

## Patent agency officials discuss how to reduce application backlog

April 25 2011, By Kris Newby

"We have a backlog of a little over 700,000 patent applications." That daunting figure was what David Kappos, the director of the U.S. Patent and Trademark Office, addressed in an April 13 talk to 250 medical technology inventors, entrepreneurs, venture capitalists and patent attorneys at a conference on intellectual property and entrepreneurship held at the School of Medicine.

And by the end of the day of workshops and speeches, there was a feeling of optimism about the agency's plan to address its biggest problems — long patent application backlogs, inconsistent patent reviews and outdated information technology systems.

"Mr. Kappos and the staff of the USPTO who participated in the various workshops sought to listen to members of academia and the Silicon Valley community about ways the USPTO could work more effectively and collaboratively," wrote Philip Pizzo, MD, dean of the medical school, in his April 18 *Dean's Newsletter*.

The Bayh-Dole Act of 1980 gives universities, along with other institutions, control of the intellectual property underlying inventions that result from federal funding. This has advanced the role of universities in moving discoveries from academia to industry. Patents are a vital part of this process, making it commercially viable for businesses to capitalize on these innovations, by allowing them to license the protected intellectual property from the patent-holders.



The process of issuing patents, however, is not going smoothly. So for university-based med-tech inventors and entrepreneurs, many whom have had to wait as long as five years for patent decisions, a top priority is to reduce the time and cost associated with bringing life-saving medical discoveries into the public domain.

Kappos said he hoped a step in the right direction would be the agency's new Track 1 Accelerated Examination Program, which will allow inventors to pay a \$4,000 fee to receive initial patent feedback within three months and a final ruling within a year. This program is open for submissions from May 4 through Sept. 30 of this year.

Support for this fast-track program wasn't unanimous. "We would love for patent processing to be faster but I don't know if we would be willing to pay extra fees for expedited review," said Katharine Ku, director of Stanford's Office of Technology Licensing. Mark Meltzer, senior vice president of Intuitive Surgical, added that he was worried that this pilot would "turn the patent office into an airline with a tiered class system."

Another factor contributing to patent processing delays is the mismatch between the organizational structure of the patent office, which assigns applications to examiners who are experts in a single field, and the interdisciplinary nature of today's innovation, which increasingly occurs at the seams of scientific disciplines.

One suggestion for improving this situation came from Kenneth Salisbury Jr., a Stanford professor of mechanical engineering and of surgery who holds more than 30 patents in medical robotics, surgical simulation and robot-human interaction. "Can you outsource [patent] examination?" he asked USPTO officials. "Why not go with an expert that stands on the borderline of scientific fields, rather than having your experts in one field have to educate themselves across boundaries?"



Kappos is trying to change things. Another potential pilot program is the Humanitarian Expedited Examination Programs, which is currently under review. Technologies eligible for the humanitarian program would include treatments for tropical diseases, diagnostic medical tools, crops with higher yields or better nutritional value, and sanitation or clean water advances. Those that meet certain criteria would receive expedited patent evaluation.

One of the agency's most daunting and costly challenges is managing its vast data stores, which, within the government, are second in size only to the Department of Defense. As a first step, the agency enlisted Google to help digitize the millions of PDF documents in the patent petition archive, enabling inventors to conduct online text searches. The agency most recently automated the submission process for some of its patent petitions — such as requests to accept late fee payments — freeing up staff to work on other tasks and trimming months off petition wait times. And it has added anonline dashboard that helps inventors more accurately estimate patent wait times, accessible at: www.uspto.gov/dashboards/patents/main.dashxml .

As Kappos continues to modernize the agency's patent approval processes, many of which were established when Thomas Jefferson became the first <u>patent</u> examiner 230 years ago, no one can accuse him of setting the bar too low: By 2015 he hopes to reduce the agency's inventory of pending patents to 325,000, a 50 percent reduction from today.

The key to implementing Kappos' grand plan is the passage of the America Invents Act, which could provide a more sustainable funding model for the agency going forward. "We're not lacking in great ideas at the USPTO," said Kappos. "What we need are the resources to carry those ideas to fruition."



And by the end of the day, Paul Yock, MD, director of the Stanford Biodesign Program, felt that the agency was on the right track: "We were delighted that Under-Secretary Kappos and his senior staff took time to focus on the impact of USPTO on medical device innovation — and that they were willing to come out to Stanford and engage the local community in frank discussions. We finished the day feeling that our concerns had been heard clearly — and that the office has already made important steps in a positive direction."

A podcast and an audio recording of this event will soon be available on the <u>website</u> of the biodesign program, which hosted the event; the other hosts were the Graduate School of Business; the Law School; the Office of Technology Licensing; and Spectrum, the Stanford Center for Clinical and Translational Education and Research.

Provided by Stanford University Medical Center

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