

**AMERICAN BAR ASSOCIATION****SECTION OF INTELLECTUAL PROPERTY LAW**

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March 30, 2009

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
U.S. Senate  
Washington, D.C. 20510

The Honorable Arlen Specter  
Ranking Member  
Committee on the Judiciary  
U.S. Senate  
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Specter:

We understand that during the consideration in the Committee in the next few days of S. 515, the Patent Reform Act of 2009, an amendment on damage awards may be offered by Senator Specter. As circulated for the March 26 markup in Committee, the amendment was designated GRA09318. I am writing to express the support of the Section of Intellectual Property Law for the adoption and enactment of this amendment. These views have not been submitted to the House of Delegates or Board of Governors of the ABA, and should not be construed as representing policy of the Association.

The Specter amendment would mandate the establishment of meaningful “gatekeeper” processes for the determination of damages awards in patent infringement cases. Parties in litigation would be required to identify, by no later than the entry of the final pretrial order, the legal standards, factual contentions and proposed evidence on which they plan to rely. Judges would then be required to identify the relevant factors to be considered and legal standards to be applied, and to provide guidance to juries in applying those factors and standards.

We believe that the Specter amendment provides a very sensible and workable framework within which the determination of damages, often a complex and confusing process, will be carried out in a manner that is efficient, fair, and effective.

We urge adoption of the amendment.

Sincerely,



Gordon T. Arnold  
Chair  
Section of Intellectual Property Law

