March 13, 2018

The Honorable Andrei Iancu  
Under Secretary of Commerce for Intellectual Property and  
Director of the United States Patent and Trademark Office  
U.S. Patent and Trademark Office  
Alexandria, Virginia 22313-1450

Dear Director Iancu,

On behalf of the American Bar Association’s Section of Intellectual Property Law (the “Section”), and in anticipation of our visit with you on March 15, 2018, we wish to share some thoughts with you about the operation of the U.S. Patent and Trademark Office (“USPTO”)’s Office of Policy and International Affairs (“OPIA”). The views expressed herein are presented on behalf of the Section of Intellectual Property Law. They have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the position of the Association.

As you observed during your recent confirmation process to become Director of the USPTO, bolstering the intellectual property (“IP”) regime, domestically and abroad, is critical to maintaining the United States’ position as the economic and technological leader of the world. It is our view that one of the key resources for ensuring that our country’s international efforts on IP are effective is OPIA. This office efficiently combines all the different IP regimes, i.e. patents, trademarks, copyrights, trade secrets and enforcement, within a single office at the USPTO.

A key advantage of this dedicated office from the point of view of external stakeholders is that it makes communications with the USPTO easier and simpler, especially when an array of IP issues are involved rather than a single IP issue. Without a single dedicated entity, all external stakeholders, including domestic bar organizations, foreign governments and international organizations, would be required to communicate with multiple offices, or at a minimum have copies of the same communication directed to multiple recipients. Having a single dedicated office also ensures that there is a coherent U.S. IP policy represented at all the relevant international fora, such as the World Intellectual Property Organization (“WIPO”), the World Trade Organization (“WTO”), and trade negotiations, such as the current North American Free Trade Agreement (“NAFTA”) discussions.
The Section has become aware of suggestions that OPIA be disbanded and its operations and functions moved to various operational units throughout the USPTO, e.g. all the patent international policy initiatives under the Commissioner for Patents and all the trademark international policy initiatives under the Commissioner for Trademarks. However, international IP issues are rather diverse and often very different from domestic IP issues. Based on our past interactions with the USPTO on international IP issues, it has been our experience that a single international office within the USPTO, which then reports to the Director, has been quite effective in communicating with external entities like ours and assisting in the development of USPTO policy.

A further complication concerns copyright law. While the Director is the main Executive Branch advisor on copyright issues, the USPTO does not have a Commissioner of Copyrights. Therefore, by following the logic of splitting up the office by disciplines, international copyright policy would fall under either the Patent or Trademark Commissioner, or perhaps some other newly created internal operation. This could lead to a considerable weakening of international copyright policy.

Another successful component of OPIA is the IP Attaché program, which ensures that U.S. IP rights holders can interact with USPTO representatives in key U.S. embassies around the world. By virtue of being housed within OPIA, this program ensures that the Attachés are perceived to work with all rights holders and able to reach out directly to colleagues within OPIA that have the expertise to help U.S. rights holders.

Lastly, a great deal of the relationship-building associated with cooperation among different countries relates to the status of the participants. Trust is often built on status, thus, the importance of having a Chief Policy Officer and head of OPIA who reports directly to the Director cannot be understated. It also is important that such a senior representative can speak authoritatively, on behalf of the USPTO, on the international stage in accord with the policy established by the Director and others in the Administration.

We hope you will take these reflections into account as you review the organization of the USPTO. We stand ready to work with you on any improvements that can be made to the operations of the USPTO that will ensure the U.S. continues to have the best IP office in the world.

Thank you for your consideration of our views. If you have any questions, please feel free to contact me.

Very truly yours,

Scott F. Partridge
Chair, ABA Section of Intellectual Property Law