

USPTO Exempted From Remote Work Executive Order: Kathi Vidal Discusses Impact with MLex

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Winston & Strawn partner Kathi Vidal was quoted in a MLex article discussing the effect of President Trump's executive orders on U.S. progress in patent pendency. The USPTO recently stated that there has been a reduction in patent pendency—the amount of time it takes to gain an approval or an initial rejection of a patent application—from 20.5 months in 2023 to 19.9 months in 2024. This improvement has been partly attributed to the office's push to hire more examiners, who come from diverse STEM backgrounds and are required to have technical expertise in areas from mechanical engineering and biochemistry to artificial intelligence. To maintain a highly skilled examiner corps capable of keeping up with the increasing demand for examination, the USPTO has offered remote work for examiners since well before the Covid-19 pandemic.

Kathi Vidal, who previously served as the USPTO Director, told MLex that the flexibility plays a role in the office's ability to attract "the best talent across the country."

Following the inauguration, Trump signed an executive order requiring federal employees to return to their offices five days a week. While the EO gives agency heads the ability to grant exceptions "they deem necessary," the order may have an impact on the USPTO's efforts to minimize patent pendency.

The remote work agreement may be reinforced in the collective bargaining agreements recently reached between the office and federal employee unions. All three unions which represent USPTO workers—two National Treasury Employees Union chapters and the Patent Office Professional Association— inked new deals with the office in late 2024 and early 2025, following "decades of stagnation," Kathi noted.

"I am grateful that President Trump's In-Person Work Action recognized that the Action would be implemented consistent with applicable law and afforded USPTO leadership the ability to make exceptions they deem necessary," Kathi said.

As an update, after the article posted, the Department of Commerce issued a memorandum noting that "[t]he Department of Commerce no longer permits regular and recurring telework and remote work," and that "[e]mployees should work full time at their respective worksites/duty stations." The DOC memorandum made clear, however, that President Trump's Return to In-Person Work memorandum would not supersede existing collective bargaining agreements and did not apply to the USPTO.

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