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§11–1603.

(a) A person may not make an assertion of patent infringement against another in bad faith.

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

(i) The demand letter sent by the person does not contain:

1. The alleged patent number;

2. The name and address of the patent owner or assignee, if

any; or

3. Facts relating to the specific areas in which the target's product, service, or technology infringes the patent or is covered by the claims in the patent;

(ii) The target requested the information described in item (i) of this paragraph, and the person failed to provide the information within a reasonable period of time;

(iii) Before sending the demand letter, the person did not conduct an analysis comparing the claims in the patent to the target's product, service, or technology, or the analysis was conducted but does not identify specific areas in which the product, service, or technology is covered by the claims in the patent;

(iv) The demand letter demanded a response or payment of a licensing fee within an unreasonably short period of time;

(v) The person offered to license the patent for an amount that is not based on a reasonable estimate of the value of the license;

(vi) The assertion of patent infringement is without merit, and the person knew, or should have known, that the assertion is without merit;

(vii) The assertion of patent infringement is deceptive;

(viii) 1. The person, or a subsidiary or an affiliate of the person, previously has filed or threatened to file one or more lawsuits based on the same or a similar assertion of patent infringement; and

2. A. The threats or lawsuits did not provide the information described in item (i) of this paragraph; and

and B. A court found the person's assertion to be without merit;

(ix) Any other factor the court determines to be relevant.

(2) The court may consider the following factors as evidence that a person has made an assertion of patent infringement in good faith:

(i) If the demand letter sent by the person does not contain the information described in paragraph (1)(i) of this subsection, the person provides the information to the target within a reasonable period of time;

(ii) The person has:

1. Engaged in a good faith effort to establish that the target has infringed the patent; and

2. Attempted to negotiate an appropriate remedy;

(iii) The person has:

1. Demonstrated good faith business practices in previous efforts to enforce a patent; or

2. Successfully enforced a patent through litigation;

(iv) The person has made a substantial investment in the use of the patent or in the production or sale of a product covered by the patent;

(v) The person is:

1. An inventor of the patent or an original assignee; or

2. A representative of an institution of higher education or a technology transfer organization affiliated with an institution of higher education; and

(vi) Any other factor the court determines to be relevant.

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