David McCombs in Law360: ‘Ex-USPTO Leader Predicts Next Director Will 'Dilute' Fintiv’

By David L. McCombs | January 26, 2022

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Former U.S. Patent and Trademark Office acting Director Terry Rea said Monday she doesn't expect the next director to eliminate the Patent Trial and Appeal Board's reliance on discretionary denials, but that she expects the process to be watered down.

At the PTAB Masters virtual conference hosted by IPWatchdog, Rea and others speculated that President Joe Biden's USPTO director nominee, Kathi Vidal, will modify how much discretionary powers PTAB judges have to turn away challenges but that she won't immediately make radical changes.

… Haynes Boone Partner David McCombs — who spoke against discretionary denials — noted that Vidal didn't make any commitments during her confirmation hearing, but applauded that there was "clearly a willingness" to consider outstanding legislation aiming to get rid of Fintiv. The Restoring the America Invents Act, announced in September, would require the board to take on meritorious challenges unless there's a statutory reason to reject it.

"[These are] all good signs that the idea of a balanced approach means not making rash decisions on anything and looking at what reforms are really needed," McCombs said.

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