

**From:** Boundy, David [mailto:DBoundy@cantor.com]  
**Sent:** Thursday, August 21, 2008 11:22 AM  
**To:** Fawcett, Susan  
**Cc:** Jordan, Kimberly  
**Subject:** RE: Information Collection Comment on Appeal Rule 0651-00xx

Dear Ms. Fawcett and Ms. Jordan:

Thank you.

If you "summarize," please do so more fairly and accurately than the "summary" of public comments in the Appeal Final Rule notice. I found at least a dozen issues in the public comment letters for which there is no recognizable answer in the Final Rule notice - either the summary is such a grotesque caricature of the comment that the "summary" is unrecognizable as having any relationship to the comment, or the PTO simply ignored comments it chose not to answer.

The documents produced in the Tafas litigation, provided to OMB and SBA, and provided in the PTO's reply to Chairman Berman's letter, create a clear inference that senior officials of the PTO decided in the late spring or early summer of 2006 to abandon their oaths to "see that the laws be faithfully executed," and instead to take every opportunity to skirt the law, to bury inconvenient facts, and to make affirmative misrepresentations to regulatory oversight officials, in an effort to ride roughshod over the public and the rulemaking process.

This comment period might be a good time for the PTO to turn over a new leaf, and begin to demonstrate some respect for the rule of law. The PTO should start with implementation of E.O. 13422 and related guidance bulletins from the Executive Office of the President. If the PTO simply implemented this law (John Love, the single person most responsible for them, stated on October 3 in New York that he had not even bothered to make himself aware of them, and the PTO's web site and recent telephone conversations with T.C. Directors demonstrates that the PTO has still not made the slightest effort to comply with the President's instructions), then the examination backlog and "rework" would simply evaporate, along with any need for the appeal rule, the continuations rule, or the claims rule, and any need for the IDS rule and Markush rule would be sharply reduced. The PTO's backlog and rework problems are self-inflicted wounds based almost entirely on the PTO's refusal to follow the President's Executive Orders.

However, if my conjecture is wrong, and after an experiment of a year or so of simply following the law, any further need remains, then the PTO must do the following to bring the Appeal Rule into effect:

- start over with a new NPRM, with a contemporaneous and complete Paperwork submission under 5 C.F.R. 1320.11
- the PTO should cease its practice of providing outright falsifications in its certifications to OMB and to SBA, and cease its efforts to evade E.O. 12866, Paperwork, and Reg Flex review. The PTO must follow guidance, and include in its evaluations of "impact" and "economic effect" all effects of the regulation, including non-paperwork effects such as loss of patent value, diversion of investment away from innovation, businesses that cannot be formed because effective patent protection becomes unavailable, etc.
- if any rule goes final, the PTO should fairly, accurately, and directly respond to the public comments, even those for which the PTO's reply will be embarrassing. The PTO should not introduce changes in final rules that are not logical outgrowths of proposed rules, and should not reinstate rules that were tried in the past and found to be unworkable, and where the past notices of Final Rulemaking explained why the PTO's actual experience with these past rules is exactly opposite the "hopes" with no objective support expressed in the PTO's 2006-08 rulemaking notices, the PTO should explain what basis it has for wholesale abandoning the lessons it learned by experience a decade or more ago.

- all factual assertions in Notices of Proposed Rulemaking, Notices of Final Rulemaking, and in submissions to OMB and SBA should comply with the PTO's Information Quality Guidelines, and be developed after the "consultation" required by 5 CFR 1320.11. Uninformed speculation by PTO employees who have no experience in the private sector is not objective or reliable information on which rules or economic analyses can be based.

I request that this email be included as a public comment, and forwarded to OMB without being "summarized."

David Boundy

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**From:** Fawcett, Susan [mailto:Susan.Fawcett@uspto.gov]  
**Sent:** Thursday, August 21, 2008 7:48 AM  
**To:** Boundy, David  
**Cc:** Jordan, Kimberly  
**Subject:** RE: Information Collection Comment on Appeal Rule 0651-00xx

Thanks for your patience - I can verify the receipt of this comment submission. I'll replace the earlier submission (with three attachments) with this submission, having a single attachment.

As noted before, your comments will be summarized or included in the request for OMB approval of this information collection and will also become a matter of public record.

Thank you,

Susan Fawcett

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**From:** Boundy, David  
**Sent:** Monday, August 18, 2008 12:40 AM  
**To:** 'Susan.Fawcett@uspto.gov'; 'Kimberly.Jordan@uspto.gov'  
**Subject:** Information Collection Comment on Appeal Rule 0651-00xx

Dear Ms. Fawcett and Ms. Jordan -

As we discussed, here is a revised document to replace the comments I sent earlier on the Appeal Information Collection Request for Comment. Please use these for all purposes, and discard the earlier draft. These comments are from me personally, not from Cantor Fitzgerald. Thank you

<<Boundy lettersupplemental re Paperwork burdens of Appeal Rule 080817 2300 DEB.pdf>>

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