



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND  
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

JUN 10 2020

The Honorable Lindsey Graham  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

The Honorable Jerrold Nadler  
Chairman  
Committee on the Judiciary  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Dianne Feinstein  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

The Honorable Jim Jordan  
Ranking Member  
Committee on the Judiciary  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Thom Tillis  
Chairman  
Subcommittee on Intellectual Property  
United States Senate  
Washington, D.C. 20510

The Honorable Henry C. "Hank" Johnson, Jr.  
Chairman  
Subcommittee on Courts, Intellectual Property and  
the Internet  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Christopher Coons  
Ranking Member  
Subcommittee on Intellectual Property  
United States Senate  
Washington, D.C. 20510

The Honorable Martha Roby  
Ranking Member  
Subcommittee on Courts, Intellectual Property and  
the Internet  
United States House of Representatives  
Washington, D.C. 20515

Dear Chairmen and Ranking Members:

Thank you for your April 14, 2020 letter seeking information regarding the USPTO's transition to full time telework, the status of patent and trademark filings and fee collections, and cost saving measures the USPTO has taken pursuant to the COVID-19 related economic downturn. I appreciate your interest and the active role you have taken to oversee and ensure the continuity of operations at the USPTO during these uncertain times.

### Workforce transition to mandatory telework

Prior to the COVID-19 pandemic, the USPTO had approximately 11,185 employees (about 88% of our entire employee base) working from home at least one day per week, with approximately

7,200 of these employees working from home full-time. When it became evident that COVID-19 could pose a significant challenge to operations, the USPTO proactively required mandatory telework training for all employees that did not already have telework agreements in order to prepare for the potential of mandatory telework. Then, in response to guidance from federal, state, and local authorities, on March 23, 2020, the USPTO announced that it would be operating under mandatory telework.

Because of its historic and ongoing investment and leadership in telework, the USPTO was uniquely positioned to undertake this transition. In fact, the USPTO implemented a previously planned upgrade to its network bandwidth into the campus from 6GB to 10GB in January of 2020. Recent data indicate that more than 14,000 USPTO employees and contractors are using our network to connect to the campus daily from a remote location to perform their jobs.

To facilitate remote interactions with our workforce, contractors, and the public, the USPTO also makes extensive use of our secure video teleconferencing tools. These state of the art videoconferencing technologies allow employees to conduct meetings, patent and trademark applicant interviews, and even hearings before the Patent Trial and Appeal Board and Trademark Trial and Appeal Board. Importantly, these tools also help foster continued interpersonal connections and relationships during this challenging time when physical separation has been required for public health reasons. On average, we have over 1,200 virtual meetings a day with over 6,600 participants.

In order to make full use of our collaboration tools, the agency has undertaken five upgrades and configuration enhancements to our teleconferencing infrastructure to improve the performance and user experience during these sessions. In addition, we have worked quickly to re-position available equipment in our warehouse inventory, or acquire the necessary hardware as needed, in order to equip new teleworkers so that they can work safely and effectively. In the first weeks after full-time telework was required, USPTO teams prepared and staged the procurement and shipping of approximately 2,000 monitors and 3,200 printers for patent and trademark examiners. The USPTO has also deployed 400 SOHO routers to recently hired examiners to enhance user connectivity.

While necessary, transitioning and equipping thousands of employees to full-time teleworkers in a matter of weeks during the COVID-19 outbreak involved a tremendous amount of change for our employees. They were facing challenges at home and new challenges at work. Acknowledging these unprecedented circumstances, and to help our employees adjust to their new work environment (including receiving and installing their new equipment), the USPTO administered reasonable relief to production requirements for patent and trademark examiners during the first weeks of the transition when additional leave for federal employees had not yet been enacted into law.

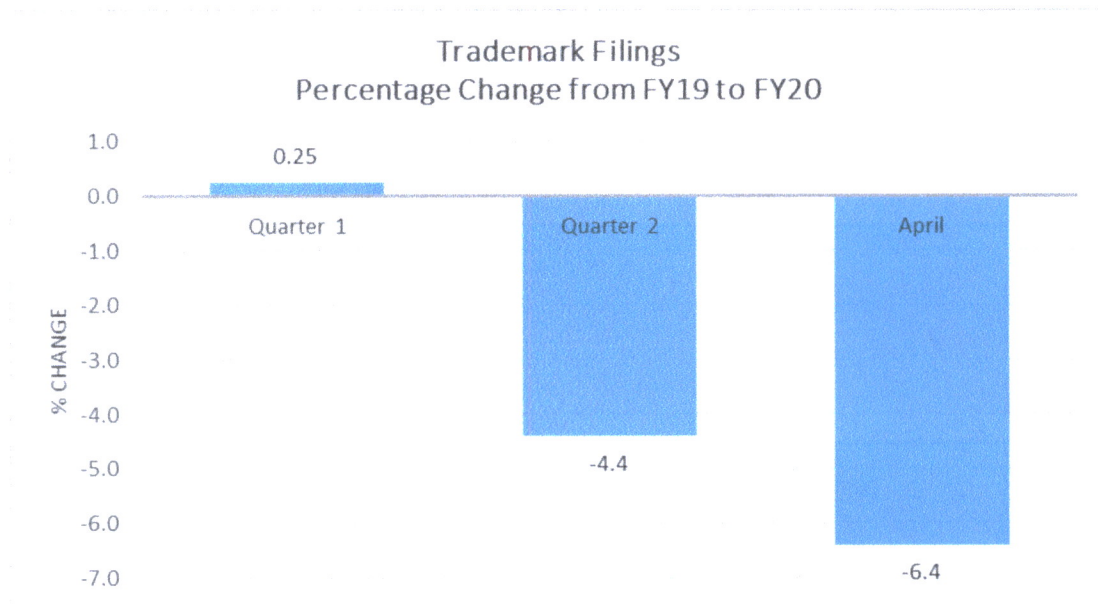
There is, of course, a very limited number of workers for whom it is still essential that they report to headquarters, including, for example, to ensure that the IT systems remain operational. The USPTO has taken measures to prioritize the health and safety of these essential employees, including establishing strict safety protocols, limiting access and the number of employees at

various critical IT centers, and providing personal protective equipment such as masks and gloves.

Trademark filings and fee revenues

Trademark activity has traditionally been correlated with the overall state of the economy, and recent changes in domestic and global economic conditions due to the COVID-19 outbreak have led to variance in trademark application filings and fee revenues. The USPTO is proactively conducting multiple revenue assessments and contingency plans in response to potential lower revenues.

In Q1 of FY 2020, trademark application filings were tracking very closely to Q1 of FY 2019, within 0.25 percent. However, in Q2 application filings were down 4.4 percent below the same period in FY 2019, which tracks closely to the decline in economic activity. In April 2020, application filings were 6.4 percent below the April 2019 level. While the data for May 2020 trademark filings is still preliminary, it indicates that there was a 2.9 percent increase compared to the same period (May 1-14) in May 2019.



Importantly, revenues are lower than planned for FY 2020. While the unprecedented nature of the COVID-19 outbreak presents challenges for economic modeling, the USPTO continuously updates its revenue projections based on new information. Based on year-to-date fee collections, including preliminary data through May 2020, the USPTO projects that it would collect approximately \$335 million in trademark revenues in FY 2020, which is 9.2 percent below the planned level of \$369 million. In May, trademark fee collections averaged \$1.4 million per day, which was close to planned levels. However, in April, trademark fee collections averaged \$1.3 million per day, which was 12.6 percent lower than the planned level of \$1.4 million per day and 9.4 percent lower than the same time in FY 2019. While May fee collections were stronger than in April, it is too soon to say that this is a sign of continued recovery. The duration of current

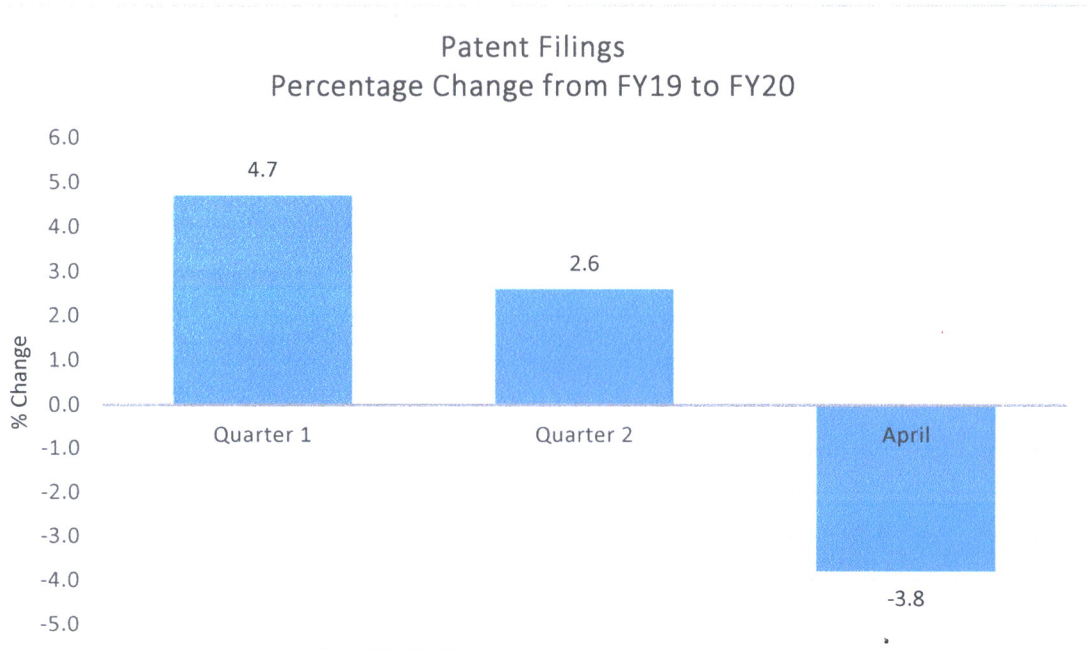
circumstances and the path of economic recovery are uncertain, and it is anticipated that FY 2021 revenues will be below previously estimated levels.

Because recent trademark obligations and expenditures have exceeded fee collections this year, our trademark operating reserve is being utilized to supplement fee revenues. The reserve level stood at \$95 million based on preliminary data through May 2020, which could fund trademark operations for 13 weeks in the absence of additional fee collections. However, the reserve is dependent on fee revenues and thus any decreases in fee revenues due to the economic downturn would accelerate depletion of the reserve.

Patent filings and fee revenues

Patent activity is also correlated with the overall state of the economy, but the impacts of economic shocks on patent application filings and fee collections usually take longer to manifest than with trademarks. The USPTO is proactively conducting multiple revenue assessments and contingency plans to compensate for anticipated lower revenues. The patent operating reserve stood at \$356 million based on preliminary data through May 2020, which could fund patent operations for approximately six weeks in the absence of additional fee collections. The patent reserve provides a degree of financial stability that should supplement any anticipated loss of revenues in FY 2020. However, a prolonged economic downturn could force us to draw down the reserve below our published minimum of \$300 million to unsustainable levels, which is less than four weeks of operations funding.

In Q1 of FY 2020, serialized utility, plant, and reissue (UPR) filings were 4.7 percent above Q1 of FY 2019. Q2 filings were 2.6 percent above the same period in FY 2019, reflecting the beginning of declines. In April 2020, filings were 3.7 percent lower than the same period during the previous year. While the data for May 2020 patent filings is still preliminary, it indicates that there was a 3.8 percent decrease compared to the same period (May 1-14) in May 2019.



With respect to fees, in May 2020, patent fee collections averaged \$11.8 million per day, which was 7.0 percent lower than the projection of \$12.7 million per day (a reduction of approximately \$4.4 million per week). These trends are troubling and the current economic uncertainty could lead us to revise FY 2020 and FY 2021 revenue estimates further downward.

### Cost-saving measures

In order to offset the loss in trademark revenue, the USPTO recently reduced trademark spending by a total of over \$45 million this fiscal year. This includes \$37 million in IT spending reductions. Unfortunately, these spending reductions will postpone upgrades to USPTO's legacy trademark IT systems. Without additional funding, these upgrades will have to be postponed well into FY 2021 at the earliest.

Spending reductions also include delayed trademark and patent hiring due to anticipated revenue reductions, which are expected to result in an estimated savings of \$14 million. Furthermore, we are in the process of resetting our hiring and spending plans for patents and trademarks for FY 2021 to address the continued anticipated lower application filings and fee collections. Of course, reduced hiring impacts pendency of applications.

### USPTO's CARES Act relief

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) gave the USPTO the authority to provide relief to intellectual property owners to help mitigate U.S. intellectual property loss and abandonment during these uncertain times. The USPTO promptly implemented this authority to extend certain filing and fee deadlines for both patents and trademarks, while balancing the level of relief with the need to maintain sufficient revenues to continue operations. Because no additional funds were provided by Congress, any fee relief provided by the USPTO to applicants is funded by our reserves, further depleting them on top of the reductions due to the economic downturn.

Mindful of the outsized impact the COVID-19 outbreak is having on small businesses and independent inventors, the USPTO has – through July 1, 2020 – provided relatively broad relief in terms of extending patent fee deadlines for small and micro entities but more limited fee relief for large entities. We are also providing relief on a case by case basis for trademark applicants and owners through June 30.

The current relief has begun to impact patent revenues. We are closely monitoring this but, until the time extension period has ended, we will not fully understand how much this reduced revenue is attributable to a general reduction in patent application and patent maintenance activity due to the economic downturn (in which case it will never be paid) and how much is attributable to individuals simply deferring fee payments to a later date (in which case it will ultimately be paid).

Supplemental funding

The USPTO is a fee funded agency and this concept is reflected in the USPTO's annual appropriation language. If the USPTO's fee revenues exceed its annual appropriation level in a given fiscal year, the USPTO can gain access to those additional fees. On the other hand, if the USPTO's fee revenues fall below the annual appropriation level, the appropriation is automatically reduced at the end of the fiscal year to match the actual amount of fees collected. The USPTO appreciates this special arrangement and has a proven track record of successfully utilizing its internal patent and trademark operating reserves to accommodate fluctuations in the economy that have impacted anticipated fee revenues.

As discussed above, the unique nature of the COVID-19 outbreak and the resulting economic downturn, together with the relief provided pursuant to the CARES Act, have reduced USPTO fee collections already and has injected unprecedented uncertainty with respect to anticipated future fee collections. As such, additional funds may be needed to supplement the USPTO's internal reserves and support operations.

Specifically, Congress could make available user fees and surcharges previously collected by the USPTO (between 1990 and 2011). Although the fees and surcharges are already accounted for on the USPTO's audited balance sheet and included in its current fund balances with Treasury, the USPTO does not currently have authority to spend these funds.

Again, thank you for the opportunity to share the proactive steps the USPTO has taken to address the COVID-19 outbreak, and to discuss the outbreak's impact on USPTO fee collections and the need for access to additional funds already existing in the USPTO's account. The USPTO stands ready to work with Congress to continue to mitigate the impact of the current crisis for inventors and entrepreneurs while sustaining USPTO operations. Please feel free to contact me if you have any additional questions or need further information.

Sincerely,

A handwritten signature in blue ink that reads "Andrei Iancu". The signature is fluid and cursive, with a long horizontal stroke at the end.

Andrei Iancu

Under Secretary of Commerce for Intellectual Property and  
Director of the United States Patent and Trademark Office