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(Original Signature of Member)

109TH CONGRESS  
2D SESSION

**H. R.** \_\_\_\_\_

To amend title 35, United States Code, to modify certain procedures relating to patents.

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**IN THE HOUSE OF REPRESENTATIVES**

Mr. BERMAN (for himself and Mr. BOUCHER) introduced the following bill; which was referred to the Committee on \_\_\_\_\_

\_\_\_\_\_  
**A BILL**

To amend title 35, United States Code, to modify certain procedures relating to patents.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Patents Depend on  
5 Quality Act of 2006” or “PDQ Act”.



1 **SEC. 2. OPPOSITION PROCEDURES.**

2 (a) IN GENERAL.—Title 35, United States Code, is  
 3 amended by inserting after chapter 31 the following new  
 4 chapter:

5 **“CHAPTER 32—POST-GRANT OPPOSITION**  
 6 **PROCEDURES**

“Sec

- “321. Right to oppose patent; opposition request
- “322. Real party in interest
- “323. Timing of opposition request
- “324. Limits on scope of validity issues raised
- “325. Institution of the opposition proceeding
- “326. Patent owner response
- “327. Amendment of claims
- “328. Discovery and sanctions
- “329. Supplemental submissions
- “330. Hearing and briefs
- “331. Written decision
- “332. Burden of proof and evidence
- “333. Reconsideration
- “334. Appeal
- “335. Certificate
- “336. Estoppel
- “337. Duration of opposition
- “338. Settlement
- “339. Intervening rights
- “340. Relationship with reexamination proceedings

7 **“§ 321. Right to oppose patent; opposition request**

8 “(a) FILING OF OPPOSITION.—A person may request  
 9 that the grant or reissue of a patent be reconsidered by  
 10 the Patent and Trademark Office by filing an opposition  
 11 seeking to invalidate 1 or more claims in the patent. The  
 12 Director shall establish, by regulation, fees to be paid by  
 13 the person filing the opposition (in this chapter referred  
 14 to as the ‘opposer’). Copies of patents and printed publica-  
 15 tions to be relied upon in support of the request must be



1 filed with the request. If an opposer relies on other factual  
2 evidence or on expert opinions in support of the opposi-  
3 tion, such evidence and opinions must be filed with the  
4 request through one or more accompanying affidavits or  
5 declarations.

6 “(b) COPIES PROVIDED TO PATENT OWNER.—Copies  
7 of any documents filed under subsection (a) must be pro-  
8 vided to the patent owner or, if applicable, the designated  
9 representative of the patent owner, at the time of filing  
10 under subsection (a), except that if a request is made that  
11 the identity of a real party in interest be kept separate  
12 pursuant to section 322(b), then the identity of the real  
13 party in interest may be redacted from the copies pro-  
14 vided.

15 “(c) FILE AVAILABLE TO THE PUBLIC.—The file of  
16 any opposition proceeding shall be made available to the  
17 public, except as provided in section 322.

18 **“§ 322. Real party in interest**

19 “(a) IDENTIFICATION.—The person making a request  
20 under section 321 shall identify in writing each real party  
21 in interest, and the opposition pursuant to the request  
22 shall proceed in the name of the real party in interest.

23 “(b) IDENTITY KEPT SEPARATE UPON REQUEST.—

24 “(1) IN GENERAL.—Subject to paragraph (2),  
25 if requested by the opposer, the identity of a real



1 party in interest shall be kept separate from the file  
2 of the opposition and made available only to Govern-  
3 ment agencies upon written request, or to any per-  
4 son upon a showing of good cause. If the identity of  
5 a real party in interest is kept separate from the file  
6 under this paragraph, then the opposition shall pro-  
7 ceed in the name of the individual filing the request  
8 as the representative of the real party in interest.

9 “(2) EXCEPTION.—No request under paragraph  
10 (1) to keep the identity of a real party in interest  
11 separate from the file of the opposition may be made  
12 or maintained if the opposer relies upon factual evi-  
13 dence or expert opinions in the form of affidavits or  
14 declarations during the opposition proceeding or if  
15 the opposer exercises the right to appeal under sec-  
16 tion 141.

17 **“§ 323. Timing of opposition request**

18 “A person may not make an opposition request under  
19 section 321 later than 9 months after the grant of the  
20 patent or issuance of the reissue patent, as the case may  
21 be, or later than 6 months after receiving notice from the  
22 patent holder alleging infringement of the patent, except  
23 that, if the patent owner consents in writing, an opposition  
24 request may be filed anytime during the period of enforce-  
25 ability of the patent. A court having jurisdiction over an



1 issue of validity of a patent may not require the patent  
2 owner to consent to such a request.

3 **“§ 324. Limits on scope of validity issues raised**

4 “An opposition request under section 321 must iden-  
5 tify with particularity the claims that are alleged to be  
6 invalid and, as to each claim, 1 or more issues of invalidity  
7 on which the opposition is based. The issues of invalidity  
8 that may be considered during the opposition proceeding  
9 are double patenting and any of the requirements for pat-  
10 entability set forth in sections 101, 102, 103, and 112,  
11 and the fourth paragraph of section 251, except for—

12 “(1) any requirement contained in the first  
13 paragraph of section 112 relating to disclosing the  
14 best mode; and

15 “(2) any issue arising under subsection (e), (f),  
16 or (g) of section 102.

17 **“§ 325. Institution of the opposition proceeding**

18 “(a) DISMISSAL; INSTITUTION.—

19 “(1) DISMISSAL.—The Director may dismiss an  
20 opposition request that the Director determines  
21 lacks substantial merit. The determination by the  
22 Director to dismiss an opposition request shall not  
23 be appealable. The dismissal of an opposition re-  
24 quest shall not be admissible in any civil action re-



1 lated to the patent against which a dismissed re-  
2 quest was filed.

3 “(2) INSTITUTION.—If the Director receives 1  
4 or more requests that meet the requirements of sec-  
5 tion 321 regarding the same patent by the Director  
6 and are not dismissed under paragraph (1), an op-  
7 position proceeding shall be promptly instituted pur-  
8 suant to the request or requests, but not before a  
9 period of 9 months has elapsed since the date on  
10 which the patent was granted.

11 “(3) CONSOLIDATED PROCEEDING.—If an op-  
12 position proceeding is instituted based upon more  
13 than 1 opposition request, the opposition shall pro-  
14 ceed as a single consolidated proceeding, unless later  
15 divided under subsection (c).

16 “(b) PARTIES.—The parties to an opposition pro-  
17 ceeding under this section shall be the patent owner and  
18 each opposer whose request meets the requirements of sec-  
19 tion 321 and has not been dismissed under subsection  
20 (a)(1).

21 “(c) DECISION BY PANEL.—The Director shall as-  
22 sign the opposition proceeding to a panel of three adminis-  
23 trative patent judges (in this chapter referred to as the  
24 ‘panel’). The panel shall decide the questions of patent-  
25 ability raised in each opposition request for which an oppo-



1 sition proceeding has been instituted. The decision shall  
2 be based upon the prosecution record that was the basis  
3 for the grant of the patent and the additional submissions  
4 by the parties to the opposition proceeding authorized  
5 under this chapter. The panel may, in appropriate cases,  
6 divide the opposition into separate proceedings if the oppo-  
7 sition involves multiple opposition requests by different  
8 parties.

9 **“§ 326. Patent owner response**

10 “After the Director has instituted an opposition pro-  
11 ceeding under section 325, the patent owner shall have  
12 the right to file, within the time period set by the panel,  
13 a response to each opposition request that is the subject  
14 of the proceeding. The patent owner, in responding to an  
15 opposition request, shall file with the response, through  
16 affidavits or declarations, any additional factual evidence  
17 and expert opinions on which the patent owner relies in  
18 support of the response.

19 **“§ 327. Amendment of claims**

20 “The patent owner is entitled to request amendment  
21 of any claims that are the subject of an opposition pro-  
22 ceeding under this chapter, including by the addition of  
23 new claims. The patent owner shall file any such request  
24 for amendment with the patent owner’s response to an op-  
25 position request under section 326. The panel may permit



1 further requests for amendment of the claims only upon  
2 good cause shown by the patent owner. No amendment  
3 enlarging the scope of the claims of the patent shall be  
4 permitted in the opposition proceeding.

5 **“§ 328. Discovery and sanctions**

6 “(a) DISCOVERY.—After an opposition proceeding is  
7 instituted under this chapter, the patent owner shall have  
8 the right to depose each person submitting an affidavit  
9 or declaration on behalf of any opposer, and each opposer  
10 shall have the right to depose each person submitting an  
11 affidavit or declaration on behalf of the patent owner.  
12 Such depositions shall be limited to cross-examination on  
13 matters relevant to the affidavit or declaration. No other  
14 discovery shall be permitted unless the panel determines  
15 that additional discovery is required in the interest of jus-  
16 tice. The panel shall determine the schedule for the taking  
17 of discovery under this subsection.

18 “(b) SANCTIONS.—If any party to an opposition pro-  
19 ceeding fails to properly respond to any discovery under  
20 subsection (a), the panel may draw appropriate adverse  
21 inferences and take other action permitted by statute,  
22 rule, or regulation.

23 **“§ 329. Supplemental submissions**

24 “The panel may permit one or more supplemental  
25 submissions to be made by any party to an opposition pro-





1 ceeding under this chapter, subject to the rights and limi-  
2 tations on discovery under section 328.

3 **“§ 330. Hearing and briefs**

4 “Any party to an opposition proceeding under this  
5 chapter may request an oral hearing within the time set  
6 by the panel. If a hearing is requested or the panel deter-  
7 mines sua sponte that a hearing is needed, the panel shall  
8 set a time for the hearing. The panel may permit the par-  
9 tied to file briefs for the hearing, and shall permit cross-  
10 examination of all affiants and declarants in the hearing,  
11 either before the panel or by deposition taken under sec-  
12 tion 328.

13 **“§ 331. Written decision**

14 “The panel shall issue a written decision on each  
15 issue of patentability with respect to each claim that is  
16 the subject of an opposition proceeding under this chapter.  
17 The written decision shall consist of findings of fact and  
18 conclusions of law. The written decision shall become a  
19 final determination of the Office on the issues raised in  
20 the opposition unless a party to the opposition files a re-  
21 quest for reconsideration and modification of the written  
22 decision within a period set by the panel, which shall not  
23 be less than two weeks from the date of the written deci-  
24 sion.



1 **“§ 332. Burden of proof and evidence**

2 “(a) BURDEN OF PROOF.—The opposer in an opposi-  
3 tion proceeding under this chapter shall have the burden  
4 to prove the invalidity of a claim by a preponderance of  
5 the evidence. The determination of invalidity shall be  
6 based upon the broadest reasonable construction of the  
7 claim.

8 “(b) EVIDENCE.—The Federal Rules of Evidence  
9 shall apply to the opposition proceeding, except to the ex-  
10 tent inconsistent with any provision of this chapter.

11 **“§ 333. Reconsideration**

12 “If a request is filed for reconsideration of the written  
13 decision in an opposition proceeding under this chapter,  
14 the panel may authorize a party to the proceeding who  
15 did not file such a request to file a response to the request  
16 for reconsideration. Following any reconsideration, the  
17 panel shall either deny the request for modification of the  
18 written decision or grant the request and issue a modified  
19 written decision, which shall constitute the final deter-  
20 mination of the Office on the issues raised in the opposi-  
21 tion proceeding.

22 **“§ 334. Appeal**

23 “A party dissatisfied with the final determination of  
24 the panel in an opposition proceeding under this chapter  
25 may appeal the determination under sections 141 through



1 144. Any party to the opposition proceeding shall have the  
2 right to be a party to the appeal.

3 **“§ 335. Certificate**

4 “When a decision of a panel in an opposition pro-  
5 ceeding under the chapter has become final under section  
6 331, 333, or 334, as the case may be, the Director shall  
7 issue and publish a certificate in accordance with the deci-  
8 sion, canceling any claim of the patent determined to be  
9 unpatentable, and shall incorporate into the patent any  
10 new or amended claims determined to be patentable. The  
11 issuance of the certificate shall terminate the opposition  
12 proceeding.

13 **“§ 336. Estoppel**

14 “(a) ESTOPPEL.—

15 “(1) IN GENERAL.—Subject to paragraph (2),  
16 after a certificate has been issued under section 335  
17 in accordance with the decision of the panel in an  
18 opposition proceeding, the determination with re-  
19 spect to an issue of invalidity raised by an opposer  
20 shall bar that opposer from raising, in any subse-  
21 quent proceeding involving that opposer under this  
22 title, any issue of fact or law actually decided and  
23 necessary to the determination of that issue.

24 “(2) EXCEPTION.—If an opposer in an opposi-  
25 tion proceeding demonstrates, in a subsequent pro-



1 ceeding referred to in paragraph (1), that there is  
2 additional factual evidence that is material to an  
3 issue of fact actually decided in the opposition pro-  
4 ceeding, and necessary to the final determination in  
5 the opposition proceeding, that could not reasonably  
6 have been discovered or presented in the opposition  
7 proceeding by that opposer, the opposer may raise,  
8 in that subsequent proceeding, that issue of fact and  
9 any determined issue of law for which the issue of  
10 fact was necessary.

11 “(b) EXPANDED DEFINITION OF OPPOSER.—For  
12 purposes of this section, the term ‘opposer’ includes the  
13 person making the request under section 321, any real  
14 party in interest, and their successors in interest.

15 “(c) NEW PARTY-IN-INTEREST.—If a proceeding  
16 arising by reason of additional factual evidence raised  
17 under subsection (a)(2) involves a real party in interest  
18 not identified to the patent owner under section 322, the  
19 real party in interest shall notify the Director and the pat-  
20 ent owner of that fact and of the proceeding, within 30  
21 days after receiving notice that the proceeding has been  
22 filed.

23 **“§ 337. Duration of opposition**

24 “The determination of a panel in an opposition pro-  
25 ceeding under this chapter, including any determinations



1 pursuant to a request for reconsideration under section  
2 133, shall be issued not later than 1 year after the date  
3 on which the opposition proceeding is instituted under sec-  
4 tion 325. Upon good cause shown, the Director may ex-  
5 tend the 1-year period by not more than 6 months.

6 **“§ 338. Settlement**

7       “(a) IN GENERAL.—An opposition proceeding under  
8 this chapter shall be terminated with respect to any op-  
9 poser upon the joint request of the opposer and the patent  
10 owner, unless the panel has issued a written decision  
11 under section 331 before the request for termination is  
12 filed. If the opposition is terminated with respect to an  
13 opposer under this section, no estoppel under section 336  
14 shall apply to that opposer with respect to an issue of inva-  
15 lidity raised in the opposition proceeding. The written de-  
16 cision under section 331 shall thereafter be issued only  
17 with respect to issues of invalidity raised by opposers that  
18 remain in the opposition proceeding.

19       “(b) AGREEMENTS IN WRITING.—Any agreement or  
20 understanding between the patent owner and an opposer,  
21 including any collateral agreements referred to therein,  
22 that is made in connection with or in contemplation of  
23 the termination of an opposition proceeding under sub-  
24 section (a) shall be in writing. The opposition with respect  
25 to the parties to the agreement or understanding shall not



1 be terminated until a true copy of the agreement or under-  
2 standing, including any such collateral agreements, has  
3 been filed in the Patent and Trademark Office. If any  
4 party filing such an agreement or understanding requests,  
5 the agreement or understanding shall be kept separate  
6 from the file of the opposition, and shall be made available  
7 only to Government agencies on written request, or to any  
8 person on a showing of good cause.

9 “(c) DISCRETIONARY ACTIONS REVIEWABLE.—Any  
10 discretionary action of the Director under subsection (b)  
11 shall be reviewable under chapter 7 of title 5.

12 **“§ 339. Intervening rights**

13 “Any proposed amended or new claim determined to  
14 be patentable and incorporated into a patent following an  
15 opposition proceeding under this chapter shall have the  
16 same effect as that specified in section 252 of this title  
17 for reissued patents on the right of any person who made,  
18 purchased, or used within the United States, or imported  
19 into the United States, anything patented by such pro-  
20 posed amended or new claim, or who made substantial  
21 preparation therefor, before the certificate issued under  
22 section 335 with respect to that amended or new claim.

23 **“§ 340. Relationship with reexamination proceedings**

24 “(a) ESTOPPEL.—A patent for which an opposition  
25 proceeding has been instituted under this chapter may not



1 thereafter be made the subject of a request under section  
2 302 or 311 for reexamination, by the same opposer or on  
3 behalf of the same real party in interest, on the same  
4 claim and on the same issue that was the basis of the  
5 opposition proceeding.

6 “(b) STAYING OF OTHER PROCEEDINGS.—[If, after  
7 an opposition proceeding has been instituted under this  
8 chapter, a request for reexamination under section 302 or  
9 section 311 is made by or on behalf of a person other than  
10 the opposer or the same real party in interest, such reex-  
11 amination shall be stayed during the pendency of any op-  
12 position proceeding under this chapter.]”.

13 (b) CLERICAL AMENDMENT.—The table of chapters  
14 for part III of title 35, United States Code, is amended  
15 by adding at the end the following:

“32. Opposition Procedures ..... 321.”.

16 **SEC. 3. PUBLICATION OF PATENT APPLICATIONS.**

17 Section 122 of title 35, United States Code, is  
18 amended—

19 (1) in subsection (b)(2)—

20 (A) by striking subparagraph (B); and

21 (B) in subparagraph (A)—

22 (i) by striking “(A) An application”

23 and inserting “An application”; and



1 (ii) by redesignating clauses (i)  
2 through (iv) as subparagraphs (A) through  
3 (D), respectively; and  
4 (2) by striking subsection (c) and redesignating  
5 subsection (d) as subsection (e).

6 **SEC. 4. SUBMISSIONS BY THIRD PARTIES.**

7 Section 131 of title 35, United States Code, is  
8 amended—

9 (1) by striking “The Director” and inserting  
10 “(a) IN GENERAL.—The Director”; and

11 (2) by adding at the end the following:

12 “(b) THIRD PARTY SUBMISSIONS.—Any party shall  
13 have the opportunity to submit for consideration and for  
14 inclusion in the record, prior art (including, but not lim-  
15 ited to, evidence of knowledge or use, or public use or sale,  
16 under section 102), to determine whether the invention  
17 was known or used, or was in public use, or on sale, under  
18 section 102 or would have been obvious under section 103.  
19 The Director shall consider such submissions if the  
20 request—

21 “(1) is made in writing not later than—

22 “(A) 6 months after the date on which the  
23 patent application is published under section  
24 122, or





1           “(B) before the date on which a notice of  
2           allowance is mailed under section 151 for a pat-  
3           ent on the invention,

4           whichever occurs first;

5           “(2) is accompanied by the payment of a fee es-  
6           tablished by the Director under section 41 for third  
7           party submissions;

8           “(3) sets forth the teaching and applicability of  
9           each reference and the basis on which the submis-  
10          sion is offered; and

11          “(4) includes a sworn declaration attesting to  
12          the relevance and accuracy of the submissions.

13          Information submitted under this subsection shall be con-  
14          sidered during the examination of the patent application.”.

15          **SEC. 5. INTER PARTES REEXAMINATION.**

16          (a) **ESTOPPEL PROVISION.**—Section 315(c) of title  
17          35, United States Code, is amended by striking “or could  
18          have raised”.

19          (b) **FINAL DECISION.**—Section 317(b) of title 35,  
20          United States Code, is amended—

21                  (1) in the heading, by striking “FINAL DECI-  
22                  SION” and inserting “DISTRICT COURT DECISION”;  
23                  and

24                  (2) in the first sentence, by striking “final deci-  
25                  sion” and inserting “decision of a district court”.



1 (c) APPLICABILITY.—Notwithstanding section  
2 4608(a) of the Intellectual Property and Communications  
3 Reform Act of 1999, as enacted by section 1000(a)(9) of  
4 Public Law 106–113 (41 U.S.C. note), sections 311  
5 through 318 of title 35, United States Code, as amended  
6 by this section, shall apply to any patent that issues from  
7 an original application filed before, on, or after November  
8 29, 1999.

9 **SEC. 6. WILLFUL INFRINGEMENT.**

10 Section 284 of title 35, United States Code, is  
11 amended—

12 (1) in the first paragraph, by striking “Upon”  
13 and inserting “(a) AWARD OF DAMAGES.—Upon”;  
14 and

15 (2) by amending the second paragraph to read  
16 as follows:

17 “(b) WILLFUL INFRINGEMENT.—

18 “(1) INCREASED DAMAGES.—A court that has  
19 determined that the infringer has willfully infringed  
20 a patent or patents may increase the damages up to  
21 three times the amount of damages found or as-  
22 sessed under subsection (a), except that increased  
23 damages under this paragraph shall not apply to  
24 provisional rights under section 154(d) of this title.



1           “(2) PERMITTED GROUNDS FOR WILLFUL-  
2           NESS.—A court may find that an infringer has will-  
3           fully infringed a patent only if the patent owner pre-  
4           sents clear and convincing evidence that—

5                   “(A) after receiving written notice from  
6           the patentee—

7                           “(i) alleging acts of infringement in a  
8                           manner sufficient to give the infringer an  
9                           objectively reasonable apprehension of suit  
10                          on such patent, and

11                           “(ii) identifying with particularity  
12                           each claim of the patent, each product or  
13                           process that the patent owner alleges in-  
14                           fringes the patent, and the relationship of  
15                           such product or process to such claim,  
16           the infringer, after a reasonable opportunity to  
17           investigate, thereafter performed one or more of  
18           the alleged acts of infringement;

19                   “(B) the infringer intentionally copied the  
20           patented invention with knowledge that it was  
21           patented; or

22                   “(C) after having been found by a court to  
23           have infringed that patent, the infringer en-  
24           gaged in conduct that was not colorably dif-  
25           ferent from the conduct previously found to



1           have infringed the patent, and which resulted in  
2           a separate finding of infringement of the same  
3           patent.

4           “(3) LIMITATIONS ON WILLFULNESS.—(A) A  
5           court shall not find that an infringer has willfully in-  
6           fringed a patent under paragraph (2) for any period  
7           of time during which the infringer had an informed  
8           good faith belief that the patent was invalid or unen-  
9           forceable, or would not be infringed by the conduct  
10          later shown to constitute infringement of the patent.

11          “(B) An informed good faith belief within the  
12          meaning of subparagraph (A) may be established by  
13          reasonable reliance on advice of counsel.

14          “(C) The decision of the infringer not to  
15          present evidence of advice of counsel shall have no  
16          relevance to a determination of willful infringement  
17          under paragraph (2).

18          “(4) LIMITATION ON PLEADING.—Before the  
19          date on which a determination has been made that  
20          the patent in suit is not invalid, is enforceable, and  
21          has been infringed by the infringer, a patentee may  
22          not plead, and a court may not determine, that an  
23          infringer has willfully infringed the patent. The  
24          court’s determination of an infringer’s willfulness  
25          shall be made without a jury.”; and



1           (3) in the third paragraph, by striking “The  
2           court” and inserting “(c) EXPERT TESTIMONY.—  
3           The court”.

4 **SEC. 7. VENUE.**

5           Section 1400 of title 28, United States Code, is  
6 amended by adding at the end the following new sub-  
7 section:

8           “(c) A court shall grant a motion to transfer an ac-  
9 tion to a judicial district or division in which the action  
10 could have been brought if—

11           “(1) such judicial district or division is a more  
12 appropriate forum for the action, including any judi-  
13 cial district or division where a party to the action  
14 has substantial evidence or witnesses;

15           “(2) the action was not brought in a district or  
16 division—

17           “(A) in which the patentee resides or  
18 maintains its principal place of business;

19           “(B) in which an accused infringer main-  
20 tains its principal place of business; or

21           “(C) in the State in which an accused in-  
22 fringer, if a domestic corporation, is incor-  
23 porated;

24           “(3) at the time the action was brought, neither  
25 the patentee nor an accused infringer had substan-



1 tial evidence or witnesses in the judicial district in  
2 which the action was brought; and

3 “(4) the action has not been previously trans-  
4 ferred under this subsection.

5 “(d) For purposes of subsection (c), the use or sale  
6 of allegedly infringing subject matter in a judicial district  
7 shall not, by itself, establish the existence of substantial  
8 evidence or witnesses in such a judicial district.”.

9 **SEC. 8. INJUNCTION.**

10 Section 283 of title 35, United States Code, is  
11 amended by adding at the end the following: “In deter-  
12 mining equity, the court shall consider the fairness of the  
13 remedy in light of all the facts and the relevant interest  
14 of the parties associated with the invention. Unless an in-  
15 junction is entered pursuant to a nonappealable judgment  
16 of infringement, a court shall stay the injunction pending  
17 an appeal upon an affirmative showing that the stay would  
18 not result in irreparable harm to the owner of the patent  
19 and that the balance of hardships from the stay does not  
20 favor the owner of the patent.”.

