

Advocacy Requests that PTO Consider Impact of Patent Application Reform on Small Business

On April 27, 2006, the Office of Advocacy (Advocacy) filed a letter with the U.S. Patent and Trademark Office (PTO) to address small business concerns regarding two proposals by the PTO to reform its patent application process. Advocacy believes that the proposed rules would have a significant impact on small entities and asked the PTO to analyze the impact. A complete copy of Advocacy's letter may be accessed at <http://www.sba.gov/advo/laws/comments/>.

- The proposed regulations would limit to ten the number of representative claims contained in an initial examination of a patent application, as well as restrict an applicant to one continuation application as part of the process. Current rules of practice neither limit the number of claims that are reviewed on initial examination nor the number of permissible continuation applications. The PTO certified under the Regulatory Flexibility Act (RFA) that the changes would not have a significant economic impact on a substantial number of small entities.
- Advocacy's comment letter relayed concerns expressed by small entities about the proposed regulations. Small business interests informed Advocacy that the proposed rules would have a significant economic impact on small entities seeking patents. Small entities asserted that taken together, the two regulations would increase the cost of application preparation and hinder the patent prosecution process. Moreover, they raised concerns that the regulations will significantly impact the most valuable and commercially viable patents, because those types of patents typically involve a higher number of continuations.
- Advocacy believes that the proposals are likely to have a significant economic impact on a substantial number of small businesses. The RFA requires federal agencies to determine a rule's economic impact on small entities and consider significant regulatory alternatives that achieve the agency's objectives while minimizing the impact on small entities. Advocacy requested that the PTO complete an initial regulatory flexibility analysis (IRFA) prior to publication of the final rule. The IRFA would allow the agency to examine the impacts of the proposed rule changes on affected small entities more closely and consider viable alternatives.

For more information, visit Advocacy's website at <http://www.sba.gov/advo> or contact Carrol Barnes at (202) 205-6533.