



General Assembly

**Substitute Bill No. 258**

February Session, 2014



**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  
37 (B) if such an analysis was conducted, 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 the 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 the target. A hearing on the target's motion  
96 for 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.

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

**Statement of Legislative Commissioners:**

In section 1(d)(2), the subparagraph designator "(B)" was moved to before, rather than after, the "if such an analysis was conducted" clause for clarity. In section 1(f), references to "a target's" and "a target" were changed to "the target's" and "the target" for consistency and clarity.

**JUD**      *Joint Favorable Subst. -LCO*