Author Full Name : Gerald T Peters **Received Date :** 03/28/2021 08:56 PM

Comments Received :

I am one of the co-signatories on the "85 Patent Practitioners" letter of March 28.

I write separately to urge OIRA to admonish PTO that procedural law matters. Procedural rules exist to ensure that decision-makers ask the right questions of the right people to fully inform themselves of all relevant facts, before making decisions. Procedural rules exist to prevent unintended consequences.

The PTO is well aware of the importance of procedural rules—the procedural rules for patent applications applications fill over 300 pages of the Code of Federal Regulations, and hundreds of pages more of guidance documents. The PTO enforces those rules tenaciously. 98% of the enforcement is fine, because when the PTO follows rulemaking procedure, its rules reflect fair cost-benefit balancing and sound policy choices, and the public has fair notice beforehand.

The letter explains a recent pattern of rulemaking in which the PTO has shortcut required procedure. That shortcutting deprives OIRA of critical information, deprives the public of critical opportunity to comment, and deprives the PTO of critical information about cost-benefit balancing. The letter is at least as much about informing you of that pattern and its costs, and asking you to help get PTO on side with the law, than about this particular instance.

The key message in the "85 Patent Practitioners" letter is that procedural rules matter just as much to the PTO's rulemaking decisions as they do its patent decisons. The pattern of shortcutting in the PTO’s rulemaking leads to PTO issue rules that impose costs that have no public policy grounding, and that create burden and cost-shifts without commensurate benefit.

I urge OIRA to grant only a narrow clearance as requested in the "85 Patent Practitioners" letter. PTO should have an opportunity to rethink some of its recent rules that don't serve their needs well, and retailor recent rules to do a more-targeted job at lower cost.