Senator Tillis Questions for the Record – Protecting Real Innovations by Improving Patent Quality

Professor Jorge L. Contreras

1. How would you define or describe a low quality patent?

2. What are the main obstacles towards improving patent quality?

3. What recommendations do you have to increase patent quality? How would you recommend prioritizing improvements?

4. What are the biggest problems that you see posed by low quality patents?

5. What initiatives to address patent quality have been particularly successful, in your perspective?

6. Are there any particular data points or metrics that could help prioritize discussions about improving patent quality? What agencies or other organizations could contribute to collecting such data?

7. How can the USPTO improve collaboration on prior art searching—both domestically (e.g. between USPTO and the FDA) and internationally (e.g. among the IP5)?

8. What technological improvements should the USPTO focus on to improve prior art searching?

9. You have expressed concern about patents covering imaginary, fraudulent, or otherwise non-existent inventions, and have proposed solutions. Could you please elaborate on your proposed solutions, including the concept of adopting more stringent enablement standards for examiners?

10. Over the past several years, some stakeholders have consistently expressed concerns about the number of patents being issued that don't appear to satisfy the enablement and written description requirements found in Section 112. These stakeholders claim that Section 112 has not been correctly interpreted or appropriately applied by the USPTO or the courts and that this has resulted in the issuance of many vague and overly-broad patents of questionable validity. What is your view regarding whether the USPTO adequately enforces Section 112 to ensure that issued patents comply with the enablement and written description requirements?

11. Do you think current examination practice is effective in deterring so-called "functional claiming," which is the inappropriate practice of describing only the desired result in a patent without disclosing the particular means of producing that result as is required by Section 112?

12. Are any changes to Section 112 that should be made by Congress to clarify its meaning or to ensure it is given its intended effect?

13. What are your thoughts about creating a "gold plated" patent, where applicants would have the option of paying for a more thorough examination of their inventions that would merit a presumption of validity (a "gold plated"), or allowing less economically significant patents to receive a separate patent?