

STATEMENT OF
MICHELLE K. LEE
**DEPUTY UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY
AND
DEPUTY DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE**
BEFORE THE
**SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY AND THE INTERNET
COMMITTEE ON THE JUDICIARY
U.S. House of Representatives**
**“U.S. Patent and Trademark Office: The America Invents Act and Beyond, Domestic and
International Policy Goals”**
JULY 30, 2014

I. Introduction

Chairman Coble, Vice Chairman Marino, Ranking Member Nadler, and Members of the Subcommittee:

Thank you for this opportunity to appear before you to discuss the operations, programs and initiatives of the United States Patent and Trademark Office (USPTO).

Promoting innovation, stimulating economic growth and creating high-paying jobs continue to be top priorities of the Obama Administration and the Department of Commerce. I am very proud and honored to be part of an agency that serves America’s innovators by helping to provide the intellectual property (IP) protection they need to secure investment capital, build their companies and bring their products and services to the global marketplace. Our work is more important than ever before because of the growing importance of intellectual property to the economic vitality of our country.

Also, I am very proud to be a part of an agency that was ranked #1 out of 300 agency subcomponents in the 2013 Best Places to Work in the Federal Government® report of the Partnership for Public Service. This success was accomplished while simultaneously achieving significant reductions to the patent backlog and pendency, as well as timely and effective implementation of the historic *Leahy-Smith America Invents Act (P.L. 112-29)*.

II. Overview

Mr. Chairman, before I discuss our array of programs, initiatives and other efforts to serve America's innovators, I want to provide an overview of our financial posture and our strategic direction.

USPTO’s FY 2015 Budget

We are very pleased that the House has passed, and the Senate Appropriations Committee has approved, a FY 2015 appropriation bill that provides USPTO with the authority to spend anticipated fee collections as estimated by the Congressional Budget Office. This will provide the USPTO with the resources and

flexibility needed to continue reducing the patent application backlog, shortening patent pendency, improving patent quality, enhancing patent administrative appeal and post-grant processes, fine tuning trademark operations, expanding our international efforts and investing in our information technology (IT) infrastructure.

Strategic Direction

Specifically, our FY 2015 appropriation will enable us to continue implementation of our 2014-2018 Strategic Plan which prioritizes efforts to:

- Continue to reduce patent pendency and the backlog of unexamined patent applications, while working with stakeholders to refine long-term pendency goals that will meet the needs of both the Office and the IP community.
- Maintain trademark pendency by continuing to align examination capacity with incoming workloads.
- Increase patent and trademark efficiencies and examination capacity, such as hiring and retaining a nationwide workforce.
- Enhance patent and trademark quality by evaluating and refining quality measurements, and maximizing their usage to improve the quality of patent and trademark examination.
- Maintain the Patent Trial and Appeal Board's (PTAB's) ability to provide timely and high quality decisions by hiring to meet increased demand and reduce inventory, updating its IT infrastructure and expanding outreach to stakeholders.
- Increase international cooperation and work sharing.
- Ensure optimal information technology (IT) service delivery to both employees and stakeholders by transitioning to next generation technology and services.
- Continue and enhance stakeholder and public outreach to promote the availability of educational resources and increase transparency of data on patents and trademarks for applicants and other users.
- Support a sustainable funding model, including using fee setting authority to adjust patent and trademark fees as appropriate.
- Implement White House Executive Actions to improve the environment for future innovation.

III. Patent Operations and Initiatives

Our patent application workload continues to increase at a healthy pace. In FY 2014, we expect to receive nearly 600,000 patent applications. That represents an increase of more than 5% as compared to FY 2013. Our backlog of unexamined patent applications is less than 620,000 which is down from more than 750,000 in 2009 (a 17.3 percent decrease). Our goal is to reduce the inventory of unexamined patent applications to a manageable level that will allow us to achieve optimal pendency by FY 2019.

In terms of processing applications, our first action pendency has been reduced to approximately 19 months and our average total pendency has fallen to approximately 28 months. Our plan is to reduce those periods to 11.3 and 21.0 months respectively by FY 2018.

The USPTO has benefited from recent legislative changes enacted in the 2011 *Leahy-Smith America Invents Act* (AIA). During the last three years, USPTO has fully implemented the changes made to modernize the U.S. patent system – transitioning to a first-inventor-to-file system, establishing new post-grant review proceedings at USPTO's PTAB and taking advantage of new authority to enable sustainable funding and other operational efficiencies.

Consistent with the President’s call to strengthen the patent system and foster innovation, the USPTO believes that additional legislative changes to build upon the AIA are needed to further enhance patent quality and to lessen litigation abuses in the system. Although we had hoped that legislation would move forward this Congress, we will continue to work with the Committee and others in Congress to support efforts to develop consensus legislation.

In the meantime, USPTO has implemented a number of administrative actions using its existing authority to address these issues:

Enhancing Claim Clarity

The AIA reforms made important improvements to the patent examination process and overall patent quality, but certain stakeholders remained concerned about patents with potentially overly broad claims in certain high-tech fields. The USPTO has developed multiple initiatives to address the concerns.

First, an extensive, multi-phased training program for all examiners focused on evaluating functional claims and improving examination consistency and the clarity of the examination record. During the last year, we have implemented four training modules focused on functional claiming under section 112(f) of Title 35 – a type of claiming frequently used in software patents. The training also provides tools for examiners to clarify the examination record to positively affect the clarity of the claims. The clearer the patents, the clearer the path to innovation with less opportunity for abusive patent litigation.

Second, in addition to providing targeted training to our examiners, we also have conducted extensive stakeholder outreach and engagement to solicit ideas and collect feedback, experiences, and insights on enhancing claim clarity and improving overall patent quality.

Third, as another effort toward claim clarity, the USPTO has initiated a Glossary Pilot Program to study how the inclusion of a glossary section in a patent application might improve the clarity of the patent claims and facilitate examination of patent applications by enabling the USPTO and the public to more fully understand the meaning of the patent claims.

Increased Transparency in Patent System

At the beginning of this year, the USPTO proposed a rule requiring that owners and applicants report people or companies with ownership interests in a patent or application, called the “attributable owners.” We are in the process of reviewing written comments from the public and feedback from stakeholders received at two public hearings on the proposal. As we evaluate opportunities for increasing transparency in our patent system, we look forward to working with Congress to ensure that any such enhancements are coordinated and meet the needs of our innovating companies.

Empowering Consumers and Main Street Retailers

Unsuspecting retailers, consumers, small businesses, and other users of products containing patented technology have increasingly found themselves targeted by letters alleging patent infringement and demanding money—even in instances where a small business is using an off-the-shelf product. To help level the playing field and ensure individuals and businesses know their rights and are aware of available resources before entering into costly litigation and/or settlements, the USPTO has launched a useful online toolkit of information, available at www.uspto.gov/patentlitigation. This new portal brings together for the first time in one place a wide-ranging, powerful set of tools and information, including answers to

commonly asked questions about patent demand letters and a catalog of third-party websites that users can access information about, for example, whether the patent has ever been asserted in litigation.

Expanding Outreach and Focused Study

The USPTO has significantly increased its already extensive public outreach efforts to more actively engage key stakeholders in the high-tech community, trade and bar associations, business and university groups, and advocacy organizations, resulting in a wealth of valuable input on patent clarity, transparency, and enhanced patent quality.

The USPTO has also expanded its Thomas Alva Edison Visiting Scholars Program and has selected three new scholars who will engage in focused study of various aspects of our patent system, to develop and make available to the public more robust data and research on the issues bearing on abusive litigation. This empirical research will help the USPTO better understand our current patent system and better inform the development of new ideas and consensus around improvements to patent policies and laws.

In addition, the USPTO has committed to sustaining the Patents for Humanity Program which aims to increase the accessibility of the patent system for innovators who are delivering game-changing technologies to address global humanitarian needs. Past award recipients have used their patent portfolios to decrease the price of anti-HIV and anti-malaria drugs, develop more nutritious food sources, bring solar energy to off-grid villages, combat toxic counterfeit drugs, and purify billions of liters of water using inexpensive chemical packets.

Crowdsourcing Prior Art

To determine whether an invention is novel, USPTO examiners must find and apply information about the state-of-the-art in the relevant technology. However, documents reflecting this state of knowledge can sometimes be difficult to find and incorporate into the patent-examination process. Accordingly, the USPTO is exploring a series of measures to make it easier for the public to provide information about relevant prior art in patent applications, including by refining its third-party submission program, exploring other ways for the public to submit prior art to the agency, and updating its guidance and training to empower examiners to more effectively use crowd-sourced prior art. This effort will focus on deriving valuable contributions to the patent process and to patent quality, strengthening a process that is vital to innovation and economic growth. The USPTO will seek public input on these efforts by calling on the public and expert stakeholders to partner with us to encourage the disclosure and sharing of prior art, particularly hard-to-find non-patent references.

More Robust Technical Training and Expertise

Patent examiners must be skilled in determining whether a particular application should be granted based on the state of the art. Building on its existing “Patent Examiner Technical Training Program,” the USPTO is taking steps to make it easier for technologists and engineers from industry and academia to provide relevant, technical training and expertise to patent examiners regarding the state of the art. We are calling on volunteers to assist in this training effort and to help ensure that our examiners are up-to-speed on the latest, fast-moving technological development so they can issue the highest quality patents possible. In addition the USPTO is making permanent each of its four regional satellite offices, which will make it even easier for stakeholders and other volunteers to contribute in-person or virtually from these locations nationwide.

Patent Pro Bono and Pro Se Assistance

Due to a lack of resources, independent inventors and small businesses sometimes struggle with how to file and prosecute a patent application to protect their invention. The USPTO will be providing dedicated educational and practical resources to those who lack legal representation (i.e., pro se applicants) and will work with the America Invents Act (AIA) Pro Bono Advisory Council—and through a newly appointed full-time Pro Bono Coordinator—to expand the existing pro bono program established under the AIA to cover all 50 States. The USPTO will be calling on members of the patent bar to participate in the program.

Patent Quality

Improving patent quality is a top priority for the USPTO. Issuing high-quality patents not only improves the overall vitality of our patent system but also can play a significant role in curtailing abusive patent litigation now and over the long run.

The *America Invents Act* gave the USPTO fee-setting authority, which in turn allowed us to work closely with our stakeholders to develop an operating reserve. This means we are now able to launch new initiatives in response to our customers' needs, with the confidence that we can sustain these efforts even during fluctuations in funding.

As previously mentioned, we have redoubled our efforts to train our patent examiners, to ensure they stay abreast of the latest developments in the law. We have expanded our Patent Examiner Technical Training Program that brings outside experts to the PTO to train our examiners so they may stay abreast of the latest technological changes. Keeping our examiners up to date on the technology and the law is a core part of our mission.

In addition, the USPTO is also evaluating and refining our current patent quality measures, and we plan to hold a series of road shows through the end of the year to gather stakeholder input on improving our quality measures to achieve even better patent quality.

Cooperative Patent Classification (CPC)

The USPTO continues to implement the Cooperative Patent Classification (CPC) system launched in January 2013. CPC is a joint patent classification system between the USPTO and the European Patent Office that enables patent examiners and patent system users worldwide to conduct more efficient prior-art searches. Compared with the current U.S. Patent Classification System, CPC offers more targeted searches with more focused results.

Implementation of CPC requires extensive patent examiner training (approximately 1.1 million hours total, with about 868,000 hour already used). The patent examining transition began in November 2013 and will be completed by the end of this year. Training focuses on enabling patent examiners to effectively search in CPC and accurately categorize applications and granted patents. The transition to CPC is an investment in the future of IP. Through the implementation of CPC, applicants and the IP community will derive many benefits, including: enhanced examination efficiency and quality; improved access to more documents from patent offices around the world; improved navigation and understanding of a single classification system; facilitated work sharing on patent applications filed in multiple IP offices; improved consistency of classified search results across IP Offices; and adaptive and actively maintained classification schemes.

IV. Post-Grant Review Proceedings

Since September of 2012, the number of filings of petitions for administrative patent trials, created by the AIA, has grown from zero to nearly 2000. While we initially predicted that the Patent Trial and Appeal Board (PTAB) would receive, roughly, about 400 to 500 new filings per year, PTAB is on track to receive filings of approximately 1600-1900 cases per year, over 200 percent more than predicted. Recently, the Court of Appeals for the Federal Circuit overturned a district court's failure to grant a stay in favor of the PTAB, citing the great value in resolving the parties' dispute and rendering its expert decision on validity issues in advance of the district court opinion.

The number of Administrative Patent Judges (APJs) now exceeds 210, a 121% increase since the enactment of the AIA. This increase has permitted the PTAB (1) to meet its deadlines under the AIA, which requires trials to be completed in a year absent good cause; (2) to continue to handle special (reexamination) appeals in an expedited manner, as required by statute; and (3) to reduce the ex parte appeals backlog, which crested at 27,200 appeals in mid-2012, and now has fallen to below 25,750 appeals (a 5.3% decrease from the peak) – and continues to decline.

The USPTO now has permanent satellite offices in Detroit and Denver, and temporary offices – set to move to permanent space in 2015 – in Dallas and Silicon Valley. While I will provide more details about these offices later, the PTAB currently has judges at each of these sites. In fact, the first USPTO employees (10 of them) in Detroit were APJs. Dallas and Silicon Valley do not yet have any Patent Examiners, but each location has approximately a dozen judges. The APJs in these all of these offices have made significant contributions to the quality and quantity of the PTAB's decisional output. And we continue to leverage the ability to expand the recruitment effort beyond the DC area to the maximum extent possible in the satellite cities.

V. Trademark Operations

Trademark application filings continue an upward trend, increasing by more than 4 percent compared to a year ago. New applications are expected to increase by nearly 5 percent this fiscal year to 455,000 classes.

Trademark Quality & Pendency

Our Trademark Operation has made great progress toward setting and achieving high quality standards. Quality results are evidence that the specialized training, online tools, and enhanced communication efforts we are using are proving effective. The results for our newest quality standard for assessing efforts that go beyond procedural and statutory correctness continue to exceed our expectations. They demonstrate exceptional results preparing a first action.

First action pendency—the time from filing to the initial examination—has been consistently maintained within the target range to issue a first action between 2.5 and 3.5 months from filing. Disposal pendency—the time from when an application is filed until a trademark is registered or abandoned or a notice of allowance is issued for applications that are not in use—averages 10.3 months, under the 12-month target as of the end of June, and remains at historically low levels.

These results are due in part to the progress made from greater acceptance of electronic filing. Electronic filing and communications promote more efficient and cost-effective processing. In fact, more than 99 percent of applications are now filed electronically and more than 80 percent of all applications are processed electronically from filing to disposal.

Proposal to Reduce TM Fees

In the second quarter of FY2015, our Trademark Operation plans to begin to offer reduced fees for certain products. Proposed fee reductions include lowering of the filing fee where applicants agree: (a) to certain additional filing requirements, (b) to conduct all business with the office electronically and (c) to file their renewal applications electronically.

Expanding Outreach and Study

Our Trademarks Operation has also significantly expanded its public outreach in the last few years by updating and expanding its basic educational materials – including translating materials into Spanish, appointing a Managing Attorney specifically for outreach to entrepreneurs, small businesses, universities and business students among others, and conducting a series of roundtables throughout the country to gather stakeholder input.

As part of its outreach, our trademark team has also developed new explanatory videos targeted at potential applicants without counsel. For example, one 45 minute video directed to entrepreneurs has had more than 127,000 hits since it was launched last August.

VI. Intellectual Property Policy and Enforcement

The USPTO plays a significant leadership role in promoting effective domestic and international protection and enforcement of IP rights. We advise Executive Branch agencies on national and international IP policy matters, advocate for the establishment of global IP norms, and conduct technical assistance and capacity-building programs for foreign governments seeking to develop or improve their IP regulatory and enforcement mechanisms.

Key domestic-focused efforts include the following:

IP Law Development

The USPTO continues to work with Congress and the courts to improve the state of U.S. IP law. We have been actively engaged within the Administration and with Congress to enact patent reform legislation that fairly balances the interests of innovators across all industries and technologies. We are supportive of legislative changes that will streamline the patent process, address abusive litigation practices and reduce litigation costs, and improve patent quality and fairness, while preserving the rights of legitimate patent holders to enforce if needed. In addition, USPTO advocates for strong and balanced intellectual property polices in trademark, copyright and trade secret related matters.

Trade Secret Protection

The USPTO actively works to promote the importance of trade secret protection to our domestic industries. In coordination with DOC's International Trade Administration (ITA), USPTO includes discussion of trade secrets in the "STOPfakes" road shows and IP awareness campaigns that ITA conducts. Small and medium-sized enterprise outreach programs conducted by the USPTO Global Intellectual Property Academy also include trade secret components and the role that trade secret protection plays as part of an intellectual property strategy. USPTO IP Attachés stress the importance of effective trade secret protection and enforcement in their regular discussions with appropriate host-country officials (including judges, prosecutors, and policy makers) in prioritized countries.

Copyright Policy

In July 2013, the Department of Commerce’s Internet Policy Task Force (“IPTF”), led by the USPTO and National Telecommunications and Information Administration (“NTIA”), issued a Green Paper titled *Copyright Policy, Creativity and Innovation in the Digital Economy* (“Green Paper”). The Green Paper is the most thorough and comprehensive analysis of digital copyright policy issued by any Administration since 1995. In issuing the Green Paper, the IPTF sought to provide an objective analysis of copyright in the digital environment to help move beyond the polarized discussions of the recent past and to set the stage for productive engagement going forward.

Within this broad framework, the Green Paper identified the following three policy issues that call for attention and the development of solutions: (1) the legal framework for the creation of remixes, (2) the relevance and scope of the first sale doctrine in the digital age, and (3) the appropriate calibration of statutory damages in the context of both individual file sharers and secondary liability for large-scale infringement. USPTO and NTIA are currently conducting roundtables around the country to solicit further public input on these policy issues and to ensure a complete record upon which the task force can make recommendations. We believe this initiative is complementary to the comprehensive review of the U.S. Copyright Act the House Judiciary Committee is conducting, and we are collaborating with the U.S. Copyright Office to ensure that our discussions in this policy area are coordinated and complementary.

Key international-focused efforts include the following:

Intellectual Property (IP) Attaché Program

In partnership with the Department of Commerce’s International Trade Administration/U.S. Commercial Service, the USPTO posts IP experts as Attachés around the world to improve intellectual property systems internationally. IP Attachés have assisted a broad base of U.S. industry associations and businesses in the protection and enforcement of their IP rights abroad. The primary goals and objectives of the IP Attaché Program are to promote U.S. government IPR policy internationally; help secure strong and balanced IP provisions in international agreements and host country laws; and encourage strong and balanced IP protection and enforcement by U.S. trading partners. IP Attachés seek improvements in foreign policies, laws, and regulations; educate host government officials on IP matters; and build grassroots support for U.S. policy positions by conducting public awareness programs on IP. They serve at posts in Brazil, Russia, India, China, Mexico, Kuwait, Thailand, and the U.S. Missions in Geneva.

Global IP Academy

Since 2005, the USPTO Global Intellectual Property Academy (GIPA) has provided high-level intellectual property rights training, capacity building programs and technical assistance training to foreign judges, prosecutors, customs officials, IP enforcement personnel, as well as officials from copyright, trademark and patent offices from around the world. Those individuals come to the United States to learn, discuss and strategize about global IP protection and enforcement. The program’s goals include fostering a better understanding of international intellectual property obligations and norms, exposing participants to the U.S. model of protecting and enforcing intellectual property rights, and promoting discussion of intellectual property issues in a friendly and supportive environment.

GIPA provides both multilateral programs and country-specific programs as needed. GIPA also delivers training to other stakeholders, including small business owners, U.S. Government officials, and the general public.

VII. IT Modernization

With escalating demand for patents and trademarks, the USPTO's IT professionals are continuously looking for ways to operate more nimbly and deliver services rapidly. This year, they are working to modernize the systems that support patent and trademark examination and fee processing by using "agile" development. Many successful technology companies use "agile," an IT development method which emphasizes user involvement and ongoing feedback throughout the development process. By providing our examiners with enhanced examination tools, we are helping to improve the speed and quality of their work.

One new system, Patents End to End (PE2E), is already in beta use by some examiners and is targeted for a wide introduction to the examiner corps late this year. PE2E creates a more streamlined way for examiners to process patent applications, enhancing the way they view documents, search, take notes, and complete tasks. Another landmark project is Trademarks Next Generation, a faster, more feature-rich trademarks system for both examiners and the public to use.

Systems such as PE2E and Trademarks Next Generation follow industry best practices which include efforts to:

- Build shared IT services and tools to support global customers and maximize cost effectiveness;
- Use web-based systems with open technology standards that scale;
- Write code and deploy it everywhere for more stable, portable, and cost effective tools; and
- Provide easily searchable IP information by converting all information into searchable technology formats which will enable us to make more data available to the public.

Two weeks ago, our IT operations hit a significant milestone toward continuous, automated deployment of new software across USPTO IT systems. This advancement reflects a significant cultural and technology shift and moves the USPTO closer to what's known in industry as "DevOps." It will provide the agency with the continuous integration and release of tested software right into production (aka the hands of our customers) at a pace only seen in the private sector.

VIII. USPTO Satellite Offices

The Leahy-Smith America Invents Act of 2011 (AIA) requires the USPTO to establish regional satellite locations as part of a larger effort to modernize the U.S. patent system. These offices are important to inventors, entrepreneurs, and small and large businesses in the surrounding regions—and to accomplishing our core mission of fostering American innovation and competitiveness.

On June 30, 2014, we opened our permanent satellite office in Denver, Colorado. Located in the Byron G. Rogers Federal Building in the city's central business district, the new office will serve as a hub of innovation, education and outreach to the region to enable companies and cutting-edge entrepreneurs in the region to more efficiently navigate the world's strongest intellectual property system.

The Elijah J. McCoy Satellite Office in Detroit opened for business in July 2012 and continues to play a vital role for the agency and the local innovation community. We have hired and trained 100 patent examiners who are processing patent applications in one of our nation's historic innovation hubs. Our eight administrative patent judges are managing appeal cases and America Invents Act trials, and this summer, will move into a new space that includes a hearing room.

In April, the San Jose City Council unanimously approved the terms and conditions for our permanent facility in the San Jose City Hall to serve the Silicon Valley and the surrounding region. It will include a

large outreach center on the first floor that is on track to open in the spring of 2015 and office space that will open a few months later. A wide range of outreach activities is already underway in the Silicon Valley. Nearly 20 PTAB judges, appointed in Silicon Valley, are already participating in trials.

Finally, our Dallas satellite office is scheduled to open in the fall of 2015 in the Terminal Annex Federal Building in downtown Dallas. We currently have 11 Administrative Patent Judges who are operating out of the Santa Fe Federal Building. We continue to engage with local partners such as the Dallas Entrepreneur Center to support the innovation community, start-ups, and entrepreneurs.

We continue to appoint Patent Trial and Appeal Board judges for all of our satellite office locations. Our goal is to have at least 20 in each office who will work to reduce the inventory of trial and appeal cases. In addition, we expect to recruit patent examiners for Silicon Valley and Dallas offices closer to the dates when their respective permanent spaces near completion. We believe that these satellite offices are critical to our efforts to support innovation and creativity, help protect and foster American innovation in the global marketplace, help businesses cut through red tape, and create new economic opportunities locally.

IX. Telework

Telework at the USPTO supports mission achievement and goal fulfillment via a distributed workforce and our relevant numbers are impressive. At the end of the second quarter of 2014, 9,300 employees, agency-wide, were working from home at least 1 day per week; of these, nearly 4,800 employees work from home between four and five days per week and are distributed across 45 states.

Our telework programs have a significant impact on our real estate footprint, air quality, and traffic congestion in the Washington metropolitan area. Our full-time telework programs enable an annual rent cost avoidance of \$34 million and reduce emissions in the region by 27,095 tons.

The USPTO is considered a model for telework in the Federal Government. The flexible work arrangement and work schedules associated with our telework programs have resulted in improvements in the overall efficiency of the agency. Intangible benefits such as increased employee satisfaction and enhanced morale, have had a positive impact on retention. In fact, our telework programs contributed significantly to the USPTO's #1 rank in the 2013 Best Places to Work in the Federal Government® report of the Partnership for Public Service.

X. Conclusion

Mr. Chairman, we appreciate your continued support of the goals, priorities, operations and employees of the USPTO. We look forward to working with you to promote the strong and balanced protection of intellectual property rights both home and abroad for our country's innovators.

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