

AMERICA INVENTS ACT

Section 29: Establishment of methods for studying the diversity of applicants.

Section 29 of the Leahy-Smith America Invents Act (the Act), Pub.L. 112-29 (2010), requires that the “Director [of the USPTO] shall, not later than the end of the 6-month period beginning on the date of the enactment of this Act, establish methods for studying the diversity of patent applicants, including those applicants who are minorities, women, or veterans.” This statement outlines the methodology the USPTO will follow in order to allow the study of important issues related to applicant diversity.

At the outset, the Agency’s method for discovering more about how the USPTO is serving diverse communities must respect the interests of individuals and organizations in protecting private information. The method we have chosen underscores our sensitivity to this issue, and therefore takes an iterative, careful approach to collecting potentially sensitive information from USPTO applicants.

Accordingly, the USPTO is pursuing the following method to develop a basis for studying the diversity of patent applicants:

- (1) The USPTO is concluding a memorandum of agreement (MOA) with the U.S. Census Bureau providing for a cooperative program in which information currently collected by the USPTO will be provided to the Center for Economic Studies (CES) at Census, allowing CES employees to attempt to match these data to existing diversity information, such as race, gender, veteran status, age, economic status, education, and geography (for individuals), as well as to diversity information such as revenues, number of employees, and geography (for companies). The USPTO will use the proper process to modify the use of the existing information collection under the Paperwork Reduction Act and Privacy Act. Because sensitive Census information concerning diversity characteristics is protected under Title 13, once the USPTO information becomes comingled with Census data, it is also protected under Title 13 and cannot become public. Therefore, the planned outcome of this matching program will be tabulations that CES will deliver to the USPTO. These tabulations will consist only of aggregated information concerning the diversity of patent applicants by group, with no diversity information on any specific applicant provided to the USPTO. After conducting the matching, Census will consult with the USPTO on the accuracy and reliability of the statistics that CES was able to provide using existing USPTO information, including any bias that may have been introduced by any inability to adequately match the data, and offer suggestions as to what modeling may be used, or what additional data may be necessary, to accomplish a more accurate match and better outcomes.
- (2) The USPTO also plans to publish a Request for Information (RFI) in the Federal Register asking the public to comment on several questions associated with the collection of private information. The USPTO recognizes from the outset that the Census MOA described above includes only U.S. individuals and organizations, yet over fifty percent of U.S. patent applications originate outside the US. We may also find that given the limited information that the USPTO currently collects about applicants, the match to Census Title 13 data may be inadequate to provide a robust picture of diversity even for U.S. applicants. The RFI will therefore ask the

public to comment on several questions, including whether, and to what extent, the USPTO should consider collecting personal identifying information to enable the Agency to conduct better matching, analytics, and studies with the Census Bureau, as well as the desirability of possible other approaches to better reach the pool of non-U.S. applicants.

- (3) After the USPTO has collected information both from the RFI and the first match with Census data described above, the USPTO will decide whether, and under what restrictions, it may need to take further steps to ensure that it is able to accurately describe patent applicant diversity information consistent with Section 29 of the Act. We expect that the USPTO will be able to make such a determination not later than November 2012. The USPTO will then publicly announce what decision has been made, and whether any further process is necessary.

The USPTO is committed to responding adequately to the concerns of Congress and the increasing need in the innovation economy to analyze and understand how the various parts of the Federal Government are responding to the needs of innovators. The method we have established takes important preliminary steps toward this end, while also carefully considering the possible public concerns about collecting and using sensitive diversity information, thus protecting public confidence that the USPTO is treating all inventors seeking patent protection fairly and equally.