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Sent: Sunday, February 14, 2010 5:56 PM
To: patent_quality_comments
Subject: Comments of Carl Oppedahl

The undersigned welcomes the opportunity to respond to USPTO's Federal Register notices (see <http://www.uspto.gov/patents/law/notices/74fr65093.pdf> and <http://www.uspto.gov/patents/law/notices/75fr5040.pdf>) about patent quality.

USPTO is to be applauded for recognizing that existing quality metrics employed by USPTO might leave room for improvement, and is to be further applauded for asking for suggestions from outside of USPTO.

Indeed, from the perspective of customers of the USPTO, the existing USPTO quality metrics are less than completely successful. Every year the USPTO publishes its annual report, and every year the report offers statistics as to the high quality of USPTO's work according to its own quality measures. Since the metrics presently employed by USPTO say that the work is high quality, and since from the perspective of customers the work is not consistently of high quality, then it follows that the metrics presently employed by USPTO are less than completely successful.

The notice invites customers and others outside of the USPTO to suggest new and different quality metrics for possible use in future. It is, of course, very difficult for outsiders to know what to suggest, because outsiders do not have access to all of the same internal USPTO resources to which USPTO management has access.

A few new metrics could, in fact, be based upon things that are easily objectively measurable and externally observable, even without access to the internal USPTO resources to which USPTO management has access.

- As one example, how long does it take to get a Filing Receipt if you are entering the US national stage from a PCT? (At present, far longer than it takes to get a Filing Receipt if you file a domestic patent application.)
- As a second example, how often does USPTO, examining a national-stage application from a PCT, give full faith and credit to its own work, allowing a case if it was treated favorably in the ISA/US written opinion? (Answer, almost never.)

But most of the metrics that an outside might propose run the risk of being unworkable because the outside might be unaware of the limitations of USPTO's existing systems and procedures. Yet if only outsiders were fully aware of the sources of data already being collected within USPTO, outsiders might be able to devise helpful quality metrics might cost almost nothing to implement, above and beyond the work required to code the reports drawn from those existing systems.

Stating the same point differently, for those who are outside of the USPTO, it is very difficult to respond constructively to the Federal Register notice, since when one is

outside of the USPTO, one is by definition unaware of what is easy to measure and what is not easy to measure. One is unaware of what is easy to extract from data already being accumulated by USPTO, and what is difficult or impossible to extract from such data.

The most productive thing that USPTO could do, I suggest, is to make the entirety of its official data available to outsiders in raw form. See for example an article from The Economist entitled "Of governments and geeks", February 4, 2010, available online at http://www.economist.com/world/international/displaystory.cfm?story_id=15469415 , which describes a number of success stories in which government agencies have provided their data to the public in raw form (generally via the Internet), and outsiders have figured things out that could not easily have been figured out any other way.

This would mean, at a minimum, opening up all of the PAIR databases (including Palm) completely to outside scrutiny, at least so far as published applications are concerned. It would also mean making nearly all Financial Profiles data available to outside scrutiny, holding back only information as to payment mechanisms (e.g. credit card numbers) and as to non-published applications. The information made available would include fee codes for particular payments.

The desired result would be to permit outsiders to search whatever fields in Palm (and the other databases of PAIR) they wish to search, and download whatever data they wish to download, all according to some open-standards programming interface. (The existing PAIR interface does not permit searching arbitrary fields, and indeed is carefully designed to make open access impossible.)

Without seeing the actual raw data, one cannot say in advance with certainty exactly what quality metrics members of the public might devise and develop. But I am confident that members of the public would surely devise and develop extremely helpful and workable metrics that would impose little or no cost upon USPTO beyond modest one-time costs.

If USPTO were to make its official data available in raw form, then outsiders would be able to suggest metrics that would be capable of being measured. Outsiders might be able to come up with better metrics than those employed in the past by USPTO, metrics that might be easy and nearly cost-free to implement because they would draw upon data that USPTO already collects.

An ever-present problem when a metric is defined for a large organization is that interest groups within the organization might identify ways to "game" that metric. It is suggested that this approach (providing raw data to outsiders and letting outsiders carry out measurements) would likely be nimble, and capable of overcoming such possible "gaming" much more quickly and effectively than other purely intra-organizational approaches.

Still another ever-present problem when a metric is defined for a large organization is that perturbations or changed circumstances (for example increased or decreased rates of filing because of changes of economic climate, establishment of a new bilateral PPH

agreement, new emphasis on trying to get cases disposed of by allowance rather than abandonment, or handing-down of an important appellate court decision) can make the metric suddenly irrelevant or actually counterproductive. It is suggested that this approach (providing raw data to outsiders and letting outsiders carry out measurements) would likely be more able to quickly and efficiently respond to such perturbations or changed circumstances than other purely intra-organizational approaches.

It is possible to imagine management in a government agency being reluctant to release raw data in the manner proposed herein. But as described in the Economist article, such releases can offer great benefits to the public and to the agency itself.

Respectfully submitted,

/s/

Carl Oppedahl
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