



20883 Stevens Creek Blvd.,
Suite 100,
Cupertino, CA 95014
voice 408-446-4222
fax 408-919-1234
www.tplgroup.net

19 June 2012

TO: SecrecyOrder.Comments@USPTO.gov

FROM: Daniel E. Leckrone
Chairman & CEO

For more than two decades, The TPL Group has been dedicated to the development of disruptive cutting-edge technologies which have proven over the years to have significant commercial applications as well as significant national defense applications, often referred to as "dual-use" technologies.

We have experienced first-hand the adverse impacts on American innovation of ill-conceived Legislative and Judicial intrusions into the American Patent System, and have been shocked and dismayed by the resulting conflicts between America's economic interests and her national security interests as we have witnessed our Patent Applications which teach the details of important and costly research and development being prematurely revealed to the world by the Patent and Trademark Office ("PTO") in the name of "Publication" --- even as we were pursuing the process of complying with America's very necessary Export Controls which rigorously regulated the export of the very technology the PTO was revealing to the world.

The concept of "Publication" invokes the delicate balance which is integral to the foundational principles of the American Patent System articulated in Art I Section 8 of the US Constitution --- the abiding belief in the exclusive entitlement of Innovators to the fruits of their work, while contemporaneously allowing all other Americans and accordingly the American economy to learn about, benefit from, and build on the Innovator's work.

For more than 200 years that delicate balance was established and maintained in the form of a profoundly simple bargain between America and her Innovators. More specifically:

1. That if you disclose to the PTO your work in the form of a Patent Application, the PTO will maintain the secrecy of your work, review your work, and then advise you of the extent to which your work will qualify for protection as the subject matter of a US Patent which will then be made available to all comers; and,

2. That you will at that time be given the opportunity to decide whether to accept the protection offered by the PTO in the form of a US Patent, or if not satisfied by the scope of the protection offered, elect to maintain your work as a trade secret by declining the Patent offered and directing the PTO to destroy your Patent Application and forever thereafter protect and maintain the secrecy of your work and your entitlement to benefit from your work.

In conjunction with the Patent Acts of 1994 and 1999, America was confronted with a laundry list of changes to the American Patent System that would "harmonize" the American Patent System with the Patent Systems of Europe and Asia. That laundry list became the strategic battle plan for a relentless attack on the American Patent System by a group of multi-national corporations whose multi-billion dollar Treasuries were themselves the product of the protections of the American Patent System --- the System which had enabled their economic transmogrification from brash Innovators to multi-national market dominators, contemporaneously and unfortunately driving their intellectual transmogrification as the once-cherished protections which the American Patent System provided for Innovators began to limit their brash exercise of their dominant market and economic power.

Among the jewels in the tarnished crowns of European Patent Systems is their concept of "Publication" which provides the lethargic European industrial giants an "early-warning" system by forcing Innovators to allow the broadcast of their work by the European Patent System network if the Innovator chooses to seek the protection of a European Patent System which mandated the early "publication" of the Innovator's work.

In light of the fact that there are precious few characteristics of the European Economic Systems or the lackluster and/or foundering economies they have produced, there are likewise precious few characteristics of the European Patent Systems which are the foundation of those lackluster and/or foundering economies which are worthy of emulation, much less by Americans who for over 200 years have enjoyed the economic and political freedoms delivered by a vibrant Economic System owing in large measure its roots to the American Patent System mandated by Article 1 Section 8 of the Constitution.

Throughout the decade of the '90s as the winds of war on the American Patent System eroded the will of its Defenders, that cherished jewel from the tarnished crown of European Patent Systems known as "publication" stole its way into the American Patent System as a part of the ill-conceived and painfully misnamed "Inventor Protection Act" of 1999.

And a decade later, Americans find themselves wondering how to reconcile the fundamentals of economic and national security which have been infected by this gem of a European virus known as "publication", one strain of a crippling virus at the core of a disease known as "harmonization".

We now find ourselves searching for a Band-Aid with which to medicate a self-inflicted wound, having correctly come to understand that Publication is inherently and fundamentally inconsistent with not only America's Constitution, but with the foundation of America's economy, the demands of America's National Defense, and the fundamentals of America's Economic System.

The perception that the problem is not only enormous but eminent is absolutely correct. However the perception that the solution is some sort of enigma wrapped in a conundrum concealed in a dark room is absolutely incorrect. There are immediate, low-cost and/or no-cost steps which can be implemented to halt the hemorrhaging of America's interests. More specifically:

1. Immediately direct the USPTO to stop disclosing US Patent Applications until such time as the traditional prosecution process is completed and the Innovator afforded his fundamental right to either accept the patent protection offered, or maintain his work as a trade secret;

2. Immediately direct the USPTO to comply with the requirements of the 1999 Patent Act by publishing only the traditional Abstract of the Patent Application which historically has contained little or no revealing detail; and,

3. Immediately initiate a thoughtful and deliberate review of the National Security and Economic issues which arise in connection with so-called "dual use" technology, with a view to developing a workable and effective basis for rationalizing those two powerful considerations.

In addition, anticipate the wailing and feigned hand-wringing of those who have driven this two-decade long attack on the American Patent System which has resulted in the economic and national security crisis currently under review.

We will surely hear their party line that the opportunity to decide whether or not to accept the protection from disclosure via "publication" afforded Innovators by the American Patent System is somehow not worthy of our consideration because the non-US counterparts routinely filed by those Innovators result in immediate disclosure under the respective non-US National Patent System.

The fact which these opponents of the US Patent System have neglected to disclose as a part of their party line is the fact that the vast majority of non-US counterparts are pursued under the provisions of the Patent Cooperation Treaty or "PCT" pursuant to which the filing of the non-US counterparts in the non-US Patent System is deferred for up to 18 months. Suffice it to say, the voices of those who demand an immediate Band-Aid to conceal the wound they have inflicted on the American Patent System, as well as on America's National Defense and Economy, demand careful scrutiny.

The immediate attack on a hemorrhage is a tourniquet, followed by enlightened diagnoses and deliberate treatment --- an absolutely appropriate approach to the loss of American innovative supremacy via "Publication". Steps numbered one and two suggested above constitute just such a tourniquet and are respectfully urged.

--- The End ---