

# Inventors' Digest

30-31 Union Wharf, Third Floor, Boston, MA 02109

**Date:** April 30, 2001

**To:** Mr. Jon P. Santamauro

**Fax number:** (709) 305-8885

**From:** Joanne Hayes-Rines, Editor

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Dear Mr. Santamauro:

Following are my comments re: international efforts to harmonize patent laws. Guess I'm getting this in just under the wire. Thank you for your consideration.



# **Inventors'**

**DIGEST**

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April 30, 2001

Director U.S. Patent and Trademark Office  
Box 4  
Attention: Mr. Jon P. Santamauro  
U.S. Patent and Trademark Office  
Washington, DC 20231

RE: Comments on Patent Law  
Harmonization for SCP

Dear Mr. Santamauro:

In response to the Patent and Trademark's request for comments on the International Efforts to Harmonize the Substantive Requirements of Patent Laws, I offer the following observations. The item numbers refer to the issues as presented in the Federal Register/ Vol. 66, No. 53/ Monday, March 19, 2001/ Notices -- Pages 15409,15410 and 15411.

#### ITEM 1

Article I, Section 8 of the U.S. Constitution states:

*"The Congress shall have the power to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."*

The U.S. first-to-invent system is rooted in this Congressional power. Upon filing patent applications, the applicants declare that they are the inventors of the technologies for which they are seeking patent rights.

Such an oath is not required in first-to-file patent systems which are rooted in advancing technology for the good of the society as a whole with the exclusive rights to the inventor being a secondary matter.

The first-to-invent system is as unique to America as is our fundamental belief in the rights of our citizens. The first-to-invent system rewards inventors for their industriousness and creativity, and it is imperative that this system be maintained for those who contribute the majority of the technological breakthroughs: the independent inventors.

U.S. culture supports and encourages independent thinking and rewards independent activity; this culture is vastly different from those cultures that elevate the society above the individual. The first-to-invent system rewards those who are most innovative not those who are first to the Patent Office.

The "best practice" for a harmonized, global patent system is the first-to-invent system. Foreign patent examiners would have to do more than stamp a filing date on patent applications

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to determine "inventorship," but foreign societies would be rewarded with an awakening of individual inventive spirit that would energize their economies just as our economy has flourished for over 200 years because our highly creative inventors have been encouraged and rewarded.

**ITEM 9**

The "grace period" provided by U.S. patent law provides inventors with the opportunity to prototype, test, and refine their inventions before filing a patent application. For independent inventors this opportunity allows them to work with professionals who have expertise they may lack to develop their inventions.

In numerous discussions with independent inventors in other countries, I have learned that they yearn to have such a grace system and they also yearn to have a first-to-invent patent system. Any disclosures in their systems are considered prior art which renders them unable to obtain patent protection. This means that they cannot seek the assistance of a prototype maker as they try to improve their concept. They cannot obtain manufacturing quotes or design assistance. The grace period combined with the first-to-invent system provides independent inventors the time needed to evaluate the potential viability of a concept before seeking costly patent protection while also providing eventual patent rights to the inventor.

The effect on the U.S. economy of the grace period combined with the first-to-invent system cannot be underestimated. This "one-two punch" is the spark behind the prodigious contributions made by independent and university inventors who are responsible for such blockbusters as . . . the MRI, the implantable cardiac pacemaker, the laser, power steering, imaging radar and sonar, the 56K modem, the airbag, the respirator, the ATM, color film, the digital fax, the helicopter, the microphone, the portable kidney dialysis machine, and scores of other products that improved our standard of living, contributed billions of dollars to our economy and created millions of jobs.

**ITEM 17**

Continuing to award patent rights to the inventor will continue to recognize the contributions made by individuals. The assignee rewards the inventor for his or her innovation but a business entity (corporation, partnership or other entity) will never be capable of creating something out of nothing. It is people who are capable of creative genius.

We strive to encourage our future generations to develop their innate innovative talents and this is often done by pointing to the wonderful inventions created by individuals. We point to the Wright Brothers and to Dr. Forrest Bird (the respirator) and to Philo Farnsworth (television) and to Art Fry (Post-It Notes) and to Patsy Sherman (Scotchgard) and to others in whose footsteps we ask the students of today to walk. Such role models will be lost forever if the U.S. changes to a system which accepts patent applications in the name of assignees. Corporate America's innovative heroes will be lost in records filed away on dusty zip disks and tapes.

**OTHER COMMENTS**

Harmonizing patent laws globally is the "brass ring" that will yield many positive benefits for corporations, universities and independent inventors. However, the global cultural differences that support different systems and yield diametrically opposed innovative, independent spirits must be considered in order to work towards a harmonious system that fosters creativity. Such a

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system must not be created for the benefit of the "paper pushers," the "bean counters" or the bureaucrats whose skills rarely include innovative thinking.

Social scientists can readily identify those societies that encourage independent thinking and those societies that stifle such original thought. In no way should the U.S. representatives be encouraged to recommend changes to the U.S. system that will appease those who represent regimented, repressed societies in order to merely gain procedural changes. The goal of international harmonization must be to improve those systems which do not encourage its citizens to be inventive, creative and innovative.

Sincerely,

A handwritten signature in black ink, reading "Joanne Hayes-Rines". The signature is written in a cursive, flowing style with a large initial "J".

Joanne Hayes-Rines  
Publisher