

Patent Office Professional Association

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SPOKEN TESTIMONY OF ROBERT D. BUDENS

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Mr. Chairman, Ranking Member Coble, Members of the Subcommittee,

POPA represents more than 5,800 patent professionals at the USPTO including more than 5,500 patent examiners. POPA's members take great pride in the work they do and are committed to maintaining the quality and integrity of America's patent system.

The USPTO has received much criticism in recent years for failing to allow high-quality patents in a timely manner. Many proposed solutions represent radical changes that go far beyond what is necessary to fix the patent system. As with any product, it is better to build quality in right up front than to try and repair problems after the product has left the factory. Patent examiners need the time and the tools to do the job right the first time.

DOING THE JOB RIGHT TAKES PEOPLE

Years of inadequate funding and restrictions on hiring left the USPTO severely understaffed. Fortunately, since 2005, the agency has been permitted to

keep its fees, and appropriators have lifted restrictions on hiring – actually requiring more hiring, not less.

The agency now brings on 1,200 new examiners each year. It is doing a good job hiring people, its just not keeping them.

Statistics we have seen show that about 30 to 44 percent of each year's new examiners leave the agency within three years. To compensate for overall annual examiner attrition, the agency must hire almost two examiners for each one it retains. Frankly, we don't recognize the attrition statistics cited in the agency response to the GAO report.

The one thing management could do to increase retention, it has consistently refused to do for more than thirty years – provide examiners with the time to do the job right. More than any other factor, the reason examiners leave the USPTO is the unrelenting stress caused by the agency's outdated production system.

DOING THE JOB RIGHT TAKES TIME

Patent examination is a labor-intensive job, mentally and physically. Automation can accelerate processes such as searching large databases, but it cannot make the examiner read and understand the results of those searches any faster.

After years of trying to do the job faster and cheaper, the USPTO now finds itself facing the same criticism that any manufacturer faces when it cuts corners – a perception by end-users that the product lacks the quality it needs to do the job it was supposed to do.

The USPTO's production goals have remained essentially unchanged since they were put in place in 1976. Since then, patent applications have become more technologically complex, have larger specifications and higher numbers of claims. Studies by Professor Dennis Crouch show that the size of issued patent specifications increased by 85 percent since 1987. The data also shows significant increases in the number of independent claims and total claims.

Trying to do a high quality job in 2008 in the amount of time examiners were given in 1976 has left examiners angry, stressed-out and demoralized.

A POPA survey revealed that one third of examiners work unpaid overtime just to keep their jobs! Another third of examiners work unpaid overtime to earn performance awards. The GAO found similar results in its September 2007 report. This excessive use of unpaid overtime establishes the need for the USPTO to provide more time.

WHAT EMPLOYEES NEED TO DO THE JOB RIGHT

We need Fee Retention

POPA encourages the Subcommittee to continue working with the Appropriations Committee and the Administration to insure that the USPTO has access to all its fees. POPA believes that this access, however, must not be obtained at the expense of the oversight responsibilities of the Judiciary and Appropriations Committees.

We Need To Put An End To Outsourcing Searches

The USPTO has wasted considerable resources in prior attempts to outsource patent searches and now with the Applicant Quality Submission. Outsourcing searches will not result in better quality patents and will likely create conflicts of interest for applicants. The Subcommittee should put an end to this waste by passing legislation that clearly establishes patent searching and examination as inherently governmental functions.

We Need More Time

POPA asks that the Subcommittee provide more time for examiners by putting a fence around the patent filing fees and directly allocating these fees to providing time for examiners to examine patent applications.

We Need Tools

The USPTO needs to reverse its policy of neglecting the U.S. classification system and restore its funding. We need automated tools that allow examiners to classify and add foreign and non-patent references to USPTO databases. There are very few former classifiers left in the agency. Before their institutional memory is lost forever, they need to be put back to work training new classifiers and examiners.

Thank you for this opportunity to present our views.