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Remarks for Public Hearing - Proposed Plan for an Electronic Public Search Facility

United States Patent and Trademark Office

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The following are the comments of Calvin E. VanSant, a public user of the USPTO public search facility.

VanSant Patent Services is a sole-proprietor business providing patent searching services to individuals, corporations and law firms, principally in the mechanical arts.

I have been using the public search facilities of the USPTO for 10 years. Over those years, I have spent over 3900 hours using the various iterations of the computer-based image systems.

It seems inevitable that the electronic searching tools will supplant the paper files. Accepting that fact, my comments relate to making the electronic tools as robust and usable as possible before removing the paper from public use.

The following items should be addressed prior to removing the paper:

Database availability

Outside of a fire, or similar catastrophic event, the paper collection is always available. The same cannot be said of the databases accessed from EAST and WEST. Every effort should be made to insure system availability to the examiners during core working hours and to the public searchers while the public search room is open. System upgrades and maintenance should be conducted in a manner to minimize or eliminate disruptions to the examiners and the public. System "up-time" is a commonly tracked statistic in most corporate information technology departments. The PTO should benchmark database providers such as Derwent, MicroPatent, Delphion, etc. with a goal of exceeding their system availability percentage. To help keep the PTO accountable, a graph showing the "up-time" of the search systems should be posted in the public search room and updated on regular basis (i.e. monthly).

Database accuracy

The best way to win over the advocates of keeping the paper is to make the electronic system better. Better, in this case, meaning more accurate. When a data entry or similar error occurs, the correction only needs to be made in one place rather than attaching a certificate of correction to every paper copy filed in the shoes. The "proposed plan for an electronic public search facility" addressed this point, but is a bit confusing. The Federal Register announcement states:

"Like paper files, errors can occur in electronic search systems. However, mechanisms are in place for tracking, reporting and fixing errors that are made as a result of internal processes"

However, a recent discussion thread on the Patent Information Users Group (" More stinky biblio" <http://www.derwent.com/archive.piug/0018.html>) would contradict the previous statement. On January 9, 2002, Stu Kaback of ExxonMobil made note of erroneous fields in the bibliographic data of US 6,160,029. Larry Larson of the USPTO offered his expertise in response to Mr. Kaback's observation.

"The simple fact is that the 6,160,029 bibliographic data in the full-text database (and in PTO-distributed full-text data) *can't* be fixed, because it is correct, in that it agrees with the issued patent as printed (see the full-page image for confirmation.) Under present PTO processes and systems , it will stay that way forever. PTO electronic data, both in databases and in bulk data on magnetic media, is not intended to be a collection of absolutely correct information; rather, it is intended to be an accurate rendering of PTO's legal publications.

PTO does not have any process or system which actually corrects errors in published documents by either re-printing those documents or by correcting electronic data (either in-house or as distributed to the public), no matter how egregious the errors might be. PTO has only Certificates of Correction and Reissue Patents as tools. Certificates of Correction become appended to the full-page image database, and Reissues are added to the database as new documents, but published documents containing errors correctly reflected in **PTO full-text can never actually be corrected. This obviously complicates the automation of patent searches and makes problematic full reliance on electronic, rather than paper, patent collections.**

It would theoretically be possible to correct errors by reprinting corrected patents with a new publication date (as distinguished from the issue date), and then updating electronic data to the most recently published content (akin to software version control), but PTO does not have such a process.

Regards,

Larry Larson, USPTO "

Please excuse my naiveté, but not being able to correct known errors in the database seems rather unbelievable. Mr. Larson indicated that a committee has been formed to address a process for correcting errors. I would encourage the PTO to implement procedures to correct database errors as soon as possible.

To this, I must add Mr. Kaback's response to Mr. Larson explanation...

Larry,

I believe that my notoriety in the field of patent information is due in substantial part to the fact that I am not accepting of unacceptable conditions. I think it is sad that the most important patent office in the world doesn't seem to comprehend how seriously wrong it is for it to disseminate faulty information without providing a method to correct errors. Everyone makes errors, every system makes errors. Other documentation systems that I deal with have appropriate systems which permit them, when such errors are pointed out, to correct them--they take seriously a responsibility to provide correct information to their users. Sadly, the USPTO still seems to consider itself just an organization for issuing patents; any documentation that results apparently isn't worth worrying about too much.

I said sadly--but sad is far too mild a term. I challenge the USPTO to take seriously the responsibility of producing an archive of information that is as accurate as possible--and that can be corrected when the inevitable errors creep in.

Stu Kaback

A brief final note on an issue related to the electronic versus paper debate - Reclassification

One of the principle services I provide to the corporations who support the PTO through application and maintenance fees is infringement or clearance searches. Before a manufacturer produces and sells a product, they need a reasonable assurance that they will not be infringing upon another company or individuals patent rights.

The ability to review the pertinent patent art in an efficient manner is vital to my clients. The USPTO's decision to reduce resources in the area of reclassification has caused and inordinate increase in the time it takes to complete a clearance search. **KEYWORD SEARCHING CANNOT REPLACE A CLASSIFICATION SEARCH.** The information imparted by a human being placing a patent in an appropriate subclass adds tremendous return-on-investment to the many users who need a reasonable search set to prevent infringement of another's patent rights. Using VanSant Patent Services as an example, between 1998 and 2001 the hours required to complete an

infringement search have increased by 32% (search set in excess of 1500 patents are common). With the addition of pre-grant publications, and the increased number of patents issued, the problem of subclasses with too many patents is accelerating. Please direct appropriate resources to reclassification projects in areas where emerging technology has caused outdated classification areas to explode in size.

In summary, make the electronic systems dependable, make them accurate, and use human intelligence, applied by way of reclassification, to make the systems more efficient.

Thank you for your time.