

From: Michael D
Sent: Monday, April 15, 2013 8:34 AM
To: SoftwareRoundtable2013
Subject: SOFTWARE PARTNERSHIP COMMENTS

Dear Sirs:

Please find herein, and attached as MS-Word, RTF, and PDF document, further comments as per your request from the public.

Michael D.

Dear Sirs:

The following is responsive to USPTO request for comments 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

Suggested:

1. Eliminate declaratory relief actions for patent law, enabling patent holders to discuss licensing and infringement with corporations in their market place.
2. Create an explicit “duty of care” for all corporations with more than ten employees detailing hours or research required, according to company size, to be spent responsibly researching patents prior to product development.
3. Create a government monitored portal to log companies, personnel, and research time, and let a failure of compliance be an absolute determination of wilfulness in future patent infringement.
4. Require corporations to post full bonds for appeals from judgment and if the defendant is a large corporation and the plaintiff a small business, make the corporation pay attorney fees to date and ongoing fees for the appeal.
5. Strengthen patents themselves by grant the USPTO the sole authority to invalidate patents, while infringement, not validity, is argued in the Federal courts.
6. Add the word “fund,” to “make, use, offer to sell, or sell...” as applying to professional venture funds, and hold them to the same standard of research compliance as corporations.

Argument:

The patent system is fundamentally failing inventors and small business in its constitutionally charted purpose to foster innovation. Corporations do not innovate; inventors do. Inventors

assigning inventions to corporations mostly are pursuing innovation at the direction of management in order to exploit markets. Product development personnel are directed to not research patents in order to avoid late claims of willful infringement.

This leaves inventors attempting to exploit their own inventions and grow a business with few alternatives. With large corporations and well-funded venture-funded start-ups ignoring existing patents, there is no incentive for capital to assist those holding patents. Fundamentally, this means in present law a patent is not considered sufficient property upon which the inventor can build.

Instead, with markets for their innovation taken, most inventors then find themselves in the position of needing a massive amount of time and capital to pursue infringement claims in the court, the exact opposite effect of attracting capital to their invention in order to build business. Few will succeed at this effort, ultimately achieving only one-half of one percent of the one percent of successfully commercialized patents. In other words, less than five in ten thousand independent inventors will ever see financial gain from their innovation.

Yet many inventors are willing to collaborate with large business through licensing, strategic partnership, or sale of technology. Instead, because of the laws surrounding declaratory relief, the filing of a lawsuit is necessary to even open a discussion of licensing, let alone infringement. However, capital and corporations will always follow economic advantage, which now lies with ignoring patents and inventors until an inventor or monetizing entity is able to mount infringement litigation.

Under present law patent monetization entities will and must continue to grow because the courts and the law offer no practical means, principally because of the costs of infringement litigation, for redressing harm done to inventors and small business when their patents are infringed.

The present operation of patent law in the courts pits capital and markets against small business and inventors with small business with the inventors inevitably being the losers, along with the constitutionally purpose of fostering innovation.

Submitted by:

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