

From:
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Subject: Comments in Docket No. PTO-P-2010-0035, Enhanced Examination Timing Control Initiative

**Before the
United States Patent and Trademark Office
United States Department of Commerce
Alexandria, VA 22313**

In the Matter of)	
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Enhanced Examination Timing Control Initiative; Notice of Public Meeting)	Docket No.: PTO-P-2010-0035
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To the United States Patent and Trademark Office

Comments from Nickolaus E. Leggett

I am an individual independent and employed inventor holding three U.S. Patents. My latest patent is a wireless bus for computers and other digital devices (U.S. Patent # 6,771,935). I am also a certified electronics technician (ISCET and iNARTE) and an Extra Class amateur radio operator (call sign N3NL). I have a Master of Arts degree in Political Science from the Johns Hopkins University (June 1970). In addition, I am a professional technical writer.

My experience in amateur radio and electronics enabled me to invent a wireless bus for computers and other digital machines (U.S. Patent # 6,771,935). In addition, I have worked on other technical advances such as defining a “lighthouse protocol” for enhancing radio communications in the microwave frequency bands. Refer to Note 1. I am also the inventor of a microwave-based insect killing system for greenhouse incoming air flows (unpatented).

My comments are focused on the Prioritized Examination (Track 1) proposed by the United States Patent and Trademark Office (USPTO). The proposed Prioritized Examination Track has some serious ethical and philosophical problems.

The Scope and Market of the Prioritized Examination Track

Track 1 allows inventors and organizations to purchase greatly accelerated processing of their patent applications by paying a large fee. The USPTO Request for Comments states that: "...substantial fee would need to be charged to recover all of the costs associated with the contemplated service". Refer to Note 2.

The USPTO does not state what the fee for the prioritized examination would be. However, one can make an estimate of what the potential fee might be. I am assuming the USPTO will hire some experienced and credentialed senior engineers to be their Track 1 patent examiners. Each of these individuals will be paid on the order of \$100,000 per year and they will incur additional costs of \$50,000 per year for training, benefits, and overhead. Each examiner will work 50 weeks per year resulting in an approximate cost of \$3,000 per week to the USPTO for each Track 1 examiner hired.

As described in the USPTO Request for Comments, each customer of the Track 1 will have to pay for the full cost of operating his part of Track 1. In addition, it is likely that each prioritized examination will require at least one person-week of labor. This is a cost of \$3,000. Two weeks of labor would cost \$6,000 and a month of labor would cost \$12,000. Clearly, a fully-paid-for Track 1 is not an inexpensive service. Based on these inputs, a fee on the order of \$5000 and higher would be likely.

In addition, the USPTO points out that this Track 1 application fee could not be reduced for small entity applicants such as independent inventors. (Note 3)

Despite the high cost, Track 1 accelerated applications will be quite popular. They offer the excellent service of an issued patent within 12 months and large corporations will be able to easily afford the cost of the higher fee. As a result there will be a large flood of Track 1 applications conducted for large corporations. The number of patent examiners hired by the USPTO will increase significantly. The examiners serving in Track 1 will have to be highly skilled and able to deal with complex technologies in a rapid manner.

Consequences for Other Inventors

The consequences for the users of Track 1 will be excellent. However, the consequences for other inventors will not be as good.

The organizations purchasing Track 1 service will be rewarded with the major advantage of obtaining rapid patent issuance. This is a significant competitive advantage which will reinforce their existing huge advantages such as access to capital, large engineering and development staffs, laboratory facilities, research budgets, and existing strong presence in the market.

In contrast, the inventors and small organizations who cannot afford Track 1 will be burdened with much slower patent applications inhibiting their access to capital and to the market.

Over time, the USPTO will focus on Track 1 as the real action of the agency and will devote more attention and resources to it. The better examiners in the USPTO will want to transfer to Track 1, and the other application tracks will be thought of as a secondary service containing a high percentage of “junk” applications. This will further reduce the appeal of patents developed by independent inventors and others who are not

using the Track 1 prioritized applications.

In addition, the operation of Track 1 applications will serve to increase the concentration of economic power in the American economy. This will occur because of the advantages that Track 1 provides to applicants that already command extensive wealth and economic power.

The proposed new system of patent applications will discourage independent inventors. Many of these inventors already have difficulty using the patent system protections. This situation will hurt the independent inventors, and it will also limit the competitiveness of the American economy.

In my own survey of inventors that I conducted for my Masters degree in Political Science, I found that most inventors, employed or independent, had only patented a few inventions in their careers. So decreasing the number of participants in inventive activity is likely to decrease the total number of inventions accomplished and brought to market. This decline in patent activity would damage America's competitive position in the World economy.

Ethical and Philosophical Issues

The establishment of the Track 1 prioritized applications has serious philosophical and ethical ramifications. The USPTO is a governmental agency that should be representing the interests of all American citizens. The USPTO does not exist to serve just the interests of the wealthy organizations that can easily afford Track 1. The USPTO is not a private organization such as an airline that can have First Class and Coach.

Since it is clear that Track 1 helps rich organizations far more than other applicants, the establishment of Track 1 applications goes against the basic American

value of equality of opportunity. Our sense of equality requires that the USPTO operate a more even handed patent application system. It is ethically wrong to suppress the independent inventors, while at the same time facilitating the advantages of the privileged applicants.

Alternatives to Track 1 Prioritized Applications

I suggest that the USPTO consider raising the patent application fees for all applicants by one hundred dollars (\$100). This would raise a significant amount of money that would allow additional patent examiners to be hired. Furthermore, the USPTO could hire junior apprentice examiners who could review applications at their preliminary stages under the supervision of senior patent examiners. Also, non-engineer technicians could be hired for many functions in the examining process. In addition, the temporary hiring of engineering consulting firms to conduct patent applications on a contract basis could be considered. Any or all of these alternatives would be preferable to the Track 1 Prioritized Applications.

Respectfully submitted,

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Note 1: "A 'Lighthouse' Protocol for Random Microwave Contacts", Nickolaus E. Leggett, N3NL, QEX The Experimenter's Exchange (Technical Notes) July/August 2004 – ARRL, Newington, CT.

Note 2: Federal Register, Vol. 75, No. 107, Friday, June 4, 2010, Notices, Page 31765.

Note 3: Ibid.

Some of my document references are listed below:

United States Patent 6,771,935, Wireless Bus August 3, 2004

United States Patent 3,280,929 Ground-Effect Machine October 25, 1966

United States Patent 3,280,930 Ground-Effect Vehicle October 25, 1966

“Demonstration and Development of Amateur Radio Applications of Natural Vacuum Electronics”; Nickolaus E. Leggett, N3NL - 22nd AMSAT Space Symposium and Annual Meeting October 8-10, 2004 in Arlington, Virginia

“A ‘Lighthouse’ Protocol for Random Microwave Contacts”, Nickolaus E. Leggett, N3NL, QEX The Experimenter’s Exchange – Technical Notes July/August 2004 – American Radio Relay League, Newington, CT.

I am an author, with my wife Judith F. Leggett, of numerous peer-reviewed papers on controlled-environment agriculture. Judith is an agricultural expert. We presented these papers at space engineering conferences.

I have submitted over 200 regulatory documents in rule making dockets at the Federal Communications Commission. These documents of mine are accessible online on the Internet at the FCC Electronic Comment Filing System (ECFS). In addition, I have filed regulatory comments at the EPA, FAA, and the TSA. These comments are accessible on the Regulations.gov web site.