



October 26, 2001

Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent & Trademark Office
Attn: Ronald Hack
Washington, D.C. 20231

ATTORNEYS AT LAW

BRIAN D. ANDERSON
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Re: Docket Number 010126025-1025-01
RIN 0651-AB34

Title: Notice of Request for Comments on Development of a plan to remove the Patent & Trademark
Classified Paper Files from the Public Search Facilities

Dear Sir:

The undersigned write in opposition to the proposal to eliminate the classified paper search files from the Public Search facilities as proposed.

From a review of the written comments received on this subject to date by your office it is clear that many of the comments have been submitted by 'secondary information disseminators' who are among the most knowledgeable of the users of the PTO information services. These comments are nearly unanimous in their opposition to the elimination of these unique classified paper records.

We would summarize and agree with the reasons expressed to date for this opposition as three-fold: 1) the classified paper records offer uniquely valuable methods of accessing relevant information in ways not available or not cost-effectively available by electronic systems; 2) there have been and no doubt will continue to be a variety of technical shortcomings in electronic search systems, including, but not limited to: computer down time during which no searches can be conducted; errors and omissions of data; un-user friendly search parameters and limitations; 3) concerns over the security of the electronic search systems from electronic terrorism and/or computer viruses or the functional equivalent.

We would add to these reasons as follows:

By way of example, the classified trademark records both pending and registered as maintained in the PTO facilities in Arlington include various categories of data that are not cost effectively searchable under ANY electronic search system developed to date, public or private. Trademark records are such that, by their very unique and sometimes perverse nature, as a whole they defy standard rules of 'boolean logic' or even constructed "design codes" and thus cost



effective electronic searching. As to word mark searching, during a search the paper files educate the searcher as to various aspects of the word(s) in question more effectively than do electronic systems by providing the researcher a 'birds eye' view of the word(s) spanning product and classification categories. That is not to say that at some time in the future cost effective and improved electronic search systems may not be devised such that the classified paper search records will no longer be a unique and thus incalculably valuable national resource.

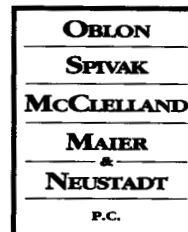
Thus, at present, and for the foreseeable future, there are several levels of unique information available within the classified paper files utilized every day in the search libraries of the PTO. Especially as regards searches of designs and certain other non-word marks (such as product configurations and trade dress) conducted without access to those records, a greater increase of risk of missed references arises which in turn can result in unquantifiable cost to American [and international] business in the form of otherwise avoidable conflict and infringement litigation. The avoidance of such conflict is the *raison d'être* of the information dissemination function of both the PTO and secondary information disseminators.

The foregoing is the reason the Office of Management and Budget (OMB) places such importance on the opinions of 'secondary information disseminators' where information dissemination policy is being formed or is under review.

Appendix 4 to OMB Circular no. A-130 reads in part:

"Section 8a(5)(d)(iii), requiring agencies to take advantage of all dissemination channels, recognizes that information reaches the public in many ways. Few persons may read a Federal Register notice describing an agency action, but those few may be major secondary disseminators of the information. They may be affiliated with publishers of newspapers, newsletters, periodicals, or books; affiliated with on-line database providers; or specialists in certain information fields. While millions of information users in the public may be affected by the agency's action, only a handful may have direct contact with the agency's own information dissemination products. As a deliberate strategy, therefore, agencies should cooperate with the information's original creators, as well as with secondary disseminators, in order to further information dissemination goals and foster a diversity of information sources. An adjunct responsibility to this strategy is reflected in Section 8a(5)(d)(iv), which directs agencies to assist the public in finding government information. Agencies may accomplish this, for example, by specifying and disseminating "locator" information, including information about content, format, uses and limitations, location, and means of access. "

In this situation, it is clear that those secondary information providers who have submitted comments to date overwhelmingly oppose the elimination of the unique classified paper files. We join that opposition for the reasons stated above and since to eliminate those records at this time would be to seriously undermine effective information dissemination to the American public in a



manner which would add significantly to intellectual property conflict and litigation costs to American and international business interests.

Respectfully submitted,

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Brian D. Anderson

A handwritten signature in black ink, appearing to be "Roberta S. Bren", written over a horizontal line.

Roberta S. Bren

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Kathleen Cooney-Porter

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Colette Durst-Barkey

A handwritten signature in black ink, appearing to be "P. Jay Hirfes", written over a horizontal line.

P. Jay Hirfes

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Jonathan Hudis

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Jeffrey H. Kaufman

A handwritten signature in black ink, appearing to be "David J. Kera", written over a horizontal line.

David J. Kera

A handwritten signature in black ink, appearing to be "Jordan Weinstein", written over a horizontal line.

Jordan Weinstein