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AGRICULTURE, NUTRITION, AND FORESTRY

SMALL BUSINESS AND ENTREPRENEURSHIP

April 18, 2025

Secretary Howard Lutnick
United States Department of Commerce
1401 Constitution Avenue NW
Washington, DC 20230

Dear Secretary Lutnick,

As members of the Senate Judiciary Subcommittee on Intellectual Property, we write to express our shared concerns regarding reductions in force being considered at the United States Patent and Trademark Office (USPTO) and urge you to exempt USPTO from any forthcoming staffing cuts.

The USPTO is a key driver of American innovation and, unlike other federal agencies, is fully self-funded by user fees. We share the Administration's desire to ensure that American patents and American inventors are not only protected, but allowed to flourish both domestically and globally. In particular, we share the Administration's concerns that foreign threats to intellectual property could pose devastating consequences not only for American inventors and companies, but for American customers and the nation's economy.

The U.S. Patent and Trademark Office is entirely self-funded by user fees. In fact, USPTO requested $0 in appropriations for FY2025. Eliminating employees at the USPTO would not save the federal government a single cent or put any money back into the pockets of American taxpayers. Patent and trademark applicants expect their fees to be used to process patent and trademark applications and improve domestic and international IP environments. USPTO is uniquely and highly qualified to carry out this work to make America stronger and more prosperous. Eliminating critical USPTO employees would instead hamstring efficiency within the United States patent system, which could threaten America's position as the worldwide leader in innovation and intellectual property.

While we understand and appreciate that patent examiners and trademark examining attorneys may not be subject to any reductions in force, we are seriously concerned about staff reductions in USPTO's various organizational offices and programs. We are particularly concerned about staff reductions at USPTO's Office of Policy and International Affairs (OPIA), Patent and Trial Board (PTAB), Intellectual Property (IP) Attaché Program, and the Global Intellectual Property Academy.

The Office of Policy and International Affairs, the Intellectual Property (IP) Attaché Program, and the Global Intellectual Property Academy collectively play a key role in solidifying America's dominance as the worldwide leader in innovation. OPIA assists USPTO in advising the President on international IP issues and focuses on finding the most effective means to

Google Exhibit 1081
Google v. Mullen
IPR2025-00366

protect and enforce Americans' IP rights globally. OPIA's work includes fighting against foreign IP threats from China. The IP Attaché Program advocates internationally to assist U.S. IP stakeholders by entering new foreign markets, resolving issues related to obtaining IP rights in foreign jurisdictions, and helping address IP enforcement challenges for U.S. rights holders abroad. The Global Intellectual Property Academy was launched in 2005 as part of an initiative to fight foreign IP theft and provides training to both U.S. and international IP rights owners and policymakers. Staff reductions in these offices and programs are certain to harm the nation's efforts to protect American rights holders abroad, an unnecessary gift to foreign IP stakeholders who seek to harm American inventors.

We are also concerned about reports of staff reductions at the Patent and Trial Appeals Board (PTAB). The PTAB was established as the signature accomplishment of the bipartisan Leahy-Smith America Invents Act, arguably the most important patent law enacted by Congress in the last 50 years. The PTAB reviews a variety of administrative challenges to patents, including challenges to patent applications that have been denied and challenges to the validity of patents that have already been granted. PTAB has enjoyed broad bipartisan support across Presidential administrations and by both Democratic and Republican members of Congress as a cheaper, faster, and more efficient forum for patent dispute resolution than federal court.

On March 21, 2025, Chief Administrative Patent Judge Scott Boalick emailed all PTAB Administrative Judges writing, "our organization is expected to experience staff reductions" after the April 17 deadline for U.S. Patent and Trademark Office employees to accept early retirement or buyout offers. We are concerned that up to 20 percent of PTAB judges could be laid off, which would make the PTAB far less efficient and likely lead to a significant increase in the amount of time it takes to resolve disputes in the PTAB.

A significant portion of the trials in the PTAB are required by law to be resolved no later than one year after the PTAB institutes the proceedings. Patent cases in federal court, on the other hand, often take several years to reach a final resolution. Additionally, PTAB trials are usually cheaper to litigate than patent lawsuits in federal court, with the average PTAB proceeding costing hundreds of thousands of dollars in legal fees as opposed to the millions of dollars in legal fees it costs to litigate patent cases in federal court. For more evidence of the PTAB's efficiency, we need only look to its predecessor, the Board of Patent Appeals and Interferences, which had a backlog of over 26,000 ex parte appeals, or appeals involving patent applications that were denied by patent examiners, in 2012. After that board became the PTAB, its backlog of *ex parte* appeals dropped more than fivefold to just 5,000 in FY2025.

A strong, fully staffed, and fully functioning United States Patent and Trademark Office is essential to ensuring America's dominance as the global leader in intellectual property. It is also necessary to ensure that American intellectual property rights holders are protected abroad and have their patent disputes resolved efficiently. As an entirely self-funded agency, reducing staff at USPTO would not save the federal government or American taxpayers a single cent, making any reductions unnecessary.

We appreciate your consideration of our bipartisan request to exempt USPTO from any reductions in force. We look forward to working closely with you and your team to help drive

American innovation and would welcome the opportunity to discuss USPTO's vital contribution to this effort.

Sincerely,

Adam B. Schiff
United States Senator

Christopher A. Coons
United States Senator

Peter Welch
United States Senator

cc: Coke Morgan Stewart, Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office