

## The U.S. Patent System: Just the



## Patent System Must Protect Against Litigation Abuses

It is a fundamental principle of American justice that a matter already judged is settled by that judgment and cannot be re-litigated – a safeguard against harassment and waste that is embodied in the Fifth Amendment guarantee against double jeopardy, as well as the civil law doctrines of res judicata and collateral estoppel:

No person shall “be subject for the same offense to be twice put in jeopardy of life or limb.”

—*U.S. Const., amend. V*

“When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or different claim.”

—*Restatement (second) of Judgments, §27 (stating the general rule for collateral estoppel)*

Throughout our nation’s history, the U.S. judicial system has protected Americans against the cost and burden of re-litigating the same issue in multiple proceedings. ***So why aren’t patent owners entitled to this same protection under the proposed Patent Reform Act of 2009?***

As it stands, current language under consideration in the Senate encourages the very litigation abuses and inefficiencies that our system of justice aims to prevent. Current law prohibits a party from challenging a patent a second time on grounds that were “raised or could have been raised” in the first challenge. However, the current Senate bill would remove the “could have been raised” clause, leaving only a ban against subsequent claims that were actually “raised” in the first forum.

Removing the “could have raised” language will enable, and essentially encourage, deep-pocketed infringers to challenge a patent multiple times, imposing additional cost and delay on patent owners. As a result challenged patents are rendered unenforceable in the marketplace. Not only does this make innovation more expensive, but it also puts small, thinly capitalized innovators – who are often the most imaginative and successful in creating new jobs – at a severe disadvantage.

**Passing the Patent Reform Act of 2009 with its current language regarding estoppel will cripple the U.S. patent system and, by consequence, hamper American innovation and job creation.**

Click [here](#) to read Innovation Alliance’s proposal for a patent system that works for everyone.



**The best patent system in the world promotes  
American innovation and creates U.S. jobs.**