

*Before the*  
**United States Patent and Trademark Office**  
Alexandria, VA

*In re*

Request for Comments on a Proposed Track  
Three Pilot Program With a Pre-Examination  
Search Option

Docket No. PTO-P-2023-0021

**COMMENTS OF  
COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION**

The Computer & Communications Industry (CCIA)<sup>1</sup> submits the following comments in response to the U.S. Patent and Trademark Office’s May 26, 2023, Request for Comments.<sup>2</sup>

CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For more than fifty years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy.

CCIA members are at the forefront of research and development in technological fields such as artificial intelligence and machine learning, semiconductor design and manufacturing, and other computer-related technologies. CCIA members are also active participants in the patent system, holding approximately 5% of all active U.S. patents and significant patent holdings in other jurisdictions such as the EU and China.

The proposed micro-entity Track Three program would appear to help micro-entities manage the cost of patent filings by letting them ascertain whether a given filing will be financially worthwhile prior to paying the search and examination fees. We note that one potential issue is that the cost of counsel for prosecution often significantly exceeds the cost of fees at USPTO, with micro-entities paying a total of approximately \$8,000 to file an application, of which the USPTO search and examination fees represent only \$304.<sup>3</sup> Because USPTO fees represent less than 5% of the total fee, it seems unlikely that delayed payment of fees will result in additional filings. And because the deferral of payment is of minimal cost, it is likely to only have limited benefit even to micro-entities. However, that limited benefit comes at minimal cost to the public and the Office, and as such we would not oppose a delayed payment option for micro-entities only.

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<sup>1</sup> A list of CCIA members is available online at <https://www.ccianet.org/about/members>.

<sup>2</sup> Request for Comments on a Proposed Track Three Pilot Program With a Pre-Examination Search Option, 88 Fed. Reg. 34136 (May 26, 2023).

<sup>3</sup> See AIPLA, *2021 Report of the Economic Survey* 42 (2021).

The “plus” option for obtaining a pre-examination search report appears to be of more value, as it could enable applicants to obtain a pre-examination understanding of the likelihood of success of their application and/or the breadth of a patent that might be obtained. We would support this approach if the pre-examination search report contained, at a minimum, the provided references along with a short explanation of their relevance. A PCT-style search report would be ideal. A simple listing of references is unlikely to prove of value, especially to micro-entities who may not have the resources to understand the relevance of the references themselves and may not have the finances to employ outside counsel to explain them, and we would not support a pre-examination program that simply provided a list of references. As such, an AI-only output is unlikely to be of value; at a minimum, an examiner needs to be involved to explain the relevance of the AI-generated list of references.

At the same time, as we have noted in the past in comments to the Office,<sup>4</sup> the Office’s current fee structure incurs costs years before those costs are recovered. While a deferred payment approach may be beneficial to micro-entities, we would be concerned if such an approach was expanded to cover a wider swath of the Office’s operations, exacerbating the existing cost recovery problem and further destabilizing the Office’s finances. While the Track Three program for micro-entities may prove beneficial, we would have serious concerns about—and would oppose—expansion of a deferred payment program beyond those entities.

Respectfully submitted,

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<sup>4</sup> See, e.g., Comments of CCIA on Patent Reliability and Robustness, Section IX (Feb. 2023), <https://ccianet.org/library/ccia-comments-on-patent-reliability-and-robustness-2022-00025/>.