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A CONVERSATION WITH MICHELLE LEE,
USPTO DEPUTY DIRECTOR

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Featured Speaker:

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P R O C E E D I N G S

MR. WEST: (in progress) -- at USPTO. That's #uspto, so if you wish to post comments or ask questions during the event you can do so through that. And if we get interesting questions we will try to include that in our audience Q&A session.

So, as you know, the U.S. Patent and Trademark Office is a leading force in American innovation policy. The agency reviews hundreds of thousands of patent applications every year and grants intellectual property protection to those who are able to persuade the agency that they have a novel idea.

As a major force in U.S. innovation policy, the USPTO works closely with Congress, the administration, the legal community, and industry to implement new approaches to innovation and patent filings. So today we are pleased to welcome Michelle Lee to Brookings. She is the deputy under secretary of Commerce for intellectual property and the deputy director of the U.S. Patent and Trademark Office.

In this position, Ms. Lee provides leadership and oversight to one of the largest intellectual property offices in the world. She serves as a principal advisor to the President through the Secretary of Commerce on both domestic and international aspects of intellectual property. She handles the day-to-day management of the policy, budget, and operations of an agency that now has over 12,000 employees.

And prior to her current position, she served as the first director of the Silicon Valley U.S. Patent and Trademark Office. And she was also the first head of patents and strategy at Google before entering public service. She actually began her career as an engineer and computer programmer at the Hewlett Packard Research Laboratories and also in the Artificial Intelligence Lab at MIT.

It's been an eventful week for her. Yesterday, she testified before the Senate Judiciary Committee as part of her confirmation hearings, so today should be a

little less stressful than perhaps yesterday was, depending on the questions that we ask her.

So our format is going to be I'm going to ask a few questions and then we will open the floor to any questions that you have.

So before we dive into policy, I'd like to give our audience kind of a better sense of who you are and the kind of experiences that you bring to your work at the Patent Office. So I know that you were an engineer and a computer programmer before you became an intellectual property attorney, so could you just tell us a little bit about your background?

MS. LEE: Sure, Darrell, I'd be glad to. And first let me say thank you for having me here. It's a real pleasure to be here with this audience and having the opportunity to speak to all of you.

I was born and raised in the Silicon Valley and that turned out to be and is one of the most innovative regions in our country, if not the world. And my father was an electrical engineer and so, too, were all the dads on the street that I grew up on. And it was very common for these individuals to work for companies that were created by somebody with a clever idea, who patented that idea, who obtained venture capital funding, and then would bring their product or their service to the marketplace. And oftentimes these products and services would revolutionize the world or change the way in which we live. Some succeeded, some didn't, but they certainly created high-paying jobs for a lot of folks.

So that was my inspiration for studying electrical engineering and computer science at MIT and working at MIT's Artificial Intelligence Laboratory and HP's Research Laboratory. And I have to say the experiences that I gained there, being a part of innovation, informed me in my job even to today.

So then I was attracted to the legal side of the profession. I was in the process of getting my Ph.D. in computer science and that did not continue to conclusion because at the time there was a case, and I think many of you may remember it, it was the Apple v. Microsoft case. And at issue in that case was to what degree and whether copyright could protect the graphical user interface of computers. So things like the scroll bar, the trashcan, the icons that were so revolutionary at the time, those were novel legal questions that had no answer in the existing copyright jurisprudence. And I thought to myself, huh, those are really interesting legal issues. And changes in technology would increasingly necessitate us to take a look at existing case law, be creative, apply it in a manner that would hopefully encourage further innovation.

So that was an inspiration to go to law school instead of finishing my Ph.D. in computer science. I did so. And I'd like to think that I've always been a part of innovation, whether as an engineer, as a legal advisor for startup companies and major companies. And even now, in my current job, I view it's my job and my role to promote and encourage American innovation.

MR. WEST: So you've obviously had very interesting experiences in the private sector and I like that combination of technology and the law because so many of our policy issues kind of occur at that intersection. But you've now come across the country from Silicon Valley. What made you want to work in government?

MS. LEE: I think my answer's probably no different from many of those who are in public service and that's, quite frankly, the desire to give back to a country that has given me and my family so much. Through my experiences, as I said, as an engineer, as a Silicon Valley law firm partner representing a bunch of innovative companies, as an in-house counsel for what started as a small startup that grew into a multinational corporation, I've witnessed firsthand the importance of technological

innovation and intellectual property in our country's economic success. And I came to understand and practice almost every area of intellectual property law and certainly almost every aspect of patent law. I wrote patents. I asserted patents. I defended against patent infringement and I've licensed, bought, and sold patents, sometimes for very large sums of money.

So I understand and appreciate from a business perspective the uses of intellectual property, and for innovators and for our businesses. And I wanted to bring that perspective to this job and to help build an IP system that, quite frankly, encourages and promotes innovation for the next generation.

MR. WEST: So let's jump into some of the public policy issues that you're facing. You've had a year in your current position and I know it's been a very busy year. Can you tell us what is your top priority at this point?

MS. LEE: Well, Darrell, I think I have many top priorities, but let me just start with one of my top priorities, and I think that would be enhancing the quality of patents issued by the United States Patent and Trademark Office.

You know, I've seen firsthand from the business side the importance that patents play, the exclusionary right that it gives, the protections that it gives innovators and businesspeople, startups at the very early stages. If you're entering a market that is highly competitive, you need to have the assurance that you will have protection as you go up against some very steep and oftentimes well-funded competition. So for the USPTO to issue those patents promptly and accurately is critically important so that people invest in these developments.

But also, on the other side, I've seen the effect of patents that should not have issued or that have issued with a scope that is too broad. And there's a cost associated with that, as well. So if you think, drawing back to my business roots, on

average a startup may get maybe between 10- to \$15 million in venture capital funding to last over a number of years. And also, there are statistics that indicate that patent litigation can cost well over a million dollars, if not more, sometimes double digits. So you can see that if there is abuse of litigation or a patent that should not have issued there's also a cost to our businesses. So that's why we at the PTO recognize the extreme importance of issuing quality patents in a timely manner.

And I would just say that, you know, I'm certainly not the first head of the United States Patent and Trademark Office to say that quality is a priority nor will I be the last, I am sure. But I will say that for too long, due to uncertain and limited financial resources, the USPTO has had to make do with less, but that is no longer the case.

Pursuant to the America Invents Act that passed in September of 2011, Congress gave us the ability to set our fees. And now that we're able to set our fees and now that we've been working with our appropriators to collect -- or to keep the full amount of our estimated fee collections, we are in a different financial situation than previously.

We an operating reserve. If we don't use monies every year, we can carry it over. And that permits us to think strategically and for the long run about perhaps more expensive initiatives that truly help our agency. So certainly being in a sounder financial situation is a tremendous advantage now as we look for initiatives.

Also, our pendency and our backlog, Darrell. I mean, if you look, it was in January of 2009 at an all-time high of I think 750,000 unexamined new patent applications. And clearly, it's a priority for the agency meme to drive that number down. And I would say since that time we've made some significant progress that I'm pleased to report on. We've had a 20 percent reduction in our backlog of newly examined patent applications despite a 4 percent year-over-year increase in filings.

So we're making good progress there. There's certainly more to do, but I

would say the combination of those two things, certainly being in a sounder financial footing and having the backlog go down, now, for the first time, the PTO's able to do more than just sort of make do and we can focus on the workforce, building it, and the tools that we need to support what I'll call a world-class patent quality system.

And that's why Commissioner for Patents Peggy Focarino, and she's sitting here in the front row, and I asked her to join me, if you could please stand up, we are super excited to be championing a broad new Enhanced Patent Quality Initiative that we will roll out shortly. And that initiative has three pillars to it. It's excellence in our prosecution services, excellence in customer service, and excellence in the measurement of patent quality. And we've directed our employees across the PTO from a variety of business units to come together -- examiners, IT specialists, quality assurance specialists, policy advisors -- to take a hard look from every angle on patent quality and to brainstorm new ways to improve it.

We're considering all options, big and small, before, during, and after examination, including things like increasing the resources to improve patent examination quality by expanding focused review of examiners' work product to measure the impact of training; also improving the effectiveness of interviews between applicants and examiners; and also providing training to all of our employees who interact with the customer on customer service and customer training. We're also looking at ways to compare best practices conducted in foreign patent offices and how we might leverage what they do to improve what we do and collaborating with them more closely.

And we're also looking at big data. I mean, I come from the tech world. I come from Silicon Valley and big data has been very helpful for many, many companies. And we're looking at big data techniques. I mean, the PTO has a lot of data. We measure a lot of things. But we can certainly measure more and take that data to further

streamline and improve and target our training to examiners to improve the quality of the examination process.

So that gives you some idea of some of the initiatives we have underway in terms of measuring patent quality. We need to better understand what quality means to our customers or our stakeholders. And we'll be having a conversation with our stakeholders explaining how we currently measure patent quality and soliciting their input on how we can do better.

And we will have a new *Federal Register* notice. I'm very excited about quality. I have a lot to say about it. We have a new *Federal Register* notice that will publish soon, where we'll be requesting input on our newer proposals to enhance patent quality and, again, getting the public's input on any ideas that we're not looking that we should be considering. We're very open to hearing those.

And we plan to have a two-day patent quality summit with a series of follow-on conversations with our stakeholders. And I'm very excited, Darrell, today to announce that quality is such a priority for the agency that Commissioner for Patents Peggy Focarino and I have created a new senior executive position that will focus exclusively on patent quality efforts of the PTO. We recognize that the quick fixes are -- many of them have been undertaken and we need to give deep thought to this. And we recognize the importance of quality.

And I wanted one person whose one and only one job it is to think day-in and day-out on how to improve patent quality at the PTO. And so we are excited to announce that one of our best and brightest, Ms. Valencia Martin Wallace has been selected to be the first deputy commissioner for patent quality. And we are confident that she will do an outstanding job and that she will help us keep our eye on the ball on improvements on patent quality now and in the long run.

And finally on this topic, I want to thank Commissioner Focarino for the fantastic job that she and her team have done in terms of quality improvements and really, and most importantly, getting the agency to this point, working on our backlogs and reductions, and having really the engagement of a top-notch, fully engaged workforce so that we are able to make really substantial improvements on the quality front. So I'm very excited about that, we're very excited about that, and the team is looking forward to rolling that out.

MR. WEST: Well, we always love it when our speakers come and make news, so it's interesting to hear all these new announcements. And if I could just ask a quick follow-up on a couple of these points.

So you mentioned you're going to be having a two-day patent summit. Do you have a sense of when that's going to be, what the agenda is going to be, and kind of how that summit is going to operate?

And then on the new position, the deputy commissioner for patent quality, could you just explain a little bit about that position, how you see the person doing -- what kind of responsibilities the person will have, and so on?

MS. LEE: Okay. So the summit, the date is still to be determined yet, but I think we will -- and we will share with all of you when the news comes out. There will be -- the summit announced, it's a two-day summit, and we'll put forth the proposals that we've been brainstorming on. We to put forward some concrete proposals because if you just ask the question what should we do to improve quality, that's a hard one to just sort of get your head around and digest and come up with concrete proposals. And certainly our stakeholders, certainly some of them, will have some concrete ideas and we're certainly welcoming of that. But we wanted to put forth some concrete proposals for the public to react to, but that's just the beginning of the conversation.

I mean, this conversation is going to occur many times over the course of the year and, quite frankly, over many years. And that's why we have this deputy commissioner for patent quality because her job is to make sure that we're getting the input from the public on these important initiatives, that we are thinking about both short-term improvements and really long-term improvements. I mean, it's like my exercise regime. I mean, I'm not going to get into shape by going to the gym once the beginning of the new year, right? It's a lifestyle -- you have to have it, you have to do it every day, you have to think about it every day. And so --

MR. WEST: That's what I hate about exercising. (Laughter)

MS. LEE: Yes, it's a tough one, you know. But the PTO has been -- I mean, we do care and has always cared and has always had quality as a priority, but, like I said, we are in a new point in recent history. I mean, it's hard to do things when you have more limited resources, when you're on a year-to-year budget, right, and when you have a very, very high and upward trending backlog, but with improvement in those areas, we're very excited about what can be done.

MR. WEST: So it sounds like you have very ambitious plans on the patent quality side. I know you're also working on some other priorities in terms of operations, the use of technology, some of the international activities. Could you tell us about some of these other activities that you have underway?

MS. LEE: Yes. So, as I said, I have many top priorities and other top priorities include, for example, ensuring that American companies have strong and cost-effective protections overseas. And if you think about it, in our increasingly global marketplace, what American company thinks that they're going to offer their products and services only within the United States? In the age of Internet, where your product can be just as easily sold, your first sale could be just as easily in Dallas, Texas, as in Beijing,

China, right, that world does not exist anymore. So American companies are increasingly looking to protect their inventions in multiple countries and they need to rely upon quick, cost-efficient, and effective protections.

So we are working with, and we do a lot of work with, other countries to make sure that they share our IP values on patents, copyrights, and trade secrets; that their systems, their judicial systems, their customs, their law enforcements, and their laws respect and protect intellectual property rights not only of their domestic companies, but of foreign companies doing business in their country. So that's a priority of ours.

In addition, patent law harmonization. You know, it's funny, our patent law systems, each one sort of grew up on its own in its own country with its own set of laws, with its own set of filing requirements. But as the world becomes more and more global, companies are applying for patents and other intellectual property rights in multiple jurisdictions. And a lot of work has been done, but a lot more work can be done in terms of streamlining that process. I mean, as a head of patents for a major corporation who had to file in multiple countries, it's expensive. Right? And there's a lot of duplication. So one of the focuses of the agency is to focus on streamlining and collaborating more with some of our foreign counterpart offices to reduce the cost, to streamline the efficiencies, and to get a better quality product to our innovators quickly so that they can conduct their business.

Another priority is on operational excellence. Darrell, we are certainly focused on further reductions of our backlog. I mentioned and shared the stats with you. It's a good direction. It's a good downward trending direction, but there's more we can do and we are still focused on that.

And also, on strengthening and improving our telework program. Our telework program has been critical to the success of the agency and has a very important

role to play on a going-forward basis. But we are also making improvements and we very much look forward to making it the very best that it can be.

And finally, you know, sort of on the more mundane issues, making sure that the IT systems that our examiners are working on, so that they can best do their job most efficiently and effectively. I mean, in past periods where we had more limited budgets and we were subject to the sequester and so forth, some of the first things cut, unfortunately, is the IT budget. So, you know, putting a renewed focus on that and making sure we deliver on those issues.

And also, another priority is making sure that we have balanced and meaningful legislative reforms, and we can certainly talk more about that later on.

And finally, a topic that's near and dear to my heart is making sure that we open the four permanent offices, satellite offices, that are located in Denver, Dallas, Detroit, and the Silicon Valley, and making sure we get those up and running to serve our innovators.

MR. WEST: So I know you were the first director of the agency's Silicon Valley office and you mentioned the new offices that are underway, as well. Can you tell us about what the division labor is going to be between the D.C. end of things and the regional offices? And then also, how these various offices are going to affect their particular region.

MS. LEE: So right now, all the applications are filed, many of them electronically, and submitted to Alexandria, which is where we're located. And the applications are then routed out to the satellite offices, depending upon the workload and the technical expertise and so forth. But our vision is, and the plan is basically, we will have four satellite offices. They will have examiners on the ground examining patent applications. And we will have Patent Trial and Appeal Board judges on the ground

adjudicating our Patent Trial and Appeal Board proceedings.

And that proceeding, for those of you who are not familiar, was enacted pursuant to the American Invents Act. Some of the work there is giving stakeholders the ability to have the USPTO take a second look at patents to determine whether or not they should have issued. It's meant to be a faster and more cost-effective solution to District Court litigation. And also, you get a panel of three technically trained judges.

So that's the vision for those offices, but it's really more than just prosecuting patents and dealing with Patent Trial and Appeal Board proceedings. We very much view them as hubs of education and outreach. So when I say "education," I don't just mean the PTO to the public about our filing procedures and the importance of IP and things of that nature, although that certainly includes that. I mean the public educating the PTO on how we can have better programs, procedures, and policies to best meet their innovation needs.

So it's a two-way communication there that we find very, very valuable. And having come from the outside and having participated in some of those, it's extremely important for the PTO to be able to do its job well.

And if you think about it, if you're a small inventor or you are a startup company, you're not going to have a large legal budget to come to Washington, to participate in proposed rules, and to have a government affairs person advising you on when and where to come and when to provide input. So our ability to go out into the local innovation communities, to bring that sort of programming to them, I think will enable us to get a broader perspective on how we can do our job better, and it's very powerful.

And like I said, I'm a huge fan and a belief that those offices will be tremendously beneficial to our local innovators across the country and it also helps the PTO. I mean, it enables us to recruit and retain top technical talent. And I come from the

tech world and good technical talent is very hard to get and come by. And we've been hiring for 200+ years in the Washington, D.C., area. We've done a very nice job, but there's a lot of technical talent outside this area. And let me tell you, we've done very well with our hires in Denver, Detroit, Dallas, and the Silicon Valley, and I look forward to doing more of that.

MR. WEST: So we know President Obama has undertaken a number of Executive Actions on patent reform. I think there were five in 2013 and then three in 2014. And then also, there have been several major Supreme Court decisions on various patent cases.

So given the fact we've seen action from the Executive Branch and the Judicial Branch, Congress, what do you think Congress should be doing in terms of possible legislation in this area?

MS. LEE: So thanks for that question. The administration has a priority to create business environments where innovative companies can flourish. And patent reform, whether achieved legislatively, judicially, or administrative, or more likely through a combination of all of those is an important part of that effort.

And as you've noted, Darrell, I mean, there have been changes recently in the courts, from the Supreme Court, from the Federal Circuit, as well as administrative changes, many of them from the PTO in terms of implementation of administration actions; in terms of, for example, the Enhanced Patent Quality Initiative; in terms of implementation of the AIA post grant proceedings. But there can and there should be more legislative reform.

Those reforms should take into account the changing landscape so that we strike the right balance between -- or balance in terms of achieving meaningful and impactful reform.

MR. WEST: So I know you've spent a lot of time telling us about your plans on the domestic side, but international intellectual property is also something that I know you pay a lot of attention to, so could you give us an update on what you would like to accomplish in the international realm?

MS. LEE: Sure. We have a number of initiatives underway and obviously we work closely with the United States Trade Representative to ensure that our free trade agreements include effective borders and civil and criminal procedures. I also co-chair the U.S.-China Joint Commission of Commerce and Trade, IPR Working Group - Intellectual Property Rights Working Group. And through this group the administration addresses a wide range of trade issues with the Chinese government. The IP Working Group deals with the intellectual property issues. And we're working with the Chinese government to ensure that there are appropriate protections for American intellectual property rights when American companies do business in that country.

We also have a very popular and successful IP attaché program, where we have about a dozen of our professionals around the world in various countries, including China, India, Brazil, and Geneva. And basically, the IP attachés help our companies navigate the IP landscape in a foreign country.

You know, each country is a little different. It has a slightly different landscape. It has slightly different challenges. And it helps our companies navigate that landscape.

And it also, having these IP attachés on the ground, helps inform sort of the policy decisions that are made in Washington. We make better policy decisions at PTO in terms of what we need to do and how we can work with a country to the benefit of our companies. And I think other folks have found, on the Hill and so forth, have found input from these IP attachés very valuable.

We are also working on and it's a priority for the administration to ensure that we have appropriate trade secret protections. The USPTO just held a symposium earlier this month discussing the value of trade secrets and the cost to businesses in terms of misappropriation of trade secrets. We heard from our companies, both the domestic and international challenges associated with misappropriation of trade secrets. And there was also a discussion on the legislation and where it might go. There was pending legislation in the 113th Congress on trade secrets and providing a civil cause of action for trade secret misappropriation, a nationwide civil cause of action, federal, and there was some discussion on that.

So we very much look forward to continuing our work on that area, especially in the international arena where those are very, very important issues.

MR. WEST: Maybe I'll ask one more question and then we'll open the floor to any questions from you.

So I know a lot of sectors, big data has become the hot topic and everybody's trying to figure out how to harness the power of information in various organizations. And you mentioned big data as one of the initiatives that you have underway at the Patent Office. So how do you see big data helping you and your agency, colleagues do their jobs?

MS. LEE: I'm a tech geek and a person with a computer background, so when you talk about data --

MR. WEST: Which at Brookings we consider that complimentary term, just for your information.

MS. LEE: Well, yes. So, you know, I come from that world and I have also seen how businesses now increasingly across the country, and all sorts of businesses, are using big data to help improve their operations and to refine and to make

smarter business decisions. So the administration has it as a priority, the Department of Commerce has it as a priority, and the PTO has it as a priority to think long-term and strategically on how we can use big data to improve our operations.

And let me tell you, the PTO is a numbers-driven organization like no other organization is. And we measure a lot of things and we can measure much more. So by measuring much more in terms of our examination process, you know, where we're seeing difficulties, where we're seeing trends, we can take that data and feed it back into improving it and rectifying it and doing it in a very, very precise manner. So where there may be gaps in the training in certain technology areas for certain examiners or perhaps on certain topics, we can create a module or a training program that addresses precisely that. Train them, measure it, and further iterate and improve as needed.

And another issue, the other side of the coin for big data, for us is for a long time we've provided our data on information on patent applications and patents to the public. And we've provided it in bulk downloadable form. And we are very much looking forward to, and we had a workshop at the PTO on, what additional data the public would like to see from the PTO and what would help them make smarter, more informed business decisions.

We have a lot of information: trends in innovation, who's filing what, who owns what, who's transferred what rights. So that's another area where we are very open to and we are thinking hard about how we can further promote the provision of information that would be helpful. It's in line with our transparency goals.

MR. WEST: Okay, let's open the floor to any questions that you have. If you can just raise your hand. There's a woman on the aisle here with a question.

And we have a microphone that's coming over to you. If you can just

give us your name and organization, please.

MS. LEE: Thank you. Hi, I'm Jennifer Lee. I'm with Hong Kong Phoenix TV. I have two questions regarding China.

So in your speech you mentioned one of your priorities is the IP protection overseas. And when talking about U.S.-China relations, President Obama emphasized many times that the IP protection would be his priority. So I wonder if you can illustrate more on that. What would you foresee your office's efforts with China this year? Will we see more collaborations or what's your priority?

And the second question is in the State of the Union, President Obama also says that he thinks the United States should be the one that writes the rules, not China. And we know that the patent is a critical element in the original trade agreement negotiations. So in your perspective I wonder how would you interpret his statement? Thank you.

MS. LEE: Well, thank you very much for the question to address a very important priority for the PTO. Let me just say that I will be making probably three trips over the China before the end of the year. And it is a priority for the PTO and the administration to ensure that we have an IP environment that is conducive to innovation for both the Chinese innovating companies and the U.S. innovating companies. And we have so many programs underway and collaborations with China.

I mean, we have an IP attaché in not one city in China, but three cities in China: Beijing, Shanghai, and Guangzhou. That's how important that country is for our businesses and that's how important the intellectual property landscape is.

I participate in the U.S.-China Joint Committee of Commerce and Trade, the JCCT, and we are always discussing issues like things on topics such as trade secrets and how we can improve the trade secret environment for both American

companies and Chinese companies. We are working together with the Chinese government on enhancing legislation on trade secrets.

We've worked with the judicial officers there. They come over to the United States, to our global IP Academy. They meet with our judges on the Federal Circuit and the District Courts to learn about our IP system. We share best practices. We are working with them now on an initiative to increase the transparency of some of their judicial rulings, so that when they make a judicial ruling there's a record of it, parties can review it, it creates a precedent. And they have created a new court, as I think you may know, that is a specialized IP court.

And so when I head over the China in my very next visit, I will be meeting with them and I think that's a tremendous advantage. For China to have a court specialized on IP indicates to all of us the importance that the country is placing on intellectual property. And I think that will work to the benefit of Chinese innovators, American innovators, and innovators around the world.

So, I mean, we have many initiatives. We have an entire China team of many people working on copyright, trademark, trade secrets, patent issues. I meet routinely with -- or I meet with the head of the offices of the Chinese Patent Office and I will be meeting with the Copyright Office and the Trademark office. And we're looking for ways to collaborate much more closely and it's a priority.

MR. WEST: On the aisle, right here, this woman with her hand up.

MS. CIRELLO: Thank you very much for your presentation. I'm Elaine --

MR. WEST: Can you give us your name and organization, please.

SPEAKER: Yes. I'm Elaine Cirello and I'm the executive director of Fate-squared.

I was wondering, I've heard really a lot of information that I was not

aware that PTO was doing, particularly with regard to the attachés in other countries, particularly China. With regard to PTO's interagency relationship beyond Commerce, what are you doing to build upon other agencies' activities that you could maximize your efforts?

MS. LEE: So that's a very good question and thanks for asking it. We work closely -- I mean, clearly there are many parts of the government that are working on this matter. It's a priority for the administration. It's a priority for the President. And we work closely with the IPEC, Intellectual Property Enforcement Coordinator. In yesterday's confirmation hearing I was sitting next to the nominee for IPEC. We have a history of working together with them and, if confirmed, I will look forward to continuing to work with them on their efforts.

And they're focused on coordinating the federal government's effort in terms of curtailing piracy and counterfeiting. And so we will work together and we have always worked together closely with them.

Also, I mentioned the U.S. Trade Representative. They undertake a lot of trade -- well, they're responsible for leading the negotiation of our trade agreements. And those trade agreements have intellectual property provisions in them. So we provide IP expertise and policy advice in making sure that the provisions in there are supportive of American priorities.

And also, with the Department of Justice, you know, in terms of with law enforcement officials coming over from other countries and training that was provided to them. We pulled together people from the FBI to talk to folks in Customs, to talk to foreign visitors who are learning how we stop counterfeiting and piracy at the borders and so forth. So there are a lot of interagency collaborations beyond the Department of Commerce and PTO.

And even within the Department of Commerce we have a Stop Fakes Initiative that we work on with ITA. I think it's the International Trade Association. It's a 1-800 hotline. If you see a counterfeit or pirated good coming in or someone's counterfeiting or pirating your property, you can call this 1-800 Stop Fakes hotline and you can get advice on sort of how best to address the situation. So there are a lot of initiatives and collaborations underway.

MR. WEST: There's another question on the aisle right there, the gentleman.

MR. TIBBITS: Hi. Nate Tibbits from Qualcomm.

Director Lee, it was really exciting to hear about your patent quality initiatives. I wonder if you could share a little bit more about what that means and about what problems you're trying to address with your Patent Quality Initiative. Thank you.

MS. LEE: So I would like to say stay tuned for our *Federal Register* notice. And I'm going to invite you personally to come and you will hear all about it. But I think I've shared with you sort of the motivations behind it, some of the things we've been working on, some of the things that we've been thinking about. But I would really encourage as many of you who can attend, to attend that quality initiative. You'll find it, I think, both informative and we are very much welcome to hearing thoughts that you may have on what we can do more.

MR. WEST: My colleague Walter up here has a question.

MR. VALDIVIA: Thank you, Darrell. And thank you, Director, for coming and speaking. My name is Walter Valdivia. I'm at the Center for Technology Innovation at Brookings.

One of the things that we have received with great enthusiasm is your emphasis on balance. You have used this during your hearings, during this conversation.

So let me ask you a question about this in terms of implementation of the USPTO.

Last July, the office issued guidelines for examination, accommodating the Supreme Court rulings, particularly on the *Myriad* case. This particular interpretation was taken by the biotech industry and many advocates of patent law as too narrow and the office received heated feedback. In December, last December, just a few weeks back, the USPTO issued new examination guidelines accommodating and really doing a great job of trying to balance and incorporating this feedback.

So here's a question of balancing. Clearly you see that patents have a social benefit, they have an incentive for innovation, but you also see that they have a social cost. The social benefit, and particularly the private benefit from patents, seems to have clear political representation and a clear voice that is heard by the USPTO. What is your plan to balance the considerations of the voices that are not heard on the social costs of patents and how do you plan to incorporate and balance in future policy those considerations that are not heard generally?

MS. LEE: So actually, you know, I very much appreciate that question. And I think the PTO -- well, I know the PTO is welcoming of all perspectives, so that we do have the most balanced viewpoint, and I do think we get it. And to the extent that we're not, if you think there are those who are not being heard, I would encourage you to have them call me or any member of my team. Because we will only do a good job if we're hearing from everybody, if we're hearing from every perspective.

I mean, we are all stakeholders and we are all beneficiaries of a strong intellectual property system. You could be a patent applicant. You could be on the receiving end of the patent infringement claim. You could be a licensor of the piece of patented technology. Or you could be none of that, but every one of us benefits from a system that is -- an IP system that incentivizes innovation: drugs created, products and

services created. So we all have a stake in this. And all I would say is if there's somebody who thinks that their voice is not being heard, we welcome hearing their voice.

MR. WEST: Okay, here on the aisle there's a question.

MS. STERN: Hi. My name is Paula Stern and I'm a senior advisor to the National Center for Women and Information Technology, so thrilled to see you in your position. I've also chaired the U.S. International Trade Commission and continue to be an expert witness there, particularly in the patent area.

So my question about the public interest, building on a very good question that proceeded me, relates to DARPA-funded small businesses and small businesses that may not yet be in the manufacturing stage, but do have patents. I'm wondering maybe with your big data it might yield some information about the role of those companies that are patent holders or individuals that are patent holders, but who do not show that they are manufacturing.

Many times they get pulled into being considered patent trolls in this very, very heated debate over "reform." So I'm just wondering because I care very much about that and they've been so important in our past and future technological leadership.

MS. LEE: Right. So this is interesting. This is a question that I was asked about during my Senate Judiciary confirmation, which is sort of, you know, what is the definition of a "troll?" And I don't find it helpful to -- I mean, you get a different definition depending upon who you ask, so it means different things to different people.

I think what we need to focus on is the behavior. We need to focus on solutions that curtail abusive patent litigation. And if you're an innovator and you create and you invent something and you file for a patent on it, it should not matter what your business model is or when you decide to make a product, if you decide to make a product, whether you decide to license it, whether you decide that somebody else is

better off manufacturing and you do the inventing, our system should be agnostic. We want a system that incentivizes innovation and then we want a system that curtails abusive patent litigation.

MS. STERN: Thank you.

MR. WEST: There's a question here in the front row if we can get a microphone over.

MR. McDONALD: Jim McDonald from Alexandria, Virginia, and I'm a patent attorney.

But I've had some recent experience with the Office of Employment and Discipline that indicates to me that there's an excellence problem. I could be wrong about that. And I think the issues I've looked at probably extend to others, not just myself. And so the question is, can I share those with you, like a minute or two at the end? And I'll leave you with the paperwork.

MS. LEE: Sure, please, yes.

MR. WEST: Okay, in the very back. Yes.

SPEAKER: Director Lee, in your earlier remarks you said that there can and should be more legislative reform of the patent system. And I'm curious if you'd care to elaborate a little bit. Are you thinking in terms of making Patent Office revenues completely independent of the appropriations process, perhaps along the lines of what the FTC commissioner, Ms. Ramirez, has suggested for patent assertion in these? Or if you have other thoughts as what the Congress should be thinking about in terms of legislative reform.

MS. LEE: I think we should be open to anything and everything, that is that will improve and enhance our patent system so that it encourages innovation. And that could be -- including the topics raised in the 113th Congress, there were a lot of

issues that were discussed, and it could be new initiatives. But I think we need to take a look at all of those proposals in light of the overall ecosystem because the patent landscape is rapidly changing. I mean, there are changes that are occurring now as we speak in the court system. We've seen a number of Supreme Court rulings. We saw a number of Federal Circuit rulings.

As I said, on the administrative side, the USPTO is doing a lot. We implemented the AIA, America Invents Act, Patent Trial and Appeal Board, post grant proceedings. They are increasingly popular. We've had more than three times the number of filings. We're also engaging in discussions with the public on how to improve those proceedings. We have the Enhanced Patent Quality Initiative. So there are a lot of moving pieces in the system. And in order to get the right and appropriate amount of change, you have to take into account the totality, and I think that's very important.

So to answer your question, I mean, I think all topics for improving or all ideas for improving the patent system and curtailing abuse and incentivizing innovation should be on the table and considered together.

MR. WEST: There's a gentleman here in a red sweater who has a question over here.

MR. HOLLINSE: Good morning. Chris Hollinsed, Morgan State University.

With the rapid speed of technology growth is there any -- you talked a lot about quality, but did you say anything about or are you going to say anything about the speed to getting from application to final patent?

MS. LEE: So thank you very much for that question. So I think what you're addressing is the pendency of patent applications as they -- the time that they're in the office until the time they issue. And I mentioned it very lightly, but thank you for giving

me the opportunity to address it even more specifically because it is a priority.

I mentioned sort of our goal to reduce and our priority to reduce the backlog of newly filed patent applications, but also a strategic priority of ours is to reduce the pendency and the time in which the patent application takes from filing to issuance. We have a goal of -- it's been going down, just to let you know, in recent years, as well as our backlog, and that will be something that is focused on. And I think many of the initiatives, like having examiner interviews in our satellite offices, or even our IT improvements, all these operational matters help with reduction of backlog and pendency.

I mean, if you think about it, if an applicant can sit down with an examiner and they can have a conversation about what is the invention that is -- or the invention sought to be protected, you're going to get a patent that issues faster and with better quality, and not to mention greater customer satisfaction. So all these things all feed into, I think, all of the agency's priorities: reducing backlog and reducing pendency and improving quality.

MR. WEST: There's a question back there.

MR. HAND: Lloyd Hand with King & Spalding. I appreciate it very much, obviously, your comment in response to the earlier comment about trolls. I thought that was very responsible, very mature, very progressive.

I want to go back, if I may, and call your attention to another priority you identified and that is an IP sector with China. As I'm sure you're aware, recently China, in an effort to use its anti-monopoly as an industrial policy tool, has harassed a number of U.S. companies in various ways, including determining that the fact of bringing a case before the ITC is a per se violation of their anti-monopoly law, which, of course, as you know, is totally unacceptable for those companies. This issue was raised in the course of

the confirmation hearings by Ambassador Baucus. It wasn't raised by Baucus, but it was in the hearings by one of the members of the Judiciary Committee, and it was acknowledged that it was an issue.

And I'm aware, as you just indicated that there are, and have been for many years, strategic dialogues, other fora for communication. And while some progress has been made, it appears that in the absence of the ITC there is really no way to create a level playing field when a company is subjected to harassment of this kind and abusive tactics by China.

So my question is, do you think maybe it's time that the Congress consider legislation that would level the playing field so that there are means of addressing Chinese practices that are abusive to U.S. companies who are seeking to do business with China?

MS. LEE: So I'm sure that the members of Congress would be eager to hear your proposals on the ITC reform in that regard. I know ITC reform was considered earlier. I'm not sure it made it as far as legislation. The concern was, was the ITC being used improperly or as too great of a leverage for certain non-practicing entities? But it sounds to me like that's a topic worthy of consideration by our members of Congress.

MR. WEST: We have time for one more question. There's a gentleman near the back.

MR. VOLZ: Hi. Dustin Volz with National Journal. Thanks for being here today.

I want just one last question on sort of dealing with patent reform in Congress. You've said that there is a need for a sort of broader mosaic of things that are happening in the patent system with court cases and that things are really rapidly shifting. So I wanted to ask about timing in terms of is congressional action something that you

believe needs to happen in this current 114th Congress or is it something that you think maybe, because of all these changes with these court cases and everything else happening in the system, is it something that there should be more prudent, more patient approach?

And the reason I ask is because it seems like the stakeholders seem to disagree very much on this aspect. Some very much want reform right away, say we can't wait, and others say, well, we need to see how the dust is going to settle.

And then related to that, President Obama did not mention patent reform in his State of the Union Address earlier this week. Is that in any way an indication that the administration sees patent reform as a less urgent need than it was a year ago? Thank you.

MS. LEE: So let me start with your second question, and I would say no, it's not an indication that it's any less of a priority. I mean, the President has stated that more legislative patent reform is needed and it's a priority of the administration. It's that simple. He has many important priorities to discuss in the State of the Union and he discussed it last year. And for patents to get two mentions two years in a row would be fantastic, but, you know, the President has, obviously, many competing demands on his time. But it's not at all a reflection of the priority or a change in priorities.

Going to the first question that you had mentioned, it's my understanding, and I think several members of Congress have publicly stated that they intend to introduce legislation on patent reform in the 114th Congress, so I think we will be seeing legislative proposals. And, as I said, I think the appropriate approach is to take into account all the changes that are occurring in the system as we evaluate and discuss all the proposals.

MR. WEST: Well, Michelle Lee, I want to thank you very much for

sharing your views with us. We'll look forward to this two-day patent summit, as well as the notice in the *Federal Register*. So thank you very much.

MS. LEE: Thank you. (Applause)

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