

From: Mail Delivery System
To: agpgi@yahoo.com
Subject: Mail delivery failed: returning message to sender
Date: Fri, 28 May 2004 15:31:33 -0400

This message was created automatically by mail delivery software.

A message that you sent could not be delivered to one or more of its recipients. This is a permanent error. The following address(es) failed:

bregan@michiganbowling.com

This message has been rejected because it has a potentially executable attachment "MSNBC - Got an invention You, too, can be scammed.url"

This form of attachment has been used by recent viruses or other malware.

If you meant to send this file then please package it up as a zip file and resend it.

----- This is a copy of the message, including all the headers. -----

<http://msnbc.msn.com/id/4863987/>

Do you Yahoo!?

Friends. Fun. [Try the all-new Yahoo! Messenger](#)

--0-592135426-1085772693=:87988--

--0-1453009884-1085772693=:87988

Content-Type: application/octet-stream; name="MSNBC - Got an invention You, too, can be scammed.url"

Content-Transfer-Encoding: base64

Content-Description: MSNBC - Got an invention You, too, can be scammed.url

Content-Disposition: attachment; filename="MSNBC - Got an invention You, too, can be scammed.url"

W0RFRkFVTFRdDQpCQVNFVVJMPWh0dHA6Ly9tc25iYy5tc24uY29tL2lkLzQ4NjM5ODcvDQoNCitJbnRlcm5ldFNob3J0Y3V0XQ0KVVJMPWh0dHA6Ly9tc25iYy5tc24uY29tL2lkLzQ4NjM5ODcvDQpNb2RpZmllZD1DMDA5MkE5RjAyNDVDNDAxOUUNCg==

--0-1453009884-1085772693=:87988--

Do you Yahoo!?

</A

o;?

[Tech / Science](#)
[Science](#)
[Space News](#)
[Games & Gadgets](#)
[Hacks, Scams,
Spam](#)
[Tech Tools](#)
[Return to Mars](#)
[The Big Idea](#)
[Genetic
Genealogy](#)

[News](#)
[Business](#)
[Sports](#)
[Tech / Science](#)
[Entertainment](#)
[Health](#)
[Travel](#)
[Opinions](#)
[Weather](#)
[Local News](#)
[Newsweek](#)
[Today Show](#)
[Nightly News](#)
[Dateline NBC](#)
[Meet the Press](#)
[MSNBC TV](#)



RESOURCE GUIDE

[b" Buy Life Insurance](#)
[b" Yellow pages](#)
[b" expedia.com](#)
[b" Shopping](#)
[b" Small Business Tips](#)



Got an invention? You, too, can be scammed
Expert: Consumers lose \$300 million a year to promotion firms

Bob Sullivan / MSNBC.com

Eric Fortier says this artist's rendering of his invention, a disposable ash tray, was all he got for the \$6,000 he sent to an invention promotion firm.

By Bob Sullivan

Technology correspondent

MSNBC

Updated: 1:20 a.m. ET May 09, 2004

Eric Fortier used to build airplanes at Boeing, but that was before Sept. 11, 2001. He was laid off soon after in the economic fallout from the terrorist attack. One night, while musing how they would provide for their two special needs children, Fortier and his wife, Tina, figured they'd found their answer while watching television. An infomercial described an easy process for turning a simple invention into a steady revenue stream.

advertisement

"We knew hard times were coming," Fortier said. "We saw Sept. 11; everybody did."

As former smokers, the couple was well aware that fines in Washington state can exceed \$1,000 for throwing cigarette butts out of car windows. So they came up with an easy solution -- a disposable butt holder that automatically snuffs out cigarettes. A machinist by trade, Fortier knew his simple device could be cheap to produce in high volume, but he had no capital to get the idea off the ground. He certainly had no idea how to market the device or get it into retail stores.

Enter NewInventions.com. With just a small up-front fee, and an agreement to split the profits, NewInventions.com would take care of all those details.

"We spent a lot of time on the computer. We looked them up in the Better Business Bureau and saw no complaints. That's why we did business with them," Fortier said from his home in Woodinville, Wash. "So we contacted them. They contacted us. We went back and forth for a little while. It was actually quite a while before any money changed hands."

Family and friends pitch in

The firm only asked for \$500 at first. A flurry of optimistic letters and phone calls followed, suggesting the invention was a winner. Another \$3,000 was sent, gleaned from family and friends turned fellow investors, and back came a business plan. An impressive-looking binder arrived in the mail, complete with an artist's rendering of the product and a market survey. It indicated a potential market size of more than \$1 billion for the disposable ash tray.

Then, the firm asked for another \$3,000 to begin marketing, and to build a Web site.

Soon after Fortier wrote that check, NewInventions.com fell silent. The promised Web site never materialized. Phone calls and letters weren't returned. A visit to the NewInventions office in Florida by Fortier's brother-in-law revealed the ugly truth: The office was empty, but for a few party balloons left on the floor and a pile of mail inside the door.

"We have big dreams ... but we couldn't afford to lose this kind of money, with the kids and the care they need," Fortier said. "I should have known better. But we got sucked in, like a lot of other people."

Among those other people were John and Patsy Newman, who also gave big bucks to NewInventions.com, hoping their dream would come true. The Florida couple sent \$8,900 to the company during a six-month romance, hoping NewInventions.com could promote the special cushion Patsy had invented to help people with spinal injuries. But their story is the same as Fortier's. After writing a series of checks and getting a spiffy business plan, they heard nothing more.

NewInventions.com is currently out of business, says Lee Schierenbeck, an investigator at the Hillsborough County Consumer Protection Agency, where the company was located. About 100

victims gave up to \$10,000 each to the company, she said; her office has received 23 complaints.

"This is some people's life savings. Granted, for some of them it's a pipe dream. But it's sad," Schierenbeck said. "There are a lot of angry people out there."

Attempts to contact Web site owner Eugene Ramos, found by searching the Florida Secretary of State's Web site, were unsuccessful. A phone message left at his residence wasn't returned.

The Newmans are now organizing a group of about 20 victims, hoping for recourse through the legal system, but they aren't optimistic.

"We know we're not going to get our money back. But we want to stop this from happening to other people," Patsy Newman said. "We can't believe people still go around doing things like this."

\$300 million-a-year industry

In fact, hundreds of firms do it but it's an epidemic, says Ron Riley, himself an inventor and a self-appointed watchdog of so-called invention promotion firms. Two years ago, the U.S. Patent Office estimated that inventors lost \$200 million each year. Riley says it's probably more like \$300 million now. Despite dogged efforts to inform consumers, a long list of sanctions and courtroom defeats for the firms involved but even a new federal law passed by Congress in 1999 but the problem just keeps getting worse, Riley says.

"I have shoeboxes full complaints," he says. "There are hundreds of companies doing this. I could add 20 or 30 to my 'caution' list right now."

Riley maintains a consumer information site called InventorEd.org, which he funds with his own money. He regularly crusades on behalf of consumers in an attempt to get refunds, but with mixed results. His site is full of consumer complaints and correspondence with companies. But the critical page on his site is his [Caution List](#), where he cites hundreds of companies that consumers should be wary of when attempting to market their inventions.

The U.S. Patent Office engaged in its own education campaign two years ago in an attempt to draw attention to the problem. Still, consumers can't seem to help but fall for the old ploy, says another watchdog, Gene Quinn. The Syracuse, N.Y., patent attorney maintains an inventor education Web site named IPWatchDog.com. He even pays Google so his site comes up among the invention promotion sites under paid advertisements when a visitor does a search.

He says inventors have just the right mindset to be taken to the cleaners.

Tell them what they want to hear

"What they are doing is they are selling dreams and telling you exactly what you want to hear. Some of these inventions ought not to see the light of day. But they will say, 'This is the greatest thing since sliced bread. Send us \$800 so we'll do a patent report.' They've never seen an invention they're going to reject," Quinn said. "You hear people all the time say, 'I took every last dime that I'd saved and paid for this.' It turns my stomach to hear these stories."

Among the more stomach-turning tales involves Virginia Jones, an elderly widow from Graham, N.C., who took out loans from an invention-financing firm to pay for \$20,000 worth of worthless services. She and her former husband invented a device that controls smoke emissions from wood stoves after an accident in their home several years ago caused extensive smoke damage. Jones spent more than \$10,000 with one firm, and had only a patent to show for it. That company

eventually refunded her money, but only after she agreed to a "gag" order not to discuss the case. Meanwhile, a second firm, Invention Publishing and Research, noticed the patent on file at the U.S. Patent Office and pursued Jones, saying it had a better way to promote the product. She fell for this second ploy, too, even though by now she had moved into low-income housing.

"Two or three times they were acting like they were close to getting somebody interested," said Jones' son, Alvarado. "For the money we paid, they got a six-month period to work with. And after that period of time we didn't hear from them. It was like they just disappeared."

Steve Lee, a spokesman for Invention Publishing and Research, said he couldn't comment on Jones' case because it happened in 2001, before he started working for the company. He said 22 percent of inventions submitted are actually licensed, but he could not say how many consumers earned more than they spent signing up with his firm. He said the company regularly shows off inventor's products at more than 50 trade shows around the country each year.

Federal Trade Commission attorney Peter Lambert says inventors often fall for flattery.

"What I tell inventors who call me is, you can never tell the mother of a newborn baby that this wrinkled little ball is not the most beautiful thing you ever saw," he said. But what inventors really need, he said, is honest feedback b not ego stroking, followed by a big bill.

FTC targets some firms

The Federal Trade Commission and various state authorities have taken several sweeping legal actions against invention firms, beginning with a 1994 settlement with Invention Submission Corp., one of the largest firms. In that deal, the firm agreed to pay \$1.2 million to redress consumers without admitting to any wrongdoing. The FTC charged that the company made several misrepresentations to consumers while persuading them to pay fees ranging from \$395 to \$4,890. Other legal actions include:

- ? The FTC sued American Inventors Corp. in the mid-1990s after the firm made \$60 million off 34,000 amateur inventors. Its owner agreed to pay more than \$2 million in fines.
- ? Global Development Services Inc. settled out of court in 1996, after agreeing to pay \$1 million in consumer refunds and to give customers a written notice stating that, since its inception in January 1994, not one of its clients has received profits of any kind from an invention as a result of Global's services.
- ? National Invention Services Inc., an invention promotion firm out of Cranford, N.J., agreed to pay about \$750,000 in consumer redress under a proposed settlement announced in July 1998 by the FTC. The case was part of the commission's 1997 Project Mousetrap roundup, which cited a number of companies for bilking \$90 million from consumers.
- ? Universal Consulting Service, also called Continental Ventures Inc., agreed in 2000 to refund more than \$240,000 to consumers after it was sued by the Missouri state attorney general.

The rabid growth of such firms and the flurry of legal activity got the attention of Congress in the late 1990s, when lawmakers approved the [American Inventor's Protection Act in 1999](#). The law mandates that the U.S. Patent Office keep a [complaint database for consumer reference](#).

Dismal success rates

It also forces companies that do invention-related business to disclose success rates to consumers. For instance, companies must reveal how many consumers actually made more money than they paid the promotion firm.

Typically, companies reveal this data at the last possible moment, after a consumer has all but signed on the bottom line, experts say. Invention Submission Corp. lists the information on its Web site. From 2001 to 2003, the firms signed deals with 6,480 clients, but only 14 made more money than they paid.

Those results are typical, Lambert said. "I'm not aware of a single company with over 1 percent," he said.

Still, despite all the legal activity and the abysmal success rates, invention promotion firms continue to flood the airwaves with marketing pitches, and still snare eager inventors.

"You can't watch late-night TV anymore without seeing one of these advertisements," Quinn said.

Patent Office faulted

Quinn and others fault the U.S. Patent Office for not taking a more activist role in warning consumers. And in some ways, the patent office serves to legitimize the promotion business, experts say. Because invention promotion firms can procure patents for consumers b albeit usually design patents, which generally aren't worth much b consumers can easily be duped into believing the companies are performing a worthy service. After all, they get a snazzy looking government document to put on the mantle.

"People can in good faith say, 'I can get you a patent,' " Quinn said. "These people are able to use the patent office to prop themselves up." A more diligent patent office would probably reject many of the consumer ideas submitted by invention promotion firms as useless, or lacking novelty, he said.

Riley says the impact of unscrupulous promotion firms goes far beyond the financial losses of victims. Many would-be inventors give up on their ideas, he said, meaning that products that might help people and create new businesses are forever lost.

"All of society is victimized," Riley said.

B) 2004 MSNBC Interactive
MORE FROM THE BIG IDEA

The Big Idea Section Front

- b" [The urge to innovate](#)
- b" [That 'Eureka!' moment](#)
- b" [The next Big Thing](#)
- b" [Small firms targeted in patent cases](#)
- b" [U.S. patent office swamped by backlog](#)
- b" [Would-be inventors lose money in scams](#)
- b" [Video: Whiz kids at work](#)
- b" [NBC on the search for the perfect tire](#)
- b" [The Big Idea Section Front](#)

EDITOR'S CHOICE

- b" [New Iraqi leader nominated](#)
- b" [U.S., Shiite militia clash near](#)
- b" [jobs safe from outsourcing](#)
- b" [The Best of the Nixon Years](#)

Najaf
b" Caribbean storm toll tops 950
b" WWII vets gather in D.C.
b" Coalition troops accused of
abuse

b" Does Potter die in last book?
b" Ten places for savvy travelers
b" New evidence of youngest
planet

advertisement

Bob Sullivan
Technology
correspondent

b" [Click for profile](#)
b" E-mail the
author

Feedback

Your favorite invention
isn't on our list? To tell
us what you think we
left out, [click here](#) .

Interactive

b" **Looking for the
next big thing**

advertisement

Shopping on MSN

[Cover](#) | [News](#) | [Business](#) | [Sports](#) | [Tech/Science](#) | [Entertainment](#) | [Travel](#) | [Health](#) | [Opinions](#) |
[Weather](#) | [Local News](#)
[Newsweek](#) | [Today Show](#) | [Nightly News](#) | [Dateline NBC](#) | [Meet the Press](#) | [MSNBC TV](#)
[About MSNBC.com](#) | [Newsletters](#) | [Search](#) | [Help](#) | [News Tools](#) | [Jobs](#) | [Contact Us](#) | [Terms and](#)
[Conditions](#) | [Privacy](#)

B) 2004 MSNBC.com

Try MSN Internet Software for FREE!

[MSN Home](#) | [My MSN](#) | [Hotmail](#) | [Shopping](#) | [Money](#) | [People & Chat](#) | [Search](#)

Feed

B) 2004 Microsoft Corporation. All rights reserved. [Terms of Use](#) [Advertise](#) [TRUSTe Approved](#) [Privacy](#)
[Statement](#) [GetNetWise](#) [Anti-Spam Policy](#)

Antitrust Law
Entertainment Law
Copyright Law
Internet Law
Patent Law
Trademark Law
Trade Secret Law

ASK IPWatchdog
Forms Library
Inventors Workshop
Need an IP Attorney?
Understanding IP

Home Page
About IPWatchdog
Contact Information
Media Relations
What's New

PW Bookstore
PW Education
PW Merchandise

; Patent Infringement

Patent infringement is defined in **35 U.S.C. 271**. A person or entity infringes a patent when, without authority, such person or entity "makes, uses, offers to sell, or sells any patented invention, within the United States" during the term of the patent. 35 U.S.C. S 271(a). The infringement analysis has two steps. **Carroll Touch, Inc. v. Electro-Mechanical Sys., Inc.**, 15 F.3d 1573, 1576 (Fed.Cir.1993). First, the patent's claims must be construed to determine their proper scope and meaning. Id. The Supreme Court has held that such construction must be performed exclusively by the court. **Markman v. Westview Instruments, Inc.**, 116 S.Ct. 1384, 1395-96, 134 L.Ed.2d 577 (1996). Second, the factfinder must compare the properly construed claim to the accused device. *Carroll Touch*, 15 F.3d at 1576.

Essentially, a patent can be infringed in four ways: literal infringement, infringement under the doctrine of equivalents, inducement of infringement, and contributory infringement. Additionally, while not really a type of infringement, infringement can occur willfully (i.e., knowingly and intentionally). For more information on infringement and infringement related topics click on the links below:

Attorneys Fees
Claim Construction
Doctrine of Equivalents
Literal Infringement
Indirect Infringement (Generally)
Inducement
Contributory Infringement
Repair or Reconstruction?
Who may be sued for infringement?
Willful Infringement

Attorney Resources
Cases of Interest
Course Materials
Law Library
Message Boards
Patent Bar Exam
Web E-mail
Week in Review

; *Literal Infringement*

A finding of literal (or direct) infringement is warranted if the claim "covers" the accused device, that is, "if the [accused] device embodies every limitation of the claim, either literally or by an equivalent." **Carroll Touch**, 15 F.3d at 1576.

; *Indirect Infringement (Generally)*

"It is well settled that there can be no inducement of infringement without direct infringement by some party. Upon a failure of proof of direct infringement, any claim of inducement of infringement also fails. A finding of contributory infringement likewise requires underlying proof of direct infringement." See **Epcon Gas Systems, Inc. v. Bauer Compressors, Inc.**, 279 F.3d 1022 (Fed. Cir. 2002); **Aro Mfg. Co. v. Convertible Top Replacement Co.**, 377 U.S. 476, 483, 84 S.Ct. 1526, 1530, 12 L.Ed.2d 457 (1964) ("[I]t is settled that if there is no direct infringement of a patent there can be no contributory infringement." (quoting **Aro Mfg. Co. v. Convertible Top Replacement Co.**, 365 U.S. 336, 341, 81 S.Ct. 599, 602, 5 L.Ed.2d 592 (1961))); **Joy Technologies, Inc. v. Flakt, Inc.**, 6 F.3d 770, 774 (Fed.Cir. 1993) ("Liability for either active inducement of infringement or for contributory infringement is dependent upon the existence of direct infringement."); **C.R. Bard, Inc. v. Advanced Cardiovascular Sys., Inc.**, 911 F.2d 670, 673 (Fed.Cir.1990) ("Of course, a finding of induced or contributory infringement must be predicated on a direct infringement..."); **Moleculon Research Corp. v. CBS, Inc.**, 872 F.2d 407, 410 (Fed.Cir.1989) ("In the absence of direct infringement, [defendant] cannot be held liable for inducing infringement under section 271(b)."); **Met-Coil Sys. Corp. v. Korners Unlimited, Inc.**, 803 F.2d 684, 687 (Fed.Cir.1986) ("Absent direct infringement of the patent claims, there can be neither contributory infringement ... nor inducement of infringement...." (citations omitted)); **Blackman v. Hadron, Inc.**, 450 F.2d 781, 782 (2d Cir.1971) ("[A]bsent direct infringement, no action for contributory infringement can be maintained.").

For a good discussion of both inducement and contributory infringement see **Curtis Manufacturing Co., Inc. v. Plasti-Clip Corp.**, 888 F.Supp. 1212 (D.N.H. 1994).

; *Inducement*

Inducement of infringement occurs whenever someone "actively induces infringement of a patent." 35 U.S.C. S 271(b).

On its face, 271(b) is much broader than 271(c) and certainly does not speak of any intent requirement to prove active inducement. However, in view of the very definition of "active inducement" in pre-1952 case law and the fact that 271(b) was intended as merely a codification of pre-1952 law, the Federal Circuit has stated that they are of the opinion that proof of actual intent to cause the acts which constitute the infringement is a necessary

PW Hall of Fame
Obscure Patents

prerequisite to finding active inducement. **See Water Technologies v. Calco, Ltd.**, 850 F.2d 660, 668, 7 USPQ2d 1097, 1103 (Fed.Cir.1988)(intent is necessary and that it may be shown by circumstantial evidence).

; Contributory Infringement

Contributory infringement occurs whenever someone "offers to sell or sells ... a component of a patented machine, manufacture, combination or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use." 35 U.S.C. S 271(c).

; Who May Be Sued?

It is indisputable that patent infringement is a tort. **Carbice Corp. of Am. v. American Patents Dev. Corp.**, 283 U.S. 27, 33, 51 S.Ct. 334, 336, 75 L.Ed. 819 (1931); **Orthokinetics, Inc. v. Safety Travel Chairs Inc.**, 806 F.2d 1565, 1579 (Fed.Cir.1986). In this regard, the language of section 271(a) "has generally been interpreted to allow a finding of infringement against any entity be it an individual, corporation or otherwise." **Symbol Technologies, Inc. v. Metrologic Instruments, Inc.**, 771 F.Supp. 1390, 1402 (D.N.J.1993). Officers of a corporation are personally liable for tortious conduct of the corporation if they personally took part in the commission of the tort or specifically directed other officers, agents, or employees of the corporation to commit the tortious acts. **United States v. Mottolo**, 629 F.Supp. 56, 60 (D.N.H.1984); **Orthokinetics**, supra, 806 F.2d at 1579.

Moreover, as a "general rule... an officer of a corporation is liable for torts in which he personally participated, whether or not he was acting within the scope of his authority, and that such direct personal involvement by the officer is causally related to the alleged injury." **Mottolo**, supra, 629 F.Supp. at 60 (citing **Escude Cruz v. Ortho Pharmaceutical Corp.**, 619 F.2d 902, 907 (1st Cir.1980)). Under such circumstances, there is no need to pierce the corporate veil. "The cases are legion in which courts have recognized and imposed personal liability on corporate officers for participating in, inducing, and approving acts of patent infringement." **Symbol Technologies**, supra, 771 F.Supp. at 1402 (quoting **Orthokinetics**, supra, 806 F.2d at 1579); **see generally** 4 Donald S. Chisum, **PATENTS** '16.06[2], at 16-168 to 16-182 (1994).

Who may be sued... Dealing with Manville...

Without reason, **Manville Sales Corp. v. Paramount Sys., Inc.**, 917 F.2d 544 (Fed.Cir.1990) seemingly departed from generally settled law and sought to create a new standard for section 271(a), necessitating piercing the corporate veil in order to find an officer of a corporation personally liable for patent infringement. **Manville**, supra, 917 F.2d at 552-53; **see also**

Symbol Technologies, supra, 771 F.Supp. at 1403. Plaintiffs are unable to avail themselves of the **Manville** court's recasting of settled law for two reasons.

First, as the court in **Symbol Technologies** noted, it is not clear that the Federal Circuit intended in **Manville** to overturn the long-standing precedent that a corporate officer can be liable for direct infringement without piercing the corporate veil. Second, even assuming that **Manville** does attempt to establish a new rule, it is not binding because the Federal Circuit follows the rule that "prior decisions of a panel of the court are binding precedent on subsequent panels unless and until overturned in banc." **Newell Cos., Inc. v. Kenney Mfg. Co.**, 864 F.2d 757, 765 (Fed.Cir.1988), cert. denied, 493 U.S. 814 [110 S.Ct. 62, 107 L.Ed.2d 30] (1989). There has been no overturning en banc of the previous standard of determining personal liability for infringement nor was there any reason given by the **Manville** court for any overturning of the previous standard in **Manville**. "Where there is direct conflict, the precedential decision is the first." **Newell**, 864 F.2d at 765. Therefore, until changed by an en banc decision or a decision of the United States Supreme Court, the long-established rule that a corporate officer can be liable for direct infringement without piercing the corporate veil remains in effect.

Copyright) 2003
All rights
reserved
IPWatchdog.com

Website designed by Infocreek
Website maintained by IPWatchdog.com
Send comments to <mailto:Webmaster@IPWatchdog.com>?subject=IPWatchdog.com Website Comment

Le
Disclaim
Priv:
Po
Sea
IPWatchc
Advert

IPWatchc