



Virginia Society of CPAs (VSCPA) Positions CPA Assembly Day 2014

Support HB 375 (O'Quinn) and SB 150 (Stuart) — Patent Infringement

Summary

Prohibits any person from making in bad faith an assertion, allegation, or claim that a resident of the Commonwealth is infringing a patent. The measure creates a cause of action for damages and an injunction against a person threatening to bring legal action for alleged patent infringement. A court that finds that a target of an assertion of patent infringement has established a reasonable likelihood that the person has made the assertion in bad faith shall require the person to post a bond in an amount equal to the target's costs to litigate the claim and amounts reasonably likely to be recovered as damages. The Attorney General or any attorney for the Commonwealth is empowered to issue civil investigative demands, accept assurances of voluntary compliance, and seek injunctions. The target of a bad faith assertion or any other person aggrieved by a violation may bring an action to recover actual damages, fees, and costs and obtain equitable relief. If the violation was willful, damages may be increased to the greater of three times the actual damages sustained or \$50,000.

Background

"Patent trolls" are individuals and firms that use patents primarily to obtain licensing fees. Increasingly, such entities are sending threatening letters to Virginia businesses alleging patent infringement and demanding payment. These claims are often unfounded and in bad faith, based on vague and overly broad patents on common business practices and technologies. Even though claims are often frivolous, it is usually in a targeted business's interest to settle rather than mount an expensive court defense. The targets of these suits are often small businesses.

Key Points

- These bills provide a recourse to businesses victimized by bad faith patent infringement suits.
- The bills specifically target bad faith patent infringement suits by establishing a standard for bad faith assertions.
- The bills do not preempt federal patent laws, make it more difficult to obtain patents, change how valid patents are issued or interfere with legitimate patent enforcement efforts.

Conclusion

Please support HB 375 and SB 150 to help protect Virginia businesses from bad faith patent infringement suits.

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