

Congress of the United States
Washington, DC 20515

March 28, 2018

The Honorable Andrei Iancu
Under Secretary of Commerce for Intellectual Property
Director of the U.S. Patent and Trademark Office
600 Dulany Street
Alexandria, VA 22313

Dear Mr. Iancu:

Congratulations on your recent confirmation as Director of the U.S. Patent and Trademark Office (USPTO). We write to bring to your attention previous findings and recommendations by the Department of Commerce Office of Inspector General (OIG) regarding potential time and attendance abuse at USPTO. We look forward to working with you to address this issue at USPTO. We respectfully request documents and information related to this issue, and your plans to ensure it does not recur.

In August 2016, the OIG released a report detailing potential time and attendance abuse at the USPTO.¹ This report found 288,479 unsupported hours among patent examiners over a 15-month period.² These unsupported hours equated to \$18.3 million in potential waste and could have reduced the patent application backlog by approximately 15,990 cases.³ Of the over 8,400 examiners reviewed by the OIG, 415 examiners accounted for 43 percent of the total unsupported hours.⁴ Fifty-six of those examiners averaged unsupported hours equal to three days for every two-week pay period.⁵

This report followed a 2015 report by the OIG on time and attendance abuse of one particular patent examiner at USPTO.⁶ The OIG's investigation found the examiner committed 730 hours of time and attendance abuse in fiscal year 2014, resulting in payment of approximately \$25,500 for hours not worked.⁷ The investigation also found the examiner would leave work to play golf, play pool, or socialize at restaurants.⁸ Before the OIG could interview the examiner, he resigned on advice from the Patent Office Professional Association, the union representing patent examiners, in order to "keep his official personnel file free of any derogatory information."⁹

¹ U.S. DEPARTMENT OF COMMERCE INSPECTOR GENERAL, NO. 14-0990, U.S. PATENT AND TRADEMARK OFFICE: ANALYSIS OF PATENT EXAMINERS' TIME AND ATTENDANCE (2016) [hereinafter "2016 Commerce OIG Report"].

² *Id.*, at 2.

³ *Id.*, at 3.

⁴ *Id.*

⁵ *Id.*

⁶ U.S. DEPARTMENT OF COMMERCE INSPECTOR GENERAL, NO. 15-0076, U.S. PATENT AND TRADEMARK OFFICE: TIME AND ATTENDANCE ABUSE BY PATENT EXAMINER A (2015).

⁷ *Id.* at 2.

⁸ *Id.* at 3.

⁹ *Id.*

In both reports, the OIG made recommendations to USPTO aimed at strengthening the agency's time and attendance controls. On December 7, 2016, the House Committee on Oversight and Government Reform, Subcommittee on Government Operations held a hearing on the alleged time and attendance abuse and USPTO's work in implementing the OIG's recommendations.¹⁰ We understand USPTO has now implemented all the recommendations.¹¹

The Committees continue to conduct oversight of time and attendance abuse at USPTO and other federal agencies. To assist the Committees in evaluating USPTO's improvement of time and attendance controls, please provide the following documents and information:

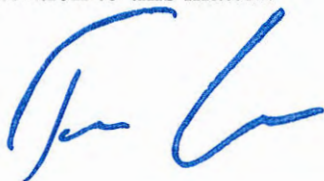
1. A written explanation on USPTO's implementation of the recommendations in the August 2016 OIG report no. 14-0990, including any challenges the agency has faced in implementation and an analysis of whether agency reforms in response to the recommendations have helped to reduce alleged time and attendance abuse at the agency;
2. The number of USPTO employees that committed time and attendance abuse;
3. Descriptions of the types of actions USPTO determined to be time and attendance abuse;
4. The total number and types of disciplinary actions taken by USPTO for time and attendance abuse;
5. The date of each disciplinary action taken by USPTO for time and attendance abuse;
6. Whether any disciplinary action was appealed, what forum the appeal was heard in, and, if such appeal has concluded, the final outcome of the appeal;
7. Whether USPTO anticipates additional changes to its time and attendance policies and procedures are needed to prevent waste, fraud, and abuse at the agency; and
8. Any challenges preventing development or implementation of time and attendance policies needed to prevent waste, fraud, and abuse and to improve the quality of work and productivity of employees.

Please provide the requested information as soon as possible, but no later than 5:00 p.m. on April 11, 2018. An attachment to this letter provides additional instructions for responding to the Committees' request. With the exception of item 1, the Committees also request you provide this information to the Committees by January 15 annually until January 15, 2021. For the first submission of items 2-7, please cover the period of January 1, 2017, to December 31, 2017.

¹⁰ *Time and Attendance Abuse at the U.S. Patent and Trademark Office: Hearing Before the Subcomm. on Gov't Operations, H. Comm. on Oversight and Gov't Reform*, 114th Cong. (2016).

¹¹ Email from USPTO staff to Majority staff, H. Comm. on Oversight & Gov't Reform (Feb. 1, 2018, 12:23 p.m.).

Please contact Kevin Ortiz with Chairman Gowdy's staff at (202) 225-5074, Courtney Allen with Chairman Johnson's staff at (202) 224-4751, or Lena Chang with Ranking Member Cummings' staff at (202) 225-5051 with any questions about this request. Thank you for your attention to this matter.



Trey Gowdy
Chairman
House Committee on Oversight
and Government Reform

Sincerely,



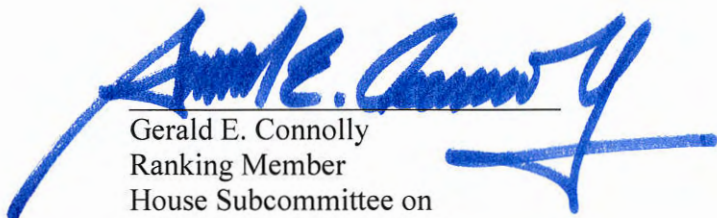
Ron Johnson
Chairman
Senate Committee on Homeland
Security and Governmental Affairs



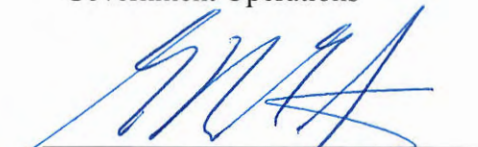
Elijah E. Cummings
Ranking Member
House Committee on Oversight
and Government Reform



Mark Meadows
Chairman
House Subcommittee on
Government Operations



Gerald E. Connolly
Ranking Member
House Subcommittee on
Government Operations



Greg Gianforte
Member of Congress

Enclosure

cc: The Honorable Claire McCaskill, Ranking Member
Senate Committee on Homeland Security and Governmental Affairs

The Honorable Bob Goodlatte, Chairman
House Committee on the Judiciary

The Honorable Peggy Gustafson, Inspector General
U.S. Department of Commerce

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.

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 intra-office 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.

**COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES
115TH CONGRESS**

NOTICE OF APPEARANCE OF COUNSEL

Counsel submitting: _____

Bar number: _____ **State/District of admission:** _____

Attorney for: _____

Address: _____

Telephone: (_____) _____ - _____

Pursuant to Rule 16 of the Committee Rules, notice is hereby given of the entry of the undersigned as counsel for _____ in (select one):

All matters before the Committee

The following matters (describe the scope of representation):

All further notice and copies of papers and other material relevant to this action should be directed to and served upon:

Attorney's name: _____

Attorney's email address: _____

Firm name (where applicable): _____

Complete Mailing Address: _____

I agree to notify the Committee within 1 business day of any change in representation.

Signature of Attorney

Date