

**FROM:** Art Nutter, president, TAEUS International Corp.  
**TO:** ATR-LPS-PAE Public Comments  
**SUBJECT:** Public Comment on Patent Assertion Entity Activities  
**DATE:** December 7, 2012

**ACTION:** Request for written submissions from the public:

## Patent Assertion Entity Activities

### Overview:

**Examining the potential efficiencies, rewards and harms to innovation and competition from PAE behavior, TAEUS proposes a private-sector solution that requires no government funding or involvement.**

The TAEUS proposal is for a private sector initiative that allows international companies to have access to U.S. patents and markets, thus offering consumers the broadest possible selections and industry the greatest opportunities for innovation, while providing U.S. companies compensation for the use of their patents.

The six goals of a just and effective solution must be:

1. To organize private sector support and funding of an industry solution to its problem
2. To ensure that consumers get the broadest choice of products in the marketplace from the broadest number of competing companies
3. Support the access by global companies to intellectual property needed for product production
4. To encourage industry innovation and new product development through easy access to patents
5. Guarantee that U.S. Companies receive ongoing compensation for the use of their intellectual property
6. Implement an easy, efficient, cost-effective online system for patent identification, marketing, and acquisition

### Background:

Industries that are intellectual property intensive support more than 40 million jobs in the US and contribute more than \$5 trillion to the US gross domestic product (GDP). Put another way, intellectual property intensive industries provide, directly or indirectly, roughly 27 percent of all U.S. jobs and nearly 35 percent of GDP.

Patent assertion entities (PAE) are new businesses that have been created in recent years to take advantage of current practices of intellectual property law and the lack of transparency in comparable patent licensing transactions. The combination of recent high levels of interest in patent licensing and litigation have resulted

in extremely high prices being paid for patents by companies that charge high licensing fees for use of intellectual property, and in unreasonably high damages being awarded in patent litigation.

### **Scope of Response:**

**Patents Only.** For the purpose of this response, we will confine our discussion to patents. Unlike copyright, where copyright holders can frequently be easily identified, it is far more difficult to identify patents relevant to a specific product or process, and equally difficult to find the patent holders, in many cases, because of lack of context.

**Private Sector Funding.** Additionally, because of limited federal funding for some enforcement efforts, we will look at ways that the private sector can provide a significant amount of the resources needed to implement the proposed plan, without drawing on federal funds.

### **PROBLEMS THAT NEED TO BE ADDRESSED:**

Any action by the Government will need to address problems in . . .

- Identification by patent holders of infringed patents,
- Improving the patent licensing process to make the process more efficient while fostering widespread legitimate use of US patents,
- Improving the amount of comparable patent licensing information available to the public to permit more rational assessments of damages and reasonable licensing fees, and
- Improving the process that results in fair and reasonable compensation to patent holders for licenses to their patents.

1. **Identifying appropriate patents.** It is difficult to identify the patents appropriate to a specific product or process, and even more difficult to find all of the relevant patents.

One problem is that in the current process of registering a patent, the name and process does not convey an obvious basis to determine if the patent is relevant to a specific product or process. In short, the patents often lack context and their application to a specific product requires extensive review. When there are many patents relating to a product this review is complex and challenging. For example, Google estimates that there are 240,000 patents just for smartphones. There is a comparable number for flat screen TVs, LEDs for lighting, green energy, and the lists go on.

As a result, it is hard for an honest manufacturer to find all of the appropriate patents they should license, and it is difficult to know how many patents an unlicensed manufacturer's products may be infringing.

**Suggested Solution: *Patent Aggregation by Product.*** One solution is patent data aggregation by product. There are several efforts underway to identify all patents related to specific product categories, such as flat screen TV's, smartphones, steel products and more. For example, TAEUS International Corporation maintains something called *PatentBooks*. A *PatentBook* lists all the patents owned by multiple patent holders by product category.

Legitimate manufacturers can use *PatentBooks* or similar patent aggregation systems based on product to license relevant patents, and enforcement authorities can use the *PatentBook* or patent aggregation database to identify licensed or unlicensed manufacturers of that product.

**2. Simplify the Patent Licensing Process.** Patent holders need to reduce their costs for licensing their patents, while ensuring that they are paid for the use of their patents. Litigation between companies manufacturing popular consumer products increases product costs and reduces consumer choices. The intense Apple vs. Samsung patent litigation may result in both unfavorable outcomes.

Meanwhile, legitimate manufacturers must be able to identify all relevant patents for specific products quickly and efficiently and be able to easily license those patents to mitigate the risk of assertions of infringement. Currently, bilateral patent license negotiations and patent litigations take years, drive up costs, delay new products market entry, and clog the US judicial system.

Further, enforcement authorities need to be able to determine if a manufacturer has licensed the appropriate patents.

**Suggested Solution: *Append a PatentBook.*** One solution would be for the government to append an open and transparent global registry system to a *PatentBook* or other patent aggregation system.

A *PatentBook* is similar to, and an improvement on, the original patent pools that were encouraged by the US government before World War I to enable broader production of aircraft, as the Wright Brothers and Curtiss Aircraft controlled many of the fundamental licenses required to build planes.

Today, patent pools aggregate patents based on universal technology standards, yet, for antitrust issues, necessarily include only those patents that are “Essential” to the underlying technology standards. Blu-Ray, DVD, MPEG, and many telecommunications patents may be licensed via patent pools. Today’s patent pools offer a convenient way to license hundreds of patents through one source.

A *PatentBook* greatly expands on today’s patent pools by offering one license to a vast quantity of patents that may be used by specific products, and distributing licensing income fairly. Utilizing a standard template, patent holders and patent seekers quickly list their patents in the *PatentBook* and begin to collect licensing income directly. Lengthy bilateral licensing negotiations, contentious expensive patent litigation, and narrow patent pool licensing are significantly reduced by *PatentBook* licensing.

Under the PatentBook methodology, patent holders grant the administrator of PatentBook a non-exclusive right to license their listed patents together with all other listed patents to third parties in a single transaction. Patent holders retain all right and title to their patents and may license these patents bilaterally if they so elect. They will not elect to do so if the PatentBook methodology results in broader licensing and higher compensation. PatentBook provides efficient access to patents, but not exclusive access and for that reason it is “pro-competitive.”

**NOTE 1: China anticipates having one or two many-to-many online intellectual property trading platforms up and running within the next few months, according to Peter K. F.**

Cheung, Director of Intellectual Property for Hong Kong and China. To work with this emerging economic giant, the US must be able to operate a similar system for its companies.

**NOTE 2:** Singapore, already home to WIPO and the patent holding companies of many multinational organizations, has made significant moves recently to attract PatentBooks to further advance Singapore as a global hub of patent licensing, according to Mr. Yih San Tan, Chief Executive of the Intellectual Property Office of Singapore.

**NOTE 3:** Luxembourg, a European domicile for many US-based companies intellectual property, has also made significant moves recently to attract PatentBooks to further advance Luxembourg as a global hub of patent licensing, according to Mr. Georges Schmit, Consul General, Executive Director, Luxembourg Trade and Investment Office.

3. **Identify Patent Violators and Provide Access to Publicly available data on the Quality of Patents and the Relative Value of Patents Currently Being Licensed.** Identifying products from manufacturers that may require US patent licenses is a daunting task.

**Suggested Solution: *Online Database and Payment Levels.*** Consider a *PatentBook* database from which aggregation data is drawn that is specific to a product category (not just a technology, not just an industry standard). Consider patent quality metrics defined in a universal and transparent manner (recently adopted by CTEX as “Patent Value Degree”). Consider that higher quality patents receive higher compensation from the single royalty rate for all listed patents that is established in a single transaction. Consider that the single royalty rate is established according to all market factors relevant to the specific product. Now consider the favorable effect on fair and reasonable practices when *PatentBook* payment information is available to the public.

As an example, consider liquid crystal displays (LCDs) where between 25,000 and 50,000 patents may be relevant to a manufacturer’s product. Under the PatentBook methodology, these patents are all licensed in a single transaction at a single royalty rate. For LCD products, and similar consumer electronics products, a royalty rate that is fair to both the patent holder and the manufacturer is roughly 10% of the retail price of the product. To provide patent holders higher compensation for higher quality patents, the patents within the PatentBook are quality-rated using proven and transparent rating criteria. The highest rated 2% of the patents receive 50% of the royalty income distributed to patent holders, the next 13% receive 35%, and the remaining 85% receive 15%.

Patents presented by a PAE may be evaluated using the PatentBook evaluation criteria to determine their quality relative to all the patents used in LCD products. Depending on the quality of the PAE patents, comparable PatentBook revenue distribution amounts may be readily considered. The PAE revenue expectations would likely be judged to be similar to licensing revenue distributions of other patents of similar quality.

## Implementation Considerations

As in all changes, there are a variety of potential problems. These include:

**Cost.** The processes identified above (Patent aggregation, online PatentBook licensing, and notification of potential violations) can be supported by private industry, reducing the demand on government resources.

**Patent Aggregation.** One or more private companies can implement the patent-aggregation-by-product report as suggested above. Currently, TAEUS is one of the few companies to have implemented this type of system.

**Limited Initial Participation.** Not all companies will initially participate in a PatentBook or other patent-aggregation-by-product system, meaning not all the patents that should be included will be included in a specific PatentBook. Further, not all product manufacturers will license patents via the PatentBook initially, as they may believe that a PatentBook license may increase their prices making them less competitive. Additionally, reporting of current patent agreements between a patent holder and a licensee may not initially be reported into the database for business reasons. Adoption of such a new paradigm can reasonably be expected to evolve over time as all stake holders develop an appreciation for the efficiencies of “pro-competitive” aggregation and transactions.

Participation could be expected to be greatest if the system defined above is used by the USICC to automate the monitoring of licensed and unlicensed products entering the US.

**International Agreement.** The online notification of product shipments would need the support of foreign governments and a modification of required shipping documentation.

Implementation of the aggregation, pool, and notification system will need to grow over time beginning with high-value patent areas such as mobile telecommunications and computing devices, LCDs, biomedical devices, alternative energy, etc. Other countries are currently preparing to implement their own systems relative to patents, so a cooperative arrangement with the US to support a US-centric system should be possible.

**Where to Start:** TAEUS proposes initiating a Cooperative Research and Development Agreement (CRADA) between the appropriate government agency and private enterprise. A CRADA is a written agreement between a private company and a government agency to work together on a project. Created because of the Stevenson-Wydler Technology Innovation Act of 1980, as amended by the Federal Technology Transfer Act of 1986, a CRADA allows the Federal government and non-Federal partners to optimize their resources, share technical expertise in a protected environment, and share intellectual property emerging from the effort.

There are several agencies or offices that would be appropriate on the government side of this proposed CRADA, including the Office of the U.S. Intellectual Property Coordinator at the White House or the US International Commerce Commission. TAEUS, in cooperation with other private companies and the government sponsor, would develop a pilot project to demonstrate the practicability of this licensing paradigm as a solution to the public and private sector needs described above.

## **Conclusion**

Thank you for allowing us to submit this document in response to the Antitrust Division of the U.S. Department of Justice and the Federal Trade Commission (FTC) regarding written submissions from the public on Patent Assertion Entity Activities.

We believe that the suggestions given above can . . .

- Allow the Government to move forward at little or no cost to taxpayers;
- Identify and aggregate patents appropriate to specific products to assist licensing legitimate product manufacturers to avoid litigation and to compensate patent holders;
- Simplify the current patent promotion, licensing and monetization process by establishing effective and convenient online patent licensing processes;
- Provide a valuable tool to identify patent violations and prevent products infringing on US patents from entering the US, thus protecting US business and jobs;
- Create a substantial new income stream for US inventors as they are fairly compensated for the use of their intellectual property;
- Respond to emerging foreign intellectual property platforms that could challenge US leadership in this area.

**Respectfully submitted:**

**TAEUS International Corporation**