

## *Patent Imperialism*

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With a few narrow exceptions, U.S. patent law concerns itself with activity that either occurs within this country's borders or crosses its borders. The result is that patent owners have only been able to recover money damages for activity that takes place in this country. In the typical case, that means that a patentee calculates any damages by relying on the domestic sales of infringing products. However, patentees have begun to advance a new and creative "worldwide causation" theory that would allow them to calculate damage based on sales everywhere. So long as some domestic infringement can be said to cause sales overseas, these patentees argue that there should be no territorial limitation on their recovery. This Essay argues that the courts should reject this new theory on both doctrinal and policy grounds. As a purely statutory matter, permitting patentees to recover damages for sales that take place overseas would circumvent the explicit territorial limitations that are currently found in U.S. patent law. This argument is reinforced by the well-established presumption against the extraterritorial application of any U.S. law. The worldwide causation theory of damages also makes bad international and domestic policy. Under the current international regime, each nation has its own patent system. This means that inventors must satisfy a country's specific patent laws to obtain a patent, and navigate through its courts to obtain any remedy that the country sees fit to grant. The proposed worldwide causation theory would subvert this regime and allow United States patent law to trump laws in other countries. Of course other countries could also follow suit and exercise their own forms of "patent imperialism" thereby wreaking havoc with notions of territorial sovereignty in patent law. In addition to causing problems abroad, the worldwide causation theory provides troubling disincentives for U.S. companies. Companies that locate key activities in the U.S. will be worse off than companies that offshore those activities. In sum, there are ample reasons to reject patent imperialism.

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