

EXHIBIT A

Andrea P Roberts

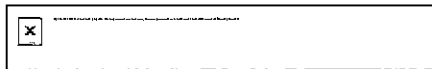
From: Bennett, Jennifer D. [jennifer.bennett@snrdenton.com]
Sent: Thursday, March 08, 2012 2:58 PM
To: Andrea P Roberts; PUM
Cc: Google-PUM; rhorwitz@potteranderson.com; dmoore@potteranderson.com
Subject: PUM v. Google

Andrea,

I write in response to Google's March 1, 2012 announcement changing Google's privacy policy. It is clear from the publicly available information on the new policy that Google is monitoring and using information it collects about its users and combining all of the collected information in one place to provide personalized search results and ads to the user, and is therefore, highly relevant to the current case. Please immediately supplement Google's document production and produce all documents relating to Google's new policy and the ways in which Google monitors, collects and combines data regarding user's interactions to provide search results and ads to its users.

Thanks,

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EXHIBIT B

April 13, 2012

BY E-MAIL

David Perlson
Quinn Emanuel Urquhart & Sullivan LLP
50 California Street, 22nd Floor
San Francisco, CA 94111

Re: Personalized User Model LLP v. Google Inc., C.A. No. 09-00525-LPS

Dear David:

I write to follow-up on our meet and confer today regarding documents relating to Google's new privacy policy. As I stated during our call, there are several statements in Google's new privacy policy which indicates Google made changes to its Search and YouTube systems. For example, Google explains "[t]he changes to Google's privacy policy also make clear that Google can, for a given signed-in user, **combine information gathered in connection with one Google service and use that information with information from other Google services**. For the vast bulk of Google properties, this does not represent a change in Google privacy policy or how Google treats and deals with user data. The two notable exceptions to this relate to Web History (i.e., search history for signed-in users) and YouTube (i.e., Google's video sharing service that it acquired in 2007). Under the new policy, it is clear to users, including those of YouTube and Web History, that such cross-service sharing is permitted."

PUM is specifically interested in documents relating to the following:

1. Whether any information tracked and/or collected about a user while using Search, for example, queries, clicks on results, clicks on ads, results or ad impressions, or any derived information (i.e., odp, link, or rephil categories associated with such actions) is used by Google in other systems, for example, to determine which ads to display to a user on YouTube, or which videos to recommend; and
2. Whether any information tracked and/or collected about a user while viewing videos in YouTube or clicking on ads in YouTube, or any derived information (i.e., the categories associated with the ads that are clicked by the user) is used by Google in other systems, for example, in Google Search, to determine which search results or ads to display to a user.

As I stated in previous correspondence, and again during our call today, any documents relating to whether Google's change in its policy reflects Google's change to relevant aspects of the accused systems, (e.g., Web History in Google Search and You Tube), are highly relevant to the case. Please confirm as soon as possible whether these changes were made to Google's systems, and if so, whether Google will produce documents relating to such changes.

Sincerely,

Jennifer D. Bennett
Jennifer D. Bennett

EXHIBIT C

Ten Years of *Inter Partes* Patent Reexamination Appeals: An Empirical View

Eric J. Rogers¹

Introduction

Inter Partes Patent Reexamination is an administrative review process, with significant participation by the requestor, whereby an issued patent can be challenged as existing in error. If during a patent reexamination a patent claim is determined to be defective, then the remedies are to allow the patent owner the opportunity to correct the error(s) and to cancel any patent claim that remains invalid. The benefits of patent reexamination include: 1) providing a mechanism to clear up patents with cloudy validity that is administered by the U.S. Patent and Trademark Office, the only institution that can declare a patent valid;² 2) allowing a potential patent infringer to invalidate a patent and avoid costly litigation;³ and 3) offering an alternative forum, presided over by experienced patent examiners,⁴ to the federal courts for determining patent validity.

This raises questions: 1) How accurate are the patent examiners of the Central Reexamination Unit of the U.S. Patent and Trademark Office? 2) Do patent owners or third party requestors fare better? 3) Which types of appeals are more likely to be successful?

An analysis of the results of all the appeals of *Inter Partes* Patent Reexaminations completed in the first ten years reveals the historical reversal percentages of reexamination decisions. Based on the empirical data presented, the examiners' determinations are upheld more than three fourths of the time (e.g. 76-78% by individual grounds of rejection). The data presented here indicate that during appeals third party requestors tend to be more successful by about 14 percentage-points in maintaining patent claim rejections and adding new grounds of rejection compared to patent owners' tendency to successfully have patent claim rejections reversed. This is probably caused by a systemic disadvantage to patent owners rather than any special advantage to third party requestors.

Part I of this article reviews patent reexaminations in general. Part II focuses on the *Inter Partes* Patent Reexamination proceeding. Part III discusses appealing *Inter Partes* patent reexamination decisions to the Board of Patent Appeals and Interferences and describes empirical data regarding results of appeals. Part IV highlights for practitioners some advantages and disadvantages of *Inter Partes* Patent Reexamination. Finally, Part V looks to the future of *Inter Partes* Patent Review after the enactment of the America Invents Act of 2011.

I. Background on Patent Reexamination

Patent reexamination (reexam) is an administrative proceeding conducted by the U.S. Patent and Trademark Office (USPTO) wherein a party may file a request, during the period of enforceability of a patent, to reevaluate the validity of one or more patent claims in light of published reference(s) cited by the requester as raising a substantial new question of patentability of the patented subject matter.⁵ The patent owner (PO), any third party and the Director of the USPTO can request a reexam.⁶

Reexams may favor the rejection of claims as compared to EP Reexams, although in a minority of IP Reexam proceedings, the TPR stops participating.

The impact of narrowing amendments to the claims in a reexam is not clear – from the TPR’s point of view, it could be positive, negative or neutral. The amended claims could be irrelevant to any ongoing litigation or to potentially infringing conduct or, on the other hand, might have created intervening rights that protect the TPR’s past conduct. Often a narrowing amendment or a disavowal induced by reexam counts as a “win” for the TPR. On the other hand, the PO may utilize a narrowing amendment to survive the validity challenge while maintaining a claim scope broad enough to encompass the activities of the TPR and others.

III. Appealing *Inter Partes* Patent Reexamination Decisions

In an IP Reexam, both the PO and TPR have an opportunity to appeal any adverse decision to the BPAI. The PO has the right to appeal any decision unfavorable to patentability, and the TPR has the right to participate in any appeal by the PO.¹²⁴ The TPR has the right to appeal any decision favorable to patentability, such as the non-adoption of any proposed grounds of rejection; the PO has the right to participate in the appeal.¹²⁵ Non-adopted grounds of rejection include both grounds proposed by the TPR and examiner-proposed grounds of rejection that were later withdrawn. During an appeal, claims are construed according to the broadest reasonable interpretation standard.¹²⁶ Like the reexam itself, any appeal is to be conducted with special dispatch.¹²⁷

A. Methodology

Every appeal of an *Inter Partes* Reexam as of July 27, 2011 (the ten-year anniversary of the filing of the first IP reexam request) was examined by extracting data from the USPTO’s public Patent Application Information Retrieval database (PAIR). To do so, a database of completed IP reexam appeals was created. The database contained the results of each appeal, which were categorized as affirmed, reversed or affirmed-in-part; also, each appeal was labeled by which party (PO or TPR) had brought the appeal. For each appeal, the BPAI decision was compared to the CRU examiners’ grounds of rejection in the RAN. Then more detailed information was recorded for each appeal, e.g. dates and types of patented technology involved, was recorded in the database. The prosecution history was also searched for any appeals to the Federal Circuit and to determine whether the patent was involved in concurrent litigation. In addition, to both double check concurrent litigation and to determine subsequent litigation, each patent number was entered into Westlaw Next’s KeyCite Patent.

In order to understand the result of appeals, several approaches and metrics were used. The **case approach** is based on the overall BPAI decision. The case approach was used to calculate two metrics: appellate case results, and appellate case results minus PO appeals in which all the patent claims-at-issue remained rejected (reduced for when “all remained rejected”). The **appeals approach** is based on individual party appeals within the cases, which better handles cases with cross-appeals and merged-appeals. The appeals approach was used to calculate two metrics: individual party, appeal results, and individual party appeal results minus PO appeals where all the patent claims-at-issue remained rejected (reduced for when “all remained rejected”). These are the four metrics used for considering appeals.

In addition, an individual **ground-of-rejection approach** was used. This approach was also produced two metrics: 1) unadjusted grounds of rejection, and 2) grounds of rejection

reduced for when all the patent claims-at-issue remained rejected. Thus, six main metrics were used to answer the broad questions: #1 What percentage of appeals successfully resulted in the BPAI reversal of examiners' decisions or, similarly, #2 What percentage of appealed examiners' decisions were reversed?

Statistical testing was used to determine if a difference was either likely by chance (i.e. random) or unlikely by chance (i.e. systematic). Chi square statistical tests were used to compare observed and expected frequencies in one-, two- or three-sample cases. The probability (P) that any difference between observed and expected values had occurred by chance was determined after calculating the chi square (χ^2) test statistic and degrees of freedom (df). As is conventional, a probability value (P) of less than 0.05 was regarded as statistically significant, because this meant there was only a 1 in 20 ($\alpha = 0.05$) chance of being wrong and assuming a systematic effect existed when the data were merely random (See Appendix I).

B. Empirical Data

As of July, 27 2011, there were 101 IP Reexam proceedings that involved appeals to the BPAI that had been decided on the merits. Three of these proceedings involved the same patents because multiple IP Reexam proceedings can be merged together as a single BPAI decision per patent. Thus, these 101 proceedings represented 98 different patents. However, three proceedings involved two consecutive appeals, and thus these 101 proceedings involved 101 appeals, three of which were second appeals in the same proceeding. Thus, an empirical study was conducted of these 101 IP Reexam proceedings to answer how often the specialist examiners of the CRU were reversed by the BPAI.

1. The Case Approach: Affirmed/Reversed Percentages by Case

Overall (Table 1, part 1), the majority of appellate cases (82% or 83 of 101) resulted in the BPAI agreeing with the examiners' patentability decisions (45.5% affirmed, 46 of 101; 36.6% affirmed-in-part, 37 of 101). The BPAI completely reversed examiners in only 17.8% of the cases. The data are presented in several large tables to allow efficient comparison of different approaches and metrics, rather than dividing the results into smaller tables as the text develops. Successive parts of the table will be referred to over the next few pages.

Table 1. Total Affirmed/Reversal Percentages for *Inter Partes* Patent Reexaminations

1. All Cases (101 proceedings involving 98 patents)	Number (n)	Percentage (%)
Total Cases	101	100
Affirmed	46	45
Affirmed-in-Part	37	37
Reversed	18	18
2. All Appeals (including dissected cross-appeals and merged-appeals)		
Total Appeals	124	100
Affirmed	59	48
Affirmed-in-Part	34	27
Reversed	31	25
3. All Cases Reduced for When All Patent Claims Remained Rejected		
Total Cases	101	100
Affirmed	51	50
Affirmed-in-Part	32	32
Reversed	18	18
4. All Appeals Reduced for When All Patent Claims Remained Rejected		
Total Appeals	124	100
Affirmed	72	58
Affirmed-in-Part	23	19
Reversed	29	23
5. All Grounds of Rejection		
Total Grounds of Rejection	744	100
Affirmed	526	71
Reversed	218	29
6. All Grounds of Rejection Reduced for When All Patent Claims Remained Rejected		
Total Grounds of Rejection	689	100
Affirmed	513	74
Reversed	176	26