

## IPBC Global 2025: Acting USPTO Director says IPR use needs to change

Angela Morris

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USPTO Acting Director Coke Stewart speaking at IPBC Global 2025

Coke Morgan Stewart, acting director of the US Patent and Trademark Office, says the agency wants to send a clear message to patent challengers to use early-filed validity challenges instead of waiting decades after a patent is issued to file an *inter partes* review.

Speaking at IPBC Global 2025 in Boston on Tuesday, she implored patent professionals to instead challenge patents more quickly by ramping up the use of pre-issuance submissions and post-grant reviews.

Stewart's view is the Patent Trial and Appeal Board has been taking up nearly triple the number of *inter partes* review petitions annually than the 500 cases that Congress intended when it passed the America Invents Act. She signalled changes are on the horizon.

"We must still make judgment calls on which petitions to institute," Stewart states. "Our resources are not unlimited. Let's take up the important cases. Patents that have been enforced for 10, 12, 15, or more years may not be the best cases for the

office to take up. We don't need to be an on-demand extension of purely private disputes. We aren't a court.”

Her comments come at a time that the PTAB has returned to policies and procedures that were in place under former USPTO Director Andrei Iancu. Earlier this year, Stewart rescinded a 2022 policy memo (issued by then-Director Kathi Vidal) that had limited the use of discretionary denials of institution of trials in the PTAB.

Then, in March, Stewart issued a new memorandum that created a bifurcated process to decide on discretionary denials. Now, parties draft separate briefs arguing about discretionary denial factors, and the director makes a decision on whether to issue a denial. Only if a case survives the discretionary denial stage will a petition go to a panel of PTAB administrative patent judges to decide the merits of institution.

“Let's hear from both sides on whether to institute an IPR; let's hear why it's good for the system. It's not just up to patent owners to argue why a petition should not be instituted. Petitioners too need to explain why a petition should be instituted, much like parties do at the US Supreme Court, where parties present many petitions, but the justices do not take up every one – even if the petitions are timely filed and even if the lower court may have made a mistake,” says Stewart. “Access, fairness and finality are all important components of our legal system, and they are important components of our patent system.”

Stewart encouraged patent challengers to begin to use other mechanisms that the AIA created to challenge the validity of patents. The USPTO wants to incentivise the filing of more pre-issuance submissions.

“We are asking stakeholders to do their part,” Stewart urges. “Among other tools, the American Invents Act gives an opportunity for third parties to send prior art to the USPTO when patents are under examination. This helps solve the problem of patent examiners not having the best information to decide whether an invention is new and not obvious. And this is important because who knows better than a fellow inventor as to whether something is truly new?”

Likewise, she reminds that post-grant reviews allow third parties to challenge a granted patent within nine months of issuance.

“Use of this tool can also help improve the durability of patent rights. Again, we want to incentivise these early challenges. Unfortunately, these early tools have been rarely used in the past, because there are other portions of the AIA that encourage competitors to wait until they are sued for infringement to take part in this joint exercise to improve patent quality. This is not good for the system. It is not what the AIA intended. We all need to care about the front end, when patents are issued, not ignore issued patents until we are sued,” Stewart mentions.

Her view is that IPRs should not be the main way to challenge the validity of patent rights. The IP community needs to share information with the patent office as soon

as possible. She stresses that the USPTO must engage in excellent patent examination.

Stewart detailed changes the agency is making internally to ensure it grants strong patents. She launched a “back to basics” philosophy to ensure the USPTO focuses on “the timely, rigorous and modern examination of patents and trademarks”.

One goal is to tackle the backlog of unexamined patent applications. Stewart notes there were more than 838,000 unexamined applications in January.

“I am pleased to announce that in four short months we've started to make headway, and as of last Friday, we brought it down to 806,000. These reductions that we have seen in the past four months are the first backlog reductions in over four years. Our goal is to bring patent inventory down to a net steady state in the 500,000s,” says Stewart.

She listed many initiatives the agency is taking to meet the backlog goal and boost patent quality:

- prioritising examination over other activities;
- rewarding examiners and supervisors for picking up more work;
- returning to 12 months for a first office action (which are now at 23 months) and 24 months for disposal;
- addressing fraudulent filings, eliminating “fake and low-quality” applications;
- developing new tools for examiners to compare claims and large patent families;
- adopting artificial intelligence tools to aid examiners in evaluating claims under Section 101 and 112;
- shifting administrative work away from supervisory patent examiners so they have time to review examiners’ work;
- redirecting the Office of Patent Quality Assurance to targeted reviews;
- checking for errors in allowance and rejection rates in individual art units; and
- rewarding examiners who issue high-quality office actions, because, “we shouldn't just reward examiners for production”.

“Patents recently stopped over 3,300 patent applications due to falsified signatures, and patents has mailed 2,200 notices to those who have falsely claimed that they are micro entities when they are not. They're taking advantage of those discounts, and it's not right. Repeated false assertions of micro entity status, which is mostly happening among certain foreign filers, will come not only with requests that the balance of fee needs to be paid, but also with serious penalties,” warns Stewart.

Overall, she wanted to ensure that IPBC Global delegates know that the US administration profoundly appreciates the significance of IP rights. Stewart believes they are essential to society and the future. Patents and trademarks empower

people, businesses, technological change and leadership. She says the IP system should be celebrated and cherished.

“We have tremendous support for what we are doing. Commerce Secretary Howard Lutnick – he has been granted 400 patents. The secretary is a true believer in the power and necessity of intellectual property protection, and the entire team knows that it is our responsibility to ensure a robust and stable IP system that fosters job growth and investment,” Stewart vows. “We are committed to doing everything in our power to enhance and safeguard those rights.”



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**Angela Morris**

Deputy editor

IAM

[angela.morris@lbresearch.com](mailto:angela.morris@lbresearch.com)

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