

United States Senate

WASHINGTON, DC 20510

April 1, 2019

The Honorable Andrei Iancu
Under Secretary of Commerce for Intellectual Property &
Director of the United States Patent and Trademark Office
U.S. Patent and Trademark Office
600 Dulany Street
Alexandria, VA 22314

RE: Exclusion of Hawaii Residents from the Patent and Trademark Office's Telework Enhancement Act Pilot Program

Dear Director Iancu:

We write regarding the United States Patent and Trademark Office's (USPTO's) exclusion of employees working from Hawaii from the Telework Enhancement Act Pilot Program (TEAPP). We are aware of no rational justification for rendering Hawaii residents ineligible for TEAPP—and certainly no justification sufficient to impose the substantial burdens Hawaii residents are forced to endure in order to telework under the USPTO's "hoteling" program. We therefore respectfully request that you reevaluate TEAPP and extend it to employees working from Hawaii.

In 2010, Congress passed the Telework Enhancement Act.¹ Among other things, the Telework Enhancement Act authorized certain agencies—including the USPTO—to introduce pilot programs to permit qualified employees to telework on a full-time basis in exchange for waiving reimbursement for travel to the employees' pre-existing duty stations for a reasonable maximum number of visits (e.g., for mandatory training).² Pursuant to this authority, the USPTO introduced TEAPP in February 2012. As initially crafted, TEAPP permitted USPTO employees that satisfy certain seniority and proficiency requirements to telework full-time from any of the contiguous 48 states so long as the employees had internet connections of sufficient security and speed.³ In April 2016, the USPTO expanded TEAPP to allow qualifying employees to telework from Puerto Rico.⁴

Notably, TEAPP does not extend to Hawaii. Otherwise telework-eligible employees therefore must satisfy the requirements of the USPTO's "hoteling" program. Under this program, any USPTO employee teleworking from Hawaii must travel to and work at least one hour at his or her assigned duty station at least twice per bi-weekly pay period.⁵ For Hawaii residents, this can mean monthly travel of over 9,000 miles roundtrip at the employees' expense and on the employees' own time.

¹ Pub. L. No. 111-292.

² *Id.* at § 3.

³ Patent Office Professional Association – Telework, <http://popa.org/about/work-life-balance/telework/> (last visited Mar. 29, 2019) (hereinafter, "POPA – Telework").

⁴ Trademark Public Advisory Committee Annual Report, United States Patent and Trademark Office (2016) at 2, available at https://www.uspto.gov/sites/default/files/documents/TPAC_Annual_Report_2016.pdf.

⁵ POPA – Telework.

The USPTO's exclusion of Hawaii residents from TEAPP not only imposes unfair financial and temporal burdens on current employees who telework from our state, it also puts our state at a significant disadvantage in recruiting and retaining those interested in a career with the USPTO. Increasing the number of jobs in science, technology, engineering, and mathematics—like those offered by the USPTO—is critical to ensuring that Hawaii can compete in today's global economy. Yet, qualified individuals who would otherwise telework for the USPTO from Hawaii may instead choose to reside on the mainland when faced with the huge costs associated with monthly travel to their duty stations.

The USPTO benefits greatly from TEAPP. You testified before the Senate Judiciary Committee that, without TEAPP, the USPTO “would incur additional travel costs, calculated to be approximately \$3.5 million over three years.”⁶ You further testified that “the USPTO avoided more than \$49.8 million in rent as a result of its full-time telework programs” in FY 2018 alone.⁷ In addition, the USPTO has touted its increased ability to recruit “top notch scientists, engineers, and lawyers across the country;” “[p]roven increases in productivity and work hours;” and “[i]ncreases in employee morale and decreases in the environmental footprint of commuting” that all resulted from the increased accessibility to telework permitted under TEAPP.⁸ These benefits would apply equally should the USPTO extend TEAPP to Hawaii.

We respectfully request that you reevaluate TEAPP and either extend the program to residents of Hawaii or provide a justification for why such an extension is not appropriate.

Thank you for your attention to this matter.

Sincerely,


MAZIE K. HIRONO
United States Senator


BRIAN SCHATZ
United States Senator

⁶ *Oversight of the U.S. Patent and Trademark Office: Hearing Before the S. Comm. on the Judiciary*, 115th Cong. 13 (2018) (statement of Andrei Iancu, Under Sec. of Commerce for Intellectual Property and Dir. of the U.S. Patent and Trademark Office).

⁷ *Oversight of the U.S. Patent and Trademark Office: Hearing Before the Subcomm. on Intellectual Property of the S. Comm. on the Judiciary*, 116th Cong. 12 (2019) (statement of Andrei Iancu, Under Sec. of Commerce for Intellectual Property and Dir. of the U.S. Patent and Trademark Office).

⁸ Telework Enhancement Act Pilot Program (TEAPP), U.S. Patent and Trademark Office (2017) at 2, available at <https://www.uspto.gov/sites/default/files/documents/TEAPP2017.pdf>.