



## What Needs To Change

The Coalition for Patent Fairness supports a modern and efficient patent law that will promote innovation and spurs job creation and economic growth by encouraging commercialization of new and better products and services.

### Fair Damages Calculation

The current law provides very little guidance to courts and juries on how to fairly calculate damages in reasonable royalty cases. Too often these damages are set as a percentage of a known product: a computer, a car or an airplane, even when the invention is but one of thousands of elements that make up the product. This poor guidance allows substantial overcompensation for infringement. The overcompensation potential creates two problems: it encourages patent owners to seek settlements that far exceed the value of the patent's contribution and it places huge pressure on the defendant to settle regardless of the strength of the infringement claim. Congress should make clear that when calculating damages, courts should focus on the invention's contribution to the value of the infringing product, and not the value of the whole product or system that incorporates the invention. The objective is to compensate the patent owner for the relevant harm—and that harm is the unauthorized use of the invention.

### Assessing Willful Infringement

The standards for assessing "willful infringement," which can trigger a tripling of ordinary damages, should be reformed. Willful infringement damages should only be awarded in situations of truly egregious conduct. Under current law, it is easy for plaintiffs to allege that defendants "knowingly" infringed on a patent. Conversely, it is difficult, time-consuming and exceptionally expensive to prove that willful infringement did not occur. Reform of both the willfulness standard and the procedure for litigating willfulness claims is essential to restoring balance in the litigation process.

### Post Grant Review

Improving the existing process for challenging questionable patents will lead to better patent quality and will benefit everyone: patent holders, patent users and consumers. Allowing third parties to institute a reexamination early in the process will clarify the breadth and applicability of these patents, thereby leading to fewer later challenges. Patent reform legislation should establish a new administrative procedure for review of patent decisions so that wrongfully-issued patents can be effectively reviewed and redressed within the PTO, rather than in the courts.

### Forum Shopping

Venue standards should be designed to preclude "gaming the system" through "forum-shopping." Lawsuits should be resolved in a forum that has a connection to the underlying claim. In *eBay v. MercExchange*, the U.S. Supreme Court ruled that injunctions were to be determined by district courts. But allowing "venue shopping" preserves a loophole for plaintiffs to choose courts that are most likely to issue injunctions and to deliver disproportionate damages.