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Troubling Changes To Patent Rules

By James Yang

On January 3, 2006 the United States Patent and Trademark Office (Patent Office) proposed

changes to the current patent filing procedures that will dramatically change the process inventors and small businesses use to seek patent protection. The proposed changes also limit inventors' ability to protect their inventions. The public may submit their feedback on these changes by May 3, 2006.

CHANGE NO. 1: The first change alters the current "continuation practice" by limiting the number of correspondences that inventors may have with the Patent Office. Additional correspondence may be made with the Patent Office but only under limited conditions.

CHANGE NO. 2: The second change alters the current "claiming practice" by limiting the number of claims that may be presented on an invention, specifically, ten claims per application. The proposed change severely restricts the conditions under which additional claims may be presented.

Interestingly, the stated purposes of the changes are to reduce the back log of un-examined patent applications and increase the quality of the patent application review. Unfortunately, these changes also bring out two important negative implications:

· INCREASE COST TO OBTAIN PATENT · NARROW PATENT PROTECTION

Under the proposed changes, an inventors may only present ten independent claims even if the technology to be patented requires more. The Patent Office states that more claims may be presented if the inventor provides an opinion as to the reason that the invention is patentable over a prior art search but such opinion may be expensive. Hence, the inventor may have to accept narrow claim coverage that may not sufficiently protect their invention. instead of continuing to pursue broad patent protection. Also, inventors must seek patent protection on multiple aspects of their invention simultaneously which may be cost prohibitive. Moreover, in cases where the Patent Office has incorrectly rejected an application, the inventor may only proceed with a costly appeal process instead of attempting to highlight different ingenious aspects of the invention.

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IMPACT ON BACK LOG AND QUALITY: The changes do not appear to achieve the Patent Office's desired objective of reducing its back log of applications and improving quality. Inventors, when faced with an examiner who does not understand the uniqueness of the invention, would immediately appeal or petition such refusal rather than use up their limited number of correspondences with the examiner. As such, in one aspect, the changes merely shift the load of the work from patent examiners to the appeal board and petition process. Moreover, patent attorneys would file additional applications on the same invention describing the invention in different ways to circumvent the changes increasing the number of applications. As such, in another aspect, it may increase the number of patent applications.

PUNISH EVERYONE BECAUSE OF A FEW: According to the Patent Office, only 1.2% of applicants engage in excessive claiming. The Patent Office has identified a claiming practice used by a few applicants and proposes changes that affect all applicants. Oddly, the Patent Office appears to be punishing all inventors due to the excessive claiming practice of a few.

PUBLIC REACTION: Feedback submitted by individuals, patent practitioners, businesses and trade

associations range from full acceptance to full rejection. For example, one comment stated that the Patent Office is not taking into consideration "real-world effects on practitioners and applications." Another comment from an intellectual property association supports the Patent Office's efforts in increasing examination efficiency and patent quality but disagrees that the proposed changes would achieve the desired results.

SUBMITTING YOUR COMMENTS: For information on submitting a comment, go to

www.uspto.gov

or

www.ContactJamesYang.blogspot.com

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This information is provided for informational purposes only and not considered legal advice. Legal advice requires review and analysis of your specific factual situation.

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The Importance Of Getting A Patent

By Edward Bryce

Even if you don't invent things for a living, you might still have a great idea. Chances are, if you actually pursued your invention you will have found that you don't exactly have the resources necessary to produce it yourself. Any plans you create will need to be shipped off to someone else. How, though, can you protect your idea from being stolen?

1. What A Patent Means

First of all, you should know that a patent is significantly different from a copyright. All a patent means is that you have the exclusive rights to profit from a physical invention. Not all inventions are physical. The most common use for patents is for pharmaceuticals and plastics. Things like chemical formulas like aspirin have their own patent for the formula, for example, but the name aspirin will be protected by a copyright instead.

2. Not Everything Can Be Patented

It might be impossible to get a patent if you show off your physical product before you patent it. Furthermore, the more technology and expertise is required to produce the product, the better. Inventions that seem like a no-brainer are more difficult to get a patent for. For example, silly putty.

3. Banned Items

You can't apply for patents on many items – a scientific or mathematical theory or method, a work of art (books, plays, etc. - computer programs are included), a way of doing things (eg. a new business method). Many of these things are, instead, covered by copyright.

4. How To Apply For A Patent

You need to visit a patent office to get a patent. First, apply for a patent for your country with the help of a lawyer under a strict non-disclosure agreement. Depending on where you live this can be absurdly expensive or quite cheap. Next, file for patents you might want for the rest of the world. Yes, you have to file individually for every country in the world. Alternatively, you can use the patent co-operation treaty that allows you to apply once and eventually receive protection in all 126 countries signed up to the treaty.

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