

US Presidency and his Patent Advisors

Righting the patent ship in the next Administration will require a President who understands the importance of patents and has a network of patent leaders; even better would be a President who himself (or herself) *understands* the essence of patent law for two clear reasons:

First, a new Director for the PTO who *is* a knowledgeable expert can do wonders to turn around the patent ship of state: A President is needed who will understand the significance of this appointment and not treat the Under Secretary title as a fungible political plum to be treated like a FEMA-like appointment.

Second, new Federal Circuit appointments will fall in the new President's lap, with nine (9) of the twelve positions currently being senior-eligible or which will become senior-eligible in the term of the new President: Only a President who understands the significance of appointments to the Federal Circuit will appoint patent-experienced judges, as opposed to treating the appointments as yet another fungible political plum.

All of the Candidates *Could* be Suitable: The point of open discussion of the candidates' knowledge of patents is not to attempt to focus attention on any one candidate possessing such knowledge, but, rather, to make this an issue in the primary campaigns so that *all* candidates will want to become educated and *will* become educated. It is not that we want a "patent attorney" to be President; but, we *do* want a President who has a trusted set of advisers that include patent-knowledgeable folks.

A Bipartisan Need for Patent Knowledge: The writer's interest is in seeing that *all* candidates become more involved with patent policy. To the extent that the criticism of Senator Clinton is viewed as an attack on Democrats, long time readers will recall that much more negative attention has been focused upon the incumbent in the White House and, particularly, his initial appointment of "Judge Jim" Rogan to head the PTO. Indeed, this was a far more detrimental appointment than President Clinton's appointment of his initial PTO Director.

The Patent Generation Gap – The Challenge for Giuliani, Romney and Clinton: One writer said that it was "ludicrous" that Hillary's 35 years of experience should be discounted against the knowledge that Senator Obama gained in the 1990's as part of the University of Chicago culture and generally growing up professionally in that period.

But, this is precisely the point of the generational divide: Except for the small number of folks who have worked in the patent field or in some high tech industries, essentially *none* of the lawyers and businessmen who grew up in the 60's, 70's or early 80's had *any* exposure to patents. *Until the current generation, patents were looked down upon by major law firms and the*

academy; it was possible to grow up through a culture of the big law school and the big law firm with zero contact with patents:

Essentially none of the major general practice firms in that era had a significant patent practice. None of the major upper end law schools outside of GW, NYU and scant few others had *any* teaching presence in the patent arena.

But, anyone professionally evolving at a major law school/major law firm culture in Senator Obama's generation has been constantly exposed to patents, whether in the major academic institutions where patents permeate the curricula or in major law firms where IP is the hottest ticket going.

Romney, Giuliani, but not Senator Clinton: As noted in the initial email, Mitt Romney *has* overcome the generation gap and has actively included patents in his campaign. Mayor Giuliani also has patent supporters who will have an influence on appointments.

The striking exception is Senator Clinton as manifested both by the initial appointment by President Clinton of the head of the PTO with no patent or trademark practice background, chosen over the strong voice of the patent bar and its consensus candidate, an experienced patent attorney). The Rose Law Firm experience of Senator Clinton was a nullity in terms of patent law: The entire history of both patent and trademark cases reported by Westlaw for *any* member of that firm from the beginning of its history up until the start of the Clinton White House years was *zero* patent cases. For trademarks, Hillary was involved in two cases as local counsel.

Obama's High Tech Supporters: Colleagues have pointed to the formal organization of high tech support for Senator Obama (*attached, ObamaTechGroup.pdf*). Hopefully, *all* candidates will take this as a challenge and seek to gain greater knowledge of patents and join the patent mainstream.

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