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To: Ombudsman Program
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Subject: Willis Commentary on Ombuds Proposal

I hope this is helpful. John Willis

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COMMENTARY ON USPTO OMBUDS PILOT PROPOSAL

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NOTE: The commentary will be inserted using this font where it appears. The proposal text has been divided into paragraphs treating the different aspects of the proposal.

SUPPLEMENTARY INFORMATION: The majority of patent applications filed with the USPTO proceed through the examination process consistent with established USPTO procedure. However, some patent applicants, attorneys, and agents have expressed that their applications have not proceeded in accordance with established procedure. In some situations, the patent applicants, attorneys, and agents have felt that examination has stalled and that their efforts to move their applications forward through the normal channels have not been effective. Patent applicants, attorneys, and agents have suggested that there be a dedicated resource they can turn to in such instances.

It is presumed that the USPTO has documented the various classes of complaints, and that some fall into predictive categories. "Stalled" may or may not capture these issues. It is suggested that the webpage link include the common complaints, divided separately, with a check-box for the customer to self-identify the complaint type. A separate text box can be provided for elaboration on alternative issues.

These suggestions have led the USPTO to consider implementing a Patents Ombudsman Pilot Program. After considering its resources, the USPTO is proposing that the pilot program take the following form.

It is envisioned that pro se applicants or applicant's representatives would initiate use of the Patents Ombudsman Pilot Program via a link on the USPTO web site where pro se applicants or applicant's representatives would provide their name and phone number and select the ombudsman for the patent division (e.g., Technology Center) in which they are seeking assistance; replies to the initial communication for this pilot program will be by telephone rather than by written communication, such as e-mail.

It is presumed that the initial telephone contact is to prevent needless documentation, which might be used adversely against the USPTO for later actions by the applicants or their representatives should the process not proceed as predicted or described. Again, the webpage link should include "common events in the application process within the statute," placed under each potential complaint type. This has four effects: (1) the customer may have his/her complaint answered in anticipation, and thereby not contact the ombudsperson; (2) the customer is prepared for the response that may come from the ombudsperson; (3) the USPTO personnel are protected from protracted, repetitious responses on common issues, when contacted by the ombudsperson; and, (4) the ombudsperson has a basis to reduce the workload by indicating to the customer "as was indicated on the webpage link, 'A' was the potential reason, which we have determined was the case" or "we have determined a variable B affected the process."

The ombudsman in the appropriate division will call the pro se applicant or applicant's representative within one business day to obtain a full description of the issue. Once the full description is obtained, the ombudsman would create a record in a database. The record in the database will be solely limited to the contact information and a broad description of the issue at a level not requiring being made part of the application record.

Again, the use of the predictive causes on the webpage link may enable the ombudsperson to (1) anticipate the scope of the customer's description; (2) have ready additional information that may resolve the complaint at the record-making level.

All requests for assistance made to the pilot program will be tracked in the database to: (1) Ensure that all requests for assistance are addressed; (2) identify and use trends to develop targeted training for employees as appropriate; and (3) enhance customer service.

As the tracking progresses, appropriate data can be uploaded to the webpage link that (1) adds commonplace issues not abnormal to the process; (2) predictive responses from the agency if customer data meets certain specifications, both which are forms of customer service.

¹ At one time, I served on the International Ombuds Association Ethics Committee, which pertained to standards of practice, as well as the ethics committees of the ABA Section on Dispute Resolution, the Association for Conflict Resolution, and the Association of Family Conciliation Courts.

After the USPTO gains greater experience with the Patents Ombudsman Pilot Program, the USPTO will reassess whether additional information concerning the issue should be recorded and where best to make a record of that information.

If possible, the ombudsman will: immediately resolve the issue (*e.g.*, certain routine administrative issues); otherwise, forward the issue to the appropriate area for review (*e.g.*, Technical Support Staff, Technology Center Director, SPE, another business unit) and will request that the area send a message back to the ombudsman when the issue has been treated and the pro se applicant or applicant's representative has been notified.

Experienced agency staff can provide data that can become the "Ombuds Reference" in terms of commonplace delays, which even could be coded when tied to facts, not opinion. This could accelerate response time in inter-agency communication regarding the issues. The ombudsperson could request more information when the nature or language of the complaint suggested the customer demanded more information.

It is intended that all issues be considered and treated within ten business days. The ombudsman in each division will regularly monitor the database to ensure that issues are being treated in a timely manner. In particular, the ombudsman will inquire into instances where five business days have elapsed and there is no indication that the issue has been closed out or is actively in the process of being treated.

This is a good process point.

The Patents Ombudsman Pilot Program is not intended as an alternative forum for resolution of disagreements between the applicant and the examiner that are currently resolved via appeal or petition. The Patents Ombudsman Pilot Program does not supplant the requirement that all business with the USPTO be conducted in writing. *See 37 CFR 1.2.*

Again, the careful development of the webpage link can (1) answer most questions, sufficient that many customers will self-identify that their perceived issue is not a factual one; (2) pre-sort the customers into self-identified classes, enabling quicker adjudication, or transmission to the appropriate authority; (3) enable all agency personnel to have more self-identified information to reduce their work load, and keep them tracking on application processing; and, (3) enable the agency ombuds program to be perceived and factually be superior in its conception and execution;

The USPTO is publishing this request for comments to gather public feedback on the Patent Ombudsman Pilot Program to ensure that it will serve the patent community as intended