

From: Mary Allen [e-mail address redacted]
Sent: Friday, November 04, 2011 5:53 PM
To: aia_implementation
Cc: [e-mail address redacted]
Subject: AIA Section 34 - Group 2 Rulemakings

Thank you for the opportunity to submit comments regarding the proposed AIA rules. Our company, Calendar Club, operates seasonal stores and kiosks in shopping malls, selling calendars, games and toys in the United States, Canada, the United Kingdom and Australia.

We also operate a consumer website, www.calendars.com, which generates a substantial portion of our annual sales. I am writing to you today regarding the recent onslaught of patent infringement cases pursued by what the media has dubbed "patent trolls." This letter will outline the concerns our small business has with respect to this predatory litigation.

In the past twelve months, Calendars.com has been sued (or threatened with suit) three times by three different claimants for patent infringement. The claims center around the software architecture used to run components of the Calendars.com website. The infringement claims are complicated in nature and would require expert testimony in determining the veracity of the infringement allegation; however, it is our position that we do not infringe.

Based on our research, these lawsuits are being pursued by a handful of well-funded operations that have spent years buying up relatively obscure patent rights. In each case, the notice from the patent holder's attorney includes an offer for a license at a significant fee (typically between \$50,000 and \$100,000) leaving Calendar Club with the choice of paying the license fee to avoid litigation or defending the lawsuit in court. However, we have been advised, and the plaintiffs have adroitly determined, that the cost of defending these lawsuits far outweighs the proffered settlement terms and, therefore, settlement is the only commercially reasonable choice for a small business such as ours. Unfortunately, settlement of the existing claims against Calendar Club does not foreclose the possibility of many more similar claims being made by other companies holding obscure patents looking for a quick and easy pay day. In fact, it may be that by agreeing to a settlement with one "patent troll", we raise our profile as a target for others. In no uncertain terms, this is a shakedown perpetrated by companies with deep pockets and teams of lawyers who know how to game the system.

Our opinion with respect to these predatory practices is by no means unique. Forbes, NPR, Freakonomics and CNNMoney have all recently reported on this growing cottage industry and the potentially devastating effects on small businesses and innovation.

We respectfully ask that the study of patent litigation (as required in Section 34 of the AIA) include a review of whether the patent assertion entities should be required to sue the company that developed and sold the product to the allegedly infringing companies in the first place. Calendars.com purchased software from a large software company that designed and implemented the systems through which calendars.com operates its website. That software is the subject of numerous infringement actions against calendars.com, even though we have never developed any software. In our case, the patent assertion entities have chosen not to pursue the company that actually developed the allegedly infringing software but instead they have targeted us, a much smaller end-user of the product. A thorough review of these litigation practices is warranted and we hope the end result is further legislation aimed at reforming this system.

Sincerely,

Mary Allen
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