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The Honorable David J. Kappos
Undersecretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

November 8, 2011

Re. Federal Register Notice –
Request for Comments and Notice of Public Hearings on the Study of
International Patent Protection for Small Businesses

Docket Number. PTO-P-2011-0062

Dear Secretary Kappos:

We appreciate the opportunity to comment on the above notice. Power Clean 2000 is a Los Angeles based SME manufacturer, distributor and active exporter of industrial equipment in business since 1993. Between us and our sister company, there are over 150 patents issued and pending in the US and abroad. As well as substantial copyrights, trademarks and trade secrets related to our business activities. While we are not IP lawyers, we are comfortably up to date on the subject matter.

IPR is a complicated issue and difficult to comment upon through a short submission. Should you find our comments useful, we invite your office to contact us for a more detailed explanation.

1. Overall, how important is international patent protection to small business?

International patent protection is crucial for SMEs whose inventions have broad-base appeal, are competitive and therefore have excellent export potential, versus those inventions that are limited in scope, or cannot compete on a cost based with similar foreign inventions, and thus would be economically viable only in the US domestic market.

2. At what point, if ever, in the growth of small companies does international patent protection become important?

We believe this depends on the intent of the SME and the nature of the invention. As mentioned in #1 above, if the invention is competitive and viable for international markets, international patent protection must begin as early as the inception of the invention. As you know, while the US grants a grace period for patent filing after public disclosure of an invention, many foreign countries do not, and in fact considers any public disclosure a bar to patent filing. SMEs who are not aware of this fact risk losing their invention. SMEs must be made aware of this fact before they pursue exports under the persuasion of the stepped up efforts of the National Export Initiative.

3. What challenges, if any, interfere with the growth and competitiveness of small companies if international patent protection is not sought early in the innovation process?

In addition to #2 above, many SMEs typically have one, or two pieces of key IP, e.g. a patent that represents their entire core business. For this SME, the loss of its patent rights is more than devastating. At best it merely expels them from the foreign market, at worst, it equates to the loss of its livelihood and the permanent closing of its doors. We have witnessed this in our industry all too often.

4. What specific role does international patent protection play in the successful internationalization strategies (such as franchising, exporting, or foreign-direct investment) of small businesses? Does this role differ by industry or sector?

International patent protection is critical for SMEs that have inventions that are viable both in the domestic market and overseas. The international marketplace is extremely competitive as it is. American SMEs need every possible edge over their foreign competitors to secure on-going sales. Having patent protection for an advanced technology, or invention isn't a guarantee, but is a significant advantage.

We don't know if there are significant differences between industries or sectors. However, a patent portfolio is always highly prized, whether by distributors/customers or investors.

5. How can the USPTO and other Federal Agencies best support small businesses regarding international patents:

(a) In obtaining international patent rights?

i. If possible, help negotiate down the cost of filing for small inventors. The initial filing costs for patents are daunting. The fees vary by economy and routinely range from hundreds to thousands of dollars per filing. This does not include the mandatory annual maintenance fees and continuous legal fees related to the prosecution of the application, which could take years to complete. There are a number of major markets that are not part of the PCT. Even with a PCT filing, the application still needs to be filed and prosecuted individually in each member economy. As a result, many SMEs do not file for patent protection in markets outside of the US, because they simply cannot afford to.

ii. Harmonize the application process - need for 'for applied once approved everywhere'

There is a complete lack of harmonization in the foreign patent application process. In fact, a patent could be granted in one economy, yet rejected in another. This uncertainty is extremely frustrating for SMEs. And, unlike large companies with full legal departments, SMEs do not have the deep pockets and expertise to navigate through the quagmire of antiquated patent processes in multiple foreign countries.

Ironically, this problem disproportionately affects SMEs in the information technology, software, internet, and social media sectors – the new frontier and high growth segments that support many of the best paying jobs.

(b) In maintaining international patent rights? And
(c) In enforcing international patent rights?

i. The US embassies could take a proactive and hands-on approach to help SMEs protect their patent rights by monitoring the general status of IPR protection and enforcement in-country and disseminate that information on a timely basis. IP Attachés stationed at selected US embassies who could work closely with the commercial sections at the embassies to actively help SMEs diffuse infringement activity at its early stages, would be extremely valuable. The embassy or IP attaché should have the authority to issue a letter on behalf of the SME letting the infringer know that the embassy has been notified of its activities and has taken an interest in seeing its rapid and fair resolution.

The US embassy has traditionally taken a very hands-off approach as it relates to SME IPR grievances. The embassies usually take the position that they can neither recommend able IP counsel, nor give legal advice. In essence, once the export success has been recorded, the SME is left to fend for itself. Unfortunately, infringement activity in high risk markets typically occurs shortly after the first few shipments of goods.

ii. Frequent dialogue between SMEs and USPTO, ITA and USTR through roundtables, conferences, and town-hall style meetings.

iii. Help SMEs access affordable IPR insurance.

6. What role should the Federal Government play in assisting small businesses to defray the costs of filing, maintaining, and enforcing international patent protection?

See response to #5 above.

Questions 7, 8, 9 and 10 on revolving fund loan programs and grants

We believe that a revolving loan program would be welcomed by SMEs, if the application process could be easy to navigate, low cost and extended payment terms could be available. There should be a minimum threshold to qualify for these loans.

In general, we do not believe that grants for the stated purposes would be an effective use of tax payer dollars, given the current deficit situation and because these type of grants are easily subject to abuse. With respect to inventions related to public health and safety, we have the impression that there is no lack of private and public sources available for research grants and joint projects.

Finally, it is impossible for any active SME exporter to comment on international patent rights without mentioning China.

We believe that it is time for the Federal Government and the business community to move beyond the constant criticism of China's IPR environment. Instead, let's find ways to engage China's new class of entrepreneurs – whose understanding and view on the protection of IPR are closely aligned with those of our own. This new class of Chinese entrepreneurs, more than likely have already experienced similar frustrations as American SMEs on the protection of IPR within their borders.

American businesses both large and small would benefit from helping our Chinese counterparts find constructive ways to persuade China's central government to update and enforce its intellectual property laws at the provincial level to everyone's benefit. In fact, no one is more qualified, nor can more persuasively lobby the Chinese government than their own business community.

Thank you for the opportunity to express our opinion. Please feel free to contact us with any questions, or for additional information.

Sincerely,

Candace Chen

Candace Chen
President
Power Clean 2000