

Chuck Fish
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Chairman Hatch, Senator Leahy, and Members of the Committee, it is an honor to have the opportunity to appear before you today to discuss recommended improvements to our nation's patent laws. My name is Chuck Fish, and I am Vice President and Chief Patent Counsel of Time Warner Inc.

The patent system as it exists today touches Time Warner's diverse businesses in many ways and works well in a variety of contexts. There are several areas, however, where improvements are sorely needed. The patent remedies environment, which is the subject of today's hearing, is one of the most important. As a large and diverse media company, Time Warner has an enormous and unique interest in the maintenance of strong intellectual property protections in all contexts. We believe that creators and innovators must have the fruits of their intellectual endeavors protected lest this country lose its edge in exporting valuable products like our entertainment and technology products and services.

That strong commitment to intellectual property protection and, in particular today, a strong and enforceable patent system in this country is wholly compatible with repairing a remedy system that has begun to reward not innovation, but hiring tenacious lawyers. Indeed, it is critical that the remedial aspects of the patent law and their judicial application strike the right balance in today's complicated marketplace.

To illustrate problems in the current remedy system, imagine a company (either a large or small company) that brings an exciting new information service to market. The company has invested tens of millions of dollars in research, equipment, marketing, etc. and may have negotiated license arrangements on a variety of patents needed for the service. Then, without warning, the company is hit with a patent infringement suit by another patent owner the company was previously unaware of who owns a patent that relates to a small part of the overall service. The patent owner demands as damages a portion of the monthly fee charged to subscribers for the overall service, including the new information service. In addition, the patent owner asks for an injunction, which would prevent the company from providing the service at all merely as a way to gain leverage and increase the likelihood of a favorable license fee. Thus, the new service can be essentially paralyzed until the patent dispute is resolved.

Certainly, if the patent is valid, and the company truly infringes the patent, a broad range of remedies including the issuance of an injunction may well be justified. However, as is increasingly the case, if the patent is invalid, or the company does not infringe the patent, the array of remedies brought into play through such a lawsuit cannot be justified. The company faces the threat of multi-million dollar damages far higher than the value of the patented component, as well as the threat of having to withdraw the service. The results and the relief in such cases are often unpredictable. Even winning these nuisance lawsuits can cause major damage to a large company, and can bankrupt a small company. In the end, most companies settle with the patent owner rather than run the risk of litigating. Consumers are the real losers, as they either pay the price of the litigation through increases in retail prices, or, in many cases, are never offered the new service.

We have been following proposals for revision of the patent system that have been circulating in Congress with great interest, and continue to evaluate new ideas to improve

