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Sent: Saturday, April 06, 2013 12:12 AM
To: ATR-LPS-PAEPublicComments
Subject: Request for Comment re: Patent Assertion Entities Activities

Thank you for investigating this serious problem. Given the volume of litigation and the exponentially larger threats of litigation by PAEs, and more importantly, how their patents have not been used "to promote the progress of science and useful arts," it is clear the current patent system is wreaking unintended havoc.

The harm to consumers and existing businesses are well known, but I ask the DOJ to also consider how patent abuse threatens the creation of new businesses.

After a year of development, I was on the verge of launching a new company but I was shocked to discover my business activities--although common and in widespread use for decades--would violate a recently granted patent. Now I spend each day trying to determine if I may start my business, and if so, at what risk and cost. If not for these questionable patents and the all too real threat of PAEs, I would be in business today.

As a layman, I can't speak authoritatively about the current state of our patent system, but I can share my perspective as an average citizen.

- Patents were to be awarded to genuine, specific innovations, but today many patents asserted by PAEs are broadly scoped with commonly used or obvious methods. Not only do these patents directly endanger many companies, they harm the credibility of the patent system itself.
- Patents are intended to promote progress but PAEs seek not to promote progress but to prevent it by disallowing others its rightful use.
- Patents were created to protect innovation but today PAEs use them to extort. PAEs have transmorphed the patent system into an illegitimate commercial market where the innovation is not the source of commerce, rather commerce is derived through the threat of patent enforcement.
- Patent abuse enriches a small group of special interests at the cost of every business, citizen, and society itself. These government sanctioned monopolies are as harmful as the private monopolies which the government is tasked to prevent.
- And finally, the Government's enablement and sustaining of this distortion of the patent system undermines the public faith in both government and law.

That said, PAEs are merely the symptom of the true problem: The patents themselves. PAEs are unintended loopholes of the law and they can only be effectively dealt with by eliminating these loopholes. The problem is not with the law nor its enforcement, it is in the determination of what is granted patent protection.

ADDENDUM

Assume you're having a large family reunion and you're asked to buy several dozen t-shirts with your family's name printed on them to commemorate the event. How would you generally do this? (For example, "I'd start by looking in the phonebook for "t-shirt printers" and then call them to see if they can do this job. Then I'd get a price quote, choose a printer and place the order.")

Now assume your boss overhears you discussing the reunion and the nice t-shirts you got with a co-worker. She asks if you would mind ordering some polo shirts for an upcoming company event and you agree. You contact the same company you used before but unfortunately they don't sell polos, they only sell t-shirts. What do you do? (For example, "I go back the phonebook and call more companies until I find someone that sells custom printed polos. Get a quote, etc.")

You manage to acquire the polos and your boss is very pleased. She asks if you would buy some more but this time she wants the company's logo embroidered. So you contact the previous vendor but they cannot do embroidery. So again, what do you do?

After awhile you realize that reselling these customized shirts could be a good business opportunity. So you decide to open your own company. You're fortunate and have a lot customer inquiries for a variety of imprinted items--hats, jackets, sweatshirts, etc. You already have a list of the vendors you called on before, but you need to select vendors depending on what the customer wants, and you need need pricing from these vendors. What is the best, fastest way you can think of to do this?

That's the end of the exercise. Do you have a basic working solution to this problem? Good. Then if you're like every person I've walked through this exercise, this is the point where I inform you that you can be sued for patent infringement.

To see if you are in violation, I ask you to read the following article written by the holder of U.S. Patent 7,451,106.¹

Let's say, I buy a bottle of water. [. . .] The label [. . .] is printed on some sort of material that adheres to the bottle [. . .] it has a scanable bar code [. . .] a special tab that I can remove for a price discount. All of these features on the label on the bottle are called specifications. [. . .] Specifications are what tell suppliers of labels exactly how to manufacture the labels. [. . .]

Now let's say you are the buyer and have the list of specifications all ready to go. Now all you need is a supplier. But which one should you use? [. . .] So you do some research and

¹ "How does this business method patent affect me? Is The Gindlesperger Method for real?," CEOWORLD Magazine 7 January 2009.

¹<http://ceoworld.biz/ceo/2009/01/07/how-does-this-business-method-patent-affect-me-is-the-gindlesperger-method-for-real>

build a nice portfolio of suppliers. [. . .] You now have more than 100 suppliers that can do the work, plus you discover that many of these suppliers have special characteristics, like being woman-owned, being minority-owned, having an active green environmental production program [. . .]. Each of these characteristics is an attribute.

You try to list all of these attributes on a piece of paper for each of the hundred-plus suppliers and you soon discover you are creating a nightmare. [. . .] Ah, you decide to put this information into a computer-operated database system. Easy enough, you're back in control.

Now, you get really smart and enter your specifications into the same computer-operated database system. You tell the system to match these specifications and other requirements [. . .] to the attributes of the suppliers you previously entered [. . .]. Up pops a list of just 20 such suppliers that match exactly your specifications, out of the hundred plus you previously entered.

You look at the list of 20 qualified suppliers. You ask, how do I get the specifications to each of these suppliers? [. . .] Oh, you say, I'll *just* let my computer-operated system automatically send the specifications to each of the 20 qualified suppliers, and then each supplier will be able to send its price back to me for my computer-operated system to receive and release to me.

Now that I have this all figured out and a computer-operated system put together, I look in my in box [sic] and low and behold there are hundreds of more label requests [. . .] that need processed. Fortunately, all I have to do is to input the specifications and let the computer-operated system do the rest.

That is the essence of the business method patent called The Gindlesperger Method.

When I went through this exercise with a 73 year old widowed housewife with no prior business experience and almost no computer skills, she described the exact same steps above.

When I told her that she could be sued for patent infringement, she said, "That's impossible. Really?!? Then that's stupid. That's not fair...it doesn't make any sense! I don't know anything and I figured this out by myself, and that's illegal? How else would you do it?"

My point exactly: This is a glaringly obvious solution to a common problem. It is using a fax machine to fax an invoice, nothing more.

But according to the USPTO, we are violating Patent 7,451,106. How likely is it that we will be sued?

Well, his company already sued J.C. Penney Corp. Inc., Staples, Dr. Pepper Snapple Group, NewLineNoosh, Taylor Corporation, Rent-a-Center, R.R. Donnelley, The Standard Register Company, Innerworkings, Ariba, Emptoris, PrintVision, Cirqit.com, Williams LEA, and RBO Printlogistix, Inc., and there is likely to be many, many more according to this Morning Herald article²

10 years later, Chambersburg company gets its patent

November 12, 2008

by Don Aines

...on Tuesday, U.S. Patent No. 7,451,106 for "The Gindlesperger Method" was officially registered and posted, a patent he believes "is worth several billions of dollars once it is rolled out to the entire market." [. . .] He called the patent "revolutionary. It forms the backbone for any electronic system that manages the procurement of customized goods and services. "

[. . .] The company is in negotiations with a major law firm to handle the licensing and enforcement of the patent, including agreements with companies that adopted the method since the application was filed [in November 1998], he said.

The final question in this exercise: Now that you know you are likely violating this patent and it is held by a litigious PAE, what do you do now?

² "10 years later, Chambersburg company gets its patent," The Morning Herald, 12 November 2008.

² http://articles.herald-mail.com/2008-11-12/news/25058923_1_business-method-patent-new-patent-patent-application

It is incomprehensible to think that upon the patenting of the ballpoint pen in 1888 that the USPTO would also grant a patent forbidding a store owner from writing an invoice with said ballpoint pen. Or in 1960, requiring a store owner to license the use of an electronic calculator to calculate the total of an invoice. Or in 1964, requiring license to use a fax machine to fax an invoice. And yet this has inexplicably occurred at the USPTO for decades.

Take the patents in the following addendum as an example. They forbid anyone to use the built-in search feature of their spreadsheet or database to search for certain vendors. How can a patent be granted for using a good for its general intended purpose? And why should a patent be granted to limit a good's application to solve common problems? After all, faxing invoices with a fax machine is simply replicating an existing practice using modern tools. Many of the most egregious patents wielded by PAEs fall under this category and it is a good starting point to begin closing the patent system loopholes that created PAEs.

Thank you very much for your consideration, and I sincerely hope a quick and decisive action is taken to alleviate the unintended yet serious widespread harm caused by the current state of our patent system.

Respectfully,
John Valdez