DARRELL E. ISSA, CALIFORNIA CHAIRMAN

JOHN L. MICA, FLORIDA
MICHAEL R. TURNER, OHIO
JOHN J. DUNCAN, JR., TENNESSEE
PATRICK T. MCHENRY, NORTH CAROLINA
JIM JORDAN, OHIO
JASON CHAFFETZ, UTAH
ITIM WALBERG, MICHIGAN
JAMES LANKFORD, OKLAHOMA
JUSTIN AMASH, MICHIGAN
PAUL A. GOSAR, ARIZONA
PATRICK MEEHAN, PENNSYLVANIA
SCOTT DESJARLIAIS, TENNESSEE
TREY GOWDY, SOUTH CAROLINA
BLAKE FARENTHOLD, TEXAS
DOC HASTINGS, WASHINGTON
CYNTHIA M. LUMMIS, WYOMING
ROB WOODALL, GEORGIA
THOMAS MASSIE, KENTUCKY
DOUG COLLINS, GEORGIA
MARK MEADOWS, NORTH CAROLINA
KERRY L. BENTIVOLIO, MICHIGAN
RON DESANTIS, FLORIDA

LAWRENCE J. BRADY STAFF DIRECTOR ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6143

MAJORITY (202) 225–5074 FACSIMILE (202) 225–3974 MINORITY (202) 225–5051

http://oversight.house.gov

August 19, 2014

ELIJAH E. CUMMINGS, MARYLAND RANKING MINORITY MEMBER

CAROLYN B. MALONEY, NEW YORK
ELEANOR HOLMES NORTON,
DISTRICT OF COLUMBIA
JOHN F. TIERNEY, MASSACHUSETTS
WM. LACY CLAY, MISSOURI
STEPHEN F. LYNCH, MASSACHUSETTS
JIM COOPER, TENNESSEE
GERALD E. CONNOLLY, VIRGINIA
JACKIE SPEIER, CALIFORNIA
MATTHEW A. CARTWRIGHT, PENNSYLVANIA
L. TAMMY DUCKWORTH, ILLINOIS
ROBIN L. KELLY, ILLINOIS
ROBIN L. KELLY, ILLINOIS
PETER WELCH, VERMONT
TONY CARDENAS, CALIFORNIA
STEVEN A. HORSFORD, NEVADA
MICHELLE LUJAN GRISHAM, NEW MEXICO
YACANCY

The Honorable Penny Pritzker Secretary U.S. Department of Commerce 1401 Constitution Avenue, NW Washington, D.C. 20230

Dear Madam Secretary:

The Committee on Oversight and Government Reform is conducting an investigation into allegations of telework abuses at the U.S. Patent and Trademark Office (USPTO). On August 10, 2014, the *Washington Post* published a story, "Patent Office Filters Out Worst Telework Abuses in Report to its Watchdog," that describes numerous instances of misconduct and apparent efforts by agency officials to conceal wrongdoing. To assist the Committee's investigation of these matters, I am writing to request related documents and information.

According to the *Post*, patent examiners "repeatedly lied about the hours they were putting in, and many were receiving bonuses for work they didn't do." In one instance, an examiner received full pay despite missing 304 hours of work. The employee was caught twice for cheating but not fired. Another employee racked up \$12,533 in salary while showing no evidence of working. The employee was reportedly not charged with fraud "because an assistant deputy commissioner refused her supervisor's request to pull computer records." It appears the employee never reimbursed the government. According to one manager, an examiner used a "mouse-mover" program to create the appearance that he was working. While the manager reported the incident to a top official, no disciplinary action was taken.

¹ Lisa Rein, Patent Office Filters Out Worst Telework Abuses in Report to its Watchdog, WASH. POST, Aug. 10, 2014, available at http://www.washingtonpost.com/politics/patent-office-filters-out-worst-telework-abuses-in-report-to-watchdog/2014/08/10/cd5f442e-1e4d-11e4-82f9-2cd6fa8da5c4 story.html.

² *Id*.

³ *Id*.

⁴ *Id*.

⁵ *Id*.

⁶ *Id*.

⁷ *Id*.

⁸ Id.

⁹ *Id*.

The Honorable Penny Pritzker August 19, 2014 Page 2

According to the Washington Post, paralegals at the USPTO also received salaries while doing little or no work. 10 The Commerce Inspector General found that paralegals took home pay checks during a four-year period while surfing the internet, washing clothes, and reading books because managers gave limited assignments. 11 Despite a hiring freeze, managers apparently did not assign work because they were waiting "for new judges to be hired to handle a backlog of appeals."12

According to the Post, USPTO officials removed damaging information from an internal report to avoid disclosure of abuses in the telework program. 13 The internal report "describes a culture of fraud that is overlooked by senior leaders, lax enforcement of the rules and the resulting frustration of many front-line supervisors." The report also lists specific examples of abuse occurring at the agency and calls into question the business model of the patent office. 15

In contrast, when the USPTO turned its findings over to OIG, "the most damaging revelations had disappeared." Indeed, the report provided to OIG is 16 pages—approximately half the length of the original report. 17 The abridged report does not contain any findings of abuse with respect to the telework program's reporting procedures. ¹⁸ Moreover, the initial report finds that "significant" numbers of examiners rush to get work done at the end of each quarter because little is done for long periods of time. 19 In the abridged report submitted to OIG, the agency found that some examiners take longer to complete assignments because the employees "want to make their actions perfect." The report to OIG concluded that it was impossible to know if the "allegations of systemic abuses were true."²¹

This Committee has historically examined instances of wasteful spending and mismanagement at federal agencies. For example, during the Committee's April 16, 2012, hearing on the 2010 General Services Administration conference in Las Vegas, Members of Congress on both sides of the aisle agreed that a number of egregious examples of waste occurred there—including the hiring of a clown, a \$31,000 reception, and a team-building

¹¹ Id.

¹⁰ Id.

¹² *Id*.

¹³ *Id*.

¹⁴ *Id*.
15 *Id*.

¹⁶ *Id*.

¹⁷ *Id*.
18 *Id*.

¹⁹ *Id*.

²⁰ *Id*.

²¹ *Id*.

The Honorable Penny Pritzker August 19, 2014 Page 3

exercise that cost \$75,000.²² Similar gaps in internal agency controls seem to exist at the USPTO.²³

The *Post*'s report comes at a time when examiners are apparently falling behind on one of the core functions of the agency. The USPTO reportedly has a backlog of patent applications of over 600,000 and an approximate wait time of more than five years.²⁴ Despite patent examiners generally receiving salary at the top of the federal pay scale—some making \$148,000 a year—it appears the telework program is not serving its intended purpose to produce more efficiency.²⁵

The waste, fraud, abuse and mismanagement described by the *Post* is unacceptable. In order for the Committee to understand the extent of abuses and mismanagement in the telework program at the USPTO, please provide the following documents and information as soon as possible, but by no later than 5:00 p.m. on September 2, 2014.

- 1. All documents and communications, including e-mails, relating to the internal report regarding abuses in the telework program at USPTO cited by the *Washington Post*.
- 2. All documents and communications, including e-mails, relating to the 2013 report submitted to the U.S. Commerce Department OIG regarding abuses in the USPTO telework program.
- 3. All documents and information provided to the U.S. Commerce Department OIG relating to the allegations described herein.

In addition, please make arrangements by August 22, 2014, to brief Committee staff on this matter.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request.

Please deliver your responses to the Majority Staff in room 2157 of the Rayburn House Office Building and the Minority Staff in room 2471 of the Rayburn House Office Building. The Committee prefers to receive all documents in electronic format.

²² Addressing GSA's Culture of Wasteful Spending: Hearing Before H. Comm. on Oversight & Gov't Reform, 112th Cong. (Apr. 16, 2012).

²³ Rein, supra note 1.

²⁴ *Id*.

²⁵ *Id*.

The Honorable Penny Pritzker August 19, 2014 Page 4

Please contact Lamar Echols of the Committee staff at (202) 225-5074 with any questions about this request. Thank you for your attention to this matter.

Sincerely,

Darrell Issa Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM 2157 RAYBURN HOUSE OFFICE BUILDING WASHINGTON, DC 20515–6143

> Majority (202) 225-5074 Minority (202) 225-5051

Responding to Committee Document Requests

- 1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
- 2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
- 3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
- 4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
- 5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,

CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

- 6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
- 7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
- 8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
- 9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
- 10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
- 11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
- 12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
- 13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
- 14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
- 15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
- 16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been

located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

- 17. All documents shall be Bates-stamped sequentially and produced sequentially.
- 18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
- 19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Schedule Definitions

- 1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intraoffice communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
- 2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

- 3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
- 4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
- 5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
- 6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
- 7. The term "employee" means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.