

"We're No. 12!!"

Normally, finishing 12th is not particularly impressive. When the U.S. Chamber of Commerce tells the world that the U.S. patent system is now ranked 12th in the world, the term "particularly unimpressive" is apt. How did we get here? Testifying before the Senate Judiciary Committee on April 18, 2018, USPTO Director Andrei Iancu addressed two particular issues raised by the Committee: the PTAB and Section 101.

It appears that the USPTO is finally recognizing that the patent system is suffering. Director Iancu noted that review of the Agency's approach to PTAB proceedings has begun. This review is to ensure that they are consistent with the intent of the AIA and "the overall goal of ensuring predictable, high quality patent rights." The Director noted that they are specifically studying, among other things, "the institution decision, claim construction, the amendment process, composition of judging panels, the conduct of hearings and the variety of standard operating procedures".

Perhaps more importantly, the Director addressed the patent eligibility legal landscape noting that "we are considering ways to increase the certainty and predictability of the eligibility analysis." The Director acknowledged that recent Supreme Court decisions have introduced uncertainty into section 101. Notably, the Director expressed a willingness to work with the Committee, the public and Congress to explore a legislative adjustment of Section 101.