

ADOPTED

**AMERICAN BAR ASSOCIATION
SECTION OF INTELLECTUAL PROPERTY LAW**

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association urges that the defense of unenforceability of a
2 patent based upon inequitable conduct arising from proceedings in the United States Patent and
3 Trademark Office ("PTO") can be established only by proof by clear and convincing evidence of
4 a specific intent to deceive the PTO by knowingly and willfully misrepresenting a material fact
5 or material information to the PTO or by failing to provide a known material fact or known
6 material information to the PTO, and that such intent cannot be established by only the
7 materiality of the fact or information that was misrepresented or not provided.

