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Iancu Touts 'Vibrant' US Patent System Despite Criticisms

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Law360 (February 11, 2020, 10:37 PM EST) -- Director Andrei Iancu of the [U.S. Patent and Trademark Office](#) said Tuesday that the U.S. patent system is “vibrant” and working well overall, despite concerns about inconsistencies in the system and the expense of litigating infringement disputes.

At a Washington, D.C., patent conference hosted by [Covington & Burling LLP](#) and Inventing America, a coalition of U.S. inventors and patent holders, Iancu touted the U.S.' recent jump in a global ranking of intellectual property jurisdictions, as well as a spike in the number of patents issued last year.

The U.S. claimed the top overall spot in a Feb. 7 ranking from the [U.S. Chamber of Commerce's](#) Global Innovation Policy Center, and came in second for patents, a 10-point jump from 2018, Iancu said. He also noted that the office issued more than 370,000 patents last year — the most ever issued by the USPTO and a 9% spike from 2018.

Iancu told Law360 that despite those gains, the agency nonetheless needs to do whatever it can to address persistent concerns about litigation costs and a system that is not always predictable.

“But none of that means that the system is broken,” Iancu said. “To the contrary, the system is vibrant.”

During his keynote address, Iancu said that the issue most in need of attention is patent subject matter eligibility, which was also identified by the Chamber of Commerce as an area needing improvement. But Iancu said the courts or Congress have to step in, because that's beyond the USPTO's purview.

“We have done the most we can do given the state of the law on Section 101,” he said, referring to the part of the Patent Act that guides what’s patent-eligible.

Rep. Hank Johnson, D-Ga., chairman of the House Judiciary Subcommittee on Courts, Intellectual Property and the Internet, also [spoke at the event](#) Tuesday and said he’s hopeful such legislation will get hammered out this congressional session.

Iancu's generally optimistic remarks about the health of the U.S. patent system were in stark contrast to those of other speakers, who characterized the U.S. patent system as being badly broken.

Adam Mossoff, a law professor at George Mason University's Antonin Scalia Law School, spoke at length about so-called efficient infringement, or when big companies decide it would cost less in legal fees and damages to willfully infringe than it would to pay licensing fees.

It's become an established business practice in recent years thanks to changes to the patent system that have made it harder for patent owners to get injunctions and adequate damages awards in federal court, Mossoff said.

Compounding the problem is confusion around patent subject matter eligibility, which Mossoff said is having the practical effect of "offshoring innovation." That's because patent applications rejected by the USPTO related to things like diagnostics and medical treatments are being granted by China and the [European Union](#).

"This portends very very darkly for the future of the innovation economy," Mossoff said.

--Editing by Alanna Weissman.