DOMINION HARBOR GROUP, LLC

A Proposal to Achieve Meaningful Patent Reform

Developing Standards to Move to a Rational, Market-based Licensing Environment

The U.S. Constitution expressly recognizes the right of innovators to protect their inventions. In return for the public disclosure of an invention, the United States vests the patent holder with a property right to exclude others from infringing on a disclosed invention. U.S. patent laws offer this exclusive right for a limited time as an incentive to inventors, entrepreneurs and corporations to spend the time, energy and capital resources on research and development necessary to create useful inventions that will benefit the United States. So core to this country's principles is protecting intellectual property through the patent system that Secretary of State Thomas Jefferson reviewed the first U.S. patent and President George Washington signed it.

"It is our view that all interested parties, licensors, licensees and their respective representatives, must adopt a self-imposed, rational approach to licensing and, when necessary, litigating intellectual property rights. Dominion Harbor Group stands ready to take the lead in elevating standards that will increase efficiency, reduce transaction costs, and preserve the patent system – all to the benefit of the U.S. economy as a whole."

In recent years, as the effective functioning of our society and economy has become increasingly reliant on advancing technology, patent portfolios, which represent the rights to that technology, have greatly increased in value. That increase has captured the attention of not only the investment community, but of a small minority of bad actors looking to game the system. This, in turn, has fueled calls for patent reform. Congress' latest attempt at patent reform recently stalled because it is hard to write into words the line between legitimate and abusive patent assertions. Too far one way, innovation suffers and the government reneges on its compact with existing patent holders. Too far the other, the bad actors use baseless litigation to tax legitimate commerce.

Our company, Dominion Harbor Group, opposes patent litigation abuse and sees an opportunity to obviate the need for further legislative reform by making the line between legitimate and abusive patent assertions clearer. It is our view that all interested parties – licensors, licensees and their respective representatives – must adopt a self-imposed, rational approach to licensing and, when necessary, litigating intellectual property rights. DHG stands ready to take the lead in elevating standards that increase efficiency, reduce transaction costs, and preserve the patent system – all to the benefit of the U.S. economy as a whole.

DHG is an intellectual property services company. We represent a cross section of patent-owning clients including operating companies selling their patented products, public companies that have invested tens of millions of dollars in R&D, and individuals who have made their own inventions or have invested in the inventions of others. None of them want to see their investments devastated by the misappropriation of their inventions and they have turned to DHG for help. Our clients are not pirates, kidnappers, or trolls; rather they are inventors and entrepreneurs. Our clients have a right – just like Fortune 500 Companies – to equal access to the protection of their inventions and ideas. They have a right to protection against unauthorized, uncompensated use, of their patents.

Congress' recent attempt at patent reform, however, would have effectively created classes of protection for patents – classes that are exclusively based on *who the patent owner is* and NOT based on *the characteristics and quality of the patents they hold*. For example, a patent held by Google would be afforded more protection than a patent held by an individual inventor. The playing field would tilt even further in favor of large, cash-rich companies. Individual inventors struggling to stay afloat would not have the ability to protect their intellectual property – unless they were able to invest millions of dollars up front. Patents are property rights. Can you imagine the government treating classes of land owners differently based on their wealth or status in society? Of course not. So why would we tolerate such unequal treatment under a system that forms the bedrock of innovation in our society?

Such collateral damage to the patent system is not new to patent reform. In the America Invents Act (2011) Congress decided, for example, that the number of companies alleged to infringe the same patents was an effective measure of the quality of those patents, so they limited each case to a single alleged infringer. One case that would have proceeded against five alleged infringers now must proceed as five cases. The result? The number of patent cases has multiplied, the cost to the litigants has increased, and scarce judicial resources are spent coordinating disjointed cases.

We have the opportunity to put an end to the unintended consequences and collateral damage that patent reform has caused and threatens to continue to cause. DHG issues a call to patent owners and those alleged to be violating patent owners' rights to follow DHG's lead in proliferating rational licensing practices.

Going forward DHG proposes taking certain steps in tandem with its clients to implement the following principles should opposing parties agree to this new rational approach:

Pre Filing Letters: DHG will not work with any clients that send serial demand letters in the hopes of extracting "cost of defense" settlements. DHG opposes entities that send demand letters in an attempt to extort licensing fees based on dubious patents and questionable infringement claims.

Patent Pleading: DHG will only work with clients that agree to provide clear, concise and detailed disclosure regarding their claims early in the process. For example, DHG will encourage its clients to provide more detailed information regarding infringement in any complaints filed in patent litigation. DHG asks that, in return, opposing parties plead more detailed information regarding their defenses. In addition, DHG will, in the context of licensing discussions, provide additional information about its clients' positions even before a defendant files an answer, provided the defendant agrees to reciprocate with a timely explanation of its defenses.

> *"Adopting these steps will greatly increase efficiency and reduce transaction costs. It will also make litigation more efficient while giving all parties much more insight into the merits of all infringement, invalidity and damages positions early on in any patent dispute. Dominion Harbor Group looks forward to working with companies to establish a national standard in patent licensing and litigation."*

Litigation Efficiencies: DHG believes that litigation is inherently inefficient and that parties to litigation should do everything possible to expedite the litigation process and thus reach resolution of the material issues at minimal litigation cost. For example, in the Eastern District of Texas, the Court has implemented a "Track B program" to move cases along in a faster, more efficient manner. Track B affords parties to patent litigation a faster schedule with early disclosures of infringement and invalidity positions, revenue information for accused products and early-targeted discovery. DHG believes that the Track B approach developed by the Eastern District of Texas should be adopted uniformly across all U.S. District Courts. Since many of our clients are located in Texas, DHG will recommend that its clients opt into the Track B program in East Texas. This will help reduce the legal fees and expenses for everyone and will allow each side to more swiftly arrive at a point enabling a business decision regarding the merits of pending patent litigation.

Revenue Threshold for Licensing: DHG believes that small companies should not be the target of patent litigation where their use of a particular invention may be incidental and small. For example, a mom and pop restaurant should not be sued for infringing a patent covering router technology. Accordingly, DHG will not represent any client in a case where the alleged-infringing company has less than $25 million in annual revenue.

Rational Pricing: DHG recognizes that not all patents are granted on $100 million inventions, and that litigation costs should not be used to prop up the value of patents with low damages. DHG invites potential licensees to engage in an early disclosure of revenue information so that both parties can arrive at a rational price for licensing intellectual property.

Fee Shifting: DHG is in favor of fee shifting that punishes any party engaging in litigation abuse. This should not just apply to a patent plaintiff but rather should apply uniformly to any party that takes unreasonable positions in patent litigation. DHG supports the U.S. Supreme Court's recent decisions in *Octane Fitness v. Icon Health* and *Highmark Inc. v. Allcare* cases. These cases appropriately provide District Courts with broader discretion to award fees to a party in patent litigation where the other party has acted unreasonably.

DHG believes strongly in its business model and the paradigm outlined above, and invites all parties on both sides of patent disputes to follow our lead. Adopting these steps will greatly increase efficiency and reduce transaction costs. It will also make litigation more efficient while giving all parties much more insight into the merits of all infringement, invalidity and damages positions early in any patent dispute. Dominion Harbor Group looks forward to working with companies to establish a national standard in patent licensing and litigation.

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About Dominion Harbor Group – A Rational Actor in a Complex Intellectual Property Marketplace

www.DominionHarborGroup.com

Dominion Harbor Group was founded in 2013 by seasoned legal, technical, engineering and financial professionals dedicated to the premise that patents are a sacrosanct and critical component of the United States and global commercial marketplaces. The firm's highly specialized, talented team manages, helps protect and preserve intellectual property portfolios, maximizes values of patent portfolios through licensing, helps enforce and defend clients' critical intellectual property rights, and advises owners and investors in realizing appropriate value for innovations and risk taking in the patent market.

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