October 24, 2016

Via email to sharon.marsh@uspto.gov

Ms. Sharon R. Marsh
Deputy Commissioner for Trademark Examination Policy
United States Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

Re: Comments on adoption of CAPTCHA for TESS and Sign-in for TEAS

Dear Ms. Marsh:

I write on behalf of the American Bar Association Section of Intellectual Property Law (“ABA-IPL Section” or “Section”) in response to your informal request by email dated August 26, 2016 for comments about the United States Patent and Trademark Office’s possible adoption of: (1) a CAPTCHA verification device on the TESS search engine and (2) a user sign-in requirement for electronic forms via the TEAS system.

The American Bar Association is the largest voluntary professional association in the world and the ABA-IPL Section is the largest intellectual property law association with approximately 20,000 members. The views expressed in this letter are those of the Section alone. These views have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the position of the Association.

The Section supports the Office’s apparent goal of reducing the burdens on the USPTO website arising from unqualified open access, and in doing so, improving the speed and efficiency of those systems for applicants and practitioners among other members of the public. The Section simultaneously recognizes that the systems serve the public and should provide equal access to all members of the public, including their electronic agents (i.e., internet robots).
CAPTCHA

The Section recognizes that access to the TESS search engine by internet robots has caused substantial traffic that slows the system and, in some cases, renders it inaccessible. In addition, the Section suspects that at least a reasonable proportion of robot interaction with the TESS system is used to enable private businesses both inside and outside of the United States to leverage the information and capitalize on it, sometimes by sending correspondence using a name or other indicia intended to create the appearance of official correspondence and offering unnecessary or extraneous services to applicants. A CAPTCHA device would reduce or eliminate robot traffic and free up the system to be utilized by humans, while possibly also preventing the exploitation of the information in the database for personal gain.

However, CAPTCHA devices also create an additional step that obstructs access by legitimate human users, including, for example, visually-impaired users. Some forms of these devices are particularly frustrating because they require the user to read sometimes illegible images showing a series of letters or numbers and to enter them in the computer in order to proceed. Others may only require the checking of a box or the selection from a series of images. The Section suggests that only the least intrusive variety of CAPTCHA device should be adopted.

The Section considers that the frequency in which a user must re-verify that he/she is a human to access the system is also worthy of consideration. A CAPTCHA device that requires completion by the user upon every visit to the same page is burdensome. The Section suggests that once the CAPTCHA has been successfully completed, it should not require the user to complete it again within a 24-hour period.

The Section also recognizes the public nature of the TESS system, and suggests that the Office consider appropriate alternative channels that allow internet robots to access the database without burdening the system. For example, a duplicate of the database could be created each day and published on a different server that allows access to robots.

Sign-In

The Section supports the Office’s proposed adoption of a user sign-in feature for access to forms available in the TEAS electronic filing system. A sign-in feature that can save attorney information and auto-populate the forms when appropriate can save a substantial amount of time. The feature may also reduce efforts by unauthorized persons to file documents, and compel users to more seriously consider the language of documents to which they affix their electronic signatures.

However, the Section notes that the Office already requires sign-in for purposes of accessing the new Financial Manager software as well as a separate sign-in for purposes of ordering certified copies of documents via EBIZ1. The Section suggests that the Office
consider a single sign-on feature that allows the same user logged into TEAS to access ETAS, ESTTA, EBIZ1, and Financial Manager without further login.

The Section also suggests that users should not be automatically logged out after only a relatively short interval of inactivity. Additionally, the Section recommends that sign-in should allow for access to all of the cases associated with the particular user within the same session, and not require separate login for each application. However, the Section requests that the Office further consider the mechanics of how a U.S. attorney would associate a particular case not previously linked to his/her account, particularly where no Power of Attorney is required (i.e., a newly appearing attorney on behalf of an applicant who filed the mark on a pro se basis, or a foreign applicant that sought an extension of protection of its International Registration to the United States).

In keeping with the Office’s desire to serve pro se applicants, the Section further suggests that the proposed system should allow users to bypass the proposed sign-in and instead to log in as a guest. The Section considers that guest login should require a click-through agreement in which the user swears that he/she is duly authorized to bind the applicant or that he/she is an attorney licensed and in good standing in a U.S. state.

The ABA-IPL Section commends the Office for its consideration of these issues and appreciates the opportunity to offer these comments.

Very truly yours,

Donna P. Suchy  
Section Chair  
American Bar Association  
Section of Intellectual Property Law