

Patent Public Advisory Committee Meeting

Legislative Update



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Congressional Hearings:

Highlight on IP-related hearings (USPTO not testifying) :

Patents

- “Abusive Patent Litigation: The Impact on American Innovation & Jobs, and Potential Solutions” - March 14, 2013, *House Judiciary Committee, Subcommittee on Courts, Intellectual Property and the Internet*
- “Abusive Patent Litigation: The Issues Impacting American Competitiveness and Job Creation at the International Trade Commission and Beyond” – April 16, 2013, *House Judiciary Committee, Subcommittee on Courts, Intellectual Property and the Internet*
- “Patent Reform implementation and New challenges for Small Businesses” – May 15, 2013, *House Committee on Small Business*
- “Standard Essential Patent Disputes and Antitrust Law” – July 30, 2013, *Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights*



Congressional Hearings (cont.):

Copyrights

- ↪ "The Satellite Television Law: Repeal, Reauthorize, or Revise?" June 12, 2013, **House Energy and Commerce**, Subcommittee on Communications and Technology
- In front of **House Judiciary**, Subcommittee on Courts, Intellectual Property and the Internet:
 - ↪ "A Case Study for Consensus Building: The Copyright Principles Project" – May 16, 2013
 - ↪ "Unlocking Consumer Choice and Wireless Competition Act" – June 6, 2013
 - ↪ "Innovation in America: The Role of Copyrights" - July 25, 2013
 - ↪ "Innovation in America: The Role of Technology" - August 1, 2013
- *Additional Hearings expected in September.*



Various proposals/approaches to address abusive patent litigation:

White House Announcement (June 4, 2013):

5 Executive Actions (4 of which USPTO is implementing):

1. Making “Real Party-in-Interest” the New Default.
2. Tightening Functional Claiming.
3. Empowering Downstream Users.
4. Expanding Dedicated Outreach and Study.

7 legislative recommendations:

1. Require applicants to disclose the “Real Party-in-Interest”
2. Permit more discretion to the court to award fees to prevailing parties
3. Expand the PTO’s Transitional Program for Covered Business Methods
4. Protect off-the-shelf use by consumers and businesses
5. Change the ITC standard for obtaining an injunction
6. Use demand letter transparency to help curb abusive suits
7. Ensure the ITC has adequate flexibility in hiring qualified Administrative Law Judges



Various proposals/approaches to address abusive patent litigation:

Congressional Activity (113th Congress) - Various Introduced bills or Circulated Drafts:

H.R. __, DISCUSSION DRAFT (Rep. Goodlatte, R-VA-6) – circulated: 5/28/2013	Various Litigation-Related and Other Provisions, <i>inc.</i> fee shifting, RPI, CBM
H.R. 845, “Saving High-Tech Innovators from Egregious Legal Disputes” (SHIELD) Act of 2013 (Rep. Defazio, D-OR-4) – introduced: 2/27/2013	Fee shifting
H.R. 2024, “End Anonymous Patents Act” (Rep. Deutch, D-FL-21) – introduced: 5/16/2013	Patent Owner Disclosure / Real Party in Interest
H.R. 2639, “Patent Litigation and Innovation Act” (Reps. Jefferies, D-NY-8, Farenthold, R-TX-27) – introduced: 7/10/2013	Heighten Pleading Standards, Joinder, Stays, Discovery, Rule 11 sanctions
H.R. 2766, “Stopping the Offensive Use of Patents Act (STOP Act)” (Reps. Issa, R-CA-49, Chu, D-CA-27)- introduced 7/22/2013	Expanding PTO’s Transitional Proceeding for Covered Business Methods
S.866, “Patent Quality Improvement Act of 2013” (Sen. Schumer, D-NY) – introduced: 5/6/2013	Expanding PTO’s Transitional Proceeding for Covered Business Methods
S. 1013, “Patent Abuse Reduction Act of 2013” (Sen. Cornyn, R-TX) – introduced: 5/21/2013	Litigation-Related Provisions <i>inc.</i> Discovery, Joinder



113th Congress (*Miscellaneous IP Legislation*)

Budget

- **H.R. 2582**, “To End the Application of Sequestration to the USPTO” (Rep. Honda, D-CA-17) – introduced: 6/28/2013

Patents

- **S. 1478**, e911 services and patent infringement (Sen. Cardin, D-MD) -- introduced: 8/1/2013
- **H.R. 2236**, “Promoting Start-up Innovation Act” (Rep. Chabot, R-OH-1) – introduced: 6/4/2013

Trademarks

- **H.R. 1278**, “Non Disparagement of Native American Persons or Peoples in Trademark Registration Act of 2013” (Rep. Faleomavaega, D-AS-at large) – introduced: 3/20/2013

Copyright / Cellphone Unlocking

- **H.R.1892** – “Unlocking Technology Act of 2013” (Lofgren, D-CA-19) introduced: 5/8/2013
- **H.R.1123** (Goodlatte, R-VA-6) and **S. 517** (Leahy, D-VT), “Unlocking Consumer Choice and Wireless Competition Act,” introduced: 3/13/2013
- **S.467**, “Wireless Device Independence Act of 2013” (Sen. Wyden, D-OR) – introduced: 3/5/2013
- **S.481**, “Wireless Consumer Choice Act” (Sen. Klobuchar, D-MN) – introduced: 3/6/2013

Trade Secrets – creating a private right of action against theft

- **H.R. 2466** (Lofgren, D-CA-19) – introduced: 6/20/2013
- **DISCUSSION DRAFT**, (Whitehouse, D-RI, Graham, R-SC) – circulated: 7/29/2013



113th Congress – Selected Bills/Activity

Counterfeiting & Designs

- **H.R. 22**, “ Foreign Counterfeit Merchandise Prevention Act” (Rep. Poe, R-TX-2) – introduced: 1/3/2013
- Promoting Automotive Repair, Trade and Sales (PARTS) Act
 - ↳ **H.R.1663** (Rep. Issa, R-CA-49) – introduced: 4/23/2013
 - ↳ **S.780** (Sen. Whitehouse, D-RI) – introduced: 4/23/2013

Cyber Security

- **H.R.624** (Rogers, R-MI-8) – introduced: 2/13/2013
- **S.21** (Rockefeller, D-WV) – introduced: 1/22/2013
- **S.884** (Sen. Levin, D-MI) – introduced: 5/7/2013
- **Executive Order**, “Improving Critical Infrastructure Cybersecurity” (2/12/2013)
- **House Hearing** 7/9/2013: Energy & Commerce, Subcommittee on Oversight and Investigations, “Cyber Espionage and the Theft of U.S. Intellectual Property and Technology”

Generic Drugs

- **S.214**, “Preserve Access to Affordable Generics Act” (Klobuchar, D-MN) – introduced: 2/4/2013

Miscellaneous

- **S. 660**, “Innovation Through Trade Act of 2013,” (Sen. Hatch, R-UT) – introduced: 3/22/2013



Other Considerations for the 113th Congress

- **Green Paper on, “Copyright Policy, Creativity, and Innovation in the Digital Economy”**
 - ✦ Multi-stakeholder process and outreach efforts beginning this month
- **Satellite Offices**
 - ✦ Continued interest from Capitol Hill
 - ✦ Local support for outreach and education (in Silicon Valley, Denver and elsewhere)
- **International Treaties – implementing legislation**
 - ✦ Beijing Treaty on Audiovisual Performances
 - ✦ Marrakesh Treaty on the Visually Impaired
- **Nominations (confirmed):**
 - ✦ The Hon. Penny Pritzker – Secretary of Commerce (97-1)
 - ✦ Ray Chen – U.S. Court of Appeals for the Federal Circuit (97-0)
- **Partnership with the Smithsonian Institute (2 highlighted)**
 - ✦ The Innovation Pavilion at the Arts and Industry Building
 - ✦ “Build a Better Mousetrap” Hill Staff tour (July 11)
- **USPTO Outreach to Hill Staff**
 - ✦ Individual Staff Meetings with Judiciary and New Members, Congressional Caucuses
 - ✦ Preparing for Telework meetings with Oversight Committees
 - ✦ “Day in the Life” Visits for Congressional Staff (June 21)
 - ✦ “Everything You Ever Wanted to Know About IP in China (and More)” at USPTO (Aug. 7)



Questions and Comments?

Thank you.

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