

# Possible Biden Administration Goals for the USPTO

米国特許商標庁 (USPTO) におけるバイデン政権の潜在的目標



by Dennis Hubbs

# HEA at a Glance

- Our offices are located just outside Washington DC and in Roppongi, Tokyo
  - We offer training programs for patent professionals and patent administrative professionals at our Roppongi Office
  - Native Japanese Support Staff
  - HEA is the first Japan based US Intellectual Property Law Firm to be registered as a gaikokuho jimu bengoshi houjin and only the second registered foreign houjin law firm in Japan.
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- ・当事務所はワシントンDC近郊と東京の六本木に事務所があります。
- ・日本人スタッフがいます。
- ・HEAは国内初の外国法事務弁護士法人として登録された日本に拠点を置く米国特許事務所であり、日本では2番目に登録された外国弁護士法人です。



# Topics to be Discussed (I)

- Overview of Biden Administration/US Politics
  - USPTO Transition Document - what is it?
  - USPTO Transition Document Contributors - Who made it?
  - Patent Quality Proposals
  - Equity, Diversity, and Inclusion Proposals
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- ・バイデン政権／米国の政治の概要
- ・USPTOトランジション・ドキュメントーこの文書は何なのか？
- ・USPTOトランジション・ドキュメントー誰が作成したのか？
- ・特許の品質提案
- ・公正性、多様性、及び包括性の提案

# Topics to be Discussed (II)

- PTO Budgeting and Governance Proposals
  - International Intellectual Property Proposals
  - Other Components of USPTO and US Patent System
  - Broader Policy Initiatives that include the USPTO
  - Governance Insights
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- ・特許庁の予算及びガバナンスの提案
- ・国際的知的財産の提案
- ・USPTO(米国特許商標庁)及び米国特許システムの他の構成要素
- ・USPTOを含むより幅広い政策の取り組み
- ・ガバナンスの見識

# Overview of Biden Administration/US Politics (I)

- US Federal Government is currently controlled by one party – Democrats, but with very small margins – so it may be difficult to pass major legislation
- Usually Democrats and Republicans don't agree, but one exception is intellectual property (IP). IP is not as divisive as other issues
  - Instead of dividing on party lines, IP policy usually divides on state/constituent lines. For example, what companies are in the politician's district. Pharma/Big Tech/Auto/Med Device, etc.

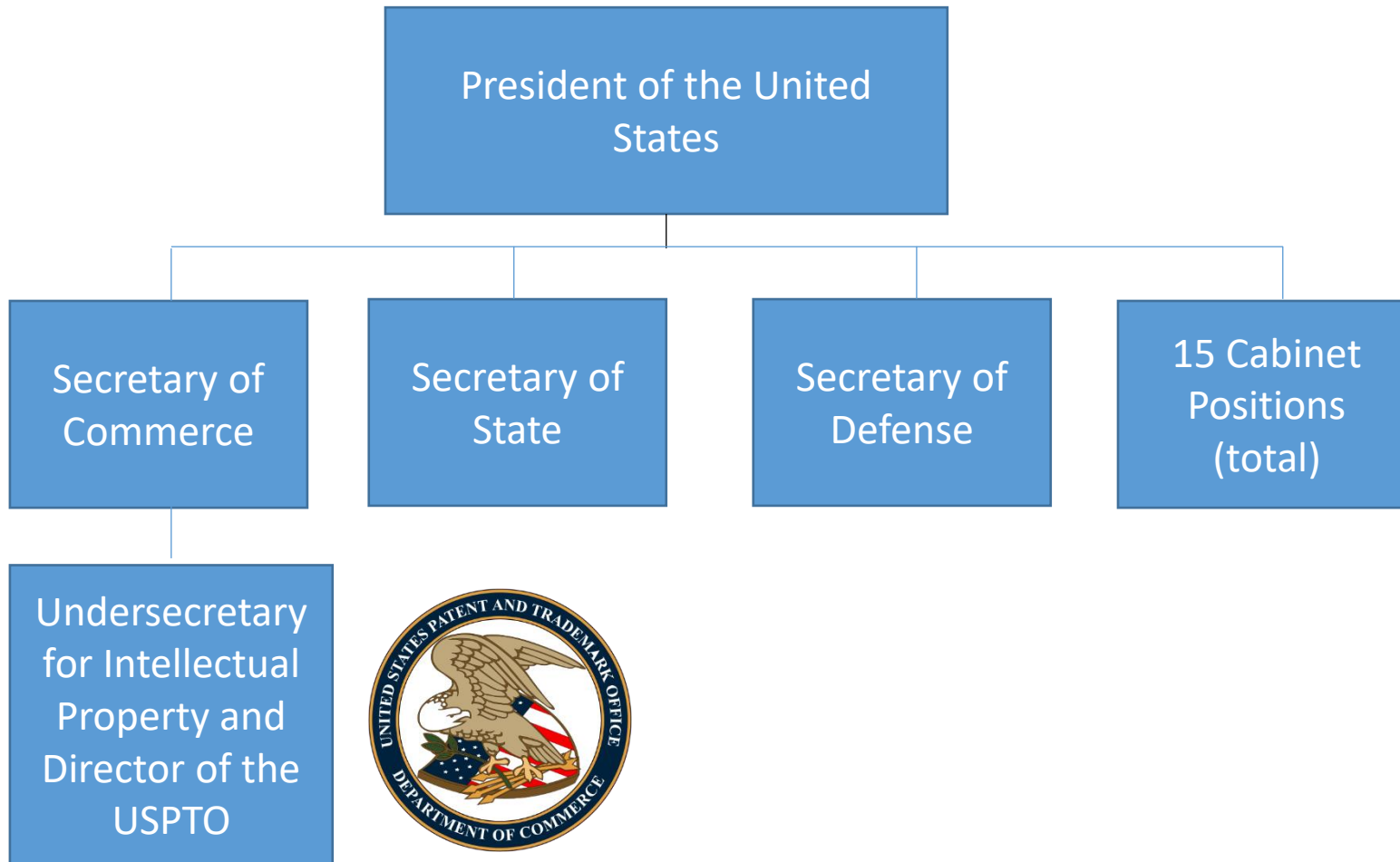
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- ・アメリカ合衆国連邦政府は現在一党(民主党)によって支配されているが、その差は少なく、重要な立法を通過させるのは難しいかもしれない。
  - ・通常、民主党と共和党は意見が一致しない、しかしながら知的財産(IP)に関しては例外である。知的財産は他の課題ほど意見が対立しない。

# Overview of Biden Administration/US Politics (II)

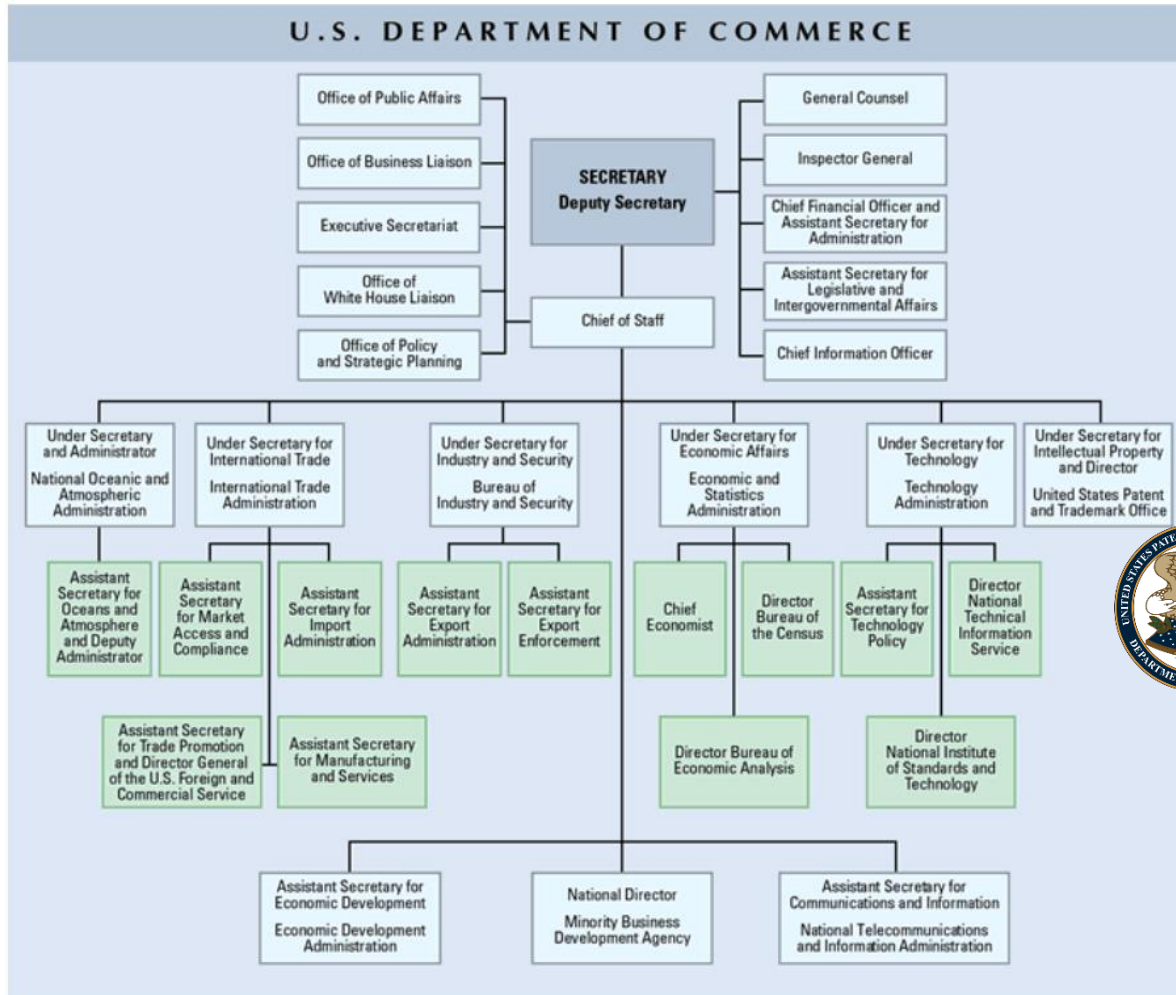
- Big Tech currently has strong ties to Democrat Party and favor weaker patent protection
  - Washington DC Expression: “Personnel is Policy”
    - Major reform may be difficult, but policy will be influenced by who is appointed to key positions
    - Flashback: Director Iancu set in place examination guidelines and culture that softened the impact of Alice decision on patent applicants.
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- ・ビッグ・テックは、現在、民主党と強い繋がりがあり、弱い特許保護を支持している。
- ・ワシントンDCの表現;「人員が政策」

# Government Organization Chart (partial)



# Organization Chart



- The executive office is expansive
- 2 million full-time employees in the federal government
- It is impossible for one person to manage
- Personnel is critical for implementing President's policy.

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連邦政府には200万人の正職員がいる。

- 一人が管理するのは不可能。
- 大統領の政策を実行するうえで人員は重要である。



# Overview of Biden Administration/US Politics (III)

- New USPTO Director will be appointed
- Andrei Iancu left the USPTO on January 20, 2021
- We do not know who the new Director will be yet (our best guess is that the person will come from Big Tech.)
  - It was 7 months before David Kappos was sworn in (August 13, 2009) after President Obama's inauguration and 13 months before Andrei Iancu was sworn in (February 8, 2018) after President Trump's inauguration.
- Drew Hirshfeld is the Acting USPTO Director and was the Commissioner for Patents

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- ・新しいUSPTO長官が任命される。
  - ・アンドレイ・イアंक氏は2021年1月20日にUSPTOを退いている。
  - ・誰が新しい長官になるかはわかっていない。(ビッグ・テックから人が呼ばれるだろうというのが私たちの最も有力な推測である。)

# USPTO Employee Statistics

At end of FY	Employees	Patent Examiners	Trademark examining attorneys
2019	12,652	8,296	627
2018	12,579	8,185	579
2017	12,588	8,147	549
2016	12,725	8,351	505
2015	12,667	8,426	456
2014	12,450	8,611	429

\*USPTO Performance and Accountability Report, fiscal year 2019



# USPTO Transition Document - What is it?

- All Presidents want to immediately act
- On Day 1, I will do this...
- In my first 100 days, I will do this
- Presidents historically have momentum from the election and want to use this to their advantage.



U.S. Patent and Trademark Office (USPTO)  
Transition Document

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- ・全ての大統領が即時に行動を起こしたい。
  - ・大統領は歴史的に選挙時からのモーメンタム（勢い）で、これを有利に使いたい。

# USPTO Transition Document - What is it?

- 17 Contributors (who largely support President Biden) volunteered their recommendations for changes in USPTO policy in a 22-page document.
  - [https://9381c384-0c59-41d7-bbdf-62bbf54449a6.filesusr.com/ugd/14d834\\_fa6b0d730acb491fa81b0fce54cfbef8.pdf](https://9381c384-0c59-41d7-bbdf-62bbf54449a6.filesusr.com/ugd/14d834_fa6b0d730acb491fa81b0fce54cfbef8.pdf)

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・（概ねバイデン大統領を支持している）17人の寄稿者は、22ページにわたる文書において、USPTO政策変更のための推奨事項を進言した。

# USPTO Transition Document - What is it?

- Series of high-level goals - not a detailed policy paper
  - The document sets an outline of some of what the Biden Administration may want to achieve with its USPTO policy.
  - The Biden Administration may or may not pursue all these goals or achieve all these goals
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- ・一連のハイレベルな目標 — 詳細を欠いた政策文書
- ・バイデン政権はこれら全ての目標を追求、あるいは達成しようとするかもしれないし、しないかもしれない。

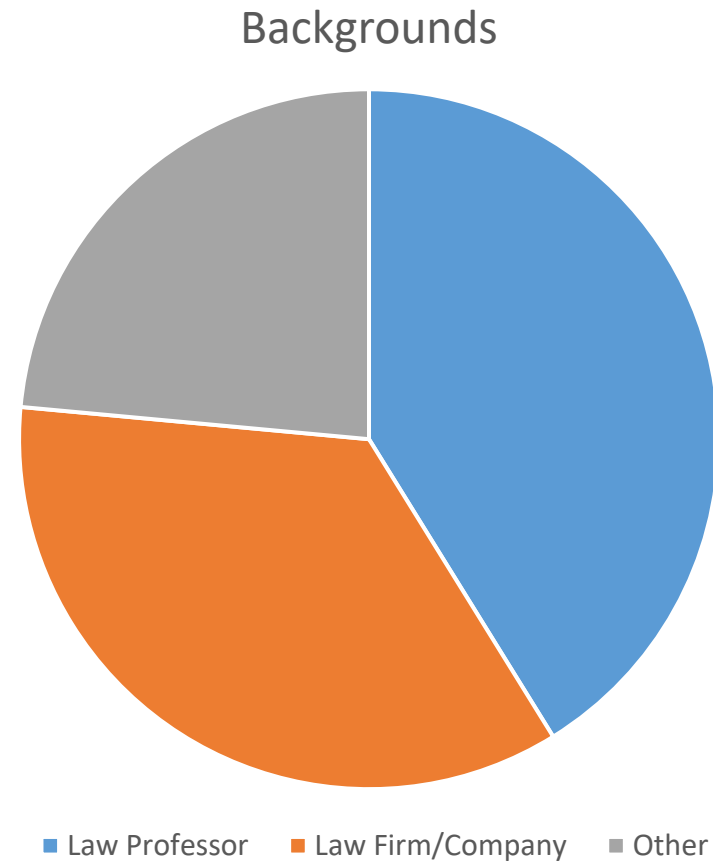
# USPTO Transition Document Contributors - Who made it?

## Personnel is Policy

- Law Professors 7
- Law Firm/Company 6
- Other 4
- 3 Former USPTO Officers

\*Links to bios at the end of the presentation

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- ・法律学教授 7
  - ・法律事務所／企業 6
  - ・その他 4



# USPTO Policy Ideas: Patent Quality

- Remove inventor names and attorney names from patent applications to reduce gender and racial bias.
- Encourage cross-agency collaboration within federal government. The PTO could work with the Food and Drug Administration (FDA) to better understand biopharma applications, for example.

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- ・ジェンダー及び人種差別を少なくするため、特許出願から発明者及び弁護士の名前を削除する。
  - ・連邦政府内で省庁間の協力を奨励する。例えば、バイオ医薬出願をより良く理解するために、特許庁がアメリカ食品医薬品局と連携する。

# USPTO Policy Ideas: Patent Quality

- Contemporaneous examination of applications at the Big 5 patent offices (EPO/JPO/KIPO/SIPO). Basically, have a coordinated/collaborative with the other offices to get a better search result.
  - Establish PTAB administrative judges as inferior offices in the US government
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- ・主要な5つの特許庁(欧州特許庁／日本特許庁／韓国特許庁／中国特許庁)で出願の審査を同時期に行う。要するに、他の庁と連携／協働することでより良い検索結果を得る。
- ・特許審判部の行政判事を下級裁判所として米政府内に設ける。



# USPTO Policy Ideas: Patent Quality

- Analyze the various factors in determining why IPR requests are denied.
  - Pursue legislation to allow PTAB to cancel claims in an IPR for failure to meet § 112 requirements, as well as address double patenting issues
  - Promote § 101 reform with Congress
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- ・なぜ当事者系レビュー（IPR）の請願が拒絶されたか判断するための様々な要素を分析する。
- ・特許審査部が、当事者系レビューにおいて、112条の要件に満たない及び、重複特許問題に対処できていない場合、クレームを取り消しできるよう立法を求める。
- ・議会と101条の改定を推進する。

# USPTO Policy Ideas: Equity, Diversity and Inclusion

- Study diversity of USPTO Applicants with a pilot program to collect data on ethnicity, gender, veteran status, etc.
  - Incentivize African-American and other minority inventors
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- ・民族性、ジェンダー、退役軍人の身分等を集計するパイロット・プログラムによって、USPTO出願者の多様性を調べる。
- ・アフリカ系アメリカ人と他の少数民族の発明者を奨励する。

# USPTO Policy Ideas: Budgeting and Governance

- Raising Initial Filing Fees to respond to anticipated declines in maintenance fees. Portfolio owners are using more sophisticated tools to determine what patents to maintain. Increased fees may also dampen frivolous filings.
  - Increasing maintenance fees (third and maybe second) to move some innovations into the public domain more quickly.
- 

- ・予想される維持年金費用の減額に応じて初期出願費用を増額する。ポートフォリオの所有者はより優秀なツールを使用してどの特許を維持するか判断している。また、費用の増額は、無用な出願を鈍らせるかもしれない。
- ・いくつかの革新をより早く公有財産とするため、維持年金費用(3回目とおそらく2回目も)を増額。

# USPTO Policy Ideas: Budgeting and Governance

- In August 2019, the USPTO implemented a new rule that any foreign-domiciled trademark applicant be represented by a US attorney. Look for more targeted ways to address the fraud problem (which principally comes from China).

	2015	2016	2017	2018	2019
China TM Applications	14,144	28,770	50,942	57,879	76,334
Japan TM Applications	6,521	6,199	7,340	7,883	8,779
Germany TM Applications	12,310	12,792	14,617	15,095	14,359

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・2019年8月、USPTOは外国居住の商標出願者は米国弁護士に代理されなければならないとする新規定を導入した。(主に中国から来る)不正行為に対処するため、より対象を絞った方法を模索する。

# USPTO Policy Ideas: Budgeting and Governance

- Pursue legislation to give USPTO substantive rulemaking authority to allow the USPTO to be more nimble and innovative
- Reorganize the Office of the Chief Economist (OCE) to perform economic research and analysis on IP and innovation

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- ・USPTOがより鋭敏で革新的であるようUSPTOに実質的な規則制定の権限を与える立法を求める。
  - ・チーフエコノミスト室(OCE)を再編し、知的財産と技術革新分野の経済調査と分析を行う。

# USPTO Policy Ideas: International Intellectual Property

- Explore and promote discussion of a compromise disclosure of origin mechanism that would not invalidate patent rights.
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・特許権が無効とならないようにする出所の開示譲歩メカニズムの議論を検討及び進める。

# USPTO Policy Ideas: International Intellectual Property

- **Reorganize China IP Engagement for greater depth, coherence and efficiency.** Establish an inter-agency task force to address China IP to provide support for other agencies Bureau of Industry and Security (BIS) and Department of Homeland Security (DHS); develop coordinated responses to China's model of state-dominated IP planning, anticipated disruptions caused by China's intervention in technology and IP, etc.
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・より深い、一貫性のある、効率的な中国知財エンゲージメントに再編する。

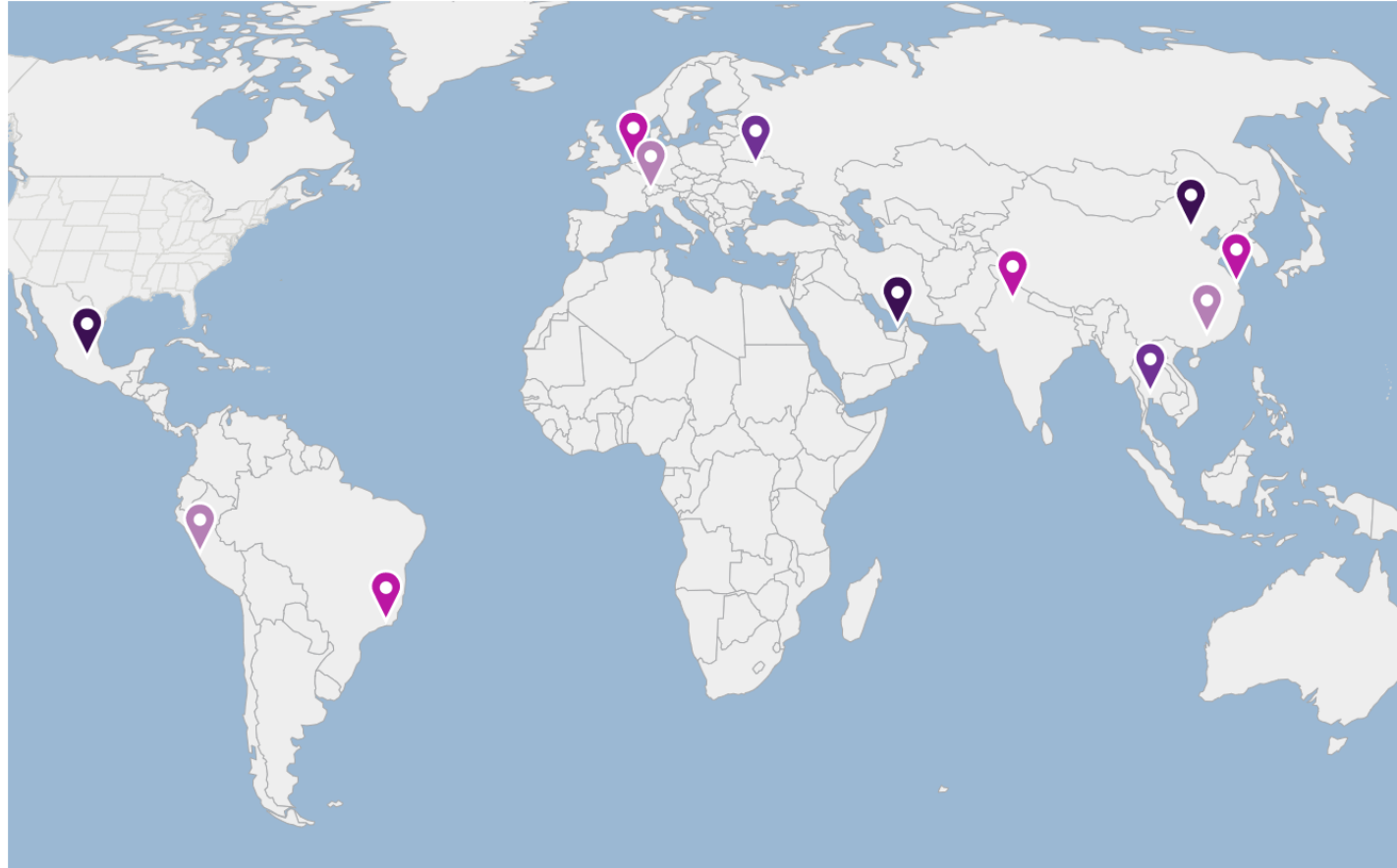
# USPTO Policy Ideas: International Intellectual Property

- **Increase Cross-Agency Collaboration on International Work on Genetic Resources.** Address important issues such as digital sequence information on genetic resources, address the question whether or not to ratify the Convention on Biodiversity
- **Allow USPTO to recommend that Attaches in their 12 missions around the world be promoted to a higher rank based on experience and qualifications**

- 
- ・遺伝資源の国際的働きに関し省庁間の協力を増やす。
  - ・世界の12のミッションにおける(知財)駐在員に関し、経験と資格を基準に上位階級に昇格されるよう、USPTOが推薦できるようにする。



# USPTO Policy Ideas: International Intellectual Property



USPTO Attache Offices

# USPTO Policy Ideas: Other Ideas

- Expand the Patents for Humanity Program, which is a program to recognize innovators who use new technology to meet global humanitarian needs. Winners receive certain accelerated USPTO proceedings and public recognition
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・「人道的特許プログラム」を広げる。これは、世界的人道上のニーズを満たすために新技術を使用する革新者を認知するプログラムです。

# USPTO Policy Ideas: Other Ideas

- **Patents for Humanity Winners in 2020:**

- **Global Vision 2020 (Maryland)**, for developing the USee Vision Kit, used to provide prescription eyeglasses cost-effectively to hundreds of people, particularly in remote parts of the world, who normally do not have access to vision care.
- **Sisu Global (Maryland)**, for creating the Hemafuse, a highly effective, mechanical alternative to transfusing donor blood. With a simple push and pull of a handle, the Hemafuse can salvage, filter, and recycle blood from an internal bleeding in trauma, without the use of electricity.

(<https://www.uspto.gov/about-us/news-updates/uspto-announces-2020-patents-humanity-winners>)

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・2020年 人道的特許 (Patents for Humanity) の勝者

# USPTO Policy Ideas: Other Ideas

- **Patents for Humanity Winners in 2020:**

- **Sanaria Inc. (Maryland)**, for developing a whole parasite vaccine for malaria.
- **Flexcrevator (North Carolina)**, for creating a machine that enables fast, safe, and hygienic fecal sludge removal, surpassing manual emptying.

(<https://www.uspto.gov/about-us/news-updates/uspto-announces-2020-patents-humanity-winners>)

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- ・2020年 人道的特許 (Patents for Humanity) の勝者

# USPTO Policy Ideas: Other Ideas

- **Patents for Humanity Winners in 2020:**

- **NEWgenerator (Florida)**, for utilizing state-of-the-art membrane bioreactor technology to create a machine capable of the simultaneous recovery of nutrients, energy, and water from wastewater.
- **Nonspec (Massachusetts)**, for providing affordable and highly adjustable prosthetic limb systems to amputees that can be taken off the shelf and adjusted in under an hour to those in need.

(<https://www.uspto.gov/about-us/news-updates/uspto-announces-2020-patents-humanity-winners>)

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・2020年 人道的特許 (Patents for Humanity) の勝者

# USPTO Policy Ideas: Other Ideas

- **Establish a Small Claims Court for Patent Infringement.** The USPTO should explore feasibility of creating a venue for inventors to seek relief for infringement of their patent rights in an expeditious and economic manner.
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・特許権侵害のための簡易(少額)裁判所を設ける。

# USPTO Policy Ideas: Broader Administration Policy Initiatives that would Include USPTO

- Establish a Blue Ribbon Commission on National Innovation Strategy. The Commission would propose a strategy for the US to lead the future of innovation.
- Make global access to medicines a priority in international trade. The USPTO should coordinate agencies to prioritize global access to medicine.

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- ・ナショナル・イノベーション戦略のためブルーリボン委員会を設ける。この委員は米国が未来のイノベーションを牽引するための戦略を提案する。
  - ・医薬品の世界的なアクセスを国際貿易において優先させる。

# USPTO Policy Ideas: Broader Administration Policy Initiatives that would Include USPTO

- Developing robust USPTO data to inform innovation policy
  - Convene a cross-agency task force on drug pricing that includes exploring patent reforms to rein in abusive practices that contribute to high drug prices.
  - Create blue ribbon commission on patent system to study current issues with the patent system and recommend improvements through court, agency and legislative changes.
- 

- ・イノベーション政策に提供するため、しっかりとしたUSPTOデータに成長させる。
- ・薬の高価格の一助となった濫用行為を抑制する特許改正の模索を含んだ薬価に関する省庁連携特別作業部会を召集する
- ・特許システムに関する現在の課題を検討し、裁判所、政府機関、法改正に通じて改善を推奨するため、特許システムにブルーリボン委員会を作る。



# Governance Insights

- In this final section of the transition document, a group of over 20 former USPTO officials were asked to share their lessons learned on how to hit the ground running at the agency.
- Many of these insights are very technical, and not worth going over for our purposes. But I will touch on some of the the pertinent insights.

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・トランジション・ドキュメントの最後の項目では、20人以上の前USPTO職員からなるグループが、機関で学んだ事を共有するよう要請された。

・多くの見識は非常に専門的で、今回の目的のために探求する必要はないが、関連する見識に少し触れることとする。

# Governance Insights

- Aligning US-China position with White House. The USPTO has been in a holding pattern with China and is hesitant to engage because they don't want to conflict with White House policy. Have better communication between the White House and USPTO.
- Office of Enrollment and Discipline: Enrollment to foreign nationals should be limited to those countries that permit our (US) patent agents/lawyers to practice before their patent and trademark offices.

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- ・米中の位置関係をホワイトハウスと協調する。USPTOは中国との関係にパターンを保持しており、干渉するのに消極的である。なぜなら、ホワイトハウスと衝突したくないからである。
  - ・Office of Enrollment and Discipline(OED) : 外国籍の国民の登録は、彼らの国の特許商標庁で米国特許エージェント／米国特許弁護士の実務を許可している国の国民に、制限されるべきである。

# Transition Document Contributors

- Remember, Personnel is Policy – so these are the people who created the transition document:
  - Margo A. Bagley (Law Professor) <https://law.emory.edu/faculty/faculty-profiles/bagley-profile.html>
  - Sharon Barner (General Counsel in Auto Industry) <https://www.cummins.com/company/leadership/sharon-barner>
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# Transition Document Contributors

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- A. Christal Sheppard (Law Professor) <https://law.unl.edu/christal-sheppard/>
- Saurabh Vishnubhakat (Law Professor) <https://law.tamu.edu/faculty-staff/find-people/faculty-profiles/saurabh-vishnubhakat>
- Stephen Yelderman (Law Professor) <https://law.nd.edu/directory/stephen-yelderman/>

# Final Thoughts

- Remember that the transition document is not official White House policy and that the Biden Administration may or may not pursue these proposals.
  - Also – the US courts have a tremendous amount of power with respect to patent law. The courts are interpreting the law everyday. The Presidency has little or no ability to determine court outcomes, and can only pass laws with the help of Congress, in order to change a law.
  - So – probably don't expect big changes. The Government bureaucracy is huge and things move slowly.
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- ・トランジション・ドキュメントは公式なホワイトハウスの政策ではないこと、またバイデン政権がこれら提案を追求しようとするかもしれないし、しないかもしれないということを覚えておいて下さい。
- ・また、米国の裁判所は特許法に対してとても大きな力(影響力)を保持しています。
- ・そのため、大きな変化は望めないでしょう。

# Questions/Contact Information

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