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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

VIA ELECTRONIC TRANSMISSION

November 12, 2020

The Honorable Andrei Iancu
Under-Secretary of Commerce for Intellectual Property and
Director, United States Patent and Trademark Office
600 Dulany Street
Alexandria, VA 22314

Dear Director Iancu:

As Chairman of the Senate Judiciary Committee Subcommittee on Intellectual Property, I submit these comments to the federal register to express my strongest support for the reforms you have made at the United States Patent and Trademark Office (USPTO). Since being confirmed as Under-Secretary of Commerce and USPTO Director, you have made a number of changes to the USPTO which have strengthened intellectual property protections and ensured the United States remains the global leader in innovation.

Our nation has spent decades building and maintaining the world's strongest legal standards and policies to encourage innovation and protect and enforce IP. The United States still leads the world in innovation across multiple sectors, including quantum computing, artificial intelligence, 5G, the internet of things, and biopharmaceuticals, but our lead in all these areas is being challenged by a number of nations that would like to supplant ours in key areas of science and technology. With the proper incentives in place, our robust innovation economy can ensure that American citizens have not only early access to revolutionary and groundbreaking technology, cures, and treatments, but also that we have good sound jobs and economic growth in these industries.

During your leadership at USPTO, a number of changes have been made to strengthen intellectual property protections at the office and to ensure that every patent holder—from large corporations to mom and pop inventors—receives a fair shake and equitable process. Among other things, you have made clear that the Patent Trial and Appeal Board (PTAB) must use the same standard as is used in district court litigation, established clearer standard for when joinder is allowed or disallowed, and articulated factors which the PTAB must consider when allowing for the institution of *inter-partes* review proceedings.

Those efforts—when coupled with numerous other changes made during your tenure—have done much to ensure that the PTAB is seen as a more fair and impartial forum and no longer deserves being described as “death squads killing property rights.”¹ While these improvements have come at a critical time and restored a tremendous amount of confidence and predictability to the U.S. patent system, I believe our continued economic recovery will rely more than ever on patent-intensive sectors like life sciences, semiconductors, core wireless, and other emerging technologies. These are all dependent on entrepreneurial innovation and significant venture investment. While we have seen some positive signs in terms of venture funding in the U.S. recently, it remains true that there is a direct correlation between strong patent protections and the willingness of investors to support the cutting-edge innovation that the U.S. needs if we are to recover and continue to lead the world forward.

I fully believe you are within your statutory authority under the Leahy-Smith American Invents Act to make these changes and improvements to the PTAB process, and I support any and all measures to codify your actions in federal regulations. I believe codifying your actions in formal federal regulations will provide long-term certainty to our intellectual property system ensuring our role as the world’s leading innovation economy for years to come.

If you have any questions about my submission, please do not hesitate to contact me. As always, I stand ready and willing to work with you to provide greater certainty and protections to our intellectual property system.

Sincerely,



Thom Tillis
Chairman

Subcommittee on Intellectual Property

¹ See remarks by Honorable Randall Rader, fmr. Chief Judge, United States Court of Appeals for the Federal Circuit, at American Intellectual Property Law Association annual meeting, 2013.