

From: John Wolff [email redacted]

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To: WorldClassPatentQuality

Subject: Patent Quality Summit- Comments and Suggestions

I am pleased to submit my suggestions concerning the USPTO's efforts to improve the patent system. The USPTO acknowledges the critical importance of supporting innovation as an essential component of the U.S. economy, the USPTO has identified a challenge which has many dimensions.

The views expressed below are solely my own and not those of any organization. I am keenly interested in improving the patent system to make it adapt to the changing technology in a post-industrial society. Creating an unambiguous and accurate Official record is an excellent first step in leveling a playing field that is clearly tilted in favor of well-financed entities, and adversely against small start-up enterprises and independent inventors. This initiative should be expanded, with the objective of making the patent application and prosecution process more user-friendly, especially to small entities and independent inventors/applicants. This will create greater opportunity for applicants to elect filing pro se, should they wish to do so.

In reviewing the proposed USPTO Enhanced Patent Quality Initiative I note that it focuses on internal operations, and excludes important issues that could improve the outcomes to patent applicants.

USPTO: Quality Index Reporting (QIR): As a former Quality Assurance manager and Lead auditor in a national ISO 9000 Certification Organization, I am qualified to provide insightful comments regarding any Quality initiative. I have the following comments on the above initiative: The initiative is apparently focused inwardly on throughput and efficiency of operations staff. This is a typical implementation of industrial quality control such as found in any high output production facility which produces cars, tin cans or widgets of any type. The approach will lead to a "dumbing down" where employees focus solely on production rates, while ignoring customer expectations. Ultimately, the approach will have a negative effect on quality. The effect of implementing such a system will be to create a stressful work environment that will lower productivity, reduce quality output, and lead to a higher employee turnover. I would never recommend this format to any organization whose mandate is to provide high-quality output that varies enormously from individual to individual, such as a hospital, school or university. Using QIR is acceptable for gathering statistical information, but a far better approach to improving Quality is to provide intensive training to staff, and in particular to front-line personnel involved in examining patent applications.

It would be of great value to many patent applicants to provide informative, down-to-earth materials which would introduce the would-be applicant to the realities of the patent system.

A patent application is normally just a first step in a process to monetize an invention. It is an established fact that the vast majority of patents fail to make it to the production and marketing stage. Only the patent practitioner would ever benefit from them. For anyone who has little or no experience in dealing with patents, their first introduction will likely be through a patent practitioner.

In my experience, a practitioner will be hesitant to discuss patentability of a client's invention prior to conducting a patent search. She will be even more hesitant to discuss any issues pertaining to marketing, or other business-related issues. Quite often an issued patent can be ambiguous or tricky, and subject to legal interpretation. Patent practitioners prefer to draft claims that are as broad as possible, in order to obtain coverage of all potential variations of the client's invention. This is a routine strategy performed by practitioners whose primary focus is on the legal aspects of a case. This practice can become a two-edged sword. It has obvious practical advantages for any company which has the resources to defend its patent against infringement. However, in the case of newly formed start-ups, an excessively broad claim may attract a legal challenge from a well-financed competitor who seeks to gain advantage by tying up his opponent in frivolous litigation. These are examples of many issues that could be presented to the public in an authoritative manner to counter the misinformation and half-truths disseminated by unscrupulous practitioners.

According to Fraunhofer ISI Discussion Papers\*, in the US, small businesses represent 99.7 percent of all employer firms, employing 51 percent of the workforce and accounting for 51 percent of the private sector output.

Patents of large firms have a higher chance to be granted than patents filed by SMEs. This could be associated with the fact that large firms have more bargaining power and experience in negotiations with the patent office and therefore have a higher chance to get their patents granted than small firms.

Providing helpdesks and reduction of patent filing costs for SMEs filing costs are relatively low compared to the costs for patent lawyers and patent search as well as maintaining and enforcing patents in later stages of the patent process.

I suggest the following steps may be included in this initiative:

1. Partnering with educational institutions, universities, and community innovation centers to provide hands-on guidance to inventors to prepare and file patent applications pro se, instruction materials, namely booklets, film clips, fill-in forms, sample templates and other materials to help inventors learn about patent application filing and prosecution requirements. Tutorials and classroom instruction should be made available to give students (i.e. inventors who are non-practioners) the basic skills needed to prepare and file patent applications pro se, as well as the knowledge needed to avoid falling victim to questionable advise posted by unscrupulous practioners with the intent of luring naive inventors into becoming their clients.
2. Creating a simplified patent application user's manual to assist inventors who wish to prepare and file their own patent application pro se. It is common to read alarmist pronouncements posted by patent practitioners that warn inventors of the "catastrophic" consequences for those who dare to draft their

own patent application without the benefit of professional advice, and statements which compare the skills needed to prepare a patent application to those needed to perform brain surgery. It would be beneficial to provide a publication sanctioned by the USPTO for use by inventors as a guide in drafting a patent application.

3. Providing clarification of certain Rules in the MPEP which are controversial, ambiguous, and can lead to avoidable litigation that can have a detrimental impact on innovation. The following examples suggest one possible "formula" approach for anyone preparing a patent application to writing a patent claim, or overcoming an objection, according to the following examples:

"The failure of an asserted combination to teach or suggest each and every feature of a claim remains fatal to an obviousness rejection under 35 U.S.C. § 103, despite any recent revision to the Manual of Patent Examining Procedure (MPEP)." And "In sum, it remains well-settled law that obviousness requires at least a suggestion of all of the features in a claim." See *In re Wada and Murphy*, citing *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) and *In re Royka*, 490 F.2d 981, 985 (CCPA 1974)).

4. To the extent possible within the mandate of the USPTO, altering the scope of Rules 101, 102, and 103, of the MPEP that define patentability, in order to eliminate the proliferation of patents granted to trivial improvements, garbage inventions, and useless trinkets.

This presents a barrier which gives well-financed entities an unfair advantage in using the patent system attaining the benefits provided by the patent system and opens up the system to wide-spread abuse.

It also leads to costly, often frivolous litigation proceeding without a priori restrictions on legitimacy or questions of good-will being raised by the courts. The resultant chill on innovation will likely have negative effects on the U.S. economy.

The single most serious issue that needs to be addressed is the uneven playing field created by flaws in the system which leaves small business organizations and independent inventors vulnerable to attack by powerful entities. While primary portions of this issue are beyond the scope of the USPTO mandate and require changes in legislation, I submit that the patent system, as it has evolved into its present form, has not kept pace with the evolution of science and technology over the course of the past century

Respectfully Submitted

John Wolff

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