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Sent: Friday, April 27, 2001 4:17 PM
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Subject: Response re WIPO meeting in May on HARMonization



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April 27, 2001
Director of the United States Patent and Trademark Office
Box 4
Washington, DC 20231

ATT: Mr. Jon P. Santamauro

Gentlemen:

This is my response to your request for comments on HARMonization.

As I'm certain you've been asked before and will be again and again – what is the purpose of even considering uncorrectable, *Drastic* changes to our WORKING patent system, with it's over 2 CENTURIES of success? This is the system, which carried us to where we are today, the envy of the world.

Is it because of the envy of others – who easily could have chosen our patent system for their own, but chose not to do so? If so, why would officials at the PTO help them cut off our Sampson's hair of giant strength? Why would we allow ourselves to be directed and controlled by the 100 plus nations in WIPO? Aren't the vast majority of these nations very small, with few, if any, patents or inventors? And aren't their interests, understandably, far different from ours? Why would we permit the demise of America's Independent Inventors – whose contributions CREATED ALL of our large but now far less-inventive companies. These independent inventors and small companies are STILL the ones creating much of our newest technologies and growth companies.

Why would any American do this to his country?



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George Margolin
An American Inventor

George Margolin's COMMENTS ON HARMonization

1. The First-to-Invent system is and has been the basis of our creativity, technology and successful innovation. The Constitution directs the rewards to the FIRST inventor, not to someone who races to the patent office. We MUST keep First-to-Invent. It has made our country great. It is the basis of our Patent laws. It WORKS and has worked for over 2 centuries! ***Keep America's Patent System intact!***

2. The "engineering" approach taken by #2 shows WHY the broader American System is so productive. It is by far the "Best Practice." If it is useful, concrete and produces a tangible result AND is novel and unobvious – that is far more important than a purely mechanistic approach. Form follows function ***Keep America's Patent System intact!***

3. Enablement and Best Mode have been enormously successful aspects of the American Patent System. If there is a better way, I haven't heard of it. Please don't let anyone change what works so well. ***Keep America's Patent System intact!***

4.. The intent of this "technical fields" identification restriction, is to stifle invention by forcing it into boxes and molds, thereby restricting its scope. This is exactly contrary to the creation of innovations and breakthroughs, which have been the hallmarks of "American" inventors. Many of these inventors have come from foreign countries, Tesla and Steinmetz to name just two. It has been the nurturing American Patent System that has been so beneficial. So IF they are serious about wanting to Harmonize the patent systems of the world – they should – clearly – choose to follow our successful, 211 year old system.

This attempt at reducing "Invention" to engineering – is another example of why large corporations, American and foreign, would stifle and structure our inventiveness with contrived engineering restraints.

Some truly important inventions clearly transcend the restrictions of limited "technical fields."

And while it has often been said that Inventors work outside the box – I and my inventor colleagues would say, "What Box?"

Keep America's Patent System intact!

5. "Unity of Invention" --
Many inventions are not, mere, individual inventions, but are new insights and paradigms that address and solve "generally" related groups of problems. They are often iterations of novel ways of both looking at and solving the inventive concepts, which they are addressing. Sometimes, when solving a particular need, additional, different but related, inventions flow from and follow, to complete the thrust of the new concept that was the basis of the original invention.

To permit the restriction of each patent application to a single means – along with the STRONG desires of many Countries and Companies to eliminate America's crucial

George Margolin's COMMENTS ON HARMonization

“First-to-Invent” system, by changing it to a “First-to-File” system – would be a Fatal Error for American creativity, technology and ingenuity.

Why, would any American citizen or Patent Official, wish to let this happen? We have THE system that works! The rest of the world wants to HARMonize us out of contention. ***Keep America’s Patent System intact!***

6 “Industrial Applicability” -- attempts to reduce invention to engineering product development. It, once again, shows the unacceptable limitation of companies and countries seeking to quench our fires of invention, by using boxes and labels to control, contain and constrain our creativity.

This is not good for America! ***Keep America’s Patent System intact!***

7. Global priority dates, which will surely be tied to First-to-File, will hamstring American inventors and bring America to its knees. Not a good thing for America!
Keep America’s Patent System intact!

8. Clearly an inferior mode. As you stated in your summary – countries, like Japan, permit endless “obvious” permutations to be patented.
Keep America’s Patent System intact!

9. The elimination of the “Grace Period” and the “Absolute Novelty” requirement is designed to discourage intellectual property ownership. This would be an opportunity for nefarious claims of disclosure, when none were made.

Once again, the US Patent system WORKS! It works both for us and the world by bringing innovation to a world that has so restricted its inventive citizens that they are unable to create within their own countries. Their laws don’t work and their incentives are non-existent. Why would we want to go along with that? We don’t!

Remember – many brilliant inventors had to come to America, in order to have an opportunity to freely invent and they have helped their adopted country prosper.
Keep America’s Patent System intact!

10. Without effective geographic restrictions, no one – would be able to track down and/or defend against “so called” prior art being claimed from the farthest corners of the globe. Bad news! ***Keep America’s Patent System intact!***

11. Public Use or Sale – We are permitted only one year for U.S. patentability. For the most part, any sale or publication before filing bars obtaining of foreign patents Our system works and is clearly defined. ***Keep America’s Patent System intact!***

12. Other systems are designed to force Invention into an exercise in mundane engineering. They attempt to define the nuts and bolts. They operate on the premise that an Invention can be made up of a pre-defined laundry list of parts. That’s not inventing!

George Margolin’s COMMENTS ON HARMonization

Our system permits creativity, it works and has worked for over two centuries and made us what we are. While engineering is often involved in the perfecting of an invention, it is not always the basis of the invention. The Gestalt – the whole, is greater than the parts. We should not go

along with the restrictions stated in section 12.

Keep America's Patent System intact!.

13. On Obviousness – Since EVERYTHING is “obvious” AFTER it is invented – our system does and has worked well for centuries. The forced “Identification of a technical problem to be solved” AGAIN – implies the reduction of innovation to the level of simple product development. Invention, at least as practiced in the United States, is Much, much more! ***Keep America's Patent System intact!.***

15. The discussion of Pre-grant issues – when WIPO has already achieved Early Publication, even in the United States and is now pushing for First-to-File, global priority, and mechanically defined invention areas – does not bode well for America. ***Keep America's Patent System intact!.***

16. Doctrine of Equivalents – has been a necessary part of our patent system. I believe and or hope – that FESKO will be found to be flawed.

Keep America's Patent System intact!.

17 THIS is a BIG issue. It goes part and parcel with those countries and companies pushing so hard for First-to-File.

Our American Constitution provides opportunities of rewards for inventors and authors for their creations. If we have Companies, rushing First-to-File inventions of unknown or false inventors who have “assigned” these questionable patents – who's to know whom or what created those inventions.

Keep America's Patent System intact!.

George Margolin

An American Inventor

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