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THE FARRINGTON GROUP

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NBER Productivity, Innovation and Entrepreneurship (PIE) Program
Call for Small Grant Proposals
Attn: The Innovation Policy Group

Dear PIE,

Please accept this proposal to research "Efficient Infringement, Patent Hold Out and Other Forms of Gamesmanship: Policy Bias of Incumbents, Cronyism and Capture" in response to NBER's call for Small Grant Proposals concerning "the impact of policy on technological entrepreneurship, antitrust and innovation."

Efficient infringement illustrates the gaming of entrepreneurship and innovation and may satisfy antitrust enforcement thresholds. Derived to some degree from efficient breach, efficient infringement (otherwise known as patent hold out) enables incumbents and financiers to bet against new innovation.

I propose to research the lobbying activity on patent issues since lobbying disclosures were modernized in 1995 to create a set of data that can be used as a baseline for identifying patterns in behavior based on other sets of data such as R&D spending, patent applications and issued patents, patent lawsuits, amicus briefs, and other financial exercises.

I also propose to research the literature on efficient infringement to generate an objective vocabulary and set of definitions that can be referenced by stakeholders, policy makers, judges and enforcement authorities.

There is much rhetoric, hyperbole, and variance in what patent data means. Calls for transparency in the data and also the sources and methods are often unmet as parties benefit from injecting their bias into the debates. For example, studies show that patents help and harm startups and entrepreneurs.

I actively lobbied on patent reform from the inception through the completion of the Leahy-Smith America Invents Act (AIA), I've consulted with a wide variety of clients on patent reform

issues for over twenty years, involving interests favoring and opposing patents, representing tech and life sciences and large and small entities including non-profits, universities, governments, individual inventors, startups, SMEs and multinational corporations. In recent years I've worked with the National Science Foundation and the Santa Fe Institute on patent data and patenting system complexity projects. In the past I've worked with the National Academies on their university IP management committee and report and with the OECD on their innovation policy planning and strategic update.

Lobbying data in recent years has been researched as an indicator of competitive advantage and higher stock market pricing. Lobbying data also illustrates how incumbents capture agencies, legislatures and even courts to increase their edge over their competitors and to block or raise the costs of new entrants.

The $20,000.00 in funding provided by NBER to support this research will produce a first of its kind summary and data set of who has spent money on lobbying on patents, who is being paid to lobby, and what issues are being specified. This data set can be updated each quarter after lobbying reports are filed. Given the breadth of this data set this research proposal will focus analysis of the impact of efficient infringement on technological entrepreneurship, antitrust and innovation by examining particular sub sets of the data including, for example, top filers of patents, top litigants, top lobbying spenders, top M&A and R&D spenders. In addition, this research will produce a few stories geared for a general audience that illustrate how the industry of influence functions. Such stories can help to raise public awareness and enable key audiences such as investors and startups better appreciate the challenges they face. It may also help educate incumbent corporations that the efficient infringement path may be appealing competitively and in the naked interest of near term shareholder value but also risks longer term reputational and antitrust liabilities and distracts corporate governance from appreciating how a more balanced, sustainable value can increase the value of the intangible assets that comprise so much of a balance sheet.

Please let me know what comments and questions you may have.

Thank you for this opportunity.

Most Sincerely,

Peter

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