



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

January 19, 2021

The Honorable Thom Tillis
Chairman, Subcommittee on Intellectual Property
Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

The Honorable Mazie K. Hirono
Subcommittee on Intellectual Property
Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

The Honorable Christopher A. Coons
Ranking Member, Subcommittee on Intellectual Property
Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

Dear Senators Tillis, Coons, and Hirono:

Thank you for your letter of December 11, 2020 seeking information regarding the criteria for the registration examination for admission to the patent bar. I appreciate your strong partnership in and commitment to promoting and protecting intellectual property and expanding innovation in the United States. I also very much appreciate your strong and continued support of the USPTO and its mission.

The USPTO continuously evaluates its operations and policies in order to identify potential improvements, including regarding the criteria for the registration examination. These criteria serve the important function of ensuring that those who practice before the USPTO have the requisite scientific and technical knowledge to competently represent our nation's inventors. However, I share your belief that it is also critically important that these criteria are kept up to date and that they do not themselves act to discourage applications from women or individuals from other underrepresented groups. To that end, I have asked the USPTO to evaluate whether a number of immediate changes can be made, and also whether other changes may be possible in the future.

I hope the following updates and answers to the questions raised in your letter are informative to you as you continue to evaluate these issues. Should you determine that further action is needed on this important topic, the USPTO stands ready to assist with any additional information or technical assistance you may need.

Thank you again for your tremendous service to our nation's inventors and intellectual property system.

Sincerely,

A handwritten signature in blue ink that reads "Andrei Iancu".

Andrei Iancu

Responses to Questions Raised in December 11, 2020 Letter

1. What percentage of registered patent practitioners are women? To the extent the USPTO does not currently have this data, do you commit to collecting it?

Since FY2015, applications for the registration examination have included a “Mr./Ms.” salutation field that applicants can fill. On October 19, 2019, the USPTO began accepting electronic applications for the registration examination in addition to paper applications. As of December 2020, approximately 90% of applications submitted for the registration examination are submitted electronically.

Since October 19, 2019, the USPTO has received 1,937 electronic applications for the registration examination.¹ Of these applicants, 397 applicants have taken and passed the registration examination, and thus, have been registered. Of those 397 applicants registered, 29.22% selected the “Ms.” field on their application. While these statistics do not show the complete gender data for all currently registered practitioners, this data provides some insight into the possible gender breakdown for practitioners registered in the past 14 months. See Table 1.

Should Congress desire that the USPTO collect more comprehensive data about the gender of applicants for the registration examination, the USPTO stands ready to provide technical assistance on such legislation.

Table 1 - Applicants Who Applied for the Registration Examination and Have Been Registered Since October 19, 2019

APPLIED & BECAME REGISTERED SINCE 10/19/2019	Mr.	Ms.	TOTAL
REGISTERED	281	116	397
Category A	229	88	317
Category B	50	28	78
Category C	2	-	2
TOTAL	281	116	397

APPLIED & BECAME REGISTERED SINCE 10/19/2019 (%)	Mr.	Ms.	TOTAL
REGISTERED	70.78%	29.22%	100.00%
Category A	57.68%	22.17%	79.85%
Category B	12.59%	7.05%	19.65%
Category C	0.50%	0.00%	0.50%
TOTAL	70.78%	29.22%	100.00%

Applicants represented in Table 1 both (i) applied for the registration examination and (ii) became registered on or after October 19, 2019.

¹ Approximately 10% of applications are still being submitted in paper format and these applications are not included in the present data. In order to include these practitioners or to review data from applications submitted prior to October 19, 2019, all of which are in paper format, a manual review of each application would be required. Such a review would be a lengthy process and was not able to be completed in the required timeframe for this response.

2. Has the USPTO performed or is the USPTO aware of any studies regarding the impact of its criteria for admission to the patent bar on the diversity of patent practitioners?

To date, the USPTO has not undertaken any formal studies specific to evaluating the impact of admission criteria to the patent bar on the diversity of patent practitioners.² In addition, the USPTO is not aware of any relevant studies beyond those identified in your letter.

3. When did the USPTO last evaluate its criteria for admission to the patent bar? Please provide the USPTO's reasons for either changing or maintaining the admission criteria at that time, including any proposed changes considered and objective arguments or data considered.

The USPTO evaluates the criteria for applicants to sit for the registration examination on an ongoing basis in order to ensure fairness in the process and that patent practitioners who represent inventors are qualified, understand the technology, and able to effectively communicate with inventors regarding the technical features of the invention(s). This helps ensure practitioners are able to provide competent service to inventors in the preparation and prosecution of patent applications before the USPTO.

Based on its ongoing evaluation, the USPTO is currently looking into making a number of changes to the criteria. These potential changes would:

- Add common Category B degrees to Category A: This potential change would expand the list of Category A degrees to expressly include such categories as aerospace engineering, bioengineering, biological science, biophysics, electronics engineering, genetic engineering, genetics, marine engineering, materials engineering, materials science, neuroscience, ocean engineering, and textile engineering.
- Accept advanced degrees under Category A: This potential change would accept masters and doctoral degrees in Category A subjects.
- Accept a combination of core sciences under Category B, Option 4: This potential change would allow an applicant to satisfy the requirement with a combination of chemistry, physics and biology classes, as long as one has a lab component.

Other changes may also be evaluated and considered in the future.

Separately, in 2019, the USPTO considered whether it could or should grant a limited form of registration to a practitioner for the sole purpose of prosecuting design patent applications. In its review, the USPTO considered many factors, including: (i) whether scientific and technical qualifications should be modified; and (ii) whether ending common baseline of qualifications may result in fragmentation of the patent bar and decrease the protection of the public from

² This information has been confirmed by the USPTO's Chief Economist.

unqualified practitioners;³ and (iii) resource impact on USPTO operations. Ultimately, based on balancing these criteria, the USPTO decided not to change the criteria at that time. This should not prevent the USPTO from reconsidering this issue in the future, as appropriate in light of new information or suggested solutions.

4. Over the past 5 years, has the USPTO received requests to change the criteria for admission to the patent bar? If so, describe each request and the USPTO's response to the request, including the USPTO's reasons for its response.

The USPTO's Office of Enrollment and Discipline ("OED") is the office responsible for reviewing an applicant's qualifications for the registration examination, registering attorneys and agents to practice before the USPTO, and developing and administering the registration examination.

In the winter of 2019, the USPTO was contacted by a professor who thought changing the criteria for admission to the patent bar would result in more women being admitted. However, after being directed to the OED Director to provide more details regarding the initial communication, there was no further communication from the professor.

In addition, OED periodically receives petitions or informal requests from applicants who are disapproved for the registration examination. In some of these communications, applicants have argued that the scientific and technical qualifications should be modified. In some instances, the USPTO was able to work with the applicant to overcome the specific problem at issue. In other cases, the applicant was denied and did not pursue separate recommendations for changing the criteria. After a review of petitions received by OED in the past 5 years, the following three situations appear to be responsive to your letter.

In 2017, OED received a petition from an individual who was initially denied admission to take the registration examination, which requested a reduction in the number of required credit hours in Category B determinations and that life experiences be counted toward Category B determinations. OED was able to work with the applicant to overcome the initial denial.

In 2017, OED received a recommendation via petition, from an individual who was denied admission to take the registration examination, which requested that more computer science related degrees be included under Category A. However, that individual also subsequently overcame the initial denial and did not pursue the recommendation further.

In May 2018, OED received an informal request from an applicant in response to a Notice of Incompleteness and Denial of Admission from OED. The applicant requested that the USPTO reevaluate the scientific and technical requirements in relation to computer science degrees. Despite an attempt by OED to work with the applicant to demonstrate evidence of qualification under Category B, Option 4, the applicant did not subsequently provide supplemental information to OED, and the application was denied. The applicant did not re-apply for the registration examination or pursue the matter further.

³The U.S. Supreme Court (*Sperry, supra*) and the U.S. Court of Appeals for the Federal Circuit (*Premysler, supra*) noted the importance of protecting USPTO proceedings from unqualified individuals.

In addition to the above instances, OED received an informal telephone inquiry about whether/how certain design patent practitioners may be eligible to apply for the registration examination. The USPTO researched this matter in 2019. See response to question 3 above.

5. *How many individuals have qualified to take the patent bar over the past 5 years? Please indicate the number of individuals, by gender, who qualified under each of Categories A, B, and C. And, for those individuals qualifying under Categories B and C, please provide a list of their undergraduate and graduate degrees.*

8,540 applicants applied for the registration examination in the past 5 years. Of those applicants, 8,049 applicants were approved to sit for the registration examination, which is 94.25% of all applicants. 97.34% of Category A applicants qualified to sit for the registration examination, 87.42% of Category B applicants qualified to sit for the registration examination, and 98.18% of Category C applicants qualified to sit for the registration examination. See Table 2.

Only 4.23% of all applicants were disapproved to sit for the registration examination. An applicant's disapproval could have been for any number of reasons, including failing to pay the required application fees, failing to provide all required documentation, failing to provide all required responses and required information, or failing to demonstrate the required scientific and technical qualifications.

Table 2 - Total Applicants Applying for the Registration Examination in Past 5 Years (1/1/2016 – 1/1/2021)*

STATUS BY APPLICANT	Category A	Category B	Category C	TOTAL	As % of Category A	As % of Category B	As % of Category C	As % of Total Applicants
APPROVED	5667	2328	54	8049	97.34%	87.42%	98.18%	94.25%
DISAPPROVED	89	272	0	361	1.53%	10.21%	0.00%	4.23%
WITHDRAWN	6	7	0	13	0.10%	0.26%	0.00%	0.15%
PENDING	60	56	1	117	1.03%	2.10%	1.82%	1.37%
TOTAL	5822	2663	55	8540	100.00%	100.00%	100.00%	100.00%
As % of APPROVED	70.41%	28.92%	0.67%	100.00%				
As % of DISAPPROVED	24.65%	75.35%	0.00%	100.00%				
As % of WITHDRAWN	46.15%	53.85%	0.00%	100.00%				
As % of PENDING	51.28%	47.86%	0.85%	100.00%				
As % of TOTAL	68.17%	31.18%	0.64%	100.00%				

*Table 2 includes each applicant only once with the applicant's most recent status. Data from 1/1/2016 through 12/18/2020.

Furthermore, data has been collected in electronic format since October 19, 2019, which enables the USPTO to calculate certain data that may provide insight into the possible gender breakdown of the applicant. Table 3 shows that of the 1,937 applicants who have submitted applications electronically, 74.70% were Category A applications, 24.52% were Category B applications, and 0.77% were Category C applications. Further, of these 1,937 applicants, 65.67% chose the

“Mr.” salutation and 34.33% chose “Ms.” These applicants are further able to be broken down by “Mr./Ms.” in each of the scientific and technical qualification categories as follows:

- a) For Category A applicants, 67.45% were “Mr.” and 32.55% were “Ms.”;
- b) For Category B applicants, 59.37% were “Mr.” and 40.63% were “Ms.”; and
- c) For Category C applicants, 93.33% were “Mr.” and 6.67% were “Ms.”

Table 3 - Applicants Applying for Registration Examination Since October 19, 2019 by “Mr./Ms.” and Category

APPLICANTS	Mr.	Ms.	TOTAL	As % of Mr.	As % of Ms.	As % of Total
Category A	976	471	1447	76.73%	70.83%	74.70%
Category B	282	193	475	22.17%	29.02%	24.52%
Category C	14	1	15	1.10%	0.15%	0.77%
TOTAL	1272	665	1937	100.00%	100.00%	100.00%
As % of Category A	67.45%	32.55%	100.00%			
As % of Category B	59.37%	40.63%	100.00%			
As % of Category C	93.33%	6.67%	100.00%			
As % of Total	65.67%	34.33%	100.00%			

Table 3 includes data from electronically submitted applications from October 19, 2019 through December 18, 2020.

Table 4 shows the data of approved applicants submitting electronic applications from October 19, 2019 through December 18, 2020, separated by category and “Mr./Ms.” field. It is important to note that within this data, 7.12% of applicants are still pending. Thus, once the applications for these applicants have been fully reviewed, the percentage of approved applicants above will likely increase.

Table 4 - Applicants Qualifying for Registration Examination Since October 19, 2019 by “Mr./Ms.” and Category

APPLICATION STATUS	Mr.	Ms.	TOTAL	As % of Mr.	As % of Mr. for Status	As % of Ms.	As % of Ms. for Status	As % of Total
APPROVED	1153	585	1738	90.64%	N/A	87.97%	N/A	89.73%
Approved - Category A	910	437	1347	71.54%	78.92%	65.71%	74.70%	69.54%
Approved - Category B	230	147	377	18.08%	19.95%	22.11%	25.13%	19.46%
Approved - Category C	13	1	14	1.02%	1.13%	0.15%	0.17%	0.72%
DISAPPROVED	31	25	56	2.44%	N/A	3.76%	N/A	2.89%
WITHDRAWN	3	2	5	0.24%	N/A	0.30%	N/A	0.26%
PENDING	85	53	138	6.68%	N/A	7.97%	N/A	7.12%
TOTAL	1272	665	1937					

Table 4 includes data from electronically submitted applications from October 19, 2019 through December 18, 2020.

6. How many individuals, broken down by gender, have requested to take the patent bar exam who did not qualify under Categories A, B, or C? Of those, how many individuals, broken down by gender, did the USPTO permit to take the patent bar exam? Please provide separate lists of the undergraduate and graduate degrees for those who were permitted to take the patent bar exam and those who were not, respectively.

361 applicants of 8,540 total applicants were disapproved for the registration examination in the past 5 years. Those 361 applicants represent only 4.23% of all applicants applying for the registration examination. Further, an applicant’s disapproval could have been for any number of reasons, including but not limited to, failing to pay the required application fees, failing to provide all required documentation, failing to provide all required responses or required information, or failing to demonstrate the required scientific and technical qualifications.

Table 5 shows the limited data of disapproved applicants who submitted electronic applications from October 19, 2019 through December 18, 2020, separated by category and “Mr./Ms.” 2.89% of all applicants were disapproved to sit for the registration examination during this time period, with 2.44% of “Mr.” applicants and 3.76% of “Ms.” applicants disapproved.

Table 5 - Applicants Disapproved for Registration Examination Since October 19, 2019 by “Mr./Ms.” and Category

APPLICATION STATUS	Mr.	Ms.	TOTAL	As % of Mr.	As % of Mr. for Status	As % of Ms.	As % of Ms. for Status	As % of Total
APPROVED	1153	585	1738	90.64%	N/A	87.97%	N/A	89.73%
DISAPPROVED	31	25	56	2.44%	N/A	3.76%	N/A	2.89%
Disapproved - Category A	12	8	20	0.94%	38.71%	1.20%	32.00%	1.03%
Disapproved - Category B	19	17	36	1.49%	61.29%	2.56%	68.00%	1.86%
Disapproved - Category C	0	0	0	0.00%	0.00%	0.00%	0.00%	0.00%
WITHDRAWN	3	2	5	0.24%	N/A	0.30%	N/A	0.26%
PENDING	85	53	138	6.68%	N/A	7.97%	N/A	7.12%
TOTAL	1272	665	1937					

Table 5 includes data from electronically submitted applications from October 19, 2019 through December 18, 2020.

Again, while the statistics based on the “Mr./Ms.” field do not show the gender data for all currently registered practitioners, this data provides some insight into the possible gender breakdown for practitioners registered in the past 14 months. Should Congress desire that the USPTO collect more comprehensive data about the gender of applicants for the registration examination, the USPTO stands ready to provide technical assistance on such legislation.