VIA ELECTRONIC TRANSMISSION

March 15, 2022

Mr. Drew Hirshfeld
Commissioner for Patents
Performing the functions and duties of the
Undersecretary for Intellectual Property and Director
United States Patent and Trademark Office
600 Dulany Street
Alexandria, Virginia 22314

Ms. Shira Perlmutter
Register of Copyrights and Director
U.S. Copyright Office
101 Independence Ave, S.E.
Washington, D.C. 20559

Dear Mr. Hirshfeld and Ms. Perlmutter:

I write you today to request the US Patent and Trademark Office (USPTO) and US Copyright Office (USCO) jointly establish a federal public advisory committee to discuss the benefits of creating a unified, stand-alone Intellectual Property Office.

As you know, I have asked the Administrative Conference of the United States (ACUS) to study issues relating to the creation, funding, and functions of a single Intellectual Property Office. I am attaching that letter and the ACUS’s response declining the study. ACUS explained that it “has neither the expertise nor the resources to conduct this study” and recommended the National Academy of Public Administration (NAPA) conduct the study instead. I have asked NAPA to continue with that study in contract with your agencies.

Separately, I believe that your offices could establish a federal advisory committee to also address these topics. I recognize the USPTO already has established separate advisory committees to address patent and trademark matters under Section 5 of the Patent Act.\(^1\) It is important that policy and other discussions around important issues that implicate different types of intellectual property are not defeated by conflicting policy agendas or fractured bureaucratic structures. Some believe that concentrating our intellectual property rights (IPR) expertise into one agency will not only provide a “one stop shop” to assist all Americans with engaging in their

\(^1\) 35 U.S.C. §5.
intellectual property system, but may also more appropriately reflect intellectual property’s elevated role in our modern, digital economy.

I therefore ask that you establish such an advisory committee to weigh in on the questions presented in my letter to NAPA, and identify and address the key functions necessary for a unified Intellectual Property Office. These discussions could also include ways to create efficiencies and reduce unnecessary bureaucracy between your agencies, specifically focusing on how to better create collaboration on matters of IP policy. In addition, such an advisory committee could discuss creating a “virtual” one stop shop within our current statutory structure in the interim period before a unified intellectual property office is created.

Thank you for your prompt attention to this matter. I ask that you establish the advisory committee by December 31, 2022. I ask that you confirm receipt of this letter and advise whether you will be able to undertake the creation of the advisory committee by no later than May 1, 2022.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Thom Tillis
United States Senator
ANNEX
VIA ELECTRONIC TRANSMISSION

January 26, 2022

Mr. Matthew L. Wiener
Acting Chairman
Administrative Conference of the United States
1120 20th St NW, Suite 706 South
Washington, DC 20036

Mr. Todd Rubin
Counsel for Congressional Affairs
Administrative Conference of the United States
1120 20th St NW, Suite 706 South
Washington, DC 20036

Dear Acting Chairman Wiener and Mr. Rubin:

I write you today to request the Administrative Conference of the United States (ACUS) conduct a study on whether Congress should create a unified, stand-alone, and independent Intellectual Property Office.

The current fractured approach to intellectual property (IP) in the federal government, with multiple IP functions housed in different agencies, leads to conflicting policy agendas and unnecessary bureaucracy. Concentrating our intellectual property rights (IPR) expertise into one agency will not only provide a “one stop shop” to assist Americans with engaging in their intellectual property system, it will also appropriately reflect intellectual property’s elevated role in our modern, digital economy.

As you may be aware, I am currently exploring the possibility of creating an independent agency that at a minimum would unite the Patent and Trademark Office (currently within the Department of Commerce) and the Copyright Office (currently within the Library of Congress). My proposal may also include the Intellectual Property Enforcement Coordinator (currently within the Executive Office of the President) and other relevant IP functions located in other agencies. I believe that a single, Senate-confirmed, presidentially appointed Director should lead such an office and that it should have, at a minimum, separate Commissioners for Patent, Trademark, Copyright, and Policy Coordination that would report to the Director.

However, before pursuing legislation I believe Congress would benefit from a detailed study exploring this concept and all of the implications of creating such a unified office. With that in mind, I ask that ACUS to contract with the United States Patent and Trademark Office (USPTO) and the United States Copyright Office (USCO) to study this issue. Specifically, I request that such a study consider the following issues:
A. Funding Models: Fee-Funded vs. Taxpayer Funding

As you are likely aware, the USPTO is fee funded. The Copyright Office is funded from both fees and dollars appropriated as part of the Library of Congress’s budget request. A proposal that combines the USPTO and USCO raises questions about whether a new agency should be entirely fee funded, or whether it should be funded by a combination of user fees and taxpayer dollars. If it is to be entirely fee funded, then questions arise about how best to ensure sufficient financial support for intellectual property functions that are not directly tied to the processing of patent, trademark, and copyright registrations or other operational programs. If it is to be a hybrid model that includes appropriated funds, then questions arise about what funds should be mandatory and what should be subject to discretionary appropriations.¹

Accordingly, I ask that one part of the study address the possibility of different funding models for a unified agency, including:

1. a fully fee-funded Office. This should consider whether it money collected in fees for one system (trademark, copyright, patent) pays for that particular type of intellectual property, or whether cross-subsidization could create efficiencies—for example, in funding shared administrative staff. It should also consider how these costs and collections can be tracked to ensure transparency.

2. a hybrid model where only core IP registration, recordation, and copyright licensing functions² that collect fees from the public (“IP Operations”) are fee funded, but other functions are subject to a mix of discretionary and mandatory appropriations; and

3. different variations of a hybrid fee-funded and appropriations model where certain functions listed below, such as education, training, and outreach activities, will be covered by collected fees, but other functions, such as the intellectual property attaché program, or domestic and international advice and policy guidance or coordination, are subject to mandatory or discretionary appropriations.

Regardless of the ultimate funding mechanism(s), it is imperative that the IP Office have a reserve fund to provide continuity in operations, similar to the USPTO’s current reserve. Fees collected must not be diverted to other purposes, so any funding model must ensure fees collected will be used for intellectual property functions. It is important that the IP Office is “buffer[ed] from budgetary insecurity and political fluctuations, as well as the funding visibility and predictability required for long term investments and operational confidence.”³ Please ensure that such a study takes into account the need for reserve funds and how those funds would impact the Office’s operations.

¹ For example, some considerations could include: whether the funded functions will serve the rights holder community that pays fees, the broader public, other federal agencies, or general improvements to the intellectual property system worldwide; estimated costs of particular functions.
² For example, the Copyright Office’s Licensing program collects royalty fee payments and assists in the administration of certain statutory licensing provisions that are fully supported by its collection authority.
B. Key Functions of a Unified Intellectual Property Office

In addition to studying fee structures, a study on this issue should also involve an assessments of the key functions of a unified office. For each item listed below, it will be helpful to determine, in consultation with USCO and USPTO, how such a unified office would perform such functions.

1. Granting and issuing of patents, and related recordations of assignments, grants, or conveyances.
2. Federal registration of trademarks, and related recordations of assignments, grants, or conveyances.
3. Registration of copyrights, related recordations, and licensing programs.4
4. Providing information to the public about intellectual property.
5. Advising the President, Congress, Courts of the United States; and other Federal departments and agencies on national and international issues relating to intellectual property, other matters arising under the intellectual property laws, and related matters.
6. Conducting evidence-based studies regarding intellectual property and other matters arising under the intellectual property laws, or the administration of the Office.
7. Conducting educational programs for other federal agencies, members of the public, or cooperatively with foreign intellectual property offices and international intergovernmental organizations.
8. Representing the United States in international fora and negotiations on intellectual property matters.
9. Issuing rules and regulations, as needed, regarding intellectual property.
10. Participating in meetings of international intergovernmental organizations, and meetings with foreign government officials, relating to intellectual property, other matters arising under the intellectual property laws, and related matters.
11. Performing such other functions as Congress may direct, or as may be appropriate in furtherance of the functions and duties specifically set forth under the intellectual property laws.
12. Engaging directly with the public, including underrepresented communities, on intellectual property issues to appropriately balance diverse interests.
13. Providing administrative tribunals, such as the Copyright Royalty Board, the soon to be operational Copyright Claims Board, the Trademark Trial and Appeal Board, and the Patent Trial and Appeal Board.

4 For example, the Copyright Office's Licensing program collects royalty fee payments and assists in the administration of certain statutory licensing provisions that are fully supported by its collection authority.
14. Funding for Public Advisory Committees: including the Patent Public Advisory Committee, a Trademark Public Advisory Committee, a Copyright Public Advisory Committee, and a Policy, Training, and Outreach Public Advisory Committee.

15. Any other functions that are deemed necessary or desired for the intellectual property office of the future.  

C. Streamlining Duplicative Functions

Certain functions may be reduced by a combined agency. For example, both the USPTO and USCO engage in domestic and international copyright policy activities. I ask that in your discussions with the USPTO and USCO, you assess what functions currently within USPTO and USCO may be streamlined by the creation of a single intellectual property office.

Thank you for your prompt attention to this matter. I look forward to you contracting with the USPTO and Copyright Office and producing this study. I ask that you confirm receipt of this letter by no later than February 15, 2022 and complete the requested study by no later than February 1, 2023. If you have any questions, please do not hesitate to contact me.

Sincerely,

Thom Tillis  
United States Senator

cc:

Mr. Drew Hirshfeld  
Performing the Functions and Duties of the  
Under Secretary of Commerce for Intellectual Property and Director,  
United States Patent and Trademark Office  
600 Dulany Street  
Alexandria, VA 22314

Ms. Shira Perlmutter  
Register of Copyrights and Director,  
United States Copyright Office  
Washington, D.C. 20559-6000

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3 See, e.g. IPO of the Future Report, n. 3 above.
March 7, 2022

The Honorable Thom Tillis  
Ranking Member  
Subcommittee on Intellectual Property  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Senator Tillis:

Thank you for your letter of January 26, 2022, asking the Administrative Conference of the United States (ACUS) to contract with the U.S. Patent and Trademark Office (PTO) and the U.S. Copyright Office to conduct a study on “whether Congress should create a unified, stand-alone, and independent Intellectual Property Office.”

After carefully considering the matter, we have concluded that ACUS has neither the expertise nor resources to conduct this study.

There are other entities that are likely well-positioned to conduct the study. They include the congressionally chartered National Academy of Public Administration. We would be pleased to consult with your staff, the PTO, or the Copyright Office about possible alternatives. We would also be pleased to consult with whatever entity may conduct a study about issues of administrative procedure on which we have expertise.

We appreciate your turning to ACUS on this important subject. If you or your staff has any questions, we would be pleased to address them.

Sincerely yours,

Matthew Lee Wiener
cc:

Mr. Drew Hirshfeld  
Performing the Functions of the Under  
Secretary of Commerce for Intellectual Property  
and Director  
United States Patent and Trademark Office

Ms. Shira Perlmutter  
Register of Copyrights and Director  
United States Copyright Office