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March 19, 2007

The Honorable Jon W. Dudas
Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Attention: Mr. Richard Cole

Submitted by email to: AC9.comments@uspto.gov

Re: Comments on Proposed Rulemaking “April 2007 Revision of Patent Cooperation Treaty Procedures,” 72 Fed. Reg. 7583 (Feb. 16, 2007)

Dear Under Secretary Dudas:

I am writing on behalf of Intellectual Property Owners Association (IPO) to comment on the USPTO’s proposed revisions to procedures for Patent Cooperation Treaty (PCT) applications as recently published in the Federal Register. IPO welcomes the opportunity to comment on these rule changes.

IPO is a trade association of more than 200 companies and 10,000 individuals who are involved in the association either through their companies or as IPO inventor, author, executive, law firm or attorney members. Our corporate members file approximately 30 percent of the patent applications filed at the USPTO by U.S. nationals.

IPO supports the USPTO’s efforts to ensure that U.S. laws and practice are coordinated with international laws and practice. We have consistently advocated for a treaty to effect greater harmonization of global patent systems. IPO has also worked with industry groups internationally to advocate for changes such as the proposal for a global patent application format.

The Notice proposes to amend the rules to conform to a number of changes to PCT procedures adopted in September and October 2005 by the PCT Assembly, which become effective on April 1, 2007. As part of the changes proposed, the USPTO would increase search fees for PCT applicants to “more accurately reflect the cost” of the activity. We are concerned with this proposed increase in the search fees.

The increase may discourage use of the PCT. We find this result contrary to other efforts by the USPTO to enable applicants to more easily obtain patent protection abroad. Currently, the cost charged by USPTO for doing the search under the PCT is \$1,000 – a cost identical to the amount charged when filing a national application. The proposed increase to \$1800 would make the fee for PCT filings nearly double that of a U.S. application. In addition, under the current rules, if an applicant files a non-provisional

Intellectual Property Owners Association (IPO)
Comments on 72 Fed. Reg. 7583 (Feb. 16, 2007)

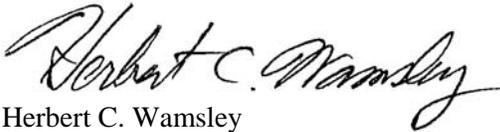
U.S. application, paying the \$1,000 fee, and then files a corresponding PCT application, the USPTO charges a discounted search fee of \$300 to act as the International Search Authority. The proposed rules would eliminate the discount and impose the new \$1800 fee, six times the current charge.

The Notice argues that the current application backlog justifies eliminating the discount for PCT searches. While an increase in the fees may be needed, we believe to nearly double it based on existing backlogs at the Office is not appropriate. To encourage filers to select patent offices in other countries as their international search authority to lessen USPTO's burden seems short sighted and a disservice to U.S. filers. We suggest that some discount remain that gives applicants credit for fees paid for searches of corresponding applications and that a more modest increase be considered to reflect current costs.

The conclusion in the Notice that the proposed increase is "not significant in comparison to the overall costs" incurred by applicants to obtain international patent protection is incorrect. The Notice cites a 2003 Government Accountability Office (GAO) report on patenting by small businesses which concluded that cost of obtaining and maintaining foreign patents was in the range of \$160,000 to \$330,000. However, this figure includes all costs borne by applicants "from cradle to grave." Also, the policy on patent fees has been to keep filing fees relatively low and ask owners to bear higher fees later in the life of a patent through maintenance fees.

At a time when patent offices have been encouraging use of PCT filings to avoid duplication of efforts around the world, the fee increase proposed by the USPTO would impose a dampening effect on the use of PCT to the detriment of corporations, small businesses and individual patent filers.

Sincerely,



Herbert C. Wamsley
Executive Director