

United States Senate

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COMMITTEES

ARMED SERVICES

BANKING, HOUSING, AND URBAN
DEVELOPMENT

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VETERANS' AFFAIRS

VIA ELECTRONIC TRANSMISSION

September 15, 2020

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

Dear Director Iancu:

I write you again today in my capacity as Chairman of the Senate Judiciary Committee Subcommittee on Intellectual Property. As you know, I am heavily committed to improving our patent system and the efficiency and effectiveness of U.S. patent law and its administration. That is why I have previously written you to encourage that you take action to improve the *inter partes* review process¹ and to enhance patent quality by improving the disclosure of accurate information about new inventions in a transparent and standardized manner.²

In my most recent letter, I urged you to adopt at the United States Patent and Trademark Office (USPTO) two recommendations from Stanford University professors Lisa Larrimore Ouellette and Heidi Williams. Their recommendations—which I sincerely hope you adopt— would promote policy goals that you and I share. Their recommendations would enhance 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.

Since sending my last letter, I have spoken extensively with former USPTO officials and renowned scholars about what additional steps you can take to improve the efficiency and transparency of the patent system. These conversations lead me to believe that one of the easiest and most effective ways you could improve patent transparency and data disclosure is by instituting a system of tangible incentives for those who are willing, and costs for those unwilling, to disclose accurate scientific data and assignment information. I believe this could be done by instituting a pilot program of appropriate incentives including, but not limited to, fee reduction and queueing advantage for those patent applicants and owners willing to provide accurate and transparent scientific data and assignment information. Such a program should simultaneously impose appropriate tangible costs, such as surcharges, for those who elect not to provide such information.

¹ See Ltr. from Senators Thom Tillis & Chris Coons to the Hon. Andrei Iancu, April 9, 2019.

² See Ltr. from Senator Thom Tillis to the Hon. Andrei Iancu, August 10, 2020.

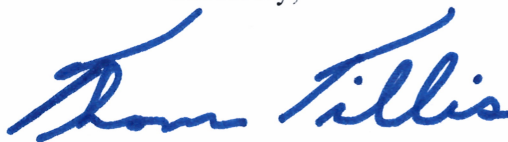
It is especially important that any such pilot program impose tangible costs on those who elect not to provide accurate information as they are, in effect, imposing transactional costs on the intellectual property system through non-transparency. The benefit of such an incentives-cost pilot program is that it addresses the concerns of many companies that believe there are competitive reasons for not disclosing their ownership of patents and patent applications. By providing a tangible cost to not disclose such information, the companies are in effect indicating that the secrecy behind such information is of greater value to them than the costs of non-disclosure.

However, any such program must account for issues of scale. While many large- and medium-size commercial operations are able to accurately and speedily provide both scientific data and assignment information, this is not necessarily true for all small inventors. As you know, mom and pop inventors are the engine of American ingenuity and creativity, and thus any pilot program must take account of their legitimate equities, challenges, and interests. Among other things, you should ensure the pilot program minimizes their burdens, provides assistance, and accentuate the tangible benefits for them if they elect to disclose ownership.

My understanding is that such a pilot program could be implemented by your office under its current regulatory authority and is not without precedent. As you know, the Cancer Moonshot Initiative and Patents for Humanity programs were both originally instituted as pilot programs under the regulatory authority of previous USPTO Directors. Using your existing authority to implement such a program would impose no costs on taxpayers and only minimal administrative costs for your agency. At the same time, implementing such a pilot program would promote our shared goal of improving the patent system.

Thank you for your careful attention to this matter, and for your excellent leadership at USPTO. Please let me know by no later than November 1, 2020, if your office will implement such a pilot program and will take additional steps to promote patent transparency and efficiency. I look forward to our continued work together. If you have any questions, please do not hesitate to contact me.

Sincerely,



Thom Tillis
Chairman
Subcommittee on Intellectual Property