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Stewart Says New Policies Seek Fairness For Patent Owners

By [Ryan Davis](#) · [Listen to article](#)

Law360 (September 15, 2025, 9:27 PM EDT) -- Acting [U.S. Patent and Trademark Office Director Coke Morgan Stewart](#) said Monday the numerous changes to patent reviews she has implemented are intended to provide "more balance and fairness" for patent owners, and bring the reviews "back to how they were originally intended."

In addition to her [Patent Trial and Appeal Board](#) policies, the acting director discussed many other patent issues

during an event at the Hudson Institute think tank in Washington, D.C., including potential changes to patent fees, pending legislation in Congress and patent eligibility.

Stewart said in [altering PTAB procedures](#) this year, which have resulted in substantially more patent challenges being denied for discretionary reasons, the office has been "really trying to approach it with more balance and fairness with the patent owners."

When the inter partes review system was created by the 2011 America Invents Act, it established a "very low bar" to institute review, Stewart said, and "I think we got off on the wrong foot right out of the gate, by turning it around on the patent owner and saying, why shouldn't we have a proceeding?"

"I think what we're trying to do is bring it back to a level playing field," she said. "And frankly, it shouldn't even be a level playing field, because the patent owner, of course, has the issued grant" of a patent from the USPTO.

By making discretionary denial decisions herself and closely scrutinizing issues like whether a related infringement trial in district court will take place before the board's decision is due, the intention for the reviews is to "bring it back to how they were originally intended," she said.

Inter partes review can be warranted in some instances, Stewart said, including when the office made a material error in initially examining the patent, when the same patent is at issue in infringement suits across multiple courts, or the patent owner alleges in court that many unrelated patents are being infringed by the same company.

"There are certainly examples where I think the efficiency originally intended by the AIA can be well served by the office, but just an on-demand challenge of all issued patent rights whenever the need arises, or the purported need arises, seems to be where we've been taken off course," she said.

She noted that the PTAB has 200 judges and has limited resources, and that "if you take it to its extreme," there would need to be 9,000 judges, one for each patent examiner, and "everything we issue would just turn around and go to the other side of the office and get reconsidered by PTAB."

The office's view is that "on-demand, limitless reviews of IP rights are not good for the system and not fair," Stewart said. She noted that since the AIA gives the patent office director the discretion to decide whether to institute review, her decisions are focused on "what are the best kinds of cases that we should be looking at?"

Commerce Secretary Howard Lutnick, who oversees the USPTO, "is a big fan of early challenges," she said, so he wants to encourage the use of post-grant reviews, which must be filed within nine months of when a patent is issued, compared with inter partes reviews, which can be filed at any time, once an infringement suit is filed.

"I think the secretary may have used the expression 'speak now or forever hold your peace,'" Stewart said. "This is the time to speak up if you see a concern and bring it early."

Mandamus Petitions

The Federal Circuit is considering several [mandamus challenges](#) to the new policies by companies including [Motorola](#) and [SAP](#), which allege that the policies are being applied retroactively. Stewart said she finds that claim "frustrating."

During the Biden administration, the office issued a memo stating that PTAB challenges would not be discretionarily denied if the petitioners agreed not to make the same arguments at the board and in court. Stewart rescinded that policy, including for cases that were pending, which critics claim amounts to a retroactive policy change.

"That is a little frustrating," she said, because that argument would mean the USPTO is bound by a previous administration's policies, and "you can't actually come in with the president's vision, with the secretary's vision

on how to run the government because of a memo issued three years ago in a prior administration."

She added that "I mean, I don't think we're trying to be retroactive" and that "we're trying to afford people a terrific amount of process, so that everybody gets to put all the arguments on the table before we make a decision. Obviously, there have been some mandamus petitions filed with the Federal Circuit, so we'll see what happens with those."

Stewart noted that under the AIA, the office could just issue one-word decisions denying review without explanation, so "you can say we're a little bit of a victim of our attempt to try and be as transparent as we can possibly be."

Patent Fees

Beyond the PTAB, Stewart addressed [reports](#) that Lutnick is considering imposing new fees based on the value of patent portfolios, which has [drawn opposition](#) from business groups. She referred to it as "the alleged proposed patent fee structure" and said any further details will have to come from Lutnick.

Still, she said his role as Commerce secretary includes more than just patents, and requires him to think about major economic issues like how the government can collect enough revenue to stay funded and address the budget deficit.

"That being said, I think there are a lot of opportunities with respect to the fee system to modernize it," she said.

She said fees for examining patents are relatively low and are made up by maintenance fees paid by those who are issued patents. That means patent owners subsidize the costs for unsuccessful applicants, she said, and "maybe that's not a great thing. Maybe we should be paying for the cost as we go up front."

Stewart noted that there is a lengthy process to change patent fees, so those with strong feelings about the proposal should get involved in the discussion.

Pending Legislation

The acting director touched on several patent-related bills pending in Congress, expressing support for some aspects of them and wariness about others.

The [PREVAIL Act](#), reintroduced earlier this year, would make numerous changes to PTAB proceedings that could make patent challenges harder. Stewart said that without endorsing the legislation, there are parts of it that "I'm optimistic might gain some traction," including requiring the board to use the same higher burden of proof used in district court, which she said would provide more consistency.

The same senators simultaneously reintroduced the Patent Eligibility Restoration Act, which aims to set new rules on which inventions are eligible for patents, and effectively undo several [U.S. Supreme Court](#) decisions on the issue. Stewart suggested that might be an area the high court should take the lead on.

"We have a big problem with patent eligibility. The area is very confusing," she said. "I think the Supreme Court takes a lot of heat on it, and maybe they deserve it, but ultimately they evaluate the arguments that are put in front of them. And I think we have an opportunity to make better, more clear arguments on eligibility to the Supreme Court."

The acting director also highlighted the [RESTORE Act](#), which would establish a presumption that patent owners are entitled to an injunction when infringement is found. She said she had a conflict and didn't participate in a [recent brief](#) the office filed in a Texas case advocating for injunctions, but believes the ability to block sales of infringing products is a key right for patent owners, which courts have made difficult to obtain.

"If you can't get an injunction to prevent people from using your IP, then obviously that's going to greatly diminish the value of the IP," she said. She added that "just like AIA, I think we got off track. I think there's an opportunity to get back on track on the injunction issue."

The acting director expressed concern about the Interagency Patent Coordination and Improvement Act, which [calls for](#) the USPTO and the [U.S. Food and Drug Administration](#) to share patent-related information. Proponents say that would address gamesmanship by pharmaceutical makers that can cause higher drug prices.

Stewart said she was worried that the bill could result in patents being found unenforceable if the applicants don't disclose certain information, saying that could be "used as a sword in litigation" and that "dropping that hammer on the rights holders at the end is pretty concerning."

Separate from legislation, the acting director also said "we're taking a hard look at" how often patents are found invalid as obvious, since "people are taking a lot of shortcuts" to argue that just about everything would be obvious if you combine earlier inventions.

She said that comment could cause some to react with "their hair on fire" and think that "the USPTO is going to say nothing's obvious," but "we're not saying that. We just want to have a thoughtful, consistent approach to the patent right" so issued patents can be relied on.

The patent policies that have been implemented and discussed have spurred possibly more commentary on patents in the media than ever, Stewart said, adding that in her view, "it's kind of like any publicity is good publicity," since it provides an opportunity to advocate for the importance of intellectual property.

"We have fresh ears and fresh eyes looking at these things, and maybe it's a real opportunity for us, although I know it's a little scary and frustrating at times as well," she said.

--Editing by Kelly Duncan.

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