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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/16/2015	.	
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The Committee on Appropriations (Richter) recommended the following:

Senate Amendment (with title amendment)

Between lines 156 and 157
insert:

Section 6. The Division of Law Revision and Information is directed to create part VII of chapter 501, Florida Statutes, consisting of ss. 501.991-501.997, Florida Statutes, to be entitled the "Patent Troll Prevention Act."

Section 7. Section 501.991, Florida Statutes, is created to read:



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11 501.991 Legislative intent.-

12 (1) The Legislature recognizes that it is preempted from
13 passing any law that conflicts with federal patent law. However,
14 the Legislature recognizes that the state is dedicated to
15 building an entrepreneurial and business-friendly economy where
16 businesses and consumers alike are protected from abuse and
17 fraud. This includes protection from abusive and bad faith
18 demands and litigation.

19 (2) Patents encourage research, development, and
20 innovation. Patent holders have a legitimate right to enforce
21 their patents. The Legislature does not wish to interfere with
22 good faith patent litigation or the good faith enforcement of
23 patents. However, the Legislature recognizes a growing issue:
24 the frivolous filing of bad faith patent claims that have led to
25 technical, complex, and especially expensive litigation.

26 (3) The expense of patent litigation, which may cost
27 millions of dollars, can be a significant burden on companies
28 and small businesses. Not only do bad faith patent infringement
29 claims impose undue burdens on individual businesses, they
30 undermine the state's effort to attract and nurture
31 technological innovations. Funds spent to help avoid the threat
32 of bad faith litigation are no longer available for serving
33 communities through investing in producing new products, helping
34 businesses expand, or hiring new workers. The Legislature wishes
35 to help its businesses avoid these costs by encouraging good
36 faith assertions of patent infringement and the expeditious and
37 efficient resolution of patent claims.

38 Section 8. Section 501.992, Florida Statutes, is created to
39 read:



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40 501.992 Definitions.—As used in this part, the term:
41 (1) "Demand letter" means a letter, e-mail, or other
42 communication asserting or claiming that a person has engaged in
43 patent infringement.

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

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

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

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

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

56 Section 9. Section 501.993, Florida Statutes, is created to
57 read:

58 501.993 Bad faith assertions of patent infringement.—A
59 person may not make a bad faith assertion of patent
60 infringement.

61 (1) A court may consider the following factors as evidence
62 that a person has made a bad faith assertion of patent
63 infringement:

64 (a) The demand letter does not contain the following
65 information:

66 1. The patent number;

67 2. The name and address of the patent owner and assignee,
68 if any; and



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

72 (b) Before sending the demand letter, the person failed to
73 conduct an analysis comparing the claims in the patent to the
74 target's products, services, or technology, or the analysis did
75 not identify specific areas in which the target's products,
76 services, and technology were covered by the claims of the
77 patent.

78 (c) The demand letter lacked the information listed under
79 paragraph (a), the target requested the information, and the
80 person failed to provide the information within a reasonable
81 period.

82 (d) The demand letter requested payment of a license fee or
83 response within an unreasonable period.

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

87 (f) The claim or assertion of patent infringement is
88 unenforceable, and the person knew, or should have known, that
89 the claim or assertion was unenforceable.

90 (g) The claim or assertion of patent infringement is
91 deceptive.

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

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

97 2. The person sued to enforce the claim of patent



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98 infringement and a court found the claim to be meritless.

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

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

103 (a) The demand letter contained the information listed
104 under paragraph (1)(a).

105 (b) The demand letter did not contain the information
106 listed under paragraph (1)(a), the target requested the
107 information, and the person provided the information within a
108 reasonable period.

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

112 (d) The person made a substantial investment in the use of
113 the patented invention or discovery or in a product or sale of a
114 product or item covered by the patent.

115 (e) The person is the inventor or joint inventor of the
116 patented invention or discovery, or in the case of a patent
117 filed by and awarded to an assignee of the original inventor or
118 joint inventors, is the original assignee.

119 (f) The person has:

120 1. Demonstrated good faith business practices in previous
121 efforts to enforce the patent, or a substantially similar
122 patent; or

123 2. Successfully enforced the patent, or a substantially
124 similar patent, through litigation.

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

126 Section 10. Section 501.994, Florida Statutes, is created



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127 to read:

128 501.994 Bond.—If a person initiates a proceeding against a
129 target in a court of competent jurisdiction, the target may move
130 that the proceeding involves a bad faith assertion of patent
131 infringement in violation of this part and request that the
132 court issue a protective order. After the motion, and if the
133 court finds that the target has established a reasonable
134 likelihood that the plaintiff has made a bad faith assertion of
135 patent infringement, the court must require the plaintiff to
136 post a bond in an amount equal to the lesser of \$250,000 or a
137 good faith estimate of the target's expense of litigation,
138 including an estimate of reasonable attorney fees, conditioned
139 on payment of any amount finally determined to be due to the
140 target. The court shall hold a hearing at either party's
141 request. A court may waive the bond requirement for good cause
142 shown or if it finds the plaintiff has available assets equal to
143 the amount of the proposed bond.

144 Section 11. Section 501.995, Florida Statutes, is created
145 to read:

146 501.995 Private right of action.—A person aggrieved by a
147 violation of this part may bring an action in a court of
148 competent jurisdiction. A court may award the following remedies
149 to a prevailing plaintiff in an action brought pursuant to this
150 section:

- 151 (1) Equitable relief;
152 (2) Damages;
153 (3) Costs and fees, including reasonable attorney fees; and
154 (4) Punitive damages in an amount equal to \$50,000 or three
155 times the total damages, costs, and fees, whichever is greater.



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156 Section 12. Section 501.997, Florida Statutes, is created
157 to read:

158 501.997 Exemptions.—This part does not apply to an
159 institution of higher education, to a technology transfer
160 organization owned by or affiliated with an institution of
161 higher education, or to a demand letter or an assertion of
162 patent infringement that includes a claim for relief arising
163 under 35 U.S.C. s. 271(e)(2) or 42 U.S.C. s. 262.

164
165 ===== T I T L E A M E N D M E N T =====

166 And the title is amended as follows:

167 Delete line 14

168 and insert:

169 intent; providing a directive to the Division of Law
170 Revision and Information; creating s. 501.991, F.S.;

171 providing legislative intent; creating s. 501.992,
172 F.S.; defining terms; creating s. 501.993, F.S.;

173 prohibiting bad faith assertions of patent
174 infringement from being made; providing factors that a
175 court may consider when determining whether an
176 allegation was or was not made in bad faith; creating
177 s. 501.994, F.S.; authorizing a court to require a
178 patent infringement plaintiff to post a bond under
179 certain circumstances; limiting the bond amount;
180 authorizing the court to waive the bond requirement in
181 certain circumstances; creating s. 501.995, F.S.;

182 authorizing private rights of action for violations of
183 this part; authorizing the court to award certain
184 relief to prevailing plaintiffs; creating s. 501.997,



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185 F.S.; providing exemptions; amending s. 960.03, F.S.;

186 revising the