

## Patent Reform Legislation

By Randall Schwartz

The Senate's patent reform bill (S. 515), originally introduced in March, remains pending before the full Senate and has received formal support from the Obama administration.

In a letter to the Senate Judiciary Committee, Commerce Secretary Gary Locke highlighted provisions expanding Patent Office authority while briefly touching on other provisions, such as the contentious issue of damages reform. More particularly, the administration generally favors, among other bill provisions: establishment of agency fee-setting authority, establishment of agency substantive rulemaking authority, a "phased-in" post-grant review procedure, and a change from the current "first-to-invent" system to a "first-inventor-to-file" system.

A grant of substantive rulemaking authority would allow the Office to unilaterally institute broad changes to the patent system. Most notably, the package of continuations and claims rules added by the Office in 2007, which was roundly criticized by the patent community and eventually withdrawn by the new administration, was partly thwarted because the Office currently lacks substantive rulemaking authority. Concerning fees, Secretary Locke has also asked for a limited interim fee adjustment to resolve an impending budget crunch at the Patent Office. Specifically, newly sworn-in PTO Director David Kappos is reportedly advocating a 15% increase in fees for at least one year to overcome a \$200 million budget shortfall in the next fiscal year.

In a recent statement, Senator Leahy indicated that debate on S. 515 before the full Senate will occur before the end of the year.

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