

STATEMENT OF REP. JOHN CONYERS, JR.
Courts, the Internet, and Intellectual Property Subcommittee
Hearing on the Committee Print Regarding
Patent Quality Improvement (Part II)
April 28, 2005

I have not heard anyone deny that there are too many 'bad' patents out there, patents that are overbroad or should have been denied by the Patent and Trademark Office as being obvious. Owners of such patents file infringement suits and receive either damages or injunctions for patents that never should have been issued. This drives up costs not only for businesses but also for consumers. To address this, we are faced with two options.

Some have proposed that we make it exceedingly difficult to enforce patents. I fear, however, that such an approach could disproportionately harm smaller patent owners. Moreover, this solution would affect owners of not just overbroad patents but also those that are entirely legitimate. I hope we will fully examine the scope of such proposals before moving.

The second option, which I believe deserves consideration, is to prohibit such patents from issuing in the first place. Such an approach would help avoid infringement and related litigation costs altogether. It also would ensure against the issuance of injunctions for patents that should not have been granted without affecting the rights of legitimate patent owners.

One proposal to accomplish this is to allow patent examiners to review more than just officially published documents. Patent examiners must be able to consult information that tells whether an application describes something that is not really new, even if that information was not a patent or a journal article.

We also need to revisit the standard that is used to determine whether an application describes something that would be obvious to people in the field. These two ideas, among others, could drastically cut the number of bad patents being issued and drive down costs for all of us.