

**From:**  
**Sent:** Monday, August 16, 2010 4:25 PM  
**To:** 3-tracks comments  
**Subject:** Fourth Set of Comments from Nickolaus E. Leggett

**Before the  
United States Patent and Trademark Office  
United States Department of Commerce  
Alexandria, VA 22313**

<b>In the Matter of</b>	)	
	)	
<b>Enhanced Examination Timing Control Initiative; Notice of Public Meeting</b>	)	<b>Docket No.: PTO-P-2010-0035</b>
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**To the United States Patent and Trademark Office**

**Diverted Fees: Fourth Set of Comments from Nickolaus E. Leggett**

I am an individual independent and employed inventor holding three U.S. Patents. My latest patent is a wireless bus for computers and other digital devices (U.S. Patent # 6,771,935).

In my first comments document (submitted on June 7, 2010), I discussed the ethical problems with the proposed three-track patent application system (Enhanced Examination Timing Control Initiative).

In my second set of comments (August 2, 2010), I discussed points of the history of the patent system and the relationship of this history to the proposed Enhanced Examination Timing Control Initiative.

In my third set of comments (submitted on August 6, 2010), I presented practical problems with the proposed 3-track system's queues. These problems inhibit complete and accurate searching of the state of the art.

In this set of comments, my focus is on the fact that substantial amounts of the fees collected by the United States Patent and Trademark Office (USPTO) are diverted to other governmental uses.

### **Diverted Fees vs. the Enhanced Examination Timing Control Initiative**

The fact that a substantial fraction of the USPTO's collected fees are actually diverted to other governmental uses imposes a major burden on the design of the proposed three-track patent application processing system. How can we decide what fees are appropriate when much of the fee stream is taken away for other (non-patent) governmental purposes?

We can compute how much it will cost to provide the Track 1 accelerated service, as I did in my first set of comments, but then we have the problem that some of the fee will be taken away from the USPTO. Does this mean that the USPTO has to increase the fee above the cost estimate in order to cover the expected diversion of part of the fee?

### **Would Such an Increase be Misleading to the Applicants?**

Is this an ethical thing to do? To a layman like me, such an increase is basically misleading because I think that I am purchasing a professional service when actually some of my fee is being spirited away to pay for some other government agency. Since I am not an attorney, I cannot say definitively that such fee inflation (driven by fee diversions) is actually misleading from a legal standpoint. I do request that you consult with your legal staff to determine if a fee increase to cover diversions is proper.

### **Consequences of Diversions and Fee Estimating Errors**

If the USPTO estimates that Track 1 examinations will cost a certain amount and then they pad the fee to cover the expected diversion, they run the risk of miscalculation.

For example, if the diversion that occurs that year is more than expected, then the USPTO may be stuck with having to deliver accelerated patent processing (Track 1 service) without having enough money to actually deliver the service. This situation would cause problems for both the USPTO and for its applicants who expect excellent service for their money.

In addition, any padding of USPTO fees would negatively impact the welfare of the patent applicants. This is especially the case for independent inventors and small companies that are already impacted by the high costs of patents.

### **A Long-term Step to Stop Diversion**

No matter how well an organization is run, it is hard to operate when large percentages of the organization's cash flow are taken away (diverted) and given to other organizations. In the long term, this basic weakness could be overcome by converting the USPTO from being a governmental agency to being a government-chartered private corporation. In effect, the USPTO could become the United States Patent and Trademark Service (USPTS) much like the U.S. Postal Service.

This new privatized patent office would operate like a non-profit corporation that would be fully supported by its collected fees. All of the fees collected would remain within the Patent and Trademark Service ending the practice of fee diversion. Under these circumstances, the Patent and Trademark Service could rationally decide on appropriate fees for the services rendered.

Any profits that may occur would be directly reinvested in the Patent and Trademark Service for improved infrastructure, regional offices, employee training, staffing, and experimental projects.

## **A Short-term Response to Diversion**

In the short term, the USPTO should publish the percentage of each fee that is currently being diverted to other governmental uses. This would allow the applicants to be fully informed of the situation and to take account of the diversion situation in their planning. Basic fairness calls for the public disclosure of the current amount of diversion of USPTO fees.

**Respectfully submitted,**

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