
STATEMENT OF

KATHI VIDAL

**UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE**

BEFORE THE

**SUBCOMMITTEE ON INTELLECTUAL PROPERTY
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

“Oversight of the U.S. Patent and Trademark Office”

July 26, 2023

I. Introduction

Chairman Coons, Ranking Member Tillis, Chairman Durbin, Ranking Member Graham, and Members of the Subcommittee:

Thank you for this opportunity to discuss the operations, programs, and initiatives of the United States Patent and Trademark Office (USPTO).

The USPTO advises the President, through the Secretary of Commerce, on a full range of national and international intellectual property (IP) issues, including patents, trademarks, copyright, trade secrets, and enforcement. IP is a critical engine that powers our economy and one reason our Nation is a global leader in innovation and entrepreneurship. As we face humanitarian and environmental crises, and new technologies and globalization present evolving and challenging IP issues, we need to encourage the progress and growth that IP protection can provide. We need an IP ecosystem that will cultivate an innovation mindset and catalyze inclusive innovation and entrepreneurialism, economic prosperity, and U.S. competitiveness, and bring that innovation to positive impact.

To that end, the USPTO is working to ensure that it issues patents, registers trademarks, and upholds and protects clear and enforceable IP rights that incentivize innovation and commercial enterprises—whether large or small—and helps to bring that innovation to positive impact, including job growth, higher paying and more stable employment, national security, and solving world problems.

I am honored to be here with you today to provide the Committee with an overview of the USPTO’s recent activities and accomplishments, and to share the advancements that the USPTO has implemented this past year in pursuit of this goal. Since my confirmation, I have received valuable feedback from nearly 100 external stakeholder meetings, in internal small-listening sessions with over 1,500 USPTO employees, in my 130+ fireside chats, and in all my

interactions across the country and the globe with inventors, entrepreneurs, and everyone who cares about making our IP ecosystem work for all.

I am especially grateful for the thoughtful responses the USPTO has received to its recent requests for comments (RFCs). These comments are critical in the USPTO's process of engaging in data-driven decision-making and determining how to adjust processes and policies to provide a strong IP system for all. With valuable input from a variety of stakeholders, the USPTO is able to promote robust, reliable, and transparent IP rights and enforcement. The USPTO is making great strides in creating more clarity and certainty around examination, post-grant challenges, Director Review, and discretionary denials. The USPTO seeks to ensure our patent laws provide the certainty necessary to encourage innovation and investment in the same. The agency is committed to making change where it is needed, not only through changes to our own procedures and regulations but also through our work with Congress and other executive agencies, as well as upholding the strong IP system that has made America the innovation engine that it is.

None of the USPTO's work is possible without the dedication and hard work of the USPTO's highly educated and talented workforce. The USPTO continues to build, retain, and effectively manage the workforce it needs to serve the public and stakeholder community.

The USPTO is pleased that Congress continues to provide it with the authority to spend all anticipated fee collections. This provides us with resources to continue reducing the patent and trademark application backlog, shortening patent and trademark pendency, improving patent quality, protecting the integrity of the trademark register, expanding access to our patent and trademark system to underrepresented communities, engaging effectively internationally, and investing in our information technology (IT) infrastructure. This also enables the USPTO to continue to expand its nationwide workforce, including by providing necessary financial agility when responding to increased demand as we have seen in trademarks over the past few years.

Since the enactment of the Leahy-Smith America Invents Act (AIA), USPTO's fee setting authority has allowed the agency to more efficiently set user fees to recoup its operational costs. In 2018, Congress extended the USPTO's fee setting authority for eight additional years to 2026. We look forward to working with the Committee to ensure that the USPTO maintains this authority.

The agency is also pleased that Congress passed the Trademark Modernization Act, which has provided the USPTO with more tools to help maintain the trademark register, and the Unleashing American Innovators Act, which builds on the USPTO's outreach to America's underserved and underrepresented communities. Information on how the USPTO has implemented, and is taking steps to implement, these laws is set forth in more detail below.

The following provides an overview of some of our key programs and initiatives.

II. Patent Operations and Initiatives

Patent Quality

Providing high-quality, efficient examination of patent applications is key to the issuance of robust and reliable patent rights. The USPTO continually works to equip our examiners with the guidance, training, tools, advanced technology, and procedural resources they need to meet this

challenge.

As part of quality improvement efforts, the USPTO has developed or implemented tools and programs to improve our examiners' ability to access the best prior art as early as possible in prosecution. The USPTO has developed Global Dossier, which enables examiners to view work done by examiners in other IP offices, including the prior art references cited in related patent applications. The USPTO has also released two capabilities to the examining corps, which allow for examiners to use AI functionality to automatically and securely retrieve potential prior art from US and translated foreign patent document collections: More Like This Document, released at the beginning of FY 2022, allows examiners to use AI to retrieve similar U.S. and foreign patent documents, and Similarity Search, released at the beginning of FY 2023, provides examiners with the ability to emphasize aspects within their applications to help further guide AI in retrieving prior art.

The USPTO has also instituted Post Grant Outcomes, a collaborative effort between the Patent Trial and Appeal Board (PTAB) and the Patents (examination) division to establish a learning loop, which leverages and readily introduces PTAB decisions into patent examination to improve patent prosecution. In addition, the USPTO has also launched a program, the Relevant Prior Art Initiative, that brings relevant prior art into a patent application under examination in a fully automated manner and has developed an electronic tool that will improve examiners' ability to review this prior art. Although this program is currently limited in scope, the USPTO is currently evaluating and reassessing approaches to expand the program.

The USPTO also continues to refine the patent application classification and routing systems to best leverage the technological expertise of the patent examination corps in assigning a patent application to the most appropriate patent examiner, especially when the patent application encompasses more than one technology. These refinements place a greater emphasis on matching the technologies described in the applications with the technology backgrounds and experience of the examiner. As a result, the USPTO is better able to assign applications that are better aligned to the patent examiners' expertise and experience.

Further, to ensure quality work product, the USPTO's Office of Patent Quality Assurance provides assessment and analysis of patent examination quality through random selection of product reviews. The quality review system is designed to not only provide individual feedback to examiners, but also to improve consistency through collecting minable data utilized for evaluating performance and trends and to project training needs. These data are also utilized by Patents managers to create action plans for their specific technology area. In order to solicit external feedback on the review process, its methodology and resulting data are available to the public.

Recognizing that patent quality is a joint effort between applicants and the USPTO, the agency continually engages with its stakeholders, including universities, non-profits, small businesses, corporations, and individual inventors, on issues related to patent quality via speaking engagements, conferences, roadshows, virtual chats, and surveys, as well as through various efforts of the Office of Patents Stakeholder Experience. Through collaboration with external stakeholders, the USPTO remains focused on continuing to improve the quality of patent products, processes, and services to address stakeholder concerns.

Robust and Reliable Patents Initiatives

The USPTO issued an RFC on initiatives directed at bolstering the robustness and reliability of patents to incentivize and protect new and nonobvious innovation while also facilitating the broader dissemination of public knowledge to promote innovation and competition. The RFC sought input on a variety of topics, including prior art searching; support for claimed subject matter; request for continued examination practice; restriction, divisional, and rejoinder practice; and non-statutory double patenting practice. The USPTO is reviewing the comments and will use them to inform improvements to the agency's procedures and the patent system as a whole.

Examiner Training

Providing training and guidance to USPTO's employees is of utmost importance for supporting high-quality examination. The USPTO recognizes that quality begins with an extensive, structured entry-level training program for patent examiners that trains them to address all issues that may hinder patentability during prosecution and to identify all allowable subject matter. Examiners continue their education throughout their tenure at the USPTO with regular refresher training and master level training, as well as training on new case law. Training curricula are developed yearly with the addition of new modules.

To increase examiners' knowledge of a specific technology, experts from industries and academia volunteer to share their technical expertise with examiners. The USPTO's Patent Examiner Technical Training Program provides opportunities for technologists, scientists, engineers, and other experts from industry and academia to voluntarily provide technical training and expertise to patent examiners. The Site Experience Education (SEE) program provides an opportunity for commercial, industrial, and academic institutions within the continental United States to voluntarily host patent examiners for technical site visits. Organizations that participate in the SEE program contribute to improving the quality of patent examination by keeping patent examiners updated on the latest technologies and innovations in their field of examination. To strengthen the USPTO's workforce expertise, the agency also offers legal studies. In addition, the USPTO regularly organizes or participates in continuing legal education credit offerings across the country.

In furtherance of the President's July 2021 Executive Order on Promoting Competition in the American Economy, the USPTO is also working closely with other federal agencies in training examiners. For example, the USPTO and the Food and Drug Administration (FDA) have collaborated in training events to discuss how examiners can utilize publicly available information and resources from the FDA as prior art during patent application examinations. USPTO is also working with the U.S. Department of Agriculture to explore initiatives to improve the quality of the patent examination process for agriculture related innovations, including enhancing prior art search capabilities and providing additional training and guidance to patent examiners.

Patent Pendency and Inventory

The timely issuance of patents helps inventors and investors bring inventions to impact more quickly. The USPTO recognizes the importance of continually refining and defining optimal pendency to take into consideration the external environment affecting workload inputs, the commitment made to customers, and the need to ensure that there is a balance between workload

and production capacity. Based on stakeholder feedback, including from individual inventors, the USPTO is looking into providing more flexibility around the speed of examination, including the option to slow the examination process to give applicants time to assess the viability of their inventions, and expanding the ability to expedite the examination process.

The USPTO received approximately 457,500 serialized patent applications (new patent filings) in FY 2022, which represents an increase of 1.6% over the number received in FY 2021. The inventory of unexamined patent applications is anticipated to be approximately 733,300 at the end of FY 2023, which is an increase of approximately 43,800 from FY 2022.

The USPTO remains committed to processing patent applications promptly and has established patent timeliness goals based on Patent Term Adjustment (PTA) timeframes. Reducing the number of patent term adjustments issued provides consistently shorter pendency for all applications and gives applicants greater certainty of the timeliness of their own cases. For FY 2022, the USPTO met its target of 80% of total PTA compliance for mailed actions (i.e., office actions the agency mailed to applicants), but did not meet the PTA compliance target of 87% for remaining inventory (i.e., cases awaiting action from the USPTO), which was 85%. The underperformance was due to the increase in applications awaiting a first office action. We are examining other ways to reduce pendency, including making changes to examiner hiring and retention policies. Our FY 2023 goal is to maintain the 80% total PTA compliance for mailed actions and increase the target to 86% for PTA compliance for remaining inventory.

Fee Setting Authority

The USPTO's fee setting authority, as established in 2011 by the AIA, permits the agency to set and adjust fees to ensure that aggregate revenue recovers the USPTO's aggregate costs to fulfill its mission and ensure long-term financial sustainability. To date, the USPTO has used its AIA fee-setting authority six times. The USPTO anticipates setting and adjusting both patent and trademark fees with a FY 2025 effective date to better align aggregate revenue and costs and refine certain fees for policy considerations. The USPTO has already started the process of adjusting patent fees by submitting a proposal to the Patent Public Advisory Committee (PPAC) and assisting PPAC in holding a public fee setting hearing on May 18, 2023. The USPTO is reviewing public comments and will consider these comments, as well as the written report from PPAC that provides advice and recommendations on the fee proposals, in preparing the Notice of Proposed Rulemaking on the new patent fees.

III. Trademark Operations & Initiatives

The USPTO registers marks (trademarks, service marks, certification marks, and collective membership marks) that meet the requirements of the Trademark Act. The USPTO creates and maintains the federal register of trademarks that now includes approximately 3,100,000 live registrations. Federal trademark registration provides important benefits to trademark owners that help them to enforce rights in their mark against unauthorized users and to enlist the help of U.S. Customs and Border Protection to exclude counterfeit goods from importation.

The Accuracy of the Trademark Register and the Implementation of the Trademark Modernization Act

For the public and the USPTO to reliably determine whether a mark is available for registration, the trademark register must accurately reflect marks that are in use in the United States for the goods and services identified in the registrations. Over the past several years, there has been a rise in behaviors that undermine the accuracy and reliability of the trademark register that include a steady growth of abuses of the filing system, attempts to circumvent rules of practice, and outright fraud. Protecting the trademark register from these harmful actions and ensuring the accuracy and integrity of the trademarks the USPTO registers and maintains remains a top priority. The USPTO's Register Protection program includes tools that can be used internally as well as tools that external stakeholders can use to fight these harmful behaviors.

The Register Protection program's internal tools include the Administrative Sanctions Program, through which the USPTO reviews suspicious behavior and issues sanction orders for rule violators. Since mid-2021, USPTO has issued approximately 150 orders for sanctions that have terminated over 19,000 invalid applications and sanctioned 3,500 invalid registrations. Another tool is the Director-initiated expungement and reexamination nonuse cancellation proceedings created under the Trademark Modernization Act, through which marks that are no longer in use and registrations emanating from scammers are eliminated from the register. Since the proceedings were implemented, the USPTO has instituted approximately 147 Director-initiated proceedings against registrations that are not in use. Through the Post-registration Audit Program, the USPTO requests proof of use to establish that the mark is actually in use on the goods and service identified in the registration at the time of the maintenance filing and, if proof is not provided, the USPTO imposes a \$250 penalty. The USPTO currently audits approximately 5,000 registrations a year. The USPTO also expends significant resources in educating customers to avoid scams such as impersonations of the USPTO, misleading solicitations, or engaging unauthorized practitioners. The USPTO also encourage customers to report when they have been a victim of a scam, which helps the agency gather information about evolving behaviors and combat fraud.

The USPTO also has tools available for third parties to protect the trademark register. The Trademark Modernization Act created the ability for third parties to file petitions to request institution of *ex parte* nonuse proceedings before the Director. Since implementation, the USPTO has received approximately 334 third-party petitions and instituted approximately 166 nonuse proceedings on the registrations identified in those petitions that resulted in the cancellation of a total of approximately 1100 goods or services. Third parties can also file a letter of protest to submit evidence that the specimens of use submitted in a pending application are fake or fraudulent. Since December 2021, the USPTO received approximately 122 Letters of Protest providing evidence of nonuse and, where the evidence was determined to be relevant and forwarded to the examining attorney for consideration, nearly one-third of those cases resulted in a refusal to register based on the evidence provided. Third parties may also file petitions to cancel a mark at the Trademark Trial and Appeal Board (TTAB) for fraud, abandonment, or nonuse, or that an application or registration is void *ab initio*, which may be based on findings made in orders issued through the Administrative Sanctions Program.

Consistent with the Trademark Modernization Act, the USPTO has implemented the shortened response periods during pre-registration in December 2022. Implementation of post-registration shortened response periods is planned for October 2023.

Trademark Pendency

The USPTO's Trademark Organization is guided by the strategic goal to optimize trademark quality and timeliness. Trademark application filings unexpectedly surged in 2021 during the pandemic to over 940,000 applications because many individuals and small businesses formed businesses and began selling online at that time. While application filing levels returned to normal in 2022, the resulting unexamined inventory, along with new applications, increased overall pendency. First-action pendency—the time from filing to the initial examination—has increased from 3.5 months to 8.5 months. However, with the smaller growth in trademark filings in recent months and recent hiring, pendency has remained relatively flat and the USPTO has brought down the unexamined inventory by 5% since its highest level in 2022 and expects to make even more progress in the coming months.

The USPTO has taken proactive steps to lower the number of unexamined applications and reduce first-action pendency. The USPTO hired approximately 90 new trademark examining attorneys in FY 2022 and FY 2023, respectively. The USPTO has continued to improve initial trainings so that new examining attorneys can quickly start examining trademark applications. The USPTO is also conducting a business process optimization analysis of the entire trademark examination process and exploring possible efficiencies in existing practices, policies, and procedures. The USPTO will also continue to develop numerous automated processes to assist examination in areas such as suspension checks and checking addresses on commercial mail-receiving agencies. The USPTO will continue to explore other ways to address pendency and inventory.

Anti-Counterfeiting Initiatives

The USPTO is working to protect brands by working to change the narrative around purchasing counterfeit products and informing consumers about the dangers and consequences of purchasing counterfeit goods. The USPTO and the National Crime Prevention Council are working together to educate the public about safe buying behavior and the importance of decreasing the demand for counterfeit goods through a series of public service announcements (PSA), which have received an estimated 1.2 billion views. The USPTO's most recent radio ad reached an estimated audience of 10,000,000 through the end of February 2023. In January, the USPTO also released a new online game and educational toolkit that was distributed to educators through Young Minds Inspired, the nation's leading provider of free educational outreach programs and has been downloaded by nearly 17,000 educators.

Fee Setting Authority

As noted above, the USPTO anticipates setting and adjusting both patent and trademark fees with FY 2025 effective dates to ensure that aggregate revenue recovers costs and to refine certain fees for policy considerations. The USPTO has begun the process of adjusting its trademark fees by submitting a fee proposal to the Trademark Public Advisory Committee (TPAC) and assisting them in holding a public fee setting hearing on June 5, 2023. The USPTO is reviewing public comments and will consider these comments, as well as the written report from TPAC that provides advice and recommendations on the fee proposals, in preparing the Notice of Proposed Rulemaking on the new trademark fees.

IV. Patent Trial and Appeal Board

AIA Trial Filings and Ex Parte Appeals

As established by the AIA, the PTAB is a neutral tribunal within the USPTO that, if requested, reviews final rejections in patent applications made by examiners during prosecution (*ex parte* appeals) and determines patentability questions of challenged claims in issued patents raised by third parties in AIA trial proceedings.

In FY 2022, the USPTO received approximately 1,350 AIA petition filings and issued approximately 1,100 decisions on institution and approximately 450 final written decisions within the AIA's statutory due dates. The inventory of *ex parte* appeals was approximately 4,600 appeals at the end of FY 2022, with an average pendency of 12.1 months, meeting our ultimate pendency goal for *ex parte* appeals of about 12 months.

Issuance of Procedural Improvements and Guidance

The USPTO has made several significant changes to AIA trial proceedings during the past year to provide even more enhanced transparency, fairness, certainty, and predictability.

In order to promote transparency and clear and consistent decision-making, the USPTO issued an RFC in July 2022 to receive stakeholder feedback on its processes regarding Director Review, Precedential Opinion Panel review, and internal circulation and review of PTAB decisions. Until those rules are finalized through notice-and-comment rulemaking, I issued the "Interim process for PTAB decision circulation and internal PTAB review," which provides that the Director is not involved, pre-issuance, in directing or otherwise influencing panel decisions, and the PTAB panel has final authority and responsibility for the content of a decision. These steps, which were taken before the Government Accountability Office issued its report on "Increased Transparency Needed in Oversight of Judicial Decision Making" in December 2022, are consistent with, and incorporate, many of the recommendations in that report. We have reviewed the public comments to the RFC on these processes and intend to issue a Notice of Proposed Rulemaking (NPRM) soon that will set forth proposed rules governing pre-issuance internal circulation and review of decisions within the PTAB, as well as a separate NPRM as it relates to Director Review and related processes. In the meantime, the USPTO recently issued an updated standard operating procedure and easily accessible websites that provide detailed information regarding the USPTO's current interim practice in this area.

In addition, the USPTO is currently reviewing over 14,500 public comments on the Advanced Notice of Proposed Rulemaking (ANPRM) that we issued in April on the rules of practice for *inter partes* review (IPR) and post-grant review (PGR) proceedings. In the ANPRM, the USPTO solicited comments regarding the rules the Director and, by delegation the PTAB, will use in exercising discretion to institute IPRs and PGRs. The changes under consideration are intended to avoid abuses, minimize inefficiencies, and afford additional protections to under-resourced innovators while also ensuring that petitioners have an opportunity to raise meritorious challenges in AIA proceedings. The USPTO also solicited comments regarding proposals that would allow petitioners to pay additional fees for higher petition word-count limits, provide a separate briefing process for discretionary institution arguments, and require parties that settle prior to institution to file with the PTAB copies of any settlement agreements.

V. Domestic and International Intellectual Property Policy

The USPTO plays a leading role in promoting strong and balanced protection and effective enforcement of IP at home and abroad. In particular, the USPTO “advise[s] the President, through the Secretary of Commerce, on national and certain international intellectual property policy issues,” and advises “Federal departments and agencies on matters of intellectual property policy in the United States and intellectual property protection in other countries.”

USPTO Initiatives to Promote Drug Accessibility

The USPTO is committed to ensuring that the United States’ strong patent system continues to incentivize life-saving innovation in drugs without unnecessarily delaying accessibility to generic, biosimilar, and more affordable versions of those drugs. This work includes current and future initiatives taken by the USPTO and ongoing collaboration with the FDA.

The USPTO has undertaken several initiatives that seek to further this goal. As noted above, the USPTO published its RFC on robust and reliable patents. The USPTO also issued a Federal Register Notice clarifying the patent applicant’s duty of disclosure and duty of reasonable inquiry, and hosted a panel discussion on these duties. The USPTO has also launched a new public webpage that provides a list of applications for patent term extension that have been filed within the past five years and a list of patents that have had terms extended.

In furtherance of the President’s July 2021 Executive Order on Promoting Competition in the American Economy, the USPTO is working with the FDA to continue to incentivize innovation and reduce potential misuse of the patent system to improperly delay competition. As noted above, the USPTO and the FDA have held cross-training events where we discussed resources and information that are publicly available from the FDA that could be used by examiners as prior art during patent application examination. The USPTO and the FDA also hosted a joint public listening session to hear from representatives of patient advocacy groups, pharmaceutical and biologic industries, generic and biosimilar industries, and academia. The USPTO and FDA also jointly published a request for comments on USPTO-FDA collaboration initiatives, and the agencies are now reviewing the comments received to decide on next steps.

Artificial Intelligence and Emerging Technologies

The USPTO plays an important role in incentivizing and protecting innovation in critical technologies such as artificial intelligence (AI) and other emerging technologies (*e.g.*, quantum computing, synthetic biology, blockchain, precision medicine, and virtual reality), so these innovations can positively impact our country’s competitiveness, economic prosperity, and national security. Last June, the USPTO launched a major new initiative called the AI and Emerging Technologies Partnership (the Partnership) that brings together diverse stakeholders including scientists, engineers, attorneys, academics, and entrepreneurs, to share perspectives, experiences, and insights on the intersection of IP, AI, and emerging technologies. The Partnership hosted several events that focused on a variety of topics, including an overview of the National AI Initiative and the USPTO’s AI Patent Dataset, important patent policy issues, AI and biotechnology, and using AI technologies in the innovation process itself. In February 2023, USPTO published an RFC seeking stakeholder input on the current state of AI technologies and inventorship issues that may arise in view of the advancement of such technologies, especially as AI plays a greater role in the innovation process. The USPTO is digesting that input and plans to

focus next on next steps.

Green Initiatives

In furtherance of promoting the USPTO's green initiatives, the USPTO launched a Trademarks for Humanity award, and this year's award recognizes brand owners who improve the environment through their products and services, a Patents for Humanity Green Energy category, and a joint work-sharing program with the National Oceanic and Atmospheric Administration. In May 2022, the USPTO launched its Climate Change Mitigation Pilot Program, which accelerates the examination of patent applications involving innovations to reduce greenhouse gas emissions. This program was recently expanded to encompass a more robust group of innovations in any economic sector that advance progress toward achieving net-zero greenhouse gas emissions. In July 2022, the USPTO formed a new partnership with the World Intellectual Property Organization (WIPO). WIPO GREEN is a global online platform that facilitates the dissemination and advancement of environmentally friendly technologies, provides opportunities for collaboration and partnership, and encourages widespread adoption. It provides opportunities for U.S. innovators to advance their innovation in green technologies and bring their ideas to market and to the world. In May 2023, the USPTO, the Federal Laboratory Consortium, and AUTM sponsored the Green Energy Innovation Expo that highlighted the impact of green energy in the fight against climate change. The event sought to facilitate partnerships between businesses and federal laboratories, universities, and private-sector innovators—including government-funded startups—offering a wide range of green energy technologies for licensing, including green hydrogen, energy storage, and wind energy. And, at the annual IP5 meeting in June 2023, the USPTO, along with its partners, discussed how to address climate change through an accessible and inclusive IP system and strategies to leverage their resources to further incentivize and promote sustainable innovations.

International Activities

Among other things, the USPTO advocates for global IP norms and understandings, and conducts technical assistance and capacity-building programs for foreign governments and U.S. stakeholders through its Global Intellectual Property Academy (GIPA). In FY 2022, the USPTO conducted 222 training programs through GIPA, including programs coproduced with the USPTO's regional offices, serving over 18,600 individuals. Approximately 62% were patent, trademark, and copyright officials, prosecutors, police, customs officials, and policy makers from the United States and 162 other countries, including intergovernmental organizations. Approximately 38% of all attendees were representatives of U.S. small and medium-sized enterprises, IP practitioners, and IP owners and users.

The USPTO continues to work toward global IP harmonization. In FY 2022, the USPTO established cooperative agreements designed to improve IP systems and enhance the enforcement of rights with the IP offices of Japan, the European Union, Saudi Arabia, Malaysia, France, and Peru, as well as the National Research Development Corporation of India and the WIPO. The USPTO, with the International Trade Administration, participates robustly in U.S. government-wide trade policy processes to improve international IP protections and enforcement practices available to U.S. rights holders. These include bilateral, regional, and multilateral negotiations and dialogues, as well as annual country review processes such as Special 301, which is a congressionally-mandated annual review of the state

of IP rights protection and enforcement in U.S. trading partners around the world.

China-Related Activities

The USPTO's China Team in Alexandria, Virginia, along with IP attachés on the ground in China, bring extensive knowledge of, and experience with, China's IP system. In addition to the IP attachés, the USPTO Mission in China has 5 local Chinese attorneys on staff who specialize in Chinese IP law. Rights holders have expressed a range of concerns about the IP landscape in China, including bad faith misappropriation of trademarks, the theft of trade secrets, infringement of patents, excessive government involvement in intellectual property licensing transactions, and a lack of judicial and administrative transparency. The USPTO has responded by presenting a series of China IP Roadshows and webinars, which inform rights holders about the most effective ways of protecting and enforcing their IP in China. Since 2017, the China Team has taken their road shows to more than 30 cities, and has held 20 webinars. Since December 2022, the team visited a wide range of cities, including Greenville, South Carolina; Minneapolis, Minnesota; Omaha, Nebraska; and Dallas, Texas and plans an additional roadshow this year including in San Diego, California. The USPTO was pleased to have featured addresses from Members of Congress and municipal leaders at many of our China IP roadshows and looks forward to their continued involvement. The USPTO also supports broader U.S. government-wide efforts to address threats posed by China, by advising and coordinating with other U.S. government agencies on strategies to promote U.S. IP policy and encourage effective IP protection and enforcement in China.

IP Attaché Program

The IP Attaché Program is an important asset that supports the USPTO's efforts to promote strong and balanced protection and effective enforcement of IP rights abroad. The attachés' fundamental role is to provide technical expertise assisting embassy officials on IP issues; advocate for U.S. IP policy positions for the benefit of U.S. stakeholders with governments in the host region; educate foreign government officials on IP matters, including judges, prosecutors, patent and trademark examiners, customs officials, police, and policy makers; assist U.S. stakeholders with IP concerns in the host country or region; and build grass-roots support for U.S. policy objectives by conducting public awareness programs on IP with embassy teams. The USPTO currently has thirteen IP attachés serving in the U.S. and Foreign Commercial Service in Belgium, Brazil, China, India, Mexico, Peru, Thailand, Ukraine, the United Arab Emirates, the U.S. Mission to WIPO, and the WTO, where most of these attachés cover a broader region. The IP Attachés have proven to be effective advocates for U.S. IP in overseas markets and the USPTO will continue to work with its interagency partners to ensure that their contributions continue to serve and advance American interests abroad.

VI. USPTO Regional Offices

The USPTO is actively working to better serve the local innovation economies through its four regional offices in Detroit, Dallas, Denver, and San Jose. Among other things, these offices serve as hubs for IP outreach and education efforts and provide inventors, small businesses, and entrepreneurs easier access to USPTO personnel and resources, including walk-in services to obtain general IP information; work stations for searching patents and trademarks; a hearing room to host PTAB proceedings; and interview rooms to connect applicants to examiners across the country. In FY 2022, our regional offices met with over 600 stakeholders, including small

and large companies, independent inventors, universities, and government entities, and held over 600 training events. Regional office outreach efforts have included broad-based and issue-specific IP seminars for startups, small business and independent inventors; tech-specific partnership meetings; participation in science, technology, engineering, and math (STEM) education events; and working relationships with regional stakeholders including business interests and federal, state, and local government officials.

Under the recently enacted Unleashing American Innovators Act, the USPTO is working to implement the provisions in that law, including those directing the USPTO to establish a new Southeast Regional Office and four community outreach offices. The USPTO issued a Request for Comments on these new offices and the comment period closed on July 17, 2023. The USPTO is reviewing these comments as it considers where to establish the Southeast Regional Office and the first of the community outreach offices, the Northern New England Community Outreach Office.

VII. Education and Access

At the highest level, the USPTO exists to promote American innovation through IP, across all geographic regions of the United States and across all demographics. The USPTO has established several new programs and expanded and/or improved existing programs to fulfill this mission.

Expanded Legal Services

The USPTO has expanded access to patent legal services. First, the USPTO has expanded its Patent Pro Bono Program, which provides free legal services for financially under-resourced independent inventors and small businesses by increasing annual funding by 42% to \$1.2 million. The program has provided more than 95,000 hours of free legal services to independent inventors and small businesses since we started collecting data in 2015, and that assistance has resulted in more than 2,000 patent application filings. Our data show that pro bono applicants self-identify as 43% women, 35% African American or Black, 14% Hispanic American, 5.7% Asian American or Native Pacific Islander, and 1.5% Native American.

Second, the USPTO also launched its PTAB Pro Bono Program, which matches volunteer patent professionals with financially under-resourced inventors to provide free legal assistance in preparing *ex parte* appeals to the PTAB, and plans to expand the program to AIA trial proceedings later this year. Finally, the USPTO has expanded its participation in existing law school clinic programs to a record high of more than 60 law schools around the country, which provides critical free legal services to the public, including to inventors, entrepreneurs, and small businesses. The USPTO hopes to continue to add additional law schools to the program.

New Programs for First-time Applicants

The USPTO has also implemented new programs and initiatives for first-time applicants. First, the USPTO has implemented a new pilot program to provide first-time micro entity filers with expedited examination during the agency's initial review of a patent application at no additional

charge. The pilot program also provides a collection of free training resources for applicants to help ensure their success. Second, the USPTO is developing a pilot pre-prosecution assessment program to support first-time applicants by assessing the strengths and weaknesses of their potential patent applications. Third, the USPTO launched its new IP Identifier tool, a virtual resource designed for those who are less familiar with IP that can help a small business understand if its idea or creation is IP and how patents, trademarks, and copyrights may help protect this IP as the business owners establish and/or grow their business. Fourth, the USPTO also launched AccessUSPTO, a pilot program that works with national organizations that do not specifically focus on IP, but whose members could benefit from learning how to protect their ideas, creations, and brands. Finally, the USPTO launched its Stakeholder Application Readiness Training, a virtual course that provides training, tailored to pro se applicants, such as individual inventors and small businesses, about the patent filing process and provides resources for submitting a nonprovisional patent application.

The USPTO continues to offer extensive free services and courses to educate members of the public, including those new to the IP ecosystem, on ways in which IP protection can help them bring their ideas to reality. These programs include the Patent Pro Se Assistance Program, which provides pro se applicants with additional assistance for obtaining a patent; patent and trademark “boot camps”, which are eight-part series that cover the basics of filing for a patent and trademark; free educational events that inspire, educate, and empower underserved and under-resourced communities of innovators; inventor and entrepreneur resources that provide information to assist them at every stage of protecting their inventions and/or brands; and free programming offered every quarter, such as the Hispanic Innovation series, the Invention-Con series for independent inventors, the Proud Innovation program, the Veterans Innovation and Entrepreneurship event, and the new Together in Innovation program, which focuses on networking, teamwork, and mentorships.

Council for Inclusive Innovation

The USPTO has also expanded outreach to underrepresented communities. The USPTO plays a vital role in the government’s Council for Inclusive Innovation (CI²) by providing the primary support for CI². Under CI², the USPTO launched a new pilot program to expedite the first round of examination in qualifying patent applications from first-time micro-entity filers at no additional charge. The pilot program also connects applicants with free, vetted patent training resources to help ensure their success. Other CI² initiatives include an internship program that provides hands-on training to community college and university students, including learning about the USPTO’s role in protecting IP, granting patents and trademarks, and fostering innovation. The first group of interns joined the USPTO in January 2023. CI² is also coordinating and amplifying the USPTO’s nationwide community outreach campaign targeted at communities with historically low patent participation rates, including the development of “IP Champions,” an initiative the USPTO plans to stand up later this summer, in which USPTO employees can volunteer to use their expertise to educate the public on the importance of IP. The USPTO will also work with the Minority Business Development Agency to better ensure that underserved entrepreneurs are not only aware of, but also take greater advantage of, their IP rights when starting or scaling their businesses.

Education and Outreach to Underrepresented Communities

Our outreach to underrepresented communities includes a range of entrepreneurship programs.

Last fall, U.S. Secretary of Commerce Gina Raimondo and I co-founded our Women's Entrepreneurship (WE) initiative to inspire and empower more women leaders to jumpstart their journeys of innovation, advance the conversation around challenges and opportunities for women-owned businesses, and tap into women's potential through entrepreneurship. The WE initiative includes a new resource hub that provides key information about IP protections, as well as resources that help women connect with each other, identify sources for funding, and launch their own businesses. Similarly, the Black Innovation and Entrepreneurship Program was expanded to provide programming on a monthly (rather than annual) basis and offered a hybrid program for the first time this year.

The USPTO has created new educational programs for Minority Serving Institutions in collaboration with the National Society of Black Engineers, which include training on IP basics, best practices for patent and trademark filers, and information on local resources for independent inventors and small business owners. These programs were presented at Howard University in Fall 2022, the University of Puerto Rico in Spring 2021, and the University of Houston in Summer 2022.

The USPTO also held a series of monthly free webinars in collaboration with the U.S. Department of the Interior's Indian Arts and Crafts Board and the nonprofit Indian Dispute Resolution Services, founder of the Acorn Project for Native American small businesses. These webinars offered information and guidance to Native American visual artists from experienced entrepreneurs, e-commerce sellers, IP specialists, fellow artists and craftspeople, and others on how to navigate today's e-commerce environment.

The USPTO is also working to encourage and support more active-duty military, military family members, and veterans to bring their innovations to life, build successful businesses, and protect their creations with IP. This includes events at Fort Liberty, MacDill Air Force Base, and Joint Base Pearl Harbor, and the military innovation competition Dragon's Lair.

Fostering the Next Generation of Creators and Innovators

IP and invention education are critical to bringing more Americans into the innovation ecosystem. The USPTO is working to engage young students early and continue to provide training and opportunities for them to gain exposure to IP as they mature. Last year, the USPTO educated over 280,000 children through its partnership with the National Inventors Hall of Fame's Camp Invention summer camps; launched a new online resource EquIP HQ which features online games, interviews with inventors, and lesson plans for the classroom; hosted monthly webinars for K-12 educators to encourage and support the integration of IP activities into their STEM/STEAM curricula; and hosted the National Summer Teacher Institute, a multi-day professional development training opportunity designed to support elementary, middle, and high school teachers as they increase their knowledge of concepts of making, inventing, and IP creation and protection. The USPTO also developed and hosted its first-ever Master Teacher of Invention and IP Education Program to cultivate a national network of teacher-leaders who will empower fellow educators to foster invention and IP education in schools, districts, and communities.

VIII. IT Modernization

The USPTO relies on technology for virtually all aspects of its business. In order to provide reliable, modernized systems to employees and the public, the USPTO is committed to improving the stability and delivery of its IT systems. The USPTO continues to invest in IT modernization and retire legacy systems. IT modernization efforts enable more secure, effective operations to support a national teleworking workforce.

The USPTO has stabilized and modernized critical systems for agency operations and IP examination. This includes moving to a new, modern data center, which is expected to be complete by July 2023. This move will enhance disaster recovery and improve the security, resiliency, and stability of systems in a new state-of-the-art facility. This data center will also provide the USPTO with the ability to launch new systems and move critical applications to the cloud that can improve the efficiency, speed, and resilience of IT systems.

Emerging technology using AI, Machine Learning, and robotic process automation all bring new, potential opportunities to the agency for its operations and workforce. These tools can serve as catalysts for operating efficiencies and enhancing the work of examiners, not replace them. In a human-first approach, the USPTO is deploying AI tools responsibly to assist patent examiners and the public with prior art searches.

IX. Conclusion

Chairman Coons, Ranking Member Tillis, Chairman Durbin, Ranking Member Graham, and all members of the Subcommittee, I appreciate your continued support of the goals, priorities, operations, and employees of the USPTO. We look forward to working with you to promote robust and reliable IP rights at home and abroad that incentivize innovation and bring that innovation to positive impact.

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