

STATEMENT OF
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COMMISSIONER FOR PATENTS
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BEFORE THE
COMMITTEE ON THE JUDICIARY
AND
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. House of Representatives

Joint Committee Oversight Hearing on USPTO Telework

NOVEMBER 18, 2014

Chairman Goodlatte, Chairman Issa and Members of the Committees:

Thank you for this opportunity to appear before you to discuss the United States Patent and Trademark Office's (USPTO's) telework program and recent press reports regarding its operation and management. We take these reports very seriously, and that is why I want to share with you today *how* our program works, *why* it plays a critical part in our agency's role in advancing innovation, and *what* we are doing to continue to improve our program.

Delivering high-quality and timely examination of patent and trademark applications is a core part of the USPTO's mission. And the USPTO has benefited from the enactment and implementation of the 2011 Leahy-Smith America Invents Act (AIA) which both supported many improvements already occurring at the agency and provided new authorities for the USPTO to improve the patent system. As intellectual property becomes more important in the global marketplace and innovative companies are relying more than ever on their intellectual property to grow their businesses, application filings at our agency continue to increase at significant rates.

To effectively manage this workload, while maintaining high-quality standards in a constantly evolving technological and legal environment, we have grown and invested in our workforce to enable them to perform their mission to the best of their ability. Our pioneering telework program is a critical part of these efforts. Our telework program has increased the USPTO's ability to recruit and retain highly-skilled employees with technical backgrounds throughout the country while producing substantial operational cost savings. It has allowed us to more than double the number of patent examiners since 2005 without significantly increasing our real estate footprint. In FY2014, based on more than 5,000 full-time teleworkers, the USPTO avoided more than \$34 million in rent as a result of its telework program.

Since 2009, we have been able to reduce our backlog of newly filed applications by approximately 20 percent, despite a 5 percent annual increase in filings, and we have shortened total pendency by 18 percent.

But, of course, no program is perfect, and the USPTO's telework program is no exception. The USPTO has one of the oldest and most established telework programs within the Federal workforce and, as a result, sometimes has been the first to encounter unique challenges. Our own investigation in 2012 into whistleblower allegations as covered in recent press reports helped shine a light on areas where our telework program needed to be improved. In that investigation, we found isolated abuse and took actions to address those cases.

As I said, we take these issues very seriously. That is why we moved forward with a number of concrete steps following our 2012 investigation and have continued through today to take steps to strengthen the oversight and management of the USPTO's patent telework program to ensure the integrity of our operations.

We are confident these actions will help ensure that this important program continues to benefit our agency, our employees and our stakeholders while minimizing the potential for abuse.

First, in 2012, after receiving the four whistleblower complaints alleging possible time and attendance abuse, the USPTO investigated the claims, immediately took action to address issues raised during the investigation, and subsequently submitted a report to the Department of Commerce Office of the Inspector General (OIG). In the report to the OIG, we made eight recommendations to improve our program. We began implementing these recommendations and taking other actions even before submitting the report.

Those actions included requiring the use of electronic collaboration tools for full-time teleworkers to improve the accessibility and interaction between teleworking employees, their supervisors, and their on-campus colleagues.

We also revised and strengthened our procedures in a number of ways. We developed new, more effective guidance, made these policies fully accessible and then conducted extensive training sessions to make sure that our supervisors understood and followed the policies so that better controls were in place. Based on our review, we discovered some additional areas where policies, procedures and compliance could be improved and took action accordingly.

Further, we have standardized the process for accessing relevant electronic records to be used when investigating alleged violations. We are clarifying what steps supervisors should take if they suspect any misconduct and we are ensuring that we proceed appropriately and consistently in those situations.

All of these actions help ensure our programs are effective, that employees are accessible and responsive, and that expectations both for supervisors and employees are clearly communicated and understood.

Further, to ensure that we have the best tools and procedures in place, the USPTO has also established two cross-agency teams (including representatives from Patents, Employee Relations, Labor Relations and Office of General Law) to (1) explore *additional* ways to prevent abuse and intervene early, and (2) to review the *entire* conduct process including consistent, effective enforcement of policies.

Also, working closely with the Department of Commerce, at the end of last month we contracted with the National Academy of Public Administration (NAPA). NAPA is an independent, nonpartisan, nonprofit organization chartered by Congress to improve government performance. We engaged this highly respected group to provide a thorough and independent evaluation of our telework programs and to advise us on further opportunities for improvement and the application of any additional best practices in this area.

Following the press coverage this summer, our management team conducted briefings for your committee staffs and also for House Appropriations committee staff on the USPTO's telework program, on the report submitted to the DOC Inspector General in July 2013, and on the improvements already implemented by the USPTO. We will continue to provide your committees with updated briefings upon your request. And, since that time we continue to implement management changes addressing time and attendance, including through engagement with our unions.

Chairman Goodlatte, Chairman Issa, we understand that some serious issues were raised in recent press reports. Please be assured that we are taking many important and necessary steps to strengthen our telework program and improve controls to best manage our program so that it serves our innovators and remains one that is aspired to by all other Federal entities.

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Margaret A. (Peggy) Focarino

Commissioner for Patents

Margaret A. (Peggy) Focarino is Commissioner for Patents for the U.S. Patent and Trademark Office (USPTO). She was appointed to this position in January 2012.

The functions and duties of the Under Secretary of Commerce for Intellectual Property and Director, United States Patent Office (Under Secretary/Director) and the functions and duties of the Deputy Under Secretary/Deputy Director have been delegated to the Commissioner for Patents for any period when there is no Under Secretary/Director and the Deputy Under Secretary/Deputy Director, and when there is no Acting Director.

In her role as Commissioner, Ms. Focarino manages and leads the Patent Organization as the chief operating officer. She is responsible for the management and direction of all aspects of this organization which affect the administration of patent operations, examination policy, resources and planning, and budget administration. She previously served as Deputy Commissioner for Patents, providing administrative oversight to nine Patent Technology Centers and coordinating the activities of patent application examination and reissues of patents.

Ms. Focarino began her career at the USPTO in 1977 as a patent examiner. She was promoted to the senior executive service in 1997. She received the Department of Commerce Silver Medal for Leadership in 2010 for leading a joint union and management task force that developed and implemented the first significant changes to the patent examiner work credit system in more than 30 years.

In May of 2013, the Partnership for Public Service named Ms. Focarino a finalist for the Service to America Medal in the category of Management Excellence and in 2012, she was named one of Managing Intellectual Property's Most Influential People in the World of Intellectual Property. She was the 2010 recipient of American University's School of Public Affairs Roger W. Jones Award for Executive Leadership.

Ms. Focarino received her undergraduate degree in physics from the State University of New York, and a Certificate in Advanced Public Management from Syracuse University's Maxwell School of Citizenship and Public Affairs.

About the USPTO

Since 1790, the basic role of the United States intellectual property system has remained the same: to "promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries" (Article I, Section 8 of the United States Constitution). Today, the United States Patent and Trademark Office (USPTO) is a federal agency in the Department of Commerce, headquartered in Alexandria, Virginia. Through the issuance of patents, the USPTO encourages technological advancement by providing incentives to invent, invest in, and disclose new technology worldwide. Through the registration of trademarks, the agency assists businesses in protecting their investments, promoting goods and services, and safeguarding consumers against confusion and deception in the marketplace. By disseminating both patent and trademark information, the USPTO promotes an understanding of intellectual property protection and facilitates the development and sharing of new technologies worldwide.