

**Senator Chuck Grassley
Chairman
Committee on the Judiciary
United States Senate**

**Hearing entitled “Nominations”
Questions for the Record
Submitted May 31, 2017**

Questions from Chairman Grassley for Mr. Vishal Amin

1. Have you reviewed the IPEC's latest *Joint Strategic Plan on IP Enforcement*? What initiatives and recommendations arising from the *Plan* do you believe need to be pursued? Are there areas where you disagree with the *Plan*'s findings and recommendations?

Intellectual property enforcement and protection has been a longstanding priority for the United States. If I am confirmed, I look forward to continue building on prior efforts, for example, by working with stakeholders on areas where it is possible to facilitate voluntary agreements in the online infringement space and other areas. It will be important to work with all Executive Branch Departments and Agencies to ensure that the Federal government's intellectual property efforts, domestically and abroad, are well-coordinated and that we are taking a targeted, practical, and comprehensive approach to the United States' intellectual property strategy, in line with the President's policy priorities.

2. The previous IPECs made progress in improving intellectual property enforcement through facilitating voluntary agreements between stakeholders. These voluntary agreements led to positive developments on a wide range of issues, including more engagement by payment processors and advertising networks in helping to combat online infringement. What are your thoughts on the progress of these voluntary agreements so far? Do you plan to advance these efforts? If so, please explain how.

Intellectual property underpins nearly every aspect of our economy – it supports good paying jobs, it supports the arts, sciences and technology, and it creates a framework that allows new industries and innovations to flourish. We must protect our great competitive advantage: our nation's innovative economy. If confirmed, I look forward to building on the Federal Government's efforts, by working with stakeholders, where possible, to facilitate voluntary agreements in the online infringement space and other

areas, in line with the President's policy priorities. Voluntary agreements have led to positive developments on a range of issues.

3. In your role as IPEC, how do you plan on working with the USPTO on patent enforcement issues?

To help promote American jobs and economic growth, we need to make sure that our IP enforcement policy includes all areas of intellectual property and innovation policy – copyrights, patents, trademarks and trade secrets; and involves nearly every sector of our economy. If confirmed, I look forward to engaging with all of the relevant offices including the Commerce Department and the U.S. Patent and Trademark Office. As we work to address important intellectual property issues, including patent enforcement, it will be important to engage collaboratively and ensure that our efforts are well-coordinated.

4. Criminals have changed the way they are bringing counterfeit good into the United States. Rather than bringing counterfeit goods into the country via ports in large shipping containers, we are seeing a huge increase in the number of counterfeit goods which are shipped to consumers via small packages. How we can better interdict the flow of counterfeit goods into the United States, especially through small parcel shipments?

The key is that we must use existing tools to ensure that our IP laws are enforced and prevent counterfeit and infringing goods from entering our borders. To accomplish this, we must engage with our trading partners and our stakeholders, to fight IP infringement at its source, expand law enforcement cooperation, protect supply chains, and promote public health & safety. The issue of counterfeit goods entering the United States through express shipping and small packages is an important one and, if confirmed, I look forward to working with the Department of Homeland Security, the U.S. Postal Service and others as the Federal government works to address these issues.

**Nomination of Vishal J. Amin to be Intellectual Property Enforcement Coordinator,
Executive Office of the President
Questions for the Record
Submitted May 31, 2017**

QUESTIONS FROM SENATOR FEINSTEIN

1. The protection of intellectual property is particularly important to my home state of California, which is home to the thriving film, TV, music, and high-technology industries. According to the Commission on the Theft of American Intellectual Property, the annual cost to the U.S. economy “continues to exceed \$225 billion in counterfeit goods, pirated software, and theft of trade secrets and could be as high as \$600 billion.” The Office of the Director of National Intelligence has estimated that economic espionage through hacking costs our economy as much as \$400 billion per year. The theft of American intellectual property has caused the loss of jobs for my state and for the country.

- a. **How will your background working on intellectual property issues in Congress help you in the role of the Intellectual Property Enforcement Coordinator?**

I have a wide range of experiences, including developing working relationships with many of your constituents, working on intellectual property and trade issues in both the Executive and Legislative branches, and handling the full scope of intellectual property issues in both the domestic and international arenas, that will allow me, if confirmed, to hit the ground running for the ultimate benefit of America’s innovators and creators.

- b. **What do you see as the greatest threats to U.S. intellectual property here and abroad? What do you plan to do about them?**

The most significant threats are two-fold. On the law enforcement side there are a number of key issues, including, the widespread manufacture, sale, and export of counterfeit goods; online piracy; and cyber-theft. On the trade enforcement side, the key issues include market access concerns, competition, digital trade, cybersecurity, and rule of law concerns in the IP space. Addressing these issues will require engaging with our trading partners; effective use of all of our authorities, including our trade tools; expanded law enforcement cooperation; and, engagement and partnership with the private sector. If confirmed, I look forward to working with the relevant Executive Branch Departments and Agencies, including stakeholders, on these important issues.

- c. **What is your plan for strengthening enforcement of intellectual property crimes worldwide?**

It will be important to use existing tools to ensure that our IP laws are enforced and to prevent counterfeit and infringing goods from entering our

borders. We need to engage with our trading partners and our stakeholders, to fight IP infringement at its source, expand law enforcement cooperation, protect supply chains, and promote public health & safety. If confirmed, I look forward to learning about new issues as they develop from the IP community, including those in California.

d. What do you think that Congress could do to further protect U.S. intellectual property?

If confirmed, I look forward to working with Congress, and this Committee, as we work to promote intellectual property rights protection and enforcement to ensure our nation's continued economic competitiveness and to expand our innovative economy. It will be important for us to carry a consistent message, on behalf of America's innovators and creators, when we discuss intellectual property issues with our trading partners and interested stakeholders around the world.

2. Your two predecessors spent considerable time promoting and coordinating voluntary initiatives designed to ensure legitimate businesses do not facilitate clearly illegal conduct. Significant progress has already been made with advertisers and payment processors. What will you do as IPEC to continue such efforts?

Intellectual property underpins nearly every aspect of our economy – it supports good paying jobs, it supports the arts, sciences and technology, and it creates a framework that allows new industries and innovations to flourish. We must protect our great competitive advantage – our nation's innovative economy. If confirmed, I look forward to building on the Federal government's efforts, by working with stakeholders, where possible, to facilitate voluntary agreements in the online infringement space and other areas, in line with the President's policy priorities. As part of that approach, it will be important to engage and partner with the private sector.

3. Streaming piracy is a growing problem both in the United States and abroad. I am concerned by the proliferation of set-top boxes preloaded with add-on software that can index pirate streaming sites globally and arrange them in easy to use interfaces. What will you do to combat streaming piracy and the use of set-top boxes preloaded with piracy software?

Intellectual property enforcement and protection is important to our economic competitiveness and our innovative economy. If confirmed, I look forward to engaging with stakeholders on this issue, as we work to promote and protect American intellectual property.

4. Your predecessor as Intellectual Property Enforcement Coordinator, Danny Marti, developed a well-regarded three-year strategic plan to combat IP theft. What would you do as IPEC to implement his plan?

If confirmed, I look forward to building on the work of all of my predecessors, in line with the President's policy priorities. I commit to ensuring, that our efforts are well-

coordinated, and that they take a targeted, practical, and comprehensive approach to promote and protect American intellectual property. Our goal will be to protect our economic competitiveness and expand our innovative economy.

Senator Dick Durbin
Written Questions for Francis Cissna, Vishal Amin, and Stephen Boyd
May 31, 2017

For questions with subparts, please answer each subpart separately.

Questions for Vishal Amin

1. On April 7, conservative commentator and former Ohio Secretary of State Ken Blackwell wrote an op-ed entitled “U.S. Undermining Patents, Innovation; Meanwhile, China Gains Ground.”

In it, Mr. Blackwell discusses how America has long led the world in innovation largely because of our constitutionally-based system of strong patent rights. But he points out that we are at risk of losing ground to China when it comes to innovation. Chinese inventors applied for twice as many patents as U.S. inventors in 2015, and China is creating new IP enforcement mechanisms and strengthening patent protections. Meanwhile, Supreme Court decisions here in the United States have limited patent protections, and the Patent and Trademark Office has overseen a surge in administrative challenges to patents that has cast doubt on the strength of U.S. patent rights. The U.S. Chamber of Commerce Global Intellectual Property International IP Index recently found that for the first time, the United States fell out of first place, all the way to 10th place, in a measurement of the strength of patent systems.

- a. **Do you believe that stakeholders in other countries perceive United States’ intellectual property rights as having been weakened in recent years?**

American innovation and ingenuity stands second to none. When it comes to intellectual property protection and enforcement, we need to ensure that countries and foreign companies are not allowed to profit off of the theft or the misappropriation of American IP, through such actions as trade secret theft, IP infringement, counterfeiting, piracy, forced technology transfers or localization requirements. This Administration has made it clear that one of its key objectives is to ensure that U.S. owners of IP have a full and fair opportunity to use and profit from their IP around the globe.

- b. **Are you concerned that the United States is at risk of losing ground to China when it comes to intellectual property protections?**

No. This Administration recognizes the essential role of intellectual property to advancing our economic competitiveness and our innovative economy. If confirmed, I will work closely with the Administration on intellectual property protection issues, including with respect to enforcement against counterfeits.

- c. **Are you concerned that we may see innovators and venture capitalists shift their focus to China when they seek to develop and commercialize their IP?**

No. As referenced in the most recent USTR Special 301 Report, there are significant challenges for innovators attempting to operate in the Chinese market.

- d. **Do you believe that recent Supreme Court decisions interpreting 35 U.S.C. § 101 have provided greater clarity or greater ambiguity when it comes to U.S. patent eligibility determinations?**

The Supreme Court has ruled in a number of patent cases over the past several years, including two last month. If confirmed, I look forward to engaging with all the relevant Departments and Agencies, as well as stakeholders, to examine these important intellectual property matters.

- e. **Are you aware of calls by IP stakeholder groups, including the Intellectual Property Owners Association and the American Bar Association Intellectual Property Law Section, to review and consider changes to 35 U.S.C. § 101 in light of their concerns that recent Supreme Court decisions have brought greater ambiguity to patent eligibility determinations? If confirmed, are you willing to engage with IP stakeholder groups regarding these proposals?**

If I am confirmed, I will support the Administration's position on any potential legislation that is considered by Congress. If confirmed, I look forward to engaging with all the relevant Departments and Agencies, as well as stakeholders, on a range of intellectual property matters, including patent issues.

2. According to a 2016 report by the Organization for Economic Cooperation and Development, the United States was the top country in the world when it came to having intellectual property rights infringed.

Are we doing enough in the United States to protect intellectual property from foreign infringement?

This Administration has made it clear that one of its key objectives is to ensure that U.S. owners of IP have a full and fair opportunity to use and profit from their IP around the globe. If confirmed, I will work closely with the Executive Branch agencies, including the Departments of State and Commerce, and the USTR to ensure that our trading partners engage in strong IP protection and enforcement.

Senator Orrin Hatch
Questions for the Record
U.S. Senate Committee on the Judiciary
Hearing: “Nominations”
May 24, 2017

Questions for Mr. Amin

1. For a number of years now, India has received poor ratings for IP protection. In 2017, for example, India ranked third-to-last in the U.S. Chamber’s International IP Index, and the most recent USTR Special 301 Report again placed India on its Priority Watch List. India has received this designation every year for more than 20 years. As IPEC, will you prioritize securing commitments and other actions from India to improve its IP enforcement? What steps will you take to accomplish these goals?

The relationship between the world’s oldest democracy and the world’s largest democracy remains strong, but there are a number of trade and economic challenges to be addressed. The Administration has made it very clear that one of its key objectives is to ensure that U.S. owners of IP have a full and fair opportunity to use and profit from their IP around the globe. Working, in particular with the Indian government, to address these issues will be a priority. If confirmed, I look forward to working closely with Executive Branch agencies, including the Departments of State and Commerce, and the USTR to improve IP enforcement and protection.

2. I have long viewed strong copyright protections as a means to advance First Amendment interests, not hinder them, because copyright and other forms of IP help incentivize creativity. Where do you believe the line between lawful free expression and unlawful IP theft lies?

Intellectual property is integral to our nation’s economic competitiveness and the growth of our innovative economy. Copyrights are not only economically important, but integral to our culture and society. A well-functioning IP system is important for all of our industries, and working to address important intellectual property issues will be key. Domestically, the Constitution, our statutory/regulatory system, case law, and the extensive jurisprudence on these issues should be our guide. Internationally, we must engage with our trading partners; make effective use of all of our authorities, including our trade tools; expand law enforcement cooperation; and, engage and partner with the private sector, to properly address intellectual property enforcement and protection issues.

3. Your two predecessors spent considerable time promoting and coordinating voluntary initiatives to ensure that legitimate businesses don’t facilitate illegal conduct. Significant progress has been made on this front with advertisers and payment processors. What will you do as IPEC to continue such efforts and to expand voluntary initiatives such as registrars and registries, content delivery networks, and file hosting providers?

Intellectual property underpins nearly every aspect of our economy – it supports good paying jobs, it supports the arts, sciences and technology, and it creates a framework that allows new industries and innovations to flourish. We must protect our great competitive advantage – our nation’s innovative economy. If confirmed, I look forward to helping build on the Federal government’s efforts, by working with stakeholders, where possible, to facilitate voluntary agreements in the online infringement space and other areas, in line with the President’s policy priorities. As part of that approach it will be important to engage and partner with the private sector.

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Senator Mazie K. Hirono

Questions for the Record following hearing on May 10, 2017 entitled:

“Nominations”

Vishal J. Amin:

- 1) The United States is party to the Patent Cooperation Treaty, which provides a common process for filing patents in all its member states. Will President Trump’s “America First” foreign policy harm our ability to cooperate with foreign nations on patent enforcement, and limit the capabilities of U.S. patent holders in foreign markets?

This Administration has made it clear that one of its key objectives is to ensure that U.S. owners of IP have a full and fair opportunity to use and profit from their IP around the globe. If confirmed, I look forward to advancing American economic interests on issues, including, patents, and ensuring a level playing field for America’s innovators and creators, allowing them to operate in a free, fair and open marketplace.

- 2) It has been reported that, since the inauguration, President Trump and his daughter Ivanka, who is also a federal official, have continued to seek and receive trademarks in Brazil, Canada, China, Indonesia, Kuwait, Jordan, Panama, Peru, the Philippines, Qatar, and Saudi Arabia. What challenges does the President and his family’s pursuit of foreign trademarks present for the IPEC? Does the pursuit of these trademarks undermine the IPEC’s efforts to enforce trademarks worldwide?

If confirmed as IPEC, I look forward to working to promote intellectual property protection and enforcement on behalf of the United States and America’s innovators and creators. My goal will be to ensure a level playing field and for systems to be in place that allow American businesses to operate in a free, fair and open marketplace.

- a. Should the President have such meetings, and should he attempt to involve himself in these mergers?

I am unable to answer this question, because it is unclear to which meetings and mergers the question refers.

- b. Should the President disclose transcripts of his meetings with the CEOs of companies with mergers subject to US government approval?

I am unable to answer this question, because it is unclear to which meetings and mergers the question refers.

- 3) The Trump administration is preparing to renegotiate NAFTA, and planning to include new provisions on IP. As IPEC, what suggestions would you make to improve IP enforcement in Canada and Mexico?

The ability for rights holders to use and benefit from their IP rights is a key part of the U.S. competitive advantage in global markets. I am confident that effective protection and enforcement of IP will be a priority in any trade negotiations. If confirmed, I will work closely with the rest of the Administration on intellectual property policy, including the Office of the U.S. Trade Representative, to promote strong enforcement of intellectual property rights, domestically and abroad.

- 4) One of the primary responsibilities of the IPEC is to issue a report, the Joint Strategic Plan on Intellectual Property Enforcement, every three years. The most recent Joint Strategic Plan was issued in 2016 and covers 2017–2019.

- a. Have you reviewed this report?
- b. Do you agree with the conclusion that IP theft and exploitation poses a serious threat to US national security? How serious is this threat and how can we combat it?
- c. What are the biggest structural flaws that impede the effective enforcement of IP rights against counterfeiters, and how can these be addressed?

Intellectual property enforcement and protection has been a longstanding priority for the United States. Having reviewed the report and its section on this issue, this is clearly an important issue. If I am confirmed, I look forward to engaging with the relevant Executive Branch Departments and Agencies to discuss these important cybersecurity and national security issues in the IP arena. A major structural flaw that impedes IP enforcement is that not every country respects IP rights to the extent the United States does. If confirmed, I will work closely with the rest of the Administration on intellectual property policy, including the Office of the U.S. Trade Representative, the Departments of Commerce, Justice and Homeland Security, to promote strong enforcement of intellectual property rights, domestically and abroad.

- 5) The Joint Strategic Plan called for the development of “best practices” by search engines, domain name registries, social media companies, and app developers. This was criticized

by Internet civil liberties groups as giving government approval to private agreements between Internet providers and copyright holders, which they say could be abused to allow private or government censorship of the Internet.

- a. Do you think these concerns are justified?
- b. How can we protect IP on the Internet while respecting the interests of Internet users and avoiding censorship?
- c. Do you agree with the Joint Strategic Report's conclusion that basic copyright principles like fair use "have permitted the Internet to thrive [and] must be safeguarded"?

Intellectual property is a key component to our nation's economic competitiveness and the growth of our innovative economy. Copyrights are not only economically important, but integral to our culture and society. A well-functioning IP system is important for all of our industries, including the internet ecosystem. Domestically, the Constitution, our statutory/regulatory system, case law, and the extensive jurisprudence on these issues should be our guide. If confirmed, I look forward to working with the rest of the Administration and stakeholders on these important issues.

- 6) It is vitally important that we have a patent system that protects the property rights of patent owners, whose innovation powers economic growth and the development of new industries. You have been described as one of the key drafters of the America Invents Act, a 2011 reform package that serves as a framework for modern patent law. The Act was opposed by a number of the very innovators patent law is supposed to help, including inventors, universities, and small businesses. Since its passage, we've seen a number of unintended consequences, such as it becoming more expensive for small inventors to protect their patent rights.
 - a. What do you think can be done to help small and medium-sized enterprises navigate the patent process?
 - b. Would you support increasing resources at the USPTO for pro se applicants?

The U.S. Patent and Trademark Office's work to assist small and medium-sized enterprises is important. The USPTO operates a patent pro bono program, in partnership with non-profits and law schools, to help small businesses file patent applications. The USPTO also provides tools to assist "pro se" filers. The USPTO also offers independent inventors reduced fees for "micro entities" and "small entities." On the budgetary

operations of these programs, if confirmed, I look forward to learning more about these issues and engaging with the rest of the Administration.

- 7) Last Congress, I co-sponsored the STRONG Patents Act. That bill would have cracked down on abuses in the patent process, particularly by large firms that want to use frivolous lawsuits to prevent startups from challenging their dominance of the market.
 - a. Do you agree that the abuse of the patent process, particularly the issuance of false or deceptive demand letters, stifles innovation and prevents the growth of startup companies? As IPEC, what would you recommend to ensure that these abuses do not continue?
 - b. The organizations representing America's public and private universities supported the STRONG Patents Act. Under the America Invents Act, small investors and many university employees can qualify as "micro entities" that pay 75% lower patent filing fees than those paid by large firms. See 35 U.S.C. § 123. But universities themselves cannot take advantage of this provision. Do you support a fix that would clarify that universities can qualify as "micro entities"?

A well-functioning patent system is important for our economy. If confirmed, I look forward to working on issues involving demand letters. I defer to the Commerce Department on specific questions concerning the USPTO's operations and fee schedules, and I defer to the Administration's official position on any specific legislative proposals.

**Nomination of Vishal J. Amin,
to be Intellectual Property Enforcement Coordinator, Executive Office of the President
Questions for the Record
Submitted May 31, 2017**

QUESTIONS FROM SENATOR WHITEHOUSE

1. Please describe your understanding of the role of the Intellectual Property Enforcement Coordinator.

Intellectual Property underpins nearly every aspect of our economy – it supports good paying jobs, it supports the arts, sciences and technology, and it creates a framework that allows new industries and innovations to flourish. The White House’s Intellectual Property Enforcement Coordinator is focused on protecting our great competitive advantage – our nation’s innovative economy.

2. Do you support the policies outlined in the PROTECT IP Act (S.968 – 112th Congress)?

Intellectual property is key to our economic competitiveness and expanding our innovative economy. I defer to the Administration’s official position on any specific matters relating to legislation.

3. While with the House Judiciary Committee, you helped draft the America Invents Act, which, among other things, created the Patent Trial and Appeal Board (PTAB) – the administrative tribunal component of the U.S. Patent and Trademark Office (USPTO) that conducts trials, hears appeals, and renders decisions on patent issues. The PTAB has had a high rate of invalidity determinations through its inter partes review (IPR) process – it has invalidated at least one claim in approximately 90% of the patents it has reviewed – and has been criticized for weakening the U.S. patent system and harming inventors.

- a) Do you believe that the IPR process is operating effectively?
- b) What reforms, if any, would you propose to the IPR process?
- c) What factors explain PTAB’s high invalidity rate in IPR proceedings?
- d) Is an issued patent a private property right?
- e) May private property be taken by an Article I administrative tribunal, like PTAB?
- f) Is a patent owner defending her patent in a validity challenge entitled to a civil trial by jury under the 7th Amendment?
- g) In IPR proceedings, does the PTAB apply the presumption of validity outlined in § 282 of the Patent Act?
- h) Should Article III courts be bound by PTAB decisions as to the validity of issued

patents?

A well-functioning patent system is important for our economy. Broadly speaking, we must ensure that we have high quality patents, that the process for granting them is thorough, yet expeditious, and that any subsequent reviews by the Courts or the Commerce Department's U.S. Patent and Trademark Office (USPTO) are done fairly. The programs referred to were directly implemented by the previous Administration. I defer: to the Commerce Department on specific questions concerning the USPTO's operations; to the Administration on official positions regarding any legislative proposals; and on matters of statutory construction and constitutional analysis to the Department of Justice. If confirmed, I look forward to working with the Commerce Department, the Department of Justice and the rest of the Administration on the full range of intellectual property matters.