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Deputy Under Secretary of Commerce  
for Intellectual Property and Deputy Director of the  
United States Patent and Trademark Office

Via email only: [strategicplan@uspto.gov](mailto:strategicplan@uspto.gov)

December 3, 2013

Subject: U.S. Section of FICPI Written Comments on Draft USPTO  
2014-2018 Strategic Plan

Dear Deputy Under Secretary:

Thank you for taking the time to consider the following comments to the draft USPTO 2014-2018 Strategic Plan. We appreciate the opportunity to provide these comments and would like to thank you in advance for your careful consideration of them. The comments are submitted on behalf of the U.S. Section of the International Federation of Intellectual Property Attorneys (FICPI) with input from the Study and Work Commission of FICPI. FICPI is a non-political, worldwide organization of intellectual property professionals (attorneys and agents) in private practice. FICPI has approximately 5,000 members from more than 80 countries and regions. Members' qualifications, reliability, and professional standing are well established. Clients of FICPI members span all types and sizes of corporations, multinational companies, small and medium-sized enterprises, and individual inventors. (For more on FICPI, please visit [www.ficpi.org](http://www.ficpi.org) and [www.ficpi.us](http://www.ficpi.us).)



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## **I. Introduction**

We applaud the mission-focused strategic goals and many of the objectives associated with each of the strategic goals. Our comments are focused on Goal I (i.e., Optimize Patent Quality and Timeliness) and the Management Goal (i.e., Achieve Organizational Excellence), although our comments may also apply to other organizational goals.

## **II. Goal I: Optimize Patent Quality and Timeliness**

### **A. Objective 1: Refine Optimal Patent Pendency**

We agree with the proposal of the Office to refine optimal patent pendency and congratulate the Office in reducing the average time applications are pending before the Office before obtaining a first Office Action on the merits. We recommend careful consideration of any reduction in patent examiner workforce as the Office approaches desired initial Office Action pendency targets. For example, as a steady state is reached for first Office Action pendency targets, we suggest redirecting the examiner workforce to further address the overall pendency of applications before the Office. For instance, prior to reducing the examiner workforce, we suggest moving RCE application filings back on the “regular amended” docket to expedite disposal of the patent application. Returning the RCE application filings to the regular amended docket will reduce the average total pendency of applications before the Office while providing applicants with prompt issuance of worthy applications.



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**B. Objective 2: Increase Efficiencies and Patent Examination Capacity to Align with Optimal Patent Pendency**

We agree with the initiative of the Office to address patent pendency issues by hiring additional examiners to strengthen the examiner workforce. In our opinion, the hoteling program is an effective way to reach talented individuals in all geographic regions of the country. Currently, hoteling examiners are required to periodically visit the Office to work on-site. Periodic visits may have the advantage of increasing face-to-face time with fellow examiners to increase the cohesiveness of the examiner art units. However, requiring periodic visits may eliminate access to hiring otherwise talented individuals that cannot economically visit the USPTO on a periodic basis. We suggest reviewing the periodic-visit requirement to determine whether the benefits outweigh the drawbacks. Current video-conferencing technology can be examined to determine whether typical benefits of periodic visits can be achieved remotely without the burden of traveling to or from a remote Office location. Establishing each hoteling examiner with current video-conferencing technology should reduce the need for on-site visits and consequently increase the attractiveness and feasibility of working for the Office - particularly from remote locations of the country. Moreover, video-conference communication should increase effective communication between hoteling examiners and applicants, thereby permitting personal



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interviews without requiring travel and a difficult coordination of schedules.

We also agree that efficiencies in patent prosecution can be realized by enhancing compact prosecution. Many successful initiatives have been supported and proven effective, such as the Pre-Appeal Brief Conference Pilot Program. We support this program as an effective way to avoid instances of reopening prosecution of an application after an Appeal Brief is filed. As such, we recommend permanent adoption of the Pre-Appeal Brief Conference Pilot Program.

We also support the After Final Consideration Pilot 2.0 program to promote compact prosecution. The program is effective to encourage productive communication between the applicant and examiner while avoiding unnecessary RCE filings. In order to improve the program, we suggest requiring the examiner to determine whether the amendment is effective to overcome the outstanding rejection in the final Office Action. If the examiner determines that the current rejection in the final Office Action still applies, we suggest requiring any Advisory Action from the examiner to indicate that the amendment after final will be entered upon filing a Notice of Appeal. Compact prosecution will be achieved by eliminating an unnecessary RCE to enter an amendment already considered by the examiner as insufficient to overcome the current rejection in the final Office Action. Rather, the applicant will be given the opportunity to directly appeal



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the rejection to the Patent Trial and Appeal Board (PTAB) without delay.

**C. Objective 4: Continue to Enhance Patent Quality**

Patent quality is often focused on improper issuance of patents. More particularly, metrics are often tracked to determine whether there was an error in allowing an application. We further suggest considering the quality of final rejections in applications. While there is a desire to discourage improper allowance of applications, there should likewise be a desire to discourage improper refusal to allow applications that meet the statutory requirements of novelty and nonobviousness. We recommend particular attention to be focused on improper issuance of final rejections.

**D. Objective 5: Ensure Optimal Information Technology (IT) Service Delivery to All Users**

Currently, the public search room at the Alexandria Office includes search terminals that are equivalent to terminals used by examiners. The search terminals provide powerful search engines while allowing quick and efficient electronic review of located patents and publications. Cost-free technology currently available to the public does not provide equivalent search or electronic review of patents and publications. We strongly recommend extending equivalent public search room facilities to the Detroit Office and the other Satellite Offices, once established. Still further, we also strongly suggest extending such search facilities to selected public libraries in



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major cities of every state. Providing widespread access to these powerful search tools will reduce patent pendency by allowing the most relevant prior art to be quickly and inexpensively located and subsequently cited to the Office. Indeed, armed with the most relevant prior art, a significant amount of invention disclosures will never be filed as patent applications. Moreover, with the knowledge of the most relevant prior art, applicants will be able to produce high-quality applications with initially filed claims that are already distinguished over the most relevant prior art.

**E. Objective 7: Maintain the Patent Trial and Appeal Board's Ability to Provide Timely and High Quality Decisions**

We suggest carefully considering the production requirements of the PTAB Judges to make sure well-reasoned decisions are issued that are fully supported by case law. We suggest implementing quality review(s) to ensure high-quality decisions.

**III. Management Goal: Achieve Organizational Excellence**

**A. Objective 4: Secure Sustainable Funding to Deliver Value to Fee-Paying Customers and the Public**

We understand the desire of the Office to ensure that fee setting is made permanent. We believe the fees set by the Office should be directly related to the cost of the services provided to the applicant. Noted recently, the fee for filing an RCE has dramatically



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increased without a clear understanding of how the fee increase relates to actual RCE processing expenses at the Office. While we recognize the desire of the Office to reduce patent pendency, increasing fees should not be used as a means to discourage applicants from pursuing patent coverage for worthy inventions. We recommend considering other options to allow applicants to obtain a complete review of the application without requiring an RCE. For example, we suggest further encouraging a complete search from the examiner in the first Office Action. This may be achieved, for example, by further reducing the counts available to the examiner for processing RCE applications.

#### **IV. Conclusion**

We are grateful to have the opportunity to comment on the draft USPTO 2014-2018 Strategic Plan. As the Office approaches initial Office Action pendency targets, we suggest redirecting the examiner workforce to further address overall application pendency. We also support the examiner hoteling program, Pre-Appeal Brief Conference Pilot Program and After Final Consideration Pilot 2.0 program as effective ways to increase efficiencies and increase examiner capacity. As discussed above, we suggest further modifying this program to avoid the unnecessary filing of an RCE to have an amendment entered that would not require further search or consideration by the examiner. We also suggest reviewing the quality of final Office Actions in patent applications to reduce unnecessary



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filing of appeals with the PTAB. We further suggest leveraging the technology currently enjoyed in the public search room to other public locations to further enhance patent quality and reduce unnecessary patent application filings. In addition, we suggest carefully aligning fees with the associated costs for the services provided by the Office. We welcome the opportunity to discuss any of the provisions of this paper at any time. We again thank you for this opportunity.

Respectfully submitted,

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