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Stewart Says USPTO Wants Early Validity Challenges, Not Late IPRs

GENE QUINN
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Earlier today, Acting U.S. Patent and Trademark Office (USPTO) Director Coke Morgan Stewart addressed the Intellectual Property Business Congress (IPBC) Global 2025, telling those in attendance that the Office is already making headway by chipping away at the record backlog inherited from the Biden Administration. Not surprisingly, however, much of Stewart's remarks focused on new Patent Trial and Appeal Board (PTAB) initiatives and a desire on the part of the Office to see patent challengers migrate away from filing inter partes review (IPR) challenges and toward filing third-party submissions of prior art during examination so examiners can be presented with the best prior art, which will lead to better examination and fewer mistakes.

Leaning into the Inherited Patent Backlog

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number down to 800,000 unexamined applications.

Wiz - EXHIBIT 2004
Wiz, Inc. v. Orca Security Ltd.
IPR2025-01083

Ultimately, the goal is to bring the inventory of unexamined patent applications down into the 500,000 range, which is where it was during the first Trump Administration under the leadership of then USPTO Director Andrei Iancu. To achieve this goal the Office is prioritizing examination activities over other activities and rewarding examiners and supervisors who work on more applications than required. Indeed, the Office has returned nearly 200 patent examiners to examining applications from various "special assignments" that were unrelated to examination. And the Office has instituted a new bonus plan where examiners and supervisors who examine more applications each quarter can earn bonuses over and above what has traditionally been available.

Acting USPTO Director Coke Stewart speaking at IPWatchdog LIVE. March 4, 2025.

Significantly reducing the backlog of unexamined applications is not the only goal. Stewart explained that the Office wants to get to an average of 12 months to a first office action on the merits, and to get to an average of 24 months for disposal of patent applications, which she explained the Office was close to reaching at the end of the Trump Administration.

Encouraging Early Submissions and Challenges

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can be used during the first nine months after a patent has issued, and third-party submissions, which notify examiners of prior art during examination, are both seldom used. Challengers prefer to wait until an infringement suit is filed before first challenging what they believe to be improvidently granted patents. Through the new PTAB processes the Office is trying to send a message to stakeholders—do not wait to file an IPR. Use third-party submission opportunities and PGR to address concerns about pending patent applications and recently issued patents. Filing an IPR many years after a patent has been granted should not be the primary mechanism for addressing patent quality, or correcting errors.

Stewart said she is not placing blame on IPR petitioners who have not filed earlier challenges but acknowledged that the Office must make judgment calls on what IPR petitions to institute. The Office needs to focus on important cases, Stewart explained, and patents that have been in force 10, 12, 15 years or more may not be the best cases for the Office to be instituting.

GENE QUINN

Gene Quinn is a patent attorney and a leading commentator on patent law and innovation policy. Mr. Quinn has twice been named one of the top 50 most influential people [...see more]

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George
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All inventors should read this book (written over 20 years ago) before even thinking of filing a patent, especially if they hope to ever get anything for their work & public disclosure. If it's just to hang something on a wall, then maybe it's worth around $100. The USPTO is just a scam now and Congress allows it to continue.

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And inventors will be able to check that themselves, even before submitting a patent application! They'll also get a 'relevant' list of prior art to submit with their application and help in drafting them too. Will be as easy as using a word processor (with compliance with all laws & statutes – and even patent CASES – checked automatically in seconds).

Will happen in less than 20 years. Maybe even in 5! Ask Sam Altman (lol). What will happen then, and what country will be the first do let AI decide (most cases)?

Not sure, but China doesn't care so much about lawyers or their job security. They like efficiency and being able to plan for the future. You can't plan for the future with our current 'messed up' and 'super-expensive' patent system. We need a much faster and much cheaper one. One that 21st technology can now provide. So, why stick to the 'tired' and 'expensive' old ways? China won't, that's for sure.

Yes, it's IMPOSSIBLE to plan now. Can't know if a patent is valid or not (for years), and also can't get 'broad' patents anymore that have actual value. Also our government doesn't help protect patent rights – you're on your own when it comes to that. That's just stupid, since they issue the patents, supposedly for the purpose of encouraging innovation and helping to grow the economy – as quickly as possible – not hinder this growth and 'new' wealth creation. What happened to the 'innovation economy' lifting all boats, especially among the middle class and poor?

AI will be able to solve those serious questions of 'invention ownership' too. Will even permit 'extremely broad' patents to be issued again like Bell, Edison & Tesla got, along with all the past great inventors in America – 100's of them – during the first industrial revolution! It's clear (& now easily proven) that 'broad patents' are SECRETLY and UNCONSTITUTIONALLY being denied by examiners (under USPTO orders). This secret PTO 'policy' began with the 20-year SAWS program but continues to this day, in

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