

USPTO Legislative Update

Presentation to the Patent Public Advisory Committee
July 8, 2010



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Legislative Update

Update on:

- **Patent Reform Legislation**
- **USPTO Funding**
- **Other Legislation Important to USPTO**



Patent Reform Legislation in the 111th Congress

Patent Reform Legislation

- 3/3/2009 S.515 and H.R.1260 introduced at Joint Press Conference.
- 4/2/2009 Senate Judiciary Committee amends and reports out S.515.
- 4/30/2009 House holds hearing on H.R.1260.
- 5/12/2009 Committee Report filed, S. Rep. 111-18 with Supplemental/Minority Views (*concerns over Willfulness and Post Grant Proceedings*).
- 10/5/2009 Administration's "views letter" filed supporting much of S.515.
- 2/25/2010 Sen. Leahy announces that a "*tentative agreement in principle*" was reached in the Judiciary Committee which preserves the core of the compromise struck in 2009; circulates Managers Amendment to S.515 and pushes for floor action.
- 5/2010 Manager's Amendment "Hotlined" in the Senate.



Patent Reform Legislation in the 111th Congress

Inside the Senate:

S.515, 13 Cosponsors:

- Sen. Leahy, D-VT – Sponsor / Chairman
- Sen. Crapo, R-ID - 3/3/2009
- Sen. Gillibrand, D-NY - 3/3/2009
- Sen. Hatch, R-UT - 3/3/2009
- Sen. Schumer, D-NY - 3/3/2009
- Sen. Risch, R-ID - 3/3/2009
- Sen. Whitehouse, D-RI - 3/3/2009
- Sen. Cornyn, R-TX - 4/2/2009
- Sen. Feinstein, D-CA - 4/2/2009
- Sen. Klobuchar, D-MN - 4/2/2009
- Sen. Specter, D-PA - 4/2/2009
- Sen. Kaufman, D-DE - 6/1/2009
- Sen. Udall, D-CO - 6/8/2009
- Sen. Pryor, D-AR - 6/25/2009

Stakeholder Support:

A consensus bill.

General support now voiced by many in industry, the VC community, academics.

Some concerns still raised by some independent inventors and some High Tech.



Patent Reform: Issues in Play

Issues Addressed in S.515, Manager's Amendment

- First-Inventor-to-File
- Assignee Filing
- Damages
- Willful Infringement
- Prior User Rights
- Post-Grant Review Proceedings
- *Inter Partes* Reexamination
- Prior Art Submissions by 3rd Parties
- Venue (for District Court cases)

- Providing USPTO Fee-Setting Authority
- Micro-entity provision
- Patent Marking – Virtual Marking and False Marking
- Residency Req. for Federal Circuit Judges
- Supplemental Examination
- Telework flexibility
- Venue for USPTO



USPTO Funding: Key Legislative Provisions

USPTO FY 2011 Budget Request

- ↔ Imposes a 15% interim surcharge on patent fees*
- ↔ provides USPTO with fee-setting authority*

S.515, Patent Reform Bill (Leahy)

- ↔ provides USPTO with fee-setting authority (Sec. 9)*

H.R.5322, USPTO Funding Stabilization Bill (Conyers)

- ↔ provides USPTO with fee-setting authority*
- ↔ codifies current fee schedule*
- ↔ imposes a 15% interim surcharge on patent fees*
- ↔ creates a USPTO Revolving Fund*



USPTO Funding: Key Legislative Provisions

House Funding Bill (H.R.5322)

- 5/3/2010 House Judiciary Oversight hearing on USPTO -- Director Kappos testifies
- 5/18/2010 H.R.5322, "Patent and Trademark Office Funding Stabilization Act of 2010" introduced.

Rep. Conyers (D-MI-14) and 3 co-sponsors:

- o Rep. "Hank" Johnson (D-GA-4)
- o Rep. Zoe Lofgren (D-CA-16)
- o Rep. Lamar Smith (R-TX-21), *Ranking Member*

Staff discussions between House Judiciary and House Appropriations are ongoing.



FY2011 Budget Process (Model Schedule)

Feb. 2010	President's Budget delivered to the Hill
Feb./Mar. 2010	Appropriations Committee hearings held; Director Kappos testified in front of House Commerce, Justice, Science Subcommittee (2/25/2010)
TBA	House and Senate passes some bills (<i>usually Defense related and a few others</i>)
Oct. 1, 2010	Government Fiscal Year 2011 Begins

- *Individual appropriations bills unlikely in recent years.*
- *Continuing resolutions necessary if action not completed before 9/31/2010; sometime multiple extensions.*
- *Omnibus appropriation bill often passed.*



Other Legislation Important to USPTO

Signed into Law

- Trademark Technical and Conforming Amendment Act of 2010 (signed into law as P.L. 111-146, March 17, 2010)

Pending

- “4 Easy Pieces”
 - ↗ Implementing legislation for the Hague Agreement on Designs
 - ↗ Implementing legislation for the Patent Law Treaty
 - ↗ Technical correction to clarify USPTO ability to fund travel for GIPA programs
 - ↗ Technical correction to clarify pay authority for Administrative Law Judges
- Performance Rights Act (S.379); views letter filed April 1, 2010
- Telework Legislation (S.707, S.515, H.R.1722)
- Legislation addressing IP Attaches (H.R.2410 & Possible Senate Bill)



Thank you.

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