

Faulty Patent Application Routing Delays Action

Misclassification by the Office of Initial Patent Examination (OIPE) using the electronic Application Routing Tool (ART) is delaying action on newly filed patent applications by routing them to the wrong art units and/or technology centers (TCs). This is causing applications to languish in USPTO cyberspace for weeks, months or sometimes even a year or more. This problem is made worse by the lack of an adequate application transfer procedure and an audit trail to identify problem areas. OIPE Director Thomas Koontz reports that the agency is working to correct the initial routing insufficiencies.

The current ART software, a part of the Image File Wrapper system (IFW), does not automatically assign continuation-type cases to the art unit and examiner who worked on the parent application. In addition, the software routes applications to the first art unit in a TC or workgroup that meets its keyword searching criteria. Thus, docketing examiners spend considerable additional time researching classification issues and trying to transfer cases to the right art units. Some docketing examiners have an unfair burden because they must docket the majority of cases for their workgroups, which hold up to ten art units.

Research Highlights Problems

Before OIPE started using ART, about a dozen full-time classifiers designated cases to the correct art unit approximately 80 percent of the time. Now that percentage is reversed. Recent research within several biotechnology art units found that, of 109 cases sent to one particular art unit, ART assigned 13.7 percent correctly and 86.2 percent incorrectly.

Of those incorrectly assigned, 63.3 percent were determined to belong elsewhere after an examiner consulted Patent Application Location and Monitoring (PALM) continuation data that ART had ignored because ART was not designed to access PALM data.

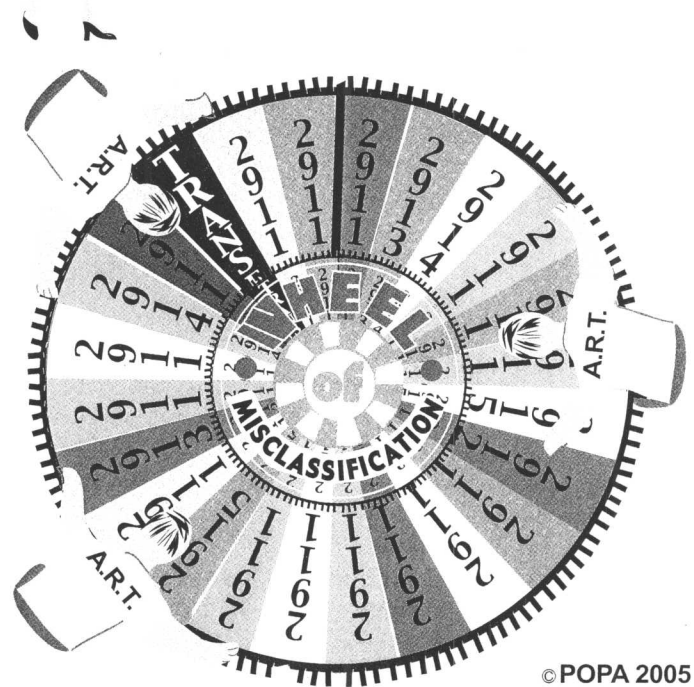
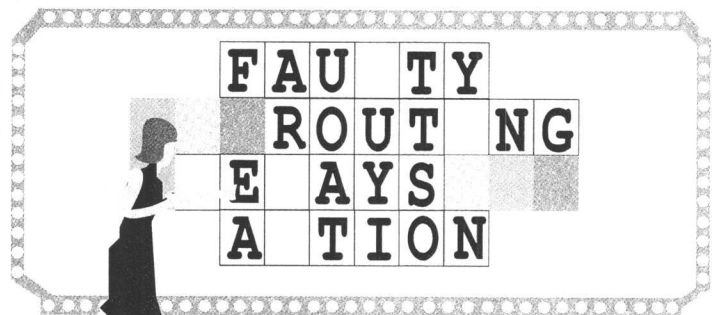
In addition, a snapshot of undocketed cases assigned to TC 1600 demonstrated the disproportionate assignment of cases by ART. Of 12,766 total cases, 3,452 cases (27 percent) were assigned to one art unit. This is more than ten times the cases assigned to most other art units in the TC and shows how ART simply routes cases for docketing to the first art unit that meets its criteria. This places a significant burden on that art unit and docketing examiner to quickly redocket cases to the proper art units in the TC or wherever they belong.

In addition, transferring incorrectly routed cases can be a nightmare. Within a TC, if a docketing examiner mistakenly

receives a case from ART, the examiner then must send an eDAN message to the docketing examiner that he or she thinks it goes to. If that examiner disagrees, then it goes to a classification team of managers and docketing examiners to resolve.

When eDAN sends these messages to managers about cases needing reassignment, it fails to alert managers that cases are awaiting their action. Managers need to actively check to see if cases need reassignment. When an application clearly belongs in a different TC, there is no way to require the other TC to accept transfer of the application. If managers don't timely take appropriate action, cases can sit for weeks or months awaiting docketing.

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Cases with No Histories

When managers do pick up the eDAN messages, they contain no information on where the case has been, who has reviewed it or why it's bouncing around. The software doesn't allow any history to accompany the reassignment message, obliging the manager to docket blindly or conduct additional research.

A parallel transfer inquiry system exists in the PALM Expo software that allows an examiner to create a record or audit trail. However, only about half of the docketing examiners use this process because it requires double the effort to duplicate the eDAN transfer message in PALM Expo. Even if the docketing examiners send two messages, some examiners only respond to the eDAN message and not the PALM Expo message, thereby negating the recordkeeping system. Creating a separate PALM Expo message consumes extra time because it requires the docketing examiner to write down or memorize the application serial number from eDAN to then key it into the PALM Expo system.

Each assignment also needs to carry an audit trail, outlining each person who heretofore has acted on the case and why.

Currently primary examiners and managers waste untold hours determining the rightful dockets for cases misassigned by faulty ART software. The time saved by fixing these problems could be rechanneled into examination to reduce the patents backlog.

OIPE Director Koontz in early August reported plans to install a new software program to enable use of parent data keyed in by OIPE staff as part of the creation of the PALM data account for a new application. The software will provide the current classification of the parent case, which will be used to direct the application to the correct art unit. The software also would immediately flag security cases, simplifying that designation process.

The OIPE program system modification was to be in place in early August. However, the modifications to the contract for the outsourced OIPE staffers who run the program were still needed at press time. Koontz expected that to be accomplished by the end of August.

PALM Reading

To quickly access PALM continuity data from within eDAN, examiners can do the following:

- Click on "View," then click on "Bib" in the dialog box;
- On the bib sheet for the current application, click on the link to "continuity data";
- Right click on the parent serial number.

This will take you to the PALM application info page for the parent application.

While this change represents a major advance, it will only partly fix the problems. When a case gets to the docketing examiner at the art unit level, the examiner will still need to look up the current parent case classification and the name of the examiner handling the parent case.

Reservations on USPTO "Hoteling" Program

POPA has offered employee stakeholder input on the USPTO's proposed "hoteling" program, in which patents employees would relinquish their workstations in exchange for onsite "hotel work space" that's available for short periods via reservation.

Through informal union-management discussions on hoteling—which employees would prefer as just one feature of the patents telework program—the agency can gain insight on employee concerns without jeopardizing the standing telework benefits. If the USPTO and POPA enter formal negotiations, all of the current benefits become bargaining chips. Because it's very easy for the agency to declare a negotiations impasse and refer the decision-making to the Federal Service Impasses Panel (FSIP), and because the current FSIP has regularly rubber-stamped management proposals, formal negotiations could risk employees' hard won gains. Sincere, informal union-management discussions present the only viable way for the USPTO to understand employee hopes and anxieties about hoteling.

POPA already has voiced employee worries about several of the USPTO's proposed terms for the hoteling program that place employees in unfair situations:

- Any downtime for computer or other equipment failures would be the employee's responsibility. The agency is ignoring that equipment failure is a conventional risk of doing business that is normally borne by the employer rather than its salaried staff.

- Employees in the hoteling program would get no assured rights to private office space if they choose to return to the workplace or if the agency removes them from the hoteling program.

- The USPTO would have full authority to remove participating employees from the program for any reason, including any alleged, unjustified or minor infraction, or for other reasons unrelated to telework. Immediate removal could create severe commuting and family hardships for employees.

- No additional time would be given to employees remaining onsite to cover the additional duties created by removing a significant number of senior employees in the workplace, such as customer service, training, and junior-employee supervision.

The union rejected the USPTO's proposal for formal negotiations. "Experience demonstrates that the agency is more concerned with asserting its rights than it is with the actual issues and concerns of employees," wrote POPA in

