

**UNITED STATES
PATENT AND TRADEMARK OFFICE**

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Patent Public Advisory Committee
Quarterly Meeting

Legislative/Governmental Affairs Update

Dana Robert Colarulli
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UNITED STATES
PATENT AND TRADEMARK OFFICE



Legislative Activity

115th Congress, second session

Budget Issues

Commerce, Justice, Science and Related Agencies Appropriations Act of 2019 (H.R. 5952/S. 3072)

- Sets the USPTO budget at \$3.37 billion
- Both bills reported out of their respective committees in May.

Legislative Activity

115th Congress, second session

Fee Setting Authority

- Authority expires Sept. 16, 2018
- Legislation has been introduced that extends fee setting authority
 - Building Innovation Growth through Data for Intellectual Property Act (BIG Data for IP Act) (S. 2607/H.R. 5887)
- Unclear whether these bills or another measure might move forward
- FY2019 President's Budget

Funding-related provisions in other legislation (“Revolving Fund”)

- Restoring America's Leadership in Innovation Act of 2018 (H.R. 6264)
- Support Technology & Research for Our Nation's Growth and Economic Resilience (STRONGER) Patents Act (S.1390/H.R. 5340)

Legislative Activity

115th Congress, second session

Recent Patent Bills /Proposals

- **H.R. 6264, *Restoring America's Leadership in Innovation Act of 2018***
Rep. Massie (R-KY-4) – introduced 6/28/2018
- **H.R. 6557, *Inventor Protection Act***
Rep. Rohrabacher (R-CA-48) – introduced 7/26/2018
- **H.R. 6370, *The Targeting Rogue and Opaque Letters (TROL) Act***
Rep. Burgess (R-TX-26)- introduced 7/13/2018
- **S. ____, *Hatch Waxman Integrity Act***
Sen. Hatch (R-UT) – draft circulated but not introduced, 6/14/2018

Legislative Activity

115th Congress, second session

H.R. 6264, *Restoring America's Leadership in Innovation Act of 2018*

Rep. Massie (R-KY-4)

Cosponsors: Rep. Rohrabacher (R-CA), Rep. Kaptur (D-OH)

Introduced 6/28/2018

- Reverts the U.S patent system to “first to invent”
- Abolishes IPR and PGR
- Abolishes PTAB/Restores BPAI
- Removes the USPTO from Annual Appropriations/Establishes “revolving fund”
- Amends Section 101
- Amends Section 102 prior art
- Establishes that patent only revocable through judicial proceeding
- Overrules *Impression Products v. Lexmark*
- Ends automatic publication of patent applications
- Establishes presumption of validity in federal, state and administrative proceedings
- Tolls the patent term when validity is challenged
- Overturns *eBay*
- Restores best mode

Legislative Activity

115th Congress, second session

H.R. 2655/S.791, Small Business Innovation Protection Act of 2017

- Passed both chambers on a voice vote (Senate on July 19 and the House on July 10)
- Directs the Small Business Administration and the USPTO to enter into a partnership agreement to:
 - Develop high-quality training for small business concerns related to domestic and international protection of intellectual property and how such protections should be considered in small business plans and growth strategies, and
 - Leverage existing training materials already developed to educate inventors and small business
- Training can be done through electronic resources, including webinars or at SBA or USPTO physical locations
- Training at SBDC relating to domestic and international intellectual property and how such protections should be considered in the business plans and growth strategies of small businesses

Congressional Activity

115th Congress, second session



Oversight of the U.S. Patent and Trademark Office (May 22, 2018)

- Hearing before the House Judiciary Committee
- Some issues raised by House members:
 - § 101 Subject matter eligibility
 - PTAB
 - NPRM on claim construction
 - Diversion of USPTO user fees
 - China IP problems
 - Qualified workforce
 - Patent quality
 - Fraudulent TMs from overseas
 - IP protection in trade agreements



Congressional Activity

115th Congress, second session



Intellectual Property 101: How Small Business Owners Can Utilize Intellectual Property Protections in Their Businesses (May 16, 2018)

- Hearing before the House Small Business Committee
- Focused on exploring the value of intellectual policy to small businesses and start-ups
- Witnesses:
 - **Ms. Michal Rosenn**, General Counsel, Expa, New York, NY.
 - **Mr. David Graham**, CEO, Code Ninjas, Pearland TX. on behalf of the International Franchise Association.
 - **Mr. Rick Carnes**, President, Songwriters Association, Brentwood, TN.
 - **Ms. Joan Fallon**, CEO Curemark, Rye, NY.

Congressional Activity

115th Congress, second session



Innovation Nation: How Small Businesses in the Digital Technology Industry Use Intellectual Property (July 11, 2018)

- Hearing before the House Small Business Committee
- Examined how small business owners in the digital technology industry utilize intellectual property and the issues they face when navigating the intellectual property process
- Witnesses:
 - **Mr. Frank Cullen**, Vice President of U.S. Policy, The Global Innovation Policy Center, U.S. Chamber of Commerce, Washington, D.C.
 - **Mr. Morgan Reed**, President, ACT | The App Association, Washington D.C.
 - **Mr. Christopher Mohr**, Vice President for Intellectual Property and General Counsel, Software & Information Industry Association, Washington, D.C.
 - **Mr. Chris Israel**, Executive Director, Alliance for U.S. Startups and Inventors for Jobs, Washington D.C.

Questions and Comments

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Resource Slide:

USPTO's Office of Governmental Affairs: Overview

Structure: 10 Staff (mix of attorneys and non-attorneys)

Core Mission

**Represent USPTO
on Capitol Hill**

*(Advance PTO's
legislative agenda,
prepare testimony, brief
staff, provide technical
advice)*

**Respond to
Requests from
Members of
Congress and
Facilitate
Clearance**

*(constituent issues, clear
IP policy documents
within the
Administration)*

**Build
Relationships and
Maintain Goodwill
with Elected
Officials**

*(Support regional office
engagement, build
fed/state relationships &
stakeholder outreach)*