

April 12, 2022

Kathi Vidal
Under Secretary of Commerce for Intellectual Property
Director of the U.S. Patent and Trademark Office
600 Dulany Street
Alexandria, VA 22314

Dear Director Vidal,

Congratulations on your recent confirmation to lead the U.S. Patent and Trademark Office (PTO)! As you take the reins of this important agency, we hope you will prioritize the needs of high-tech, growth-oriented startups and small business innovators. Despite the pandemic's disruptions, 2021 was a record year for the startup economy—we saw a 22 percent increase in the number of new businesses with growth potential and a record of over \$300 billion invested in domestic startups.¹ Yet challenges remain, and America's innovation economy depends on startups. We need a PTO leader who understands and respects our contributions.

As startups, incubators, accelerators, investors, and support organizations, we know first-hand the critical importance of domestic innovation—and we know how the patent system can play a role in supporting that or it can stand in the way of progress when the system is not working well. We are optimistic you can restore the PTO's focus on balance and patent quality and foster a system in which the entire startup ecosystem can access the full scope of the Office's work. In that vein, it is vital the PTO acknowledge how broad and diverse its stakeholders are, adequately engage those voices and experiences, and focus on the following principles:

- ***Patent quality is essential.*** High-quality patents can be a valuable asset for many innovative startups. Yet low-quality patents can—and unfortunately often do—stand in our way. While quality patents can help us establish our companies in the market or attract investors and customers, we do not have time or money to waste on invalid patents. And patents on basic ideas of research or innovation tie our hands without justification. In recent years, the PTO has deprioritized patent quality,² and it is vital that as Director you intentionally lead the agency toward issuing only valid patents and protecting against the harm low-quality patents cause.
- ***Diversity, equity, and inclusion are critical.*** It would be difficult to overstate the value of and the need for a more diverse, inclusive innovation ecosystem. Admittedly, the PTO is one small piece of that and will be limited in what it can do directly to dismantle the unwarranted barriers unrepresented founders face.³ But the Office must do more to make the patent and trademark systems more inclusive. Under Congress's leadership, for example through the Leahy-Smith America Invents Act

¹ E.g. Daniel Newman, *The Startup Surge: Business Formation in 2021 on Pace to Break Record*, Econ. Innovation Grp. (Oct. 15, 2021), <https://eig.org/news/the-startup-surge-business-formation-in-2021-on-pace-to-break-record>; *PitchBook-NVCA Venture Monitor Q4 2021*, Nat. Venture Capital Assoc. (Jan. 13, 2022), <https://pitchbook.com/news/reports/q4-2021-pitchbook-nvca-venture-monitor>.

² See, e.g., Abby Rives, *A Declining Focus on Patent Quality at the USPTO and What it Means for Startups*, Engine (Oct. 21, 2020), <https://www.engine.is/news/ip-recap-102120>.

³ See, e.g., Letter from 113 Startups, Investors, Entrepreneurs, and Support Organizations to Janine Scianna, PTO (Feb. 23, 2021), <https://www.engine.is/news/startups-push-government-on-diversity-in-innovation>.

(AIA), the government has taken important steps. But the time is ripe for the PTO to push further, to expand the reach of the Office, expand the pro bono program, and create new or improved programs to assist under-resourced innovators across the country who want to obtain high-quality patents or trademarks. At the same time, as you step into the Council for Inclusive Innovation, it is essential to attend to the numerous non-patent mechanisms that support innovation and chart a course for a whole-government response that includes, e.g., fixing inequities in federal financing, expanding innovation education, and incentivizing private investment.

- ***PTO must help curb abuse of the patent system.*** Many of us know, through personal experience, how harmful abusive patent assertion is to startups and small businesses. But right now across the country, rates of patent assertion continue to climb.⁴ Low-quality patents continue to fall into the wrong hands, and they are used to threaten companies like ours with expensive, frivolous litigation. We urge you to recognize—not ignore—this reality of the small business experience,⁵ and acknowledge the role the Office should play in solving the problem. For example, the Office should make sure startups and entrepreneurs can access the tools we need to defend ourselves, instead of making it easier for bad actors to threaten us.

The PTO must balance the interests of all stakeholders—and that includes prospective patent owners and applicants from all backgrounds as well as entrepreneurs and small businesses who only interact with the patent system when they are accused of infringing a low-quality patent. Whether we have applied for a patent before, whether we ever apply for a patent, whether we have registered one or a dozen trademarks—and regardless of whether we have interacted with the PTO directly—what the Office does impacts us, and our voices matter.

We look forward to working with you in your new role as PTO Director. And we hope you will take our experiences into account, make sure companies like ours have a seat at the table, and look within the Office and beyond to promote an inclusive innovation ecosystem that better reflects the diversity of the nation.

⁴ See, e.g., *2021 Patent Dispute Report: Third Quarter in Review*, Unified Patents (Sept. 30, 2021), <https://www.unifiedpatents.com/insights/2021-patent-dispute-report-third-quarter-in-review>.

⁵ See, e.g., Letter to Hon. Iancu from Small Business Owners (Feb. 14, 2019), <https://www.eff.org/document/letter-andre-iancu-director-us-patent-and-trademark-office> (responding to PTO remarks “downplaying , or even denying” serious harms experienced due to abusive patent litigation); Press Release: Patent Trolls and Bad Patents Continue to Be Reality for U.S. Companies, United for Patent Reform (Oct. 23, 2018), <https://unitedforpatentreform.com/files/iancu-edtx-speech-stmt1175616836.pdf> (similar).

Sincerely,

14bis Supply Tracking	M1PR, Inc.
2600Hz, Inc.	Mark Cuban Companies
A Better Mousetrap	MyRadar
AberrantMuse	NFT Shopping Network
Arkansas Venture Center	niolabs
Arkatecht	OculoTherapy
Biometrica Systems	One City United
Brave Founders	Onfleet, Inc.
Build a Pizza, LLC	OZVP V LLC
Charles Goorsky Services	Physical Systems Inc.
CitiQuants Corp	Pigeonly
EcoSytemBuilder & Associates, Executive Director Mike Ducker	Pioneers 21
Empathy Rocks, Inc.	Pruve Systems Inc.
Federal Foundry	Quorum
Fiskkit	Rapidsoft Systems Inc.
Founder Academy	Right to Start
Founder Collective	Social Impact Capital
Halcyon	SparkFun Electronics
Hangar	Stylaquin
hobbyDB	Sultan Ventures
Hotels By Day	SymmetryIP
IncentiLock LLC	Tostie Productions, LLC
Infiltron Software Suite	UnaliWear, Inc.
Libib	Unshackled Ventures
Linknovate	Uplift Solar Corp.
Lithic Technology	

cc: Honorable Members of the Senate Committee on the Judiciary, Subcommittee on Intellectual Property; Honorable Members of the House Committee on the Judiciary, Subcommittee on Courts, Intellectual Property, and the Internet