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Congress and the Administration Should Champion Policies to Increase Diversity and Inclusion in Invention and Patenting

Intellectual property (IP) is critical to the U.S. economy. The U.S. Patent & Trademark Office (USPTO) has estimated that IP-intensive industries account for more than 40% of U.S. economic activity and support 63 million jobs—44% of the U.S. workforce.

Inventors with patents earn higher incomes on average than non-inventors. Patents also help businesses—especially small businesses and startups owned by women and people of color—access capital, attract customers and licensees, and create jobs. Startups that obtain a patent employ an average of sixteen more new employees after five years compared to startups that do not obtain a patent.

Despite the enormous significance of IP to the economy and individual inventors, not all Americans share equally in the opportunity to invent and patent. USPTO and leading researchers have found that women, people of color, and individuals with lower incomes patent inventions at significantly lower rates than their representation in the population:

- Less than 13 percent of all inventors who hold a U.S. patent are women. Women hold only 5.5 percent of commercialized patents.
- Black and Hispanic college graduates patent at half the rate of white college graduates. Patenting activity by Black inventors peaked in 1899 and has not recovered.
- Children in the top one percent of family income are ten times more likely to patent in their lifetimes than children in the entire bottom half of family income.

Closing these gaps would promote U.S. job creation, entrepreneurial activity, economic growth, and global leadership in innovation. Increasing participation in invention and patenting by underrepresented groups would quadruple the number of American inventors and increase annual U.S. GDP by almost \$1 trillion. It would also result in exciting new inventions that solve problems and improve lives.

Invent Together supports public policies that would close the patent gaps and ensure that everyone can contribute to America's innovation economy.

Pass Legislation to Support Diverse Inventors

- **The IDEA Act:** Because USPTO does not collect demographic data from patent applicants, researchers must use name-matching software and other imperfect techniques to study disparities in patenting. Invent Together supports the *Inventor Diversity for Economic Advancement (IDEA) Act* ([S. 632/H.R. 1723](#))—a bipartisan, bicameral bill that would direct USPTO to collect inventors' demographic data on a voluntary basis and make this information available in the aggregate for research. The bill would require USPTO to keep this information separate from patent applications to mitigate implicit bias in the patent examination process.



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- **The Unleashing American Innovators Act:** Invent Together supports *Unleashing* ([S. 2773/H.R. 8697](#))—a bipartisan, bicameral bill that would provide meaningful support to diverse inventors by strengthening the Patent Pro Bono Program and increasing USPTO outreach to diverse inventors.
- **The Small Business and Innovation Research/Small Business Technology Transfer (SBIR/STTR) Programs:** SBIR/STTR programs are currently authorized through September 2022. Invent Together supports reauthorization of these programs and policy changes to ensure innovation funding is allocated equitably and projects are commercialized.

Support the Council for Inclusive Innovation (CI²)

- CI² is responsible for developing a National Strategy to promote and increase the participation of underrepresented groups in invention, patenting, entrepreneurship, and innovation leadership. CI² is chaired by Secretary of Commerce Gina Raimondo and comprised of leaders from non-profits, universities, and private companies, as well as individual inventors. Invent Together strongly supports CI²'s development of a detailed National Strategy that provides recommendations for programmatic adjustments and deeper structural changes in both the public and private sectors. We look forward to the release of a National Strategy in the coming months.

Expand Assistance and Outreach to Low-Income and Other Underrepresented Inventors

- **Enhance Financial Assistance to Lower the Cost of Obtaining Patents:** Programs like the Patent Pro Bono Program, which matches qualified financially under-resourced inventors with volunteer patent attorneys, and the USPTO Pro Se Assistance Program, which provides advice to inventors who wish to pursue patents without the help of an attorney, can help mitigate the high costs of patenting an invention. These programs should be expanded to help those for whom attorneys' fees are a major barrier to entry. Invent Together supports the expansion of income eligibility for the Patent Pro Bono Program as well as a comprehensive evaluation of the Program to determine whether it adequately serves underserved inventors and to ultimately improve the Program to better serve these communities, as called for in *Unleashing*.
- **Expand Law School Clinic Certification Program:** Students at more than 60 participating law schools provide pro bono assistance to independent inventors seeking patent advice under the supervision of their law school clinical faculty. Invent Together encourages USPTO to continue to grow the network of law schools that participate in this program.
- **Continue USPTO Outreach Programs:** USPTO should improve outreach to underserved communities that historically access federal services at lower rates. Outreach programs should focus on meeting underrepresented communities where they are. For example, USPTO should hold events at Historically Black Colleges and



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Universities (HBCUs) and other Minority Serving Institutions (MSIs) to promote awareness of the agency's inventor assistance programs. USPTO should also use social media and other web-based tools to better reach younger inventors and spread awareness about the value of invention and patenting and how to access the agency's services.

- **Provide IP Trainings to Small Businesses and Underrepresented Inventors:** Through the *Small Business Innovation Protect Act* ([SBIPA](#)), passed in 2018, Congress directed USPTO and SBA to work together to provide IP protection training through Small Business Development Centers (SBDCs). By providing trainings on a local level, USPTO and SBA can ensure that small business owners from all communities have access to the information and support that they need to pursue patents. For the same reasons, USPTO should also coordinate programming with Women's Business Centers and Minority Business Development Agency (MBDA) Business Centers to train women and inventors of color on IP protections at the local level.

Promote Diversity Among Patent “Gatekeepers,” Including Patent Counsel and Patent Examiners

- **Increase Patent Counsel Diversity:** Researchers approximate that only about 18–22% of the patent bar are women, less than 6% are people of color, and less than 2% are women of color. While the lack of diversity in the patent bar is somewhat reflective of the fact that fewer women and people of color pursue STEM degrees—background required to sit for the patent bar examination—researchers have attributed the small number of diverse patent practitioners at least in part to the scientific and technical qualifications set out by USPTO. Invent Together applauds USPTO's recent modifications of these requirements and supports regular review of patent bar examination requirements to ensure that they do not exclude qualified individuals.
- **Increase Patent Examiner Diversity:** Researchers have found that only 28% of patent examiners are women. Research also suggests that gender bias may exist in the patent examination process. Invent Together encourages USPTO to increase gender and racial diversity among patent examiners. We also support an independent study to examine implicit bias in the examination process and to recommend reforms to cure them if needed.

Expand Data Collection and Research on Patent Gaps

- **Surveying Inventors:** Invent Together supports the [SUCCESS Act report](#) recommendation to conduct a voluntary, confidential, biennial survey of individuals named in patent applications that have been filed with USPTO to gather demographic data. Separate from the IDEA Act's voluntary data collection, conducting a survey would allow USPTO to gain additional insight into the characteristics of inventors who have applied for U.S. patents.



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- **Data Sharing:** Invent Together also supports the SUCCESS Act report recommendation to increase federal agency data sharing and cooperation. The OMB should designate USPTO as a data-sharing agency under the *Confidential Information Protection and Statistical Efficiency Act (CIPSEA)*. This designation will allow USPTO to share demographic data with other federal agencies, provide access to critically needed information on the inventor-patentee population, and support cross-agency efforts to create linkages between disparate data sets.
- **Council for Economic Advisors (CEA) Study:** The CEA should study and report on the patent gaps among women, people of color, and other underrepresented groups, and quantify the positive impact that greater access to invention and patenting would have on individual income, wage gaps, national GDP, and U.S. technology leadership.
- **Federal Reserve Study:** As part of [President Biden's initiative](#) to strengthen the Federal Reserve's focus on racial economic gaps, the Federal Reserve should study the positive impact that expanding invention and patenting by people of color would have on existing racial economic gaps and U.S. economic growth and recovery in the wake of the pandemic.

