From: Elizabeth Crowe [e-mail address redacted]
Sent: Monday, October 31, 2011 3:07 PM
To: aia_implementation
Subject: Derivation proceedings

Dear PTO Officer:

I work for a small R&D company in Ohio. We have proven in a court of law that a foreign competitor stole our senior engineer and that this engineer actually worked for both companies simultaneously before going to work entirely for the other company, taking our technology with him. This other company has lied to our potential customers to tell them that they have the rightful technology when that is not the case. So we have had experience with people visiting our site and discussing projects with us until they get the information they need and then using it against us to their own gain, sometimes going so far as to file patent applications on our technology. We cannot always show how these other companies got their information. Until now we have always been able to remedy the situation.

It is my understanding that logbooks, journals, etc. will no longer be capable of being used as evidence of inventorship. It is also my understanding that there is no right to discovery in a derivation proceeding. It is also my understanding that unless I can show at the outset how the other company got our information, then we will lose the patent application. Moreover, it is my understanding that we would have to request a derivation proceeding for one to even be initiated (with the interference, the PTO could make such request on its own).

We cannot see the applications that have been recently filed; we can't see them for 18 months and we are supposed to file within 12 months. So presumably there will be times when we will spend money on time, labor, attorney fees, and patent fees, only to discover that someone else has already filed a patent application on our invention and lose approximately $10,000 to $25,000 as a result; even more if you count the future licenses lost as a result and there could also be damage to our reputation. Even worse, there would be no remedy; we would have to watch the other company get a patent that they stole from us because the derivation rules do not give adequate protection.

If this other company had to show best mode, then perhaps we have a way to protect ourselves because it will probably be obvious that the other company has no idea of what they are doing. And obviously our best mode, after all the trial and error we have conducted, will be better than theirs.

Perhaps if we could see a patent application immediately upon filing instead of waiting 18 months (like with regular courts of law), that too might help the situation. We would be able to assess the situation immediately, save money and time at the outset, and then challenge the other company's application farther down the road.

I mentioned the phrase "adequate protection." How do you plan to implement the derivation proceeding in a way that it does provide adequate protection?

Thank you very much for your consideration of this matter.

Liz Crowe

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