2013 DRAFTING REQUEST

Bill

Received:	**12/19/2013**	Received By:	**mgallagh**
Wanted:	**As time permits**	Same as LRB:	**-2996**
For:	**Adam Neylon (608) 266-5120**	By/Representing:	**Joe Z.**
May Contact:		Drafter:	**mgallagh**
Subject:	**Trade Regulation - other**	Addl. Drafters:	
		Extra Copies:	

Submit via email: **YES**
Requester's email: **Rep.Neylon@legis.wi.gov**
Carbon copy (CC) to: **michael.gallagher@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Prevention of patent trolling

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/1	mgallagh 12/19/2013	evinz 12/19/2013	rschluet 12/19/2013	_____ _____	mbarman 12/19/2013	mbarman 12/19/2013	State Crime

FE Sent For:

01-16-2014 ("/1")

<END>

Requested by Joe Z (aid)

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/1	mgallagh	/1 eev 12/19/13	/1 eev 12/19/13	12/19/13			State Crime

FE Sent For:

<END>

Gallagher, Michael

From: Henkel, Matt
Sent: Wednesday, December 18, 2013 3:47 PM
To: Gallagher, Michael
Cc: Zapf, Joe; Rep.Neylon
Subject: RE: Draft review: LRB -2996/P3 Topic: Prevention of patent trolling

Mike, can you release the draft of LRB -2996 to Rep. Neylon's office?

Thanks!

-Matt

Matthew Henkel
Office of Senator Paul Farrow
Room 323 South, State Capitol
(608) 266-9174

In: 12/17 Soon

State of Wisconsin
2013 – 2014 LEGISLATURE

Transf

LRB-2996/1
MPG:eev:jm

2013 BILL

Companion RMR
No Changes.

-3864/1

regen

AN ACT *to create* 100.197 of the statutes; **relating to:** notifications concerning the assertion of rights under a patent or pending patent and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill regulates written communications attempting to enforce or assert rights in connection with a patent or pending patent. Under the bill, such a written communication is called a "patent notification." Under the bill, a "target" of a patent notification is an individual who is a resident of this state or a company that is domiciled in or does substantial business in this state and who either receives a patent notification or has customers who receive a patent notification concerning a product, service, process, or technology of the target.

Under the bill, a patent notification must contain certain information, including the number and a copy of each patent or pending patent that is the subject of the patent notification; an identification of each patent claim being asserted and the target's product, service, process, or technology to which that claim relates; and the basis for each theory of each patent claim being asserted and how that claim relates to the target's product, service, process, or technology. The bill provides a 30–day opportunity for a person to supplement a patent notification with any required information the person fails to include in the initial patent notification. A patent notification may not contain false, misleading, or deceptive information.

The bill provides that the Department of Agriculture, Trade, and Consumer Protection (DATCP) or the attorney general may investigate an alleged violation of

the bill's requirements. The bill authorizes the attorney general to initiate a court action for an injunction of a violation of the bill's requirements, and in such an action, the bill authorizes the court to make any necessary orders to restore to any person any pecuniary loss the person may have suffered as a result of the violation. The bill also authorizes the attorney general to seek a forfeiture to the state of up to $50,000 for each violation of the bill's requirements.

The bill further creates a private right of action for a target or other person aggrieved by a violation of the bill's requirements. The target or other person may seek an injunction restraining further violation and may recover an appropriate award of damages, an award of costs and reasonable attorney fees, and an award of punitive damages not to exceed $50,000 for each violation or three times the aggregate amount of actual damages and costs and attorney fees awarded by the court, whichever is greater.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 100.197 of the statutes is created to read:

2 **100.197 Patent notifications. (1)** DEFINITIONS. In this section:

3 (a) "Patent notification" means a letter, e–mail, or other written
4 communication attempting in any manner to enforce or assert rights in connection
5 with a patent or pending patent.

6 (b) "Target" means a person who meets at least one of the conditions described
7 in s. 801.05 (1) (b), (c), and (d) and satisfies at least one of the following:

8 1. The person has received a patent notification.

9 2. One or more of the person's customers has received a patent notification
10 concerning a product, service, process, or technology of the person.

11 **(2)** PATENT NOTIFICATION REQUIREMENTS.

12 (a) A patent notification shall contain all of the following:

1. The number of each patent or patent application that is the subject of the patent notification.

2. A physical or electronic copy of each patent or pending patent.

3. The name and physical address of the owner of each patent or pending patent and all other persons having a right to enforce the patent or pending patent.

4. An identification of each claim of each patent or pending patent being asserted and the target's product, service, process, or technology to which that claim relates.

5. Factual allegations and an analysis setting forth in detail the person's theory of each claim identified under subd. 4. and how that claim relates to the target's product, service, process, or technology.

6. An identification of each pending or completed court or administrative proceeding, including any proceeding before the U.S. patent and trademark office, concerning each patent or pending patent.

(b) A patent notification may not contain false, misleading, or deceptive information.

(c) If a patent notification lacks any of the information required under par. (a), the person may provide that information to the target within 30 days after the date on which the target notifies the person that the patent notification is incomplete.

(3) ENFORCEMENT AND REMEDIES. (a) 1. The department or the attorney general may investigate an alleged violation of this section.

2. The attorney general may commence an action in the name of the state to restrain by temporary or permanent injunction a violation of this section. Before entry of final judgment in an action commenced under this subdivision, the court

may make any necessary orders to restore to any person any pecuniary loss the person has suffered because of the violation.

3. The attorney general may commence an action in the name of the state to recover a forfeiture to the state of not more than $50,000 for each violation of this section.

(b) A target or other person aggrieved because of a violation of this section may commence an action for the following:

1. A temporary or permanent injunction restraining a violation of this section.

2. An appropriate award of damages.

3. The person's costs and, notwithstanding the limitations under s. 814.04 (1), reasonable attorney fees.

4. An award of punitive damages not to exceed $50,000 for each violation or 3 times the aggregate amount awarded for all violations under subds. 2. and 3., whichever is greater.

(c) Each patent notification is a separate violation.

(5) NO LIMITATION OF RIGHTS AND REMEDIES UNDER OTHER LAW. Nothing in this section may be construed to limit rights and remedies available to the state or any person under any other law.

SECTION 2. Initial applicability.

(1) This act first applies to a patent notification, as defined in section 100.197 (1) (a) of the statutes, as created by this act, received by a target, as defined in section 100.197 (1) (b) of the statutes, as created by this act, or a customer of the target on the effective date of this act.

(END)

Barman, Mike

From: Zapf, Joe
Sent: Thursday, December 19, 2013 9:55 AM
To: LRB.Legal
Subject: Draft Review: LRB -3864/1 Topic: Prevention of patent trolling

Importance: High

Please Jacket LRB -3864/1 for the ASSEMBLY.