outside U.S. territory, that evidence cannot be presented in a court of law to prove invention." [5] This means that foreign inventors involved in a U.S. dispute are unable to reference data obtained, or activities performed, outside the U.S. to prove a date of invention prior to their U.S. filing date. "This protectionist provision in U.S. patent law will change on January 1, 1996. From that point forward, evidence of inventive activities occurring in the World Trade Organization (WTO, Geneva - successor organization to GATT) and the North American Free Trade Agreement countries will be admissible during an interference proceeding. The new law will also allow foreign-language documents to be considered as part of this process. Foreign inventors will need to collect and preserve their data according to the unique United States first-to-invent patent systems if they want to extend their rights to the U.S. under this new law."[6]

A unique feature of the January 1, 1996 protectionist revision will be that the holder of a U.S. patent has the right to exclude others from offering for sale and from importing products that are protected by U.S. patents. This enhances the value of a U.S. patent and may permit preemptive legal manoeuvring against potential patent violators.

Another defense available to the alleged infringer is that the current patent holder engaged in inequitable conduct in procuring its patent. If such a position is taken it is recommended that separate legal counsel be retained for the defense. This will preclude the disqualification of counsel should the attorney involved in the patent application process become implicated.

Typically, once a court finds infringement, an injunction will be issued. An injunction enables the patent holder to maintain its market exclusivity, or to license it to a third party. Should the product be "life-saving" (used in a medical environment where discontinued use may produce loss of life) the court may not issue an injunction and request that the patent holder be paid a royalty on future sales, as well as past damages. The value of past damages is usually at least equal to a reasonable royalty that the parties would have negotiated at a neutral setting.

Lost profits may be another category for award damages. In the U.S., a patentee seeking lost profits must show: Product demand for the patented device; an absence of competitors other than themselves; the manufacturing capability and marketing expertise to exploit product demand; and a reasonable estimate of the lost profit in U.S. dollars.

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[5] 35 U.S.C.$104.

[6] Enayati, E. (1995) Intellectual Property Under GATT, *Bio/Technology*, Vol. 13 May, p. 460