6 KEY TAKEAWAYS
Trends in Patent Law:
Data and Observations on Patent Litigation and Prosecution

Kilpatrick Townsend partners Tina McKeon and David Reed recently presented to clients at the Kilpatrick Townsend Intellectual Property Seminar (KTIPS) about "Trends in Patent Law: Data and Observations on Patent Litigation and Prosecution."

Key takeaways from the presentation include:

1 The number of patent applications filed in the USPTO dropped slightly in fiscal year 2018 as compared to 2017, whereas the number of PCT applications increased in 2018. Increases in PCT applications and worldwide patent filings reflect, in part, a steady trend of increased patent applications from China.

2 Average total application pendency in the USPTO generally exceeds 30 months, but average pendency varies by more than 8 months across technology centers. Allowance rates are generally lower and pendency longer in art units with frequent rejections under 35 U.S.C. § 101.

3 Track One, Patent Prosecution Highway, Petitions to Make Special, and First Action Interview Pilot can facilitate prosecution when the specific requirements are met.

4 Overall, patent litigation dropped about 30% in the year after the Supreme Court's *TC Heartland* decision, accompanied by a dramatic shift away from E.D. Texas to Delaware and California.

5 Although there has been a downward trend in the success of § 101 motions, courts continue to grant over 50% of the motions. The state of the law remains in flux, however, in view of recent Federal Circuit decisions and guidance from the USPTO. Congress has also shown recent interest in potentially addressing eligible subject matter.

6 Post-grant PTAB proceedings have plateaued at just under 2,000 new petitions per year, and some or all claims are invalidated in about 80% of the final decisions. The PTAB has issued recent rulemaking narrowing the claim construction standard, providing a sur-reply, and implementing a claim amendment pilot program that could result in more favorable decisions for Patent Owners.

For more information, please contact
Tina McKeon at tmckeon@kilpatricktownsend.com or David Reed at dreed@kilpatricktownsend.com