

Survey of X-Search/TESS database design errors for the week of November 5-11, 2001**Scope and Methodology**

This survey was conducted to estimate the error rate of the United States Patent and Trademark Office X-Search and TESS databases for trademarks with design features. The research encompassed all applications filed during a single week of calendar year 2001, which amounted to nearly 4000 filings. The week surveyed was randomly selected by a member of the Trademark Public Advisory Committee and the research conducted by trademark research professionals.

In the X-Search or TESS systems, designs are searched by use of a six-digit code assigned to each design element in a mark. Many designs contain multiple elements, requiring the assignment of multiple design codes. The design search codes are defined by 29 broad categories further subdivided into 1,250 more narrowly defined classifications.

To determine the error rate, the researchers compared the assigned design codes in the X-Search and TESS databases to the images in the applications as filed which are available on the TIGRS image retrieval system. The scope of the research was limited to design images and the classification of those images. Although it appears there are numerous incidents where applicants filed applications with design elements that were not captured in TIGRS, the study made no attempt to determine the number of these additional errors.

Although many bibliographic errors were noted during the audit, the bibliographic data fields in their entirety were not surveyed in this study. A separate study is now under way to quantify bibliographic errors.

Conclusions

The survey indicated that the X-Search and TESS databases contain errors and/or omissions that affect at least 52% of all trademark applications filed with a design element in the week surveyed¹.

In approximately 25% of the applications surveyed, the agency has coded only a portion of the design feature and failed to code a distinctive element of the design. For example, a design mark consisting of a representation of a postage stamp with an eagle showed only the design code for a postage stamp, meaning that mark would never appear in a design search of eagles.

Similarly, in approximately 20% of the applications surveyed, the agency has improperly coded the design as a whole. For example, a design mark consisting of a representation of a dog was assigned the design code for palm trees.

Further, in approximately 5% of the applications surveyed the agency has failed to enter any design code for the mark.

Lastly, in approximately 2.5% of the applications surveyed, the design images contained in X-Search and TESS were missing or so illegible that a determination of proper design codes was impossible.

Recomendations

Given the unacceptable error rate of the electronic search systems provided by the USPTO, the agency should immediately commission an independent study of the automated search systems by an independent organization to ensure correction of the existing data and creation of guidelines to correct the data flow and ensure future data quality. Pending the results of that study, all agency efforts to eliminate the paper trademark search records should be suspended. Further, the integrity of the paper records which the agency has deliberately allowed to deteriorate should be fully restored to their previous condition.

Given the magnitude of errors found in this limited study, a comprehensive review and assessment of those systems is necessary. Failure to address these problems has and will continue to negatively impact search validity, the confidence of public users and ultimately the economic interests of American businesses, who through mistaken investment in infringing marks, will lose advertising and promotion costs as well as inventory value. Such a negative impact will injure small and large investors, stifle venture capital offerings or investment in brand development and result in unnecessary litigation, infringement proceedings and questions of liability, the ultimate costs of which could ruin many businesses.

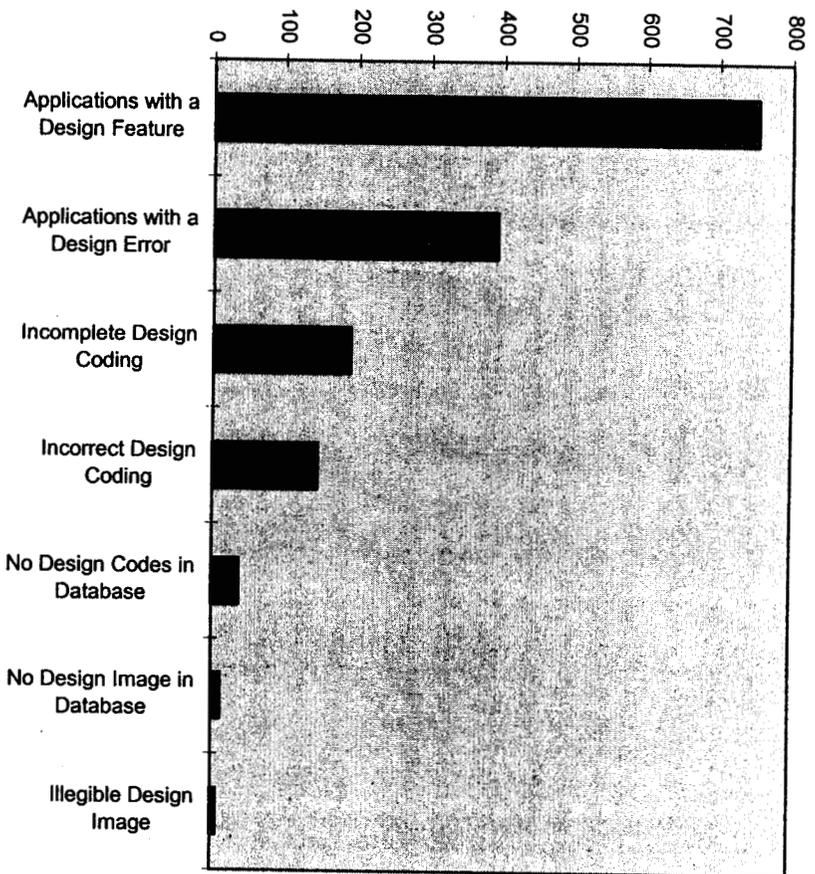
Further, in view of these findings, it appears the agency is not in compliance with OMB Circular A-130 in that it has not:

1. Adequately considered the effects of the agency's actions on members of the public and ensure consultation with the public as appropriate. (8a(1)(b))
2. Protected government information commensurate with the risk and magnitude of harm that could result from the loss, misuse, or unauthorized access to or modification of such information. (8a(1)(g))
3. Ensured the ability to access records regardless of form or medium. (8a(4)(b))
4. Established and maintained communications with members of the public and with State and local governments so that the agency creates information dissemination products that meet their respective needs. (8a(6)(i))
5. Informed the public as to the limitations inherent in the information dissemination product (e.g. possibility of errors, degree of reliability, and validity) so that users are fully aware of the quality and integrity of the information. (Appendix IV)

X-Search/TESS database design errors for the week of November 5-11, 2001

Total Applications Filed	3667
Applications with a design element	753
Applications with a design element error	391
Percentage of design marks with a design element error	51.9%
Incomplete design coding errors	190
Percentage of design marks with incomplete design coding	25.2%
Incorrect design codes	146
Percentage of design marks with incorrect design codes	19.4%
No design codes in database	38
Percentage of design marks with no design codes	5%
No image in database	13
Percentage of design marks with no image in database	1.7%
Illegible design	7
Percentage of design marks with an illegible design	1%

X-Search/TESS Design Errors



A preliminary statistical survey of random filings for the entire calendar year 2001 indicated an error rate of 39%