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Comments Submitted by Nicholas Frattalone

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Regarding business method patents. I have two business method patents that took 15 and almost 20 years respectively of back and forth with the PTO before these patents were granted. From one court decision to the next, the procedure was stalled. And along the way, fees continue to be paid.

I think that if the Government wants to be even handed, it should stay as far back as possible from the intent of the Constitution and ignore the pleas and influence of the lobbyists who are paid by industry giants to dampen and restrict competition from individuals or smaller entities. The purpose of the Constitution is to protect individual liberty.

In this regard the system has failed. It has become a complex system that predominantly benefits large corporations and industries in general, while disrespecting the individual.

One of my two patents (attached) took almost 20 years to be granted, just in time to expire.

Undue influence's have suppressed the free market system through the Courts, where you need millions just to defend against invalidity. The promise is simple and straight forward. If a patent is granted you get to enforce it without being subjected to the misery and potentially financial ruin by corporations and industries who just don't want to pay. The rules need to be changed to equal out the opportunities, and allow the free markets to determine the success or failure of a patent that is granted. If an infringer doesn't want to compensate, then just don't use it. Then, the free market would dictate the level of royalties or other forms of compensation. If an inventor wants too much, then he'll ultimately have to lower expectations or get nothing. That is how the free market is supposed to work. The more we can simplify things the less monkey business will take place and we would get closer to the intent to support and encourage invention and entrepreneurship. The Courts cannot force anyone to pay anything. It is the sole decision of the infringer. This idea of a second bite at the apple is not good in these matters, unless chaos and the desire to unravel past decisions is a desired effect.

In closing, there needs to be certainty when a patent is granted. The playing field need to be leveled. Inventor's should receive the full and meaningful guaranty the Constitution affords. Including that certain time period of exclusivity which is the incentive to invent. That time period needs to begin upon granting and not from the application date. I think the delays that I experienced would stop immediately without the background noise of pending legal cases where Court decisions are allowed to reach back in time and invalidate a patent which has already been applied for and granted in good faith. Trust the free markets to decide what things are worth.

There is an old tradition called grandfathering. It would be very useful here to begin to reimpose fairness and avoid legal devastation. This must not be the reward for innovation.

Very truly yours,

Nicholas Frattalone

Attachments 1

United States Patent_ 10885578

Download (https://downloads.regulations.gov/PTO-P-2021-0032-0026/attachment_1.pdf)

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