

THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

IP FRONTIERS

IP in the Obama administration

President Barack Obama's inaugural address referenced the importance of technology to our country's economic policy and financial recovery.

Obama, whose campaign was among the most technologically savvy, is placing technology and innovation at the forefront of his executive priorities, in the hope of reinvigorating the national economy.

His administration follows one that was widely criticized for not fully funding and supporting science, and failing to implement intellectual property policy reforms. Obama has expressed a strong commitment to innovation and science, and basing government decisions on the best available, scientifically valid evidence.

More than \$50 billion was included in Obama's economic stimulus proposal for high-tech spending, including funding for the computerization of medical records, clean energy innovation, the creation of smarter and more efficient electrical grid networks and expansion of high-speed internet access to rural communities.

Obama's campaign emphasized his technology platform, as well as the creation of an environment that is highly conducive to innovation. His plans include renewed emphasis on math and science education, expansion of research initiatives at American colleges and universities and an increase in federal funding for basic research over the next 10 years to ensure competitive markets, protect American intellectual property at home and abroad and reform the patent system.

Patent reform

Many believe the U.S. patent system is in need of reform. The U.S. Chamber of Commerce in December 2008 issued a report that attested to the U.S. Patent and Trademark Office's daunting application backlog.

In his technology initiative, candidate Obama promised a reformed patent system with improved predictability and clarity producing timely, high-quality patents. He also indicated a desire to open up the process to citizen review as a means to reduce uncertainty and wasteful litigation.

President Obama has pledged to give the USPTO the resources necessary to improve patent quality and efficiency.

James Greenwood, president of the Biotechnology Industry Organization, a trade group for some of the world's largest biotechnology companies, has suggested that the new administration should seriously consider "reforms aimed at ensuring



By **DAVID P. MIRANDA**

Daily Record
Columnist



By **ERICA M. HINES**

Daily Record
Columnist

examination timeliness, backlog reduction, and front-end patent quality."

One of the more significant changes we may see under the new administration will be new procedures for employing individuals with the necessary patent experience at the USPTO.

The new administration also is likely to be more receptive to USPTO exploratory programs. The U.S. chamber's report outlined policies believed to be central to patent reform and recommends an incentive system for applicants and examiners to allow for early interviews about a patent's contents. Early interviews would provide a means for examiners to address questions informally. Overall, the programs may help us avoid the need for costly amendments or extensions in the examination process.

The chamber also recommends a public dialogue about ways to improve the patent process as the new administration takes control. Legislation that allows the USPTO to set and modify its own fees has been suggested, and would help to ensure the office has, and can manage, the resources necessary to promote innovation.

Biotech and health policy

Laws and policies governing pharmaceuticals and biologics may change significantly.

Facilitating the use of generic drugs was a top priority of candidate Obama's healthcare agenda. In light of his support for shorter exclusivity periods for brand-name biotech drugs, it is likely we'll see significant changes to legislation governing biotech drugs. The prospect means innovation and technology could be used to reduce health care costs and fuel competition, in turn aiding the national economy.

Stem cell research is likely to advance under the new administration. John Podesta, co-chairman of Obama's transition team indicated the president plans to reverse Bush's 2001 directive to limit federal funding of human embryonic stem cell research. The expected result likely will be a surge in stem cell research funding.

The reversal will make the U.S. a more hospitable location for stem cell research, which could lure some research and development within our borders. The industry's reemergence also would bring precious investment dollars, which have been dwindling in

Continued ...

THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

Continued ...

light of the current economic crisis, and make the U.S. more competitive globally in stem cell research-related industries.

Technology Initiative

President Obama's proposed Technology Initiative could make permanent the Research and Development Tax Credit. Many industries that depend on intellectual property by allowing businesses and entrepreneurs to rely on the credit when making investment decisions, especially over multi-year time periods, would be assisted by such a measure.

Obama's technology and innovation proposals are estimated to include more than \$71 billion in new, direct expenditures for science, technology and innovation programs, and \$14.5 billion from tax revenue forgone by extending R&D tax credits. All of that would have significant short- and long-term impacts on U.S. competitiveness and the stability of the national economy.

Protecting IP abroad

U.S. cooperation in international IP laws and policies also are likely to change.

Obama's Technology Initiative includes a plan to protect U.S. intellectual property abroad by promoting greater cooperation on international standards.

In announcing former Dallas Mayor Ron Kirk as the U.S. Trade Representative, then President-elect Obama pledged a trade-liberalizing agenda. It is anticipated that copyright law changes will be made to accompany Obama's new international trade policy.

Candidate Obama sought to foster increased cooperation on international standards to allow U.S. technologies to better compete globally, as well as support for copyright reform and civic discourse at home. President Obama may consider copyright reform, including major changes to the Digital Millennium Copyright Act. Contributing to the anticipation of such reform are the implications of a liberalized trade policy and the possible influence of Google CEO Eric Schmidt, one of Obama's technology

advisors during the campaign.

In recent decades, the U.S. has pushed for ever-increasing levels of international IP protection based on the idea that such policies benefit U.S. intellectual property; however, there is growing concern surrounding the alienation that occurs when the U.S. forces other countries to adopt stringent rules or otherwise face sanctions. The Obama administration, as a result, may seek a more balanced IP agenda that maintains incentives for certain intellectual property industries without alienating foreign nations.

In the future

The final days of the Bush Administration saw passage of the PRO-IP Act, which included greater protections against counterfeiting, and the creation of an IP Czar who reports directly to the president. Obama has called for the appointment of the country's first chief technology officer (CTO) as a cabinet-level role. A leading contender for the new position is Todd Dickinson, director of the USPTO under the Clinton Administration and the current executive director of the American Intellectual Property Law Association.

Obama's administration also will have an impact on IP policy through his federal judicial appointments, including those to the Court of Appeals for the Federal Circuit. In the past, appointments to that circuit often failed to attract significant attention. Given Obama's commitment to innovation, however, it is likely he will exhibit a keen interest in those appointments.

While it's difficult to predict all of the changes that may occur, the consensus is that Obama's emphasis on technology, education and innovation are likely to have a positive impact on intellectual property in the years ahead.

David P. Miranda, dpm@hrfmlaw.com, is a partner with the Albany law firm of Heslin Rothenberg Farley & Mesiti PC. Erica Hines, emh@hrfmlaw.com, is an associate attorney with the firm. They can be reached in Albany at (518) 452-5600, or in Rochester at (585) 288-4832.