

From:
Sent: Tuesday, June 08, 2010 10:05 AM
To: 3-tracks comments
Subject: Three Track Comment

RE: Comment on the proposed three track system

To Whom It May Concern:

I believe that creating a three track system is a good reform for the patent process. There are valid concerns as raised by Prof. Kristen Osenga (*The Patent Office's Fast Track Will Not Take Us in the Right Direction*, 2010 Patently-O Patent L.J. 89.) but I believe they can be addressed by an appropriate fee structure. One idea that I would like to see explored is a 'bidding system' for the Track I patent prosecutions.

I imagine a bidding system that would work similar to the Google AdSense program where instead of bidding on keywords for search results, patent seekers could 'bid' on their place in the patent line. The highest bids would be given the highest priority for prosecution. This would create incentive for the highest value patents to be considered quickly, while less valued patents might be considered in due course. In some ways this would expand the three tier system to one of 'unlimited' tiers. The Track II and III would stay as proposed.

There are bound to be some questions of fairness associated with this type of system. Larger entities would be more able, as a general rule, to absorb these additional costs to increase their place in line toward the front. Smaller entities might not be able to afford this. The PTO, if it has proper authority, could also continue to extend the 50% discount to smaller entities, in essence allowing them to bid double what they might otherwise be able to afford (or wish to spend). It should also be noted that since Track II is anticipated to stay the same as the current system, and not increase in pendency, these small entities would be in no worse a position as they are today by opting for the Track II system instead of the Track I.

A bidding system for these quicker patent prosecutions would likely create a large increase in fees in payment to the PTO and could create a surplus of resources that might be able to be used to decrease the time for Track II patent examinations.

Creating a bidding system for prosecution of patents (in Track I) would allow those patents most valuable to society (through their anticipated value to the patent seeker) to be brought to market faster increasing the pace of innovation and increasing the overall benefits to society. I would like to see a bidding system explored as a possible alternative to the proposed Track I structure.

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Supporting Brookhaven's research, discovery and commercialization connections.

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