

David McCombs, Eugene Goryunov, Jonathan Bowser and Jolene Robin-McCaskill in Thomson Reuters Westlaw: 'Changes at the USPTO Under Former Director Andrei Iancu: A Retrospective'

May 26, 2021 David McCombs, Jonathan Bowser

Haynes Boone Partners [David McCombs](#) and [Eugene Goryunov](#), Counsel [Jonathan Bowser](#), and Associate [Jolene Robin-McCaskill](#) recount the accomplishments of the U.S. Patent and Trademark Office's (USPTO's) most recent director.

Andrei Iancu served as Director of the USPTO for nearly three years from February 2018 to January 2021. He spearheaded many initiatives during that time.

Change began swiftly, and Iancu continued to actively implement a variety of new policies throughout his tenure. This article reviews many of the changes that he implemented, and their apparent impact on the IP landscape.

I. Promoting confidence and predictability in the patent system

Throughout his tenure, Iancu actively promoted the USPTO's role in "providing strong, reliable and predictable intellectual property rights." Iancu explained that "[i]n order for the intellectual property system to function as intended, rights owners and the public alike must have confidence in the system."

Two of Iancu's most significant policy changes relate to examination guidelines for patent eligibility, and the conduct of America Invents Act post-issuance trial proceedings before the Patent Trial and Appeal Board.

Iancu emphasized that reducing uncertainty in these two areas would promote confidence and predictability in the patent system.

A. Patent eligibility guidance

U.S. courts have increasingly focused on patent eligibility over the last decade. Under Iancu's leadership, the USPTO issued revised examination guidelines for determining whether patent applications are directed to patent-eligible subject matter.

The examination guidelines were issued to aid examiners and PTAB judges in evaluating claims for patent eligibility. Iancu explained that the goal of the guidance was "to improve the clarity, consistency, and predictability of actions across the USPTO."

Although the guidelines do not have the force of law, patent examiners are obligated to follow the guidance. In April 2020, the USPTO released a report highlighting that the guidance "brought greater predictability and certainty to the determination of patent eligibility."

B. PTAB policies

lancu brought about numerous changes to AIA trial proceedings through rule changes; precedential decisions; an increasing focus on discretionary institution; changes to the Trial Practice Guide; and a motion to amend pilot program.

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