

To:

USPTO

5 Attention: James Engel
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner for Patent Examination Policy
AC90.comments@uspto.gov

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Re: Comments of Carl Oppedahl

Dear Mr. Engel:

15 I offer these comments to the Notice of Proposed Rulemaking dated January 24, 2014 entitled *Changes to Require Identification of Attributable Owner*. The views expressed herein are solely those of the undersigned and are not to be imputed to any particular client of the undersigned.

Summary:

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The package of proposed rules directs itself against the tiny fraction of patent applicants (“trolls”) who engage in “frivolous litigation” and “abusive patent litigation”. In doing so it would impose staggering costs and risks upon many perfectly legitimate non-troll patent applicants who are not within that tiny fraction, applicants who have never engaged in, and have no intention of engaging in, such “frivolous” and “abusive” litigation. Some of these costs would be incurred during prosecution of patent applications; others of these costs would be incurred during the term of any issued patent. The risks would be imposed upon perfectly legitimate non-troll patent owners at litigation time in federal district court and during any of a variety of post-grant review proceedings before the Patent Trial and Appeal Board.

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Setting aside the staggering costs and risks that the proposed rules would impose upon legitimate patent applicants, there is the further problem that if the proposed rules were enacted, the apparent goals of the proposed rules would not be well served.

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It is not easy to devise small or even larger changes to these proposed rules that would reduce the staggering costs and risks significantly, or that would allocate the costs and risks more nearly to the “frivolous” or “abusive” parties (the trolls) and away from legitimate non-troll patent applicants. Likewise it is not easy to devise small or even larger changes that would permit the rules to actually serve well the apparent goals of the rules. The proposed rules should be scrapped. To the extent the problem to which the proposed rules direct themselves needs solving, a targeted legislative approach is called for.

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The commenter:

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I am a practitioner registered to practice before the USPTO since 1987. I have prosecuted many hundreds of patent applications over the years on behalf of a range of applicants. As one who sends bills to clients, I am keenly aware of what it costs to carry out tasks imposed by USPTO's rules.

As one who has represented parties (patent owners and accused infringers alike) in adversarial proceedings, I am very familiar with the range of arguments which might be made to attempt to invalidate a patent.

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The goal of the proposed rules:

The actual goal of the proposed rules is to make it easier for the target of a cease-and-desist or licensing inquiry letter to work out who is behind the letter.

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The Notice offers up other putative benefits of the proposed rules, putative benefits other than the goal of making it easier for the target of a cease-and-desist letter to work out who is behind the letter. Few if any of those other putative benefits withstand scrutiny. The other putative benefits offered up in the Notice are as follows.

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Power of attorney. The Notice says that the proposed rules will “ensure that a 'power of attorney' is current in each application or proceeding before the Office.” The Notice further explains that “the Office has a clear interest in ensuring that current representatives in any proceeding before the Office are authorized by the current owner of the application or patent.” The Notice mentions that “there are recent trends towards greater liquidity in the markets for patent-related intellectual property” and that having “up-to-date attributable owner information will help the Office determine whether current representatives ... are authorized by the current applicant or owner”.

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Missing from the Notice is any actual evidence that this is a problem that need solving. The impression given by the language of the Notice is that there is some recurring problem of practitioners insinuating themselves into proceedings before the Office, practitioners who are presenting powers of attorney signed by parties other than the actual owner. The chief imagined problem is that the application or patent is owned by party B and the practitioner files a power of attorney signed by party A, thereby wresting control of prosecution away from B. A related imagined problem is that ownership somehow shifts (for example the application is owned by a corporation and someone buys or sells some shares of that corporation) and that this puts into question whether the practitioner has ceased to be “authorized”.

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The Notice fails, however, to point out even a single instance of such a problem having arisen, nor does the Notice explain how the proposed “attributable owners” reporting burden would somehow remedy such a problem.

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A moment's reflection reveals why this “unauthorized power of attorney” problem is illusory. In the case where the application or patent is owned by party B and the practitioner files a power of attorney signed by party A, thereby wresting control of prosecution away from B, it is a straightforward matter for party B to get in touch with the USPTO. USPTO already has mechanisms in place to handle cases in which two parties each try to control the prosecution of the application. USPTO's existing mechanisms are called upon only rarely (at most only a handful of times per year) and the existing mechanisms are sufficient to the task.

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Further reflection reminds us that the practitioner who attempts improperly to control prosecution by filing an improper power of attorney risks loss of his or her license. This fact probably helps to explain why such problems are in reality quite rare.

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5 The patent system in the US has somehow survived for over two centuries despite the fact that sometimes the owner of a patent application is a corporation of which the share ownership shifts from time to time. If the owner is, say, General Motors, then a change in share ownership will result in a change in the list of “attributable owners” (as will be discussed below), yet for two centuries no one inside or outside of the USPTO has ever suggested that this change puts into question whether the practitioner on the case continues to be “authorized”.

10 It would be ill-advised to impose upon half a million applicants per year a substantial “attributable owners” reporting burden because of the few times per year that some practitioner files a power of attorney to improperly wrest control of the application away from the owner.

15 *Avoidance of conflicts of interest for PTAB personnel.* The Notice says that the proposed rules will “avoid potential conflicts of interest” in the PTAB. The example given is that “an official” of the USPTO might have “an investment in a company with a direct interest in a Board proceeding.” The Notice explains that the “ultimate parent entity information would serve as an additional check to the extent that Office employees might not be aware of subsidiaries owned by companies in which they might own stock.”

20 It is noted that long-standing rules already require a party before the PTAB to identify the “real party in interest” for exactly this reason. Doubtless every now and then a “real party in interest” identification has indeed permitted an administrative patent judge to avoid being empaneled on a proceeding presenting an actual or potential conflict of interest.

25 But the proposed rules call for a much more invasive inquiry and detailed disclosure of a list of all “attributable owners”, going far beyond the “real party in interest” list already required by existing rules. For example if the applicant were General Motors, the list of “attributable owners” would (as discussed below) include a list of all of the current shareholders. Nowhere in the Notice is it explained how (for example) the provision to the USPTO of a shareholder list would avert a conflict of interest
30 that would have been overlooked by the administrative patent judge had only the “real party in interest” been identified.

(General Motors is not a client of my firm. I merely mention General Motors as an example for purposes of discussion. In this comment I mention many companies that are not a client of my firm but
35 that are merely given as examples for purposes of discussion.)

40 *Avoidance of conflicts of interest for patent examiners.* The Notice says that the proposed rules will “avoid potential conflicts of interest” for patent examiners. Nothing in the Notice explains how (for example) a shareholder list for General Motors will better serve the Examiner than a mere identification of General Motors as the owner. As things now stand, in many cases an Assignment has been recorded and an Examiner who goes to the trouble to do so may learn the name of the assignee by a single mouse click in the Palm system. It will also be recalled that 35 USC § 261 establishes a three-month period for recording patent assignments, and it is the experience of the undersigned that the vast majority of signed patent assignments do in fact get recorded within that three-month period.

45 A previous USPTO rulemaking (Federal Register 77 FR 48775, August 14, 2012) suggested that some fraction of pending patent applications have been assigned (or are subject to a duty to assign) but have

not had an assignment actually recorded. It is noted in this connection that 37 CFR § 1.46 (adopted in that FR notice) obligates the applicant to “notify the Office of any change in the real party in interest no later than payment of the issue fee.”

5 To the extent that this situation (an applicant having failed to record an assignment) is actually a problem (and that Notice did not quantify the size of the real or imagined problem), the problem could be addressed in ways that would be much less burdensome than the proposed “attributable owners” investigation and reporting requirement. For example the USPTO could require (just as it now does for patent appeals) that the applicant identify the “real party in interest” to the Examiner.

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The plain fact is that Examiners already minimize conflicts of interest in other much simpler and more effective ways. An Examiner whose work is examining (say) shock absorbers will likely avoid owning stock in the companies that make shock absorbers. This by itself does not, of course, eliminate all possible conflicts but does eliminate a large fraction of the potential conflicts. The other normal steps to identify potential conflicts (for example, the Examiner clicking on the “assignee” tab in Palm and looking to see what appears on the screen) would be carried out regardless.

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In any event, USPTO has not pointed to any statistics or even individual examples of Examiner/applicant conflicts. This makes it difficult to know whether the problem (if there is indeed a problem that needs fixing) calls for imposition of a staggeringly burdensome and expensive investigation and reporting requirement (as proposed in the Notice) or whether some far less burdensome and far less expensive approach (such as the disclosure-of-real-party-in-interest approach which the Board has used for decades, with no apparent problems) might suffice.

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25 *Common ownership exception.* The Notice says that the proposed rules will help to “determine the scope of prior art under the common ownership exception under 35 USC § 102(b)(2)(C)”. This is a red herring. It is not Examiners who look to see whether some piece of otherwise citable prior art is in fact unavailable to the Examiner because of a common duty to assign. The standard practice of USPTO's Examining Corps is to reject claims over such prior art and to wait to see whether the applicant has some argument that will prompt reconsideration of the rejection. It is up to the applicant to see whether a rejection by the Examiner based upon such prior art may be overcome by demonstrating the common duty to assign. Applicants do this right now. They do not need the presently proposed rules to be able to do this.

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35 *Double patenting.* The Notice says that the proposed rules will help to “uncover instances of double patenting”. This is also a red herring. Examiners already use existing search tools within USPTO to look for cases presenting double patenting issues, using search terms such as the assignee, the inventor, and claim terminology. Examiners also already use continuity data in Palm to identify possible double patenting issues. Examiners are already under a duty to carry out an interference search in each application (MPEP § 2304.01(a)).

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Let us assume for sake of discussion that there is some residuum of potential double patenting issues that somehow routinely gets missed despite all of the existing practices. From this it would not automatically follow that the correct next step is the imposition of a staggeringly burdensome and expensive investigation and reporting requirement (as proposed here). Perhaps the appropriate next step (if we assume for sake of discussion that such a residuum exists and that it represents a problem that needs fixing) would be to try some far less burdensome and far less expensive approach (such as

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the disclosure-of-real-party-in-interest approach which the Board has used for decades, with no apparent problems) might suffice.

5 Nothing in the Notice makes clear how it is that provision of (for example) shareholder lists to the USPTO would “uncover instances of double patenting”. Presumably the Examiner who is examining a General Motors application would use some search tool provided by USPTO, to bring up a list of all of the “attributable owners”. A particular human being might be a shareholder in General Motors and also in Apple Computer, and thus would be an “attributable owner” of both companies. Presumably, if the reasoning of the Notice is to be believed, the Examiner would then check all of the pending
10 applications (and issued patents) of Apple Computer to see if they constitute double patenting relative to the General Motors application being examined. This would of course be a complete waste of time and money and resources within the USPTO.

15 *Verifying proper party.* The Notice says that the proposed rules will “verify that the party making a request for a post-issuance proceeding is a proper party for the proceeding”. This is likewise a red herring, for multiple reasons.

20 First, most issued patents are owned by corporations. Under recent USPTO rules such corporations are not allowed to proceed *pro se* but must instead be represented by a practitioner. No practitioner will knowingly proceed in such a post-issuance proceeding on behalf of someone who is not a “proper party”, due to the risk of being disbarred.

25 Second, the Notice fails to point to even a single instance of someone other than the “proper party” requesting a post-issuance proceeding to the exclusion of the proper party.

Third, common sense suggests that if someone other than the “proper party” were to request a post-issuance proceeding, the proper party would very likely somehow catch wind of the proceeding and would make inquiry to the USPTO about this.

30 Nothing in the Notice explains how the provision of (for example) a shareholder list for General Motors will permit the USPTO to “verify” that General Motors is the proper party for a post-issuance proceeding on one of its own patents.

35 *Accuracy in published applications and issued patents.* The Notice says that the proposed rules will “ensure that the information the Office provides to the public concerning published applications and issued patents is accurate and not misleading”.

40 Nothing in the Notice explains how the provision of (for example) a shareholder list for General Motors to the USPTO for one of the patents of General Motors will somehow benefit the public. Is USPTO proposing to include the shareholder list on the front page of each issued US patent?

The claimed benefits of the propose rules. The Notice sets forth five supposed benefits said to flow from the proposed rules if enacted:

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1. ensure the highest-quality patents,
 2. enhance competition by providing the public with more complete information about the competitive environment in which innovators operate,

3. enhance technology transfer and reduce the costs of transactions for patent rights by making patent ownership information more readily and easily available,
4. reduce abusive patent litigation by helping the public defend itself against frivolous litigation, and
5. level the playing field for innovators.

Nothing in the Notice actually explains how these supposed benefits would flow from the proposed rules if enacted. The Notice simply states, without any support or analysis, that it is so. It does so six times – at page 4105, twice on page 4106, again at pages 4108-9, and twice more on page 4114. But mere repetition (even saying it six times) does not make it so. A few brief comments suggest that it is not so, for at least some of these supposed benefits.

Ensuring the highest quality patents. Examiners are supposed to proceed in an unbiased way, deciding whether any given claimed invention is patentable without regard to who owns it (or who are the “attributable owners”). Yes of course the Examiner’s work should be of high quality, but this is so regardless of who owns the patent application and regardless of whose names appear on the “attributable owners” list. The unstated suggestion seems to be that if only “attributable owners” list were made available to the Examiner, the Examiner could more quickly or accurately weed out inventions that are undeserving of patent protection. Such would be offensive to the notion of an unbiased patent office.

Providing more complete information about the competitive environment in which innovators operate. The suggestion seems to be that innovators need to know what their competitors are up to, and that the USPTO should force those competitors to reveal what they are up to. If this is a good thing, then why stop with merely forcing competitors to reveal details of their (published) patent holdings? Why not also force competitors to reveal the markets that they intend to enter in the future? Why not force them to reveal the names of companies they plan to try to compete with in the future? Suppose a retailer tries to buy a desirable retail location through an undisclosed agent. Should the retailer be forced to reveal its identity to the would-be seller? Suppose a mining company hires a middleman to lease drilling or mining rights in a particular geographic area. Should the company be forced to reveal its identity to the would-be lessor? Why should the USPTO involve itself in such forced disclosure by companies for no better reason than that they are part of “a competitive environment in which innovators operate”?

Enhancing technology transfer and reducing the costs of transactions for patent rights by making patent ownership information more readily and easily available. This is likewise a red herring. Many mechanisms are already in place to facilitate matching of would-be buyers and sellers of patent rights. See 37 CFR § 1.21(i) which provides for publication in the USPTO’s Official Gazette of a notice of the availability of an application or a patent for licensing or sale. USPTO publishes hundreds of such notices every year. See also PCT Form PCT/IB/382 “Request for indication of availability for licensing purposes” by which the applicant in a PCT application can arrange for its application to be listed in the Patentscope database as being available for licensing. There are hundreds of web sites and businesses, large and small, whose *raison d’être* is to match would-be buyers and sellers of patent rights.

Yet another simple reality is that very often the patent practitioner who prosecuted a particular patent application will know how to reach his or her own client. Anyone seeking to purchase a patent or

seeking to obtain a license under that patent can get in touch with the patent practitioner who prosecuted it. In many cases this will permit the patent owner to learn of the interest and in the (relatively infrequent, in my experience) instance where the patent owner wishes to get in touch with the inquiring party, it may do so.

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Anyone who holds patent rights and hopes to sell or license those patent rights will have no difficulty at all making his or her identity known to the would-be buyer or licensee. Those who hold patent rights but have no particular desire to sell or license those patent rights ought to be left in peace to proceed with their intended activities, and ought not to be forced to incur otherwise unnecessary investigating and reporting burdens.

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Leveling the playing field for innovators. Nothing in the Notice so much as hints or suggests what “the playing field” is exactly, or how it is supposedly “non-level” at the present time, let alone how the proposed rules would remedy the supposed “non-level” circumstance. It is perhaps instructive to recall the Constitutional mandate “to promote the Progress of Science and useful Arts, by securing for limited Times to ... Inventors the exclusive Right to their respective ... Discoveries.” This mandate expressly calls for a non-level playing field. Inventors are supposed to have exclusive rights that others don't have.

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The true goal of the rulemaking proceeding. As has just been discussed, the Notice offers half a dozen reasons *other than* the real goal (the real goal being making it easier for the target of a cease-and-desist or licensing inquiry letter to work out who is behind the letter) as reasons why the staggering costs of “attributable owners” reporting are somehow appropriate to be imposed on all patent applicants. To the extent that any of those half a dozen “non-troll” reasons represents a problem that actually needs fixing, the problem will have been around for decades if not centuries. The simple fact that these proposed rules did not appear twenty years ago or a hundred years ago speaks volumes; the real reason for these proposed rules is the (real or imagined) “troll problem” and not any of the half a dozen other reasons.

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The troll problem. Having identified the real reason for this Notice, it is instructive to review the real-life events that are involved. The usual real-life event is that a patent owner (a “troll”) writes a letter to a target corporation, suggesting that a license is needed. From the wording of the Notice, the reader gets the impression that sometimes the target corporation suspects that some unnamed party is “behind” the letter, and that the unnamed party may directly or indirectly control other patents. The reader gets the impression that the target corporation desperately needs (or at least wants) to have much more information than can be gleaned from assignment records and the like. The Notice does not explain what exactly the target corporation would do with this information, but one can speculate. Perhaps, for example, the target corporation has a suspicion that more letters may be in store from the same unnamed party, and does not want to purchase a license if this will be likely to embolden the unnamed party to send more letters. Perhaps, for example, the target corporation has received multiple letters and if only the letters could all be connected to the same unnamed party, the target corporation could justify the expense of a declaratory judgment action.

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There is also the reality that the easiest way to predict who will win a proceeding is by looking to see who has more money. The target corporation, weighing the pros and cons of filing a declaratory judgment action, would of course greatly prefer to know how much money the other side has. If an unnamed party is “behind” the letter, the target corporation would of course prefer to know who the

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unnamed party is so that a guess can be made as to how much money the (hitherto) unnamed party has.

5 The Notice is clearly sympathetic to the position of such target corporations, and (quite mistakenly) thinks that the investigation and reporting burdens contemplated by the proposed rules would only cost "\$100" (*Notice* at 4116) to each patent applicant. The supposedly "victimless" nature of the investigation and reporting burdens would then make it an easy policy choice to impose those burdens, thus (supposedly) permitting target corporations to react much more knowledgeably and confidently to letters from "trolls".

10 For reasons that will be discussed below, it is simply false to suggest that the investigation and reporting burdens are small. And as will also be discussed below, even if all patent applicants and patent owners were to be subjected to the investigation and reporting burdens that have been proposed, this would not come anywhere close to providing the information apparently sought by such target corporations. The proposed rules should be scrapped.

15 ***What is an "attributable owner"?*** The Notice contemplates that any patent applicant or patent owner would be required to carry out an investigation to develop a comprehensive list of all of the "attributable owners", and to report that list to the USPTO. It is instructive to explore what counts as an "attributable owner" as set forth in the Notice.

20 Under the proposed rules, this investigation and report would need to be carried out once when the patent application is filed, and again no less often than every three months during pendency of the patent application. The investigation and report would need to be carried out again at the time of paying the issue fee. The investigation and report would also need to be carried out at 3½ years, 7½
25 years, and 11½ years, accompanying the payment of each maintenance fee. Other events (such as various PTAB proceedings) would also require additional investigations and reports as to "attributable owners".

30 As contemplated by the proposed rules, here is the process that the patent applicant or owner would have to follow for each of the dozens of investigation-and-reports.

35 As a starting point, the applicant (typically, the practitioner representing the applicant) would first have to identify and list all of the "titleholders". This would usually be a fairly straightforward task, in most cases requiring simply an inspection of the assignment documents that have been signed by the inventors.

40 Having identified and listed all of the titleholders, the proposed rules would require that the practitioner identify all of the "enforcement entities". This means entities capable of enforcing the patent in court. The Notice mentions that one way an entity might become an "enforcement entity" is by possessing an exclusive license, for example for some field of use. The point of this aspect of the Notice is that sometimes there will be an "enforcement entity" that does not appear on the "titleholder" list.

45 Having identified all "titleholders" and all "enforcement entities", the practitioner would be required to identify the "ultimate parent entities" for each of the title holders and for each of the enforcement entities. "Ultimate parent entity" is said by the Notice to be "defined in 16 CFR § 801.1(a)(3)". The term "ultimate parent entity" is defined there as an entity that "is not controlled by any other entity". The proposed rules further make clear that "entity" can mean a natural person. As can best be

discerned from the Notice and from the cited section of 16 CFR, the only entities that are “not controlled by any other entity” are natural persons (human beings).

5 Any corporation is by definition controlled by some entity or entities who are not the same as the corporation. From this it follows that no corporation could ever be an “ultimate parent entity”. If some “titleholder” or “enforcement entity” turns out to be a corporation, the list of “ultimate parent entities” would include (at the very least) a shareholder list.

10 A partnership is by definition controlled by some entity or entities who are not the same as the partnership. From this it follows that no partnership could ever be an “ultimate parent entity”. If some “titleholder” or “enforcement entity” turns out to be a partnership, the list of “ultimate parent entities” would include (at the very least) a list of the partners.

15 From the above discussion it appears that no entity except a natural person could ever be an “ultimate parent entity”.

20 The “attributable owners” investigation is thus iterative. First one arrives at a list of titleholders and a list of enforcement entities. Then one runs down the list, item by item, to see whether any of the entities on the list is other than a natural person. If so, then the entity on the list is replaced by a shareholder list or partner list for that entity as the case may be. Having reached the bottom of the list, one returns to the top of the list, again looking for entities that are not natural persons. If any such entity is encountered on the list, then the entity on the list is replaced by a shareholder list or partner list as the case may be. This process is repeated until all entities other than natural persons are eliminated from the list.

25 The Notice explains that if the entity being dissected to determine its “ultimate parent entities” is a nonprofit, the list of ultimate parent entities is the board of directors of the nonprofit.

30 It does not, however, follow automatically that if the practitioner has managed to trace ownership and control back to the underlying natural persons (human beings), that the practitioner has reached a complete list of “ultimate parent entities”. After all, it is not uncommon for a natural person to hold property “in trust” for some other natural person. This happens when one is, for example, a legal guardian of a minor or incompetent, under the control of a deed of trust or an order of a probate court. This would have to be investigated for each natural person on the list.

35 Having expanded the “attributable owners” list repeatedly until all legal persons are eliminated and only natural persons remain, and having further accounted for each natural person who holds ownership “in trust” for someone else, is the inquiry completed? No. The Notice requires the practitioner to divine the existence of “divesting entities”. The term “divesting entity” is defined as
40 “any entity that creates or uses any type of arrangement or device with the purpose or effect of temporarily divesting such entity of attributable ownership or preventing the vesting of such attributable ownership”. Presumably the hunt for “divesting entities” requires detailed scrutiny of each legal person that turned up in the titleholders inquiry, and detailed scrutiny of each legal person that turned up in the enforcement entities inquiry, and each legal person that turned up in the iterative
45 process of expanding the legal entities into an ultimate list of natural persons.

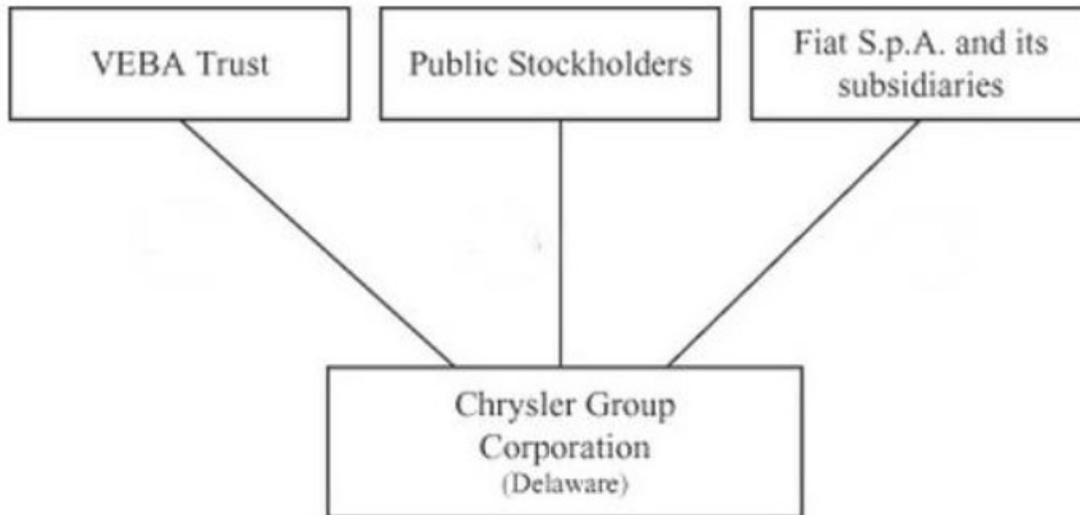
Each “divesting entity” would need to be added to the “attributable owners” list. And it would be

necessary to work out the “ultimate parent entities” for that newly added entity.

It may be instructive to look at a few real corporations to see what might be involved in the “attributable owners” investigation.

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Consider the automaker Chrysler. Here is a diagram showing ownership of Chrysler.



10 Is Chrysler Group Corporation an “ultimate parent entity”? Probably not. An “ultimate parent entity” is an entity that is not controlled by any other entity. From this diagram it appears that Chrysler is controlled by “VEBA Trust”, by “Fiat S.p.A. and its subsidiaries”, and by “public stockholders”. So the (preliminary) list of “attributable owners” has at least three items on the list, the “VEBA Trust”, “Fiat S.p.A. and its subsidiaries”, and the “public stockholders”.

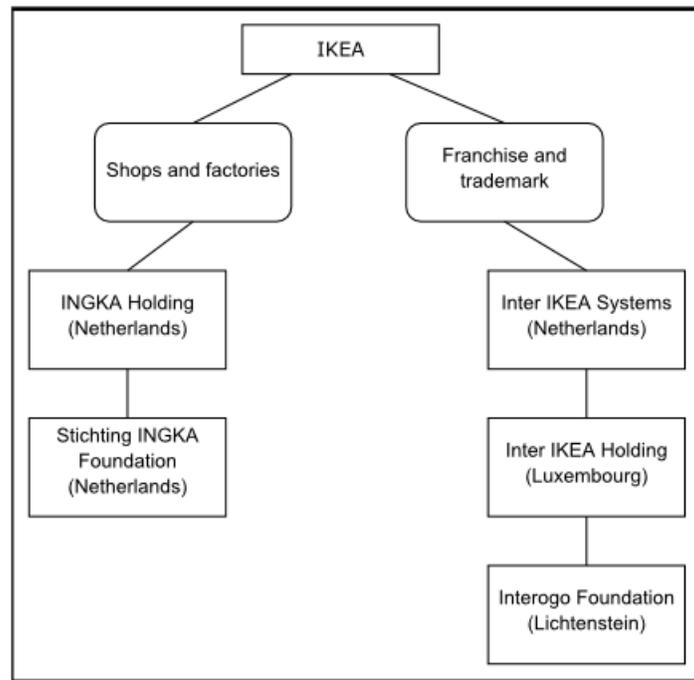
15 What is “VEBA Trust”? This is a Voluntary Employees Beneficiary Association, a nonprofit entity having something to do with employee benefits, probably controlled by a board of directors. So on the “attributable owners” list, “VEBA Trust” is replaced with a director list. So far so good. Now we turn to “Fiat S.p.A. and its subsidiaries”. This will require advice of Italian counsel to work out who exactly controls the S.p.A. (Advice of Italian counsel would also be needed to arrive at opinions as to how to handle the “subsidiaries”.) We also have “public stockholders”, who will have to be listed. Any stockholder that is not a natural person is presumably “controlled by another entity” and would thus need to be replaced on the list by the natural persons who control it.

25 The proposed rule requires that for each person listed on the “attributable owners” list, the person's current residence and current mailing address must be provided. Many persons would object to having to provide their residence address to the general public.

I estimate that developing the list of “attributable owners” for Chrysler would incur a one-time cost of over \$50,000.

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Now let's look at Ikea, the well-known furniture retailer. Here is an organizational chart:



5 If Ikea were to file a US patent application, or if it were to purchase an issued US patent for which a maintenance fee would later need to be paid, then Ikea would need to carry out an investigation to arrive at an “attributable owners” list. Let's put aside for the moment the “enforcement entities” portion of the required investigation and look only at the ownership and “ultimate parent entities” portion of the investigation. Assume for sake of discussion that the corporate decision is for the patent or patent application to be held by Inter IKEA Systems. The “ultimate parent entities” investigation would presumably call for opinions by Netherlands counsel (for Inter IKEA Systems), Luxembourg counsel (for Inter IKEA Holding), and Lichtenstein counsel (for Interogo Foundation). Likely the Foundation is a non-profit in which case according to the proposed rules the “ultimate parent entities” would be the directors of the Foundation.

15 Interestingly, according to the proposed rules, the “attributable owners” list might well be nothing more than a list of the natural persons who happen to be the directors of the Foundation. In other words, the “attributable owners” list might not even mention any entity with “IKEA” in the name. To the extent that we are counting on the “attributable owners” list as a way for patent examiners or PTAB judges to identify conflicts, the list would not only be unhelpful but would be a value subtractor. The examiner or judge who happens to have a spouse who works for IKEA, presented with nothing but a list of names of natural persons, would almost certainly never guess that person X or Y on the list is a director of a foundation that happens to own the company known as IKEA.

25 I estimate the one-time cost for the “attributable owners” investigation for IKEA to be in excess of \$50,000.

Suppose the patent application is owned by Facebook. Here is a list of the largest institutional investors in Facebook:

Owner Name	Shares Held
FMR LLC	118147574
STATE STREET CORP	67892687
VANGUARD GROUP INC	58719099
BARCLAYS GLOBAL INVESTC	38392673
SANDS CAPITAL MANAGEME	35226219
INVESCO LTD.	34157484
PRICE T ROWE ASSOCIATES	33322289
MORGAN STANLEY	31174002
JENNISON ASSOCIATES LLC	25741313
BAILLIE GIFFORD & CO	22090961
JPMORGAN CHASE & CO	20974366
AMERIPRISE FINANCIAL INC	14935157
MAIL.RU GROUP LTD	14210507
WELLS FARGO & COMPANY//	14148318
AMERICAN CENTURY COMPA	13889300

5 The “ultimate parent entities” portion of the investigation requirement would, among other things, require Facebook to obtain a shareholder list for each of these companies. It is safe to assume that (for example) the shareholder list for Wells Fargo would change almost daily. This would bring about daily changes in the “attributable owners” list. The proposed rules require that the USPTO be informed within three months of any change in the “attributable owners” list. Presumably at a minimum this would require Facebook to send in to the USPTO a new “attributable owners” list no less often than every three months. Arguably since “each change” is to be reported, Facebook would have to file an updated “attributable owners” list daily. Perhaps Facebook could be given the weekends off, and would only have to file two hundred or so reports per year.

15 I estimate the one-time cost for Facebook to carry out an investigation for an “attributable owners” list to be in excess of \$50,000. Each update would, I estimate, cost at least an additional \$50,000. Somewhere in the range of three to two hundred such updates per year would be needed during the pendency of the patent application depending upon how one interprets the proposed requirement that “each change” be reported within three months of its occurrence.

20 Suppose the patent owner is VocalTec Ltd, the company that makes the well-known MagicJack. Here are the biggest institutional investors:

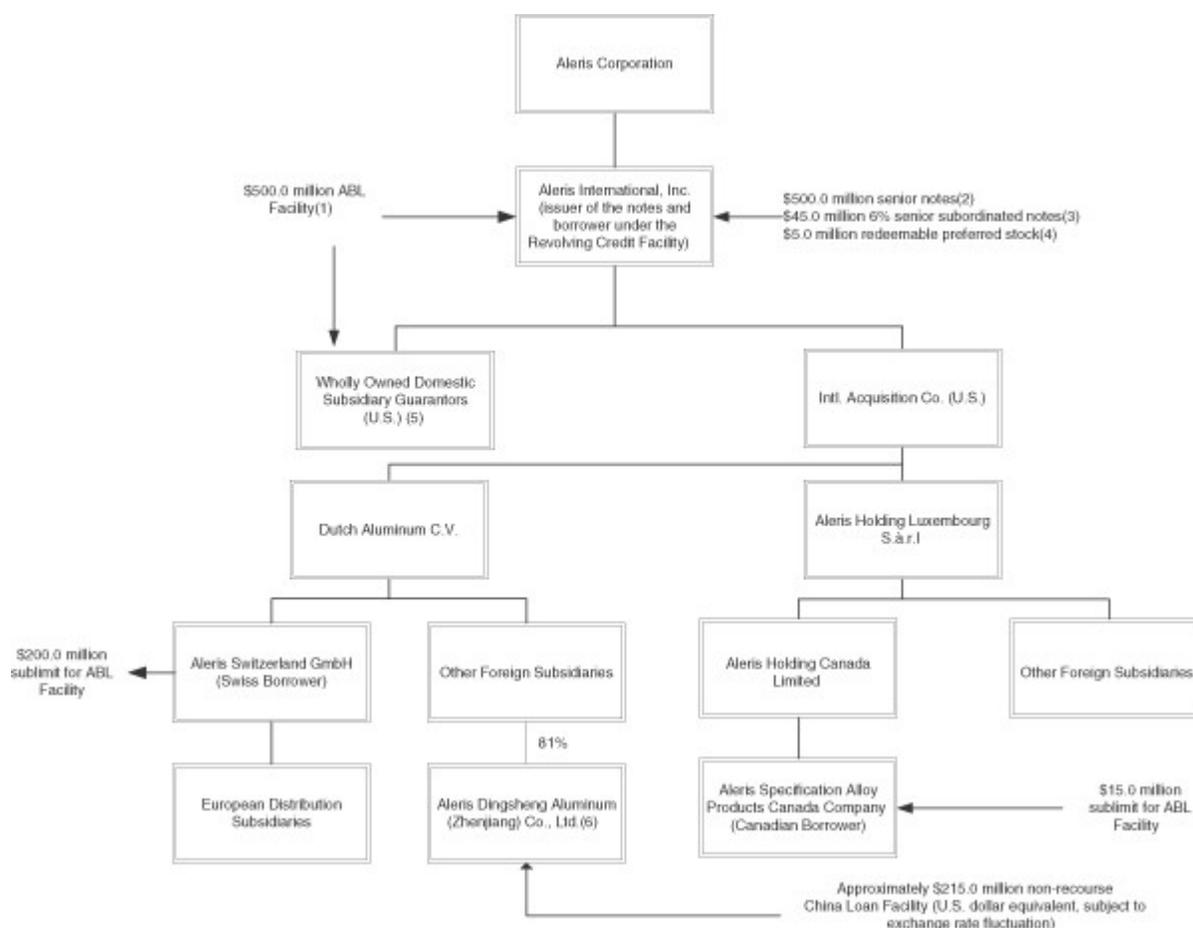
Owner Name	Shares held
ADAMS STREET PARTNERS LLC	1976861
JPMORGAN CHASE & CO	942473
BARCLAYS GLOBAL INVESTORS UK HOLDINGS	710619
BLACKROCK ADVISORS LLC	545110
BLACKROCK FUND ADVISORS	525527
THOMPSON SIEGEL & WALMSLEY LLC	438008
STATE STREET CORP	380319
SUSQUEHANNA INTERNATIONAL GROUP, LLP	298522
GROUP ONE TRADING, L.P.	225525
AQR CAPITAL MANAGEMENT LLC	190100
NORTHERN TRUST CORP	167683
T2 PARTNERS MANAGEMENT, LP	165000
MORGAN STANLEY	125519
GOLDMAN SACHS GROUP INC	125322
BANK OF NEW YORK MELLON CORP	120240

At least three of the investors are partnerships, which when listed on the “attributable owners” list, would then be replaced with a list of the respective partners as part of the “ultimate parent entities” investigation. Each of the other entities would be replaced by its shareholder list. The replacement process is recursive, meaning that for example Goldman Sachs would be replaced on the list by a list of its shareholders. The resulting “attributable owners” list would again be expected to change daily.

I estimate the cost of each “attributable owners” investigation to be in excess of \$50,000.

Let's suppose the patent application is owned by Aleris Dingsheng Aluminium (Zhenjiang) Co., Ltd., the Chinese subsidiary of the well-known company Aleris International, Inc., a producer of rolled and extruded aluminum products. Here is an organizational chart:

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5 The “ultimate parent entities” investigation would presumably require Chinese counsel to advise as to ownership and control of the Chinese company. Dutch counsel would be needed to advise as to ownership and control of Dutch Aluminum C.V. US counsel would be needed to advise as to ownership and control of Intl. Acquisition Co. and ownership and control of Aleris International, Inc. as well as ownership and control of Aleris Corporation.

10 I estimate the cost of each “attributable owners” investigation for this would-be applicant at well in excess of \$50,000.

At page 4109, the Notice says:

15 Most additional reporting will need to be done by companies that have complicated corporate structures and licenses, which often include the complex structures used by certain patent assertion entities (“PAEs”) to hide their true identities from the public.

20 The suggestion in the Notice seems to be that if a company's structure is so complicated that the “attributable owners” inquiry incurs more than a nominal (\$100) cost, then that is not the USPTO's problem and that the company is probably a troll anyway. This point of view is, at best, naïve.

The investigation and reporting burdens arise again and again. USPTO proposes that the applicant

would be required to carry out the investigation as to the list of “attributable owners”, along with the filing of a report as to the results of the investigation, multiple times during the life of a patent application and patent. Under the proposed rules, the investigation would have to be carried out and its results reported to the USPTO:

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- when an application is filed (or shortly thereafter);
- no less often than once every three months during the pendency of the patent application, so that such change could be reported to the USPTO within three months of the change;
- when the issue fee is due;
- when each of the three maintenance fees is due; and
- when a patent becomes involved in any of a variety of post-issuance proceedings within the USPTO.

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Assume for sake of discussion a pendency of four years. This would mean that the “attributable owners” investigation would have to be carried out no less often than sixteen times during pendency, so that any change could be assured of being reported within three months of the change. For a company whose “attributable owners” investigation costs (say) \$50,000, this would lead to a total cost during pendency of some \$800,000. At page 4107 the Notice states:

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20 This rulemaking is not economically significant under Executive Order 12866.

This statement is believed to be factually false.

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Burden on foreign companies. As will be appreciated from the examples cited above, a foreign company is particularly likely to be excessively burdened by the proposed rules. The patent agent or patent attorney representing the applicant will have no expertise as to corporate structures or ownership rules in the foreign country involved. Legal counsel will have to be hired in the foreign country involved to work out in detail the “ultimate parent entities” and the “divesting entities” that might exist under the law in the foreign country involved.

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Many perfectly legitimate non-troll companies (see examples above) have corporate structures that would require hiring legal counsel in two or more foreign countries to work out in detail the “ultimate parent entities” and the “divesting entities” that might exist under the laws in the foreign countries involved.

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Small startups that have not yet “gone public”. The Notice at 4115 puts forth the astonishingly naïve view that “the relatively low percentage of patent applicants who submit a second assignment document for recordation leads to the inference that changes in [attributable] ownership during the pendency of a patent application are relatively infrequent”. On this view the Notice suggests that this “will occur in fewer than four percent of applications each year.” In reality, for any small start-up company, the attributable ownership is likely to change at least annually, as each round of financing take place and as the ownership of the founders' shares is repeatedly diluted. Grants of stock options to employees will likewise affect attributable ownership. Many small startups preserve their existence in the years prior to “going public” only by obtaining infusions of cash from licensees. A startup that has devised a drug delivery system is likely to grant one exclusive license to a maker of blood pressure drugs to secure a first infusion of cash, followed by a second exclusive license to a maker of cancer-

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fighting drugs to secure a second infusion of cash, and so on. Each of these exclusive licenses would trigger the accretion of yet another member to the ever-increasing list of “attributable owners”. The practitioner would then be required to carry out an investigation as to the “ultimate parent entity” of each licensee.

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It is to be noted that these proposed rules would impose a substantial investigation and disclosure burden on any would-be licensee of the startup company. Indeed it is likely that this investigation and disclosure burden would have a chilling effect, prompting some would-be licensees to decline to enter into a license with the startup. This would deny the startup the infusion of cash that would otherwise have been available. The overall result would be to starve some startups of cash and lead to their demise.

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The requirement for constant monitoring of the “attributable owners” list to detect changes would put an additional strain on such startup companies, needlessly diverting money away from research and product development.

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A management executive of one startup company, upon hearing of the proposed requirement for an “attributable owners” investigation, estimated that the investigation would tie up two high-level company employees, whose time was worth \$300 per hour, for about a week. This suggests a one-time cost of \$24,000 for each such investigation.

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Many small startups raise money by entering into any of a variety of option agreements with companies that have money. Each such agreement would have to be scrutinized closely to see whether the option-holder is (or can later in litigation be construed by the infringer to be) in some sense an “owner” or in some sense an “enforcement entity” or in some sense a “divesting entity”.

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A patent attorney would be able to carry out the “attributable owners” investigation? It is also astonishingly naïve to suggest (Notice at 4116) that “a patent attorney or general practice attorney would have the type of professional skills necessary to provide the attributable owner information required by the proposed rules.” This suggestion also ignores that some patent applicants are represented by patent agents about whom no assumption can be made as to their ability to carry out the required investigations. Many small inventors and start-up companies are represented by patent agents. Working out the “attributable owners” list may require analysis of agreements which would be equivalent to a legal opinion. Patent agents who provide these opinions may unwittingly subject themselves to disciplinary proceedings in their states for the unauthorized practice of law.

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I am a patent attorney. Despite this credential, and despite some twenty-five years of experience serving patent applicants, I have no knowledge of German law, or Chinese law, or Polish law, as to legal ownership or legal control of German or Chinese or Polish corporations, partnerships, or other types of legal entities. I have no clue what “types of arrangements or devices” one might use in Germany or China or Poland to attempt to “temporarily divest” some entity of its “attributable ownership”.

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I am admitted to practice in Colorado and in New York. Suppose the applicant is a Delaware corporation located in California. My admission to practice in Colorado or New York offers no assurance that I have the competence to evaluate corporate ownership or control under Delaware or California law. My admission to practice in Colorado or New York offers no assurance that I know

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anything about the “types of arrangements or devices” one might use in Delaware or California to attempt to “temporarily divest” some entity of its “attributable ownership”.

5 Although I have the credential of being admitted to practice before the USPTO, I note that USPTO's Office of Enrollment and Discipline has never tested any would-be practitioner on his or her knowledge on any of these areas of law, whether in Germany or China or Poland or Delaware or California.

10 **Representation through foreign patent counsel.** The proposed rules also fail to take into account that a large fraction of US patent applications are filed on behalf of applicants with whom the US practitioner has no contact whatsoever, other than through foreign patent counsel. If I were to commence an “attributable owners” investigation in connection with an applicant in (say) China, I would only be able to pose my queries to Chinese patent counsel. Chinese patent counsel would then have to pose the queries to the applicant. After such time as the complete list of “titleholders” was
15 enumerated, it would be necessary to proceed to work out a complete list of “enforcement entities”. This would include enumerating a list of exclusive licenses. These lists having been accumulated, further queries would have to be passed back and forth through Chinese patent counsel to explore who might be the list of “ultimate parent entities” for each entity on the list of titleholders and the list of enforcement entities. The inquiry would then proceed to the hunt for “divesting entities” under the law
20 of the country involved, all mediated though foreign patent counsel.

It strains credulity that the cost of such an investigation might be a mere “\$100” (Notice at 4116).

25 For one Polish applicant served by my firm, I conservatively estimate the cost for a first “attributable owners” investigation at \$40,000. This cost includes not only my professional time, but also the professional time of at least one Polish patent agent at the Polish patent firm with which my firm corresponds. The Polish patent agent is not an attorney in Poland, so Polish legal counsel at a Polish law firm would have to be engaged to investigate the corporate structure of the applicant, as well as any exclusive licensees of the applicant, as well as to carry out a seemingly pointless hunt for “divesting
30 entities” in Poland under Polish law, and to arrive at an opinion as to the “ultimate parent entity” for each of the previously identified entities.

35 The proposed rules would require an additional “top-up” investigation every three months during the pendency of the patent application. I conservatively estimate the cost of each top-up investigation at a minimum of \$1000 for those calendar quarters in which no material change has occurred. This cost includes my professional time and the professional time of the Polish patent agent, as well as the internal cost to my firm to docket the need to carry out the quarterly investigations.

40 During the (average) four-year pendency of the patent application, the Polish applicant is likely to undergo an average of one corporate structure change, to give one example perhaps from a “spółka akcyjna” (somewhat analogous, I am told, to a British PLC) to a “spółka partnerska” (somewhat analogous, I am told, to a limited liability partnership). The quarterly top-up investigation that by chance happened to come after this structure change would once again require substantial professional time on my part, on the part of the Polish patent agent, and on the part of the Polish attorney. This
45 would again require Polish counsel to arrive at an opinion as to the “ultimate parent entity” for each of the previously identified entities.

One Silicon Valley startup served by my firm has been through five rounds of financing, involving angel investors, venture capital firms, and sizeable cash infusions from large corporations receiving exclusive licenses to the technology of the startup. One large corporation having made such a cash infusion in return for an exclusive license is a Swiss pharmaceutical company. Another such large source of cash is a privately held manufacturer of electronic equipment, a company that does not publish financial statements and does not publicly disclose the details of its ownership. It is not beyond imagining that this company would have declined to enter into the relationship with the startup if the price of such a relationship with the startup were a public revelation of the exact and detailed ownership and control of the company, tied to a duty to reveal at least once every three months every change in the ownership and control of the company.

For this startup, I conservatively estimate the cost for a first “attributable owners” investigation at \$90,000. This cost includes my professional time, and the professional time of experienced corporate lawyers familiar with the corporation laws of the states involved (at a minimum, a first corporate lawyer admitted to practice in California and a second corporate lawyer admitted to practice in Delaware). This cost includes a review of the corporate records of the startup, beginning with the incorporation documents and continuing through the documents for each round of financing and for each exclusive license that has been granted thus far. This cost also includes rendering of opinions by Swiss counsel regarding ownership and control and “ultimate parent entity or entities” of the Swiss pharmaceutical company. This cost also includes rendering of opinions by counsel regarding ownership and control and “ultimate parent entities” of the privately held electronics manufacturing company.

For this startup I conservatively estimate the average cost of a top-up investigation at \$4000. In general some event that risks being material to the “attributable owners” list will have occurred at least once every six months, be it another round of financing, the exercise or grant of employee stock options, or the infusion of cash due to an exclusive license. During a nominal four-year pendency, these investigations would add up to perhaps \$138,000 (sixteen quarterly top-up investigations in addition to the first investigation).

Risks in litigation. Conspicuous by its absence in the Notice is any discussion or explanation as to what will happen in litigation when a legitimate, non-abusive patent owner asserts its patent in court. Recall that the penalty contemplated by the proposed rules is that the application would be deemed abandoned three months after any non-reported change in the “attributable owners” list. This “silent abandonment” would happen without the USPTO or the applicant being aware of it having happened. Prosecution would continue, an issue fee paid, and other actions taken in reliance on the supposed non-abandoned status of the application.

At litigation time, every real or imagined inaccuracy in the dozen or more “attributable owners” lists to be found in the file wrapper will be grist for a summary judgment motion as to supposed “silent abandonment”. During the discovery phase of the litigation, it is to be assumed that third-party discovery would be carried out to explore the historical ownership and control (and “ultimate parent entity” status) of each investor, each licensee, and the patent owner itself. Every significant corporate event in the life of the patent owner would be discovered into in an effort to show some real or imagined failure to conclude the investigation within the required three months, or to report the results of the investigation within the required three months. Every stock option, every license, every change in corporate structure would be gone into as a possible “divesting entity” mechanism.

For a patent owner that was a small startup when the application was pending, I estimate the cost of responding to discovery as to “attributable owners” during pendency at \$300,000. The inevitable summary judgment practice which would follow would cost such a patent owner an estimated \$50,000.
5 It would be a rare corporation whose history and corporate structure would be so simple and event-free that such discovery would not be needed and that no such summary judgment practice would follow.

Were these rules to enter into force, it would likely rise to the level of malpractice for counsel representing an accused infringer to do anything other than carry out such discovery against the patent owner and to carry out such summary judgment practice against the patent owner.
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No safe harbor. Also conspicuous by its absence in the proposed rules is even a hint or suggestion of “safe harbor” for the patent practitioner who faithfully reports to the USPTO the “attributable owners” list developed by California counsel or Delaware counsel or Polish counsel or German counsel.
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Resorting to use of rules promulgated by some other government agency. The USPTO Notice does not itself define “ultimate parent entity” but instead proposes to use a definition arrived at by the Federal Trade Commission at 16 CFR § 801.1(a)(3). This is ill-advised for many reasons, including but not limited to the reasons given in the comments of Rick Neifeld in this proceeding.
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There is at least one additional reason why USPTO should not do this.

Heretofore, any member of the intellectual property community wishing to try to avert badly worded proposed Rules relating to patents could do so by monitoring the portions of the Federal Register relating to the USPTO and filing comments in response thereto.
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Were these proposed rules to be implemented, any member of the intellectual property community wishing to try to avert badly worded proposed Rules relating to this “attributable owners” burden would additionally be required to monitor the portions of the Federal Register relating to the Federal Trade Commission.
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It is not reasonable for USPTO to proceed in such a way as to require parties harmed by this burden to monitor Federal Register notices relating to two government agencies.

Couldn't workable definitions be arrived at? The proposed rules (see the “examples” hinted at in the FTC “definition” of “ultimate parent entity”) leave open that in some cases, the patent applicant might choose not to provide shareholder lists and partner lists and board-of-directors lists, but might instead choose to truncate the “ultimate parent entity” inquiry at some point short of providing such lists. This would require the patent applicant (or its corporate attorney in some state of the US or in some foreign country) to arrive at a judgment call that such truncation is somehow not violative of the requirement that all “ultimate parent entities” be revealed and listed.
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Any such truncation judgment call is, of course, leaving the patent owner open to charges that the judgment call was made erroneously and thus that the patent application suffered a “silent abandonment” at some point during pendency or upon payment of some maintenance fee.
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If such rules were to take effect, then later some court-made precedent would be developed to explore

and flesh out which past truncation judgment calls were deemed to be justified and which were deemed to have been inaccurate. With each such precedent, patent owners would face the need to revisit past truncation judgment calls and (in many cases) the need to file petitions to revive in view of the new precedent. This would require each patent owner to constantly monitor such precedents during the term of the granted patent.

To the extent that any safe or conservative course of action can be seen in the proposed rules, it would indeed be the iterative development of a list of “attributable owners” devoid of any list members other than natural persons and provision of that constantly updated list in the recurring reports to the USPTO.

It appears to be a fool's errand to try to devise some revised definition for “attributable owners” (or “enforcement entities” or “divesting entities” or “ultimate parent entities”) that would actually provide a bright-line objective standard for the place where the investigation could be truncated short of providing only a list of natural persons.

For example suppose the definition of “ultimate parent entity” were revised to say “entity for which no other single entity controls the entity” or “entity for which no other single entity owns more than 50% of the entity”. While this would likely permit General Motors to avoid having to hand a constantly updated shareholder list to the USPTO, it would also vitiate the apparent goal of exposing trolls. Anyone wishing to truncate the “attributable owners” investigation could take the simple step of arranging for at least three owners for an entity, no one of which has over 50% ownership.

A targeted solution? The proposed rules direct themselves to a real or imagined problem, namely that the recipient of a cease-and-desist letter would want to know who is behind the letter.

A first problem is that the proposed rules force burdensome investigation and reporting requirements at a very different time than during the term of a patent. Such letters are sent for issued patents, not for pending patent applications. Despite this, the proposed rules would call for some sixteen “attributable owners” investigations and reports during the (average) four-year pendency of a patent application. The Notice does not explain how these sixteen investigations help at the (later) time when the letter is sent. If an “attributable owners” investigation and report were to be justified at all during pendency, it would be at the time of paying the issue fee. The previous fifteen investigations and reports would add little or nothing to this result.

A second problem is that the patent may have come into the possession of the author of the letter during any of the four “jurisdiction gaps”, by which is meant the long time intervals during which the USPTO lacks any jurisdiction over a patent. The first such gap is between issuance of the patent and the payment of the first maintenance fee (at 3½ years). The second such gap is between the payment of the first maintenance fee and the the payment of the second maintenance fee (at 7½ years). The third such gap is between the payment of the second maintenance fee and the the payment of the third maintenance fee (at 11½ years). The fourth such gap is between the payment of the third maintenance fee and the end of enforceability of the patent (at the end of the statute of limitations, around twenty-two years later depending on pendency and patent term adjustment). If the letter regarding which the recipient is so curious happens to relate to a patent obtained during any of these four “jurisdiction gaps” then the proposed rules will have done nothing to satisfy the recipient's curiosity.

5 A third problem is that the proposed rules place nearly all of their (substantial) economic burden upon innocent parties. The Notice gives no statistics as to what fraction of granted US patents ever become the subject of a cease-and-desist letter, but I estimate that fraction at less than one-tenth of a percent. The Notice likewise gives no statistics as to what fraction of cease-and-desist letters involve a patent where there is any actual mystery as to who is behind the letter. I estimate that with the great majority of cease-and-desist letters, there is no mystery at all on this point. Most granted US patents list the owner on the front page of the patent. Most granted US patents for which assignments have been signed are patents for which the assignments have been recorded in the USPTO, and are thus a matter of public record. Most cease-and-desist letters open with a sentence identifying the actual party asserting the patent rights.

15 Despite the fact that perhaps only one patent in ten thousand ever gets mentioned in a cease-and-desist letter for which there is any mystery as to who is behind the letter, this Notice would impose staggering investigation and reporting costs upon the other nine thousand nine hundred ninety-nine patent owners. Furthermore, in the event that any of these other nine thousand nine hundred ninety-nine patent owners were to find the need to enforce patent rights in court, the patent owner would face expensive discovery into real or imagined failures to comply with the hunt for “attributable owners” and “divesting entities”, and would face expensive summary judgment practice as to the real or imagined failures.

20 The analogy that comes to mind is the present TSA screening requirement that airport passengers pass through imaging scanners. A time cost, privacy cost, dignity cost and possible exposure to radiation is imposed upon millions of persons as a reaction to a small number of events such as the failed “underwear bomber”. Of course in the TSA case, the risk being guarded against (a second “underwear bomber”) is different from the risk that the recipient of a cease-and-desist letter might not be able to figure out who is behind the letter.

30 To the extent that recipients of cease-and-desist letters need help, this help should be targeted. Such recipients could, for example, seek from Congress a law permitting the recipient of a cease-and-desist letter to respond to the letter with a request for an “attributable owners” report. Under such a law, failure to provide such a report when requested could (for example) give rise to a personal “intervening right” for the requester. This approach would impose the costs of “attributable owners” investigations directly upon the cost-causers, namely the senders of such letters. This approach would avoid needlessly imposing the costs of such investigations upon the 99.9% of patent owners who do not engage in “abusive” or “frivolous” litigation.

35 Were such a law to enter into force, it would likely become routine for non-abusive, non-frivolous patent owners who send such letters simply to attach the “attributable owners” report to the letter itself, thus saving trouble for both parties.

40 ***Why the awkward penalty of “silent abandonment”?*** If in litigation it were to develop that a patent owner had engaged in some improper behavior, such as misrepresenting the actual identity of a party to an enforcement activity, the normal and natural timing of the penalty would be that the penalty is considered and perhaps imposed *at litigation time*.

45 It is, frankly, bizarre to imagine what is proposed in this Notice, namely that the penalty imposed should be that a patent application was deemed to have gone abandoned some years or decades ago, despite no one knowing of the event at the time of the abandonment.

5 This highlights the wrong-headedness of trying to use the USPTO (through its rulemaking power which is mostly limited to the examination of patent applications) to bring about a remedy at litigation time when in fact it is Congress that should address litigation-time remedies if in fact such remedies are to be given.

10 **Conclusion.** The United States Supreme Court, in the case of *Dastar Corp. v. Twentieth Century Fox Film Corp. et al.*, 539 US 23 (2003), considered one litigant's suggestion as to the supposed need to give attribution to everyone who was connected with a literary work. The Court said “We do not think the Lanham Act requires this search for the source of the Nile and all its tributaries.”

15 I do not think the aims of this rulemaking package justify imposing upon each patent applicant the burden of investigating the source of the Nile and all its tributaries, and repeating that investigation every three months.

Respectfully submitted,

/s/

20 Carl Oppedahl