

# CARDOZO/GOOGLE PROJECT FOR PATENT DIVERSITY

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## ***Project Overview***

The Cardozo/Google Project for Patent Diversity is a Google-funded project that was just launched at Cardozo Law School. The goal of the Project is to increase the number of U.S. patents issued to women and minorities. Recent studies show that there is a great disparity in the number of U.S. patents issued to these groups as compared with the total number of issued U.S. patents. Notably, the studies show that this disparity is not fully explained by differences in STEM education; there are other factors contributing to this disparity including the lack of awareness of the patent process and the resources that are available as well as the difficulty and cost of the patent process. The network being created by the Project team will help narrow this disparity by bringing together resource-constrained innovators from these underrepresented groups with members of the legal community willing to provide pro bono legal services. In addition, the Project team will create educational materials as well as programming designed to raise awareness about the existence of the patent process as well as the mechanics and substantive requirements of obtaining a patent.

## ***Rationale/Supporting Evidence***<sup>1</sup>

### *Publications*

In the past five years or so, several studies and articles (including peer-reviewed literature) have been published that identify and discuss the lack of parity in the number of patents issued to women and minorities as a percentage of all issued patents. While most would agree that complete parity was not expected, the gap was even more substantial than anticipated.<sup>2</sup>

In the U.S., less than 8% of issued patents name women as the primary inventor. This number increases – but only to 18% - for patents that name women as an inventor even though not the primary inventor. Notably, these numbers are calculated based on the complete universe of issued patents, *i.e.*, design patents as well as utility patents. Equally significant is the fact that patents naming female inventors (in any capacity) often relate to fields that have

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<sup>1</sup> Citations available upon request.

<sup>2</sup> The United States Patent and Trademark Office (USPTO) does not track patents by gender or ethnicity. Because of the growing interest in determining the contribution of women and minorities to the innovation ecosystem, studies were undertaken using, among other things, name databases, name-matching software, national survey of college graduates, census data, and USPTO patent classes.

historically been associated with women, including jewelry, apparel, furnishings, and travel-related goods rather than, for instance, engineering. Based on the historical trends, gender parity in the patenting process will not occur until 2092.

There is significantly less data available on the percentage of patents issued to minorities. Nevertheless, the data that does exist suggests an even greater lack of parity for patents naming U.S.-born minorities as an inventor, whether as the primary inventor or as one among several named inventors. Among minorities, the most significant disparities appear to exist for African Americans and Hispanics.

The studies and articles we rely upon in addition to anecdotal evidence from Cardozo's Tech Start Up Clinic, other law school clinics around the country, and pro bono organizations all indicate a lack of resources as one of the reasons for the disparity in the patenting system. Other contributing factors include a lack of awareness of the patent process and the resources that are available, the difficulty and cost of the patent process, differences in STEM degrees, workplace participation in STEM fields and STEM research teams, incentives to publish rather than patent in certain settings (*e.g.*, academia), and sociologic factors (*e.g.*, networks, mentors, unconscious bias, confidence, assertiveness). While this Project does not directly address all of these factors, it has the potential to at least indirectly cause a positive impact on most all of them.

#### *Repercussions of current patenting patterns*

The lack of gender and ethnic parity in the patent system needs to be addressed for various reasons beyond basic fairness. Many of these reasons are economic. First, access to venture capital and in turn the viability of start-ups is influenced by patent ownership.<sup>3</sup> Second, patents are aimed at providing solutions to the public including both genders and all ethnicities, not just one segment of the population. Inclusion of women and minorities in the patent system expands the spectrum of experiences and perspectives of the team and in turn helps provide the most useful and innovative solutions. Third, utilizing the full potential of all innovators regardless of gender or ethnicity will increase the GDP. It is estimated that narrowing the patent gap with respect to women alone would increase the GDP per capita by 2.7%.

#### **Project Structure**

There are four basic components to the structure of the Project network. The first is a group of pro bono legal service providers; the second component is the individuals and entrepreneurs desiring to pursue patent protection for their innovations but without the means to do so; the third is the application process; and the fourth is the match of attorney with client.

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<sup>3</sup> Interestingly, the available data (limited but credible) shows that only 17% of VC-funded companies are founded by women and only 1% by African Americans. The lack of patent ownership is almost certainly reflected in these low numbers.

The network of pro bono legal service providers will consist of law firms, solo practitioners, and in-house counsel. To create this network, the Project team is leveraging a deep bench of relationships in the legal community to reach solo practitioners, law firms, and in-house attorneys. The team is also working with the USPTO, bar associations (national, state, and local), and other organizations (*e.g.*, IPO, WIPO, *etc.*) to expand the universe of potential legal services providers even further. Network participants can opt to structure their participation in any number of ways including, for instance, with a cap on the number of matters they will take on in each year or with a financial cap per year.

Next, the Project needs to reach prospective patentees. To do so, the Project team is working with pro bono organizations, law school clinics, and community organizations that are directed to small businesses, technology start-ups, and economic development initiatives. For this component, just as with the first, the Project team will work with bar associations, the USPTO, and other IP-centric organizations; these organizations not only have the ability to reach potential legal services providers, but they may attract prospective patentees looking for pro bono legal services. The Project team also expects to tap in to STEM programs at universities around the country and in to well-known scientific organizations (*e.g.*, IEEE, NSPE, ACS).

When prospective patentees come to the Project, they will be screened with a written application and an interview. The screening process will be crafted to obtain the information necessary to assess whether they are suitable for the Project, including, among other things, gender, ethnicity, financial resources, prior patenting activity, and preliminary information about the technology at issue. In most instances, the initial patentability assessment will not be made by the Project team but rather by the pro bono provider. Also, in terms of financial resources, applicants will be income screened at 300-500% of the federal poverty guidelines; however, if there are firms willing to work with applicants above this threshold, then some such applicants might be accepted into the Project.

Finally, the prospective patentee is matched with a network member. During the representation and at its conclusion, the network member will provide the Project team with progress reports coincident with significant events regarding the matter, *e.g.*, whether and what type of patent application will be filed. This will allow us to capture additional data for compilation and analysis as well as to help us refine our screening process.

### ***Conclusion***

The studies and articles published to date identify a lack of parity in the patenting system and a need for programs to increase the number of patents issued to underrepresented groups.

In addition to basic inequality, the lack of parity has negative economic implications. Through the Cardozo/Google Project for Patent Diversity, we hope to address this issue and increase the number of U.S. patents issued to women and minorities.

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