

February 26, 2010

Via Email

The Honorable David J. Kappos
Under Secretary of Commerce for Intellectual Property and
Director, United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22314

Subject: Rules of Practice in Ex Parte Appeals Before the Board of Patent Appeals
and Interferences in Ex Parte Appeals, Advanced Notice of Proposed
Rule Making

Dear Director Kappos:

I am pleased to submit these comments regarding the Board of Patent Appeals and Interferences' Rules of Practice in Ex Parte Appeals, Advance Notice of Proposed Rulemaking, published on December 22, 2009. I am commenting in my capacity as a named inventor on more than 100 patent applications and as a concerned citizen.

It is in the best interest of the US economy, and in my personal interest as well, for the patent examination and appeal process in the USPTO to work efficiently and effectively. Therefore, I wish to submit comments on two specific proposed rules:

Bd. R. 41.37 Appeal Brief

Concerning Bd. R. 41.37(o), I believe that it should be required, in an appeal, for the applicant to demonstrate that what is claimed is not equivalent to the examiner's findings and, given the dissimilarity, that the claims should be allowed. It is excessively burdensome and procedurally unnecessary for the applicant to be required to correct every single error in the examiner's findings. Instead, the applicant should be required to correct only those errors necessary to demonstrate the lack of equivalence.

Concerning Bd. R. 41.37(o)(1), there is no reason that an appeal must address all conceivable errors made by the examiner. I can see no benefit to the appeal process from the waiver.

Bd. R. 41.39 Examiner's Answer

Concerning Bd. R. 41.39, the problem is that the examiner is allowed to respond with an inadequately researched answer, transferring responsibility and putting excessive burden on the applicant. This can repeat at each stage of the application and appeal process. The

better approach is to require the examiner first to research the application subject matter thoroughly, and then to disclose such findings in the examiner's initial answer.

In summary, Director Kappos, instead of implementing the proposed rule changes immediately, I urge the USPTO to delay their implementation and, instead, to continue pursuing the solid reform process you introduced last year.

Sincerely,

A handwritten signature in blue ink that reads "Richard T. Lord". The signature is written in a cursive style with a prominent initial "R" and a long, sweeping underline.

Richard T. Lord
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