



General Assembly

February Session, 2014

Raised Bill No. 258

LCO No. 1461



Referred to Committee on JUDICIARY

Introduced by:
(JUD)

***AN ACT CONCERNING BAD FAITH CLAIMS OR ASSERTIONS OF
PATENT INFRINGEMENT.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2014*) (a) As used in this
2 section:

3 (1) "Demand letter" means a written communication, including an
4 electronic communication, asserting or claiming that the target has
5 engaged in patent infringement;

6 (2) "Institution of higher education" means "institution of higher
7 education", as defined in Title IV, Part B of the Higher Education Act
8 of 1965;

9 (3) "Person" means a natural person, corporation, limited liability
10 company, trust, partnership, incorporated or unincorporated
11 association, or any other legal entity;

12 (4) "Target" means a person (A) who has received a demand letter,
13 (B) who has been named as a defendant in a civil action alleging patent

14 infringement, or (C) whose customers have received a demand letter;
15 and

16 (5) "Technology transfer organization" means an organization
17 owned by or affiliated with an institution of higher education whose
18 primary purpose is to facilitate the commercialization of technologies
19 developed by one or more institutions of higher education.

20 (b) No person shall make a bad faith claim or assertion of patent
21 infringement.

22 (c) A target of conduct involving a bad faith claim or assertion of
23 patent infringement may bring an action in the superior court for the
24 judicial district in which a violation of any provision of this section
25 occurs to enforce the provisions of this section.

26 (d) In determining whether a person has made a bad faith claim or
27 assertion of patent infringement, a court may consider factors that
28 include, but are not limited to, the following:

29 (1) Whether a demand letter contained: (A) The patent number, (B)
30 the name and address of the patent owner and assignee, if any, and (C)
31 factual allegations concerning the specific areas in which a target's
32 products, services and technology infringe upon the terms of the
33 patent;

34 (2) Whether the person sending a demand letter: (A) Prior to
35 sending such demand letter, conducted an analysis of the terms of the
36 patent relative to the target's products, services and technology, and, if
37 such an analysis was conducted, (B) included the results of any such
38 analysis in the demand letter and specifically identified the ways in
39 which a target's products, services and technology infringe upon the
40 terms of the patent;

41 (3) If a demand letter does not contain the information specified in
42 subdivisions (1) and (2) of this subsection and the target requested that

43 such information be provided, whether the sender of the demand letter
44 provided such information not later than thirty days following the
45 date on which the target requested that the information be provided;

46 (4) Whether a demand letter included a demand for a response or
47 the payment of a license fee within an unreasonable period of time;

48 (5) Whether a person alleging patent infringement offered to license
49 the patent for a sum of money that is not based on a reasonable
50 estimate of the value of the license;

51 (6) Whether the claim or assertion of patent infringement is
52 meritless and the person making such claim or assertion knew or
53 should have known that such claim or assertion is meritless;

54 (7) Whether the claim or assertion of patent infringement is
55 deceptive; and

56 (8) Whether a person making the claim or assertion of patent
57 infringement, or a subsidiary or an affiliate of such person, has
58 previously filed or threatened to file one or more civil actions based on
59 the same or a similar claim of patent infringement and (A) such civil
60 action or threatened civil action failed to include the information
61 specified in subdivision (1) of this subsection, or (B) such civil action
62 was found to be without merit by the court.

63 (e) In determining whether a person has made a good faith claim or
64 assertion of patent infringement, the court may consider factors that
65 include, but are not limited to, the following:

66 (1) Whether a demand letter contained the information specified in
67 subdivision (1) of subsection (d) of this section;

68 (2) If a demand letter did not contain the information specified in
69 subdivision (1) of subsection (d) of this section and the target
70 requested that the person sending the demand letter provide such
71 information, whether the person provided such information not later

72 than thirty days following the date on which the target requested that
73 the information be provided;

74 (3) Whether the person engaged in a good faith effort to establish
75 that the target has infringed the patent and to negotiate an appropriate
76 remedy;

77 (4) Whether the person has made a substantial investment in the use
78 of the patent or in the production or sale of a product or item covered
79 by the patent;

80 (5) Whether the person is: (A) The sole or a joint inventor of a
81 patent, or in the case of a patent filed by and awarded to an assignee,
82 the original assignee, or (B) an institution of higher education or a
83 technology transfer organization; and

84 (6) Whether the person has: (A) Demonstrated good faith business
85 practices in previous efforts to enforce the patent, or a substantially
86 similar patent, or (B) successfully enforced the patent or a substantially
87 similar patent through a civil action.

88 (f) Upon motion by a target and a finding by the court that a target
89 has established a reasonable likelihood that a person has made a bad
90 faith claim or assertion of patent infringement in violation of this
91 section, the court shall require the person to post a bond in an amount
92 equal to a target's good faith estimate of the costs to litigate the claim
93 and amounts that are reasonably likely to be recovered under this
94 section, conditioned upon payment of any amounts finally determined
95 by the court to be due to a target. A hearing on the target's motion for
96 the posting of a bond shall be held if requested by either party. Any
97 bond ordered pursuant to this section shall not exceed the sum of two
98 hundred fifty thousand dollars. The court may waive the bond if it
99 finds the person has available assets equal to or in excess of the
100 ordered bond or for good cause shown.

101 (g) In any civil action brought under this section in which the

102 plaintiff prevails, the court may order: (1) Equitable relief, (2) actual
103 damages, (3) reasonable costs and attorney's fees, and (4) punitive
104 damages not to exceed an amount equal to five hundred thousand
105 dollars or three times the total of actual damages and reasonable costs
106 and attorney's fees, whichever is greater.

107 (h) The Attorney General, acting on behalf of the state of
108 Connecticut, may bring an action in the superior court for the judicial
109 district in which a violation of any provision of this section occurs to
110 enforce the provisions of this section. In any such action, the Attorney
111 General may obtain, for the benefit of persons adversely affected by a
112 violation of this section, any relief to which such persons may be
113 entitled. The Attorney General may combine such action with any
114 other action within the Attorney General's power to maintain,
115 including an action under chapter 735a of the general statutes. Nothing
116 in this section shall limit the right of a person adversely affected by
117 violations of the law from bringing a private cause of action under this
118 section or any other law that may entitle such person to relief.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2014</i>	New section

Statement of Purpose:

To provide judicial relief to persons who are the targets of bad faith claims or assertions of patent infringement.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]