

THE WHITE HOUSE

EXECUTIVE ACTIONS: ANSWERING THE PRESIDENT’S CALL TO STRENGTHEN OUR PATENT SYSTEM AND FOSTER INNOVATION

❖ Year of Action: Making Progress Through Executive Action ❖

In his State of the Union address, President Obama set an ambitious agenda to make 2014 a year of action. As part of that commitment, and recognizing that innovation is the lifeblood of our economy, the Administration today is announcing major progress on a series of initiatives designed to combat patent trolls and further strengthen our patent system and foster innovation; issuing new executive actions to build on these efforts; and renewing its call on Congress to finish the job by passing common-sense patent reform legislation.

Since last June, when the White House [pledged](#) to protect innovators from frivolous litigation, the Administration has been working to implement a series of executive actions to improve the U.S. patent system. Today the White House is announcing delivery on these commitments:

- **Promoting Transparency** — The United States Patent and Trademark Office (USPTO) recently published a [draft rule](#) to ensure patent owners accurately record and regularly update ownership information when they are involved in proceedings before the USPTO. This effort is aimed at improving the quality of patents issued, enhancing competition, facilitating technology transfer, and making it harder to hide abusive litigation tactics behind shell companies. After receiving input from the public, the USPTO aims to issue a final rule in the coming months.
- **Making Patents Clear** — The USPTO has developed and implemented a training program to help its examiners rigorously examine so-called “functional claims” to ensure claims are clear and can be consistently enforced. In the coming weeks, USPTO will launch a pilot program that uses glossaries in patent specifications to promote patent clarity.
- **Protecting Main Street from Abuse** — To help ensure consumers and main-street retailers know their rights before entering into costly litigation or settlements, the USPTO is today launching an online toolkit aimed at empowering consumers with answers to common questions, information about patent suits, and details about specific patents. The toolkit will include information and links to services and websites that can help consumers understand the risks and benefits of litigation or settlement, and pick their best course of action.
- **Expanding Outreach & Focused Study** — Today, the USPTO is announcing the expansion of its Edison Scholars Program, which brings distinguished academic experts to the USPTO to develop and make available to the public more robust data and research on issues bearing on abusive litigation. USPTO will also continue to expand its engagement with stakeholders—including patent holders, researchers, advocates, and others—and build on the successful roundtables the agency hosted across the country over the past year on high-tech patent issues.
- **Strengthening Exclusion Order Enforcement**— To make the enforcement of exclusion orders issued by the International Trade Commission more transparent, effective, and efficient, the Office of the U.S. Intellectual Property Enforcement Coordinator launched an interagency review and will, in the coming months, deliver its recommendations on refining that process.

- **Patents for Humanity.** Today, the Administration is committing to sustain, going forward, the previously pilot-scale Patents for Humanity Program, which creates business incentives for using patented technology to address global humanitarian needs.

Today, the White House is also announcing three new executive actions to encourage innovation and further strengthen the quality and accessibility of the patent system:

- **Crowdsourcing Prior Art** — To help ensure that U.S. patents are of the highest quality, the USPTO is announcing a new initiative focused on expanding ways for companies, experts, and the general public to help patent examiners, holders, and applicants find relevant “prior art”—that is, the technical information patent examiners need to make a determination of whether an invention is truly novel.
- **More Robust Technical Training** — The USPTO is expanding its Patent Examiner Technical Training Program to help patent examiners keep up with fast-changing technological fields by making it easier for technologists, engineers, and other experts to provide relevant technical training and guidance to patent examiners. To make the most of these changes, the Administration is calling on innovators to volunteer their time and expertise to help ensure that USPTO training is robust and reflects the state of the art.
- **Pro Bono and Pro Se Assistance** — To increase the accessibility of the patent system, the USPTO will dedicate educational and practical resources to assist inventors who lack legal representation, appoint a full-time Pro Bono Coordinator, and help expand the existing America Invents Act pro bono program to cover all 50 states.

Renewing the Call for Meaningful Legislation to Combat Patent Trolls: In his State of the Union address President Obama renewed his call for Congress to pass patent reform legislation, which enjoys strong bipartisan support. The Administration looks forward to continuing to work with Congress to deliver focused and effective patent reform legislation to the American people in the coming months.

❖ **Year of Action: Making Progress Through Executive Action** ❖

**FURTHER DETAIL ON ANSWERING THE PRESIDENT’S CALL TO
IMPROVE OUR PATENT SYSTEM AND FOSTER INNOVATION, NOT LITIGATION**

Innovation is the lifeblood of our economy, and a strong intellectual property system is central to those efforts. Our patent system is enshrined in our Constitution to encourage invention and to reward Americans for their hard work and risk-taking. But in recent years, that system has also seen the growth of abusive patent litigation designed not to reward innovation but to threaten inventors and companies based on questionable claims. That’s why President Obama has made it a priority to reform that system to ensure it encourages innovation and invention and provides the right incentives to drive investment, inspire and reward creativity, and spur job creation.

In 2011, the President signed the Leahy-Smith America Invents Act (AIA), a landmark piece of legislation designed to help make our patent system more efficient and responsive to innovators. The United States Patent and Trademark Office (USPTO) has now successfully implemented that law, enabling many reforms that are leading to higher patent quality, including post-grant patent review proceedings at the USPTO that offer faster and less expensive alternatives to litigation in Federal courts. Yet many innovators have continued to face challenges by patent-assertion entities or patent “trolls”– entities that have, over the past decade, increasingly used patents to extract settlements based on the high cost of defense.

Building upon the strong foundation of AIA reforms, on February 14, 2013, President Obama stated that “our efforts at patent reform only went about halfway to where we need to go. What we need to do is pull together additional stakeholders and see if we can build some additional consensus on smarter patent laws.”

On June 4, 2013, the White House set forth a series of [executive actions and legislative recommendations](#) designed to protect innovators from frivolous litigation and ensure high-quality patents.

During his State of the Union address in January 2014, the President renewed his called for passage of a patent reform bill that would allow businesses to stay focused on innovation, not litigation. To complement this legislative effort, today the White House is highlighting progress to date on the previously announced executive actions, and is announcing three new actions to further respond to the President’s call-to-action to level the playing field for all innovators and increase patent quality.

Progress on the June 2013 Executive Actions

1. **Transparency in Patent Ownership.** Patent trolls often set up shell companies to hide their activities. This tactic prevents those facing litigation from knowing the full extent of the patents that their adversaries hold when negotiating settlements; keeps innovators from being able to find each other; and undermines companies’ understanding of the competitive landscape. That’s why the USPTO recently proposed a [new rule, informed by extensive stakeholder input](#), requiring the reporting of people or companies with ownership interests in a patent or application, called the “attributable owners.” Attributable owner information will provide the public with more complete information about the competitive landscape; facilitate more efficient technology transfer by making patent ownership information more readily available; and reduce abusive patent litigation by helping the public better defend itself against meritless assertions. The USPTO is currently

soliciting and accepting written comments from the public [here](#), and hosting stakeholder [engagement events](#) to solicit additional valuable feedback.

2. **Enhancing Claim Clarity** The AIA reforms made important improvements to the patent examination process and overall patent quality, but stakeholders remained concerned about patents with overly broad claims in certain high-tech fields. In response, the USPTO has developed an extensive, multi-phased training program for all examiners and judges focused on evaluating functional claims and improving examination consistency and the clarity of the examination record. The agency has also conducted extensive stakeholder outreach and engagement to solicit ideas and collect feedback, experiences, and insights on improving patent quality. In the coming weeks the USPTO will launch [a pilot program](#) aimed at encouraging the use of clearer language within patent claims through the use of glossaries in patent specifications.
3. **Empowering Consumers and Main Street Retailers.** Unsuspecting retailers, consumers, small businesses, and other users of products containing patented technology have increasingly found themselves targeted by letters alleging patent infringement and demanding money—even in instances where a small business is using an off-the-shelf product. To help level the playing field and ensure individuals and businesses know their rights and are aware of available resources before entering into costly litigation or settlements, the USPTO is launching today a robust online toolkit of information, available via the www.uspto.gov or at www.uspto.gov/patentlitigation. This new portal brings together for the first time in one place a wide-ranging, powerful set of patent-relevant tools and information, including answers to commonly asked questions about patent-demand letters and a catalog of third-party sites that users can access to find out, for example, whether the patent has ever been asserted in litigation.
4. **Expanding Outreach and Focused Study.** Since last June’s announcement, the USPTO has significantly increased its already extensive public outreach efforts to more actively engage key stakeholders in the high-tech community, trade and bar associations, business and university groups, and advocacy organizations, resulting in a wealth of valuable input on patent clarity, transparency, and high-tech patents. The USPTO has also expanded its Thomas Alva Edison Visiting Scholars Program and has now selected three new scholars who will engage in focused study of various aspects of our patent system, to provide insights on how to further reduce unnecessary litigation and improve the quality of issued patents. This empirical research will help the Administration better understand our current patent system and better inform the development of new ideas and consensus around improvements to patent policies and laws.
5. **Strengthen Exclusion Order Enforcement.** When patent-infringing products are banned from importation to the United States, U.S. Customs and Border Protection and the U.S. International Trade Commission are responsible for the application of exclusion orders and determining whether imported products fall within the scope of an order. Implementing these orders presents unique challenges, particularly when a technologically sophisticated product has been redesigned to avoid the order. To address this growing challenge, the U.S. Intellectual Property Enforcement Coordinator has launched a review of the processes and standards used during exclusion order enforcement activities and, in the coming months, will issue recommendations and guidance to executive agencies to improve the efficacy, transparency, and efficiency of exclusion order enforcement activities.
6. The Administration is committing to sustain the [Patents for Humanity Program](#), which aims to increase the accessibility of the patent system for innovators who are delivering game-changing technologies to address global humanitarian needs. Past award recipients have used their patent portfolios to decrease the price of HIV and malaria drugs, develop more nutritious food sources,

bring solar energy to off-grid villages, combat toxic counterfeit drugs, and purify billions of liters of water using inexpensive chemical packets.

New Executive Actions Announced Today

1. **Crowdsourcing Prior Art.** To determine whether an invention is novel, examiners in the USPTO must find and apply information about the state-of-the-art in the relevant technology. However, documents reflecting this state of knowledge can sometimes be difficult to find and incorporate into the patent-examination process. Today, the USPTO is announcing that it is exploring a series of measures to make it easier for the public to provide information about relevant prior art in patent applications, including by refining its third-party submission program, exploring other ways for the public to submit prior art to the agency, and updating its guidance and training to empower examiners to more effectively use crowd-sourced prior art. This effort will focus on driving valuable contributions to the patent process and to patent quality, strengthening a process that is vital to innovation and economic growth. The USPTO will seek public input on these efforts, as the Administration calls on the public and expert stakeholders to partner with us to encourage the disclosure and sharing of prior art, particularly hard-to-find references.
2. **More Robust Technical Training and Expertise.** Patent examiners must be skilled in determining whether a particular application should be granted based upon the state of the art. Building upon its existing “Patent Examiner Technical Training Program,” the USPTO will take steps to make it easier for technologists and engineers from industry and academia to provide relevant, technical training and expertise to patent examiners regarding the state of the art. The Administration is calling upon volunteers to assist in this training effort and ensure that training is systematic, robust, and covers all disciplines. In addition the USPTO is making permanent each of its four regional satellite offices, which will make it even easier for stakeholders to contribute in-person or virtually from these locations nationwide.
3. **Patent Pro Bono and Pro Se Assistance.** Due to a lack of resources, independent inventors and small businesses sometimes struggle with how to file and prosecute a patent application to protect their invention. The USPTO will be providing dedicated educational and practical resources to those who lack legal representation (i.e., pro se applicants) and will work with the AIA Pro Bono Advisory Council—and through a newly appointed full-time Pro Bono Coordinator—to expand the existing pro bono program established under the AIA to cover all 50 states.

Renewing the President’s State of the Union Call for Legislation to Combat Patent Trolling

The Administration stands ready to work with Congress on these issues, which are crucial to our economy, American jobs, and the Nation’s engine of innovation. Building upon the President’s State of the Union remarks, the Administration urges Congress to pass a bipartisan law designed to curtail abusive patent litigation and improve transparency in the patent system. We are encouraged by Congress’s strong, bipartisan attention to these issues and look forward to working with the Congress and stakeholders to bring this important bipartisan legislation to the President’s desk this year.