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June 25, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

Dear Mr. Chairman and Ranking Member Sessions:

For more than 20 years, the American Bar Association has been on record expressing its desire that persons with appropriate subject matter expertise and experience be selected for appointment by the President to the top leadership positions in the U.S. Patent and Trademark Office. Our policy does not extend to endorsement of the nomination of any particular candidate or candidates for these offices. While we followed with keen interest the selection process that concluded with the nomination of David Kappos to be Under Secretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office, the ABA did not endorse his selection or the selection of any other person for the Office.

Now that President Obama has nominated Mr. Kappos and the nomination is before the Judiciary Committee for confirmation, I would like to inform you that the ABA, through its Section on Intellectual Property Law, has carefully reviewed Mr. Kappos' background and experience and find that he possesses the qualifications set out in our policy recommendations.

The ABA policy, first adopted more than twenty years ago, advocates that "any person selected to be Commissioner or Deputy Commissioner of Patents and Trademarks be a lawyer having experience in patent and trademark law, knowledgeable of both domestic and international laws concerning these matters, and well qualified to represent the United States Patent and Trademark Office domestically and to advocate United States positions on patent and trademark matters internationally." The title for these offices has since been changed to "Director" and "Deputy Director."

Ten years ago, in recognition of the growing size and complexity of the U.S. government's patent and trademark operations, the ABA amended this policy to include the recommendation that persons selected for these two offices "have management skills sufficient to oversee the operations of the Patent and Trademark Office."

We note that Mr. Kappos has more than 25 years experience as a developmental engineer, practicing patent, trademark, and copyright attorney, and corporate manager. We thus believe that Mr. Kappos meets the ABA's recommended professional qualification standards to serve as Under Secretary and Director of USPTO. As you well know, the USPTO is in critical and immediate need for leadership, and we thus urge the Committee to take action on the confirmation process as soon as possible.

Sincerely,

A handwritten signature in black ink, reading "Thomas M. Susman" with a long horizontal flourish extending to the right.

Thomas M. Susman