

Patent Office Professional Association

Box 25287, Alexandria, VA 22313

November 17, 2025

Hon. Darrell Issa
Chairman
Subcommittee on Courts, Intellectual Property, Artificial Intelligence and Internet
2138 Rayburn House Office Bldg
Washington, DC 20515

Hon. Henry C. Johnson
Ranking Member
Subcommittee on Courts, Intellectual Property, Artificial Intelligence and Internet
2142 Rayburn House Office Bldg
Washington, DC 20515

Dear Chairman Issa and Ranking Member Johnson:

We write to alert you to certain significant changes that the United States Patent and Trademark Office has recently made that jeopardize the quality of patents it issues.

As you may recall, earlier this year the GAO issued a report linking questionable patent quality to, among other factors, limits on the amount of time that examiners are allocated to examine applications imposed by the USPTO in the form of production goals. These hours are known as “expectancy” and can range from 19 to 35 hours, depending upon the technology to which the examiner is assigned and their GS grade. Examiners reported to the GAO that they are often unable to complete a thorough search of prior art due to time constraints, and that these time pressures are increasing as the body of scientific literature and prior art that needs to be searched grows and as applications and the technology contained therein become more complex. *Patent Office Should Strengthen its Efforts to Address Persistent Examination and Quality Challenges*, GAO-25-107218, pp. 13-14 (April 30, 2025). This confirmed earlier GAO findings that time pressures may reduce examiners’ ability to conduct prior art searches. *Patent Office Should Strength Search Capabilities and Better Monitor Examiners’ Work*, GAO-16-469, p. 21 (June 2016). In fact, it has been statistically demonstrated that there is an inverse correlation between the amount of time an examiner is given to review an application and the validity of the patents granted – as the number of hours allocated to the examiner decreases, the rate at which the patents examined are

ultimately found invalid increases. Michael Franks & Melissa Wasserman, *Irrational Ignorance at the Patent Office*, 72 Vand. L. Rev. 975 (2019).

On September 30, the GAO reissued its April 2025 report with responses from the USPTO. In response to the criticism of insufficient examination time, the USPTO stated that it “has recently recalibrated examination time” based on a comprehensive 2019 study. “This reevaluation identified an imbalance that put quality at a disadvantage and accordingly examination time was increased.” GAO Report at 63.

Unfortunately (and perhaps disingenuously), the very next day the USPTO implemented wide ranging changes in its performance appraisal plans for patent examiners that *reduced* the amount of examination time by 5.26% for most examiners. This was done by raising the level of production that examiners would be required to meet to be rated as “fully successful” from 95% to 100% of the production goal assigned to their technology and GS grade level. This changed their production “goal” from an aspiration to a requirement. Based on data provided to POPA for FY 2022, *over 3,000 of the 9,000 patent examiners who had previously been rated “fully successful” will no longer be rated “fully successful.”* Patent examiners at the GS-15 level also had their “expectancy” or the time allocated to any given examination increased by an additional 7.4% - moving their goalpost twice. The GAO report noted that many examiners were already spending vacation and other non-compensated time working to meet their production quotas. GAO Report at 16-17.

At the same time, the USPTO took another action to increase production at the expense of quality patents. The agency placed a cap of one hour on the amount of time examiners can spend preparing for and conducting an interview with an applicant without further supervisory approval. This conflicts with longstanding guidance contained in the Manual of Patent Examining Procedure that “encourages the use of interviews to expedite prosecution.” Interviews “are often indispensable to advance the prosecution of a patent examination” because “an interview can bridge the gap between an examiner and an applicant with regard to the substantive matters at issue in an application.” According to the MPEP, examiners “are encouraged to initiate an interview with the applicant or applicant’s representative at any point during the pendency of an application.”

This year’s push for greater production at the expense of quality began in March when USPTO cancelled ongoing career training conducted on duty time, including a bank of 25 hours that each examiner was accorded annually for continuing training. Nonetheless, in its recent response to the GAO report, the USPTO disingenuously wrote that it provides a “comprehensive training program which provides patent examiners with an exceptional level of training.” It concedes that “[a]ugmenting and updating the knowledge of patent examiners, as they progress through their career, is key to producing reliable and predictable IP rights.” It then falsely states that “[w]ith this in mind, the USPTO provides a

comprehensive and continual training program.” This is simply no longer true and has not been since March.

POPA anticipates that any increase in production that results from the increased time pressures on examiners will be more than offset by increased examiner attrition. We would appreciate any inquiries that the Subcommittee may make concerning whether the USPTO has adequately considered the effect of these changes on patent quality as well as their potential impact on examiner retention.



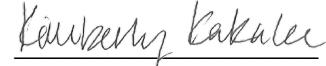
Dr. Patricia Duffy
President, POPA



Gabriel L. Chu
Vice President, POPA



Kimberly N. Kakalec
Secretary, POPA



Kimberly N. Kakalec
Treasurer, POPA



Melanie H. Tung
Assistant Secretary, POPA