

IN THE CIRCUIT COURT OF LAFAYETTE COUNTY, MISSISSIPPI

HOMESAFE INSPECTION, INC. LAFAYETTE COUNTY
& BOYD & BINKLEY SERVICES, LLC **FILED**
d/b/a HOMESAFE SERVICES

PLAINTIFFS

APR 08 2014

V.

Baretta Mosley
CIRCUIT CLERK
BY:  D.C.

CIVIL ACTION NO. L14-143

BILL J. LODEN, Individually
& INSIGHT HOME INSPECTION

DEFENDANTS

FIRST AMENDED COMPLAINT

COMES NOW Plaintiffs, HOMESAFE INSPECTION, INC. ("HomeSafe") and BOYD & BINKLEY SERVICES, LLC d/b/a HOMESAFE SERVICES ("H.S. Services") and files this, its Complaint against BILL J. LODEN, individually, ("Loden") and INSIGHT HOME INSPECTION ("Insight") (collectively "Defendants") and in support thereof, state the following:

1. HomeSafe is a Mississippi corporation whose principal place of business and mailing address is 1109 Van Buren Ave, Oxford, MS 38655.
2. H.S. Services is an Alabama Limited Liability Company whose principal place of business is 2525 Elizabeth Dr., Pelham, AL 35124 and whose mailing address is P.O. Box 19174, Birmingham, AL 35219.
3. Loden is an individual resident of Alabama who may be served at his residential address of 110 Manningham Dr., Madison, AL 35758, and is neither incapacitated nor a minor.
4. Insight is an Alabama corporation whose registered office address is 110 Manningham Dr., Madison, AL 35758.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the Defendant pursuant to M.C.A. § 13-3-57.
6. Venue is proper in this judicial district under M.C.A. § 11-11-3.

FACTS

7. HomeSafe co-founder Peng Lee, while working on a U.S. Department of Agriculture-funded project at the University of Mississippi's National Center for Physical Acoustics (NCPA) in the 1990s, first developed the procedures to effectively utilize infrared technologies to inspect a home for termites and other potential defects or problems.
8. In 2001, Lee filed patents to protect these procedures.
9. Lee left NCPA and teamed with Kevin J. Seddon to found HomeSafe in March 2003.
10. A few months later, HomeSafe awarded its first infrared home inspection franchise and soon had franchises and licensed users operating across the U.S., including Mississippi, Alabama, Tennessee, Georgia, Florida, North Carolina, South Carolina, Virginia, Pennsylvania, Illinois, Louisiana, Texas, Colorado, Utah, California, Oregon, and Minnesota, as well as in the Philippines, China, Canada, and South Africa.
11. HS Services is a franchisee of HomeSafe performing home inspections in North Alabama, using the patented procedures of HomeSafe.
12. Since 2003, HomeSafe has trained, licensed, and certified inspectors in the use of its patent pending procedures. HomeSafe also educated real estate agents, insurance providers, state, federal and international officials, as well as numerous other industry professionals about the benefits of the use of infrared technology to all parties involved in building inspections and real estate transactions.

13. Although HomeSafe's patents were filed in 2001, its first patent was not approved until 2008.
14. Additional patents that originated from HomeSafe's 2001 filings were subsequently approved between 2008 and 2010.
15. Additional HomeSafe patents are still under review by the U.S. Patent Office, but all are retroactive to the original filing date upon their approval.
16. Currently, HomeSafe has six (6) approved patents, all at a cost to HomeSafe of over \$300,000.
17. Once the patents were issued, not wanting to prevent anyone from using these new and productive procedures, HomeSafe modified its business plan from exclusive franchises to licensing its patented procedures to any inspector. HomeSafe began in 2008 and continues to market the licensing of its patented procedures, now allowing licenses to be obtained in several ways: (1) through membership in InterNachi, a trade association of inspectors, (2) through the purchase of InspectAll, liability insurance for home inspectors, (3) through Infrared Financing, LLC, and the financing of infrared camera equipment, and (4) through direct license from HomeSafe.
18. Loden is the President of Insight.
19. At all times relevant to this Complaint, Loden was acting individually and on behalf of and as representative for Insight.
20. Loden is also, and has been for many years, the President of the American Society of Home Inspectors ("ASHI"), a national association of home inspectors, with over 10,000 members. ASHI is widely considered the first association of its kind in the industry and the most influential in the inspection industry.

21. As soon as HomeSafe began its efforts to license its patents, the defendants began to post false statements about HomeSafe's origins, its ownership, its patents, its pricing, and its intent in doing business with inspectors.
22. The defendant used and continues to utilize his relationship with the industry's leading association (ASHI) to spread falsehoods about HomeSafe that are believed to be fact by many of the industry's home inspectors because of the defendant's association with ASHI and his influence thereof.
23. The defendant's false and misleading statements fall mostly into two categories: 1. That HomeSafe's patents are invalid so inspectors should not license from HomeSafe; and 2. HomeSafe is a patent troll and does not have a legal right to enforce its patents.
24. In particular:
 - a. In an online journal entitled the "The Inspector's Journal Online" on August 21, 2013, Loden, as ASHI president, stated:

"When I found out about this in 2010 [HomeSafe seeking to enforce its patents] I informed the ASHI Board of Directors of these threats. They took the threat seriously and appointed me to lead a task force to investigate the issue. We consulted four patent attorneys to evaluate the validity of their claims and the consensus among the patent experts was that given the overwhelming evidence of 'prior art' in this field, and the specific nature of their patented process, any litigation could be defeated." See Exhibit A.
 - b. In the ASHI chat-board on February 6, 2014, defendant, again acting as the ASHI president, posted a long article all about HomeSafe's efforts to enforce its patents and asserted that HomeSafe was a "patent troll". See Exhibit B
 - c. Within the article attached as Exhibit B, defendant provided a link to a recorded news story that defendant himself brought to the news agency. The article addresses the evils of patent trolls, references only HomeSafe as a patent troll, and

even shows HomeSafe's website, asserting that HomeSafe had no legal right to assert patent protection. This link was made available by defendant as president of ASHI on the ASHI chat board for all ASHI members to watch. The recorded news cast was then copied and re-posted on YouTube.com by one of the ASHI members. See Exhibit C.

- d. On February 16, 2011, in an online community called IRTalk, Defendants compared HomeSafe's lawful attempts to enforce its patents to the conduct of criminals, stating that HomeSafe's letters were "extortion," "very much like the protection rackets run by the mob. They [HomeSafe] go in and threaten a store keeper with harm, then offer 'protection' for a low monthly fee." "I am faced with a choice of paying the extortion or..." To date, these comments are still posted and available for viewing. See Exhibit D attached hereto.
- e. The Internet is full of false and misleading statements made by Loden over the years where he discourages all ASHI members as well as other inspectors from signing a license with HomeSafe.

25. Loden participated in a video broadcast which defined patent troll as "a company that does not have a commercial product and not in the market to sell things . . . [b]ut have either bought the patent or acquired it through other means and then threatens litigation, or threatens licensing opportunities to collect royalties." See Exhibit E attached hereto.

26. Defendants' statements that HomeSafe was a patent troll were knowingly false, made with actual malice and were made in an attempt to directly harm HomeSafe's and HS Services' businesses.

27. As a result, HomeSafe has been unable to effectively communicate and sell its services to inspectors or cost-effectively enforce its patent, in that inspectors believe, because of the defendants' unrelenting, completely false campaign and position of leadership in the industry, that HomeSafe is not a reputable company and that its patents are either non-existent, invalid, were obtained in a nefarious fashion, or are unenforceable.
28. As a direct result of the false and misleading statements of the defendants, the number of HomeSafe franchisees or licensees dropped from 40 in 2008 to only 10 in 2013, and revenues dropped from approximately \$500,000 in 2008 to under \$100,000 in 2013.
29. As a direct result of the defendants' actions, HS Services' reputation in North Alabama and its ability to obtain new customers has been damaged.

COUNT ONE: TORTIOUS INTERFERENCE WITH CONTRACT

30. Plaintiffs incorporate herein by reference the allegations of paragraphs 1-29 above.
31. Loden's acts were intentional and willful.
32. Loden was aware that HomeSafe had existing contracts with franchisees, and that HS Services operated in the north Alabama region, in direct competition with defendants.
33. Loden was reasonably certain that his statements discouraging home inspectors from working with Plaintiffs would interfere with existing contracts.
34. Loden's acts were calculated to cause damage to Plaintiffs' businesses.
35. Plaintiffs are engaged in lawful businesses.
36. Loden's acts were done without justification.
37. As a result of Defendants' acts, Plaintiffs have suffered over nine million dollars (\$9,000,000) in actual past lost income and other actual damages, plus punitive damages, plus future lost income damages.

COUNT TWO: TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS

38. Plaintiffs incorporate herein by reference the allegations of paragraphs 1-37 above.
39. Loden's acts were intentional and willful.
40. Loden was aware that HomeSafe had existing contracts with franchisees, and that HS Services directly competed with defendants in the North Alabama region.
41. Loden was reasonably certain that his statements discouraging home inspectors from working with Plaintiffs would interfere with Plaintiffs' existing contracts.
42. Loden was reasonably certain that his statements, made in his capacity as ASHI president, to home inspectors discouraging them from working with Plaintiffs would interfere with the Plaintiffs' prospective business opportunities.
43. Plaintiffs are engaged in lawful businesses.
44. Defendants' acts were done with an unlawful purpose of damage and were without justification.
45. As a result of Defendants' acts, Plaintiffs have suffered over nine million dollars (\$9,000,000) in actual past lost income and other actual damages, plus punitive damages, plus future lost income damages.

COUNT THREE: DEFAMATION

46. Plaintiffs incorporate herein by reference the allegations of paragraphs 1-45 above.
47. Defendants repeatedly communicated statements that HomeSafe patents were invalid and that HomeSafe was a "patent troll" to third parties.
48. Defendants' statements were clearly directed at Plaintiffs.
49. The statements by defendants as outlined above, that the HomeSafe patents were invalid and that HomeSafe was a "patent troll," were false and defamatory.

50. The defamatory nature of the statements that Homesafe patents were invalid and that Homesafe was a “patent troll” is clear and unmistakable from the words themselves.
51. The defendants’ statements that Homesafe patents were invalid and that Homesafe was a “patent troll” were capable of causing and actually caused damage to Plaintiffs’ reputations in the home inspection industry.
52. The statements by defendants as outlined above that the Homesafe patents were invalid and that Homesafe was a “patent troll,” were not privileged communication.
53. Defendants were negligent in failing to research the validity of patents or Homesafe’s status as the original owners of the patents in issue.
54. As a result of Defendants’ acts, Plaintiffs have suffered over nine million dollars (\$9,000,000) in actual past lost income and other actual damages, plus punitive damages, plus future lost income damages.

COUNT FOUR: DEFAMATION PER SE

55. Plaintiffs incorporate herein by reference the allegations of paragraphs 1-54 above.
56. Defendants repeatedly communicated statements that HomeSafe patents were invalid and that HomeSafe was a “patent troll” to third parties.
57. Defendants’ statements were clearly directed at Plaintiffs.
58. The statements by defendants as outlined above, that the HomeSafe patents were invalid and that HomeSafe was a “patent troll,” were false and defamatory to Plaintiffs.
59. The defamatory nature of the statements that HomeSafe patents were invalid and that HomeSafe was a “patent troll” is clear and unmistakable from the words themselves.

60. The defendants' statements that HomeSafe patents were invalid and that HomeSafe was a "patent troll" were capable of causing and actually caused damage to Plaintiffs' reputations in the home inspection industry.
61. The statements by defendants as outlined above that the HomeSafe patents were invalid and that HomeSafe was a "patent troll," were not privileged communication.
62. Defendants were negligent in failing to research the validity of patents or HomeSafe's status as the original owners of the patents in issue.
63. Defendants intentionally made this false statements knowing that no court or other proceeding had invalidated the patents, and knowing that HomeSafe was the inventor and original owner of these patents and was therefore not a patent troll.
64. Loden compared the Plaintiffs' business to the illegal acts of the mob and referred to a letter from HomeSafe as an "extortion letter." See Exhibit D.
65. The statements mentioned in Paragraph 64 improperly impute criminal activity to the Plaintiffs.
66. The defendants' statements that HomeSafe patents were invalid and that HomeSafe was a "patent troll" attack Plaintiffs' capabilities in their trade and profession.
67. As a result of Defendants' acts, Plaintiffs have suffered over nine million dollars (\$9,000,000) in actual past lost income and other actual damages, plus punitive damages, plus future lost income damages.

COUNT FOUR: FALSE LIGHT

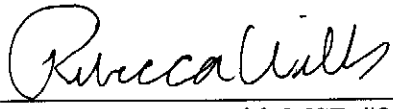
68. Plaintiffs incorporate herein by reference the allegations of paragraphs 1-67 above.
69. The comments made by Loden would be highly offensive to a reasonable person.
70. Plaintiffs are not patent trolls.

71. HomeSafe has valid and enforceable patents.
72. Loden acted with reckless disregard to the falsity of his statements.
73. Loden acted with reckless disregard to the false light in which Plaintiffs were placed as a result of Loden's statements.
74. The television station aired Loden's comments in its news story and posted said news story on its website, making Loden's statements matter of public knowledge.
75. Also as direct a result of Loden's actions and postings, the television show's broadcast was also posted to YouTube.com.
76. Loden repeatedly posted in an online forum, making statements a matter of public knowledge.
77. As a result of Defendants' acts, Plaintiffs have suffered over nine million dollars (\$9,000,000) in actual past lost income and other actual damages, plus punitive damages, plus future lost income damages.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that judgment be entered against Defendants in the amount of nine million dollars (\$9,000,000) in actual past lost income and other actual damages, plus punitive damages, plus future damages in the form of reduced future income, and such other and further relief as the court deems appropriate.

RESPECTFULLY SUBMITTED, this the 8th day of April, 2014.

**HOMESAFE INSPECTION, INC. and BOYD &
BINKLEY SERVICES, LLC d/b/a HOMESAFE
SERVICES**

By: 
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- Topic -

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Posted By

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Russe777

Thread Start First Page

[#1] Posted: 08/21/2013 - 07:16:08 AM

Tupelo, MS Posts: 3 Joined: Apr, 2012 offline

On August 7, 2013 suit was filed in Lafayette County, Mississippi for patent infringement against myself and my company. My attorney and myself are very certain they intend on proceeding with the case. They seek damages for lost revenue, enhanced damages, attorneys fees, and etc. Essentially they want my business and everything I own.

I am posting on this forum to raise awareness that the suit everyone has feared has begun. Why my company? I can only suppose that it's because of my proximity to their office(forty miles).

My company is typical of most small business's. Just barley making enough money to pay the bills and stay alive in this trying economy. I do not use their process. I do however use infrared in home inspections. I don't pump up house in preparation for home inspection, use their software, etc..

I estimate defense of this suit will cost more than my company could possibly bear. There is no help from insurance because copyright infringement is specifically excluded. So I'm asking for help.

Anyone who has connections to Flir, Fluke, Testo etc. Making them aware of this would be critical. After all, they should have fought this battle years ago. I am a member of InterNACHI and am trying to use the defense fund as this case will affect everyone in the industry.

I am also seeking help from ASHI. I believe this case crosses all barriers between the two organizations.

If you read online some people's estimates beating this case could well exceed 150,000 dollars. Appealing to the big guys remains the best choice. Possibly we might be able to get some sort of defense fund set up by all three.

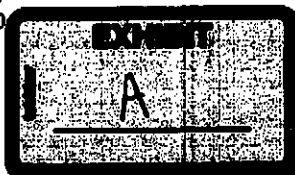
Allowing HS to win will set a precedent that no one wants.

I appreciate your time.

admin

Home Safe vs Assured Home Inspection [#2] Posted: 08/21/2013 - 08:04:59 AM

Home safe was talked about here before: http://www.inspectorsjournal.c...ID=13561 http://www.inspectorsjournal.c...ID=8940



Home Inspection Training

www.homeinspectioncourse.com

Obtain Your Home Inspection License Affordable Course, 100% Online.



Victoria, BC
Posts: 1029
Joined: Aug, 2002
● offline

http://www.inspectorsjournal.c..._ID=8010

Pretty sure we punted somebody from home safe for making fake posts and answering them on the board a few years ago.

I'm no lawyer but can give you contact information for a company that is very good at finding prior art citations that can be used to invalidate patents. It's contingency basis, if they find prior art citations you have to pay.

Playing poker one might think that's a fight that could end up invalidating the very patent and they may want to move on to easier targets. Telling them you don't have the funds to fight isn't what I would do first off. I would be letting them know how much it was going to cost them and the risks they take by engaging you. Patent trolls won't like that kind of fight, they want to intimidate you into settling and move on to the next victim.

BTW: Patent infringement and copyright infringement are completely different.

Let me know if you want the contact info?

Michael

Russe777

Home Safe vs Assured Home Inspection
[#3] Posted: 08/21/2013 - 08:25:16 AM

That's good advise, send me the link.

Tupelo, MS
Posts: 3
Joined: Apr, 2012
● offline

admin

Home Safe vs Assured Home Inspection
[#4] Posted: 08/21/2013 - 08:42:28 AM

Quote: Originally posted by Russe777

That's good advise, send me the link.

In your email.

Victoria, BC
Posts: 1029
Joined: AUG, 2002
● offline

Les

Home Safe vs Assured Home Inspection
[#5] Posted: 08/21/2013 - 10:00:33 AM

Charles,
likely many of the forum participants are not aware of what this issue is really about. While I know some of the history of the "claim", I am not as well versed as you appear to be.

Want to try to post a short summary? BTW, I am not a user of thermography.

Mike has made some very good points. Get a good atty and trust them.

DeWitt, MI
Posts: 3469
Joined: Jan, 2004

● offline

Les

Home Safe vs Assured Home Inspection
[#6] Posted: 08/21/2013 - 4:44:22 PM

bjloden

To All,
I am very familiar with this issue and with HomeSafe. They have been sending out letters to home inspectors and energy auditors threatening legal action for patent infringement since about 2009 or 2010. When I found out about this in 2010 I informed the ASHI Board of Directors of these threats. They took the threat seriously and appointed me to lead a task force to investigate the issue.

We consulted four patent attorneys to evaluate the validity of their claims and the consensus among patent experts was that given the overwhelming evidence of "prior art" in this field, and the specific nature of their patented process, any litigation could be defeated. However the costs to litigate this could be expected to run into the hundreds of thousands of dollars. Then a separate suit, costing hundreds of thousands of dollars, would be required to invalidate their patents.

We then attempted to build an industry coalition to defend inspectors of this threat but since no inspector had at that time actually been sued, the companies involved in IR sales and training backed out of providing funding for an inspector defense fund.

At ASHI we have been watching the situation since late 2011 and for over a year there were no threat letters going out. I was hopeful that the problem was going to evaporate. However this represents a dramatic change of events. Since finding out about this yesterday I have been in contact with the board and we are reformulating our task force and are again going to work to protect the profession from this threat to the thousands of inspectors who currently use infrared technology as a part of their inspections and we hope that the rest of the industry will join us. Though Mr. Russell is not a member of ASHI, we intend to assist in obtaining funding needed to protect his business and his family.

Madison, Alabama
Posts: 48
Joined: Feb, 2004

● offline

Please consider that if you now use infrared technology or ever expect to in the future, you have a stake in this. HomeSafe claims that if you turn on an infrared camera in a house, you are in violation of their patents. A win on their home court in Oxford, Mississippi would give them a powerful precedence to start filing suits across the country.

Bill Loden
ASHI President Elect

kurt

Home Safe vs Assured Home Inspection
[97] Posted: 08/21/2013 - 6:28:26 PM



Bill, you're the best. Thank you for your involvement in this.

If you need me to do something, please let me know.

Chicago, IL
Posts: 10023
Joined: Dec, 2003

● offline

Kurt in Chicago

"If I smell it, it goes in the report".....Phillip Smith...2012

SNations

Home Safe vs Assured Home Inspection
[#8] Posted: 08/21/2013 - 6:44:02 PM



Oak Park, IL
Posts: 150
Joined: Mar, 2011

● offline

Quote: Originally posted by bjloden

Though Mr. Russell is not a member of ASHI, we intend to assist in obtaining funding needed to protect his business and his family.

Bill Loden
ASHI President Elect

As a dues-paying ASHI member I want to echo the idea that ASHI should play a huge role in helping Mr. Russell. This affects all of us. I trust that our board will lead on this issue.

Steve Nations
NationsHomeInspections.com

Bill Kibbel

Home Safe vs Assured Home Inspection
[#9] Posted: 08/21/2013 - 6:56:37 PM

Count me in for any offensive against the trolls. Lotsa stuff angry people could do to make their board members really, really miserable - without paying lawyers.



State: PA & NJ
Posts: 3374
Joined: Jan, 2004
● online

Bill Kibbel, Historic & Commercial Building Inspections - Old House Resources

Jerry Simon

Home Safe vs Assured Home Inspection
[#10] Posted: 08/21/2013 - 7:54:02 PM

I don't use thermal imaging, but if a check would help, lemme know where to send.



Crystal Lake, IL
Posts: 1248
Joined: Sep, 2003
● offline

homesafeinspection.com/home-inspection-category/patent-protected-technologies-and-methodologies

Jim Katen

Home Safe vs Assured Home Inspection
[#11] Posted: 08/21/2013 - 11:10:08 PM

Quote: Originally posted by SNations

Quote: Originally posted by bjloden

Though Mr. Russell is not a member of ASHI, we intend to assist in obtaining funding needed to protect his business and his family.

Bill Loden
ASHI President Elect

As a dues-paying ASHI member I want to echo the idea that ASHI should play a huge role in helping Mr. Russell. This affects all of us. I trust that our board will lead on this issue.



Gaston, Oregon
Posts: 8519
Joined: Dec, 2003
● offline

I agree. I have no problem with Homesafe defending their rightful patents. But casting the net this wide is despicable.

I'd love to see ASHI and InterNACHI set aside their differences and cooperate on this, single, issue.

Jim Katen, Oregon
www.amipdx.com

Russe777

Home Safe vs Assured Home Inspection
[#12] Posted: 08/22/2013 - 06:36:31 AM



Tupelo, MS
 Posts: 3
 Joined: Apr, 2012
 ● offline

Thank you guys for you vote of support.

I believe my attorney is completely capable of protecting my assets. But I don't know if he is aware or can be made aware of the consequences of the case regarding Home Inspectors. In this case I will probably need a couple of attorneys. Not to mention a Patent attorney.

I don't know if this is the right case to try to over throw the patent. That's for attorneys to decide.

ghentjr

Home Safe vs Assured Home Inspection
 [#13] Posted: 08/22/2013 - 09:26:59 AM

Posts: 729
 Joined: Feb, 2004
 ● offline

Quote: Originally posted by Russe777

Thank you guys for you vote of support.

I believe my attorney is completely capable of protecting my assets. But I don't know if he is aware or can be made aware of the consequences of the case regarding Home Inspectors. In this case I will probably need a couple of attorneys. Not to mention a Patent attorney.

I don't know if this is the right case to try to over throw the patent. That's for attorneys to decide.

Because of the implications of this issue your attorney might want to contact the attorney for ASHI to swap thoughts and maybe get a more clear picture of what the stakes are. I am not sure where ASHI is on this but their attorney should be up to speed. And, if a pool of funds is to be developed it should be a donation of at least the value of an inspection, especially from those of you who do IR work. Small donations of \$25 or \$50 won't get anyone anywhere.

Gromicko

Home Safe vs Assured Home Inspection
 [#14] Posted: 08/27/2013 - 9:37:37 PM

Boulder, CO
 Posts: 27
 Joined: Aug, 2013
 ● offline

I met with Home Safe and the other patent owners today. The lawsuit will be withdrawn tomorrow.

Planet InterNACHI... resistance is futile.

kurt

Home Safe vs Assured Home Inspection
 [#15] Posted: 08/28/2013 - 05:10:54 AM

I want to thank Nick for coming out and joining in the larger inspection community. Anything Nick does to advance the profession is appreciated.

Nick graciously joined the wide ranging consortium of inspection associations, individuals, law firms, and multi-national IR manufacturing companies in opposing this ridiculous extortion attempt.

We thank you for stepping up to take credit for what dozens of other's have diligently worked on for the benefit of us all. Someone usually grabs the spotlight for what many toiled for, and who better than Nick to bask in the glory?

Please stop back again and join us in making the world a better place.

Chicago, IL
 Posts: 10023
 Joined: Dec, 2003
 ● offline

Kurt in Chicago

"If I smell it, it goes in the report".....Phillip Smith...2012

Scott Wood

Home Safe vs Assured Home Inspection
[#16] Posted: 08/30/2013 - 1:59:25 PM



Gig Harbor, Washington
Posts: 26
Joined: Sep, 2010

● offline

Nick,
Thank you for your post and involvement regarding the legal action. Could you be more specific on the reasoning behind HomeSafe's lawyers dropping legal action?

Bill Kibbel

Home Safe vs Assured Home Inspection
[#17] Posted: 08/30/2013 - 2:26:51 PM



State: PA & NJ
Posts: 3374
Joined: Jan, 2004

● online

Quote: Originally posted by Scott Wood

Nick,
Thank you for your post and involvement regarding the legal action. Could you be more specific on the reasoning behind HomeSafe's lawyers dropping legal action?

He paid them off - just what they wanted.

That's the precedent the patent trolls needed to continue their extortion.

Bill Kibbel, Historic & Commercial Building Inspections - Old House Resources

Scott Wood

Home Safe vs Assured Home Inspection
[#18] Posted: 09/01/2013 - 11:25:21 AM



Gig Harbor, Washington
Posts: 26
Joined: Sep, 2010

● offline

Additional information and posts of HomeSafe's patents on the use of thermography has spread to other forums including, LinkedIn's RESNET BPI Energy Audit and Home Performance. It seems that once a patent is issued, little can be done to prevent its enforcement without incurring huge legal expenditures. This may be the reasoning for the lack of visible fight from FLIR when the letters first went out in 2008. Seems time is ripe for home inspection organizations and imager manufactures to team up on this issue.

kurt

Home Safe vs Assured Home Inspection
[#19] Posted: 09/01/2013 - 12:05:52 PM



Chicago, IL
Posts: 10023
Joined: Dec, 2003

● offline

Do not forget that the other side also has the risk of fighting a long legal battle too. It's not just one of us against a bully. If there was an industry wide cooperation to push back, I'd take odds that HomeSafe was as much at risk of as one of us as an individual. I greatly doubt the multinational corporations that manufacture the tools are afraid.

And, what Kibbel said. Nicky, whatever possessed him to play such a small time maneuver, has helped these folks, while wrapping himself in the guise of a savior. It's carnival sideshow entertainment that hurts us in the long run.

Loden asked me to put this up here in TIJ. It's the responsible and intelligent approach.

Important Notice from ASHI

Threat to the Home Inspection and Thermal Imaging Industry

For years ASHI has quietly monitored the inspection industry landscape for threats to our profession. Through a grass roots network of members, committees, chapter leaders, the Council of Representatives and the Board of Directors, we effectively survey--and when needed--react to changing conditions. ASHI is also the only association of professional home inspectors with a lobbyist in Washington DC, allowing us to protect the entire profession from regulation that would be adverse to the profession and promote positive policy, thus enhancing the home inspection profession and adding value for our clients.

Now a threat to our profession has materialized. First recognized by some ASHI members in 2008, the threat has now reached a critical stage and requires all members' attention and consideration. This threat is from a company in Oxford, Mississippi, HomeSafe Home Services, incorporated in 2003. One of the HomeSafe cofounders, while working as a researcher at a university in Oxford, Mississippi, used industry-developed infrared techniques and technology to supplement his acoustic research to locate termite colonies inside the walls of buildings.

Over the course of several years, the researcher and his associates developed patents on procedures related to the use of infrared camera technology in a residential structure. While much of his work can be shown to be from widely documented procedures developed by others in the 1980s and 1990s, the patents applications were submitted to and approved by the US Patent Office. These patents are now the basis of claims being made against inspectors and thermographers who use infrared camera technology.

Around 2005 or 2006 HomeSafe began sending letters to home inspectors and energy auditors who use infrared cameras in evaluating homes, threatening legal action for patent infringement. HomeSafe claims, "It is impossible to perform a complete and accurate inspection or even a partial inspection with an infrared camera without utilizing HomeSafe's patented methods and infringing."

Additionally they allege, "If you are using an infrared camera to detect anomalies in a home related to indoor air quality, energy loss, moisture intrusion and electrical hazards among others, you are violating HomeSafe's patents."

ASHI established a task force in 2011 to assess these threats. The task force consulted a number of expert patent attorneys from around the country and also worked to assemble a coalition of industry stakeholders to determine the veracity of HomeSafe's claims. As the task force continued its work, the threat from HomeSafe appeared to diminish and over the past year ASHI has been monitoring the situation.

On August 7, 2013 HomeSafe filed its first lawsuit in the Northern District of Mississippi for patent infringement against a home inspector in Tupelo, Mississippi. ASHI learned of this action on August 19 and immediately began taking steps to reactive the work of the task force and make contact with industry stakeholders. Our intention was to assist this inspector who is a member of another inspection association to ensure he had the information and resources he needed to protect his assets.

In the meantime, the owner of the defendant's home inspection association stepped in, before the court date for the defendant response on August 28, and offered to pay HomeSafe a cash settlement to drop the suit. While it might have been intended as a generous gesture, this offer and acceptance of cash provides HomeSafe a quick win and additional funds to file more legal action. This ill-advised payment to HomeSafe will further embolden them to pursue their legal strategy. In the end, while certainly a godsend for the inspector involved, this can mean more threats and more suits by HomeSafe against home inspectors.

Be aware that there are also some in the home inspection industry beginning to report they have a "magic bullet" or "shield" against HomeSafe's threats. They lead their members to believe that if a thermographer adopts their "procedure," they will be protected. Before you accept this, you should consult with a patent attorney. You are likely to discover that while the tactics suggested might be marginally helpful if you have to defend yourself in court, those tactics are in no way likely to deter or prohibit HomeSafe from engaging you in a civil action in US Federal Court.

ASHI is taking positive steps to assist its members who use thermal imaging as a part of their business. ASHI's actions will also benefit any residential thermographer, regardless of association or industry affiliation. An ASHI 2011 member survey indicates that today there are close to 2,000 ASHI members using thermal imaging in their business, and there are many thousands more across the thermal imaging community.

ASHI will engage all thermographers and the thermal imaging support industry to join our coalition and develop a unified strategy to protect the interest of our members. This will require industry-wide cooperation. In the days ahead, ASHI will issue a Call to Action to let each of you know how you can show your support for our efforts to protect not just our members but the industry as a whole.

Finally, please consider what happens if the industry ignores this issue. Predicting the future is never easy, but we can be sure of one thing: HomeSafe will not quietly give up their fight to control the residential infrared market. They have proven they are committed to achieve their objectives with ten years of effort. Do you want to face


them alone or do you want to stand with thousands of inspectors and thermographers across the country and meet this challenge head on?

ASHI will provide additional updates as this situation unfolds.

Kurt in Chicago

"If I smell it, it goes in the report".....Phillip Smith...2012

Darren

 Home Safe vs Assured Home Inspection
[#20] Posted: 09/07/2013 - 02:23:53 AM

Interesting reading

<http://www.nj.com/business/ind...ten.html>

Darren
Succasunna NJ

New Jersey Home Inspections

"Leave my nose alone Please!" (FZ)



Succasunna, NJ
Posts: 1041
Joined: Sep, 2003
● offline


dstew619

 Home Safe vs Assured Home Inspection
[#21] Posted: 09/11/2013 - 1:59:59 PM

This will be intriguing to follow and see what homesafe does now? In a way settling with them and making it "disappear" validates the claim. Look out home inspectors there may be more coming...

San Diego, CA
Posts: 3
Joined: Sep, 2013
● offline

Scottpat

 Home Safe vs Assured Home Inspection
[#22] Posted: 09/12/2013 - 04:59:43 AM

This was sent to me overnight by an unhappy INACHI member. It show Nicks true motivation with this issue...

Nick Gromicko
InterNACHI Admin

Join Date: Aug 2002
Location: Valley Forge, PA
Posts: 36,239

Spring Hill (Nashville area),
Tennessee
Posts: 3549
Joined: Nov, 2003
● offline

Re: Assured Home Inspection vs. Home Safe

I'm not interested in an insurance policy that covers members who infringe on the patents or a discount for members who want a license to use them. I'm trying to acquire partial ownership in the patents so that I can enforce them on non-members who are using IR cameras.

Nick Gromicko
Certified Master Inspector
President, Contractors Association
Founder, InterNACHI

"Just as iron sharpens iron, one man sharpens another." Proverbs 27:17
Last edited by gromicko; 9/11/13 at 6:30 PM..

From Assured Home Inspection vs. Home Safe - Page 24 - InterNACHI Inspection Forum <http://nachi.org/forum/f6/assu...eg8JKkPi>

Scott Patterson
<http://www.traceinspections.com>

"Minds are like parachutes they only function when open"

kurt

Home Safe vs Assured Home Inspection
[#23] Posted: 09/12/2013 - 05:18:01 AM

Consistent with the fellow's business plan.....

Kurt in Chicago

"If I smell it, it goes in the report".....Phillip Smith...2012

Chicago, IL
Posts: 10023
Joined: Dec, 2003

● offline

Marc

Home Safe vs Assured Home Inspection
[#24] Posted: 09/12/2013 - 06:02:08 AM

Yeah, he's clearly a businessman above all else. He'd sink the profession for a dime.

Marc

"If Guam gets too overpopulated, it might tip over."
Congressman Hank Johnson (D) GA

Lafayette, Louisiana
Posts: 4487
Joined: Nov, 2009

● online

Les

Home Safe vs Assured Home Inspection
[#25] Posted: 09/12/2013 - 06:21:29 AM

Quote: Originally posted by Marc

Yeah, he's clearly a businessman above all else. He'd sink the profession for a dime.

Marc

DeWitt, MI
Posts: 3469
Joined: Jan, 2004

● offline

Marc,

Please re-consider the use of the word "businessman". This behavior does not indicate he is a businessman, at least to my thinking.

Les

kurt

Home Safe vs Assured Home Inspection
[#26] Posted: 09/12/2013 - 06:54:58 AM

Yes. I consider us to be business people.

Nick....I'm not sure how to describe it in few words.

Kurt in Chicago

"If I smell it, it goes in the report".....Phillip Smith...2012

Chicago, IL
Posts: 10023
Joined: Dec, 2003

offline

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- Topic -



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www.slab2shingles.com

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Kevin Seddon <kjseddon1@gmail.com>

Posting of TV Station Story

1 message

Thu, Mar 6, 2014 at 7:39 PM

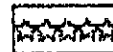
Here is where Bill Loden posted a link to the news story on the ASHI site and responses from folks in 7 states.

Page 1 of 1 (9 items)

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Thu, Feb 6 2014 12:21 PM



Infrared Patent Update

Alabama Attorney General PR.pdf

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Bill Loden



Joined on Fri, Jan 11 2008

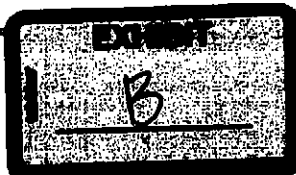
Madison, AL

Posts 546

To all,

We've been quite busy the last few months and would like to update everyone on what is going on with the patent issues regarding infrared. There are developments on a number of fronts. As noted in this thread, the house has passed a bill and now the senate is working on a similar bill which will eventually be reconciled and passed. This is one of the few bills in congress that is receiving bipartisan support. I'm not sure if anyone noticed but POTUS mentioned the Patent Troll issue in the State of the Union Address. Everything appears to be aligned and as soon as the bill is passed, it appears to have pre-approval from the White House.

One of the key provisions will be fee shifting. A plaintiff will first be required to submit a bond assuring payment of the defendant's legal costs if they lose the action. Another key provision is the requirement for greater due diligence on the plaintiff's part. The plaintiff will have a greater responsibility to show evidence of infringement. In HomeSafe's case they filed demand letters based on the fact that an inspector offers IR on their website or other marketing material. This



won't be acceptable under the likely provisions of the final bill.

In any case, ASHI's lobbyist is on the job working with a large coalition to move this through the legislative process.

At the state level there is also a great deal of activity. In December, 43 State Attorney's Generals submitted a letter to the Secretary of the Federal Trade Commission voicing strong support for the Secretary's proposed investigations on patent trolls. It is my understanding that FTC investigations are underway.

Since I work in North Alabama, I am a stone's throw away from Oxford, MS, HomeSafe's resident location. Anticipating possible action from HomeSafe, I have been working locally to strengthen state law as it pertains to the aggressive claims of patent trolls. State Senators from my area have pushed through legislation giving the attorney general the authority to investigate and prosecute patent trolls who may attack Alabama business. The law was patterned after the Vermont law on the subject. Weaknesses identified in the original Vermont law that have been corrected in the Alabama bill giving Alabama one of the strongest state laws on the issue.

The attorney general has asked any business being attacked by patent trolls to contact his office. I've attached a letter from his office.

In addition, ASHI has provided startup funds for an independent Not for Profit Corporation, IR FREEDOM, Inc. The business operations are being established and I am the President of the organization. We are currently completing our business plan and have corporate donors making pledges of support. We will also have a website up soon and will be soliciting donations from individuals and companies who want to defend free markets in the infrared sector.

I do hope all of you will support this effort.

Finally, here is a link to a news story on the subject from a North Alabama CBS station.

<http://whnt.com/2014/02/03/pat...igation/>

Just to drive home the point, Patent Trolls are a real problem across all sectors of the economy. Cutting deals with them is not the way to solve the problem. By working through the legislative system, the law enforcement agencies and by joining together, we can permanently put this problem to rest for the entire infrared community.

Please join me as we fight for IR FREEDOM!

Bill Loden, ACI
ASHI President

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[Quick Reply](#)

Thu, Feb 6 2014 2:24 PM

In reply to 

Re: Infrared Patent Update

[Paul Barraza](#)

[Reply](#) [Favorites](#) [Contact](#)



Bill-

[Joined on Fri, Jun 24 2011](#)

[Berkeley, CA](#)

[Posts 259](#)

A big thanks to you and the others who have obviously working hard on this. I don't currently to IR thermography, but I am heartened that ASHI has worked diligently to combat this plague and protect the interests of our members.

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[Quick Reply](#)

Thu, Feb 6 2014 4:53 PM

In reply to 

Re: Infrared Patent Update

[Kurt Mitenbuler](#)

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Yes, thanks much.

[Kurt Mitenbuler](#)

Kurt Mitenbuler

- o Joined on Sat, Dec 29 2007
- o Evanston, IL
- o Posts 2,985

o Report abuse

o Quick Reply

Fri, Feb 7 2014 7:41 AM

In reply to 

Re: Infrared Patent Update

- o Les Van Alstine

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Thanks for the info and update.

Les
Michigan



- o Joined on Tue, Oct 23 2007
- o Dewitt, MI
- o Posts 281

o Report abuse

o Quick Reply

Fri, Feb 7 2014 9:13 AM

In reply to 

Re: Infrared Patent Update

- o Gareth Denise

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Thanks for taking the initiative and for all the hard work.

Gareth Denise
Denver, CO



- o Joined on Tue, Jan 15 2008
- o Littleton, CO
- o Posts 712

o Report abuse

o Quick Reply

Fri, Feb 7 2014 9:52 AM

In reply to 

Re: Infrared Patent Update

o Mike Twitty



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Thanks Bill, let us know how we can help through our respective state levels.

o 

- o Joined on Sat, May 15 2010
- o Mount Juliet, TN
- o Posts 344

o Report abuse

o Quick Reply

Fri, Feb 7 2014 10:56 PM

In reply to 

Re: Infrared Patent Update

o Matthew Steger, ACI



Reply Favorites Contact

Thank you Bill. We appreciate ASHI's efforts to help fix this nonsense.

Matthew Steger, ACI

o 

- o Joined on Sat, May 23 2009
- o Elizabethtown, PA
- o Posts 1,163

o Report abuse

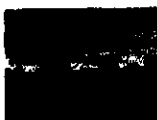
o Quick Reply

Tue, Feb 11 2014 6:37 PM

In reply to 

Re: Infrared Patent Update

o Jim Hemsell



o 

- o Joined on Sat, Jan 26 2008
- o Denton, TX
- o Posts 311

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Great Job, Bill. The sun and moon and the ASHI leadership and legislative committee have all aligned to allow reason into the patent process. The timely move is also raising options of their timely support. Compare that to cheap payoffs to buy their memberships access for another association, ASHI stands for the industry.

Jim Hemsell

o Report abuse

o Quick Reply

Tue, Feb 11 2014 10:18 PM

In reply to 

Re: Infrared Patent Update


o  Kurt Mitenbuler

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Jim Hemsell:

Compare that to cheap payoffs to buy their memberships access for another association. ASHI stands for the industry.

- o 
- o Joined on Sat, Dec 29 2007
- o Evanston, IL
- o Posts 2,985

Exactly.

I've never paid any attention to anything from over there until the IR pimp shot. ASHI leadership really impressed me with their reasoned and industry stabilizing response.

Kurt Mitenbuler



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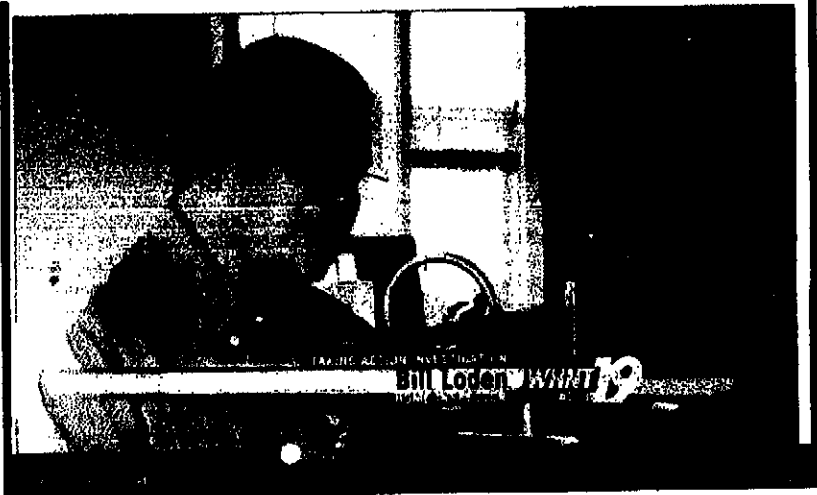
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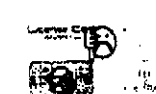
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IRTalk

IRTalk is an online community and information exchange that connects people interested in infrared thermography through discussion and collaboration. Whether you are a beginner or an advanced thermographer, IRTalk is the place to learn!

APPLICATIONS

Thermal Imaging Monopoly



Posted by MichaelDWolok on Sun, Jan 16 2011 10:45 PM

Sounds like a scam.

Florida Thermal Imaging Florida Building Science & Energy Efficiency. IR Inspections and Analysis
HVAC/R Commissioning, Consulting & Preventive Maintenance Electrical Preventive Maintenance



Posted by MichaelDWolok on Sun, Jan 16 2011 10:47 PM

I would contact your local attorney general, DA or state attorney. Sounds like an extortion to me.

Florida Thermal Imaging Florida Building Science & Energy Efficiency. IR Inspections and Analysis
HVAC/R Commissioning, Consulting & Preventive Maintenance Electrical Preventive Maintenance



Posted by rbrakebill on Wed, Jan 19 2011 7:52 AM

Not only are they offering this in Infrared but also ultrasonic? And after reading thru some of this literature it sounds like IR/Ultrasonic for dummies! It basically says that there software gives you the awnser via laptop and you make your judgement call off that? And on top of that there throwing around that your "certified" thru this company that shows no proof of any type of knowledge/certifications/history but some patent? Now how would this effect the standards or how would the standards effect this "theory" of theres that john and so many others have been working on for years? Besides a patent is only good if you follow every step down to the word that is lined out in



the patent, while utilizing just their software. If you use their or say their software that already has a patent then these patents override these guy's patents.

Sorry if I sound like I am ranting but nothing makes me madder than some yahoo out trying to make a buck off something that they "think" they know and hiding behind some BS "patent" that they had some off the wall back alley lawyer draw up while effecting the average Americans livelihood. Almost as bad as some of these executives running the businesses in the ground while ruining a great American product and peoples lives/families.

Common Sense is like a super power these days! GKN Aerospace PdM Technician Level 1 qualified TI-40/TI-55



Posted by Gordon Fraser on Sat, Jan 22 2011 7:38 PM

The link provided appears to show they also have visual inspection patented, but here in Quebec I am protected by Francophone rights so I am probably OK for a while. Being fairly isolated where I live; far from the maddening crowd, so to speak, I am sometimes a bit behind in the new and improved. (Thank all you folk for this great informative site and dialog). But looking at the patent drawings for the next generation of cameras makes me think it will be awhile before I order this specific model.

Curiously I came across this post just after seeing that video of the woman walking into a fountain while texting. I imagine operators with this type of vision would do well to stay away from low doorways, cactus gardens, and roof edges.

Gordon Fraser Grenville sur la Rouge, QC



Posted by Bill Loden on Wed, Feb 16 2011 9:00 AM

It has been just over 3 years since I started this thread and I just received the extortion letter from HomeSafe.

From what I have seen their business plan revolves around targeting individual home inspectors who will likely not have the resources to fight this in court. They state up front that if you don't settle immediately and they are forced to file suit, it will cost you at least \$20,000. The final amount will depend on how long you hold out. They also tell you that if you try to fight to overturn their patent, it will cost anywhere from \$400K to \$2.5 million.

They "demand" an initial up front payment of \$1000 for having violated their patent and if you aren't willing to stop performing infrared scans on houses, they tell you to contact HomeSafe to set up an account in which you pay them \$99 per month. Sounds like a bargain.

It is very much like the protection rackets run by the mob. They go in and threaten a store keeper with harm, then offer "protection" for a low monthly fee.

They are growing like a cancer and as they grow they are going to get stronger and will be coming after more and more thermographers. As you know, cancer is best controlled in the early stages before it spreads too far and overwhelms the system.

I am faced with a choice of paying the extortion or paying an attorney to fight this. I am not one who takes well to being pushed around and it is my intention to start an industry coalition to stop this now. It was Ben Franklin who as he signed the Declaration of Independence said, "We must all hang together or assuredly we shall all hang seperately."

You can call this a joke and you can off the cuff advise me to just ignore them but this is not a joke. We all know what they are doing is wrong. That is not the question. The question for those of you who are performing IR on residential properties is: Are you willing to stand up to fight this now or do you want to wait until the thugs are knocking on your door?

Bill Loden


 Posted by **Jeff Gadd** on **Wed, Feb 16 2011 9:51 AM**

Bill,

Can you scan the letter into a pdf and post it? I know I would like to see it.

Jeff Gadd

<http://professionalinfrared.com> www.visioninfrared.com

 Posted by **Bill Loden** on **Wed, Feb 16 2011 10:28 AM**

If you want to find our more about HomeSafe, their web address is:

<http://www.homesafeinspection.com/>

In their literature they provide the following warning:

HomeSafe's federally approved patents grant HomeSafe Inspection and its SIRI-certified inspectors exclusive rights to use infrared technology to locate many major thermal anomalies in a residence -

including, but not limited to, air quality issues, energy inspections and energy audits, water intrusion problems and electrical and wiring dangers.

Inspectors not licensed by HomeSafe who are using IR are advised to consult with an intellectual property attorney to determine if they are infringing on HomeSafe's patents.

Folks, this is serious.

Bill Loden

Bill Loden

Posted by **METHornton** on **Wed, Feb 16 2011 10:36 AM**

We went through all this in the Vibration field. I still can't believe a patten was allowed on route based data collectors, but it was and the data collector prices were kept high because of it until the patten ran out. Just because it sounds stupid doesn't mean it won't hold up in court.

Mike Thornton Machine Evaluation & Training, Inc. www.MachineEvaluation.com Office: 309-579-3510
Toll Free: 888-579-3510 Fax: 309-210-4341

Posted by **Gordon Fraser** on **Wed, Feb 16 2011 11:06 AM**

As was mentioned on this thread before, the camera companies will surely be affected by this attempt. They might be restricted to selling only approved models to approved people. For certain their sales would fall. I wonder if any of the major manufacturers have been informed or have any comments on these patents.

Gordon Fraser Grenville sur la Rouge, QC

Posted by **Bill Loden** on **Wed, Feb 16 2011 11:20 AM**


HomeSafe Inspection FLIR patent issue.pdf

That is a good question. The camera companies have an interest as do the IR training companies. So far I have found that HomeSafe has about 60 franchises around the country. As they grow and get stronger they may eventually dictate terms to the big firms. Who knows.

Some one on another forum shared the attached document that is on Flir letterhead. Since there is no name on the letter I have no way of verifying it but if it is legitimate it appears Flir is aware of the HomeSafe scam. Of course they don't appear to be interested in providing substantive assistance to their customers and advise anyone confronted to consult with their own attorney.

Bill Loden

Bill Loden

 Posted by **Jeff Gadd** on **Wed, Feb 16 2011 12:12 PM**

Interesting letter from Flir if it is real. I went to the website after this topic resurfaced. I would still like to see this letter they sent you. I say shame on anyone who joins (coerced or not) this franchise whatever.

They are selling a steaming pile of something, training, franchise.....my 2cents

The SIRI (Specialist - Residential Infrared Inspector) Certificate is awarded to home inspectors who complete a **40-hour specialized training course** and pass a **comprehensive examination** in the correct usage of infrared imaging technology in the course of a home inspection. SIRI (Specialist - Residential Infrared Inspector) Certificate is awarded to home inspectors who complete a **40-hour specialized training course** and pass a **comprehensive examination** in the correct usage of infrared imaging technology in the course of a home inspection.

Jeff Gadd

<http://professionalinfrared.com> www.visioninfrared.com

 Posted by **David Molland** on **Wed, Feb 16 2011 2:45 PM**

Question I have is, has anyone anywhere consulted with a patent attorney about this? It seems like it would be in the interest of anyone affected by this to avoid reinventing the wheel. If I had to dig into this issue, the last thing I would want is to have to find and hire an attorney totally unfamiliar with it.

General Contractor & Building Consultant IR Level 1 – Fluke T132 user <http://www.ballerhill.com>

Posted by **Mark P** on **Thu, Feb 17 2011 9:28 AM**

Several years ago I called HS and discussed this topic with them. I did not even have an IR camera I was just annoyed and wanted some answers. Their point of view was that they were the 1st ones to develop protocols for using IR in combination with a HI. They spent years working on the patent process, and the court of public opinion is not going to change that. If someone wants to take the time and money to fight their patent in court let them do so, but in the mean time they own the patent and intend on protecting it.

The letters are a form of patent protection, because if they don't actively take steps to prevent others from using their patented process then they could loose the patent. If I remember correctly there are 3 or 4 letters written by their attorneys each one a little stronger in language then the previous.

By the way they don't own the patent on using IR for finding missing / inadequate insulation; someone else owns that one.



Posted by **Bill Loden** on **Thu, Feb 17 2011 1:24 PM**

Mark,

These guys did spend several years developing these patents but one thing you should know is that while they were working on this they were paid employees of the University of Mississippi, using university time and legal assistance to obtain the patents that they now turn to personal profit.

Bill Loden

Graduate - Mississippi State University

Bill Loden



Posted by **Bill Loden** on **Thu, Feb 17 2011 1:33 PM**



David Melland:

Question I have is, has anyone anywhere consulted with a patent attorney about this? It seems like it would be in the interest of anyone affected by this to avoid reinventing the wheel. If I had to dig into this issue, the last thing I would want is to have to find and hire an attorney totally unfamiliar with it.

I consulted with a patent attorney this morning. We reviewed my process in comparison to the HomeSafe patents and found that my process was significantly different and could not be considered an infringement.

My question back to everyone here is: Would you be willing to help bring together the resources to establish a central clearinghouse to help thermographers defend against this threat?

Bill Loden

Bill Loden

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Patent Trolls: A Taking Action Investigation

Posted on: 7:56 am, February 3, 2014, by [Carrie Marchese \(http://whnt.com/author/whntcarriemarchese/\)](http://whnt.com/author/whntcarriemarchese/), updated on: 10:55pm, February 3, 2014

HUNTSVILLE, Ala. (WHNT) - Innovation is the heart of Huntsville. We create things every day that prosper our economy. But with creativity comes deceit. Patent Trolls have made their mark in the Tennessee Valley, targeting business owners and companies.

Recently, Bill Loden, a local home inspector, contacted WHNT News 19 to share his story. A company called Home Services Inc. sent him a letter claiming he was infringing on their patents.

This all stems from an infrared camera that Loden uses during home inspections. A \$17,000 dollar thermal imaging device used to check for air tightness and energy efficiency, to be exact. It's an added service he uses to help his customers save money.

Loden has been using the camera since 2006 with no problems. That is, until Home Safe contacted him in 2011. The letter claimed Loden was using the using their patented method of infrared inspections.

"They were threatening me," said Loden, "And they went on to say that if you try to defeat our patents it's going to cost you hundreds of thousands of dollars."

Home Safe's patents aren't about the product themselves; it's about the process and technique. The company doesn't sell infrared cameras. They simply claim to own six federally approved patents in the U.S. that cover the use of infrared technologies in building inspections.

Here's what the demanded from Loden:

- Pay \$1,000 in back pay for using their infrared process.
- Or, sign an affidavit that he will never use infrared in a home inspection again.
- Or pay \$10,000 in damages for each use and prepare to be sued.

WHNT News 19 turned to a patent expert to help better understand the situation, which has become controversial nationwide.

David Lucas, with Bradley Arant Boult Cummings, has worked with companies like Intergraph on patent protection and litigation. Lucas has also defended several large local employers against troll cases and confirms there is troll activity in Huntsville.

So what is a patent troll? Lucas sums it up best.

"Typically it is a company that does not have a commercial product and not in the market to sell things," said Lucas, "But either have bought the patent or acquired it through other means and then threatens litigation, or threatens licensing opportunities to collect royalties."

You will be amazed at the amount of money it takes to defend one of these cases in court. "An average patent case can run anywhere between a million and a half, to 2 million dollars, per patent to defend," said Lucas.



Big companies pay the big bucks to take the trolls to court. But small business owners like Loden can't afford to go that route, and often end up paying the fees just to stay in business.

Lucas said some of the greatest abuses in troll litigation are around method claims, similar to Loden's situations. Those abuses are now being scrutinized by the government and have made new headlines for the last several months.

According to the White House, in the last two years, the number of lawsuits brought by patent trolls has nearly tripled, and account for 62% of all patent lawsuits in America. The report suggests that victims of patent trolls paid \$29 billion in 2011, a 400% increase from 2005.

Currently there's a bill in Congress to stomp out this practice. The bill would shift fees, holding trolls responsible if they bring bad faith litigation to the table.

Alabama Attorney General Luther Strange recently announced that Alabama has joined 42 other Attorneys General in submitting a letter to the Secretary of the Federal Trade Commission (FTC) voicing strong support for the federal agency's proposed nationwide investigation of patent trolls.

And this past Thursday, The Alabama Senate passed a bill Thursday with broad support from both Republicans and Democrats to prevent so-called "patent trolls" from exploiting businesses.

Senator Arthur Orr's proposal authorizes the Attorney General to investigate claims of bad faith patent infringement claims and gives the recipient of a bad faith accusation the right to counter-sue in state court. The next move is for the bill to go to the Alabama House of Representatives in Montgomery.

In the meantime, Loden says he's not succumbing to demands. He's formed a coalition with other home inspectors and businesses so they can fight any lawsuit that comes his way.

And if he should win, hopefully he will have state and federal laws to back him up. Otherwise inevitably it's the consumer that suffers.

"If I can't do this service," said Loden, "I can't help consumer save money on their energy bills."

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