Patent Office Backlog Crisis:

Corporate Strategies Are Impedements to Solutions?

AIPLA / FICPI Colloquium
Edinburgh, Scotland
June 17-18, 2010

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A Cooperative Effort?

Key Factors	Office Interests	Applicant Interests
Produce a quantity of one-of-a-kind products	✓	✓
of an acceptable quality	✓	✓
in an acceptable time	✓	✓
for an acceptable price	✓	✓

Alignment of common interests among stakeholders is usually an asset.

Issue today is the sliding scale of ‘quantity’ + ‘time’ = ‘backlog’

Strategies Influencing Backlog

Intentionally flooding the system with applications?

- Difficult approach due to prohibitive costs for sustainability.

Legitimate response to business interests?

- ‘Good fences make good neighbors’ – identify the property boundary.
- Different industries require different numbers of patents to protect a single product.
- Licensing ‘in’ &‘out’ is a key industry driver greatly facilitated by granted patents.
- Risk mitigation is often facilitated by an array of patents.
- Hedging bets – tension between filing requirements and fully developed invention.
  - ✓ Sometimes delay is a legitimate need.
  - ✓ Sometimes quantity (i.e., variations on a theme) is a necessary approach.
  - ✓ Response to Rules, Judicial decisions, & Legislation

How much is enough?

- This is a common in-house question, but is tending in the wrong direction if asked broadly in public or patent office debates.
- Applicant strategies & practices are not inherently good or bad, they are a necessary reaction to existing rules of the day.

Impedements to Backlog Solutions

Backlogs are not inherently bad

- Balancing ‘input’ vs ‘output’ as a controllable buffer.

Throttling throughput by changing the rules

- Behavior modifying rules tend to create applicant vs office conflicts.
  - Fee thresholds for claims.
  - Limiting divisional application opportunities.
  - Patentable subject matter modifications.

Creating alternative pathways through the system

- Patent Office can think like a customer – ‘I want options and choices.’
- Applicant can think like a Patent Office – ‘Quality input can facilitate quality output.’

Shared Solutions Created by Stakeholders

- Sustainable solutions are more likely with shared participation.
- Know-how and best practice exchanges are essential between Office & Applicant.

Thank you for your time.

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