

Patent Public Advisory Committee Meeting USPTO Legislative Challenges



Dana Robert Colarulli
Director, Office of Governmental Affairs
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Legislation: Implementing Patent Reform

- America Invents Act (AIA) Implementation/Rulemakings
- Outreach to Stakeholders
- Preparation of AIA Reports on Prior User Rights and Small Business
- AIA Technical Corrections Legislation
- GAO Review of USPTO Fees
- Reports Required by “Minibus” Appropriations on patent examiner hiring, quality, national and economic security, IT and small business



IP Legislation Introduced in the 112th (highlights)

- H.R. 3261 – the **“Stop Online Piracy Act” (SOPA)** introduced by Judiciary Chairman Smith (R-TX). Enhances tools for fighting rogue websites that hawk counterfeit merchandise. S. 968 is comparable Senate bill introduced by Senate Judiciary Chairman Leahy and approved by the committee. H.R. 3261 contains a section to create a parallel IP attaché program.
- S. 623 – the **“Sunshine in Litigation Act of 2011”** introduced by Senator Kohl (D-WI) . Passed full Committee . Prohibits a federal court from entering protective orders for information relevant to protection of public health/safety; H.R. 592 is House companion – no action.
- S. 1882 – the **“Fair and Immediate Release of Generic Drugs Act”** (Fair Generics Act), introduced by Senator Bingaman (D-NM) . Eliminates the 180-day exclusivity period for a generic applicant that enters into a disqualifying agreement as defined by the legislation.
- S. 27 - the **“Preserve Access to Affordable Generics Act,”** introduced by Senator Kohl (D-WI). Passed full Committee. Prohibits brand name drug companies from compensating generic drug companies to delay the entry of a generic drug into the market.



IP Legislation Introduced in the 112th (cont.)

- S. 1886 – the “**Counterfeit Drug Penalty Enhancement Act of 2011**,” introduced by Senator Leahy (D-VT). Increases penalties for trafficking in counterfeit drugs. H.R. 3468 is House companion measure introduced by Congressman Meehan (R-PA). (Comparable provision in SOPA.)
- S. 1830 - the “**Protect American Innovation Act of 2011**,” introduced by Senator Stabenow (D-MI). Holds countries accountable for abusing international trade rules, and one section of the bill is dedicated to improving enforcement of IP rights by bolstering U.S. anti-counterfeiting and anti-piracy efforts.
- S. 1228 – the “**Combating Military Counterfeits Act of 2011**,” introduced by Senator Whitehouse (D-RI). Approved by the Judiciary Committee. Strengthens penalties for trafficking in counterfeit military goods and services. (Comparable provision in SOPA.)



Update on USPTO Funding (FY2012)

FY 2011:

- Approximately \$209 million collected in FY2011 above spending authority. Spending in FY2011 limited to \$2.09 billion.

FY 2012:

- The President signed “minibus” into law as Pub. Law 112-55 on Nov. 18 (expiration of last CR); includes FY 2012 appropriations for Commerce-Justice-Science (including USPTO), Agriculture, and Transportation-Housing Urban Development.
- The conference bill provides \$2.706 billion for the USPTO (which was the President’s FY 2012 submitted request, but significantly higher than current fee projections). Also includes language to allow USPTO to request access to funds collected above its annual appropriations consistent with the provisions of the *American Invents Act*. **Arguably, the best outlook for the USPTO since 1991 that USPTO will retain all fee collections this year.**
- A new continuing resolution (CR) funds the remaining portion of the Federal Government through Dec. 16 while Congress crafts an omnibus FY 2012 bill for that portion.



Update on Implementing Telework Legislation

Implementing Telework Flexibility:

- Pursuant to Public Law 111-292 (H.R.1722), the *Telework Enhancement Act of 2010*, USPTO is in process of implementing new telework flexibilities.
- USPTO Oversight Committee developed operating procedures to ensure reasonable technological alternatives used before requiring employee travel.
- MOU with USPTO Unions signed on July 5, 2011.
- Implementation begins 30 days after GSA approval transmitted to Congress with Cost Benefit Analysis.



Thank you.

Dana Robert Colarulli

Director

Office of Governmental Affairs

U.S. Patent and Trademark Office (USPTO)

(571) 272 -7300

dana.colarulli@uspto.gov

