

(3) THE WARRANTIES UNDER SUBSECTIONS (A) AND (B)(2) OF THIS SECTION ARE NOT MADE BY A LICENSE THAT MERELY PERMITS USE, OR COVENANTS NOT TO CLAIM INFRINGEMENT BECAUSE OF THE USE, OF RIGHTS UNDER A LICENSED PATENT.

(D) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (E) OF THIS SECTION, A WARRANTY UNDER THIS SECTION MAY BE DISCLAIMED OR MODIFIED ONLY BY SPECIFIC LANGUAGE OR BY CIRCUMSTANCES THAT GIVE THE LICENSEE REASON TO KNOW THAT THE LICENSOR DOES NOT WARRANT THAT COMPETING CLAIMS DO NOT EXIST OR THAT THE LICENSOR PURPORTS TO GRANT ONLY THE RIGHTS IT MAY HAVE. IN AN AUTOMATED TRANSACTION, LANGUAGE IS SUFFICIENT IF IT IS CONSPICUOUS. OTHERWISE, LANGUAGE IN A RECORD IS SUFFICIENT IF IT STATES "THERE IS NO WARRANTY AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE INFORMATION OR AGAINST INFRINGEMENT", OR WORDS OF SIMILAR IMPORT.

(E) BETWEEN MERCHANTS, A GRANT OF A "QUITCLAIM", OR A GRANT IN SIMILAR TERMS, GRANTS THE INFORMATION OR INFORMATIONAL RIGHTS WITHOUT AN IMPLIED WARRANTY AS TO INFRINGEMENT OR MISAPPROPRIATION OR AS TO THE RIGHTS ACTUALLY POSSESSED OR TRANSFERRED BY THE LICENSOR.

21-402. EXPRESS WARRANTY.

(A) SUBJECT TO SUBSECTION (C) OF THIS SECTION, AN EXPRESS WARRANTY BY A LICENSOR IS CREATED AS FOLLOWS:

(1) AN AFFIRMATION OF FACT OR PROMISE MADE BY THE LICENSOR TO ITS LICENSEE, INCLUDING BY ADVERTISING, WHICH RELATES TO THE INFORMATION AND BECOMES PART OF THE BASIS OF THE BARGAIN CREATES AN EXPRESS WARRANTY THAT THE INFORMATION TO BE FURNISHED UNDER THE AGREEMENT WILL CONFORM TO THE AFFIRMATION OR PROMISE.

(2) ANY DESCRIPTION OF THE INFORMATION WHICH IS MADE PART OF THE BASIS OF THE BARGAIN CREATES AN EXPRESS WARRANTY THAT THE INFORMATION WILL CONFORM TO THE DESCRIPTION.

(3) ANY SAMPLE, MODEL, OR DEMONSTRATION OF A FINAL PRODUCT WHICH IS MADE PART OF THE BASIS OF THE BARGAIN CREATES AN EXPRESS WARRANTY THAT THE PERFORMANCE OF THE INFORMATION WILL REASONABLY CONFORM TO THE PERFORMANCE OF THE SAMPLE, MODEL, OR DEMONSTRATION, TAKING INTO ACCOUNT DIFFERENCES THAT WOULD APPEAR TO A REASONABLE PERSON IN THE POSITION OF THE LICENSEE BETWEEN THE SAMPLE, MODEL, OR DEMONSTRATION AND THE INFORMATION AS IT WILL BE USED.

(B) IT IS NOT NECESSARY TO THE CREATION OF AN EXPRESS WARRANTY THAT THE LICENSOR USE FORMAL WORDS, SUCH AS "WARRANTY" OR "GUARANTY", OR STATE A SPECIFIC INTENTION TO MAKE A WARRANTY. HOWEVER, AN EXPRESS WARRANTY IS NOT CREATED BY:

(1) AN AFFIRMATION OR PREDICTION MERELY OF THE VALUE OF THE INFORMATION OR INFORMATIONAL RIGHTS;