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**From:** GEN-ERIC

**Sent:** Friday, May 05, 2006 3:46 PM

**To:** DDP.Comments

**Subject:** COMMENTS on Proposed Changes to Eliminate the Disclosure Document Program

**Importance:** High

To whom it may concern,

I voice strong opposition to the call for elimination of the Disclosure Document Program (DDP).

Background:

USPTO is turning their back on independent inventors by calling for elimination of the DDP which supports their agenda of attempting to dismantle and change the United States from a 205-year old first-to-invent system into a first-to-file system. The DDP is a program used mostly by independent inventors as a means to establish evidence of conception of an invention. Such evidence is paramount to an inventor filing a patent application in the United States under a first-to-invent system. USPTO seems not willing to wait for the outcome of a patent reform bill in Congress, which would eliminate the DDP if the bill is signed into law and sells out the United States to a first-to-file system. Elimination of the DDP is a slap in the face toward the inventor, an indicator that the administration now no longer cares about a first-to-invent system, and affirms their agenda of trying to steer this country to a first-to-file system. DDP should never be eliminated for as long as United States remains a first-to-invent country.

First-to-file system and first-to-invent system are legal concepts that define who has the right to the grant of a patent for an invention. The first-to-file system is used in all countries, except for the United States, which has operated a first-to-invent system for near 206 years. The Patent Reform Act of 2005 (also known as the "bill H.R. 2795") is U.S. patent legislation proposed in the Congress of the United States. Texas Republican Congressman Lamar S. Smith introduced the Act on 8 June 2005. Smith called the Act "the most comprehensive change to U.S. patent law since Congress passed the 1952 Patent Act." The Patent Reform Act would also change the United States patent system to a first-to-file system, from the current first-to-invent. The United States is currently the only country in the world still using the first-to-invent system.

Request for Comments:

United States Patent and Trademark Office (USPTO) published request for comments (RFC) due Monday May 8, 2006 on Changes to Eliminate the Disclosure Document Program (DDP) as published in Official Gazette (OG) Notices Tuesday May 2, 2006.

<http://www.uspto.gov/web/offices/com/sol/og/2006/week18/patrule.htm>

As stated in summary section of RFC, the USPTO implemented the DDP in 1969 in order to provide an alternative form of evidence of conception of an invention to, for example, a self-addressed envelope (SASE) containing a disclosure of an invention.

(COMMENT: SASE is considered a much lesser form of evidence in connection with both patents and copyrights. Most practitioners frown upon using SASE and advise otherwise regarding patents and copyrights. Elimination of the DDP will lead to increase usage of SASE which means a drop in intellectual property creators registering a copyright at \$30 per work product with the Library of Congress. Furthermore, there are no instructions of how SASE is used. For example, how can an Examiner determine evidence of conception from a sealed SASE when an inventor swears behind a reference. Is the inventor supposed to mail the SASE for the Examiner to open?)

USPTO is proposing to eliminate the DDP due to the following reasons stated in the summary section of the RFC.

1. Few, if any, inventors obtain any actual benefit from a disclosure document.  
(COMMENT: Subjective statement - how do you measure actual benefit? It can up take five to ten years to learn whether a benefit is even obtained with respect to swearing behind a reference or an interference. One can argue that an immediate benefit is realized by the inventor from the act of submitting a document with the DDP as a milestone or tangible step toward the path of filing a patent application. One benefit could be a sense of positive re-enforcement that leads to completing more steps and encourage more filings from the inventor. It is unfair to judge say the conversion rate of DDP into provisionals as an indicator of obtaining actual benefit. There are numerous reasons why ink tends to abandon.)

2. Some inventors who use the DDP believe that they are actually filing an application for a patent.

(COMMENT: There is no way an inventor filing the DDP oneself, would confuse use it for a patent application or a sense that they protected an earlier filing date because of a how clear it is on USPTO website:

<http://www.uspto.gov/web/offices/pac/disdo.html>

or in the same information already provided along with the DDP receipt sent to the inventor. This may be the case however if invention promotion firms are misleading inventors regarding the DDP which would give reason to toughen laws for invention promotion firms but not a reason to eliminate a 37 year old program that supports a 205 year old first-to-invent system.)

3. A provisional patent application (PPA) affords better benefits and protection to inventors than a disclosure document.

(COMMENT: The benefits of filing a provisional cannot be compared as an alternative to the DDP, because the benefit of constructive reduction to practice is the same regardless of which type of patent application is filed. Comparing DDP to SASE similar as PPA to DDP is apples and oranges. This is about the connection between conception of an invention and constructive reduction to practice. Applications of ALL filing types serve as constructive reduction to practice making the point moot. Reduction to practice is a United States patent law concept. It means the embodiment of the concept of an invention. The date of this embodiment is critical to the determination of priority between inventors in an interference proceeding. Conception is the formation in the mind of the inventor, of a definite and permanent idea of the complete and operative invention, as it is hereafter to be applied in practice.)

By eliminating the DDP an inventor may attempt to seek other means for evidence of conception such as obtaining a notary signature and having the false impression that such a signature is sufficient. This is not the case because a notary does not perform function of corroboration.

By eliminating the DDP an inventor loses the privilege of not being forced to disclose to another under confidentiality that they somewhat understand the invention such as witness signatures in numbered lab notebooks. Though the RFC mentions other means such as commercially available electronic notebooks for evidence of conception, the inventor would be subjected to rely on a third party for corroboration. Leaving us with the dreaded SASE solution. So the message seems to be that the only way to preserve the right to keep disclosure limited to only the inventor and Government, is to turn back pre-1969 and use SASE leaving the inventor to rely on a much lesser form of evidence.

**A GOVERNMENT SHOULD NOT BE ALLOWED TO SUBJECT AN INVENTOR TO HAVE TO DISCLOSE KNOWLEDGE TO A PARTY OTHER THAN THE GOVERNMENT IN THE NAME OF ATTEMPTING TO RECORD EVIDENCE OF DATE OF CONCEPTION OF INVENTION.**

Regards,  
Eric