



UNITED STATES MANUFACTURING COUNCIL

October 15, 2014

The Honorable Penny Pritzker
The Secretary of Commerce
U.S. Department of Commerce
Washington, D.C. 20230

Dear Madam Secretary:

Since our recommendations of April 29, 2014, the Manufacturing Council (Council) has continued its work to identify the most significant challenges to U.S. manufacturing innovation in an effort to provide substantive recommendations to you. As part of our fact-finding, we conducted a Southwest Regional Roundtable with 40 participants representing small, medium and large businesses, national laboratories and defense installations, the National Institute of Standards and Technology's (NIST) Hollings Manufacturing Extension Partnerships (MEP) and the Department of Commerce export promotion programs, academia, and state and local economic development experts. The engaging input from this roundtable solidified and validated our recommendations to you.

We have focused our current efforts on two specific areas: intellectual property and how best to safeguard it and identifying additional mechanisms to increase the pace of innovation. The second area came as a direct result of discussions with a large spectrum of manufacturing companies during roundtable discussions in early 2014.

The Council recommends the Department of Commerce take the following actions on the two focus areas:

1. Intellectual Property and How Best to Safeguard It

- a. *Advocate for a fully funded and self-sustained US Patent and Trademark Office (USPTO).*

The patent system is a critical component of the U.S. economy and contributes greatly to U.S. leadership in innovation and technological advancement. The USPTO, which is fully funded by user fees and uses no taxpayer money, should have full access to all the user fees it collects.

In 1990, Congress made the USPTO a self-funded agency, establishing a system in which fees were collected by the USPTO and transferred into an account in the general Treasury Department. The USPTO then received appropriations through the traditional Congressional appropriations process. More recently, in 2011 the *Leahy-Smith America Invents Act* established a more stable funding mechanism by enabling the USPTO to set its fees and recover the full, actual cost of its services to inventors. The “fee-reserve fund” could be an important safeguard in maintaining USPTO operations, given annual Congressional funding variations. To date, however, nearly \$1.1 billion in user fees have been withheld from the USPTO and appropriated to other accounts. As a result, innovators are paying to support Federal programs unrelated to the purpose of the user fee paid.

Having full access to the fees the USPTO collects is crucial for manufacturing innovation. These fees would allow the USPTO to plan both for its long-term personnel and technology needs as well as day-to-day operations. The patent and trademark system could be more efficient and less costly, and more able to issue high quality patents. Further, it would enable the USPTO to address its extensive backlog of patent applications (more than 600,000, as of June 2014) and the length of time it takes to review a patent. Today the patent pendency stands at well over two years.

We recommend that the Secretary and the Administration continue to work with Congress to support a better-funded, more efficient USPTO with full and exclusive access to and control over all of its fees.

b. Strongly encourage the President to nominate and pursue Senate confirmation for a permanent Director of the USPTO.

The USPTO has been without a permanent director since January 2013. This 21-month vacancy has weakened the USPTO’s ability to perform strategic and long-term planning and has harmed its ability to influence policy and incentivize innovation in the United States. The USPTO needs consistent leadership in the form of a permanent director confirmed by the Senate, a deputy director, and an operating team to improve effectiveness, quality and speed of examination and to underscore to the global manufacturing community the value the United States places in its intellectual property system.

2. Increase Efforts to Protect U.S. manufacturers’ Trade Secrets.

Trade secrets play a crucial role in the U.S. economy and are increasingly important to U.S. manufacturers, but they receive inadequate protection in many markets. Estimates of trade secret theft range from 1-3 percent of GDP of the United States and other advanced industrial economies.

In recognition of this, the Administration has developed a major trade secrets strategy in which the Department of Commerce and USPTO have significant roles. The Council supports efforts to enhance trade secrets protections for manufacturing innovators as well as strong enforcement efforts by the government. We recommend full implementation of World

Trade Organization (WTO) provisions and expansion of protections in ongoing and future trade agreement negotiations to help ensure fair treatment for U.S. firms and prevent the forced disclosure of proprietary information as a condition of market access.

3. Use “Incentive Prizes” to Increase the Pace of Innovation

- a. *Encourage the Department of Commerce to use “incentive prizes” to address significant manufacturing innovation challenges.*

In his 2009 “Strategy for American Innovation,” the President called on all agencies to increase the use of incentive prizes to address some of our nation’s most complex problems. The White House Office of Science and Technology Policy (OSTP) and the Office of Management and Budget (OMB) have provided guidance to Federal agencies identifying prizes as a standard tool for open innovation. The America Competes Reauthorization Action of 2010 provided authority for all Federal agencies to offer prizes and to partner with the private sector in developing and funding prize competitions. Over 300 prizes have been offered by more than 50 Federal agencies since 2010 on Challenge.gov. Through the use of incentive prizes, Federal agencies pay only for success and are able to reach beyond the “usual suspects” to source innovative solutions.

According to annual reports from OSTP to Congress, the Department of Commerce lags other government agencies in the use of prizes. The Council believes there is a significant opportunity for the Department of Commerce to spur manufacturing innovation through incentive prizes. OSTP could be an excellent resource for the Department of Commerce to establish agency-wide guidance for the use of prizes and evaluating potential areas of focus for a pilot prize program focused on manufacturing innovation.

- b. *Explore the use of incentive prizes to develop an online National Advanced Manufacturing Collaboration Capability Directory.*

Our recommendation letter of April 29, 2014, identified the need to “expand connections for collaboration and commercializing of technologies.” This need has been further validated in our due diligence research and in regional roundtables with overwhelming interest in an online National Advanced Manufacturing Collaboration Capability Directory (Directory). The Directory would increase the visibility of manufacturing innovation capabilities among public and private sector development bodies. The concept of a Directory has been discussed in many forums; however, it has been previously characterized as a transactional procurement mechanism for commercialized products. We propose something entirely different--a technology-based directory to facilitate collaboration for manufacturing innovation. This platform could complement physical infrastructure, such as MEPs and the National Network for Manufacturing Innovation.

In addition to our general recommendation that the Department of Commerce evaluate and encourage the use of incentive prizes to spur manufacturing innovation, we specifically recommend that the Department of Commerce use an incentive prize to explore and develop a creative and useful National Advanced Manufacturing Collaboration Capability Directory.

We appreciate your commitment to revitalizing manufacturing innovation and look forward to working with you to see these recommendations implemented.

Sincerely,



Albert Green
Chair, Innovation, Research
and Development Subcommittee



Susan Smyth
Vice-Chair, Innovation,
Research and Development
Subcommittee



Mike Laszkiewicz
Chair, Manufacturing Council



Mary Isbister
Vice-Chair, Manufacturing Council

Resources Appendix

US Patent and Trademark Office:

1. Full funding for the USPTO, including no fee diversion
 - 2013 Letter to OMB Opposing Sequestration of PTO User Fees: <http://www.ipo.org/wp-content/uploads/2013/08/LetterToOMBreSequestration8-12-13.pdf>
 - 2013 Letter Supporting S. 3349: http://www.ipo.org/wp-content/uploads/2013/10/10-29-2013_IPO_Letter_Supporting_HR3349-FINAL.pdf
 - 2011 Short Paper on Understanding Fee Diversion: http://www.ipo.org/wp-content/uploads/2013/03/Understanding.Patent.Fee_Diversion.pdf
 - Good historical overview: http://www.ipi.org/docLib/20120525_PatentFeeDiversion.pdf
2. Addressing Patent Pendency at USPTO
 - IPO Comments on FY 2014-18 USPTO Strategic Plan: <http://www.ipo.org/wp-content/uploads/2013/12/IPO-Comments-to-USPTO-2014-2018-Strategic-Plan1.pdf>
 - IPO Comments on FY 2010-15 USPTO Strategic Plan: http://www.ipo.org/wp-content/uploads/2013/03/2010-08-02IPO_Strategic_Plan_Comments1.pdf
3. Improving patent quality
 - IPO Comments in Response to FRN on Software Patents: <http://www.ipo.org/wp-content/uploads/2013/04/IPO-Comments-in-Response-to-Request-for-Comment-on-Software-Related-Patents-4-15-13-.pdf>
 - Industry Trilateral Paper on Quality: http://www.ipo.org/wp-content/uploads/2013/03/IT_Quality_Paper_Final_Plus_Cover.pdf
4. Protecting trade secrets
 - 2013 Comments to IPEC on Strengthening Trade Secret Protection: http://www.ipo.org/wp-content/uploads/2013/04/2013.04.22_Trade-Secrets-Letter-re-Leg-Similar-to-S3389.pdf
 - IPO Letter to USTR Re: Special 301 Review: <http://www.ipo.org/wp-content/uploads/2014/02/IPO-Special-301-Submission-2-7-141.pdf>
 - White House Strategy on Trade Secrets:
http://www.whitehouse.gov/sites/default/files/omb/IPEC/admin_strategy_on_mitigating_the_theft_of_u.s._trade_secrets.pdf

Innovation Prizes:

1. <http://www.whitehouse.gov/blog/2012/04/10/identifying-steps-forward-use-prizes-spur-innovation>
2. <http://www.forbes.com/sites/rahimkanani/2014/02/17/incentivizing-innovation-how-the-white-house-uses-challenge-gov-to-solve-big-problems/>