

# Patent Public Advisory Committee Quarterly Meeting

## Legislative Update



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# Election Results, 2014



## U.S. Senate

44-53

*GOP takes the Senate*

*11 New Senators (10 R – 1 D):*

Capito (WV)	Cotton (AR)
Daines (MT)	Ernst (IA)
Gardner (CO)	Lankford (OK)
Perdue (GA)	Peters (MI)
Rounds (SD)	Sasse (NE)
Tillis (NC)	

To override a veto, 67

## U.S. House of Representatives

186-244

GOP Maintains control of the House

Roughly 60 new Members elected

Net gain of 12 seats for the GOP

**Majority is 218**

*To override a veto, 290*





## *Members and Senators Exiting Congress*

- Rep. Mike Rogers, R-Mich., 51, 7 terms
  - Rep. Melvin Watt, D-N.C., 69, 11 terms
  - Rep. James P. Moran, D-Va., 69, 12 terms
  - Rep. Howard Coble, R-N.C., 83, 15 terms
  - Rep. Frank R. Wolf, R-Va., 75, 17 terms
  - Rep. John D. Dingell, D-Mich., 88, **29 terms**
- 
- Sen. Tom Coburn, R-Okla., 66, 2 terms



## Ending 113<sup>th</sup> / A look ahead at the 114<sup>th</sup> Congress...

### The 113<sup>th</sup> Congress (2013-2014)

#### U.S. House of Representatives



##### **Committee on the Judiciary**

Bob Goodlatte (R-VA-6), Chairman

John Conyers (D-MI-13), Ranking Member

##### **Subcommittee on Courts, Intellectual Property, and the Internet**

Howard Coble (R-NC-6), Chairman

Jerry Nadler (D-NY-10), Ranking Member

*\* retiring this congress*

#### U.S. Senate



##### **Committee on the Judiciary**

Patrick Leahy (D-VT), Chairman

Chuck Grassley (R-IA), Ranking Member



***Possible Issues Addressed:***

- Omnibus Appropriations
- ISIS/Ebola Funding
- Nominations
- Internet Tax Moratorium
- Tax Breaks Extension
- Satellite TV Reauthorization
- Immigration?



## *Stated Republican Priorities for the 114<sup>th</sup> Congress*

- Repeal or Roll-back Obamacare
- Authorize Construction of Keystone XL Pipeline/Energy Reforms
- Tax Reform
- Global Terrorist Threat
- Educational Choice
- Reduce Excessive Regulations and Frivolous Lawsuits
- Fix Antiquated Government Bureaucracy (e.g., VA and CDC)



### ***The 114<sup>th</sup> Congress is likely to address:***

- Patent Litigation Reform
- Copyright Reform
- Trade Secrets
- Trade Promotion Authority



# Joint Committee Hearing on Telework

## HOUSE JUDICIARY COMMITTEE AND HOUSE OVERSIGHT AND GOVERNMENT REFORM COMMITTEES

*Oversight Hearing on*

### **“Abuse of the USPTO's Telework Program: Ensuring Oversight, Accountability, and Quality”**

November 18, 2014

#### **Witnesses:**

- Rep. Frank Wolf, R-VA-10th District
- **Margaret A. Focarino, Commissioner for Patents, USPTO**
- Todd J. Zinser, Inspector General, DOC
- Robert D. Budens, President, POPA
- Esther Kepplinger, Wilson Sonsini Goodrich & Rosati (Representing PPAC)
- William F. Smith, BakerHostetler

#### ***USPTO Testimony Stressed the Benefits of Telework:***

- Improved Recruitment and Retention
- Quality of Life
- Reduced Pendency and Backlog
- Higher Productivity
- Rent Savings
- Environment

#### ***Highlighted Actions USPTO is Taking:***

- Revise policies and procedures
- Comprehensive training
- Standardize access to records
- Consistent responses to suspected misconduct
- Review by two cross-agency teams
- Contract with 3<sup>rd</sup> Party Consultant (NAPA)



## *Activity on Patent Related Issues: Proposals Address Abusive Patent Litigation*

### **President Obama - "Town Hall on Innovation" Los Angeles, CA – October 9, 2014**

*"One of the biggest problems that we've been working on is how do we deal with these folks who basically are filing phony patents and are costing some of our best innovators tons of money in court; or if they don't go to court, they end up having to pay them off even though they're making a bogus claim just because it's not worth it for you to incur all the litigation costs. So we've made some progress on patent reform. We continue to work with Congress to do more."*



## *Activity on Patent Related Issues: Proposals Address Abusive Patent Litigation*

### ***Activity during the 113<sup>th</sup> Congress Addressing Abusive Patent Litigation***

#### **White House Activity**

- June 4, 2013 – 5 executive actions and 7 legislative recommendations
- February 20, 2014 - White House event -- *3 additional executive actions announced*

#### **Congressional Activity**

- H.R. 3309, “The Innovation Act” (Goodlatte, R-VA-6) – passed Dec. 5, 2013
- S. 1720, the “Patent Transparency and Improvements Act of 2013” (Leahy, D-VT)
- Several other bills introduced; Numerous hearings and staff briefings held

#### **USPTO Activity**

- Continued Implementation of Administrative Actions
- Continued PTAB Implementation of AIA post issuance proceedings
- Monitoring Impact of Court cases and continued engagement with Stakeholders
- Anticipated engagement with House and Senate Judiciary Staff in the “lame duck”



## H.R.3309, “The Innovation Act” (as passed by the House, 113<sup>th</sup> Congress)

### Procedural Highlights:

- **Introduced** 10/23/2013 (Goodlatte, R-VA)
- **Amended and Reported out of Committee** by a 33-5 vote
- **Passed** by the House on 12/5/2013 by a 325-91 vote (D: 130-64, R: 195-27)

### Substantive Highlights:

<b>Transparency &amp; Demand Letters</b>	<ul style="list-style-type: none"> <li>○ Real-Party-in-Interest disclosure in pleadings</li> </ul>
<b>Patent Infringement Actions</b>	<ul style="list-style-type: none"> <li>○ Shifts presumption and enhances fee-shifting under 35 USC 285.</li> <li>○ Establishes core discovery; Limits discovery before <i>Markman</i> claim construction hearing</li> <li>○ Directs the Judicial Conference to consider/issue rules related to discovery</li> <li>○ Provides heightened pleading requirements</li> <li>○ Customer stay based on consent of manufacturer or supplier</li> </ul>
<b>Studies, Technical Changes and Clarification</b>	<ul style="list-style-type: none"> <li>○ Extends term of patent cases pilot from 10 to 20 years</li> <li>○ Switch from BRI to district court claim construction</li> <li>○ Clarifies law as it relates to treatment of IP in bankruptcy cases</li> <li>○ Codifies language on obvious-type double patenting for FITF patents</li> <li>○ Requires USPTO and GAO to conduct studies on secondary market oversight, government patents, examination quality and patent small claims court</li> <li>○ Makes technical changes and clarifications               <ul style="list-style-type: none"> <li>✓ Revises language under “Inventor’s Oath or Declaration”</li> <li>✓ Codifies patent term adjustment calculations (<i>In Re Exelixis</i>)</li> <li>✓ Codifies language on obvious-type double patenting for FITF patents</li> <li>✓ Changes estoppel for PGR appeals (strikes “or could have raised”)</li> </ul> </li> </ul>



## *S.1720, “Patent Transparency and Improvements Act of 2013” (as introduced, 113<sup>th</sup> Congress)*

### **Procedural Highlights:**

- *Introduced 11/18/2013 (Leahy, D-VT)*
- *Committee Hearing held Dec. 17, 2013*
- *Multiple Mark-ups scheduled through early May 2014.*

### **Substantive Highlights:**

<b>Transparency &amp; Demand Letters</b>	<ul style="list-style-type: none"><li>○ Real-Party-in-Interest disclosure in pleadings</li><li>○ “Bad-faith” demand letters subject to FTC Act as unfair or deceptive acts or practices</li></ul>
<b>Patent Infringement Actions</b>	<ul style="list-style-type: none"><li>○ Customer stay based on consent of manufacturer or supplier</li></ul>
<b>Studies, Technical Changes and Clarification</b>	<ul style="list-style-type: none"><li>○ Switch from BRI to district court claim construction</li><li>○ Clarifies law as it relates to treatment of IP in bankruptcy cases</li><li>○ Codifies language on obvious-type double patenting for FITF patents</li><li>○ Requires USPTO and GAO to conduct studies on secondary market oversight, government patents, examination quality and patent small claims court</li><li>○ Includes other technical changes and clarifications similar to the House bill.</li></ul>

**Note:** *S.1720, as introduced, did not include provisions on expanding CBM, enhancing fee-shifting, or limiting discovery; these issues were actively discussed as part of a possible Manager’s amendment.*



*Thank you.*

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