Inter partes review (IPR) is a procedure for challenging low-quality patents, i.e., those that should not have issued in the first place. With IPR, a third-party can go back to the patent office’s Patent Trial and Appeal Board (PTAB) and petition it to take a second look at a patent. The PTAB can then assess whether a patent was (in)correctly granted, and specifically whether a patent fails to claim a truly new invention.

What it means for startups:

Startups cannot afford to spend a lot of time and money on patent litigation. IPR offers a more efficient & affordable alternative for challenging low-quality patents. Bad actors (variously called “patent trolls,” non-practicing entities (NPEs), or assertion entities) use low-quality patents and the threat of litigation to coerce startups into settling frivolous infringement allegations. By reducing the cost of challenging low-quality patents, IPR has helped level the playing field. Indeed, since IPR went into effect in 2012, abusive NPE litigation has started to decline as startup activity has simultaneously increased.

“Having the IPR process available to us as a means of defending our innovation is critical.”
- Colin Sullivan, Patreon

Patent review board is working:

Over 10,000 petitions have been filed with the PTAB—which is a very small fraction of the nearly 3 million active U.S. patents. But companies report fewer frivolous patent demands and estimates suggest innovators have saved over $2 billion since implementation of IPR.

Despite its success, critics mischaracterize the PTAB as a “death squad.” In reality, an exceedingly small portion of patents are challenged before the PTAB. And for those that are challenged, the PTAB only invalidates claims in a minority of cases.

Bottom line: The PTAB has proven to be an accessible venue for resolving problems of abusive litigation and low-quality patents that should not have issued. This promotes both patent quality and confidence in the U.S. patent system. And when there are fewer low-quality patents that can be weaponized against startups, innovation thrives. Congress should preserve, not chip away at, the PTAB and IPRs.

Sources:
1. Data collected from portal.unifiedpatents.com/litigation/analytics:
   indicators.kauffman.org/data-table
2. www.youtube.com/watch?v=JjFcZl_Ftpc
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