

Patent Office Professional Association

Box 25287, Alexandria, VA 22313

April 24, 2025

Ms. Sonya Penn
Acting Director of Labor Relations
Office of Human Resources
Mail Stop 13
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

by electronic mail: lrgrievance@uspto.gov

Re: Grievance Docket No. 04-22-2025-POPA-02

Dear Ms. Penn:

This is an Association grievance filed pursuant to Article 13, Section 6 of the parties' 2024 collective bargaining agreement over the April 14, 2025 "Notice for Return to Office of Probationary Patent Examiners."

A. In this notice from the Acting Chief Administrative Officer, POPA was informed that *all* "probationary Patent Examiners . . . who live within 50 miles will be directed to report to the USPTO headquarters . . . for one-year." This directive is a flagrant breach of the "Telework Agreement for Patent Employees Hired to Work Remotely from a USPTO Office" of November 8, 2022, in which it was agreed that probationary patent examiners could participate in both the Patents Fulltime Telework Program or Patents Partial Telework Program. It is also a violation of both of the earlier agreements that established those programs.

The "Patents Partial Telework Program 2022 Agreement" of February 7, 2022, permits probationary employees to telework up to 40 hours a pay period. Furthermore, because the April 14 notice terminates telework eligibility for a period of one year, it will prohibit patent examiners who complete their probationary period from teleworking until one year after their return to campus. Thus, this Notice also violates the February 7, 2022 "Patents Full-Time Telework Program" that contains three telework options for which all examiners who have completed

their probationary program are eligible (although, as noted above, the November 8, 2022 agreement opened these programs to probationary employees who have completed their initial PTA training).

The parties agreed in their December 11, 2024 “Side Agreement to Retain Memorandums of Understanding” to retain these three agreements in effect until the expiration of the new master collective bargaining agreement on June 30, 2029.

Although the parties agreed in a February 8, 2025 Memorandum of Understanding that patent examiners hired during the government-wide hiring freeze will work on-campus for the duration of their probationary period, there was no agreed-upon change to the status and eligibility of telework for those probationary employees hired before that date.

B. In the third paragraph of the April 14 “Notice” the agency has claimed that the telework agreements between POPA and the USPTO “are unlawful and cannot be enforced.” This constitutes a repudiation of those agreements which is an unfair labor practice in violation of the Federal Service Labor Management Relations Statute, 5 U.S.C. § 7116(a)(1) and (5).

To the extent that this April 14 notice is intended to enforce President Trump’s January 20, 2025 *Return to Work* order it also violates § 7116(a)(7) which makes it an unfair labor practice “to enforce any rule or regulation . . . which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed.”

C. The termination of telework eligibility for probationary examiners also violates the following statutes that require the USPTO to permit telework “to the maximum extent possible” –

1. Department of Transportation and Related Agencies Appropriations Act 2001, Pub. L. No. 106- 346, 114 Stat. 1356A-36:

SEC. 359. Each executive agency shall establish a policy under which eligible employees of the agency may participate in telecommuting to the maximum extent possible without diminished employee performance. Not later than 6 months after the date of the enactment of this Act, the Director of the Office of Personnel Management shall provide that the requirements of this section are applied to 25 percent of the Federal workforce, and to an additional 25 percent of such workforce each year thereafter.

2. Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 2004, Pub. L. No. 108-199, 111 Stat. 99:

SEC. 627. The Departments of Commerce, Justice, State, the Judiciary, and the Small Business Administration shall each establish a policy under which eligible employees may participate in telecommuting to the maximum extent possible without diminished employee performance: *Provided*, That, not later than 6 months after the date of the enactment of this Act, each of the aforementioned entities shall provide that the requirements of this section are applied to 100 percent of the workforce: *Provided further*, That, of the funds appropriated in this Act for the Departments of Commerce, Justice, and State, the Judiciary, and the Small Business Administration, \$200,000 shall be available to each Department or agency only to implement telecommuting programs: *Provided further*, That, every 6 months, each Department or agency shall provide a report to the Committees on Appropriations on the status of telecommuting programs, including the number of Federal employees eligible for, and participating in, such programs, and uses of funds designated under this section: *Provided further*, That each Department or agency shall designate a “Telework Coordinator” to be responsible for overseeing the implementation of telecommuting programs and serve as a point of contact on such programs for the Committees on Appropriations.

3. Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 2005, Pub. L. No. PL 108-447, 118 Stat. 2919:

SEC. 622. The Departments of Commerce, Justice, State, the Judiciary, the Securities and Exchange Commission and the Small Business Administration shall, not later than two months after the date of the enactment of this Act, certify that telecommuting opportunities are made available to 100 percent of the eligible workforce: *Provided*, That, of the total amounts appropriated to the Departments of Commerce, Justice, State, the Judiciary, the Securities and Exchange Commission and the Small Business Administration, \$5,000,000 shall be available only upon such certification: *Provided further*, That each Department or agency shall provide quarterly reports to the Committees on Appropriations on the status of telecommuting programs, including the number of Federal employees eligible for, and participating in, such programs: *Provided further*, That each Department or agency shall designate a “Telework Coordinator” to be responsible for overseeing the implementation and operations of telecommuting programs, and serve as a point of contact on such programs for the Committees on Appropriations.

4. **Science, State, Justice, Commerce and Related Agencies Appropriations Act, 2006, PL 109—108, 119 Stat. 2340-2341:**

SEC. 617. The Departments of Commerce, Justice, and State, the Securities and Exchange Commission and the Small Business Administration shall, not later than two months after the date of the enactment of this Act, certify that telecommuting opportunities have increased over levels certified to the Committees on Appropriations for fiscal year 2005: *Provided*, That, of the total amounts appropriated to the Departments of Commerce, Justice, and State, the Securities and Exchange Commission and the Small Business Administration, \$5,000,000 shall be available to each only upon such certification: *Provided further*, That each Department or agency shall provide quarterly reports to the Committees on Appropriations on the status of telecommuting programs, including the number and percentage of Federal employees eligible for, and participating in, such programs: *Provided further*, That each Department or agency shall maintain a “Telework Coordinator” to be responsible for overseeing the implementation and operations of telecommuting programs, and serve as a point of contact on such programs for the Committees on Appropriations.

5. **Telework Enhancement Act of 2010, Pub. L. No. 111-192, 124 Stat. 3165, Title 5 U.S.C. § 6501 et seq.:**

“[T]he head of each executive agency shall . . . establish a policy under which eligible employees of the agency may be authorized to telework. . . and . . . notify all employees of the agency of their eligibility to telework.”

As relief, we demand that the notice of April 14, 2025 be rescinded and that the USPTO continue to comply with the terms of all of the parties’ telework agreements. I will serve as the Association’s representative in this matter.

Sincerely yours,

Irakli Kiknadze
Director of Grievances
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