

Coalition for Patent and Trademark Information Dissemination

October 28, 2016

Michelle Lee

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office
600 Dulany Street
Alexandria, VA 22314

RE: "Importing Prior Art Automatically & Streamlining Patent Issuance"

Dear Under Secretary Lee:

We appreciate the opportunity to express views on behalf of the Coalition for Patent and Trademark Information Dissemination (CPTID) on Importing Prior Art Automatically & Streamlining Patent Issuance. As you know, the CPTID is a group of entities committed to the notion that private sector participation is essential to the quality and integrity of the US patent and trademark system. We have a significant interest in the quality of the information made publicly available by the USPTO and strongly believe that the US patent and trademark system depends not only on the quality of the raw data disseminated by the USPTO, but also on the value-added information, tools and services provided by private sector entities such as our members.

The USPTO is proposing that, as part of an effort to streamline patent issuance, the amount of information provided on the front page might be reduced. The stated rationale for doing so, beyond potential "efficiencies" in the issuance process, is that "complete information concerning U.S. patents and U.S. patent application publications is accessible to the public via the PAIR system." While in principle this appears to be a reasonable position, in practice it would be highly problematic for several reasons.

First, and most importantly, the USPTO's proposal will lead to a significant degradation in the quality of the public record. Today's publication processes include robust quality checks on allowed patent applications, including the bibliographic information published on the front page. This process exposes literally hundreds of thousands of errors each year in the information that is available in PAIR.

Each year applicants make literally millions of errors in the documents they submit to the USPTO. While patent examiners do yeoman's work in exposing problems in applicants' submissions, still nearly half of all allowed applications contain errors or omissions that must be identified and corrected prior to issuance – with many of these errors and omissions occurring in the front page content.

The USPTO's proposal implies (1) that in a streamlined process these quality checks would no longer be performed on front page content during the publication process, (2) that the

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uncorrected and flawed PAIR content would now represent the public record, and (3) that users of the USPTO's PAIR content would have to discover and correct for flaws in the PAIR content on their own. This would represent a massive abdication of a key responsibility of the agency, namely assurance of the accuracy of the public record. Further, it would run entirely counter to the Office's stated commitment to improving quality processes and outcomes, including the quality of the public record.

Former Director Kappos made the following commitment to Congress in 2012. When asked "what are PTO's plans for ensuring that this new system will help maintain PTO's current high standard of content accuracy for PTO's databases and published U.S. patent content," the former Director answered, in part, "Any PE2E projects that would impact the current patent publication process would meet or exceed the current standards." *1

Current Director Lee has said, "I am excited to say that we are taking a big step forward by modifying (1) our process for reviewing patent quality, and (2) the volume of data we'll be gathering. In essence we are transforming our (1) patent review process and (2) data capture process, with the net benefit being greater transparency and consistency across the entire patent corps." *2 Moreover, improving patent quality has been a consistent theme throughout her tenure. As recently as last month, she stated, "Improving patent quality both in terms of ensuring that every patent issued comports with all statutory requirements and has a clear record, is a top priority for the USPTO. Through issuing high-quality patents, we enable certainty and clarity of rights which fuels investment in innovation and reduces needless litigation." *3 The USPTO's proposal regarding front page content runs entirely counter to these commitments.

In addition to essentially ensuring degradation in the accuracy of the public record, a change such as the one proposed would serve to make patent information more opaque rather than more transparent. The current publication process for front page content involves not only robust quality checks, but also a range of content normalization steps that make search systems far more effective and make the results they provide more useful and transparent. The USPTO's description of the proposed streamlining implies that these content normalization steps will no longer occur, and that users (and search systems) will have to deal with bibliographic content in more "raw" form (i.e., in the less normalized state in which it exists in PAIR) – simply because current data normalization steps will no longer occur. Taken together, the quality and data normalization issues will represent a massive and growing problem for users of patent information, including patent examiners.

Third, and related to the two issues above, the USPTO's proposal would increase the cost burden on users of patent information and would create a disparity of outcomes among those users. If the USPTO no longer ensures the quality of the public record at the level of today's standards or better, users of USPTO content would have to do it on their own. Some users have more and better resources to do so than others, which would create inequity of outcomes. But all users would have to expend more cost, time, and/or effort to arrive at the level of quality and information transparency that the USPTO provides today. In other words, while the USPTO's costs may go down, users' costs (and frustration) would go up.

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Far from eliminating the quality checks that exist in the current publication process for bibliographic (front page) content, the USPTO should instead be utilizing technology and existing value added content to make those checks more robust. Several coalition members offer enhanced and corrected citation data that offer the following key characteristics:

US citation data searchable by the source of the citation ie. Search report, revealed during examination phase, revealed during opposition phase, or Article 115 – revealed by a third party etc. This will allow examiners to focus on examiner or opposition citations first to increase quality, and increase examination efficiency.

Non-US citation data from 32 international patent authorities, with some citation data complete back to the early 1960s.

Non-patent literature citation data from 22 international patent authorities

Patent family deduplicated complete citation data so examiners are not wasting time reviewing duplicate citations in the same invention.

The international citation data has several value added enhancements including:

- Manual correction of bibliographic and patent/literature citation errors
- Standardisation of Patent number/kind codes, assignee and inventor names

The USPTO should keep existing post-allowance filters for front page content in place, but in addition to those filters should also implement analytics that are already available in the private sector to catch errors and anomalies that persist to the point of allowance or beyond.

Finally, regarding the proposal, the USPTO says “... the USPTO is seeking to reduce the issuance time of a patent by eliminating potentially unnecessary information from the front page of the patent.” It goes on to say that, since some of the front page information is available in PAIR, it may be duplicative and no longer necessary to appear on the front page. The Coalition believes it is important to emphasize that a patent’s front page is integral to the end users’ analysis of the document. We are concerned that the USPTO may drop information from the front page without giving adequate time for commercial providers to study and adapt to using the PAIR information. Commercial providers (and end users) depend on the existence of the front page as a highly structured and defined part of the patent document. The structure of a document type (whether it is a patent, a trademark, a peer-reviewed journal article, etc.) is a serious issue for online information providers. All of our XML specifications and downstream conversion processes rely on the structure of the document being processed.

In closing, we would like to reiterate that while we appreciate the USPTO looking for efficiencies in the issuance process, reducing the amount of information provided on the front page would be highly problematic and is not advised.

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Thank you for considering the views of the CPTID.

Fondly,

Marla Grossman
Executive Director
Coalition for Patent and Trademark Information Dissemination

*1: Statement of David Kappos, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office before the Subcommittee on Commerce, Justice and State, Committee on Appropriations, U.S. House of Representatives March 1, 2012.

*2: Michelle K. Lee, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office at Fireside Chat at AIPLA Annual Conference October 22, 2015.

*3: Statement of Michelle K. Lee, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office before the Subcommittee on Courts, Intellectual Property and the Internet, Committee on the Judiciary, U.S. House of Representatives “Oversight of the U.S. Patent and Trademark Office” September 13, 2016.