

1                                   A bill to be entitled  
 2           An act relating to patent infringement; creating part  
 3           VII of chapter 501, F.S., entitled the "Patent Troll  
 4           Prevention Act"; creating s. 501.991, F.S.; providing  
 5           legislative intent; creating s. 501.992, F.S.;  
 6           defining terms; creating s. 501.993, F.S.; prohibiting  
 7           bad faith assertions of patent infringement from being  
 8           made; providing factors that a court may consider when  
 9           determining whether an allegation was or was not made  
 10          in bad faith; creating s. 501.994, F.S.; authorizing a  
 11          court to require a patent infringement plaintiff to  
 12          post a bond under certain circumstances; limiting the  
 13          bond amount; authorizing the court to waive the bond  
 14          requirement in certain circumstances; creating s.  
 15          501.995, F.S.; authorizing private rights of action  
 16          for violations of this part; authorizing the court to  
 17          award certain relief to prevailing plaintiffs;  
 18          creating s. 501.997, F.S.; providing exemptions;  
 19          providing an effective date.

20  
 21 Be It Enacted by the Legislature of the State of Florida:

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 23           Section 1. Part VII of chapter 501, Florida Statutes,  
 24 consisting of ss. 501.991-501.997, Florida Statutes, is created  
 25 and is entitled the "Patent Troll Prevention Act."

26           Section 2. Section 501.991, Florida Statutes, is created

27 | to read:

28 | 501.991 Legislative intent.—

29 | (1) The Legislature recognizes that it is preempted from  
30 | passing any law that conflicts with federal patent law. However,  
31 | the Legislature recognizes that the state is dedicated to  
32 | building an entrepreneurial and business-friendly economy where  
33 | businesses and consumers alike are protected from abuse and  
34 | fraud. This includes protection from abusive and bad faith  
35 | demands and litigation.

36 | (2) Patents encourage research, development, and  
37 | innovation. Patent holders have a legitimate right to enforce  
38 | their patents. The Legislature does not wish to interfere with  
39 | good faith patent litigation or the good faith enforcement of  
40 | patents. However, the Legislature recognizes a growing issue:  
41 | the frivolous filing of bad faith patent claims that have led to  
42 | technical, complex, and especially expensive litigation.

43 | (3) The expense of patent litigation, which may cost  
44 | millions of dollars, can be a significant burden on companies  
45 | and small businesses. Not only do bad faith patent infringement  
46 | claims impose undue burdens on individual businesses, they  
47 | undermine the state's effort to attract and nurture  
48 | technological innovations. Funds spent to help avoid the threat  
49 | of bad faith litigation are no longer available for serving  
50 | communities through investing in producing new products, helping  
51 | businesses expand, or hiring new workers. The Legislature wishes  
52 | to help its businesses avoid these costs by encouraging good

53 faith assertions of patent infringement and the expeditious and  
54 efficient resolution of patent claims.

55 Section 3. Section 501.992, Florida Statutes, is created  
56 to read:

57 501.992 Definitions.—As used in this part, the term:

58 (1) "Demand letter" means a letter, e-mail, or other  
59 communication asserting or claiming that a person has engaged in  
60 patent infringement.

61 (2) "Institution of higher education" means an educational  
62 institution as defined in 20 U.S.C. s. 1001(a).

63 (3) "Target" means a person, including the person's  
64 customers, distributors, or agents, residing in, incorporated  
65 in, or organized under the laws of this state which:

66 (a) Has received a demand letter or against whom an  
67 assertion or allegation of patent infringement has been made;

68 (b) Has been threatened with litigation or against whom a  
69 lawsuit has been filed alleging patent infringement; or

70 (c) Whose customers have received a demand letter  
71 asserting that the person's product, service, or technology has  
72 infringed upon a patent.

73 Section 4. Section 501.993, Florida Statutes, is created  
74 to read:

75 501.993 Bad faith assertions of patent infringement.—A  
76 person may not make a bad faith assertion of patent  
77 infringement.

78 (1) A court may consider the following factors as evidence

79 that a person has made a bad faith assertion of patent  
80 infringement:

81 (a) The demand letter does not contain the following  
82 information:

83 1. The patent number;

84 2. The name and address of the patent owner and assignee,  
85 if any; and

86 3. Factual allegations concerning the specific areas in  
87 which the target's products, services, or technology infringe or  
88 are covered by the claims in the patent.

89 (b) Before sending the demand letter, the person failed to  
90 conduct an analysis comparing the claims in the patent to the  
91 target's products, services, or technology, or the analysis did  
92 not identify specific areas in which the target's products,  
93 services, and technology were covered by the claims of the  
94 patent.

95 (c) The demand letter lacked the information listed under  
96 paragraph (a), the target requested the information, and the  
97 person failed to provide the information within a reasonable  
98 period of time.

99 (d) The demand letter requested payment of a license fee  
100 or response within an unreasonable period of time.

101 (e) The person offered to license the patent for an amount  
102 that is not based on a reasonable estimate of the value of the  
103 license.

104 (f) The claim or assertion of patent infringement is

105 unenforceable, and the person knew, or should have known, that  
106 the claim or assertion was unenforceable.

107 (g) The claim or assertion of patent infringement is  
108 deceptive.

109 (h) The person, including its subsidiaries or affiliates,  
110 has previously filed or threatened to file one or more lawsuits  
111 based on the same or a similar claim of patent infringement and:

112 1. The threats or lawsuits lacked the information listed  
113 under paragraph (a); or

114 2. The person sued to enforce the claim of patent  
115 infringement and a court found the claim to be meritless.

116 (i) Any other factor the court finds relevant.

117 (2) A court may consider the following factors as evidence  
118 that a person has not made a bad faith assertion of patent  
119 infringement:

120 (a) The demand letter contained the information listed  
121 under paragraph (1) (a).

122 (b) The demand letter did not contain the information  
123 listed under paragraph (1) (a), the target requested the  
124 information, and the person provided the information within a  
125 reasonable period of time.

126 (c) The person engaged in a good faith effort to establish  
127 that the target has infringed the patent and negotiated an  
128 appropriate remedy.

129 (d) The person made a substantial investment in the use of  
130 the patented invention or discovery or in a product or sale of a

131 product or item covered by the patent.

132 (e) The person is the inventor or joint inventor of the  
 133 patented invention or discovery, or in the case of a patent  
 134 filed by and awarded to an assignee of the original inventor or  
 135 joint inventors, is the original assignee.

136 (f) The person has:

137 1. Demonstrated good faith business practices in previous  
 138 efforts to enforce the patent, or a substantially similar  
 139 patent; or

140 2. Successfully enforced the patent, or a substantially  
 141 similar patent, through litigation.

142 (g) Any other factor the court finds relevant.

143 Section 5. Section 501.994, Florida Statutes, is created  
 144 to read:

145 501.994 Bond.—If a person initiates a proceeding against a  
 146 target in a court of competent jurisdiction, the target may move  
 147 that the proceeding involves a bad faith assertion of patent  
 148 infringement in violation of this part and request that the  
 149 court issue a protective order. After the motion, and if the  
 150 court finds that the target has established a reasonable  
 151 likelihood that the plaintiff has made a bad faith assertion of  
 152 patent infringement, the court must require the plaintiff to  
 153 post a bond in an amount equal to the lesser of \$250,000 or a  
 154 good faith estimate of the target's expense of litigation,  
 155 including an estimate of reasonable attorney fees, conditioned  
 156 on payment of any amount finally determined to be due to the

157 target. The court shall hold a hearing at either party's  
158 request. A court may waive the bond requirement for good cause  
159 shown or if it finds the plaintiff has available assets equal to  
160 the amount of the proposed bond.

161 Section 6. Section 501.995, Florida Statutes, is created  
162 to read:

163 501.995 Private right of action.—A person aggrieved by a  
164 violation of this part may bring an action in a court of  
165 competent jurisdiction. A court may award the following remedies  
166 to a prevailing plaintiff in an action brought pursuant to this  
167 section:

- 168 (1) Equitable relief;  
169 (2) Damages;  
170 (3) Costs and fees, including reasonable attorney fees;

171 and

- 172 (4) Punitive damages in an amount equal to \$50,000 or  
173 three times the total damages, costs, and fees, whichever is  
174 greater.

175 Section 7. Section 501.997, Florida Statutes, is created  
176 to read:

177 501.997 Exemptions.—This part does not apply to an  
178 institution of higher education, to a technology transfer  
179 organization owned by or affiliated with an institution of  
180 higher education, or to a demand letter or an assertion of  
181 patent infringement that includes a claim for relief arising  
182 under 35 U.S.C. s. 271(e)(2) or 42 U.S.C. s. 262.

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Section 8. This act shall take effect upon becoming a law.