

*PRESENTATION:*

**REDUCING PATENT PROSECUTION COSTS:  
UNITED STATES LEGISLATIVE DEVELOPMENTS**

**Q. Todd Dickinson\***

**Introduction by Professor Harold Wegner:** It is exciting that Commissioner Dickinson was put on as Deputy Commissioner, originally with the idea that he would serve out the Clinton Administration as a deputy. However, the overall consensus of the bar and the politicians has been so highly favorable that, although there would have been nothing wrong with continuing under that scenario, the White House has put Commissioner Dickinson through for full Assistant Secretary of Commerce approval. We are delighted that you are out here in Seattle.

**Q. Todd Dickinson:** Thank you very much. I want to talk a little bit about U.S. legislation and some of the rules in our own office that affect costs and reducing costs, in particular internationally. I want to start off by thanking both Dean Hjorth and Professor Takenaka for their invitation to speak here today. This is a very distinguished group that you have assembled, and I am honored to be a part of it. I am particularly honored to be here with Professor Adelman and Professor Wegner and Judge Rader, who I had the chance to tour Japan with—"The Three Musketeers" of patent law. I also want to say that it is a pleasure to be here in Washington state, because whether we are from Washington state or Washington D.C., we all recognize the importance of intellectual property, in the domestic and global economies.

Let me put some of the cost issues in context, to start with. I am just back from The Hague, where we had the Fourth Annual Symposium on the Reduction of Patent Costs. Deputy Director General Uemura was there, others that are here in the room were there, and it was a very important continuation of a series directed toward just that specific topic. One of the

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great challenges in intellectual property management in the world is the "how-to" of doing that in all of its various forms. We are talking about issues ranging from fees and fee reduction to the difficulty that translation costs present, particularly in Europe; as well as the questions of how to reduce prosecution costs generally, what kinds of statutory and regulatory changes can be made to reduce those costs, and the always-problematic issue, particularly here in the United States, of reducing the cost of litigation.

Let me talk about fees. That is one area where I have some responsibility and, hopefully, a little bit of control. Fees are coming down worldwide. In the U.S., they came down last year and are likely to come down again this year. I will talk about that in a little bit more detail in a minute. Foreign fees are also coming down. The European Patent Office reduced their fees for the first time in some time. The British Patent Office has eliminated their filing fee, for example. They have kept their search and examination fees, but they did eliminate the filing fee.

Prosecution costs are generally still fairly high. Obviously, they are a function, in many cases, of the associated attorney costs. However, there are some rules and structural changes at play. For example, one area where the United States is regularly criticized, and was so in The Hague, is the unity of invention area. There is a desire for us to move toward a European unity of invention standard or PCT unity of invention standard. The challenge there is that we estimate that it would cost our office somewhere on the order of \$140-160 million, which is roughly 15% of our budget. So, we have to understand how we will do that. Several folks say, "Why don't you raise your fees?" There is a tension there obviously: raising fees at a time when we are supposed to be reducing fees. However, that is certainly a suggestion that has been made.

The question of translations is also a big issue. One area that we work on a lot is the question of international harmonization—bringing the domestic patent laws of the world's countries closer one to the other. More convergence would allow for more and more of a *de facto* world patent, and hopefully, in the process, reduce the cost, increase the certainty, and make the system a little better.

Let me talk a little bit about what we have done in the United States. The changes to our fee structure, as I have mentioned, are probably the most significant items to report. We in the United States became a fully fee-funded agency with the passage of the Omnibus Budget Reform Act in 1990. That created a system, however, where we had a surcharge on top of our base fee structure. That surcharge actually lapsed last year when

OBRA, that legislation, expired. Under the leadership of Congressman Coble in particular, as the chairman of our committee in Congress, a new fee schedule was fashioned. It was passed by Congress, the President signed it, and it was the first major patent fee reduction in memory, maybe ever. It dropped the fees by about \$50 million overall.

We are now in the process of doing our year 2000 budget cycle. Our Senate Appropriations Committee has recommended that all of the funding that the President recommended in the budget be approved. They did not approve, however, a \$20 million surcharge that was suggested, and the House committee is likely to go along with that. That is my understanding, although they have not acted. They did their mark-up the other day. I am told that in their mark-up, however, they have lopped off another \$50 million from our budget to be used as what we call a carry-over, which is used for other governmental purposes. I think that has been something that has traditionally raised the concerns of our user community. It is probably the number one issue, frankly, of our user community. So, it will be interesting to see what happens.

We have this past year for the first time implemented what is called an activity-based cost accounting. The U.S. government does not do a lot of the things that we tended to do in private industry—where I come from, basically. Cost accounting is one of those. We have done an activity-based cost accounting system now in our office. What we found was that we had been allocating things inappropriately, and we have made certain reallocations. What that has meant is that we have had to adjust the allocation between our trademark side and our patent side by some \$20 million. Trademark fees will likely go up by \$20 million; that is the bad news for you trademark practitioners. However, we will again have another fee reduction on the patent side, if it passes Congress, of some \$20 million, most likely in filing fees and first maintenance fees. First maintenance fees hit our independent and smaller inventors particularly hard because they have a longer commercialization period.

Let me talk now about legislation more broadly, and how it affected both fees and other very significant aspects of our practice in the United States.

The high point of the last Congress, the 105th Congress, was clearly on the intellectual property front. It was reached on October of 1998 when Congress ratified and passed the World Intellectual Property Organization Treaties: the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. They were essential to protecting copyrighted work, musical performances, and sound recordings in a digital environment, in the

age of the Internet. They are very crucial, as we go forward in the era of e-commerce, to making sure that the kind of protections that we have enjoyed in copyright would be applicable in that area.

The trademark community also enjoyed success in that Congress. We ratified the Trademark Law Treaty and adopted the implementing legislation for it as well. That will go a long way towards simplifying requirements to acquire and maintain trademark registrations in all the member countries.

Legislation enacted in the 105th Congress also included improved protection for plant patents, an extension of copyright term, and everybody's favorite—the Vessel Hull Protection Act. It is interesting because we do not have industrial design protection in the United States; and the Act actually is not limited to vessels. It is specifically limited to vessel hulls in the definition of design, but it is intended to be applicable to designs generally. It just limits the definition of design to vessel hulls. Someone suggested that might expand at some point in the future. That is a fairly controversial topic.

I will spend the bulk of my time on patent law reform. Patent and Trademark Office modernization legislation was the subject of very substantial consideration and debate during the last Congress, as it was in the Congress before that. An omnibus patent bill entitled as H.R. 400 passed the House of Representatives in 1997. It was a fairly close vote. Patent legislation has traditionally not been controversial, but it has come to be that way. A consensus could not be reached on the Senate side on the Senate equivalent bill, S. 507, before the curtain came down on the 105th Congress late last year. Overall, the congressional debate focused on proposals to improve the PTO operations, as well as some specific patent law changes. Many people—Democrats and Republicans, inventors associations, and corporate representatives—worked very hard to try to craft an acceptable formula for addressing all these issues. Unfortunately, what happened in the debate was that it got very contentious and, in some ways, very personalized. It led, in the end, to a fundamental breakdown of communication between the various interested parties. So, in the end there was no compromise.

I am very pleased to report that the legislative climate has changed substantially for the better. Parties interested in patent reform are more willing than ever to try to work together to build a consensus and to improve patent law and our operations at the PTO. This spirit of cooperation, I think, was most evident recently at a roundtable we convened in January called "Patent Law 2000." The purpose of it was not really to reach a particular consensus; it was to provide a forum for open and frank discussion, to give

those opponents, who were so corrosively divided in the last Congress, the opportunity to come together and discuss these important issues. That opportunity turned out to be a good one. We had congressional staff and representatives from our various constituencies, independent inventors, trade associations, universities, large and small business interests. It was very carefully balanced between those who were supporters of the previous legislation and those who were opponents. And I think most folks tend to regard it as having exceeded expectations—which in some places, frankly, were a little bit low. It did reveal a fair amount of agreement on certain issues and avenues for agreement on other issues where it seemed unlikely in the past. There was not agreement on some very specific issues, I will say—things like pre-Graham publication, prior user rights, and expanded reexamination, which we will talk about in a minute. However, I think it created a new dynamic on the debate, and that was principally the goal.

This dialogue has already borne fruit in the 106th Congress. Many of the participants in the round table work together now. Many of the staffers on Capitol Hill have come together to find more common ground. A bill was crafted, and back in March, I testified before the House Judiciary Subcommittee on Intellectual Property to present the preliminary views of the Clinton-Gore Administration on the Subcommittee's proposal, now called the American Inventors' Protection Act. This patent reform proposal, which was then a committee print, had been circulated by the Subcommittee Chairman, Howard Coble, to serve as the basis for negotiation and discussion. Since that time, the committee print has been updated and formally introduced. The bill is called H.R. 1907. It is entitled "The American Inventors' Protection Act of 1999." I guess the title can be important on this, and I think you will see some of the changes in titles reflecting that.

The full House Judiciary Committee approved an amended version of HR 1907 by voice vote on May 26. This bill could possibly go to the House floor for a vote before the Congressional recess in August, which is just a few weeks away. Comparable legislation has not been introduced, or even considered yet, on the Senate side. The Senate may craft its own bill or may await the version that the House passes and work from that.

I think the best way to describe this bill, frankly, is as a work in progress. While the major elements of the bill are reasonably well established, I think there is still some fine tuning that needs to occur before it's enacted. Those of us in the administration, as well as those representing independent inventor interests, and business interests, will continue to work with our friends on Capitol Hill to make those adjustments.

Now I would like to look at some of the key provisions of H.R. 1907. Title I is called the Inventors' Rights Act. It would reduce the number of instances in which inventors are cheated out of their hard-earned money and robbed of their dreams by fraudulent invention promotions. It is basically designed to get at this condition that we have in the United States of fraudulent invention promotion firms, which prey on individual first-time inventors by promising them, frankly, the moon in many cases and taking their money. I know of cases where people have mortgaged their homes, gone to friends and relatives and gotten substantial loans, and gotten very little in return for it. What the bill would provide is for mandatory contract disclosures, reporting procedures, and penalty provisions that I think will go a long way towards addressing this problem. They're similar to other kinds of "lemon law" provisions that we're familiar with in contract law the United States—cooling-off periods and that sort of thing. The Administration has indicated support for this title, with some possible fine tuning.

Title II is somewhat more controversial. It is called the "First Inventor Defense Act." It used to be called "Prior User's Rights," for those of you who knew it under that previous name. The Administration has previously supported the concept of a defense to infringement based on first-to-invent, but we understand and appreciate that the proposal has been the source of very substantial concern. While we think there are significant, legitimate, and often troublesome concerns that need to be addressed, we are hopeful that the Congress will craft provisions that will address these concerns and create a defense that is fair to all parties.

Basically what this provision is about, for those of you who may not know, is providing a defense to infringement for a trade secret owner who has used that trade secret. Under U.S. law, someone could come along and patent that invention if the trade secret has been maintained. Some argue that it is contrary to U.S. patent law and patent philosophy because it does not encourage the disclosure that is an underlying philosophy of the patent law. Frankly, some would argue, it rewards the trade secret owner.

The challenge is, within that broad rubric of philosophy, that there are concerns that pop up, niche inequities that pop up. For example, the one that's been most often cited recently is the question of what happens when the law changes, and what was once thought not to be patentable or possibly not patentable now becomes clear and clearly patentable. The example normally given is the *State Street Bank*<sup>1</sup> case in the United States. Many

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<sup>1</sup> *State St. Bank & Trust Co. v. Signature Fin. Group*, 149 F.3d 1368, 47 U.S.P.Q.2d 1596 (Fed. Cir. 1998).

would have argued that it was probably black-letter law in many ways, that business methods were not patentable in the United States. Well, *State Street Bank* now fairly clearly says that business methods associated with software are indeed patentable. If you're a company that had previously believed that they were not patentable and decided to maintain your business method as a trade secret, what do you do now when the possibility exists that someone else will come along and patent it and you may have find restrictions on your use?

Those who were concerned about situations like that have crafted the First Inventor Defense. It would provide a defense against charges of patent infringement for a party who had, in good faith, actually reduced the subject matter to practice at least one year before the effective date of filing of the patent, and commercially used the subject matter before that effective filing date. The "effective filing date" means the filing date of the earliest filed application relied upon in the application that results in the patent. The defense is limited to processes and methods used to produce useful end products or services.

The so-called "first-to-invent defense" would be available so long as the party asserting it did not derive the subject matter he or she was exploiting commercially from the patentee or anybody in privity with the patentee. It would apply only to subject matter in dispute and would not give the party a general license to use all the technology claimed. If it is raised or established, it will not cause the patent itself to be held invalid; it is just a defense to infringement, either under §102 or under §103.

Title III is called the "Patent Term Guarantee Act." The Administration continues to review the provisions of Title III. The Act would require the establishment of procedures to extend the term for patents to compensate for certain processing delays in our office, and for other delays in the prosecution of applications which would cause them to pend for more than three years. This has become a concern as we move from a 17-year fixed term upon issuance to a 20-year term, under GATT, from filing. This was frankly one of the things that led to the strongest opposition in the House. Congressman Rohrbacher, in particular, found this to be one of the more onerous concerns under GATT, and he sought for a long period of time to revise the law accordingly. Congressman Rohrbacher is now a co-sponsor of this bill, which I think is one of the reasons why it is likely to move forward in the House. Extensions would be available for delays in the issuance of patents due to interference proceedings, secrecy orders, and appellate review, and it will be applicable to any application filed after the enactment of the bill. We have a lot of concern in the office, as you could

imagine, about what that means to our operations. We hope that any final provisions under this Title would minimize those administrative burdens and provide us with sufficient lead time to implement them. We are currently reviewing that impact.

We also have a couple of other concerns. We cannot support unlimited extension of time, for example, for interference proceedings. We think the potential for gaining is fairly high in that circumstance, and we would instead try to streamline our interference procedure process to eliminate delays. We also feel that the patent term adjustment should only be available when the effective life of the patent would, in fact, be less than 17 years, (*i.e.*, where the pendency of the application exceeds 3 years). We do not think anyone should have the opportunity to get, through the system, greater than the 17 years previously guaranteed.

We would also like to make these terms fairly or very specifically objective to calculate. We worry that if they are not objective and there are subjective decisions to be made about term, we will have to devote substantial human resources to those calculations—which we think would not be warranted. We also think that the opportunities for appeal should be specifically spelled out and limited. The original bill actually provided that all appeals from our calculation of term would go directly to the CAFC. I am sure Judge Rader and his colleagues would not have welcomed the thousand or two thousand additional cases that might have yielded in a year to calculate those various term extensions. That is no longer in the bill, so we don't have that, hopefully, to worry about.

Title IV is called the "Publication of Foreign-Filed Applications Act." This is probably the most significant issue affecting the international harmonization and the convergence I mentioned previously. It stems in large part from a bilateral agreement between the U.S. government and the Japanese government that was negotiated during the early part of the Clinton-Gore Administration.

Provisions for early publication of patent applications in the U.S. have been hotly debated for years. They are very much the concern of independent inventors, in particular, who are worried that this will give large corporations an opportunity to see their technology sooner and, frankly, infringe that technology before the issuance of the patent and before the inventors have the opportunity to get the kind of commercialization or investment that they need. It is my hope that the PTO will reduce our cycle time, and we are very much in the process of doing this through efficiencies and other things to get our term in the office down to such a point where this

will be a moot point. We will not have to worry about 18-month publication because we will have most of our patents issued before 18 months.

We are doing this in a variety of ways, as you may know. We are greatly expanding the number of examiners. We hired 750 last year, 700 more this year, and hope to hire 700 more next year and 700 the following year. We are also adding additional databases and providing more automated searching. We are trying to use the productivity increases, which automation should provide, to help us get to that point as well. So, we're trying to accelerate our process and make this a moot issue.

Be that as it may, Title IV would provide for the publication of patent applications 18 months after filing, unless the applicant certified upon filing that the invention was not, and would not be, the subject of an application filed in a foreign country. It is a fairly large exception under the law, but it's one that we think, and which apparently Congress feels, is appropriate and consistent with our international obligations. Under the current draft, if an applicant were also to make a foreign filing with a description of the invention less extensive than the PTO filing, the applicant could submit a redacted version for publication by the PTO.

Title IV would also provide provisional rights to patentees, similar to the Canadian system and others. Reasonable royalties could be obtained for the make, use, sale or importation of the invention that would occur during the period between the publication and the issuance of the patent. However, the royalties would only be available if there was actual knowledge given, usually by sending or submitting a copy of the application to the potential infringer, and if the invention that was claimed and the patent that eventually issues were substantially identical to the invention that was claimed in the published patent application. Under Title IV, any applicant who receives notice that one or more claims of the published application are allowable would be able to request the issuance of a patent incorporating those claims, even if it is individual claims. Any subsequently allowed claims could be incorporated into the patent or could issue as a separate one.

Title IV would also provide that published patent applications would have prior effect. The PTO would be authorized to recover the cost of early publication by charging a separate fee. Now, the Administration has previously supported 18-month publication for all patent applications, except those that were withdrawn or subject to a secrecy order. The primary reason for support of early publication is that, under current law, foreign companies have an advantage in their ability to review, in their own language, technology that is claimed in patent applications 18 months after those

applications are filed in their own countries. American companies and American inventors, large and small, do not enjoy that same benefit. Also, it is believed to be a generally positive idea to prevent or reduce instances of substantial research and development investment in areas that are directed to technologies that may eventually be patented. In general, we believe that Title IV is a step in the right direction. However, we have serious concerns with the redaction publication provision and those relating to the issuance of patents on individual claims. We believe that these provisions will very likely create severe administrative burdens on our operations, and we will certainly continue to work with Congress to try to achieve an effective and efficient system for the early publication.

Title V is the so-called "Patent Litigation Reduction Act." Most people know that section as "expanded reexamination." Our current reexamination procedures provide a low cost alternative to litigation to confirm the validity of a patent. An improved reexamination system, we believe, will provide a better low cost alternative to litigation. These improvements would inure to the benefit of all patentees, but especially small entity patentees who often do not possess the time or the money to engage in time-consuming and costly litigation. It will provide limited yet meaningful participation by third-party requesters through a reexamination proceeding resulting from their request.

Currently, as you know, third party requesters who request reexamination state why they believe that reexamination should occur. The patentee is given the opportunity to respond. If they do respond, and very often they do not respond, the third party requester has the opportunity to have a second bite at the apple. Then it goes back to an *ex parte* proceeding within the office. This bill would provide the opportunity for enhanced third party participation in the reexamination system. Some would suggest that it gets closer to what Professor Wegner suggested about an opposition system.

Our primary concern with Title V, and the Administration's concern, is the newly added section that will prevent any party who requests a reexamination from challenging, at a later time, in any civil action "any fact determined during the process of such reexamination." We do not normally determine facts during reexamination, so we are a little unclear what this estoppel language means. However, we are concerned that it would make reexamination dramatically less attractive than it currently is. It is not particularly attractive at this point anyway. We get roughly 400 reexamination requests a year. Additionally, the provision related to Commissioner-ordered reexamination should be expanded to include considerations relating to sections 101 and/or 112 of Title 35. We will of course continue to

work with Congress to ensure that reexamination is an effective, low-cost alternative to litigation.

Title VI, which for us is the most important section in many ways, is the "Patent and Trademark Office Efficiency Act." This would establish the PTO as an agency of the U.S. government, a separate agency of the U.S. government, within the Department of Commerce. The previous bill would have made us a government corporation, not a private corporation. This is not privatization, as it was very often wrongly characterized. Under the current bill, we would not even be a government corporation anymore. We would be an agency, a separate agency, within the Department of Commerce.

The new PTO would be subject to the policy direction of the Secretary of Commerce and it would create an Undersecretary for Intellectual Property and a Director of the Patent and Trademark Office in the same person. It would also retain responsibility for decisions regarding the management and administration of its operations and would exercise independent control of its budget allocations and expenditures, its personnel decisions and processes, procurement, and other administrative and managerial functions.

As indicated in the President's 2000 budget, the Administration is developing legislation to establish a number of what are called "performance-based organizations (PBOs)" for agencies in the government which, frankly, function more like real businesses. They are not regulatory or policy organs. They are business-like entities of the U.S. federal government. Implementation of the PBO concept is intended to help selected government agencies function more efficiently and effectively and to better serve their customers. We believe this would be the case with this legislation.

So we will continue to work with Congress to craft a Patent Bill and PTO Reform Bill that will produce what we hope will be one of the more effective and efficient U.S. patent and trademark systems possible. Now, there is some opposition to the bill again this time. It is not perhaps as well organized or as vocal as it was before, though it is continuing to rise.

There are those who charge that the substantial compromises that were made, over the last Congress' bill, are not sufficient. The principal opposition again tends to come from independent inventors who believe that they will be disadvantaged, further disadvantaged, relative to large entities. It also has opposition from those in the United States who oppose or tended to oppose free trade because there is not a strong interest in international harmonization of laws, such as the patent law, when there is a belief that the U.S. system is preferable to those systems. There are also, interestingly,

individuals who are more traditionally associated with social conservatism in the United States, such as Phyllis Schlafly who heads an organization called Eagle Forum, who for some reason has made this a principal subject of her efforts in the current Congress.

This is a very busy time for other legislation. Let me touch briefly on some other legislation that is pending in the intellectual property arena. Since the *Feist*<sup>2</sup> decision from the Supreme Court, databases have been believed not to be covered or protected by copyright. H.R. 354 (the "Collection of Information Anti-Piracy Act"), will create a new federal statute, complementing copyright law, to prohibit the extraction or use in commerce of all or a substantial part of a collection of information that causes market harm to the original producer. This bill was crafted and approved by the House Judiciary Committee. The House Commerce Committee has developed a competing bill, H.R. 1858, called the "Consumer Investor Access to Information Act of 1999." It provides a somewhat narrower scope of protection for databases and emphasizes freer access to information for science, education, and research purposes.

Creators and publishers of databases have endorsed the Judiciary Committee version, while the user community, composed primarily of researchers, universities and others, tends to favor the Commerce Committee approach. The Administration supports enactment of a statute to protect database creators from the wrongful taking and distribution of database materials. We have expressed concerns with both of the bills and will continue to work with Congress to fashion one that is fair to everybody.

There is also a trademark dilution bill pending. Actually, it has passed the Senate. It would include dilution as a ground for opposition and cancellation and proceedings before the TTAB, our Trademark Trial and Appeal Board. We support a bill, but we are concerned about the overall costs and the cost implications on us. We will need some additional judges, in effect.

There is an Anti-Cybersquatting bill that deals with the question of the trademark aspects of internet domain names. S. 1255 will establish civil and criminal penalties for unauthorized use of trademarks as internet domain names or other identifiers on on-line locations. There has been a lot of press

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<sup>2</sup> *Feist Publications v. Rural Tel. Serv. Co.*\*1, 499 U.S. 340, 113 L. Ed. 2d 358, 1991 U.S. LEXIS 1856, 111 S. Ct. 1282, 59 U.S.L.W. 4251, 91 C.D.O.S. 2217, 91 Daily Journal D.A.R. 3580, 18 Media L. Rep. (BNA) 1889, 18 U.S.P.Q.2d (BNA) 1275 (1991)

about this issue and there was a Congressional hearing just last week. The Administration is developing a position on this issue as we speak.

The Madrid Protocol Implementation Act is pending. This would implement the protocol related to the Madrid Agreement. The House passed the bill back in April, 1999. The Administration has not yet forwarded the treaty to the Senate for ratification. However, this bill is intended to send a signal to the international community that Congress is serious about the U.S. becoming a part of the Madrid Protocol. It would permit a U.S. trademark owner to file for registration in any number of countries using just a single standardized application in English, with a single set of fees, and file with us at the PTO. The U.S. accession to this protocol is dependent on resolving the voting rights issue involving European Union.

The Patent Term Extension for drugs, the so-called "Patent Fairness Act of 1999," would establish within the PTO a public process to review claims for patent term restoration for certain drugs to compensate for extended regulatory review by the FDA. Back when Hatch-Waxman<sup>3</sup> was enacted, there was a belief that for drugs that were in the pipeline at that time they only needed two years, and were only granted two years to come out of that pipeline. The FDA in some cases, it's alleged, took longer than that two years, and some of the companies involved are looking for a mechanism to recover some of that term.

I will not go into the trademark rights of oldies performers or additional copyright damages; those are the two other bills that are pending. Let me just talk briefly about some of the things that we are doing by rule, because they have touched on some of the things Harold Wegner mentioned as well.

Last October we published the advanced notice rulemaking packet. We can do a lot in our office just by rule, as you can imagine. That advanced notice rulemaking packet was very specifically directed to trying to reduce costs and reduce costs internationally. There were new proposals in 21 different areas. There was substantial comment, substantial constructive criticism, and a fair amount of not so constructive criticism.

We are in the process of reviewing all that criticism now and will publish, very shortly, the final notice of those rules. I will not go into all of them here. Some of the ones that will come out of that process will involve a relaxation of drawing standards in the office. Right now, conforming to the drawing standards can be a very expensive process and one that is sometimes difficult to comply with. Applicants will be able to amend the

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<sup>3</sup> The Drug Price Competition and Patent Term Restroration Act of 1984 (Hatch-Waxman Act), Pub. L. No. 98-417, 98 Stat. 1585.

specification by replacing paragraphs or sections, something they cannot do now but can do in other countries. Applicants will also be able to submit voluminous materials such as amino acid sequence listings or gene sequence listings on CDs instead of bulky paper copies.

We will also create a "rocket docket" for design applications, which is very helpful because they are often time-critical. The products which they support are often the subject of marketing trends, and creating a "rocket docket" would help them out a lot.

Substantial criticisms were directed to some of the things Harold Wegner mentioned, actually. The deferred examination is a good example. The PTO proposed the deferred examination system, as we can by rule. We proposed a 3-year deferred examination system. It was roundly criticized by many of the same people who were urging as to try to reduce costs. We also proposed limiting the number of claims. Again, substantially criticized.

As you know, in the United States only natural human inventors can file patent applications. They can be assigned, but as someone said earlier in this session, it might be more efficient if corporate entities can file in their own name, as is possible in other countries. We thought we'd moderate that effect by saying you did not have to file your declaration of power of attorney until after you received your notice of allowance, until the very end of the process. We thought that would be a cost saving mechanism. But even that was criticized.

So, needless to say, it is an interesting time to be in the PTO. A lot of these opportunities for change that will help us in cost reduction have many detractors as well as supporters. We are going to try to keep doing the best job we can to reduce those costs and make the system better for everybody. Thank you.

**Concluding comment by Harold Wegner:** One of the major reasons that we have some hope and optimism with legislation is the Commissioner's more balanced approach, his reaching out to this roundtable, and so forth. There is some realistic chance that some legislation could pass. But I have not even put the champagne in the refrigerator yet and I have kept the cork in.