

BIG Data for IP Act of 2018

Building Innovation Growth through Data for Intellectual Property Act of 2018

Overview:

- Delaying the issuance of a company's first patent—even if that patent is ultimately granted—negatively affects a company's future employment and sales growth by 21% and 28%, respectively. Timely issuance of quality patents is crucial to startups.¹
- The agency responsible for issuing patents, the United States Patent and Trademark Office (USPTO), still relies on some badly-outdated IT systems. The modern innovation economy needs a modern USPTO that can issue rights efficiently and effectively.
- The USPTO has made progress in updating its systems, thanks partly to the financial security provided by the Leahy-Smith America Invents Act of 2011 (AIA). This bill would extend key provisions that allow the USPTO to set its fees.
- In exchange, the bill holds the USPTO accountable for its progress in making these upgrades as well as a requirement to investigate promising new tools such as big data and machine learning to make patent and trademark examination even more productive.

Background:

The Department of Commerce has estimated that IP-intensive industries directly accounted for 27.9 million jobs in 2014, contributing \$6.6 trillion in value added to the GDP. The USPTO supports this innovation ecosystem through the issuance of patents and trademarks. IT systems are critical for the USPTO's mission, but several are badly outdated. For example, the current "Patent Application Location and Monitoring System" was developed in the 1980s for mainframe computers. In 2015, a power surge disrupted one of these "legacy" systems, and because of its age, replacement parts needed to be shipped from other countries. This vulnerability needs to be addressed by finally upgrading and replacing aging infrastructure.

In 2011, the AIA granted the USPTO the authority to set the rates that patent and trademark applicants are charged for the USPTO's services. The USPTO has worked with its advisory committees and the public to set these fees in a transparent manner, as envisioned by statute. Having control over its finances has enabled the USPTO to implement a sustainable funding model with an operating reserve, allowing for investment in long-term IT upgrades necessary for a modern intellectual property office regardless of temporary fluctuations in revenue.

This bill extends this fee-setting authority, and in exchange, holds the USPTO accountable for making it a priority to complete the transition to modern IT systems by requiring the USPTO to report on the status of this upgrade. Going forward, the bill promotes more regular adoption of emerging IT solutions by calling for the USPTO to set forth a plan on how it will use advanced data science to improve consistency of examination, detect common sources of error, and improve productivity.

¹ Farre-Mensa, Joan, D. Hegde, and A. Ljungqvist, 2015. The Bright Side of Patents. USPTO Economic Working Paper No. 2015-5.