



Fact Sheet: *What Happened to Legislative Patent Reform for the High-Tech Industry?*

Despite several insightful proposals on how to fix dire problems in our patent system, the legislative reform debate that began with strong drafts finished with watered-down bills that would solve few of the high-tech industry’s problems. This table illustrates how beneficiaries of the status quo neutered serious patent reform in six critical areas. CCIA supports each of these crucial reforms.

Issue	Industry Concerns	FTC Recommendations	Legislative Drafts of H.R. 2795				
			BSA Draft (Feb 3)	Cmte. Draft (April 14)	Initial Bill (June 8)	Substitute (July 26)	Coalition Draft (September 1)
Damages should be proportionate to relevance of infringing function.	✓		✓ (§ 10)	✓ (§ 6)	✓ (§ 6)	✓ (§ 6)	▲ (§ 6) ¹
Create procedure for post-grant opposition, including a “second window” review.	✓	✓	✓ (§ 2)	✓ (§ 9)	✓ (§ 9)	▲ (§ 7) ²	▲ (§ 7) ²
Reform standard for injunctive relief.	✓		✓ (§ 8)	✓ (§ 7)	✓ (§ 7)	✗	✗
Eliminate abuse of continuation procedures.	✓	✓	✓ (§ 5)	✓ (§ 8)	✓ (§ 8)	✗	✗
Evidentiary burden to invalidate patents should be “preponderance,” rather than “clear & convincing.”	✓	✓	✓ (§§ 2, 3)	✗	✗	✗	✗
Tighten standard of non-obviousness.	✓	✓	✗	✗	✗	✗	✗

- ✓ = Proposed.
- ▲ = Proposed, but with ineffective language.
- ✗ = Not proposed.

¹ “Inventive contribution” changed to a far more permissive phrase, “claimed invention.”

² While retaining the post-grant opposition for 9 months after the patent grant, the July 26 Amendment in the Form of a Substitute removed the proposed “second window” of review, which would have opened for 6 months after a patent holder alleged infringement.