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'History Maker' Cunningham Draws High Praise From IP Attys

By Dani Kass

Law360 (July 19, 2021, 9:37 PM EDT) -- Intellectual property attorneys offered glowing words of support for the newest addition to the Federal Circuit, a former Perkins Coie LLP litigator whose "impeccable credentials" are expected to strengthen the court and encourage diversity in patent law.

The Senate confirmed Tiffany P. Cunningham to the Federal Circuit on Monday in a 63-33 vote, making history as the court's first Black judge. Her nomination and confirmation have received nothing but support from the IP world, where attorneys tout her wealth of experience and breadth of knowledge.

"She obviously has impeccable credentials, there's no question about that," said Mark Stallion of Greensfelder Hemker & Gale PC. "The fact that she is willing to transition from a very productive career in private practice and take on a public service sort of role is commendable."

President Joe Biden nominated Cunningham on March 30 to fill the seat given up by Circuit Judge Evan J. Wallach. During her confirmation hearing, Cunningham told the Senate that the role was her "dream job."

"At that point in time, I kind of pinned my mental vision board that I hoped that one day I could be a judge at that court," she told the Senate in May. "I'm truly humbled to be sitting here before you today, and it's really a dream job that I aspire to."

Emer Simic of Neal Gerber & Eisenberg LLP, who called the new judge a "history maker," said Cunningham's credentials make her "perfect" for the bench, noting that she's a registered patent attorney with more than 20 years of litigating for both plaintiffs and defendants. Cunningham, a former clerk of Circuit Judge Timothy B. Dyk, has represented tech giants such as Intel and Microsoft, but has also done pharmaceutical cases and has a background in chemical engineering.

"The court is heavy on electrical engineers, so I think it's great to add a chemical engineer to deal with complex pharmaceutical patent disputes," Simic added.

McKool Smith's Christina Ondrick likewise pointed to the range of matters that Cunningham has covered as a litigator, saying she's "somebody who has seen everything."

Baker Botts LLP's Robert Maier said Cunningham's experience as a litigator at a private firm will bring a practical voice to the table, especially when issues such as patent eligibility come to a head.

"Diversity in viewpoints is really important," Maier said. "We can have the academics and people who come from the government, but to have the viewpoint of people at law firms doing this in the trenches brings a different perspective. It all results in a healthy debate and hopefully better decisions in the end."

Cunningham's likely to bring "stability, thoughtfulness, well-reasoned decisions" to the court, Ondrick said, all of which will be welcomed by the patent world.

"She's somebody who has all the right skill sets to do this job," Ondrick said.

Cunningham is notably the court's first Black judge, and her confirmation brings the court into gender parity, both marking a landmark moment for the appeals court and giving attorneys hope that the patent practice will foster greater diversity and inclusion, and increase the number of minority attorneys going into patent law.

"She basically has textbook credentials, and she happens to be a minority, and I think we should all be shouting 'congratulations' from the rooftops that we got there, but we also really need to focus in on efforts to make sure these types of opportunities are available to more people of color and minorities as well," Simic said. "It's great to have an exceptional candidate make it, but we want to have more diversity represented in our law firms as well."

Stallion said having a Black judge on the court is "long overdue," but still exciting.

"It's very unfortunate that we're still having this conversation about firsts," he said.

The number of Black attorneys in the patent world is "abysmal," and having Cunningham on the court could help change that, Stallion said. He added that the 44-year-old Cunningham could be on the bench for a very long time, extending her impact.

"I hope it will be inspiring for young African American women, and just African American attorneys in general, to get into the field, as well as into the sciences," Stallion said. "I think that hopefully will be an inspiration for those attorneys who are coming along or young people who are thinking of their career path."

--Editing by Jay Jackson Jr.