



September 11, 2019

The Honorable Thom Tillis, Chairman
Subcommittee on Intellectual Property
Committee on the Judiciary
U. S. Senate
224 Dirksen Senate Office Building
Washington, D. C. 20515

The Honorable Chris Coons, Ranking Member
Subcommittee on Intellectual Property
Committee on the Judiciary
U. S. Senate
152 Dirksen Senate Building
Washington, D.C. 20515

Subject: **THE DDR HOLDINGS, LLC STORY**

Dear Senators Tillis & Coons:

Abraham Lincoln was the only U. S. President to hold a patent. On February 22, 1860, during a lecture on Discoveries, Inventions and Improvements, President Lincoln spoke eloquently about patent laws and their importance. *These [patent laws] began in England in 1624, and in this country with the adoption of our Constitution. Before then any man [might] instantly use what another man had invented, so that the inventor had no special advantage from his own invention. The patent system changed this, secured to the inventor for a limited time exclusive use of his inventions, and thereby added the fuel of interest to the fire of genius in the discovery and production of new and useful things.*

One hundred thirty seven years after Lincoln's lecture, during the early days of the Internet, five entrepreneurs who believed in our patent system, sitting in my venture capital conference room in Dunwoody, Georgia, made a discovery that would forever change commerce on the Internet: Commerce Syndication. A provisional patent was filed on September 17, 1997. My son, Del and I were two of those inventors.

We founded Nexchange Corporation, to practice this invention. Nexchange achieved significant success, having a presence on over 54% of the websites (Nielson NetRatings) at that time, representing over 40 national retailers and employing a staff of over 100. Unfortunately, despite this measurable success but unable to raise the needed capital to fuel the continued growth, the company failed during the "dot com bust" of 2000.

Del and I believed in the technology and purchased the patent application from two other secured creditors. In 2003 the patent was finally issued and the patent was assigned to DDR Holdings, LLC (DDR), owned by my son and me and where I serve as the Managing Director. By this time, we had identified numerous large companies that had implemented the DDR technology. Included among these companies were Expedia and Hotels.com both of which knew about our invention and patents from our days at Nexchange and which had built multi-billion dollar businesses using our invention without permission.

Our intention from the beginning was to license our invention to any companies who wished to use it to grow their business. Despite our willingness to offer licenses at a

reasonable price to several companies who were using our invention, we were forced to bring lawsuits against these Internet giants who each believed that a small company like ours would not be willing or able to support the effort and expense required to prevail in court. Our work had only just begun. In the course of the next seven years we:

- Submitted our patents for voluntary re-examination. We took the infringers' responses seriously and wanted to ensure that our patents were valid before pursuing our lawsuit. The infringers provided thousands of pages of documentation and "prior art" to the patent office and we provided still more information. After several years, our patents were declared to be valid for a second time and we proceeded with our licensing effort.
- Won our patent infringement suit in Federal district court, during which time additional evidence of invalidity was presented and overruled. Once again, the validity of our patents was confirmed.
- Won a costly appeal to the Federal Circuit Court of appeals in what has become a landmark case in patent eligibility in the Internet era. Our case, DDR Holdings vs. Hotels.com et al, has been the most cited case in patent law since the decision was rendered several years ago.
- Saw the claims of our quadruple-validated patents cited by the USPTO as examples of patentable technology in their guidance to patent examiners and inventors, where we continue to provide the standard for patent eligibility and validity.

Despite all of this, when we identified additional infringement activity by, among others, Priceline/ Booking.com, these hundred billion-dollar enterprises declined our offer of a reasonable licensing fee and chose instead to fight us once again, asserting invalidity. This time they were able to assert this defense both in court and in the PTAB, citing once again the same prior art that had been examined as many as four previous times by the patent office AND the federal courts. We now have invested significant money to protect our patents once again only to have the ability to then argue our case before a federal judge and jury. By the time we are through the defendants will have spent more than 10X what we would have accepted in licensing fees at the outset of our discussions on legal fees alone, and there is a chance that even if we are able to survive all of these legal challenges we will never collect the fees we are awarded by the court! Four of DDR's patents have now been challenged on validity in the PTAB, in Washington, D.C. and in Denver. DDR again prevailed in the hearings in Washington and are waiting for the decision to be rendered in Denver.

DDR's story shows how nearly impossible it is for small, innovative companies and inventors to assert their Constitutionally granted rights in the USA system.

Our twenty-year patent journey has been difficult, emotionally draining, and extremely expensive. Our expert testimony other trial related expenses required a substantial investment funded by family savings. The relatively small settlements we ultimately obtained, after paying our attorneys and covering costs, were less lucrative than the average low-level corporate job. Anti-patent lobbyists label us "trolls" (despite the fact that we had invented and practiced the invention) and attempt to persuade Congress and the public that our efforts to profit from our inventions are selfish, motivated by greed, and intended to "stifle innovation." We created something unique, useful, and valuable that numerous companies

have used to build massive, profitable businesses. In return for this, we have invested millions in personal savings, sacrificed countless hours which could have been spent inventing other new, amazing technologies, and have been rewarded with name-calling and enough revenues to repay our legal expenses and some of our time.

The purpose of the patent system is to encourage and provide incentive for investment in innovation, as the Constitution says. As a venture capitalist that founded more than thirty successful technology companies, I can speak from experience. In addition to the strength of the management team, a venture capitalist will only make an investment if barriers to entry (use) can be shown. The patent system is supposed to provide such a barrier. Today, I am sorry to share that this system no longer works. As a patriot, entrepreneur, technologist, father and grandfather, I am gravely concerned about the future of our once-great country.

Note: On August 5th the U.S. Inventor organization sent a letter to Patent Public Advisory Committee (PPAC) that chronicled our recent journey:

“IPR2019-00435. Del and Danny Ross survived a decade of patent litigations against some of the biggest technology companies on the planet. Their initials comprise the patentee name DDR Holdings. Their (DDR) ‘399 patent survived Alice challenges to become the gold standard for eligibility. It has been adopted throughout the Manual of Patent Examination Procedure (MPEP) as the example of eligible subject matter. Everyone tries to say their patents are like DDR Holdings in hopes of surviving Alice. Guess what – after 13 years of litigation the PTAB allowed the big tech infringers to file 13 Intellectual Property Rights (IPRs) against their 4 patents – and instituted review on obviousness! Gang tackling is alive and well at the PTAB. Last month Del and Danny flew to Denver to see their patents attacked by the infringers and the USPTO PTAB panel and received notification that they successfully defended their patents in a June PTAB hearing in Washington, D.C.”

Sincerely,

Danny Ross

Daniel D. Ross
Managing Director