

Patent Infringement Remedies – the

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Basics

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Constitutional and Statutory Basis for Receiving and Enforcing Patents

- A patent is a property right on an invention
- The origin of those rights is found in the U.S. Constitution, Article I, Section 8:
 - “Congress shall have the power ... To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”
- Pursuant to this Constitutional authority, Congress has enacted laws governing the issuance and enforcement of patents in Title 35 of the U.S. Code

Constitutional and Statutory Basis for Receiving and Enforcing Patents (cont.)

- 35 U.S.C. § 154 – Contents and term of patents; provisional rights
 - 154(a)(1): “Every patent contains “a grant to the patentee ... of the right to exclude others from making, using, offering for sale, or selling the invention throughout the United States or importing the invention into the United States...”
- 35 U.S.C. § 271 – Infringement of patent
 - “Except as otherwise provided in this title, whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent.”
- 35 U.S.C. § 281 – Remedy for infringement of patent
 - “A patentee shall have remedy by civil action for infringement of his patent.”

What Remedies are Available for Patent Infringement?

- 35 U.S.C. § 283 – Injunction
 - “The several courts having jurisdiction of cases under this title may grant **injunctions** in accordance with the principles of equity to prevent the violation of any right secured by patent, on such terms as the court deems reasonable.”
- 35 U.S.C. § 284 – Damages
 - “Upon finding for the claimant the court shall award the claimant damages adequate to compensate for the infringement, but in no event less than a **reasonable royalty** for the use made of the invention by the infringer, together with interest and costs as fixed by the court. ... [T]he court may increase the damages **up to three times** the amount found or assessed.”
- 35 U.S.C. § 285 – Attorney fees
 - “The court in exceptional cases may award reasonable attorney fees to the prevailing party.”

What Remedies are Available for Patent Infringement? (cont.)

- Lawsuit in U.S. District Court
 - Monetary damages
 - Injunction possible, but no longer common
 - Depends on four factors set forth by Supreme Court in 2006 in eBay v. MercExchange decision: ” (1) that [plaintiff] has suffered an irreparable injury; (2) that remedies available at law are inadequate to compensate for that injury; (3) that considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.”
- U.S. International Trade Commission
 - Injunctive relief only, and only if infringing goods are being imported
 - Requires a domestic industry
- Special consideration if patent has been declared as essential to IEEE standard: FRAND licensing obligation that may preclude injunctive relief

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