

CONQUERING INNOVATION FATIGUE

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For Economic Recovery, Let's Strengthen the Patent and Trademark Office - Not Rob It of Resources

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One of the most interesting patent attorneys on the blogosphere is the inimitable Gene Quinn of IPWatchdog.com. His top five patent stories of 2009 are especially noteworthy. He doesn't exactly hold back on his opinions about these stories, and for the most part I have to agree. All of these stories fit in with the theme of innovation fatigue in some way.

Quinn's Top Story #4, "USPTO Allowance Rate, Backlog and Pendency" is a topic we address in our book and one of grave importance for the economic welfare of this nation. We bemoan the sharp drop in allowance rates and the increased time it now takes to get a patent allowed. We worry that this adds further discouragement to innovators and harms the economy. Quinn makes even bolder statements:

I think the allowance rate, backlog and pendency issues deserve their own place in the top 10 because of the toll that it has had on the US economy, which is inexcusable and darn near treasonous during a recession as bad as anything we have seen since the Great Depression, and perhaps on par with the economic troubles of the late 1970s.

During the first quarter of 2009 the allowance rate for patent applications dipped to 42%. At the end of fiscal year 2009 there were 1,207,794 patent applications pending at the US Patent Office, with 735,961 of those still awaiting first action by a patent examiner, which means that 735,961 patent application had yet to be picked up and even looked at substantively. At the end of FY 2009 the average length to first action by a patent examiner was 25.8 months, and the average total pendency of a patent application was 34.6 months, up from 25.6 and 32.2 respectively for FY 2008. *[Quinn then explains that the real pendency may be 50% higher because people often need to file a new application, a Request for Continued Examination, after the first gets a final rejection. This restarts the clock and obscures just how long it takes on average to get a patent issued.]*

To put this into some historical perspective, take a look at the chart [see Quinn's original article]. You can see that the backlog started its upswing noticeably in 1998, and just went out of control over the last decade. Under the Bush Administration the USPTO held innovation hostage, prevented small businesses, start-ups and entrepreneurs from getting investor funding and that created a drag

on the economy, prevented the creation of new jobs and then when widespread economic disaster hit the Patent Office was unable to play a part in recharging the US economy.

Ouch! But as an inventor and former Corporate Patent Strategist familiar with the pains and burdens of delay, I can't bring myself to disagree! As I continue working with inventors, both within corporations and lone inventors or small teams in start-ups, I have seen a great deal of discouragement when people learn just how long it takes to obtain a patent, and just how difficult it has become. Bold, original, brilliant concepts that need intellectual property to better secure investment are held up and may die due to the ever growing backlog and increasing delays from the PTO.

If we want to conquer innovation fatigue in the United States, we need to give the U.S. Patent and Trademark Offices the resources it needs to provide rapid examination and swiftly reduce the disastrous backlog in cases.

Are we headed in the right direction now? No, I'm afraid not. When our book went to press early in 2009, I expressed relief that past Congressional siphoning of funds from the PTO had ended. Unfortunately, I spoke too soon. What is essentially a tax on innovation came back in the closing days of 2009, as we learn from the nation's leading investigative reporter on patent topics, John Schmid of the Milwaukee Journal Sentinel. In his story from Dec. 29, 2009, "Congress Deals Funding Blow to Patent Office: Budget Strips \$100 Million Provision for Backlogged Agency," he shares the disturbing news that Congress has again acted to take money away from this essential and underfunded office.

The \$1.1 trillion spending bill that Congress passed this month bankrolls thousands of pet projects: the World Food Prize in Iowa, a farmers market in Kentucky, and a 12-mile bike path in Michigan, among many others.

And to pay for a fraction of its largesse, Congress added one late change to the budget: It slapped a restrictive spending ceiling on the U.S. Patent and Trademark Office, further cramping an agency that was already incapacitated by more than a decade of congressional raids on its fees.

A Journal Sentinel investigation published in August documented how congressional diversions of the agency's income from 1992 through 2004 left the Patent Office incapable of keeping pace with the volume and complexity of the applications it receives. The backlog has grown to more than 1.2 million applications, which the agency has said could take at least six years to get under control – assuming it receives the funding to hire and train new examiners.

But a budgetary provision that could have allowed it to spend up to an additional \$100 million during the current fiscal year was stripped on Dec. 9, the final day of budget negotiations.

“We are currently operating on a barebones budget that makes it very difficult to attack our application backlog,” said Sharon Barner, the agency’s deputy director.

The last-minute move further frustrated critics who say the Patent Office has become dysfunctional because of mismanagement and underfunding.

Washington’s policy-makers fail to recognize that innovation – which the Patent Office is designed to encourage and protect – has become the key driver of competitiveness and job creation, said Hank Nothhaft, chief executive of chipmaker Tessera Technologies in San Jose, Calif., and a prominent advocate to repair the years of damage at the Patent Office.

“Everyone in Washington is talking about job creation,” often to justify stimulus projects and automaker bailouts, Nothhaft said. “And then they turn around and take money from the agency that can create high-value jobs.”

Read the full story and let your Congressional representatives know how you feel. This tax on innovation is a terrible step in the wrong direction. We need to be adding fuel to this critical engine of economic growth, not siphoning it out of the gas tank.

To conquer innovation fatigue, a healthy and efficient patent system is needed.

<http://www.innovationfatigue.com/2010/01/more-patent-delay-uspto-robbed/>