

United States Senate

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VIA ELECTRONIC TRANSMISSION

August 10, 2020

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

Dear Director Iancu:

I write to you as Chairman of the Senate Judiciary Committee Subcommittee on Intellectual Property. As you know, I have been heavily committed to improving our patent system. Last year, my Subcommittee held a series of hearings on patent eligibility reform with an eye toward improving the efficiency and effectiveness of U.S. patent law and its administration. While stakeholders were unable to reach any consensus on legislative reforms during that process, I remain interested in finding ways to improve our patent system. And so, I was very encouraged when I read a paper on patent reform from Stanford University professors Lisa Larrimore Ouellette and Heidi Williams.¹ That paper outlining their proposals is enclosed. I write you today to urge that the U.S. Patent and Trademark Office (USPTO) adopt two of their recommendations.

Their first reform would require patent applicants to more clearly distinguish hypothetical experimental data from results that have already been achieved and recorded. Currently, patent rules require applicants to put hypothetical data in the present or future tense. But the tense is not always clear and the rule is not well known to many of those who read patents, including researchers and the general public. In fact, a recent study found that 99 percent of patents that included solely hypothetical data and that were cited in a scientific publication were cited as if they had reported real data. The result is often confusing data that can be used to mislead investors and pump up profits for a company that has little to offer the economy or the public. As Ouellette and Williams noted, clearer labeling would reduce those confusion costs while

¹ Ouellette is Associate Professor of Law and Justin M. Roach, Jr. Faculty Scholar at Stanford Law School. Williams is the Charles R. Schwab Professor of Economics at Stanford University, a Professor of Law (courtesy) at the law school, and was a 2015 recipient of a MacArthur "Genius Grant." For further details on their proposals, see Lisa Larrimore Ouellette & Heidi Williams, *Reforming the Patent System* (June 2020).

“enhancing the patent system’s goals of inducing researchers to disclose accurate information about new inventions and reducing duplication of inventor effort.”

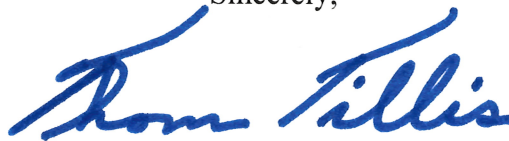
The second reform would improve ownership information by requiring patent owners to disclose it in a manner that is both more transparent and more standardized. As someone who spent many years working in the technology fields, I am well aware of how obscured patent ownership increases transaction costs for other innovators and inventors. Ouellette and Williams noted that USPTO could improve ownership transparency and searchability by increasing incentives for recording changes in patent assignments, by promoting disclosure of hidden owners, and by standardizing company and inventor names across patent records. As I understand that last point, researchers spend a lot of time trying to figure out all the different name variations used by a single company, even one with a short and straightforward name.

These proposals would promote policy goals that you and I share: enhancing our patent system so that it provides optimal incentives for innovators and inventors while also minimizing transactional costs that may discourage the development of new products. My understanding is that these proposals could be implemented by your office under its current regulatory authority.² And, significantly, they would impose no costs on taxpayers and only minimal administrative costs; at the same time they would lower transactions costs for inventors looking to create something new.

Though the U.S. patent system remains a global leader, it is our job as legislators and agency leaders to continually work to identify means for improvement. Patents are a key part of our economy and a big reason that the United States is a global leader in entrepreneurial, technological, and pharmaceutical innovation. Without a well-functioning patent system, many innovators and inventors would not have the incentives to invest heavily in life-changing technologies and life-saving drugs. Improvements to the patent system will result in more innovation, which is good for the U.S. economy and great for the American people. As we deal with the global coronavirus pandemic, the importance of investing in innovation is all the more apparent.

Thank you for your careful attention to this matter, and for your excellent leadership at USPTO. I look forward to continuing to see your efforts to improve our patent system through efficient and effective administration. If you have any questions, please do not hesitate to contact me.

Sincerely,



Thom Tillis
United States Senator

² I recognize that USPTO efforts to improve ownership information stalled in 2014, but the time has come to revisit this and Ouellette and Williams’ narrower approach should minimize stakeholder concerns over regulatory costs.