

**JOINT COMMENTS REGARDING A SMALL CLAIMS PROCESS FOR
PATENT ENFORCEMENT**

Submitted in Response to the USPTO's Request for
Comments on a Patent Small Claims Proceeding in the
United States [Federal Register Volume 77, Number 243]

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SCOPE OF COMMENTS

Our comments address the need for a small claims process for patent enforcement and suggestions for use of damages experts in the process.

**THERE IS A NEED FOR A SMALL CLAIMS PROCESS FOR PATENT
ENFORCEMENT**

We support the implementation of a Patent Small Claims Process in the United States.

The current system for patent enforcement does not provide a cost-effective means for patent enforcement by patentees with limited financial resources or with patent infringement claims for which claimed damages do not sufficiently exceed the costs of patent enforcement litigation.

Unless the potential financial benefits of patent enforcement sufficiently exceed the cost of enforcement, patent enforcement may be uneconomical or unavailable. Therefore, in infringement situations with damage claims that do not sufficiently exceed the cost of litigation, enforcement is unlikely or impossible. In those situations where a patentee pursues enforcement and establishes liability, but obtains damages less than the cost of enforcement, the patentee's risk/reward may not justify patent enforcement through traditional patent infringement litigation.¹

Unavailability of effective patent enforcement undermines the value of patents in the U.S.

¹There may be situations in which there are strategic or other reasons that justify patent enforcement where realistic damages do not equal or exceed the cost of enforcement.

DISPARITY BETWEEN A PATENTEE'S AND AN ALLEGED INFRINGER'S VIEW OF THE AMOUNT OF PATENT INFRINGEMENT DAMAGES INTERFERES WITH RESOLUTION OF DISPUTES

A realistic assessment of damages can facilitate resolution of patent infringement disputes. In our experience, there is often significant disparity between a patentee's and an alleged infringer's view of the amount of patent infringement damages, and these differing views often interfere with the early and cost-effective resolution of patent infringement claims.

Unfortunately, effective analysis of the amount of patent infringement damages often does not occur until late in the litigation process, after considerable time has elapsed, after considerable resources have been expended and after significant costs have been incurred.

A process that results in early analysis of damages can help to narrow the expectation gap between the parties and facilitates earlier, and more cost effective, resolution of disputes.

USE OF DAMAGES EXPERTS TO FACILITATE A SMALL CLAIMS PROCESS FOR PATENT ENFORCEMENT

Use of damage experts in non-traditional roles could help facilitate a small claims process. Experienced damages experts can efficiently evaluate patent infringement damages, identify critical issues and determine likely damages magnitudes.

Use of damage experts in non-traditional roles could facilitate efficient and cost-effective resolution of patent claims. These non-traditional roles could include the following:

- Early evaluation;
- Early decision; and
- Arbitrators