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To: Virtual Marking

Subject: Response to the USPTO Request for Comments on Virtual Marking PTO-P-2014-0032

Response to the USPTO Request for Comments on Virtual Marking

Comments in response to Docket No. PTO-P-2014-0032 – Request for comments on Virtual Marking (Federal Register Vol. 79, No. 115 Monday, June 16, 2014)

From: Nikolaus E. Leggett, Independent Analyst and Inventor

Date: July 10, 2014

My comments are in opposition to the virtual marking of physical objects. The following problems occur with virtual marking as applied to physical objects:

- Physical marking of the object can be permanent. This means that as long as the object is in use, the user can determine that patent protection has been applied to this object.
- Virtual marking is not permanent. The referenced computer web site may no longer be in operation due to a variety of causes. This results in the potential user being unable to find out about the patent protection. In general, as time goes by this will become more and more of a problem for a virtually marked invention.
- Serious infrastructure problems such as major earthquakes, hurricanes, wars, electromagnetic pulse attacks (EMP) and intense solar geomagnetic storms may disable virtual marking computers and their supporting networks for substantial periods of time.
- If the company or individual who owns a virtual marked invention goes bankrupt, it is likely that the virtual marking computer will cease operating. Similarly, if the invention is sold, it is likely that the new owner would want to use their own virtual marking computer with a different URL. For example, IBM will not want to use a Ford Motor Company URL. If the URL is changed in the future, the user will not be able to find the patent information.
- Physical marking is of direct use to future historians and analysts of technology. These historians can apply the physical patent number to USPTO records that will probably still be available even in the distant future. This research will be of value even if the USPTO is no longer in active service protecting new inventions. In contrast, the virtual marking computers will be long gone in future centuries.
- Computer technology changes rapidly over the years; this will force the owner of a virtual marked object to keep updating his or her files and computer hardware to reflect this technological change. In the case of physical marking, there is no such burden to constantly update a computer system.
- The USPTO would have to develop a whole set of new rules and enforcement mechanisms for patent owners of virtually marked devices. No new rules are required for physical marked objects.

- In the case of software inventions, it would be more useful to include the patent numbers in a display included in the software instead of using virtual marking. Then whenever the software is used, its patented status is made visible to the user. Similarly, the patent number or numbers should be included directly in the source code listings.

In summary, virtual marking is too fragile to be of long-term use for users of patented devices and products. The traditional direct physical marking of objects is much more useful and durable.

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Appendix A – My Patents and Document References

Some of my document references are listed below:

United States Patent 6,771,935, Wireless Bus August 3, 2004

United States Patent 3,280,929 Ground-Effect Machine October 25, 1966

United States Patent 3,280,930 Ground-Effect Vehicle October 25, 1966

“Demonstration and Development of Amateur Radio Applications of Natural Vacuum Electronics”; Nickolaus E. Leggett, N3NL - 22nd AMSAT Space Symposium and Annual Meeting October 8-10, 2004 in Arlington, Virginia

“A ‘Lighthouse’ Protocol for Random Microwave Contacts”, Nickolaus E. Leggett, N3NL, QEX The Experimenter’s Exchange – Technical Notes July/August 2004 – American Radio Relay League, Newington, CT.

Note: All of my information and comments may be published by the USPTO.