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From: John M
Sent: Saturday, April 22, 2006 10:57 AM
To: DDP.Comments
Subject: Disclosure Program

Dear Ms Kirik,

I am an indepent inventor, and I have been following with interest the goings on of the patent office. I undertand that there is a move affot to make the first to file rather than the first to invent, and while I understand that this is to harmonize with the rest of the world, and makes practical patenting simpler, I can't think of a quiker way to drive inventive ideas underground, never to be shared untile they are fully patented, something which it seems to me is the opposite of the spirit of patent law.

But I digress. I am writing about the disclosure program, hoping to convince you to keep it rather than abolish it.

I have never used the disclousre program, but I was about to. By the time I began to make my own applications to the USPTO, I was in the mindset of using the provisional application process. A year in which to claim patent pending, an additional year on the term of the patent, and the ability to discuss the invention under non-disclosure with potential licensors was a seductive mix of benefits. So I plugged away, generating applications in the naive belief that a year was plenty of time to market many, much less one, inventive idea.

I was stunned when the first provisional anniversary came and went, as I had hardly made a dent in the job of finding manufacturers and licensors. Since, like most independent inventors, I have scant resources for paying lawyers, I had intended to find licensors in order to reduce the risk of investing in the actual non-provisional application. But a year is nowhere near long enough, especially when inventing is a numbers game where only one out of a hundred ideas finds a market. If I am to have many inventions pending at a time, I must be prepared to see some of them pass their one year provisional anniversary dates, and expire.

I wrote to the USPTO on the dilemma, and discovered that as long as my inventions had not had any public disclosure, the expiration of the provisional did not prevent me, (in the US, though not internationally), from applying at a later date for a non-provisional, though I lost the additional year on the term. I further got clarification that if the non-disclosure prevented any public disclosure, that the discussions I had with manufacturers and licensors under non-disclosure were not considered public disclosure. Thus I could come back later and apply for a non-provisional.

On the other hand, having made the pending application puts the work into prior art as far as any other application for the same invention is concerned, so I ASSUME (please correct me if I am wrong) that at least no one else can patent the invention once I have made the provisional application. My point is that if I miss the one year anniversary, then that pending provisional is in effect no different than a disclosure, in that it asserts I am the inventor, thereby preventing anyone else from patenting the idea, without putting a time limit on my application for a non-provisional patent. And the cost would be ninety dollars less!

I propose that there are those inventions I want to disclose, but not patent yet. In effect, I like being able to separate the benefit of a patent into two parts, the prevention of anyone else patenting the idea, separated from the protection and right to sue afforded by a non-provisional. I am not at all against the provisional system, as there are those ideas I am actively pursuing within the one year time frame.

If the disclosure system were "positioned" (in the marketing sense of the term) as a way to establish primacy, it could in fact clear up some of these incredibly complex suits between inventors and infringers, where the only evidence in the balance is perhaps signed notebooks and corroborated memories. Wouldn't a robust, well articulated and publicised disclosure mechanism help to avoid all that? Wouldn't a simplified disclosure process, taken to its logical extreme, get inventors to send in and send often their notebooks, and push ideas into the public domain sooner? What if, for example, disclosure was used as a simpler and less expensive process, with a longer time limit, say ten years, after which it is published and becomes a part of prior art? Then the USPTO would have the perfect library to prove questions of primacy, ideas would not be lost, provisionals would still afford that extra year, would still be discarded after one year, and I would have the choice.

I agree that frivolity could be an issue, and that without claims, the clarity and breadth of purpose intended could be subjects of contention. But the disclusre requires sufficient clarity to enable someone skilled in the art to make the invention, and this could be enlarged upon.

In the end, I see the disclosure as another tool available to me. In fact, I was considering using it as an "on-ramp" to provisional applications, as a sort of place to safely park ideas I was not yet ready to pursue, but for which I wanted to establish a date of invention. If you take away this option, I can establish a date of invention with a provisional, but it costs me more, and I have to act on it after a year. If my ASSUMPTION (above) is incorrect, and the provisional is actually destroyed, thus also destroying any record of the date of invention, well, then the disclosure program in some cases is the first thing to do whether or not a provisional is intended.

A little long winded, but I hope I have gotten the idea across. Don't dump the disclosure--strengthen it! Give it some purpose and let everyone know. With electronic communications, it could even be a net zero effort on the part of the patent office, while affording examiners a large pool of clear documentation of prior art.

Thanks for wading through this!

I am, sincerely,

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