

**From:** Michael D

**Sent:** Tuesday, February 26, 2013 9:57 AM

**To:** SoftwareRoundtable2013

**Subject:** SOFTWARE PARTNERSHIP SECOND TOPIC PROPOSAL \_ PLEASE CONFIRM RECEIPT

Dear Sirs:

Please find herein, and attached as MS-Word and PDF documents, a proposal for a second topic of discussion, as per your request from the public.

Dear Sirs:

The following is responsive to USPTO request for comments for additional topics for future discussion by the Software Partnership:

New Topic: Divergent Interests of Markets and Innovation in Patent Infringement Enforcement, Corporations vs. Small Business in the Courts

Problem: The current operation of patent law in the courts including declaratory judgments and lack of standards for levels of infringement other than "willful"

- 1) promotes the advisable disregard of patent law by corporations until the completion of an appealed jury verdict or injunction, a virtually impossible ordeal for a small business or inventor thereby promoting the rise of "trolling" by NPE's.
- 2) prevents normal communications surrounding licensing, including the sending of letters of infringement,
- 3) promotes litigation as the only solution to enforcement,
- 4) prevents corporations from reviewing potential infringement prior to the development of products or services, and
- 5) limits the ability of inventors and small business to raise capital, further develop, market, or exploit their inventions in commerce.

This condition greatly limits the value of patents to inventors and small companies, and is therefore at odds with the constitutional basis for patent law, "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries," favoring capital and markets over the spirit of innovation and its protection.

Comment: New laws and regulations are required to:

- 1) enable for the approaching party safe non-disadvantageous communications surrounding licensing and infringement,
- 2) create levels of infringement for "negligent disregard" of a less high standard than "willful infringement," with meaningful multiples of damages for each,
- 3) clarify the means and standards by which corporations may be in compliance with those levels, such as as personnel requirements per corporation size dedicated to the review of potential infringement, to their advantage rather than their disadvantage,
- 4) promote as a reference, a registry organized in a taxonomy grouping patents according to their relevance to market areas, especially in new and emerging markets, and
- 5) promote public awareness and discourse of major patents and patent portfolios in new and emerging markets, including the possible scope of their patent claims.
- 6) promote by any and all means the pre-enforcement value in commerce of holding a patent.

Submitted by:

exec1000@gmail.com