

Standing Up for the Dead Inventor: Ensuring a Personal Representative's Standing to Sue for Patent Infringement, Note

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The patent system is the product of federal law, while the probate system is that of state law. As one can imagine, issues arise when these two interact—and, because statutes give patents the attributes of personal property, the two inevitably do. One problem is an apparent void of standing to sue for patent infringement when the patent is part of an estate in probate. By subverting the prior understanding that a personal representative holds title to a patent in the decedent's estate in *Akazawa v. Link New Technology International, Inc.*, the Federal Circuit has established an ambiguity over who can assert infringement. Accordingly, Congress should enact a provision to explicitly ensure that standing passes on to a personal representative; this Note recommends language for such a provision. In the alternative, Congress should amend the patent laws to provide a statutory basis for a personal representative's standing by adding “personal representative” to 35 U.S.C. § 154(a)(1). The resulting statute would then grant the exclusive right in a patent to “the patentee, his personal representative, heirs, or assigns.” Doing so fulfills the states' presumption that a personal representative already has standing, comports with a personal representative's existing duties over patents as well as his analogous duties over copyrights, and promotes policy cooperation between patent law and succession law. Other possible solutions such as imparting patents with the qualities of contracts are ineffective because they subvert established law, deny the harmony of the patent and probate systems' policy goals, and give rise to problematic incentives.