

America Invents Act Is A Game Changer

The new act, signed by President Obama on Sep. 16, 2011, contains twenty different statutory provisions and steps for the USPTO to implement in a variety of ways. Public input is valued and welcomed at stops along the way to final implementation.

In an article published in the current issue of *Technology and Innovation-Proceedings of the National Academy of Inventors*®

(https://www.cognizantcommunication.com/journal-titles/technology-a-innovation?page=shop.product_details&flypage=flypage.tpl&product_id=56&category_id=16 [1]), Janet Gongola, Patent Reform Coordinator for the U.S. Patent and Trademark Office (USPTO), describes the process of implementing the America Invents Act (2011, H.R. 1249), the first patent law reform in 60 years. "The America Invents Act is the foundation for a 21st century patent system, but the public must join in the construction effort to erect the walls and roof," said Gongola, who manages all aspects of the USPTO's implementation of the act.

Those steps are:

- In keeping with the Administrative Procedure Act an initial notice-and-comment five-step rulemaking process begins, each step lasting weeks or months as necessary.
- Once the USPTO prepares proposed rules they must be cleared by other government agencies, such as the Department of Commerce, Office of Management and Budget, among others, for feedback and "interest balancing."
- After clearance, the USPTO will publish the proposed rules in the Federal Register, triggering a 60-day comment period for the public.
- Following public comment period, the USPTO will consider the public feedback and may modify rules.
- Once the rules are complete and cleared, the USPTO republishes them in the Federal Register as "Notice of Final Rulemaking." Public comments will be received.

"At each step the USPTO is eager for public comment on its proposed rules," said Gongola. "The agency cannot do this in isolation; it must rely on its partnership with independent inventors, small businesses, universities and large corporations."

To help facilitate public comment, the USPTO has created a "micro-site" on its Website www.uspto.gov/americaninventsact [2] to house all of its rulemaking information in a single location where the public may click a link and submit a written comment.

"The USPTO will treat public comments with utmost care," promised Gongola. "The

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comments will be distributed within the agency and reviewed by multiple people, including the deputy director."

When the agency publishes its proposed and final rules, the USPTO will begin a series of cross-country "roadshows," said Gongola. "The roadshows will help teach the public about the proposals and accept their comments."

According to Gongola, the USPTO recognizes that it may not achieve the ideal balance of interests in its first rulemaking attempts; so the agency is willing to make changes "down the line" if necessary.

"Changes may be unsettling, but the America Invents Act will modernize U.S. patent law for the benefit of the entire patent community," she concluded.

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