

From:

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Subject: Comments - Docket No.: PTO-P-2010-0030]

United States Patent and Trademark Office

[Docket No.: PTO-P-2010-0030]

Request for Comments on Proposed Changes to Restriction Practice in Patent Applications

I commend the USPTO for proposing changes to restriction practice to improve the quality and consistency of restriction requirements made by Office personnel. It has been my experience that examiners are too willing to find multiple inventions and issue restrictions. No amount of traverse argument will normally be sufficient to overcome the restriction. No matter how persuasive an argument on the identified multiple inventions not being a serious burden will normally be sufficient.

I recommend that restriction practice be amended so that there can be no restriction on claims dependent from an independent claim that will be examined. My experience in one case is that a restriction was made to separate out dependent claims in a mechanical invention claimed with a single independent claim and claims dependent therefrom. No matter the argument made in response, the examiner will typically refuse to alter his position and he has little incentive to do so.. The examiner knows that small entity applicants are unlikely to have the funds to pursue a petition.

I also recommend that objections to restrictions be first considered by a panel of 3 examiners, including the examiner's supervisor. The payment of a small fee for this review would be acceptable. And so that the panel is not simply a rubber stamp, they should be given demerits if the applicant petitions for review of the restriction and it is successful. There should be some potential consequence to improper restrictions made so that the applicant knows his expenditure of funds to correct the improper restriction will have some meaning to the examiner and panel members. This might provide a modicum of incentive for the examiner to reconsider an improper restriction. Rejoinder after the fact, as proposed, is less desirable because it necessitates costs to the applicants in responding to the restriction.

Sincerely,

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