

Michelle Lee launches PTAB initiative to ‘shape and improve’ IPR proceedings



By **Gene Quinn**
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USPTO Director Michelle Lee.

Last week the United States Patent and Trademark Office (USPTO) announced that at the direction of USPTO Director Michelle Lee the Office is launching an initiative “to further shape and improve Patent Trial and Appeal Board (PTAB) trial proceedings, particularly inter partes review proceedings.” According to the USPTO, the purpose of the initiative is to ensure that post grant proceedings are both effective and as fair as possible.

The timing of the announcement is curious given that Michelle Lee’s days seem numbered as Director of the Office. As first reported on IPWatchdog.com (and then over 24 hours later relayed by POLITICO to POLITICO Pro subscribers without any mention of IPWatchdog.com), Commerce Secretary Wilbur Ross has interviewed at least three candidates for the position of Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office. Those receiving interviews were Phil Johnson, former Vice-President for Intellectual Property Strategy & Policy for Johnson & Johnson, Randall Rader, former Chief Judge of the United States Court of Appeals for the Federal Circuit, and an

unidentified patent attorney characterized by one source as a dark horse candidate.

Given that Lee’s days may be numbered as Director of the Office some are speculating that the timing of this PTAB initiative may be more than coincidental. Indeed, there is speculation that Lee may be attempting to get out in front of her successor and put whoever is the next Director in a difficult political position. Under this scenario this PTAB initiative would wrap up relatively quickly by DC standards and conclude that little or nothing needs to be done and that PTAB proceedings, including IPR proceedings, are already extremely fair and even-handed, which is of course not true. This speculation is exacerbated by the belief that whoever the next Director is will have a very different view of the PTAB than Lee. However, if Lee concludes everything at the PTAB is fine on the way out the door it might make it politically more difficult for whoever is next to make the type of change required to bring proper balance and fairness to PTAB proceedings.

In any event, according to the USPTO announcement:

This initiative will examine procedures including, but not limited to, procedures relating to multiple petitions, motions to amend, claim construction, and decisions to institute. It will evaluate the input already received from small and large businesses, startups and individual inventors, IP law associations, trade associations, and patent practitioners, and will seek to obtain more feedback regarding potential procedural enhancements.

Coke Morgan Stewart, Senior Advisor to Director Lee, is coordinating this PTAB initiative. Members of the public may submit their ideas regarding PTAB procedural reform to: PTABProceduralReformInitiative@uspto.gov.

Tags: [Coke Morgan Stewart](#), [inter partes](#), [inter partes review](#), [IPR](#), [Michelle Lee](#), [patent](#), [patent office](#), [Patent Trial and Appeal Board](#), [patents](#), [post grant procedures](#), [post grant proceedings](#), [PTAB](#), [USPTO](#)

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Ken April 10, 2017 3:33 pm

“The timing of the announcement is curious given that Michelle Lee’s days seem numbered as Director of the Office.”

“[[I]f Lee concludes everything at the PTAB is fine on the way out the door it might make it politically more difficult for whoever is next to make the type of change required to bring proper balance and fairness to PTAB proceedings.”

Well, an optimistic view could be that she figures some kind of pro-inventor changes could be coming in any case, and she wants to at least be in a position to act like she 'got the ball rolling' in some sense (and perhaps try to 'temper' her reputation as anti-patent?).

Valuationguy April 10, 2017 5:59 pm

Well...I must say that (Acting) Director Lee certainly put an intellectual ally into the key position of coordinating the 'improvement' effort to ensure nothing harmful (to the infringers lobby) comes out of it. Coke Morgan practiced in EDTX for 4 years DEFENDING corporations from infringement with Kaye Scholer LLP. Additionally she was co-chair of the ABA's IP Litigation Committee during the key run-up to the AIA being written and passed in 2011 (with inputs and recommendations from her committee undoubtedly being written into the AIA.)

Bemused April 10, 2017 8:15 pm

Here's another take on all this: If Lee is attempting to curry favor with the current administration with the hope that she'll end up in another government position or on a federal bench, one way might be to introduce initiatives aimed at curbing IPR abuses (it's a long list...).

Call me optimistic or naive, but I don't see any upside for Lee with the current administration in (further) deconstructing the US patent system. Unless, of course, she's planning on going back to SV for an in-house position. However, according to some of the recent scuttlebutt I've heard (and don't ascribe any real value to this), she's been angling/agitating for a seat on the CAFC.

If the latter is indeed true, where's the benefit to Lee personally (cause I doubt she's the altruistic type) to put in place policies to further the goals of the infringers' lobby?

B

Reality April 10, 2017 9:54 pm

She also represented plaintiffs and had a big plaintiffs win at trial in EDVA.

Eric Berend April 11, 2017 5:34 am

Black is white. Up, is down. Left...is right. Orwell....reigns.

Tim April 11, 2017 7:33 am

Let us never forget how "Vringo", now under a new symbol: FH, was completely screwed after a 12-man jury found Google, AOL, Target and Gannett "guilty" on all 14 charges, and as a stalling technique had the patent pulled at least 5 times, as Vringo was the lawful patent holder. And how 2 of 3 judges, Mayer&Wallach, didn't see it the way the unanimous jurors saw it and "tossed the case". The former head of the USPTO "Judge Chinn" highly dissented against the other 2 judges. Vringo took the case to the US Supreme Ct who wouldn't even see the case. The stock went to pennies. Shareholders lost all. Only reason the stock is still listed on Nasdaq is due to a huge reverse plot that put it back to over \$4.00. Yesterday it traded at \$1.97. Sad to see how corrupt our courts have become. Now I understand how a couple judges can go against the safety of our citizens as they went against the President's travel ban, and so far have put all Americans in harms way. Maybe one day we will see "tarring and feathering" come back into play. Never thought I would see the day when our courts would be against juries. Why even have them, if you don't like the decisions. Or is there more to the Obama/Google dealings? Where did Michell Lee come from?

Flippy Hambone April 11, 2017 8:23 pm

Wonder if ~~Google~~ Michelle Lee will be returning to Silicon Valley after a stint in D.C.?

Night Writer April 12, 2017 7:57 am

She just sounds like a ideologue that is going to try to get her last licks in on the patent system before she goes. Good riddance. I hope she stays from patents and innovation.

