

Re: Call tomorrow (Thursday)

From Amanda Prose <aprose@wck.com>

To mattguertin<MattGuertin@protonmail.com>, Megan Neumann<mneumann@wck.com>

Date Friday, January 6th, 2023 at 8:48 AM

Wow. Thanks Matt. I will take a look at this.

As for your other question regarding alerting others to this issue...there are a couple of ways to look at it and I admit, this is an issue new to me so I do not know where/who to alert or where to start.

Regarding the patent office and your pending application as well as future applications, we have made memos in our file to explain why these archived pages are not considered prior art to you. Simply put, the material was not actually published prior to your filing of the provisional patent application. Because of this, the patent office will not consider the materials, the Examiner will ignore it. Generally, we have to provide a date of publication to materials not having a date on their face (a patent application publication or book have publication dates on the publication, but websites do not and are generally identified as published on the date you accessed it). So, we do not have any obligation to provide these to the patent office and then provide an explanation that its not really prior art. The patent office does not want to review it and probably would not. Thus, we do have a duty of candor with the patent office, and I believe that our initial information disclosure statement filing of the old (original) PhotoRobot pages satisfies this. As far as the patent office is concerned, the jurisdiction of the patent office is limited with respect to the disclosure of inventions and prior art, but tampering with non-patent literature prior art is not something the patent office will do anything about unless that allegedly tampered/altered prior art is submitted either by a patentee or by a third party. Then the patent office will get involved.

As for the website tampering itself, it would seem that if the organization behind the website hosting the WayBack Machine should (and would want to) be made aware that there is some glitch or issue that is allowing these alterations and fake pages to be populated on its website. To me, this seems like step one, whether or not this step might actually solve, address or make the problem public. We could also let the entity who has these altered/fake pages on its server aware of this fraud as well (similar to how we file Digital Millennium Copyright Action violations).

As for additional steps here - I am not sure what the next step is yet. I have not come across this and generally when we speak of such frauds it is when the fraudulent/altered material is used, for whatever purpose. For example, as soon as Photrobot or the Internet Archives tries to use the material in some way, then it is much more clear what the next step is.

Best regards,

Amanda

westman champlin & koehler
INTELLECTUAL PROPERTY ATTORNEYS
