

October 6, 2006

The USPTO Strategic Plan Coordinator  
P.O. Box 1450  
Alexandria, VA 22313-1450

**RE: Comments on USPTO's Draft Strategic Plan for FY 2007-2012**  
**(71 Fed. Reg. 50048)**

Dear Sir or Madam:

I am a business systems inventor, and a named inventor on 250 U.S. patents over the course of 25 years. My companies have brought in \$200 million in licensing deals based on that IP. In addition to being a patent holder, I am a business creator. I am the founder of a direct marketing company, NewSub Services, and of an Internet-based business, priceline.com.

As an applicant seeking IP protection, I am a customer of the Patent Office. I have also been a defendant in frivolous cases brought by patent abusers, so I understand both sides of the patent quality issue.

I have studied your draft Strategic Plan 2007-2012, and I am impressed with two things. The first is the heading in the Introduction: "Changing Times Require a New Focus." With that statement the Patent Office declares it has recognized the need for transformation, that what has gone before is not necessarily the way things should be.

The second impressive item is the plan to improve quality and timeliness by developing a "patent suite of products."

This is a great leap forward. The conception of the Patent Office as a seller of products is a powerful idea. Until now, Applicants have treated the Office as if it were a court of patent approval. Inventors and businesses prepare for dealing with the Patent Office the way we would prepare to go to court. We hire lawyers. We go through a mini-trial of adversarial discovery and advocacy to make our case for patentability, and sometimes we have to file appeals.

Courts do not have customers. But in the Strategic Plan you are using the language of commerce, of products. Again, this is a new focus, and a bold step. Products have customers. They are market-driven. They adapt and change. And products succeed and fail.

In fact, the Strategic Plan indicates multiple products—a “suite of products”—are needed. The Plan clearly indicates that the Patent Office has conceived of these products as alternatives—not replacements—for the traditional, one-size-fits-all approach to examination. I support the Patent Office’s desire to stop offering only vanilla and instead to offer many different flavors of IP protection. Inventors will be able to choose a product based on their individual needs. And for those who want vanilla, we’ll still have that available as well.

Finally, the Patent Office says that it wants to collaborate to create these products. We spent some time in our development lab analyzing how the Patent Office could provide these choices, these new alternative products.

What types of choices could customers of patent products want? We thought of some aspects of the patent process that inventors should be able to choose from in identifying a product they want. Speed of examination, claim quantity, and rights to appeal are but a few aspects of the examination process that might be used to create different patent products. Some customers might be drawn to a product with a limited patent term but some other desirable benefit.

More direct interaction with an examiner could be an aspect of a new patent product. The Patent Office suggests regional offices as a hiring tool, but we recognize that regional offices means personal, face-to-face access to the examiners, that some customers would value highly. In short, regional offices mean greater access for the PTO’s customers. Of course, variations in price could provide choices for customers, as could variations in the amount of resources used by the Patent Office in providing the desired levels of examination. Different products could also be characterized, for example, by the level of peer access or review during examination, self-service examination, full service examination by the Patent Office, willingness to accept post-grant review, or an enhanced search.

If the Patent Office wants to create products, how should it go about it? Who should it collaborate with? Not the lawyers and the patent bar. They provide valuable services within the patent system, but they do not create products. We cannot look to government employees either, because they also do not create products.

The Office should do what business do, and look to the needs of its own customers—the inventor community. Not only are inventors interested in getting different and better products from the Office—they actually invent products.

We recommend that the Patent Office form a Blue Ribbon Panel of inventors from diverse industries and backgrounds. The inventors selected should be prolific—they should have several patents. They should be accomplished—they should have had commercial success with their products. And they should be involved directly in the patent system during their careers. We want people who have first-hand experience with patent prosecution, such as by interviewing with Examiners, or with patent litigation.

These types of individuals have a stake in achieving the Office's objectives: increasing quality, reducing pendency, preventing abusive practices before the Office, attracting more inventors to use the system, and increasing confidence in the Office and in patents.

A Blue Ribbon Panel of such inventors could create products and recommend products—the Office's own customers will be able to tell it what the products are really worth to them.

The Panel could be created within 45 days. Participants would commit to monthly videoconference participation and could report its recommendations within 6 months.

In addition to developing the "suite of patent products," the Panel of prolific, accomplished, and involved customers could prove an invaluable resource, if desired, for input on developing what may otherwise be controversial current and future rules changes intended to make everybody, inventors and the Office, more successful. Also, the Panel could identify areas of consensus that the Office could rely on for support where necessary to inform administrative and legislative action.

Thank you for the opportunity to comment on the USPTO's Strategic Plan.

Sincerely,



Jay Walker  
Chairman  
Walker Digital, LLC