



Innovation Alliance Supports the Kyl Amendment

July 17, 2007

The Innovation Alliance (IA), a coalition of innovators, patent owners and stakeholders from a diverse range of industries dedicated to maintaining a strong patent system that supports innovative enterprises of all sizes, supports the amendment on damages offered by Senator Jon Kyl and urges all Senate Judiciary Committee Members to vote for the amendment.

While reserving the option to seek additional clarifying modifications, the IA believes the Kyl amendment provides courts appropriate flexibility to reach a fair conclusion in assessing damages for patent infringement. Maintaining that flexibility is critical for technology developers and licensors to be able to protect their inventions against patent infringers and larger, well-financed competitors.

In contrast, the language in the underlying Senate bill would, with limited exceptions, require a court to value a patented invention based on an artificial and arbitrary parsing of a patent's "specific contribution over the prior art." This novel and complex test would, in effect, require a court to ignore the legally defined scope of the issued patent and potentially deem valid patent claims "non-inventive" and thus without economic value for purposes of a damages calculation.

The bill's rigid, one-size-fits-all apportionment formula would be unworkable in most situations, encourage courts to ignore market-based evidence of a patent's economic value and, in the process, diminish the patent-based rights and incentives so critical to America's innovation economy and global competitiveness. Further, the apportionment language in the current bill would reduce the cost of patent infringement and encourage infringers and even existing licensees to reject negotiated, market-based royalties in pursuit of a more favorable, formula-based court award. In doing so, this language would increase the prevalence, cost, delay and uncertainty of patent litigation. Federal Circuit Chief Judge Paul Michel has echoed these concerns in his letters to the U.S. Congress. Senator Kyl's proposed damages amendment addresses reasonable royalty patent damages in a balanced and equitable manner that recognizes the interests of all patent stakeholders, and it ought to be supported.

The Innovation Alliance is a coalition of entrepreneurial companies seeking to enhance America's innovation environment by improving the quality of patents granted and protecting the integrity of the U.S. patent system. To learn more, visit www.innovationalliance.net.