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OMB Desk Officer

Comment: Invention Promoters/Promotion Firms Complaints

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For years the United States Patent and Trademark Office (USPTO) and inventor organizations like the United Inventors Association (UIA) have been trying to educate inventors and would-be inventors about the dangers of fraudulent invention marketing companies. Congress took up this issue in 1999 with the American Inventors Protection Act where certain legislative requirements were set. The Federal Trade Commission (FTC) also worked to limit damage done by these companies through Operation Mousetrap. However, the invention marketing industry has grown stronger than ever and they are still targeting unsuspecting inventors with false promises.

Fraudulent invention marketing companies (IMCs) use advertising to attract unsuspecting inventors or quasi-inventors into their operation and limited contracts. Some use well-known spokespersons to send a message of competence to their unsuspecting audience. Others use internet marketing or have their websites placed on the first page of a search for invention. Their aim is to find the unsuspecting inventor who wants to be the next Bill Gates with a wonderful invention. Once the inventor has been drawn into the IMC's website, all the IMC has to do is use a little sweetener to capture the victim and insure the IMC of a quick profit.

The IMC's method of operation is relatively consistent from company to company. The first step is to offer a patent search, which usually shows that the invention can be patented. This first step is relatively inexpensive as it normally costs just a few hundred dollars. And in many instances they are not being provided a legal opinion of patentability. Now the IMC sets the hook by telling the inventor that it knows almost every big company in the field of invention and can make sure that its work can lead to a licensing deal. The next step is the hard part for the inventor, paying for IMC services which can cost up to \$20,000, and sometimes more. Most inventors who go to IMC companies do not have this kind of money, so the IMC offers a way to pay for the services through a private loan company. Interest rates usually are high and the loan company makes sure that the money is paid back.

The biggest issue with the IMC is its contract. Federal law requires that the success rate must be shown in the contract, but there is nothing to prohibit the IMC representative from discounting these numbers by saying that the current inventor need not worry, since the invention is great and will easily make money. Once the contract loan contract is signed, it is all over for the inventor. The inventor is out a great deal of money and the patent, if issued, will either be a design patent or totally worthless due to the claim language required to be approved by the patent examiner. One of the men who helped craft the bill in 1999 is sorry that it ever passed, because the companies use the language and comment that they are legal because they are complying with the law.

Inventors have an opportunity to complain about these IMCs by filing a complaint with the USPTO and with the FTC. The USPTO complaint is reviewed, a letter is sent to the IMC and both the complaint and the IMC response are posted on [www.uspto.gov](http://www.uspto.gov), unless the inventor withdraws the complaint. Some companies settle with complainants for

pennies on the dollar to get the inventor to withdraw the complaint so that the IMC's name will not appear on the list of companies having complaints filed against them.

The USPTO addresses the issue of IMC complaints, educates the public on how to find reputable providers when trying to obtain a patent, and provides information for transitioning into the marketplace. The USPTO has had multiple Independent Inventor Conferences and Saturday Seminars across the country, bringing to light how inventors can and should handle the invention process. However, these conferences and seminars can help only a limited number of people. The number of conferences and seminars is dependent on the budget authorized for this outreach. If there is a shortfall of money, then one of the first areas of the USPTO budget to be hit is outreach, thus limiting any effort to increase knowledge of IMCs and other important invention issues.

The USPTO also has tried to help with this issue through education on their website, through the new *pro se* initiative and through the implementation of a nationwide *pro bono* program to assist inventors with legal work. All these efforts are great, but they still do not reach the multitudes that television, radio or internet advertising attract, which are provided by the IMCs.

While the percentage of patent applications by independent inventors has decreased over the last number of years, there are still plenty of inventors that are losing money to IMCs and are so disillusioned that they never invent again. This is a disservice to the inventor and to our nation's intellectual property growth.

How do we address the issues discussed above? It appears that there should be a three-prong approach. First, the USPTO should work directly with inventor associations to help devise a legislative solution that will address directly the deceptive practices of the IMC industry. Legislation requiring IMCs to change their business model will provide inventors with a better chance for understanding what obligations are listed in a contract and for recovering funds if the IMC does not live up to the contract terms. Second, the USPTO should place immediate restrictions on registered attorneys and agents from being on the payroll of IMCs and/or require these attorneys and agents to work directly for and be paid by inventors. Finally, the budget for outreach should be increased and not be restricted by decreases in income to the USPTO.

We are bringing these problems to your attention with the express intent of offering our assistance in addressing these issues. I would like to follow up with you or your designee to see if we can work together on this critical issue affecting the inventor community.

Sincerely,

//John J Calvert, Sr.//

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