

## Controversial CEO Moves From Disposable Phones To Patent Lawyers

Hop-on CEO Peter Michaels is demanding royalties from major handset manufacturers, wireless carriers, and retailers that he claims are making money from his ideas.

By Antone Gonsalves, [InformationWeek](#)

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Peter Michaels, Hop-on CEO who several years ago drew lots of media attention but few sales with his plans for a disposable mobile phone, is back with a new scheme. This one, however, won't need any factories or retail sales channels, only lawyers.

A month after receiving federal patents for a couple of mobile phone designs, Michaels is demanding royalties from major handset manufacturers, wireless carriers, and retailers that he claims are making money from his ideas. "I do have lawyers," he told *InformationWeek*. "And we have resources to lock asses with these guys. We have the resources to defend our rights."

While some CEOs would try to work out this dispute privately, Michaels issued a press release last week warning the mobile phone industry that he wanted payment. Michaels' decision to go to the media is reminiscent of 2001 when he convinced *Time* Magazine that his \$30 disposable phone was worthy of being named one of the year's best inventions, even though Hop-on, the company he founded in 1998, hadn't sold a single phone. Indeed, three months later in March 2002, [the San Francisco Chronicle reported](#) that a prototype of the phone was a jury-rigged Nokia phone with a plastic faade.

Two years later, Hop-on claimed it's throwaway phones were ready for market. But no major wireless carrier or retailer ever sold them. Michaels said the company stopped selling his invention a couple of years ago, because competition is just too tough. "It's such a competitive business now, there's not enough margins," he said.

Competition won't be a problem in Michaels' latest moneymaking effort. Hop-on has received from the U.S. Patent and Trademark Office two design patents, D536,685 S and D536,320 S, for two flip phones. Among the design elements Michaels claims belong to Hop-on are speakers placed on the sides of phones, and front and side buttons used to activate camera and video features and to control music playing, such as fast forwarding or replaying a tune.

Michaels won't say that anyone has actually copied the designs. "I don't want to say they blatantly copied my design, but it's kind of funny that their phones look exactly like mine," he said. "If they did design the phone, why didn't they file a patent and protect their intellectual property rights."

While Michaels says the patents show he's been wronged, lawyers say patents alone don't mean a company is entitled to anything. The government issues patents based largely on the information supplied by the applicant, so companies, when challenged, often have to convince a judge that they deserve exclusive rights to an invention. "Just because the Patent Office issues a patent doesn't mean it's valid or enforceable," said Henry Sneath, IP attorney for the law firm Picadio Sneath Miller & Norton, in an interview.

In addition, Michaels' patents are anything but foolproof, said Robert Katz, patent lawyer for Banner and Witcoff, which handles design patents for Nokia. In examining the patents, Katz in an interview said he found it odd that the patents appeared to cover the design of the entire phone, rather than specific elements or areas of the device, which is more normal in design patents. "I'm not aware of any manufacturer making anything that would infringe on those designs," he said of Hop-on's patents.

One claim of Michaels that didn't make sense in terms of a design patent was the speakers on the side of the phone, Katz said. Because speakers perform a particular function, they are typically considered more appropriate for a utility patent. "Design patents don't cover function," Katz said.

Generally speaking, courts have two tests in ruling on design patents. The first is whether the products in question look enough alike to go forward with the case. This is the stage where frivolous lawsuits are usually thrown out.

The second test, called the "point of novelty," involves identifying the uniqueness of a design -- the element that has never been done before. Winning this test remains more of an art, because higher courts have yet to establish firm guidelines that lower courts can follow. "There's a lot of strategy involved," Katz said. "Good attorneys win cases, and bad attorneys lose cases on that [test]." Having only the patents in front of him, Katz couldn't see how Hop-on expected to win both tests to draw royalties from every manufacturer, retailer, and wireless carrier. "Theoretically, it is possible that a company may make a phone that resembles their design, but they will not be successful in shaking down the industry," he said.

Michaels insists that he's only seeking his due, and isn't looking for a fight. "My goal is not to get into a big lawsuit," he said. "My goal is to get royalties." Michaels claims to be in talks with all the major carriers, but declines to identify any of them, with the exception of Korean handset maker LG Electronics. LG makes a popular cell phone with speakers on the side of the phone.

In the meantime, Hop-on doesn't appear in a position to make lots of money selling mobile phones. None of its phones are available through its [Web site](#), or through carriers and retailers. Michaels said the company is working on a children's phone, but has yet to win approval from regulators.

Those regulators probably won't be the only federal officials Michaels will be in contact with. Last month, a federal judge in San Diego sentenced Michaels to three years probation in connection with a [2003 federal indictment](#). Prosecutors had accused him and others of bilking investors in raising millions of dollars on behalf of an online gambling company.

Michaels declined to discuss the case, saying he's ready to move on. "It's behind me," he said. "I'm happy with the court's decision."



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