

Why Is the USPTO Mucking With its Critical User Facing Electronic Interfaces Without, At Least, Advising the Public In Advance?

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I. Introduction

Certain USPTO user facing electronic interfaces are critical for enabling users to submit documents in patent applications and are critical for enabling users to determine what must be submitted in those applications. Those interfaces are “Private PAIR” and “EFS Web.”

So one would think that the USPTO would take great care in ensuring those interfaces work reliably for their critical missions. So one would think that the USPTO would test revisions to these systems before implementing those revisions, and one would think that the USPTO would notify the public of anticipated and planned revisions to those systems, since it is foreseeable that revisions might not work as intended, even after being tested in advance of implementation.

But the USPTO did not do that, at least for the changes it made to these mission critical systems on December 4, 2020. Here are the facts, as I know them, followed by my comments.

II. The USPTO implemented Changes to Mission Critical Systems Without Informing the Public Users of Those Systems, in Advance

On Monday, December 7, 2020, I started to receive emails on “Oppedahl EFS Web” email list serve regarding defects in the USPTO’s user facing electronic interface for EFS Web and Private PAIR. See: https://oppedahl-lists.com/mailman/listinfo/efs-web_oppedahl-lists.com

These messages stated:

We can log into MyUSPTO, but EFS-Web is not working. Anyone else having this issue? Thanks. Catherine

Yes, same issue here. So frustrating. Best regards, Sharon

I just tried to log in; same problem. Ivan

same here ... and accessing private PAIR was very slow [From Wendy]

Looks like PatentCenter may be working, though? [From Andrea]

Same issues here. I checked the announcements page and apparently after the PAIR infrastructure update, the the link to EFS web is incorrect. I was able to access EFS web from the link on the UPSTO.gov home page. Michelle

PAIR no longer works in Internet Explorer after the update. You can log in, but it displays a blank screen instead of the PAIR screen.

You can no longer click the boxes next to documents in the image file wrapper and then click the "PDF" at the top of the list of documents to download all of the documents as a single PDF file. You have to download each document separately by clicking "PDF" by each document to download it, or click on the

document description to open the document and then save it.

You can no longer download DOCX versions of documents such as OAs from the image file wrapper. You can download DOCX versions of documents from the outgoing correspondence search results page, but they are saved as zip files, rather than DOCX files.

Our docketing people have been having trouble downloading filing receipts from the outgoing correspondence search results page.

They messed up the order of the documents on the outgoing correspondence search results page so you can no longer download the various documents included in a Notice of Allowance in the correct order in a single PDF document without repeatedly playing with the sort order of the documents.

This update was not the USPTO's finest hour. I cannot understand how they could possibly have released the update with so many bugs in it. And the benefits they tout are laughable. Randall

At 3 PM on December 7, 2020, Randall reported to the "Oppedahl EFS Web" email list serve that the USPTO's Electronic Business Center had been receiving complaints, that is they knew from users that there were problems. Randall posted:

Well, I'm using Chrome and they don't work for me. The EBC told me that other people have reported the same problem. See "Some users have experienced issues downloading documents from the IFW tab" in the list of identified defects below.

At some time on December 7, 2020, the USPTO "PAIR Announcements" page published an announcement that *as of December 4, 2020*, Private PAIR had been "improved." This announcement identified ten bullet items that were "defects that will be addressed in future release." However, these "defects" were functionality that previously worked in private PAIR and on which users relied for reliable docketing and prosecution. See the announcement on:

<https://www.uspto.gov/patents-application-process/checking-application-status/pair-announcements>

This December 7, 2020 entry on the USPTO "PAIR Announcements" page states:

Updated Advisory(07DEC2020): PAIR Infrastructure Update
Effective Friday, December 4, 2020, USPTO technical teams have made updates to the infrastructure to Private PAIR. Users will experience the following benefits and changes:

- Improved user experience
- Java Applet no longer required to download Patent References
- Enhanced visual indicator during page loading

One major difference is how bulk Attorney Docket number updates are processed. When a change is made in the bulk update, the system may take up to 15 minutes to reflect the new attorney docket number in the bulk update search. However, if users search the application number, the new attorney docket number

is immediately available.

The list of identified defects that will be addressed in future releases. Users can access Patent Center to access the same data or perform the same function.

Filing and Issue date may be displayed on the Application Data and Continuity tabs offset by one day from the actual date

Supplemental Content tab is not displayed

Incorrect link to EFS-Web from the Patents link

Application Unavailable message displayed when searched using 99/999999 format

Some users have experienced issues downloading documents from the IFW tab

When selecting the Examiner's name, the displayed phone is incorrect

When printing the Assignment tab when data is available, the print page displays "Assignments data does not exist"

The label for U.S. Patent Documents, under the Display References tab, always indicates "2 Form(s) Found" where there can be one or many documents displayed

Downloading XML of Application in Status Changes search is missing data elements

If a new saved customer number request is opened from the View saved and completed requests, the request will be blank if the imported registration number list was modified

If you have questions about the changes to PAIR or to report any problems not listed, please contact the Patent Electronic Business Center (EBC) at ebc@uspto.gov or 866-217-9197.

Last Updated: 2:30PM ET

This announcement does not identify that things were broken on December 4, 2020 by the "PAIR Infrastructure Update."

All of the "identified defects" are things that worked in private PAIR prior to December 4, 2020, and now do not work in private PAIR.

Users on the Oppedahl EFS Web email list serve expressed displeasure with these developments.

Practitioner Richard *** posted the existence of this notice to the Oppedahl EFS Web email list serve at 2:24 PM on 12/7/2020.

Practitioner Bruce *** responded "Wow - And they call that an "Improved user experience"!"

Practitioner Wendy *** responded "I want my money back."

Practitioner Andrea *** responded:

We've also noticed:

the application number in outgoing correspondence no longer includes punctuation

if I check the boxes to download multiple items for one application, the

Viewed By column updates but not the Earliest Image View Date (if I click on PDF next to a single item the Earliest Image View Date and Viewed By columns both update)

if I check the boxes to download multiple items for Application A, then click the application number to go download the cited references and click on the outgoing correspondence, all the Application A boxes are unchecked - but when I check boxes to download materials for Application B, I get the documents for application A and application B. I have to go check the "select all" box at the top of the column to select/de-select everything and then I can download just the materials for application B.

Practitioner Julie *** noted:

One annoying thing I've noticed (among the very, very many), is that with the update, when you download your office action with all of the parts, it is not in the correct order anymore so, for instance, your 892 form will be the first page of your OA rather than the coversheet. Now I have to waste time rearranging the document.

Practitioner Richard *** responded "I'd love to know just what the "improved user experience" is in this mess."

Practitioner Melanie *** noted:

...in addition to parts of a communication being out of order, the bookmark for documents downloaded from PAIR reflect a date one month prior to the actual mailing date of the communication. Not only did they mess up the actual date, but they also changed the date format (previously MM-DD-YYYY). And because they removed the space between the date and the communication name we have to correct that as well for our auto upload feature to work.

There were other user comments posted to the Oppedahl EFS Web email list serve , in which the users tried to nail down what systems worked on what browsers, and what system gave incorrect or incomplete information.

The USPTO website has a page titled "USPTO Systems Status and Availability," which is at URL: <https://www.uspto.gov/blog/ebiz/>

On 12/8/2020, the USPTO Systems Status and Availability, posted this entry:

Current Status, Tuesday Dec 08, 2020

Current Events, PAIR Infrastructure Update

Effective Friday, December 4, 2020, USPTO technical teams have made updates to the infrastructure to Private PAIR. For more information and current defects associated with the change, including the incorrect filing date and unable to access EFS-Web from the Private PAIR page, please see the PAIR Announcements Page on the USPTO website.

Please contact the EBC at 866-217-9197 or EBC@uspto.gov if there are

questions or to report new issues.

Posted at 07:59AM Dec 08, 2020 in Current Status |

On 12/8/2020, I posted to the Oppedahl EFS Web email list serve and the Oppedahl PAIR email list serve asking:

Did the USPTO provide *any advance warning of these "updates to the infrastructure to Private PAIR"*?

Practitioner Jodi *** responded "None."

Practitioner Andrea *** responded "As noted by Jodi, no notice was provided."

Practitioner Richard *** responded "I am unaware of any, Rick."

III. Discussion

The USPTO's changes to its electronic infrastructure on December 4 broke elements of Private PAIR and EFS Web.

The USPTO, like any organization with an electronic infrastructure must know that changes to infrastructure likely have unforeseen consequences, affecting users.

A reasonable person would therefore concluded that users should be informed of changes to electronic infrastructure so they will have a reasonable basis to proceed in case something in the electronic infrastructure fails, and a basis to carefully check for latent failures. The USPTO failed in its duty to notify the public of these changes.

As a matter of law, USPTO has the power to "govern the conduct of proceedings in the Office" and the duty to promulgate regulations governing that conduct "in accordance with section 553 of title 5." See 35 USC 2. And section 553 of title 5 requires notice to and an opportunity for comment by, the public, before promulgating rules. My recollection is that the USPTO has never followed the notice and comment procedure prior to changing its public facing user interfaces. The USPTO's electronic interfaces for submitting documents and obtaining docketing data governs conduct of proceedings in the Office. It may be that format and usability of the USPTO's public facing user interfaces fall are outside the scope of section 553 of title.

Regardless of whether the USPTO has a legal obligation under the statute to provide notice and comment in advance of changing its public facing user interfaces, it is unreasonable for the USPTO to not provide, at least, notice.

As indicated by the comments from users quoted above, users rely upon EFS Web and Private PAIR in critical ways, to ensure they fulfill their duties to their clients to obtain and safeguard valuable IP rights. It is unclear how many human hours of users will have been spent, unnecessarily, because the USPTO did not announce, in advance, the December 4, 2020 changes to EFS Web and Private PAIR. It is also unclear how many patent applications will be abandoned, miss response dates, or the like, as a result of the USPTO's failure to announce, in advance, the December 4, 2020 changes to EFS Web and Private PAIR. However, it likely that the public incurred substantial burdens as a result of the USPTO's failure to announce, in advance, the December 4, 2020 changes to EFS Web and Private PAIR.

Moreover, this failure exemplifies a pattern of neglect by the USPTO of defects in its public user facing electronic interfaces. That pattern is mentioned in ["Rick's Rule, The PTO's](#)

[Long Standing Failure to Address Defects in its Public Facing Electronic Interfaces" Rick Neifeld, December 5, 2020.](#)

Because this kind of problem has arisen in the past with USPTO's user facing electronic infrastructure, evidence suggests that it is likely to happen again, and therefore harm users again. So this is not a moot issue. It is, instead, "capable of repetition, yet evading review." *Southern Pacific Terminal Co. v. Interstate Commerce Commission*, 459, 460, 219 U. S. 498, 515 (2/20/1911). And therefore should be addressed and resolved.

IV. Request and Conclusion

The USPTO is wreaking havoc with the ability of its users to perform their duties to clients. Regardless whether this is legal, it is not consistent with the USPTO' mission.

Consequently, I request that the USPTO change its ways, and that Congress and the Department of Commerce hierarchy instruct the USPTO to change it ways.

Specifically, the USPTO should provide a notice of proposed changes to its electronic infrastructure and review comments before making specific changes. And the USPTO must timely respond to problems identified by the public in their public facing user interfaces.

The USPTO should certainly notify users of its public facing electronic systems, in advance, when changes are scheduled to occur.