



## Minnesota Inventors Congress

Providing inventors with reliable information since 1958

Re: Commerce Agency Review Team for the Obama Transition Team

Dec. 22, 2008

Attn: Don Kelly  
From: Deb Hess

Thank you for the opportunity to be a part of the conference call on Friday, Dec. 19<sup>th</sup>. As some of the callers commented, it was wonderful to be asked to share our thoughts on the operations of the United States Patent & Trademark Office. Below are a few comments I would like to add to the conversation.

General information:

1. Invention Promotion companies encourage people who have an idea to get a patent very early on in the process. There is not a successful inventor that I have talked to that would recommend that the patenting process is the first stage of developing marketable products. By using secrecy and the sense of urgency in protecting the idea they convince a naïve customer that they (the promoter) know what is best. I hope that some of the current changes in law for practitioners will help in the future. If there is a way to make the invention promotion companies more accountable (consumer protection) and they stop encouraging people to get a patent early on in the process it could be a step towards improving patent quality. I have also had many conversations with inventors who leave their appointment with the marketing company and based on the conversation will try to write their own patents to avoid the high costs.

Patent Reform thoughts (I know this was not the focus of the conversation, but feel compelled to share some thoughts): Which entities are the driving forces behind the change, major corporations or independent inventors? Independent inventors do not have the capacity to hire full time lobbyist firms to carry their message. It is a grassroots effort to share their collective voice. All sides agree that the quality of patents need to be addressed.

2. First inventor to file. Over the past year I have participated in many invention expos, representing the United States through the International Federation of Inventors Associations (IFIA). I have had many conversations with inventors from around the world, at these events. When we talk about the proposed changes in the US Patent Law they unanimously have commented that they hope this portion of the bill doesn't pass and that they wish that their country held the same position as the current US law, that it is the first to invent. They stated that they are very sorry to see that as a proposed change to our system, that it should stay the first to invent, not first inventor to file. They recommend that this is one area where we should not try to conform to international standards. US inventors comments say they feel the same way.
3. Damage awards/Appportionment. Concerns about these topics lean very strongly towards one major concern. Setting the maximum amount for damages that the court can access is very troubling for professional and individual independent inventors. The reason the courts should not be controlled to set damages is because of the blatant disregard for the law by the infringers. The saddest message I hear on a regular basis is that if the proposed language becomes effective it will stifle the innovative spirit. Others use the phrase "cripple the independent inventor." They make comments about how if they create a product, a major corporation can develop it and write out a very small check for the damages." They have a hard enough time fighting the large companies with their deep financial and legal resources. If the courts are limited in what can be awarded I am hearing that it will have a major impact on the spirit of creativity and imagination. If there is no chance of monetary gain why would inventors continue to be innovative. The current environment for ethical leadership in major US corporations is not fostering a spirit of trust – there is more of a sense that they will do whatever they can get away with for as long as they can get away with it. Apportionment concerns involve the desire to not change the current method of determining damages based on the share used. Red flag!!
4. Excessive Litigation. The proof is the numbers over the past 15 years. It does not appear to be an issue.

If there is interest in a more in-depth discussion about these topics, I would be very willing to participate. Thank you for the opportunity to share what I have heard in the inventing community about these issues.