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February 17, 2023

The Honorable Kathi Vidal  
 Under Secretary of Commerce for Intellectual Property  
 and Director U.S. Patent and Trademark Office  
 600 Dulany St.  
 Alexandria, VA 22314

**Re: Comments on the United States Patent and Trademark Office 2022-2026 Strategic Plan**

Dear Director Vidal:

Intellectual Property Owners Association submits the following comments and suggestions in response to the draft USPTO 2022-2026 Strategic Plan, as per the press release dated January 6, 2023 (hereinafter “draft Strategic Plan”).

We appreciate the USPTO’s engagement with stakeholders on various aspects of policy and operations. IPO is an international trade association representing companies and individuals in all industries and fields of technology who own, or are interested in, intellectual property rights. IPO’s membership includes 125 companies and spans over 30 countries. IPO advocates for effective and affordable IP ownership rights and offers a wide array of services, including supporting member interests relating to legislative and international issues; analyzing current IP issues; providing information and educational services; supporting and advocating for diversity, equity, and inclusion in IP and innovation; and disseminating information to the public on the importance of IP rights.

IPO’s vision is the global acceleration of innovation, creativity, and investment necessary to improve lives. The Board of Directors has adopted a strategic objective to foster diverse engagement in the innovation ecosystem and to integrate diversity, equity, and inclusion in all its work to complement IPO’s mission of promoting high quality and enforceable IP rights and predictable legal systems for all industries and technologies.

IPO supports the USPTO’s efforts to promote robust and reliable patent rights. The U.S. patent system is designed to encourage and empower innovation that fuels economic prosperity. Individuals and businesses rely upon a robust and reliable system to protect their innovations. That protection encourages new innovations, resulting in improved technologies, increased economic growth, and the promotion of new and useful ideas. These benefits extend across all industries and technologies, including the high tech, biotech, and pharmaceutical industries. A robust and reliable patent system benefits not only the patent holder, but others in the industry as well, because the patent system supports the sharing of ideas, encourages competition, and spurs continued innovation.<sup>1</sup>

All innovators, creators, entrepreneurs, and brand owners must have access to the IP support provided by the USPTO. However, unless the USPTO provides robust and reliable IP rights in a timely and efficient way to its customers, it cannot incentivize innovation and commercial

<sup>1</sup> IPO’s Comments on “Request for Comments on USPTO Initiatives To Ensure the Robustness and Reliability of Patent Rights,” published at 87 Fed. Reg. 60130-60134 (Oct. 4, 2022), available at <https://ipo.org/wp-content/uploads/2023/02/Draft-IPO-Robustness-FRN-Comment-Letter-20230131.pdf> (Feb. 1, 2023).

enterprises. Delays in prosecution, inconsistent or ineffective examination, and a trademark register beset by scams and fraudulent behavior can discourage and negatively impact newly inspired and educated innovators and long-time IP creators alike.

We suggest that the USPTO prioritize Goals 2, 3, and 5. Achieving these three goals is imperative to drive inclusive innovation and global competitiveness and bring innovation to positive impact. Although Goals 1 and 4 are important, they cannot be achieved without ensuring excellence in the USPTO's core functions. We provide general feedback concerning certain aspects of these specific goals below.

### **I. Goal 2: Promote the efficient delivery of reliable IP rights**

Promoting efficient delivery of reliable IP rights requires timeliness, thoroughness, and accuracy in patent and trademark examination. The desire for expeditious examination must be balanced against the need for accurate and effective examination to secure “robust and reliable patents and trademarks” that will withstand post-examination challenges and protect the owner’s IP while serving as notice to the public of the scope of that IP. To deliver reliable IP rights, examiners must receive thorough and continuous training, as the draft strategic plan recognizes. It is also important that junior examiners receive effective supervision and mentorship.

We applaud the USPTO's goal of providing tools, resources, and technology to help examiners be more efficient and productive. These efforts may not be sufficient to reduce application pendency without an increased number of examiners and/or an increase in the output of each examiner. Objective 2.2 indicates that, with respect to trademark staff, the USPTO will “adjust our staffing levels, and refine our staff score duties.” We encourage similar considerations with respect to patent staff.

### **II. Goal 3: Promote the protection of IP against new and persistent threats**

We agree that “[c]onsistency and clarity in the application of our IP laws is a critical pillar of reliable IP rights.” (Objective 3.5). In this context, although the 2019 Revised Guidance on Patent Subject Matter Eligibility has attempted to bring some consistency to treatment of subject matter eligibility throughout the examining corps, there are opportunities for improvement.<sup>2</sup>

Additionally, improving the examination of patent applications will have a positive impact on downstream proceedings, such as PTAB proceedings. This can be achieved with a well-trained examining corps, the efficient assignment of applications (e.g., USPTO’s AI-driven examiner assignment), automatic incorporation of prior art from IP5 offices, and similar USPTO efforts.

### **III. Goal 5: Generate impactful employee and CXs by maximizing agency operations**

It is important to generate impactful employee and customer experiences. In the patent context, customer experiences (both IP owners and practitioners) will be enhanced by enlarging the pool of potential patent practitioners by expanding eligibility requirements for registration to practice before the USPTO. Expanding eligibility requirements will ensure the patent profession stays in step with technology and innovation advancement as well as increasing the diversity of patent practitioners,

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<sup>2</sup> IPO’s Submission on USPTO’s Request for Comments on the 2019 Guidance on Patent Subject Matter Eligibility published in 87 Fed. Reg. 53736 (Sept. 1, 2022), available at <https://ipo.org/wp-content/uploads/2022/11/IPO-Comments-to-USPTO-re-SME-Guidance-20221015.pdf> (Oct. 15, 2022.)

including practitioners with experience and training in new and emerging technologies that are becoming more and more in demand by IP owners, including our members. We support expanding access to the patent profession to update it for the advancement of technology. For instance, we recently expressed support for considering expansion of Category A degrees to include certain degrees that were previously listed under Category B in the General Requirements Bulletin (GRB).<sup>3</sup> We commend the USPTO for its continued efforts to keep pace with technology advancement including reviewing the admission criteria for registration to practice before the USPTO.

Gathering and publishing customer survey and feedback data as outlined in Objective 5.2, and referenced in Objective 2.5 (referring to “lessons learned from ongoing CX efforts”) will be helpful in enhancing and adapting CX. IPO encourages the USPTO to transparently publish other data collected relative to the USPTO's policies and procedures, such as responses to requests for comments on specific proposed initiatives, and explain how the USPTO implements this data. In addition, publishing lessons learned and further actions taken based on experiences from various pilot programs will contribute to improved customer experience.

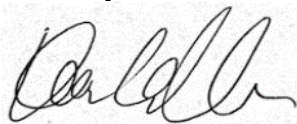
Technology priorities, including “application and infrastructure resiliency” as outlined in Objective 5.3 are important. But applications and infrastructure are not always resilient, and the USPTO's IT resources are not always available to customers. This is unacceptable when unavailability means that time sensitive filings cannot be made, with the possible loss or impairment of IP rights. In addition to developing modern IT infrastructure and applications, we encourage the USPTO to develop and promulgate backup procedures and guidance for handling time sensitive filings during the rare times IT infrastructure and applications are not available.

Finally, we encourage the USPTO to consider that CX is not always technology based. With respect to Objective 5.2 (Equitably deliver exceptional customer experiences), customer interactions with the USPTO often entail person-to-person dialog over telephone help lines, such as the Inventors Assistance Center, Application Assistance Unit, Patent Electronic Business Center, Trademark Assistance Center, and others. It is important that USPTO staff working these help lines provide accurate information to callers and provide consistent information to all callers.

## **Conclusion**

Thank you for considering IPO’s comments. As one of the primary organizations representing IP owners, we welcome the opportunity for additional dialogue regarding the Strategic Plan.

Sincerely,



Karen Cochran  
President

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<sup>3</sup> IPO’s Comments on “Expanding Admission Criteria for Registration to Practice in Patent Cases Before the United States Patent and Trademark Office,” published in 87 Fed. Reg. 200 (Oct. 18, 2022), *available at* <https://ipo.org/wp-content/uploads/2023/02/FINAL-IPO-Comments-on-Expanding-Admission-Criteria.pdf> (Jan. 31, 2023.)