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CONGRESSIONAL SCHEDULE  NEW

The Senate did not meet today. The House met and approved two measures: the conference report for H.R. 658, a four-year reauthorization of the Federal Aviation Administration (FAA), and a bill to prevent the Congressional Budget Office from incorporating inflation increases into its projected spending baselines (H.R. 3578). The Senate is not expected to take up the budget measure.

When the Senate returns to session on Monday, February 6, it is scheduled to consider the FAA reauthorization conference report. CQ.com reports that the FAA has operated under a series of stopgap measures since September 2007.

The legislative program for the House has not been announced.

OTHER CONGRESSIONAL ISSUES

HOUSE PANEL HOLDS HEARING ON PATENT OFFICE REPORT ON PRIOR USER RIGHTS  UPDATED

The House Judiciary Subcommittee on Intellectual Property, Competition and the Internet held a hearing on February 1 to discuss a report on prior user rights in patent law and related issues with U.S. Patent and Trademark Office (USPTO) Director David Kappos and representatives from
industry and academia. Among those testifying was AAU Executive Vice President John Vaughn, whose testimony, and that of other witnesses, is available on the hearing webpage.

As the USPTO implements provisions of the patent reform law enacted last September, the law’s significant expansion of prior user rights as a defense against patent infringement remains a major issue. Given the far-reaching changes to that portion of the law, the Leahy-Smith America Invents Act (AIA, P.L. 112-29) directed the USPTO to submit a report to Congress on the new prior user rights provisions, which the agency did last month.

Among other recommendations, the USPTO report said the prior user defense in the AIA “should be maintained with no change at the present time because there is no substantial evidence that it will have a negative impact on innovation, venture funding, small businesses, universities, or independent inventors.”

The university community had long opposed an expansion of prior user rights. However, higher education representatives worked with other sectors toward the end of the patent reform effort to forge a compromise that substantially expanded the U.S. prior user rights defense, but exempted university patents from the assertion of a prior user rights defense and included a number of other provisions circumscribing the scope of the prior user rights defense.

Two witnesses at the hearing called for significant changes in the prior user rights compromise included in the AIA. However, in his oral testimony, Director Kappos said the university exemption was a 21st century means of promoting innovation that enabled the U.S. to “leapfrog” ahead of the nation’s economic competitors in patent policy. There appeared to be general agreement among subcommittee members that there should be no immediate changes to the prior user rights provisions and that discussion of any changes to be made in the future should include the university community.

EXECUTIVE BRANCH

AAU AND APLU URGE NIH DIRECTOR TO EXPAND PROOF-OF-CONCEPT RESEARCH NEW

AAU and the Association of Public and Land-grant Universities (APLU) sent a letter to National Institutes of Health (NIH) Director Francis Collins on February 2 urging him to “take full advantage” of the proof-of-concept authority included in the reauthorization of the Small Business Innovation and Technology Transfer Research (STTR) programs.

The associations noted that they did not support the provision in the new law that increases the small business research funding set-aside at major federal research agencies, but they did endorse proof-of-concept language added to the bill by Rep. Dan Lipinski (D-IL). As described in the letter, the language authorizes NIH to fund “a pilot program to support proof-of-concept research that would enable universities to more effectively commercialize new technologies and to support creation of successful small businesses.”

NATIONAL ACADEMIES REPORT IDENTIFIES HIGH-PRIORITY TECHNOLOGIES FOR NASA
The National Academies released a report on February 1 that identifies 16 high-priority technologies that NASA should pursue over the next five years. According to the National Academies press release, these priorities were chosen to align with three main facets of NASA's overall mission: extending and sustaining human activities beyond low Earth orbit; exploring the evolution of the solar system and the potential for life elsewhere; and expanding our understanding of Earth and the universe.


DHS TO CHANGE VISA RULES FOR HIGH-SKILLED IMMIGRANTS

As part of the White House Startup America Initiative, aimed at promoting “high-growth entrepreneurship,” the Department of Homeland Security (DHS) on January 31 announced a series of administrative changes that are meant to attract, retain, and improve the immigration process for high-skilled immigrants. The agency press release includes the following administrative changes (details of which are available in the release):

- expand eligibility for 17-month extension of optional practical training (OPT) for F-1 international students to include students with a prior degree in Science, Technology, Engineering and Mathematics (STEM);
- allow for additional part-time study for spouses of F-1 students and expand the number of Designated School Officials (DSOs) at schools certified by DHS to enroll international students;
- provide work authorization for spouses of certain H-1B holders;
- allow outstanding professors and researchers to present a broader scope of evidence of academic achievement;
- harmonize rules to allow E-3 visa holders from Australia and H-1B1 visa holders from Singapore and Chile to continue working with their current employer for up to 240 days while their petitions for extension of status are pending; and
- launch the Administration’s Entrepreneurs in Residence Initiative with an information summit on February 22 “to bring together high-level representatives from the entrepreneurial community, academia, and federal government agencies to discuss how to maximize current immigration laws' potential to attract foreign entrepreneurial talent.”

AMICUS BRIEF SUPPORTING PLAINTIFFS FILED IN EMBRYONIC STEM CELL CASE

An amicus brief in support of the plaintiffs has been filed in Sherley v. Sebelius, the ongoing court case over federal funding of human embryonic stem cell research. The case is back in the U.S. Court of Appeals after the lower court judge, Royce Lamberth, found in favor of the National Institutes of Health (NIH) last year.

The amicus was filed in support of Dr. Sherley, a plaintiff, by a group of ethicists and scientists associated with the Witherspoon Institute. The Institute’s website says the organization is “an
independent research center that works to enhance public understanding of the moral foundations of free and democratic societies. Located in Princeton, New Jersey, the Institute promotes the application of fundamental principles of republican government and ordered liberty to contemporary problems through a variety of research and educational ventures.” A report on stem cells by the Witherspoon Council on Ethics and the Integrity of Science was the focus of the most recent issue of The New Atlantis, a publication whose goal is to “clarify the nation’s moral and political understanding of all areas of technology…especially where the moral stakes are high and the political divides are deep.”

The amicus brief focuses exclusively on the argument that funding of embryonic stem cell research violates the Dickey-Wicker amendment, which prohibits the use of federally appropriated funds for the creation of human embryos for research purposes or for research in which human embryos are destroyed. (The U.S. Court of Appeals ruled that NIH had "reasonably concluded" that although federal funds could not be used to directly destroy an embryo, the amendment did not prohibit funding a research project using embryonic stem cells.) Although neither the Court of Appeals nor Judge Lamberth found the Dickey-Wicker argument persuasive in previous rulings, the new brief argues that the courts did not take into account the history and intent of Congress related to Dickey-Wicker.

The next round of briefs, from HHS/NIH, is due on February 27.

OTHER

NACUBO REPORT SHOWS GAINS IN UNIVERSITY ENDOWMENTS, BUT NOT TO PRE-RECESSION LEVELS

The annual survey of university endowments conducted by the National Association of College and University Business Officers and the Commonfund Institute, released on January 31, shows that U.S. college and university endowments returned an average 19.2 percent in FY11 (July 1, 2010 through June 30, 2011), but have not recovered from their losses during the 2008-9 credit crisis.

As noted in a press release, the survey found that among participating institutions, the average FY11 return, net of fees, “exceeded the average return of 11.9 percent from the previous year. However, on average, university endowments lost 18.7 percent in FY2009.”

The average annual effective spending rate for all institutions was 4.6 percent. For institutions with endowment values between $501 million and $1 billion, and institutions with endowments above $1 billion, the average effective spending rate was 5.2 percent.

CNSF EXHIBITION SCHEDULED FOR MAY 15 NEW

The Coalition for National Science Funding (CNSF) has scheduled this year’s Capitol Hill exhibition for Tuesday, May 15, from 5:30 pm to 7:30 pm. (This is a new date.)

Further details about the exhibition, as well as information about how to register for a booth or help to sponsor the event, will be sent to CNSF members soon.
Please visit AAU at www.aau.edu and follow us on Twitter @AAUniversities.

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