Andrei Iancu's Confirmation Hearing to Be the New PTO Director

Yesterday I attended the hearing before the Senate Judiciary Committee on the nomination of Andrei Iancu to be the next PTO Director.

One of the most interesting parts of the hearing came during the introduction of Mr. Iancu by Rep. Mike Kelly (R-PA). With some recently wondering why Mr. Iancu would want to give up his multi-million dollar a year practice and position as the managing partner of a prominent patent firm to take a much lower paying government job, Rep. Kelly answered that question.

He testified that Mr. Iancu was born in Romania and came to America when he was just twelve years old, and with so much hard work and success that after the last presidential election he received a phone call from Mr. Iancu telling him he would like to serve in the Government. According to Rep. Kelly, when he asked Mr. Iancu why he would give up his great private sector job, Mr. Iancu said, “It is my turn to give back something to the country that gave me everything.” In his opening statement, Mr. Iancu said it would be his great honor to serve the country that he loved in the field that he loves.

Wants To Champion a Balanced IP System

Another very compelling aspect of his testimony were statements that it would be his goal to “champion” or “evangelize the IP system” where he would “promote the brilliance of inventors,” “identify the excitement of invention,” and promote “the benefits it brings to the economy.” He talked about America’s great inventors and described innovation as the engine of economic growth and the patent system as the crown jewel providing both the incentives and protections necessary to enable that innovation. He said that when inventors and the public have confidence in the patent system inventors are encourage to invent, investments are made, companies grow, and science advances. He said that at the same time we need to keep patent quality very high. He spoke of understanding the needs of all stakeholders and of a balanced patent system that establishes an even playing field.

IPR and PTAB: Will Investigate Concerns and Make Any Needed Improvements

In response to a question from Chairman Grassley on challenges he expects to face at the PTO, Mr. Iancu answered that he was hoping to bring certainty and stability to the IP system and was going to see, after 5 years of implementing the AIA, how well IPR and post-grant proceedings were working. He said that he would work with PTO leadership, Congress, and the stakeholder community to determine what if any improvements were needed. When Senator Coons asked about the tremendous amount of criticism we are hearing on how the PTO has implemented IPR proceedings (his list of concerns happen to be addressed in various provisions of his STRONGER Act) and whether they are baseless or well-founded complaints, he said that he was aware of the “strident criticisms,” well-founded in some instances, but that we need to be careful to make sure the system was well balanced and said that he was not just going to believe statistics. If confirmed, he planned to drill down to find out what is really happening.

He emphasized that it was a true fact that IPR proceedings are heavily criticized and that fact was important to know because if the inventing community has no confidence in the patent system then investments do not get made and invention will slow down and the economy does not benefit. He later said that he recognized specific criticisms had been lodged against IPR proceedings including the amendment process, claim construction standards, the type of evidence considered in these proceedings, and others. In response to a question from Senator Grassley on what is the Director's proper role as a member of PTAB panels, Mr. Iancu said that
by statute the Director is a member of the PTAB and that he would have to explore the feasibility and desirability of sitting on PTAB panels.

**Recent Supreme Court’s 101 Rulings: “Law of the Land,” But Still Evolving**

In response to a question from Senator Coons on whether he was troubled that under recent Supreme Court jurisprudence the eligibility of medical diagnostics and computer implemented inventions is in doubt and what the PTO could do to address the problem, Mr. Iancu said that those cases are the law of the land and the PTO must follow it. He agreed that these recent cases had introduced a level of uncertainty but noted that the lower courts were still working through the issues and drawing the appropriate lines. He said one of his priorities will be to look at the PTO’s guidance and see if there is any more guidance that should issue.

**Global IP Issues, PTO Funding, and Trolls**

Senator Coons noted that Commerce Secretary Ross had just yesterday sent a response to his and Senator Grassley's July letter asking if the PTO would continue to divert funds to the department as part of its shared services initiative, but it provided “no answer whether the PTO would be required to continue to contribute to shared services even if it won't use them.” Mr. Iancu said that he would investigate and that it was really important to fully fund the Office and use the user fees for the benefit of PTO users.

In response to a question from Chairman Grassley on how he would strengthen IP here and oversees, Mr. Iancu committed to working with the rest of the administration to strengthen IP rights in the U.S. through a higher level of predictability and worldwide by insisting that our trading partners have strong IP laws and enforcement mechanisms for U.S. businesses operating overseas.

When asked by Chairman Grassley if trolls were still abusing the patent system, he said any abuse must not be tolerated and that we need a functioning, balanced IP system. He added that Congress and the courts have taken a number of measures to address that abuse and that we should see how that is working or if more needs to be done, but balance includes being careful not to throw the baby out with the bathwater.

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