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Sent: Thursday, November 03, 2011 9:39 AM
To: SMEpatenting
Subject: International Patent Protection for Small Businesses

Selling of PCT rights prior to the 30 month national stage deadline.

This is a proposal for the USPTO to setup an auction site that enables the sale or licensing of selective foreign rights by PCT applications that have received favorable Writing Opinions on Patentability of the International Searching Authority (WOISA). By selling or licensing rights to pending PCT applications in countries of no interest to the applicant, small US companies may offset the costs of foreign filing in countries that are of interest to them.

The 30 month national stage is when the costs of international filings escalate. It is at this point that, primarily for financial reasons, many small companies opt to pursue only a few, or no, national stage filings, even if their invention may be of value in many foreign countries.

However, within 16 months, applicants have typically already received a Writing Opinion on Patentability (WOISA) from the International Searching Authority. If this opinion is favorable, the application will automatically be granted patent status in many of the 144 PCT patent countries. Even in examining countries, a positive WOSIA report is a good indicator of patentability.

A small business is unlikely to want to pursue patent rights in all 144 countries. However, the rights in one or more of those countries may be of interest to local entrepreneurs in those countries. Using an auction website, small US companies may be able to sell or license rights in those countries to help finance pursuing international rights they are more interested in. A typical sale of rights may include the purchaser accepting the financial and legal obligations of pursuing the national stage proceedings in the jurisdictions they have acquired the rights to.

To facilitate such a process, the USPTO could set up an auction site, possibly in conjunction with E-Bay or a similar established commercial auction website. The auction site should allow applicants to easily post information such as, but not limited to, details of the countries they are willing to license or sell rights in, the WOSIA, links to the PCT application, information on the current commercial status of the invention and an outline of the type of deal they would find acceptable.

The USPTO site may, for instance, simply be an information site, and may be linked to an auction process on E-bay, where the transactional arrangements may be handled by their existing system.

Entrepreneurial inventors should welcome the opportunity to engage in more entrepreneurial activity to further their business.

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