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An Intellectual Property Law Commentary

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Just Intellectuals eNewsletter

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Sent via electronic mail

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Acting Director Drew Hirschfeld
c/o Alma Rubio
Office of the Deputy Commissioner for Patent Operations
United States Patent & Trademark Office
600 Dulany Street
Alexandria, Virginia 22314
E alma.rubio1@uspto.gov

RE: REVIEW OF THE LOCATION OF THE DETROIT SATELLITE OFFICE

Director Hirschfeld,

I am writing you because, as an interested patent professional, I am concerned that the location of the Detroit satellite office is undermining many of its purposes as enumerated in Section 23 of the America Invents Act.

First, I am a patent attorney in Southeastern Michigan. I have seventeen years of counseling experience that I obtained preparing and prosecuting hundreds of original US utility patent applications for global companies. During this time, I have drafted and prosecuted over 200 original US utility applications and over 90 secondary or PCT patent applications. I am also an educator having served as a co-adjunct professor of law for Marquette University Law School. I currently self-publish an online practical commentary on intellectual property law developments whose subscription list includes federal judges, Patent Office leadership, law firm partners and other academics. Further, I am published by highly acclaimed academic journals such as the *Texas*

Intellectual Property Law Journal, Marquette Intellectual Property Law Review, Intellectual Property Law Bulletin and the Journal of the Patent & Trademark Office Society.

Section 23(b) of the America Invents Act outlines five purposes for the satellite offices.

Purposes.—The purposes of the satellite offices established under subsection (a) are to—

- (1) increase outreach activities to better connect patent filers and innovators with the Office;
- (2) enhance patent examiner retention;
- (3) improve recruitment of patent examiners;
- (4) decrease the number of patent applications waiting for examination; and
- (5) improve the quality of patent examination.

Additionally, Section 23(c)(1)(D) states that “[i]n selecting the location of each satellite office to be established under subsection (a), the Director. . . shall consider the availability of scientific and technically knowledgeable personnel in the region from which to draw new patent examiners at minimal recruitment cost. . .”

In selecting satellite offices beyond Detroit, it is evident that the Patent Office thoroughly considered all plausible options within the US and ranked options based upon “site selection performance indicators.”¹ Your site selection performance indicators relate back to the five primary purposes of the satellite facilities; they include statistics like the locations of patent grantees, small entities, number of patent agents/attorneys, number of technically qualified individuals, quality of life and commute time.² However, when selecting the specific neighborhood and city within Southeastern Michigan for the location of the Midwestern Regional Office many of the founding purposes for the office and site selection performance indicators, respectfully, appear to have been ignored.

The Rivertown neighborhood of Detroit, Michigan would not rank in the top five locations within Southeastern, Michigan with respect to your site selection performance indicators. The Rivertown location is obscure from local R&D or patent activity, thus it is significantly inconvenient to visit.

Initially, Rivertown Detroit is not where most patent agents and attorneys work. Nearly half of the State of Michigan’s intellectual property attorneys do not even work in the same county, much less the same city as the current location.³ The State Bar of Michigan reports that only 12.6% of the state’s IP attorneys work in Wayne County, where Detroit is located. Contrastingly, 49.3%

¹ See US PTO, REPORT ON THE SATELLITE OFFICES (Sept. 2014).

² *Id.*

³ State Bar of Michigan, Section Membership Demographics, <https://www.michbar.org/file/opinions/sectiondemographics2020.pdf#page=109&zoom=100,45,48> (2020-2021).

of Michigan's IP attorneys work in Oakland County. The state's largest patent law firms are also located in Oakland County: Harness, Dickey & Pierce and Cantor Colburn in Troy, Michigan and Brooks Kushman in Southfield, Michigan.⁴ Troy is 24 miles and Southfield is 16 miles from the Detroit Office location.

Additionally, Rivertown Detroit is neither where most patent grantees or technically qualified individuals work, under Section 23(b) and (c)(1)(D). I would encourage you to search the PTO's database for the most frequent applicants in Southeastern Michigan. To my recollection, the largest local patent filers (and employers of scientists) are Ford Motor Co., General Motors, Denso, Toyota, Nissan and Fiat Chrysler. All of General Motors' technical headquarters, Denso's technical and non-technical HQ, Nissan's technical HQ and Fiat Chrysler's technical and non-technical HQ are in Oakland County. Ford's HQs are in Wayne County, Dearborn, Michigan, 10 miles away from the Rivertown neighborhood; and Toyota's technical HQ is in Washtenaw County, Ann Arbor, 44 miles from Rivertown. I estimate that most small technical companies are located proximate to these R&D centers.

Similarly, most R&D professionals wish to live proximate to their work locations. Thus, the quality of life for patent examiners in the Detroit Office would greatly benefit from moving the location closer to where similarly situated scientists live and work. Indeed, one of the main motivators for choosing the Metropolitan Detroit Area for a satellite location was its wealth of technical professionals. But the Rivertown neighborhood is essentially devoid of any of Southeastern Michigan's R&D! Because other technical professionals do not work or live near Rivertown, I would imagine that most of the Detroit Office's examiners commute 20 minutes or more to work.

Both Troy and Southfield in Oakland County, Michigan, have affordable and available commercial office space that could accommodate the Office's needs. Here are some exemplary listings.

⁴ HARRITY, TOP PATENT FIRMS 2020, (Assessed 12-30-2021), <https://harrityllp.com/services/patent-analytics/top-patent-firms-2020/>. Even though Foley & Lardner was one of the top patent filing firms of 2020, its Detroit Office only includes three IP attorneys. *See* FOLEY & LARDNER, PEOPLE, (Assessed 12-30-2021), <https://www.foley.com/en/people?practice=75fe0dd201084fef946f9f27c6b7dd18&location=6bacad2d2b664933a9b4488d6024bb7f>.

5440 Corporate Dr

12,350 SF of 4-Star Office Space Available in Troy, MI



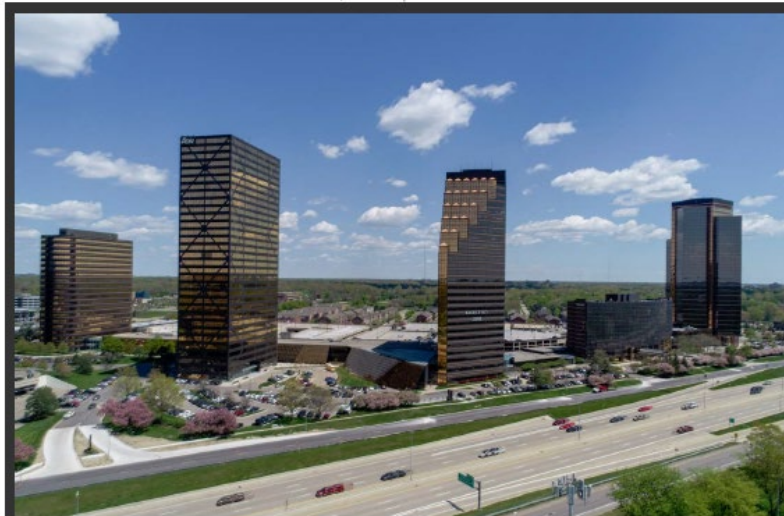
HIGHLIGHTS

- Up to 4,866 Square Feet
- Class "A" Finishes Throughout / Corporate Office Environment
- Close & Convenient Parking
- Under New Ownership and Management
- Excellent Access to I-75 Interchange
- Motivated Landlord

| SPACE | SIZE | TERM | RATE | SPACE USE | CONDITION | AVAILABLE |
|-----------------|----------|------------|----------------|-----------|----------------|-----------|
| 1st Fl, Ste 125 | 4,866 SF | Negotiable | \$19.50 /SF/YR | Office | - | 30 Days |
| 2nd Fl, Ste 205 | 1,579 SF | Negotiable | \$19.50 /SF/YR | Office | - | 30 Days |
| 2nd Fl, Ste 275 | 5,905 SF | Negotiable | \$19.50 /SF/YR | Office | Full Build-Out | Now |

Southfield Town Center | Southfield, MI

439,843 SF of Space Available

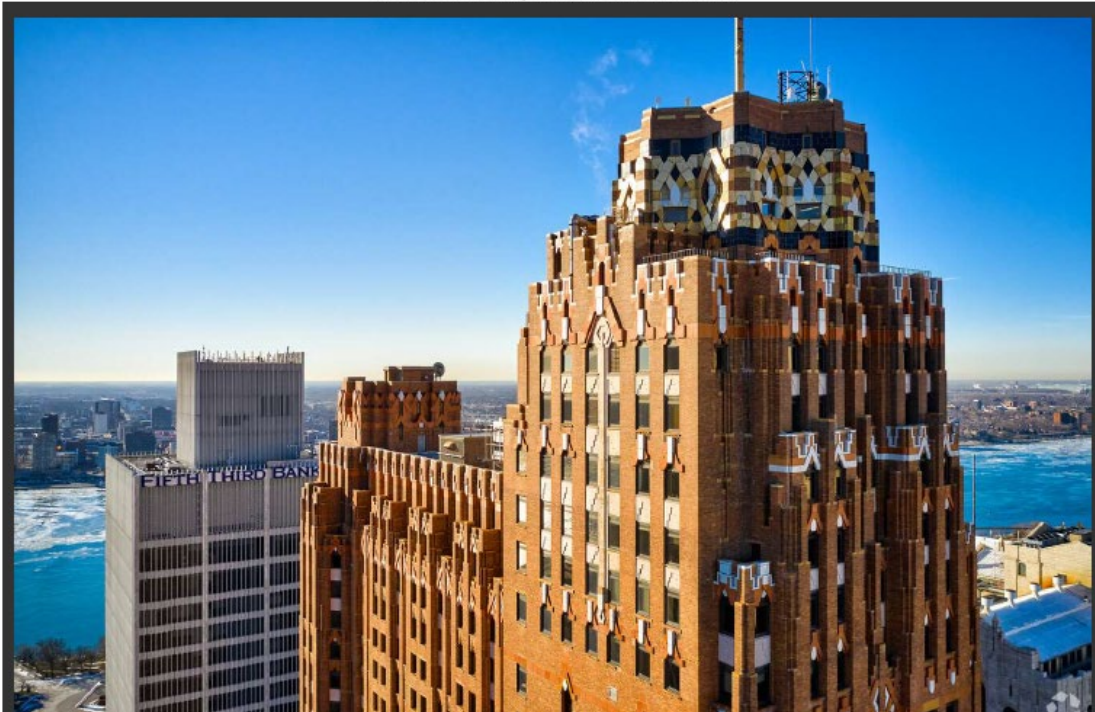


PROPERTY FACTS FOR 1000-4000 TOWN CENTER , SOUTHFIELD, MI 48075

| | | | |
|-----------------------|--------------------------|--------------------|-------------|
| Rental Rate | \$21.00 - \$24.00 /SF/YR | Max. Contiguous | 53,148 SF |
| Total Space Available | 439,843 SF | Business Park Type | Office Park |

Alternatively, if the Office wishes to remain within the City of Detroit, the Rivertown neighborhood is still not one of the top Detroit neighborhoods to facilitate the Office's purposes. It is surrounded by vacant industrial buildings and/or low income residential apartment buildings on the other side of Jos Campau Rd., down Atwater as well as down the Detroit Riverwalk towards Belle Isle. Rivertown itself is more than 1 mile from the heart of downtown Detroit. Most attorneys and technical professionals who work and live in the City of Detroit do so in the 48226 and 48201 zip codes, proximate to Woodward Avenue. A Midwestern Regional Office would more suitably be located within these zip codes to better connect patent customers with the Office and enhance the recruitment and retention of examiners. Here are some exemplary listings in 48226/48201.

Guardian Bldg | 500 Griswold St
41,612 SF of 4-Star Space Available in Detroit, MI



| SPACE | SIZE | TERM | RATE | SPACE USE | CONDITION | AVAILABLE |
|-------------------|-----------------|------------|----------------|----------------|-------------------|-----------|
| 16th Fl, Ste 1600 | 2,520 SF | Negotiable | \$21.00 /SF/YR | Office | Full Build-Out | Now |
| 20th Fl, Ste 2000 | 16,555 SF | Negotiable | \$24.00 /SF/YR | Office/Medical | Full Build-Out | Now |
| 23rd Fl, Ste 2350 | 1,139 SF | Negotiable | \$21.00 /SF/YR | Office | Partial Build-Out | Now |
| 32nd Fl, Ste 3200 | 8,000-16,555 SF | Negotiable | \$28.00 /SF/YR | Office | Partial Build-Out | Now |
| 34th Fl, Ste 3400 | 2,343 SF | Negotiable | \$21.00 /SF/YR | Office | Partial Build-Out | Now |
| 35th Fl, Ste 3500 | 2,500 SF | Negotiable | \$21.00 /SF/YR | Office | Full Build-Out | Now |

2025 Woodward Ave

64,514 SF of 4-Star Space Available in Detroit, MI



HIGHLIGHTS

- Located in the heart of Detroit with Woodward exposure where Downtown meets District Detroit in the center of the entertainment district.
- Fully customizable floor plates to meet every creative and technical need.
- Modern look with a classic feel.
- Unique amenities with open-air terrace, fullservice market, banking & on-site security.
- High-image building with professional atmosphere utilizing cutting-edge technology.

| SPACE | SIZE | TERM | RATE | SPACE USE | CONDITION | AVAILABLE |
|------------|-----------|------------|----------------|-----------|-------------|-----------|
| 1st Floor | 1,100 SF | Negotiable | \$40.00 /SF/YR | Retail | Shell Space | Apr 2022 |
| 11th Floor | 21,138 SF | Negotiable | \$40.00 /SF/YR | Office | Shell Space | Apr 2022 |
| 12th Floor | 21,138 SF | Negotiable | \$40.00 /SF/YR | Office | Shell Space | Apr 2022 |
| 13th Floor | 21,138 SF | Negotiable | \$40.00 /SF/YR | Office | Shell Space | Apr 2022 |

Additionally, the current Midwestern Office does not have proper gathering space. The Office relies on third party venues to host events, which is further inconvenient and gives the impression that the facility is underfunded. Many of the primary activities of the Patent Office are CLE hosting, public workshops and examiner training. How can the Detroit Office properly do this with no onsite meeting space?

The inconvenient location of the regional office does a great disservice to the Office, local professionals and the region. The poor location stifles Section 23's purposes. Its distance from

where patent professionals and innovators work hinders community outreach by the Office and visiting the Office for utilizing the Office's resources. Local patent professionals will be less likely to attend events at the Office or invest in its people or programming. Also, it is more inconvenient for technical experts to provide training to examiners. Moreover, examiner recruitment and retention are weakened by the Rivertown location. Those who work in Rivertown will feel less included and integrated into the local technical and patent communities, which are in other cities, as far as 10-25 miles away. Better candidates will choose other employers over the PTO just to be more connected to the R&D community. Being more proximate to the local technology hubs will provide a better quality of life and working environment for the examiners. Hence, the Office's other goals in forming the satellite offices—reducing pendency and increasing quality—are also not being best met by the location's hampering of retention and recruitment.

Finally, the obscurity of the Detroit Office acts against the public / all-inclusive character of the Agency, which also adversely affects professionalism. Being largely disconnected from the customers the Office serves can make the Rivertown location feel ghostly or unmonitored, like a private island or resource, which can promote personal use of the Office's investment. This is further off-track from Section 23's mandate.

I can appreciate that leasing commercial space for federal agencies can take up to 24 months. Moreover, I am unsure what the current lease status is for the Detroit Office since their original lease began in 2012 and was for 10 years. However, I am asking you to form a committee to research the suitability of the current location for our local patent office as compared to my other proposed locations. The goal of the committee should be to find the optimal location within Southeastern Michigan to meet Section 23's mandates. Specific committee activities can include but are not limited to the following:

- Referencing the site selection performance indicators previously used to rank locations for the other satellite offices and provide a similar rubric for Southeastern, Michigan neighborhoods;
- Surveying existing Detroit Office personnel on location satisfaction and the desirability of relocating to Troy, Southfield or central downtown Detroit;
- Comparing the Detroit Office's retention numbers with the other offices;
- Comparing Detroit's recruitment numbers with the other offices, such as the number of applications per vacancy;
- Researching Michigan registration numbers for more evidence on the most frequent work locations in Southeastern Michigan;
- Researching Michigan applicants as well for evidence of their most frequent locations; and
- Investigating the cost of early termination of the existing lease.

I appreciate your attention to this matter. Certainly, if you have questions send an e-mail to: KristyJDowning@gmail.com or call me at (248) 296-0770.

Sincerely,

s/ Kristy J. Downing /



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