



THE NAPLES ROUNDTABLE

Exploring Ways to Strengthen & Improve the Patent System

June 18, 2026

Summary of 2026 Leahy Institute for Advanced Patent Studies

The Naples Roundtable is a non-profit 501(c)(3) organization which convenes leading patent law experts under the auspices of the *Leahy Institute for Advanced Patent Studies*. The Naples Roundtable conference is organized to facilitate the exchange of viewpoints among experts interested in strengthening and improving the patent system.

This year's conference addressed twelve topics of significance to the U.S. and global patent system. The ideas and viewpoints raised during the discussions are summarized below. Consistent with the Chatham House Rule under which the conference operates, no idea or viewpoint raised during the conference is attributed to any individual participant; nor do the ideas or viewpoints necessarily reflect the views of the Naples Roundtable or any organization.

Issue 1. Hikma's Potential Impact on Induced Infringement and Innovation.

- The Hatch-Waxman Act created the section viii "skinny label" pathway to permit generic manufacturers to obtain FDA approval for non-patented uses of a drug while carving out patented indications from the proposed label. This framework balances two competing goals: encouraging earlier generic entry while preserving incentives for continued pharmaceutical innovation, particularly innovation involving new therapeutic uses for known compounds. Recent induced infringement decisions, however, have created increasing uncertainty regarding how effectively a generic manufacturer may rely on a section viii carveout without risking liability under 35 U.S.C. § 271(b).

- On January 16, 2026, the Supreme Court granted certiorari in *Hikma Pharmaceuticals USA Inc. v. Amarin Pharma, Inc.*, No. 24-889, to address when induced infringement liability may attach to a generic drug launched with a skinny label. The case arises from Amarin's cardiovascular-use patents covering Vascepa. Hikma launched a generic version using a carveout label that omitted the patented cardiovascular indication and limited the label to treatment of severe hypertriglyceridemia. Amarin nevertheless alleged that Hikma's label, public statements, and marketing materials encouraged physicians to prescribe the generic product for the patented use. Although the District of Delaware dismissed the complaint at the pleadings stage, the Federal Circuit reversed, concluding that the allegations plausibly stated a claim for inducement when the totality of Hikma's conduct was considered.



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- The Federal Circuit’s approach in *Hikma*, particularly when read alongside *GlaxoSmithKline LLC v. Teva Pharmaceuticals USA*, 7 F.4th 1320 (Fed. Cir. 2021), has created concern that the statutory skinny-label pathway may no longer provide predictable protection against induced infringement claims. Even where a generic manufacturer fully carves out a patented indication from its label, allegations involving press releases, product descriptions, or references to the branded drug may still permit costly litigation to proceed beyond the pleading stage. The resulting uncertainty may encourage more conservative launch strategies and diminish the practical utility of section viii carveouts.
- The participants discussed how the Supreme Court’s then-forthcoming decision in *Hikma* may significantly impact induced infringement doctrine. Several panelists emphasized that the Court’s treatment of intent and causation may substantially influence how inducement claims are evaluated in cases involving products with lawful noninfringing uses.
- Concerns were raised that the current uncertainty surrounding skinny-label liability may undermine the balance Congress originally sought to create between generic competition and follow-on pharmaceutical innovation. Method-of-use patents frequently reflect substantial clinical and financial investment directed toward identifying new therapeutic applications for previously approved compounds. Several panelists noted that if skinny-label launches continue to carry significant post-launch inducement risk even after a carveout is implemented, companies may become less willing to invest in developing and patenting new uses for known therapies.
- The *Hikma* litigation also highlights the unusual posture of post-launch inducement allegations in the skinny-label context. Rather than focusing solely on the ANDA filing itself, the allegations center on labeling language, public statements, and related materials allegedly encouraging infringing use after launch despite the carveout. This has created growing uncertainty regarding what steps generic manufacturers must take beyond modifying the label itself to avoid inducement exposure. Some discussion focused on whether additional FDA guidance, clearer statutory safe harbors, or further judicial clarification may ultimately be needed to preserve the practical utility of the section viii pathway.
- Several panelists suggested that *Hikma* may ultimately be resolved on relatively narrow pleading-standard grounds under *Twombly* and *Iqbal* rather than through a broader reworking of induced infringement doctrine. Even so, the Federal Circuit’s willingness to allow inducement claims to proceed based on the overall context of a generic launch has already altered launch planning and litigation strategy for both branded and generic pharmaceutical manufacturers.
- The Solicitor General’s briefing in *Hikma* places substantial emphasis on causation principles



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and whether the alleged conduct sufficiently encouraged infringement of the patented use. Participants noted the continuing tension between the Supreme Court's inducement jurisprudence, including cases such as *MGM Studios, Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005) and *Commil USA, LLC v. Cisco Systems, Inc.*, 575 U.S. 632 (2015), and the Hatch-Waxman statutory framework. Questions remain regarding whether mere knowledge of foreseeable infringing use may support inducement liability absent affirmative promotion of the patented indication. Several participants cautioned that requiring direct “smoking gun” evidence uniquely in skinny-label cases could improperly heighten inducement standards, while others expressed concern that an overly flexible inducement standard risks weakening the certainty Congress intended the carveout framework to provide.

- Questions also remain regarding whether the existing Hatch-Waxman framework appropriately allocates responsibility among participants in the pharmaceutical supply chain. As reimbursement systems and substitution practices increasingly influence prescribing behavior, it remains to be seen whether future inducement disputes may increase scrutiny on downstream entities beyond the generic manufacturer itself.

Issue 2. Artificial Intelligence and the Expanding Scope of Prior Art.

- The rapid integration of generative artificial intelligence into innovation and legal practice is already reshaping both the patent system and the broader innovation economy. Participants noted that generative AI tools are increasingly capable of producing technical disclosures and assisting with patent drafting and legal analysis at lower cost. As AI-generated material proliferates, questions remain regarding how existing patent doctrines should apply to AI-generated materials.

- Participants expressed optimism regarding the integration of generative AI into patent practice. Discussion focused on the possibility that generative AI tools may substantially reduce the amount of routine document review and basic research historically assigned to junior attorneys. Generative AI, therefore, may ultimately shift legal training away from repetitive production tasks and toward apprenticeship with greater emphasis on client counseling and litigation strategy.

- AI-generated disclosures may have a disruptive effect on the scope and universe of prior art. As publicly accessible generative AI systems continue producing staggering volumes of content, participants disputed whether existing prior art doctrines are well suited to a world in which potentially relevant disclosures may be generated instantaneously and at massive scale.

- Some discussion focused on the concern that the patent system's current emphasis on whether information is publicly available may inadequately account for the investment required to



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commercialize inventions in practice, as commercialization efforts respond more strongly to patent incentives than do initial development or disclosure activities. Several participants noted that many valuable technologies require years of development and regulatory review before reaching the market. Under current patentability standards, however, large volumes of AI-generated technical disclosures could potentially render commercially significant inventions unpatentable before meaningful commercialization efforts occur. Concerns were raised that such a development could weaken incentives for private investment in innovation and commercialization.

- Some participants therefore suggested that Congress or the courts may ultimately need to consider whether AI-generated materials should be treated differently within the prior art framework, particularly where such materials are generated without meaningful technical validation or real-world implementation. Others cautioned that categorical exclusion of AI-generated disclosures from the prior art inquiry could create substantial unintended consequences, especially in technical fields where AI-assisted development is becoming increasingly common.

- Others emphasized that existing patent doctrines may already contain limiting principles capable of addressing concerns relating to low-quality AI-generated disclosures. In particular, the requirement that prior art references must still satisfy enablement principles to support invalidity or unpatentability arguments. Several participants noted that AI-generated technical material lacking meaningful operability may already be insufficient under current patentability doctrines to substantiate an invalidity ground or unpatentability rejection. Moreover, given the tendency of generative AI tools to hallucinate, it was suggested that the presumption that prior art is enabling should not extend to AI-generated materials.

Issue 3. Patent Tax Proposal and Bayh-Dole Restrictions.

- The Bayh-Dole Act fundamentally reshaped the commercialization of federally funded research by permitting universities, research institutions, and private entities to retain ownership of inventions developed using federal funding. Prior to Bayh-Dole, federally funded inventions were frequently retained by the government and often remained unlicensed or commercially undeveloped. The Act was intended to encourage practical commercialization by allowing private entities to assume the substantial financial risk associated with transforming early-stage research into marketable products and technologies.



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- In recent years, however, attention has turned to the federal government's retained rights under Bayh-Dole, particularly the government's "march-in" authority. Recent draft guidance and public policy proposals suggest a significantly expanded federal role in regulating commercialization outcomes for federally funded inventions. Participants expressed concerns regarding proposals advocating march-in rights based on product pricing, as well as proposals suggesting that the federal government should retain a direct financial interest in licensing revenue generated from federally funded technologies. Particularly, participants expressed that shifting interpretations of march-in authority between administrations may create substantial uncertainty for universities, startups, investors, and licensees seeking to commercialize federally funded technologies. Because commercialization of early-stage research frequently requires years of investment, clinical testing, regulatory review, and manufacturing development, uncertainty regarding future ownership rights or government intervention may discourage private capital formation and reduce willingness to invest in university-developed technologies.
- Several panelists emphasized that the original purpose of Bayh-Dole was not simply to support research, but to facilitate downstream commercialization through stable ownership rights and predictable licensing frameworks. Questions were raised regarding whether expanded march-in theories based on pricing or broader industrial policy concerns are consistent with the statutory framework Congress originally enacted.
- Participants also questioned whether recent proposals suggesting that the federal government should retain a substantial percentage of licensing revenue associated with federally funded inventions similarly clash with the Bayh-Dole Act's purpose. Although such proposals were viewed by some as reflecting broader concerns relating to industrial policy and federal deficits, concerns were raised that significant government participation in downstream licensing revenue could materially alter investment incentives surrounding university technology transfer and early-stage commercialization.
- Congress may wish to consider codifying clearer limitations and standards governing march-in authority to reduce recurring policy shifts between administrations and provide greater predictability for commercialization efforts involving federally funded inventions. Some discussion also focused on whether additional statutory clarification may be necessary to reaffirm Bayh-Dole's longstanding role in promoting private-sector commercialization while preserving the government's ability to address extraordinary circumstances involving federally funded technologies.



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- Concerns were also raised regarding proposals suggesting that the federal government should retain a direct financial interest in licensing revenue generated from federally funded inventions. Although such proposals are often framed in terms of industrial policy or broader fiscal concerns, several participants cautioned that government participation in downstream licensing revenue could discourage venture capital investment and reduce private-sector willingness to fund early-stage commercialization efforts.
- Several participants suggested that policymakers should more fully account for the role private investment and technology transfer offices play in transforming federally funded research into commercially viable products. Because many university technology transfer offices already operate under substantial financial pressure and frequently struggle to generate sustained positive returns from licensing activity, additional uncertainty regarding commercialization rights, revenue allocation, or enforcement authority may further weaken incentives to pursue patent protection, licensing efforts, and downstream development of federally funded technologies.

Issue 4. Patent Damages After *EcoFactor*: Apportionment, Expert Testimony, and the Search for a Workable Framework.

- 35 U.S.C. § 284 provides that, upon a finding of patent infringement, courts must award damages “adequate to compensate for the infringement, but in no event less than a reasonable royalty.” In modern patent litigation, reasonable royalties are typically determined through a hypothetical negotiation framework that attempts to estimate the royalty the parties would have agreed to at the time infringement began. In many cases, however, the patented technology reflects only one portion of a larger product or commercial system, requiring courts and damages experts to apportion the value attributable to the patented invention from the value associated with noninfringing features.
- Apportionment has therefore become one of the central and most difficult issues in patent damages law. The inquiry is highly fact dependent and may involve technologies ranging from software functionality embedded within complex systems to pharmaceutical methods covering only particular therapeutic uses. Courts have generally endorsed use of the *Georgia-Pacific* factors as the principal framework for evaluating reasonable royalties, but participants expressed concern that the factors often provide limited practical constraint on damages theories and may permit experts to justify dramatically different royalty outcomes using the same general framework.
- Several participants noted that current damages doctrine places substantial emphasis on methodology while providing comparatively little guidance regarding the ultimate reliability or reasonableness of the resulting damages figure. Concerns were repeatedly raised that Federal Rule of



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Evidence 702 and *Daubert* are fundamentally structured as gatekeeping mechanisms directed toward whether an expert's methodology is sufficiently reliable to reach the jury, rather than whether the resulting damages number accurately reflects the economic value of the patented invention.

- Participants further observed that modern patent litigation frequently bears little resemblance to the hypothetical negotiations upon which reasonable royalty analysis is theoretically based. In many disputes, the litigating entities are no longer the original innovators or commercial actors involved at the time of the invention itself. Several participants questioned whether existing reasonable royalty doctrine adequately accounts for modern patent monetization practices, portfolio licensing arrangements, and the growing role of secondary-market patent enforcement.

- Significant attention focused on the Federal Circuit's *en banc* decision in *EcoFactor, Inc. v. Google LLC*, 104 F.4th 243 (Fed. Cir. 2025) (*en banc*), which vacated a more than \$20 million patent damages award after concluding that the district court improperly admitted portions of the patentee's damages expert testimony under Federal Rule of Evidence 702 and *Daubert*. *EcoFactor* involved patents relating to smart thermostat technology asserted against Google's Nest products in the Western District of Texas. *EcoFactor*'s damages expert relied upon several prior lump-sum license agreements and attempted to derive from those agreements an implied per-unit royalty rate allegedly reflecting what prior licensees had agreed represented the value of the patented technology. Although the district court admitted the testimony and a Federal Circuit panel initially affirmed, the *en banc* court concluded that the expert's analysis lacked sufficient factual support because the underlying agreements did not adequately establish that the counterparties themselves had agreed to the asserted royalty framework. In some instances, the agreements expressly disclaimed that the lump-sum payments reflected running royalties tied to sales volumes. The Federal Circuit therefore held that the district court abused its discretion by permitting the testimony to reach the jury and ordered a new damages trial.

- The *en banc* majority emphasized that district courts must more rigorously evaluate whether expert royalty opinions are in fact supported by the factual record underlying supposedly comparable licenses rather than permitting unsupported extrapolations regarding the parties' intent or valuation methodology. Separate opinions by Judges Reyna and Stark cautioned against interpreting *EcoFactor* too broadly. Judge Stark specifically emphasized that the majority's holding was highly dependent upon the unusual factual record presented in *EcoFactor* itself and warned that the opinion should not be read as imposing broader restrictions on patent damages experts beyond those required by Rule 702 and *Daubert*.

- While participants noted that *EcoFactor* may lead to more aggressive Rule 702 challenges and increased attention to the drafting of settlement agreements and license provisions, most viewed



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EcoFactor as a narrow evidentiary decision rather than a broader restructuring of patent damages doctrine. Several participants expressed agreement with the view that *EcoFactor* provides limited practical guidance for addressing the larger structural problems associated with reasonable royalty analysis.

- Discussion also focused on the growing tension between increasingly sophisticated economic models used in patent litigation and the practical realities of jury presentation. Participants noted that damages theories now frequently involve complex quantitative analyses, conjoint surveys, and licensing models that may be difficult for juries to meaningfully evaluate. Concerns were raised that the current system places substantial pressure on district courts to admit competing expert models under Rule 702 while leaving juries to resolve extraordinarily complex valuation disputes with limited doctrinal guidance.

- Some participants observed that the Federal Circuit's broader damages jurisprudence, as reflected in cases such as *Rite-Hite Corp. v. Kelley Co.*, 56 F.3d 1538 (Fed. Cir. 1995) (*en banc*), has contributed to perceptions that patent damages law lacks clear limiting principles and endorse an "anything goes" approach to patent damages. Others noted that because commercial arrangements vary so substantially across industries and technologies, development of a single comprehensive damages framework may prove exceptionally difficult. Even so, several participants suggested that Congress, the Judicial Conference, or the Federal Circuit may ultimately need to provide clearer guidance regarding apportionment principles, expert admissibility standards, and the structure of reasonable royalty analysis in complex patent cases.

- Congress, the Judicial Conference, and the Federal Circuit may therefore wish to consider whether additional guidance regarding reasonable royalty doctrine would improve predictability and reduce inconsistent damages outcomes. Participants also discussed whether the patent system may benefit from renewed efforts to simplify and modernize reasonable royalty doctrine itself. Suggestions included reconsideration of the continued utility of the *Georgia-Pacific* framework and development of more structured approaches to apportionment. Several participants emphasized that absent clearer standards, patent damages disputes are likely to remain among the most unpredictable and heavily litigated issues in patent law.

Issue 5. PTAB Discretion and Patent-System Stability in the Squires/Stewart Era.

- The America Invents Act created the Patent Trial and Appeal Board ("PTAB") and authorized *inter partes* review ("IPR") proceedings as an expedited mechanism for reevaluating the validity of issued patents based on prior art patents and printed publications. Since their creation, IPRs have



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become a central feature of modern patent litigation because final written decisions generally must issue within one year of institution and because patent challengers may invalidate claims under the preponderance-of-the-evidence standard rather than the more demanding clear-and-convincing standard applied in district court litigation. As a result, many patent disputes now proceed simultaneously before both the PTAB and district courts, generating continuing debate regarding the proper relationship between administrative patent review and traditional litigation.

- Of particular note, participants expressed concern regarding parallel validity challenges proceeding simultaneously in multiple fora, which often requires patent owners to defend the same patent claims before both the PTAB and district courts at the same time, thereby increasing litigation expense and creating opportunities for duplicative invalidity attacks. Participants suggested that there should be a push for finalizing the Patent Office’s proposed “One and Done” framework, which would require petitioners to stipulate that, if an IPR is instituted, the petitioner will not pursue overlapping invalidity arguments elsewhere, including in district court or before the International Trade Commission. Several participants viewed such proposals as potential mechanisms for reducing duplicative proceedings and limiting what some characterized as multiple opportunities to invalidate the same patent claims.

- Participants also focused heavily on the growing role of discretionary institution decisions within PTAB practice. In practice, a single panel of Administrative Patent Judges (“APJs”) decides both the institution and final written decisions during an IPR. Under the current administration, the Patent Office’s response to these concerns has been to substantially reduce the rate of institution. In response, the number of IPR petitions has sharply declined and the number of requests for *Ex Parte* Reexaminations has spiked. By statute, the Director’s decision whether to institute IPR proceedings is generally unreviewable. Participants noted that the lack of judicial review over the institution process—especially as expanded in the Supreme Court’s decisions including *Cuozzo Speed Technologies, LLC v. Lee*, 579 U.S. 261 (2016) and *Thryv, Inc. v. Click-To-Call Technologies, LP*, 590 U.S. 45 (2020)—afford Directors with sweeping discretion, allowing changes in administration to disrupt expectations regarding patent strength. Several participants expressed concern that broad discretion over institution policy may allow substantial shifts in PTAB practice between administrations, potentially disrupting long-term expectations regarding patent strength and enforceability.

- Questions were raised regarding whether patents, as long-lived quasi-property rights, require greater institutional stability than the current administrative structure provides. Several participants noted that established expectations are critical to patent interests, which functionally resemble property rights and frequently remain in force across multiple presidential administrations, while PTAB institution practices and discretionary-denial policies may shift substantially over comparatively short



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periods. Some participants suggested that, to dampen fluctuations in the Patent Office's policy, Congress should expand judicial review to include questions that have so far been considered integral to the institution decision, such as real-party-in-interest disputes and statutory time-bar determinations.

- Participants also discussed whether the current structure of PTAB adjudication creates institutional pressures that may affect merits determinations. Under existing practice, the same panel of APJs generally issues both the institution decision and the final written decision. Several participants expressed concern that requiring the same panel to decide both stages may create an anchoring effect in which early institution conclusions influence later merits determinations. Some participants recommended bifurcating institution and merits determinations between different decisionmakers to improve neutrality and reduce concerns regarding pre-judgment of the merits.

- Efficiency concerns relating to PTAB adjudication also received attention. Several participants noted that current PTAB practice often requires APJs to prepare lengthy analyses at both the institution stage and the final written decision stage, creating duplication of effort. Some participants suggested that institution decisions could instead be issued in abbreviated form or without detailed explanation to reduce administrative burden and avoid influencing the merits panel's later analysis. Others favored retaining more robust institution decisions while permitting later merits panels to modify or depart from earlier institution-stage reasoning as the factual record develops.

- Some participants further questioned whether the current placement of patent adjudication authority within a politically accountable executive agency is fully consistent with the quasi-property nature of patent rights. Participants suggested that the PTAB would benefit from more insulation from political influences, with some urging that the issuance and reevaluation of patents be handled by an independent commission.

Issue 6. Developments in Litigation Finance and Insurance.

- Third-party litigation funding ("TPLF") has become an increasingly significant feature of modern patent litigation, particularly in large-scale commercial disputes involving substantial costs and extended timelines. Funding arrangements have grown increasingly sophisticated, with some structures involving portfolio-based investments and aggregated patent-enforcement campaigns. As outside capital assumes a larger role in patent litigation, questions surrounding disclosure obligations and litigation control have received increasing attention within the patent system.

- Much of the discussion focused on whether courts should have greater insight into the identity



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and role of litigation funders. Several panelists emphasized that where outside funders may influence litigation strategy or settlement authority, judges should understand whose interests are effectively before the court. Participants expressed concern that without greater transparency ethical conflicts could remain undiscovered.

- Others cautioned, however, that litigation finance arrangements should not automatically be subjected to disclosure obligations beyond those imposed on other forms of business financing. Concerns were raised that overly broad disclosure mandates could expose privileged information or discourage lawful investment in patent enforcement activities. Discussion also focused on whether existing ethical rules and judicial case-management authority may already provide courts with sufficient tools to address the most significant transparency concerns on a case-by-case basis.

- Attention was given to the then-pending “Kansas compromise” legislation relating to litigation finance transparency, which was enacted following the Naples conference as Kansas Senate Bill 54. The legislation represented one of the first negotiated compromise frameworks between the litigation finance industry and business groups concerning TPLF disclosure obligations. Rather than requiring wholesale disclosure of funding arrangements, Senate Bill 54 establishes limited disclosure requirements designed to identify potential conflicts while preserving protection for attorney-client privileged materials and confidential funding terms.

- The Kansas law, therefore, may ultimately provide a useful model for future federal or state disclosure proposals because it attempts to balance transparency concerns against legitimate confidentiality interests rather than adopting either complete disclosure or complete nondisclosure.
- Congress, the Judicial Conference, or federal courts may consider more uniform disclosure standards to reduce the growing patchwork of local rules and state-law approaches currently governing TPLF disclosure obligations.

- More broadly, the continued expansion of litigation finance reflects larger structural changes in patent litigation itself. As patent disputes become increasingly expensive and resource intensive, outside funding may continue expanding access to patent enforcement for certain patent holders while simultaneously raising broader questions regarding transparency and the proper role of private investment capital within the judicial system.

Issue 7. How to Effectively Mediate Patent Cases.

- Panelists generally agreed that mediation remains one of the most effective mechanisms for



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resolving patent disputes, particularly given the cost and uncertainty associated with modern patent litigation. At the same time, the discussion emphasized that mediation in patent cases must occur early in the life of the case with a mediator who is familiar with patent law, particularly claim construction.

- Participants generally favored mediation at early litigation stages. Some expressed a preference for mediation before even motions to dismiss are filed, noting that many disputes can be resolved before the parties rack up costs or positions become entrenched. Others articulated a preference for post-*Markman* mediation so that the parties have greater clarity regarding the meaning and scope of the claims-at-issue but also emphasized that claim construction should be performed as early as possible.

- Questions were raised regarding whether courts should retain flexibility to tailor mediation timing to the needs of a particular dispute rather than adopting uniform scheduling requirements. Additional attention focused on whether earlier mediation may be particularly valuable in cases involving smaller parties or limited damages exposure where litigation costs themselves may distort settlement incentives.

- Participants also discussed the growing range of mediation and alternative dispute resolution offerings available in patent litigation and expressed a preference specialized patent mediators and ADR providers with technical expertise. Concerns were raised that mediation may be counterproductive where the mediator lacks sufficient understanding of claim construction principles or the practical realities of patent litigation.

- Questions were also raised regarding whether courts and ADR providers should place greater emphasis on developing mediator expertise specifically tailored to patent disputes. Suggestions included increased use of technically trained mediators, creation of patent-specific mediation panels, and greater judicial involvement in identifying mediators with sufficient patent experience for complex cases.

- As mediation serves as an increasingly important case-management tool within the patent system itself, policy makers should contemplate how the practice could be used to further reduce litigation expense while preserving judicial resources and improving predictability for litigants.

Issue 8. Patent Agenda for the 120th Congress.

- Patent policy is increasingly being leveraged as a tool for economic competitiveness and technological leadership. Discussion focused on whether the United States patent system is currently structured to adequately promote homegrown innovation and maintain long-term advantages in an



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increasingly competitive global environment.

- Attention was given to the possibility that significant patent legislation may again receive congressional consideration during the 120th Congress, including renewed efforts relating to patent eligibility reform under the Patent Eligibility Restoration Act (“PERA”). Several participants noted that continuing uncertainty surrounding American subject-matter-eligibility case law chills investment in industries that, in foreign jurisdictions, benefit from patent incentives.

- Concerns were also raised regarding long-term trends showing increasing numbers of United States patents being issued to foreign entities relative to domestic companies. Discussion focused on whether current patent policy sufficiently advances American economic interests and whether the United States should more directly evaluate patent policy through the lens of strategic technological competitiveness.

- Panelists expressed concern regarding the extent to which foreign governments and strategic competitors of the United States have carefully studied and adapted to the structure of the American patent system. Discussion included the continued operation of international work-sharing programs such as the Patent Prosecution Highway, including concerns regarding whether existing programs appropriately balance international cooperation against broader domestic interests.

- The growing intersection between patent policy and national security considerations also received substantial attention. Several participants noted that issues relating to semiconductors and communications infrastructure increasingly place patent policy within broader discussions surrounding supply-chain resilience and technological independence. As a result, attention focused on whether intellectual property policy should receive greater consideration from congressional committees and staff traditionally focused on defense or national security matters.

- Several participants urged broader engagement between the patent community and policymakers responsible for industrial policy and defense planning. Discussion also focused on the need for Congress and federal agencies to more closely evaluate how patent policy influences domestic innovation and the ability of United States companies to compete in strategically significant industries.

Issue 9. Patent pools and SEPs.

- Patent pools and standard essential patent (“SEP”) licensing frameworks continue to play an increasingly important role in industries that are dependent upon shared technological standards, including telecommunications and network infrastructure. Because implementation of modern technical standards often requires access to large numbers of patents held by different entities, patent



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pools and coordinated licensing structures are frequently viewed as mechanisms for reducing transaction costs and simplifying access to standardized technology.

- Standard-setting participants commonly commit to license SEPs on fair, reasonable, and non-discriminatory (“FRAND”) terms. Over time, however, substantial disagreement has emerged regarding how FRAND obligations should be enforced, which tribunals should determine global licensing terms, and whether FRAND disputes should primarily sound in patent law or contract law.
- Significant attention focused on the growing willingness of foreign courts to influence or establish worldwide FRAND royalty frameworks. Discussion included the increasing practice of foreign tribunals relying on United States verdicts and damages determinations as reference points when evaluating global licensing terms. Concerns were raised that expanding foreign authority over worldwide FRAND disputes may increasingly place pressure on domestic patent systems and create incentives for strategic forum selection. Participants urged continued engagement by United States courts and policymakers to ensure that domestic patent rights and damages principles are not effectively subordinated to foreign rate-setting regimes.
- Some participants expressed concern that treating FRAND obligations as broadly enforceable contractual commitments may permit foreign courts to assert authority over worldwide licensing disputes involving United States patents. Others noted that FRAND commitments have frequently been treated in United States litigation as contractual obligations enforceable by third-party beneficiaries, particularly in disputes involving standard-setting organizations and implementers. Attention focused on the need for greater doctrinal clarity regarding the relationship between patent rights, contractual FRAND obligations, and international jurisdictional principles.
- Participants also discussed ongoing efforts by United States policymakers and agencies to strengthen the role of American companies within global standards development and SEP licensing markets. Several participants emphasized the importance of ensuring that United States companies remain leading licensors of advanced technologies rather than becoming increasingly dependent upon foreign-controlled patent portfolios and licensing regimes. Some discussion focused on whether the USPTO, the Department of Justice, and other agencies should continue coordinating policies designed to support domestic participation in standards development and global SEP licensing.
- Attention was also given to whether greater use of alternative dispute resolution mechanisms may help reduce the fragmentation and forum disputes increasingly associated with global FRAND litigation. Some discussion focused on whether arbitration or other coordinated dispute-resolution procedures may provide more predictable mechanisms for resolving worldwide licensing disputes



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while reducing incentives for conflicting judgments across jurisdictions. Participants suggested that courts and standard-setting organizations may ultimately need to place greater emphasis on coordinated dispute-resolution procedures capable of addressing multinational SEP disputes more efficiently.

Issue 10. The Rise of the UPC and Global Patent Forum Competition.

- The Unified Patent Court (“UPC”) has emerged as a major venue for multinational patent litigation following its launch in 2023. Designed to provide centralized adjudication for participating European states, the UPC offers patent holders the ability to seek relief across multiple European jurisdictions through a single proceeding. Within its first two years of operation, the UPC has already seen more than 500 filed actions, reflecting substantial early adoption by patent holders and litigants seeking broader European enforcement strategies. Panelists further noted that litigation costs through trial in the UPC generally fall into the \$1-2 million range, substantially below the costs associated with patent litigation venues in the United States.

- A central theme of the discussion involved the extent to which the UPC’s procedural structure may alter the competitive landscape of global patent litigation. Particular emphasis was placed on the relative speed of UPC proceedings together with the availability of broad injunctive relief across multiple jurisdictions through a unified forum. Panelists noted that the combination of reduced litigation costs and streamlined proceedings may continue increasing the attractiveness of European patent litigation relative to traditional United States venues.

- Participants further examined the continuing influence of German patent litigation practices on the development of UPC jurisprudence. Because more than half of UPC judges have backgrounds in German patent law, some participants observed that early UPC decisions appear to reflect continued reliance on German-style approaches to infringement analysis and injunctive remedies. Questions were raised regarding whether the UPC will ultimately develop a distinct body of supranational patent law or instead continue evolving primarily through existing European national litigation traditions.

- The availability of injunctive relief was repeatedly identified as one of the principal drivers of UPC filings and settlement leverage. Several participants noted that many UPC disputes have resolved shortly after injunctions issued, resulting in relatively few final damages determinations to date. Participants further observed that the combination of streamlined procedures and strong injunctive remedies may continue increasing the strategic attractiveness of the UPC for patent holders seeking rapid enforcement outcomes.



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- Attention was also placed on the growing willingness of patent holders to pursue European litigation strategies in parallel with, or in some cases instead of, United States litigation. Several participants noted that the combination of speed, reduced cost, and multinational injunctive relief may continue shifting portions of global patent litigation activity toward European venues. Questions were raised regarding whether United States courts and policymakers should more closely evaluate how domestic patent litigation costs and procedural complexity influence international forum competition.
- Participants also addressed the growing interaction between United States patent litigation and foreign proceedings following recent European decisions permitting adjudication of non-EU patents in certain circumstances. Particularly, participants endorsed the decision in *BMW AG v. Onesta, LLC*, No. 6:25-cv-00581, Dkt. 60 (W.D. Tex. Feb. 13, 2026)—in which a United States court issued an anti-suit injunction preventing a patent holder from pursuing infringement claims on United States patents in a German court—as protecting the United States’ strong interest in resolving patent disputes over U.S. patents in domestic tribunals.
- Several participants urged continued engagement by United States courts, policymakers, and patent institutions regarding the long-term competitive implications of the UPC and other foreign patent forums. Particular emphasis was placed on the need to preserve the attractiveness and effectiveness of United States patent adjudication while also ensuring that domestic patent rights are not displaced by expanding foreign jurisdiction over global patent disputes.

Issue 11. Mistakes in Patent Prosecution that Affect Litigation Outcomes.

- Patent prosecution decisions frequently have consequences extending far beyond examination itself. Statements made during prosecution, positions taken to secure allowance, disclosure practices, and strategic drafting decisions often become central issues years later in district court litigation and PTAB proceedings. Participants emphasized that many modern patent disputes are shaped as much by the prosecution record as by the asserted claims themselves, particularly in areas involving prosecution disclaimer, continuation strategy, inequitable conduct allegations, and discretionary denial practice before the PTAB.
- Participants discussed how AI-assisted drafting or inventive input may affect an invention’s patentability or enforceability. While the emergence of AI does not alter the inventorship standard under 35 U.S.C. § 116 or the written-description and enablement requirements under 35 U.S.C. § 112(a), panelists noted that unclear attribution of conception, undocumented AI-generated technical content, and unsupported statements regarding functional expansion may create substantial downstream litigation risk under existing doctrines. To mitigate these concerns, some discussion focused on whether



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the patent bar—working together with the USPTO—should develop clearer guidance addressing documentation of AI-assisted drafting and inventive processes. Greater clarity in this area could reduce future inventorship disputes and § 112 challenges without requiring substantial statutory revision or formal rulemaking.

- Examiner statements of reasons for allowance were also identified as having increasing importance in later litigation and PTAB proceedings. Participants noted that such statements may significantly affect claim construction (via prosecution disclaimer), continuation strategy, and discretionary denial arguments under 35 U.S.C. § 325(d). Discussion emphasized that applicants may comment on reasons for allowance under 37 C.F.R. § 1.104(e) and should consider correcting factual inaccuracies or unintended narrowing implications before the prosecution record becomes fixed. Some participants urged renewed consideration of USPTO pilot programs encouraging Examiners to more clearly identify what specifically renders claims allowable over specific prior art references. More precise explanations of allowance may help reduce later prosecution-disclaimer disputes while also strengthening arguments that prior art was meaningfully considered during examination for purposes of § 325(d). Additionally, such explanations would provide clearer guidance for patent owners' continuation practice by identifying which claim features were deemed patentably distinct, thereby reducing ambiguity, over-claiming, and the potential development of unnecessary “patent thickets.”

- Significant attention also focused on the evolving role of PTAB review and Director oversight. Some participants observed that *inter partes* review is increasingly being articulated as an error-correction mechanism rather than as a substitute forum for parallel validity litigation. Others emphasized, however, that recent shifts in Director-level oversight should not be viewed simply as movement between “pro-patent” and “anti-patent” approaches, but rather as an effort to recalibrate institution practice and restore greater consistency to discretionary review standards. Several participants suggested that clearer and more predictable institution policies may ultimately improve confidence in PTAB proceedings across administrations.

- Panelists further highlighted the USPTO's precedential decision in *Ecto World, LLC v. RAI Strategic Holdings, Inc.*, IPR2024-01280 (P.T.A.B. May 19, 2025), which held that the Board may consider both the volume of references submitted during prosecution and the extent to which applicants meaningfully explained their relevance when evaluating material examiner error under 35 U.S.C. § 325(d). Participants observed increasing tension between expansive IDS practices motivated by inequitable-conduct concerns and the practical risk that excessive submissions may dilute meaningful examination and weaken later arguments for discretionary denial.

- Participants also discussed whether current prosecution practices continue to overstate the



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practical threat of inequitable conduct following *Therasense, Inc. v. Becton, Dickinson & Co.*, 649 F.3d 1276 (Fed. Cir. 2011), which significantly heightened the standards for proving inequitable conduct by requiring both but-for materiality and specific intent to deceive. Several participants noted that, after *Ecto World*, indiscriminate IDS citation practices may increase subsequent litigation risk by leaving the patentee vulnerable to IPR petitions over the prior art identified in the IDS.

Issue 12. Socio-economic Benefits Economies Can Achieve Through IP Protection.

- Intellectual property policy plays a central role in broader debates regarding economic growth, private investment, and long-term technological competitiveness. Discussion focused on the importance of maintaining strong, predictable patent protections to support domestic innovation capacity and encourage sustained investment in high-risk research and development efforts. These issues are becoming increasingly significant as the United States faces growing international competition in advanced technology sectors.

- Significant attention focused on the need for more robust patent-related data collection and empirical economic research. Participants noted that many of the studies most frequently relied upon in patent-policy debates were conducted decades ago and may not adequately reflect modern innovation markets, international competition, or current commercialization realities. Congress, the USPTO, universities, and policy organizations may therefore benefit from expanded collaboration directed toward developing updated empirical research concerning how intellectual property protection affects investment behavior, startup formation, research intensity, and technological leadership.

- Discussion further emphasized the importance of ensuring that the USPTO and the Executive Branch have access to economically grounded policy expertise when evaluating intellectual property reforms. Renewed investment in the USPTO's Chief Economist Office, together with greater institutional support for long-term economic analysis relating to innovation incentives and global patent competitiveness, may improve the quality and consistency of future intellectual property policymaking. Participants noted that patent policy decisions increasingly require sophisticated economic analysis rather than purely doctrinal legal evaluation.

- Discussion also focused on the importance of identifying and supporting scholars who view patents primarily as mechanisms for encouraging innovation, commercialization, and investment formation rather than principally as economic costs imposed on downstream producers. Universities, think tanks, and policymakers may benefit from continued engagement with scholarship recognizing the role patent rights play in supporting high-risk technological development and commercialization



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efforts.

- Participants further noted that patent protection may be particularly important for companies lacking structural advantages such as dominant platforms or entrenched network effects. Intellectual property rights may provide one of the few mechanisms through which smaller companies can justify substantial research investments and attract long-term financing. Strong and predictable patent rights may therefore continue influencing whether corporate leadership and investors are willing to commit resources to uncertain or capital-intensive innovation efforts.
- Congress, the USPTO, and other policymakers may also increasingly evaluate intellectual property policy through the lens of long-term national competitiveness. Discussion emphasized that debates surrounding patent rights increasingly overlap with broader concerns regarding advanced manufacturing, strategic technologies, and the United States' ability to maintain leadership in innovation-driven industries.