

## Robert J. Yarbrough

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**From:** Robert J. Yarbrough [robert@yarbroughlaw.com]  
**Sent:** Tuesday, March 23, 2004 2:20 PM  
**To:** Ruth Bryan Cohen (rbcesq@yahoo.com); Andrew T. Hawkins (tsurinobaka@yahoo.com); Arnold M. Winter (arnold@lawwinter.com.); George Hopkins; 'William Bonner Esquire (E-mail)'; 'Ash Tankha'; 'Brian Canniff'; 'Deborah Logan'; 'Gerry Elman'; 'Larry Weinberger Esquire (E-mail)'; 'Lawrence Husick (E-mail)'; 'Loretta Smith'; 'Mark Garzia'; 'Mark Schlam (E-mail)'; 'Mark Young'; 'Maureen Smith'; 'Patricia A. Wenger (E-mail)'; 'Robert J. Yarbrough (E-mail)'; 'Stuart S. Bowie'; 'Treb Lipton Esquire (E-mail)'  
**Subject:** Delco IP Forum - Status re: telephone conference with PTO

Gang:  
Deborah Logan, Stuart Bowie, Treb Lipton, Gerry Elman and the undersigned participated in a conference call with the following persons from the PTO on March 23, 2004 at 1:00 pm.

1. Bernard Knight - Attorney with the solicitor's office. Mr. Knight is the person who made the Flex Act determination of no significant impact on small business.
2. Steve Kunan
3. Bob Barr, Sr. Patent Attorney, works for Kunan
4. Harry Moatz, in charge of enrollment and discipline
5. Richard Tortzen, Administrative Patent Judge
6. Jennifer Simmons

Mr. Knight indicated that the other persons in the room were from the programs addressed by the draft regulations to which our Flex Act comments applied.

Knight opened by saying that the rulemakings complied with the Flex Act. He stated that the PTO is not required to go through the notice and comment process for procedural rules or rules codifying existing procedures.

Stu Bowie asked Knight whether PTO created an analysis of whether the rulemakings affected a significant number of small businesses and whether the PTO published facts to support the analysis, as required by the Flex Act. Deb Logan cited chapter and verse of the Act. In discussions, Knight acknowledged that some of the rulemakings are substantive and not procedural. He stated that the PTO prepared memoranda supporting the conclusion that there will be no significant effect on small business and filed the memoranda with the SBA Counsel's Office. He acknowledged that the memoranda were not made public. He stated that the facts to support the conclusions are contained in the rulemaking. Stu, on behalf of the group, asserted that the statements in the rulemaking were mere conclusions and disagreed with Mr. Knight's assertion that this met the PTO's duty under the Flex Act.

Knight offered to allow us seven days to provide evidence of economic impact on small business. We declined.

Stu asked, and Knight agreed, to provide us with citations to statutes and case authority that procedural rules are not subject to the Flex Act. He promised to provide the information within three days. We concluded the telephone call.

After the meeting, we concluded that I will ask Knight for the memoranda to the SBA Counsel with the PTO's Flex Act analysis.

That's it. See you tomorrow at 8:30 am.  
Bob Yarbrough