November 17, 2021

Re: Former Director of the U.S. Patent & Trademark Office Andrei Iancu’s Abuses of Power and Breaches of Public Trust

We write to express the urgent need for a Director of the U.S. Patent & Trademark Office (USPTO) who will lead the agency in a different direction than the last one. Before and after serving as Director, Andrei Iancu worked as a trial lawyer at one of the country’s most profitable law firms, Irell & Manella. Irell’s clients include some of the country’s biggest companies—among them, Facebook and Regeneron. During his tenure as USPTO Director from February 2018 to January 2021, Andrei Iancu repeatedly violated the public’s trust and abused the powers of his position to benefit patent owners—including Irell’s clients—at the expense of everyone else.

Listed below are a few examples of why we desperately need a different kind of USPTO Director—one who will use their power to serve the public instead of catering to private clients, and thereby restore the public’s trust in the agency’s ability to promote innovation fairly and effectively for all.


   In 2013, the USPTO was #1 in the Best Places to Work ranking of 300 federal agency subcomponents.¹ In 2016, the USPTO was ranked #19. After Director Iancu took office, its position fell rapidly—to #60 in 2018, to #85 in 2019, and to #171 in 2020, when it fell below the upper quartile for the first time in over a decade. The USPTO was ranked even lower for “Effective Leadership: Senior Leaders”—#241 out of 410 agency subcomponents. The next USPTO Director must reverse this deeply concerning trend.

2. Failed to give patent examiners the support they need to do their jobs.

   Patent examiners are the people who review patent applications to make sure they disclose and claim new and useful inventions. The Patent Office Professional Association has reminded the USPTO that “basic competent examination is a complex task under any circumstances, and that without the necessary time, training and support, it is extremely difficult to achieve,” and asked it “to step up its support of the examiners and the existing examination process.” ² But the USPTO under Director Iancu has done nothing to increase

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¹ These rankings are primarily based on data collected by the Office of Personnel Management through its Federal Employee Viewpoint Survey, https://bestplacetowork.org/about/methodology/.
² http://www.popa.org/about/history/quality-initiatives/.
support for examiners and ensure they can conduct basic competent examinations of patent applications. In fact, it has done the opposite by giving patent applicants a free pass to get around a patent examiner’s final rejection of their application. The next Director must commit to supporting examiners, including by letting their final rejections take effect.

3. Rewarded drug company for endangering people’s lives to maximize monopoly profits.

In 2015, a drug company, Gilead, applied to the USPTO to extend the term of a patent on an important HIV drug. In 2019, an HIV-prevention advocacy group, PrEP4All, petitioned the USPTO to deny the request because Gilead’s application was legally defective. PrEP4All submitted evidence to the USPTO that Gilead had deliberately postponed development of the patented drug in order to manipulate—and extend—the length of patent term extension for which its drug was eligible. In other words, Gilead appears to have endangered patients’ lives in order to maximize profits and then asked the USPTO to reward it for doing so. PrEP4All submitted additional evidence to the USPTO that Gilead had breached its legal and ethical duty of disclosure to the USPTO, both by withholding material information about the company’s deliberate gamesmanship of the patent term extension system and by submitting incomplete or incorrect information about the timing of events relevant to the extension. Under Director Iancu, the USPTO ignored PrEP4All’s petition and granted Gilead’s request without investigating or addressing any of the evidence of the company’s misconduct. As a result of the USPTO’s decision to grant the extension, patients and payers will likely wait an additional three years for access to low-cost generic versions of the HIV drug.

4. Filled the Patent Public Advisory Committee with representatives of patent owners and his law firm’s clients while denying the public any representation.

The Patent Public Advisory Committee (PPAC) is the only formal mechanism for public interaction with USPTO leadership, but its members do not include any public interest representatives, e.g., advocates for patients, consumers, or scientific researchers. Instead, the PPAC’s members include numerous current and former employees of major patent owners, such as Eli Lilly, Juno Therapeutics (a client of Director Iancu’s), and Facebook (a client of Director Iancu’s law firm)—all of whom joined during Director Iancu’s tenure. The next Director must include more public representatives in the PPAC and create new mechanisms to facilitate public consultation.

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3 https://www.uspto.gov/patents/initiatives/after-final-consideration-pilot-20
5. Implemented policies that directly benefited his law firm’s clients, contravened the will of Congress, and hurt the public.

   In 2011, Congress created streamlined administrative proceedings to make it easier, cheaper, and faster for members of the public to challenge invalid patents without wasting huge amounts of time and money on trials in federal district court. During his tenure, Director Iancu unilaterally enacted policies to make it harder, more expensive, and more time-consuming for those challenges to proceed. In particular, Director Iancu authorized administrative patent judges to refuse, arbitrarily, to review invalid patents so that trials in district courts or the International Trade Commission could proceed. That directly undermined Congress’s intent, benefited Director Iancu’s clients, and hurt the public. For example, these rules allowed VLSI, a client of Director Iancu’s law firm, to win a multibillion dollar verdict at trial on patents that the defendant had tried to invalidate using the procedure Congress created for that purpose. These rules have also insulated numerous low quality patents on expensive pharmaceutical treatments from compelling legal challenges.

   If you have any questions, please contact Alex Moss of the Public Interest Patent Law Institute at alex@piplius.org or (818) 281-2191.

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