

## The Biggest IP Agency Developments Of 2025: Midyear Report

By **Theresa Schliep**

*Law360 (July 15, 2025, 9:51 PM EDT)* -- The U.S. Patent and Trademark Office and the U.S. Copyright Office have not been spared from the Trump administration's shake-ups and changes across the federal government in the first half of the year.

And while it's typical for new administrations to usher in fresh policies and impose their vision for the U.S. on its administrative agencies, observers characterize the amount of news out of the USPTO and the Copyright Office as especially dizzying compared to previous years. Those changes range from high-profile departures and firings to a major shift in practice at the Patent Trial and Appeal Board.

Here, Law360 highlights the biggest changes in 2025 so far at the USPTO and Copyright Office.

### Shake-Ups at the PTAB

Acting USPTO Director Coke Morgan Stewart has taken some steps that could radically alter what it's like for attorneys to practice in front of the Patent Trial and Appeal Board.

The first step was the withdrawal of a memorandum from previous USPTO Director Kathi Vidal that had the effect of limiting the PTAB's denial of patent challenges due to pending district court litigation. Specifically, the USPTO in February withdrew the 2022 memo that limited discretionary denials by changing the application of the 2020 precedential decision in *Apple Inc. v. Fintiv Inc.*, which set out factors that the board can consider when deciding whether to use its discretion not to review a patent because related infringement litigation might be over first.

While significant on its own, this change wasn't the only one in store for the PTAB. It was eclipsed by an announcement from Stewart in March that generated both questions and criticism: a bifurcated discretionary denial process in which Stewart can first review if America Invents Act petitions should be denied for discretionary reasons before the board considers the merits.

Stewart has since issued dozens of decisions under the process. A panel of judges said in April that the agency plans on putting the process through rulemaking, suggesting the policy will have some permanence despite the agency initially saying it was being done because of the PTAB's "workload needs."

Absent those rules, patent attorneys are scrutinizing the decisions to get a sense of the criteria Stewart and her advisers are using to assess discretionary denial requests.

Some factors that suggest Stewart will deny discretionary requests are if the final written decision is due before a trial date in co-pending litigation, if there is a stay and if the patent is somewhat newer, according to Kevin X. McGann of Fenwick & West LLP.

"The patterns are starting to develop," McGann said.

### **Workforce Upheaval**

The story of the USPTO's workforce in the first half of 2025 is part of the bigger story of the Trump administration's efforts to reduce federal agency headcount and generally condense the size of the federal government.

The USPTO has embraced office work for PTAB judges, who in February were ordered to work from federal facilities, as well as for probationary patent examiners and trademark examining attorneys. Two programs, the voluntary early retirement program and voluntary separation incentive payments, also have led to early retirements and departures.

It's not clear the extent to which these programs have affected the examiner corps, but the agency is finally clear of a hiring freeze and able to start replenishing patent and trademark examining attorneys. The number of PTAB judges has dipped under 200, a figure that, until recently, exceeded 230.

While PTAB judges had been warned to prepare for layoffs in March after VERA and VSIP concluded, the agency hasn't implemented reductions in force at the board.

What's more clear is the number of high-level USPTO officials who have left amid this government-wide purge. The departures have included the leader for all matters related to artificial intelligence, its chief financial officer, chief policy officer, director review executive and patent commissioner. There also have been some scheduled departures, such as David Gooder wrapping up his five-year term as commissioner for trademarks on Feb. 28.

All in all, 11 of the 13 positions on the agency's executive committee are occupied by leaders working in acting capacities. Jessica Kaiser of Perkins Coie LLP, a former PTAB judge, noted that having a number of temporary leaders can cast some doubt on the permanence of some policies.

"I think that contributes to the feeling of uncertainty and [the thought of], 'Well, if changes are happening now, will they be reversed when the permanent person comes into that role?'" she said.

At the top of the organization chart is Stewart, who took over the director role in an acting capacity with the departure of Vidal and who has overseen this period of significant change for the agency. Meanwhile, the nomination of Dilworth Paxson LLP partner John Squires, who is largely known for creating Goldman Sachs' intellectual property practice and was tapped for the director role in March, remains outstanding.

Also of note is the unusual move from Commerce Secretary Howard Lutnick to end the terms of every member of two USPTO committees made up of individuals from outside the office who advise the USPTO on patent and trademark policies.

### **Firings at the Copyright Office**

The Copyright Office has faced disruptions to its leadership as well. Most notably, the Trump administration fired the director of the Copyright Office, sparking a lawsuit.

Shira Perlmutter received an email in May from the White House saying her "position as the register of copyrights and director at the U.S. Copyright Office is terminated effective immediately." That email came one day after the Copyright Office released the third installment in a series of reports exploring issues at the intersection of artificial intelligence and copyright law.

It's not clear if that report played a role in Perlmutter's firing. But the report noted that using copyrighted material to train generative AI systems might not always be protected as fair use. Meanwhile, the Trump administration has taken a friendly position on AI development — such as in an executive order titled "Removing Barriers to American Leadership in Artificial Intelligence" — and has been lobbied by leading AI companies to allow for broad use of copyrighted materials to train models.

Perlmutter's firing came a few days after President Donald Trump's firing of Carla Hayden as leader of the Library of Congress, of which the Copyright Office is a part.

Perlmutter filed suit against the Trump administration over its actions, contending that significant functions of the government agency could be rendered "inoperable" without judicial intervention and asserting her firing was unlawful because only "a lawfully appointed librarian of Congress" could remove her. She also said the firing interferes with the release of her fourth AI report, the existence of which caught the attention of some attorneys and scholars.

For its part, the Trump administration asserted that the work of the office wouldn't be thwarted by Perlmutter's departure. And a D.C. federal judge declined her request to expedite her case, saying doing so wouldn't serve judicial economy, although noting, "I don't blame you for asking."

Brian W. Nolan of Mayer Brown LLP said the timing of all of this — Perlmutter's firing right after the release of the report — has some observers questioning if the report can be considered an official report of the office. Perlmutter's report was technically a prepublication report, and her firing means she hasn't been able to release the final version.

"It wasn't issued as a final report ... and I don't know if anyone has asked the existing acting [director] if that's a pronouncement of the Copyright Office, and many would say maybe it isn't," Nolan said.

### **The Disappearing USPTO AI Report**

As for AI and the USPTO, the agency has seen some shifts in its approach to the burgeoning technology.

In early March, **the** website for the USPTO report, titled "Artificial Intelligence Strategy," began displaying a "404 error — page not found" message. That report, issued just two months earlier in January under then-acting USPTO Director Derrick Brent of the prior presidential administration, said the agency's focus areas for AI included advancing "the development of IP policies that promote inclusive AI innovation and creativity" and encouraging "the responsible use of AI within the USPTO and across the broader innovation ecosystem." That language was modeled on then-President Joe Biden's executive order prioritizing "safe, secure, and trustworthy" AI development.

Trump **has** departed from those policies and emphasized in his own AI executive order the aim of positioning the U.S. as the "global leader in AI" and cementing "America's global AI dominance."

Meanwhile, director nominee Squires has embraced the use of AI for getting through the backlog of patent applications, saying at his confirmation hearing that "implementing software and other AI-aided tools should allow examiners to be confident that access to necessary literature and other public information is sufficiently searched."

### **A Mixed Bag of Patent Examination Changes**

On the patent prosecution side, the agency has halted a number of programs for issuing quicker patents in certain categories, while also increasing the number of applications it can accept through a special accelerated program.

For instance, the USPTO in February suspended a program that sped up examination of patent applications for inventions intended to mitigate climate change, saying any future petitions to participate in the program will not be granted, following executive orders from Trump deemphasizing climate change mitigation across the government.

The agency has also hit the brakes on a program intended to facilitate quicker examinations of design patents. The expedited program was no longer available as of April, the USPTO said, citing the need to "combat fraud and to reduce pendency and inventory of unexamined design applications."

But the USPTO also has changed or expanded programs meant to fast-track some patent applications. For instance, it's pledged to shorten the window between issue notifications for patents and issue dates. And earlier this month, the agency announced it will increase to 20,000 the number of so-called Track I program applications, a figure that has grown from 15,000 in 2021. That program, created by the America Invents Act, allows for prioritized patent application.

Trevor K. Copeland of Crowell & Moring LLP said the agency seems to be focused on pushing applicants toward Track I and "changing and reducing the number of ways, especially the number of either low-fee or no-fee ways, that people can [use to] accelerate examination."

This effort seems to be targeted at tackling the "high-volume filers, domestic and foreign, who have tried to exploit these processes and who are kind of overwhelming" the USPTO, he said.

Domingos J. Silva of Saul Ewing LLP, co-chair of the firm's IP practice group, told Law360 that the program can be unaffordable for some smaller businesses or solo inventors. The fee ranges from \$903 to \$4,515, depending on the size of the entity applying, according to the USPTO's fee schedule.

"The expansion of the Track I application program is good from the standpoint that more applications will go through the process, and therefore will issue faster," Silva said. "But if you look at it from a different perspective, it favors large companies."

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