

What's In The USPTO Policy Pipeline This Year

By **Rosaleen Chou and Lauren Katzenellenbogen** (January 1, 2024, 8:02 AM EST)

The new year is shaping up to be a busy one for intellectual property practitioners, and that's particularly true for activity at the U.S. Patent and Trademark Office.

This article examines what practitioners can expect in terms of policy updates and initiatives from the USPTO in 2024.

Trademark Focus

Artificial intelligence could be the most impactful USPTO initiative of all — from both a technological advancement and combating fraud standpoint — but it's unclear just how invested the office will be in the buzz topic of 2023.

The USPTO has stated that it wants to develop its AI capabilities as it relates to topics such as identifying and classifying goods and image searching.

It also has an AI virtual assistant, which it recently expanded to include patent customers, and has stated that it plans to add it to more office pages soon. Exactly how much AI is allowed to permeate through the USPTO remains to be seen, but 2024 will likely offer some clues.

The office will continue its efforts to fight fraudulent trademark filings in 2024 through its newly established Register Protection Office. The RPO contains three subcommittees focused on post-registration auditing, anti-scam initiatives and ex parte nonuse cancellation proceedings, respectively.

These committees provide the office with additional internal safeguards against fraud, and also increase public awareness of scams by providing tools and educational resources. The USPTO is further demonstrating its commitment to public education in the area of fraud and counterfeiting by continuing to promote the Go for Real campaign.

This campaign is designed to educate youth about counterfeit products and encourage the purchase of genuine goods and services.

Trademarks can be used in powerful and creative ways to address humanitarian issues. To shine light on those doing good in the world, and to increase public awareness of the power and importance of



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trademarks, the USPTO has launched its first trademark-specific recognition: the Trademarks for Humanity award.

This award will be presented to brand owners who are utilizing their trademarks to achieve humanitarian and environmental goals. The award also helps promote the USPTO's initiative to highlight examples and best practices of brand owners using trademarks for the benefit of the public. Applications were received through Sept. 15, 2023, and the winner is expected to be announced this year.

Finally, the USPTO will be implementing a series of long-awaited technology improvements and upgrades, including the following:

- Upgrading the Trademark Electronic Search System, which has been used by the public for 23 years, and launching a new search platform with an enhanced interface and easier-to-use features and filters, which will allow more people to use the database more efficiently.
- Developing the new Trademark Center, a cloud-based platform for filing and managing trademark applications, which is expected to officially launch in early 2024. The center will include updated electronic filing systems that will eventually replace the currently operating electronic system for the trademark trial and appeals platform.

Patent Focus

This month, new USPTO rules creating a design patent practitioner bar go into effect. These new rules expand eligibility for individuals seeking to practice before the USPTO in design patent matters.

Design patent practitioners will no longer have to meet the office's traditional requirement for patent practitioners: a science or engineering degree in a field such as biology, biochemistry, biomedical engineering, chemical engineering, computer engineering, computer science, electrical engineering, or molecular biology.

Under the new rules, individuals with other design degrees may be eligible to take the USPTO patent practitioner registration exam, which would permit them to prosecute design patents.

Design degrees accepted by the USPTO for this purpose include a bachelor's, master's or doctoral degree in any of the following areas from an accredited college or university: industrial design, product design, architecture, applied arts, graphic design, fine and studio arts, or art-teacher education in any of these fields of study.

Those admitted to practice before the USPTO in the past, present and future will still be allowed to participate in both design and utility patent matters. However, a power of attorney naming a design patent practitioner cannot be used in a utility or plant patent application.

Additionally, if a power of attorney listing multiple attorneys includes a design patent practitioner in addition to a practitioner authorized to practice in all patent matters, that power of attorney will not be accepted in utility or plant patent applications.

Thus, firms will need to use separate power of attorney documents to include design patent practitioners. Also, design patent practitioners will be required to indicate their design practitioner

status by placing the word "design" next to their signature.

In enacting this new rule, the USPTO hopes to:

- Align the criteria for design patent practitioners with those of design patent examiners;
- Improve the cost and quality of services provided by design patent practitioners by widening the pool of qualified practitioners;
- Allow more members of underrepresented groups to practice design patent law;
- Aid more inventors from underrepresented groups in acquiring patents; and
- Increase economic opportunities for design practitioners by allowing them a new market for their professional services.

The USPTO is also accepting petitions for the Semiconductor Technology pilot program this year. The program is part of the USPTO's efforts to support the Creating Helpful Incentives to Produce Semiconductors Act and will expedite the examination of patent applications for innovations that increase semiconductor device production, reduce semiconductor manufacturing costs and strengthen the semiconductor supply chain.

Qualifying applications will be granted special expedited examination status at the USPTO until a first Office Action has been issued. To qualify for the pilot program, applications must contain at least one claim that covers certain processes or apparatus for manufacturing a semiconductor device.

The applications are limited to three independent claims, a total of 20 claims, and cannot include any multiple dependent claims. A petition to make special must be filed within 30 days of filing a nonprovisional application or within 30 days of entry into the national stage from a corresponding patent cooperation treaty application.

No fees are required for the petition. The USPTO will only accept the petitions to make special until a total of 1,000 applications have been granted special status or until Dec. 2, whichever is earlier.

Conclusion

In sum, this promises to be an active year at the USPTO as we see these new policy initiatives in action. Specifically, we will see whether practitioners and IP owners find them useful, and whether they achieve their objectives.

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