

**UNITED STATES  
PATENT AND TRADEMARK OFFICE**



Patent Public Advisory Committee  
Quarterly Meeting

**Legislative/Governmental Affairs Update**

Dana Robert Colarulli  
Director, Office of Governmental Affairs

August 2, 2018

UNITED STATES  
PATENT AND TRADEMARK OFFICE



# Legislative Activity

*115th Congress, second session*

## **Budget Issues**

### **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
  - 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”)**

- Restoring America's Leadership in Innovation Act of 2018 (H.R. 6264)
- Support Technology & Research for Our Nation's Growth and Economic Resilience (STRONGER) Patents Act (S.1390/H.R. 5340)

# 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)

*Cosponsors: Rep. Rohrabacher (R-CA), Rep. Kaptur (D-OH)*

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*



## **Intellectual Property 101: How Small Business Owners Can Utilize Intellectual Property Protections in Their Businesses (May 16, 2018)**

- 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*



## **Innovation Nation: How Small Businesses in the Digital Technology Industry Use Intellectual Property (July 11, 2018)**

- 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:
  - **Mr. Frank Cullen**, Vice President of U.S. Policy, The Global Innovation Policy Center, U.S. Chamber of Commerce, Washington, D.C.
  - **Mr. Morgan Reed**, President, ACT | The App Association, Washington D.C.
  - **Mr. Christopher Mohr**, Vice President for Intellectual Property and General Counsel, Software & Information Industry Association, Washington, D.C.
  - **Mr. Chris Israel**, Executive Director, Alliance for U.S. Startups and Inventors for Jobs, Washington D.C.

# Questions and Comments

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**Resource Slide:**

## **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)*