

Patent License Questions and Answers

Patent License

1. Who is CIVIX, and why has NAR agreed to settle this dispute with it?

CIVIX-DDI, LLC (“CIVIX”) is a company that claims to own enforceable patents for an online system that allows MLS systems, and those who use them, to locate, search for and transmit to others, property information about homes, such as the location, property characteristics and detail, local school district, and photos or other graphical displays of the homes. CIVIX claims that essentially all MLS systems infringe its patents.

CIVIX’s claims are not limited solely to the real estate industry. CIVIX has already settled infringement litigation it brought against Microsoft, Expedia, MOVE and other major companies. Prior to MOVE settling, MOVE requested that the patents be reexamined by United States Patent and Trademark Office (“USPTO”). The USPTO rejected portions of the CIVIX patents but several key components of the patents survived.

Most recently, MRIS, one of the largest MLSs in the country, settled a patent infringement lawsuit brought by CIVIX by entering into a license agreement for those patents. Tarasoft, MRIS’ primary MLS software vendor, also entered into a license agreement with CIVIX. CIVIX has also sued MRED, the large regional MLS in the greater Chicago area, and that case remains pending. In the past few weeks many MLSs served by Rapattoni and CoreLogic received letters from CIVIX offering a license to use the CIVIX patents for a fee of \$6 per member/subscriber per year for four years, for a total of \$24 per subscriber. Notably, this \$24 fee includes only a license for the primary MLS system and does not include other software used by others associated with an MLS, such as IDX vendors, public records providers, web site providers, brokerage company software, agent software or any other industry software.

2. Why should the industry agree to pay for a license instead of fighting the patent lawsuit?

Fighting patent lawsuits are extraordinarily expensive, time consuming and risky. It could easily cost between \$2-\$3 million just to get through one trial in one jurisdiction. If you lose, you may not only owe significant damages which could be much greater than the negotiated license fee but you could also be liable for the other side’s attorneys’ fees. Even if you win, an appeal will probably be filed and additional dollars would be spent. Throughout the litigation you would be diverting your organization’s energy, attention, and financial and other resources away from the core business.

3. Could this patent be invalidated?

While there is always the possibility that the patent could be challenged and invalidated, the prospects for doing so are inherently uncertain. For that reason a business decision was made to attempt to provide the real estate industry with the certainty of an industry wide license agreement that eliminates the risk of litigation.

4. Can MLSs modify the form license agreement?

No, the agreement was negotiated with CIVIX and we do not have the ability to modify it.

5. What are the risks if we do not sign the license agreement?

The risks are that your organization could be sued for patent infringement. If that were to happen and if you tried to settle that litigation, it's likely that you would not reach as favorable an agreement.

6. Will we sign a license with CIVIX?

No, you will sign a license with NAR.

7. Why is the license with NAR?

Under the agreement with CIVIX, NAR received a license to grant to MLSs and others in the real estate industry licenses to use the patents. CIVIX was willing to provide a significant discount from the amount they sought from individual MLSs if they could reach an agreement with a single entity and not have to move forward on a case by case basis.

8. What should we do if we receive a demand letter from CIVIX?

CIVIX cannot initiate any new legal proceedings prior to August 17th, 2011. The safest course of action is to sign the license agreement and pay the \$9.06 per subscriber by June 16th. If you do that, you need not respond to the letter or take any other action.

Patent License Coverage

1. If the MLS obtains a license, are the shareholders, brokers and agents covered?

Yes

2. Are broker owned MLSs able to purchase a license?

Yes, all MLSs have the opportunity to participate.

3. Are brokerage firms covered?

Yes, all brokerage firms, including their agents, who participate in an MLS that obtains a license are covered.

4. Does this include brokers and agents who are not REALTORS®?

Yes, this coverage is provided for all brokers and agents participating in an MLS that becomes licensed.

5. **If we obtain a license for our MLS, are all of our vendors covered including our MLS vendor, IDX vendors, etc.? Would it cover broker and agent web sites created by third party vendors? Would it cover broker or agent's use of third party products?**

The license granted to MLSs extends to all of the vendors used by them and their participants, including software used by the brokers and agents and any contained in products and services they may use in their brokerage activities. Certain third parties were excluded from the scope of our license in order to keep the license fee as low as possible. Those third parties are Zillow, Trulia, Craigslist, Google and CoStar. Those entities are not part of our definition of the real estate industry and would need to obtain a license from CIVIX; however, if you obtain a license for your MLS, CIVIX can go after these vendors, but not the MLS, the brokers or agents.

6. **Will the license continue to cover an MLS and its participants, subscribers, and others associated with it if the MLS selects a new MLS system vendor?**

Yes

7. **Will the license cover the MLS' public facing web site and our brokers' or agents' public facing web sites?**

Yes, all those are covered by the license.

8. **Our MLS is a mutual benefit corporation membership corporation so we do not have shareholders. Are we covered?**

Yes

9. **Does "paying subscribers" include coverage for appraisers?**

If they are paying subscribers, they are covered.

State Associations

1. **Can a state association purchase the license on behalf of all MLSs in the state?**

A state association may pay the license fee for the MLSs in its state, but the MLSs are the entities that become licensed. If the state association also operates an MLS or MLS-like facility it could also become licensed. The fee would remain \$9.06 per subscriber.

2. **If a state association provides search software or IDX software, how does it obtain coverage?**

As suggested above, a state association could and probably should purchase a license if it operates an MLS or services that perform property search and display functions.

Timeframe

1. When do we have to sign the license agreement and pay the fee?

To give your MLS the best chance of being covered by a license you should sign the license agreement and pay the license fee by June 16th, 2011.

2. Why should we make the payment in the first thirty days?

All MLSs who sign the license agreement and return it to NAR with the license fee by June 16th, 2011 will be covered by a license agreement if the total received from all those licensees allows NAR to make the first payment of \$2.5 million by that date. NAR believes that is very, very likely to happen.

3. What if the \$2.5 million is raised in the first thirty days, but the industry does not raise the second payment of \$2.5 million by July 17th, 2011?

Those MLS who executed a license and paid the fee in the first thirty days will continue to be licensed, but those who submitted a license and the fee during the second thirty day period will not and will receive a refund.

Money

1. Do we have to pay the license fee in one lump sum?

Yes

2. We have a commercial and residential MLS that are separate systems. Some members are members of both MLSs. Do they count twice? Do we calculate \$9.06 for each member of each MLS?

Yes, they will count twice and you will have to pay \$9.06 for each member of each MLS.

3. We have some members who belong to more than one MLS. Do we have to pay for them if another MLS is paying for them?

Yes, you will have to pay for each participant/subscriber in your MLS even if they are also subscribers and participants in another MLS. Similarly, such other MLS(s) must pay the license fee of \$9.06 per participant/subscriber to become licensed.

4. Does the \$9.06 license fee also include participants who are broker owners?

Yes

5. What if NAR collects more than the \$7.5 million?

We do not anticipate that happening, but if NAR collects more than \$7.5 million before the end of the 90 day period, it will refund any monies collected over \$7.5 million on a *pro rata* basis.

6. If NAR collects and pays to CIVIX \$7.5 million, will those who did not participate and pay their license fee be covered for free?

Once we reach the \$7.5 million, CIVIX will have relinquished its rights in the real estate industry. NAR will own the exclusive right to license the patents in the real estate industry and may continue to license the patent to those who are not already covered. Efforts will be made to have all MLSs and others license the patents and pay their fair share.

7. Why shouldn't we just sit back and wait to see if the NAR is able to collect and pay to CIVIX \$7.5 million, without our participation?

First, as explained above you need to participate early to enhance the likelihood that you will be covered. Second, it is the right thing to do. The industry is in this together, and "free riding" is not a responsible way to participate.

8. Why is the \$7.5 million so high?

CIVIX's demand to MLSs was \$6.00 per subscriber per year for four years. For the number of MLS participants estimated by NAR, such a payment would have resulted in a total payment to CIVIX of \$19,872,000. Moreover, the CIVIX offer covered only the MLS operation software. It did not cover other vendor software, the brokerage firms, agents, brokers, REALTORS® and others participating in, or associated with, the MLS. Under NAR's agreement, for a payment of \$7.5 million, MLSs get far broader coverage at a much lower cost.

9. Why do we have to make such a fast decision and pay the money so quickly?

CIVIX has less than four years left on its patent and it is anxious to collect the money as quickly as possible. In order to prevent CIVIX from moving forward with lawsuits and to persuade them to further reduce the license fees they were demanding from other MLSs, it was necessary that we agree to act promptly.

10. Will NAR's patent insurance cover any of our costs?

No. The NAR-provided insurance was augmented as of January 1 to provide patent infringement coverage, but only in the event of actual patent litigation. In the event of litigation, the coverage is for defense costs only and would not pay for damages if the MLS is found to have violated the patent. Before the insurance is available, the MLS must have had an indemnification provision in its vendor agreement and that indemnification obligation must have been satisfied. Then the MLS pays a deductible of \$100,000 before the insurance company's obligation commences. There is no insurance coverage for MLSs without vendors (i.e., for "homegrown" systems).

11. Will NAR make money on this?

No, NAR will not make any money on this and has invested significant resources to insure that the industry has the opportunity to obtain protection.

12. What if NAR gets \$3.5 million in the first 30 days instead of \$2.5? Does it still count toward the \$5million? Will everyone in the first 30 days still get in?

Yes, it still counts toward the \$5 million and everyone who pays in the first 30 days, providing we reach the \$2.5 million will get a license even if that number is higher than \$2.5million

13. Are we guaranteed a license if we sign the agreement and pay the money within the first 30 days?

Licenses will be issued only if we collect \$2.5 million or more.

Vendors

1. Why do we have to worry about this, doesn't our MLS vendor have to pay for this?

Many MLSs have agreements with vendors that require the vendor to indemnify the MLS in the event of infringement claims based on the vendor's software, and for that reason many vendors will be assisting the MLS customers in paying the license fee or otherwise contributing to the costs of the settlement. But most MLSs today have software from multiple other sources as well, and the MLS vendor would not necessarily be responsible to provide that indemnification for any other allegedly infringing software.

2. We have an indemnification clause in our agreements with our vendors. Can we ask them to pay the license fees?

That is between you and your vendors, but you should certainly contact your vendor to discuss a contribution. Although any indemnity provided in your vendor agreement is likely triggered only in the event of actual litigation. This settlement allows the vendor to avoid such litigation (or even the risk of it) and the substantially higher costs that the vendor would have incurred had it been required to provide defense to a patent infringement suit. You should consult with your attorney.

3. Can an MLS vendor buy the full license for all of its MLS customers?

Absolutely, and several vendors have already inquired about this possibility.

4. If a vendor contributes to the settlement and the MLS pays the entire \$9.06, will the MLS be entitled or able to be compensated by the vendors under the indemnification clauses in the vendor contracts?

An MLS should consult with its legal counsel to interpret the indemnification clause in the vendor agreement. In principle, however, the intention is that vendor contributions should and will be credited towards the amount due from MLSs.