

INSURANCE IP BULLETIN

An Information Bulletin on Intellectual Property activities in the insurance industry

A Publication of - Tom Bakos Consulting, Inc. and Markets, Patents and Alliances, LLC

Introduction

In this issue's feature article, Mark Nowotarski uses guidance provided by the science fiction writer Isaac Asimov to speculate on what patents of the future might look like.

The Patent Regulation section provides links to important changes in the rules for applying for patents that the USPTO has proposed.

The Patent Events section gives dates and contact information for several upcoming conferences that have sessions on patents in insurance.

The Free Patent Help section gives contact information for the USPTO's free help line.

The Statistics section updates the current status of issued US patents and published patent applications in the insurance class (i.e. 705/004). We also provide a link to the ***Insurance IP Supplement*** with more detailed information on recently published patent applications and issued patents.

Our mission is to provide our readers with useful information on how intellectual property in the insurance industry can be and is being protected – primarily through the use of patents. We will provide a forum in which insurance IP leaders can share the challenges they have faced and the solutions they have developed for incorporating patents into their corporate culture.

Please use the FEEDBACK link to provide us with your comments or suggestions. Use QUESTIONS for any inquiries. To be added to the Insurance IP Bulletin e-mail distribution list, click on ADD ME. To be removed from our distribution list, click on REMOVE ME.

Thanks,
Tom Bakos & Mark Nowotarski

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Feature Article

The Future of Patents

By: Mark Nowotarski
Patent Agent, MPA LLC

During my college days, I had the honor of attending a lecture given by noted science fiction writer, Isaac Asimov¹. He shared with our assembled group his secret for predicting what the world will look like in the days to come. "All you have to do", he said, "is look at how humanity has always behaved in the past, and assume they will continue to behave in that way in the future".

He told us that one of the ways humanity has behaved in the past, is that there has always been a reactionary response to any major social, political, or technological change. A reactionary response like this appears to be happening right now in the field of patents. Patent coverage has become broader, and the public is failing to see the value in it. Unless patents become more effective at their primary purpose of disclosing valuable new inventions in a timely manner, reactionary forces are going to rein them in.

The judicial interpretation of the patent laws in the U.S. has been undergoing substantial changes in the past few years. Software is now patentable. Engineered life forms are patentable. Even methods of doing business are patentable. Many of these changes have been brought about by the U.S. Court of Appeals for the Federal Circuit. This is an activist court in the good sense of the word. If they can interpret the laws so that patents will provide the coverage needed to protect new fields of innovation, they will do so.

The tide of public opinion, however, has been turning against these changes. Patents are seen as being too powerful. Between the Amazon.com one-click patent, Ronald Katz's call center patents and most recently, the NTP patents that are being asserted against RIM, the maker of Blackberry® email systems, the public perception is that patents give too much protection to inventors relative to the good they bring to society.

Witness two rule changes that the USPTO has recently proposed that are ostensibly being made to improve the efficiency of patent examination. One of the consequences of these rule changes is that, if they are implemented, it will be much more difficult for inventors to get broad patent protection for their inventions. Thus these rule changes may be more of a reactionary response to overly broad patents than a genuine attempt to improve efficiency at the patent office.

¹ Isaac Asimov is the author of I Robot and other science fiction works.

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The public may be right. Patents may have become too powerful relative to the value they bring to society. Perhaps the problem is with patents themselves. Perhaps it's time for them to evolve into a new form.

Patents were originally developed in the 1600's as means for governments to encourage the revelation of otherwise secret inventions. Patents had to contain enough information so that another person skilled in the art could read them and recreate the inventions disclosed therein without undue experimentation. If they met that criteria, then the country they were filed in would grant the inventor a limited right to prevent anyone else in that country from making, using or selling the invention.

Patent disclosures were limited narrative descriptions of how to make and use an invention. The descriptions were supported by simple line drawings if necessary. This was due to the historical, technological limitations of how patents were distributed. They were published in books using moveable type presses and hand carved plates for drawings.

Examination of patents was by hand and took about three years. This was fine given the slow pace of technological development.

Except in extreme cases of questionable utility (e.g. flying machines), there was no need to prove that a given invention actually worked.

This is still largely the same way it is done today. Disclosures are limited to narrative descriptions; drawings can only be in black and white and must fit on standard sized pieces of paper for printing purposes; examination takes well over three years; and, except in extreme cases of questionable functionality (e.g. cold fusion) there is no need to prove that a given invention actually works.

This may have been OK in the days of steam ships and horse drawn carriages, but it fails today. If patents are once again to become a valuable resource for promoting the revelation and transfer of otherwise secret but useful inventions, then the mechanisms used for disclosing these otherwise secret inventions and the means for demonstrating their usefulness must keep up with the times.

Open Source software has already made this transition. Open Source software is a new method for promoting disclosure of innovations in the field of computer programming. Computer code is considered to be "open source", when the source code is made publicly available under the condition that those who improve the software must also make those improvements publicly available as Open Source. The Linux® operating system is the most well known example of useful and valuable software being developed by the Open Source process. Open Source computer code, however, is widely used in many areas of software development. In fact, some

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might argue that it's nearly impossible to find software that doesn't incorporate Open Source code to some extent². This is true even in the financial services industry.

One of the reasons for the success of Open Source is that its disclosures are immediately available in a format that's immediately useful. It's on the Internet and it's source code. If you want to see if a piece of Open Source software works, you download it, compile it, and run it. If it doesn't do everything you want it to do, you modify the source code and improve it. You then make your improvements available as Open Source and others can benefit immediately from your work.

One of the problems with Open Source is that it is strictly a barter system. The only reward that is available to those that disclose their source code is access to more source code. This is great if you like source code, but if Open Source is to become a viable alternative to patents it must provide rewards which can be in whatever form the discloser finds most valuable. That's what money is. Until monetary rewards are available for Open Source disclosures the way they are for patents, Open Source will be limited to the communities of innovators that will be satisfied with bartering their services for services in kind.

Isaac Asimov was an inspiring speaker. His message about the universal reactionary response to all change has stayed with me. We are seeing that reactionary change play out in the field of patents due to the recent changes in the types of inventions that patents can cover. The proposed rule changes by the USPTO is one example. Whether or not these particular rules changes are ever implemented is irrelevant. Some sort of constraint on patent rights is coming soon unless patents themselves evolve into a more effective and valuable means of disclosure.

² The widespread incorporation of Open Source into proprietary software poses a legal risk to those that do it. According to most open source licenses, any software that incorporates open source must itself be Open Source.

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Patent Regulation

Proposed Rule Changes at the USPTO

As indicated in our feature article, the USPTO has proposed major changes in the rules governing the filing of new patent applications. These rules would introduce new limits on the number of continuing applications an inventor can file and how many claims per application an inventor can have examined. You can read the details of the proposed changes and the rationale behind them at: <http://www.uspto.gov/web/offices/com/speeches/06-01.htm>

The USPTO asserts that these rule changes will increase the speed and efficiency of patent examination and reduce the misuse of patents by unscrupulous inventors that take advantage of loopholes in the system.

The consensus found among patent agents and attorneys, however, is that these proposed rule changes will have the exact opposite effect. They will lead to a substantial increase the cost of filing and prosecuting patent applications, prosecution times will become much longer due to the necessity to file more appeals, and new loopholes will be created that may lead to even worse abuses of the system.

The public is invited to comment on the proposed rule changes. Emails can be sent to: ab93comments@uspto.gov. The deadline for comments is May 3, 2006. The USPTO is also sponsoring "Town Meetings" to explain the rationale and implications of the changes. Announcements of town meetings can be found at <http://www.uspto.gov/>

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Patent Events

Managing Retirement Income Symposium February 27 – March 1, 2006, Boston MA

The Institute for International Research (IIR) will present a session on *The Impact of Innovation and IP Rights on Retirement Income Products* at a Symposium this month in Boston, MA. The meeting will be held at Hotel@MIT in Cambridge. The speaker will be Tom Bakos, FSA, MAAA.

For registration and information, go to <http://www.iirusa.com/retirementincome>.

Patent Session at Meeting of Casualty Actuaries of New England March 28, 2006 – Sturbridge, MA

The Casualty Actuaries of New England will present a session on patents at their Spring Meeting to be held on March 28, 2006. The meeting will be located at the Sturbridge Host Hotel in Sturbridge MA. The speakers will be Mark Nowotarski, patent agent, and Kiri Parankirinathan ASA, inventor of Survival Risk Insurance (US patent 6,999,935).

For registration and information, contact Daniel Lowen, 617 375 2485, or by email, <mailto:daniel.lowen@ey.com>

Auto Insurance Report National Conference April 23 – 25, 2006 – Monarch Beach, CA

This annual conference attended by leaders in the auto insurance industry is already sold out. Tom Bakos will provide attendees with insight into current IP activities in the auto insurance industry and how patents are being used to protect innovation.

For additional information see: <http://www.riskinformation.com>

Insurance Patent Session at IP Rights for Financial Services Meeting April 25 – 26, 2006, New York, NY

The Institute for International Research (IIR) will present a session on *Patented Innovations in Insurance* at the upcoming IP Rights for Financial Services meeting to be held on April 25 – 26, 2006. The meeting will be held at the Embassy Suites, New York, NY. The speaker will be Mark Nowotarski, patent agent.

For registration and information, go to <http://www.iirusa.com/iprights>.

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Free Patent Help ***Inventor's Assistance Center***

Have a tough patent question? There is a free helpline sponsored by the US Patent Office called the "Inventors Assistance Center". It's staffed by retired patent examiners. The examiners can't provide legal advice, but they can help make sure that procedures are followed properly. Both patent agents and inventors have found the Inventors Assistance Center to be quite knowledgeable and a pleasure to work with.

It can be a bit tricky to get through to them. The USPTO would rather that the public uses its web site (<http://www.uspto.gov/>) to answer routine questions. When a problem is unique or complicated, however, it's worth going straight to the assistance center.

Here is how to call the Inventors Assistance Center:

- Dial the USPTO's main number, 1 (800) 786-9199.
- At the first prompt press 2.
- At the second prompt press 4.
- You will then be connected to an operator.
- Ask to be connected to the Inventor's Assistance Center.
- You will then listen to a prerecorded message before being connected to a person who can help you.

The Inventor's Assistance Center is especially useful for those inventors that wish to file their patent applications themselves. The examiners at the Center can walk an inventor through the forms that need to be filled out and give guidance on proper procedures. They cannot, however, help with drafting an application, reviewing claims or helping develop arguments or amendments to overcome a rejection. For that the inventor needs a licensed patent agent or patent attorney.

Another benefit of their experience is that they personally know many of the key people in the office that an inventor might need to reach. This includes the people in the electronic business center, publications, petitions, and the PCT help desk.

The Inventor's Assistance Center is a valuable service provided by the USPTO to the public. Although difficult to reach, they are well worth the effort.

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Statistics

An Update on Current Patent Activity

The table below provides the latest statistics in overall class 705 and subclass 4. The data shows issued patents and published patent applications for this class and subclass.

Published Patents as of 2/14/2006			Published Patent <i>Applications</i> as of 2/16/2006		
	Class 705	Subclass 4		Class 705	Subclass 4
YEAR	#	#	YEAR	#	#
2006	235	5	2006	780	15
2005	1,451	30	2005	6,299	148
2004	998	23	2004	5,590	156
2003	969	21	2003	6,009	128
2002	886	15	2002	6,135	164
2001	880	19	2001	1,326	30
2000	1,062	29			
1999	1,005	36	TOTAL	26,139	641
1998	745	20			
1978-1997	2,776	47			
1976-1977	80	0			
TOTAL	11,087	245			

Class 705 is defined as: DATA PROCESSING: FINANCIAL, BUSINESS PRACTICE, MANAGEMENT, OR COST/PRICE DETERMINATION.

Subclass 4 is used to identify claims in class 705 which are related to: *Insurance* (e.g., *computer implemented system or method for writing insurance policy, processing insurance claim, etc.*).

Issued Patents

Since our last issue, 5 new patents with claims in class 705/4 have been issued: 3 relate primarily to L&H, 1 relates to auto insurance; and 1 is an administrative system relating to all lines. Three of these newly issued patents have an assignee indicated.

Patents are categorized based on their claims. Some of these newly issued patents, therefore, may have only a slight link to insurance based on only one or a small number of the claims therein.

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The [Resources](#) section provides a link to a detailed list of these newly issued patents.

Published Patent Applications

Twenty six (26) new patent applications with claims in class 705/4 have been published since our last issue. They are broken down by product line or type area as follows:

P&C:	11
Life & Health	12
All:	3
Pension:	0
TOTAL:	26

The [Resources](#) section provides a link to a detailed list of these newly published patent applications.

Again, a reminder -

Patent applications have been published 18 months after their filing date only since March 15, 2001. Therefore, there are many pending applications that are not yet published. A conservative assumption would be that there are, currently, about 200 new patent applications filed every 18 months in class 705/4.

The published patent applications included in the table above are not reduced when applications are issued as patents, rejected, or abandoned. Therefore, the table only gives an indication of the number of patent applications currently pending.

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Resources

Recently published U.S. Patents and U.S. Patent Applications with claims in class 705/4.

The following are links to web sites which contain information helpful to understanding intellectual property.

United States Patent and Trademark Office (USPTO): *Homepage* - <http://www.uspto.gov>

United States Patent and Trademark Office (USPTO): *Patent Application Information Retrieval* - <http://portal.uspto.gov/external/portal/pair>

Free Patents Online - <http://www.freepatentsonline.com/>

World Intellectual Property Organization (WIPO) - <http://www.wipo.org/pct/en>

Patent Law and Regulation - <http://www.uspto.gov/web/patents/legis.htm>

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- You will then be connected to an operator.
- Ask to be connected to the Inventor's Assistance Center.
- You will then listen to a prerecorded message before being connected to a person who can help you.

The following links will take you to the authors' websites

Mark Nowotarski - Patent Agent services – <http://www.marketsandpatents.com/>

Tom Bakos, FSA, MAAA - Actuarial services – <http://www.BakosEnterprises.com>