

## PTO Head Lee “doesn’t align with strong, inherent property rights”

**“Michelle Lee Must Go”**: James Edwards, writing on the country’s most popular patent blog, says that “Michelle Lee’s track record at the PTO doesn’t align with strong, inherent property rights. It indicates that she lacks an understanding and appreciation for the right to the labor of one’s mind, the legitimacy of and right to license or sell or trade a patent, the fact our Constitution stipulates IP as an *exclusive* right, and the role IP plays in commercializing an invention such as being an intangible asset that adds to a young company’s economic value.”

**Friendlier to Patent Infringers**: The article concludes by saying that “[i]n fact, Lee’s PTO has arguably become friendlier to patent infringers than to inventors.”

To do justice to the Edwards piece, the entire effort must be read, as included in the pdf version of this note.

Regards,  
Hal

### **Michelle Lee Must Go<sup>1</sup>**

One thing you learn early on in the Conservative Movement is the maxim, *Personnel Is Policy*.

For a new administration pledged to turn the ship of state to effect the goal of America’s economic and industrial restoration, the same turn must be made regarding intellectual property. And it’s hard to imagine that the Obama picks to lead the Patent and Trademark Office or the Copyright Office could be part of the solution in IP policy, if America is to be made great again.

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<sup>1</sup> Retitled but otherwise taken from IPWatchdog.com, James Edwards, *The Bottom Line on Trump’s PTO: Michelle Lee Must Go*, IPWatchdog.com (January 24, 2017).

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For those watching the inside baseball in Washington of musical chairs, where the Trump administration’s people come in and the Obama administration’s people leave, the intrigue about whether Obama’s Under Secretary for Intellectual Property and Director of the United States Patent and Trademark Office, Michelle Lee, is staying or going has generated much speculation and concern.

### Google, Michelle Lee’s Alma Mater

I share that concern. Michelle Lee was closely tied to Google, the Obama administration’s corporate darling. As my friend Larry Hart has shown, Google and its antipatent Silicon set “enjoyed an unprecedented level of access” to the Obama crowd.

While Google has contributed technologically, it hasn’t often strengthened the critical element underpinning the most important cutting-edge scientific commercial advances like the technological infrastructure that enables mobile communication or biologics, immunotherapy and biopharmaceuticals that can keep people out of the hospital or from needing more expensive medical care later: *intellectual property rights*.

Google has spent millions of dollars buying influence and ensconcing its people in Washington over the past decade. Michelle Lee is one of Google’s coups: The PTO run by a senior alumna of the epitome of antipatent, anti-intellectual property rights corporate elitists.

It’s no secret that Google has little regard for IP, nor are patents important to the corporation’s business model. Google has helped lead the policy fights to weaken patents and diminish patent rights — which is to say to undermine property rights. AIA, PTO, and the Assault on Property Rights

The PTO under Obama first pushed for radical patent legislation, then has implemented provisions of it, the so-called *America Invents Act*, which has done much to harm inventors and invention, in Google and company’s general direction. The AIA, which deplorably enjoyed the strong support of a lot of otherwise conservative Republicans, further undermined the American patent system’s democratized, property rights-oriented design that led to a who’s who of iconic inventors such as Edison and the Wright Brothers, as well as the foundation

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for America’s wealth-creating industrial leapfrog, including manufacturers like Eli Lilly & Co. and General Electric.

The AIA shifted from our property rights-based first-to-invent to a “globally harmonized” first-to-file system, opened up a can of worms regarding prior art and anonymous and foreign prior art assertions, gutted the one-year grace period inventors traditionally enjoyed before having to go to the expense of prosecuting a patent application, set up postgrant review proceedings that have run wild, invalidating issued patents more than 70 percent of the time, and much more mischief.

With the PTO’s implementation of AIA, Google could only be pleased with its alumna. Lee has led the U.S. Patent Office down the path of an agency that no longer stands behind its work. Lee’s allowing the Patent Trial and Appeal Board to decimate issued patents in the most reckless manner would indicate that Lee is less than friendly to invention and property rights. No wonder Judge Randal Rader has called the PTAB and its postgrant proceedings “patent death panels.” *In fact, Lee’s PTO has arguably become friendlier to patent infringers than to inventors.*

### **Trump’s Unexpected Supporter, Phyllis Schlafly**

The late Phyllis Schlafly, the conservative stalwart and founder of Eagle Forum Education & Legal Defense Fund, endorsed Donald Trump during the Republican primary in early 2016.

Mrs. Schlafly caught a lot of flak from other conservatives who favored one of the other, more conventional conservative candidates. Yet, like her early endorsement of Ronald Reagan in 1980, she stuck with her pick of Mr. Trump.

Beginning decades ago, Mrs. Schlafly made Eagle Forum the leading conservative proponent of our uniquely American patent system, invention, inventors, and the democratic, property rights-based orientation of U.S. patents.

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This is no accident, because Mrs. Schlafly’s father was an independent inventor; he invented a rotary engine (U.S. Patent No. 2,373,791). She clearly got the connection between our patent system and the inherent property right to one’s invention, articulated by the political philosopher John Locke, Founding Father James Madison and other influencers of the conservative mind.

The 2016 GOP platform, on which Mrs. Schlafly labored, strongly acknowledges the vital property right of intellectual property. The document states that IP is “the wellspring of American economic growth and job creation.”

### **The Bottom Line**

The bottom line regarding the Trump administration’s PTO director is this: Michelle Lee must go. She is Obama’s pick, and new leadership under the markedly different new administration is required, if change is to occur. Michelle Lee’s track record at the PTO doesn’t align with strong, inherent property rights. It indicates that she lacks an understanding and appreciation for the right to the labor of one’s mind, the legitimacy of and right to license or sell or trade a patent, the fact our Constitution stipulates IP as an *exclusive* right, and the role IP plays in commercializing an invention such as being an intangible asset that adds to a young company’s economic value.

The optics of Michelle Lee staying on at the PTO would be detrimental to President Trump’s stated goals for taking the country in a different, more prosperity-producing direction. Making America great again will require a renewed commitment to property rights. Keeping a prominent ex-Gogler in such a strategic office would risk destroying the hope and confidence of the little-guy inventors and IP-centered established companies across America, who have suffered under the anti-IP regime Michelle Lee represents.

President Trump owes it to a leader of the Conservative Movement whose convictions about inherent property rights to one’s inventions, coupled with her bold endorsement early on, argue for naming a PTO director whose IP principles align more with those of Phyllis Schlafly than Barack Obama.