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Before the
United States Patent and Trademark Office
United States Department of Commerce
Alexandria, VA 22313

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In the Matter of	)	
	)	
Enhanced Examination Timing Control	)	**Docket No.: PTO-P-2010-0035**
Initiative; Notice of Public Meeting	)	
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To the United States Patent and Trademark Office

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Third Set of Comments from Nickolaus E. Leggett

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I am an individual independent and employed inventor holding three U.S. Patents. My latest patent is a wireless bus for computers and other digital devices (U.S. Patent # 6,771,935).

In my first comments document (submitted on June 7, 2010), I discussed the ethical problems with the proposed three-track patent application system (Examination Timing Control Initiative).

In my second set of comments (August 2, 2010), I discussed points of the history of the patent system and the relationship of this history to the proposed Examination Timing Control Initiative.

In this comment document, I discuss some of the practical problems with the proposed system.

One Track versus Multiple Tracks

The current patent application system is fundamentally a simple one-track system where the first applications filed are near the front of the queue and later applications are further down the queue. This is basically a first-in-first-out (FIFO) queue where the first application to be filed is processed first by the system. This structure supports the basic concept of patenting where the first applicant to file is defined as the inventor. The sequence of the filed applications stays constant with the first filed applications remaining ahead of the later applications.

The situation is not so simple when you operate three different patent application tracks with different rates of progress on each queue. The Track 2 and Track 3 applications move at a much slower rate than the applications in Track 1 (accelerated processing). This results in the possible issuance of a U.S. patent from Track 1 for a technology that is already covered by an application that was submitted earlier to Track 2 or Track 3. The earlier but slower-moving application was missed because it had not been searched yet and is merely sitting in an input queue. This is a troublesome situation that can occur due to the operation of several queues in parallel.

The Need to Search Everything All the Time

The problem of potentially hidden first-to-file applications requires that your patent application system must search everything all the time. This means that a search conducted for a Track 1 application must search the following categories within the specific technology:

1. All issued patents

2. All patent applications filed in Track 1 (accelerated processing)

3. All patent applications in Track 2

4. All patent applications in Track 3

This may seem to be an obvious step, but it too has a problem. There is a difference in the quality of the data. Issued patents are validated data where the USPTO has determined that these inventions are indeed novel and original. In contrast the applications in each of the three tracks are assertions of inventions that have not yet been tested and validated by the USPTO patenting process.

As a result of this basic truth, you have the issued patents reliably applying to the application. Then you have the problem of how you handle the assertions made in the various relevant applications in the three tracks. Do you have to search all of the relevant applications then and there to determine their own validity and their validity in relation to the Track 1 application? Do you need a special process like the historical interference procedure to deal with the relative validity of the colliding applications? (The same issue applies to applications submitted in Tracks 2 and 3.)

I suspect that the answer to these two questions is yes. This results in a patchwork ballooning of effort when specific applications collide with each other. Has this phenomenon been considered in evaluations of the multi-track system?

The Need for a Detailed Model of the Proposed System

The questions about the actual operation of the proposed Examination Timing Control Initiative are difficult for the USPTO to answer. If the USPTO is serious about getting the public to accept the proposed system, then it needs to provide a detailed step-by-step model of the system's operation. This model would allow members of the public to examine the operation of the system under various situations. The model would allow the public to make sure that the system would not threaten the quality of patent searches.

The USPTO should publish this model and then have a public comment period on it.

Respectfully submitted,

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August 6, 2010