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AIPLA
American Intellectual Property Law Association

3 May 2018

The Honorable Andrei Iancu
Undersecretary of Commerce for Intellectual Property and
Director of the U.S. Patent and Trademark Office
600 Dulany Street
Alexandria, VA 22313

Dear Director Iancu:

We write following your testimony in the Senate Judiciary Committee on 18 April concerning the issue of patent subject matter eligibility, where you noted the need to restore certainty and predictability to this area of the law. In 2017, each of our organizations adopted proposals for legislation to amend 35 U.S.C. § 101 to clarify the standard and restore the scope of eligibility, which has been limited by the Supreme Court's recent decisions.

Earlier this year, after significant study and discussion, our organizations adopted a unified legislative proposal to supersede our original language. We attach the proposal for your information and hope to have the opportunity to discuss the language with you soon.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark W. Lauroesch', with a long horizontal flourish extending to the right.

Mark W. Lauroesch
IPO Executive Director

A handwritten signature in black ink, appearing to read 'Lisa K. Jorgenson', with a long horizontal flourish extending to the right.

Lisa K. Jorgenson
AIPLA Executive Director

cc: Dana Colarulli



Joint IPO-AIPLA Proposal Concerning Legislative Amendment of 35 U.S.C. § 101

Eligible Subject Matter

a) Whoever invents or discovers, and claims as an invention, any useful process, machine, manufacture, composition of matter, or any useful improvement thereof, shall be entitled to a patent therefor, subject only to the conditions and requirements set forth in this title.

Sole Exceptions to Subject Matter Eligibility

b) A claimed invention is ineligible under subsection (a) if and only if the claimed invention as a whole (i) exists in nature independently of and prior to any human activity or (ii) is performed solely in the human mind.

Sole Eligibility Standard

c) The eligibility of a claimed invention under subsections (a) and (b) shall be determined without regard to:

- (i) the requirements or conditions of sections 102, 103, and 112 of this title;
- (ii) the manner in which the claimed invention was made or discovered; or
- (iii) whether the claimed invention includes an inventive concept.