

January 5, 2022

The Honorable Richard J. Durbin
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C., 20510

The Honorable Charles E. Grassley
Ranking Member, Senate Judiciary Committee
135 Hart Senate Office Building
Washington, D.C., 20510

Dear Chairman Durbin and Ranking Member Grassley:

We write today in strong opposition to the nomination of Katherine Vidal to be Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (USPTO).

The Coalition for a Prosperous America (CPA) is the leading national, bipartisan organization representing exclusively domestic producers and workers across many sectors of the U.S. economy. For nearly two decades, CPA has advocated for the implementation of strategic trade, tax and growth policies that deliver prosperity and security to America, its citizens, farms, factories, and workers.

After reviewing Ms. Vidal's record, including her recent testimony before the Senate Judiciary Committee last December, it is abundantly clear that she is wholly unfit to lead the USPTO. Ms. Vidal's close ties to Big Tech and her professional track record as a litigator advocating for patent invalidation at the Patent Trial and Appeal Board (PTAB) are serious red flags that should warrant Members of this Committee to reject her nomination.

America's strength and well being is based upon growing America's productive capacity and quality employment more than cheap consumption. A patent system that prioritizes innovation and strongly protects against abuse by large, multinational corporations is critical to America's continued success as a global leader in research and development.

However, U.S. patent law and the actions of the USPTO have taken a dramatic turn away from these important priorities. After passage of the Leahy-Smith America Invents Act (AIA) in 2011, the focus of the USPTO shifted away from promoting innovation and strengthening America's competitiveness in the global economy. Instead, the PTAB has proven to be nothing more than a kangaroo court that serves the most powerful political and special interests in Washington, especially Big Tech.

Ms. Vidal has been the poster child for the rampant problems within the USPTO, and more specifically within the PTAB. For nearly a decade, Big Tech has abused the U.S. patent system — despite claiming to be pro-patent — with the help of litigators like Ms. Vidal.

For nearly her entire professional career, Ms. Vidal has represented Big Tech firms that have been accused of stealing Intellectual Property (IP) — including multinational corporations like Apple, Microsoft, Netflix, Samsung, and Dell. Ms. Vidal's clients also include 18 percent of all corporations that have sought to invalidate patents at the PTAB, including Apple (669), Samsung

(576), Microsoft (224), Cisco (158), Micron (63), Netflix (41), Dell (40), Roku (36), and HP (30). Undoubtedly, she is a nominee that is more heavily tied to Big Tech than any previous Director, including Michelle Lee of Google.

The Director of the USPTO must be committed to improving the U.S. patent system in order to ensure that America remains a global leader in innovation. CPA members can tell you firsthand why protecting IP is a key component to that effort.

According to academic research, uncertain patentability has led to decreased venture capital investment in the United States. In a survey of 475 investors at venture capital firms, respondents disclosed that reduced patent eligibility would cause them to significantly reduce funding of technological developments in all fields, and especially in medical devices, biotech and pharmaceuticals. Forty percent of respondents also revealed that Supreme Court decisions had negatively affected their firm's investment activities, with only 14 percent seeing positive effects.

At a time when the U.S. patent system is favoring large multinational corporations that can afford an army of litigators, like Ms. Vidal, America's rivals are taking steps to improve their patent systems. For example, China, which has shown a repeated willingness to violate and steal IP, has made clear that it understands the importance of an effective domestic patent system. According to the World Intellectual Property Organization, China is now the leading driver of global growth in patent applications, recently becoming the first jurisdiction to have more than one million applications in a single year.

As lawmakers who have voiced support for continued U.S. leadership in developing the technologies of the future, and for ensuring that the U.S. patent system protects IP and encourages innovation, we strongly urge you to oppose the nomination of Ms. Vidal.

Thank you for your attention to this important matter.

Sincerely,



Zach Mottl, Chairman
Coalition for a Prosperous America



Michael Stumo, CEO
Coalition for a Prosperous America