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Stewart Says New Patent Policies Aim To Bring Stability

By **Ryan Davis**

Law360, San Diego (September 8, 2025, 12:33 AM EDT) -- Acting U.S. Patent and Trademark Office Director Coke Morgan Stewart said Sunday that new patent review policies the office has implemented are aimed at making the patent system more stable, saying that in her view, repeated patent challenges can result in "the antithesis of stability."

In a keynote address at the Intellectual Property Owners Association annual meeting in San Diego, Stewart explained why she believed previous policies on Patent Trial and Appeal Board reviews had left patent owners "so incredibly frustrated" and how the changes she has put in place since taking office in January, many of which restrict patent challenges, are designed to be an improvement.

The acting director said in her talk, which she described as "a bit of a State of the Union, but for the USPTO," that there have been disruptions to the patent system since the 2011 America Invents Act created the ability to challenge patents in fast-moving proceedings at the PTAB, which uses a lower burden of proof than district court.

"To have a stable economy, we need a stable patent system," Stewart said. "Repeated and expedited reconsideration of patent grants under the low preponderance of evidence standard is the antithesis of stability."

Under previous USPTO policies, many patents were frequently invalidated by the PTAB, and Stewart said "you can thus see why patent owners are so incredibly frustrated by the process that they must undertake simply to maintain the patent that the U.S. government issued to them at great time and expense."

Stewart asked the audience to imagine if their law, business or driver's license, or their college degree or the title to their home, "were constantly subjected to reconsideration by anyone at any time year after year after year, and that you had no presumption that the original decision was correct and no window of time that closes to stop these challenges."

"It's hard to think of a single example in all of government where such a system exists," she said. "And such a system is completely contrary to the exclusive right granted to patent owners in the Constitution, the presumption of validity granted by Congress, and the Article III court protections afforded to patent owners prior to the AIA."

"I hope most of you agree that the only way such a review scheme is workable is because Congress granted the director discretion at the institution stage to determine when to institute these reviews," she said.

Policy Overhaul

Throughout this year, Stewart has implemented **new policies** using the discretion granted to the USPTO director in the AIA that have resulted in numerous discretionary denials of petitions challenging patents.

She now issues most decisions on discretionary considerations herself and said Sunday that 425 decisions have been issued to date. They have cited an array of reasons why review is not warranted, including the status of related district court litigation and the "**settled expectations**" of patent

owners, based on how long ago the patent was issued.

"The office has focused on liberally permitting early challenges to patent validity, particularly [post-grant reviews]," Stewart said in her speech, referring to a type of proceeding that must be filed within nine months of when a patent is issued.

"Early challenges ensure that patents are more stable, thereby increasing investment, commercialization and job growth," she said. "On the other hand, the longer a patent has been in force, the stronger and more settled the patent owner's expectations should be."

She added that settled expectations have often been cited in denials when a patent was issued over six years ago, but "it does not mean that a patent owner cannot establish strong settled expectations on a younger patent. We invite patent owners to continue to make their case for settled expectations, as well as to present other reasons why PTAB review is not appropriate in their case."

That can include scenarios where a district court case will be decided before the PTAB's decision is due or where the patent owner has already fended off prior challenges, she said. She pointed to a case last year, where the board instituted review when there had been seven prior challenges to the patent, including one pending before the PTAB at the time of the decision.

For those challenging patents, Stewart recommended that they provide clear reasons for why review should be instituted, such as when the office made a "material error in examination, such as making inconsistent fact findings across related patents."

"We should use our administrative reviews to correct errors, as the AIA intended," she said.

Other situations that may warrant review include when a district court trial is scheduled long after the board's decision would be due, Stewart said, as well as when there has been "a change in law that disrupts settled expectations of the patent grant," and when the patent owner asserts numerous unrelated patents in one infringement case or is "unexpectedly shifting its invention into new areas of technology."

She issued **several decisions** over the past week involving some of those scenarios.

Patent Quality And Statistics

The acting director said the office will soon publish a study that she said will show that "patents being challenged at the PTAB are not the so-called low quality or bad patents that motivated the creation of the AIA," since "those patents seldom make it past a demand letter, a motion to dismiss, a motion for summary judgment or a nuisance value settlement."

Stewart added that "we cannot be lulled into a false sense of patent quality or lack of quality" based on statistics about how often the PTAB finds patents invalid, or how often those decisions are affirmed by the Federal Circuit. A large majority of PTAB final decisions have historically found most or all of the challenged claims invalid, and the board's findings are usually upheld on appeal.

Stewart said if 100 patent examiners or judges all looked at the same patent claim and most of them think it should be upheld, "it's only a matter of simple math that if you challenge the same claim over and over again, you will increase the odds that it will be determined to be unpatentable, even if a majority of examiners and judges think it is patentable."

A study found that in 2023, the Federal Circuit upheld the board's decisions **over 83% of the time**. Stewart noted that, absent an error of law, the appeals court only looks at whether the PTAB's decisions are reasonable and based on substantial evidence.

"So, if you take this logic to an extreme, it is theoretically possible that most of the decisions of PTAB on patentability are wrong, but not unreasonable, and therefore affirmed by the Federal Circuit," Stewart said.

Possible New Patent Fees

Stewart, who is the USPTO deputy director but is running the office while director nominee John Squires awaits a Senate **confirmation vote**, also discussed **recent reports** that Commerce Secretary Howard Lutnick is considering a new patent fee structure based on the value of patents. She said she would leave it to him to provide more details.

Stewart noted, though, that Lutnick is an inventor on about 400 patents, so he "knows the value of strong patent rights" and also "knows that a modernized fee system can be used to add to the capacity of the USPTO," to make operations more efficient, add new technology, reduce the patent application backlog and increase patent quality.

There are multiple steps to implementing new patent fees, including public hearings and opportunities for comment, the acting director said, "so, I encourage you to think deeply and creatively about what kind of fee structure is best with the intellectual property system and best for the country, and engage in that discussion."

Stewart noted the office has been making progress in reducing the backlog, which she said went from an all-time high of 838,000 unexamined applications in January to about 800,000 now, and is in the process of hiring 1,100 new patent examiners this year.

She concluded by saying that "the entire team at USPTO knows that it is our responsibility to ensure a robust and stable IP system that fosters job growth and investment. We are committed to doing everything in our power to enhance and safeguard those rights."

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