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From: Mark Wolfe [mailto:wolfe.mark.a@gmail.com]
Sent: Wednesday, May 03, 2006 6:19 PM
To: AB93Comments; AB94Comments
Subject: Comments on Proposed Rules

For many of the reasons outlined in other comments and raised at the PTO Town Hall meetings, I oppose the adoption of the rules proposed at 71 Fed. Reg. 48 (Jan. 3, 2006) and 71 Fed. Reg. 61 (Jan. 3, 2006). The purpose of this email is principally to offer a suggestion.

If it is true, as the PTO often contends, that the PTO cannot "hire our way out" of the current backlog, then perhaps the time has come to take the opposite approach.

My own suggestion is to adopt what might be described as a "small government" approach: stop routinely examining every application filed with the PTO. Instead, allow the vast majority of applicants to rely on provisional rights based on published applications. Hundreds of thousands of applications are examined every year by the PTO unnecessarily, mostly because so few patents are actually licensed or litigated. (By one estimate, only 3% of existing U.S. patents are ever licensed.)

Of course, examination will be necessary for some applications, such as those that are the subject of licensing negotiations or litigation. So applicants (or the public) should be permitted to choose, upon request, which applications are important enough to justify an examination by the PTO. Structure the fee schedule to encourage the filing and publication of applications, but also to ensure that only parties that are unable to resolve a licensing dispute or are contemplating litigation will likely request examination. Prioritize the PTO's examination of applications not by the date examination is requested, but rather, by the earliest priority date claimed by the application, thereby eliminating any incentive to secure a place in the examining queue by making a premature request for examination.

With changes of this nature, I believe that examination will be requested for only a fraction of applications -- those where examination will actually benefit the public -- and as a result, the backlog will vanish. For those few applications where examination is requested, the PTO would presumably be able to commence examination quickly, yet perform the examination deliberately.

Respectfully submitted,
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