

## **Improving Access and Inclusivity in the Patent System: Unleashing America’s Economic Engine**

### **Responses to Specific Questions for the Record Submitted to the Senate Judiciary Subcommittee on Intellectual Property**

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I would like to Thank Chairman Leahy, Ranking Member Tillis, and Members of the Intellectual Property Subcommittee for this opportunity to respond to specific Questions for the Record as interposed by Senator Leahy and Senator Tillis, and to thereby provide further insights and information in connection with the Subcommittee’s initiative toward Improving Access and Inclusivity in the Patent System. I appreciate this further opportunity to support the Subcommittee’s efforts to ensure that every American enjoys the opportunity to contribute to the nation’s intellectual property ecosystem, in furtherance of the social justice aspirations and effects of intellectual property protection and to our nation’s collective greater good.

In preface to the enumerated responses below, I would like to offer a few general observations relevant to shaping a national strategy for improving access and inclusivity in the patent system and throughout the IP ecosystem as a whole. As explored during the Hearing of the Senate Judicial Subcommittee of April 21, 2021, expanding public awareness and education in connection with the IP regime, particularly in communities that have been traditionally underserved, is essential to the success of this important effort; however, lack of knowledge of IP rules and requisites is not the sole barrier to increased and more diverse participation in the IP ecosystem. Decades of exploitative business practices in various IP industries enabled the misappropriation of the innovative and creative achievements of, and also the attendant recognition and financial rewards due to many marginalized innovators and creatives, which has engendered deep mistrust toward the IP regime in many such communities. Moreover, such inequities can manifest differently in the various fields of IP endeavor and business enterprise.<sup>1</sup> Consequently, in order to determine the full breadth and variegated nature of IP disaffection among these groups and communities, and develop effective strategies to dispel these apprehensions, Congress could appoint a small commission of experts in IP, small business entrepreneurship, and community education and engagement, to research and compile pertinent historical, anecdotal, and empirical data, and to provide specific recommendations toward systemic redress.

In effectuating a national strategy to enhance public participation in the IP ecosystem, Congress could replicate the approach it undertook to support the enforcement of private IP rights in its adoption of the Pro-IP Act in 2008, which established the office of the IP Enforcement Coordinator. In passing the Pro-IP Act, Congress acknowledged that given the importance of IP to the national interest,

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<sup>1</sup> See e.g., *Black founder of Internet domain registry, Network Solutions, reminisces on racial barriers in tech sector*, <https://thegrio.com/2012/06/28/black-founders-of-internet-domain-registry-network-solutions-reminisce-on-racial-barriers-in-tech-sector/>; Gina Henderson, “*debacle.com*”, *Emerge*, p. 136, May, 2000.



protection of IP rights should not be solely the responsibility of individual rightsholders, but also an affirmative obligation of the federal government. Through similar legislation, Congress could authorize the appointment of a Coordinator to “Promote American Innovative and Creative Enterprise”. Unleashing our nation’s full IP potential is as vital to the national interest as the enforcement of IP protection. A “PAICE” coordinator could utilize the data provided by the suggested Congressional commission to implement its recommendations, actively solicit the cooperation of other government agencies and the participation and support of the private and non-profit public sectors, and otherwise construct and pursue a strategic plan for enhancing the public’s participation in the IP ecosystem.<sup>2</sup>

Finally, specific attention should be focused on the impacts of online environments and venues for non-traditional IP production and commercialization. Unhampered by many of the traditional gatekeeper barriers to widespread and equitable participation in the IP regime, social media and other digital venues have proven fertile ground for the successful production, use, and entrepreneurial exploitation of IP by many non-traditional creatives and innovators. This demonstrated success affirms that the benefits of IP engagement can be accessible to and empowering for all Americans.

Enumerated Responses to Specific Questions for the Record

**Questions for the Record of Senator Patrick Leahy  
Chair, Intellectual Property Subcommittee**

**Hearing on: “Improving Access and Inclusivity in the Patent System: Unleashing America’s  
Economic Engine”**

- 1. Would you support cultivating a diverse group of patent and trademark examiners by holding job fairs at Historically Black Colleges and Universities, Tribal Colleges, and universities and institutions that serve large Hispanic populations? What other methods would you suggest for identifying and recruiting a more diverse group of patent and trademark examiners?**

The cultivation of a diverse group of patent and trademark examiners to develop and conduct job fairs at Historically Black Colleges and Universities, Tribal Colleges, and universities and institutions that serve large Hispanic populations would be an extremely effective means by which to identify and recruit a more diverse population of patent and trademark examiners. While many students from diverse backgrounds today pursue a variety of STEAM degrees toward careers in IP *production*, many of these students are wholly unaware of the career opportunities available in the related fields of IP *protection and commercialization*. Diversity Jobs Fairs conducted by a diverse group of patent and trademark examiners would not only apprise such students of these career options but would also reassure them that these career paths are actually open to students from diverse backgrounds. Diversity Job Fairs could also be effectively conducted at majority institutions, when organized in collaboration with resident student cultural organizations, which are often a key conduit to minority students attending such schools.

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<sup>2</sup> Moreover, the responsibilities of a “PAICE” coordinator would not be limited to increasing the participation of only socially marginalized groups, but would extend to improving the participation of *all* IP-underserved communities and geographic regions in the nation.



The reach of the Diversity Job Fairs could be expanded by also conducting them in collaboration with IP professional organizations within underserved communities, such as the National Society of Black Engineers and the Black Entertainment and Sports Law Association, as well as in conjunction with other trusted community institutions, such as local 4-H Clubs and civil rights organization branch offices. Further, an adjunct program of online IP career awareness and training webinars, publicized through social media and targeting working graduates and professionals, will enable these and other Diversity Job Fair participants to prepare for the patent and trademark examiner application process and ultimate success in these positions.<sup>3</sup>

**Senator Tillis Questions for the Record – Improving Access and Inclusivity in the Patent System: Unleashing America’s Economic Engine**

**1. Assuming the USPTO were to collect demographic data, are there ways that the USPTO can establish a lack of bias, or otherwise address the issue, when it asks applicants to voluntarily submit application data?**

Perhaps the most effective means through which the USPTO can reassure applicants that demographic information will be used only to promote more inclusive participation in the innovation ecosystem and otherwise enhance the Office’s function in serving the public, would be to partner with an unaffiliated non-profit IP NGO to collect such information. It would be critical that any such entity not only enjoy credibility with underserved communities but also possess expertise in IP law and policy. One reason that many IP-underserved communities continue to face challenges in gaining full and beneficial access to the IP ecosystem is that few of their trusted community institutions and activist organizations have experience with IP law and policy, and consequently these institutions and organizations are unfamiliar with the information and skill sets needed to interface effectively with the IP regime. An appropriately qualified non-profit IP NGO could be particularly effective if it collected applicant demographic information in collaboration with one or more HBCUs and similar institutions. HBCUs enjoy a high reputation for community service, and many of the target communities would trust demographic data collection undertaken under their aegis.

**2. What additional data points related to the innovation ecosystem would be useful to help researchers? What agencies or other organizations could contribute to collecting such data?**

Data regarding IP entrepreneurship and start-ups in underserved communities, as well as data regarding the extent to which such small and medium businesses pursue IP protection and valuation, as compiled by the Small Business Administration would be useful. Additional information could be obtained from minority and rural solo IP practitioners and small law firms, as they traditionally serve the IP needs of these IP producers and users, and have firsthand knowledge of the challenges they face.

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<sup>3</sup> In recent years, a number of private and non-profit NGO actors have offered various no-cost programs of this kind, complimenting some similar initiatives by the USPTO. *See e.g.*, Finnegan IP University, <https://www.finnegan.com/en/Finnegan-IP-University.html>; Take Creative Control, <https://takecreativecontrol.org/about-take-creative-control/>. Currently, these programs are largely decentralized, and availability is uneven throughout the nation. A “PAICE” coordinator could collaborate with a non-profit IP NGO serving IP-underserved communities to research and compile a database of these programs and thereby coordinate a national, no-cost public IP education and training curriculum. In addition, the NGO could further serve as a co-resource for information and updates regarding Diversity Job Fair events, training programs, and application deadlines.

Minority IP trade and professional organizations such as NSBE and BESLA can also provide information regarding artist and innovator perception of and engagement with the IP ecosystem.

A study evaluating the extent to which social media and digital business environments have provided new and resilient avenues for IP commercial enterprise by marginalized community creatives, innovators, and entrepreneurs would also be instructive. As referenced above, limited studies and anecdotal evidence indicates that members of marginalized and underserved communities have disproportionately turned to social media and the digital commercial marketplace to develop, disseminate, and exploit their IP, and information regarding their experiences and successes would be helpful towards building upon these advances.

**3. What recommendations do you have to increase the participation of marginalized and underrepresented groups in the patent system?**

The data and information compilation referenced above could be used to create a series of IP awareness and education Public Service Announcements, through which various entertainment celebrities, social media influencers, and digital entrepreneurs, as well as other IP “public figures” such as Neil DeGrasse Tyson, Patricia Bath, Hakeem Oluseyi, Ayla Hutchinson and others could promote engagement in the IP ecosystem. As discussed above, a series of online IP education and training webinars targeting underserved communities would also be effective. In addition, in-community live events could be organized in collaboration with non-profit IP organizations and with support from the private sector. Such events would not only educate the public about IP law and current developments, but they could also provide venues in which to showcase local talent and IP achievements and entrepreneurial success, and with private sector participation, could also provide “IP talent scout” opportunities.

**4. What does success look like to you in terms of improving access and inclusion in the innovation ecosystem and what steps will it take to get there?**

A successful national strategy for improving access and inclusion in the innovation ecosystem would embody an “inspiration to commercialization pipeline” that replicates the development and recruitment of athletic talent in America. Throughout marginalized and mainstream communities, American athletes are nurtured and trained as early as grade school age and in both educational and community programs and venues. Potential athletes are presented with clear paths toward professional development and exploitation of their talents, notwithstanding the statistically limited opportunities for professional careers. While American students are encouraged to develop their STEAM capabilities and talents and to pursue pertinent professional careers, the opportunities for related careers in IP protection, such as patent agents and IP legal practice, as well as the benefits of IP commercialization, are rarely explored even at the collegiate or post-graduate level. Through age-appropriate K-12 as well as higher education programs, potential innovators would be exposed to IP principles in curricular, extra-curricular, and community programs which explain the intersections between STEAM achievement and IP production and commercialization. An effective “inspiration to commercialization pipeline” would accordingly begin with early-age through collegiate IP education, continue with public adult IP education and training, and culminate in preliminary and need-based public, private, and academic clinic IP pro bono counseling toward IP protection and commercialization.



**5. What initiatives in this area have been particularly successful, in your perspective?**

The most successful initiatives have included direct innovator and creative outreach and education through in-community/in-person events, comprised of information presentations, panel conversations, and pro-bono legal counseling, all in partnership with commercial IP purveyors, private law firms, NGOs, and academic institutions. In addition to “IP fundamentals”, such events include discussions of innovator/creator-informed and innovator/creator-driven policy agenda. Underserved innovators and creators are most receptive to IP education which places law and policy requisites in the context of policy solutions designed to empower them through IP endeavor, and to enable them to advocate for socio-economic change.

**6. Where do you think main obstacles are towards achieving this goal? How do you recommend addressing the issue?**

As discussed above, lack of knowledge of the IP regime and historic mistrust of IP industries present the most significant obstacles to enhancing the public participation in the IP ecosystem, particularly with respect to systemically marginalized groups and underserved communities. The construction and implementation of an affirmative national strategy to promote American innovative and creative enterprise, based upon an expert study of the industry practices and public perceptions which have contributed to limited and inequitable participation by various cohorts, would galvanize public engagement in IP endeavor.

Respectfully Submitted,  
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