

Summary Report

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2021 – Study Question

Reasonable awareness in compensation for infringement of IP rights

Introduction

This Study Question concerns the role of reasonable awareness in compensation for the infringement of IP rights. The knowledge of the infringer is relevant to damages, under Article 45 of TRIPs:

- (1) *The judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.*
- (2) *The judicial authorities shall also have the authority to order the infringer to pay the right holder expenses, which may include appropriate attorney's fees. In appropriate cases, Members may authorize the judicial authorities to order recovery of profits and/or payment of pre-established damages even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.*

The purpose of this Study Question is to explore the effect of the knowledge and awareness of the infringer on the recoverable damages. The transposition of Article 45(1) into national laws has varied from jurisdiction to jurisdiction, leading to a number of very different approaches.

For example, damages for patent infringement in the US can increase (beyond the loss suffered by the right holder) depending on whether it is found that the infringement was “willful.”

Under German law, the question of 'fault' is relevant to assessing whether or not damages should be assessed on the basis of unjust enrichment, or on a different basis.

In contrast, UK law generally takes the general approach that infringement is a strict liability tort and knowledge is not relevant to damages, except in very specific circumstances. An example of a specific circumstance, in relation to patent infringement, is that damages shall not be awarded, and no order shall be made for an account of profits, against a defendant or defender who proves that at the date of the infringement he was not aware, and had no reasonable grounds for supposing, that the patent existed. The scope of this 'innocent infringement' defence is very restricted.

These different approaches suggest that there is relatively little consistency and legal certainty, for both the right holder and a potential infringer. The same factual conduct, e.g. the global launch of a specific product across a number of jurisdictions, can lead to varying outcomes and different levels of damages in different jurisdictions. This makes it more difficult, at the stage of planning product launches and similar activities, to pro-actively take steps to reduce the risk of exposure to damages awards. For example, producing an opinion in the US to seek to protect against wilful infringement/triple damages may result in enhanced liability for damages in another country, because specific knowledge was acquired prior to product launch.

This Study Question does not address criminal law, the role of knowledge in compensation calculated by reference to the unlawful profits of the infringer, or the reimbursement of costs of litigation. It also does not address specific methods for the quantification of monetary relief, as such, because this was covered by the Sydney and London resolutions on damages.

The Reporter General has received Reports from the following Groups and Independent Members in alphabetical order: Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, Croatia, Czech Republic, Denmark, Ecuador, Finland, France, Germany, Hungary, India, Indonesia, Italy, Japan, Latvia, Malaysia, Mexico, the Netherlands, Paraguay, Peru, the Philippines, Poland, Russia, the Republic of Korea, Singapore, Spain, Sweden, Switzerland, Chinese Taipei (Independent Members), Turkey, United Kingdom (UK), the United States of America (U.S.) and Vietnam.

41 Reports were received in total.¹ The Reporter General Team thanks the Groups and Independent Members for their helpful and informative Reports. All Reports may be accessed in AIPPI's online library at www.aippi.org.

The Reports provide a comprehensive overview of national and regional laws, practices, and policies relating to the role of awareness in compensation for infringement of IP rights, set out in three parts:

- Part I – Current law and practice
- Part II – Policy considerations and proposals for improvements of your Group's current law
- Part III – Proposals for harmonisation.

This Summary Report does not summarise Part I of the Reports received. Part I of any Report is the definitive source for an accurate description of the current state of the law in the jurisdiction in question.

This Summary Report has been prepared on the basis of a detailed review of all Reports (including Part I) but focuses on Parts II and III, given AIPPI's objective of proposing improvements to, and promoting the harmonisation of, existing laws. As it is a summary, if any question arises as to the exact position of a particular Group in relation to Parts II or III, please refer to the relevant Report directly.

In this Summary Report:

- references to Reports of or responses by one or more "Groups" may include references to Independent Members;
- where percentages of responses are given, they are rounded to the nearest 5%; and
- in Part IV below, some conclusions have been drawn in order to provide guidance to the Study Committee for this Study Question.

¹ Reports received after May 28, 2021 are listed above if received by the date of completion of this summary report but their content is not included in the summary in Parts II and III.

Questions

I. Current law and practice

For the replies to Questions 1) - 3) set out in the Study Guidelines for this Study Question, reference is made to the full Reports. The Study Guidelines may be accessed [here](#).

II. Policy considerations and proposals for improvements of your Group's current law

4) **Could your Group's current law or practice relating to the role of knowledge in relation to damages be improved? If YES, please explain.**

Ten Groups indicated that their current law cannot be improved, while 18 Groups indicated that their laws could be improved (with many Groups indicating that this was so in relation to intention/knowledge).

5) **Should the recovery of damages depend, or not depend, on the knowledge (subjective or objective) of the infringer? Please explain.**

17 Groups take the view that the recovery of damages should depend on the subjective or objective knowledge of the infringer. A further eight Groups are of the view that knowledge is not just relevant, but if the infringer has the requisite knowledge, then the damages recovered should be greater. Thus a clear majority agree that knowledge should be relevant in some way to the recovery of damages.

Five Groups are of the view that the knowledge of the infringer should not be relevant to the recovery of damages.

The Malaysian Group takes the view that for some unregistered rights, such as copyright, the knowledge of the infringer of the IP right infringed may be difficult to establish, and that accordingly higher damages should be awarded as a deterrent if the infringer does have subjective knowledge of the IP right being infringed.

Clearly, higher damages would only act as a deterrent (to infringement by others) if the higher damages award is accompanied by publication of the decision since otherwise knowledge of the existence of the IP right will remain low amongst potential defendants.

The Turkish Group emphasizes that the damages ordered to be paid by a trader should be greater than those by individuals (because traders should be more diligent and become aware of IP rights).

6) Should damages be elevated so as to discourage future infringement by:

- a. an infringer, when a court has established infringement and awarded an injunction against that infringer,**

Twelve Groups are of the view that an injunction alone is a sufficient deterrent. A further seven Groups take the view that it is the purpose of the injunction (and not damages) to deter future infringement, and five Groups believe that the court should not generally aim to create a further deterrent by elevating damages, unless there are very exceptional circumstances.

Thirteen Groups take the view that a further useful deterrent effect can be achieved by elevating damages.

The majority view is that the court should not aim to achieve a further deterrent effect by elevating damages (on the basis of knowledge or otherwise). This is consistent with AIPPI's position that punitive damages are generally not desirable. However, it does prompt the question of what elevated damages should achieve and what legitimate purpose they can serve.

The Japanese Group reports the views of certain in-house members in relation to punitive damages. In Japan, IP-related associations, in which the electrical and machine industries have a voice, are strongly opposed to the introduction of punitive damages. In these industries, it is considered desirable to exploit one another's technologies through an appropriate distribution of profits, instead of providing a patent with an extraordinarily powerful exclusive right.

If, as a way of harmonization, a system of punitive damages for willful infringement is introduced by every country, the Japanese Group would be worried about the possible need to get expert opinions on non-infringement and invalidity of patents around the world. It will be too costly unless companies can avoid punitive damages only by getting a legal opinion in one of the countries concerned.

b. an infringer, when a court has established infringement but not awarded an injunction against that infringer,

Most Groups take the view that damages should not be elevated when an injunction is not awarded. In the opinion of the French Group, awarding higher damages but not awarding an injunction is not enough to deter infringement in any event.

The UK and Japanese Groups state that where forward-looking damages are awarded in lieu of an injunction, then it is not appropriate to increase damages for past infringement.

The Canadian Group comments that the purpose of increasing damages is to prevent an infringer from profiting from the infringement (this issue is discussed further below).

c. third parties, when a court has not yet established infringement by such third parties or the existence of any potentially relevant third parties.

16 Groups are of the view that damages should not be elevated to discourage third-party infringement. In addition, the Swiss Group takes the view that there should be no elevated damages because the damages award is not binding on third parties.

Six Groups suggest that some elevation of damages in these circumstances may be useful in exceptional circumstances.

7) Are there any other policy considerations and/or proposals for improvement to your Group's current law falling within the scope of this Study Question?

The Malaysian Group explains that they do not think that as a matter of policy, the amount of damages should be elevated higher than compensation due to the infringer *except* where the infringement was intentional or done knowingly.

The UK Group notes that any proposal for the adjustment of damages below or above the level necessary to compensate the patentee should be proportionate, balanced and provide safeguards against the abuse of the measure. The proposal should also take into account potential impact on barriers to legitimate trade, and the interests of the rights holder vis-a-vis the interests of the public at large in consonance with Article 41(1) TRIPS.

III. Proposals for harmonisation

8) Do you believe that there should be harmonisation in relation to the role of knowledge in relation to damages? Please answer YES or NO.

75% of National Groups indicated that harmonisation would be desirable.

9) a) Should the knowledge (subjective or objective) of the infringer affect the recovery of damages? Please answer YES or NO.

A large majority of Groups (26, 75% of those who responded) indicated it should, and 6 Groups indicate it should not.

b) If the answer to 9)a) is YES, should the knowledge be (you may tick one or, if you think either suffices, both boxes):

- subjective**
- objective**

The majority view (21 Groups, 65% of those that responded) is that both subjective and objective knowledge is relevant. Seven Groups (20%) believe that objective knowledge only is relevant, and four Groups (10%) take the view that subjective knowledge only is relevant.

c) How should such knowledge (for example) be established? Please tick all that apply:

- by the right holder?**
- by the infringer?**
- by evidence of the circumstances of the infringement?**
- by evidence of the state of mind of the infringer?**
- referring only to facts available to any person?**
- referring to information available only to the infringer?**

In order of support from Groups, the factors considered relevant to establishing knowledge were:

- 31 Groups (75%): by evidence of the circumstances of the infringement
- 25 Groups (60%): by the right holder
- 24 Groups (60%): by evidence of the state of mind of the infringer

- 18 Groups (45%): by the infringer
- 12 Groups (30%): referring only to facts available to any person
- 9 Groups (20%): referring to information available only to the infringer

Looking at the circumstances of the infringement, one can imagine a multitude of potential scenarios. For example, there may be an entirely separate category of loss if the claimant loses market share as a result of the infringer intentionally under-pricing its products in comparison to the claimant's products, and the market share loss from this price gouging cannot be quantified so that it cannot easily be recovered in money. The lack of ability to recover for market share losses, coupled with deliberate steps taken by the infringer to cause those losses, may suggest that damages for infringement should reflect the additional unquantifiable loss. This is not an example of punitive damages because even though the damages may be elevated to account for an unquantifiable loss, the purpose is still to only compensate the right holder for the totality of the harm they have suffered.

d) How should such knowledge affect the recovery of damages?

17 Groups (70% of those that responded, but 50% of all Groups) are of the view that the greater the knowledge, the higher the damages, e.g. for wilful infringement.

In the US Group's view, for punitive damages, greater knowledge should lead to greater damages but it should be objective knowledge.

Some objective or subjective knowledge should be a condition of getting any damages, according to six Groups (15% of all Groups).

10) Can or should damages to compensate the right holder:

- only be awarded where the infringer has the level of knowledge specified in Article 45(1) TRIPs**
- nevertheless be awarded if the infringer did not have the level of knowledge specified in Article 45(1) TRIPs.**

A number of Groups report that an element of negligence or fault must be present for there to be liability for infringement for damages, and that if there is no negligence or fault then liability for infringement will instead result in liability for compensation for unjust enrichment. Such

negligence or fault might be found if sufficient freedom to operate (“FTO”) searches have not been carried out.

A large majority, 22 Groups (80% of those that responded), support option b., i.e. damages should nevertheless be awarded even if there is no subjective or objective knowledge. Six Groups (20%) support option a.

Thus, there is clear majority support, with a much smaller number of Groups dissenting, that damages should nevertheless be awarded even if there is no relevant subjective or objective knowledge of the infringer. It would follow that infringement should be a strict liability tort at least as far as damages, and a successful claimant should always have a right to damages regardless of the knowledge or state of mind of the infringer.

In the view of the Dutch Group, rather than imposing a *de facto* duty to carry out FTO searches, and generating satellite litigation on whether that duty had been complied with, it would be preferable to have no duty to carry out FTO searches. In the view of the Dutch Group, an FTO should mainly serve to mitigate the risk that one launches an infringing product.

The Danish Group’s view is that option b. is essentially the same as infringement in good faith, which should not attract liability.

The Taiwanese and German Groups indicated that claim for claim for unjust enrichment only could be made if the infringer did not have any relevant knowledge.

11) What, if any, change in the level of damages or the assessment of damages is appropriate, if the infringer:

a. had no subjective knowledge, prior to the litigation, of the existence of the IP rights that were found infringed,

Knowledge of the existence of specific IP rights, if examined with the benefit of hindsight, can be a different question compared to knowledge prior to litigation. There are situations where it is possible for the defendant to precisely identify a patent, perhaps a famous or key patent, that might or might not be infringed – and in that situation the infringer will have known both of the existence of the patent and its relevance. However, there are also situations where the scope of protection of a patent, or a great many patents, is very unclear and knowledge of the existence of those patents would not have informed the infringer’s pre-litigation commercial decisions.

In the first situation, knowledge of the existence of a patent could be viewed as a proxy for whether infringement was intentional, and in the second situation the situation may be so unclear that there can have been no intention to do something falling within the known scope of a patent. Knowledge of the existence of a patent is therefore sometimes a relatively weak proxy for intention.

The majority view, held by 17 Groups (80% of those that responded), was that there should be no change to the level of damages if the infringer had no subjective pre-litigation knowledge of the existence of the infringed IP rights.

The Dutch Group explains that, in case of registered IP, the defence cannot be put forward that one did not know of the existence of the IP, unless one proves that one could not have known of the IP in spite of the requirement to register the IP, or that one had good reason to assume the invalidity of the registered IP. This prompts the question of what is a “good reason.”

Three Groups (15% of those that responded) suggested that damages may be reduced when the infringer had no subjective knowledge.

In the view of the Korean Group, awarding no damages might be justified in exceptional circumstances where there is reason to believe there is no infringement.

In the view of the German Group, in cases in which the infringer has done his best to establish freedom to operate (and thereby acquire a reasonably held belief of a lack of infringement), he should not be considered to have acted negligently. In such cases, a claim under the rules of unjust enrichment aimed at reasonable royalties seems appropriate, but an award of damages exceeding that seems inappropriate.

b. had no subjective knowledge, prior to the litigation, of the scope of the IP rights that were found infringed because the IP right was not published in a language which is (or should be) understood by the infringer,

Twelve Groups (about 1/3), take the view that non-publication in a relevant language should not affect the recovery of damages. Eight Groups were of the opinion that no damages or lower damages should be awarded in these circumstances because there is no objective or subjective knowledge of the scope of the IP rights.

In the view of the German Group, the recovery of damages should not be affected as long as a patent is published in English, due to prevalence of the English language.

The Spanish Group commented that the fundamental reason for the existence of patents in a free market and free competition economy, is that the patent applicant discloses his invention to the public, sufficiently so that an expert in the field can carry out the invention and in return for such disclosure the applicant is granted a temporary exclusive right. Disclosure of the invention must be made to the public of the territory in which the patent will extend the effects of its exclusive right, and therefore disclosure must be made in the official language of the corresponding country.

For this reason, the Spanish Group understands that a patent that has not been published in the language of the country in which it has its effects, not only should not give rise to the recognition of damages, but also should not give the right to prohibit third parties who had initiated its exploitation before the patent was published in that language. In the opinion of the Spanish Group, it is not sufficient to restrict the recovery of damages, since those who would have initiated the exploitation of the patent would have made economic investments, hired and trained personnel, etc., investments that should not be affected by the subsequent appearance of patent rights whose owners would not have made them known to the public of that country in its official language.

c. had no subjective knowledge, prior to the litigation, of the scope of the IP rights that were found infringed because the IP right was amended in the course of litigation resulting in its scope changing,

Ten Groups (about ¼) indicated that amendment during the course of litigation should not affect the recovery of damages.

In the view of four Groups, a reduction of damages would be appropriate and six Groups indicated that no damages should be available. In the case of the Peruvian Group, the reason is that the patent was not registered with the amendments, and it is the registered right that gives rights vis-à-vis third parties.

The view of the UK Group was that recovery of damages would be appropriate if the amendment was made in good faith and with reasonable skill and care.

d. had a subjective belief prior to the litigation (whether gained through legal advice or otherwise) that the IP rights in question would or would not be infringed,

In this question d., the Groups consider the significance of a *belief* and therefore the *state of mind* of the infringer, rather than actual knowledge of specific facts.

There was a wide range of opinion on this issue and no clear majority, although the view with the greatest support was that of eleven Groups (25% of all Groups) which indicated that a subjective belief of non-infringement should not affect recovery of damages. The wide range of opinion may reflect the fact that the formation of a subjective view is less clearly always justifiable or reasonable.

Two Groups suggested that damages could be reduced in such circumstances. Two further Groups indicated that a subjective belief in non-infringement could justify recovery for unjust enrichment instead of damages.

Three Groups indicated that damages should be increased depending on the subjective belief acquired prior to litigation, and two further Groups suggested that while damages could be increased it was only in relation to punitive damages.

Two Groups suggested that there should be no increase in damages if the belief was reasonable e.g. based on legal advice, otherwise there could be an increase.

The Dutch Group is of the view that such beliefs should just inform the actions of the infringer, and should not affect liability for infringement (and therefore liability for damages).

e. had not undertaken searches prior to launching a new product, to determine if the new product would or might infringe,

The majority view, held by 15 responding Groups (however, this is not a majority if non-responding groups are counted), was that the lack of searches prior to product launch should not affect recovery of damages.

In the view of the US Group, recovery could be affected but only of punitive damages.

f. had undertaken searches prior to launching a new product, to determine if the new product would or might infringe, and those searches erroneously indicated no infringement.

A general difficulty that arises with 'looking behind the veil' and into the details of the FTO opinion obtained by the infringer is the potential waiver of privilege that accompanies that investigation. In jurisdictions where this is an issue, the utility of looking into the detail of FTO searches carried out can be questionable if only incomplete information about FTO searches becomes known. Perhaps for this reason, opinion amongst the Groups was relatively fragmented.

Ten Groups (1/4 of all Groups) indicated that in these circumstances there should be no change to the recovery of damages.

The Peruvian Group indicated that potentially no damages should be recoverable at all if the infringer acted diligently. Three further Groups suggested that lower damages might be recoverable: because the infringer's behaviour was in good faith.

Three Groups suggested that in these circumstances there should be an increased recovery of damages. Two further Groups took the view that there should be no change to damages except in relation to punitive damages.

The German Group is of the view that each case should be considered individually. If the infringer has exercised due care in establishing freedom to operate, he has not acted negligently and no damages beyond reasonable royalties should be awarded. On the other hand, a freedom-to-operate opinion should not be a carte blanche for an IP infringement.

12) If the grant of punitive or exemplary damages (being damages greater than those required to compensate the right holder) is permitted, please indicate whether such damages should depend on the knowledge of the infringer, and if so, what objective or subjective knowledge should be required?

AIPPI's consistent stated position is that punitive damages are not desirable: Resolution Q134 – "Enforcement of intellectual property rights – TRIPS", Rio de Janeiro 1998; Q186 – "Punitive damages as a contentious issue of Intellectual Property Rights", Berlin 2005; Q203 – "Damages for infringement, counterfeiting and piracy of Trademarks", Boston 2008.

Six Groups stated their opposition in principle to punitive damages being available at all.

About half of the Groups stated that if punitive damages are to be granted, they should only be granted in exceptional circumstances, e.g. where there is subjective intent and gross negligence, bad faith, wilful infringement or repeated infringement. In the views of the Peruvian and Ecuadorian Groups, the granting of punitive damages should be based on a requirement for objective knowledge.

The Canadian Group makes the point that deliberate and/or intended actions by the infringer to harm the right holder should be compensated for.

13) Should the conduct of the infringer, e.g. setting out to make profit from infringement which exceeds the compensatory damages payable to the right holder, justify punitive/exemplary damages greater than those required to compensate the right holder:

(This question does not concern compensation based on the unlawful profits of the infringer)

Under the laws of some Groups, it is an aggravating factor reflected in higher damages if the infringer intends to profit from the infringement by taking a chance that the damages that will need to be paid are less than the profit that the infringer makes. If this becomes possible, it could incentivise infringement and tie up the right holder in fruitless, repetitive, costly and ultimately unsuccessful enforcement actions.

As is pointed out by several Groups, every business can be expected to try to make a profit. However, taking the chance that damages ordered by a court in relation to infringement are lower than the profit achieved is a slightly different motive.

a. when the infringer had some intention/knowledge of the objective of making the profit?

Ten Groups indicate that the intention should not play any part, while eight Groups take the opposite view. There was no clear consensus on this point. The logic applied in relation to why the intention to make profit should not matter was because businesses generally aim to make a profit. This rationale could apply even when the objective of the business is to make a higher profit than the damages would be, because the profit-driven objectives of businesses do not change and the reason why damages might be lower is often caused by other reasons (e.g. reluctance of the courts to award damages that are high enough).

b. when the infringer had no intention/knowledge of making the profit, and the profit was made “accidentally”?

16 Groups (85% of those responding) take the view that “accidental” profits should not affect damages, while three Groups believe they should.

It could be difficult to justify, from a policy perspective, why “accidental” profit-making should not result in higher damages while deliberate profit-making might. There is also the possibility of a business that sets out quite deliberately to make profits that exceed the damages payable,

but fails to do so. These examples perhaps illustrate that the subjective planning and background rationale for infringement should not play a part in the assessment of damages.

c. regardless of the knowledge of the infringer?

13 Groups (60% of those responding) take the view that the conduct of the infringer should not justify greater damages, regardless of the knowledge of the infringer, with five Groups (25% of those responding) stating that damages should not have anything to do with the conduct of the infringer. Four Groups (20% of those responding) took the opposite view.

There is a reasonably clear majority in favour of not including the mere conduct of the infringer as a factor to be considered when assessing damages.

The Canadian Group stated that the conduct of the infringer could be relevant where harm was intended to the right holder. The US, Latvia and Ecuadorian Groups are of the view that the conduct of the infringer is relevant to punitive damages.

14) Please comment on any additional issues concerning any aspect of the role of knowledge in relation to damages you consider relevant to this Study Question.

The Dutch Group provided detailed comments on the role of knowledge with regard to damages, in particular: liability for damages vs. unjust enrichment, innocent infringement, and subjective or objective beliefs as to non-infringement. These comments are discussed above in the context of each question.

In addition, in relation to intra-group knowledge, the Dutch group finds that knowledge within a group of companies can be attributed to all companies being part of that group.

15) Please indicate which industry sector views provided by in-house counsel are included in your Group's answers to Part III.

The sectors whose views are reported as being included were: the information technology industry, pharma, advertising, the deep-sea drilling industry, energy, chemistry and pharmacy, the textile sector, the clothing industry, fashion industry, entertainment industry, technology industry, machinery industry, automobile industry, retail and sporting goods, semi-conductors, chemical/process industry, electronics, health care, telecommunications, petrochemical and food industries.

The Japanese Group provided detailed comments, on the basis of the views of in-house members from two international food and beverage companies. These comments are integrated into the discussion above in relation to punitive damages.

IV. Conclusions

Threshold requirement of knowledge / fault / negligence: A majority of Groups support the view that damages should be awarded even if there is no objective or subjective knowledge. Consistent with this, a number of Groups make the point that knowledge of FTO results is not relevant, and therefore there is no need either for a duty to carry out FTO searches so as to acquire knowledge of potential infringement.

Relevance of knowledge to damages: There is majority for the proposition that the recovery of damages should nonetheless depend, in some way, on the subjective or objective knowledge of the infringer. By far the most relevant factor, according to 31 Groups, for evidencing knowledge are the circumstances of the infringement. A smaller number of Groups are of the view that knowledge is not just relevant, but if the infringer has the requisite knowledge, then the damages recovered should be greater.

Innocent infringement: The majority view was that there should be no change to the level of damages if the infringer had no subjective pre-litigation knowledge of the existence of the infringed IP rights.

Publication of patents affecting knowledge of scope of patent: Opinion amongst the Groups was divided on whether non-publication in a relevant language should affect damages recovered. About a quarter of the Groups took the view it should not, another a similar proportion was of the view that it should have *some* effect. The Spanish Group argued, very eloquently, that non-publication is contrary to the basic principle underlying the patent system and therefore non-publication should be a reason to disallow damages. The German Group was of the view that publication in English would be sufficient.

Amendments to patent affecting knowledge of scope of claims: Although a small number of Groups commented on the effect of amendments, the prevailing view was that amendments should not affect the recovery of damages. A minority of Groups suggested that damages should be reduced if the claims of a patent are amended.

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