

INTELLECTUAL PROPERTY

The American Chemical Society (ACS) supports an intellectual property system that equitably encourages innovation and fosters scholarly advancement, especially in the sciences. The

U.S. government – through the United States Patent and Trademark Office (USPTO), the United States Copyright Office, and the courts – plays a key role in fostering innovation through recognizing and incentivizing intellectual property protection nationally, as well as internationally through cooperation with global legal systems. The discovery, development, and commercialization of novel scientific technologies benefits not only discoverers and inventors, but also the public. The ability to protect and leverage intellectual property in the form of patents, trade secrets, trademarks, and copyrights incentivizes the development and commercialization of scientific technologies. Therefore, ACS supports policies and procedures that promote efficiency, equity, quality, and harmonization for obtaining, protecting and/or enforcing patents, trade secrets, trademarks, and copyrights. Therefore, ACS makes the following policy recommendations:

Patent Policy Recommendations

Stimulate innovation by issuing valid, consistent, world class patents by:

- Supporting the consistent application and refinement of an objective test to identify patent eligible subject matter to enhance innovation
- Working to achieve world-class examination through prior art searching that reflects technical understanding of highly relevant art and its relationship to claims being sought, insuring clear language, proper claim construction, and sufficiency of disclosure, and providing clearly articulated rejections that are directed to the precise prior art citations being applied by the Examiner.
- Periodically reviewing of grant rates and approaches to examination within and between art units to ensure consistent adherence to policies and procedures
- Encouraging funding for the Patent Examiner Technical Training Program and other programs to provide further training on technical subject matter to facilitate better review of patent applications and discussions between Examiners and Applicants
- Encouraging public sharing of procedural training materials used for Examiners to facilitate better discussions between Examiners and Applicants
- Exploring more harmonization of US laws and rules with respect to topics including, but not limited to, unity of invention, citation of prior art, prior use/sale, and written description and sufficiency of disclosure
- Promoting diversity, equity, and inclusion in patent filings and during prosecution
- Resisting increases in USPTO fees to keep prosecution costs reasonable

Improve efficiency of patenting process to ensure time and money of patent applicants are not wasted by:

- Improving thoroughness of initial examination to make it less of an iterative process and reduce pendency of applications and periodically reviewing Patent Office policies and procedures related to same
- Encouraging dialogue between Examiners and Applicants to promote a quicker and more efficient examination process
- Harmonizing administrative and technical processing of patent applications between the USPTO and foreign patent offices and across all patent offices such as through work sharing programs to lead to greater certainty and reduced costs/administrative obligations of Applicants
- Providing increased clarity and predictability with respect to the implementation of patent law internationally and in the United States including in the areas of patentable subject matter (§101), inventorship, artificial intelligence, and practice before the Patent Trial and Appeal Board (PTAB)
- Promoting a legal framework that maintains a distinction between the patentability requirements, e.g., §§101 (patentable subject matter), 102 (novelty), 103 (non-obviousness), and 112 (enablement and definiteness).
- Supporting the increased use of artificial intelligence as a tool for inventors in developing new inventions involving chemistry

Copyright Policy Recommendations

- Encourage implementation of information technology upgrades to the Copyright Office
- Improve and streamline copyright search parameters and results to increase access to copyright ownership documents
- Support Open Access initiatives that are responsible and sustainable.
- Promoting diversity, equity, and inclusion in copyright registrations and enforcement

Trade Secret Policy Recommendations

- Promote consistent observance of trade secret protections, especially as provided for in the Defend Trade Secrets Act of 2016 (DTSA)
- Educate the scientific research community (academic and industrial) on best practices related to trade secrets

Trademark Policy Recommendations

- Encourage implementation of, or improvements to, information technology systems and other procedures to promote efficiency and veracity of the trademark registration process.