

From: Jerry Miller
Sent: Friday, September 05, 2008 5:31 PM
To: ac27.comments
Cc: Jerry@patent-inventions.com
Subject: Comments on proposed rules RIN 0651-AC27 (Limiting Submissions By Fax)

Hon. Director:

The following comments on the proposed rules limiting submissions by fax are submitted on behalf of myself and my company Miller Patent Services, Inc.

I strongly urge you to reconsider certain aspects of the proposed rulemaking. I strongly oppose the limitation of submissions of fax for the following reasons:

Removal of the ability to submit correspondence by fax may severely limit the options of applicants and practitioners (hereinafter applicants). Despite apparent claims to the contrary, the Office cannot guarantee that EFS web is always available to all applicants. The availability of EFS Web depends not only on the Office's computer systems being 100% functional 24 hours a day, 7 days a week (which cannot be guaranteed and has not been delivered despite assertions of 24/7 availability on the Federal Register Notice), but further depends at least upon the applicant have 1) safe access at all times to operable computer systems that have functional digital certificates (at home, office and on travel), 2) have a safe and functioning Internet Service Provider, 3) having a functional Internet, and 4) possibly having the available trained resources to use EFS Web.

By way of example, my access to the Internet has been disrupted over the past year by storms, and construction (cutting telephone or cable lines) on approximately six instances. Repairs sometimes took days. In each case, there was no deadline that could not have been handled by use of my fax machine or at worst a short drive to a copy center to use the fax machine.

The same could not be said for EFS Web, since I would have to have a portable computer that has a valid digital certificate and be appropriately interfaced to the Internet. This is sometimes not as easy as it would seem. Moreover, when one relies on "hot spots" or other public access to the Internet, one faces a higher risk to their computer security over which they can exercise little control. (Note that our computers often contain information that is of our clients' most confidential nature.)

When situations disrupt the ability to use EFS Web, the inability to have fax access may necessitate use of standard first class mail. As a result, the burden of scanning of paper will not be relieved.

While EFS Web is easy to use, it does not fully take the place of being able to utilize less trained personnel that can readily operate a fax machine when deadlines are looming.

When using EFS Web, those outside the Eastern U.S. time zone one may not receive benefit of submissions on the actual date of submission.

While the Office argues that they are experiencing low image quality and increased handling costs, such is to be expected when fax is utilized as a mechanism to produce printed paper that is then scanned. Obviously, this introduces image degradation by virtue of multiple scans and prints producing a third or fourth or fifth generation image. The solution is to take advantage of the fact that the scanning has already been carried out by the fax machine sending

the document, and have the electronic equivalent directly converted to .pdf at the Office rather than introducing further distortion and labor by printing and scanning. In essence, the originator of the document has already done the scanning work for you.

Documents submitted by EFS Web may suffer from degradation by virtue of having been scanned in order to convert a paper document to .pdf format. If the fax image is directly used without printing and scanning, the quality should be comparable to that received in many .pdf documents produced by scanning and sent by EFS Web.

Fax communication is a mature technology that is readily available at hotels, printing centers, many homes, computers, online services and other businesses all over the world. Fax machines are almost always close by for borrow or hire in an emergency. This enables the applicant to meet due dates regardless of their location and provides for the ability to submit documents to the USPTO far more conveniently and readily than EFS Web. I have personally had hit-or-miss experiences with use of hotel networks and other Internet access points while traveling, but have rarely had a problem sending or receiving a fax. I also have no desire to have to potentially expose my client's confidential data to intruders via a network over which I have little control.

Fax technology is reliable and generally doesn't get or spread viruses. Thus, during a computer emergency, fax may be the only viable alternative for responding within a looming deadline.

EFS Web works well, but without a doubt works best with high speed Internet access. Believe it or not, there are many areas of this country that still do not have ready access to reliable high speed Internet. With minimal inexpensive equipment, one can still produce fax responses from these locations (or from remote vacation sites) almost effortlessly. Moreover, I personally know practitioners who use dial access to the Internet and have experienced severe delays or dropped Internet connections in attempting to use EFS Web. EFS Web is a fine and successful tool, but it does not replace conventional fax technology.

I grant that fax machines are not as glamorous as electronic filing, but the telephone infrastructure is ubiquitous almost worldwide, and fax technology is tried and true.

The Office asserts that EFS Web is so successful that from Oct. 2006 to Jan. 2008 usage of EFS Web increased from 28% to 70%. I have been told that this far exceeded expectations. At this rate, it is likely that the use of fax will further decline and the problems leading to this proposed rulemaking will diminish over time. In other words, if EFS Web is that good why rob applicants of another tool that can be used for submissions when all else fails?

The Office state that "EFS Web users have repeatedly stated that they are satisfied with the ease of access and use of EFS Web", but only a few weeks ago at a presentation regarding electronic business for the National Association of Patent Practitioners (NAPP) I personally witnessed numerous comments and questions from practitioners relaying problems they had experienced with EFS Web. Many if not most such comments and questions related to concerns about an inability to always access EFS Web. Their collective experience is that they do indeed like EFS Web, but 24/7 access is far from guaranteed. With applicant's rights at stake, we cannot lose any options for communication.

Issues noted in the Federal Register with limitations on return receipts by fax are problems that have to be addressed at the Applicant's end. I saw no mention of problems that Applicants must address to use EFS Web. If the Applicant has a problem with not getting a

receipt, it does not mean the document was not properly received. Moreover, it is a problem for which the solution is under applicant's control.

The Office should also consider the impact on pro se applicants. It is not realistic to expect many pro se applicants to adopt EFS Web. This limits their options to the U.S. postal service. It simply is not fair to place such applicants at a disadvantage.

I have no objection to the proposed font size, and suggest that if the changes to fax rules are not implemented the font size requirement will likely improve the ability of the Office to maintain legible documents in the IFW – even without printing and scanning being eliminated.

I trust you will consider my comments and hope you will revise your proposal in favor of keeping the ability of an applicant to utilize fax submissions as in the past. The current problems with fax will diminish with time, and there is no compelling reason to deny applicants this flexibility.

Respectfully submitted,
Jerry A. Miller