

TO: Vice President Al Gore, The White House

cc: The Hon. William M. Daley, Secretary of Commerce
The Hon. Bruce A. Lehman, Assistant Secretary of Commerce and
Commissioner of Patents and Trademarks
The Hon. Q. Todd Dickinson, Deputy Assistant Secretary of Commerce and
Deputy Commissioner of Patents and Trademarks

FM: Coalition for Patent and Trademark Information Dissemination, Joseph L.
Ebersole, Counsel

Subj: Response to Letter from Carl Malamud Re Patent and Trademark Databases
On-Line

Date: May 17, 1998

Dear Mr. Vice President:

Carl Malamud's letter of April 27, 1998 specifically recommends that PTO provide free access to raw historical and current patent data on an FTP site. While at first impression an attractive proposition to all companies who currently purchase raw patent data from PTO, the proposal is blind to four factors which impact this attractiveness.

First, Carl erroneously asserts these databases are treated as "government profit centers." They are not! In fact, PTO complies with OMB Circular A-130 and the Paperwork Reduction Act, which establish cost-of-dissemination as the guide for user fees. PTO's fees for raw patent and trademark data are based on the cost of making copies. If these costs were not covered by such user fees, patent and trademark applicants' fees would have to be increased to cover them.

However, we agree with Carl that provision of raw patent and trademark data via an FTP site should be studied by PTO. Indeed, patent information companies have also been pressing PTO to consider an FTP site. It is possible this would be less costly for PTO so that purchase fees could be significantly reduced. Since such a site would be completely for dissemination purposes, its development as well as operating costs would have to be covered as costs-of-dissemination. The extent to which this might cause second thoughts on the proposal remains to be seen.

Second, Carl asserts that: "...we hide the documents that define (intellectual property)." Nothing could be further from the truth. As a matter of fact, PTO has the most effective information dissemination system of any government agency in the U.S. or elsewhere. It indeed fulfills the

Paperwork Reduction Act goal of encouraging a diversity of sources. PTO provides patent and trademark data on CD-ROM products; it provides a paper copy service; and it provides a number of agency files and databases via the Internet. PTO's Web site includes the PatBib service which provides free access to twenty years of patent bibliographies and abstracts. But its most effective means of reaching the maximum number of potential users is through its bulk raw data service, which is purchased by 28 organizations as fuel for private sector patent information services. These services then provide patent information to users throughout the world.

Three private sector services already provide free searching of patent bibliographic or full text data. Anyone -- college students, senior citizens, or young researchers -- can use them for searching. All free patent search services (both government and private) do charge for copies of a complete patent, whether such copies are downloaded, faxed, or delivered in paper form, and that part of the service helps pay for the free searching.

Third, if PTO were to plan for an FTP site, this would have to include determining how to establish equitability and fairness for all those who have already purchased historical patent data. As of this year, buying the historical data will require over \$300,000 for patent images, and over \$150,000 for patent text. A number of companies have already made these investments. It would be unfair to suddenly let others obtain this data free, unless the purchase funds were first returned to those companies, or some other equitable step were taken.

Fourth, the magnitude and costs of operation for patent data search services are much different from other types of government data. Patent data volume, as of May 5th, is running at an annual rate of over 150 Gigabytes. Patent search databases, to be useful, have to carry many years of data. Patent historical files now total approximately 3 Terabytes of information. One small company who started into business several years ago reported that the facilities and equipment costs alone to start their patent search service were over one million dollars. If the data were free, this amount would not change. Any organization that seriously wants to provide a real patent information service has to conduct extensive planning studies before making such an investment. Storing 3 Terabytes takes a major investment. (One can get a sense of how much this represents by comparison with a well-known high technology company. For example, Steve Jobs, in a recent speech bragged that his Pixar Animation Studios had a total of 5 Terabytes of storage.) Thus, patent historical files represent daunting volume.

In spite of these concerns, Coalition members support evaluation of an FTP site by PTO. Providing raw data for fast downloading will speed up information dissemination; and Carl Malamud is correct in observing that making data more readily available can provide the basis for additional

creative uses of patent data. The Coalition believes it may be possible to work out an equitable basis for some type of dissemination via an FTP site and would be happy to discuss the relevant issues.

We should add that we do not believe it is possible to work out an equitable basis for a full text search service on the part of PTO. This would be anathema to all organizations who have made major investments in patent data over the years, and especially to the small new patent information companies who have sprouted in the 1990s as a result of the current enlightened PTO policies. It would amount to a betrayal of the premises upon which whole new businesses have been based. Thus, we think Carl Malamud (as opposed to Commissioner Lehman, whose comments reported in the New York Times were that he would like to provide a full-text service if he had the funding) is on the right track. The problem will be working out an equitable method for funding and charging for use of an FTP site.