From: Frank Marino [mailto:patenter@metrocast.net]
Sent: Saturday, December 19, 2009 11:27 AM
To: patent_quality_comments
Subject: Regarding your request for comments and suggestions

Dear Sire/Madame,
I wrote in a couple of years ago about this problem, but never even got an acknowledgement. I guess that says a lot.
I am a patent agent. I work alone and my selling point is my lower fee structure versus other practitioners. As a result, I tend more than most practitioners to represent individual inventors and smaller businesses who simply cannot afford high fees, prolonged prosecution of their applications, and certainly cannot afford appeals.
I've been a practitioner since '93, and have seen a huge change in recent years. Examiners used to be happy to work with practitioners to help identify the patentable features of an invention and to amend claims in an effort to assist the inventors (their customers). An interview after a first office action almost always resulted in either agreement that the invention was not patentable or agreement on amendments to obtain allowance. I could do a search afore-hand and tell a client with some degree of certainty whether he would be able to patent his invention. Now it is a crapshoot. I could tell a client ahead of time with some degree of certainty how much it was going to cost him to get his patent. Now it is anyone's guess.
While some of the older examiners are still more reasonable, it is much more common these days for examiners, especially the younger ones, to be adversarial. In MOST applications these days (no exaggeration..let me know if you need examples), I am pushed to file an RCE for the sole and obvious reason of helping the examiner increase his case numbers. Generally those "suggestions" are accompanied with subtle hints that quick allowance will follow. To me, this is an obvious request for a bribe. If the invention is patentable, why does the applicant need to pay two filing fees to get his deserved patent?
And another problem these days lies in the abundance on non-English speaking examiners. While I am not a bigot, I do believe that a MASTERY of the English language should be the FIRST requirement for this job. Dealing with many of today's examiners involves a very frustrating attempt to teach them what English words mean or don't mean, and arguments with them over what MY OWN STATEMENTS meant. I know what I said and what I meant...I don't need some youngster who cannot speak a complete sentence in proper English to tell me I said or meant something different.
Even some of the English-speaking examiners seem to have no grasp of the language these days. I had one examiner hold that "it will not fit without being broken" means that "it will fit, it will just be broken in the process". How does one argue with this lack of logic? How does one go back to a client who has already depleted his small budget and explain this nonsense? It gets more and more embarrassing to have to explain to clients that it will take over two years for a first office action on their application, and that will ALWAYS be a complete rejection, usually just a boilerplate form letter that shows the examiner did not even read or understand the application or prior art, and that in order for him to hoep to get his patent, we'll need to be lucky enough to get an examiner who recognizes that phrases in the specification like "will not fit without being broken" are consistent with phrases in the claims like "will not fit"? To them it sounds like they are just buying a lottery ticket.
And it is most shameful to have to explain the RCE "bribe" system to them. More and more former clients these days simply will not bother filing patent applications anymore because they believe the PTO has been corrupted. This is so bad in so many ways for all of us, the Office, the practitioners, and the applicants.

And you cannot complain to anyone. When you write to the Office, you get no response (I'm sure I'll never hear back from this email). Supervisors always side with the examiners. My sense (which I understand to some extent) is that they recognize the plight of the overworked/underpaid examiners, and their need to operate this way to earn a decent living. My sense is that they recognize how hard it will be to replace the examiners at such low salaries..and that allowing them to operate this way is the only way to stay staffed, no matter how bad their performance is.

In recent years I have had to abandon an unbelievable percentage of applications that I believed to be deserving of allowance simply because the applicant could not afford to RCE or appeal the case. This is simply not fair.

If money is the problem, RAISE YOUR FEES. But do it in a way that does not deny the patenting process to individual inventors. Add a third status class with higher application fees for applicants with over 5000 employees. Increase maintenance fees to take more proportionately from those who are successfully commercializing their inventions. Eliminate examiner incentives that inspire rejections and prolonged examinations so that you can move cases through faster and more efficiently. Offer different fee structures according to patent class (it doesn't not cost you the same to prosecute John Doe's widget application as it does to prosecute Intel's multi-core processor application, so why charge both applicant's the same?). Be imaginative.

Here's another thought that would allow you to increase fees without overly impacting the little guy; Graduate the fees according to the number of applications an applicant files each year. Your fist application costs $X...next one costs $X+...next one costs $X++, etc. The individual inventor is only likely to file one application, so this will not affect him. Small entities that maybe file three or four applications a year will only be slightly affected. Some larger companies may cheat and file under different names...but so be it. Make the penalties very high if they are caught...which will happen once they go to enforce. If IBM and Intel are each filing 500 applications a year and bogging down the office, then they should be footing more of the bill. They are the ones getting huge financial benefit out of the monopolies we are giving them...let them pay a more fair share of your costs to serve them. Let them pay more for the more valuable monopolies we are giving them.

I think there are many ways to increase you income and use that to fund a more efficient and applicant-friendly system if you try. I don't think that trying to bilk your clients or discourage applications, which you current system does, is good for anyone.

I hope things change soon.

Sincerely,

Frank Marino
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603-279-0159

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