VIA ELECTRONIC TRANSMISSION

February 16, 2021

The Honorable Joseph R. Biden
President of the United States of America
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear Mr. President:

I write you today as Ranking Member of the Senate Committee on the Judiciary Subcommittee on Intellectual Property. In this capacity, I look forward to working with you and members of your Administration to ensure that the United States remains the world’s leading innovation and creative economy in the twenty-first century.

As you well know, every year America develops cutting edge technologies, therapeutics, and treatments that literally change the world for the better and save countless millions of lives. Our creative industries—books, music, film, and all other forms of creative expression—reach millions of people around the world and set the table for global discourse. It can rightly be said that the growth of freedom and democracy worldwide can be attributed to the American ideals and values represented in American art and entertainment. Simply put, on all fronts, our innovation and creative economy represents the best of America.

That is why, at this critical juncture in our nation’s history, we cannot take our innovation and creative economy for granted. Our continued leadership in all of these areas depends on your Administration and Congress working together to provide strong protections for our innovative and creative works. That is why I write specifically regarding the selection of the next Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (USPTO Director).

While there are many qualified individuals you could select for this critical position, I believe the nominee must possess the following views and characteristics. First, the eventual USPTO Director must truly appreciate and value American intellectual property and must treat it for what it is—a vested property right. To that end, the USPTO Director should understand that clear, predictable, and enforceable intellectual property protections are absolutely critical, and must commit to do everything in their power to strengthen and protect those rights.

Second, and in conjunction with the previous requirement, the USPTO Director must commit to continuing the administrative reforms made by the previous Director, Andrei Iancu. Andrei’s reforms to the USPTO—especially to the Patent Trial and Appeals Board—have ensured that all rights holders, from individual inventors to innovative startups to industry titans, receive fair and equitable
treatment. The new USPTO Director must continue Andrei’s good work and ensure the USPTO doesn’t return to being viewed as a “death squad” for intellectual property rights.

Third, the USPTO Director must understand the importance of critical and emerging technologies to America’s innovation economy and national security. In the twenty-first century, technologies like precision medicine, quantum computing, artificial intelligence, 5G, and the internet of things will be critical to maintaining America’s global dominance, both from economic and security perspectives. The eventual USPTO Director must be an advocate for these technologies and ensure that, by providing strong intellectual property protections, private actors have the incentive to invest in the research and development that is necessary to ensure their creation and evolution.

Fourth, the USPTO Director must be a consistent advocate for the inclusion of strong intellectual property protections in all of our future trade agreements. In our global economy, we must ensure that American nationals and American companies have access to strong intellectual property protections both here and abroad. But, the eventual Director shouldn’t simply advocate for the exportation of existing domestic protections; instead, they should be an advocate and thought leader for new, modern, and ultimately stronger intellectual property protection standards in all international agreements.

Fifth, and finally, your nominee for USPTO Director must be committed to increasing diversity in our nation’s intellectual property system. For too long, too many women and people of color have been underrepresented in our innovation ecosystem. These individuals often face unique barriers to engaging in the intellectual property system and their lack of access costs our economy billions of dollars every year. I am proud to have worked in a bipartisan, bicameral manner with my colleagues in Congress to address this problem, and we must make sure the eventual USPTO Director is not only aware of it but committed to increasing the voluntary participation of underrepresented groups in our innovation ecosystem.

Again, given the importance of strong intellectual property protections to our nation’s innovation and creative economy, our trade relationships, and our national security, it is vital that whomever you select for this critical position meets all of these qualifications and truly appreciates and values intellectual property as a right. Anyone who fails to meet these standards will not receive my vote. The challenges our nation’s intellectual property system face are many, but I am confident that by working together we can address them head on and truly make this a new American century.

Sincerely,

Thom Tillis
Ranking Member
Subcommittee on Intellectual Property