

Why Change is Needed

Modernization and reform of the current patent system will spur job creation by allowing American businesses to focus on innovation instead of burdensome unjustified patent litigation against their products. Now more than ever, it is important to have a patent system that works for a modern economy and that fosters job creation and innovation here in the United States.

Companies, both large and small, are being forced to shift their time and resources towards responding to questionable patent infringement lawsuits and away from job creation and innovation. Engineers are spending more time in courtrooms than in the labs focusing on good science, new products and imaginative solutions.

The patent system must be modernized to keep pace with today's global economy. The last comprehensive re-write of patent laws occurred more than 50 years ago, decades before the modern technology revolution had begun. Today's multi-patent technologies and complex global economy present new challenges that require modernization of the patent system. Dedicated patent examiners work hard to do the best work possible under difficult circumstances. But outmoded procedures, insufficient training, and lack of resources result in a substantial number of questionable patents being issued each year. In addition to concerns with patent quality, the manner in which courts interpret existing patents and the standards that govern calculation of damages are problematic. New federal legislation is urgently needed to strengthen and to reform patent law in order to improve patent quality and to deter abuse of the system.

Protecting Consumers and the Economy As the Economy Evolves, So Should Patent Law

The nature of the patent system has fundamentally changed since Congress last enacted comprehensive legislation more than 50 years ago. As Supreme Court Justice Anthony Kennedy explained in his concurring in the May 2006 eBay decision, "In cases now arising... the nature of the patent being enforced and the economic function of the patent holder present considerations quite unlike earlier cases. An industry has developed in which firms use patents not as a basis for producing and selling goods but, instead, primarily for obtaining licensing fees."

Abuse of the patent system results hurt consumers and businesses. Today, litigating a typical patent case costs \$4.5 million through trial. This is more than four times as expensive as a typical copyright case with similar liability exposure. Too often these cases lack merit and are based on highly questionable patents. These legal challenges divert scarce resources away from innovating, creating jobs and delivering more value to consumers and shareholders.

For the patent system to promote innovation most effectively, it must balance clear boundaries of rights, fair procedures and good disclosures.