful.

One type of insurance plaintiffs can buy is called judgment preservation insurance. This type of insurance is purchased post-judgement and helps protect the plaintiff's financial interests if a favorable court judgment is ultimately reversed or reduced on appeal. This insurance is beneficial to plaintiffs who have won a significant monetary judgment in a patent lawsuit and want to ensure they receive some portion of the awarded amount even if the judgment is later appealed.

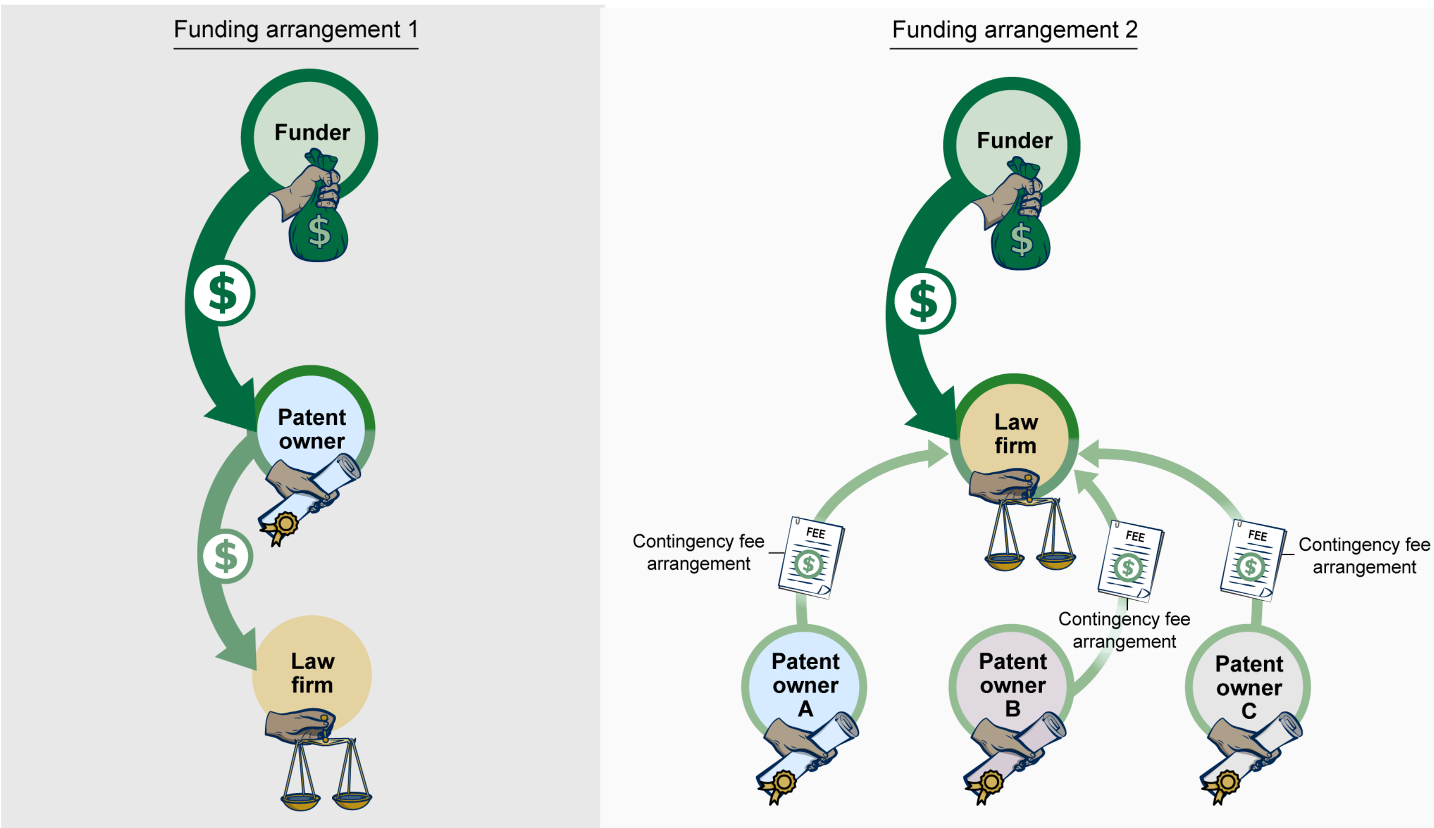
Source: GAO | GAO-25-107214

Patent litigation funders use different funding arrangements and business models to fund patent litigation. Once funders select a case to fund, funders typically provide funding directly to the patent owner who then pays the law firm to litigate their patent infringement case (see fig. 1). Funders may also fund law firms directly. This allows the law firm to offer contingency fee arrangements—a type of arrangement in which the lawyer or law firm is paid only if they win the case—to patent owners with potential patent disputes.[23] This is in lieu of hourly or upfront fees.

Two funders said there are other financial arrangements sometimes used in patent litigation beyond paying patent owners or law firms to file lawsuits. One funder we interviewed said they purchase patents to enforce on their own through litigation without the involvement of the inventor. Another funder told us that in addition to litigation funding, they also offer patent litigation insurance, which can provide additional financial protection to patent owners in case the patent litigation is reversed or reduced on appeal (see sidebar).

[23]Several stakeholders we interviewed considered TPLF to be an extension of contingency fee funding.

Figure 1: Examples of Patent Litigation Funding Arrangements



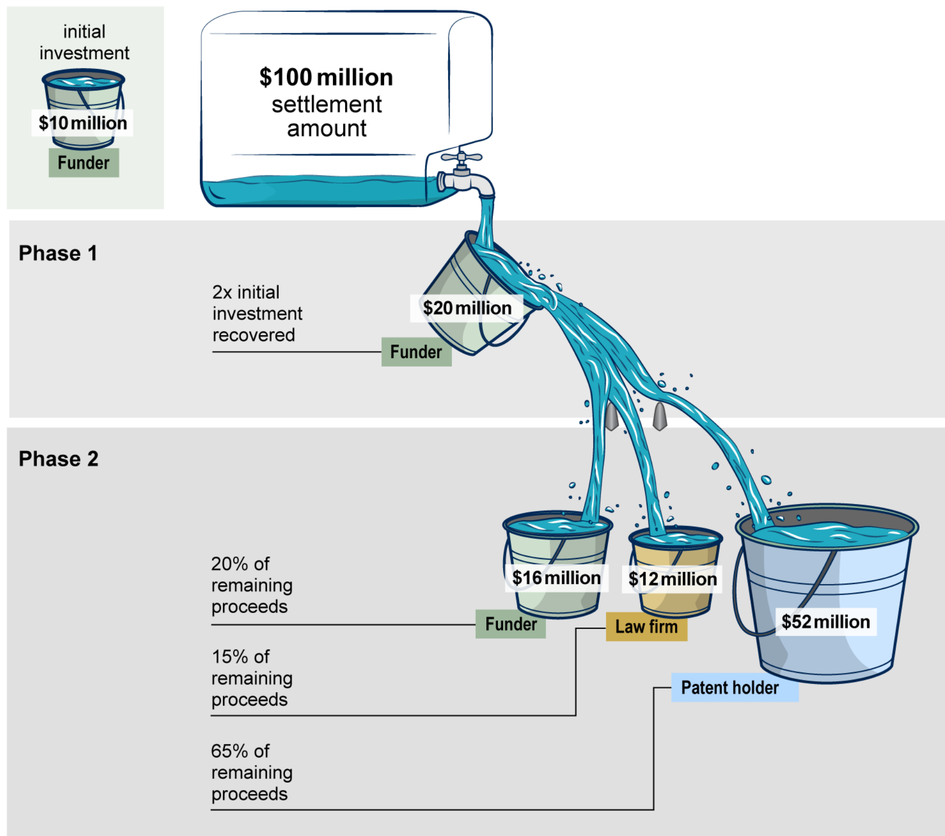
Source: GAO (analysis and icons). | GAO-25-107214

Note: If the litigation is settled or judged in favor of the plaintiff, the funder would receive a portion of the judgment award or settlement amount, according to the terms of the litigation funding agreement.

Some Funders Require Returns Up to Triple Their Investment Before Patent Owner Receives Portion of Settlement

While terms of funding agreements vary, some funders require a payout amounting to two to three times their investment before the patent owner begins receiving any proceeds from a successful lawsuit, according to our review of funding agreements and our interviews with stakeholders. Patent litigation funding agreements we reviewed were generally structured to distribute any financial recovery from a successful case in a predetermined sequence or priority, which stakeholders we interviewed referred to as a “waterfall structure” (see fig. 2). Once the proceeds from a successful patent case are received, the funder recoups their initial (principal) investment first, according to almost all funders we interviewed. Afterward, funders often receive a multiple of their investment – typically one to three times. Then, a percentage of remaining proceeds may be divided among the funder, patent owner, and law firm, according to their predetermined split in the funding agreement.

Figure 2: Example Third-Party Patent Litigation Funding Agreement



Source: GAO (analysis and icons). | GAO-25-107214

Note: The scenario represented in this figure is meant to be a generalization of what a typical patent litigation funding agreement can look like based on information obtained from our interviews with funders and our review of patent litigation funding agreements. It is not meant to be an exact representation of any specific funding agreement. The terms and conditions of patent litigation funding agreements can vary widely. In addition, in a typical TPLF arrangement, the law firm would likely be paid some portion of their hourly rate during the litigation, with the remainder of their payment contingent on the outcome of the case.

After the funder recoups their initial investment from a successful case, how the remaining proceeds are distributed depends primarily on how early the case was settled or won, stakeholders said. Funders said that agreements are generally structured to incentivize earlier settlements. For example, in one funding agreement we reviewed, the patent owner would receive a larger percentage of remaining proceeds if they settled before the first scheduled claim construction hearing than they would if they settled after that hearing.[24] One funder said because patent litigation costs are higher later in the litigation process, the funder would retain a higher percentage of proceeds if the case were settled later.

Universities often own patents that result from their cutting-edge research and carefully consider whether to use third-party funding to defend their patents against infringement. Officials from one university we interviewed said investors' expectations of a high return affect their decisions about whether to use a third-party funder. Officials from another university said that expected settlement amounts must typically be very high—in the hundreds of millions of dollars—for it to make sense to use a third-party funder, due to the returns expected by funders. However, these officials noted that a funder would be more advantageous in these instances compared to a contingency fee law firm because as soon as the funder recovers their multiple on their investment, most of the proceeds from a large settlement will go back to the patent owner. By contrast, in the contingency-fee agreement, the percentage going to the law firm stays fixed no matter what amount the case is ultimately settled for.

Stakeholders Observed a Significant Rise in Patent Litigation Funding Since 2019, and Most Supported Some Additional Disclosure of Third-Party Funding

Many stakeholders we interviewed said that they have observed a rise in third-party funded patent cases in recent years, with several stakeholders stating most of the rise came in the past 5 years. However, some stakeholders said the lack of mandatory disclosures makes it difficult to definitively determine the extent of third-party funding in patent litigation. Many stakeholders stated that mandatory disclosures of third-party funding could help address this, though some stakeholders raised concerns about the potential downsides of such disclosures.

[24] Also called a "Markman hearing," a claim construction hearing is the process in which courts interpret the meaning and scope of a patent's claims. The outcome of this hearing often has a significant effect on the ultimate outcome of the case depending on which party gets a favorable interpretation of the patent claims.

Stakeholders Said Third Parties Now Fund a Substantial Proportion of All Patent Infringement Lawsuits, Especially in Lawsuits against Large Technology Companies

Many stakeholders said they have seen an increase in third-party funding of patent litigation in recent years. Several stakeholders said that the prevalence of TPLF especially increased over the past 5 years and likely peaked during the coronavirus pandemic, when returns on third-party funding of patent litigation were attractive because they were uncorrelated with other investments, such as stocks and bonds. Most stakeholders, including large technology companies and other industry organizations, said that third-party funded patent lawsuits are now a substantial proportion of all patent litigation.

Representatives from most of the large technology companies we interviewed said more than half of patent infringement lawsuits filed against them had confirmed or suspected third-party funding. These companies represent a significant percentage of defendants in U.S. patent litigation from January 2014 through September 2023, with most of them saying they have dozens of lawsuits filed against them each year. Specifically, of the seven technology companies that we interviewed:

- Four companies estimated between 50 and 75 percent of recent lawsuits against them involved third-party funding in the last several years.
- One company estimated that 30 percent of lawsuits recently filed against it involved third-party funding.
- The remaining two companies provided no percentages, but both said that the majority of lawsuits filed against them likely received third-party funding.

These companies often learned of third-party funder involvement during settlement negotiations when the presence of a funder was finally revealed.

Several industry organizations have also reported estimates on the extent of third-party funding in patent litigation based on a mix of private and public information. For example, Westfleet Advisors, a litigation finance advisory firm that conducts an annual survey of litigation funders, found that patent litigation was the most common form of TPLF in 2023, representing 19 percent of all commitments to litigation funding for that year.[25] In addition, Unified Patents estimated that about 30 percent of patent lawsuits filed in 2022 were funded by third parties.[26]

The judges we interviewed did not have estimates on the prevalence of third-party funding because they said they do not track this information. However, one judge noted that it is becoming an increasingly common part of patent litigation. One mediator we spoke with said they had noticed a rise in appearance of third-party funders during mediation in the past 5 years.

Some stakeholders, including half of the technology companies we interviewed, also stated that funding of U.S. patent litigation from foreign entities has become significant in recent years based on their observations. Stakeholders noted examples of several countries with involvement in funding patent litigation, including China, Saudi Arabia, and France, but did not know the extent of this funding given the limited available data.

Public Data Sources Provide Limited Visibility into Third-Party Funding, and Some Stakeholders Suggested Additional Disclosure Could Help

Public data we reviewed did not fully capture the extent of TPLF. Stakeholders we interviewed, including academics and funders, told us about sources of publicly available data that could be used to discern third-party funding in patent litigation, despite not being designed for that purpose.[27] In our review of available data for 12 patent infringement lawsuits that potentially included third-party funding, we found some

[25]Westfleet Advisors, "The Westfleet Insider: 2023 Litigation Finance Market Report" (2024).

[26]Unified Patents collects data and conducts analysis based on sources such as court filings, public documents, and product documentation. Unified Patents, "2022 Patent Dispute Report," (Jan. 5, 2023), https://www.unifiedpatents.com/insights/2023/1/4/2022-patent-dispute-report.

[27]Because these public data sources are not designed to capture the full extent of TPLF, we reviewed several other information sources, such as news articles, to fully establish a probable link between a plaintiff and TPLF.

public information suggesting the presence of third-party funding in seven of the lawsuits we reviewed.[28]

Two public government databases we reviewed provided some indicators of TPLF in our selected lawsuits. First, the Uniform Commercial Code (UCC) database provides the government with information about a company's business operations, and we found one indicator that linked a plaintiff to third-party funding from this database.[29] In that lawsuit, we found that a known funder had a financial interest in the plaintiff.

Second, we reviewed USPTO's data on patent assignments. Patent owners can report to USPTO whether an entity such as a third-party funder has a security interest – a documented financial interest – in their patent.[30] We found a security interest filed on the patents at issue in two lawsuits we reviewed. However, recording a security interest in USPTO's assignment records is optional, so there may be additional undisclosed security interests among the lawsuits we reviewed. One funder we interviewed said it is common practice for a funder to take a security interest in a patent that is going to be litigated, although they said it does not happen all the time. Another funder we spoke with said they generally do not take a security interest in the patents in the lawsuits they fund. Further, USPTO has acknowledged that parties are not required to record security interests in their assignment data.[31]

Additionally, court documents provide limited information on TPLF. We found that court documents generally do not disclose the existence of

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[28]We judgmentally selected these 12 cases from a random sample of cases that Unified Patents suspected were third-party funded. We selected cases to ensure a diversity of third-party funders, court venues, and plaintiffs. Our analysis was designed to evaluate the difficulty or ease of using public data to identify third-party funding relationships, not to evaluate the accuracy of Unified Patents' data. Unified Patents likely used additional sources of information and expertise in these cases. See app. I for more details about our methodology.

[29]The UCC database is a system that keeps tracks of secured transactions, which are deals where a borrower agrees to give a lender an interest in their property, such as a patent, as collateral for a loan.

[30]37 C.F.R. § 3.11(a). The Legal Information Institute defines a security interest as an interest in someone else's property, created by contract or by law. A security interest does not involve an obligation to transfer rights in the invention unless the security interest is defaulted upon. Legal Information Institute, Cornell Law School, "Security Interest," (June 2024), accessed Sept. 27, 2024, https://www.law.cornell.edu/wex/security_interest.

[31]U.S. Patent and Trademark Office, *The USPTO Patent Assignment Dataset: Descriptions and Analysis*, Working Paper No. 2015-2 (Alexandria, V.A.: July 2015).

third-party funding unless a lawsuit is in a district court that requires funders to be disclosed (see app. II for specific disclosure requirements by U.S. court district). Several large technology companies and other stakeholders we interviewed said third party-funded patent owners sometimes create multiple limited liability corporations (LLCs) to assert their patents. While this is a common practice in litigation, some stakeholders we interviewed said the anonymity and layered structures of LLCs can make it more challenging to determine whether a case is third-party funded.[32] In our case review, we identified some LLCs that are known to be associated with certain third-party funders, which made it easier to determine whether those cases potentially received third-party funding. In seven of the 12 cases we reviewed, we found likely connections between the LLC listed as the plaintiff in court documents and a known funder.

There is no nationwide requirement for disclosure of third-party funding that specifically applies to federal litigation. Currently, requirements for disclosing third-party funding of patent litigation vary among U.S. district courts. In the past decade, the Judicial Conference Advisory Committee on Civil Rules has monitored and discussed TPLF generally, and is considering possible amendments to the rules of civil procedure that would require litigants to disclose information related to litigation funding agreements, but no amendments have yet been formally proposed or adopted.[33] Officials from the Administrative Office of the U.S. Courts, which supports the advisory committee, told us that they continue to monitor this issue and continue to discuss incorporating possible disclosure requirements in federal rules.

Many stakeholders we interviewed, including most patent litigation funders, were open to some additional mandatory disclosure requirements, which they said could provide more transparency around

[32]Patent owners create LLCs for multiple reasons including to distribute their patents and litigation risks into a separate entity. For example, LLCs are often used to protect assets during patent litigation due to their inherent liability protection features. Because an LLC is a distinct legal entity separate from its owners, this separation helps protect the personal assets of the owners from liabilities arising from patent litigation.

[33]The Judicial Conference is the policymaking body for the federal courts. The Advisory Committee on Civil Rules is a body within the Judicial Conference with responsibility for reviewing issues and recommending changes to the federal rules of civil procedure that apply to litigation in the federal courts. Administrative Office of the U.S. Courts, *About the Judicial Conference* (Washington, D.C.); Administrative Office of the U.S. Courts*, Advisory Committee on Civil Rules* (Washington, D.C.: Oct. 5, 2021); Administrative Office of the U.S. Courts, *Minutes: Advisory Committee on Civil Rules* (Washington, D.C.: Nov. 7, 2017).

third-party funding of patent litigation. For example, most large technology companies and half of the law firms we interviewed supported disclosing the presence of TPLF. Further, some of these stakeholders said they would also support disclosing the identity of the funder(s). Several stakeholders said the details of funding agreements should be disclosed, but others said such disclosures could compromise strategic advantages and confidentiality. Stakeholders identified multiple benefits of mandatory disclosures, such as helping to identify potential conflicts of interest and foreign involvement in third-party funded patent litigation (see table 1).

Table 1: Stakeholder-Identified Benefits of Third-Party Funding Disclosures

Identifying conflicts of interest. Several technology companies and other stakeholders we interviewed told us that mandatory disclosures could help judges determine whether the judge has a conflict of interest. For example, officials from one technology company said that not knowing who is involved in these cases makes it difficult for judges to assess whether they have any conflicts that would require them to recuse themselves from the case.
Identifying foreign involvement. Several stakeholders said disclosure requirements may shed light on whether a foreign entity is involved in patent litigation. For example, one industry organization we interviewed expressed concerns about whether foreign entities could be funding lawsuits against U.S. companies as a strategy to divert their financial resources and distract from their primary business operations. This group stated that disclosures could discourage this type of behavior from foreign entities.
Facilitating case resolution. Several stakeholders said that knowing whether a third party is funding a patent infringement case may motivate defendants to pursue settlements. One stakeholder said that a defendant may be motivated to avoid a lengthy legal battle, knowing that the plaintiff has ample resources.
Informing legal research. Nearly all the academics we spoke with said mandatory disclosures would make it easier to evaluate the prevalence and impact of third-party funding, including on settlement times. For example, these academics said that, without these disclosures, they can only systemically analyze third-party funding in district courts with comprehensive disclosure requirements, such as those in the District of Delaware.

Source: GAO review of stakeholder-identified benefits of third-party funding disclosures. | GAO-25-107214

Stakeholders differed on whether mandatory disclosures of litigation funding agreements could be compared to existing requirements for disclosing litigation insurance. One stakeholder argued that mandatory disclosures of litigation funding agreements, if enacted, could be structured similarly to existing requirements for defendants to disclose litigation insurance. Under current civil procedure rules, litigation insurance disclosures apply to “any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.”[34]

However, another stakeholder said that disclosing whether the defendant is insured is not analogous to disclosing if the plaintiff is third-party funded because insurance disclosure does not inform the plaintiff about the scale

[34] Fed. R. Civ. P. 26(a)(1).

of the defendant's financial resources.[35] Knowing a plaintiff's potential financial resources through a requirement for third-party litigation disclosure could provide an unfair advantage to a defendant by revealing the plaintiff's financial capability, according to an additional stakeholder. For example, defendants may use the information about the plaintiff's funding to drag out the litigation and increase costs, knowing that the third-party funder's financial support has a set limit.

While several stakeholders we interviewed reported potential benefits that mandatory disclosures of third-party funding could offer, other stakeholders we interviewed, including judges and funders, identified multiple concerns (see table 2).

Table 2: Stakeholder-Identified Concerns of Third-Party Funding Disclosures

Relevance to litigation. Several stakeholders, including multiple funders and district court judges, said that disclosures of third-party funding are not relevant to the litigation. Several stakeholders expressed concerns that disclosing the presence of a funder during a case will lead to the defendant requesting unnecessary information about the details of the funding arrangement, which, in their view, distracts from the merits of the case.
Potential biasing of litigation. Several stakeholders, particularly law firms and funders, said that disclosures of third-party funding may be overly advantageous to defendants. For example, funders may not want the opposing side to see the terms of their funding agreements, such as the funder's minimum returns, since defendants could use this to their advantage when determining settlement offers. Further, disclosures might be used by defendants to discredit the plaintiff to a jury by highlighting their reliance on funding from investors, according to several stakeholders.
Burden to court system. Several stakeholders, including two funders and two district court judges, said that disclosure requirements could increase the cost and length of litigation, creating additional burden on the court system which will need to collect and review these disclosures.
Courts' lack of investigative powers. One stakeholder questioned whether the courts could obtain meaningful information about funding arrangements from a disclosure requirement. Specifically, a district court judge said that the court system is not intended to investigate third-party funders unless there is a direct allegation of a conflict of interest or the funding is otherwise relevant to the litigation.

Source: GAO review of stakeholder-identified concerns of third-party funding disclosures. | GAO-25-107214

[35]Insurance disclosures can potentially reveal how much a defendant could provide in a judgment in favor of a plaintiff. However, third-party funding agreements could provide, among other things, the amount a plaintiff could expend on the litigation itself. While this stakeholder is making comparisons between potential disclosures of TPLF and existing insurance disclosures, there are also differences.

Third-Party Litigation Funding Helps Owners Assert Their Patents, Increases Costs for Defendants, and Alters Litigation Dynamics, According to Stakeholders

Universities, third-party funders, and law firms we interviewed said that third-party funded patent litigation creates opportunities for patent owners to defend their patents against infringement. However, large technology companies we interviewed that are typically defendants in third-party funded patent litigation raised concerns that such funding creates additional costs and risks. In addition, large technology companies, mediators, and law firms said that the presence of a third-party funder may influence settlement negotiations during litigation.

Third-Party Funding Expands Opportunities to Protect Patents and Research Investments

Third-party funding allows patent owners to protect their investments in research and development, according to several stakeholders. Funders, universities, and inventors we interviewed said that such funding provides resource-constrained patent owners the financial resources to pursue patent litigation. University officials and inventors we interviewed told us this support is crucial because, from their perspective, fewer law firms are taking cases under a contingency fee arrangement due to the unique costs and risks of patent litigation.[36] One inventor we spoke with said that contingency fee funding was not an option in pursuing a complex and costly lawsuit against a large technology company.

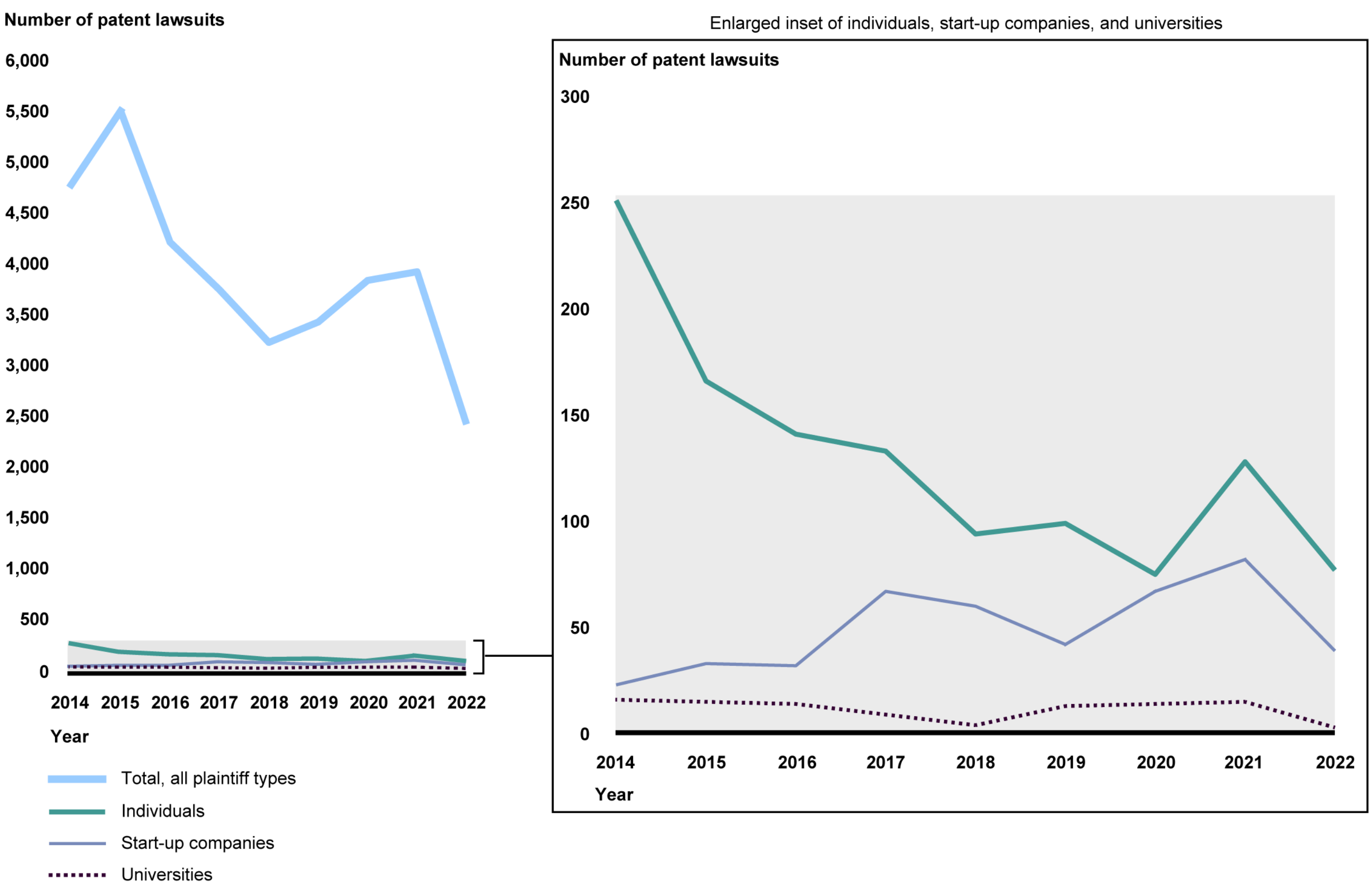
Judges we interviewed said they see cases in which third-party funding has provided access to the courts to inventors who might not have otherwise been able to assert their patents. Funders and technology companies agreed that because of increased access to the courts, some lawsuits have been filed that would not have otherwise been filed absent third-party funding.

However, data on overall trends in patent infringement litigation have shown a downtrend in the number of cases filed since 2021. These data also show no major changes in the number of cases filed by individual inventors, start-up companies, or universities. These plaintiffs made up a very small proportion—about 4 to 6 percent—of patent infringement

[36]Officials from one university we interviewed said law firms previously offered contingency-fee arrangements that included all out-of-pocket costs, providing zero financial risk to the university. However, as patent litigation became riskier, many law firms stopped offering this type of arrangement.

lawsuits overall (see fig. 3).[37] One funder also said third-party funding may have replaced funding provided solely by law firms under contingency fee arrangements, and therefore may not have significantly impacted the overall number of patent infringement lawsuits.

Figure 3: Patent Litigation in District Courts Filed between Calendar Year 2014 and 2022 by Individual Inventors, Start-up Companies, and Universities



Source: GAO analysis of Stanford Non-Practicing Entity (NPE) Litigation Database. | GAO-25-107214

Note: The universities category above also includes non-profit organizations and government agencies.

[37]Some stakeholders attributed this downtrend trend to the COVID-19 pandemic and the high interest rates that followed. They said when interest rates are high, other investments with reliably high rates of return are available and may be chosen over funding patent litigation.

Stakeholders, including universities, funders, and one law firm, said third-party funding can be particularly valuable in combatting efficient infringement. Efficient infringement may occur when smaller companies disclose their patented technology to a larger company, which then infringes the patent. These smaller companies disclose the inner workings of their technologies to a larger company under the assumption that the larger company is likely interested in acquiring or licensing the technology.[38]

Funders and one law firm we interviewed had observed several instances of efficient infringement. For example, the law firm described an instance in which a large technology company held 50 business meetings with the law firm's client, a smaller technology company, before abruptly ending discussions and later replicating the technology instead. Companies that efficiently infringe often assume that patent owners lack the financial means to enforce their patents through litigation, according to funders and one law firm we interviewed. University officials and one inventor we spoke with said that if a company has efficiently infringed on a patent and the patent owner wants to facilitate licensing discussions for the infringed patent, it can be more effective for the patent owner to first file a patent infringement lawsuit against the infringing company, rather than solely requesting a licensing discussion with the company. Third-party funding provides the financial resources necessary for patent owners to pursue litigation against efficient infringers and protect their research investments, according to several stakeholders.

University officials and inventors we interviewed said third-party funding allows them to protect their research investments. They said failing to enforce infringed patents can undermine the value of their entire patent portfolio. Universities with large patent portfolios license many of their patents to companies that use the patented technologies in their products. University officials told us that their resource constraints limit their ability to enforce their patents through litigation. According to funders, having the ability to enforce patents is critical to maintaining investor confidence that research investments are being protected. One third-party funded inventor we spoke with said that not being able to enforce their patents would undermine the patent system's ability to promote innovation. University officials said not enforcing infringed patents can undermine the commercial value of their patent portfolio by

[38]Officials from one university said efficient infringement is more common in the technology industry, where an innovation may rely on hundreds of patents. This differs from other industries, such as the pharmaceutical or medical device industries, where an innovation may only rely on a few patents.

discouraging others from licensing university patents to build new products and companies. Additionally, officials from one university said that failing to enforce a patent allows infringers to unfairly benefit from university- and taxpayer-funded research. Universities we interviewed said that despite the high costs, partnering with a third-party funder provides them with another option to protect their research investments.

Third-Party Funded Patent Litigation Creates Additional Operational Costs and Potential Risks for Defendants

Technology companies we interviewed said defending themselves from third-party funded patent litigation creates both financial and personnel costs. Stakeholders said third-party funding creates additional costs for technology companies because, among other things, third-party funding provides plaintiffs with access to better legal resources, such as more experienced attorneys, to continue their case to trial if necessary. This introduces costs for technology companies because they must contend with better resourced opponents. Technology companies said they spend tens of millions of dollars defending against third-party funded patent litigation. For example, two technology companies estimated that 70 and 90 percent of their total patent litigation expenditures in recent years were for defending against third-party funded patent lawsuits.

Technology companies also said defending themselves in third-party funded patent litigation can create personnel costs. For example, engineers are often called upon to serve as expert witnesses in patent litigation and must travel to various court venues around the country to testify. In addition, complying with discovery requests often requires engineers to conduct detailed analyses of the technology associated with the infringement claims. One technology company said taking engineers away from their work for months to support litigation can delay product development and other research efforts by years.

Additionally, technology companies told us that the patents associated with many third-party funded cases have weak infringement claims, and that they must incur defense costs even though they say these patents are likely to be invalidated upon PTAB review. According to PTAB data, PTAB invalidated around half of the patent claims for which it instituted

Non-Practicing Entities

Non-practicing entities (NPEs) are entities that hold patents but do not produce or sell any goods or services based on those patents. Instead, they may generate revenue by asserting their intellectual property rights through licensing or litigation. For example, universities are considered NPEs as they do not produce any goods or services, but typically license many of their patents to companies that use the patented technologies in their products. Stakeholders we interviewed said NPEs may receive third-party funding.

Some NPEs acquire patents and assert them against alleged infringers. Stakeholders we interviewed said that some NPEs will assert low quality patents with weak infringement claims. Although funders we interviewed said they do not fund these types of cases because they do not command significant settlements or licensing fees. In addition, stakeholders said the implementation of the Patent Trial and Appeal Board (PTAB) has contributed to a decrease in the number of NPEs asserting low quality patents.

Source: GAO | GAO-25-107214

inter partes review proceedings in fiscal year 2023.[39] In one high-profile case, a third-party funded patent owner won multiple billion-dollar jury awards against a large technology company—only to have the patents invalidated upon PTAB review.[40] The invalidation of the patents by PTAB allowed the large technology company to later successfully appeal the jury's decision, although the appeal process still cost the company additional resources.

Technology companies and other stakeholders we interviewed said that many third-party funded patent infringement lawsuits involve patents with low innovative value that have been sold off by their original corporate owners to non-practicing entities who assert them (see sidebar).[41] However, funders we interviewed said that third-party funded patent lawsuits of today are different from some non-practicing entity lawsuits from the past decade, which typically involved much lower-quality patents. Funders we interviewed said that increased costs for defendants may arise because third-party funding allows plaintiffs with high-quality patents and legitimate infringement claims the ability to continue their case to trial if necessary. For example, one stakeholder told us that, prior to the rise of third-party funding, patent owners would settle their cases earlier and for less money than they were worth because they generally lacked the funding to properly pursue a case against a larger, well-funded company.

Third-party funded patent litigation may also create risks for defendants, according to the technology companies we interviewed. Several stakeholders said that litigation funding could be used by foreign entities to divert U.S. companies from their core mission by entangling them in costly and distracting legal battles. Furthermore, technology companies shared concerns about foreign entities gaining access to sensitive

[39]Specifically, PTAB instituted 11,644 patent claims and, of those claims, 5,894 patent claims were found unpatentable in fiscal year 2023, according to USPTO data. In *inter partes* reviews, for example, PTAB reviews the patentability of one or more claims under 35 U.S.C. §§ 102 or 103, and only on the basis of prior art consisting of printed publications including patents and patent applications. See 35 U.S.C. § 311 and https://www.uspto.gov/patents/ptab/trials for more information. Since third-party funding relationships are not visible, we were not able to compare invalidation rates specifically for patents used in third-party funded lawsuits.

[40]Bloomberg Law, "Intel Nixes Second VLSI Patent Underlying $2 Billion Verdict" (Washington, D.C.: June 13, 2023), https://news.bloomberglaw.com/ip-law/intel-nixes-second-vlsi-patent-underlying-2-billion-verdict

[41]Some technologies like 5G wireless can have hundreds or thousands of patents associated with them, many of which do not represent an innovation.

company information during the discovery process—a process in which companies typically share detailed information on how their technology works—and using it to undermine U.S. industry. For example, one technology company we interviewed said that in the semiconductor industry, knowledge about manufacturing processes is particularly sensitive. Therefore, if a foreign competitor were to learn of a U.S. company's manufacturing process through discovery during litigation, it might be able to implement that process in its factories abroad without the U.S. company's knowledge.

However, funders, law firms, and judges we interviewed stated that there are courtroom protections, such as protective orders, to prevent disclosure of unauthorized information to anyone not directly involved in the case, such as a foreign entity or other third party.[42] Funders, including some that are partially foreign owned, said their business structures prevent foreign investors from gaining access to sensitive information through discovery. For example, one funder said that money invested by anyone, including a foreign entity, typically goes into a blind trust, such that the investors have no visibility over which patent cases are funded. However, in one publicly reported event, a third-party funded plaintiff chose to drop their case with a potential multi-billion-dollar award rather than comply with the court's requirement to disclose who was providing the funding—which some stakeholders said raised questions about whether foreign funders were involved.

Department of Justice officials told us they are examining whether foreign entities are investing in U.S. patent litigation to gain proprietary information that would help their own industries but did not confirm the existence of or provide details of any ongoing investigations. Industry organizations we interviewed said that mandatory disclosure requirements could help determine the extent of foreign involvement in patent litigation.

Presence of Funders May Complicate Settlement Negotiations

Third-party funders may complicate settlement negotiations, contributing to longer settlement times, according to technology companies, mediators, and a judge. Funders and law firms we interviewed said that plaintiffs retain control over the litigation, such as deciding when to ultimately settle a case, even when a third-party funder is involved. However, plaintiffs may be required to consult with their funder before

[42]Protective orders are issued by courts to safeguard sensitive technical, business, or financial information produced in discovery by limiting who may access the information. Penalties for violating protective orders can range from fines to disbarment.

accepting a settlement offer, according to funding agreements we reviewed and funders we interviewed. One mediator said that despite patent owners having control over settlement decisions, it was clear that the funders also had influence that sometimes complicated the discussions. One judge said this influence makes it difficult to conduct meaningful settlement negotiations. Mediators and one law firm also said the presence of a third-party funder can contribute to longer settlement times because patent owners may be unwilling to agree to a settlement offer unless it exceeds their repayment obligations to the third-party funder.

As a result, the presence of a third-party funder may affect how long it takes to resolve a case through settlement, according to technology companies. Mediators we interviewed said cases with third-party funding may be more likely to go to trial, which typically requires additional court resources. However, funders we interviewed said they structure their funding agreements to allow the plaintiff to settle at any time and generally incentivize early settlement.

Agency Comments

We provided a draft of this report to AOUSC, the Department of Justice, and USPTO for review and comment. AOUSC and USPTO provided technical comments, which we incorporated as appropriate. The Department of Justice did not have any comments on the report.

We are sending copies of this report to the appropriate congressional committees; the Director of the Administrative Office of the U.S. Courts; the Secretary of Commerce; the Attorney General; and other interested parties. In addition, the report is available at no charge on the GAO website at http://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-6888 or WrightC@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix III.

Sincerely,

Candice N. Wright

Candice N. Wright
Director, Science, Technology Assessment, and Analytics

Appendix I: Objectives, Scope, and Methodology

This report examines recent developments in third-party funding of patent litigation including: (1) selected funders' perspectives on factors that influence patent litigation funding decisions, (2) stakeholder and data estimates on the extent of patent litigation funding and challenges in determining the extent of such funding, and (3) literature and selected stakeholders' perspectives on the legal and economic effects of patent litigation funding. For purposes of this report, we define third-party litigation funding (TPLF) as an arrangement in which a funder that is not a party to a lawsuit agrees to provide funding to a litigant or law firm in exchange for a portion of the proceeds from the lawsuit if it is successful. The scope of this report does not include other types of third-party funding for disputes, such as traditional loans from banks.

To gather information for all three objectives, we conducted semi-structured interviews with selected stakeholders with knowledge of recent developments in third-party funding of patent litigation in the U.S. Specifically, we interviewed:

- eight patent litigation funders that fund a large proportion of U.S. patent litigation,
- representatives of seven large technology companies that were among the most frequent defendants in patent litigation over the past 5 years,
- representatives of four law firms that had partnered with a third-party patent litigation funder or with knowledge about the use of third-party funding in patent litigation,
- representatives of four universities that had partnered or considered partnering with a third-party patent litigation funder,
- four U.S. district court judges and one magistrate judge from four U.S. districts with high volumes of patent litigation from January 2014 through March 2024,
- three mediators with experience mediating third-party funded patent litigation,
- two individual inventors who used third-party funding for patent litigation,
- eight industry organizations with knowledge of third-party funding in patent litigation,
- four academics with knowledge of or conducting work on third-party funding in patent litigation.

We also interviewed officials from three federal agencies: the Administrative Office of the U.S. Courts (AOUSC), the Department of Justice, and the U.S. Patent and Trademark Office (USPTO).

We selected third-party funders based on a review of past GAO work on TPLF, reviewing public information on patent litigation funders, and recommendations from industry stakeholders. We identified industry organizations by reviewing literature and comment letters on TPLF submitted to AOUSC's Advisory Committee on Civil Rules (a committee that drafts amendments to the rules that govern civil litigation in federal courts) and by obtaining recommendations from funders, academics, and other stakeholders we met with during our background-gathering process.

We also interviewed representatives of seven technology companies that make up a significant percentage of defendants in U.S. patent litigation to gather their perspectives on the extent of third-party funded patent litigation. Technology companies were selected based on those that were among the most frequent defendants in patent litigation in the U.S. from January 2014 through September 2023, based on our analysis of the Stanford Non-Practicing Entity (NPE) Litigation Database.[1] We collected information from these technology companies on how many patent lawsuits from January 2019 through March 2024 they determined or presumed had third-party funding.

We also interviewed officials from USPTO to collect information on their patent assignment database and the extent to which it indicates that a litigated patent may be receiving third-party funding for that lawsuit.[2]

We identified law firms through recommendations from patent litigation funders and other stakeholders we interviewed. Law firms we interviewed that said they had used TPLF were not able to discuss specific terms and conditions of the funding as they were bound by confidentiality requirements that limit disclosure of funding arrangements. Universities were also identified using a similar method. While we sought to identify universities that had partnered with a third-party funder for patent

[1]The Stanford NPE Litigation Database tracks how companies, NPEs, and other entities use patents in litigation.

[2]USPTO's patent assignment database allows patent parties to record assignments and other documents for patents and patent applications, such as licensing agreements, security interests, mortgages, and liens.

litigation, not all universities we interviewed had used TPLF, but all the interviewees had considered using it and were familiar with it.

Judges were selected from four U.S. districts with high volumes of patent litigation from January 2014 through March 2024. We sought to include judges and U.S. district courts with different or no disclosure requirements, ranging from those requiring disclosure to those without disclosure requirements of information about third-party funding. The mediators and individual inventors we interviewed were selected based on the recommendations of industry stakeholders we interviewed.

Industry organizations and academics were selected based on recommendations from funders and technology companies we interviewed and by conducting searches for industry organizations and academics with perspectives or conducting work related to TPLF.

We selected stakeholders to ensure a mix of TPLF proponents, opponents, and neutral parties. Further, the comments of these individuals and groups generally represented the views of the individuals and groups themselves and not the organization with which they were affiliated.

Collectively, we refer to the selected funders, technology companies, law firms, universities, academics, judges, mediators, individual inventors, industry organizations, and academics that we interviewed as stakeholders, unless otherwise noted.[3]

We use “several,” “some,” “many,” “most,” and “almost all” to characterize stakeholder responses. We define “several” as two to 10 responses, “some” as 11 to 19 responses, “many” as 20 to 28 responses, “most” as 29 to 37 responses, and “almost all” as 38 to 45 responses. Because we selected a nongeneralizable sample of stakeholders to interview, findings from our analysis of their views cannot be generalized to all stakeholders who might have relevant knowledge and expertise. Rather, these interviews provided us with insights from a selected group of stakeholders on recent developments in third-party funding of patent litigation. In addition, the specific areas of expertise varied among the stakeholders

[3]As appropriate, we conducted joint interviews with stakeholders who were coauthors or were affiliated with the same organization. We treated the perspectives gathered at these joint interviews as one interview for the purposes of tallying stakeholder perspectives.

we interviewed, so not all of the stakeholders commented on all of the interview questions we asked.

To address the first objective, we reviewed nine patent litigation funding agreements to identify how these agreements are structured and common terms and conditions, such as the percent of court proceeds that go to the funder versus the patent owner, to the extent such information was available.[4] To obtain funding agreements, we requested patent litigation funding agreements from the patent litigation funders and industry stakeholders mentioned above.[5]

We also conducted a search for publicly available patent litigation funding agreements in the U.S. Securities and Exchange Commission's Electronic Data Gathering, Analysis, and Retrieval system. This database is an online platform for collecting and distributing submissions from companies and other entities required by law to file certain information with the U.S. Securities and Exchange Commission. For example, patent litigation funding agreements could become public record through this system if the litigation associated with the agreement is material to the company's financial condition or operations, among other reasons. Industry stakeholders provided us with two patent litigation funding agreements, and we identified seven patent litigation funding agreements through our searches in the U.S. Securities and Exchange Commission's Electronic Data Gathering, Analysis, and Retrieval database. We also reviewed financial reports from publicly traded patent litigation funders.

As we have previously reported, publicly available data on the TPLF market are limited as there is no central repository of information on funders and no federal law expressly requires all litigation funders to report market data publicly. The total number of litigation funders operating in the U.S. is also unknown because of limited data.[6] Accordingly, to address the second objective, we interviewed the funders and industry stakeholders mentioned above to gather their perspectives

[4]Some funding agreements we reviewed had relevant data, such as investment returns, fees, and funding amounts omitted or redacted.

[5]Funders we interviewed declined our request for funding agreements. One funder stated they had already provided example funding agreements to GAO as part of GAO's last engagement on TPLF. We reviewed the funding agreements provided as part of GAO's last engagement but relevant data, such as investment returns, fees, and funding amounts were omitted or redacted.

[6]GAO, *Third-Party Litigation Financing: Market Characteristics, Data, and Trends,* GAO-23-105210, (Washington, D.C. Dec. 20, 2022).

about the extent and limitations of available data on third-party funding for patent litigation.

Additionally, we reviewed reports from Unified Patents, RPX, and Westfleet Advisors to identify what they have reported on the extent of third-party funded patent litigation. We reviewed relevant academic studies analyzing data on third-party funding of patent litigation for information on the extent of third-party funding in patent litigation.

We also analyzed the Stanford NPE Litigation Database to determine the number of patent litigation cases that are initiated by individuals versus NPEs or other types of plaintiffs. This database collects data on all patent infringement lawsuits in U.S. district courts since 2000. To assess the reliability of the Stanford database, we reviewed relevant documentation, such as published reports and online guidance, tested relevant columns, and interviewed the manager of that database. Stanford's database also has data reliability checks in place. For example, for each entity filing a patent infringement claim, Stanford law students review available court documents, legal databases, and online searches to determine what type of entity it is, and the project lead regularly reviews random samples of students' work to ensure its reliability.[7] Based on these steps, we found the data were sufficiently reliable for the purpose of our reporting objective.

In addition, we selected 12 patent litigation cases that Unified Patents suspected as being third-party funded and, through a search of publicly available information, identified challenges in determining whether these cases were third-party funded. As part of our search, we sought to identify indicators of third-party funding for the selected cases. Sources we reviewed included court databases, news websites, USPTO patent assignment database, Uniform Commercial Code (UCC) filings, and searches for information related to selected cases. Cases were judgmentally selected to ensure a diversity of plaintiffs and third-party funders.

Further, to gather perspectives on disclosure requirements, we reviewed information on the regulation and disclosure of TPLF in the U.S., including reports by legal practitioners, government agencies, and others. We interviewed the federal agencies and industry stakeholders described

[7]Shawn P. Miller et al., "Who's Suing Us? Decoding Patent Plaintiffs since 2000 with the Stanford NPE Litigation Dataset," *Stanford Technology Law Review*, vol. 21, no. 2 (2018): 235.

above and reviewed legal materials related to TPLF in the U.S., including federal and state laws, federal court rules, proposed legislation, and proposals to amend federal court rules made by industry stakeholders to the Advisory Committee on Civil Rules. Although the stakeholders identified a range of opportunities and considerations regarding mandatory disclosure requirements, other opportunities or considerations may exist that were not raised.

To address the third objective, we conducted semi-structured interviews with the stakeholders mentioned above to gather perspectives on the legal and economic effects of third-party funding. Additionally, we requested information from the technology companies we interviewed on the costs associated with defending third-party funded patent litigation cases over the past 10 years. We also interviewed officials from the Department of Justice to gather their perspectives on the extent of foreign entity involvement in TPLF.

Further, we reviewed reports by academic researchers that we identified through a literature search. We conducted literature searches in April and May 2024 and searched databases including Law360, LexisNexis, ProQuest, and EBSCO. We identified additional reports by conducting internet searches and soliciting recommendations during interviews.

We conducted our work from December 2023 to December 2024 in accordance with all sections of GAO's Quality Assurance Framework that are relevant to our objectives. The framework requires that we plan and perform the engagement to obtain sufficient and appropriate evidence to meet our stated objectives and to discuss any limitations in our work. We believe that the information and data obtained, and the analysis conducted, provide a reasonable basis for any findings and conclusions in this product.

Appendix II: Federal Judicial Requirements for Disclosing Third-Party Litigation Funding

The table below displays federal requirements which could require disclosure of TPLF funding in certain situations.

Table 3: Federal Court Requirements for Disclosing Third-Party Litigation Funding

Court	Requirement	Description
CA: U.S. District Court, Central District of California	Certification and Notice of Interested Parties (Local Rule 7.1-1)	In a certification and notice, the counsel of record or party appearing in pro per, discloses any party (or parties) who may have a pecuniary interest in the outcome of a case. These representations are made to enable the Court to evaluate possible disqualification or recusal.
CA: U.S. District Court, Northern District of California	Civil Local Rule 3-15	Each non-governmental party must: (1) file a “Certification of Conflicts and Interested Entities or Persons” with its first appearance, filing, or other request addressed to the court; (2) file such Certification as a separate document; and (3) promptly file a supplemental Certification if any required information changes. The Certification must disclose whether the party is aware of any conflict, financial or otherwise, that the presiding judge may have with the parties to the litigation. Additionally, the Certification must disclose any persons, associations of persons, firms, partnerships, corporations (including, but not limited to, parent corporations), or any other entities, other than the parties themselves, known by the party to have either: (i) a financial interest of any kind in the subject matter in controversy or in a party to the proceeding; or (ii) any other kind of interest that could be substantially affected by the outcome of the proceeding.
DE: U.S. District Court for the District of Delaware	Judge Colm Connolly’s Standing Order Regarding Disclosure Statements Required by Federal Rule of Procedure 7.1 (April 2022)	In all cases assigned to Judge Colm Connolly where a party is a nongovernmental joint venture, limited liability corporation, or limited liability partnership, that the party must include in its disclosure statement filed pursuant to Federal Rule of Civil Procedure 7.1 the name of every owner, member, and partner of the party, proceeding up the chain of ownership until the name of every individual and corporation with a direct or indirect interest in the party has been identified.
DE: U.S. District Court for the District of Delaware	Judge Colm Connolly’s Standing Order Regarding Third-Party Litigation Funding Arrangements	In addition to the above, litigants receiving nonrecourse third-party funding for cases heard by Judge Colm Connolly must disclose: (a) the identity, address, and, if a legal entity, place of formation of the third-party funders(s); (b) whether any third-party funder’s approval is necessary for litigation or settlement decisions in the action, and the terms and conditions of that approval, if applicable; (c) a brief description of the nature of the financial interest of the third-party funder(s).

FL: U.S. District Court, Middle District of Florida	Certificate of Interested Persons and Corporate Disclosure Statement	Litigants must disclose information to the courts, including (1) the name of each person, attorney, association of persons, firm, law firm, partnership, and corporation that has or may have an interest in the outcome of this action — including subsidiaries, conglomerates, affiliates, parent corporations, publicly traded companies that own 10% or more of a party's stock, and all other identifiable legal entities related to any party in the case; (2) the name of every other entity whose publicly traded stock, equity, or debt may be substantially affected by the outcome of the proceedings.
GA: U.S. District Court, Northern District of Georgia	Certificate of Interested Persons and Corporate Disclosure Statement	Counsel for all private (non-governmental) parties in civil cases, including those that seek to intervene, must at the time of first appearance file a certificate containing information including: (1) A complete list of the parties, including proposed intervenors, and the corporate disclosure statement; (2) A complete list of other persons, associations, firms, partnerships, or corporations having either a financial interest in or other interest which could be substantially affected by the outcome of the case.
GA: U.S. District Court for the Southern District of Georgia	Disclosure Statement of Parties and Intervenors	The disclosure statement must include a full and complete list of all persons, associations of persons, firms, partnerships, subsidiaries and parent corporations, and organizations which have a financial interest in, or another interest which could be substantially affected by, the outcome of this case, including any parent or publicly held corporation that holds 10 percent (10%) or more of a party's stock.
IA: U.S. District Court for the Northern District of Iowa	Corporate Disclosure Statement LR 7.1	Litigants must disclose the names of all associations, firms, partnerships, corporations, and other artificial entities that are either related to the party as a parent, subsidiary, or otherwise, or have a directed or indirect pecuniary interest in the outcome of the case. This disclosure must include each entity's connection to or interest in the litigation, or both.
IA: U.S. District Court for the Southern District of Iowa	LR 7.1 Disclosure Statement	Litigants must disclose the names of all associations, firms, partnerships, corporations, and other artificial entities that are either related to the party as a parent, subsidiary, or otherwise, or have a directed or indirect pecuniary interest in the outcome of the case. This disclosure must include each entity's connection to or interest in the litigation.
MI: U.S. District Court for the Eastern District of Michigan	LR 83.4: Disclosure of Entity Affiliations, Financial Interest, and Citizenship	Whenever, by reason of insurance, a franchise agreement, lease, profit sharing agreement, or indemnity agreement, a non-party entity has a direct financial interest in the outcome of the litigation, counsel for the party entity whose interest is aligned with that of the non-party entity must identify on the Statement of Disclosure the non-party entity and the nature of that non-party entity's direct financial interest in the outcome of the litigation.
MI: U.S. District Court for the Western District of Michigan	Disclosure of Corporate Affiliations and Financial Interest	Litigants must disclose any publicly held corporations or entities that have a direct financial interest in the outcome of the litigation, including both their identities and the nature of their interest.
NC: U.S. District Court for the Eastern District of North Carolina	Disclosure of Corporate Affiliations and Other Entities with a Direct Financial Interest in Litigation and Attributed Citizenship	Litigants must disclose any publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Civil Rule 7.3).

NC: U.S. District Court for the Middle District of North Carolina	Disclosure of Corporate Affiliations and Other Entities with a Direct Financial Interest in Litigation	Litigants must disclose any publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation.
NC: U.S. District Court for the Western District of North Carolina	Disclosure of Corporate Affiliations and Other Entities with a Direct Financial Interest in Litigation	Litigants must disclose any publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation.
NE: U.S. District Court for the District of Nebraska	Disclosure of Corporate Affiliations, Financial Interest, and Business Entity Citizenship	Litigants must disclose any publicly held corporations or entities that have a direct financial interest in the outcome of the litigation, including both their identities and the nature of their interest.
NJ: U.S. District Court for the District of New Jersey	Civil Rule 7.1.1 Disclosure of Third-Party Litigation Funding	Within 30 days of filing an initial pleading or transfer of the matter to this district, including the removal of a state action, or promptly after learning of the information to be disclosed, all parties, including intervening parties, shall file a statement (separate from any pleading) containing the following information regarding any person or entity that is not a party and is providing funding for some or all of the attorneys' fees and expenses for the litigation on a non-recourse basis in exchange for (1) a contingent financial interest based upon the results of the litigation or (2) a non-monetary result that is not in the nature of a personal or bank loan, or insurance: 1. The identity of the funder(s), including the name, address, and if a legal entity, its place of formation; 2. Whether the funder's approval is necessary for litigation decisions or settlement decisions in the action and if the answer is in the affirmative, the nature of the terms and conditions relating to that approval; and 3. A brief description of the nature of the financial interest.
NV: U.S. District Court for the District of Nevada	Local Rule of Practice 7.1-1. Certificate of Interested Parties	Unless the court orders otherwise, in all cases except habeas corpus cases, pro se parties and attorneys for private non-governmental parties must identify in the disclosure statement all persons, associations of persons, firms, partnerships or corporations (including parent corporations) that have a direct, pecuniary interest in the outcome of the case. Litigants must list the names of all such parties and identify their connection and interests. These representations are made to enable judges of the court to evaluate possible disqualifications or recusal.
NY: U.S. District Court for the Western District of New York	Disclosure Statement Business Organization Party Disclosures	Pursuant to Local Civil Rule 7.1, undersigned counsel for a litigant who is a business organization party (corporation, LLC, or partnership) must identify any person (including but not limited to members, shareholders, partners, or individuals with direct decision-making authority/in leadership positions) whose identities may reasonably bear on the Court's decision whether to recuse, on motion or sua sponte, including by reason of financial interest in the outcome of the litigation or involvement in the events that form the basis for any claim.
OH: U.S. District Court for the Northern District of Ohio	Corporate Disclosure Statement	Litigants must disclose any publicly held corporation, not a party to the case, that has a financial interest in the outcome of the litigation. The disclosure should include the identity of such corporation and the nature of the financial interest.

OH: U.S. District Court for the Southern District of Ohio	Corporate Disclosure Statement	Litigants must disclose any publicly held corporation, not a party to the case, that has a financial interest in the outcome of the litigation. The disclosure should include the identity of such corporation and the nature of the financial interest.
OK: U.S. District Court for the Eastern District of Oklahoma	Corporate Disclosure Statement	Litigants must disclose any publicly held corporations or other publicly held entities that have a direct financial interest in the outcome of the litigation, including both their identities and the nature of their interest.
OK: U.S. District Court for the Northern District of Oklahoma	Local Civil Rule 7.1-1 Disclosure Statement	Any nongovernmental corporation or other nongovernmental entity that is a party or that seeks to intervene shall file a Disclosure Statement (Form CV-24), available on the Court's website, making the disclosures listed in Fed. R. Civ. P. 7.1(a)(1), and also identifying the names of all associations, firms, partnerships, corporations, and other artificial entities that either are related to the party or intervenor as a parent, subsidiary, or otherwise, or have a direct financial interest in the outcome of the litigation. The provisions of Fed. R. Civ. P. 7.1(b) shall apply to nongovernmental entities in all cases.
OK: U.S. District Court for the Western District of Oklahoma	Corporate Disclosure Statement	Litigants must disclose any publicly held corporations or other publicly held entities that have a direct financial interest in the outcome of the litigation, including both their identities and the nature of their interest.
TN: U.S. District Court for the Middle District of Tennessee	Business Entity Disclosure Form	Pursuant to Local Rule 7.02, litigants must disclose any publicly held corporations or other publicly held entities that have a direct financial interest in the outcome of the litigation, including both their identities and the nature of their interest.
TX: U.S. District Court for the Northern District of Texas	Certificate of Interested Persons/Disclosure Statement	Pursuant to Local Rules, 3.1(c), 3.2(e), 81.1(a)(4)(D), and 81.2, litigants must provide a complete list of all persons, associations of persons, firms, partnerships, corporations, guarantors, insurers, affiliates, parent or subsidiary corporations, or other legal entities that are financially interested in the outcome of the case.
VA: U.S. District Court for the Western District of Virginia	Disclosure of Corporate Affiliations and Other Entities with a Direct Financial Interest in Litigation	Litigants must identify any publicly held corporations or other publicly held entities that have a direct financial interest in the outcome of the litigation.
WI: U.S. District Court for the Western District of Wisconsin	Disclosure of Corporate Affiliations and Citizenship	Litigants must disclose any publicly owned corporation that owns 10% or more of the named party's stock or has another type of financial interest in the outcome of the litigation. This disclosure must list the identity of such corporations and the nature of the financial interest in the named party.
U.S. Court of Appeals for the Third Circuit	Corporate Disclosure Statement and Statement of Financial Interest	Third Circuit Local Appellate Rules (LAR) 26.1(b) requires that every party to an appeal must identify on the Corporate Disclosure Statement required by Rule 26.1, Federal Rules of Appellate Procedure, every publicly owned corporation not a party to the appeal, if any, that has a financial interest in the outcome of the litigation and the nature of that interest. This information need be provided only if a party has something to report under that section of the LAR.
U.S. Court of Appeals for the Fourth Circuit	Disclosure Statement	Litigants must identify any publicly held corporations or other publicly held entities that have a direct financial interest in the outcome of the litigation.

U.S. Court of Appeals for the Fifth Circuit	5th Circuit Rule 28.2-1	The certificate of interested persons provides the court with additional information concerning parties whose participation in a case may raise a recusal issue. A separate disclosure statement is not required. Counsel and unrepresented parties will furnish a certificate for all private (non-governmental) parties, both appellants and appellees, which must be incorporated on the first page of each brief before the table of contents or index, and which must certify a complete list of all persons, associations of persons, firms, partnerships, corporations, guarantors, insurers, affiliates, parent corporations, or other legal entities who or which are financially interested in the outcome of the litigation. Each certificate must list all persons known to counsel to be interested, on all sides of the case, whether or not represented by counsel furnishing the certificate. Counsel has the burden to ascertain and certify the true facts to the court.
U.S. Court of Appeals for the Sixth Circuit	Disclosure of Corporate Affiliations and Financial Interest	Litigants must disclose any publicly held corporations, not a party to the appeal, that have a direct financial interest in the outcome of the litigation, including both their identities and the nature of their interest.
U.S. Court of Appeals for the Tenth Circuit	Entry of Appearance and Certificate of Interested Parties	Litigants must disclose any individuals and/or entities who are not direct parties in this appeal but do have an interest in or relationship to the litigation and/or the outcome of the litigation. See 10th Cir. R. 46.1(D).
U.S. Court of Appeals for the Eleventh Circuit	Certificate of Interested Persons and Corporate Disclosure Statement	The appellant or petitioner to file a Certificate of Interested Persons and Corporate Disclosure Statement (CIP) with this court within 14 days after the date the case or appeal is docketed in this court, and to include a CIP within every motion, petition, brief, answer, response, and reply filed. This certificate must list all trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this case or appeal, including subsidiaries, conglomerates, affiliates, parent corporations, any publicly held corporation that owns 10% or more of the party’s stock, and other identifiable legal entities related to a party.

Source: GAO analysis of court websites and documentation. | GAO-25-107214

Note: Federal courts not mentioned above are not known to have any requirements regarding third-party funding of litigation.

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

Candice N. Wright at (202) 512-6888 or wrightc@gao.gov

Staff Acknowledgments

In addition to the contact named above, Robert Marek (Assistant Director), Courtney Thacker (Analyst-in-Charge), Lauren Gomez, and Kamala Mullur made key contributions to this report. In addition, Victoria Aysola, Jenny Chanley, Ryan Han, Patrick Harner, and John Karikari contributed to the report.

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