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January 11, 2018

The Honorable Wilbur L. Ross, Jr.
Secretary
United States Department of Commerce
1401 Constitution Avenue, Northwest
Washington, D.C. 20230

Dear Secretary Ross:

We write regarding your response to our letter of July 6, 2017, concerning the participation of the U.S. Patent and Trademark Office (USPTO) in the Department of Commerce's Enterprise Services Initiative (formerly referred to as shared services). Your letter dated November 28, 2017, informed us that you are "conduct[ing] [your] own analysis into the matter" and that you "expect to reach a decision . . . in the next several months." We are encouraged to learn of your personal attention to this matter and that you value "stakeholder concerns about the potential imposition and expense to be borne by the USPTO to support Enterprise Services operations."

Indeed, since your November letter, both statutory advisory committees at the USPTO, which represent a cross-section of stakeholders who use and pay for the USPTO's services, have expressed strong concerns about how Enterprise Services may be diverting USPTO fees away from USPTO priorities and undermining the independence provided to the USPTO by statute.¹ Because we share these concerns, it is critical that we obtain detailed and specific answers to our questions so that we can fully evaluate the merits of USPTO's participation in the Enterprise Services Initiative.

¹ Patent Public Advisory Committee (PPAC) 2017 Annual Report, page 2, available at https://www.uspto.gov/sites/default/files/documents/PPAC-2017_Annual_Report.pdf ("This [Enterprise Services] initiative would move several administrative functions from the USPTO to the DOC. The USPTO operations have special requirements set forth in the American Inventors Protection Act for the agency to have independent responsibility for its management and operations. In a letter dated August 24, 2017, the PPAC unanimously urged Secretary Ross to exempt the USPTO from mandatory participation in this initiative, including any payment for start-up costs."); Trademark Public Advisory Committee (TPAC) 2017 Annual Report, page 3, available at https://www.uspto.gov/sites/default/files/documents/TPAC_Annual_Report_2017.PDF ("The TPAC is concerned that resources might be diverted from the USPTO, resulting in duplicate investments by the USPTO and also investments for functions that the USPTO, due to its specialized needs, may be unable to use, all at the expense of the USPTO's Operating Reserve and its ongoing commitments to improve its own systems. In addition, while the DOC and its bureaus are funded through tax revenues, the USPTO is funded entirely through user fees. The TPAC is concerned that reliance on shared DOC services could potentially undermine the USPTO's independence, clearly provided for by Congress[.]")

We want to note that, while we appreciate that you are undertaking a separate review of the USPTO's participation, we find it concerning that, in the meantime, we have received inconsistent correspondence from your office regarding the basis for USPTO's participation in Enterprise Services. Most recently, on January 4, 2018, the Subcommittee on Commerce, Justice, Science and Related Agencies of the Senate Committee on Appropriations received answers from the Department of Commerce to Senator Coons' questions for the record that relies upon data that we understood to be under review.

We further note that your correspondence primarily focuses on why it allegedly makes financial sense for the USPTO to participate in Enterprise Services. Our July 6, 2017, letter asked several specific questions related to, *inter alia*, the impact of Enterprise Services on USPTO's independence as provided by statute and the quality of USPTO's services, for example: whether the USPTO would be required to use Enterprise Services if the USPTO determines such services are of a lower quality to what the USPTO has or otherwise objects, and whether the USPTO's participation would result in ultimate decision-making authority residing in Department of Commerce officials instead of the USPTO Director. To ensure that we can fully evaluate USPTO's participation, we request that each of the questions in our original letter be completely and explicitly answered.

Please confirm for us that the USPTO's participation in Enterprise Services remains under review and provide an estimation of when we can expect a complete and detailed answer to our July 6, 2017, letter. We look forward to your response and working together to ensure that the USPTO best serves the needs of America's innovators and entrepreneurs.

Sincerely,



CHARLES GRASSLEY

Chairman

Senate Committee on the Judiciary



CHRISTOPHER A. COONS

Senate Committee on the Judiciary