

INdigital Telecom Testimony of Mark Grady, Founder and President  
Before the Committee on Small Business U.S. House of Representatives May 15, 2013

Prepared Testimony and  
Statement for the Record of

Mark Grady, Founder and President

On Behalf of  
INdigital telecom

Before

The Committee on Small Business

U.S. House of Representatives

Hearing on

Patent Reform Implementation and New Challenges for Small Businesses

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2360 Rayburn House Office Building

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Good afternoon. Chairman Graves, Ranking Member Velázquez and Members of the Committee. I am Mark Grady, Founder and president of INdigital telecom (INdigital), a leading provider of advanced 9-1-1 public safety communications services. INdigital began in 1998 as a cooperative effort of several independent telephone companies in the rural areas of Michigan, Ohio, and Indiana, including New Paris Telephone, in northern Indiana, which I also manage.

Thank you for allowing me the privilege of sharing with you our small business's perspectives on the opportunities and challenges surrounding patent reform, and its impacts on our business, communities, innovation, and jobs.

By way of background, INdigital telecom is a specialized type of telephone company, a 9-1-1 system service provider. Wireless, Voice over IP, and legacy telephone companies deliver "9-1-1" calls their customers make to our network, and based on the location of the caller, we manage the vital process to make sure these calls are connected to the appropriate local police, fire, or medical authority so that emergency help can be on the way as soon as possible. Through our systems in Ohio, Indiana, and Michigan, we provide a vital service that protects the lives and property of the citizens in these communities – many whom are no doubt represented by members of this Committee. Along the way, our company has created 38 high paying technical jobs, and has provided training to many more interns and technical staff.

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We are working hard every day to provide an important public service, and we are proud of the jobs that we do and the communities we serve.

As to the connection between our business and intellectual property matters, I need to explain that even today many 9-1-1 networks continue to use technology that dates from the 1970's. We envisioned that this technology had to, and was going to change. In 2005, over four years before industry standards were adopted, we pioneered methods of using new digital internet protocols to provide advanced 9-1-1 public safety communications. What we created helped launch the revolution that is occurring now in public safety. Many of you may recognize the term "Next Generation" or "NG9-1-1". That's what I am referring to. It's a complete re-invention of the old 9-1-1 network using new digital systems and methods to deliver advanced emergency services.

Small company innovators like INdigital face a number of IP-related challenges. In the public safety industry, there are giants like AT&T and Verizon, who use many different suppliers to create full service public safety networks. There are also other large companies that perform backroom 9-1-1 location analysis and call processing. The work of these companies primarily serves the large telephone companies in the big population centers, and other large industrial businesses. INdigital is a small company serving more rural areas. For example, our largest market is Fort Wayne, the 74<sup>th</sup> largest city.

As a small business, we cannot afford the in-house resources of a large company. We must rely on outside counsel for our IP needs such as patents, copyrights, and other intellectual property

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matters. Even so, we are active and directly license the IP of others, cross-license our IP, and provide critical protected technologies to other business partners, and our customers.

As noted before, 9-1-1 emergency services are going through a technological evolution. As other providers in the telecom industry realized the need to update their 9-1-1 networks, INdigital has been successful in capturing market share with its 9-1-1 innovations. Therefore, we recognize the need, value, and importance of a well-defined and efficient patent system to protect and monetize those innovations. We appreciate and support Congress's efforts in these regards. INdigital believes in and supports a robust intellectual property system that works for small business, not against it.

Having said this, please note that INdigital is not 'patent centric.' Our patent law firm understands our business and our culture, and recognizes that our IP works in conjunction with the actual products and services we provide, not in the abstract. Our business succeeds by understanding our customers' problems, then putting a working solution into our customers' hands for refinement, not by just cranking out low quality patents whenever technically feasible. Often, our patent applications only start after the products are deployed and proven. In short, like many small businesses, patents are a by-product of and support our innovation, not the reason we exist.

Even so, we believe that, on balance, the new provisions of the American Invents Act ("Act" or "AIA") has been and will continue to be of some benefit for INdigital. Certainly, patent fee

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reform is helpful to our small business, as is the “first to file” and “provisional patent” concepts that makes the decision to file a patent clearer and easier. It’s beyond my expertise, but it’s my understanding that the AIA attempts to make it easier to challenge poor quality patents. Also, I have read about special rules for challenging new “business method” patent applications. While these sound sensible as ways to increase patent quality, these seem to be too expensive for a small business like ours. Again, we’re not patent experts, and are only now starting to see how new patent applications will be processed and enforced under the Act. We remain optimistic that the Act, with some refinements, will yield faster results for higher quality patents without harming small businesses.

As the public safety landscape transitions to NG9-1-1 and to a more competitive environment, we are seeing an increased use of patents in our industry sector. We are increasingly aware that companies are hiring armies of patent attorneys, and are buying stagnant companies solely for their patent portfolios. This brings me to the biggest IP challenge that we and other small businesses face today – the inappropriate assertion of poor quality over-broad patents. This is especially troublesome for us when they apply to 9-1-1 public safety, an area that clearly deserves as much special protection from frivolous lawsuits as “business methods.”

One of our ‘frenemies’, a company that INdigital works with often on many types of projects, has fallen behind in developing new NG9-1-1 technology. Rather than innovate in-house, they acquired another entity that was issued a very broad telecom-related patent many years ago.

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Under pre-AIA patent law, there was insufficient legally relevant prior art, and, unfortunately, the patent was approved. The concepts in the patent are very common in telecommunications, and not specific to public safety. However, this company has unleashed a patent assertion firm to seek enforcement against us of this old patent based, in large part, on the simple notion that INdigital provides “9-1-1 service.”

In case you are curious, nothing would please me more than to explain to this Committee exactly how INdigital has infringed this patent, but . . . I cannot. We have analyzed the patent, and we have had it analyzed by other experts. We are unable to determine how the NG9-1-1 industry standards we follow in our products and services are infringing, yet the litigation moves forward with swift precision. In one form it is a letter to our existing and potential customers that claims that INdigital is, or soon will be, infringing upon this patent. It doesn't take much to imagine what our customers or potential customers think when they receive such a notice, or the fear, uncertainty, and doubt it generates throughout the 9-1-1 public safety community. Our public safety customers are often units of local government. They don't need or want the distraction or expense of a ‘potential for infringement’ letter from a patent assertion firm.

A more pressing problem is that many new technologies commonly used by the public today such as text messaging and sending pictures are not part of the current 9-1-1 public safety system. Just image how many lives or how much property could be saved if they were. The recent terrorist bombing in Boston is a horrific and unfortunate example of how public safety and

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first responder access to video and related information directly from the public could (and did) greatly enhance emergency response and homeland security. 9-1-1 Centers desperately need new technologies and new equipment as the country transitions to NG9-1-1 services.

A local 9-1-1 Center isn't resourced or funded to sort out the complex legal demands of patent claims, especially ones that say even offering "9-1-1" could be infringement.

In one recent case, after receiving the letter, a potential customer had to put its project on hold to completely reissue its request for proposal. As a small business person, an innovator, an employer, and a citizen, I believe this cannot be Congress's intent for our patent system. The patent system should not be used to put Americans' lives and property in jeopardy by delaying their access to new and innovative 9-1-1 public safety and homeland security services. IP rules should first serve inventors - not investors - to bring innovation to the marketplace, not fruitless litigation which destroys jobs and companies, and wastes a small company's limited resources. But, that is exactly what is happening.

So that our message to this Committee is clear, please note that INdigital supports, in general, the process and other improvements in the America Invents Act. As the trade press detailed, we recognize the difficult negotiations and compromises required to pass the AIA.

Unfortunately, however, for all the progress that was made, the Act has not remedied these current IP issues as they relate to essential 9-1-1 public safety services.

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As we continue to work to develop and deploy important new life-saving NG9-1-1 services, we are forced to divert our limited resources to plan for the business and financial impacts of unknown patent assertion claims. This has directly affected our innovation efforts, ability to hire new employees, and our work to help protect our communities. From the perspective of our small business, the AIA is incomplete until our nation's 9-1-1 public safety and homeland security system is secure.

As we begin to benefit from the other aspects of the AIA, our Company is asking this Committee to take half a step back and help level the playing field as it relates to public safety intellectual property disputes. Two ideas we've heard discussed in the trade press, in our view, have particular merit and we support their introduction into law. First, the law should recognize 9-1-1 and NG9-1-1 for what they are; essential government services, and patent litigation claiming 9-1-1 infringement should be managed under an existing patent statute - 28 United States Code Section 1498. This will help control the costs of the court process, yet still guarantee a legitimate patent will be enforced and the patent holder compensated. Second, every infringement complaint should contain a detailed explanation of the claim –



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something more than just the assertion of a “hypothetical” infringement we receive today. It is unfair to burden small businesses with patent allegations no more substantive than a TV commercial.

No doubt there are other useful concepts that can be considered. Whatever the conclusions from this hearing, our request is that this Committee take prompt action to discourage frivolous 9-1-1 public safety related lawsuits while protecting valid patent holders.

In conclusion, thank you for your time and the opportunity to help you understand the IP problems faced by INdigital and other small business entrepreneurs today. I look forward to your questions.