



# INSTITUTE FOR INTELLECTUAL PROPERTY & SOCIAL JUSTICE, INC.

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## IIPSJ Comments on Improving Regulation and Regulatory Review

### I. Commentator Information

These comments are submitted by the Institute of Intellectual Property and Social Justice at the Howard University School of Law, by its Director, Prof. Lateef Mtima, its Associate Director, Prof. Steven D. Jamar, and its Scholar in Residence and Chair of Institute Development and Advancement, Bryant L. Young, in response to the United States Patent and Trademark Office's Request for Comments on Improving Regulation and Regulatory Review, as published in the Federal Register, Vol. 76, No. 55, p. 15891-15892 Tuesday, March 22, 2011 (FR Doc. 2011-6660).

The Institute of Intellectual Property and Social Justice (IIPSJ) was founded in 2002 to address the social justice implications of intellectual property law and practice both domestically and globally. IIPSJ's work ranges broadly and includes scholarly examination of intellectual property law from the social justice perspective; advocacy for social-justice aware interpretation, application, and revision of intellectual property law; efforts to increase the diversity of the those who practice IP law; and programs to empower historically and currently disadvantaged and under-included groups to exploit IP effectively.

### II. Comments on Improving Regulation and Regulatory Review

The United States Patent and Trademark Office (USPTO) is working on a preliminary plan for reviewing its existing significant regulations. Specifically, the USPTO proposes "to provide more effective and less burdensome regulations."<sup>1</sup> This should help the Office "foster innovation and competitiveness through providing high quality and timely examination of patent and trademark applications, guiding domestic and international intellectual property policy, and delivering intellectual property information and education worldwide."<sup>2</sup>

Through the following comments, IIPSJ addresses the USPTO's concerns on reviewing its existing regulations and making any necessary improvements. These comments correspond numerically to the questions to consider (p. 15892).

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<sup>1</sup> Improving Regulation and Regulatory Review, <http://www.gpo.gov/fdsys/pkg/FR-2011-03-22/pdf/2011-6660.pdf> (Mar. 22, 2011).

<sup>2</sup> *Id.*

1. **What is the best way for the USPTO to identify which of its significant regulations should be modified, streamlined, expanded, or repealed? What process should the USPTO use to select rules for review and how should it prioritize such review?**

The best way for the USPTO to identify regulations to modify, streamline, expand, or repeal is through gathering input from a variety of practitioners throughout the intellectual property community. In particular, it would be especially useful to consider the suggestions of those who routinely conduct business with the USPTO, e.g., registered attorneys and agents, independent inventors, in-house corporate counsel, and any lay person who relies on the USPTO for guidance and support. The process the USPTO should use to select rules for review is a standard notice and comment process, similar to the current procedure of publishing regulatory notices in the Federal Register.<sup>3</sup> The USPTO should prioritize such a review based on empirical evidence from feedback received on a given regulation. Moreover, the USPTO has recently undertaken various initiatives intended to improve the accessibility of the patent and trademark process in heretofore marginalized communities, and consistent with these initiatives, special efforts should be made to ensure relevant input from such communities, particularly with respect to issues of rule and regulation layperson clarity.

2. **What can the USPTO, relative to its regulation process, do to reduce burdens and maintain flexibility for the public while promoting its missions?**

The USPTO can reduce burdens and maintain flexibility for the public while promoting its missions by condensing its regulations. Regulations should be viewed objectively, both individually and as a whole, basically comparing and contrasting each regulation. Whenever possible, any regulation process should also be simplified for comprehension and streamlined for the encouragement of greater public participation. In addition, with fewer regulations to consider, public burdens should inherently become substantially reduced.

3. **How can the USPTO ensure that its significant regulations promote innovation and competition in the most effective and least burdensome way? How can these USPTO regulations be improved to accomplish this?**

The USPTO can ensure that its significant regulations promote innovation and competition in the most effective and least burdensome way by providing its regulations written in a format with less legalese for easier comprehension by the public at large. These USPTO regulations can be improved to accomplish promoting innovation and competition by having them drafted or initially considered by a committee. Specifically, this committee should include a fair selection of scientists and engineers, including attorneys and agents with this requisite expertise, along with independent inventors and small business owners with an interest in advancing innovation. In addition, as referenced above, in keeping with the USPTO's outreach initiatives in marginalized communities, inventors and entrepreneurs from such

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<sup>3</sup> Federal Register, <http://www.federalregister.gov/> (last updated Apr. 19, 2011).

communities should be canvassed annually to assess the impact of existing rules and regulations on innovation and competition opportunities available to such groups, and to explore ideas and suggestions for promoting innovation and entrepreneurship in these communities.

4. **Are there USPTO regulations that conflict with, or are duplicative of, regulations from other agencies? If so, please identify any such rules and provide any suggestions you might have for how this conflict or duplication can be resolved in order to help the USPTO achieve its mission more effectively.**

The USPTO does not have regulations that conflict with, or are duplicative of regulations from other agencies. The regulations pertaining to the USPTO should be found in one place for ease of access, so if duplicative regulations occur, what really matters is that they directly apply to the USPTO as opposed to agencies in general. Currently, patent and trademark regulations, such as those provided in the Manual of Patent Examining Procedure and the Trademark Manual of Examining Procedure, can be accessed and downloaded at the public's convenience on the USPTO's website.

5. **How can the USPTO best encourage public participation in its rule making process? How can the USPTO best provide a forum for the open exchange of ideas among the USPTO, the intellectual property community, and the public in general?**

The USPTO can best encourage public participation in its rule making process through a combination of public events, social media, and user blogs.<sup>4</sup> Public events held at the USPTO and broadcast online for those unable to attend in person should keep the general public informed, while USPTO affiliated blogs will allow users to voice their opinions. These blogs should have some sort of registration system so that people do not abuse the platform and hopefully stay on topic. If the USPTO seriously considers the public's comments, participation should be effectively ensured. In essence blogs are the best way to provide a forum for the open exchange of ideas among the USPTO, the intellectual property community, and the general public.

As reflected in our comments, we support the USPTO's preliminary plan, since regulations should be reviewed periodically with clarity being a key factor. In addition, any changes to the existing regulations should make obtaining patent and/or trademark protection more cost effective to the applicant, with the entire process being more expedient.

Respectfully submitted:

Institute for Intellectual Property and Social Justice

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<sup>4</sup> The USPTO currently has many free events at their headquarters in Alexandria, Virginia that are open to the general public, while USPTO Director David Kappos' Public Blog at <http://www.uspto.gov/blog/> is a great resource and an example of a blog that works.