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## **When Patents Outlast Progress—The Case for Revising Patent Duration**

The sudden increase in discretionary denials in *inter partes* reviews (IPRs) is reshaping the patent litigation landscape. As more IPR petitions are denied, a greater number of patent disputes are being resolved in the courts. This trend means that questions of patent validity are likely to take longer to resolve, which raises the expected value of these cases and may inadvertently encourage defendants to settle or seek early resolution to avoid substantial litigation expense. Consequently, we are witnessing a notable rise in patent litigation activity.

This trend is also evident in the growing number of cease-and-desist letter campaigns, often initiated by non-practicing entities (NPEs). Older patents that previously might have been invalidated through IPRs or held little value in district court litigation are now being asserted. NPEs are capitalizing on recent procedural changes and the age of these patents to bring them back into play.

Nuisance litigation has long been a source of frustration in the technology sector. A common tactic involves leveraging outdated patents—often part of large portfolios held by NPEs—and attempting to apply them to new technological advancements. For example, a patent originally designed to protect pager technology might now be asserted against social media platforms. Although this strategy may be legally resourceful, it typically extends well beyond the patent's original intent and relies more on inventive legal arguments than genuine innovation.

This raises the question: why do patents last as long as they do?

Historically, extended patent protection was intended to encourage investment and innovation by granting the first mover a period of market exclusivity. The current 20-year term for utility patents—the most common type—was established in 1995, aligning with tariff regulations set by the World Trade Organization. However, in today's rapidly evolving technological landscape, driven by artificial intelligence (AI), this justification is becoming increasingly difficult to support. First movers already benefit substantially from being early to market, and it is unclear if a full 20 years of additional protection is necessary. This is especially true given that few technologies in use today were invented 20 years ago. In fact, many technological innovations today become obsolete within just a few years—often around the same amount of time it takes for a patent application to make its way through the patent office and be granted.

Keeping outdated technologies under patent protection seldom benefits the original inventor and can actually hinder technological progress by restricting access to the foundational elements needed for further innovation. While supporters of the current system contend that such dynamics are an inherent aspect of the patent landscape, there is an opportunity to recognize these challenges and pursue meaningful reforms.

One practical solution is to shorten the duration of patents in fast-changing technological fields—particularly related to AI. This change need not necessarily affect subject matter like pharmaceuticals, where long-term

protection might remain appropriate, but for most technology patents, a shorter term could help eliminate outdated claims, curb nuisance litigation, and foster progress and innovation.

As technology advances at an unprecedented rate, it might just be time to reevaluate the length of patent protection. Adjusting patent terms to better reflect modern innovation cycles can foster greater fairness, reward inventors, and lessen the impact of outdated claims on emerging technologies.