

118TH CONGRESS
2D SESSION

S. 4840

To amend title 35, United States Code, to establish a rebuttable presumption that a permanent injunction should be granted in certain circumstances, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 30, 2024

Mr. COONS (for himself and Mr. COTTON) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 35, United States Code, to establish a rebuttable presumption that a permanent injunction should be granted in certain circumstances, and for other purposes.

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 “Realizing Engineering,
5 Science, and Technology Opportunities by Restoring Ex-
6 clusive Patent Rights Act of 2024” or the “RESTORE
7 Patent Rights Act of 2024”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Securing effective and reliable patent pro-
4 tection for new technologies is critical to maintaining
5 the competitive advantage of the United States in
6 the global innovation economy.

7 (2) The Constitution of the United States em-
8 powers Congress to grant inventors the “exclusive
9 Right” to their inventions in order to “promote the
10 Progress of Science and the useful Arts”.

11 (3) The right to prevent others from making,
12 using, offering to sell, selling, or importing a pat-
13 ented invention without authority from the inventor
14 is the core of the patent right, ensuring that an in-
15 ventor enjoys, for a limited time, the sole benefit of
16 the inventor’s invention or discovery.

17 (4) Congress and the courts of the United
18 States have long secured the constitutionally pro-
19 tected patent right through the traditional equitable
20 remedy of an injunction.

21 (5) Given the irreparable harm that is caused
22 by multiple acts of infringement or willful infringe-
23 ment of a patent, courts historically presumed that
24 an injunction should be granted to prevent such
25 acts, with a burden on defendants to rebut such a
26 presumption with standard equitable defenses.

1 (6) Recently, courts have ended the approach
2 described in paragraph (5), which contradicts the
3 traditional, historical practice governing the equi-
4 table remedy described in that paragraph.

5 (7) Eliminating the traditional, historical equi-
6 table practice of applying a rebuttable presumption
7 of injunctive relief in the case of continuing acts of
8 infringement or willful infringement of a patent
9 has—

10 (A) substantially reduced the ability of pat-
11 ent owners to obtain injunctions to stop con-
12 tinuing or willful infringement of patents; and

13 (B) created incentives for large, multi-
14 national companies to commit predatory acts of
15 infringement, especially with respect to patents
16 owned by undercapitalized entities, such as in-
17 dividual inventors, institutions of higher edu-
18 cation, startups, and small or medium-sized en-
19 terprises.

20 **SEC. 3. REBUTTABLE PRESUMPTION THAT INJUNCTIVE RE-**
21 **LIEF IS WARRANTED.**

22 Section 283 of title 35, United States Code, is
23 amended—

24 (1) by striking “The several” and inserting the
25 following:

1 “(a) IN GENERAL.—The several”; and

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

3 “(b) REBUTTABLE PRESUMPTION.—If, in a case
4 under this title, the court enters a final judgment finding
5 infringement of a right secured by patent, the patent
6 owner shall be entitled to a rebuttable presumption that
7 the court should grant a permanent injunction with re-
8 spect to that infringing conduct.”.

○