STATE OF NEBRASKA
Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
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JON BRUNING
ATTORNEY GENERAL

DAVID D. COOKSON
CHIEF DEPUTY ATTORNEY GENERAL

July 18, 2013

VIA CERTIFIED UNITED STATES MAIL

Farney Daniels LLP
Attn: M. Brett Johnson, Partner
800 South Austin Avenue, Suite 200
Georgetown, TX 78626-5845

Re: **Possible Unfair/Deceptive Patent Enforcement Efforts Within the State of Nebraska**

Dear Mr. Johnson:

It has come to the attention of this office that your firm has issued demand letters upon several entities based in or with a substantial presence in the State of Nebraska alleging the infringement of certain patents. It is our further understanding your firm or the entities on whose behalf your firm has made such allegations are non-practicing entities with regard to the vast majority of the patents in question, and that several of your infringement assertions are unsubstantiated and contain false, misleading, or deceptive statements. If the latter is true, it could constitute a violation of the Nebraska Consumer Protection Act, NEB. REV. STAT. § 59-1601 *et seq.* (Reissue 2010, Supp. 2012), and the Uniform Deceptive Trade Practices Act, NEB. REV. STAT. § 87-301 *et seq.* (Reissue 2008, Supp. 2010).

The protection of Nebraska consumers and businesses from baseless harassment, particularly that which bears the potential for costly and destructive litigation, is a top priority of this office. We view as especially egregious threats which serve to advance no valid legal purpose or the legitimate protection of productive intellectual property but, rather, seek only to extract quick settlements from those otherwise committed to building their businesses and providing positive value to society. We will use every means at our disposal to prevent such conduct and deter its future occurrence.

It is notable that this is not the first time your firm or an entity on whose behalf your firm ostensibly represents has been the subject of an investigation by this office. Accordingly, we are concerned that Farney Daniels has exhibited a pattern and practice within Nebraska of deceptively alleging patent infringement and subsequent litigation.

Unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful. *See* NEB. REV. STAT. § 59-1602 and NEB. REV. STAT. §§ 87-302 and 87-303.01.

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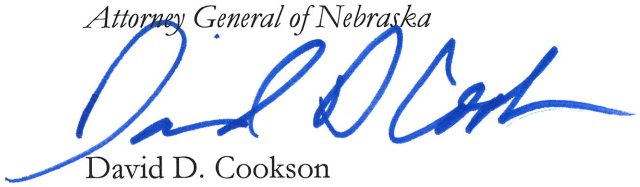
Violations of §§ 59-1602, 87-302, or 87-303.01 can subject an offender to civil penalties of up to $2,000 (two thousand dollars) *per violation. See* §§ 59-1614 and 87-303.11. The Office of the Attorney General is empowered to bring an action in the name of the state to restrain and prevent violations of the Consumer Protection Act and the Uniform Deceptive Trade Practices Act. *See* §§ 59-1608 and 87-303.05.

This office is currently investigating whether your firm's activities within the State of Nebraska constituted violations of NEB. REV. STAT. §§ 59-1602, 87-302, and 87-303.01. Pursuant to §§ 59-1611 and 87-303.03, we hereby demand that you respond to the Civil Investigative Demand enclosed herein by **August 19, 2013.**

The possible violations specified in this letter are serious and require your immediate and unconditional cooperation. Given the significant ramifications posed to Nebraska consumers and businesses by your potentially unlawful conduct, **I hereby demand that you immediately cease and desist the initiation of any and all new patent infringement enforcement efforts within the State of Nebraska pending the outcome of this office's investigation pursuant to § 87-303.03(1)(b).**

Sincerely,

JON BRUNING
Attorney General of Nebraska



David D. Cookson
Chief Deputy Attorney General

Enclosure

IN THE MATTER OF: **FARNEY DANIELS LLP or FARNEY DANIELS PC,** **Respondent.**	**CIVIL INVESTIGATIVE DEMAND**

DIRECTED TO: Farney Daniels LLP
Attn: M. Brett Johnson, Partner
800 South Austin Avenue, Suite 200
Georgetown, TX 78626-5845

PLEASE TAKE NOTICE: The Attorney General of the State of Nebraska ("Attorney General") has initiated an investigation into the business practices conducted by Farney Daniels LLP or Farney Daniels PC ("Respondent"). The Attorney General's investigation is being conducted pursuant to the Consumer Protection Act, NEB. REV. STAT. § 59-1601 *et seq.* (Reissue 2010, Supp. 2012) and the Uniform Deceptive Trade Practices Act, NEB. REV. STAT. § 87-301 *et seq.* (Reissue 2008, Supp. 2012).

NOW, THEREFORE, the Attorney General requires and demands that Respondent produce the information and documentary material requested in Exhibit A below, subject to the Definitions set forth in Exhibit B below, pursuant to the authority granted in NEB. REV. STAT. §§ 59-1611 and 87-303.03. The Attorney General further requires that Respondent mail or deliver the responsive material no later than **August 19, 2013** to the Office of the Attorney General, Attn: David A. Lopez, Assistant Attorney General, 2115 State Capitol, Lincoln, Nebraska 68509-8920.

This Civil Investigative Demand is relevant to the investigation of unfair or deceptive acts or practices in the conduct of patent infringement enforcement by Respondent within the State of Nebraska and for possible violations of NEB. REV. STAT. §§ 59-1602, 87-302, and 87-303.01. Failure to respond to this Civil Investigative Demand may subject you to sanctions as set forth in NEB. REV. STAT. §§ 59-1611 and 87-304.

ISSUED THIS 18th day of July, 2013.

By: JON BRUNING, NE #20351
Attorney General of Nebraska

By: _____
David A. Lopez, NE #24947
Assistant Attorney General
2115 State Capitol
Lincoln, Nebraska 68509-8920
Phone: (402) 471-2682
Dave.Lopez@nebraska.gov

EXHIBIT A

DEMAND FOR INFORMATION FOR THE RELEVANT TIME PERIOD

1. A listing of every patent, identified by its United States Patent Number or Application Number, for which your firm has ever asserted or alleged infringement against any individual or entity within the State of Nebraska either on your firm's behalf or on behalf of any client, including all such assertions or allegations conveyed in written or verbal form to a person or entity within the State of Nebraska since January 1, 2010.

2. A listing of every client, identified by name, on whose behalf your firm has ever made an assertion or allegation as described in Request #1 within the State of Nebraska since January 1, 2010.

3. A listing of every individual or entity within the State of Nebraska against whom you have ever asserted or alleged patent infringement and the nature of such assertions or allegations either on your firm's behalf or on behalf of any other entity since January 1, 2010.

4. Copies of any and all written (paper or electronic) communications which comprise Request #1 of Exhibit A.

5. All records, reports, memoranda, papers, communications, tabulations, maps, charts, photographs, mechanical transcriptions, or other tangible documents of recordings which support the basis of any assertion or allegation of patent infringement as described in Request #1 of Exhibit A.

EXHIBIT B

DEFINITIONS

The RELEVANT TIME PERIOD for which documents and information are requested is January 1, 2010 through the present, unless otherwise specified.

As used here, RESPONDENT, YOU, and YOUR refer to Farney Daniels PC or Farney Daniels LLP, its owners, partners, associates, affiliates, subsidiaries, directors, officers, agents, contractors, employees, and volunteers.

The terms RELATES and RELATES TO mean to be relevant in any way to the subject matter in question including, without limitation, all information that directly or indirectly contains, records, reflects, summarized, evaluates, refers to, indicates, comments upon, or discusses the subject matter. The terms also include documents or information that states the background of, was the basis for, records, evaluates, comments upon, or was referred to, relied upon, utilized, generated, transmitted, or received in arriving at any conclusion, opinion, estimate, position, decision, belief, or assertion concerning the subject matter.

The term IDENTIFY, when used with respect to a person or entity, means information sufficient to ascertain the name, address, telephone number, and, if not a natural person, the contact person of the entity or facility to be identified, as well as the relationship of that person or entity to you. The term IDENTIFY, when used with respect to a fact or event, means information sufficient to ascertain the fact or event with reasonable particularity, and to identify each person believed to have knowledge of the fact or event and each document that relates to the fact or event.

The terms ENTITY and ENTITIES includes natural persons, corporations, firms, associations, partnerships, joint ventures, any form of business entity, and governmental agencies, departments, units, or subdivisions thereof.

The terms EMPLOY, EMPLOYED, VOLUNTEER(S), and EMPLOYEE(S) relate to any and all individuals whom you control or direct the means and methods of accomplishing the result of the individual's work, regardless of whether or not the individual is employed full-time or part-time, is paid a salary or on commission, is unpaid or is called an employee, agent, or independent contractor, staff or volunteer.

CERTIFICATE OF SERVICE

The undersigned certifies that on the 18th day of July, 2013, the foregoing Civil Investigative Demand, including Exhibits A and B, was mailed by certified United States mail, postage prepaid and return receipt requested, to the following address:

Farney Daniels LLP
Attn: M. Brett Johnson, Partner
800 South Austin Avenue, Suite 200
Georgetown, TX 78626-5845

David A. Lopez