

THE COST OF INNOVATION

WILL INCREASED PATENT COSTS IMPROVE THE US PATENT SYSTEM?

Hoffman Warnick LLC



Elaine C. Berlin
Patent Attorney
eberlin@hoffmanwarnick.com



Matthew B. Pinckney
Patent Attorney
mpinckney@hoffmanwarnick.com

Over the last couple of months, the United States Patent and Trademark Office (PTO), based outside Washington, DC, sent its road show around the Nation to discuss recent changes in the US patent laws. This month, the show arrived in Boston to spread the word and discuss implementation of these new rule changes. The PTO is also openly discussing its proposed new fee structure for filing patent applications in the US. Under this proposed new structure, the cost of filing a standard utility patent application will increase almost 50% from its current amount.

Many inventors, from those in small start-up companies to those working for enormous technology firms, view the increased fees as a negative. The PTO believes that this new fee structure will result in stronger patents being issued, in less time. Other groups, such as the American Intellectual Property Law Association (AIP-PLA), a leading patent organization, believe that the increase in filing fees will discourage inventors, including start-ups and small companies, from filing for patents.

Currently, pursuing patent protection for an idea involves a lot of waiting. For example, many applicants wait up to two (2) full years from the date they file a patent application until the PTO even begins to examine that application. During that time, many inventors are attempting to commercialize their products, building a customer base and their brand along the way. However, these inventors (and their companies) frequently feel hamstrung in commercializing their products without knowing whether their patent(s) will ultimately cover the products they are selling.

Much of the reason for delay in review of patent applications is the extreme shortage of patent examiners at the PTO. Without sufficient staffing to properly review applications, the backlog of cases will only continue to grow. According to the Executive Summary submitted by the Patent Public Advisory Committee (PPAC) on February 7, 2012, the backlog at the end of the 2011 fiscal year included 669,625 applications. The PTO believes that by increasing the filing fees, they can hire more examiners, and consequently decrease the backlog. The PPAC estimates that the proposed fee changes will reduce the backlog of applications by approximately half by the end of the 2017 fiscal year, even though the number of applications filed each year continues to rise.

The PTO road show currently traveling around the US aims to inform the patent community about the changes coming to the practice of patent law in the United States. The road show also aims to build support for the PTO proposal to increase the cost of filing for patents, which is painted as a quid pro quo for build-

ing a better US patent system. Not all parties see this as a fair exchange.

Regardless of the ultimate resolution to this dispute over fees, it seems that most groups have a common interest in streamlining the patent process to reduce the backlog, thereby providing inventors with an understanding of their patent rights in an efficient manner. One thing is for certain: so long as the patent application backlog continues to build, inventors, including start-ups and small to mid-sized companies, will remain frustrated with a system that often delays the rewards for innovation. We can only hope that changes in the fee structure, no matter their final form, will help to incentivize investment in the patent system, and consequently, the innovation engine which helps drive the US economy.

WORKER'S COMPENSATION



By Raymond Seligman
Silverman, Silverman & Seligman, P.C.
rjs@thesilvermanfirm.com

There are big moments and major cases in every field of law but rarely will any affect the future lives of as many people as **Zamora**, which was argued in the Court of Appeals a few days ago.

Remember the old days of law school, when you were young and awake, with ideals, when the question was "What is the issue?" Well, the issue here is huge and the particular facts are actually relatively unimportant. In a nutshell, **Zamora**, deals with a situation in which, after both sides having had an opportunity for extensive litigation before the Workers' Compensation Board, including lay and medical testimony, with briefs, arguments and appeals as necessary, a determination is made that the Claimant suffers, for example, a 25% disability or loss of wage earning capacity. Comp pays 2/3 of the loss so if the Claimant was earning \$1,200 per week and has a loss of 25% then he has lost \$300 in wage earning ability and he receives 2/3 of that, or \$200. No one really disagrees with that arithmetic. Further, in a **Zamora** situation, as a result of the compensable injury, the Claimant has taken an involuntary separation from his job -- in lay terms, he just can't do it any more. Note that this has already been argued, established, appealed and decided before we get to the real **Zamora** issue.

THE ISSUE: Who has the burden of proof, and what is that burden in order to allow the Claimant to continue to receive benefits which result from that disability? The Claimant, by continuous unsuccessful job searching? Or the carrier by proving that the established and confirmed disability plays no part in the loss of current earnings, that the partial loss of current earnings is solely the result of outside factors unrelated to the disability. I state my bias up-front, as a "claimant's guy. And the Appellate Division agrees. While this is a difficult burden for a carrier to meet, meet it they must. Demonstrate Mr. Carrier, if you can,