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United States Patent and Trademark Office
Mail Stop Comments-Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Attn: James Engel, Senior Legal Advisor, OPLA

Re: Supplemental Comments on Proposed “Changes to Require Identification of Attributable Owner,” Fed. Reg. Vol. 79, No. 16, Jan 24, 2014 pp. 4105-4121

Dear Mr. Engel

After careful review of the transcripts of the two public hearings on the rule proposal, I offer the following additional comments. In this regard, I was for some period employed to prepare draft PCT Written Opinions for a firm who had a contract to provide the same to the USPTO

An oft-repeated justification for greater transparency in patent ownership, improving the ability to assess freedom to operate is fallacious and antithetical to the primary mission of the USPTO. Anyone skilled in patent searching knows that the current ownership of a patent or application is not particularly helpful to searching for patents of concern. Indeed many of the searches conducted by patent examiners do not take any account of the ownership of the prior art searched as is readily apparent from the search strategies reported in PAIR for particular applications. This is also reflected in the search results printed on the face of each granted patent that make reference to US and international classifications but not ownership. It can be useful secondary strategy to search using particular inventors or organizations that sponsor particular types of research. But this involves searching using the original owner responsible for the initial filing and is little aided by knowing the subsequent assignment or licensing history.

But even more disturbing is the concept that the decision of whether to respect relevant patent rights will be based on the actual owner of the patent rights. Presumably this means that if the owner is a smaller entity unlikely to have the wherewithal to bring an infringement suit, his rights may be safely infringed. This is clearly antithetical to the basic premises of the patent system of a grant of exclusive rights in return for disclosure of technology.

Some useful information on patent scope might be gleaned from forcing the disclosure of sensitive business information on the disposition of patent rights but the burden would only be justified if the information were not otherwise available. However, when it comes to information on prior court assertions of a given patent this information is readily available from existing databases including Pacer.

Perhaps the market for patent rights would be a bit more efficient if the disclosure of sensitive business information were forced in accordance with the rules proposal, but this incremental efficiency would not justify the burden imposed. In this regard, many other markets have for a great many years functioned just fine without such transparency. For time out of mind real estate developers have concealed their identities as they acquired parcels to make up a development. And the stock market functions just fine with the bulk of traded shares held in street names by brokers. Of course, if one is in negotiations with a party one can ask the other side about affiliations and the source of authority to license.

Yours truly,

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