

Wednesday, June 9, 2021

Dear President Joe Biden:

As organizations focused on science, technology, and access to knowledge, the Internet, and medicines, we urge the administration to appoint a Director of the U.S. Patent and Trademark Office (PTO) who will make evidence-based decisions, demonstrate the highest level of integrity, and broaden the base of participation in the patent system. Now more than ever, we need a Director committed to science, ethics, and equity, to restore the public's trust in the PTO and its ability to promote progress for the benefit of all.

The PTO is a public agency with a duty to the public. Indeed, the entire patent system is founded on a bargain between inventors and the public: To incentivize technological progress, the public grants patents—exclusive rights in an invention for a limited period of time—to the inventors of new, nonobvious, and useful inventions. In exchange, the inventors must teach the world how to make and use the inventions, and, when the patent expires, all can use the inventions freely. Ultimately, the goal of the patent system is to encourage the creation and dissemination of valuable technologies that benefit the public, and providing incentives to spur invention through patents must be considered alongside the public's interest in access to patented technologies.

For the past three years, the PTO was led by a Director who admittedly viewed patent (and trademark) applicants as the agency's primary "customers"—a view that led to disregard for the impact of the PTO's decisions on consumers, workers, public health, and the American public as a whole. For example, under the last Director's leadership, the PTO overstepped its statutory authority and dismantled key provisions of the America Invents Act (AIA), including the inter partes review system. Congress created that system to help stem the tide of abusive patent infringement litigation; the last Director changed the system to encourage it, as the rising number of infringement lawsuits shows. Meanwhile, he adopted policies that effectively re-wrote patent law, expanding the boundaries of eligibility for patent protection to benefit big technology, pharmaceutical, and medical diagnostic companies, but with little or no public input and oversight. Throughout this period, the PTO's sole public advisory committee (the Patent Public Advisory Committee or PPAC) included representatives of big corporations, but not a single representative of the broader public.

All of these, and many more, were steps in the wrong direction, and steps that the next Director should undo. The patent system is supposed to serve the public, not a few technology and pharmaceutical companies that hold thousands of patents.

It shouldn't be controversial to expect the PTO to prioritize the public interest, and it is essential the next Director have experience working with diverse communities outside the small world of the PTO's "customers" and the lawyers who serve them. In addition, the next Director should not have conflicts of interest that undermine their ability to make decisions based on the needs of the public.

Those of us who care about patents and their impact on society care deeply. No candidate will please everyone. But we believe the best candidate will put a great value on public service, know how to manage a large organization, and have experience working with communities beyond the patent bar. The best candidate will also have a strong track record of dedication to gender and racial equity and to empowerment of communities traditionally marginalized within our patent system and within our society as a whole.

Specifically, the next Director should have:

- an unequivocal commitment to inclusivity and equity for all Americans.
- personal experience in the patent system as a member of an historically underrepresented group.
- experience working in science and technology that goes beyond representing private clients in high-stakes patent litigation.
- a record of making science-based decisions based on the best available data.
- a demonstrated commitment to broadening the base of participation in the patent system, for example through public education, academic research, or government service.

With these qualities in mind, we urge you to choose a Director who will serve all Americans rather than only a privileged few, and who will promote access to technology we urgently need.

Respectfully Submitted,

Action Center on Race and the Economy
American Medical Student Association
Campaign for Sustainable Rx Prices
Doctors for America
Electronic Frontier Foundation
Families USA
Health Advocacy Summit
Initiative for Medicines, Access, & Knowledge
Institute for Clinical and Economic Review
(ICER)
Interfaith Center on Corporate Responsibility
(ICCR)
Knowledge Ecology International
Lower Drug Prices Now (LDPN)
Maryland Communities United
Niskanen Center
Open Source Hardware Association (OSHWA)
Patients for Affordable Drugs
PrEP4All
Public Citizen
Public Knowledge
R Street Institute

Right to Health Action
Social Security Works
T1International
T1 International Chapters:
Arizona #insulin4all
California #insulin4all
Connecticut #insulin4all
Florida #insulin4all
Georgia #insulin4all
Kentucky#insulin4all
Massachusetts #insulin4all
Maine #insulin4all
New Hampshire #insulin4all
North Carolina #insulin4all
Ohio #insulin4all
Oklahoma #insulin4all
Tennessee #insulin4all
Utah #insulin4all
Virginia #insulin4all
Washington #insulin4all

CC: Catherine Russell