

From:

Sent: Tuesday, June 01, 2010 7:40 PM

To: extended_missing_parts

Subject: Comments on Proposed Change to Missing Parts Practice

Dear Eugenia A. Jones,

Please see attached comments. Thank you.

Melanie Brown

Assistant General Counsel

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The Chemical Company

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David Kappos
Undersecretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office
United States Patent Office
Alexandria, Virginia
Via e-mail to extended_missing_parts@uspto.gov

June 1, 2010

RE: Request for Comments on Proposed Change to Missing Parts Practice

Dear Director Kappos,

BASF Corporation, headquartered in Florham Park, New Jersey, is the North American affiliate of BASF SE, Ludwigshafen, Germany. BASF Corporation and BASF SE will be collectively referred to as BASF in this letter. BASF is the world's leading chemical company, and has a portfolio ranging from chemicals, plastics and performance products to agricultural products, fine chemicals, and oil and gas. As a reliable partner, BASF uses its innovation to help its customers in virtually all industries to be more successful. With its high-value products and intelligent solutions, BASF plays an important role in finding answers to global challenges such as climate protection, energy efficiency, nutrition, and mobility.

BASF files more than 1,000 patent applications per year with the United States Patent and Trademark Office and currently has over 10,000 pending published unexamined US patent applications. Due to its large US patent estate, BASF appreciates the opportunity to provide these comments on the proposed change to the Missing Parts Practice.

BASF applauds the USPTO under your leadership for becoming more customer focused and in particular for putting more of the examination speed determination into the hands of its customers. For a technology driven company like BASF with many diverse technologies, this approach would ideally address both technologies desiring fast track examination at the USPTO and also technologies favoring slow track examination at the USPTO depending on the heterogeneous development times for the various technologies, starting from the early point of generation of the respective inventions up to their respective commercialization. These development times can significantly differ within the variety of technological areas in which BASF is engaged (plant biotechnology, crop protection, care chemicals, petrochemicals, construction chemicals, etc.). BASF applauds the many recent developments in the fast track

area including the recent expansion of the Green Technology Pilot Program and Project Exchange.

In general, those inventions having short product life cycles benefit from fast track examination in order to secure early invention protection by patenting. In contrast, those inventions having longer development times (e.g. biotechnology, crop protection) and requiring governmental approval prior to commercialization benefit from a slower track examination since product development has a high failure risk, and as a result the respective patent applications may be abandoned.

For slower track examination, the proposed change to the Missing Parts Practice is a most welcome first step in providing the ability to delay the start of US prosecution for nonprovisional applications for up to one year. BASF has the following comments and suggestions for creating additional examination delay and expanding the list of patent applications eligible for additional examination delay.

(1) BASF suggests that further delays in the prosecution should be possible similar to the German Patent Office system permitting examination delay for up to seven years. Thus, in addition to the proposed 12 month extension, BASF respectfully suggests that the proposal be extended to provide for at least 24, 36, and 48 month extensions with appropriate surcharges. This suggestion is consistent with the stated objective of the proposal to both facilitate Applicants' efforts to determine whether their inventions have commercial viability and remove those nonprovisional applications for which Applicants have decided to not pursue fast track examination from the USPTO's workload.

(2) In addition, while the proposal addresses provisional patent applications, the proposal does not include 371 applications entering the US national phase. While BASF realizes that 37 CFR §1.103(d) permits Applicants to request deferral of examination of a national phase patent application, such a deferral is limited to three years from the earliest filing date for which a benefit is claimed and thus provides a minimal delay for national phase patent applications. Thus, BASF respectfully requests that: (a) the current proposal be extended to 371 applications entering the US national phase and/or (b) 37 CFR §1.103(d) be amended to permit for greater than a three year delay for US national phase patent applications.

Thank you again for inviting and considering BASF's comments and suggestions.

Very truly yours,

/Melanie L. Brown/
Melanie L. Brown
Assistant General Counsel