

**UNITED STATES
PATENT AND TRADEMARK OFFICE**

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Patent Public Advisory Committee
Quarterly Meeting

Legislative/Governmental Affairs Update

Dana Robert Colarulli
Director, Office of Governmental Affairs

May 3, 2018

UNITED STATES
PATENT AND TRADEMARK OFFICE



Legislative Activity

115th Congress, second session

Budget Issues

Consolidated Appropriations Act of 2018 (Pub. Law No. 115-141)

- Enacted on March 23, 2018
- Funds the USPTO at \$3.5 billion

Bipartisan Budget Act of 2018 (Pub. Law No. 115-123)

- Enacted on February 9, 2018
- Establishes the federal budget for FY2018 and FY2019

Legislative Activity

115th Congress, second session

Agriculture and Nutrition Act of 2018 (H.R. 2)

- Contains a provision that amends the Plant Variety Protections Act to insert “asexually” into the Act

Building Innovation Growth through Data for Intellectual Property (BIG Data for IP) (S. 2601)

- Extends the fee-setting authority granted to the USPTO by the 2011 America Invents Act for a ten year period
- Requires the USPTO to report to Congress on its plans for improving patent and trademark examination through the use of “advanced data science analytics” to improve consistency of examination, detect common sources of error, and improve productivity
- Current fee setting authority expires in September 2018

Legislative Activity

115th Congress, second session

Support Technology & Research for Our Nation's Growth and Economic Resilience (STRONGER) Patents Act of 2018 (H.R. 5340)

- The House recently introduced the companion to Sen. Coons' STRONGER Act (S. 1390)
- Contains the same substantive provisions as the Senate version

Small Business Innovation Protection Act (S. 791 and H.R. 2655)

- Directs the Small Business Administration and the USPTO to develop partnership agreements that provide for the development and presentation of training materials for small business concerns relating to domestic and international protection of intellectual property
- S. 791 was approved by the Senate Committee on Small Business and Entrepreneurship and H.R. 2655 was approved by the House Committee on Small Business

Legislative Activity

115th Congress, second session

Preserving Access to Cost Effective Drugs (PACED) Act (S. 2514)

- Provides that tribal sovereign immunity cannot be asserted in reexamination, *inter partes* review, post-grant review or in an ITC exclusion proceeding
- An earlier bill introduced by Sen. McCaskill (D-MO) (S. 1948) would prohibit an Indian tribe from asserting sovereign immunity as a defense in an *inter partes* review of the validity of a patent

Congressional Activity

115th Congress, second session



Oversight of the U.S. Patent and Trademark Office (April 18, 2018)

- Hearing before the Senate Judiciary Committee
- Some issues raised by Senators:
 - § 101 Subject matter eligibility
 - PTAB
 - Diversion of USPTO user fees
 - Promoting diversity in STEM
 - Patents for Humanity
 - Office of Policy and International Affairs
 - China IP problems
- Possible oversight hearing before the House Judiciary Committee in the coming months



Congressional Activity

115th Congress, second session



Safeguarding Trade Secrets in the United States (April 17, 2018)

- Hearing before the House Judiciary Subcommittee on Courts, Intellectual Property and the Internet
- Focused on the effectiveness of U.S. trade secret laws, including the Defend Trade Secrets Act (DTSA).
- Witnesses:
 - **Mr. Kenneth R. Corsello**, Chair, Trade Secrets Committee, Intellectual Property Owners Association (IPO) and Counsel, Intellectual Property for IBM's Watson Customer Engagement unit
 - **Mr. James Pooley**, James Pooley, PLC
 - **Mr. David S. Almeling**, Partner, O'Melveny & Myers LLP

Congressional Activity

115th Congress, second session



Assessing the Effectiveness of the Transitional Program for Covered Business Method Patents (March 20, 2018)

- Hearing before the House Judiciary Subcommittee on Courts, Intellectual Property and the Internet
- Focused on USPTO's transitional program for covered business method patents and the GAO's recent assessment of that program
- Witnesses:
 - **Mr. John Neumann**, Director, Natural Resources and Environment, U.S. Government Accountability Office;
 - **Mr. David Hale**, Chief Privacy Officer and Deputy General Counsel, TD Ameritrade
 - **Mr. Aaron Cooper**, Vice President, Global Policy, BSA | The Software Alliance

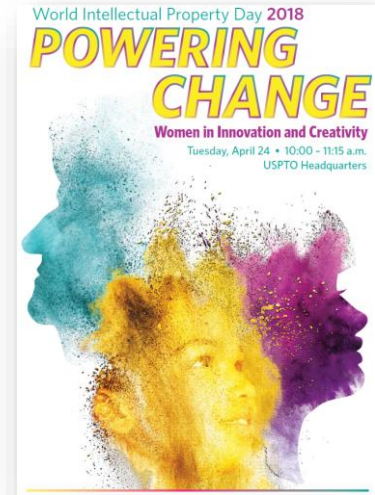


Congressional Event

115th Congress (second session)

World IP Day (April 26, 2018) – Rayburn House Office Building

- USPTO partnered with the World Intellectual Property Organization, the American Intellectual Property Law Association, the International Trademark Association, the American Bar Association IP Law Section, and the Global Intellectual Property Center of the U.S. Chamber of Commerce to celebrate World IP Day.
- Capitol Hill Event included remarks from House Judiciary Leaders
 - Chairman Goodlatte (R-VA)
 - Subcommittee Chairman Issa (R-CA)
 - Congressman Johnson (D-GA)
- Featured panelists: Dr. Cherry Murray, Dr. Irina Buhimschi, and Ms. Danya Sherman



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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)*