



U.S. PATENT AND TRADEMARK OFFICE

What Happened to Mission First, People Always?

Unpredictable Times at the USPTO

Image: Getty Images/Wynnr

***Landslide*® Magazine Interview with Vaishali Udupa**

Vaishali Udupa is a well-known figure in the intellectual property (IP) world, with a career spanning more than two decades across roles in private practice, in-house counsel at Hewlett-Packard and Hewlett Packard Enterprise, and most recently, public service as the Commissioner for Patents at the United States Patent and Trademark Office (USPTO). In her role as Commissioner, Vaishali led a workforce of more than 11,000 employees—including approximately 9,300 patent examiners—and was responsible for all aspects of patent examination and issuance. She managed a \$3.9 billion budget funded entirely by user fees, while also serving as the principal patent adviser to the Under Secretary of Commerce.

Her leadership encompassed a wide range of responsibilities, including workforce management, IT modernization, examiner and stakeholder engagement, and the development of both domestic and international patent policy. Under her guidance, the USPTO achieved its first rise in examiner production since 2019 and the

largest increase since 2015, there were significant reductions in first-year examiner attrition, and the patent business unit maintained a strong financial reserve nearing \$1 billion, highlighting the agency's commitment to operational efficiency and long-term investment in American innovation. Vaishali's work supported the USPTO motto of "Mission first, people always," as well as the constitutional mandate to promote progress in science and the useful arts, as outlined in Article I, Section 8 of the U.S. Constitution.

In February 2025, Vaishali stepped down from her position as Commissioner for Patents after two years of service. This was notable, as the role—under 35 U.S.C. § 2—is a five-year appointment made by the Secretary of Commerce.

Landslide® magazine was fortunate to sit down with Vaishali to reflect on her tenure, explore the challenges and achievements of her time at the USPTO, and discuss the future of the agency in light of recent shifts brought by the Trump administration.

Two of the first executive orders President Trump issued were to have federal workers return to the office¹ and to institute a hiring freeze for the federal government.² How have the orders impacted

Landslide® magazine interview conducted by **Mareesa Frederick**.

the USPTO, and how will the hiring freeze impact the USPTO's ongoing efforts to reduce the pendency of patent applications?

That's a great question. An efficient IP system requires reducing the amount of time it takes to evaluate patent applications, which we call patent pendency. And there's no question that the biggest factor in reducing patent pendency is having sufficient personnel to examine patent applications. When the USPTO doesn't properly hire and retain examiners, we've seen a negative impact on pendency.

For example, in 2019, a lot of great decisions were made to improve patent quality, and that involved increasing the time examiners had to examine patent applications. To compensate for the increase in time, the USPTO knew it would have to increase hiring. In 2020 and 2021, there was a global pandemic, and people thought there would be a reduction in patent applications. So, the USPTO did not hire as it had said it needed to back in 2019. If you look from 2019 to 2022, the USPTO only increased the

for agency management, even in the presence of a union and collective bargaining agreement. It might seem like the agency is considering whether the collective bargaining agreements that deal with telework are proper and whether the agency can determine where a person's duty station is, and it could require all employees, including union employees, to return to the office. At this time, the Acting Director has not been applying this executive order to nonprobationary patent examiners. It does, however, apply to senior management and supervisory patent examiners, and recently hired examiners living within a 50-mile radius of the Alexandria office. At the end of May 2025, despite telework agreements with the unions, Acting Director Stewart expanded the return-to-office directives to National Treasury Employee Union (NTEU) 243 telework-eligible positions and all non-patent Patent Office Professional Association (POPA) telework-eligible positions. The current administration's continued expansion of return-to-office mandates has definitely hurt the morale of these

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examining corps by 23 examiners. That put the agency in a bad place to address pendency issues. To make up for this lost labor, one of the big things the USPTO implemented in the last year or so was this huge hiring push. It was thought that the USPTO needed to hire 1,600 patent examiners just in fiscal year 2025.

By January 2025, the USPTO had hired approximately half of that number, about 800 examiners. Then the hiring freeze hit. The USPTO didn't even get close to what it needed to do to meet its hiring goal of 1,600. In fact, offers of employment for examiners who were supposed to start in early February were rescinded. The day after the hiring freeze was instituted, an exemption was also submitted requesting that the USPTO be able to continue to hire examiners. However, nothing has changed. In fact, the initial executive order was set to run through April 20, 2025, but will now last until July 15, 2025.³ The USPTO is not hiring. While there may be other mechanisms the USPTO can implement to tackle pendency, none of these measures will have the same impact as hiring more examiners. So that is definitely going to affect the USPTO and how it's doing on pendency.

It is important to note that because of union agreements, the return-to-office executive order does not apply to nonprobationary examiners. However, at a recent town hall meeting, Acting Director Coke Morgan Stewart specifically said that assigning a duty station is a management right. In federal government collective bargaining, management rights refer to certain powers reserved

employees. USPTO employees for years have valued the opportunities to telework. The taking away of this workplace benefit has impacted employee morale and will surely impact patent quality and pendency.

The patent business unit utilizes a multitiered system of continuous quality assessments to hold examiners accountable. The first tier is at the art unit level. Every patent examiner's performance evaluation includes quality as a critical element. The supervisory patent examiners (SPEs) normally review the quality of all examiners' work quarterly. Additionally, SPEs and primary examiners provide coaching and training to junior examiners throughout the year. With the return-to-office executive order, many supervisors have taken deferred resignation or early retirement because they didn't want to come back to the office. Some have even decided to go back to an examiner position so that they can benefit from the telework provisions of the union collective bargaining agreements. When you have significant reductions of SPEs who are involved in the first critical process of examining the applications for quality, there is going to be a hit on quality. Moreover, with fewer SPEs, there will be a bottleneck at the SPE review step, and this will also have an impact on pendency. Examiners aren't going to be as inclined to apply for these SPE positions.

Limiting telework definitely impacts both pendency and quality. This is also true in other areas of the agency. Many administrative patent judges (APJs) have taken deferred resignation or early

retirement, significantly reducing the number of APJs that the USPTO currently has on staff.

The USPTO is losing some of its top performers because of these new policies. Institutional knowledge will be lost as more employees choose to leave the agency rather than give up the flexibility to work from home.

Do you expect that there will be any significant shifts in the USPTO's priorities during the Trump administration?

The previous Director, Kathi Vidal, and Commissioner for Trademarks, David Gooder, made great strides to improve trademark pendency. We were working hard to improve patent pendency. Unlike trademark pendency, patent pendency is an extremely complicated endeavor that takes years to effectively tackle. I do think patent pendency will continue to be a focus in the current administration. During his confirmation hearing, Howard Lutnick, Trump's Secretary of Commerce, specifically stated, "A significant patent backlog is not just a bureaucratic issue, it directly impacts innovation and the ability of entrepreneurs to bring their ideas to market. We must prioritize reducing these delays to foster a more dynamic and competitive economy."⁴ I definitely think pendency is going to be one of the issues this administration will continue to work on.

Another priority, I think, will be discretionary denials. On February 28, 2025, the USPTO rescinded its 2022 memorandum on discretionary denials. Memos from Chief Administrative Patent Judge Scott Boalick on March 24 and Acting Director Stewart on March 26 provided further guidance.⁵ There is now a new bifurcated procedural pathway for handling discretionary denials. In particular, the March 26 memorandum makes several significant changes as to how the USPTO will evaluate discretionary denials of inter partes reviews (IPRs) and post-grant reviews. It's important to note that the USPTO has said these changes are temporary in nature due to the current workload needs of the Patent Trial and Appeal Board (PTAB). It's interesting how the agency has created circumstances for numerous APJs to leave the agency and then uses this shortage as a rationale to change the way it handles PTAB proceedings.

John Squires is President Trump's pick to head the USPTO. If confirmed, what do you believe his focus will be in terms of directing and shaping the USPTO, given his background in financial technology and patent law?

John Squires is a seasoned IP attorney. He really has an extensive background in both patent litigation and prosecution. He currently serves as chair of the emerging companies and IP practice at Dilworth Paxson LLP. This is a position he's held since 2017, and his practice has focused on artificial intelligence (AI), blockchain, cryptocurrency, fintech, and regtech. Interestingly, if you look at his past positions, he also worked at Perkins Coie. Trump's March 6, 2025, executive order required agency heads, to the extent permitted by law, to refrain from hiring employees of Perkins Coie absent waiver of the head of the agency.⁶ I don't know if this executive order applies to past employees, but I think it is noteworthy that John Squires worked there.

Perhaps the most notable position was his role as chief IP counsel at Goldman Sachs from 2000 to 2009. In this role, he

founded the bank's IP practice, and while there in 2007, Squires testified before the Senate Judiciary Committee in support of post-grant proceedings for challenging issued patents at the USPTO,⁷ which ultimately resulted in the subsequent legislation establishing the PTAB and its IPR process. In his testimony before Congress, he said, "Patent examination quality issues, predatory patent assertions, and litigation abuse have precluded continuous progress and efficiencies in bettering the U.S. financial system."⁸

It's also important to note that John Squires helped create Fortress Investment Group's IP funding arm while working in private practice. Fortress is an asset management giant that last year committed \$6.6 billion to litigation finance and has pursued infringement cases against companies like Apple and Intel.⁹

In my view, it's really hard to predict whether Squires will be influenced by his reform history or his litigation financing history. I do think he will likely focus on patent pendency, patent eligibility, and threats from China. With regard to patent eligibility, Squires was a coauthor of a *Bilski v. Kappos* amicus brief in 2008, where he advocated for broad patent eligibility standards.¹⁰ It's an open question whether Squires will seek to expand patent eligibility policy at the USPTO. It could be an initiative of his, given his background in finance.

The January 20, 2025, "America First Trade Policy" executive order¹¹ will also likely impact John Squires's priorities. In that order, the Secretary of Commerce is required to assess the status of the U.S. IP rights, such as patents, copyrights, and trademarks, conferred upon the People's Republic of China (PRC) and make recommendations to ensure reciprocal and balanced treatment of IP rights with the PRC. It will be interesting to see if this will be one of the initiatives John Squires will be working on when (or if) he gets confirmed.

What will be the Trump administration's impact on the USPTO's diversity, equity, inclusion, and accessibility (DEIA) initiatives?

Previous Directors have understood that opportunities to participate in the U.S. innovation system have been historically unequal. Under Andrei Iancu's leadership as the Under Secretary of Commerce, the agency focused on increasing women's participation in innovation, and he established the National Council for Expanding American Innovation. In particular, he has stated that "America's economic prosperity and technological leadership depend on a strong and inclusive innovation system. That is why it is so important for us to encourage participation in the patent system so that all Americans are inspired to invent, to protect their inventions, to build thriving businesses, and to succeed."¹² Similarly, Kathi Vidal, the previous Under Secretary of Commerce, was known for her work in promoting inclusive innovation and expanding opportunities for diverse inventors, including initiatives like the Council for Inclusive Innovation and the Women's Entrepreneurship initiative. However, if you search for these initiatives on the USPTO website now, they have been removed in light of the executive order on DEIA. But in the USPTO's schedule of events on its website, it listed a Women's Entrepreneurship event that occurred on March 27: the "Women's Entrepreneurship Symposium: Necessity-Driven Innovation."¹³

Time will tell what efforts are made to increase participation in the innovation ecosystem. One thing to keep in mind is that

DEIA initiatives for increasing inventorship also include efforts to help veterans and people coming from underserved communities, such as rural America. So blanket prohibitions on DEIA can have unintended consequences that can really hurt the U.S.'s ability to be a leader in innovation.

Do you think there will be attempts to streamline patent examination through the use of generative AI in order to improve patent efficiency?

The USPTO has already been using AI in some aspects of the patent examination process. For example, all patent examiners use the Patents End-to-End (PE2E) search suite that includes AI search features such as “More Like This Document” and “Similarity Search.” Since September 2022, examiners have run more than 1.5 million PE2E queries using these AI-powered features.¹⁴

The USPTO did, however, ban the use of generative AI for any purpose, citing security concerns with the technology.¹⁵ The USPTO did not want examiners to use ChatGPT to write first drafts of office actions, for example. The USPTO also had concerns with

morale also equates with high efficiency, as employees are more willing to give back to the agency. In light of all the things that have been happening, there has been a general consensus that morale is at an all-time low. You can even look at all the negative sentiments regarding the USPTO on Reddit. Reddit generally discusses U.S. patent examination, policy, and related topics, and there have been recent lively discussions about how unhappy USPTO employees are.¹⁶ Employees have also voiced their concerns during the previous administration, but not at the level of discontent you see now.

For example, telework is a huge benefit to the USPTO. People really appreciate telework, and taking that away from some of the employees has really affected morale. Also, management is taking away training time. For example, the agency had developed a great AI program through a collaboration with Carnegie Mellon. If someone didn't have as much familiarity with AI, they could watch this training and get more experience and become more well-versed in the AI principles. That type of training is, for the most part, not being approved anymore for examiners. When you take away things like training, it's really going to have a negative

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bias, unpredictability, and malicious behavior. Until the application is published, it is confidential information, and the agency has to make sure that information is not put into these learning models to be used later on. The USPTO was taking a cautious approach, but work should continue to create a system that takes into account bias or other confidentiality and privacy concerns.

Also of note, the recent administration's focus on reducing government contracts has resulted in the U.S. Office of Personnel Management pressuring the USPTO to consider getting rid of search-related contracts, including those related to AI. While these may be expensive contracts, the USPTO should not base its decisions purely from a monetary value standpoint but instead make sure to also consider the value it will have on the USPTO's mission. I believe search capabilities that use AI are very beneficial, and we were working to add more functionality, including collaborating with the European Patent Office, which has some great AI search capabilities. Hopefully, the agency will not get rid of the existing AI search functionalities and will not stop the work that was occurring to increase AI in searches or in other examiner processes.

How would you describe the current morale at the USPTO?

The key thing that leaders should be thinking about is employee morale. Morale impacts the quality of the work being done. High

impact on employees and their ability to do their work, which ultimately will affect their morale. Also, with the large exodus of employees, especially those who were well-loved and respected and who had no intention of leaving at this time, employees who are left are overwhelmed with work, missing their colleagues, and struggling with work-life balance, including family obligations. All of these things result in a huge hit on employee morale.

In March 2025, the Secretary of Commerce surprisingly terminated all current appointments to the Patent Public Advisory Committee (PPAC) and the Trademark Public Advisory Committee (TPAC). What is the purpose of these committees, and what are your thoughts on these terminations?

I think it's very interesting and something that has never been done before. The PPAC is a collaborative committee. They work with the agency and the executives to really try to make sure the agency is working the best that it can. The PPAC members who were recently terminated brought so many great perspectives. They included people from universities, pharma, and tech; small inventors; and those who worked at larger companies. The PPAC and TPAC members brought such a great, diverse perspective, and they truly cared for the success of the agency. Getting rid of all of them in one fell swoop was extremely surprising and unprecedented.

I'll be curious to see who comes in next. The USPTO has 90 days to appoint new members, who should be in place before the next public hearing. The next public hearing for PPAC had been scheduled for May 29, 2025. As of June 1, 2025, the USPTO had not announced the new PPAC and TPAC members, and no public meetings for the PPAC or TPAC have taken place since November 2024. Moreover, no meetings are currently scheduled on the USPTO calendar. I hope the new PPAC and TPAC members will continue to keep the agency on their toes and not just be yes-men to the current administration.

How do you feel about your time at the USPTO and the people who work there?

It was truly an honor to work at the USPTO as the Commissioner for Patents. I always knew the agency was an amazing place that did fantastic work and had outstanding people. The USPTO employees are smart, capable, and dedicated. They care deeply for the USPTO mission and the impact their work has on the U.S. They were true public servants who worked nonstop. I was continuously amazed by the amount of work that was done by these people. No one was just sitting around twiddling their thumbs. I was fortunate to collaborate with some of the most innovative and skilled individuals who inspired, challenged, and supported me. I was fortunate to have this opportunity to serve alongside these committed employees. We did a lot of great work together. My time at the agency will surely be a highlight in my career. ■

Endnotes

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