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To: The United States Patent and Trademark Office (USPTO)

Comments on Docket No. PTO –P-2011-0016, Changes to Implement Micro Entity Status for Paying Patent Fees

From: Nikolaus E. Leggett, Inventor

Date: June 25, 2012

The concept of having micro entity applicants that are able to pay fees that are reduced 75 percent is an excellent idea. This will help independent inventors many of whom have very limited money available.

However, there are very real limitations to the effectiveness of the micro entity concept. One major limitation is that the threshold of three times the median household income is often impacted by various common economic events in one's individual lifetime. These can include the following: sending children to college, supporting aging parents, unemployment, medical expenses not covered by insurance, other events not covered by insurance, crime, relocation expenses, etc. While the USPTO cannot be expected to correct for such events, it should be aware of them and their impacts on the micro entities.

Another more basic problem is that the USPTO fees are just a small part of the expenses faced by independent inventors. Each independent inventor faces the following major cost components:

1. Developing and prototyping his or her invention
2. Preparing the patent application
3. USPTO fees
4. Protecting the issued patent (including possible court action)

Developing an invention is often quite expensive. A recent article in Popular Science magazine (Reference One) reports the development costs for the inventors who won the magazine's inventions awards contest. Ten inventors or teams won the Popular Science contest. All but one inventor reported a development cost of over \$10,000. Five inventors reported over \$100,000 and one inventor reported a cost of just fifty dollars.

Preparing a patent application involves the services of an attorney with specialized advanced training. This involves the expenditure of thousands of dollars at the least.

The really big cost component is the protection of the patent once it is issued. This involves marketing to investors and potential manufacturers, contractual negotiations, and possible court action against patent infringers. It is likely that most independent inventors cannot afford to defend their patents in court.

This raises serious questions about the future of independent inventors and the patent system itself. If independent inventors cannot defend their patents, then the number of independent inventors will fade over the years declining to very low levels. In a previous docket, I suggested an alternative mechanism to address this problem. In response, a USPTO staffer stated that Congressional action would be required to establish such an alternative. I am aware that Congressional action would be required, but we need to devote several years to examining such alternatives as viable strategies before any specific Congressional action is requested.

This alternative is an inventor's certificate that would be issued by the USPTO. In this process, USPTO staffers would take descriptions and specifications written by the applicants and help the applicants to write their own claims. The application for an inventor's certificate would be examined in the same manner as a patent application. Issued inventor's certificates would then be enforced to a limited degree by the U.S. Department of Justice (DOJ). This inventor's certificate system would be an assisted do-it-yourself approach to patenting. Inventor's certificates could be sold as patents are. However, the DOJ enforcement services would only be provided to the original inventor who is the certificate owner. The cost of this program would be covered by a standardized profit-sharing agreement between the inventor and the Federal Government.

Now, any such alternative mechanism would require years of work by many participants and stake holders in the patent system. There are undoubtedly numerous alternatives to my simple alternative listed above that should also be evaluated. The USPTO needs to move beyond the micro entity mechanism and other fee reduction schemes valuable as they may be, to look at the need for more global approaches to cost controls for the inventive process.

Respectfully submitted,

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U.S. Patents 3,280,929; 3,280,930; 6,771,935

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Reference One: Popular Science Magazine, "6th Annual Invention Awards", June 2012, Volume 280, Number 6, pp. 48 – 60.