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November 8, 2021

The Honorable Dick Durbin
United States Senate
711 Hart Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley
United States Senate
135 Hart Senate Office Building
Washington, DC 20510

The Honorable Patrick J. Leahy
United States Senate
437 Russell Senate Office Building
Washington, DC 20510

The Honorable Thom Tillis
United States Senate
113 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Durbin, Grassley, Leahy, and Tillis,

Intellectual Property Owners Association (IPO) is pleased that President Biden has nominated candidates to fill two positions that are particularly important to U.S. innovation. IPO does not endorse specific individuals for nomination to be Under Secretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office or to serve on the federal judiciary. However, given that the USPTO has been without a political head for almost a year, and the importance of filling the upcoming vacancy on the U.S. Court of Appeals for the Federal Circuit with a candidate who possesses substantial prior experience in patent law, we write to share our thoughts on President Biden's nominees for these positions.

IPO is an international trade association representing a "big tent" of diverse companies, law firms, service providers, and individuals in all industries and fields of technology that own, or are interested in, intellectual property rights. IPO advocates for effective, affordable, and balanced IP rights and offers a wide array of services, including supporting member interests relating to legislative and international issues; analyzing current IP issues; providing information and educational services; and disseminating information to the public on the importance of intellectual property. IPO's mission is to promote high quality and enforceable IP rights and predictable legal systems for all industries and technologies. Our vision is the global acceleration of innovation, creativity, and investment necessary to improve lives. IPO has a strategic objective to foster diverse engagement in the innovation ecosystem and to integrate diversity, equity, and inclusion in all its work.

For more than a decade IPO has maintained the attached list of recommended qualifications we expect of qualified candidates for the USPTO Director position. The USPTO Director should be a top-caliber individual with strong organizational management and leadership skills and in-depth knowledge of patent and trademark law and practice. We recognize that any candidate is unlikely to possess every qualification listed but intend our recommendations to communicate the level of experience that will be possessed by a superb candidate for this important position.

President Biden's nominee Kathi Vidal has a sterling resume and appears to meet IPO's recommended qualifications. She is a well-respected practicing IP attorney, with extensive litigation experience in the courts and the USPTO's Patent Trial and Appeal Board. As managing partner of Winston & Strawn's Silicon Valley office, she has experience running an organization and has no doubt developed leadership and management experience necessary for running an administrative agency. As a client advocate, she has insight into the importance of IP to businesses. And finally, her experience as a litigator gives her the gravitas to represent the USPTO in highly charged political settings.

Judge Leonard Stark, who President Biden has nominated to fill the upcoming vacancy on the U.S. Court of Appeals for the Federal Circuit, is likewise eminently qualified for this position. Given the large portion of the court's time devoted to patent cases and the specialized nature of patent law, it is important to have judges on the court with substantial prior experience in patent law. Sitting district court judges who have gained deep experience presiding over patent cases are extremely strong candidates for the Federal Circuit. The need for prior judicial experience is particularly acute given that the next open judicial position on the Federal Circuit is due to the impending retirement of Judge Kathleen O'Malley, who served on the district court bench for over sixteen years prior to being elevated to the Federal Circuit in 2010. Currently no other sitting judge on the Federal Circuit possesses district court experience.

We applaud President Biden for his overall objective of expanding diversity in leadership as he makes nominations to lead administrative agencies and to serve as federal judges. We note that the vacancy Judge Stark would leave at the district court would present an additional opportunity to continue advancing this objective.

We appreciate your consideration of our views and encourage the Judiciary Committee to move swiftly to hold confirmation hearings for both candidates. We stand ready to assist in any way we can.

Sincerely,



Daniel Staudt
President

**Undersecretary of Commerce for Intellectual Property and
Director of United States Patent & Trademark Office**

Responsibilities:

- Advises the President, Secretary of Commerce, and the Administration on intellectual property (IP) matters.
- Administers the laws of granting patents and trademarks and the day-to-day management of the \$3 billion agency with about 10,000 employees.
- Develops and articulates Administration positions on intellectual property issues, both domestic and foreign.
- Promotes strong IP policy globally, including strategies to thwart the theft of U.S. IP around the world, and influences non-U.S. IP policy.
- Implements policies and initiatives to provide innovators with quality, timely, cost effective patent and trademark examinations.
- Advocates publicly for effective IP systems and their importance to innovation and economic development.

Recommended Background, Qualifications, and Experience:

Intellectual Property Expertise

- The Director should be a practicing IP attorney and must possess a thorough knowledge of patent and trademark law and procedures.
- The Director should have a minimum of 15 years IP/Patent experience, preferably within the USPTO or industry, with at least 5 years' experience in running a large organization requiring significant managerial and fiscal responsibility.
- The Director must understand the business aspects of IP, understand the importance of patents and trademarks in spurring innovation and economic growth, and be able to balance the views of various industry groups and other interested parties.

Leadership and Management Experience

- The Director should have strong leadership and management skills including experience in setting and communicating strategic direction, effective decision-making and execution, user/customer focus, and ability to inspire employees of a large organization.
- The Director must be willing to embrace and implement new technological solutions to address problems and improve efficiencies.

Policy and Advocacy Experience

- The Director must be capable of effectively taking the international stage in WIPO, EPO, JPO, and in other international agencies, and advocating for U.S. positions on international IP matters.
- The Director must be experienced in setting policy and have proven diplomacy skills. The Director should possess political acumen and have prior experience in working with government agencies in a highly charged political setting.