Legislative/governmental affairs update

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November 19, 2020
Patent Public Advisory Committee quarterly meeting
Legislative activity
116th Congress

• Telework for U.S. Innovation Act (H.R. 7448/S. 4138)
  – Introduced in both the House and the Senate on July 2, 2020
  – Would make the USPTO’s authority to conduct TEAPP permanent
  – Passed by the House as an amendment to the National Defense Authorization Act
  – Passed as a standalone bill by the Senate Homeland Security and Governmental Affairs Committee by voice vote

• Patents for Humanity Improvement Act (H.R. 7259/S. 2814)
  – Passed by the House by voice vote

• Stopgap funding (H.R. 8319)
  – Extends government funding through December 11, 2020
116th Congress

- State Sovereign Immunity Study
  - In response to a request from Congress, the USPTO is “study[ing] the extent to which patent or trademark owners are experiencing infringement by state entities without adequate remedies under state law”
  - On November 5, the USPTO issued a Request for Information (RFI) in the Federal Register seeking information and relevant evidence from external stakeholders, including the states, IP owners, and others on infringement by states and state entities
  - The RFI is available at www.federalregister.gov/documents/2020/11/05/2020-24621/sovereign-immunity-study
  - The deadline to submit comments is December 21, 2020
116th Congress

• Letter from Sen. Thom Tillis, Chairman, Senate Judiciary IP Subcommittee
  – Sen. Thom Tillis requested the USPTO to consider the following reforms:
    • Require patent applicants to “more clearly distinguish hypothetical experimental data from results that have already been achieved and recorded”
    • Require patent owners to disclose ownership information “in a manner that is both more transparent and more standardized”
116th Congress

• U.S. IP Enforcement Coordinator–Joint Strategic Plan 2020 to 2023
  – The Administration’s four-part strategic approach includes:
    • engagement with our trading partners;
    • effective use of all our legal authorities;
    • expanded law enforcement action and cooperation; and
    • engagement and partnership with the private sector and other stakeholders.
Legislative successes
116th Congress

• Enactment of CARES Act authority to grant relief to stakeholders during pandemic
• Identified and raised awareness among congressional offices and stakeholders regarding the $1 billion in previously collected fees in the USPTO’s treasury account
• House passage and Senate committee passage of TEAPP reauthorization legislation
Legislative successes
116th Congress

• House passage of Patents for Humanity legislation to allow transfer of award benefits

• Educated Congress about the importance of IP rights in the context of the drug pricing and COVID relief debates
Legislative preview

Likely issues for the 117th Congress

• Continued debate on Section 101 reform
• Potential *Arthrex* legislation
• Continued debate on drug pricing