Report About the
United States Patent and Trademark Office (USPTO)
and Their Fraudulent Fee Schedule That Deceives Congress
and the Public, and Their Contempt for Congress and Hatred
of Inventors, and Their Discrimination Against Inventors, and
Their Relentless Fee-Gouging and Their Slush Fund, and Their
Illogic, Incompetence, and Intransigence, and What Must Be Done

AN EXAMPLE EVERYBODY CAN UNDERSTAND

As an introductory warning, allow yourself to suspend disbelief so that you can try to understand that the USPTO – America's supposed "intellectual" property agency – refuses to understand what a "filing fee" is, and that a fee that is "due on filing" is, in fact, a "filing fee." But, before getting into the weeds in which the USPTO hides – like a snake - here is an analogous hypothetical situation:

- Imagine you are considering going to a movie theater, and past experience tells you the admission price should be around $15. You're just curious, so you check the ads, and find a theater where the admission price is $6. Knowing what an "admission price" is – everybody knows what an "admission price" is - you think "Wow, gotta go."
- When you get to the theater, you purchase an admission ticket for the advertised $6 and are admitted into the lobby. But, as you try to move through the lobby and into the theater, itself, you are stopped by the management, who demand another $14, and tell you that, if you want to sit down and watch the movie, you owe them another $14 ($6 + $8) because the cost is $20. They proceed to tell you that the $6 admission ticket admits you to the lobby, but if you want a seat in the theater, the cost of the seat is $6, and then, when you are in your seat, if you want them to show you the movie, you must pay another $8. The cost of being admitted into the lobby and sitting in the theater and viewing the movie is $20: $6 + $6 + $8 = $20. In actuality, the admission price – as it is traditionally and culturally known and maybe even statute-defined, i.e. it allows you to walk in and sit down and watch the movie – is $20 in this case, not $6, although the advertised "admission price" is $6.
- You are outraged, because you resent being tricked, because, heretofore, the price of the admission ticket included the lobby and the seat and the movie; and, had you known that sitting

down and watching the movie was really going to cost $20, you wouldn't have bothered. You made your decision based on the $6 "admission price," as advertised.

- What do you do? Of course, you demand your money back, but the management refuses, telling you that you should have known better, because they published their new three-tier pricing in a small ad on page 6 in your local town's online movie guide nine months ago, and it's your fault you don't know this. If you don't know that, because of this new policy, your admission ticket only admits you into the lobby, that's your tough luck.
- When they refuse to immediately refund your money, what recourse do you have? Call the police? Call the city attorney, to see if there are any commercial codes under which this theater is in violation? Report them to the Better Business Bureau? Tell other people, so they will avoid this theater? Get a lawyer?

## COMMENTS TO THE FEDERAL REGISTER

Cited herein are documents found in two Comments to the Federal Register (Comments).

- First comments: https://www.uspto.gov/sites/default/files/aia_implementation/comment-murphy.pdf
- Second comments: https://www.uspto.gov/sites/default/files/documents/Proposed_Fee_Adjustments_Comments-Kent_Murphy.pdf

If you look at these Comments, you will be doing more than the USPTO did: according to a January 29, 2009, article on the IPWatchdog website, the USPTO doesn't bother reading the Comments to the Federal Register:

> The mode of operation at the Patent Office for years has been to request comments and then simply ignore each and every comment received.
>
> https://www.ipwatchdog.com/2009/01/29/doll-wastes-no-time-uspto-considers-deferred-examination/id=1859/

## WHAT IS THE USPTO?

Imagine if the USPTO would pull something similar to the "admission price" scam described above. But, if you read further, you will realize that, essentially, that is the way the USPTO operates. And, unlike the hypothetical theater, the USPTO is a monopoly "government" agency that hates inventors – except for their fees – and that is unaccountable to anybody, even Congress.

The USPTO is a place where inventors send millions and millions of dollars, and the USPTO can keep their money, and extort more money from inventors using semantic idiocy and extensive and expensive fee traps, while holding hostage an inventor's work and aspirations, because wrongdoing of the USPTO cannot be redressed: the USPTO will refuse to honestly consider an inventor's issue, and will lie to and belittle an inventor, and when an inventor contacts their Senator, the USPTO will lie to the Senator and tell the Senator that it's none of their business, because they get their money from fees from inventors, not Congress, and Congress voted for the fees. And, of course, as you will discover as you read, the USPTO intentionally deceives Congress.

And, the USPTO is an organization that: refuses to provide accurate Fee Schedules; refuses to update their webpages; refuses to allow online patent application filing; and, refuses to provide free forms, **forcing inventors to pay $80 or $200 for a form or resort to hiring a costly patent lawyer.**

WHAT IS THE USPTO's FEE SCHEDULE?

The USPTO's Fee Schedule is a financial document on which monetary decisions are made – by inventors in deciding whether to spend the money to file an application, and by Congress in evaluating the performance of the USPTO and making fee-setting decisions about how much the USPTO can charge inventors - and the USPTO is committing fraud with their Fee Schedule, and they know it.

WHO HAS BEEN DECEIVED BY THE USPTO's FRAUDULENT FEE SCHEDULE?

In addition to this inventor – who has been working in the patent system for decades and who studied accounting at George Washington University (see page 32 of the first Comments) - the USPTO deceived a researcher with the Congressional Research Service (CRS) and a technology writer with Politico.

DECEIVING THE CONGRESSIONAL RESEARCH SERVICE (CRS)

On page 13 of the first Comments, you will see page 14 of a CRS report about *The Leahy-Smith America Invents Act: Innovation Issues* on which you will find the heading "USPTO Fee-Setting Authority and Funding," and under this heading you will see that the CRS was deceived into reporting that "the fee[s] for filing a patent application...w[as] $300" and you will see the true "filing fee" - total of fees "due on filing" - of $1,000 noted to the side. You will also see that the old fees, rather than the

new fees, that are shown in the CRS report are discussed, and this is because the time frame for these old fees correspond to the time frame for fees shown in the USPTO FY 2007 Fee Schedule shown in page 9 in the first Comments. On this Fee Schedule, you will see at the top the following words that the inventor underlined on the Fee Schedule: *(revisions effective October 14, 2006)* The filing fee (or national fee), search fee, and examination fee are due on filing. This is the **SMOKING GUN**.

Discussed a little further below is the issue of "fee-setting authority" that the USPTO seeks from Congress. This is important to know, as you read about the USPTO deceiving the CRS.

Deceiving the CRS into reporting the fees for filing a patent application to be $300, instead of the true $1,000, grossly deceives Congress as to the performance of the USPTO and how they treat inventors. The CRS thought it was important to report what they believe to be the "filing fee" - because the "filing fee" represents the threshold cost for entering the patenting process, and they know Congress wants Americans to invent - and they were deceived into reporting it to be $300. Obviously, if the CRS tells Congress the threshold cost for filing a patent application is $300, Congress would probably say "good," whereas, if the CRS had accurately told Congress the amount was $1,000, Congress might have asked "why?" Which, of course, is not good for the USPTO.

The inventor tried to contact the author of the CRS report, and managed to leave a voice mail message informing her that the CRS report was wrong as regards the "filing fee," and, eventually, contact was made with the author, who was quite indignant and refused to communicate with a member of the public: "Are you the one who left that message? You can't call me." Something like that.

What this means, of course, is that there is a closed information loop: the CRS takes the information that the USPTO gives them – without ever considering that the USPTO would deceive them – and uses it to create a summary report that they give to Congress, and Congress gets to vote based on pass-through deceptive information from the USPTO. Sweet, huh?

DECEIVING POLITICO

On page 12 of the first Comments, you see a printout of a Bing search report showing a Politico article with the heading "Patent reform would reinvent office" and under the heading you see these words:

"At the current fee schedule, the cost for filing for an independent inventor is Just [sic] $165…," and noted to the side is the true cost of filing for an independent inventor, which was, at that time, $545.

The inventor contacted the author of the Politico article, who was angered about the deception, and he said that he had been in many offices, but that he was shocked when he was in the office of the Commissioner of Patents – it didn't have gold doorknobs, but it was surprisingly lavish, something like that - and he spoke about Hal Rogers – the late Congressman Harold Rogers – having said, regarding the USPTO, that "there needs to be more transparency." We had a good conversation, and he seemed interesting in investigating, saying at one point "I need a money trail," and I sent him information to get him started. But, after a period of time, the interest in investigating the USPTO faded away.

A WARNING BARK FROM THE IPWATCHDOG

The excerpt below can be found in an IPWatchdog report, entitled *New US Patent Office Fees:*

> Effective October 2, 2008, the United States Patent Office fees will once again be changed, which is a yearly or bi-yearly event. The filing fee to the Patent Office for an individual inventor or a small company that qualifies for small entity status (i.e., companies with fewer than 500 employees) **is now $165.00**. For those who are familiar with the fee structure prior to December 8, 2004, you will remember that the filing fee for small entities **was formerly $395.00**. It would, however, be a **mistake** to believe that the Patent Office has decreased its fees in such a significant way. The Patent Office has always like to charge a la carte fees, and now they have taken that tendency to new heights. In addition to the basic filing fee the patent fee legislation enacted on December 8, 2004, requires payment of a Search Fee ($270 for small entities) and an Examination Fee ($110 for small entities). Therefore, **the total fee due** to the Patent Office for a small entity to successfully launch a non-provisional utility patent application **is $540.00**. [UNDERLINING AND EMPHASIS ADDED]
> https://www.ipwatchdog.com/2008/09/03/new-us-patent-office-fees/id=196/ (This article can also be found on pages 28-30 in the first Comments.)

Ain't that clever?!! How's that for inventiveness?!! Often, successful inventing involves creating efficiency – i.e. reducing parts or steps in a process – but here, the USPTO tripled the number of parts and steps – from one fee you have to look for to three fees you have to look for – and they made a fortune!! An easy-to-understand chart showing this very profitable semantic "filing fee" trickery can be seen on page 2 in the second Comments.

Note that The IPWatchdog uses the singular word "fee" when he says "the total fee." He knows that these three now-separately categorized fees – the "filing fee" and the "search fee" and the "examination fee" - were, previously, combined into a single "filing fee," and that they they still are "due on filing" -

the USPTO terminology used in page 9 of the first Comments - so, they are, de facto, one fee. They are, de facto, the "filing fee."

"PAID BY MISTAKE" - A TERM THE USPTO USES, BUT DOESN'T WANT TO UNDERSTAND

Pay attention to the context in which the word "**mistake**" [emphasis added] has been used in the IPWatchdog article on the preceding page, because, as you can see in the letter to Senator Byrd - Attachment A - the operative term for refunds at the USPTO is "**paid by mistake**," [emphasis added] which means anything the USPTO's General Counsel decides it doesn't mean: if an inventor made the **mistake** of trusting the USPTO's Fee Schedule, which was fraudulent, and thinking that the "filing fee" had been substantially reduced, which would benefit inventors, that's his fault. The word "**mistake**" [emphasis added] is used by the IPWatchdog to describe this very same thing, and the USPTO has been informed about this, but it means nothing to them. Of course, to the USPTO, he's just a dog, so what does he know? To the USPTO, all that matters is what they know, and they know they are keeping your money, and the sooner you know that, the happier you will be. **The USPTO hates inventors, except for their fees.**

THE LOOP – THE CLOSED INFORMATION LOOP

We see that Congress gets their information from the CRS, who mistakenly trust the USPTO and pass along fraudulent information provided by the USPTO. And, many people in and working for Congress would read Politico and be deceived by the Politico article. And, many would read The Washington Post and The Washington Times.

In 2014, a whistleblower scandal erupted at the USPTO about telework payments. Google search links for "Patent Office workers bilked" are here: https://www.google.com/search?q=Patent+Office+workers+bilked&sxsrf=ALeKk00_kEr5ANgHIeKmHlHFJzHqZ6wb1A%3A1617317469831&ei=XU5mYPmTMtSPtAbhyo2YDw&oq=Patent+Office+workers+bilked&gs_lcp=Cgdnd3Mtd2l6EAM6BwgjELACECdQwCZY2i1g0z5oAXAAeACAAXGIAagNkgEENi4xMZgBAKABAaoBB2d3cy13aXrAAQE&sclient=gws-wiz&ved=0ahUKEwi5tpyKkd7vAhXUB80KHWFlA_MQ4dUDCA0&uact=5

The inventor contacted both writers to tell them about the USPTO's deceptive Fee Schedule. The Times writer didn't really care, but the Post writer seemed interested – a phone call was set-up via e-mail – but, after discussing the way in which the USPTO was deceiving the CRS and Congress, the discussion ended when she said "I don't want to write about fees."

If you look at the 2014 articles about the telework payments scandal, you might get the impression that the people who run the USPTO were a bit lackadaisical about losing millions. But, if they have a magical Fee Schedule that deceives Congress, why bother making the effort to stop the loss? The only thing they have to worry about is if Congress learns that they have been intentionally deceived about what the true "filing fee" is. Read just a little further to learn about the pot of money, and the billion-dollar slush fund, and fee-setting authority.

There is no way that – being in this closed information loop - Congress can know what is going on, except probably in rare letters from inventors with allegations against the USPTO. Obviously, such letters would go to staffers who contact the USPTO, and the USPTO will lie and belittle the inventor and show contempt for Congress, and that's where it stops.

USPTO LIES TO SENATOR CAPITO IN INSPECTOR GENERAL RESPONSE

To her great credit, Senator Capito cared enough about a pro se inventor in her home state of West Virginia to get the Inspector General at the Department of Commerce involved, and the USPTO produced the typical response that is full of irrelevant legalese to try to intimidate the reader into being afraid to recognize their blatant and ignorant lies and deceptions. The USPTO's "Internal Administrative Inquiry Report," dated June 17, 2016, is Attachment B.

In their "Findings" the USPTO opens by saying: "There is no evidence that the fee schedule contains information that misleads or deceives the public…." That is a lie, since they had the information herein that proves that the USPTO deceived this inventor, as well as the CRS and the technology writer at Politico. Opening with a lie proves they have no defense, and that the USPTO simply enjoys spending a lot of money on legal hacks to deny an inventor a small refund that he is entitled to. **The USPTO hates inventors, except for their fees.**

FILING FEES – SOMETHING CONGRESS SHOULD BE CONCERNED ABOUT

Of course, every single member of Congress has paid "filing fees" to run for public office, and the idea of "filing fee" deception might actually be an extremely important issue to them. It might not be something they want to start tolerating, perhaps. It's a very very bad precedent. Nobody in Congress would want to be tricked when they pay their "filing fee."

THE CURRENT USPTO FEE SCHEDULE

If you take even a cursory look at the two Comments, you will see that the inventor has educated the USPTO about what a "filing fee" is, and how it must be presented, but they simply refuse to learn, because they simply don't care – about inventors, about Congress, about the public, about anybody. The current USPTO Fee Schedule can be found by searching in Google for "USPTO fee schedule current." Extracted from the current Fee Schedule and shown below are the "filing fees": all three fees are "due on filing," so they are "filing fees."

**Patent application filing fees**

| | | |
|---|---|---|
| Basic filing fee - Utility (paper filing also requires non-electronic filing fee under 1.16(t)) | | 160.00 |

**Patent search fees**

| | | |
|---|---|---|
| Utility search fee | | 350.00 |

**Patent examination fees**

| | | |
|---|---|---|
| Utility examination fee | | 400.00 |

The correct way – the only way – to properly show these three fees that are all "due on filing" is to show them itemized as shown below:

**Patent application filing fees**

Basic Filing Fee – Utility – Small Entity

| | |
|---|---|
| Filing Fee | $160 |
| Search Fee | 350 |
| Examination Fee | 400 |
| Total due on filing | $910 |

This is Accounting 101, and a Fee Schedule that does not present the Filing Fee and Search Fee and Examination Fee itemized in this way is a fraudulent financial document. Exactly why can't the USPTO simply tell inventors and Congress and the public that the cost for a small entity to file a patent application is $910?

Preparing an honest Fee Schedule to accurately communicate the true "filing fee" would take very little time for any Accounting 101 student, and yet the "geniuses" at America's "intellectual" property agency insists on forcing people all over the world to waste countless hours trying to figure out how much it costs to file a patent application. Surely, that's what makes America an innovation leader: an "intellectual" property agency that wastes everybody's time, while everybody else is striving for efficiency. God bless America. Every American should feel proud of its dirt ignorant and crudely criminal "intellectual" property agency. Thomas Edison is rolling over in his grave, trying to get out, so he can renounce his citizenship.

The Internal Revenue Service manages to organize all the extreme complexity of the tax code into competently prepared forms, and yet, the USPTO can't manage to communicate that the "filing fee" - total of fees "due on filing" – is $910. Wonder why?

POT OF MONEY – BILLION-DOLLAR SLUSH FUND - FEE-SETTING AUTHORITY

Is it about "fee-setting authority?" On the first page of the second Comments, you can read about a May 22, 2014, Patent Public Advisory Committee (PPAC) meeting at the USPTO where PPAC member Christal Sheppard spoke about a **"pot of money"** [emphasis added] and a **"slush fund [of] a billion dollars"** [emphasis added], and Anthony Scardino, Chief Financial Officer (CFO) of the USPTO, spoke about the USPTO's efforts at **"lowering fees and things like that [to] give confidence and assurance to the folks on the Hill that, you know what – [we've] been responsible stewards of fee-setting authority."** These quotes can also be found on pages 194 and 200 at this link: https://www.uspto.gov/sites/default/files/about/advisory/ppac/ppac_transcript_20140522.pdf

In the first Comments, you will find articles from two prominent patent-related websites - the Patent Law Blog (Patently-O) and the IP Watchdog – that talk about the fee-greedy USPTO.

- On pages 24-25 of the first Comments, you will see a Patent Law Blog (Patently-O) article entitled *Patent Office Keeps Check, Let's Patent Go Abandoned For Being $10 Short* that reports that it was "nonprecedential" when the U.S. Court of Appeals for the Federal Circuit "laid into" the USPTO for "behaving in what it said was an **'arbitrary and capricious' manner**." [emphasis added] And, the article concludes by asking **"Shouldn't the Patent Office be on the inventor's side?"** [emphasis added] This article can also be found here: https://patentlyo.com/patent/2009/08/patent-office-keeps-check-lets-paten-go-tabandoned-for-being-10-short.html

- On pages 28-30 of the first Comments, you will see an IP Watchdog article about "Buying Patents by the Pound" where, on page 30, in item (4), you will read that **"you quickly realize just how capitalist the Office really is."** [emphasis added] This article can also be found here: https://www.ipwatchdog.com/2008/09/03/new-us-patent-office-fees/id=196/

**The truth is, the USPTO hates inventors, except for their fees.**

AS BRIEFLY AS POSSIBLE, WHAT DID THE USPTO DO?

For probably 200 years, when you filed a patent application, you paid a "filing fee," which "filing fee" included the cost of the patent search and the patent examination: you would pay the "filing fee," and, maybe 9-12 months later the USPTO would conduct a patent search, and a few months after that they would examine the application; thus, you paid up-front for three phases of the process that occurred over probably 12 months or more. Then, all of a sudden, the USPTO produced a Fee Schedule in which there was a "Filing Fees" category and a separate "Search Fees" category and a separate "Examination Fees" category, and the only truly logical and intelligent conclusion, when looking at the Fee Schedule, was that the USPTO had separated these three phases of the process so as to spread out the costs, so as to make them payable when they are incurred. This would be very helpful for independent inventors. And, in fact, if you read further, you will find that David Kappos, then the Director of the USPTO, wrote about the "pay as you go" concept. The name of the concept is "deferred examination."

**Deferred Examination: A Solution Whose Time Has Come**

By Steven Bennett and David Kappos

Deferred Examination – A Reasonable, Balanced Process

A workable process for deferred examination offers an applicant the option to **"pay as you go"** [emphasis added] for the services received from the USPTO. The sidebar and diagram outline our proposal for deferred examination in the US and demonstrate various deferral routes available to applicants.

While not widely used, the USPTO already has a process for deferring examination of applications. Since 2000, that procedure has enabled an applicant to request deferral for up to 36 months from the filing date. To defer, an applicant must pay a $130 processing fee (in addition to the regular filing fee) and choose the number of months for the deferral (between 1 and 36 months). After processing the request, the USPTO grants the deferral for the requested number of months.

SOURCE: This is an excerpt from a 12/03/2009, article that can be found here: https://www.ip-watch.org/2009/03/12/inside-views-deferred-examination-a-solution-whose-time-has-come/

Yes, the USPTO prepared a Fee Schedule that can communicate nothing else except that "pay as you go," or "deferred examination," had been implemented. But, it had not been implemented, and the USPTO was demanding, contrary to the logic of a Fee Schedule with separately categorized fees, and contrary to the instructions they sent out with their Fee Schedule, that all three fees – the "filing fee" and the "search fee" and the "examination fee" - were still "due on filing," just as before: nothing had changed, except that the Fee Schedule was now fraudulent.

Think back to the little story about the "admission price." Imagine how encouraged an inventor would be if the USPTO sent him a Fee Schedule with a "filing fee" of $150 – when he might expect it to be about $385, or something in that range – and that the "search fee" and "examination fee" were separate, implying the logic of Mr. Kappos's "pay as you go." What a thrill! The USPTO cares!

Now, imagine how extremely angry the inventor would be when the USPTO told him that the "filing fee" - or "fees 'due on filing'" - was actually $500, not $150 And...oh, by the way...you ain't gettin' your money back.

Lots of letters and phone calls followed:

- The USPTO sent the inventor a letter – see page 13 of the second Comments - containing the usual mumbo-jumbo, where you find the operative message: the inventor didn't read the "Fed.Reg." [sic], a/k/a the Federal Register. Perhaps in compliance with the Paperwork Reduction Act, the USPTO did not waste money on sending the inventor the Fed.Reg. They did, however, send him a fraudulent Fee Schedule and incorrect instructions.
- On July 12, 2006, the inventor wrote to John Doll, Commissioner of Patents – see Attachment C - to give him a little lesson in logic and to demand some resolution to his problem, and nothing happened, so, after a few months, out of curiosity, he contacted the USPTO to get a current Fee Schedule. And, on November 16, 2006, he received the Fee Schedule shown on page 9 in the first Comments discussed on page 4. This is the **SMOKING GUN**. The fact that the USPTO made this correction is proof that they knew that their Fee Schedule was deceptive.
- The USPTO sent the late Senator Byrd, who had contacted the USPTO on behalf of the inventor, a full-of-mumbo-jumbo letter – see Attachment A - where you find the operative message: the USPTO takes no tax dollars and they get all their money from fees and most of

the fees are set by statute, i.e. Congress approved them. The USPTO was telling Senator Byrd that if they deceive one of his constituents, it's none of his business, because he voted for it.

- The inventor began calling around to Capitol Hill, and ended up at the House Committee on Appropriations, where a staffer for the late Congressman Harold Rogers, who was a critic of the USPTO, was very helpful, and supplied him with a lot information, including the CRS report.
- The inventor called the General Counsel of the USPTO, Bernard Knight, and he actually answered the phone. To paraphrase: the inventor said "Hey, you have a problem with your Fee Schedule," and Mr. Knight said "Okay, send something in, and we'll take a look at it." The inventor did so, and the inventor got a letter from a lawyer – let's suppose – at the USPTO telling him that the USPTO would never answer any more communications. See page 14 of the second Comments.
- The inventor left numerous messages with the call-screener for Mr. Scardino, the CFO at the USPTO, in an attempt to discuss and straighten out the USPTO's Fee Schedule, and Mr. Scardino never answered these messages. Finally, the inventor got his voice mail, and left the question "Do you know what a 'filing fee' is?" followed by what Mr. Scardino – who brought his sensitive ears with him from New York - apparently thought were expletives. That caused Mr. Scardino to actually call back – they knew the inventor's phone number at the USPTO – and the inventor said "Let me explain something to you…," and, hearing this, Mr. Scardino hung up. The inventor did, however, a few days later, get a phone call from Homeland Security, telling the inventor that you can't drop expletives on a government(?) agency. Suffice to say, the inventor's "expletives" weren't anything beyond what comes out of the Bible or the FCC television, and certainly nothing approaching a SWAT-team greeting, but, nevertheless, it was a job for Homeland Security to protect Mr. Scardino's tender ears.
- Yes, behind the USPTO's fraudulent Fee Schedule is the full enforcement power of Homeland Security.

THE USPTO HATES PRO SE INVENTORS

The USPTO regards pro se inventors to be a nuisance, and not deserving of respect, or response, or refunds. And, in compiling this report, the inventor found that, on July 2, 2010, regarding the Paperwork Reduction Act (PRA), Dr. Richard B. Belzer - http://www.rbbelzer.com/ - submitted "Comment: Initial

Patent Applications" to the USPTO, which can be found by searching in Google for "Comment on ICR 065 1-0032."

On page 3 of Dr. Belzer's Comment, we find:

> ***"USPTO believes that..."***
>
> A longstanding complaint that I and other public commenters have...is USPTO$^{O}$s predilection for relying on conjecture...These claims are characteristically preceded by the phrase, "USPTO believes that..."

> On Page 4 of Dr. Belzer's Comment, we find:
> "The USPTO believes that all of the information in this collection will be **prepared by an attorney**… [emphasis added]

It is very obvious that the USPTO doesn't want to believe that there are pro se inventors who might know what they are doing, and they only wants to deal with lawyers, and they expect inventors to hire a lawyer and spend thousands and thousands of dollars to file the most simple application, or to resolve the most simple issue with the USPTO. This explains why the USPTO blatantly neglects preparing accurate public documents. "Oh well, the lawyers know what we are talking about," is what they think. And, also, "the public be damned," of course.

The only respect the USPTO has for pro se inventors is their fees. Particularly, of course, when the inventor is right, and the USPTO is wrong.

**The truth is, the USPTO hates inventors, except for their fees.**

## WHAT NOW?

Obviously, an inventor, knowing that a maliciously incompetent and corrupt and criminal monopoly "government" agency – the USPTO – hates inventors, and having such a long and enraging personal experience of fraud and lying from the USPTO, should just give up, and, the inventor did stop even thinking about inventing. But, in the spring of 2019, serendipitously, he made a discovery that might solve – in a very simple way – a world-wide medical problem that costs billions upon billions every year, so, he had to file a patent application, and, in so doing, he discovered even more criminal hatred for inventors at the USPTO.

THE USPTO REFUSES TO ALLOW INVENTORS TO USE THE LINUX OPERATING SYSTEM

**What now?** Now, it seems that, although the USPTO recognizes that inventors use the Linux operating system, one of their forms – the Application Data Sheet (ADS) – requires the use of Adobe Reader, and Adobe does not work with Linux. See Attachment D, which shows at the top a screenshot of a USPTO webpage acknowledging that inventors use Linux, and telling inventors that they must use Adobe Reader, and, on the bottom, you see that Adobe does not work with Linux. **That's right, the USPTO, de facto, denies inventors who use Linux the opportunity to file patent applications.**

The inventor had filed a provisional patent application, and was attempting to file his non-provisional application, for which there is a deadline, so, unable to obtain the ADS form on his Linux computer because of the USPTO's malicious neglect, he managed to file the application without the ADS form.

In encountering this new idiotic situation with the malevolently incompetent inventor-hating fee-greedy USPTO, the inventor did everything right – just as he had done when he encounter the USPTO's fraudulent Fee Schedule – and, true to form, a cascade of letters and demands for more and more money came from the USPTO, even after the inventor obtained and filed a follow-up paper version of the ADS.

As can be expected, the malicious and incompetent USPTO sent a letter that threatened with abandonment a potentially very valuable patent application, so, the inventor, knowing it was a waste of time, did call the USPTO on March 5, 2021, sometime between 2:30-3:00pm EST, to one of these numbers: (571) 272-2382 or (571) 272-4000 or 1-888-786-0101. It want something like this:

- The inventor: My application number is 16/904,091. I filed online. I use Linux. Adobe doesn't work with Linux. I couldn't get the ADS.
- Extremely obnoxious and ignorant USPTO mouthpiece: You didn't put slashes before and after your signature. [It was a hand-signed paper form.] This is the GOVERNMENT. We don't have to work with your RINKY-DINK COMPUTER. You can file through the mail. You can get a lawyer. You have two years. THIS CALL IS FINISHED.

EVERYBODY OF A CERTAIN AGE KNOWS THE STORY

Everybody of a certain age – and who was following the story – knows the story:

- There was a computer revolution coming.
- How will it play out?
- What will the big dog – IBM - do?
- Finally, IBM introduces it's PC, which people say is slow and not up to the competition, but, it's **IBM**, which means that it immediately dominates the market.
- The IBM PC used Microsoft, so, for compatibility purposes, all competitors adopt Microsoft, except for Apple, which is more exclusive and expensive.
- To understand the IBM-Microsoft relationship, learn about Gary Kildall on Youtube here: https://www.google.com/search?q=youtube+gary+kildall&sxsrf=ALeKk01jJi3DUx9IPkx7EMTb9-VQ80KQdw%3A1617320796689&source=hp&ei=XFtmYP2rJq6w5NoPk4Sk2A4&iflsig=AINFCbYAAAAAYGZpbG1_AObZ_NkCyQCYnmGdhV-DtUnZ&oq=youtube+gary+kildall&gs_lcp=Cgdnd3Mtd2l6EAMyBAgjECc6DggAELEDEIMBEJECEIsDOgsIABCxAxCDARCLAzoLCC4QsQMQgwEQiwM6CAguELEDEIsDOgUILhCLAzoICAAQsQMQiwM6BQgAEIsDOg4ILhCxAxCDARCLAzoLCC4QsQMQgwEQiwM6CAguELEDEIsDOgIIADoKCC4QsQMQQxCLAzoICAAQsQMQgwE6CwgAELEDEIsDOgYIABAWEB5QiRVY0yxgnC5oAHAAeACAAZEBiAGDDpIBBDE2LjSYAQCgAQGqAQdnd3Mtd2l6uAEC&sclient=gws-wiz&ved=0ahUKEwj9yci8nd7vAhUuGFkFHRMCCesQ4dUDCAk&uact=5
- IBM becomes Lenovo in the marketplace. Google links for "IBM Lenovo relationship" are here: https://www.google.com/search?q=IBM+Lenovo+relationship&sxsrf=ALeKk01StM6d5Czx73ztizKKS01XzSNVOA%3A1617320619043&ei=q1pmYP7_AcystQaa6I-gDw&oq=IBM+Lenovo+relationship&gs_lcp=Cgdnd3Mtd2l6EAMyAggAOgcIIxDqAhAnUPPuEljz7hJgzfgSaAJwAngAgAHHAYgBtQKSAQMwLjKYAQCgAQGgAQKqAQdnd3Mtd2l6sAEKwAEB&sclient=gws-wiz&ved=0ahUKEwi-gfHnnN7vAhVMVs0KHRr0A_QQ4dUDCA0&uact=5
- Microsoft becomes almost a monopoly, except that people with additional money to spend can buy an Apple.

LET'S TALK ABOUT MICROSOFT

Yes, the inventor began by using Microsoft. Everybody used it, and so did he. Wow...great...a computer!...and, most of the time, it works. Then, along comes Windows 8, and the inventor buys one, takes it home, and it's junk. There were frequent calls to HP and Microsoft, and at one point the inventor had this exchange: inventor – "It doesn't work." ; Microsoft – "Does it move?" ; inventor – "Yes." ; Microsoft – "If it moves, it works." It's junk.

The inventor had heard about Linux, and, for about $65 on Ebay, he bought a Dell with Linux Elementary, including a carry bag, a wireless mouse, and a fan. Before long, he upgraded to Linux Mint. Through the years, a circa $100 used Dell laptop purchased on Ebay and installed with Linux Mint has always provided an extremely reliable computer.

WHO NEEDS MICROSOFT?

Nobody really needs Microsoft, unless, apparently, you happen to be an inventor who wants to file a patent application with the USPTO. In contrast, you do not need Microsoft to file an international PCT patent application with the World Intellectual Property Organization (WIPO). The inventor knows this, because he did so using his Linux computer.

HOW MUCH DO YOU WANT TO PAY AS PUNISHMENT FOR USING LINUX?

- $80? - If you file your patent application using Linux, you must somehow obtain a paper copy of the required ADS form, which you must file as a "Missing Part," the fee for which is $80, and, you must rely on the incompetent USPTO to handle the paperwork correctly, because they can easily demand bigger and bigger fees to punish you for using Linux. In this case, **the USPTO has, de facto, charged you $80 for a form**, although USPTO forms – and probably all government forms – are traditionally free.
- Humiliation and possible health risk and possible obligation:
  - Humiliation - Since the USPTO will not give you an otherwise free ADS form, simply because you use Linux, you are faced with the humiliation of needing to try to use a public computer or to borrow a Windows computer or go into somebody's residence to use their computer.
  - Health risk? – At the time of Covid-19 lockdown, if, simply to try to obtain an otherwise free ADS form, you must try to find a public library that might be open or see if somebody will let you into their house so you can use their computer, there is a health risk.
  - Obligation? - If you have asked the favor of using somebody's computer to file your patent application – even if it is just to print out an ADS form - what complications can arise from that? If the invention succeeds, what might they think you owe them? What might you think you owe them, just because the USPTO would not give you a form on your Linux computer?
- $100 or more? - If you decide you want to file online, and you use Linux, you will need to buy a computer with Microsoft Windows solely to obtain a USPTO form. If you search Ebay, what might you expect to pay for the Windows computer that you want just to obtain an otherwise free ADS form? $100 or more?

- $200? - If you obtain a paper ADS form, and you decide to file your application by paper through the mail, the USPTO will charge you a **$200 Electronic Filing Incentive**. In this case, **the USPTO has, de facto, charged you $200 for a form**, although USPTO forms – and probably all government forms – are traditionally free.
- Unknown hundreds of dollars – Even if you prepare the application yourself, and then find a patent lawyer who will file it electronically for you, that will cost you hundreds of dollars, and maybe more, if they insist on advising you. It might be hard to find a patent attorney who would take your prepared patent application and file it for you, without them wanting to lend their expertise, which, of course, will cost you money.
- DEADLINE: It must be remembered that if you filed a provisional application using your Linux computer, you have a one year deadline to file your non-provisional application. If you prepare your non-provisional application, and then try to file it maybe two weeks before the deadline – surely a safety margin, you might think – and you discover that the USPTO refuses to allow you to file the application with an ADS form using a Linux computer, you have a very serious problem <u>of the USPTO's making</u>.

-

<u>FORBES, THE WHITE HOUSE, AND MORE...AND...**THE USPTO WANTS $1,500**</u>

Attachment E is an extract from a Forbes article, entitled *5 Reasons You Should Switch From Windows To Linux Right Now*, in which the author says that he thinks "a ton of people are interested – are at least actively curious - about ditching Windows and making the jump to Linux."
https://www.forbes.com/sites/jasonevangelho/2018/07/23/5-reasons-you-should-switch-from-windows-to-linux-right-now/?sh=1ae25c98777b

Attachment F is an extract from a Wikipedia page that tells us Linux is used in the White House and by the Department of Defense and the Federal Aviation Administration. https://en.wikipedia.org/wiki/List_of_Linux_adopters

Attachment G is an extract from a Wikipedia page that allows you to calculate that perhaps 7.5% of people use Linux. https://en.wikipedia.org/wiki/Usage_share_of_operating_systems

**The USPTO is a belligerently backward and willfully incompetent organization that hates inventors, except for their fees.** As an example, take a look at Attachment H, which shows a USPTO Formalities Letter that informs the inventor that, because of the problem they created by not accepting Linux, if he waits five months, **they will be glad to accept $1,500**.

DAVID KAPPOS AND IBM AND MICROSOFT

Attachment I is a November 2, 2009, Politico article, entitled *Critics raise concerns at Commerce,* https://www.politico.com/story/2009/11/critics-raise-concerns-at-commerce-029002 that discusses Congressional concern about the nomination of David Kappos to be Director of the USPTO. Mr. Kappos was coming from IBM, and bringing with him Marc Berejka, from Microsoft. The article reports that:

- "[C]ritics – including government watchdog groups, a variety of stakeholders in the intellectual property community and some lawmakers – ...contend that the two officials have brought their corporate perspective to Commerce, providing an advantage to their former employers."
- "Steve Perlman, a Silicon Valley entrepreneur and inventor and former executive at Microsoft...who was a colleague of his [Berejka] at Microsoft […] said that the Commerce Department was 'pushing all sorts of things which are very specific to IBM's agenda and to Microsoft's agenda.'"

Would you be surprised, with IBM and Microsoft dictating, that *The America Invents Act*, which this particular inventor calls *The Americans Can't Afford To Invent Act*, punishes inventors with something called an **Electronic Filing Incentive?** That's right, if you are an independent inventor – possibly devising simple gadgets, for which a patent application would probably be less than thirty pages – you will be "incentivized" by a **$200 punishment** for a simple patent application.

Probably, in a very large country of 300-350 million people where there are vast areas where "electronic filing" might be very difficult, or where even urban people might not be computer-savvy, there might be an unknown number of inventors – that number will constantly dwindle as computer and internet capability advances – who will file their probably simple and small patent applications the way they always have done, through the mail. But, the USPTO – which sends communications through the mail, even if you file electronically – decided that they don't want these inventors, unless the inventors suffers a **$200 punishment**, or is incentivized to pay **much more than $200** so they can avoid this **$200 punishment** by spending **much more than $200** to file their patent application electronically.

Yes, a **$200 punishment** is supposed to force inventors to buy a computer – maybe an IBM/Lenovo – and to use Microsoft. Now, how much is that going to cost – never mind the internet cost – and how

much time must the inventor divert from trying to commercialize their invention so they can maybe give some money to Mr. Kappos's IBM/Lenovo relationship, and to Mr. Berejka's Microsoft, so as to avoid a **$200 punishment**?

The USPTO has the capability to accept patent applications in the mail, and maintaining this existing capability as mail applications dwindle as computerization becomes adopted costs them nothing. This **Electronic Filing Incentive** is just a **$200 punishment** that extracts fees from inventors. Because you can't spend hundreds upon hundreds to file electronically, the USPTO will gladly punish you by charging you **$200. The USPTO hates inventors, except for their fees.**

BEHAVIOR MODIFICATION AND MR. KAPPOS AND BERNARD KNIGHT

After filing his first Comments, the inventor made contact with a frequent Commenter about the USPTO, Ron Katznelson, who is very well informed and introduced the inventor to the deferred examination concept, and, on the subject of the **Electronic Filing Incentive**, he said that Mr. Kappos had obtained a legal opinion from Bernard Knight, the General Counsel of the USPTO, allowing the USPTO to implement policies designed to achieve "behavior modification."

In Comments Ron made on November 5, 2012, which can be found here - https://www.uspto.gov/sites/default/files/aia_implementation/comment-katznelson-2.pdf – we read:

> Throughout the NPRM, the PTO notes that it proposes to set fees for purposes that include 'facilitating the effective administration of the patent system' – a euphemism for fees set to affect applicants' behavior.
> [...]
> In setting fees not in accordance with the costs to the PTO for providing the associated service but to discourage certain filing activities, the PTO seeks to ***do more*** [sic] than merely recover its aggregate costs – it seeks to implement through the fee structure policies to affect applicants' behavior which Congress did not intend.
>
> Had Congress wanted the PTO to set fees higher for applications that —do not facilitate an effective administration of the patent system it would have done so."

Mr. Kappos came to the USPTO from IBM, and IBM has a history with Nazi Germany – https://www.google.com/search?q=IBM+Nazi+Germany&sxsrf=ALeKk00a2QwdcEL7oIKgLgk_V1AbAQlTiA%3A1617329292506&source=hp&ei=jHxmYNu7Gpqu5NoPsKCJsA0&iflsig=AINFCbYAAAAAYGaKnLoun9XHhECmwSZS-hghMFNDvWeW&oq=IBM+Nazi+Germany&gs_lcp=Cgdnd3Mtd2l6EAMyBAgjECc6BwgjEOoCECdQ7R1Y7R1ggyVoAXAAeACAAWWIAWWSAQMwLjGYAQCgAQKgAQGqAQdnd3Mtd2l6sAEK&sclient=gws-wiz&ved=0ahUKEwjbsdePvd7vAhUaF1kFHTBQAtYQ4dUDCAk&uact=5 - and this inventor doesn't want any "behavior

modification" inflicted on him by Mr. Kappos and Bernard Knight, or anybody else who follows them at the USPTO.

The **Electronic Filing Incentive** may have been the first time the USPTO used their new **behavior modification fee-gouging gadget** invented by Mr. Kappos and Bernard Knight, but the opportunity to get **an extra $200** for patent applications was quite exciting to the USPTO. The inventor, for a period of time, watched PPAC meetings, and said this on page 15 of the second Comments:

> The concept that the USPTO should engage in behavior modification is totally ridiculous, but, if you watch PPAC meetings, you will see Tony Scardino, the CFO at the USPTO, whose competence and integrity you should think highly questionable if you have read this far, speak about going around to various departments to see if there is any behavior of the inventing public that they want to try to modify, and, one might believe that, if they do want to modify some sort of behavior...well, Mr. Scardino will simply raise a fee to an exorbitant level that will 1) contribute to the USPTO's slush fund, and 2) create hardship for inventors, as if they don't have any, already.

WATERGATE AND FEE SCHEDULE-GATE AND LINUX-GATE

The inventor recently discussed the USPTO idiocy with a librarian, whose literary mind immediately opined *Catch 22*.

There is another literary classic, Bob Woodward and Carl Bernstein's *All the President's Men*, that also describes the situation with the USPTO. The inventor recently watched the movie version of the book, in which Hal Holbrook portrayed Deep Throat and Robert Redford portrayed Bob Woodward, and he took note that, at approximately 41:30, Deep Throat tells Bob Woodward this:

> "Forget the myths the media has created about the White House. The truth is, they're really not very bright guys, and things got out of hand."

The same can be said about the USPTO.

NIXON HAD A SLUSH FUND, AND SO DOES THE USPTO

Referring back to page 9, where you read about a **"pot of money"** [emphasis added] and a **"slush fund [of] a billion dollars"** [emphasis added], perhaps this excerpt from an article in the prominent Patently-O blog – which can be found at https://patentlyo.com/patent/2014/11/uspto-telework-abuses.html - can be better understood.

USPTO Telework Abuses

November 17, 2014

by Dennis Crouch

On November 18, the Congressional Judiciary an Oversight Committees will jointly hold hearings on the USPTO Telework Scandal. As with many beltway-scandals, this one is double-dip involving both the scandal and then the cover-up. Basically, USPTO managers allowed teleworkers to violate their time-reporting rules and then USPTO management attempted to hide at least some of those abuses from the Department of Commerce Inspector General after an anonymous whistleblower spilled the beans. [NOTE – The USPTO hotly contests the notion that it attempted any coverup]

What we see is that the USPTO has a "**pot of money**" to lavish on teleworkers, thanks to fees gouged from inventors using the methods described herein, as well as others, and, as far as the "management" at the USPTO is concerned, the only problem they have are whistleblowers.

IT IS ALL SUMMARIZED BY ANTHONY SCARDINO, CFO OF THE USPTO

On February 12, 2014, Anthony Scardino, the CFO of the USPTO, said the following in a PPAC meeting, which can be found here: https://www.uspto.gov/sites/default/files/documents/PPAC_Transcript_20140212.pdf

Lines 18-22 on Page 157, continued to Line 1 on Page 158:

In other words, it's never been the goal to actually full cost fees for every single activity, as you know. So it's **low entry and barriered entry** [emphasis added], and then we get our money on the back end with the maintenance fees.

Lines 6-10 on Page 159:

You know, there are certainly areas that we can apply lever or the brake how do you **modify behavior** [emphasis added] sometimes or how do you actually improve the patent system by encouraging certain behaviors.

Referring back to page 9, we read that, at the subsequent PPAC meeting, on May 22, 2014, Mr. Scardino spoke about the USPTO's efforts at **"lowering fees and things like that [to] give confidence and assurance to the folks on the Hill that, you know what – [we've] been responsible stewards of fee-setting authority."** [emphasis added]

The USPTO's fraudulent Fee Schedule gives the false impression of "**low entry**" [emphasis added] while the **Electronic Filing Incentive** and the USPTO's discrimination against Linux users provides the "**barriered entry**. [emphasis added]" The USPTO wants Congress to falsely believe that the

threshold cost to enter the patenting process is low. And, if Congress believes this, they won't notice that the USPTO demands that anybody who files their application using paper or the Linux operating system are discriminated against – "**barriered** [emphasis added]," to use Mr. Scardino's word - and must **PAY MORE**, unless they pay Microsoft and maybe IBM/Lenovo, or pay even more to Apple.

And, we can see that Mr. Scardino was exuberant about the notion that the USPTO can "**modify behavior**," which, of course, he would do by making inventors **PAY MORE**.

It doesn't matter if Mr. Scardino is no longer at the USPTO. Surely everybody there is quite happy with the status quo as regards what is described herein, because, **the USPTO hates inventors, except for their fees.**

America's "intellectual" property agency, "geniuses" that they are, can't – **won't** - figure out how to tell Congress and the public how much it costs to file a basic patent application, and they can't – **won't** - figure out how to let an inventor file a patent application without being **punished**, unless they pay Microsoft and maybe IBM/Lenovo, or pay even more to Apple. One thing they can figure out, though, is how big the **penalty fees** are that they will let you pay. **The USPTO hates inventors, except for their fees.**

## WHAT MUST BE DONE

The USPTO must be totally reformed. It's existence as an independent fee-greedy inventor-hating Congress-defying "government" agency must end, and it must be brought 100% under Congressional control. And, professionals from the WIPO, in Geneva, must be brought in and given carte blanche to restore the USPTO to respectability. In an America where it has been acceptable to have foreign-born Secretary's of State – Henry Kissinger and Madelyn Albright – there can be no credible opposition to bringing in superior capability from Europe to reform America's "intellectual" property agency.

The USPTO must be forced to:

- Immediately prepare an honest Fee Schedule that instantly and accurately informs everybody – even those who don't read the Fed.Reg., i.e. the Federal Register – what the "filing fee" is: specifically, it must show the three fees that are "due on filing" – the filing fee, the search fee,

and the examination fee - itemized and added to produce a basic "filing fee," without people around the world being forced to waste time and money on the semantic idiocy of the USPTO, America's "intellectual" property agency. Since nobody at the USPTO is competent to do this, the USPTO must hire a competent CPA accounting firm.

- Immediately stop punishing inventors with their discriminatory **Electronic Filing Incentive**, and, further, take all steps to remove this rule, or opinion, or regulation, or whatever it is.
- Immediately begin to accept the Linux operating system, and take all steps necessary to make all online forms available – free of charge – to Linux users.

And, because the USPTO is proven to be contemptuous of and harmful to a class of people – inventors - normally a class action lawsuit would be undertaken, but, the USPTO's status as a "government" monopoly makes this impossible, so Congress must force the USPTO to go through their records and make all refunds and repair all damages done and restore all lost patent rights related to:

- The USPTO's fraudulent Fee Schedule
- The USPTO's discrimination against inventors who file with paper through the mail
- The USPTO's discrimination against inventors who use the Linux operating system

And, the USPTO must be forced to adopt deferred examination. Professor John R. Thomas, in a CRS report entitled *Deferred Examination of Patent Applications: Implications for Innovation Policy,* which can be found if here - https://fas.org/sgp/crs/misc/R41261.pdf - says on page 10 of the report (page 13 in the pdf) that:

> Other commentators have expressed concern that a deferred examination system may have a negative impact upon the revenue that the USPTO receives through the fees it charges.

Thus, we can see that the USPTO is more interested in fees than they are in doing anything to benefit inventors, such as implementing deferred examination. Therefore, Congress must force them to do it. **The USPTO hates inventors, except for their fees.**

And, the USPTO must be forced to become an inventor-friendly agency, and it must be purged of all of its inventor-hating "government" employees. All contacts with independent inventors must be handled by competent inventor-friendly patent attorneys skilled in the application process, and not cheap hack

“government” lawyers who resolve nothing and write lying and contemptuous letters citing irrelevant code, and who tell inventors to read the Fed.Reg., i.e. the Federal Register.

Finally, the USPTO owes this inventor $495 – due to their fraudulent and discriminatory practices – which they must be forced to refund. And, they have wrongfully put into abandonment a potentially very valuable patent application because they discriminate against inventors who use Linux, and they must be forced to take all necessary steps to reverse this wrongdoing. The USPTO has stated that they will not communicate with this inventor, even though the inventor is proven to be correct, so, if they lack the integrity – which they do – to make the required refund and reversal of their wrongdoing, they must be forced to pay – upfront, like a filing fee – the legal costs so the inventor can pay for a lawyer that they can talk to, since they refuse to talk to an inventor who is smarter than they are at America’s “intellectual” property agency.

Of course, this inventor, after who-knows-how-many hours spent, and who-knows-how-much money spent, dealing with the problems created by the USPTO, can never be properly compensated for these damages, but he will be satisfied when the USPTO is forced to implement all of the foregoing.

The USPTO is a joke and a disgrace to the United States.

Kent D. Murphy
March 31, 2021
ptoattackdog@gmail.com

Attachment A



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

The Honorable Robert C. Byrd
United States Senate
Washington, D.C. 20510-6025

JUL 30 2009

Attention: Brian Booth

Dear Senator Byrd:

Thank you for the follow-up inquiry from your Project Assistant on behalf of Mr. Kent Murphy regarding the fees associated with the filing of a patent application and fee refunds.

Initially, we wish to note that section 41 of the patent laws, title 35 of the United States Code, mandates that a filing fee, examination fee, and patent search fee be charged by the United States Patent and Trademark Office (USPTO) upon the submission of each new application for patent. The USPTO, unlike most Federal agencies, is funded solely by user fees, which means that the USPTO receives no support from taxpayer revenues, and all of the operations of the USPTO are funded entirely by fees paid by those who request our services. Moreover, most of the fees charged by the USPTO are set by statute, 35 U.S.C. § 41, and we have no authority to suspend or waive any requirement of law.

Mr. Murphy's patent application was initially filed without any fees. Therefore, the USPTO issued a Notice to File Missing Parts indicating that the "Total additional fees required for this application is $565 for a Small Entity" and itemized these fees as follows: $150 basic filing fee, $65 surcharge (for filing these fees after the application filing date), $250 search fee, and $100 examination fee.

With respect to a refund of fees paid for this application, 35 U.S.C. § 42(d) authorizes the USPTO to refund fees paid by mistake or any amount paid in excess of that required. The fees paid by Mr. Murphy for this application -- $150 basic filing fee for a small entity and $65 surcharge for the late submission of the filing fee -- were not paid by mistake or in excess of the amount required. Therefore, the USPTO has no authority to refund any fee paid for this application.

If Mr. Murphy wishes to pursue his abandoned application, he may file a petition to revive the application under 37 CFR 1.137(b). A petition under 37 CFR 1.137(b) must contain the current search and examination fees due for this application. The current small entity search fee is $270 and the current small entity examination fee is $110, for a total of $380 in fees due for the search and examination fees. In addition, a petition under 37 CFR 1.137(b) must be accompanied by a petition fee of $810 and the applicant must be able to state that the delay in prosecuting the

Attachment B
page 1

UNITED STATES PATENT AND TRADEMARK OFFICE

# INTERNAL ADMINISTRATIVE INQUIRY REPORT

**TO:** Jennifer H. Nobles
Director of Compliance and Ethics
United States Department of Commerce

**THROUGH:** Stacy Long
Senior Counsel for Employment Litigation, Office of the General Counsel
United States Patent and Trademark Office

**FROM:** Tricia Choe
Associate Counsel, Office of the General Counsel
United States Patent and Trademark Office

**CC:** David Shewchuk
Acting Deputy General Counsel, Office of the General Counsel
United States Patent and Trademark Office

**DATE:** June 17, 2016

**SUBJECT:** OIG Complaint Referral No. 16-1071-H
Re: Fee Schedule (USPTO)

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This memorandum summarizes the administrative inquiry conducted by Tricia Choe, Associate Counsel in the United States Patent and Trademark Office ("USPTO"), Office of the General Counsel, Office of General Law ("OGL"), at the request of the United States Department of Commerce's Office of the Inspector General ("DOC OIG") in a referral dated May 24, 2016. Exhibit (Ex.) 1. This inquiry responds to a complaint from Mr. Kent Murphy ("Complainant"), made through the Office of Senator Shelley Moore Capito, alleging that the USPTO's fee schedule is "misleading, unclear and grossly understates the cost of the filing fee for a patent application." Ex. 2. OIG requested USPTO to conduct an inquiry addressing the allegations presented in the complaint, and to apprise them in writing of the disposition of the referral. Ex. 1.

**Exhibits:**

- Exhibit 1 – OIG Referral No. 16-1071-H, dated May 24, 2016
- Exhibit 2 – Complaint, dated May 12, 2016

Attachment B
page 2

- Exhibit 3 – Declaration of Independence, dated June 8, 2016
- Exhibit 4 – Patents Fee Notice of Proposed Rulemaking, published September 6, 2012 (77 FR 55028)
- Exhibit 5 – Patents Fee Final Rule, published January 18, 2013 (78 FR 4212)
- Exhibit 6 – Current USPTO Fee Schedule

**Allegations:**

On May 12, 2016, Complainant, writing through the Office of Senator Shelley Moore Capito, filed a complaint with the OIG alleging that USPTO's fee schedule is "misleading, unclear and grossly understates the cost of the filing fee for a patent application." Ex. 2. As evidence of this alleged misleading and deception, Complainant claims that the fee schedule was "altered to appear that the cost to file a patent application electronically is approximately $70." *Id.* Complainant further claims that the fee schedule is "a fraudulent document as two separate fees that are also required are buried elsewhere in the document," and asserts that this confusion regarding the appropriate fees "allows for USPTO to deceive Congress when reporting average fees." *Id.*

**Findings:**

There is no evidence that the fee schedule contains information that misleads or deceives the public, as alleged by Complainant, or that the fees were "altered" to give the appearance that the cost of filing a patent is lower than it actually is, nor were they hidden. The fee schedule is a listing of all USPTO fees that a member of the public may be required to pay in connection with services provided by the USPTO for a patent application; the fee schedule does not address the specific fees required for any particular application as each application is case specific and may require payment of a fee that is not applicable to another application. For specific application requirements and applicable fees, an applicant must look to the Code of Federal Regulations ("Code" or "CFR"), specifically 37 C.F.R. §§ 1.16 through 1.29, [1] and related guidance provided in Section 607 of the Manual of Patent Examining Procedures (MPEP),[2] both of which are available to the public and clearly lay out patent application requirements and information.

USPTO promulgated its fees, currently codified at 37 C.F.R. part 1, through a fully public and transparent process using the well-established rulemaking procedures provided in § 553 of the Administrative Procedure Act. *See* 5 U.S.C. § 553. There is no evidence that USPTO attempted to mislead or deceive the public about the nature of the fees, as all fee amounts, an explanation of the fee structure, and the fee setting methodology were disclosed to the public in the Proposed and Final Rules to the rulemaking action. Exs. 4, 5. As required under § 553, the USPTO disclosed the proposed new fee structure, including the applicable fee code, citation to the CFR and amount for each fee that it sought to implement, in a Proposed Rule published in the Federal Register on September 6, 2012, and provided the public with a 60-day comment period. *See* Ex. 4. In its Final Rule, dated January 18, 2013, and which was also published in the

[1] Sections 1.16 through 1.29 of the CFR provide detailed information regarding applicable fees and the payment for services related to a patent application.
[2] Section 607 provides further guidance and instructions regarding applicable fees for patent applications. *See* MPEP, 9th Ed., Revision 07.2015, Last Revised November 2015.

Attachment B
page 3

Federal Register, the USPTO clearly set forth the final list of fees implemented and responded to public comments received during the comment period. *See* Ex. 5. By following the rulemaking procedures in § 553, the USPTO ensured transparency in the fee setting process by providing advance public notice of its proposed fees and associated analytical documents, and facilitated public participation by, among other things, allowing for an ample public comment period. By following the established process, the USPTO provided the public with opportunities to review the fees and to express any concerns if the fee structure was unclear or misleading.

Furthermore, USPTO's current fee schedule is made available separately to the public on the USPTO's website in a table that clearly sets forth all USPTO fees that the public may be required to pay in connection with services provided by the USPTO. *See* Ex. 6. This fee schedule is updated as fees are adjusted through the rulemaking process so that the public can easily find the most current and accurate information about USPTO fees on this webpage. Further, as reflected on the fee schedule, the Office's fees are also codified in the CFR, which is published in paper format and available on the Internet, and therefore readily available to members of the public in either format. *See id.* Given USPTO's clear and accessible publication of its fees, it simply is not correct to claim that the USPTO attempts to deceive or hide from the public the actual amount of USPTO fees.

Finally, to the extent the Complainant asserts that USPTO deceives Congress when reporting on average fees, this claim also does not withstand scrutiny. The fees that USPTO make available to the public are equally available to Congress, where any member can see them on its website or in the CFR. Furthermore, in 2011, Congress passed the Leahy-Smith America Invents Act (Pub. L. 112-29), which provided the USPTO statutory authority to set and adjust its fees. USPTO used this authority from Congress to implement the 2012-13 rulemaking that set and adjusted patent fees, and that rulemaking was provided in advance to Congress, as required by the America Invents Act. *See* Ex. 5. Given that Congress both set USPTO fee authority by statute in 2011 and was involved in the USPTO's 2013 rulemaking process that set and adjusted USPTO patent fees, it simply is not correct to claim that USPTO has somehow deceived or misled Congress about USPTO's average fees.

Attachment C
page 1

July 12, 2006

TO: John Doll

Commissioner for Patents

PO Box 1450

Alexandria, VA 22313-1450

FROM: Kent D. Murphy

HC 60 Box 314

New Martinsville, WV 26155-9504

RE: Application number 11/401,473; Filing date 04/11/2006; First named applicant: Kent D. Murphy

NOTICE OF MISSING LOGIC

An independent inventor is allowed to file patent applications. The USPTO provides publications to the independent inventor to facilitate his work. The independent inventor must rely on, and, must be ALLOWED to rely on, the information provided to him by the USPTO. In the USPTO documents, the applicant is repeatedly instructed to pay a "Filing Fee," and, in the event that the "Filing Fee" is missing when the patent application is filed, the applicant is instructed to pay a "Filing Fee" and a "Surcharge." After reading this and examining the enclosed attachments, you will see that this logic is lacking in the action taken by the USPTO against the applicant, Kent D. Murphy.

NOTICE OF MISSING INFORMATION

Referring to the accompanying attachments, the applicant asks to be informed what a "Search Fee" and an "Examination Fee" are. Absolutely no mention is made of a "Search Fee" or an

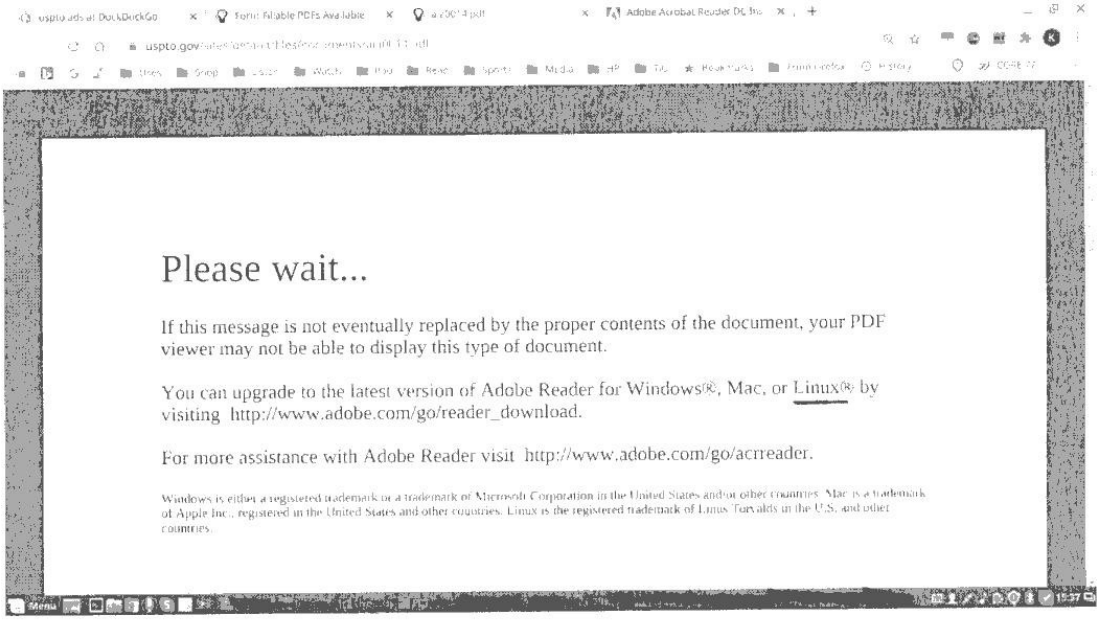
"Examination Fee" in either said USPTO publications entitled "General Information Concerning Patents" and "A Guide to Filing a Utility Patent Application." Further, in "General Information Concerning Patents," there is discussed "additional fees," which are later described as fees required for excess claims.

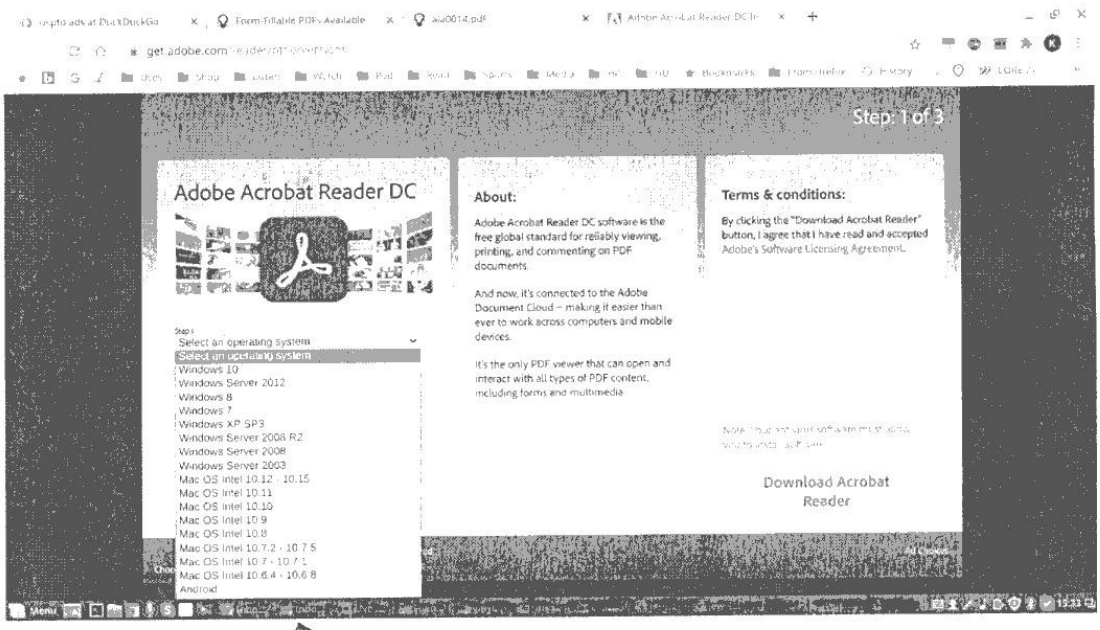
In the USPTO fee schedule, "Patent Application Filing Fees" are shown separate and distinct from "Patent Search Fees" and "Patent Examination Fees." Further, each type of fee in the schedule is shown in separate categories, and under separate headings. The form PTO/SB/17, entitled "Fee Transmittal for FY 2005." reinforces the distinction shown in said USPTO fee schedule, since it separates "Filing Fees" from not only "Search Fees" and "Examination Fees," but also from the "Excess Claim Fees" that are mentioned in the USPTO publication entitled "General Information Concerning Patents," and which are shown as "Patent Application Filing Fees" in the USPTO fee schedule.

In the "Notice to File Missing Parts of Nonprovisional Application," the only thing described as "missing" is the "statutory basic filing fee." And, there is this very specific instruction: "Applicant must submit $150 to complete the basic filing fee for a small entity." Further, the applicant is also advised that "To avoid abandonment, a surcharge (for late submission of filing fee, search fee, examination fee, or oath or declaration), as set forth in 37 CFR 1.16(f) of $85 for a small entity in compliance of 37 CFR 1.27, must be submitted with the missing items identified in this letter." Completely separate

Attachment D

The USPTO requires Adobe. Adobe discriminates against Linux users, since Adobe is not available to Linux users. The USPTO's de facto denial of forms to enable Linux users to engage in the inventing process is illegal. At the time of Covid-19 lockdowns and social distancing and library closings, the USPTO would force Linux-using inventors from their homes seeking a form. This is criminal.




NO Linux

Attachment E

This July 23, 2018, article from business-leader Forbes shows that intelligent people everywhere know that Linux is the best operating system. But, America's "intellectual" [sic] property agency, the USPTO, is so backward and incompetent and malicious and inventor-hating that they refuse to allow patent applications to be filed using Linux, burdening intelligent Linux-using inventors with illegal costs – including fees that go into the USPTO's slush fund, of course – as well as the extortion-induced fear that their potentially important and valuable intellectual property – in which they have invested so much time and passion - will be put into abandonment, because the USPTO is a criminal extortion racket.

https://www.forbes.com/sites/jasonevangelho/2018/07/23/5-reasons-you-should-switch-from-windows-to-linux-right-now/?sh=44645003777b

# 5 Reasons You Should Switch From Windows To Linux Right Now

**Jason Evangelho**
Senior Contributor
Gaming
*I cover the fascinating worlds of Linux & consumer PC hardware.*

This article is more than 2 years old.

When I published the highlights of my journey switching from Windows to Linux on my everyday laptop, I was floored at the engagement it received across all corners of the web. I also voiced an admittedly wrong assumption within the article itself that it wouldn't attract many eyeballs, and yet it became one of my most viewed pieces this year. From where I'm sitting, that tells me a ton of people are interested -- are at least actively curious -- about ditching Windows and making the jump to Linux.

Attachment F

https://en.wikipedia.org/wiki/List_of_Linux_adopters#:~:text=The%20United%20States%20Department%20of%20Defense%20uses%20Linux,fleet%20runs%20on%20Linux%2C%20including%20their%20sonar%20systems.

# List of Linux adopters

From Wikipedia, the free encyclopedia

**U.S.**[edit]

•In July 2001,[26] the White House started switching whitehouse.gov to an operating system based on Red Hat Linux and using the Apache HTTP Server.[27] The installation was completed in February 2009.[28] [29] In October 2009, the White House servers adopted Drupal, an open-source content management system software distribution.[30][31]

•The United States Department of Defense uses Linux - "the U.S. Army is the single largest installed base for Red Hat Linux"[32] and the US Navy nuclear submarine fleet runs on Linux,[33] including their sonar systems.[34]

•In June 2012, the US Navy signed a US$27,883,883 contract with Raytheon to install Linux ground control software for its fleet of vertical take-off and landing (VTOL) Northrup-Grumman MQ8B Fire Scout drones. The contract involves Naval Air Station Patuxent River, Maryland, which has already spent US$5,175,075 in preparation for the Linux systems.[35]

•In April 2006, the US Federal Aviation Administration announced that it had completed a migration to Red Hat Enterprise Linux in one third of the scheduled time and about US$15 million under budget. The switch saved a further US$15 million in datacenter operating costs.[36][37]

•The US National Nuclear Security Administration operates the world's tenth fastest supercomputer, the IBM Roadrunner, which uses Red Hat Enterprise Linux along with Fedora as its operating systems.[38]

Attachment G

The Wikipedia page shown below https://en.wikipedia.org/wiki/Usage_share_of_operating_systems puts "Google's Chrome OS [at] up to 6% (in the US) and other Linux distributions are at around 2%." Another Wikipedia page https://en.wikipedia.org/wiki/Chrome_OS says "ChromeOS...is a Gentoo Linux-based operating system designed by Google." Do the math: "up to 6%" and "around 2%" equals between 7-8%. The backward and incompetent and malevolent and inventor-hating USPTO can't add, of course, except when adding-up the extortionate fees they can add to their slush fund. You use Linux? You pay us more. You don't. You lose. Ha. Ha.

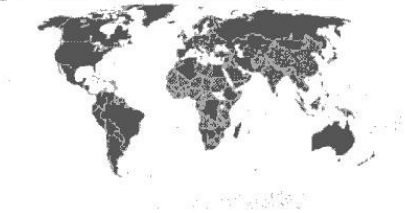
## Usage share of operating systems

From Wikipedia, the free encyclopedia

hide**This article has multiple issues.** Please help **improve it** or discuss these issues on the **talk page**. *(Learn how and when to remove these template messages)*

This article may **require cleanup** to meet Wikipedia's quality standards. The specific problem is: **the article has many confusing and poorly worded sentences.** *(November 2019)*

This article **may be confusing or unclear to readers**. *(May 2020)*



Most-used operating systems in each country or dependency[1][*needs update*]

Windows

Android

iOS

No data

The **usage share of operating systems** is the percentage of computing devices that run each operating system (OS) at any particular time. All such figures are necessarily estimates because data about operating system share is difficult to obtain; there are few reliable primary sources – and no agreed methodologies for its collection.

In the area of desktop and laptop computers, Microsoft Windows is the most commonly installed OS, at approximately between 77% and 87.8% globally. Apple's macOS accounts for approximately 9.6–13%, oogle's Chrome OS is up to 6% (in the US) and other Linux distributions are at around 2%G. All these figures vary somewhat in different markets, and depending on how they are gathered.[2][3]

Attachment H
page 1

UNITED STATES PATENT AND TRADEMARK OFFICE

| APPLICATION NUMBER | FILING OR 371(C) DATE | FIRST NAMED APPLICANT | ATTY. DOCKET NO./TITLE |
|---|---|---|---|
| 16/994,091 | 08/17/2020 | Kent D. Murphy | |

CONFIRMATION NO. 2464

Kent Murphy
72 Terrace Drive Apt. B-6
Cameron, WV 26033

FORMALITIES LETTER

Date Mailed: 08/21/2020

## NOTICE OF INCOMPLETE REPLY (NONPROVISIONAL)

*Filing Date Granted*

The U.S. Patent and Trademark Office has received your reply on 08/17/2020 to the NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION (Notice) mailed 06/29/2020 and it has been entered into the application. The reply, however, is not a complete reply for the reason(s) listed below. A complete reply must be timely filed to prevent ABANDONMENT of the above-identified application. Replies should be mailed to: Mail Stop Missing Parts, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

**The period for reply continues to run from the date of the Notice mailed 06/29/2020.** Applicant must submit all required items and pay any fees required below within two months from the date of the NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION to avoid abandonment. If the reply is submitted after two months from the date of the NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION, extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

**Items Required to Avoid Abandonment:**

The required items noted below SHOULD be filed along with any items required above.

- Complete residence information, either city and state or city and country, for **Kent D. Murphy** has not been provided. Residence information is required separately from the mailing address, if the inventor lives at a location which is different from where the inventor customarily receives mail. Also, a valid state code or a valid country code must be provided. For lists of valid state and valid country codes, see the Instructions for Application Data Sheet available at https://www.uspto.gov/patent/forms/forms-patent-applications-filed-or-after-september-16-2012. There is an indication on either the ADS or the inventor's oath or declaration that the mailing address and residence information is not the same for this inventor.
  Applicant must provide the residence information on either
  - An inventor's oath or declaration in compliance with 37 CFR 1.63, or
  - A properly marked up applicat on data sheet (ADS) in compliance with 37 CFR 1.76
- A complete mailing address that includes either the city and state or city and country, for each inventor has not been submitted. Applicant must provide the mailing address on either
  - An inventor s oath or declaration in compliance with 37 CFR 1.63, or
  - A properly marked up application data sheet (ADS) in compliance with 37 CFR 1.76.

  Note that an inventor's mailing address is required even if a correspondence address has been submitted. An inventor's mailing address may not necessarily be the same as the correspondence address for

Attachment H
page 2

the application and must be separately submitted in the manner set forth above. If the inventor lives at a location which is different from the inventor's mailing address, the inventor's residence (either city and state or city and country) must also be separately submitted in the manner set forth above. For lists of valid state and valid country codes, see the Instructions for Application Data Sheet available at: https://www.uspto.gov/patent/forms/forms-patent-applications-filed-or-after-september-16-2012
Mailing address information is needed for the following inventor(s): **Kent D. Murphy**

Mail date of Notice: 06/29/2020

Last date that extension may be obtained. (Note: The petition and fee must be received by this date, or include a proper certificate of mailing under 37 CFR 1.8 with a date on or before this date, and extend the time to include this date.) 01/29/2021

| Length of Extension of Time | Fee under 37 CFR 1.17(a) effective March 19, 2013 | | |
|---|---|---|---|
| (response due on or before) | Undiscounted | Small Entity | Micro Entity |
| One Month (09/29/2020) | $200 | $100 | $50 |
| Two Months (10/29/2020) | $600 | $300 | $150 |
| Three Months (11/29/2020) | $1400 | $700 | $350 |
| Four Months (12/29/2020) | $2200 | $1100 | $550 |
| Five Months (01/29/2021) | $3000 | $1500 | $750 |

Replies must be received in the USPTO within the set time period or must include a proper Certificate of Mailing or Transmission under 37 CFR 1.8 with a mailing or transmission date within the set time period. For more information and a suggested format, see Form PTO/SB/92 and MPEP 512.

Replies should be mailed to:

Mail Stop Missing Parts
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

Registered users of EFS Web may alternatively submit their reply to this notice via EFS-Web, including a copy of this Notice and selecting the document description "Applicant response to Pre-Exam Formalities Notice" https://sportal.uspto.gov/authenticate/AuthenticateUserLocalEPF.html

For more information about EFS-Web please call the USPTO Electronic Business Center at 1-866-217-9197 or visit our website at http://www.uspto.gov/ebc

If you are not using EFS-Web to submit your reply, you must include a copy of this notice.

Questions about the contents of this notice and the requirements it sets forth should be directed to the Office of Data Management, Application Assistance Unit, at (571) 272-4000 or (571) 272-4200 or 1-888-786-0101

qrenyea

Attachment I

Print is reduced in size to limit paperwork. It can be seen on your computer if you search Google for "Critics Raise Concerns at Commerce" or go here: https://www.politico.com/story/2009/11/critics-raise-concerns-at-commerce-029002

Critics raise concerns at Commerce

By MICHAEL FALCONE 11/02/2009 05:21 AM EST

Two former high-level managers at IBM and Microsoft are playing key roles in the Obama administration's patent reform efforts, leading critics to question whether their involvement constitutes a breach of the administration's ethics policy.

Opponents of the Obama administration's position on patent reform say that David Kappos and Marc Berejka, who recently took top jobs in the Commerce Department, are wielding too much influence over a policy that stands to benefit both of their former companies.

As recently as March, Kappos, who was vice president and assistant general counsel for intellectual property at IBM, appeared before a Senate panel to express the company's support for patent reform legislation making its way through Congress. And for more than a decade, Berejka worked in senior government affairs roles at Microsoft, including eight years as a lobbyist for the high-tech giant.

Now they are once again influencing the debate but from within the Commerce Department, where Kappos has been in charge of the patent and trademark office since August and Berejka serves as a top policy adviser.

As one of the Obama administration's chief negotiators on the bill and the main adviser to Commerce Secretary Gary Locke on patent issues, Kappos is a central figure in formulating the administration's policy. Berejka has helped coordinate the department's efforts to reach out to stakeholders involved in the debate and has been involved with the department's patent reform messaging efforts.

Both officials were among the high-level aides who had a hand in drafting an Oct. 5 letter signed by Locke that announced the administration's provisional support for the Senate's patent reform bill — the same piece of legislation that Kappos promoted seven months earlier as an employee of IBM.

The letter, addressed to Senate Judiciary Committee Chairman Patrick Leahy (D-Vt.), who sponsored the patent bill, and the committee's ranking member, Sen. Jeff Sessions (R-Ala.), was greeted with public statements of support from both Microsoft and IBM.

At Kappos's July confirmation hearing for the Commerce post, Sen. Arlen Specter (D-Pa.) grilled him on his ties to IBM. He pledged to steer clear of any issues that involved the company.

"To me, it's extraordinarily important that I have absolutely nothing to do with any particular decision that involves my former employer if I am confirmed for this job," Kappos said at the time.

He added: "Like other people who are in private industry and move to the government, I will put my previous role behind me and focus entirely on doing the right thing for the United States of America."

Berejka's job at the Commerce Department did not require Senate confirmation.

The involvement of Kappos and Berejka in the patent reform process provides an example of how former lobbyists and appointees with corporate ties can exert power even in an administration that swept into Washington with promises of curbing their influence.

On his first full day in office, President Barack Obama issued an executive order banning appointees of his administration from working on any matter "involving specific parties that is directly and substantially related" to their former employers for a period of two years. Former lobbyists entering government are subject to even stricter ethics rules. Still, a number of appointees who did not meet the guidelines managed to find their way into the executive branch; some were issued waivers allowing them to serve in key roles.

Yet neither Kappos, who was not a registered lobbyist, nor Berejka, who records show was last registered to lobby in 2007, sought or received waivers. According to the Commerce Department, that was because no issues have come up that would have required a waiver. Locke, who previously acted as a lawyer for Microsoft himself, also did not seek or receive a waiver.

"Everybody's experience comes from somewhere, and good people serve the nation in government from all walks of life. President Obama set an unprecedented standard for ethical conduct, and Secretary Locke has emphasized that standard for everyone at the Commerce Department," said Nick Kimball, a Commerce spokesman. "The administration is assisting Congress as it seeks to pass patent reform legislation that will encourage innovation and help the economic recovery for all Americans."

But critics — including government watchdog groups, a variety of stakeholders in the intellectual property community and some lawmakers — disagree. They contend that the two officials have brought their corporate perspective to Commerce, providing an advantage to their former employers.

See page 2

Melanie Sloan, executive director of Citizens for Responsibility and Ethics in Washington, an organization that monitors ethics in government, said that, at the very least, Kappos should have recused himself from the patent reform matter.

"I don't understand why someone who testified on this issue for IBM is working on the exact issue in Commerce," Sloan said. "It's completely in violation of the rules."

She added: "Even if you get past your technical ethics problem, you can't get past your appearance problem. Appearance counts."

While Kappos has recused himself from matters that directly affect IBM, the Commerce Department asserted that his past affiliation should not prevent him from working on patent reform issues. The department said that Berejka has recused himself from matters directly involving Microsoft.

Both companies, however, have been among the most vocal advocates for patent reform for years, and both are among the country's most prolific patent filers. Records show that, in recent years, Microsoft and IBM have spent millions lobbying Congress, the Commerce Department and other agencies on patent reform issues.

The Commerce Department declined to make Kappos or Berejka available for an interview.

Opponents of the administration's policy include some smaller technology and manufacturing firms, universities and individual inventors. They tend to dislike proposals, as outlined in Locke's letter, aimed at changing from a "first to invent" to a "first to file" system, allowing patents to be awarded to whichever company or inventor submits paperwork faster. They also oppose an idea, backed by the administration, known as "post-grant review," which would create more opportunities to challenge patents after they are approved. In general, technology behemoths like IBM and Microsoft are better positioned to take advantage of such changes than smaller firms.

Steve Perlman, a Silicon Valley entrepreneur and inventor and former executive at Microsoft, who is best known for co-founding WebTV, said big technology companies have much to gain from both proposals. He argued that the process within Commerce has been tainted by Kappos and Berejka, who was a colleague of his at Microsoft.

"I worked to elect Obama to curtail the kinds of things that Marc Berejka is doing," Perlman said. "It is astounding to me that he is now in the administration."

Perlman said the Commerce Department was "pushing all sorts of things which are very specific to IBM's agenda and to Microsoft's agenda," like the first-to-file system and post-grant review, "both of which strongly favor large companies."

The interest that IBM and Microsoft have in the patent reform debate is clear: Last year, IBM received more than 4,000 patents — more than any other company — and Microsoft topped 2,000 patent awards.

Last month, Horacio Gutierrez, vice president and deputy general counsel at Microsoft, issued a statement commending Locke for "supporting balanced patent reform legislation that benefits all segments of American industry." Soon after, IBM followed suit with its own statement urging "swift passage" of the bill.

On Oct. 15, a dozen Republican lawmakers wrote a letter to Senate leaders that was critical of the administration-backed patent bill, saying that it "threatens to diminish the value and enforceability of U.S. patent rights at a time when America's economic recovery is dependent on the strength of U.S. innovations."

But opponents are generally reluctant to call attention to Kappos's and Berejka's past corporate ties, according to one lobbyist who is involved with negotiations over the bill.

"There is an unwritten code, particularly among large companies, that one company doesn't criticize the other in terms of public policy if they can avoid it," the lobbyist said.

Rep. Marcy Kaptur (D-Ohio), an outspoken opponent of the patent reform bill, told POLITICO it did not appear that Kappos and Berejka had sufficiently distanced themselves from their corporate roots to be objective on patent reform issues.

"I think the president's got a problem with his personnel office. Somebody is not protecting his flank," Kaptur said. "By moving these people inside, to me, you jaundice the whole process."