

Patent System Receives Long Overdue Reforms

On September 16, President Obama signed the America Invents Act (AIA), enacting the first patent reform legislation in over 60 years. Primary goals of the act include: bringing the U.S. patent system in line with most of the other patent systems in the world; improving patent quality; and most importantly, adequately funding the United States Patent and Trademark Office (PTO). This article discusses some provisions of the America Invents Act and how they could impact patenting and portfolio strategies of inventors and businesses.

The AIA changed the U.S. patent system from a first-to-invent to a first-to-file system. This change brings the U.S. in line with the majority of jurisdictions worldwide which are already on a first-to-file system. Inventors with the earliest-filed application are now entitled to the patent. As part of this change, the AIA replaces interference proceedings with derivation proceedings which are a safe-harbor provision for inventors claiming misappropriation of their invention by the first-to-file party.



The first-to-file system will have little effect on large U.S. businesses already operating under a first-to-file patenting strategy. These businesses typically file in multiple jurisdictions including first-to-file jurisdictions. First-to-file will have the most impact on smaller businesses and sole inventors that typically only file in the U.S. Such businesses and inventors often do not have the resources to develop their inventions and file applications quickly. Small businesses and individual inventors may obtain

relief by claiming small entity status and taking advantage of provisional patent application filing.

Post-Grant Review (PGR) is similar to the European Union's Opposition in that PGR allows third parties to challenge the validity of one or more claims of a patent. The AIA allows third parties to submit patents and printed publications regarding issued patents for consideration during examination of a patent application. While PGR and third-party submission are targeted to improve patent quality, these procedures place additional burdens on an already under-funded PTO.

In July 2011 the PTO had a backlog of almost 700,000 patent applications, and the average application pendency was over 33 months. Most businesses and experts agree that delays in the PTO are stifling innovation and job growth. Even small and start-up businesses are affected by patenting delays as these businesses often use their patents to secure financing. Earlier this year, Judge Paul Michel, former Chief Justice of the Federal Circuit, told the Congressional Subcommittee on Intellectual Property the most important step to patent reform was adequate funding of the PTO so it can examine applications quickly and carefully. Judge Michel stated, the PTO desperately needs *thousands* of *additional* examiners, dozens of additional board members, and modernized IT systems.

Ironically, the PTO generates more revenue than the money it receives from Congress. The PTO has lost over \$800 million in revenue since 1992 as a result of fee diversion. Fee diversion is a process where congressional appropriators can spend taxpayer revenues elsewhere in the government by withholding fees paid to the PTO. The AIA contains provisions aimed at ending fee diversion by creating an account, or "reserve fund" for the PTO to receive its fees. This provision will also provide for

a 15% surcharge in fees and allow the PTO to set its own fees. The PTO, however, must petition Congress to receive money from the reserve fund. Thus it is unlikely that this reserve fund will stop fee diversion.

In short, the AIA's provisions for improving the patent system may well fail unless the PTO can be adequately funded to implement these much needed reforms.

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WHV Practice Area Spotlight

Intellectual Property

The Intellectual Property group of WHV is responsible for the protection and enforcement of its clients' patents, trademarks and copyrights in the United States and foreign countries. The group's attorneys practice in a wide variety of intellectual property matters and work in close cooperation with other practice areas to assure that all client needs are properly addressed.

Our attorneys are experienced in all areas of patent and trademark law including opinions, prosecution, licensing, and litigation. Our patent attorneys are registered to practice in the United States Patent and Trademark Office and possess a variety of technical degrees and background experience which proves helpful in representing our clients in a multiplicity of different technological areas.

Please visit www.wegmanlaw.com for more information.

Guardianship of Adults



Over the past several months, Uncle Ray has been found sleeping on his neighbor's driveway, writing checks to charities for excessive amounts, and has been rushed to the hospital because he failed to take his blood pressure medicine. While we all may be familiar with someone who fails to make good decisions, it may be time to consider whether a guardianship is in the best interest of Uncle Ray for his own safety and well-being.

The determination of a guardianship is an extreme process, which essentially results in taking away a person's right to make their own decisions regarding their finances (Guardian of the Estate) and/or their healthcare or living arrangements (Guardian of the Person). An adult person, known as the "ward" by the Court, is placed under a guardianship when the ward is found "legally incompetent" through a formal court proceeding in the Probate Court in the county in which the prospective ward resides.

The guardianship appointment process requires the filing of an Application for

Guardianship by an interested party or on the Court's own motion. An interested person may be someone who is not related to the prospective ward but the applicant must be willing to perform as guardian, and be able to secure a bond as required by law. If the prospective ward is incompetent, the application must include a Statement of Expert Evaluation, which is completed by the prospective ward's attending physician, psychiatrist or licensed psychologist. A Court investigator is assigned to the case to file a formal report to be used by the Probate Court at the formal hearing. The potential ward, his or her next of kin, and the applicant must receive notice of the hearing. In addition, the potential ward has the right to attend the formal hearing and also contest the application for guardianship. The potential ward also has the right to have legal counsel present at the formal hearing conducted by a Judge or Magistrate.

The Probate Court determines whether a person requires a guardianship when it finds that an adult is so mentally impaired that he or she is incapable of taking proper care of himself or herself or his or her property and the impairment is the result of a mental or physical illness or disability or mental retardation or chronic substance abuse.

Once approved, the applicant is appointed as Guardian by the Court and the prospective ward becomes a Ward of the Court. Although a Guardian has been named, the Court remains the superior guardian, and all guardians must obey all

orders of the Court. The Guardian is responsible for filing written accountings with the Court containing the income and expenses of the Ward's estate and also for filing a written report as to the need for the guardianship. If a guardian fails to timely file these documents, the Court may cite the guardian and impose a fine, reduce the guardian's fee, or remove the guardian from the case.

If you have a relative or loved one that you are concerned about, you should contact an attorney to determine whether pursuing a guardianship is appropriate for their unique situation.

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WHV Notable News and Events

Wegman, Hessler & Vanderburg welcomes our newest staff members, Iken S. Sans, Aaron D. Plasco, and Jesse L. Lydic.

Iken earned her Bachelor of Chemical Engineering from Cleveland State University in 1998 and is a 2011 graduate of the University of Akron School of Law. Iken joins our Intellectual Property group as a patent agent.

Aaron is a 2007 graduate of the Cleveland-Marshall College of Law and joins our Corporate and Business Services group.

Jesse L. Lydic joined the firm as a paralegal in the firm's Intellectual Property group.

Please visit the firm's website at www.wegmanlaw.com to review all of our attorney bios, contact information and firm practice areas.

Legislative Update

The 129th Ohio General Assembly has introduced two bills that are of particular interest. These bills are pending in the legislature.

The first is H.B. 170 which seeks to amend Ohio Revised Code §2305.06 and reduce the statute of limitations from 15 years to 6 years on a breach of contract action.

The second is S.B. 230 which seeks to amend Ohio Revised Code §4113.13 and disallow employers from asking employment applicants if he/she has ever been convicted or plead guilty to a felony in this state or another jurisdiction.

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