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Inventors Explore Funding, Celebrate Stewart And Newman

By Dani Kass

Law360, Washington, D.C. (October 24, 2025, 11:53 PM EDT) -- Suspended Federal Circuit Judge Pauline Newman and deputy U.S. Patent and Trademark Office Director Coke Morgan Stewart provided encouragement to members of US Inventor Friday as the inventors heard each other's stories, learned the logistics of protecting or losing their patents, and gained tips on financing their litigation.

Judge Newman

Judge Newman, 98, opened the group's annual conference on a panel alongside several female inventors, where she encouraged the room to continue innovating and pushing for **reconsideration** of the Federal Circuit's purpose.



Suspended U.S. Circuit Judge Pauline Newman participates on a panel with inventors at the US Inventor's annual conference with Molly Metz (from left), Sahara Lotti, Katy Stoka and Juliette Fassett. (Dani Kass | Law360)

The other members of the Federal Circuit **suspended** Judge Newman more than two years ago, saying she engaged in misconduct by refusing to undergo a medical examination when her health came into question.

Inventors say they have missed having her pro-patent owner views on the appeals court.

Judge Newman helped form the Federal Circuit before its 1982 launch, and she was appointed to it in 1984. But after about 10 years, Judge Newman said "it became apparent" that certain ambitions and activities "weren't working quite as well as we thought they might."

One place where the law hasn't worked out properly is with the America Invents Act's estoppel provision, she said, where patent owners aren't getting the sense of safety that they can use their asset without litigation for a series of years.

She asked the room, "After the elaborate and expensive patent examination structure that we have in the nation with

thousands of experts well-screened, well-educated [and] well-trained in their area, why should that patent just be up for whoever wants to attack it? What does the presumption of validity mean? And should there be a creative restructuring of our system?"

Current Administration

Since the Trump administration returned to office, the USPTO's leadership has made it more difficult for patent challengers to have the merits of their petitions reviewed.

Deputy Director Stewart, who spent most of the year as acting director, **reviewed** each petition for inter partes or post-grant review before the board could consider its merits, denying significant numbers of petitions based on criteria like the age of the patent, which hadn't been used before.

Director John Squires has **announced** he will be taking over that process and will also be considering merits.

"It's the best time to be a patent owner in the last 15 years," said Brown Rudnick LLP partner Erick Robinson on a panel, while showcasing a "Make Patents Great Again" hat to the audience.

Marc Fenster of Russ August & Kabat agreed in a later panel that it's a good time to be a patent owner.

"Whereas 99% of the cases that I had would result in multiple IPRs before, now I'm seeing less than 25% of the defendants filing IPRs in our cases," Fenster said. "What has happened in the last few months with Stewart and Squires is remarkable and really is leading to a significant change and restoring the balance."

Stewart

The deputy director closed out the event Friday, highlighting the exact policy that earned the inventors' praise.



USPTO Deputy Director Coke Morgan Stewart speaks at the US Inventor annual conference.

She rejected the idea that inventors should have the burden of trying to block an IPR, rather than the petitioner having the burden to prove why one should be necessary.

"That's really a cultural change," Stewart said. "We've explained what some of the discretionary considerations are, and we're inviting arguments on both sides. If you've got a national security argument, if you've got a settled expectations argument, make it. We're really not seeing the arguments that we would have expected coming from the petitioners on why they need the review."

Stewart said they did a review of how many discretionary cases have involved examiner error, and it was 53 out of about 600.

"The original purpose of the [America Invents Act] was for the office to correct errors that it made," she said. "We're very sensitive to that."

The deputy director added that if patents are reviewed again and again, "eventually, statistically speaking, you're ultimately going to find more and more claims to be unpatentable."

She also said the administration is concerned about how obviousness is being handled, citing the success of the Post-it note.

"It's one of our proudest inventions of the past 50 years," she said. "And you know, it's paper. You cut the paper. You put a little sticky substance on the paper. We have glue. We have paper. Glue plus paper: Post-it note. It's obvious."

Financing

Much of Friday featured practical advice for inventors, ranging from the benefits of litigating in Texas to how to get that litigation funded.

Russ August's Fenster sat down with Erich Spangenberg, a high-profile patent monetizer who was a key player in the early debate of so-called patent trolls. Spangenberg rejoined the patent game recently, **launching** SIM IP, which includes Donald Trump Jr. among its shareholders.

At one point, Fenster said Spangenberg discussed what would make a case attractive to a funder, and Fenster said there "are no small cases."

"It doesn't matter if your case is a \$2 million case, a \$200 million case or a \$2 billion case," Fenster said, citing a small-dollar one he and Spangenberg went through together that he said was particularly important. "This was one small defendant that wanted to go to trial on a small case, but it threatened the entire licensing campaign, which was many, many tens of millions of dollars that we were able to recover."

An audience member was doubtful of the no-small-cases claim, saying, "There has to be some minimum." He asked for a ballpark idea for damages in a case where there's one alleged infringer, and they're a top company.

"For us, it's about \$50 million," Spangenberg said.

"Erich's at the top of the game," Fenster said. "What I have experienced in the last five years is that there is an absolute flood of litigation funding or patent litigation. There is a lot of money available."

During a separate panel, funders repeatedly discussed how they have no say when cases they helped fund are being settled. While doing so, they tied it back to Delaware Chief Judge Colm F. Connolly's **policy** for parties to disclose their litigation funding.

"I can't have any unreasonable undue influence over that decision," said SIM IP managing director Ellen Scordino.

She noted that Fenster and Spangenberg will soon have an outside counsel-funder relationship, saying the former has to be careful to remember that the latter isn't his client.

"I think that's what the Delaware court is a little bit worried about," she continued. "There are lawyers who have violated ethical rules because they did overstep and maybe see the funder as their client."

Joel Merkin of GLS Capital LLC said funders specifically want to work with attorneys who "have significant skin in the game."

"I want to know that when I have sleepless nights in advance of a Markman hearing, because there's some major issues that are going to be coming up, the lawyers have that same degree of intensity and that they are thinking about the case the same way we are," Merkin said.

--Editing by Jay Jackson Jr.