Acting USPTO Leader Says New Policies Will Bolster Patents

By Ryan Davis · Listen to article

Law360 (April 1, 2025, 9:03 PM EDT) -- Acting U.S. Patent and Trademark Office Director Coke Morgan Stewart said at a conference Tuesday that new policies including having her take an active role in determining whether patent challenges should be denied are part of an effort to "reinvigorate our IP system."

Speaking at the LeadershIP 2025 event organized by the Center for Strategic & International Studies, Stewart said that the patent system is at times "at war with itself, but there's hope for change," and that the USPTO is "encouraging the innovation community to help strengthen patent rights."

She noted that the 2011 America Invents Act created a mechanism where third parties can submit information to the office about whether inventions described in patents that are being examined are new and non-obvious, along with post-grant reviews, in which patents can be challenged within nine months of when they are issued.

"Unfortunately, these early tools are rarely used because there are other portions of the AIA that encourage competitors to wait until they are actually sued for infringement to participate in this joint exercise to improve the IP system," Stewart said.

Those later challenges at the Patent Trial and Appeal Board, known as inter partes reviews, are the focus of a new procedure Stewart announced last month, where she and board judges will decide whether IPR petitions should be denied for discretionary reasons before the PTAB considers the merits of the invalidity arguments.

"Fortunately, the AIA permits the director of the USPTO considerable discretion in overseeing AIA proceedings," Stewart said Tuesday. Under the new process, she said, parties can file briefs about whether inter partes review petitions "negatively impact settled expectations" due to how long the patent has been in force, "or whether they will positively

impact compelling economic, national security, or other health needs."

Stewart also said the office wants to ensure that PTAB proceedings are in line with district court standards so they "complement instead of conflict with district court case law."

"Finding this right balance between offering scientific, technical, and legal expertise that the agency has, while still acting with humility in the face of co-pending proceedings in our court system has been a challenge, but I think we're making progress," she said.

She pointed to a PTAB decision that was designated as informative last month, which held that if patent challengers make a different claim construction argument at the board than they made in district court, "at a minimum, they need to explain why they change that position."

In addition, Stewart said the office is "considering ways to encourage early challenges provided by the AIA over late ones." She framed the procedures to question the validity of patents during the examination process or shortly after they are issued as being preferable to inter partes reviews mounted by accused infringers after they are sued.

The ability of third parties to submit information to the office during the examination process solves the problem of examiners not having the best information to determine if a patent should be issued, Stewart said, because "who knows better whether an invention is truly new than other inventors in the same field?"

Post-grant reviews filed soon after a patent is issued "can also help improve the durability of patent rights," she said. Those proceedings are rarely used, however: according to patent office statistics, only 38 post-grant review petitions were filed during the 2024 fiscal year, compared with 1,250 inter partes review petitions.

Stewart said she has heard concerns that post-grant reviews are too difficult to pursue since the USPTO issues hundreds of thousands of patents a year, but she argued that many companies scour issued patents for those that could impact their business, and if they focus on the subject matter relevant to them, "the number is not so great."

Stewart also described other steps the USPTO is taking that she said would benefit the patent system. She said the office plans to work with the Justice Department to persuade

the U.S. Supreme Court to take up cases to make it "simple and clear" which inventions are eligible for patents.

The USPTO is considering new guidance on the use of artificial intelligence in inventions that "does not unintentionally suggest" that people using AI are any less able to get a patent than people using any other type of machine, Stewart said.

The office also intends to pursue a "back-to-basics operating philosophy" for patent examination aimed at finding ways to review applications "in a quick and thorough manner," she said.

Stewart said the Trump administration will focus on intellectual property, and "we will reinvigorate our IP system. We will enable our nation to prosper economically like never before."

She called President Donald Trump "one of the most important brand owners in the world," and noted that Vice President JD Vance has a copyright on his best-selling memoir, Commerce Secretary Howard Lutnick is a prolific inventor and USPTO Director nominee John Squires is the former chief IP counsel at Goldman Sachs.

"This is truly unprecedented," Stewart said. "It is a sign that IP policy will play an important role in the administration's economic agenda, and that we will have leadership that speaks, finally, with a strong voice on IP," she said.

The issues of patent eligibility and artificial intelligence were also discussed by other speakers during the conference.

Sen. Thom Tillis, R-N.C., said in a pre-recorded message to the event that "patent eligibility has become increasingly confusing and restrictive" due to Supreme Court rulings, which he said "poses a real threat to the United States leadership in emerging technology sectors."

Tillis touted the Patent Eligibility Restoration Act he has introduced, which he said "is designed to restore clarity and predictability to our patent system, ensuring that the U.S. remains the world's innovation leader."

Andrei Iancu, who was USPTO director in the first Trump administration, criticized artificial

intelligence guidance the office issued during the Biden administration that said in order to get a patent on an invention developed with AI, humans need to have made "significant contribution" to its creation.

That was "a total overreaction, I believe, by the last administration to artificial intelligence," Iancu said. AI "really is just a tool," and IP rights have never before depended on what tools someone uses, he said.

Iancu said that is an issue for Congress to take action on, but unless IP rights are allowed when AI is used in creative endeavors, "we're going to stifle this area of technology and in particular we're going to stifle the United States' ability to compete."