

## Whither the PTO Head, the Hon. Michelle Kwok Lee?

Is the Hon. Michelle Kwok Lee still in charge of the Patent Office?

One source indicated that Ms. “Lee had \*\*\* formally filed a resignation letter in December” but recently “she has made clear that she would serve the Trump Administration if asked[.]” Yet another source reported on “Lee's \*\*\* statement in an interview with POLITICO that she would be ‘open’ to continuing to serve under Trump \*\*\*.”

### Was the Resignation Accepted by President Obama or Trump?

While Ms. Lee may have submitted a letter of resignation (which appears to be the case from multiple sources), there is no source indicating that either President Obama or Trump had accepted her resignation.

### House IP Subcommittee Chair Issa says President to Keep Lee:

A source (citing Rep. Issa) says “President-elect Donald Trump has decided to keep former Google executive Michelle Lee on as director of the U.S. Patent and Trademark office[.]”

Judge Lee? A source says she “would like to be appointed to become a Federal District Court Judge in California.”

Included as part of the pdf version of this note are excerpts from the IPWatchdog and Politico with relevant statements above highlighted in turquoise.

Regards,

Hal

## *From Politico.com (January 19, 2017)<sup>1</sup>:*

President-elect Donald Trump has decided to keep former Google executive Michelle Lee on as director of the U.S. Patent and Trademark office, according to Rep. Darrell Issa, who informed tech industry organizations gathered in Washington Thursday for a breakfast event.

Issa's comments were confirmed by two sources in attendance and a congressional aide.

The possibility of Lee's reappointment has been swirling in the patent world in recent days, but the official decision seems to have been a recent one: Lee had already been preparing to send a farewell letter to USPTO staff, according to another source familiar with the situation. Lee had also formally filed a resignation letter in December, in line with a directive from President Barack Obama.

The Trump transition team did not respond to a request for comment. Paul Fucito, spokesman for the patent office, declined to comment.

Issa, the chairman of the House's subcommittee on patents and a vocal Trump ally, has backed Lee publicly. At the Consumer Electronics Shows in Las Vegas in early January, Issa said "we just have to get Michelle to stay on long enough to finish what she started," telling the crowd, "if you haven't written to a gilded building in New York" — that is, Trump Tower — "please do."

Thursday he called Lee "one of the great things to come out of the Obama era," according to a person who was at the event.

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The choice of who will head the Patent and Trademark Office has traditionally been given to the head of the Department of Commerce, in which USPTO sits. Wilbur Ross, Trump's pick to be Commerce secretary, positively highlighted Lee in his confirmation hearing Wednesday.

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<sup>1</sup> Lee staying on as patent chief under Trump administration

By Ashley Gold, Nancy Scola, Li Zhou, Tony Romm

01/19/17 12:32 PM EST

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with her former relationship with Google," Ross said. "She outlined a thorough process for recusal and determining recusal and I intend to emulate the standard she set."

Those remarks, along with Lee's earlier statement in an interview with POLITICO that she would be "open" to continuing to serve under Trump raised expectations in the patent community that she might stay on in the post.

Also leading to assumptions that Lee might indeed stay on is that she and Trump technology adviser Peter Thiel are both members of the 1992 graduating class of Stanford Law School.

Lee's reappointment is not without controversy. Her original selection by Obama in 2014 was seen as a win for the technology industry in its long-running tensions with the bio-pharmaceutical industry over the focus of U.S. patent policy.

"Overall we're very happy to hear that she's going to be staying on," said Matt Levy, patent counsel at the Computer and Communications Industry Association, an organization of which tech groups like Facebook, Google and Amazon are members. "We think she's done a solid job at improving quality and transparency at the office and making the process of obtaining a patent one that is fairer and better for the economy."

He said the certainty the patent community gets by continuing current management is a "positive thing."

Some patent experts have expected Trump to take a more aggressive approach to patents than Silicon Valley often takes, given his railing on the campaign trail against China's "rampant theft of intellectual property."

Lee, who served a dozen years as patent counsel at Google, has been seen in her years in office as walking a careful line between the two patent camps — choosing to focus less on policy than on process upgrades aimed at improving the quality of patents issued by the office.

"I hope that Director Lee expands her focus from just patent quality and lends her expertise and authority to help fix the very real problem that the U.S. has lost its "gold standard" patent system — it no longer promises stable, effective property rights to innovators," said Adam Mossoff, a law professor and co-founder of the Center for the Protection of Intellectual Property at George Mason University.

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### From IPWatchdog on February 15, 2017<sup>2</sup>:

**Federal Judge Lee?** First, for several months I have heard rumors that Lee would like to be appointed to become a Federal District Court Judge in California and had, in fact, brought the possibility up to at least some Obama Officials. While she has made clear that she would serve the Trump Administration if asked, she probably has her eyes set on a lifetime appointment if one becomes available.

**[Issa Says Lee Held Over for Trump Administration:]** \*\*\* There has been no announcement by the White House, the Department of Commerce, or the USPTO. If she has been held over \*\*\* it is rather curious that no official statement has been made given that there were announcements and official confirmations of other Obama appointees who were held over.

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**[Is Ms. Lee Legally Serving as Director?]** \*\*\*. It was widely reported that Lee submitted a letter of resignation, as was requested by President Obama of all political appointees. She seems to have somehow escaped that resignation, but my reporting suggests that senior Obama Officials were very upset and were saying Lee had gone rogue. \*\*\*

**[Commerce Says PTO Director Position Open:]** Finally, mixed signals continue to be sent. As of 1:48pm ET [Feb. 15, 2017] the leadership page of the Department of Commerce website lists the position of Under Secretary for Intellectual Property and Director of the USPTO as “Vacant,” which it has done since Friday, January 20, 2017. The Executive Biographies page of the USPTO website continues to list Lee as Director, but this page is hopelessly out of date as other political appointees on this page have confirmed they resigned as requested. And as of 1:50pm ET Lee’s LinkedIn page lists her as Director.

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<sup>2</sup> Eugene Quinn, *Michelle Lee continues to sign issued patents, possible larger Administration role suggested*, IPWatchdog blog (February 15, 2017), IPWatchdog.com (bracketed material added for emphasis).