

# THE NATIONAL LAW REVIEW

---

## “Innovation Meets Insight:” An Intellectual Property Expert’s Take on the Revised America Invents Act (AIA)

---

Wednesday, April 3, 2013

Speaking of the latest developments in the legal field, legislation for the **Leahy-Smith American Invents Act** (“AIA” or “Act”) was signed by President Obama and passed in September of 2011 and has gone into full implementation this past March. The Act massively overhauls U.S. patent laws and sets forth the most comprehensive, sweeping changes to the U.S. patent system since 1836.

In an exciting era for intellectual property, [David Kappos](#), one of the world’s leading experts on intellectual property law and a partner at Cravath, Swaine & Moore LLP, recently sat down with me to discuss the revisions to the AIA and their implications. Mr. Kappos ended his term as director of the U.S. Patent and Trademark Office (“USPTO”) this past January, where he acted as advisor to the president on intellectual property policy matters. He will serve as keynote speaker for the upcoming [13th Annual SuperConference](#), where he will present the new-and-improved AIA to an audience of senior-level legal professionals. In doing so, Mr. Kappos will introduce a revolutionary patent system in which “innovation meets insight.”

However, the AIA almost did not materialize due to its largely stagnated history. Initial calls for changes to the patent system began in the 1980s, but negotiations for the actual legislation did not start until 2001. Mr. Kappos was in private practice at that time and helped with the negotiations. It took nearly five sessions of Congress for the legislation to finally gain approval.

The ensuing legislation affects many tenants of the patent system. Among the most prominent amendments to the Act is the U.S.’s conversion from a first-to-invent system to a first-to-file system, resulting in the first inventor to file an application with the USPTO for the claimed invention to be granted the patent. In addition, improvements have been made to the post-grant challenge system, resulting in the ability of an inventor to appeal to the USPTO to reconsider any issues related to granting approval of a patent.

According to Mr. Kappos, the AIA espouses a modern, pro-innovation outlook that has “leapfrogged” legislation. The patent system tends to treat innovation as highly valuable and offers incentives. For example, the U.S. now retains an interest-based system for enabling third parties to participate in the patent process.

The Act’s pervasiveness has led to progress and evolution in numerous industries. Mr. Kappos identified the life sciences and pharmaceutical sectors of the business community, which among other fields, have been granted supplemental examination, thus enabling patent owners to request timely additional examination of their inventions by the USPTO for further consideration. The finance and banking industry is expected to progress, due to the covered business method which permits parties to request a post-grant review hearing, providing patent owners an alternative to litigation for challenging a decision related to a patent. For small inventors, a new category has been carved into the Act for 75% off of fees owed to the USPTO associated with obtaining a patent.



Article By  
[The National Law Review Editorial Team](#)  
[The National Law Review / The National Law Forum LLC](#)  
[Intellectual Property](#)  
[Administrative & Regulatory](#)  
[All Federal](#)

Mr. Kappos believes that the legislation will overall bring more clarity to the U.S. innovation system. He characterized the AIA as a “more streamlined and effective way to perfect your innovations.” Any person or business seeking a patent will find a more clear, efficient and cost-effective arrangement in the AIA.

As far as the legal community catching up to the legislation, Mr. Kappos points out that there are numerous changes in the law and recommends attorneys read about the Act and focus on the modifications. The revisions are also great fodder for exchanging ideas and asking questions to other members of the IP field because there are multiple angles to look at.

Overall, Mr. Kappos has said that progress in terms of innovation is amazing and things that were unimaginable five to ten years ago are now possible due to invention and technology. He is optimistic about the future and the ability of technology to change the equation. In his own words, “Through innovation we -- humanity -- has the ability to meet and overcome our most critical challenges. And when you talk about innovation, you are talking about invention and insight. And following that thread, there is only one system of laws that protects invention, incenting it and encouraging creative people to spend their resources on it. That one system of laws: the patent system.”

---

Interview authored by S. Merchant

Copyright © 2019 National Law Forum, LLC

**Source URL:** <https://www.natlawreview.com/article/innovation-meets-insight-intellectual-property-expert-s-take-revised-america-invents>