

October 25, 2001

Under Secretary of Commerce for Intellectual

Property and Director of the United States

Patent and Trademark Office

Washington, DC 20231

Att: Ronald Hack, Acting Chief Information Officer

Re: Docket No. 010126025-1025-01: Notice of Request for Comments on Development of a Plan To Remove the Patent and Trademark Classified Paper Files From the Public Search Facilities

Dear Sir:

I am a professional patent and trademark researcher employed by several intellectual property research firms in Arlington, VA. These comments are my personal views and have been developed as the result of fifteen years searching the USPTO records and meetings with employees of all branches of the Office.

Upon examination of the notice, I have found several factual inaccuracies and omissions that need to be addressed. Firstly, the e-mail address originally given for comments appears to be non-functional and has resulted in an untold number of responses being returned to the senders. Secondly, although the X-Search system does contain the "text and image of over 2.7 million trademark applications and registrations" it is missing in excess of 577,000 cancelled or expired registrations. In like fashion, X-Search does not contain the images or data of thousands of "informal applications", data that is present in a searchable format in the paper records. Neither fact was published in the notice. Similarly, USAMark is missing approximately 2-3% of all trademark registration images and suffers from severe programming errors that result in an inability for the search engine to locate thousands of images present in the database. Further, the assertion that the Trademark Electronic Search System (TESS) is a "searchable database including the full text and clipped images of all trademarks" is fraudulent. TESS is missing the same registrations that are absent from X-Search and suffers from the same coding errors, scanning errors, data entry errors and a more lamentable search engine.

The Office should be reminded that it is mandated to not only "maintain, for use by the public, paper, microform, or electronic collections of United States patents, foreign patent documents, and United States trademark registrations" but also that those records must be "**arranged to permit search for and retrieval of information**".(emphasis added) Given the Office's abysmal record of maintaining a complete, accurate and searchable database for either patents or trademarks, I believe that the request for comments is premature. The request should not be for comments on the development of a plan to remove the files but rather whether the files should be removed at all. As the electronic records and search systems for both patents and trademarks are fraught with errors, omissions and search engine issues, the paper records constitute the only check on the veracity of the electronic data and are thus essential to conducting a valid and reliable search. Given the problems and inaccuracies of the electronic databases, any action by the Office to remove or otherwise make the paper file less accessible to the public would result in searches replete with the database errors and result in unnecessary litigation, infringement proceedings and questions of liability, the ultimate cost of said proceedings being borne by any potential applicant affected by said searches.

Although the total cost of such proceedings is inestimable, those costs pale in comparison to the affiliated costs of advertising campaigns and materials, printing plates, etc. that will have to be destroyed as a result of those search errors. Indeed, the aggregate administrative, litigation, business costs are incalculable and do not include the additional penalty of the loss of

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good will and brand identity in the market place.

The fact that the Office has invested "a substantial portion of its fee income in the maintenance of patent and trademark electronic databases and the development and enhancement of software search vehicles", databases and search vehicles that have proven to be inaccurate and of poor quality, should not in and of itself be a justification for the removal of the paper search file. The cost of maintaining the paper search file is a mere fraction of the Office's expenditures on electronic systems, many of which do not work properly, are not fully deployed or cancelled when almost fully developed, i.e.: TRAM++. In fact the cost of maintaining the paper search files for a year is often less than the litigation costs of a single high-profile patent or trademark infringement action, actions that the paper file helps prevent. Furthermore, the expense of operating the public search room has historically been offset by the fees collected by the Office for copies produced in the search rooms. The Office should thus publish the amount it costs the agency to maintain both the paper and electronic records as well as the amount of fees collected for the use of each.

Similarly, the assertion that the phased elimination of the patent examiners' paper search files is a result of the patent examiners' increased reliance on automated searching is disingenuous as the elimination of those records was the result of a labor negotiation. As detailed in the "Agreement on Initiatives for a New Millennium Between the United States Patent and Trademark Office and The Patent Office Professional Association" in exchange for a reduction in the paper search files, POPA members received a 10-15% salary increase, dependent on grade, and upgraded computer equipment.

Further, I believe the actions delineated in the notice are in violation of the provisions of OMB Circular A-130 in that the agency has failed to:

Adequately consider the effects of their actions on members of the public and ensure consultation with the public as appropriate. (8a(1)(b))

Protect government information commensurate with the risk and magnitude of harm that could result from the loss, misuse, or unauthorized access to or modification of such information. (8a(1)(g))

Ensure the ability to access records regardless of form or medium. (8a(4)(b))

Establish and maintain communications with members of the public and with State and local governments so that the agency creates information dissemination products that meet their respective needs. (8a(6)(i))

Inform the public as to the limitations inherent in the information dissemination product (e.g. possibility of errors, degree of reliability, and validity) so that users are fully aware of the quality and integrity of the information. (Appendix IV)

Lastly, given the threat of cyber terrorism, denial of service attacks, computer viruses and the unknown shelf life of electronic data in any format, the paper record stands as the only search system immune to technological failure or sabotage. Surely, given the increasing number of online attacks, the cost of maintaining the paper record can be justified if it serves no other purpose than to provide an option in the event of catastrophic data loss.

As such, I strongly endorse the retention of the paper file until such time as the integrity and validity of the electronic record is the equivalent of a parallel search of both the paper and electronic records and all of the provisions of OMB Circular A-130 have been fulfilled.

In the event the Office wishes to pursue their elimination, I advocate the republication of a more factually accurate and complete Notice of Request for Comments replete with full disclosure of the cost of maintaining the paper files as well as the expenditures for the last ten years on the development and maintenance of the electronic search systems and databases.

Sincerely yours,

Robert B. Weir

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