

57 bad faith assertion of patent infringement:

58 (a) The demand letter does not contain the following information:

59 (i) the patent number;

60 (ii) the name and address of the patent owner and assignee, if any; and

61 (iii) factual allegations concerning the specific areas in which the target's products,
62 services, and technology infringe the patent or are covered by the claims in the patent.

63 (b) ~~Ĥ→ [Prior to sending the demand letter, the person fails to conduct an analysis~~
64 ~~comparing the claims in the patent to the target's products, services, and technology, or an~~
65 ~~analysis was done but does not identify specific areas in which the products, services, and~~
66 ~~technology are covered by the claims in the patent.] By presenting a demand letter to the target a~~
66a person is certifying that to the best of the person's knowledge, information, and belief, formed
66b after an inquiry reasonable under the circumstances:

66c (i) the demand letter is not being presented for any improper purpose, such as to harass
66d or to cause unnecessary delay or needless increase in the cost of settlement or litigation;

66e (ii) the claims, defenses, and other legal contentions are warranted by existing law or by
66f a nonfrivolous argument for the extension, modification, or reversal of existing law or the
66g establishment of new law; and

66h (iii) the allegations and other factual contentions have evidentiary support or, if
66i specifically identified, are likely to have evidentiary support after a reasonable opportunity for
66j further investigation or discovery. ←Ĥ

67 (c) The demand letter lacks the information described in Subsection (2)(a), the target
68 requests the information, and the person fails to provide the information within a reasonable
69 period of time.

70 (d) The demand letter demands payment of a license fee or response within an
71 unreasonably short period of time depending on the number and complexity of the claims.

72 (e) The person offers to license the patent for an amount that is not based on a
73 reasonable estimate of the value of the license.

74 (f) The claim or assertion of patent infringement is meritless, and the person knew, or
75 should have known, that the claim or assertion is meritless.

76 (g) The demand letter is deceptive.

77 (h) The person or its subsidiaries or affiliates have previously filed or threatened to file
78 one or more lawsuits based on the same or similar claim of patent infringement, and:

79 (i) those threats or lawsuits lacked the information described in Subsection (2)(a); or

80 (ii) the person attempted to enforce the claim of patent infringement in litigation and a

88 (c) The person engages in a good faith effort to establish that the target has infringed
 89 the patent and to negotiate an appropriate remedy.

90 ~~H→~~ [f] (d) The person makes a substantial investment in the use of the patent or in the
 91 production or sale of a product or item covered by the patent.

92 (e) The person is:

93 (i) the inventor or joint inventor of the patent or, in the case of a patent filed by and
 94 awarded to an assignee of the original inventor or joint inventor, is the original assignee; or

95 (ii) an institution of higher education or a technology transfer organization owned or
 96 affiliated with an institution of higher education.

97 (f) The person has:

98 (i) demonstrated good faith business practices in previous efforts to enforce the patent,
 99 or a substantially similar patent; or

100 (ii) successfully enforced the patent, or a substantially similar patent, through
 100a litigation. [f] ←~~H~~

101 Section 4. Section **78B-6-1904** is enacted to read:

102 **78B-6-1904. Action -- Enforcement -- Remedies -- Damages.**

103 (1) A target of conduct involving assertions of patent infringement, or a person
 104 aggrieved by a violation of this part, may bring an action in district court. The court may award
 105 the following remedies to a target who prevails in an action brought pursuant to this part:

106 (a) equitable relief;

107 (b) damages;

108 (c) costs and fees, including reasonable attorney fees; and

109 (d) punitive damages in an amount equal to \$50,000 or three times the total of
 110 damages, costs, and fees, whichever is greater.

111 (2) The attorney general may conduct civil investigations and bring civil actions
 112 pursuant to this part. In an action brought by the attorney general under this part, the court may
 113 award or impose any relief it considers prudent. The court may award costs and fees, including
 114 reasonable attorney fees, to the attorney general.

115 (3) This part may not be construed to limit rights and remedies available to the state or
 116 to any person under any other law.

117 (4) A demand letter or assertion of a patent infringement that includes a claim for relief
 118 arising under 35 U.S.C. Sec. 271(e)(2) is not subject to the provisions of this act.