

November 27, 2013

The Honorable Margaret A. Focarino  
Commissioner for Patents  
United States Patent and Trademark Office  
600 Dulany Street  
Alexandria, VA 22314

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

**Re: AIPLA Comments regarding the Draft USPTO FY 2014-2018 Strategic Plan**

Dear Commissioner Focarino:

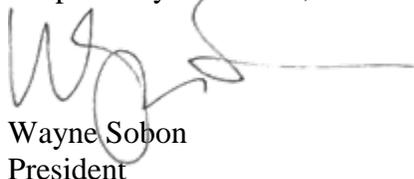
Attached please find the comments of the American Intellectual Property Law Association (AIPLA) concerning the United States Patent and Trademark Office's (USPTO) draft Strategic Plan for fiscal years (FY) 2014-2018, released October 17, 2013.

AIPLA is a national bar association with approximately 15,000 members engaged in private and corporate practice, in government service, and in academia. AIPLA represents a wide and diverse spectrum of individuals, companies and institutions involved directly or indirectly in the practice of patent and trademark law, as well as other fields of law affecting intellectual property. Our members represent both owners and users of intellectual property, and they have a keen interest in a strong and efficient Patent and Trademark Office.

As a preliminary matter, AIPLA believes the most important factor for the success of the USPTO in furthering the patent system is full funding of the USPTO. In particular, the current sequester has resulted in the inability of the USPTO to use all the fees paid by its users, many of whom are represented by AIPLA members, significantly harming the USPTO's efforts. AIPLA believes that a first priority should be full funding of the USPTO by giving the USPTO full access to all fees collected. Only then can the USPTO truly achieve the many worthy strategic goals set forth and discussed below.

AIPLA appreciates the opportunity to provide comments on the draft Strategic Plan as attached, and we would be happy to answer any questions that our comments might raise.

Respectfully submitted,



Wayne Sobon  
President  
American Intellectual Property Law Association

**Comments of AIPLA  
on the  
DRAFT USPTO FY 2014-2018 STRATEGIC PLAN**

**STRATEGIC GOAL I:  
Optimize Patent Quality and Timeliness**

AIPLA considers the optimization of patent quality and timeliness to be the most important goal for improvement of the U.S. patent system, and commends the USPTO for making this its paramount strategic goal for 2014-2018. AIPLA has engaged in an ongoing dialog with the USPTO on these issues, and has contributed user input in response to USPTO notices and calls for comments. We also have participated in international discussions, including the Trilateral and IP5 discussions, which have focused in part on quality and timeliness. As recently as 2011, AIPLA co-sponsored an international colloquium on patent quality in cooperation with FICPI, and has hosted a number of user meetings to further the goals of patent quality and timeliness.

While AIPLA fully supports the work of the USPTO in these critical areas, we also appreciate the opportunity to comment on the long-range goals of the USPTO in working toward the highest quality patent examination and grant system possible.

**Objective 1: Refine Optimal Patent Pendency**

**A. Work with stakeholders to refine long-term pendency goals, while considering requirements of the intellectual property (IP) community**

Now that the USPTO has fee setting authority, it is important that the USPTO obtain stakeholder input to establish pendency goals supported by the user community, and then adjust fees accordingly to achieve those goals. Additionally, the balance between fee levels and increased USPTO performance should be made clear to the public. The fee paying public should understand that the level of service the USPTO can provide is dependent on the amount of fees available for expenditure. AIPLA welcomes the opportunity to work with the USPTO in the next fee setting cycle.

With the movement of Requests for Continuing Examination (RCEs) from the amended docket to the new case docket, the time between filing and a first USPTO action has risen from about 2-3 months to one to two years. This is troubling, especially because the patent term adjustment (PTA) begins accruing at four months from filing. Accordingly, AIPLA believes it is important to set a goal to reduce the time from filing to first USPTO action. This is important to provide as concrete expectation for patent applicants, and also to reduce the PTA given to applications. AIPLA requests that RCEs be returned to the Examiner's amended case docket

because technically, they are amended applications. However if that is not possible, AIPLA believes that a goal of four months to a first action is a reasonable amount of time and would eliminate any PTA awarded.

**B. Continue to refine patent pendency metrics throughout the examination process and provide increased transparency of those metrics**

AIPLA commends the USPTO for establishing the Patent Dashboard to provide public access to patent examination metrics in a transparent manner. The USPTO should continue to provide metrics at the technology center and art unit level, and add additional metrics as developed or suggested by the public.

Because no metric currently gives any estimation of the time to first USPTO action for an RCE, it is important for the USPTO to provide some expectation of the time frames that can be expected before an RCE is picked up for a first USPTO action. The Dashboard currently gives an overall pendency for applications with an RCE but does not provide any guidance about the time to a first action.

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

**A. Hire/retain a nationwide workforce to meet pendency targets**

AIPLA supports the hiring and retention of additional patent examiners to increase patent examination capacity to align with optimal patent pendency. We understand that any stated hiring goal is likely to be a function of workload and resource projections, and that as pendency continues to decrease, particular care must be taken to ensure a smooth transition into a steady state at optimal pendency. With the opening of satellite offices and the telework program available to employees, the USPTO is in a very good position to recruit and hire a highly skilled workforce nationwide that will have the ability to readily respond to workload needs, including emerging technologies. The USPTO should continue to find innovative ways to adequately train new employees given the challenges of a geographically dispersed workforce, and the lack of face-to-face training and mentoring opportunities brought about by the telework program, and to some extent the satellite USPTO structure.

**B. Develop and train an adaptable workforce to respond to emerging technologies, USPTO priorities and the evolution of law**

On-going training of experienced patent examiners is essential to maintain and improve quality examination. With the significant changes in patent law brought about by the Leahy Smith America Invents Act (AIA), it is critical that the USPTO ensure examiners are thoroughly trained to handle examination under post AIA practices and policies. Additionally, as the current law evolves through the issuance of court decisions that affect examination policies, retraining is

essential. The use and refinement of examination guidelines is encouraged as well as the publication of training materials, including examples so that the public has the opportunity to understand the examination policies and procedures adopted and taught by the USPTO. Consistent application of proper examination principles is difficult with a large workforce, however it is critical to ensure confidence in our patent system. Technical training is encouraged where needed to help examiners keep abreast of emerging technologies, and AIPLA encourages the USPTO to partner with stakeholders to provide technical training by industry experts. While examiners who specialize in a particular technology may become more proficient, it is recognized that generalist examiners will be needed to balance dockets and evenly distribute backlogs.

### **C. Enhance compact prosecution initiatives**

AIPLA supports the USPTO's First Action Interview Program, the Track One option, the After Final Consideration Pilot (2.0), the Pre-Appeal Program, and the Quick Path Information Disclosure Statement option now available to applicants. AIPLA encourages the USPTO to continue promoting interviews as an effective tool for examiners and applicants to more quickly identify and address issues that arise during patent prosecution.

AIPLA commends the USPTO for their RCE Outreach efforts seeking ideas, feedback, experiences, and insights on RCE related prosecution strategies. AIPLA also commends the USPTO on recent changes to the After Final Consideration Pilot (2.0), introduction of the Quick Path Information Disclosure Statement option, and the new USPTO Patent Application Initiatives Timeline which displays various programs and initiatives available to applicants during each phase of the application process. AIPLA also appreciates the opportunities afforded to AIPLA and the public through efforts such as the RCE Outreach to provide input and comment on these changes. One area in particular AIPLA suggests the USPTO focus on for improved effectiveness is the Pre-Appeal Program. For example, changes can be made to the program to allow applicant participation in the Pre-Appeal Conference to foster communication on the types of issues the program is designed to address and effective presentation of the issues to examiners.

As the USPTO monitors these changes and makes further improvements, the USPTO should take into consideration the impacts of RCE filings on examination efficiency, as well as provide applicants with ways to avoid the necessity of filing an RCE. While AIPLA is encouraged by the initial steps to mitigate against the need to file RCEs, more work needs to be done. There is a significant need to address the timely action on RCEs once they are filed. The backlog of RCEs continues to be one of the most troubling issues facing USPTO practitioners.

Finally, the USPTO should continue to explore ways to reduce the number of actions per disposal in areas of the USPTO that are out of the norm.

#### **D. Offer patent application prosecution options**

AIPLA favors the availability of prosecution options such as Track One processing and is interested in learning more about other prosecution options being considered by the USPTO. With the development of prosecution options tailored to individual needs, the USPTO should be mindful of the overall objective of optimizing patent pendency and quality and not establish special processing only for those who can pay more at the expense of traditional efficient examination processes. AIPLA believes the USPTO should concentrate on learning which options are favored by applicants to assure the options reflect user needs and preferences.

We also suggest the USPTO consider developing computer analytics to generate patent application glossaries. This would improve compliance with 35 U.S.C. 112 and reduce claim ambiguity. Although the USPTO seems very interested in mandating the use of glossaries, we have seen no proposals which alleviate our fear of the burden which will be placed on applicants. That fear would likely be eliminated if the computer does nearly all of the work.

### **Objective 3: Increase International Cooperation and Work Sharing**

While AIPLA supports the efforts in international cooperation and work sharing, the efficiencies to be gained by work sharing are limited by differences in laws, rules, guidelines and practices around the world. An initiative to address harmonization of both laws and practices should be included within the strategic plan.

#### **A. Fully implement Cooperative Patent Classification (CPC)**

While AIPLA supports the efforts of the USPTO and the European Patent Office in their CPC efforts, more public awareness is needed regarding the implementation of the CPC. The USPTO should more fully explain the concepts behind the transition to the CPC, the advantages gained, the impact on users and USPTO employees and the timetable for implementation. AIPLA recognizes that efficiencies may be gained through cooperative efforts with other offices to move to a common classification system however public awareness of this change needs to be increased. Further, AIPLA supports the IP5 working together on a future classification system that would include Japan, Korea, and possibly China, in order to obtain an even more globally acceptable classification system. AIPLA has concerns regarding the impact of the CPC or other new classification systems on users, particularly with respect to the impact on restriction practice.

#### **B. Leverage the Patent Cooperation Treaty (PCT) to effectively use the work completed at the international stage in order to reduce the duplication of effort at the national stage**

In response to the last USPTO strategic plan, AIPLA expressed concerns over the quality of the USPTO's international phase work that is outsourced. Those concerns and recommendations are

repeated here. AIPLA has accepted the current program of outsourcing PCT searching, while remaining vigilant as to the effects on quality, timeliness, and usability of the search reports of the outsourcing contractors.

AIPLA believes that a key area in overall improvement in the PCT is the quality of search reports and written opinions. AIPLA believes that a fundamental goal should be to make the work undertaken in the international phase as good in quality as USPTO's own domestic search and examination. To this end, AIPLA strongly favors improving the quality of international search and international preliminary examination to equal the quality of search and examination for national applications, and implementing appropriate transparent metrics to demonstrate that a comparable quality is being achieved. This becomes more important with work-sharing initiatives such as PCT-PPH.

AIPLA recommends the USPTO provide statistics on reuse of the USPTO's PCT work in the national phase, but also on the reuse of work from the different International Search Reports. To further facilitate the value of this information to users, we suggest the statistics be broken down by technology as well. Further, we suggest since the search reports and written opinions provided for PCT applications should provide an Applicant with prosecution insights before a national phase filings under 35 U.S.C. 371, separate statistics on prosecution times between non-PCT 35 U.S.C. 111 filings and national phase filings under 35 U.S.C. 371 should be provided.

AIPLA also recommends that the Track One option available for direct 35 U.S.C. 111 filings should be extended to national phase filings under 35 U.S.C. 371.

We also note that in times of budget challenges such as the 2013 sequestration, the USPTO was forced to reduce the PCT outsourcing commitment. This may become a vulnerability if the same approach is taken in the future. AIPLA recommends that the USPTO strongly consider a long range plan to improve the quality of its PCT work and provide for continued timely and high quality PCT outputs that are reused by examiners in national stage processing and our foreign USPTO counterparts.

**C. Maximize the use of the Patent Prosecution Highway (PPH) to increase sharing and re-use of information between USPTO and its partner Offices**

By many reports the PPH programs implemented by the USPTO have been successful. The USPTO should consider ways to expand participation in the PPH by increasing awareness in the user community, identifying barriers to participation, and considering improvements to the programs to encourage participation by users, and assure understanding by the examiners to facilitate efficient and effective use of the PPH.

**D. Implement the Global Dossier, which will improve examiner and external stakeholder access to work products of other IP Offices to exploit the efficiencies that sharing search and examination results will provide**

AIPLA is very encouraged by the plans to implement the Global Dossier and appreciates the opportunity to give feedback and collect information through the Industry Trilateral and IP5 forums. AIPLA encourages continued support of the Global Dossier project and requests ongoing information regarding implementation. Additionally, AIPLA is encouraged by the USPTO commitments to implement the cross-filing service.

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

**A. Evaluate and refine the measurement of patent quality data**

AIPLA believes that improving quality and a renewed emphasis on quality management are critical issues facing the USPTO. We continually emphasized the need for adequate metrics for patent quality, and the need to see quality as encompassing examination procedures as well as the patent document itself. We encourage the USPTO to look at patent quality in this broader light, in order to provide meaningful and transparent metrics for measuring patent quality. For example, rejection types are a particularly fundamental type of data that should be available. Data tracking the frequency of different types of rejections (101, 102, 103, 112) may enable both users and the USPTO to monitor trends, particularly when changes are made to the law or regulations, enabling them to better understand the impact of those changes and perhaps fine tune them.

AIPLA encourages the USPTO to engage the user community in aiding the proper measurement of quality in addition to traditional internal USPTO measures. In the past there have been gaps between the public's perception of quality and internal USPTO measurement. Additionally, reliable quality measures must then translate into action plans to improve quality problems. More external feedback such as the external quality review and feedback conducted with AIPLA over the past year is encouraged.

**B. Maximize usage of patent quality data**

AIPLA commends the USPTO on the efforts to make patent quality data available to the public via the Dashboard. However, data down to the art unit and individual examiner level is now available through some external sources that can highlight outliers and areas in need of corrective action. AIPLA encourages the USPTO to look deeper into data available, such as allowance rates, actions per disposal, Board reversal rates, RCE filings, etc., to identify individuals and art units in need of corrective action.

**C. Evaluate effectiveness of changes to the count system and performance appraisal plans; make additional modifications as needed**

AIPLA agrees that the recent impact of the changes to the count system need to be evaluated to ensure that the results are in alignment with all of the USPTO strategic goals and initiatives. For example the change in RCE credits and docketing procedure appears to have contributed to the increase in RCE backlogs without reducing the filing of RCEs. The impact on applicants is increased pendency of inventions in which one or more RCEs have been filed, and a backlog of appeals at the Patent Trial and Appeal Board (PTAB). The USPTO should endeavor to find ways to incentivize examination quality, efficiency, and timeliness through both the examiner count system and performance appraisal plans.

**D. Continually improve and provide timely technical and legal training**

AIPLA agrees that timely technical and legal training are essential to maintaining and improving quality examination. We encourage interaction with stakeholders to help provide up-to-date technical training as the USPTO has done in the past. Additionally, making training materials available to the public is commended. Once clear policies and procedures are articulated through internal USPTO training, the USPTO should have processes in place to monitor the effectiveness of the training and identify situations where the policies and procedures taught in the training are not being followed. Again, stakeholder input on the impact and effectiveness of training should be sought.

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

**A. Stabilize the Patent Application Location Monitoring (PALM) and other legacy IT systems**

To the extent that legacy IT systems within the USPTO have become outdated or unable to handle the required workload, it is important that the USPTO stabilize and update these systems. The USPTO user community has come to use and rely on the EFS system to file documents with the USPTO and the PAIR and search systems available on the USPTO website to conduct everyday business. It is important that these systems, including the PALM system, be continuously available and responsive to the needs of the USPTO and the public.

AIPLA recognizes that upgrades to IT systems have been particularly impacted by sequestration. We encourage the USPTO to prioritize IT funding to ensure viability of legacy systems before new development occurs.

**B. Redesign and re-architect current patent IT systems to provide end-to-end electronic processing**

Information regarding the current status of the end-to-end electronic processing project is lacking. The previous strategic plan emphasized the need for electronic end-to-end processing, however it is not clear what progress, if any, has been made. It is also not clear what resources have been devoted to the project to date. AIPLA comments to the previous strategic plan indicated that there were many details of the plan that were not understood by the user community. Those details have yet to be disclosed.

**C. Increase the acceptance, creation and publication of standardized, structured, and searchable patent data and documents**

With worldwide search systems incorporating patent data from multiple sources it is essential that standardized data is available from those sources. It is understood that standardization of patent data is an ongoing effort internationally within the World Intellectual Property Organization (WIPO) and the IP5. The USPTO should continue those efforts to ensure its patent data is compatible with recognized norms and that data produced in other IP Offices complies with those standards. AIPLA is concerned about the impact on users if the USPTO plans to implement a text tagged filing standard. Further details regarding this initiative would be helpful.

**D. Upgrade search systems**

The USPTO should explain the current status of the search systems available to USPTO Examiners and the public. If current search systems need to be upgraded to perform a high quality examination then AIPLA supports that effort. AIPLA also suggests that cooperation with other major IP Offices may be beneficial in planning for the next generation search system and the USPTO may find efficiencies in such a cooperative effort.

**E. Identify IT opportunities with other IP Offices to invoke work sharing efficiencies**

It is important the USPTO find efficiencies through partnering with other IP Offices, including work sharing efficiencies. To the extent that IT system refinement is needed to implement those work efficiencies, AIPLA supports those efforts, provided the IT expenditures are tied to a return on investment that manifests cost savings, quality, and/or examination efficiencies.

**Objective 6: Continue and Enhance Stakeholder and Public Outreach**

**A. Expand stakeholder awareness of the various support resources for users**

AIPLA commends the USPTO for the efforts made to reach out to stakeholders to solicit input and comments regarding USPTO resources, programs, and policies. AIPLA agrees that the

USPTO should increase efforts to educate the public on the resources available and planned enhancements to those resources. AIPLA encourages the USPTO to continue the use of website announcements, public forums, and webcasts to bring the array of USPTO resources into focus for users.

**B. Continue facilitating the growth of the patent pro bono program**

AIPLA supports the expansion of the USPTO lead pro bono program. The USPTO could be more vocal in explaining the current program, celebrating its successes, and encouraging expansion to all parts of the country.

**C. Expand technology-specific and topic-specific partnerships**

By all accounts the technology-specific partnership efforts have been well received. These programs give the public and users the opportunity to meet and interact with USPTO leadership in technology specific areas to exchange information leading to improved handling of issues related to the specific technology. AIPLA supports expanding topic-specific partnerships to other technologies.

**D. Expand outreach related to CPC**

The transition to the CPC is a significant change for both the public and USPTO employees. It is recommended that the USPTO inform the public on a more expansive basis of the concepts behind the move to the CPC, the expected advantages, the challenges faced, and the timetable for transition. One concern the user community has is the impact, if any, the change to the CPC will have on restriction practice.

**E. Increase awareness and transparency of patent information, and patent application and ownership information**

AIPLA agrees that the USPTO should increase awareness and transparency of public patent information that is collected by the agency. The USPTO should however seek public input and comment on any proposals to increase the requirements made on applicants and owners to provide additional information not currently required.

**F. Engage stakeholders to advance the implementation of the AIA and explore opportunities for further reform by the USPTO**

AIPLA commends the USPTO for its efforts in implementing the provisions of the AIA. The requirements to implement rule changes and educate the public and USPTO personnel on the impacts of the AIA was extremely challenging and the USPTO rose to that challenge. The USPTO should indeed continue efforts to ensure AIA implementation is performed in a matter consistent with the law as it is clarified through judicial decisions. Additionally, as further efforts to improve our patent system are explored, such as White House Executive Actions,

AIPLA requests that the USPTO continue to engage stakeholders to find balanced solutions to the issues under consideration that help to avoid unintended consequences.

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

**A. Define optimal pendencies for PTAB proceedings**

AIPLA welcomes the efforts of the PTAB to establish optimal pendencies for reexamination proceedings and ex parte appeals, understanding that AIA proceedings are, by statute, required to be adjudicated within one year. The backlog of ex parte appeals has grown and must be addressed. While hiring more Administrative Patent Judges (APJs) is a positive, AIPLA believes the USPTO should look into additional pendency reduction options, such as a review of pending appeals to determine if a resolution is possible prior to consideration by the PTAB. Additionally, the USPTO should study the effectiveness of the appeal conference process. The USPTO should consider applicant participation in the appeal conference process and other ways to resolve patentability issues without the necessity to proceed to the appeal stage.

**B. Hire/retain an adaptable nationwide PTAB workforce, including management staff, to meet pendency and quality targets**

As stated above, the hiring of new APJs to deal with new PTAB responsibilities and the current backlog is supported. The USPTO has demonstrated success in attracting a highly skilled PTAB workforce. However, AIPLA suggests that the entire appeal process be studied and optimized to avoid unnecessary appeals and resolve patentability issues at the earliest stage possible.

**C. Develop an automated tool for centralizing the collection, retrieval, and sharing of operational data**

AIPLA supports the concept of an automated tool to collect, retrieve, and share operational data. The PTAB should look to the patent organization tools as a starting point for developing a PTAB specific tool if possible to avoid time and costs necessary to develop a separate automated system. The USPTO should integrate the existing systems where possible to serve the PTAB.

**D. Ensure consistency in PTAB decisions**

Congress has established several processes, including Post-Grant Review, *Inter Partes* Review and the Transitional Program for Covered Business Method Patents, as lower cost alternatives to patent litigation and assigned their implementation to the PTAB in the AIA. With the hiring of new APJs and the growth of the PTAB responsibilities it is more essential than ever that the decisions of the PTAB be consistent and of the highest quality. Such decisions will instill confidence in the PTAB by the public and will benefit the patent system by providing reliable outcomes. However, initial reports suggest that there is variability with regard to the application of the new rules for and the consistency of the outcomes. There have also been early indications

of concern that the PTAB decisions will be more negatively determinative than may have been originally contemplated. It is critical that the PTAB maintain that level of quality while handling the rigorous timeliness standard required by the statute, as well as managing new proceedings in a balanced and fair manner. An early review should be undertaken to evaluate the success of the implementation and to identify areas for improvement or corrective action.

**STRATEGIC GOAL II:  
Optimize Trademark Quality and Timeliness**

AIPLA agrees with the overall Strategic Goal for the Trademark Office—to optimize trademark quality and timeliness. As a general comment, AIPLA commends the Trademark Office on meeting, and in many instances exceeding, its performance targets. We agree that the general objective of continuing to improve Trademark Office performance, both in terms of USPTO action quality and through an enhanced IT infrastructure, is an appropriate focus for this Strategic Plan.

AIPLA appreciates the willingness of the USPTO to engage interest groups like AIPLA to provide feedback on a variety of initiatives (including quality and performance), and we believe that this “user” input is a significant factor in helping not only the Trademark Office, but the USPTO as a whole, in achieving the Objectives set forth in its Strategic Plan. AIPLA looks forward to providing additional input as the USPTO requests it.

**Objective 1: Maintain Trademark First Action Pendency on Average  
Between 2.5-3.5 Months with 12 Months Final Pendency**

**A. Align examination capacity with incoming workloads**

AIPLA agrees that pendency is important, and we commend the USPTO on its improvements in this area. While we appreciate the USPTO’s desire to maintain a flexible capacity in light of uncertain workloads, AIPLA wants to ensure that a shortened pendency period does not come at the risk of a decrease in quality. The USPTO already shows sensitivity to this balance through certain of its other Objectives, but we take this opportunity to reiterate its importance. For example, other Strategic Plan Objectives, such as streamlining certain USPTO action response formats and improving external IT capabilities for applicants, should, if properly implemented, further improve or at least maintain pendency at its current levels.

**B. Continue to define and validate optimal pendencies**

AIPLA is gratified to see that the USPTO intends to continue its efforts to define and validate optimal pendencies. It may seem obvious that the shortest pendency is optimal but that may not always be the case. Continuing to examine pendencies to ascertain what is truly optimal for the USPTO and its stakeholders is a highly desirable goal.

**C. Work with stakeholders to develop long-term pendency goals that increase examination efficiency, maintain an optimal pendency level, and meet the expectations of the IP community**

AIPLA supports the USPTO's commitment to work with stakeholders in developing long-term pendency goals that increase examination efficiency, maintain an optimal pendency level, and meet the expectations of the IP community. AIPLA is prepared to offer whatever assistance the USPTO deems necessary to help in pursuing this objective.

**Objective 2: Maintain High Trademark Quality**

**A. Continually maintain and improve quality measurements by: continually evaluating examination quality; providing targeted training to address quality issues; and providing legal training and education**

AIPLA has continuously emphasized that quality is a significant factor, and continually maintaining and improving quality measurements furthers the success of that factor. Evaluating examination quality is an important, if not the most important, element in maintaining examination quality. However, this evaluation should not result in Examining Attorneys second guessing their own well-developed knowledge, skills and abilities concerning the examination of trademark applications. This overly-cautious approach to examination can cause them to raise issues and ask questions in USPTO actions that are unwarranted by the specific facts of a particular application. The result is frustration on the part of the applicant or its representative and increased costs if the applicant is using the services of an attorney. A further result is reluctance by stakeholders to participate in the trademark registration system – a result that is counter to the notice purpose of trademark registration.

Providing targeted training to address quality issues and providing legal training and education is a laudable way to maintain and improve trademark quality. However, a further goal of this training should be to bolster the confidence of Examining Attorneys in their ability to make correct decisions when evaluating individual trademark applications. AIPLA would be pleased to participate in this training and education process by providing insight to Examining Attorneys about the impact their actions have on applicants for trademark registration.

**Objective 3: Ensure Optimal IT Service Delivery to All Users**

**A. Modernize IT systems by developing and implementing the Trademark Next Generation (TMNG) IT system to create full electronic workflow, and state-of-the-art IT resources for external and internal users**

AIPLA supports the USPTO's efforts to improve information technology, and to create new systems to better support both internal and external procedures through the "Trademarks Next Generation" initiative.

The USPTO should also carefully research the risks in cloud computing, both financially and from a security standpoint, to ensure that other IT goals, such as improving ease of use and harmonization, are not compromised. In this sense, AIPLA strongly supports working with subject matter experts and user groups to define user requirements and anticipate future needs.

AIPLA agrees that advancing further automation is a quality objective and that, in general, improving an IT infrastructure is a key enabler of improved efficiencies, which can, in turn, support other sound objectives like telecommuting and environmental responsibility as well.

**B. Continue to provide optimal service on legacy systems to employees and public users**

AIPLA believes providing optimal service on legacy systems to employees and public users is critical to maintaining the integrity of the trademark system as a whole, and to ensuring confidence among stakeholders in that system. Leaving legacy systems “on their own” while putting energy and resources in developing a new IT system, will result in those legacy systems deteriorating and not being able to provide the resources needed by both internal and external users. A consequence of this would be a reluctance by stakeholders to participate in the trademark registration system – a result that is counter to the notice purpose of trademark registration. AIPLA appreciates this recognition by the USPTO of the importance of maintaining existing IT systems while developing and implementing TMNG.

**Objective 4: Continue and Enhance Stakeholder and Public Outreach**

**A. Expand outreach to stakeholders by providing opportunities for interaction and updates on Trademark operations and other important issues**

AIPLA encourages any efforts by the USPTO to reach out to stakeholders by providing interaction and updates. Use of current technologies to affect such outreach should be encouraged. For example, while many people live by Facebook these days, the USPTO Facebook page only has 15000+ likes. We believe there could be many more.

**B. Assist in providing access to pro bono trademark legal services through USPTO’s law school clinic program**

AIPLA supports this initiative. Not only does this provide access to legal services for trademark applicants, but it gives students in the clinic hands-on experience in providing trademark legal services.

**C. Encourage use of the Federal registration system for trademark owners who are unfamiliar with the application and registration maintenance processes**

AIPLA is willing to assist the USPTO in furthering this initiative by providing speakers, seminars and workshops for trademark owners who should consider registration in the federal system.

**D. Engage stakeholders to ensure integrity of the register**

AIPLA believes this initiative is critical to the continued effectiveness of the entire trademark protection system. AIPLA is ready to assist in this effort, as appropriate.

**Objective 5: Enhance Operations of the Trademark Trial and Appeal Board (TTAB)**

**A. Develop consistent pendency measures and reduce overall pendency for appeal and trial cases**

AIPLA agrees that special attention should be paid to staffing needs to ensure that efficiency and quality are not compromised in times of transition. Engaging stakeholders in establishing criteria for quality and efficiency is also appropriate. AIPLA further agrees that, as additional emphasis is placed on accelerated case resolution (ACR) and other alternatives for efficient and economical *inter partes* proceedings, it is appropriate for the Board to focus on ways to improve and implement these systems.

**B. Enhance quality of TTAB orders and opinions, and contribute to development of the law through issuance of precedential decisions**

AIPLA appreciates efforts to assess the quality of orders and opinions and considers this a valuable goal. AIPLA suggests that updating the TTAB Manual of Procedure (TBMP) to reflect changes in the Trademark Act, Trademark Rules, and precedential decisions is appropriate and that making these updated materials easily available and searchable is necessary. It is noted that over the years, the number of TTAB decisions that have been found precedential and published as such has increased. This has greatly contributed to development of the law and the ability of practitioners to provide quality consultation to their clients based on established TTAB precedents

**C. Expand outreach to stakeholders by providing opportunities for interaction and updates on TTAB operations and other important issues**

AIPLA encourages efforts by the TTAB to reach out to stakeholders by providing interaction and updates. Use of current technologies to affect such outreach should be encouraged. For example, many people live by Facebook these days. It does not appear that the TTAB has a Facebook page at which it can post information about operations and other issues and receive comments from stakeholders. Use of other communication formats such as infographics may

also be useful to aid in communicating content to users regardless of the communication platform.

**STRATEGIC GOAL III:  
Provide Domestic and Global Leadership to Improve Intellectual Property Policy,  
Protection and Enforcement Worldwide**

**Objective 1: Provide Leadership and Education on IP Policy and Awareness**

Intellectual property remains a vital force in the strength of the U.S. economy and the global preeminence the U.S. enjoys in innovation. AIPLA agrees that the retention of the leadership position in innovation by the U.S. is very important for continued economic growth and the creation of jobs. Key to achieving this objective is the strategic plan for robust domestic leadership and education for IP policy and IP awareness. However, increasingly critical reviews of IP, particularly patents, have dominated the media and overshadowed the value and positive contributions realized by society and the economy from the U.S. IP system. Prominent in these reports and opinions is a theme which undervalues IP and suggests that our society would reap more benefits from ideas and inventions if there were significantly less or no IP protection in place.

It is the belief of AIPLA, however, that these views are misguided and fail to consider the consequences of reducing or eliminating IP protection on our knowledge-based economy. The presumed utopia of open availability to advancements is illusory because commercialization of the knowledge requires monetary investments, which will not occur without IP protection and exclusivity to recoup those investments. It is critically important that efforts are expended to disseminate a consistent message detailing the value of IP and the real-life impacts and benefits which flow to society from the U.S. IP system. More emphasis is necessary to alert society to the impacts of IP on their daily lives and to increase awareness of IP's value. In the short term, we need to challenge the negative rhetoric with facts and explanations of how IP influences daily life to generate long-term cultural support for IP protection. Accordingly, AIPLA strongly endorses the strategic goal of providing leadership and education to increase the general understanding of IP policy and IP awareness and its relationship to promote the U.S. economy and job creation. In fact, AIPLA has made IP education an important part of its own strategic plan.

One aspect not highlighted in the goal is the continued need to harmonize the U.S. Patent Laws with other laws around the world. With the implementation of the AIA, the U.S. has come closer to the systems of other countries, but additional efforts are needed to provide more consistent practices and procedures around the world, increasing the abilities of inventors to obtain and enforce their IP rights more reliably and at less cost. Consequently, AIPLA believes both substantive and procedural harmonization of patent laws should be an important objective of both domestic and international policy.

**A. Provide policy formulation and guidance on key IP issues in all fields of IP protection and enforcement**

AIPLA views this as a critical aspect for U.S. business both domestically and internationally and agrees that the USPTO should be the key resource in providing guidance and assistance in developing the IP policy and education agenda on all aspects of IP protection and enforcement. Not only is the Under Secretary and Director intentionally positioned as the chief IP policy administrator for the Administration, but also because the USPTO possesses a staff with extensive experience in all areas of IP and in light of the recent Executive Orders, the USPTO can provide invaluable insight and suggestions to create successful programs which increase the level of protection and enforcement of IP rights. Over the past decade, the talent, scope of experience and breadth of knowledge possessed by employees of the USPTO has made impressive gains and can be leveraged to provide results in IP protection and enforcement to the advantage of U.S. businesses.

While the USPTO's efforts in bringing positive change to the patent and trademark areas of IP are often more in the forefront, AIPLA commends the USPTO for its efforts in the copyright area regarding the Marrakesh Treaty to facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or otherwise Print Disabled, and development of the Department of Commerce's (DOC) green paper on Copyright Policy, Creativity, and Innovation in the Digital Economy. AIPLA encourages the USPTO to continue providing technical assistance to the Office of the U.S. Trade Representative (USTR) in connection with the negotiation and implementation of IP rights provisions contained in the U.S. Free Trade Agreements.

Finally, it is not clear if trade secret education is contemplated under this objective. If not, AIPLA encourages the USPTO to take an active role in trade secret education and policy as well. Although trade secret protection does not fall within the USPTO's responsibility per se, such protection frequently complements U.S. and foreign IP rights and is thus necessarily intertwined with U.S. IP policy.

**B. Engage other U.S. Government Agencies and Congress on legislation that improves the IP system**

AIPLA supports legislation that improves the IP system and agrees that working with other government agencies and Congress will achieve the most beneficial results. However, AIPLA cautions against making extensive changes prematurely. Many of the initial objectives of the AIA were actually achieved through the judicial system, and AIPLA believes that many of the current issues may similarly be addressed by the judiciary. Any legislative actions must be balanced against the sometimes divergent needs of different industries but flexibility in the judiciary can focus outcomes dependent upon the facts and needs of particular situations and industries. Critical to the achievement of an improved IP system is the continued involvement of all stakeholders of the IP system and a transparent, inclusive approach by the USPTO and Administration in gathering input.

**C. Lead domestic and international copyright initiatives and policy development for the U.S. Government**

AIPLA supports this initiative, and agrees that the USPTO plays a key role in the policy development for copyrights for the U.S. However, because the fees supporting the USPTO are paid by patent and trademark applicants, not by applicants for copyrights, AIPLA believes that particularly in tough economic times, such as under the sequester, the fees paid by patent and trademark applicants should be focused on the delivery of those services for which they have paid.

**D. Provide domestic education outreach at all levels, including through distance learning, knowledge enhancement and capacity building**

AIPLA agrees with this initiative. Currently, there is a critical need to clarify many misunderstandings and perceptions about IP with the hope that more accurate knowledge will improve support for IP rights and protections. AIPLA understands the USPTO will focus on programs on the protection and enforcement of IP rights in the U.S., and doing business overseas. AIPLA also applauds USPTO programs generally directed towards small and medium size enterprises, minorities, women, and Native Americans to bring critical IP information to an underserved segment of the U.S. population so they are better prepared to compete domestically and internationally.

**E. Leverage technology to increase domestic and international education, training and outreach at all levels**

AIPLA looks favorably on the USPTO's desire to embrace advanced technologies to facilitate this education. AIPLA recommends continuing and expanding web-based programs and road shows available to bring IP information to a broad audience.

**F. Expand knowledge of domestic and international IP landscape and public impacts of IP through empirical research and fact-finding**

AIPLA endorses this goal and notes that an evaluation of the value of IP can bolster the understanding of the general public and individuals making decisions which affect the strength of IP protection, as well as dispel misconceptions. Any such studies, particularly ones intended to guide policy decisions, must be developed and undertaken with great care to ensure adequate input from all perspectives on any issue, and AIPLA is concerned that this has not always been the case in some studies which have recently been used to shape the debate on topics such as litigation reform and patent assertion entities. The utmost care must be exercised on issues directed toward the patentability of subject matter, with opportunities for stakeholder comment and transparency regarding the methods and individuals undertaking the studies. Expansion of the Thomas Alva Edison Visiting Scholars program can infuse creative approaches to issues facing the USPTO with the objective of strengthening IP protection and enforcement.

Employing empirical research and fact finding to expand knowledge of the domestic and international IP landscape can be helpful. With the assistance of the Chief Economist's Office, the USPTO has the staffing talent and resources to optimize any outputs. Finally, as it is rooted in the Department of Commerce, the USPTO is managerially proximate to others who have key roles at the intersection of innovation policy, economic development and trade issues, all of which are critical to the successful implementation of policies and initiatives which will flow from this role.

A question, however, is how is the Chief Economist's role evolving, and how is USPTO staffed and resourced in this regard? Additionally, efforts should be made to educate the public on the benefits provided to the U.S. economy by the issuance of quality patents, and the benefits, risks, and procedures available for obtaining IP protection internationally. These questions are important to our understanding of the implications for policy development and leadership. We are aware of some initial issues which have been raised, and would suggest that this Office and other policy development Offices be submitted to the same external, stakeholder input and transparency which the USPTO has shown thus far in its operations and financial areas.

## **Objective 2: Provide Leadership and Education on International Agreements and Policies for Improving the Protection and Enforcement of IP Rights**

AIPLA views this as a critically important objective. AIPLA continues to strongly support the USPTO providing leadership on international policies relating to the protection and enforcement of IP rights, including multilateral and bilateral activities worldwide. AIPLA fully supports the improvement of protection and enforcement of IP rights to maximize innovation and competitiveness of U.S. businesses and industry, as well as a strong leadership role for the USPTO.

### **A. Lead administration efforts at WIPO and other international fora to improve IP protection and enforcement, and to further efficiency and cooperation in the global IP system**

As an active participant in the Industry Trilateral and Industry IP5, AIPLA continues to support the efforts of the Trilateral Offices and the Offices of the IP5. AIPLA believes the discussions in these fora, particularly in consultation with the Industry Trilateral, concerning possible means for work sharing and cooperation, offer significant promise toward the achievement of an efficient and effective international patent administration.

Thus, AIPLA supports the goal of the USPTO to lead efforts at all international fora to improve international intellectual property rights systems. However, AIPLA is concerned that the activities mentioned may not sufficiently accomplish the goal of maintaining U.S. leadership on behalf of the users of the IP system.

AIPLA considers that the following issues are among the most important for discussion and progress in the international fora:

**a. Substantive Patent Law Harmonization**

AIPLA is encouraged that the Strategic Plan asserts the USPTO will continue to lead the promotion of harmonization by working closely with international entities. Although progress has been very slow, international patent law harmonization remains the most important issue for improving intellectual property rights worldwide. Harmonization is a critical goal and subject of U.S. leadership. Given the history of this negotiation, AIPLA suggests the U.S. and the USPTO should redouble its efforts to provide leadership and impetus to the process. All relevant fora should be utilized to achieve this end, notably: WIPO; the B+ Group of Offices; Trilateral/IP5; the Vancouver Group; bilateral negotiations; the Tegernsee Experts Group, and others.

While AIPLA agrees the AIA has moved the U.S. more in harmony with foreign countries, there is a need to encourage major foreign governments to adopt beneficial U.S. best practices such as establishing a grace period for patent applications, and permitting revival of abandoned applications for unintentional abandonment in at least some instances.

**b. Patent Cooperation Treaty**

The PCT has been one of the most successful and important tools in the development of an effective international patent filing strategy. It is of immense use and importance to AIPLA members, and has been almost universally accepted as an important international filing tool by users in industrialized and developing countries alike. The Strategic Plan, however, does not emphasize the importance of the PCT enough, and its usefulness in achieving the goals set out in the Strategic Plan.

While AIPLA supports aspects of the WIPO PCT roadmap, including improvements in PCT search quality in the U.S. and other major patent offices, we believe that a much stronger emphasis should be put on PCT as a key part of the international aspects of the Strategic Plan.

**c. Global IP Infrastructure**

Efforts mentioned in the Strategic Plan, such as the PPH and CPC, are beneficial work saving cooperation programs. However, more mention should be made in the Strategic Plan of international work on other aspects of the Global IP Infrastructure. This area includes, inter alia:

- Digital communication and databases
- Shared information and documentation
- Electronic filing and compatible electronic formats
- Classification and standards
- Global networking
- Patent USPTO modernization
- Global Dossier, Common Citation Document, and other work-sharing efforts

These areas have great potential for increasing efficiency and utility of the international system for U.S. users, and AIPLA supports all efforts to improve them. Significant work is ongoing at WIPO, and should be fully supported by USPTO as a matter of its future strategy.

**d. WIPO Development Agenda**

The development agenda issues have become pervasive at WIPO when talking about global intellectual property protection. The current situation requires strong leadership on the part of industrialized countries to keep technical and substantive discussions on track. AIPLA hopes that the USPTO would undertake this leadership role, to insist on the need for WIPO and its member states to fulfill their obligations in dealing adequately with technical and substantive legal issues relating to IP.

**e. Improved transparency in foreign IP Offices**

AIPLA suggests the USPTO seek more transparency in foreign IP patent office practices, for example, certain "off the book" procedures, such as unwritten but available practices of expediting patent prosecution for a fee.

**f. Traditional knowledge and other forms of non-traditional IP protection**

USPTO should be a major actor in these discussions on Genetic Resources, Traditional Knowledge and Folklore; WIPO Intergovernmental committee (IGC-GRTKF); Geographical Indications; World Trade Organization (WTO) and WIPO discussions; International Enforcement–WIPO Advisory Committee, and take a strong leadership role on behalf of U.S. stakeholders.

With respect to administrative efforts with WIPO, while AIPLA appreciates the organization's initiatives with respect to traditional knowledge and other forms of non-traditional IP protection, we need to hear more from WIPO about supporting traditional forms of IP, particularly patents.

**g. Additional Items**

The following important issues seem to be missing from this section of the Strategic Plan:

- U.S. accession to the Patent Law Treaty, and the Hague Agreement on Industrial Designs. AIPLA requests the USPTO to make accession and implementation a high strategic priority in order that applicants can benefit from both procedural and substantive intellectual property initiatives. The Patent Law Treaty in particular is another step forward toward patent law harmonization among nations. The addition of Industrial Designs as a form of intellectual property will bring to the U.S. what is well established elsewhere. Accession and establishment of implementing regulations will also support other aspects of international participation by the USPTO identified above in this Objective 2.

- Trademarks on the Internet and ICANN/domain names. The rollout of hundreds of new gTLDs will greatly impact trademark owners, and the USPTO should make protection of trademark owners in light of ICANN changes a very high priority.
- Access to critical technologies: Discussions on this have been held at inter alia, the World Trade Organization (TRIPS Agreement), World Health Organization (access to medicines), UN Framework Convention on Climate Change (climate change and green technology), and Convention on Biological Diversity (disclosure and prior informed consent for genetic resources). AIPLA has been following these international discussions closely, and requests the USPTO take a strong leadership role in preserving a strong global IP system while looking for ways to address pervasive and difficult development issues.

AIPLA commends the USPTO for recognizing the importance of the United States as a leader at WIPO and other international for a on issues regarding IP protection and enforcement, as well as matters of efficiency and international cooperation. In particular, AIPLA encourages the USPTO to play a more central role in discussions regarding changes to the Madrid Protocol, particularly with respect to making the system more effective for U.S. users. Similarly with the Lisbon Agreement, the USPTO should direct efforts toward ensuring that U.S. trademark rights are properly protected. AIPLA would gladly assist in any of these efforts.

**B. Prioritize countries of interest for purposes of improved IP protection and enforcement, capacity building, legislative reform, including creation of country/region strategic plans and specific action plans**

The Strategic Plan states the USPTO relies on information from the USTR's annual Section 301 Report to help prioritize those countries that most need to improve their IP protection and enforcement. Yet, the factors going into the USTR report, how it is used, and what other factors form the basis for selecting specific countries and regions for prioritization are unclear. Are these countries/regions that the USPTO believes need special attention because they do not adequately protect IP rights? Are they countries which already have effective IP protection, and therefore deserve "prioritized" attention from the USPTO? Or, are they selected on the basis of their importance as export markets to U.S. industries? Are there empirical data to support the choice of countries? What are the potential international and diplomatic implications of choosing certain countries and regions?

It may be more beneficial for this Objective to focus on the Global Intellectual Property Academy (GIPA), IP attaché programs, and action plans, rather than prioritization of countries. The work of GIPA and the attachés has been of inestimable value, and deserves the status of a direct Objective in the Strategic Plan. These programs should be supported in effective ways, and not distracted by the potentially sensitive process of international prioritization.

The USPTO attaché program has been a very successful and beneficial program in helping U.S. businesses obtain and enforce their IP rights abroad. AIPLA is in favor of giving the program

the support it needs. AIPLA also supports the work of the Global IP Academy, and believes it should receive the resources needed to fulfill and expand its work under this sub-objective. AIPLA supports the placement of additional IP attachés in currently inactive countries or regions.

**C. Provide technical expertise in the negotiation and implementation of bilateral and multilateral agreements that improve IP rights protection and enforcement.**

AIPLA agrees the USPTO is well positioned to provide technical expertise for negotiation and implementation of bilateral and multilateral agreements that improve IP rights and protections. Moreover, the USPTO itself should also engage with International IP Offices on bilateral and multilateral policy activities (Trilateral (Trademark and Patent), IP5, PPH Plurilateral, etc.).

As a founding member of the Industry Trilateral, AIPLA has engaged in extensive and fruitful discussions with other Industry Trilateral members and the Trilateral Offices. The Trilateral has worked toward such essential goals as work sharing, improving patent quality, and efficiency measures such as common application format, common citation document, common search formats, etc.

AIPLA believes these efforts on bilateral and multilateral agreements should be a major cornerstone of the U.S. leadership policy in the international arena. AIPLA therefore requests that these activities be given a much higher priority in this part of the Strategic Plan.

Further, regarding the Trilateral and the IP5, AIPLA has been informed that the work of the Trilateral Offices may be folded into the work of the IP5 in the coming years. It is critical to the interests of AIPLA members and those of the other Trilateral associations that the input of industry, which has been so effective in the context of the Trilateral process, be equally effective in the work of the IP5. AIPLA submits that the USPTO should make it a high priority of the Strategic Plan to support an open dialogue between industry and the IP5 as well as continued active involvement of industry in the work of the IP5.

**D. Support and advise the administration in leading and negotiating the IP aspects of free trade agreements**

AIPLA supports the activities of USPTO in advising the administration and other government agencies such as the USTR, TRIPS Council, WTO, Office of Science and Technology Policy (OSTP), and the Office of the Intellectual Property Enforcement Coordinator (IPEC) in areas of critical importance to AIPLA as well as the IP system in general.

Further, AIPLA encourages the USPTO, and the Administration, to provide a high level of transparency and opportunity for stakeholders to provide input regarding the Trans-Pacific Partnership and the upcoming Transatlantic Trade and Investment Partnership agreement with the European States.

**E. As appropriate, work jointly with Congress on matters pertaining to international agreements**

While AIPLA conceptually supports the USPTO working with Congress on matters pertaining to international agreements relating to intellectual property, more specifics details on these matters would be useful.

**F. Work jointly with the administration to improve IP protection and enforcement in China**

AIPLA supports this critical objective. We believe the main focus should be improving enforcement.

**MANAGEMENT GOAL:  
Achieve Organizational Excellence**

**Objective 1: Leverage IT Investments to Achieve Business Results**

**A. Leverage IT to improve internal and external collaboration and information sharing**

AIPLA supports the efforts of the USPTO to improve its IT infrastructure and recognizes the importance of this effort in the USPTO's ability to accomplish most of the other goals of its Strategic Plan. The major objectives of this IT effort are set forth in broad terms, and we look forward to the opportunity to comment on more specific proposals as they become available.

AIPLA supports the USPTO's efforts to expand WebEx capabilities to accommodate more users. We suggest the USPTO increasingly promote the use of interactive conferencing tools to facilitate face-to-face video interactions, for example, for examiner interviews and training sessions.

**B. Enhance the internal and external user experience; for example, by developing user-driven products, including those accessible in a mobile environment**

As users become more and more facile and dependent on mobile communication devices, AIPLA finds it critical that the USPTO utilize these environments as set forth in this initiative. Conceptually, AIPLA supports the USPTO initiatives to increase website customer satisfaction, develop a new website, develop a customer portal, and implement a mobile environment strategy but within the confines of adequate budget resources to maintain and improve existing agency performance of its core mission and legacy tools. The USPTO should evaluate the return on investment for these new enhancements against all agency priorities.

### **C. Evolve and improve IT infrastructure and services**

AIPLA understands the critical need for the USPTO to improve its IT infrastructure and the importance of this effort in the USPTO's ability to accomplish most of the other goals of its Strategic Plan. The major objectives of this effort are set forth in broad terms, and we look forward to the opportunity to comment on more specific proposals as they become available.

AIPLA supports the need to improve IT infrastructure. USPTO IT systems have become critical not only for internal use but also by the user community. Electronic submission of documents to the USPTO has become the norm, and reliable access and adequate capacity are critical to the user community. Of course, internal systems are just as critical to support USPTO operations, especially with extensive telework programs. AIPLA believes that strengthening IT infrastructure and legacy systems should be prioritized above further enhancements and the development of new systems.

### **D. Continue to provide cost-effective, transparent operations, processes and information**

AIPLA is appreciative of the efforts of the USPTO to continue to provide the transparency in its operations and to make more of its data available to the public. This facilitates objective analysis and assists USPTO users to better understand and anticipate various aspects of the patent examining process. Making more data accessible via the worldwide web in a form that is convenient for users of USPTO services would be welcome. AIPLA stands ready to cooperate and partner with the USPTO to help identify data that would be useful to the public, and aid in the analysis of such data, where appropriate.

The USPTO Patents Dashboard has been a valuable tool for users to access USPTO performance and status. Maintaining and improving the Dashboard to provide transparency into USPTO operations is valuable to the user community and is supported by AIPLA.

### **E. Deliver cost-effective and seamless next generation IT solutions; for example, integrations of Patent End-to-End (PE2E), Trademark Next Generation (TMNG), and Fee Processing Next Generation (FPNG)**

AIPLA looks forward to learning more detail about the next generation IT solutions, and the potential benefits of migrating to these new systems.

## **Objective 2: Continue to Build and Maintain a Flexible, Diverse, and Engaged Workforce**

### **A. Continue to enhance our telework environment by offering more telework opportunities and developing skill sets specific to leadership in a telework environment**

As telework at the USPTO continues to expand, AIPLA finds it critical that leaders are developed that possess the skill sets needed to manage work flow and employees in a telework environment. Increasing opportunities for employees to work in a telework environment is also critical. It is well-documented that employees who telework have a higher morale and experience greater job satisfaction. These factors result in employee retention – an outcome that is beneficial to the USPTO as well as its stakeholders.

AIPLA recognizes that the USPTO has become a government-wide model for a successful telework program and has been established as one of the best agencies to work for in the Federal Government. The USPTO is to be commended for this accomplishment. The USPTO Telework Program has contributed to this accomplishment. We support the USPTO's ongoing efforts to provide employees and managers the training and skills needed to perform in and manage this type of work environment.

### **B. Implement programs aimed at enhancing employee engagement, and ensuring the nationwide workforce stays integrated with the corporate culture**

AIPLA looks forward to learning more detail about these programs, their objectives, and potential benefits.

AIPLA supports the USPTO efforts to engage its employees in its efforts to accomplish the USPTO's mission and foster a collaborative work environment and culture.

### **C. Promote learning and job opportunities for all levels of employees**

The goal of this objective is another factor in increasing employee satisfaction and retention. AIPLA looks forward to learning more detail about these opportunities and is prepared to assist the USPTO in the learning aspect of this objective, if called upon.

Career development is important to a sustainable high performance workforce. Providing leadership training and educational opportunities to transition employees to higher skilled positions is supported by AIPLA.

### **D. Enhance recruitment and hiring efforts to help sustain and develop a highly qualified and diverse workforce including the senior leadership team**

Retention and training of a skilled workforce is essential to the ability of the USPTO to carry out its mission. AIPLA suggests that training include opportunities for interaction with stakeholders.

It is also critical that the USPTO include development of its senior leadership by encouraging and guiding employees with leadership potential to realize that potential. AIPLA is ready to assist in this effort, as appropriate.

AIPLA supports the USPTO's on-going efforts to recruit and retain a highly skilled and diverse workforce. Development of senior leadership is very important, and the USPTO should take advantage of programs offered government wide to provide such training.

#### **E. Continue to build collaborative relationships with labor unions and affinity groups**

The USPTO has demonstrated that collaborative relationships with labor unions and affinity groups have been established through the naming of the USPTO as one of the best agencies to work for in Federal Government. The USPTO is to be commended for this effort. Continued efforts should be pursued with the ultimate goal of maintaining and improving agency performance. AIPLA looks forward to learning more detail about these efforts, and is prepared to assist the USPTO in the learning aspect of this objective, if called upon.

### **Objective 3: Enhance Internal and External Relations**

#### **A. Improve information and communication channels**

AIPLA appreciates the ongoing efforts of the USPTO to improve the flow of information between the USPTO and the public. The USPTO should continue to take advantage of the many communication channels that have arisen and those that have evolved since the last Strategic Plan (e.g., Facebook, Twitter, blogs (e.g., the Director's Blog), infographics, and QR codes).

AIPLA supports the USPTO plan to improve information and communication channels and take advantage of the technology today to support this effort. The USPTO should expand the use of social media and other tools to expand the agencies capability to share information and receive feedback from stakeholders.

#### **B. Strengthen relationships with Department of Commerce (DOC), the Office of Management and Budget (OMB), other Federal agencies, and Congress**

AIPLA strongly supports the USPTO objective of further strengthening relationships with the DOC, OMB, other Federal agencies, and the Congress. In this time of critical need for increasing the resources of the USPTO, these relationships are extremely important. Education of these and other government departments on the importance of intellectual property to the growth of the nation's economy will play an important role in the USPTO's ability to obtain the necessary resources to accomplish its strategic goals.

However, it should also be remembered that the USPTO by statute is given "independent control" of all of its various management activities and administrative processes, which yield

significant advantages for its users, and should therefore always be vigilant against encroachment on those statutory authorities and responsibilities.

**C. Promote a culture across USPTO of outstanding customer service for both internal and external customers**

AIPLA strongly supports the promotion of a customer service culture within the USPTO. Initiatives such as the Ombudsman Program, increased interviews, and employee initiated efforts to resolve issues and streamline processes are welcome and encouraged.

**D. Streamline stakeholder access to USPTO services and programs**

Stakeholders have become used to easy, efficient and immediate access to services and programs with all of the entities and organizations in which they are in contact. AIPLA finds it critical that this streamlined access be part of future enhancements of USPTO services and programs.

**E. Increase stakeholder partnerships and collaborations**

AIPLA looks forward to learning more detail about these opportunities and is prepared to assist the USPTO in the learning aspect of this objective, if called upon.

**F. Support Government wide efforts to promote Science, Technology, Engineering and Mathematics (STEM) education initiatives**

AIPLA supports USPTO efforts to promote STEM educational opportunities. As this tech-savvy generation moves into roles of influence and management, AIPLA finds it critical that they are facile in all of the STEM areas. Not to be forgotten are the Arts, which are also critical to the development of intellectual property. The acronym is evolving from STEM to STEAM as educational organizations recognize that all of these disciplines are necessary for the United States to move strongly and successfully into the future.

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

**A. Ensure spending authority to use all fee collections**

AIPLA could not more strongly support permitting the USPTO to have complete and unfettered access to all of the fees collected by it and fervently opposes any limited access or diversion of user fee collections. In our view, many of the challenges the USPTO is trying to address with this Strategic Plan, such as those related to quality and pendency problems, are attributable in large measure to the prior diversion of USPTO fee revenues. Cumulatively, this diversion resulted in reduced appropriations of more than \$750 million in fees paid by patent and trademark applicants for the processing of their applications.

This has been especially discouraging during this time of sequestration. It is our understanding that OMB has interpreted the language of the Sequestration Act in such a way as to facilitate this diversion. We strongly opposed this cramped interpretation and urge the USPTO and the Administration to take immediate steps to reconsider and reverse any such interpretation and permit the full flow of user fees to come to the USPTO.

We recognize and are concerned with the public policy issue of curtailing government spending and its impact on access to user fee collections. AIPLA will continue work with the USPTO and others to gain full access to all fees collected.

#### **B. Make the USPTO fee-setting authority permanent**

The AIA granted the USPTO fee setting authority with a seven-year sunset provision. To satisfy stakeholders and Congress that the USPTO has exercised this authority judiciously the USPTO should make transparent the methodology used in setting fees, the impacts on user's behaviors, and the level of service performed as a result of fees paid. The USPTO must demonstrate that it has the ability to set fees appropriately and deliver the services promised for those fees. AIPLA looks forward to reviewing and commenting on the results of USPTO evaluations regarding its fee setting authority.

Importantly, AIPLA supported granting the USPTO fee setting authority on the understanding that any increased fees would remain available to the Office, under a system that would give the Office full access to its fee collections. This has not in fact happened, in particular with respect to government sequestration. AIPLA requests that any fee increases be accompanied by future assurances that all fees will be available to the USPTO, and that past fees that have not been available should be now made available.

#### **C. Continuously optimize the fee structure**

AIPLA appreciates the opportunity to provide input to the USPTO with regards to the initial fee setting cycle. Optimization from the point of view of stakeholders may differ from optimization from the point of view of the USPTO. We are ready to engage with the USPTO to evaluate the impacts of the initial fee setting cycle and recommend adjustments that may be needed to optimize the fee structure. AIPLA looks forward to information from the USPTO regarding the impacts of the initial fee setting cycle which will be critical in future optimization.

#### **D. Continue identifying, obtaining and implementing private sector business tools**

AIPLA supports the USPTO plan to pursue private sector business tools such as investment authority once an optimal operating reserve is reached. However, securing full access to collections and exercising fee setting authority judiciously are precursors to future authorities and should receive top priority. AIPLA looks forward to learning more about other private sector business tools the USPTO is seeking to identify, obtain, and implement.

### **E. Maximize cost efficiency and transparency**

AIPLA strongly supports efforts by the USPTO to maximize cost efficiency and transparency. These factors will enhance the experience of stakeholders and bolster the credibility of the USPTO.

## **Objective 5: Establish Satellite Offices and a Regional Presence**

### **A. Finalize permanent presence of satellite Offices**

AIPLA recognizes the USPTO efforts in establishing the first USPTO satellite Office in Detroit. We also understand that budget constraints have delayed the establishment of the other three satellite Offices in Dallas, Denver, and Silicon Valley. While AIPLA supports the establishment of the AIA mandated satellite Offices, we recommend impacts of the Detroit Office be evaluated and reported on, including how the anticipated advantages of the satellite office have been achieved, any unexpected challenges and how they were resolved, and any significant budget implications in establishing the Detroit Office.

### **B. Further develop regional cooperative opportunities**

While conceptually establishing more regional cooperative opportunities is commendable, more information is needed regarding these plans. As mentioned above AIPLA urges the USPTO to evaluate the impact of current regional efforts, and use the results of that evaluation to chart the course for future efforts.