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A Pro Bono Program for the United States Patent and Trademark Office and the Costs of Patenting for Independent Inventors

Comments from Nikolaus E. Leggett, independent inventor

Many, if not most, would-be independent inventors cannot afford the costs of obtaining a patent and then protecting that patent legally. This situation has major impacts on independent inventors, the nation's economy, and the United States Patent and Trademark Office (USPTO). Each independent inventor is faced with the four major cost components of obtaining and protecting a patent:

1. Developing and prototyping the invention
2. Preparing the patent application with a patent attorney (and possible negotiations with the examiner)
3. USPTO fees
4. Protecting the issued patent via favorable contracts and possible court action

Item One, developing and prototyping the invention, often takes up much of the inventor's limited amount of money leaving little resources for the other three cost components. For most independent inventors, a few thousand dollars is a very large amount of money. Item Two, preparing the patent application with a patent attorney, costs thousands of dollars but is currently essential for obtaining a valid and valuable patent. My own experience is that the attorney's primary contribution is in the developing of the formal claims for my inventions. I can write my own descriptions of my inventions, but I certainly would have serious difficulties writing legally functional claims.

Item Three, the USPTO fees, are the least onerous component of patenting. This is because the fees are reduced for small entity inventors and the fees are due over time as the patent application and then the patent moves through its life cycle.

Item Four, protecting the issued patent, is the most daunting component of cost for the independent inventor. Hardly any independent inventors can afford the full cost of a patent infringement law suit.

As a result of these sets of costs, many independent inventors are avoiding patenting their inventions and some would-be inventors are avoiding inventing at all.

A USPTO program to encourage the patent law community to provide pro bono work to assist needy independent inventors is a good idea. However, its impacts will be limited. For one thing, the legal community can only afford to provide a certain restricted amount of free labor to assist independent inventors. The lawyers have their own expenses and practices to maintain and many of them are also

paying off large law school tuition loans. As I pointed out above, legal work on patent applications is just part of the total set of costs that independent inventors must manage.

So, in the long run, we must look beyond just a simple pro bono program to an alternative to traditional patents for many independent inventors. One alternative is an inventors' certificate that would be issued by the USPTO. In this process, USPTO staffers would take descriptions and specifications written by the applicants and help the applicants to write their own claims. The application for an inventors' certificate would be examined in the same manner as a patent application. Issued inventors' certificates would then be enforced to a limited degree by the U.S. Department of Justice (DOJ).

This inventors' certificate system would be an assisted do-it-yourself approach to patenting. Inventors' certificates could be sold as patents are. However, the DOJ enforcement services would only be provided to the original inventor who is the certificate owner.

As you can see, this is a significant step away from the current patent which is a license to sue in court. With the inventors' certificate the independent inventor and the Federal government become temporary partners in the protection of each new invention. This helps the independent inventor who cannot raise the resources to protect his invention. The inventor's certificate system would also help the National interest by increasing the number of inventions that are protected and which enter the market place. In addition, the inventors' certificates increase the interest in inventing new technology because the protection becomes practical.

An inventors' certificate program would also protect the basic legitimacy of the USPTO. Over historical time, the percentage of U.S. patents issued to independent inventors has declined to a major degree. If the percentage continues on to decline into the single digits, the legitimacy of the USPTO will decline. This will be due to the perception that the USPTO is an institution which exists solely for the large institutional inventor with little to offer to the average American. With an inventors' certificate program, the USPTO is clearly acting to encourage middle class and lower class inventors.

Actually establishing an inventors' certificate program would take years of effort and eventually some Congressional legislation. However, it is necessary to examine such alternatives starting now because a simple pro bono program is not sufficient to cure the cost problems facing our independent inventors.

Respectfully submitted,

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