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September 28, 2006

By email: strategicplanning1@uspto.gov
Original to follow by mail

USPTO Strategic Plan Coordinator
P.O. Box 1450
Alexandria, VA 22313-1450

Re: Comments on USPTO's Draft Strategic Plan for 2007-2012

Dear Sir or Madam:

These comments address Goal 1 of the USPTO's Draft Strategic Plan for 2007-2012, to Optimize Patent Quality and Timeliness (the "Plan").

▪ **Hiring and Retaining Patent Examiners**

Goal 1 places significant emphasis on the hiring of new patent examiners as a means of achieving the outcomes of optimizing patent quality and timeliness. I believe that retention of current patent examiners is a more significant issue than the hiring of new examiners. The GAO reports that the recent attrition rate of patent examiners averages over 10% annually.¹ That means that the entire examiner corps will turnover roughly every 7 years. This is unacceptable because it results in lost expertise among the examining corps and increased expense, direct and indirect, to the USPTO for recruiting, hiring, and training, among other problems.

The stated initiative to hire 1,000 patent examiners annually for the next five years should therefore be accompanied by a goal of retaining more than 90% of the examining corps. To accomplish this, the Plan should include provisions to quantify in real-time the current retention rates; determine the desired retention rate; determine reasons for failing to meet the desired retention rate; make recommendations for improvement; implement those recommendations; and publish this information.

▪ **Training Patent Examiners**

English proficiency remains a challenge with numerous examiners. Nuance and technical detail are the crux of patent prosecution, as well as claim interpretation during enforcement. Examiners who cannot conjugate verbs other than in present tense or accurately use "on" or "in" decrease patent quality. Just as the WIPO hiring criteria for patent examiners includes "complete command" of one or more languages; the USPTO

¹ GAO Report: Intellectual Property: USPTO Has Made Progress in Hiring Examiners but Challenges to Retention Remain, June 2005, GAO-O5-720.

should likewise require complete command in English for all of its examiners. Hiring criteria should therefore include passing written and spoken English proficiency tests at a college level.

▪ **Regional Patent Offices**

Regional Patent Offices for examination should not be allowed. Allowing regional patent offices would create a situation akin to the problems seen last century with patent enforcement: enforcement proved so inconsistent through the various federal district courts that the Federal Circuit was formed to be the exclusive forum for patent appeals. A similar problem of inconsistency will certainly arise if regional patent offices are set up. Forum shopping and increased appeals and litigation are sure to follow if regional patent offices are established, which would further contribute to inconsistency among the regional offices .

▪ **Telecommuting**

My major objection to the Plan is the proposal to send examiners home to work. *Sending examiners home to work should simply not be allowed.* Working alone cripples communication with other employees and customers; prevents training "on the fly" by eliminating convenient opportunities to ask questions as they arise; reduces the opportunity for non-native English speakers to practice their spoken English; and reduces consistency in patent examination, among a host of other problems. Examiners need to work physically alongside other examiners.

I understand that the proposal to allow examiners to work from home is driven by two main reasons: a) because the new USPTO building does not have enough room for all the new examiners and b) there is a belief that this will increase examiner retention because examiners can live in a different metropolitan area with a lower cost of living.

I propose an alternate solution to solve these problems and to eliminate working from home: move the examining corps, *en masse*, to another city that can provide a larger, less expensive office space and a lower cost of living. The city should also have one or more major universities with technical renown to draw patent examiners and their spouses, a technology-based economy, and one or more law schools for those examiners who wish to become patent attorneys. Many cities qualify, including Phoenix, AZ; Raleigh, NC; Dallas, TX; and Chicago, IL, to name just a few. While there will undoubtedly be some attrition in the first year, the stability over the subsequent years will make up for it quickly.

Please call me if any additional explanation is desired.

Sincerely,



Sandra L. Etherton
Registered Patent Attorney