

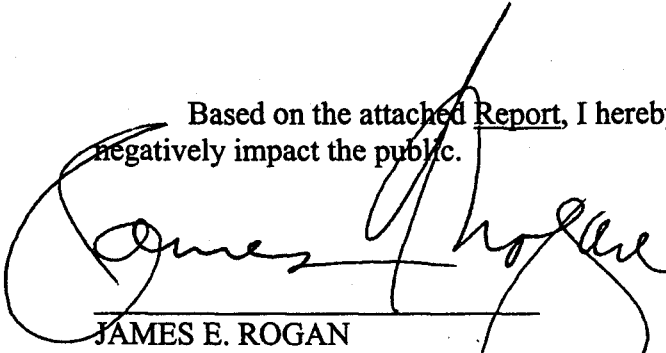
CERTIFICATION CONCERNING CERTAIN PAPER PUBLIC SEARCH COLLECTIONS OF THE USPTO

This certification is submitted pursuant to section 4804(d)(2) of the American Inventors Protection Act of 1999. This provision requires that the United States Patent and Trademark Office not cease to maintain for use by the public its paper or microform collections of United States patents, foreign patent documents, and United States trademark registrations, except pursuant to notice and opportunity for public comment, and except that the Director shall first submit a report to the Committees of the Judiciary of the Senate and the House of Representatives detailing a plan to do so. The report must certify that the implementation of the plan will not negatively impact the public and include a description of the mechanisms in place to ensure the integrity of the collections and the data contained therein, as well as to ensure prompt public access to the most current available information. For the reasons discussed below, I now certify that the USPTO plan to eliminate a substantial portion of the paper copies of collections in its public search facilities and to rely upon electronic, microform and retained paper collections as outlined in the attached Report of the USPTO Concerning Certain Paper Public Search Collections (Report) will not negatively impact the public and should be implemented.

By letter of July 24, 2002, I submitted to you a plan for the USPTO to migrate to an Electronic Public Search Facility. That plan was challenged in the United States District Court for the Eastern District of Virginia. As a result of the litigation, it became apparent that some issues were not fully explained at the time of the initial certification. In order to permit the USPTO to more fully address these concerns and to make any necessary modifications to the original plan, the plan was rescinded on December 9, 2002. Upon rescission of the plan, the USPTO made arrangements for, and began, updating its public search collections that had been frozen following the original certification.

As discussed in the attached Report, the plan provides for the removal of the classified United States patent paper collection and of those trademark registrations containing only word marks. The plan has been amended from its original version to provide for the retention of a portion of the trademark registration collection that contains design coding. In addition, the plan includes continued maintenance of the paper collections of plant patents in the public search facilities, and retention of the foreign patent documents in the examiner search files. A subsequent certification will be made if the USPTO determines to remove additional paper collections. I also note that the functionality of the USPTO's classified paper files is fully duplicated by a combination of secure and reliable electronic systems and certain paper and microform files to be retained for use by the public. In addition, the original record copies of all patents and trademark registrations will continue to be maintained.

Based on the attached Report, I hereby certify that its implementation will not negatively impact the public.

A large, stylized handwritten signature in black ink, appearing to read "James E. Rogan". The signature is written over a horizontal line that serves as a baseline for the printed name below.

JAMES E. ROGAN

Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

MAY - 9 2003

**REPORT OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
CONCERNING CERTAIN PAPER PUBLIC SEARCH COLLECTIONS
MAY 7, 2003**

SUMMARY: The United States Patent and Trademark Office (USPTO) has established a plan to provide public access to United States patents, foreign patents and trademark registrations primarily through electronic search systems. The USPTO has determined that, with the exception of trademark registrations containing design elements, its electronic systems permit the public to search for and retrieve this information in compliance with 35 U.S.C. § 41(i). This plan will permit the USPTO to eliminate a substantial portion of the redundant paper patent and trademark registration collections. This plan will be implemented if the USPTO Director determines that doing so will not negatively impact the public and so certifies to Congress.

Section 4804(d)(1) of the American Inventors Protection Act of 1999 (AIPA) amended 35 U.S.C. § 41(i)(1) to provide the USPTO the option of maintaining collections of United States patents, foreign patent documents and United States trademark registrations in electronic form. Section 4804(d)(2) required that the USPTO eliminate paper and microform copies of such collections only pursuant to notice and the opportunity for public comment, and only after submitting a report to the Committees on the Judiciary of the Senate and House of Representatives detailing its plan and certifying that implementation of the plan "will not negatively impact the public." The plan must also ensure the continued integrity and accessibility of the collections.

The decision to cease maintaining a portion of the paper collection in the public search rooms must be viewed in light of the current statutory requirements for maintaining such collections for public use. 35 U.S.C. Section 41(i)(1) requires the USPTO to maintain for use by the public "paper, microform, or electronic" collections of United States patents, foreign patent documents, and United States trademark registrations arranged to permit search for and retrieval of information. Consequently, the "paper, microform or electronic" collections should together allow the public to search and retrieve this information. If a substantial portion of the paper collections is eliminated from the public search room, the remaining paper, microform and electronic collections must still allow the public to search for and retrieve the information without significant impairment. Included within the electronic collections are various electronic data bases, including the primary electronic search systems used by the USPTO in examining patent and trademark applications and various CD and DVD-ROMS. As discussed below, the existing electronic and microform data bases, along with the retained paper collection, will satisfy the USPTO's statutory obligation with respect to making its collections searchable and retrievable to the public after the elimination from the public search rooms of a significant portion of the paper copies of the collections. This finding supports a certification to Congress that the elimination of a significant portion of the paper copies of the collections will not negatively impact the public.

After providing an initial opportunity for public comments on development of the plan, the USPTO published a proposed plan in the Federal Register on April 9, 2002. A public hearing on the proposed plan was held on May 16, 2002, on the USPTO's campus. On July 24, 2002, the

USPTO promulgated a plan for removal of a portion of its paper public search collection. The USPTO's decision was challenged in an action entitled National Intellectual Property Researchers Association, Inc. v. Rogan, No. 02-1253-A (E.D.VA.). This litigation focused attention on certain issues raised in the public comments that had not been fully explained in the initial plan. On December 9, 2002, the Congressional certification accompanying the original plan was rescinded.

This notice reflects the USPTO's further consideration of its plan to eliminate a substantial portion of the paper copies of collections in its public search room and to instead rely upon electronic and microform collections (along with certain retained paper collections) for the public to search for and retrieve the information. That consideration has led the USPTO to modify its plan, in particular to retain a portion of the trademark registration collection that includes design coding. In addition, the plan includes continued maintenance of the paper collections of plant patents in the public search facilities, and retention of the foreign patent documents in the examiner search files. The plan, as modified, is detailed herein. This notice explains the bases for the conclusion that eliminating a substantial portion of the paper copies of collections in the public search room will not negatively impact the public with respect to searching and retrieving the patent and trademark collections.

The conclusion of the report and the recommendation to the Under Secretary and Director is that the plan will ensure the continued integrity and accessibility of the collections.

INTRODUCTION

The USPTO's public search collections consist of multiple overlapping and duplicative data sources. The paper collections available at the public search rooms on the USPTO campus include paper copies of U.S. patents and trademark registrations, organized so as to be directly searchable by hand. In addition, paper copies of trademark registrations are maintained by registration number, and recent U.S. patents are maintained in paper form by patent number. A parallel microfilm collection organized by patent number also exists for almost the entirety of the U.S. patent collection.

The USPTO also maintains multiple parallel electronic public search systems. The USPTO's primary electronic patent search systems consist of the Examiner Automated Search Tool (EAST) and the Web-based Examiner Search Tool (WEST), which permit searching patents by classification as well as provide a capability to search the full text of many recent patents. EAST and WEST have essentially identical capabilities but utilize different user interfaces.

In addition, the AIPA amended 35 U.S.C. 122 to provide for the publication of pending patent applications, with certain exceptions, promptly after the expiration of a period of eighteen months from the earliest filing date for which a benefit is sought ("eighteen-month publication"). See *Changes to Implement Eighteen-Month Publication of Patent Applications*, 65 FR 57023, 57024 (Sept. 20, 2000), 1239 *Off. Gaz. Pat. Office* 63, 64 (Oct. 10, 2000) (final rule). The USPTO has been publishing patent applications ("patent application publications") electronically under the eighteen-month publication provisions of the AIPA since March of 2001. Published patent applications are not subject to the requirements of 35 U.S.C. § 41(i), and the USPTO does

not maintain paper copy collections of these patent application publications in the public search room. The Office expects that, due to their earlier publication date, these patent application publications will over time replace patents as the primary prior art and technology dissemination document. *See Changes to Implement Eighteen-Month Publication of Patent Applications*, 65 FR at 57042, 1239 *Off. Gaz. Pat. Office* at 79 (response to comment 27). Thus, a complete prior art search must include a search of relevant patent application publications. Therefore, for the prior art search to be complete, any person conducting a prior art search must conduct an electronic search of these patent application publications.

With respect to trademarks, the primary search system is X-Search, which permits searching all words contained in a trademark or elsewhere in a trademark registration certificate by field of information and retrieval of trademark registration data in text form. An additional system, known as the Trademark Information Capture and Retrieval System (TICRS), contains images of all trademark registration certificates.

In addition, the agency makes available complete patent and trademark registration collections in searchable form on the World Wide Web. At both its public search facilities in Arlington, Virginia, and at Patent and Trademark Depository Libraries around the country, the USPTO provides DVD-ROM and CD-ROM based systems that replicate the data and functionality of its EAST, WEST, and X-Search systems.

This report considers whether the extensive electronic and microform collections, supplemented where necessary with limited portions of the existing paper collections, will maintain the integrity and accessibility of such collections so that the public can still search and retrieve the required information without significant impairment. Several developments make this issue ripe for consideration. The growth of these paper collections has put a significant strain on the USPTO's limited budget. The USPTO's paper classified files occupy over 40,000 square feet of space in office buildings in Crystal City, and their maintenance requires the USPTO to incur over three million dollars per year in printing, filing, and space rental costs.

Consistent with the President's e-government initiatives, the USPTO has been moving to substantially complete reliance on electronic search systems. Patent examiners and trademark examining attorneys have used the electronic search systems daily since their inceptions. The USPTO's trademark examining attorneys have relied exclusively on the electronic search systems since before 1990. The USPTO is conducting a phased elimination of its patent examiner search collections by patent classification; to date approximately 50% of its search files have been removed and examiners working on these classifications rely exclusively on the electronic systems. In addition, a further 25% (for a total of 75%) of its search files have been identified for removal. Thus, the USPTO has substantial feedback on and confidence in the adequacy of its electronic search systems.

The public has been making a similar change in its own searching practices. The use of electronic systems by public searchers has so increased that the number of electronic workstations in the public search facilities has increased from 33 in 1999 to 135 in 2002 to meet significantly higher demand. In Fiscal Year 2001, on-line system hours used by the public in the USPTO's public search facilities totaled 90,990 hours, an increase of 36,357 hours over the

previous fiscal year. For Fiscal Year 2002, on-line hours were 113,396. Usage continues to increase, with a total of 15,200 hours for March 2003 alone.

The responses to public comments and the discussion below of the various information sources available, both within the public search facility and elsewhere, detail the manner in which the USPTO ensures the integrity and accessibility of information. In addition, the USPTO also protects the integrity of this information by ensuring its security. Terminal access to the system files is restricted to personal computers and a server console terminal. The terminals are located in a staffed area and the rooms are locked and access is restricted 24 hours a day. Furthermore, specific software features are in place to prevent unauthorized access to system files from the outside. On-site system monitors verify that security procedures are followed.

The public may access the USPTO databases through the workstations in the public search rooms, but this access is restricted to reading data only. Access to the database servers on the public workstations is possible only through a secure subnet that is protected by a firewall exclusively dedicated to the public workstations. A network proxy server in the secure subnet works in concert with the public workstation firewall to prevent direct contact between the public workstations and the USPTO server.

The USPTO provided several opportunities for the public to comment on issues related to the removal of classified paper collections from the USPTO'S public search facility. *See Notice of Request for Comments on Development of a Plan to Remove the Patent and Trademark Classified Paper Files From the Public Search Facilities*, 66 *Fed.Reg.* 45012 (Aug. 27, 2001), 1250 *Off. Gaz. Pat. Office* 137 (Sept. 25, 2001). The notice was also available on the USPTO web site at www.uspto.gov. A total of 50 comments were received and made available for viewing on the USPTO web site. Comments were reviewed and analyzed. A plan for an electronic public search facility proposing the elimination of paper collections was developed addressing the issues raised during the public comment period pertaining to the issue of migrating from a paper-based public search facility to an electronic public search facility.

The Proposed Plan for an Electronic Public Search Facility was subsequently published in the Federal Register in April of 2002. *See Notice of Public Hearing and Request for Comments on the Proposed Plan for an Electronic Public Search Facility*, 67 *Fed. Reg.* 17055 (Apr. 9, 2002), 1258 *Off.Gaz. Pat. Office* 18 (May 7, 2002). The public hearing was held on May 16, 2002, on the USPTO's campus. Ten speakers were present, and a total of 22 comments were received and posted to the USPTO web site. The transcript of the public hearing was posted on the USPTO web site on May 31, 2002.

The first section of the following report addresses the principal comments that the USPTO received. Following rescission of its July 24, 2002, certification, the USPTO has reevaluated the issues raised or implied by the public comments received. It has modified its plan to fully address these issues, and has determined that continued maintenance of one portion of the paper public search files, namely, trademark registrations containing design elements, is necessary in order for the public to search and retrieve this collection. On many issues as to which the USPTO has not modified its original plan, this report provides a fuller explanation of why its

electronic and microform search systems are adequate to enable the public to search and retrieve the collections.

The second section of this report provides the USPTO's plan, detailing what public search resources will be maintained and what paper copies in the public search files will be removed. This section further details how often these search resources are updated, thereby ensuring prompt public access to the most current available information, and the mechanisms in place to ensure the integrity of the collections.

I. RESPONSE TO PUBLIC COMMENTS TO THE PLAN NOTICE

The USPTO has carefully considered all comments it received concerning its proposed plan. The significant issues raised in the comments and the USPTO's response thereto are set forth below.

1. Plant Patents

Plant patents are uniquely dependent on photographic images accurately depicting subtle shades of color, and the USPTO has not developed an electronic system capable of adequately rendering such images. The USPTO will maintain a collection of classified paper copies of plant patents in the public search room unless and until adequate substitute technology is developed and a subsequent determination is made.

2. Design Patents

One commenter pointed out that not all design patents had been scanned and made available in the electronic systems. The USPTO has now completed entry of all design patents and will remove paper copies of these patents from the public search rooms. The USPTO has removed all paper copy collections of design patents from its examiners' search rooms; examiners now search design patents exclusively from the USPTO's electronic collections.

3. Foreign Patents

One commenter believed that implementation of the plan would curtail public access to classified foreign patent collections. Foreign patents historically have been and will continue to be made available to the public in the USPTO's examiner search rooms and its Scientific and Technical Information Center. As this information is not housed in the public search room, this plan does not include any change to the means by which the public will be provided access. Thus, implementation of the plan will in no way curtail public access to these files.

4. Patent Document Viewing and Printing

One commenter asserted that EAST and WEST are less convenient than paper because they permit printing patent images only one page at a time. This is inaccurate. Each workstation in the public search rooms is connected to a stand-alone and/or a network printer, and permits the

printing of an entire patent image file with a single command (in fact, multiple patents contained in a search result can be printed at once). The USPTO's USAPat DVD-ROM also permits printing an entire patent image with a single command. Similarly one commenter asserted that additional software was required to view patent drawings and chemical structures. The workstations in the public search rooms are fully equipped with all software (and hardware) necessary to view all information contained in all publicly available USPTO databases.

The comment appears to confuse the functionality of EAST and WEST with that of the USPTO's Internet-based patent search tool, which does limit printing to one page at a time. Some users' computers may require additional software to fully utilize USPTO products available over the Internet or by subscription. The USPTO strives to make electronic access as convenient as possible for those users who choose not to come to the public search rooms. These users do not access the USPTO's paper collections, however, and removal of paper files will not cause them inconvenience.

Several commenters complained of eyestrain when using the 21-inch Cathode Ray Tube (CRT) monitors in the public search rooms. The USPTO is committed to providing public users with the best available technology. The 21-inch CRT monitors were state-of-the-art when installed, and provide excellent viewability. The USPTO has replaced 50% of the CRT monitors in the public search rooms with 21-inch Liquid Crystal Display (LCD) monitors, which many users find provide greater ease of viewing. Purchase of additional LCD monitors depends on technological and budgetary considerations. Workstation components are on a scheduled replacement cycle, and it is anticipated that the remaining CRT monitors will be replaced within several years.

5. The Patent Classification System

Several comments concerned the USPTO's continued maintenance of the patent classification system. The USPTO maintains a database, known as the Master Classification File, which lists each patent contained in each class and subclass. This list, which is maintained electronically in various forms, is used to guide the filing of paper copies in the public and examiner search collections, and is the basis for electronic searching by classification. Because the same classification system is used as the basis for both paper and electronic searches, any perception of flaws in classification of patents is a neutral factor with respect to whether paper copies of classified patents can be eliminated from the public search facility. Thus, while no classification system can be perfect, perceived defects in the USPTO's classification system do not create a reason to retain a classified paper collection in addition to an electronic collection that is also searchable by the same classification system.

The USPTO has historically classified, and continues to classify, each patent it grants. It also undertakes ongoing reclassification efforts, which become necessary as changing technology reduces the utility of existing classes and subclasses. The USPTO has proposed in its current strategic plan to outsource its reclassification efforts and to slowly transition from the existing U.S. Classification system to a revised international classification system, developed as a result of the current efforts by the USPTO and other intellectual property offices to harmonize the existing patent classification systems. No final decision has been made, and changes to the

classification system as well as the amount of resources to be allocated to patent reclassification are policy decisions that must be considered in the context of many internal and external factors.

Patent classification provides one technique for searching with the electronic systems; it is the only available method for searching the paper classified files. The patent classification system is not germane to retention of the paper classified files.

6. Quality of Patent Database Images

The United States patent image database contains the complete set of patents granted from 1790 to date. Every patent included in the paper classified files is included in the image database, making it the electronic equivalent of the paper files. Certain members of the public commented that some patent images available electronically are missing or contain illegible pages.

Because the public will have access to patent documents in alternative media (i.e., bound volumes and microfilm), should a public searcher come across a missing or illegible page, the user can easily access the patent document through an alternative media. The two primary electronic patent search tools, EAST and WEST, each perform classification-based searches using the Master Classification File of patents in each class and subclass. Users perform classification-based searches by entering a classification (i.e. class and subclass). The system then returns a list of patents within this field, and provides a means of retrieving an image of each patent on the list. Because the master classification file is created independently of the patent images, any missing or defective image will not affect the search result. Instead, any image problem will become apparent when the user attempts to retrieve the image of a particular patent. If this occurs, the user can record the patent number as displayed by EAST or WEST and retrieve the patent from microfilm records or the bound paper copies of patents, both maintained in the patents public search room. Microfilm in the public search room covers all patents issued between 1790 and 1999. The bound paper patents include those issued in the most recent ten years.

It is also important to note that image problems affect a small fraction of a percent of the over six million patents in the USPTO's electronic public search collection. The paper classified patent files were scanned into the image database over a period of time and scanning technology and techniques improved as the project progressed. Some images of non-text documents scanned early in the process are of less than optimal quality, and, in a small number of cases, errors such as page omissions, occurred during this process. As part of its transition plan, the USPTO is identifying patents to be rescanned to correct these problems. In order to ensure the integrity of the process and to obtain the best possible image quality, rescanning is performed from the USPTO's official record copy of the patent, rather than from the copies housed in the public search facilities.

Through this sustained effort, the USPTO has reduced the number of patents with missing images or image pages to 960, which represents approximately .016% of issued patents. The images or pages at issue were not lost or disposed of during the current effort to move towards an electronic public search room, but have been missing long before the current effort to move towards an electronic public search room. Where patent copies are present in paper form in the

public search facilities, the USPTO has already scanned them to correct the missing images or pages in the electronic database. The remaining 960 patents are not present in the public search room in any form. While the USPTO is attempting to obtain them from other sources, it is possible that paper copies of these patents may not exist anywhere. Because the images missing from the electronic database are also missing from the paper files in the public search rooms, removal of the paper files will not have a negative impact on the public.

Image-related problems also affect the USPTO's paper and electronic copies of approximately 13,000 patents that include photographs. Production and reproduction of patents containing photographs is challenging because the photographs are difficult to effectively render when patents are printed, and the scanning and display systems used for the electronic system have not always resulted in good quality images. In some cases, neither the paper copy of the patent in the public search room nor the electronic copy contains a good reproduction of the photograph. The public will continue to have access to microfilm or bound paper copies of the patents, however. Moreover, as is now the case, a member of the public encountering an image of less than optimal quality may request access to the patent file through the USPTO File Information Unit and examine the original photograph as it was submitted to the USPTO. For these reasons, removal of the paper classified files will not impair the accessibility or retrievability of patents containing such images.

In September 1998, the USPTO began printing paper patents and populating the EAST and WEST database from a common electronic source database. At this time, the scanning process responsible for the image problems described in the public comments ceased to be employed. This may obviate the need for bound paper patents as a backup for patents issued after September 1998. However, under the current plan, the USPTO will continue to maintain the bound paper collection, thus ensuring that all patents are available in microfilm or paper form. In short, any remaining image problems will not preclude retrieving and accessing patents.

7. Patent Text Search Database

The USPTO received a number of comments concerning aspects of the patent text search database and problems associated with searching for patents utilizing that system. Those concerns do not, however, bear on the issue of whether to continue to maintain the paper classified patent files. Because text searching cannot be performed with the paper files, the limitations of text searching using EAST and WEST are irrelevant to the issue of whether the paper files should be maintained. The patent text search system provides a capability that is not available with the paper files and thus provides an additional service to public and internal searchers that is not available using either electronic or paper classified search files. This capability is a valuable tool which the USPTO intends to enhance. However, the USPTO does not consider the text searchable database to be the replacement for the classified paper patent files.

Some have asserted that electronic searching is not as effective or reliable as paper searching. All such comparisons of which the USPTO is aware, however, are between electronic text searching and paper-based classification searching. It is to be expected that a comparison between electronic text searching and paper-based classification searching will yield greater

results for the latter. The USPTO's patent text database is a supplemental collection containing no patents issued before 1970, and has complete coverage only of those patents issued after 1975. Further, text searching is fundamentally different from classification searching, and is likely to lead to different results.

For those patents for which text searching is available, it may be more or less effective than classification-based searching, depending on the skills of the searcher and the exact nature of the search. One of the most effective uses of the text search feature is to permit easy navigation among those patents retrieved using an electronic classification search.

Retaining the paper classified files is not necessary, however, to permit public classification-based searching. Classification searches using EAST and WEST constitute electronic searches of the same Master Classification File that guides the filing of paper patent copies in the public search room. Performing a classification-based search using EAST or WEST will provide a result identical to that obtained through a paper-based search, except that, to the extent the paper search is affected by missing or misfiled paper documents, the EAST or WEST search will be more complete.

8. Trademark Registrations Containing Design Elements

Trademarks consist of words, designs, or both. Words in trademarks generally can be searched directly (using an alphabetic system in the paper files and a search engine in the electronic systems). Designs in trademarks must be classified based on the elements they contain (for example, circles) before they can be searched. The design classification system used for the paper files is unique to the USPTO, but the electronic systems utilize the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks. Codes established under the Vienna Agreement are assigned to trademark applications that contain designs at the time they are filed. Several comments addressed mistakes in the assignment of these codes in the electronic copy of the trademark application. One commenter asserted that there was a 52% error rate in the design codes assigned to trademark applications during one week in 2001. A subsequent USPTO study found a 19% error rate among a random sample of 1009 applications filed between January 2001 and March 2002. The USPTO has taken steps to ensure that the quality of the design coding of incoming trademark applications is improved. However, after considering these comments, and the USPTO study of this issue, the USPTO has decided for the time being to retain its paper collection of classified trademark registrations containing design elements. It must also be noted that the comment cites a study of trademark applications, whereas the USPTO is required, by statute, only to maintain collections of trademark registrations. 35 U.S.C. § 41(i)(1). Thus, the cited study is not a valid comparison.

9. Issues Concerning Word Trademarks

The same concerns do not arise as to trademark registrations of word-only marks. One commenter provided one example of a trademark registration in which the text of an amendment had been entered in the electronic record, but the electronic record included the drawing contained in the original trademark application rather than the one substituted in the amendment. This error would not prevent retrieval of the trademark registration using a word search. The

official paper copies of all trademark registrations are and will remain available in the public search room in numerical order in bound volumes. This error affected only the trademark drawing, and all trademark registrations containing design elements are contained in the classified design files which are being retained as discussed above.

The same commenter objected that the electronic search systems do not contain records prior to 1983. The records of unexpired trademark registrations are equally complete in both the classified paper and electronic collections. The electronic database does not contain trademark registrations that expired or were cancelled before 1985. However, in this respect, the electronic database contains more information than the paper files, which are periodically purged of cancelled and expired registrations. The last purge of the paper files was performed in 1998-1999, when registrations that were cancelled or expired prior to 1990 were removed. Trademark registrations that expired or were cancelled prior to 1990 are recorded on microfilm. As set forth in the proposed plan, the USPTO will continue to retain this microfilm in the public search room.

While none of the comments set forth specific errors in the trademark registration search systems other than design coding issues, data quality was of general concern to the commenters, and is a major focus of the USPTO's efforts. The USPTO's database is originally populated with the information contained on trademark applications. Every paper-filed application is converted by optical character recognition (OCR) technology into text that can be manipulated. As part of the data entry process, the image of the word mark is brought up on the screen and, using a copy and paste function, the data entry person identifies the applicant-supplied typed drawing using the data entry system (Tradeups). When all data items have been identified, the application data is transferred to the Trademark Reporting and Management system (TRAM). The OCR engine has historically proved to be very accurate in its ability to convert scanned images, although the quality is directly linked to, and varies with, the quality of the original documents. Thus, there are very few opportunities for the data entry person to introduce changes to the typed drawing as the applicant supplied it in his application.

Even with that very high rate of accuracy, both the data entry person and, independently, the quality reviewer, review every word mark before the filing receipt is issued to the applicant by comparing the word mark from the image of the application in TICRS with that which was copied and pasted into TRAM. In order to provide an additional assurance that information in the database with respect to registered trademarks is accurate, trademark examining attorneys are required to verify that trademark applications are correctly entered in the database and are retrievable through X-Search prior to registering the trademark.

Since 1985, paper copies of trademark registrations, as well as the paper filed in the public search room, have been generated using the same text database used by X-Search. While a different process was used between 1983 and 1985, paper copies of registrations issued in this period were derived from the same electronic source used to populate the searchable text database. Thus, for trademarks issued after 1983, any keying or OCR errors that occurred not only would equally affect the paper classified files and X-Search, but also would be present in

the official trademark registration certificate itself.¹ Because of the redundant checks in place, the accuracy of word marks in the X-Search database is extremely high, and far exceeds the accuracy with which marks are alphabetized and filed in the paper search collection. Words on the trademark registration other than the mark itself are not subject to the same level of redundant checks. However, searches based on such words are not a primary means of retrieving trademark registrations, and cannot be performed at all using the paper collection.

While nothing submitted to the USPTO during the comment period leading to the original certification indicated any data entry problem except with respect to design classifications, such problems were alleged in the course of the subsequent litigation. The USPTO has reviewed these allegations and determined that they do not indicate problems that compromise the public's ability to electronically search and retrieve trademark registrations.

Specifically, the plaintiff in the litigation alleged that a total of 11 trademark documents contained a misspelled version of the word "restaurant", 8 contained a misspelled version of "health," and 8 contained a misspelled version of the word "government". To begin with, the majority of the records involved were pending or abandoned trademark applications; only a minority were trademark registrations subject to 35 U.S.C. § 41(i). Second, in all but two cases, the misspelled word was not in the trademark itself, but appeared in some other electronically searchable field of the document. Only words that actually form part of a trademark are alphabetized and retrievable in the paper search files. Misspellings in other areas of the electronic documents do not affect X-Search's ability to duplicate the functionality of the paper files.

Of the two instances in which a misspelled word appears in a mark itself, only one concerns a trademark registration. In this case, (reg. no. 1762708) the word "government" appears as part of a stylized mark, and was apparently mis-rendered as "goverment" when a normal-text "pseudomark" was created to permit text searching through X-Search. However, the word "government" is correctly spelled in another section of the certificate, and the trademark could therefore be retrieved in a search based on the correct spelling of the word. This is a capability that does not exist in paper files that, when misfiled, are not retrievable by other words on the registration.

Moreover, words in trademarks often contain deliberate deviations from the commonly accepted spelling of English words. Because these deviations are not always predictable, a competent searcher must adopt a search strategy designed to retrieve any possible alternative spellings that may exist. The electronic system includes capabilities designed to facilitate this. A search can be performed using the first few letters of a trademark, mimicking the way the alphabetically organized paper classified files are searched. In the example above, a search for words beginning with the letters "gov" or "gover" would retrieve the misspelled pseudomark, as well as

¹ To be useful, the public search systems, paper or electronic, must accurately reflect the contents of the legally effective trademark registration certificate, regardless of whether that certificate may contain errors introduced in the course of the USPTO's examination process. The USPTO has procedures in place both to ensure the accuracy of registration certificates and to correct issued certificates where this is warranted.

trademarks that contain deliberate misspellings such as "governmints" (the subject of an abandoned application). Because searchers routinely account for deliberate deviations in spelling, an inadvertent deviation that somehow evaded the USPTO's multiple quality checks would be unlikely to prevent retrieval of the trademark. In short, reliance on electronic searches should not adversely affect the searchability and retrievability of word mark registrations.

A commenter also asserted that governmental insignia protected by U.S. Law or Article 6ter of the Paris Convention for the Protection of Industrial Property are not available in X-Search. While these insignia are not trademark registrations, they have been added to X-Search and are now searchable electronically.

10. System Back-Up and Downtime

Some commenters suggested that the USPTO's electronic search systems shut down too frequently. The USPTO has in place procedures for reporting problems with system access and procedures for tracking progress and resolution of these problems. Since published applications (as opposed to issued patents) are only available in electronic format, the USPTO has stringent service goals in place to ensure maximum system availability for examiners and public access.

The potential for temporary system problems, nevertheless, exists with any computer-based system, and the USPTO's EAST, WEST, X-Search, and TICRS search systems are no exception. In addition to being made available in the public search rooms, the electronic search systems are relied upon primarily or exclusively by the USPTO's patent examiners and trademark examining attorneys. Because system downtime causes expensive disruptions to the USPTO's operations, the USPTO has invested and continues to invest significant resources in improving system reliability.

The USPTO has reviewed its help desk records to determine the extent of system downtime in 2002. Except for the last two weeks of the year, the patent public search room was open 60 hours per week, or approximately 3000 hours for the year. Of this time, EAST and WEST were simultaneously unavailable for only approximately 43 hours. During another 18 hours, EAST or WEST was down, but the other search system was available. Thus, both systems were available for nearly 98% of the search rooms operating hours, and at least one system was available over 98% of the time.

The trademark public search room is open 40 hours per week, or approximately 2000 hours per year. In 2002, X-Search was down for only approximately 30 hours during operating hours, and TICRS was down for about 15 hours. Thus, X-Search, the primary search system, was available over 98% of the time, and both systems were available nearly 98% of the time.

Even in the absence of backup systems, shutdowns of such infrequency would not constitute a significant impairment of public access to the patent and trademark registration collections. However, even during such failures, other redundant collections continue to be available. With respect to the patent collections, researchers could continue work during a failure of EAST and WEST by using the Cassis 2 system to identify patents in a specific class or subclass, and then retrieving these patents by patent number from the USAPat DVD-ROM or the microfilm and

bound paper collections, all available in the public search room. The Cassis 2 system is a DVD-ROM product available for use in the public search facilities. It is available either as a stand-alone product that operates independently of EAST and WEST and the USPTO computer network, or is available via the Universal Public Workstation. It permits users to search the Master Classification File, which forms the basis for EAST and WEST searches as well as for filing the classified paper copies of the patents. Public users in 59 Patent and Trademark Depository Libraries (PTDLs) do not have access to EAST, WEST or the classified paper files, and search patents using Cassis 2 and the USAPat DVD-ROM.

With respect to trademark registrations, should X-Search be unavailable, searchers can use the stand-alone trademark registration CD-ROMs, which provide the same capability as X-Search and are independently available. Images of actual trademark registrations certificates are available from the USAMark CD-ROM, which provides the same images as are available through TICRS. As with Cassis 2 and USAPat, these CD-ROMs are regularly used at the 83 PTDLs where access to X-Search and TICRS are unavailable.

Occasional system downtime in the USPTO's main computerized systems can be minimized but not entirely eliminated. Such occurrences may cause some inconvenience to public search room users. The multiple backup systems that the USPTO maintains, however, mitigate the effects of such downtime so that such occurrences do not significantly impair the searchability and retrievability of patents and trademark registrations. The rarity and brevity of shutdowns and the availability of alternatives during such periods establish that the public will not be harmed by elimination of the classified patent and classified word trademark registration paper files.

11. Training

Some public comments were received concerning the adequacy of training on the use of electronic search systems. The USPTO public search room includes a 12-workstation training facility, and the USPTO provides separate monthly classes on the use of EAST, WEST, and X-Search. Additional sessions can be scheduled at the request of users. Further, the USPTO provides special classes when significant enhancements are made to the electronic search tools. Knowledgeable personnel will continue to be available in the public search room to assist in performing searches using all resources the USPTO continues to maintain.

12. Methods Used to Report Errors from the Public

Some public users felt that there was no standard procedure for the public to report data errors. When errors are found in paper, microform, or electronic resources located in the USPTO public search facilities, there is a mechanism in place to report these errors to the appropriate USPTO office responsible for the data. These error reports are provided to the staff of the public search facilities, which passes them along to the appropriate office that can address the particular error. On October 1, 2002, the USPTO published its final data quality guidelines in accordance with guidance from Office of Management and Budget. These guidelines complement all pre-existing mechanisms for information quality at the USPTO and provide for a feedback loop that ensures a response is provided for each inquiry or error submitted. It is important to recognize that the public search facilities' mission is limited to providing accurate, retrievable copies of the official

documents issued by the USPTO. The USPTO's procedures for permitting changes in or corrections to the official documents themselves, and the circumstances under which such changes or corrections may be permitted, are beyond the scope of this plan.

II. PLAN

After reviewing the comments received on the proposed plan, the USPTO has determined that the following plan to remove a substantial portion of the paper copies of collections from the public search facilities will ensure the continued integrity and accessibility of the collections:

UNITED STATES PATENTS:

Primary public access to United States patents will be provided through the search systems known as EAST and WEST. These two systems were developed for use by the USPTO's patent examiners and constitute examiners' primary search tools. EAST and WEST provide similar search capabilities but operate through different user interfaces; both are made available so that users may use the interface with which they are most comfortable.

EAST and WEST allow users to retrieve images of all patents within one or more specific classes or subclasses. Thus, they duplicate the functionality that is currently available using the paper classified files. Both systems also permit users to search the full text of United States patents issued since 1975, as well as of some patents issued between 1970 and 1975. EAST and WEST are both updated on the same day that patents are issued, making patent documents retrievable on the same day the patent is issued.

Plant patents will continue to be made available in paper form organized by classification in the patents public search room. Foreign patents will continue to be available to the public in the examiners' classified paper search files.

In addition to EAST and WEST, various supplementary and back-up systems will remain available. Patent images are available through USAPat, a stand-alone DVD-ROM product that can also be accessed through the workstations in the USPTO's patents public search room. USAPat permits retrieval of images by patent number, but, unlike EAST and WEST, does not permit search by classification. USAPat is updated weekly with new patents appearing approximately two weeks after issue date.

Microfilm images of patents issued through 1999 and arranged by patent number will continue to be made available in the public search room. Bound paper volumes covering patents issued in the last ten years will also continue to be made available. The bound volumes are, like the microfilm, arranged in numerical order. Patents are available in a bound volume approximately two days after the issue date.

Access to Cassis 2 will continue to be provided in the patents public search room. This product permits users to obtain a list of all patent numbers in a specific class or subclass. Used in connection with USAPat or the microfilm and bound paper collections, Cassis 2 permits users to

perform classification searches without using EAST, WEST, or the Internet-based search system. Cassis 2 is updated bimonthly.

Search capabilities similar to those available in EAST and WEST are provided through the Internet, from the USPTO's home page. USAPat and Cassis 2 are available for purchase by the public as well as being provided for free public use in the public search facility and the depository libraries.

Although not part of the public search facilities, the official record copies of patents are stored at the USPTO's remote facility in Boyers, Pennsylvania.

TRADEMARK REGISTRATIONS:

Trademark registrations will be made available primarily through X-Search, which permits electronic searches for words in trademarks, other words appearing on trademark registration certificates, and for elements in trademark design elements, using the system set forth in the Vienna Agreement. X-Search also permits searching for government insignia protected by United States statutes or designated under Article 6ter of the Paris Convention for the Protection of Industrial Property. Actual images of trademark registrations will be made available through TICRS, which can be accessed directly from X-Search. Trademark registrations are retrievable on X-Search within 36 to 48 hours of the trademark's registration. Registrations are available on TICRS in approximately three weeks.

Because of concerns raised in the public comments about the accuracy of design coding in X-Search, the USPTO will continue to maintain a paper collection of trademark registrations classified by design elements. Once the USPTO has determined the impact of any design coding issues that are not corrected during the trademark registration process and has taken any necessary corrective measures, it will make a further determination as to retention of the paper classified design elements.

The USPTO will also retain and provide continued access to its microfilm collection of trademark registrations cancelled or expired prior to 1990, as well as bound volumes of all trademark registrations in numerical order. These bound volumes, which are made available in the public search room, constitute the official record copies of registered trademarks. Further, images of all trademark registrations that did not cancel or expire prior to 1985 will continue to be available to public search room users and product subscribers using the USAMark CD-ROM. USAMark is published on a monthly basis and contains all the trademark registration certificates for the preceding month.

The plan will be implemented 15 days after the Under Secretary and Director provides the certification to Congress required by Section 4804 of the AIPA.

III. DETERMINATION AND RECOMMENDATION

For the reasons discussed above, the plan to remove a substantial portion of the paper copies of collections from the public search facilities will ensure the continued integrity and accessibility of the collections. Accessibility of this information will not be restricted; the only changes that this plan will impose upon users will be to require those who still prefer to search the classified paper files to convert to electronic searches, and to require the use of secondary, but equally effective, search systems during occasional system downtime. Based on this analysis, a recommendation is made to the Under Secretary and Director to certify to Congress that the implementation of the above-discussed plan will not negatively impact the public.