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Software Review

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SOFTWARE REVIEW

PATENT PENDING™
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Like other forms of legal writing, drafting patent applications involves a certain amount of drudgery. After struggling to keep track of a seemingly endless list of components, each with an identifying number, the patent attorney may wonder why he did not choose a less complicated way to make a living. A tool is at hand, however, to take some of the complexity out of the process. The new PATENT PENDING™ program published by Saratoga Associates[1] assumes several of the more onerous bookkeeping tasks, while allowing the lawyer to focus on the creative side of patent drafting. In addition, the program provides an excellent framework for training neophytes in the esoterica of patent applications.

Before proceeding, it may be helpful to outline the process of drafting a patent application. Although the patent statute provides only sketchy guidelines for the content of an application, most applications are generally uniform in format, thanks to a large body of

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tradition.[2] Most patent applications include a section called "Background of the Invention," setting out the technical field of the invention and the state of the art; a "Summary of the Invention" that sets out objectives and advantages as well as a broad description of the invention; a "Brief Description of the Drawings" that lists the drawing figures; a "Detailed Description of Preferred Embodiments" containing the part-by-part recitation of each element of the invention (which may be depicted in a number of embodiments); and the "Claims," that define the legally protected metes and bounds of the invention.

The most complex portion of the application is the "Detailed Description of Preferred Embodiments," which sets out every element of each embodiment, and labels it with an identifying name and a numeral (which corresponds to the drawing figures), and tells the reader how it relates in structure and operation to the rest of the invention.

PATENT PENDING™ attempts to automate the patent drafting process. In general, the program leads one through the application step-by-step and provides assistance and record-keeping support along the way. The system is designed for the IBM PC family and requires 512 kb of RAM, PC- or MS-DOS 2.0 or higher, and a hard disk.

The heart of the program is its ability to assist in creating the detailed description, a feature that deserves some explanation. The program presumes that one has prepared a set of sketches or drawings, which will be used as a guide in writing the detailed description. The system directs the user to the figure showing the embodiment as a whole and instructs him or her to designate the major elements of the embodiment. Prompts ask for the name of each element and the system automatically assigns a reference number to each part, starting with "10" and proceeding by twos.[3] Thereafter, a numbered element need not be named; rather, one types the reference number followed by a double bracket (e.g. 10 >>). The double bracket is entered by pressing the function key F2 after the number. Later, the system will go through the text and substitute the appropriate nomenclature for the numeral.

With the major components identified, the system then asks for the parts of each component, again automatically assigning refer-

2. *See* 37 C.F.R. § 1.77 (1987). The Rules of Patent Practice state than a patent application "should" be organized as listed here, but that format is not required.

3. Skipping the odd numbers insures that numbers are available to add additional elements during editing, a requirement that often occurs.

ence numbers. Once every part of the first figure has been entered, the program asks for "connectivity" information—the relationship between the named parts. One can proceed in a freeform mode, or the program will prompt for such information on a part-by-part basis. At this point the description of each part and the manner in which it relates to other portions of the embodiment can be entered. During the entry of this text, the user is free to go into as much (or as little) detail as is desired to describe each part. After each entry the system asks whether it should substitute the full name for each number/bracket combination. A "yes" answer results in a rapid substitution of terms. The routine even capitalizes these terms if they are located at the beginning of a sentence.

At appropriate points during this process, the system asks for other text, such as a brief description of each figure (later plugged into the section of the same name), a general introduction for each figure, and a discussion of the operation of the elements of a particular figure. The user does not have to be concerned about the placement of this text in the application because that is handled by the computer.

Other portions of the application process are not so amenable to automation, but PATENT PENDING™ does the best it can to help, such as providing "boilerplate" phrases where appropriate. The program also recognizes that claim drafting is an art form unto itself, and one best left to patent practitioners, but it does generate "skeleton" claims, which set out each major element and its parts in the order that the user inputs them.

The program produces a finished product that includes all of the elements of an application, with the invention described in as much detail as the attorney desires. Moreover, the logic imposed by the system insures that the user must at least think about every feature of the invention. And most important, the niggling details, such as keeping track of reference numbers, are all taken care of by the system. The system also tracks which sections of the applications have not been completed; even experienced patent lawyers have been known to forget about the abstract from time to time.

When the application is complete, one can print it to hard copy or a disk file. The computer inserts headings and arranges the text with no input required from the user, providing a "clean" ASCII text file for further editing by a word processor. Here one encounters a minor limitation, in that the line length of this version is set at the width of the text window, at about 50 characters. Given a decent wordprocessing package, one can devise a macro to solve the

problem,[4] but this is the sort of fix with which one would rather not have to deal.

The program has proven to be very easy to use. This can be supported by the fact that no documentation was available for the test copy, yet the reviewer was able to cruise through the system with minimal difficulty. A user with even modest computer expertise will find that the on screen help menu answers most of the questions, and intuitive guesses will generally suffice for the few remaining instances. Experienced patent attorneys will probably want the ability to customize the program to a greater extent. For example, at several points where "boilerplate" language appears in the application, the system furnishes a stock phrase. Unfortunately, there are approximately as many variations of such phrases as there are patent lawyers, and most users will want to vary the language a bit.[5] One can delete the phrase, of course, but it would be preferable to run a utility routine to insert one's own favorite verbiage. Also, it would be helpful to have an "expert" mode for those who do not require as much assistance as others in the preparation process. After writing a number of applications, one really does not have to be told to draw circles around the major elements of the general figure (an instruction currently in the program).[6] Also, the program is almost exclusively geared to electrical/mechanical related inventions, involving apparatus and processes. Chemical application practice differs somewhat in the general application format, and this program will have to be modified to be useful for chemical patent practitioners.

Of course, the wealth of instruction and the insistence on a structured, logical approach constitute a major strength of this program. Training newcomers in the mysteries of patent drafting is a difficult proposition, most often left to the school of hard knocks. The new associate or clerk is usually handed a few sample applications and told to take a swing with perhaps some reference made to one of the instructional treatises. As a result, one's first few applications require considerable time, many drafts, and lots of sweat.

PATENT PENDING™ is a superb tool for training, precisely because it provides the structure for the patent application and asks for the information needed to write it. A person tackling a patent

4. Saratoga promises a library of macros or keystroke instructions for the more popular wordprocessing systems and software to accomplish this task.

5. Saratoga has since included the option to edit the "boilerplate" phrases.

6. Saratoga has since added the above mentioned "expert" mode which allows the experienced user to bypass some of PATENT PENDINGS™ questioning and thereby speeds up the process of finishing the patent application.

application for the first time can think about the substance, rather than bogging down in the minutia of reference numbers, figures, and formal language. Valuable as the program should be to all patent practitioners, it is easily the best training device to appear in the patent field since Professor Kayton took up teaching.

Overall, PATENT PENDING™ is a sound investment for any patent lawyer or agent. Keeping in mind the varying degrees of complexity of an apparatus and the different levels of expertise of the patent draftsperson, PATENT PENDING will reduce the time needed to generate a first draft of a patent application by a minimum of twenty-five to thirty percent. This program promotes concentration on the substance of an application. That security, plus the ability to train newcomers more rapidly and effectively, makes this system a mandatory tool for patent firms and corporate patent groups.