

AIPLA

AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION

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Statement of

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Subcommittee on Intellectual Property

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On

Perspectives on Patents

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Mr. Chairman:

I am pleased to have the opportunity to present the views of the American Intellectual Property Law Association (AIPLA) on the need to improve the United States patent system and the legislative reforms AIPLA proposes to address this need. AIPLA expresses its appreciation to you for holding this hearing to identify the important problems confronting the U.S. patent system and to identify appropriate solutions to address these problems.

AIPLA is a national bar association of more than 16,000 members engaged in private and corporate practice, in government services, and in the academic community. The AIPLA represents a wide and diverse spectrum of individuals involved directly or indirectly in the practice of patent, trademark, copyright, and unfair competition law, as well as other fields of law affecting intellectual property. Since our members represent inventors before the PTO, as well as both plaintiffs and defendants in patent litigation, we have a keen interest in reforms that further an efficient, effective, and balanced patent system.

The Need for Reform

The U.S. patent system has, in certain respects, functioned remarkably well. Its successes today are in significant part attributable to a number of reforms that have been made by Congress during the past 25 years. The creation of the Federal Circuit, the passage of the Patent Law Amendments Act of 1984, the adoption of reexamination, and the enactment of the American Inventors Protection Act have made the patent system more open and much stronger as an incentive to invest in innovation. However, there are

aspects of the U.S. patent system that are not working well today. Over the past decade, some of these elements of the patent system have, in fact, come to work less well.

This conclusion is shared by others. Two recent studies of the U.S. patent system have produced lengthy reports that have largely come to the same conclusion. The Federal Trade Commission report, (*To Promote Innovation: The Proper Balance of Competition and Patent Law and Policy*, Report by the Federal Trade Commission, (October 2003)), found that while most of the patent system works well, some modifications are needed to maintain a proper balance between competition and patent law and policy. The FTC made ten recommendations that focused on tuning the balance between patent owners' rights to effective exclusivity in valid patents and the public's right to be free from the competition-limiting effects of invalid patents.

The report of the National Academies of Sciences' Committee on Intellectual Property Rights in the Knowledge-Based Economy (NAS) was published just one year ago, in April 2004. Like the FTC effort, it was the culmination of a multi-year study of the patent system. The NAS report found that the U.S. patent system played an important role in stimulating technological innovation by providing legal protection to inventions and by disseminating useful technical information. Moreover, with the growing importance of technology to the nation's well-being, it found that patents are playing an even more prominent role in the economy. It concluded with seven principal recommendations to ensure the vitality and improve the functioning of the U.S. patent system, several of which overlap those made by the FTC.

AIPLA has also studied the effectiveness of the patent system. Former AIPLA President Rick Nydegger recognized the need to review the functioning of the patent

