

## **IPO EDUCATION FOUNDATION PTO IPO Day**

Deputy Director of the U.S. Patent and Trademark Office Michelle K. Lee

Luncheon Keynote Speech

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Remarks as Prepared for Delivery

Good afternoon, everyone. Thank you, Herb, for that introduction and for inviting me here to speak today. And, also a special thanks to Phil Johnson for his leadership as President of IPO. It's an honor to be speaking here again as the head of the U.S. Patent and Trademark Office.

As a former IPO board member, I have a particular affection for this organization and am always eager to come back. I'm also honored by the trust President Obama placed in me as his nominee to be the next USPTO Director.

Our two organizations, the USPTO and IPO, have a long tradition of commitment to serving America's doers, makers, and innovators. The title of today's event is "Connecting the IP Community with the PTO," but I like to think that we're always connected to the IP community. We're a part of it. That was certainly how I felt my first year on the job with the USPTO, when I was leading our Silicon Valley office. And it's how I've felt in the last year while serving as the agency's leader. I continue to seek to work with all of you as we advance our agency's central mission, namely; excellence in operations; excellence in output; and excellence in customer service.

A lot has happened since I last spoke before you a year ago. It's been a very busy year, but a very productive one. And a lot is on our near-term horizon as well. I'm sure some of you have heard of our Enhanced Patent Quality Initiative. But, I want to take this opportunity to talk a little further about it, because it's something my team and I are very excited about.

Now, I know I'm hardly the first USPTO leader to emphasize quality as a priority. And I certainly won't be the last. But for too long, due to uncertain budgetary conditions and limited financial resources, the USPTO has had to make do with less. That is no longer the case. Thanks to the America Invents Act—something that many of you were involved in passing—the USPTO is now in an historically healthy financial position. Further, we've made significant strides in reducing (and will continue to reduce) our patent pendencies and backlogs. So, for the first time in a long time, the USPTO doesn't just have to make do. We can focus more than ever on building a world-class patent quality system for American entrepreneurs and innovators.

We all know that intellectual property plays a critical role in incentivizing innovation. I know this through my experiences as an engineer, a Silicon Valley law firm partner advising innovative companies on their IP issues, and an in-house counsel for a young company that grew into a multinational corporation. I understand from a business perspective the critical

value patents can have for a company, as well as the cost to society when a patent issues that should not have. That's why Commissioner for Patents Peggy Focarino and I launched the Enhanced Patent Quality Initiative. If you didn't see our Federal Register notice that published on February 5<sup>th</sup>, I encourage you to read it. You can find a link on our website.

This new initiative is built around three core elements: Excellence in prosecution services; excellence in customer service; and excellence in quality measurement. On the excellence in prosecution services prong, we offered three proposals for public input: (1) To provide a mechanism for an applicant to request USPTO's quality assurance team to review a particular application. The application would be placed in a pool for selection by the QA team for review. It wouldn't provide an appeals path, but instead help better identify trends and challenges earlier in the examination process to better inform training and improvements. (2) To require an enhanced automated pre-examination search that leverages the latest in search technologies. Currently that's an examiner option limited by outdated technology, but we could require the use of it by examiners, or we could allow applicants to request it. Another possibility is to share the results of the search with the applicant to give the applicant the opportunity to amend before the examiner begins substantive examination. (3) To enhance the clarity and completeness of the prosecution record by making claim construction explicit in the record; providing further details of the interview between applicant and examiner; or requiring a statement for the reasons for allowance. There are many other ideas listed in our Federal Register notice, and we're open to more. Bottom line: We're taking a hard look at patent quality from every angle and brainstorming paths to improvement.

And we're also taking engagement to an entirely new level. We are of course seeking written comments, which are due May 6<sup>th</sup>. But I want to take a moment to encourage all of you to attend, whether in person or via webinar, our two-day Patent Quality Summit at the USPTO on March 25<sup>th</sup> and 26<sup>th</sup>. We're encouraging participation from patent prosecutors and litigators, patent owners and inventors, licensees, business leaders, and of course our own patent examiners. Really, we're looking to hear from anyone who has a stake in our patent system, which—if you think about it—is everyone. This is, of course, not meant to be a one-and-done event. We recognize that, as with any company that produces a truly top quality product, the focus on quality must be pervasive throughout the organization and long-term. There are few quick and easy fixes. Hence, our Enhanced Patent Quality Initiative is an ongoing priority for the agency.

There's no better sign of that than the new senior executive position Commissioner Focarino and I created, a Deputy Commissioner for Patent Quality. That person's sole job is to focus on the USPTO's patent quality efforts, now and into the future. We chose for that position Ms. Valencia Martin-Wallace, an electrical engineer with more than 20 years' experience in the office as an examiner, TC Director, and Assistant Deputy Commissioner for Patent Operations. She is doing an outstanding job helping us keep our eye on the ball when it comes to quality improvements.

But as the agenda for today's meeting shows, what matters isn't just the quality of patents we will be issuing, but also patents already issued. I understand there are some panels this

afternoon on our Patent Trial and Appeal Board, but let me take a moment to discuss our new administrative trial proceedings.

The PTAB has been quite busy meeting a greater-than-expected demand for the AIA authorized trials. As of mid-February the PTAB had received nearly 2,500 inter partes review filings and nearly 300 covered business method filings. It's pretty clear why these proceedings have proven so popular. The intent of Congress was to provide a faster and more affordable means to challenge issued patents. And the numbers reveal that is exactly what is happening. The PTAB is issuing a claim construction (by way of our decision to institute) in a mere six months. Compare that to the pace of the so-called Rocket Docket, the Eastern District of Virginia, where the parties will find the process taking about 12 months, or in other federal courts where the proceedings can drag on for three years or more.

I would also like to note that we were pleased with the Federal Circuit's recent ruling in *Cuozzo Speed Technologies*, which endorsed the rulemaking process the USPTO underwent to implement our PTAB trial procedures. While the Agency could not give every commenter all of what he or she wanted, I think it fair to say that the process was a model of transparency and public engagement, and the *Cuozzo* decision confirmed that the USPTO followed Congressional intent. But, because we recognize the significant role these PTAB proceedings play in the patent landscape, we don't claim we have created a perfect system on our first try.

That's why, promptly after being sworn in as Deputy Director, I asked my team to reach out to all of you through a series of roadshows and a public comment period. I wanted to hear from you what we are doing right, and what we could do better in our relatively new AIA trials. We'll be issuing very soon, as interim rules, what we're calling "quick fixes" based upon public feedback as well as suggestions from our own judges. Later this year, you'll see from us a second package of proposed rules, to address more challenging changes. We'll be conducting another series of roadshows later this year to engage directly with you on these proposed rules, and will seek written feedback as well. Let me be clear that the Agency is open to considering changes to ensure the most effective and fair AIA trials possible in compliance with our legislative mandate. We aim to implement final rules by the end of this year.

But there's more we're doing to improve the quality of patents and agency operations and the overall functioning of our patent system. When I testified earlier this year before the Senate Judiciary Committee, I was asked if, given the changing patent landscape over the last year, I still felt patent reform legislation was necessary. The answer is yes. But any legislative changes to our patent system need to take into account changes that have already occurred in the courts and administratively including at the USPTO. Everyone has a role to play in achieving meaningful and balanced improvements to our patent system: the courts, Congress, the USPTO, and the public. I've already outlined our focus on improving patent quality and post-grant review proceedings.

When I spoke here last year, I mentioned a number of administrative actions we were undertaking, part of President Obama's intention to strengthen, quote, "the quality and

accessibility of the patent system.” Let me take a moment to discuss some of the great progress we’ve made on these fronts. For one, we’ve significantly expanded our Patent Examiner Technical Training Program, which makes scientists, engineers, and academics available to our examiners to keep them up to speed on the latest technologies and advancements. We’ve made it easier than ever for experts to participate. As a result, last year we more than doubled the number of training events while tripling the time examiners spend in technical training. You have helped us train our examiners on everything from stem cells to robotics, from petroleum to golf ball designs. So thank you to those of you who have volunteered, and for those of you who have not, please consider doing so. Details on how can be found out on our website.

Another initiative that I know is of interest to a lot of you here is what we like to call our “Patent Litigation Toolkit.” This is a set of resources, provided both by the USPTO and by third parties, that answers common questions on patent assertions. It also allows anyone—a recipient of a demand letter, a practicing IP attorney, or simply an interested member of the public—to search for free a variety of databases that contain details on various patent litigations. If you haven’t explored these databases, I encourage you to do so.

And I must mention our continuing effort to ensure robust pro bono programs in every state. We are well on our way to seeing programs in all 50 states by the end of this year. If you are interested in volunteering to represent an under-resourced inventor or small business filer and prosecute a patent application before the Office, please submit your name through our website.

But these are not the only steps we’re taking to make our IP system more accessible to all. We have made strides on the trademark side of the house as well. Last year, we were very pleased to lower fees for trademark applicants who were willing to submit their correspondence with the Agency electronically. When was the last time you saw a government agency lower its fees? Count that as part of our focus on better meeting our customer’s needs by making it easier for all members of the public to benefit from trademark protection. Our Trademarks operation is the international gold standard. And I know that will continue to be the case under the strong leadership of our new Commissioner for Trademarks, Mary Denison.

Speaking of our focus on excellence, let me turn to a subject that is near and dear to my heart. We have embraced an ethos that permeated my time in Silicon Valley, a belief in the power of Big Data Analytics and Open Data. The Obama Administration has aggressively made government data more open and accessible to the public, and that is important to us as well. We house a treasure trove of data at the USPTO. We’re moving forward on ways to better disclose and disseminate that data, as well as making better use of it ourselves. For example, we’re seeking to make more accessible our patent application information, known as PAIR, and our Patent Trial and Appeal Board decisions and orders. We have already received some great input from our stakeholders at a roundtable discussion we had in December on what data would be most useful to release. But, as we advance our Open Data initiative, we welcome your on-going input and feedback.

Turning to another vehicle for excellence in operations and customer service, let me turn to our four regional offices. I have a particular affinity for these offices, since as I mentioned earlier, I began my public service as the first Director of the USPTO's Silicon Valley office. We've made tremendous progress in the last year standing up those offices and taking advantage of the full benefits they bring. Last summer, we opened our permanent regional office in Denver, and are actively adding patent examiners and PTAB judges there. That office is led by Russell Slifer, an IP law veteran whom many of you know since he served over seven years on the IPO board. Another key leader for us is John Cabeca, who runs our Silicon Valley office. John is an electrical engineer and longtime veteran of the USPTO, who helped launch our new Cybersecurity Partnership in Silicon Valley last year. And we just recently hired a fantastic individual to lead our Detroit office. Dr. Cristal Sheppard brings to the job more than two decades of experience as an IP law practitioner on the Hill and in academia. As for the Dallas regional office, we're very close to hiring a director and hope to announce that hire later this spring. In short, by the end of the year, we should have all of our regional offices up and running in their permanent locations, each with a director on the ground leading local efforts to better serve all of you.

So it should be clear how deeply engaged the USPTO is across the country. But we all know that innovation, more than ever before, is global. It's about engaging in the marketplace in Boston as well as the marketplace in Bangkok. Our 21<sup>st</sup> Century economy knows no borders. But borders still matter when it comes to intellectual property law and practice. And that's why the Agency is focused on efforts to harmonize our IP procedures and rules.

Last week, I was in Yokohama, Japan, for a meeting with my counterparts from the EPO and JPO. The meeting was a nice precursor for the upcoming IP5 Summit, which includes the patent office heads of Korea, China, Japan, the European Union, and the U.S. The Chinese patent office will be hosting the IP5 Summit this May in Suzhou. China is of particular focus to the USPTO because that market is so important to many of our stakeholders. I'm honored to co-chair, along with USTR, the IP Working Group for the U.S.-China Joint Commission on Commerce and Trade. While in China I'll be doing a series of meetings in Beijing with key officials as well as U.S. IP stakeholders.

But as to the here and now, I hope you saw our momentous announcement that the U.S. has ratified the Hague Agreement concerning the international registration of industrial designs. This is critically important for American businesses and entrepreneurs. When this treaty goes into effect on May 13<sup>th</sup>, any U.S. applicant pursuing protection for industrial designs in multiple jurisdictions under the Hague Agreement will be able to file a single application either with the USPTO or with WIPO. The Hague system will allow you to register up to 100 designs in more than 60 territories with one filing. That's remarkable.

Finally and importantly, I mentioned that one enabler of our activity and public engagement has been the recent achievement of some financial stability due to our fee-setting authority granted by the AIA. Many of you likely participated in that fee-setting process a couple of years ago. Well, we're not too far from revisiting our fees. We'll want to hear from you about what is working with our fees, and what changes you would recommend. The services we

provide that are funded by those fees all tie back to our mission of advancing American innovation. Every initiative I've outlined here today ties back to that mission. And every public engagement I've detailed here ties back to that mission.

As you can see, we are focused on advancing innovation through excellence in operations, excellence in output, and excellence in customer service. We can only accomplish those goals through close collaboration with all of you. This conference, with its theme of "Connecting the IP Community with the PTO," is the perfect manifestation of that collaboration.

So thank you once again for having me here today, and I look forward to furthering that collaboration.

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