USPTO Legislative Challenges:
111th Congress “Wrap-up” and Navigating the Lame Duck

Patent Public Advisory Meeting (PPAC)
December 2, 2010

Dana Robert Colarulli
Director
Office of Governmental Affairs
U.S. Patent and Trademark Office (USPTO)
At the end of the 111th Congress, USPTO’s primary legislative challenges continue to be:

- USPTO funding (Annual Appropriations & Judiciary Bills)
- Patent Reform legislation
- Other technical and substantive law changes
Successes –

IP bills signed into law during the 111th Congress that benefit USPTO:

- **Trademark Technical and Conforming Amendment Act of 2010** (S. 2968, signed into law as P.L. 111-146, March 17, 2010)

- **Supplemental Appropriations for the USPTO** (H.R. 5874, signed into law as P.L. 111-224, August 10, 2010)

- **Telework Enhancement Act of 2010** (H.R. 1722, signed into law as P.L. 111-___, pending Presidential signature)

- **Copyright Cleanup, Clarification, and Corrections Act of 2010** (S.3689, signed into law as P.L. 111-___, pending Presidential signature)
Trademark Technical Corrections (highlight: “TM Bullies” Study)

- Provision included in the TM technical Corrections Act; amended by copyright corrections passed by Senate 11/20/2010.
- Congressionally directed study on trademark owner litigation tactics; to be completed by March 17, 2011.

Supplemental Appropriations for the USPTO

- Provided $129 Million in supplemental appropriations to USPTO, extended backlog reduction efforts, provided some protection from cuts otherwise necessary under a continuing resolution, and enabled access to more of actual fee collections.

Telework Legislation

- Includes provisions to enhance telework throughout the government as well as a USPTO-specific provision.
- Provides USPTO flexibility to expand its current telework program; specifically, to waive the “twice a bi-week” requirement.
Pending as the 111th Congress Ends (Selected Key bills):

- Patent Reform Legislation (S. 515 / H.R. 1260)
- USPTO Funding Stabilization Bill (H.R.5322)
- “4 Easy Pieces” (Administration Proposals, not introduced)--
  - Technical correction to clarify funding for GIPA programs
  - Technical correction to clarify pay scale for Administrative Law Judges
  - Implementing legislation for the Hague Agreement on Designs
  - Implementing legislation for the Patent Law Treaty
- Performance Rights Act (S.379); DOC views letter filed April 1, 2010
- IP Attaches (H.R.2410, Draft House and Senate Bills)
Republican Majority in the House; structural changes possible to House Judiciary Committee

Presumptive* Committee Leadership in the 112th Congress:

**U.S. House of Representatives**
- Rep. Lamar Smith (R-Texas-21), Chairman
- Rep. John Conyers (D-Michigan-14), Ranking Member

**U.S. Senate**
- Sen. Patrick Leahy (D-Vermont), Chairman
- Sen. Chuck Grassley (R-Iowa), Ranking Member

*Appointments will be made in January

Patent Reform is likely to move forward quickly in both Houses; Early indications from Chairman Smith that House will work closely with the Senate to pass a bill in the 112th Congress
Current Continuing Resolution (CR) expires tomorrow (Dec. 3).

Possible Outcomes of the Lame Duck Session:
- Limited CR (to Dec. 17? Longer?)
- Year-Long CR
- Omnibus Appropriations Bill

USPTO has requested an “anomaly” to be added to any future CR:
- 15% patent surcharge as proposed in the President’s Budget
- A “buffer” sufficient to allow USPTO to access all of its projected fee collections in FY 2011
Thank you.
(and a Happy New Congress to all!)

Dana Robert Colarulli
Director
Office of Governmental Affairs
U.S. Patent and Trademark Office (USPTO)
Ph: (571) 272-7300
Email: dana.colarulli@uspto.gov