

**UNITED STATES
PATENT AND TRADEMARK OFFICE**



Patent Public Advisory Committee Quarterly Meeting

Legislative/Governmental Affairs Update

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UNITED STATES
PATENT AND TRADEMARK OFFICE



It's a new Congress!



- Welcome to the 116th Congress!
- New members on the Senate Judiciary Committee
- Awaiting final leadership assignments for the House Judiciary Committee
- Schedule unclear. Democratic majority in the House means that issues unrelated to IP likely to be higher on the agenda, but staff are discussing both oversight and targeted IP legislation to take up at some point
- Continued interest in patent developments at USPTO. Targeted legislation addressing various trademark and copyright issues also being discussed

The 116th Congress (2019-2020) – Demographics



- 235 Democrats, 199 Republicans, 1 undecided
- 102 women
- Rep. Don Young (R-AK) is the oldest (85) and longest serving member (46 years)
 - He entered the House before 84 current House members were born
- Rep. Alexandria Ocasio-Cortez (D-NY-14) is the youngest (29)



- 53 Republicans, 45 Democrats, 2 Independents
- 25 women
- Sen. Patrick Leahy (D-VT) is the most senior senator
- Sen. Dianne Feinstein (D-CA) is the oldest (85) with Sen. Chuck Grassley(R-IA) just a few months younger (85)
- Sen. Josh Hawley (R-MO) is the youngest (39)

The 116th Congress (2019-2020)

Changes in leadership of the House/Senate Judiciary committees

U.S. House of Representatives



Committee on the Judiciary

Jerry Nadler (D-NY-10), Chairman

Doug Collins (R-GA-9), Ranking Member

Subcommittee on Courts, Intellectual Property, and the Internet

TBD, Chairman

TBD, Ranking Member

U.S. Senate



Committee on the Judiciary

Lindsey Graham (R-SC), Chairman

Dianne Feinstein (D-CA), Ranking Member

Subcommittee on Intellectual Property (might be re-constituted)

It's a new Congress!

USPTO legislative priorities for the 116th Congress, first session:

1. **Continuity of operations** – continued access to fee collections and flexibility on suspending legal deadlines
2. **Elevating IP attaché rank** – to support the work of USPTO's foreign assets
3. **Coordination of copyright policy functions** – to ensure continued, necessary communication on policy matters between the Copyright Office and the USPTO

Legislative activity

116th Congress (first session)

OPERATIONS

- **Federal udget FY2019:** Consolidated Appropriations Act of 2019 (H.R. 21) includes appropriations for Commerce-Justice-Science at \$7.4 billion; would provide USPTO with access to all projected fee collections
 - Passed by the House (241-190) on January 3, 2019
- **Government Employee Fair Treatment Act of 2019 (S. 24):** Ensures payment of employee salaries as a result of any lapse in appropriations starting on or after December 22, 2018, the day the current shutdown began
 - Signed by the president on January 16, 2019
 - Related: H.R. 339 (introduced January 15, 2019)/S. 162 (introduced January 16, 2019) provide for similar back pay for federal contractor employees

Legislative activity

116th Congress

IP LEGISLATION

- **Fair Trade with China Enforcement Act (S. 2):** Sens. Rubio (R-FL) and Baldwin (D-WI)
 - Introduced: January 3, 2019 (reintroduction from the 115th Congress)
 - The legislation would:
 - Prohibit the sale of national security sensitive technology and intellectual property to China
 - Increase taxes on multinational corporations' income earned in China at a rate similar to the lost value of stolen IP and technology
 - Prepare duties on, and impose Chinese investor shareholding caps on U.S. companies producing, goods targeted by the Made in China 2025 plan
 - Prohibit the federal government, or subsidiaries/contractors, from purchasing telecommunications equipment or services from Huawei and ZTE

Legislative activity

116th Congress

IP LEGISLATION

- **Targeting Rogue and Opaque Letters (TROL) Act of 2019:** Burgess (R-TX-26)
 - Introduced: January 3, 2019 (reintroduction from the 115th Congress)
 - The legislation provides that certain bad faith communications in connection with the assertion of a United States patent are unfair or deceptive acts or practices, and for other purposes
- **Office of Critical Technologies and Security (S.29):** Sens. Warner (D-VA) and Rubio (R-FL)
 - Introduced: January 4, 2019
 - The legislation would create an Office of Critical Technologies and Securities at the White House responsible for coordinating across agencies and developing a long-term, whole-of-government strategy to protect against state-sponsored technology theft and risks to critical supply chains

IP issues likely addressed in the 116th Congress (2019-2020)

Non-IP related issues likely to dominate the beginning of the 116th Congress.

IP issues that may be discussed include:

- **Trademark legislation**
 - Industry proposal on injunctive relief (*to create a presumption of irreparable harm in trademark infringement cases*)
 - Consolidation of TTAB appeals at the Federal Circuit
 - Rep. Jeffries bill on state seals and insignia
 - USPTO technical amendments
- **Patent reform**
 - Sec. 101 discussions (patent eligibility)
 - Changes to PTAB proceedings
- **Copyright modernization and other issues**
 - Register of Copyright Bill – converting the Register to a political appointee
 - Office structure – funding and IT
 - Small claims court
 - Resale royalties
 - Other copyright statute modernization proposals possible

Questions and comments

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Resource Slide:

USPTO's Office of Governmental Affairs (OGA)

Structure: 9 Staff (mixture of attorneys and policy professionals)

Mission

Congressional

Represent USPTO on Capitol Hill and facilitate Inter-Governmental communication

- Advance PTO's legislative agenda
- Prepare congressional testimony/lead hearing prep
- Brief Capitol Hill staff
- Provide Technical Assistance
- Respond to Member inquiries
- Facilitate Interagency Clearance of documents

State & Local

Establish and Maintain Relationships with State/Local Elected Officials

- Support regional office engagement
- Promote PTO IP education and outreach efforts

IP Stakeholders

Build and Maintain Goodwill and Facilitate Discussions with Industry and IP Stakeholders

- Facilitate engagement with IP stakeholders