

IC 24-11-3

Chapter 3. Assertions of Patent Infringements in Bad Faith Prohibited

IC 24-11-3-1

Assertion of claim of patent infringement in bad faith prohibited

Sec. 1. A person may not assert a claim of patent infringement in bad faith.

As added by P.L.172-2015, SEC.1.

IC 24-11-3-2

Factors as evidence of bad faith

Sec. 2. (a) A court may consider the following factors as evidence that a person has made an assertion of patent infringement in bad faith:

- (1) The person distributed a demand letter that does not contain all the following information:
 - (A) The patent number of the patent that the person claims is being infringed.
 - (B) The name and address of:
 - (i) a patent owner;
 - (ii) if applicable, any assignee of the patent; and
 - (iii) if applicable, a patent owner's or assignee's agent who is retained by the patent owner or assignee to enforce the patent.
 - (C) Factual allegations identifying specific areas in which the target's products, services, and technology infringe the patent or are covered by the claims in the patent.
- (2) The person fails to:
 - (A) conduct an analysis comparing the claims in the patent to the target's products, services, and technology; or
 - (B) identify, if the person conducts an analysis described in clause (A), specific areas in which the target's products, services, and technology are covered by the claims in the patent.
- (3) If the demand letter does not contain the information described in subdivision (1), the person that distributed the demand letter fails to provide the information within a reasonable amount of time after the target requests the information.
- (4) The person demands:
 - (A) payment of a license fee; or
 - (B) a response from the target;within an unreasonably short period of time.
- (5) The person offers to license the patent for an amount that is not based on a reasonable estimate of the value of the license.
- (6) The claim or assertion of patent infringement is meritless, and the person knew, or should have known, that the claim or

assertion is meritless.

(7) The claim or assertion of patent infringement is deceptive.

(8) The person or the person's subsidiaries or affiliates have previously filed or threatened to file a lawsuit based on the same or similar claim of patent infringement and the:

(A) filing or threats to file lacked the information described in subdivision (1); or

(B) person attempted to enforce the claim of patent infringement in litigation and a court found the claim to be meritless.

(9) Any other factor the court finds relevant.

(b) A person may not use the failure of a target to request any information described in subsection (a)(1) that is not contained in the demand letter as a defense to an action under this article.

As added by P.L.172-2015, SEC.1. Amended by P.L.149-2016, SEC.73.

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Factors as evidence of not bad faith

Sec. 3. A court may consider the following factors as evidence that a person has not made a bad faith assertion of patent infringement:

(1) The demand letter contains the information described in section 2(a)(1) of this chapter.

(2) If the:

(A) demand letter lacks the information described in section 2(a)(1) of this chapter; and

(B) target requests the information;

the person provides the information to the target within a reasonable period of time.

(3) The person engages in a good faith effort to:

(A) establish that the target has infringed the patent; and

(B) negotiate an appropriate remedy.

(4) The person makes a substantial investment in the:

(A) use of the patent; or

(B) production or sale of a product or item covered by the patent.

(5) The person is:

(A) the inventor or joint inventor of the patent; or

(B) if the patent was filed by and awarded to an assignee of the original inventor or joint inventor, the original assignee.

(6) The person has:

(A) demonstrated good faith business practices in previous efforts to enforce the patent or a substantially similar patent; or

(B) successfully enforced the patent, or a substantially similar patent, through litigation.

(7) Any other factor the court finds relevant.

As added by P.L.172-2015, SEC.1.