

A Statutorily Unqualified Future PTO Head Waiting in the Wings

The buzz has the Hon. Michelle K. Lee about to leave the PTO. If this happens, until the naming and confirmation of a successor, the Acting Director would be the statutorily unqualified Mr. Anthony Scardino, by virtue of his current position as Deputy Director.

Mr. Scardino is Statutorily unqualified to be Director: The patent law requires that “[t]he Director shall be a person who has a professional background and experience in patent or trademark law.” 35 USC § 3(a)(1). Mr. Scardino has neither a professional background nor experience in either patent or trademark law. As set forth in his official biography on the PTO website (included in the pdf version of this note), he “has a bachelor of art [sic] degree in political science *** and a Master of Public Administration degree *** [and] has recently attained his Certified Government Financial Management (CGFM) certification with the Association of Government Accountants.”

Patent Trial and Appeal Board Membership: Under 35 U.S.C. 6(a)(as more fully quoted in the PDF version of this note) “[t]he Director *** [and others] shall constitute the Patent Trial and Appeal Board. The administrative patent judges shall be persons of competent legal knowledge and scientific ability * * *.”

The Many Positive Achievements of Mr. Scardino: To be sure, no one can question Mr. Scardino’s qualifications as a financial leader of the PTO. But, his achievements have nothing to do with the statutory requirements for the Office of Director.

Regards,
Hal

From the PTO Website:

“Anthony P. Scardino is the acting Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the USPTO.

“He is the Chief Financial Officer (CFO) for the United States Patent and Trademark Office (USPTO). Mr. Scardino serves as principal advisor to the USPTO Director to support and improve the accounting, budgeting, planning, and organizational performance systems of the USPTO. His responsibilities include managing the fiscal operations of the USPTO and providing leadership in areas defined by the Chief Financial Officers Act of 1990 and other legislation designed to improve integrity in federal financial management.

“Mr. Scardino comes to the USPTO from the Department of Housing and Urban Development (HUD), where he was most recently the Assistant CFO for Budget. There he oversaw a budget of more than \$45 billion and an additional \$13.6 billion in Recovery Act funds.

“While serving as the Assistant CFO for Budget at HUD for almost four years, Mr. Scardino was a key advisor to the HUD Secretary on all financial matters and acted as a principal liaison official with all oversight entities for HUD. In addition to his regular duties, Mr. Scardino spent most of the last year serving as the Department's Acting Deputy CFO. In this capacity, he was responsible for the Department's budget, accounting, financial management, financial systems, financial reporting and appropriations law issues.

“Mr. Scardino has a bachelor of art degree in political science from the State University of New York at Geneseo and a Master of Public Administration degree from the State University of New York at Albany. Scardino has recently attained his Certified Government Financial Management (CGFM) certification with the Association of Government Accountants and is a recent graduate of Harvard's John F. Kennedy School of Government's Senior Managers in Government program.

* * *”

Membership on the Board of Patent Appeals and Interferences

35 U.S.C. 6(a). There shall be in the Office a Patent Trial and Appeal Board. The Director, the Deputy Director, the Commissioner for Patents, the Commissioner for Trademarks, and the administrative patent judges shall constitute the Patent Trial and Appeal Board. The administrative patent judges shall be persons of competent legal knowledge and scientific ability who are appointed by the Secretary, in consultation with the Director. Any reference in any Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to the Board of Patent Appeals and Interferences is deemed to refer to the Patent Trial and Appeal Board.