PRESIDENT'S CORNER

September 2010

Dear Fellow Members,

As summer draws to a close, I've prepared a short "to-do" list of objectives for my term in office. The focus is to: (a) increase the diversity of our membership, including racial, ethnic, geographic, and in-house representation among our ranks, (b) streamline our committees structure to enhance the effectiveness, accountability and productivity of core committees, (c) insure that our Association remains on a sound financial footing to weather what pundits are calling "The Great Recession", and (d) enhance our Association's involvement in proposed IP legislation.

Apropos of item (d), H.R. 5980 was introduced in Congress on July 29, 2010 with the stated purpose of promoting job repatriation. In this election year, few politicians would wish to be branded as not in favor of job creation legislation - perhaps only those not caring about being re-elected.

One provision of H.R. 5980 would replace the "automatic" publication of patent applications, at eighteen months after filing, with publication of merely an abstract of the invention instead. The remainder of the patent application, including the claims, would be publicly unavailable until the patent issues.

It's hard to imagine who would benefit from the change that this provision embodies. Possibly no one. Any patent owner choosing to foreign file would see their patent application publish anyway, albeit abroad, at the eighteen-month mark. Under current law, any patent owner choosing not to foreign file can request nonpublication of their application, thus keeping it under wraps until the time the patent issues.

It's less hard to imagine who would be disadvantaged by the change that this provision would make. Possibly everyone. The reason is that the easy flow of information to the public concerning the contents of patent applications would likely be impeded. It might be more difficult for the average member of the public to gain access to such information if, for example, it is only available in a Japanese counterpart application published in Japanese.

It is also hard to imagine who gains from the standpoint of purported job repatriation. What might the authors of the provision have been thinking: job repatriation for translations into the English language?

Irrespective of what the authors may have been thinking, the likely impact of the provision, if enacted, would be to diminish, rather than increase, the incentive force associated with our patent system by re-imposing a veil of secrecy on the contents of patent applications that had been lifted via the American Inventors Protection Act of 1999. The likely consequence would be to slow the wheels of innovation - which could hardly bode well for job creation.

It goes without saying that our Association needs to speak out on pending IP legislation, such as H.R. 5980, and perhaps get involved in drafting legislation that we believe will be for the betterment our IP system. Hopefully, we can bring a perspective to legislators that those having greater vested interests might not be in a position to bring.

On a different note, next month my wife, Ginger, and I will be pleased to represent the Association at the Intellectual Property Law Association of Chicago's ("IPLAC's") annual dinner in honor of the federal judiciary. IPLAC was established in 1884 - almost four decades before our Association was founded. At the dinner, we hope to gain a sense of perspective from the IPLAC's members based upon their association's long history of service to our profession.

With kind regards,

Dale Carlson