

## Coalition for Patent and Trademark Information Dissemination

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March 6, 2018

The Honorable Andrei Iancu  
Director  
United States Patent and Trademark Office  
600 Dulany Street  
Alexandria, VA 22314

Dear Director Iancu:

We are writing to congratulate you on your confirmation as Undersecretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (USPTO). The Coalition for Patent and Trademark Information Dissemination (CPTID) has no doubt that, under your leadership, the USPTO will continue to be the global gold standard for the protection of patents and trademarks.

As you may know, the CPTID is a group of private sector companies that provide value-added services for patent and trademark information users. We have been investing in and building efficient, high quality patent and trademark search services for more than 50 years and believe that private sector participation is essential to the quality and integrity of the US patent and trademark system. We have a significant interest in the quality of the information made publicly available by the USPTO, and are committed to the notion that the US patent and trademark system depends not only on the quality of the raw data disseminated by the USPTO, but also on the value-added information, tools, and services provided by private sector entities such as our members.

As you take office and begin to evaluate the ways in which the USPTO can better serve its stakeholders and reduce duplication—a stated priority of President Trump’s Administration—we ask that you keep in mind the following principles:

### Private Sector Publishers are Essential to the Quality and Integrity of the US Patent and Trademark System

The US patent and trademark system depends on the dissemination of value-added information. Such dissemination can best be achieved by a public-private partnership that takes advantage of the core strengths of private sector publishers. A competitive private sector patent and trademark information industry, complemented by the USPTO, provides the optimal approach for meeting the broad range of user needs—from specialists to the general public.

## USPTO Policies Should Encourage a Diversity of Sources for Patent Information

It is common sense that one should not rely on a single source of information, and that “truth” or the “most accurate information” is best derived from a marketplace of ideas with a multiplicity of sources. This principle is incorporated in the Federal Code, which provides that Federal government agencies shall ensure public access to an agency's public information by “encouraging a diversity of public and private sources for information based on government public information.” 44 U.S.C. § 3506(d)(1)(A) (2012). The statute's enforcement vehicle, OMB Circular A-130, Managing Information as a Strategic Resource (Jul. 28, 2016), provides that in determining how and whether to disseminate information, agencies will: “[t]ake advantage of all dissemination channels, Federal and nonfederal, including State governments, libraries, and private sector entities, in discharging agency information dissemination activities.”

The concept of “a diversity of sources” has special applicability to patent information. Each area of technology benefits from different types of search tools to achieve optimal results. There are many types of uses of patent information, and there are many types of users in addition to those who conduct searches for patentability, infringement, validity, etc. Such users include researchers, business intelligence analysts, financial analysts and technology specialists. If there is only one source—the USPTO—all of this diversity is lost. And yet, this is what can happen if the USPTO does not consciously take into account this principle when they are making decisions about free patent services.

Perhaps the greatest advantage of a diversity of sources is that it maximizes the dissemination of patent information and enables this information to reach places where it would otherwise not be used, thus helping to realize one of the major policy goals of the US patent system.

## The USPTO’s Funding Allocations Should Give the Highest Priority to Improving the Quality and Efficiency of Internal Operations

The USPTO should focus on and give highest priority to funding decisions to improve internal operations. Information services cost money, and if the USPTO’s limited funds are spent on providing free services to the public, these funds have to be subtracted from those available to support top USPTO priorities such as improving the quality of patents and decreasing the patent application backlog. Of course, the USPTO has public responsibilities, and publishing and providing basic access to patents and high quality raw data are broadly recognized as such. But, this does not necessarily include providing free access to value-added services that go beyond the basic public responsibilities, especially if such services are already provided the private sector. We believe that the USPTO’s main focus should be on improving the quality of raw patent and trademark data.

## Congress and the USPTO Should Recognize That Functionality Is Value, and Functionality Costs

Added functionality—added value—is really at the heart of what private sector patent information services do. It represents the results of their investment in both dollar and human capital in any given year. It is a never-ending process. Adding value can add considerable costs to a patent office's budget, and since applicants and grantees are paying for patent offices, added value can translate into added costs to inventors.

Here is where a solid private-public partnership can provide optimal results for meeting the broad range of user needs. For example, when the USPTO was planning to expand its website service to include full-text searching, the CPTID and the USPTO management had an extensive dialogue regarding functionality. Coalition member companies identified and ranked critical functionalities and the effect the introduction of particular functions by the USPTO would have on private sector services. The USPTO also conducted analyses of the costs of each function. These analyses showed that the private sector plays an important role in addressing USPTO objectives. Particularly, there was a strong positive correlation between high costs to the USPTO and functions that Coalition member companies considered to be problematic for the USPTO to provide because of the cost and the negative impact on private business. As such, the USPTO was sensitive to the negative impact aggressive and expensive changes to their public search systems would have on private sector vendors. Considering that the USPTO is funded by users of the agency, cost-evaluation should play a decisive role when the Office is making decisions on appropriate functionality.

## The USPTO's Policies Should Create an Environment for Maximizing Competition among Private Sector Patent and Trademark Information Providers

Maximizing competition requires creating, not destroying, incentives for investment. No rational investor will risk capital where the plans of a patent office are not known, or where there is no reasonable certainty that fair and open competition will prevail. This means open competition among private sector companies in a marketplace and fair competition with a patent office or its proxy. Fairness implies that a patent office is not overreaching in the added value it is providing free. If a patent office takes steps to directly compete with private sector companies, a market distortion is created and this can lead to destruction of the marketplace.

Finally, CPTID appreciates that the USPTO has kept the Coalition apprised of developments of the USPTO Open Data initiative, and we ask that the agency continue to do so. We recognize that the goal of the Open Data initiative is to make USPTO data publically available and “structured in a way that enables the data to be fully discoverable and usable by end users.” While many of the CPTID members provide competing tools to private and public sector actors

as well as non-profits, we appreciate the cooperative spirit in which the Open Data office has worked with our members. We ask that, if in the future, the agency will be using its resources to expand this initiative, that we be given as much advance notice as possible so we can adjust our business models accordingly.

Sincerely,

Marla Grossman  
Executive Director  
Coalition for Patent and Trademark Information Dissemination

John Manchester  
Deputy Executive Director  
Coalition for Patent and Trademark Information Dissemination