PUBLIC POLICY

Patent Law Change

by Frank Sartwell

In the face of exploding technology, a Presidential commission has recommended sweeping changes in the ground rules for inventors—the first basic changes in the U.S. patent system in 135 years.

The commission, after a year's study, suggested 35 different steps to improve patent law and Patent Office practices, ranging from redefinition of words to a suggestion for one world-wide patent system.

These recommendations include a possible "deferred search" procedure like that being considered in some parts of Europe, and quick and easy early protection options for inventors.

Most of the recommendations require new law to implement them. In the case of a contest between inventors of similar devices the first to file with the patent office would win. This would eliminate the use of the dates of "conception" and "reduction to practice" in determining who gets the patent, and would abolish some legal proceedings.

An inventor could file, instead of a complete application, a preliminary application which could be drawn up by a person with little knowledge of patent law and procedure. This would give him an early filing date, and protect his ideas while he seeks financial support, or market tests his invention. A completed application could be filed up to a year later. Patents take about two years to process now.

Foreign use, or sale, of an invention would be considered "prior art" —evidence of pre-existing knowledge —and affect the patentability of an idea in the U.S. "The anomaly of excluding, from 'prior art' public knowledge, use or sale in a border town of Mexico or Canada, and including the same kind of disclosure in Alaska or Hawaii, would be eliminated."

Design, plant and computer program patents would be abolished and other protection provided.

Applications would be published within 18 or 24 months. Currently, the only publication made by the Patent Office comes on issuance of the patent. "Early publication could prevent needless duplication of the disclosed work and promote additional technological advances based on the information disclosed."

Authority would be set up whereby the Patent Office could elect to create "optional deferred examination." If an inventor wished, he could defer the examination of his application, until a challenge developed, and still be protected by early filing. "To the extent that applications are deferred, the remainder should be reached for examination sooner. In some cases, examination might never be requested, and the applications would become abandoned." (When the Dutch set up a similar system three years ago, it cut the number of examinations in half.)

Patents would last 20 years from the date of application, instead of the present 17 years from date of issuance.

The Patent Office would be "encouraged and given resources to continue and intensify its efforts toward . . . a fully mechanized search system." The sheer growth of information makes mechanical retrieval a necessity for the future, the commission said. Recent "crash" mechanization efforts within the Patent Office were deferred because of obstacles in information technology itself.

Importing into the United States of a product made abroad by a process patented in this country would be made an infringement of the patent. Today, a patent holder can only keep out such products if he can prove under the tariff laws that "importation will tend to cause substantial injury to an efficiently and economically operated domestic industry."

To attack "one of the most common grievances," the high cost of litigation, the commisison suggests creating "Civil Commissioners" in the District Courts. These would shorten the legal proceedings conducting pre-trial hearings, taking depositions, and make preliminary rulings on the admissibility of evidence. This should "reduce considerably the time and expense to litigants."

The ultimate goal, the commission believes, would be a universal patent, valid world-wide, "and obtained quickly and inexpensively."

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