

WIGGIN AND DANA

*Counsellors at Law*

## Public PAIR: The Newest Tool to Monitor the Filing and Prosecution of Competitor Patents

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The U.S. Patent and Trademark Office (USPTO) recently announced a new electronic database as part of its effort to make the patent examination process fully transparent to the public. The new database, known as the Public PAIR (Patent Application and Information Retrieval) system, allows anyone with Internet access to track the status of a public patent application as it moves from publication to final disposition. Public PAIR allows the public to view, download, and print an array of information including PDF files of all the documents contained in approximately 500,000 patent application files not covered by confidentiality laws. The types of documents available for viewing include Office Actions, Amendments, Information Disclosure Statements, Notices of Allowance, and similar prosecution documents. New applications will be continually added to the database, and at least 300,000 new application files are expected to be added annually. The Public PAIR database may be accessed on the internet at

*<http://portal.uspto.gov/external/portal/pair>.*

- The Public PAIR system allows access to information that companies and individuals may find helpful in monitoring patent prosecution of competitors or partners, or making strategic decisions regarding patent protection and the direction of research.

- Public disclosure of patent application file documents will permit others to more easily "design around" a product for which patent protection is sought by their competitors, and may help guide innovation into those areas not occupied by competitors' filings. In general, the later in the patenting process a competitor becomes aware of a relevant patent in the field, the more difficult and expensive it becomes to design a non-infringing product. With the Public PAIR system, one can become aware of a competitor's patent claim scope much earlier (e.g., before grant), and begin the design around process earlier and before major capital investment has been made.
- The Public PAIR system will publicly disclose the most current version of the claims in a published application, thereby allowing a more accurate determination of whether the claims may cover an infringing activity of a competitor. By using Public PAIR, the infringer can be alerted to cease its infringing activity well in advance of patent issuance and thus prevent the applicant from recovering potentially significant damages.
- Public PAIR can facilitate due diligence activities and negotiation of patent representations and warranties as a prelude to patent licensing or other corporate transactions. For example, by allowing public access to the file history of the patent assets, potential licensees can more carefully determine the scope of patent protection being offered.

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The new Public PAIR system is an excellent complement to the European Patent Office's (EPO) Online Public File Inspection system which allows for viewing, downloading, and printing of documents contained in the published application files. Together, the EPO's Online Public File Inspection and USPTO's Public PAIR allow for monitoring of filing and prosecution of patents in the United States and Europe, arguably the two largest markets in the world.

Wiggin and Dana has extensive experience in establishing patent monitoring procedures and can tailor a useful and comprehensive system to monitor worldwide patent filings and prosecution of your competitors using Public PAIR and EPO's Online system, as well as fee-based services such as Derwent, Inpadoc, and selected Dialog databases. If you are interested in establishing such a system, or would like to find out more information about these services, please contact your regular Wiggin and Dana attorney, or one of us.

*This document is intended as an informational reminder and does not constitute legal advice. If you have any questions or would like to discuss a particular situation, you should contact your regular Wiggin and Dana attorney, or one of us.*

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