

4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
Jackson-Lee OF Texas, OR Her
DESIGNEE, DEBATABLE FOR 10 MINUTES:

14
Revised

**AMENDMENT TO H.R. 1908, AS REPORTED
OFFERED BY MS. JACKSON-LEE OF TEXAS**

At the end of the bill insert the following new section:

1 **SEC. 18. STUDY ON PATENT DAMAGES.**

2 (a) IN GENERAL.—The Under Secretary of Com-
3 merce for Intellectual Property and Director of the United
4 States Patent and Trademark Office (in this section re-
5 ferred to as the “Director”) shall conduct a study of pat-
6 ent damage awards in cases where such awards have been
7 based on a reasonable royalty under section 284 of title
8 35, United States Code. The study should, at a minimum,
9 consider cases from 1990 to the present.

10 (b) CONDUCT.—In conducting the study under sub-
11 section (a), the Director shall investigate, at a minimum,
12 the following:

13 (1) Whether the mean or median dollar amount
14 of reasonable-royalty-based patent damages awarded
15 by courts or juries, as the case may be, has signifi-
16 cantly increased on a per case basis during the pe-
17 riod covered by the study, taking into consideration
18 adjustments for inflation and other relevant eco-
19 nomic factors.

1 (2) Whether there has been a pattern of exces-
2 sive and inequitable reasonable-royalty-based dam-
3 ages during the period covered by the study and, if
4 so, any contributing factors, including, for example,
5 evidence that Federal courts have routinely and in-
6 appropriately broadened the scope of the “entire
7 market value rule”, or that juries have routinely
8 misapplied the entire market value rule to the facts
9 at issue.

10 (3) To the extent that a pattern of excessive
11 and inequitable damage awards exists, measures
12 that could guard against such inappropriate awards
13 without unduly prejudicing the rights and remedies
14 of patent holders or significantly increasing litigation
15 costs, including legislative reforms or improved
16 model jury instructions.

17 (4) To the extent that a pattern of excessive
18 and inequitable damage awards exists, whether legis-
19 lative proposals that would mandate, or create a pre-
20 sumption in favor of, apportionment of reasonable-
21 royalty-based patent damages would effectively
22 guard against such inappropriate awards without
23 unduly prejudicing the rights and remedies of patent
24 holders or significantly increasing litigation costs.

1 (c) REPORT.—Not later than 1 year after the date
2 of the enactment of this Act, the Director shall submit
3 to the Congress a report on the study conducted under
4 this section.