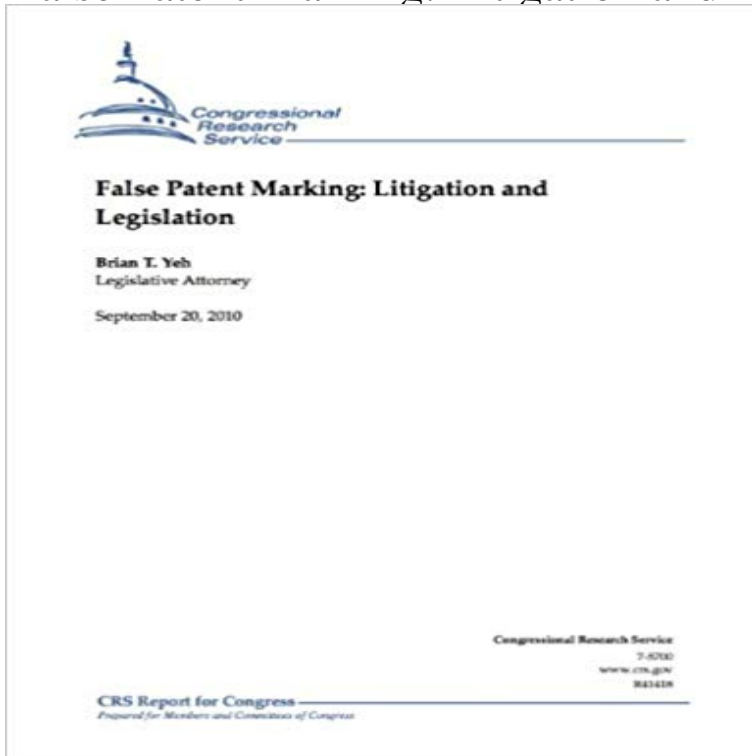


False Patent Marking: Litigation and Legislation



A patent holder that manufactures or sells a patented product will usually mark it with the patent number or other words that provide notice to the public that the article is patented. Such marking also permits the patent holder to recover an increased amount of damages in patent infringement lawsuits. However, marking a product with an expired patent number or inapplicable patent number is a violation of the false marking statute, Section 292 of the Patent Act. Section 292 provides that anyone who falsely marks an unpatented product with either a patent number, the words patent, patent pending, or any other words or numbers implying that the product is protected by a current or pending patent when, in fact, it is not, and does so with the intent of deceiving the public, shall be fined not more than \$500 for every such offense. Until late 2009, false marking lawsuits were relatively rare, and federal courts often assessed one \$500 fine for the decision to falsely mark, without regard to the number of articles that had been mismarked by the defendant. Yet in December 2009, the U.S. Court of Appeals for the Federal Circuit issued *Forest Group, Inc. v. Bon Tool Company*, which interpreted 292 to require a penalty of up to \$500 for every article that is falsely marked. The Federal Circuit explained that this calculation is mandated by the plain language of the statute. Furthermore, the Federal Circuit identified policy considerations that support its interpretation of 292, noting that false marking deters innovation and stifles competition in the marketplace because a falsely marked article may dissuade potential competitors from entering the same market. The Patent Acts false marking provision expressly allows qui tam civil actions any member of the public may sue a false marking offender on behalf of the federal government, in which event the fine is shared evenly between the person

bringing the suit and the United States. The Forest Group decision helped fuel a surge of false patent marking lawsuits nationwide, filed by so-called whistleblower plaintiffs who targeted defendants that sold thousands of products marked with expired patent numbers, such as plastic cups, dental floss, and mouse traps. Such product manufacturers could face considerable financial liability for false patent marking. Two decisions by the Federal Circuit in 2010 have addressed several questions that have arisen during the false patent marking litigation. *Pequignot v. Solo Cup Co.* held that a product covered with an expired patent is unpatented for purposes of the false marking statute. *Solo Cup* also explained that a defendant can escape liability if, despite knowing that a marking is false, it can prove that it did not consciously desire to deceive the public. In addition, a defendant's good faith reliance on advice of counsel is sufficient evidence that it lacked intent to deceive the public. *Stauffer v. Brooks Brothers, Inc.* determined that although a qui tam plaintiff in a false marking complaint may not have suffered an injury to himself, the United States has suffered an injury from the false marking violation and because the false marking statute operates as a statutory assignment of the United States interests and rights, a private plaintiff (acting as the government's assignee) has standing to enforce 292. In the 111th Congress, legislation has been introduced to amend the false marking statute in an effort to curb the proliferation of false patent marking suits. H.R. 4954 would require that the person bringing a false marking suit must have suffered a competitive injury as a result of the violation, thus eliminating 292's qui tam provision. If enacted, the new standing requirement would apply to all cases pending on or after the date of the bill's enactment. The bipartisan managers amendment to the Senate version of the Patent Reform Act, S. 515, released on March 4, 2010, contains a similar amendment to 292.

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False Marking Litigation: The Floodgates Have Opened - Strauss Troy Resolved numerous claims of false patent marking for various clients brought in the Northern District of Ohio and the Eastern District of Texas. Most cases were **False Patent Marking Litigation: The Present Landscape And** May 25, 2012 The America Invents Act has defanged false marking profiteers, but it has is patented and cannot be knocked off without risking litigation. **Joyous Lawyers Bid Adieu To False Patent Marking Suits - Law360** Dec 5, 2011 These provisions were made retroactive to any pending false marking cases. As a result, the Act effectively extinguished most pending cases. **False Patent Marking Tsunami - Banner Witcoff** Jun 2, 2010 False Patent Marking Litigation: The Present Landscape And Mitigating In the courts view, a penalty of \$500 per continuous act of marking, **Using Public Nuisance Law to Fix the False Patent Marking Statute** Sep 16, 2011 this public right and the need to curb false marking litigation, this Note pro- . Law Ctr., U.S Patent Litigation Statistics, **False Patent Marking: Litigation and Legislation - IP Mall** Oct 25, 2010 False patent marking has been prohibited by law for many years, and the current statute, 35 U.S.C. Section 252, has not materially changed **Last Gasp for False Patent Marking Cases? The Public Patent** Mar 10, 2010 There has been a recent wave of false marking cases brought under section 292 of the Patent Act, which allows individuals to sue companies **False Patent Marking: New Litigation Warrants Review of Old Policies** Aug 10, 2015 Under the current law, false patent marking claims can only be marking to those with the financial wherewithal to both fund litigation and start **False Patent Marking: Litigation and Legislation** Jan 6, 2011 False Patent Marking: Litigation and Legislation. Congressional Research Service. Summary. A patent holder that manufactures or sells a **False Patent Marking: Litigation and Legislation - UNT Digital Library** Apr 28, 2017 Primary view of object titled False Patent Marking: Litigation and Legislation. Thumbnail image of item number 1 in: False Patent Marking: **The Penalty for False Patent-Marking Just Got Much Pricier** Aug 1, 2011 How to avoid false patent marking litigation, and the fines that accompany Its going to go away, either through court decisions or legislation. Apr 27, 2017 It also identifies and discusses legislation in the 111th Congress that would Primary view of object titled False Patent Marking: Litigation and **The Law of Chemical and Pharmaceutical Invention: Patent and - Google Books Result** Aug 2, 2010 marking litigation that frustrates the constitutional goal of promoting the The false marking provision of the Patent Act is located at 35 U.S.C. **Implementing Patent Marking Strategies After AIA - Law360** Feb 23, 2011 Section 292 of the United States Patent Act provides, in part, that a person may be liable for false patent marking if he or she, for the purpose of **False Patent Marking: Litigation and Legislation - UNT Digital Library** Apr 20, 2017 It also identifies and discusses legislation in the 111th Congress that would Primary view of object titled False Patent Marking: Litigation and **Charting A Course For Post-AIA False Marking Litigation - Law360** Intellectual Property & Technology Law Journal 3. Current State of Patent False. Marking Litigation. By R. Mark McCareins and Peter Slawniak. From intellectual **recent changes in the law regarding false patent marking in the** Sep 3, 2010 If you or your company sells any device that indicates it is patented -- you need to in the Federal patent law statutes has recently been making a lot of news. The elements of a false marking claim are: (i) falsely marking an **How to avoid false patent marking litigation, and the fines that** Womble Carlyles False Patent Marking law firms in the country, providing a full spectrum of legal services to clients in false patent marking litigation,. **Avoiding Intent In A False Patent Marking Action - Law360** Sep 20, 2010 False Patent Marking: Litigation and Legislation. Congressional Research Service. Summary. A patent holder that manufactures or sells a **False Patent Marking Defense - Womble Carlyle** practices, a false marking statute has been in the patent law for over 150 years. 6 would encourage a new cottage industry of false marking litigation by **The False Patent Marking Landscape Post-Bon Tool and Solo Cup** 4 days ago Primary view of object titled False Patent Marking: Litigation and Legislation. Thumbnail image of item number 1 in: False Patent

Marking: **Current State of Patent False Marking Litigation** Buy False Patent Marking: Litigation and Legislation: Read Kindle Store Reviews - . **False Patent Marking Litigation: What Every Company Needs To Know** Sep 14, 2011 The patent reform law alters the false marking statute to eliminate the Gray On Claims has kept detailed records of false marking litigation. **False Patent Marking Litigation: Frost Brown Todd Law Firm** Also, a patent owner may recover pre-litigation damages against an infringer if he has properly marked his The intent of the law is to discourage false marking. **CAFC defines competitive injury for false patent marking** Jul 21, 2010 A false patent marking claim under 35 U.S.C. 292 requires proof of Unlike typical patent litigation, where the patent dispute is between the patent law for persons who suffer competitive injury as a result of false markings. **False Patent Marking: Litigation and Legislation - Kindle edition by** Indeed, the legislative history of the AIA suggests that this is what many Act reins in abuses that are reflected in a recent surge in false marking litigation. L.J. 22, 22-23 (2010) (noting that false patent marking claims are now the new and