Patent Policy Advisory Committee (PPAC) Meeting
May 3, 2018

Note: Audio of this meeting can be found here:  https://rev-vbrick.uspto.gov/#/events/dd2cdc68-79bf-42d8-9f80-04a6975e872b
Also – embedded in the section headings below are links to the powerpoint presentations discussed during the meeting.

Session Opening

Marylee Jenkins, PPAC Chairperson

Ms. Jenkins welcomed participants and introduced Director Iancu, and welcomed him to his first PPAC meeting of his tenure. Ms. Jenkins also noted that there were new topics on the agenda, due to input from members, notably discussions of plant patents; PTAB proceedings in light of the recent U. S. Supreme Court decision in SAS v. Iancu, and a segment showing how examiners undertake their searches.

Opening Remarks

Andrei Iancu, Under Secretary of Commerce for Intellectual Property and Director of the USPTO

Director Iancu welcomed the participants to the meeting and noted the collaborative relationship between the USPTO and the PPAC, and stated his interest in continuing the dialogue between the PPAC and the office. He then repeated his priorities for the USPTO, as previously announced during his speech at the U.S. Chamber of Commerce, namely: 1) to engage in a new narrative about the intellectual property system by highlighting the brilliance of US inventors, the excitement of innovation and the benefits it brings to our country; 2) to strive towards predictable, reliable, high quality patents from the start by giving tools to examiners to ensure that they have access to the best prior art available; and 3) to ensure that post-grant proceedings are fair and balanced for both sides by reviewing how and when proceedings are instituted, the standards used, possible amendment process and how to conduct proceedings; in addition, with respect to §101, the Director would like to clarify the analysis and therefore the USPTO on April 19 released a memo on how to apply the Berkheimer standard, isupport and in particular, how Examiners should support and document their “conventional” analysis, which should be the same as done as part of the §112 analysis, he also noted that there might be further guidance on §101 issues coming out later this year.

There was a brief question and answer session between the Director and the PPAC members; among this discussing PPAC member, Peter Thurlow encouraged more roundtables between the Office and the public/practitioners.
Mr. Clarke gave an update on the recent revisions of the Manual of Patent Examining Practice, as detailed in the powerpoint (in the link) above. Topics of the revisions include: Subject Matter Eligibility; Markush practice; applying prior art in Pre-AIA §102(e); Double Patenting; and Written Description. With respect to the Patent Eligibility updates, Deputy Commissioner Bahr explained how the USPTO was conducting the two-step analysis to determine eligibility, and also focused on the new guidance provided pursuant to the *Berkheimer v. HP* case. Mr. Thurlow asked whether examiners were receiving training alongside all these new revisions and he was assured that they were. Mr. Thurlow also asked about training on new technologies such as Blockchain and artificial intelligence, and again he was assured that examiners were receiving training on these new technologies.

**Partnership Meetings**

**Day in the Life of an Examiner: Searching**

Andrew Faile, Deputy Commissioner for Patent Operations  
Jack Harvey, Assistant Deputy Commissioner for Patent Operations  
Tammy Goddard, Supervisory Patent Examiner, Tech Center 2600  
Jessica Manno, Supervisory Patent Examiner, Tech Center 2800  
Kevin Parendo, Patent Examiner, Tech Center 2800

This section dealt with operations, and detailed the partnership meetings held between stakeholders and the Technology Centers. In addition, due to all the attention being paid to how patent examiners conduct their searches, the PPAC was witness to demonstration of how a patent examiner conducts a search from start to finish.

**International Update**

**WIPO IGC**

IP-related trade matters  
Shira Perlmutter, Chief Policy Officer and Director for International Affairs

Ms. Perlmutter provided an update on international issues that the USPTO has been working on, including new developments at the WIPO Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore (IGC); the U.S. Trade Representative’s Special 301 report; the results of the U.S. Trade Representative’s Section 301 investigation in China’s practices with respect to intellectual property protection and technology transfer requirements; and developments related to UK’s withdrawal from the EU (Brexit).
With respect to the WIPO IGC, Ms. Perlmutter noted that at the upcoming June meeting of the Committee there will be discussion of whether to move forward with an international treaty that would require the disclosure of origin of genetic resources in patent applications. Developing countries and the EU and its Member States support such a treaty; the U.S., Japan, and South Korea prefer the development of tool to better identify and find prior art so that traditional knowledge is not patented. Ms. Perlmutter urged stakeholders to attend the meetings to help ensure that views of rights holders are fully expressed and understood at the meeting.

On IP-related trade matters, Ms. Perlmutter reported on the findings issued in March by the U.S. Trade Representative with respect to China’s IP practices and technology transfer policies. She noted that there was a currently high-level delegation in China to discuss these issues. On the Special 301 of IP practices globally, Ms. Perlmutter noted that twelve countries were listed on the Priority Watch List, including China, and Canada; she noted that the overall themes of the report were: 1) restrictive criteria for patentability; 2) ineffective regulatory data protection; 3) localization requirements; and 4) inadequacy of trade secret protection.

Lastly, with respect to Brexit, Ms. Perlmutter noted that the UK has deposited its instrument ratifying the Unified Patent Court. This brings the number of countries which have ratified the instrument to 14, all that is required to bring the Treaty into effect is Germany’s ratification. Still outstanding, however, is the question as to the effect of the patent court’s decisions in the UK, which is an issue that will be included in the broader negotiations between the UK and the EU.

The Benefits of Cooperative Patent Classification (CPC) to External Stakeholders

PCT Collaborative Search and Examination

Mark Powell, Deputy Commissioner for International Patent Cooperation
Chris Kim, Director of Classification Quality and International Coordination
Charles Pearson, Director of International Patent Legal Administration

Commissioner Powell and Mr. Kim gave an overview on the PCT classification system and how the PCT collaborative search and examination procedure works.

Plant Patent Updates

Christian Hannon, Patent Attorney, Office of Policy and International Affairs

Mr. Hannon provided an overview of how plant varieties are protected under plant patents and under breeders’ certification (Plant Variety Protection) which is administered by the U.S. Department of Agriculture. He also noted that there is legislation pending in Congress that would broaden the Plant Variety Protection certificates to include both asexually and sexually reproduced plants (currently only available to sexually reproduced varieties).
Judge Ruschke presented the PTAB’s plan on complying with the U.S. Supreme Court’s recent decision in *SAS v. Iancu* to review all claims presented in PTAB proceedings. Judge Ruschke noted that as of the start of 2018 they have been initiating on all claims presented, and therefore all new cases are already in compliance with the Court’s decision. There are, however, approximately 150 cases that are affected by the Court’s decision, and Judge Ruschke explained, as detailed in the powerpoint above, how they were going to proceed with these cases depending on the specific phase of the proceeding that the case is in.

Judge Ruschke also noted that with respect to the Director’s priorities on reviewing PTAB procedures, there are several new initiatives under discussion, including whether there should be an amendment process and also, whether the standards used in the PTAB should be the same as those used in U.S. Federal District Courts.

**Communications Outreach**

Mr. Shipp gave an overview of the USPTO’s outreach efforts, highlighting in particular, how to receive notices of “breaking news” from the USPTO.

**Finance/Budget Update**

Mr. Scardino provided an update on the USPTO’s budget, including the status of the current FY 2018 budget, and the planning for the FY 2019 and 2020 budgets. Mr. Scardino also pointed out that the USPTO’s Fee Setting authority is set to expire in September 2018, and the USPTO is currently working with Congress to get this authority extended.

**IT Update**

Mr. Chiles gave an update on USPTO IT systems, including: PE2E - DAV, OC, EST and CMS; Patent Center Updates & Statistics; Global Dossier and CPC; and a discuss of Legacy Systems.

**Legislative Update**

Mr. Colarulli gave an update on current legislative proposals on Capitol Hill, including the STRONGER Patents Act and Big Data and IP bills, the latter of which provides for extension of the PTO’s user fee authority. Mr. Colarulli also noted the provisions in the Farm Bill which expand the U.S. Department of Agriculture’s plant variety protection certificates. Mr. Colarulli also noted that the Director had
testified at an oversight hearing before the Senate Judiciary Committee, which was well received. He noted that several Senators mentioned the need for a legislative fix for §101. Mr. Thurlow pressed Mr. Colarulli as to whether the USPTO had any position with respect to the industry proposals that have been proposed to amend §101; Mr. Colarulli noted that the USPTO did not have any formal position on any of the proposals, but they are supportive of the conversations that are taking place to harmonize the proposals.

The meeting was adjourned at 2:30 pm by Marylee Jenkins, PPAC Chairperson; the next meeting will take place on August 2, 2018 at the USPTO Headquarters in Alexandria, Va.