



[3510-16-P]

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO-C-2013-0039]

Request for Comments on Methods for Studying the Diversity of Patent Applicants

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for Comments.

SUMMARY: The United States Patent and Trademark Office (“USPTO” or “the Office”) is interested in gathering information on approaches for studying the diversity of patent applicants in accordance with research methodology developed as required by the America Invents Act (AIA or Act). To assist in gathering this information, the USPTO invites the public to provide comments on collecting information on the diversity of patent applicants consistent with the AIA.

WRITTEN COMMENTS: Written comments should be sent by e-mail to saurabh.vishnubhakat@uspto.gov. Comments may also be submitted by postal mail addressed to Saurabh Vishnubhakat, Expert Advisor, Office of Chief Economist, United States Patent and Trademark Office, Mail Stop External Affairs, P.O. Box 1450, Alexandria, VA 22313-1450. Although comments may be submitted by postal mail, the USPTO prefers to receive comments via e-mail. The deadline for receipt of written comments is [INSERT DATE 60 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]. Written comments should be identified in the subject line of the e-mail or postal mailing as “Diversity of Patent Applicants.”

Because written comments will be made available for public inspection, information that a respondent does not desire to be made public, such as a telephone number, should not be included in the written comments.

FOR FURTHER INFORMATION CONTACT: Saurabh Vishnubhakat, Expert Advisor, Office of Chief Economist, by telephone at (571) 272-6900, or by e-mail at saurabh.vishnubhakat@uspto.gov.

SUPPLEMENTARY INFORMATION:

Section 29 of the AIA charged the Director of the USPTO with “establish[ing] methods for studying the diversity of patent applicants, including those applicants who are minorities, women, or veterans” no later than six months after the enactment of the Act (i.e., by March 16, 2012). This section further provided that the Director shall not use the results of such study to provide any preferential treatment to patent applicants. The USPTO developed and timely published a methodology to study important issues related to applicant diversity. See “Diversity of Applicant Methodology” (March 16, 2012) on USPTO Web site for AIA Implementation (under “Programs”).

This methodology respects the interests of individuals and organizations in protecting private information. It underscores the Office’s sensitivity to this issue by taking an iterative, careful approach to potentially sensitive information from patent applicants, and includes input from the public. The methodology includes two initial steps: (1) Cooperate with the U.S. Census Bureau (“Census”) to analyze currently available public information data; and (2) seek public comment on whether or how to collect additional information. This Request for Comments constitutes the second step in the methodology.

As to the first step in the methodology, the USPTO cooperated with Census to analyze currently available public information data. Consistent with the language and legislative history of Section 29 of the AIA, the analysis sought: (1) To describe the overall, cumulative (i.e., highly aggregated) demographic characteristics, such as race, gender, age, and geography, of inventors as a group; and (2) to describe the overall, cumulative (i.e., highly aggregated) business characteristics, such as revenues, number of employees, and geography, for companies as a group. Note that this analysis gathered and evaluated cumulative data on groups of individuals and companies; this analysis did not gather and evaluate data in a manner that would identify any particular individual or company.

The analysis sought to match certain public information in USPTO files with confidential census information in Census files. Consistent with AIA Section 29, USPTO's analysis aimed to identify group demographics like race, gender and age of inventors in patents granted in 2005-2006; USPTO did not seek or obtain such demographic information for any particular inventor. By using existing data and cooperating with Census, the USPTO could avoid any additional burden on applicants while also protecting the identity of particular individuals and companies. This is because Census would only share with USPTO the highly aggregated group data (i.e., devoid of any personal identifying information). Because sensitive Census information concerning diversity characteristics is protected under Title 13, United States Code, once the USPTO information becomes comingled with Census data, that comingled data is confidential under Title 13 and cannot be released.

The data provided by USPTO for this analysis consisted only of certain public information provided on the face of patents granted between January 1, 2005, and December 31, 2006. This information was the name and address (generally only the town and state) of the inventor. As

stated above, USPTO provided this public information to Census, and Census then confidentially attempted to match this data against its own data with the goal of identifying, on an overall basis, the cumulative demographic information of the inventors as a group.

The analysis was only partially successful, however, since Census was able to match only 64% of the inventors provided by USPTO. The basic information collected by the USPTO from inventors—i.e., name, town, and state—was not a particularly strong basis for matching with Census data. For example, usually it was not possible to match common names (such as “John Smith” or “Mary Johnson”) in large cities (such as “New York, NY” or “Chicago, IL”). In sum, the poor quality of data-matching, as well as some statistical bias, suggest that the limited information currently collected by the USPTO about inventors (i.e., name, town, state) is not sufficient to allow Census to meaningfully describe the cumulative diversity characteristics of inventors as a group within the meaning of AIA Section 29.

In sum, the first step of USPTO’s methodology under AIA Section 29 was to cooperate with Census to analyze currently available data. The aim was to identify demographic information about inventors of patents granted in 2005-2006, as a collective group. Since step one was only partially successful, the Agency now proceeds to step two, which is to seek public comments on whether or how to collect further information for completing the diversity study under AIA Section 29.

ISSUES FOR COMMENT: The USPTO seeks comments on how to study the diversity of patent applicants before the USPTO pursuant to AIA Section 29. The questions below are intended to aid the USPTO in assessing whether and how to collect further information and in considering potential next steps for a diversity study. The questions should not be taken as an indication that the USPTO has taken a position or is predisposed to any particular view. The

public is invited to answer any or all of these questions. The public is also invited to submit comments on any related issues that they believe are relevant.

- (1) How and by which methods should the USPTO effectively study patent applicant diversity in accordance with the expressed intent of Congress in Section 29 of the AIA?
- (2) Should the USPTO conduct surveys of patent applicants to obtain demographic data such as race, gender, age, and geography, of inventors as a group?
- (3) Aside from surveys, how can the USPTO effectively collect personal identifying information about U.S. and non-U.S. patent applicants in order to study applicant diversity through improved data matching, analytics, and studies?
 - (a) Should the USPTO collect certain personal identifying information about U.S. and non-U.S. patent applicants on a mandatory basis or on a voluntary basis? How would each of these approaches affect the accuracy of the information being provided?
 - (b) Can USPTO effectively collect personal identifying information from other institutions or organizations about U.S. and non-U.S. patent applicants?
- (4) What particular personal identifying information should the USPTO seek (or not seek) in order to more effectively study applicant diversity? Why?

Dated: November 25, 2013.

Margaret A. Focarino,
Commissioner for Patents.

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