February 10, 2021

The Honorable Joseph R. Biden, Jr.    The Honorable Kamala D. Harris
President of the United States    Vice President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Biden and Vice President Harris:

Congratulations on your historic election and inauguration at this critical time in our nation’s history. As members of the Senate Judiciary Committee and the Subcommittee on Intellectual Property, we look forward to working with your administration to promote innovation and harness the power of American ingenuity to restore our economy. We also congratulate you on your selection of Gina Raimondo and Don Graves to lead the Department of Commerce, and we look forward to partnering with them to confront the challenges facing our innovators, and particularly the threats posed by international competitors like China, who seek to undermine our intellectual property systems while bolstering their own domestic protections.

We write to emphasize the vital role of Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (USPTO Director) in combatting these threats, incentivizing invention, and protecting American brand owners and creators. Given the impact of intellectual property policy on our economy, our trade relationships, our national security, and even our health, the selection of the next USPTO Director is critical. Based on our many years of oversight and partnership with multiple USPTO Directors, we urge you to nominate a Director who possesses at least the following four specific qualifications.

First, the USPTO Director should understand that clear, predictable, and enforceable intellectual property protections drive economic growth, foster entrepreneurship, create jobs, and improve our quality of life. Our intellectual property systems have long enjoyed a reputation as the international gold standard, and this has allowed the United States to leverage the incredible talents of our people to lead the world in technology and creative enterprise. The USPTO Director must ensure that risk takers can access the research and development investments necessary to challenge incumbent players, bring disruptive technologies to market, and win the global race to develop the next generation of personalized medicine, clean energy technology, quantum computing, wireless communications protocols, and artificial intelligence.

Furthermore, the USPTO Director serves as one of our leading ambassadors for intellectual property and innovation. A history of criticizing or weakening American intellectual property rights will undermine his or her ability to advocate for strong protections and enforcement mechanisms with our trade partners. As evidenced by China’s recent attempt to capture the
World Intellectual Property Organization, a USPTO Director with vision, compelling leadership, and diplomacy can play a critical role in safeguarding these institutions.

Second, the USPTO Director should have real-world experience building portfolios, licensing, and litigating intellectual property across different technology sectors. The Director should also respect the diverse stakeholder interests in our intellectual property systems and avoid any appearance of bias, irrespective of area of technology, company size, business model, geography, or demographics. Our patent and trademark laws are exceptionally complex. Driving successful policies at the USPTO requires a deep understanding of how policy changes impact the litigation and transactional work in the startup offices, corporate board rooms, and courthouses across our nation and around the globe.

Third, the Director should have significant management and leadership experience. The USPTO employs approximately 13,000 highly-skilled individuals with an annual budget in excess of three and a half billion dollars. The expectations on the USPTO from the global stakeholder community are exceptionally high, and the decisions made by the USPTO have enormous business and economic consequences, so the margin for error in policy, process, and results is extremely narrow. To lead this organization effectively, the next USPTO Director should have a clear track record of consensus building and executive management.

Finally, the USPTO Director should be committed to expanding diversity in the innovation ecosystem, breaking down barriers, and encouraging everyone to participate in the process of invention and patenting the technology solutions and health care advances of tomorrow. We applaud the USPTO’s recent work in this area, and we hope that the next Director will commit to continuing these efforts to expand opportunity for underrepresented groups, particularly through the recently created National Council for Expanding American Innovation.

We appreciate your consideration of these critical qualifications as you evaluate potential nominees. We look forward to the opportunity to discuss these qualifications and provide feedback throughout the selection process.

Sincerely,

CHRISTOPHER A. COONS
United States Senator

MAZIE K. HIRONO
United States Senator

CC: Ron Klain, White House Chief of Staff
Catherine Russell, Director, White House Presidential Personnel Office
Gina Raimondo, Nominee, Secretary of Commerce
Don Graves, Nominee, Deputy Secretary of Commerce