



David Kappos  
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"The USPTO -- Early Views and Initiatives of the Obama Administration"

#### Introduction

- Good morning everyone.
- It is a pleasure to be with you this morning, and to have the opportunity to be the “kick-off” speaker here at the IPO 2009 Annual Meeting.
- Thank you so much for inviting me.
- It’s really an incredible privilege to be here representing the USPTO, after so many years attending this conference as a practitioner. It’s a new experience for me, as you can imagine.
- I can’t believe it’s been just five short weeks since I took on the job as Under Secretary and Director of the USPTO.
- I have to say that I have a new appreciation for the challenges that come with running a complex agency within the U.S. government . But I also have a new appreciation for the extremely dedicated people who work at the USPTO. I feel confident I’m working with the brightest and most passionate team in the federal government.

#### Thank you to IPO

- Before I start my remarks, I want to specifically thank Herb Wamsley and Steve Miller for the wonderful ongoing partnership IPO has with the USPTO.
- There has been a longstanding, productive relationship—much to the benefit of the U.S. innovation community.
- Over the years, the USPTO has benefited greatly from IPO’s support of the agency’s international programs and ongoing outreach to important parts of the innovation community.
- The relationship the USPTO and IPO have developed is one that I hope will continue to flourish during my tenure.

#### Updates from the USPTO

- Turning to today’s topic, let’s start with a glimpse of some of the things we’re focusing on at the USPTO—both in terms of broad themes, as well as specifics.
- But let me say right up front—WE NEED YOUR HELP. We need your support. We need your input. We need your advocacy. And we need your patience.
- In exchange, we will be completely transparent—sharing with you the good, the bad and the ugly of what’s happening at the USPTO as we embark on what I intend to be a renewed focus aimed at making the agency a catalyst for innovation and competitiveness for the U.S. economy.

- So where are we directing our initial efforts?
- We have a number of initiatives underway that I want to share with you:
  - We've started a task force to reengineer the examiner count system, which hasn't been revisited in several decades. This a joint task force made up of senior Patents managers and leaders from our examiner labor union – POPA. The team is currently working together to propose a new system that will give examiners the time they need to do their jobs properly the first time through an application, while incentivizing compact prosecution.
    - Let me repeat this one: We're going to have a count system that helps everyone get to the point without requiring two or three RCEs.
  - We are working on new programs to help cut pendency across the board, such as one that would allow an applicant to select an application to advance in the queue in exchange for each application they withdraw before substantive examination.
    - We hope this will benefit applicants who are abandoning applications without response to first office actions, while saving the office from unnecessarily examining applications that are no longer important to applicants.
  - We'e also looking at ways to cut pendency in specific growth segments such as green technologies, with programs that would shorten the time an application waits for review.
  - We've started a quality task force, which IPO past president Mark Adler is leading under the auspices our Patent Public Advisory Committee.
    - I won't stand up here charts and tell you how perfect our quality is. I know that quality is not where it should be, even if the agency's past quality standards indicated otherwise.
    - So this task force will be gathering information from a variety of sources with respect to how quality should be analyzed and evaluated.
    - We hope you'll participate in this effort: Look for a Federal Register notice where we'll be asking for your comments on quality. We'll also be holding a roundtable discussion on the topic in the near future.
  - We are also focused on global worksharing—which I believe is key to helping us meet the increasing challenge of efficiently managing the USPTO's workload.
    - We need to increase participation in worksharing projects such as the Patent Prosecution Highway by orders of magnitude, so we can truly see the benefits of worksharing, including time and cost savings for applicants and patent offices worldwide.
    - We need your input if we are to succeed in our aggressive target of a many-fold increase in worksharing participation, so we're planning a roundtable discussion on Work Sharing at the USPTO on October 27.
    - We are also focused on bringing the quality of PCT processing to world-class level. We'll have another formal effort directed to this issue.
  - We are looking to provide the public with increased access to USPTO data, and additional ways to participate in USPTO processes through wikis and other Web 2.0 technologies.
  - We're going to take a run at developing a nationwide work force, which will allow us to hire the best candidates across the country, retain valuable employees, and control real estate costs associated with workforce expansion.
  - In the policy arena, we are taking broad policy leadership positions aimed at increasing the role IP plays in accelerating innovation across ALL business models and industries. There is to be no prejudice for or against certain technologies. Our mission is U.S. policy

leadership on a global scale to accelerate innovation, and products and services rooted in innovation.

- We are actively participating in patent reform discussions on Capitol Hill. This is one of my, and Secretary Locke's, highest priorities.
- You can expect we will be strongly in favor of reform now. The patent system is a key driver of innovation and prosperity for our country. Innovation industries create jobs, which means a well-functioning patent system creates jobs. It has been too long since the U.S. patent system was overhauled.
- Without significant improvements to our patent system, we put at risk a major source of job creation, financial security and global competitiveness.
- The time is now to get patent reform done.

#### Our biggest challenge – Funding

- So we've got a very full agenda already, and we're just getting started.
- However, we've also got a big overhanging problem—an elephant in the room kind of problem. The economic downturn has brought to light fundamental flaws in the method of funding the USPTO.
- Because of the downturn in patent application filings, issuances and maintenance fee payments, the USPTO faces a \$200M shortfall in fiscal year 2010. This serious situation puts into question the agency's ability to address its mission at any acceptable level.
- This means no hiring in 2010, so the size of the agency will decrease. It means no IT improvements, no overtime and probably no progress in cutting into the backlog.
- We need help from Congress, the Administration and—YOU—the intellectual property community to implement both short- and long-term solutions to our funding shortfall and overall funding process.
- USPTO is in discussions with the DOC, OMB and Congress regarding a number of short-term solutions.
- But in the longer-term, the USPTO needs to restructure its fees and have additional flexibility to adjust fees.
- These longer-term measures would allow us to focus on reducing pendency, enhancing quality and improving the intellectual property system domestically and abroad.
- Specifically, our objectives include:
  - Reducing first action pendency to 10 months and overall pendency to 20 months;
  - Decreasing the size of the patent application backlog to approximately 300,000 cases;
  - Reducing patent appeals pendency to 3 months;
  - Reducing reexamination pendency to 1 year;
  - Bringing the quality of PCT processing to world-class level; and
  - Implementing a robust IT system capable of supporting all the USPTO's operations on a 24/7 basis, and capable of facilitating full electronic patent and trademark processing.

#### Reason to be optimistic

- Having just shared with you many of our challenges, I'll tell you I also am incredibly optimistic.

- Whereas in earlier eras intellectual property was considered by many as an arcane segment of law, today it is widely recognized as the engine that drives our information age economy, maintains our competitiveness and is responsible for creating and sustaining tens of millions of U.S. jobs.
- It's not just about patents—it's about people.
- It's an issue that CEOs and cabinet-level secretaries care deeply about.
- And we shouldn't feel threatened or marginalized or invaded by this attention.
- Rather, we should take advantage of this visibility and this moment, and work together to ensure we create a system that drives the economy the way it can and should.

#### Conclusion

- As Mark Twain wrote in *A Connecticut Yankee in King Arthur's Court*: "A country without a patent office and good patent laws is just a crab and can't travel anyway but sideways or backwards."
- Although those words were written more than 100 years ago, they've never been more true than they are today.
- I look forward to working with all of you to move our country forward with a good patent office and patent laws that will drive innovation, create jobs and ensure America's competitiveness.

Thank you.

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*Is there a question about what the USPTO can or cannot do that you cannot find an answer for? Send questions about USPTO programs and services to the [USPTO Contact Center \(UCC\)](#). You can suggest USPTO webpages or material you would like featured on this section by E-mail to the [webmaster@uspto.gov](mailto:webmaster@uspto.gov). While we cannot promise to accommodate all requests, your suggestions will be considered and may lead to other improvements on the website.*

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