From: Brad S.
Sent: Thursday, March 7, 2019 1:32 PM
To: Eligibility2019
Subject: In Support of 2019 Revised Patent Subject Matter Eligibility Guidance

Director Iancu:

I am taking a few minutes to write in support of the 2019 Revised Patent Subject Matter Eligibility Guidance not because commenting on such things is a regular habit, but precisely because it isn't. As a named inventor on both US utility and US design patents as well as being responsible for the management of large portfolios of patents numbering in excess of 12,000 world-wide, I have first-hand knowledge and experience with not only the US patent system, but the US Patent and Trademark Office as the steward of this system. Therefore, I have no doubt that while directing the USPTO would be a daunting challenge in any period of its history, trying to lead it through this period, when the US patent system has become a battlefield pitting the haves, in the form of giant global conglomerates, against the have-nots, in the form of innovative small businesses and independent inventors, is a harrowing experience. As such, I believe that when your effort is directed toward something as critical to the future of the US patent system as bringing clarity and predictability to the nearly indescribable mess that is patent eligibility, it should be strongly supported.

When we reach a point that even experienced and skillful attorneys well used to managing the meaning and nuance of the law cannot confidently advise their clients on the state of that law, then our very system of law is doomed to failure. Sadly, that is the situation for patent attorneys, particularly with respect to eligibility for patent protection, and ironically at the hands of the judicial branch. While the executive branch may be the least well-equipped to deal with failings in our legal system, it is no less responsible for doing what it can to fix failings in that system and it is admirable that you, as a senior member of that branch, are doing everything you can to fix this failing. Doing so will not only encourage (or, perhaps better, shame) the other branches into paying attention and doing their part but will hopefully also be the root of a broader fix that will save a patent system established at the very outset of our republic and one that was once inarguably the model for patent systems world-wide.

While I have heard the criticism that this guidance either expands on Supreme and lower court decisions or that it distorts or ignores existing law, it rings hollow. This is especially true in view of such criticism largely arising from the mouthpieces of large,

well-established tech companies who ironically founded themselves through the use of what were then strong patent rights and are now doing everything they can to diminish those rights in a selfish and shortsighted attempt to maintain their market incumbency. They do this brazenly, and, even more ironically, while complaining about the impact on their bottom lines while their balance sheets show some of the largest cash reserves in history. The mere fact that these companies oppose this Guidance is telling, and their propaganda should not only be ignored, it should be called out for what it is, and I applaud your recent public comments doing just that.

This Guidance, if established, may not be the full and final fix necessary to undo the ridiculously twisted knot of patent eligibility law for all the reasons pointed out by parties on both sides of the issue, but it will be an excellent step in that direction. Without it, we risk the continued erosion of patent rights in the US, as well as of our lead in the critical technologies of tomorrow. For these reasons, I encourage you not only to fully establish this Guidance, but to continue in your efforts to bring clarity, predictability and stability to the US patent system as a whole.

Best,
Brad Sheafe