Patent Public Advisory Committee
Quarterly Meeting

Legislative/Governmental Affairs Update

Dana Robert Colarulli
Director, Office of Governmental Affairs

August 2, 2018
Commerce, Justice, Science and Related Agencies Appropriations Act of 2019 (H.R. 5952/S. 3072)

- Sets the USPTO budget at $3.37 billion
- Both bills reported out of their respective committees in May.
Legislative Activity
115th Congress, second session

Fee Setting Authority
• Authority expires Sept. 16, 2018
• Legislation has been introduced that extends fee setting authority
  o Building Innovation Growth through Data for Intellectual Property Act (BIG Data for IP Act) (S. 2607/H.R. 5887)
• Unclear whether these bills or another measure might move forward
• FY2019 President’s Budget

Funding-related provisions in other legislation (“Revolving Fund”)
  o Restoring America’s Leadership in Innovation Act of 2018 (H.R. 6264)
Legislative Activity
115th Congress, second session

Recent Patent Bills /Proposals

• **H.R. 6264, Restoring America’s Leadership in Innovation Act of 2018**
  Rep. Massie (R-KY-4) – introduced 6/28/2018

• **H.R. 6557, Inventor Protection Act**
  Rep. Rohrabacher (R-CA-48) – introduced 7/26/2018

• **H.R. 6370, The Targeting Rogue and Opaque Letters (TROL) Act**
  Rep. Burgess (R-TX-26) - introduced 7/13/2018

• **S. ____, Hatch Waxman Integrity Act**
  Sen. Hatch (R-UT) – draft circulated but not introduced, 6/14/2018
Legislative Activity
115th Congress, second session

H.R. 6264, Restoring America’s Leadership in Innovation Act of 2018
Rep. Massie (R-KY-4)
Introduced 6/28/2018

- Reverts the U.S patent system to “first to invent”
- Abolishes IPR and PGR
- Abolishes PTAB/Restores BPAI
- Removes the USPTO from Annual Appropriations/Establishes “revolving fund”
- Amends Section 101
- Amends Section 102 prior art
- Establishes that patent only revocable through judicial proceeding
- Overrules Impression Products v. Lexmark
- Ends automatic publication of patent applications
- Establishes presumption of validity in federal, state and administrative proceedings
- Tolls the patent term when validity is challenged
- Overturns eBay
- Restores best mode
Legislative Activity
115th Congress, second session

H.R. 2655/S.791, Small Business Innovation Protection Act of 2017

- Passed both chambers on a voice vote (Senate on July 19 and the House on July 10)
- Directs the Small Business Administration and the USPTO to enter into a partnership agreement to:
  - Develop high-quality training for small business concerns related to domestic and international protection of intellectual property and how such protections should be considered in small business plans and growth strategies, and
  - Leverage existing training materials already developed to educate inventors and small business
- Training can be done through electronic resources, including webinars or at SBA or USPTO physical locations
- Training at SBDC relating to domestic and international intellectual property and how such protections should be considered in the business plans and growth strategies of small businesses
Congressional Activity
115th Congress, second session

Oversight of the U.S. Patent and Trademark Office (May 22, 2018)
• Hearing before the House Judiciary Committee
• Some issues raised by House members:
  • § 101 Subject matter eligibility
  • PTAB
  • NPRM on claim construction
  • Diversion of USPTO user fees
  • China IP problems
  • Qualified workforce
  • Patent quality
  • Fraudulent TMs from overseas
  • IP protection in trade agreements
Congressional Activity
115th Congress, second session


- Hearing before the House Small Business Committee
- Focused on exploring the value of intellectual policy to small businesses and start-ups
- Witnesses:
  - Ms. Michal Rosenn, General Counsel, Expa, New York, NY.
  - Mr. David Graham, CEO, Code Ninjas, Pearland TX. on behalf of the International Franchise Association.
  - Mr. Rick Carnes, President, Songwriters Association, Brentwood, TN.
  - Ms. Joan Fallon, CEO Curemark, Rye, NY.
Congressional Activity
115th Congress, second session


• Hearing before the House Small Business Committee
• Examined how small business owners in the digital technology industry utilize intellectual property and the issues they face when navigating the intellectual property process
• Witnesses:
  o Mr. Frank Cullen, Vice President of U.S. Policy, The Global Innovation Policy Center, U.S. Chamber of Commerce, Washington, D.C.
  o Mr. Morgan Reed, President, ACT | The App Association, Washington D.C.
  o Mr. Christopher Mohr, Vice President for Intellectual Property and General Counsel, Software & Information Industry Association, Washington, D.C.
  o Mr. Chris Israel, Executive Director, Alliance for U.S. Startups and Inventors for Jobs, Washington D.C.
Questions and Comments

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USPTO’s Office of Governmental Affairs: Overview

**Structure:** 10 Staff (mix of attorneys and non-attorneys)

**Core Mission**

- **Represent USPTO on Capitol Hill**
  
  (Advance PTO’s legislative agenda, prepare testimony, brief staff, provide technical advice)

- **Respond to Requests from Members of Congress and Facilitate Clearance**
  
  (constituent issues, clear IP policy documents within the Administration)

- **Build Relationships and Maintain Goodwill with Elected Officials**
  
  (Support regional office engagement, build fed/state relationships & stakeholder outreach)