

Writer's direct phone
(312) 460-5579

Writer's e-mail
pmuffo@seyfarth.com

November 7, 2011

Saurabh Vishnubhakat, Attorney Advisor
Office of Chief Economist
United States Patent and Trademark Office
Mail Stop External Affairs
P.O. Box 1450
Alexandria, VA 22313-1450

Re: Comments Relating to the Study of
International Patent Protection for Small Businesses

Dear Mr. Vishnubhakat:

Seyfarth Shaw, LLP is a multi-national law firm with a prominent intellectual property department that serves clients of all sizes, including small businesses that seek international patent protection. It is with this background that we submit these comments relating to the study of international patent protection for small businesses. Our comments intend to answer the questions provided in the Federal Register Notice dated October 7, 2011.

The Federal Register Notice asks commenters to provide their opinions regarding the role international patent protection may play in the growth and competitiveness of small businesses. International patent protection becomes important to a small business when that business either exports products or services to foreign countries, or when they experience competition from foreign entities in domestic markets. Accordingly, typically the size of the small business is not related to whether international patent protection is important to the business. Factors such as industry (e.g., manufacturing versus services) and output (e.g., specialty manufacturing versus commodities) play a larger role in determining when international patent protection becomes important.

We believe that the key to spurring competitiveness in small business is education about the role international patent protection can play. Rather than fund particular industries/companies, we believe that the U.S. Patent and Trademark Office (PTO) should continue to provide educational workshops/seminars in addition to information on its website. Those should be held through regional small business organizations in order to provide the most direct impact.

The Federal Register Notice also asks how the PTO can best serve small businesses in obtaining international patents. Like the issues discussed above, we believe that education is the best way to provide meaningful information to small business. For example, the PTO can provide a

link on its web page discussing the various cooperative programs between the PTO and other participating patent offices across the world. Examples of such programs include the Patent Prosecution Highway, the Electronic Exchange of Priority Document program, and the Paris Convention. Small companies could benefit from a simple explanation of these provisions that provide them with an understanding of the benefits generated by these programs. We believe that small business can use the educational services to determine the best use of its resources – i.e., whether to invest in international patent protection or not.

The PTO also asks to what extent, if any, the PTO or the Federal Government should play a part in actually funding the filing, prosecution, or enforcement of patents or patent applications owned by small companies. It is our opinion that the PTO should avoid selecting individual companies to which it finances patent operations. The PTO already provides advantages to smaller companies by reducing fees up to 75% depending on the size of the company. To actually fund the operations of small companies would cross the line from encouraging innovation to entering the market place of patent investment. In the private sector, patents and patent applications are licensed every day based on their speculated profitability, and small companies are provided with financing from venture capital firms based in part on the value of their patent portfolio. The PTO and the Federal Government should avoid competing against technical investors and simply continue their role to encourage innovation by providing reduced fees to smaller companies.

* * *

In summary, we believe that international patent protection plays a large part for any size company, and that the PTO should provide assistance to small companies in the form of education and not financing. We appreciate the opportunity to provide our comments regarding the PTO's study of international patent protection for small businesses.

Very truly yours,

SEYFARTH SHAW LLP



Patrick J. Muffo

PTM:dd