

Question for the Record
Rep. W. Gregory Steube (FL-7)
House Judiciary Committee
Subcommittee on Courts, Intellectual Property, and the Internet
Hearing: Oversight of the U.S. Patent and Trademark Office

Please accept these questions for the record to be asked of Under Secretary Iancu regarding the SAWS program at the USPTO.

1. Please specify with explanations all the authorizing statutes under which the USPTO (a) instructed examiners to spend time on identifying applications with SAWS subject matter; (b) instructed their Supervisory Patent Examiner (SPE) to spend time and review and flag (designate) such applications under the SAWS program, and (c) established automatic mechanisms and procedures to prevent issuance of any such flagged patent applications even when they are found patentable and allowable.
2. Documents produced by the USPTO under a FOIA including the Board's Standard Operating Procedure SOP-8 show that the Board of Patent Appeals and Interferences, the predecessor of the Patent Trial and Appeals Board, (the Board) was notified of the SAWS designation and was given the SAWS reports pertaining to SAWS applications under appeal or interference.
 - a. Please specify with explanations what legal authority or statute authorizes informing the Board of such SAWS facts when such facts could have no bearing on the Board's decision under the patent law?
 - b. Please specify with explanations what legal authority authorizes the examiner to conduct such *ex-parte* communications with the Board while withholding it from the applicant?
3. In her January 9, 2015 responses to Senate inquiries for the record, then Acting Director Lee asserted that the SAWS program was a quality control program. The Inspector General audited the USPTO quality control programs in 1997, 2010, and 2011. Under the Inspector General Act of 1978 (as amended) the USPTO was to provide the IG with "access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available ... which relate to programs and operations" of the USPTO subject to the IG's audit. 5 U.S.C. App. § 6(a)(1).
 - a. If Director Lee's assertion was correct, please explain why the USPTO consistently acted contrary to the IG Act of 1978 by concealing from the IG in all three investigations the existence and operation of the SAWS as a quality control program?
 - b. Please provide the names of the USPTO officials who decided in each of the respective audits that the SAWS program should not be subject to such IG audits.
 - c. Please provide the name(s) of the person(s) who have prepared, drafted, or written Director Lee's explanations in her January 9, 2015 response for the record that the SAWS was a quality control program.