

**U.S. PATENT AND TRADEMARK OFFICE:
OPERATIONS AND FISCAL YEAR 2003 BUDGET**

HEARING
BEFORE THE
SUBCOMMITTEE ON COURTS, THE INTERNET,
AND INTELLECTUAL PROPERTY
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED SEVENTH CONGRESS
SECOND SESSION

APRIL 11, 2002

Serial No. 64

Printed for the use of the Committee on the Judiciary



Available via the World Wide Web: <http://www.house.gov/judiciary>

U.S. GOVERNMENT PRINTING OFFICE

78-675 PDF

WASHINGTON : 2002

For sale by the Superintendent of Documents, U.S. Government Printing Office
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U.S. PATENT AND TRADEMARK OFFICE: OPERATIONS AND FISCAL YEAR 2003 BUDGET

THURSDAY, APRIL 11, 2002

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COURTS, THE INTERNET,
AND INTELLECTUAL PROPERTY,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:02 a.m., in Room 2141, Rayburn House Office Building, Hon. Howard Coble [Chairman of the Subcommittee] presiding.

Mr. COBLE. [Presiding.] Good morning, ladies and gentlemen. Welcome to 2141 again. The Subcommittee will come to order.

Today we will review the operations of the Patent and Trademark Office in light of the Administration's budget submission for fiscal year 2003.

As I have stated before, specifically at our last hearing, our last oversight hearing on PTO, it pains me that we must continue to address the ongoing issue of diversion of agency funds to other government programs. Our witnesses understand how this harms PTO operations and ultimately how it can harm that sector of our economy which is obviously dependent on the creativity of inventors and trademark owners.

Once more, I pledge that our Subcommittee will work in a bipartisan manner with those in the intellectual property community to do whatever is viable and necessary to reverse this trend.

That said, I am a realist. And realistically speaking, I do not believe that the appropriators will generously cede their authority to control PTO funding in the near future. We can no longer afford to chant the same mantra of more money.

To my mind, the agency will be better positioned to acquire greater appropriations if it can do a better job of demonstrating how it is using available resources to meet clearly defined objectives, which ultimately means improving quality and reducing existing pendency rates and backlogs.

And speaking of money, the Congress cannot blindly endorse a request by the Administration to raise patent and trademark fees as a stopgap or even a long-term solution to this problem.

Anyone who has reviewed the fiscal year 2003 budget request for PTO is aware that it contains a recommendation that Congress apply new 1-year surcharges to existing fees. That is 19 percent in the case of patents, 10 percent in the case of trademarks.

I will be most interested to learn whether the user community endorses this request. Will implementing this change really reduce

pendency and backlogs, or will it merely subsidize other government programs?

I emphasize that I retain the highest confidence in Director Rogan to help us solve these problems.

Jim, I think you may well be the person best suited to lead the PTO into the 21st century. It's good to have you back on the Hill.

I look forward to the testimony of the witnesses here this morning.

[The prepared statement of Mr. Coble follows in the Appendix]

Mr. CHABOT. And I am now pleased to recognize my good friend, the Ranking Member from California, Mr. Berman.

Mr. BERMAN. Thank you very much, Mr. Chairman. I'm happy to join you for our annual hearing on the Patent and Trademark Office.

And I welcome our former colleague—he knows some Members of this panel well—the distinguished PTO Director, Undersecretary of Commerce, in his first appearance before this Subcommittee. The man actually gave up a lucrative private practice to take on this office. And we'll talk to him later on about his judgment. [Laughter.]

I want to welcome our other witnesses as well. Many of them are quite familiar to this Subcommittee.

And I think we have cause this year for a muted celebration. It appears that our collective efforts over the past few years to secure adequate funding for the PTO have had measured success. Based on the pressure applied by relevant stakeholders, including the ones testifying today, the PTO itself, and many Members of Congress, the President has submitted a fiscal year 2003 budget that recommends that the PTO have use of all its projected fees. This request indicates that our message has finally gotten through.

Without adequate funding, the PTO cannot carry on its critical role in stimulating innovation, technological advancement, and business growth.

Unfortunately, this forward movement comes with a price. The Administration has not repealed the innovation tax; it has simply renamed it a surcharge.

The Bush administration's fiscal year 2003 budget request proposes a surcharge on patent and trademark fees. This surcharge, which will generate \$162 million to be used for non-PTO purposes, would be almost 20 percent on patent fees and over 10 percent on trademark fees.

In other words, the Bush administration doesn't end the fee diversion or innovation tax of which we have long complained. It simply raises the fees in order to have its cake and eat it, too.

I do not intend to place the blame entirely at the feet of the Bush administration, because there's no reason to believe our appropriators will the end the practice on their own initiative. Indeed, we need to remain vigilant less they attempt to divert more.

To be sure, the surcharge approach to diversion is an improvement over the previous situation, but it's still not the preferred course. Ideally, there would be no innovation tax, regardless of whether it was called a carry-forward, a diversion, or a surcharge.

I believe the surcharge approach—I want to make clear, I'm not against redistribution, but I just don't think this is redistribution

based on ability to pay. This is not—this is what gives redistribution a bad name.

I believe the surcharge approach is not an adequate solution because it will not solve the pendency, quality, staff retention, and technology problems facing the PTO. Even assuming that the PTO has use of all its projected fee income through 2006, the fiscal year 2002 corporate plan of the Department of Commerce still predicted that patent pendency would increase to 38.6 months by fiscal year 2006.

I want to repeat that: Even if the PTO can keep all its projected fees, patent pendency increases from about 24 months to nearly 39 months.

Whether 24 or 39 months, such patent pendencies are too long. Such pendencies hamstring the ability of inventors to commercialize their innovations and, when combined with increased fees, may even persuade inventors to rely on trade secret protection rather than patenting their inventions. This result will be the worst outcome as it would deny the public, other innovators, and research the benefits of public disclosure of innovations.

For these reasons among others, Chairman Coble and I have insisted that the PTO complete a 5-year strategic plan. This strategic plan, as proposed in H.R. 2047, would set a course of the PTO to achieve its critical mission by improving patent quality, reducing pendencies to reasonable levels, and increasing PTO efficiency.

We look forward to receipt of the strategic plan and look upon it as a key to demonstrating that patent and trademark fees bear a direct relationship to achievement of the PTO mission.

In conclusion, Mr. Chairman, I believe the President's fiscal year 2003 budget request doesn't keep a bad situation from getting worse. It just keeps it from getting a lot worse.

I do not believe that the surcharges are an adequate permanent solution to the challenges the PTO faces.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Berman follows in the Appendix]
Mr. COBLE. I thank the gentleman.

We're pleased as well to have Ms. Lofgren, the gentelady from California, join us this morning.

Now, what I'm about to say really has nothing directly to do with today's hearing, and pardon my immodesty for sharing this with you. Someone came to me the other day, and he said, "I appreciate very much the way you and Howard Berman have worked together on this Subcommittee."

And I want to, at this time, express my thanks to Howard. I think we have worked pretty well together. And in no small reason, that's because of the cooperation that we have enjoyed from many people, some of whom are in this hearing room today.

We will continue to try to hammer out the problems as they continue to surface and plague us. But with your help, we'll try to keep plowing through this thing and hopefully come up with a solution.

Some folks have criticized me for my lengthy introductions of witnesses. Now oftentimes, many people in the audience don't know the background of some of the witnesses, and I think if you're

uninformed, you need to be informed. So that's why I may give these extended biographies. So you all bear with me.

Our first witness does not fall in that category. I think we all know him: Jim Rogan, the Undersecretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office. He was nominated by President George Bush on May 25, 2001, and confirmed by the U.S. Senate on November 30, 2001. We all remember him as a valued colleague who served on our Subcommittee from 1997 through 2001.

Judge Rogan has a distinguished career in public service. He was a gang murder prosecutor in the Los Angeles County District Attorney's Office, and became California's youngest sitting State judge since 1990 before his election to the California State Assembly in 1994.

Judge Rogan earned a B.A. degree from the University of California at Berkeley in 1979 and his J.D. from the UCLA School of Law in 1983, where he served as a member of the UCLA Law Review.

Our next witness is an old friend—strike that. Our next witness is a friend.

“Old” has a bad ring to it, Mike. [Laughter.]

Mike Kirk serves as the executive director of the American Intellectual Property Law Association. Prior to AIPLA, he served as Deputy Assistant Secretary of Commerce and Deputy Commissioner of Patent and Trademarks from May 1994 through March 1995. In 1993, Mike Kirk also served as the Acting Assistant Secretary of Commerce and Acting Commissioner of Patents and Trademarks.

Mr. Kirk earned his bachelor of science in electrical engineering at the Citadel in 1959, his juris doctor in 1965 from the Georgetown University Law Center, and his master's of public administration in 1969 from Indiana University.

Our next witness is Colleen Kelley, who is President of the National Treasury Employees Union, NTEU, the Nation's largest independent Federal sector union. As the union's top elected official and as spokesperson for the union, Ms. Kelley represents NTEU in the media and testifies before Congress on issues of importance to NTEU members and Federal employees.

An NTEU member since 1974, Ms. Kelley was an IRS revenue agent for 14 years. She served in various NTEU chapter leadership positions, including chief steward, vice president, and president of NTEU Chapter 34 in Pittsburgh, Pennsylvania.

In August 1999, delegates to NTEU's 47th national convention elected Ms. Kelley as national president.

Ms. Kelley received a bachelor's degree in accounting from Drexel University and earned a master's degree from the University of Pittsburgh. She is a certified public accountant.

Our final witness this morning is John K. Williamson, who is president of the Intellectual Property Owners and is a past president of the Pittsburgh Intellectual Property Law Association. He has worked exclusively in the area of intellectual property law for 25 years in both corporate and private practice.

Prior to joining PPG in 1996, he had been the chief patent counsel for Westinghouse Electric Corporation and for Allegheny International.

Mr. Williamson is an adjunct professor of law at Duquesne University and has written and lectured extensively on intellectual property issues.

He received a B.S. in mechanical engineering, a juris doctor from the University of Missouri. He is admitted to practice before the U.S. Patent and Trademark Office.

Good to have all of you with us. We have written statements from each of the witnesses, and I ask unanimous consent to submit into the record in their entirety.

So if you witnesses will come forward and, as we have previously requested, if you could confine your oral testimony within the confines of our 5-minute rule, we will be appreciative.

And the 5-minute rule will be invading your area when you see the red light appear in front of you.

Why don't we start, Judge Rogan, with you?

And before you do that, let me welcome furthermore the gentleman from Florida and the gentleman from Tennessee. And with unanimous consent, the gentleman from Texas, although he does not sit on the Subcommittee, he has asked if he can sit in. We will not permit you to ask questions, Lamar. But without objection, we'll invite Lamar Smith to join us as well.

Judge Rogan, you're on.

STATEMENT OF THE HONORABLE JAMES ROGAN, UNDERSECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE U.S. PATENT AND TRADEMARK OFFICE

Mr. ROGAN. Mr. Chairman, first, I want to thank you and the Members of the Subcommittee—

Mr. COBLE. Jim, put that mike a little closer to you, if you will.

Mr. ROGAN. Mr. Chairman, I wanted to thank you and Members of the Subcommittee not only for the kind introductory remarks but also for the invitation to testify here today.

You have allowed me now to keep a promise I made just before the election of 2000. I told you all I would be back. I am here. [Laughter.]

This is not exactly what I had in mind, but a promise is a promise. [Laughter.]

Mr. Chairman, thank you. and also, Congressman Berman, thank you, as well as the Members of the Subcommittee, for your continued strong support for our agency and for intellectual property generally.

As a former Member of this Subcommittee, I know firsthand of your commitment to ensuring that the U.S. intellectual property system remains the very best in the world. Let me assure you that I will do all I can to bolster American intellectual property during my tenure at the U.S. PTO.

President Bush has set forth two primary goals for his Administration: homeland security and economic security. While our intellectual property system certainly affects homeland security by en-

couraging innovative ways to protect our country, it has a direct, vital link to our Nation's economic security.

As the Subcommittee is well-aware, intellectual property has become increasingly vital to our Nation's economy. By some estimates, IP industries represent the largest single sector of the American economy, almost 5 percent of GDP, and employ over 4 million Americans.

The increasing volume and complexity of our workload poses serious issues for the U.S. PTO. Some might even use the word "Crisis." In 1981, a U.S. News & World Report article highlighted the serious backlog of patent applications at our agency. At that time, pendency was 22 months and the backlog was 81,000.

By the time I was sworn in a few months ago, pendency was over 24 months and the backlog stood at something like a third of a million applications.

Current projections for pendency to remain in excess of 2 years and much longer in certain critical technologies should be deemed unacceptable. Our customers deserve—and the reality of our high-tech economy demands—that we provide the highest quality patent in the shortest feasible timeframe.

Issuing a quality patent is our primary goal. Issuing it in a timely manner is essential. Balancing the goals is our challenge.

Before I assumed office last year, the U.S. PTO developed a 5-year business plan as part of the Administration's 2003 budget submission. That business plan presented a traditional way to stem the dangerous tide of rising pendency.

While I consider this business plan to be an important step forward, I believe the U.S. PTO, the Administration, the Congress, and our user community can and should do much more.

With that in mind, I have begun an aggressive review of the U.S. PTO to identify new and possibly nontraditional ways to improve quality and reduce pendency. This process includes a thorough top-to-bottom review to ensure that resources are fully devoted to mission-critical tasks.

I am committed to shifting available resources to the frontline examination process to the maximum extent possible.

I also am conducting a comprehensive analysis of how we conduct our business. I believe fundamental changes in the way we do business may be required.

Some of these reforms may require the approval of the Administration, and some will require the approval of Congress. Others will involve greater cooperation with other nations, to share workload problems.

I intend to report back to this Subcommittee on what additional information we have found and will seek your support and guidance as we attempt to implement those changes.

Despite the daunting challenges facing the U.S. PTO, I'm optimistic. I view this as a time filled with opportunity. It's a chance to look at our system, determine how it should be structured, and then make it happen.

The Administration's budget request lays the groundwork for these efforts. It would give us the largest increase in our funding history and enable us to hire 950 patent examiners.

I am hopeful that the continued support of the Members of this Subcommittee, coupled with the President and Secretary Evans' firm commitment to our agency, will enable the PTO to meet the challenges that lie ahead.

Mr. Chairman, I look forward to working closely with you, with Ranking Member Berman, and the Members of this Subcommittee, to that end.

[The prepared statement of Mr. Rogan follows:]

PREPARED STATEMENT OF JAMES E. ROGAN

Mr. Chairman and Members of the Subcommittee:

Thank you for this opportunity to appear before you to discuss the operations and funding of the United States Patent and Trademark Office (USPTO). It is a pleasure to be here in my first appearance before the Subcommittee as Under Secretary for Intellectual Property.

Let me begin, Mr. Chairman, by thanking you, Ranking Member Berman, and the members of the Subcommittee for your continued strong support for our agency and for intellectual property generally. As a former member of this Subcommittee, I know first-hand of your commitment to ensuring that the U.S. intellectual property system remains the very best in the world. Let me assure you that I intend to do all I can to bolster the American intellectual property system during my tenure as Under Secretary for Intellectual Property and Director of the USPTO.

President Bush has set forth two primary goals for his Administration: homeland security and economic security. While our intellectual property system certainly affects homeland security by encouraging innovative ways to protect our country, it has a direct vital link to our nation's economic security. As the Subcommittee is well aware, intellectual property (IP) has become increasingly vital to our nation's economic competitiveness, our standard of living, and our global security. In fact, according to the International Intellectual Property Alliance, IP industries represent the largest single sector of the American economy—almost 5% of Gross Domestic Product (GDP)—and employ over 4 million Americans. Copyright industries, for example, are creating jobs at three times the rate of the rest of the U.S. economy.

As the importance of IP assets—patents, trademarks, and copyrights—has increased, so too has the USPTO's workload. Since 1996, patent filings are up over 70 percent and these levels of growth are expected to continue. In addition, the complexity of the technology and the number of claims in these applications is growing rapidly. On the Trademark front, filings in FY 2001, while down 21 percent, follow two consecutive years of 27 percent increases.

The difficulties the USPTO faces today do have historical precedent. For example, after reaching an all-time high of 35 months in 1964, patent pendency was reduced to 18 months in 1977. By 1980, however, pendency had climbed to 23 months and was projected to reach 48 months by the end of the decade if bold measures were not taken. Consequently, in 1982 legislation was signed into law to substantially raise USPTO fees. Under the able leadership of Commissioner Gerry Mossinghoff, the USPTO used these resources to reduce pendency to 18 months by the end of the 1980s. Average pendency stayed between 18.2–19.5 months until the end of 1995.

However, from 1996 through 2000, annual application growth rates of more than 10 percent and a crippling attrition rate, caused by more experienced examiners going to higher paying private sector jobs, began to take their toll, and pendency grew dramatically. Average pendency surpassed 24 months in 1999, and we expect it to average 26.5 months this year.

The increasing volume and complexity of our workload poses serious issues for the USPTO. Some might even use the word "crisis." Let me give one historical representation of how serious these challenges are. I mentioned that the patent system faced significant problems in the 1980s—this situation was highlighted in a 1981 U.S. News & World Report article entitled "Patent System a Drag on Innovation." What had led to such a dramatic pronouncement? In 1980, average patent pendency was 22.6 months. In FY 2001 it was 24.7 months, and absent a new course, it is projected to grow beyond three years. In 1980, the backlog of applications was about 81,000. By the time I was sworn in a few months ago, the backlog of applications stood at more than 330,000. I believe the challenges the USPTO faces today, while similar to the situations in the mid-1960s and early 1980s, are on a much larger scale.

The current projections—where patent pendency remains in excess of two years because of backlogs (and much longer in certain critical technologies) should be deemed unacceptable. Our customers deserve—and the reality of our high-tech economy demands—that we provide the highest quality patent in the shortest feasible timeframe. Issuing a quality patent is our primary goal. Issuing it in a timely manner is essential. Balancing those goals is our challenge.

To chart a course to lower pendency and higher quality, last year the USPTO developed a five-year Business Plan as part of the Administration's FY 2003 budget submission. That Business Plan, which was developed before I assumed office last December, presented a traditional response to attack increasing pendency and proposes a way to stem the dangerous tide of rising pendency. Under the Business Plan, the projected patent pendency rate in FY 2006 would not rise to the projected 38 months but instead would be held to 26 months.

While I consider the Business Plan to be an important step toward a long-range strategy to refocusing the agency's priorities on improving quality and timeliness, I firmly believe that the USPTO, the Administration, the Congress and our user community can—and must—go even further. With that in mind, I have begun an aggressive review of the USPTO to identify new and possibly nontraditional ways to improve quality and reduce pendency. This process includes a thorough top-to-bottom review of the USPTO to ensure that resources are fully devoted to mission critical tasks. I have made clear that I expect to see a compelling justification for every non-examination operation in the agency, and I am committed to shifting available resources to the frontline examination process to the maximum extent possible.

I also am conducting a comprehensive analysis of how the USPTO and its applicants conduct business. Fundamental changes in the way we do business may be required in order to meet the demands of today's high-tech world. Therefore, in the coming weeks I will be examining all options, including the restructuring of our fee system and workforce, in order to maximize our operations.

I intend to evaluate every way that the USPTO can improve internally, including looking at productivity. I want to seek ways that the system can be improved only with the cooperation and approval of the Administration and the Congress. Finally, I want to identify possible ways to improve cooperation with other nations and possibly share workload problems. I fully expect to report back to you what additional information we have found and will seek your support to implement the appropriate changes.

Despite the many significant and daunting challenges facing the USPTO at this time, I am optimistic. I view this as a time filled with opportunity. Because the issues facing our system are so significant, we do not have the luxury to nibble at the edges. We have before us an opportunity to look at our system, determine how it should be structured, and then make it happen. In fact, I believe we have more than just an opportunity—we have a responsibility to do just that. I am reminded of the phrase, "you can be a part of the problem or a part of the solution." I am confident that all of us here today can and will be a part of the solution.

The Administration's 2003 budget request for the USPTO lays the groundwork for these efforts.

It would give the USPTO the largest increase in its funding history.

The President's budget request would allow us to spend \$1.365 billion of the fee revenues we expect to generate, an increase of \$237 million or 21.2% over the FY 2002 enacted level. Of the \$1.527 billion in revenues we expect to collect next year, \$1.265 billion will be available to us in FY 2003. In addition, we will have access to \$100 million carried forward from FY 2002.

In effect, the President's budget provides the USPTO with the equivalent of 100 percent of our traditional fees, plus an additional \$45 million. This additional funding will enable us to: (1) hire 950 patent examiners; (2) transform trademarks to a fully electronic operation by 2004; and (3) implement the President's management agenda, including e-government, outsourcing, and workforce restructuring.

In order to fund the USPTO's and the President's priorities, the budget request includes a one-time surcharge on both patent and trademark fees that will generate an additional \$207 million in FY 2003. A 19.3 percent surcharge will apply to all patent statutory fees, including the filing, issue, maintenance, extension, appeal and revival fees. Discounted fee rates for independent inventors and small businesses will remain in effect. For trademarks, a 10.3 percent surcharge will apply to the initial filing and post registration fees.

Let me now slightly shift focus and highlight some of the noteworthy developments in the agency since the Subcommittee's oversight hearing last year.

In keeping with our goal to minimize patent and trademark processing time and enhance the quality of our products and services, the USPTO has undertaken a

number of initiatives over the last year to manage our growing workload. For example, we continue to be a leader in providing user-friendly e-government services to our customers. Approximately 30 percent of our Trademark applications are now received electronically through our award-winning Trademark Electronic Applications System (TEAS). In addition, we are in the second year of our patent Electronic Filing System (EFS). EFS currently has over 560 unique users and has received over 3,000 filings.

Our website (*www.uspto.gov*), which receives over 36 million visits each month, also continues to expand the array of services it offers. In addition to TEAS and EFS, visitors to our website can find everything from procedural updates and notices to the Patent and Trademark Manuals of Examination Procedure. Our customers also can search U.S. patents, published pre-grant patent applications, and trademarks.

Attracting and retaining top quality employees is also integral to managing our workload, and we have undertaken a number of important initiatives in this area. For example, the USPTO is a leader in government telecommuting. In fact, we have recently received awards from the International Telework Association and the Metropolitan Washington Council of Government for our achievements in this area. Currently, 122 trademark examiners and paralegals (of 295 eligible) are telecommuting three to four days a week. This represents more than 40% of the eligible workforce. Our Patents operation has also started a telecommuting pilot program one day a week for over 300 patent employees.

Lastly, I am pleased to report that the development of our new consolidated facility in Alexandria, Virginia is on track. The consolidation project took a significant step forward on December 19, 2001, when the developer, LCOR, Inc., secured financing for the project. As a result, the construction phase is officially underway. We are hopeful that we can begin the move at the end of calendar year 2003 with completion in 2005.

PATENTS

In 2001, the USPTO received 326,081 utility, plant, and reissue patent applications (UPRs), an increase of 11.2 percent over the previous year. Some of the largest increases in patent filings are occurring in the electrical technologies, which have experienced 19 percent increases in each of the last two years.

Last year we granted a record number of patent documents, including 169,576 utility, 563 plant, and 504 reissue patents as well as 17,179 design patents. Total Office disposals for FY 2001 were 239,493. Annual grants of UPR patents increased by 3.1 percent over the previous year. In 2001, the share of all UPR and design patents that were issued to U.S.-resident inventors was 54.1 percent, down from 55.2 percent in 2000. 18,843 patents were granted to U.S. independent inventors in 2001—or 19.1 percent of all patents issued.

So far in FY 2002, patent filings are running about equal to last year's level. The mail interruptions caused by the discovery of anthrax in a Washington, D.C., postal facility in October 2001 caused a decrease in our filings for about two months. However, we have recently experienced filing levels above those from 2001 and we expect to receive over 350,000 patent filings by the end of the year.

To handle the increase in our patent workload, the USPTO hired 414 patent examiners in 2001.

With 263 attritions, our end-of-year total examining staff was 3,061. With respect to attritions, I am pleased to report that our examiner attrition rate fell from 13.8 percent in FY 2000 to 8.2 percent in FY 2001. This encouraging trend is continuing this fiscal year with our projected attrition rate currently at 6.9 percent, which would be the lowest level since 1995.

Pursuant to the American Inventor Protection Act of 1999 (AIPA), the Patents operation is managing to the "14-4-4-4-36" timeliness standard. These benchmarks provide commensurate restoration of a patent term to diligent applicants when the following requirements are not met by the USPTO: (1) issue a first Office action on the merits within 14 months from the filing date; (2) respond to an applicant's reply to a rejection or appeal within four months of receipt by the Office; (3) act on an application within four months of a decision by the Board of Patent Appeals and Interferences or the federal courts; (4) issue a patent within four months from the payment of the issue fee; and (5) issue a patent within 36 months from the filing date.

In FY 2001, 74.3 percent of applications received a first Office action within 14 months of filing and 87.2 percent of patents were granted within 36 months from the filing date. Of the patents that qualified for additional patent term, the extra

term averaged 32 days. End-of-year pendency to first Office action averaged 14.4 months and total pendency averaged 24.7 months.

With regard to computer-implemented business method patents, an area that is of interest to many on the Subcommittee, business methods filings increased from 1,300 in FY 1998 to 8,200 in FY 2001. At the same time, the allowance rate for business method patents (Class 705) has decreased from 55 percent in FY 2000 to 45 percent in FY 2001. The number of examiners in Class 705 has expanded from 17 in 1997 to 120 today, and I hope to increase that number to 130 examiners by the end of this year.

As part of our on-going Business Methods Patent Initiative, since August 2000 we have tripled the number of customer partnerships (from 10 to 31) with the patent community and the software, Internet and electronic commerce industries. As part of these partnerships, we are soliciting input from our customers on additional sources of prior art that our examiners can utilize. For example, in June 2001 we published a Federal Register Notice identifying the current core databases for Class 705 to help our customers and partnership organizations understand and comment on the searching requirements in business methods. Included in the notice is a detailed description of the required mandatory search for all applications in Class 705.

I believe that these initiatives are working well, but I want to assure the Subcommittee that I will closely monitor developments in the business methods area in the event that additional administrative measures are needed.

TRADEMARKS

As I mentioned earlier, unlike the workload increases in patents, the Trademark side of our operations has experienced a decline in filings as a result of the downturn in the economy. In FY 2001, we received 296,388 trademark application classes, a decrease of 21 percent over FY 2000, and registered 124,502 classes. So far this year, application filings are about 20 percent less than a year ago.

At the end of FY 2001, pendency to first Office action was 2.7 months, the lowest level in thirteen years. Our objective is to sustain a level of 3.0 months to first Office action in FY 2002. Total pendency currently stands at 17.4 months.

To ensure that we make our operations as efficient and user-friendly as possible, Trademarks continues to aggressively move to e-government services. Reducing or eliminating the number of processing activities in the production process, with end-to-end electronic processing of trademark applications, offers the greatest potential for performance improvement. Our goal is to transform the Trademark examining operation from a paper-based process to a fully electronic operation by 2004.

The filing of trademark applications via the Internet—a key part of this initiative—increased to 24 percent at the end of FY 2001. Currently, 30 percent of trademark applications are filed electronically. Our goal is to achieve 50 percent electronic filing by the end of this year and 80 percent electronic filing in 2003. In addition to filing electronically, customers are able to search the status of pending and registered trademarks, conduct a preliminary search prior to filing an application, access examination manuals and regulations, and obtain weekly information on marks published, registered and renewed.

We intend to make greater use of electronic communications by taking steps to eliminate preferences for filing trademark applications in paper. In response to comments we received from a notice published in the Federal Register last August, we are considering two options to that end. The first is a phased approach requiring all trademark application forms to be filed electronically within 18 months of a final rule, with exceptions provided for those who do not have access to the Internet or for those filing under treaties where filing requirements have been previously established. The second option is establishing a processing fee for those who would choose to file in paper when an electronic alternative is available.

INTERNATIONAL

Let me discuss our efforts in the international arena, an essential but less well-known part of our mission. In addition to the examination and issuance of patents and trademarks, USPTO works to promote protection of the intellectual property of American innovators on both the domestic and international levels. Under the AIPA (P.L. 106–113), USPTO is directed to advise the President, through the Secretary of Commerce, and all Federal agencies, on national and international intellectual property policy issues including intellectual property protection in other countries. USPTO is also authorized by the AIPA to provide guidance, conduct programs and studies and otherwise interact with foreign intellectual property offices and international intergovernmental organizations on matters involving the protection of intellectual property.

In keeping with this directive, the USPTO continues to be active in a number of different venues to streamline and strengthen protection for patents, trademarks, and copyrights abroad. Through our Office of Legislative and International Affairs, we: (1) negotiate and implement international IP treaties; (2) provide technical assistance to foreign governments that are looking to develop or improve their IP laws and systems; (3) train foreign IP officials on IP enforcement; (4) draft/review IP sections in bilateral investment treaties and trade agreements; and (5) work with both the Office of the U.S. Trade Representative (USTR) and industry on the annual review of IP protection and enforcement under Section 301 of the Trade Act of 1974. The USPTO also serves as co-chair of the National Intellectual Property Law Enforcement Coordination Council (NIPLECC), which coordinates domestic and international IP law enforcement among federal and foreign entities.

The goal in the international arena is to move toward greater consistency in intellectual property protection around the world. Just as the Framers of the Constitution created standard intellectual property rules for the nation, we are working to develop consistent rules for the rest of the world.

In the patents area, we seek uniform treatment of patent applications and patent grants worldwide, which will reduce costs for American patent owners in obtaining and preserving their IP rights abroad. Today, the cost to U.S. companies and inventors of applying for and obtaining separate patents in individual countries is prohibitive. Therefore, USPTO is leading the effort to reform the Patent Cooperation Treaty, which implements the concept of a single international patent application. To help cut procedural red tape, we will soon submit implementation and ratification legislation for the recently negotiated Patent Law Treaty. We also are in the early stages of discussions at the World Intellectual Property Organization regarding possibilities for a more harmonized worldwide patent system. In the Trademark and copyright areas, we are working to implement international IP treaties, such as the Madrid Protocol and the WIPO Copyright Treaties.

As part of our international efforts, the USPTO focuses significant attention on the enforcement of IP abroad and combating IP piracy. Today the illegal duplication of software, music, DVDs, and other digitized information takes a toll on our economy. Last year the U.S. copyright industry reported losses of nearly \$22 billion due to piracy overseas. According to the Business Software Alliance, software piracy alone cost the U.S. economy over 118,000 jobs and \$5.7 billion in wage losses in the year 2000. By 2008, those numbers will rise to 175,000 lost jobs, \$7.3 billion in lost wages and \$1.6 billion in lost tax revenues.

Let me briefly highlight just a few of the enforcement activities we have recently undertaken.

In October 2001, USPTO attorneys conducted a one-week IP enforcement program to train IP enforcement officials from Nigeria, Ethiopia, Egypt, and various Central American countries on how best to develop an enforcement system that is compliant with the WTO Agreement on the Trade Related Aspects of Intellectual Property (TRIPs). In November 2001, we conducted two technical assistance programs in Hanoi and Ho Chi Minh City, Vietnam, on the enforcement of IP rights. The program, cosponsored with the Vietnam National Office of Industrial Property, focused on compliance with the enforcement provisions of the Bilateral Trade Agreement and the TRIPs Agreement. In December 2001, USPTO developed and conducted a technical assistance program for 16 Russian government officials on specific problems in implementing the enforcement obligations in TRIPs. Later this month, we will conduct an IP enforcement program in China geared towards prosecutors and customs officials. The programs will be held in two "second tier" cities where rampant counterfeiting and piracy problems are developing.

As the effective protection of intellectual property rights becomes an increasing focus of worldwide trade, Mr. Chairman, the demands for our Office's expertise and resources in this area are growing significantly.

CONCLUSION

Mr. Chairman, as you know, President Bush and Secretary Evans are firmly committed to ensuring that the USPTO continues to lead the world in producing the most timely and reliable intellectual property rights protection for American innovators. Their FY 2003 budget proposal for the USPTO is a powerful testament to that commitment.

I am hopeful that the continued support of the members of this Subcommittee, coupled with the Administration's dedication to our agency, will enable the USPTO to meet the challenges that lie ahead. Mr. Chairman, I look forward to working closely with you, Ranking Member Berman, and the other members of the Subcommittee to that end.

Mr. COBLE. You even beat the red light, Judge. You're very—the pressure is on you now, Mike.

Mr. Kirk, good to hear from you.

**STATEMENT OF MICHAEL K. KIRK, EXECUTIVE DIRECTOR,
AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION**

Mr. KIRK. Thank you, Mr. Chairman.

The vitality of our Nation's patent and trademark systems has steadily eroded during the last decade. Companies are increasingly being subjected to litigation on the basis of questionable patents.

Pendency is 25 months and rising. First opinions on patentability in some rapidly growing areas are not received by applicants for more than 40 months after filing.

While the office has made significant strides in creating electronic databases in both the patent and trademark operations, the internal electronic processing capabilities of the office fall woefully short of the goal of a paperless office announced 20 years ago.

Mr. Berman mentioned in his opening remarks H.R. 2047 which we strongly support. How has the Office reacted to that? The Office published its business plan in February, as Undersecretary Rogan noted. We find nothing in the plan that reveals a true appreciation of the patent quality issue, and a willingness to take meaningful steps to address it.

While we appreciate the plan's promise to hire 950 new examiners each year, the plan acknowledges that the current situation will worsen.

Finally, the plan falls far short of offering any real hope that patent operations will be processing applications electronically by FY 2006.

Turning to trademarks, it is difficult for us to evaluate the promised comprehensive internal quality review program without details. On the positive side, however, the pendency goals for trademarks are commendable and should certainly be achievable.

We are also heartened by the plan's goals to complete the transition to a fully electronic trademark operation during 2004. We are very pleased that the President has requested \$1.365 billion for the office in 2003. Unfortunately, as has been noted, the request includes a proposal to place a surcharge on patent and trademark fees with only \$45 of the \$207 million that would be raised targeted for the PTO.

Thus, the user community is being asked to accept a fee increase to generate additional revenues, only 25 percent of which are targeted for the PTO, with no guarantee that even that amount will reach the PTO to implement a plan which has serious shortcomings.

We wish to make it perfectly clear that our critique of the plan is not directed at the new management team in the U.S. PTO nor at career employees. Undersecretary Rogan had essentially no opportunity to shape the 2003 PTO budget. In addition, the lack of an appointed political leader made it very difficult for the career employees to be heard in terms of submitting an effective plan.

We are very encouraged by what Undersecretary Rogan is doing and by his characterization of the business plan published in February as "first step business plan."

On the budget request, no one will be surprised that AIPLA strongly opposes any diversion of fees, irrespective of how it is clothed.

We also oppose any fee increase by means of a surcharge inserted in an appropriations act, as proposed by the President. This procedure denies the user community any opportunity to participate effectively in the evaluation of the increase or the purposes to which it will be put. It also undercuts the role of this Subcommittee in its oversight function of the PTO.

We wish to be very clear on one point: If the current level of funding from user fees is inadequate to allow the office to achieve our desired quality, timeliness, and electronic processing goals, we are prepared to consider the fee increases needed. We would support a reasonable statutory fee increase to implement a 5-year plan that would achieve the goals that Congress and AIPLA seek.

In the long term, we believe that the perennial problem of underfunding of the PTO will be solved only by transforming it into a wholly owned government corporation. As this Subcommittee knows well, previous bills that would have corporatized the office met with strong opposition, due in large part to other features that those bills contained. We believe it is time to try once again to achieve this change, but this time with the authorities needed to effectively manage the PTO. The earlier bills, for the most part, never solved the funding problem. They never gave the managers the authority they needed to set competitive salaries to attract and retain the skilled men and women needed to provide the quality services the public desires, and they never effectively overcame the cultural constraints that placed the policy and management authority in one position. These and many other details need to be discussed and debated to develop an appropriate legislative remedy for the problems facing the PTO. If we do not pursue this or some other permanent fix, we will return here next year at this time for our annual hand-wringing exercise.

Thank you for the opportunity to be heard.

[The prepared statement of Mr. Kirk follows:]

PREPARED STATEMENT OF MICHAEL K. KIRK

Mr. Chairman:

I am pleased to have the opportunity to present the views of the American Intellectual Property Law Association (AIPLA) at this oversight hearing on "The U.S. Patent and Trademark Office: Operations and Fiscal Year 2003 Budget."

The AIPLA is a national bar association of more than 13,000 members engaged in private and corporate practice, in government service, and in the academic community. The AIPLA represents a wide and diverse spectrum of individuals, companies and institutions involved directly or indirectly in the practice of patent, trademark, copyright, and unfair competition law, as well as other fields of law affecting intellectual property. Our members represent both owners and users of intellectual property.

AIPLA'S VISION FOR THE USPTO

The AIPLA believes that a strong and effective Patent and Trademark Office is critical to maintenance of a robust economy. However, AIPLA believes that achieving that end result will require focus on three critical objectives: quality, timeliness and improved electronic filing and processing capabilities. AIPLA also believes that these critical objectives, of necessity, will only be achieved through the joint efforts and renewed commitment of Congress, the USPTO and the USPTO user community.

Quality. Quality of the patents and trademark registrations granted by the USPTO must be at the forefront of efforts to strengthen and improve the operation of the Patent and Trademark Office. Granting patents or trademark registrations that cannot withstand the rigors of a court challenge does not serve the interests of the USPTO user community. It is costly and wasteful of valuable resources that could be put to better use in other endeavors. Moreover, the existence of patents and trademark registrations that grant unwarranted rights of exclusivity may deter otherwise lawful activity by others in technical and marketing endeavors. On the other hand, the ability to protect investment in research through the grant of strong patent rights, and the ability to protect investment and development in the marketing of products under strong trademark rights, is equally critical. The AIPLA believes that efforts to strengthen and improve USPTO operations should therefore be governed in every instance by a concern, first and foremost, for improving quality of the ultimate rights granted under patents and trademark registrations.

Timeliness. Timeliness in granting strong, enforceable patent and trademark rights is also of critical importance. Long delays in granting patents, even if they are strong and enforceable, are not in the best interests of patent owners and their competitors alike. Such delays place the technology in which investment has been made at risk for undue periods of time in the face of encroachment by others. In addition, these delays subject competitors to uncertainty and stifle efforts to lawfully invent around such patent rights. Likewise, prompt indications of the registerability of trademarks are essential for businesses to plan marketing strategies to launch new products and to enable competitors to avoid infringement of others' marks. While admittedly quality on the one hand, and timeliness on the other, will at times create tension as to whether certain efforts will or will not ultimately serve to strengthen and improve USPTO operations, the AIPLA believes that both of these objectives must be met.

Electronic Filing and Processing. The United States transacts its daily commerce electronically through the Internet. Efforts to make electronic filing and processing of patent and trademark applications the norm, rather than the exception, must be redoubled. AIPLA believes that in so doing, both quality and timeliness of the patent and trademark rights granted by the USPTO will be well served.

BACKGROUND

The AIPLA believes that its vision for the USPTO is more critical than ever to the continued viability of our nation's patent and trademark system. In fact, that viability has been steadily eroded during the last decade. As this Subcommittee is well aware, the Executive Branch and the Congress have participated in diverting fee revenues from the United States Patent and Trademark Office (USPTO) since 1992. To date, approximately \$700,000,000 in patent and trademark fees paid by USPTO users have been diverted from, rescinded, or made unavailable to the USPTO. The result is that longer delays in obtaining protection for valuable new technologies and marketing efforts are increasing the uncertainty in the marketplace, and are diminishing the value of the rights ultimately obtained. And while the USPTO has and continues to make efforts to stem these increasing delays notwithstanding the budgetary strictures imposed upon it, the reality is that quality has suffered.

Large and small companies are increasingly being subjected to litigation (or its threat) on the basis of questionable patents. This undermines the confidence of USPTO users and the public in general, and threatens ultimately to undermine the position of the U.S. as a world leader in encouraging and capitalizing on the development of new technologies.

Former Federal Trade Commission Chairman, Robert Pitofsky, asked last year:

"Does the patent office have the resources to conduct a rigorous review of patent applications?; and

"Are patent grants justified in terms of utility, novelty and invention, or is the scope of patents that are granted unnecessarily broad?"

These are serious questions which we fear are not being properly addressed.

After an average total pendency for patents of between 18 and 19 months was achieved in 1989 through 1991, patent pendency has risen to 24.7 months. Today, first opinions on patentability (first actions) in some rapidly growing fields are not received by applicants for more than 40 months after filing. While the trademark goals of three months to a first opinion on registerability and an average total pendency of 13 months were also achieved in 1989, these times have generally risen through the last decade until last year. The sharp decrease in filings related to the downturn in the economy permitted the Office to turn the corner on the rising pendency to first action last fiscal year and overall pendency this fiscal year.

The electronic processing capabilities of the Office also fall woefully short of the goal of “a paperless office by 1990” announced twenty years ago. To be fair, the Office has made significant strides in creating electronic databases in both the patent and trademark operations. Examiners now have the ability to search electronically every U.S. patent from 1790 to date, along with the applications published under the American Inventors Protection Act, the patents of many foreign countries, and much of the world’s non-patent technical literature. We are on the threshold of seeing the paper search files, which are still stored in the same manner as in Thomas Jefferson’s day, finally give way to complete, accurate and robust electronic search tools. Similarly, in the trademark operation, examining attorneys have long had access to an electronic search of all federally-registered and abandoned trademarks and have moved away from using the paper files several years ago.

The trademark operation has also developed and implemented a user friendly and effective electronic trademark application filing system. Currently, nearly one quarter of all trademark applications are filed electronically, which speeds the process and reduces errors.

Unfortunately, the same cannot be said for the filing of patent applications. While the USPTO has made an electronic patent application filing system (EFS) available to applicants and has worked with applicants to instruct them in its use, the vast majority of patent applicants find the system very user-unfriendly. So few applicants have been able to master the EFS that, following the recent Anthrax problems at the Brentwood Postal Facility, the Office was forced to request patent communications to be filed by express mail, by facsimile, and by hand (in addition to electronically).

Moreover, once the twenty-five percent of trademark applications filed electronically and the very small percent of patent applications filed electronically reach the Office, the Office converts them all into paper for processing through the Office in the same manner as it always has. Communications to applicants are sent by mail and replies by applicants return the same way. If the Office receives the 368,000 patent applications and 300,000 trademark applications it has forecast for this fiscal year, on top of the existing backlogs, the Office must store, manage, and keep track of well over one million paper files. It is not hard to understand the burdens under which the Office struggles with this mountain of paper.

A NEW APPROACH

While not abandoning our strong opposition to the diversion of patent fees, we have been working with this Subcommittee to try a new approach to address the comments of the appropriators. The House appropriators observed last year in the report accompanying the appropriation bill, H.R.2500, that:

“PTO and the patent user community have continually criticized the Congress and the Administration for not allowing full access to their fees in the year they are received, yet the PTO has been unsuccessful in proving that increased funding will decrease the amount of time it takes an applicant to receive a patent. PTO bases its budget submission on anticipated fee income, which is derived from an estimation of its anticipated workload. However, there is no indication that the existing level of fees was developed based on any direct relationship to the actual costs of doing business.”

(House Report No. 107–139)

Accordingly, Chairman Coble together with Mr. Conyers and Mr. Berman introduced H.R. 2047, the “Patent and Trademark Office Authorization Act of 2002” on June 7, 2001, calling for the Office to make the type of showing requested. This legislation calls for the Director, working with the Patent and the Trademark Public Advisory Committees, to develop a five-year strategic plan that would—

- “(1) enhance patent and trademark quality;
- (2) reduce patent and trademark pendency; and
- (3) develop and implement an effective electronic system for use by the Patent and Trademark Office and the public for all aspects of the patent and trademark processes . . .”

The strategic plan is to include milestones and objective and meaningful criteria for evaluating the progress and successful achievement of the plan.

Another section of H.R. 2047 called for an accelerated effort to develop an electronic system for the filing and processing of patent and trademark applications that is user friendly and includes the necessary infrastructure (A) to allow examiners and applicants to send all communications electronically; and (B) to allow the

Office to process, maintain, and search electronically the contents and history of each application.

The House Appropriations Committee called for similar information in its report on H.R. 2500:

“ . . .the Committee directs the United States Patent and Trademark Office, in consultation with the Department of Commerce, to develop a requirements-based budget structure. This revised budget structure proposal should include the number of actual trademark examiners required to perform the examinations, the number of examiners the PTO would be able to hire and train during the fiscal year, the number of patent applications to be processed while maintaining accuracy, and a timeline and incremental budget plan for technological requirements to assist the processing of applications.”

The Senate Appropriations Committee also called for the development of such a plan in its report on H.R. 1215, Senate Report No. 107-42.

USPTO BUSINESS PLAN

The USPTO published a Business Plan in February of this year to accompany the FY 2003 Budget submission of the President. In the critical areas of quality, pendency, and electronic processing, the Plan states that the Office will:

In patents:

- Improve quality by 55% by FY 2006 by reducing the “error rate” from 6.6 to 3%
- Reduce total pendency to 26 months by FY 2006 by hiring 950 examiners
- Initiate the TEAM* project to prepare for electronic processing of applications
 - *“Tools for Electronic Application Management”

In trademarks:

- Improve quality by 50% by reducing the “error rate” from 6 to 3%
- Reduce total pendency to 12 months by FY 2004
- Complete its transition to fully electronic operation during FY 2004

The goals of the Plan need to be evaluated in terms of whether they truly meet the critical objectives toward which they are aimed. In the patent quality context, it is difficult to have confidence in a program that is in part dependent on the agreement of the judged. Before a patent application can be re-opened to prosecution on the basis of a finding of an “error” by the Quality Review Office, the relevant Group Director must agree. If a Group Director does not agree (and they do not in nearly 20% of the cases), no “error” is counted. We need the quality of the patents granted by the USPTO to convince critics such as former FTC Chairman Pitofsky that they are “justified in terms of utility, novelty and invention,” and that their scope is commensurate with the patentable contribution of the inventor.

Let me hasten to add that we fully recognize that it is easy to criticize the “quality” of patents; it is far more difficult to identify how patent “quality” can be measured, and to offer constructive suggestions to enhance quality. For this reason, AIPLA has created a special Task Force to work with the USPTO to develop some practical and effective proposals on how the Office can enhance patent quality.

We appreciate the Plan’s promise “to hire 950 new examiners each year,” but this statement must be considered in the context of the President’s Budget which calls for adding only 250 FTE patent examiner positions. We also note that, even with this promised increase, the goal in the Business Plan is to reach an average total pendency of 26 months by FY 2006, essentially making no inroads on the current situation. We would like to see more progress on this front; however, the effort to reduce pendency should not be permitted to overshadow the more important objective of patent quality. Thus, the goal of reducing pendency through increased hiring needs to be tempered by realistic measures for improving and strengthening examiner training and supervisory capacity, not simply increasing the sheer number of examiners.

Finally, we note that the stated goal of “initiating” a project “to prepare for electronic processing” of applications, absent more, falls far short of offering real hope that the patent operations will be fully electronically processing applications, from initial filing through examination and prosecution, by the end of the five-year period covered by the Plan.

Turning to the trademark side of the Office, we applaud the plans to develop “a comprehensive internal quality review program focused on improving examination quality to complement the corporate quality review program already in place,” but,

without details, it is difficult to evaluate the planned effort. The pendency goals in the trademark operation of 2 months to first action by FY 2004 (down from 3 months for FY 2002 as reported in the Plan), and total pendency of 12 months by FY 2006 (down from 15.5 months for FY 2002 as reported in the Plan) are both commendable and appear to be achievable in light of the respite in the number of trademark applications currently being filed. Finally, we have previously applauded the advancements made by the USPTO in implementing electronic filing of trademark applications. We are heartened to see the goals of increasing the number of new trademark applications filed electronically to 80% in FY 2003 and to complete the transition to a fully electronic trademark operation during FY 2004.

THE PRESIDENT'S BUDGET

The proposed budget would fund the Office at a level of \$1.365 billion. This would come from three different sources:

- (1) \$1.220 billion from existing statutory fees
- (2) \$0.100 billion from the nearly \$0.500 billion in fees classified as "unavailable" in the year they were received
- (3) \$0.045 billion from a new "one time" surcharge (which will raise \$0.207 billion, with \$0.162 billion being used for non-USPTO programs)

A major problem with the President's Budget Proposal is that there is no guarantee that the Congressional appropriators will use the revenues as proposed. They may well agree to impose a surcharge, but then use the revenues generated elsewhere. Similarly, there is no guarantee that they will make available any of the monies previously withheld.

Thus, the user community is being asked to accept a fee increase to generate additional revenues, only 25% of which is targeted for the USPTO (and there is no guarantee that even that amount will reach the USPTO), to implement a USPTO plan which has serious shortcomings.

USPTO MANAGEMENT

We wish to make it perfectly clear at this juncture that our observations are not directed at the new management team in the USPTO or at the career employees. Under Secretary Rogan did not officially assume the duties of office until December 10 of last year. It is our understanding that on his second day in office, he was given a copy of the "passback" from the Office of Management and Budget for the USPTO's budget for FY 2003. The "passback" informs an agency what level of funding the financial officials in OMB have decided to allow it to request. The budget proposals requested by the USPTO, to which the passback responds, were sent to the Department of Commerce and then to OMB many months earlier. Thus, Under Secretary Rogan essentially had no realistic opportunity to shape the operating plan or to press the case for adequate funding for the Office.

This is also not a criticism of the career employees in the USPTO. Having observed first hand what occurs when a new Administration comes into power, I can say that it is very difficult for career officials to represent adequately the interests of the patent and trademark systems to a new Commerce Department administration. The lack of an appointed political leader in the Under Secretary's position makes it very difficult for the career managers to be heard. In fact, a very good plan could have been prepared and forwarded, but then rejected: we will never know.

Of course, a roadblock that continues to plague anyone in the Office who seeks to develop an effective plan for addressing the problems confronting patent applicants, trademark applicants, and, very importantly, the public, is that the individuals who control the decisions never have to publicly justify their decisions. While no Under Secretary/Director or career official can do anything but support the position dictated by Commerce Department and OMB officials, the individuals who make those decisions never have to justify those decisions before this Subcommittee.

You have heard from Under Secretary Rogan, this morning. We are extremely heartened with what he is saying and doing at the USPTO. He has instituted a top-to-bottom review of the entire Office to eliminate duplicative, wasteful, and low priority programs. In the statement issued late last month, Under Secretary Rogan observed:

"The Business Plan was completed before I assumed office last December; in reviewing it, I prefer to think of it as a "First Step Business Plan." I am preparing to begin a top-to-bottom review of all non-examination and administrative support operations, and will expect to see a compelling justification for every non-examination operation within the agency."

We are encouraged by these comments; we hope he will be permitted to succeed.

AIPLA POSITION ON THE 2003 PTO BUDGET AND BUSINESS PLAN

It will come as no surprise to anyone on this Subcommittee that AIPLA strongly opposes any diversion of patent and trademark fees—irrespective of the clothes it wears. If there is a need for additional resources for some urgent program or service, the President and the Congress should explain that need and, if the existing tax revenues are insufficient, propose a tax increase on all citizens who will receive the benefits of such program or service. It should not be hidden away as a stealth tax increase only on America's creative community.

In addition, we strongly oppose any fee increase through the mechanism of a "surcharge" as proposed by the President. This procedure denies the user community any opportunity to participate effectively in the evaluation of the increase or the purposes to which it will be put. It also, quite frankly, undercuts the role of this Committee in its oversight of the USPTO. This procedure not only dictates the details of the operation of the Office, but also the level of contribution that users are forced to make to the general tax coffers.

Finally, we wish to be very clear on one point. As we stated at the outset, AIPLA wants the United States Patent and Trademark Office to be, simply, the best in the world in terms of quality, timeliness, and full electronic processing. If the current level of funding from user fees is inadequate to allow it to achieve this status, we are prepared to consider the increases needed. We would support a reasonable statutory fee increase to implement a five-year plan that would achieve the goals Congress and we seek.

The AIPLA looks forward to the next iteration of the Business Plan promised by Under Secretary Rogan. As previously noted, we urge that the next iteration include an action program designed to enhance patent and trademark quality. While we agree that pendency is important, especially for applicants in rapidly moving fields, the competitors of those applicants and the public have an equally strong claim to freedom from challenges based on questionable patents.

With the assurance that only quality patents will issue, we also wish to see the Office propose a detailed plan to achieve the long standing goal of 18-months average total pendency. In this regard, it is very important that the fluctuations in pendency among the various technical fields not have great disparities. Not only do rapidly advancing technologies deserve protection before obsolescence, but the public also has an interest in patents expiring twenty years after their U.S filing dates.

Finally, we urge the Office to develop an effective, user friendly, electronic filing system and an internal electronic processing system. The Office should look to every source available for assistance in developing an electronic filing system, especially the European Patent Office, which a number of observers believe has already developed such a system. The obvious savings in personnel, space, and the elimination of errors which would flow from the ability of the Office to electronically receive, process, and communicate with applicants make the prompt development of such a system an imperative.

The AIPLA recognizes that these objectives will not be attained without a price. As we have already noted, however, we are prepared to support a reasonable statutory fee increase to fund a sound plan to achieve them. This may mean that this Subcommittee should hold a follow-on hearing when the USPTO has developed its "Second Step Business Plan," perhaps in conjunction with the fee restructuring promised in the President's Budget submission.

LONGER TERM SOLUTION

As the members of this Subcommittee are fully aware, the USPTO has gone through twelve consecutive years during which it has failed to receive all of the fee revenues it collected. During this same period, we have seen the services the Office provides gradually deteriorate. Concerns about patent quality are higher now than at anytime in memory.

Congressional appropriators are not solely to blame for this situation. The Executive Branch budget proposals have similarly followed the political expedient of funding other more favored programs by suggesting the use of USPTO fee revenues. Is it realistic to expect that the USPTO can engage in sensible long range planning for major automation projects such as electronic processing when the funds available fluctuate year to year?

We believe that the perennial problem of under-funding the USPTO will be solved only by transforming it into a wholly owned government corporation. As this Subcommittee knows well, this suggestion has been raised several times during the past decade. This question has been studied by the National Academy of Public Adminis-

tration (NAPA) several times. In its 1989 study, NAPA concluded that USPTO “meets the criteria for conversion to a wholly-owned federal corporation” and “could be placed on a fully self-sustaining basis within a reasonable period after its activation.” In a follow-on study in 1995, NAPA again found the USPTO an appropriate candidate for becoming a government corporation and added that it should have the power “To retain and utilize its revenues for any purposes of the corporation.”

A number of bills that would have “corporatized” the Office were considered in the 104th(105th, and 106th Congresses, including H.R. 1659 and H.R. 3460 in the 104th Congress, H.R. 400 in the 105th Congress, and H.R. 1907 in the 106th Congress. All of these measures met with strong opposition due in large part to other features such as inter partes reexamination, prior use defense, and 18-month publication of pending patent applications. We submit that it is timely to try once again to achieve this change, but with the authorities needed to effectively manage the USPTO.

The earlier bills, for the most part, never solved the funding problem. Funding for the proposed corporation was generally subject to the flawed process that we have today. Contrary to the recommendations in the NAPA reports, these measures did not allow the corporation to actually run like a corporation where it could set its fees to obtain the funds needed to carry out its responsibilities under the oversight of this Subcommittee and a representative body of users. Although efforts were made, these bills did not, for the most part, give the managers of the corporation an exemption from title 5 of the United States Code so that they could set competitive salaries to attract and retain skilled engineers and attorneys to provide the quality services users and the public desire.

In addition, these earlier measures flirted with, but never quite overcame the cultural ties that placed the policy authority and the management authority in the same individual. The President needs an individual of his choosing to whom he can turn for advice on intellectual property questions, both here and abroad. This is a critically important and demanding, full time assignment; America’s future depends on worldwide protection of its intellectual assets. However, a \$1.365 billion government corporation responsible for the examination and grant or registration of reliable patents or trademarks also needs full time attention. Moreover, while there are dedicated public servants like Under Secretary Rogan who are prepared to serve at Executive Level II salaries to assist in conducting the President’s agenda, we should be realistic and understand that talented COO’s are not going to be attracted to a job paying that same salary and offering job security only until the next Presidential election.

These and many other details need to be discussed and debated to develop an appropriate legislative remedy for the problems which the USPTO is facing. But we need to become engaged in this exercise now. If we do not pursue this or some other permanent fix, we will return here next year at this time for our annual hand-wringing exercise.

Thank you for the opportunity to present our views. We will be pleased to work with the Subcommittee in any way we can to resolve these difficult funding and operational problems.

Mr. COBLE. Thank you, Mr. Kirk.

Mr. Williamson, before you come on, I went to the PTO office recently. Spent a couple of hours there. And I would urge any Members of the Subcommittee who have not gone down there to do so. It was an illuminating exercise for me, and I learned very much having been there, seen it hands on. And I benefited from that visit and, as I say, urge the rest of you to do likewise if you’re so interested.

Mr. Williamson? Pull that mike a little closer, if you will, Mr. Williamson.

**STATEMENT OF JOHN K. WILLIAMSON, PRESIDENT,
INTELLECTUAL PROPERTY OWNERS**

Mr. WILLIAMSON. Thank you, Mr. Chairman. I was going to say I believe the idea for your visit to the U.S. Patent and Trademark Office came from a visit that we paid to you and suggested that that would be a good idea. I’m glad that you followed up on that.

I appreciate the opportunity to testify today on behalf of IPO. As some of you know, IPO is an association of U.S.-based owners of patents, trademarks, copyrights, and trade secrets. In the world of business-speak, we would probably be known as the ultimate end-users of the products coming from the Patent and Trademark Office.

Our members account for about 30 percent of the patent applications filed in the U.S. Patent and Trademark Office by U.S. nationals and pay about \$200 million a year in fees to support PTO operations.

We acknowledge the important work being performed by the many dedicated employees of the Patent and Trademark Office and want to congratulate Judge Rogan on his appointment as Director. We strongly support his efforts to make the PTO operations as effective as possible.

And not surprising, IPO enthusiastically supports the President's proposal for a 22 percent increase in PTO funding for 2003. We believe a spending increase of this magnitude is necessary in order for the PTO to take steps to improve patent quality and to reduce the backlog of unexamined applications.

However, our support for this major funding increase is premised upon the PTO having in place a 5-year strategic plan that addresses four important issues: improving patent quality, reducing patent pendency, implementing full electronic processing of patent and trademark applications, and financing the PTO.

The 5-year plan must be cost-effective, and it must set priorities that should incorporate measurable goals and objectives that can be used by Congress, the Administration, and the user community to evaluate progress.

Improving patent quality is vital to the 5-year plan for the PTO. There is a huge cost to the economy as a consequence of granting invalid patents, a cost which is paid initially by industry but which is borne ultimately by consumers. It is perhaps time to rethink the current practice of measuring national innovation and PTO productivity solely in terms of the number of absolute patents issued annually, and time to eliminate the incentive simply to grant more patents without an opportunity for appropriate counterbalancing quality.

Patent quality in the context of the PTO requires excellence in analyzing the written description of claims; finding and analyzing the relevant prior art; applying the substantive criteria for granting a patent; and, finally, creating a reviewable record for the patent examination.

IPO members have a number of suggestions for improving patent quality, a few samples of which are given in my full statement.

The average length of time it takes the PTO to examine and grant a patent application is also a very important issue to us. Pendency now is about 26 months on average and is increasing, compared with the longtime goal of 18 months, which IPO has always endorsed.

Long pendency times cause enormously uncertain legal rights and can discourage investments in inventing, developing, and commercializing new technology. The 2003 budget proposes hiring a large number of additional patent examiners in order to reduce

pendency. We support hiring additional examiners. But given the need for also addressing quality and electronic processing of application, it appears that resources will still be very scarce.

We applaud Director Rogan's statement that he is preparing to do a top-to-bottom review of all non-examination and administrative support operations and that he will expect to see a compelling justification for every operation within the agency.

I should add that despite the need to hire more examiners, PTO investment in information technology also must be given high priority. We must give the new examiners and their colleagues the necessary tools to do their jobs effectively.

Finally, IPO strongly opposes the proposal in the President's 2003 budget to divert \$162 million in patent and trademark fees to unrelated government programs. The President's budget contemplates raising \$207 million in additional income through fee surcharges. Subject to a satisfactory 5-year spending plan and an end to fee diversion, IPO would favorably consider appropriate legislation to restructure and potentially increase patent and trademark fees.

We cannot at this time, however, support an increase in fees merely to facilitate more diversion of fees.

I want to commend Chairman Coble, Ranking Member Berman and the other Members of the Subcommittee for their excellent work in overseeing the PTO. Thank you.

[The prepared statement of Mr. Williamson follows:]

PREPARED STATEMENT OF JOHN K. WILLIAMSON

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to testify today on behalf of Intellectual Property Owners Association (IPO). I am the current President of IPO. My company, PPG Industries, Inc., with headquarters in Pittsburgh, is an IPO member, and I am the Chief Intellectual Property Counsel for the company. The views I am expressing today are those of IPO.

IPO is an association of U.S.-based owners of patents, trademarks, copyrights, and trade secrets. Our members include about 100 American corporations that are among the largest patent filers in the United States and worldwide from all major industries. Our members file about 30 percent of the patent applications that are filed in the U.S. Patent and Trademark Office (PTO) by U.S. nationals, and pay about \$200 million a year in fees to support PTO operations.

We view the PTO as one of the most important agencies in government, vested with the responsibility for making correct and timely determinations on whether to grant patent and trademark rights in order to encourage invention, innovation, and investment. The PTO has a highly dedicated and competent staff of professional employees who have worked very hard to maintain and increase the level of excellence in granting patents and registering trademarks during a time when the PTO's workload has skyrocketed. We want to note that the PTO is in very capable hands under the leadership of its new Director, the Honorable James E. Rogan, and we congratulate him on his appointment. We strongly support Mr. Rogan's efforts to make the PTO operations as effective as possible.

As patent owners, our members want to obtain high quality patents that can be relied upon. We need to avoid surprises arising from prior art that was overlooked by the PTO or other issues that may not have been properly considered by the PTO. Equally important, when our members are commercializing new technology, they want certainty as to the scope and validity of patent rights of other parties. And we want a patent system that operates at a reasonable cost. Similar considerations apply to trademark registrations obtained by IPO members and their competitors.

MORE RESOURCES FOR THE PATENT AND TRADEMARK OFFICE

A year ago when IPO testified at the annual PTO oversight hearing held by this Subcommittee, we said the PTO was likely to be in crisis soon if it was not there

already. We were concerned about patent quality, and about backlogs of unexamined patent applications that were climbing out of control, with a projected patent application pendency of 38.6 months by 2006. The prospect of American companies waiting on average over three years to obtain a patent was unacceptable. Such delays would cause huge uncertainty about legal rights in new technology. And last year no relief was in sight.

This year, while the situation is still very difficult, and we are still deeply concerned about patent quality, the Administration's 2003 budget for the PTO provides some hope for improvement. The proposed record 21.2 percent increase in funding for 2003, together with Director Rogan's comprehensive review of all PTO operations, causes us to believe the PTO may have a chance of obtaining the resources it needs to do its job.

IPO enthusiastically supports the 21.2 percent increase in funding, which would raise spending to \$1.365 billion in 2003, a level that for the first time in many years actually would be somewhat higher than projected fee income, if fees remained at their current levels. We believe a spending increase of this magnitude is necessary in order for the PTO to take steps to improve patent quality and to work down the backlogs of unexamined applications.

Our support for a such a major funding increase for the PTO, however, is premised on the PTO having finalized a 5-year strategic plan for (1) improving patent quality, (2) reducing patent pendency, (3) implementing full e-processing of patent and trademark applications, and (4) financing the PTO. Completion and implementation of such a 5-year plan, with greatest emphasis on patent quality, is an urgent matter.

SUGGESTIONS FOR 5-YEAR PTO PLAN

The recommendation for a comprehensive 5-year strategic plan—stressing enhanced patent and trademark quality, reduced patent pendency, and an effective electronic system for use by the PTO and the public for all aspects of patent and trademark processes—was first made in Chairman Coble's bill H.R.2047, which has passed the House and is awaiting action in the Senate. That bill contains an excellent outline of the components for a 5-year PTO strategic plan, and we strongly support its enactment.

The plan must be cost effective and set priorities. It should seek accountability and feature measurable benchmarks that can be used by Congress, the Administration, and the user community to evaluate progress.

Patent Quality

Measuring and improving patent quality is vital to any 5-year plan for the PTO. Industry and inventors cannot be confident about the status of legal rights in technology without high patent quality. There is a huge cost to the economy from invalid patents, which is paid initially by industry but is borne ultimately by consumers. It is time to rethink the current practice of measuring national innovation and PTO productivity simply in terms of the absolute number of patents issued annually. Quality must become an integral part of these metrics.

Quality is an elusive concept with many facets. In essence, patent "quality" in the context of PTO work is the degree of excellence achieved by the PTO in (1) analyzing the written description and claims, (2) finding and analyzing the prior art relevant to the invention that the applicant is seeking to patent, (3) applying the substantive criteria for granting a patent, and (4) creating a reviewable record of the patent examination.

To illustrate what we are talking about, the following are examples from the many suggestions that have been made by IPO members and others for possible actions the PTO might take to improve patent quality:

- Insure that the PTO is able to recruit, train, and retain the best possible examiners and supervisors.
- Establish performance goals for examiners that will incentivize and reward superior quality, in addition to rewarding superior production.
- Expand the current business method patents "Second Look Initiative" to all classes of patentable subject matter.
- Reduce the number of patent examiners assigned to each Supervisory Patent Examiner to allow for more "hands on" supervision.
- Adopt procedures to ensure that an accurate and detailed record is made of all patent prosecution proceedings.

- Review whether the appropriate level of resources is being devoted to reclassification of search files, and promote international cooperation on harmonization of patent classification systems.
- Develop plans to use patent searches from other patent offices to save examiner search time.

In order to improve patent quality, the PTO also should plan to improve its capacity to measure quality. Measures of quality should be as objective as possible. Results of quality measurements should be published and used to drive improvements in quality. To measure quality, for example, the PTO could:

- Track reviews of examined applications conducted by the PTO or an independent outside organization and publish a detailed error rate index.
- Track changes in the confidence level of specific industries in the validity of patent granted in their industries as indicated by polls conducted by the PTO or an independent organization.
- Track patents for which a reexamination request was granted and claims were cancelled or amended, and patents in court litigation in which claims were invalidated.
- Track the number of and reasons for rejections of patent applications that are reversed by the PTO Board and the Court of Appeals for the Federal Circuit.

Patent Pendency

Patent quality is the most important issue for IPO members. The average pendency time of patent applications in the PTO, however, also is a very important issue. Pendency is now at about 26 months and climbing, compared with the long time goal of 18 months, which IPO has always supported. Pendency was last close to 18 months in the mid-90's. Long pendency times cause enormous uncertainty about legal rights in new technology and discourage investments in the inventing, developing, manufacturing, and marketing of new products and services. Reasonable pendency time often is as important to manufacturers who are utilizing technology as it is to the patent applicant. The continued viability of the patent system requires both high quality and reasonable pendency time.

Moreover, pendency times of the magnitude now being experienced are resulting in automatic extensions of the life of many patents under the American Inventors Protection Act. Data presented at a meeting of the Patent Public Advisory Committee in March showed that 26 percent of patent applications are not receiving a first action within 14 months after filing, which is needed to avoid an automatic extension of the patent term. This is inconsistent with the Congressional decision that patents should generally expire 20 years after filing.

The 5-year plan must include measures for reducing pendency time and keeping it under control. The PTO's recent Business Plan that give details of the proposed 2003 budget calls for hiring a large number of additional patent examiners in order to reduce patent pendency. We support the hiring of the additional examiners, but given the need for also addressing quality and e-processing of applications, it appears that resources will still be very scarce. We applaud Director Rogan's statement that he is "preparing to begin a top-to-bottom review of all non-examination and administrative support operations, and will expect to see a compelling justification for every non-examination operation within the agency."

We note our concern, however, about a statement in the 2003 PTO Business Plan, prepared before Director Rogan took office, which indicates that the PTO expects to ask Congress for authority to allow applicants to opt to defer the examination of their applications. The business plan estimates that this would allow the PTO to avoid ever examining 10 percent of applications and free up resources to reduce pendency time of other applications. In principle, IPO is opposed to deferred examination, which creates uncertainty over patent rights in pending applications that have not been examined. Instead of deferred examination, the PTO needs a 5-year plan for substantially accelerating the examination of all patent applications. In response to the proposal in the PTO Business Plan, however, IPO will undertake a review of its position on deferred examination.

Electronic Processing

Despite the need to hire more examiners, PTO investments in information technology cannot be neglected. It appears that the PTO has had to forego information technology expenditures to focus on current workloads. The e-filing system for trademarks is proving very effective, but a great deal of work is needed before the PTO reaches the objective of an electronic system for use by the PTO and the public for

all aspects of the patent and trademark processes. H.R. 2047 properly requires this objective to be a key part of the 5-year strategic plan.

DIVERSION OF \$162 MILLION TO OTHER PROGRAMS

The President's 2003 budget proposes to withhold or divert to unrelated government programs \$162 million in patent and trademark fees. We believe the members of this Subcommittee already agree with us, but we want to take the opportunity to strongly reaffirm our opposition to withholding or diversion of patent and trademark fees. The PTO should have access to all of its fees collected in the current year and previous years.

This is a subject that we have raised with this Subcommittee and the Appropriations Subcommittee every year since fee withholding began in 1992. By the end of 2003, according to current projections, nearly a billion dollars will have been withheld or diverted. IPO believes this practice of withholding or diverting fees is a primary cause of the situation in which the PTO now finds itself.

We continue to support H.R.740 (Coble) and H.Res. 110 (Berman), which propose to limit or eliminate the authority of the Appropriations Committees to withhold fees. In the long term, this type of legislation may be the only way to assure adequate PTO funding. User fees in the PTO account in the Treasury are funds that have been paid by American corporations and inventors for specific services that they expect to receive.

We are opposed to an increase in patent and trademark fees only to enable more fee withholding. Indeed, if the previously unavailable fees are merely temporarily withheld, as accounting records indicate, then the previously unavailable funds should be made available to the PTO as a part of the 5-year plan.

PROPOSED PATENT FEE SURCHARGE

The President's 2003 budget proposes a 19.3 percent patent fee surcharge (i.e., an across-the-board fee increase) and a 10.3 percent trademark fee surcharge, to raise \$207 million. As we view it, \$162 million of that surcharge is being diverted to other government programs. The budget also indicates that there is a forthcoming "fee-restructuring" proposal to support the PTO's 5-year plan and goals and objectives, to be effective in 2004. The fee restructuring, as we understand it, will include a fee increase.

Subject to a satisfactory 5-year spending plan and an end to fee diversion, IPO would favorably consider appropriate legislation to restructure, and potentially, increase patent and trademark fees. The PTO should include the details of such fee legislation in its 5-year plan. Accordingly, at least for the present, IPO opposes the proposed 19.3 percent patent fee surcharge and 10.3 percent trademark fee surcharge for 2003.

We offer our assistance to the Subcommittee in working to find an acceptable financing plan for the PTO that will enable the PTO to improve patent quality, reduce patent pendency and implement full e-processing of patent and trademark applications. PTO users should not face the threat that any increase in fees will be accompanied by continued diversion of fees to unrelated programs.

PATENT REEXAMINATION LEGISLATION

We would like to reiterate our support for H.R.1866 and H.R.1886, bills developed by this Subcommittee that have passed the House and are awaiting action in the Senate. These two bills will improve the statute governing patent reexamination proceedings in the PTO, and passing them is one of the actions that can be taken to improve the quality of patents. Patent reexamination, based on earlier patents and publications that have a bearing on the validity of a patent, is a relatively quick and inexpensive proceeding for eliminating uncertainty about the validity of a patent. We hope these bills can be enacted in this Congress.

I want to commend Chairman Coble, Ranking Member Berman and the other members of the Subcommittee for their excellent work in overseeing operations of the PTO. I will be pleased to answer any questions.

Mr. COBLE. Thank you, Mr. Williamson.

And we have been joined by the other gentleman from California, Mr. Issa. Good to have you with us.

Ms. Kelley.

**STATEMENT OF COLLEEN KELLEY, NATIONAL PRESIDENT,
NATIONAL TREASURY EMPLOYEES UNION**

Ms. KELLEY. Thank you, Chairman Coble, Representative Berman and Members of the Subcommittee.

As the national president of the National Treasury Employees Union, I very much appreciate the opportunity to be here today.

NTEU represents over 2,300 employees in two bargaining units at the U.S. Patent and Trademark Office. The employees of Chapter 243 are involved in all phases of the patent and trademark application process, from handling the mail, to other tasks directly related to the adjudication of the patent and trademark applications.

The Trademark Society, Chapter 245, represents the attorneys who process trademark applications. With me today are Ollie Pearson and Amy Perkins, vice presidents Chapter 243, and Howard Friedman, the president of Chapter 245.

The PTO's employees are vital to the successful operation of the office, and they can and should play an important role in increasing efficiency and productivity.

Agency management and the American public are very fortunate to have this dedicated, progressive, and innovative workforce. They are extremely computer literate, professional, and open to new ideas.

Two years ago I testified before this Subcommittee, and I said that PTO was an agency in crisis. I stated that the Office was grossly understaffed for its growing workload and that pendency for applications was at an unacceptable level, and that turnover of staff was entirely too high. Some things have changed, at least on the trademark side, and let speak to that first.

Thanks to cooperative labor-management relationships, the leadership of Director Rogan and past directors, and the ongoing interest and support of this Subcommittee, the situation is much improved at the trademark office.

Staff turnover is down and customer satisfaction is heading in the right direction. Greater efficiency is being achieved thanks to labor-management initiatives such as electronic filing, flexiplace, and flexible work schedules.

I believe the trademark office has turned the corner. But it will take ongoing attention to stay on course.

The resources proposed in the President's budget for trademark will provide an opportunity to reduce trademark pendency and to address those challenges.

One example of a near-future challenge is the proposed Madrid Protocol, which, if adopted, will require significant changes at the trademark office. Resources need to be allocated so that employees can be trained and prepared for those changes.

Additionally, the trademark office needs to direct resources to improving the quality of trademark registrations. As the national economy improves, even greater numbers of trademark applications are likely. And now is the time to put in place systems to improve the quality and the efficiency before the trademark office is overwhelmed with new work.

On the patent side, as we have already heard, staffing and inventory problems exist. Pendency will continue to climb even next year with increased resources in the President's proposed budget.

American inventors deserve better. The Federal Government has an obligation to see that the inventors receive patents in a timely manner. And for reasons of privacy and accountability, the work at the PTO should not be contracted out to private, commercial entities. Funding is needed to provide services that inventors expect and deserve.

And, of course, last of all, I would like to address the issue of the proposed surcharge on the patent and trademark application fees. NTEU certainly supports setting the fee for patent and trademark applications at a level which produces the needed revenues to run the agency properly. But as has already been noted, under the President's proposal, \$163 million of the revenue will be diverted to the general revenue.

NTEU has objected to this diversion in the past, and we object to it today. We believe that PTO should keep all of the revenue from the fees it collects. The Administration has said that these monies are needed for homeland security. NTEU fully supports every authentic initiative for homeland security at our borders, our airports, our seaports and across the country. But this surcharge will be deposited into general revenue and is not dedicated to any particular program from these diverted fees.

With these diverted fees, if it were retained by PTO, PTO could give the customer speedier and higher quality service, more staff could be hired, better training could be implemented, and improved retention incentives could be developed.

Mr. Coble, you and Mr. Berman have been very outspoken on these issues, and I know we can count on your continued leadership, help, and support.

Again, I appreciate the opportunity to be here and look forward to any questions you might have.

[The prepared statement of Ms. Kelley follows:]

PREPARED STATEMENT OF COLLEEN M. KELLEY

Good morning Chairman Coble, Representative Berman and members of the House Judiciary Subcommittee on Courts and Intellectual Property. My name is Colleen Kelley. I am the National President of the National Treasury Employees Union (NTEU). I very much appreciate the Committee's invitation to be here today to present our Union's views on the operation and proposed budget of the U.S. Patent and Trademark Office (PTO).

NTEU represents more than 2,300 employees in two bargaining units at the U.S. Patent and Trademark Office. The employees at NTEU Chapter 243 are involved in all phases of the patent and trademark application process—from handling mail, to other tasks directly related to the adjudication of the patent and trademark applications. The Trademark Society, NTEU Chapter 245, represents the attorneys who process trademark applications. In the audience today, are Amy Perkins, Vice-President and Legislative Coordinator of NTEU Chapter 243, and Howard Friedman, President of NTEU Chapter 245, our two units at PTO.

As the Subcommittee is well aware, the Patent and Trademark Office plays a critical role in the development of new industries in our economy. PTO's employees perform the quasi-judicial function of adjudicating patent and trademark applications—an inherently governmental function that appropriately belongs in the public domain and is of Constitutional authority. The American public and business community place great importance on the registration of patents and trademarks in the United States as a key to the protection of valuable intellectual property rights.

The PTO's employees are vital to the successful operation of the Office and can and should play an important role in increasing efficiency and productivity. Agency management and the American public are very fortunate to have the young, progressive and innovative workforce represented in NTEU's bargaining units. They are extremely computer literate, professionally savvy and open to new ideas.

Mr. Chairman, two years ago I testified before this subcommittee. At that time I told you that PTO was an agency in crisis. I stated that the Office was grossly understaffed for the growing workload it bears, that pendency for applications was at unacceptable levels and that turnover was at an intolerable magnitude. You may wonder what I think today.

Let me first speak to the trademark side. Thanks to cooperative labor-management relations, the leadership of the current and past directors Todd Dickinson and James Rogan, and the poking and prodding of you and Mr. Berman, the situation is much improved at the Trademark Office. Staff turnover is down and customer satisfaction is heading in the right direction. Further, greater efficiency is being achieved thanks to labor-management initiatives such as electronic filing, flexiplace, and flexible work schedules.

I believe the Trademark Office has turned the corner. But having turned the corner, let us not reverse course. Pendency in trademarks is starting to creep up. With the resources proposed in the President's budget, we have a chance to reduce trademark pendency. This is the right step, but many challenges remain. One example of a near future challenge is the proposed Madrid Protocol, which, if adopted, will require significant changes at the Trademark Office. Resources need to be allocated so that employees can be trained and prepared for these changes. Another challenge is the need to retain experienced and skilled staff and for the agency to invest for the long term in its human capital. Additionally, with the advances the Trademark Office has had on some fronts, it needs to direct resources to improving the quality of trademark registrations. Mr. Chairman, let us move to address these challenges now. As the national economy improves, even greater numbers of trademark applications are likely. Let us put into place systems to improve quality and efficiency before the Trademark Office is overwhelmed with new work.

While on the trademark side, things are getting better presuming PTO stays the course,

I cannot say the same on the patent side. Pendency will continue to climb next year even with the increased resources in the President's proposed budget. American inventors deserve better. Patents are the institutional protection of intellectual property rights. The ability to lay claim to the fruit of one's intellect is a basic right and one of the examples of positive rights mentioned in our Constitution. The federal government has a fundamental and Constitutional obligation to see that inventors receive patents in a timely manner. I would emphasize that the Constitution gives this obligation to the government. For reasons of privacy and accountability work at the PTO should not be contracted out to private, commercial entities.

Let me also point out an issue that may be otherwise overlooked. The PTO will be moving to new facilities in Alexandria in 2003. NTEU is in a partnership relationship with PTO management regarding space allocation and other issues concerning new space PTO will occupy after the move. We are confident the new facilities will provide an environment in which our members can work efficiently, productively and safely. We have already come to agreement with management on important issues such as space allocation and look forward to the many benefits this new site will offer. As much as I think the issues around the move have been a model of labor-management cooperation in the federal sector, even in the best of circumstances, office moves are disruptive to employees. Commuting patterns change and car pools dissolve. We must make sure that this does not result in the loss of productive and experienced PTO employees.

Finally, I would like to address the issue of the proposed surcharge on patent and trademark application fees. NTEU certainly supports setting the fee for patent and trademark applications at a level which produces the needed revenues to run the agency properly. I must note however, that under the President's proposal, \$163 million of the revenue from these fees will be diverted into general revenue. NTEU has objected to this diversion in the past and we object to it today. We believe that PTO should keep all of the revenue from the fees it collects. The Administration has said these monies are needed for homeland security. NTEU fully supports every authentic initiative for homeland security at the border, in our airports, through the movement of currency or any other means. But to be honest, this surcharge is simply deposited into general revenue and is not dedicated to any particular program. It is unfair to the inventors that they pay a fee for a service they are not getting the full benefit from. With the resources from these diverted fees, our members could give the customer speedier and higher quality service, more staff could be hired, better training could be implemented and improved retention incentives could be developed. Mr. Coble, you and Mr. Berman have been very outspoken on this. We need your continued leadership.

Mr. Chairman, I appreciate the opportunity to testify today. I am happy to answer any questions you or the members of the committee may have. Thank you.

Mr. COBLE. Thank you, Ms. Kelley.

We impose this red-light rule against us as well. You all have complied very favorably.

Let me start with Mr. Williamson and Mr. Kirk. Gentlemen and panelists, you all and the Subcommittee have one thing in common, if not more: We want the PTO to succeed.

What is the reaction of the user—I think you've touched on this, but I want to reiterate it for emphasis.

What is the reaction of the user community to the surcharge and fee restructuring proposals in FY '03 budget without having a compelling 5-year plan in hand, A? And if your members are not willing to make a leap of faith in the absence of such plan, are there circumstances in which they could support the proposed fee increases?

Mr. Williamson, why don't you start off? And then we'll hear from Mr. Kirk.

Mr. WILLIAMSON. Well, as stated in my testimony, and maybe more lucidly in the written testimony, we are opposed to the surcharge as it's currently proposed. It's probably best stated by one of our members who, in discussing the proposed increases with his chief scientist, received the response that we must pay what we are charged to protect our technology in the U.S. through patents; however, every dollar I give you is a dollar that I cannot spend on research and development. That from the chief scientist of a major construction equipment manufacturer, who is competitive internationally and accounts for a favorable balance of payments to the U.S.

As to the second part of your question, we understand that some of the things that we're asking for has a price tag. And our members are willing to pay that price tag, provided that we can be guaranteed that we are going to get, in return, what is promised to us.

Mr. COBLE. Mr. Kirk?

Mr. KIRK. Mr. Chairman, AIPLA cannot support the surcharge under the current conditions. We have yet to see a 5-year plan that gives us the encouragement we need to agree to an increase in fees. Of course, as I indicated, any increase in fees should not involve a diversion of fees to some other agency. But at this point, that's not even an issue, because the 5-year plan has not shown us any compelling need.

Like Mr. Williamson, however, we would be prepared to support an increase in fees for a 5-year plan that provided the quality, timeliness, and electronic processing goals that we have.

In this regard, AIPLA congratulate the Undersecretary. I am aware that he has started a team to—not only took at the top-to-bottom review of the PTO to eliminate any nonproduction-type activities that may not be affordable at this particular time, but also to look at developing a 5-year plan which, it is my understanding, at least, and I stand to be corrected, is targeted for roughly the June time frame to be available.

And we would think that, if it were possible to perhaps have a review of that plan in the June time frame, then it might be appropriate to come back and revisit a statutory fee increase to support

those parts of the plan that we felt and believed were going to accomplish our goals.

Thank you.

Mr. COBLE. Thank you, sir.

Would each of you, starting with you Judge Rogan, summarize the ongoing success of the ongoing effort to make the PTO paperless agency? Now, I think I'm correct in assuming that the trademark sphere is doing a better job with regard to electronic filing, assuming I am correct there.

And along these lines, why are the patent filers are experiencing problems with the electronic filing system at the agency?

Judge, if you would respond to that?

Mr. ROGAN. Mr. Chairman, during my time at the agency, what I have been hearing from our management and also from the user community essentially is this: It's been very difficult to plan ahead on the patent side for moving to a totally paperless office because of the uncertain funding stream and the type of investment that has to be made up front.

The decision had been made to essentially deploy that on the trademark side first. We're moving in that direction.

And in fact, under the President's budget submission, it would enable us to have a fully automated trademark operation by 2004. The decision was made to try to work the kinks out on the trademark side first before fully deploying on patent side. Under the circumstances, I think that was a wise decision.

But the Administration is fully committed to moving to an electronic operation on both sides at the earliest possible date.

Mr. COBLE. Thank you, sir.

My time has expired, but we will have a second round.

Mike, I will get to you on the second round.

Mr. Berman?

Mr. BERMAN. Thank you, Mr. Chairman.

A couple of issues that have been raised from the outside, and Judge-Congressman-Commissioner-Undersecretary Rogan — [Laughter.]—I was wondering if you could react to them.

One is on the issue of the business plan and—to the calendar year 2002. You filled 750 new positions at full-year cost \$770,600; 500 of these positions were for new examiners, who make about \$50,000 a year. For the other 250 staffers, then people say, "Well, that leaves an average of \$210,500. Yes, we want to upgrade the quality and hire the best people, but that seems like a high per capita rate."

Can you give us an explanation of how this adds up and where the money is going?

Mr. ROGAN. The short answer is no. And it's not because I don't have it available; it's because if I read it into the record, I'm not sure it would explain it to you.

I understand where the question is coming from, Congressman Berman. And we've actually looked into getting the appropriate answer for you.

It has to do with OMB's forward hiring mathematical accounting calculations. I can assure you that there are a number of examiners at the PTO who probably deserve to earn a quarter of a million dollars for the work we do, but we operate under title 5.

I will be happy to get for you, from our CFO, the actual accounting explanation of how all of those figures work.

Mr. BERMAN. Great. I can understand any explanation that puts the blame on OMB. [Laughter.]

We've all talked about going to an electronic filing system. We get complaints about PTO plans to get rid of the paper files of patents. People complain that electronic files are incomplete, particularly with regard to foreign patents, or they're unusable. Some claim that PTO is violating statutory mandates contained in the AIPA.

Can you address these concerns?

Mr. ROGAN. We're sensitive to the requirements under the American Inventors Protection Act. Last year, I understand, they had two public comment periods. We're going to have an open forum some time in May to allow further public commentary. We have published a Federal Register notice that we would like to remove the paper in the public search room and rely on the other formats that are available, such as CD-ROM, electronic searching, DVD, and microfilm.

The truth of the matter, Congressman Berman, is that the paper takes up an inordinate amount of space. It eats up an awful lot of resources. If somebody removes paper to photocopy it, the file is therefore incomplete anyway.

And to those folks who just don't want to move to an electronic system, they won't be able to do a search there that's complete anyway, because ever since March of 2001, when we went to the 18-month publication, all of those applications are only stored in the public search room in electronic format. So for them to do an electronic search, they would have to—for them to do a full search, they would have to do it electronically anyway.

Mr. BERMAN. Thank you. My last question for you on this time, because I think it will be running out fairly soon, is, do you think it's consistent with the spirit and philosophy behind the Contract for America to take the patent fees and divert them to general fund purposes, as opposed to spreading those costs over the taxpayers generally.

Mr. ROGAN. Congressman Berman, thank you for that question. [Laughter.]

The Administration believes that, at this time, a 1-year surcharge would be appropriate, particularly because of homeland security and homeland defense issues.

The President has proposed a one-time surcharge that would give the PTO what would be the equivalent of all of its statutory filing fees, the first time that I believe that's occurred since it went on to become a fee-based institution. And of course, the balance the President would like to see appropriated to homeland security and homeland defense.

Mr. BERMAN. Well, I have a little more time. On the issue—and I do appreciate and I think I acknowledged in my opening statement the importance of the President's budget, but that it still leaves, under a different name, the fundamental diversion problem.

I'd like to ask Ms. Kelley, though, one of the—there's a bit of an inconsistency in the budget submission. One of the arguments for the surcharge is to cover the retirement, full retirement costs for

the U.S. Patent and Trademark Office employees. Then, of course, we note that a substantial amount of that money from the surcharge will go to homeland security.

What does—well, you sort of told us what you think of the diversion. But at this point, what is your opinion about the proposal in the context of retirement security for Patent and Trademark Office employees?

Ms. KELLEY. We are opposed to the requirement of funding retirement in the agency budgets. And we have been briefed by OMB, and we have expressed our concerns at every opportunity, because all this proposal does is really call for an accounting movement of money, if you will. And it only provides that the money will be funding in the agency's budget for this first year. After that, it's not clear that the agencies will be provided with funding to in fact continue to absorb those retirement costs.

So we believe that should not be occurring, and that the system that's currently in place to fund those through OMB, through other OMB vehicles, is what should remain in place.

Mr. COBLE. Thank you, Mr. Berman.

The gentleman from Tennessee.

Mr. JENKINS. Thank you, Mr. Chairman.

And, Mr. Rogan, welcome back to the Committee. You've had some nice compliments here on your work, and I'm sure those are going to continue.

You mentioned that it may be time to make some changes in the basic ways that you do business in your office. We've heard that thought expressed before in this Committee by folks who have been here from the office and who've testified. Are you far enough along in your analysis of what needs to be done that you could outline for us any of those very basic changes that you feel, at this point, we should look at and possibly make in the future?

Mr. ROGAN. Congressman Jenkins, it would be premature for me to do that at this point. I recently was able to coax back to the PTO a gentleman by the name of Brad Huther, who spent about 32 years at the PTO and is known by all here at the table with me. He spent, I think, the last 4 or 5 years at WIPO.

And he has just undertaken the lead role, in the last week or so, of putting together a working committee where we have been able to start really diving into that. And I'm afraid it would be premature and probably unfair to the individuals who are working on that if I attempted to go any further than that right now.

May I just say, while on—

Mr. JENKINS. Judge, are you relying on the fifth amendment, too? [Laughter.]

Mr. ROGAN. Well, as a former Member of this Committee, I know how that's been used.

I don't want to give anybody the impression that I'm somehow distancing myself from the business plan that has been submitted. Quite frankly, Congressman Jenkins, under the current structure of the PTO, that may be about as good as it gets. If it ends up that the government and the user community are unwilling to take a real hard look at the way we do business there, then we have to deal with some very basic facts.

And the facts are that we will get this year about 350,000 new applications. We will have 3,200 examiners to review them, and we have about 350,000 files sitting in the backlog.

Every examiner gets about 20 hours per application. We will issue about 176,000 patents, and it will just get worse.

Unless we are going to take a look at the structure under which Thomas Jefferson used to examine these patents over 200 years ago, and take a real hard look as to whether we can do better in the 21st century, that business plan may well be about as good as it gets.

Mr. JENKINS. How long is it going to take to make a determination?

Mr. ROGAN. I'm hoping that we'll have a preliminary outline to share both with the Administration as well as with Congress in the next month or so.

Mr. JENKINS. Okay.

Mr. ROGAN. But I'm a very cautious fellow, Congressman Jenkins. Before I spend 212 years of practice, I at least like to take a month to give it some thought. [Laughter.]

Mr. JENKINS. Thank you.

Mr. COBLE. I'm sorry. I was talking to Mr. Berman. You've finished, Mr. Jenkins?

The gentlelady from California?

Ms. LOFGREN. Thank you, Mr. Chairman, and also Mr. Berman. I appreciate that we are having this hearing today, and that the witnesses are all here—all of your testimony was useful and enlightening.

I have, and I know Mr. Rogan was frustrated when he was sitting on this side of the room. And now he's on the other side, probably also still frustrated that we can't seem to get ahead of the problems that the agency faces in terms of backlog. And that's despite everybody really being in agreement that we need to put the resources in, and people working hard. We're not getting to where we need to be.

And as I look at the proposal and the resources available, as you've just mentioned, Jim, it's going to get worse. It's not really going to get better, best-case.

So I very much support your looking at reinventing the way we do business. Obviously, I've got to reserve judgment, depending on what it is, but clearly it's not just working faster. It's working smarter, it's working differently, that we need to look at.

Having said that, the idea that we would up the fees to divert them is very offensive to me. And I really think—you know, as I was listening, really what that is, is it's a tax. I mean, if it were going into the operation, it would be a fee. But if it's going to be diverted, it's a tax. And of all the things that we would want to single out in this country, to tax inventions is craziness. I think it's just—I mean, let's tax bullets instead.

I mean, taxing the engine for the economy is a crazy thing to do.

And so I was captivated, Mr. Kirk, by your suggestion that we revisit the idea of a separate corporation and do only that, strip out the things that drove some of our colleagues crazy on the floor and maybe seriously pursue that.

And I'm wondering, if I could, Ms. Kelley, I don't know if you're authorized to speak for your association, but what would the employees say if we were to seriously, in a collaborative way, put renewed emphasis on a government corporation that would, by its structure, prevent this kind of diversion?

Ms. KELLEY. Well, I think, in general, the—I would need more information about what that would like, obviously.

Ms. LOFGREN. Of course.

Ms. KELLEY. And I know there have been past looks, and I'm very interested in what Mr. Kirk suggested.

But in general, on the question of employees' interest in being involved in change, and a pretty drastic change, I have found Federal employees to be very, very interested in being a part of the change process, rather than having change happen to them and being told what will happen. They are very interested in playing a role in defining how the agency, how the office, can do its work better.

Most recently, NTEU has been involved with the IRS in the largest reorganization of a Federal agency that's ever been undertaken. And frontline employees, NTEU and the IRS, work together and have been for a number of years to not only look at the structure and reorganize in accordance with a law that was mandated by Congress but also to look at processes and literally reengineer processes of how the work of the IRS is done. And that work is ongoing.

And I believe that the employees represented by NTEU at PTO would welcome the opportunity to be fully engaged in that kind of a venture and to build something better for the inventors as well as for themselves as employees in the office.

Ms. LOFGREN. Mr. Kirk, we made an effort with H.R. 400 a while ago, and fell short despite our very best efforts on the Committee. And I think, unfortunately, one of the key elements was the structure that really I think were not the gist of the objections to our colleagues.

What is your vision of what would be in the stripped down structure version that you alluded to in your testimony? What would the elements be?

Mr. KIRK. I would see, first of all, the structure fundamentally being changed. The position of Undersecretary of Commerce for Intellectual Property would be separated from the Director of the United States Patent and Trademark Office. They are both full-time jobs. I think it's inappropriate and unwise, really, to ask a single individual to try to hold down both those jobs and do them both well. I think it's an impossibility.

We came very close to having a structure like that during the restructuring discussions, but, unfortunately, we were not able to make it.

I think the Undersecretary position has to be a political appointment to serve the President, to advise the President on intellectual property issues domestically and internationally. It's a very important full-time job.

The management of the Patent and Trademark Office is also a very important full-time job. You're talking about a medium-sized corporation with a \$1.3 billion budget with 7,000 employees. That is a serious management task that takes full time.

I don't believe the two jobs can adequately be done together.

Secondly, I think title 5 needs to be relaxed. The employees in the Patent and Trademark Office need to be paid their value. Right now, we're losing patent examiners and trademark examiners to private practice because we cannot keep up with the private sector salary demands. They get paid less, considerably less, than their counterparts in the European Patent Office, and their counterparts' pay is tax-free. It is no wonder that we lose people and there's constant turnover.

It's inappropriate, I think, to have the positive employment situation that we have right now that results from the fact that we've just been through a mild recession. We should not have to rely on that to make this occur.

The most important thing of all, in my opinion, however, is to deal effectively with the funding issue. As long as the funds have to go through the Department of Commerce and the Office of Management and Budget and the Appropriation Committees, I see no end of diversion and no real opportunity for the office to improve itself.

Mr. COBLE. The gentlelady's time has expired.

The gentleman from California.

Mr. ISSA. Thank you, Mr. Chairman.

Returning to what the gentlelady from California had said earlier, since the obligation of the government to provide for patents, trademarks, and copyrights to their inventors for an exclusive period of time in order to promote their continuation is an obligation of government, Mr. Rogan—Jim, you've got so many titles, I'm not sure anybody knows which one to use anymore. But "Mr. Secretary" is the one I'll use for now.

Would you say, not as a member of the Administration, but sort of if you were back on this side, would it be fair to say that—

Mr. ROGAN. I'm starting to wiggle uncomfortably in my chair, Congressman. [Laughter.]

Mr. ISSA. Well, then I'm doing what I need to do.

Would you say that it is fair to say that if something is a constitutional obligation, and if you divert a fee, then you are taxing a constitutional obligation, and, thus, perhaps violating the original intent within the Constitution that this be a service provided for which there was no statement that it could be taxed in the—while you were providing it?

Mr. ROGAN. Congressman Issa, thank you for the question. I've learned long ago never to sit at a Committee hearing table and start to preach to Members of the House Judiciary Committee my opinion of the Constitution. It cost me my job the last time I did that. [Laughter.]

Mr. ISSA. Thank you, Mr. Secretary. I'll take that as a yes, you agree— [Laughter.]—it would be inappropriate to tax a constitutional obligation of the government.

And so I would second the gentlelady's statement that, although I'm not sure we can talk about taxing bullets in this particular Committee, but that in fact this diversion of funds, it's just flat wrong and should be reconsidered by the Administration.

But switching gears for a moment, as you probably know, I have about 36 of my own patents. My company has quite a few beyond that. And I'm concerned that there doesn't appear to be, as part of

the ongoing reform, an effort to reduce the number of patents granted; that, in fact, we have a pervasive problem within your agency, which is that there's a belief that the applicant is entitled to a patent. And as a result of that, the patents you grant have a tendency not to be upheld in court.

Now, we could go through categories of companies, and we could look at pharmaceutical companies of very large size versus a small inventor, but are you doing something under your leadership to do a reality check on the patents you grant and particularly the patents that you re-exam and affirm that are later not upheld by the CAFC?

Mr. ROGAN. Congressman Issa, that certainly is nothing unique to my limited leadership, my temporary—or, my 4-month leadership, rather, I should say, at the office. That has been the standard for all of my predecessors, Democrat and Republican.

I'll give you a perfect example of that. There was a lot of criticism after the Supreme Court essentially opened the floodgates for business method patents. At that time, some 60 percent of the patents were being granted. My predecessor, Todd Dickinson, stepped in and instituted a number of reforms, such as further education of the examiners and bringing that education from private industry in partnership with them; instituting a second look on all business method patents.

In fact, right now, because of the—and significantly increasing the number of examiners from I think 16 or 17 back a couple years ago to about 120 now.

We reject now almost, I think, something like 60 percent of those business method applications.

The fundamental principle behind the United States Patent and Trademark Office is, in relation to patents, is to make sure that we do not give that right of exclusivity that the Constitution contemplated unless someone's invention is new, useful, non-obvious, non-infringing, and meets all of the statutory guidelines. And if we fail in that regard, the statutes allow for a reexamination.

That opens another area that I think is ripe for discussion, as to whether our current reexamination procedures are adequate or whether those should be reformed.

This Committee has been in the forefront, with Chairman Coble, Mr. Berman, Congresswoman Lofgren, in that area. And those have been bills that the PTO has supported and have been working very closely with, irrespective of who was the head of the PTO or who was the President at the time.

Mr. ISSA. Just one follow-up question. If you had some of those funds that are not being diverted, would you say it was fair to put some of those funds into improving the quality circle, if you will, of: You grant a patent; it goes out there; it gets challenged; it goes to court; it fails to prevail, if you will; and bringing a loop back in to find out where the mistake, if there was one, was made, whether it was too little time being spent on it or some other problem that led to a patent that ultimately, under the light of day, did not survive.

Mr. ROGAN. Congressman Issa, I'll take it a step further than that. When all is said and done, after all of the reviews and all of the restructuring proposals have been unveiled and rolled out, if at

the end of the day it really comes down to deciding whether we're going to put out a patent quicker for the sake of pendency of we're going to take longer to ensure quality, while I am Director, we will always err on the side of quality.

Mr. ISSA. Thank you.

Thank you, Mr. Chairman.

Mr. COBLE. The gentleman's time has expired.

By the way, folks, as I said before, I think this warrants a second round, so we will have a second round of questions.

The gentleman from Florida.

Mr. WEXLER. Thank you, Mr. Chairman.

I think Ms. Kelley's comments were very apropos in terms of reviewing what you said about 2 years ago, in terms of your characterization of the condition at the Patent and Trademark Office. And I think it bears repeating in some sense, in that we have obviously made great strides, as you have said. And in that regard, I compliment everyone that has been a part of the process and also share the compliment with Secretary Rogan.

It seems obvious to me—one of the things that I enjoy very much about intellectual property is that the issues are rarely partisan, if ever, so it gives us an opportunity to objectively evaluate people's performances without respect to partisanship.

And I think you've got an incredible opportunity as an individual to transform an agency whose economic ramifications are so extraordinary. And I think you've brought a degree of energy, a refreshing degree of energy, and a degree of sensitivity to this process that will greatly enhance your ability to do innovative things.

And I think the idea or reference that Congresswoman Lofgren made, for instance, is something that I think you should pursue in a very bold fashion.

And in the context of the kinds of changes I think you've talked about, I would just highly encourage you to be as aggressive as possible, because I think you've got now a scenario where all the parties that are related to it will support you in your efforts after you've had time to consider them.

And I think it bears noting that the increase to 21 percent is significant. And I congratulate everyone for obtaining it. I hope it's the first of many.

And I think that you'll be very sensitive and very critical in terms of how that money is spent. And I think you've heard some very good comments today from the Committee Members as to the division of the money and so forth.

I just, without going on and on, I just want to make the point that, at least from this one Democrat's point of view, you've got an opportunity that's incredible, and I support you in your efforts.

Mr. ROGAN. Thank you.

Mr. WEXLER. And I think the President made a very good choice in terms of you, in terms of bringing about a lot of change.

I guess I would make one other observation, and I know you know this or appreciate this. Intellectual property issues are not just extremely important in California and North Carolina. They're very important in South Florida; they're very important in many parts of the country where the institutions are not as strong.

And I would highly encourage you, in my limited experience in talking with people in my community that are involved in the process, one of the things they feel is that they're very isolated from the opportunity of participating. And to the degree you have the opportunity, if you as an individual, as a leader in this process, can go out to the communities, and it's a small universe of people, and just present yourself and talk about your ideas, I think you would—and I think you've done this already—but I think you would find an incredible reception, and it would do an enormous amount of positive good for particularly the smaller people in the process, if they had an opportunity to hear from you at their associations as to the changes you're hoping to make. And I think that would generate a lot of—a groundswell of support that would help the political process as well. So I would encourage you to do that.

The one question I would ask of you is, as it relates to the piracy issues, international piracy issues. At the end of the game here 2 years from now or 3 years from now or whenever that is, what would you hope that we, the Committee and you together, could accomplish in terms of protecting American rights overseas? And how would you suggest we go about doing it?

Mr. ROGAN. I'm first compelled, Congressman Wexler, just to thank you for your very gracious comments. That means a lot to me, and I appreciate it.

If you saw my travel schedule, and the number of IP groups before whom I speak, you would agree with my wife. She thinks I'm going through congressional withdrawal. [Laughter.]

Piracy is a fundamental responsibility, not just of the U.S. PTO but clearly for the Administration as a whole and the United States Congress. One of the things I keep reminding people is that it is my job to help protect American intellectual property. And nowhere is American intellectual property more threatened than the areas of piracy and infringement.

And you certainly don't need a lecture from me as to how that is playing out on the worldwide stage.

I don't want to go beyond the red light, Mr. Chairman. I will—

Mr. COBLE. You may finish your response.

Mr. ROGAN. From an agency perspective, we're working with multiple agencies across the government, from Customs to the United States Department of Justice, with the USTR. We're working at numerous fora, from WTO, WIPO, and trying to work as closely as possible with all of our counterparts, to make sure that we get as tight a rein on that as possible.

Mr. WEXLER. Thanks.

Mr. COBLE. Mr. Wexler, you just mentioned piracy.

Folks, piracy and these diversion tactics are going to make an old man out of me. Strike that. I am an old man. [Laughter.]

But piracy and the diversion tactics are accelerating me chronologically. [Laughter.]

And I hope we can resolve both of them. It's going to be a full day's work.

The distinguished gentleman from Utah.

Mr. CANNON. Thank you, Mr. Chairman.

I'd like to associate myself with some of those remarks by my associate from Florida, Congressman Wexler. This is a matter of

great opportunity now in the transition that we have going on. I think it bodes well.

And I'm thrilled to have you over there, Jim. It's nice to have you back. I think you're a great choice for the job, and you're doing a great job.

John left; I was just going to point out it was bad enough for you to go, but to take the brains with you and take John Dudas was maybe a little over the edge. But you can pass that on to him when he gets back in.

You have a huge job. You and the PTO are largely responsible for the orderly processing and legitimizing of innovation in this country. And you have this job in an age where the pace of innovation is increasing exponentially.

Moreover, when you don't have the resources to do your job to process innovation and invention quickly, it creates a bottleneck that slows technological process on a massive scale in America and creates a backlog.

I know that you have a budget request this year that you back, and you must deal with the Appropriations Committee, too. But hypothetically, if you're allowed to retain an even greater percentage of the fees collected by the PTO this year, what would be your top priorities for additional funding?

Mr. ROGAN. I think if you look at the President's budget request, Congressman Cannon, you'll see where the top priorities are. And he's right on target.

The amazing thing is that the Administration recognizes the importance of American intellectual property and the function of the PTO even in these heightened days of national security concerns. I'm told that most non-homeland defense, non-defense related budgets, have been increased across the board about 2 or 3 percent. The President is recommending a 21.2 percent increase for the U.S. PTO.

And those funds, if we get them, will go directly into hiring more examiners, trying to move to an electronic file wrapper as quickly as possible, and modernizing the PTO so that we cannot only keep up with the pace of technology but that we'll be able to start addressing the backlog.

But having said that, it will not be a silver bullet in 1 year, 2 years, 3 years, 4 years. You could let us hire 10,000 new examiners today and pendency would go up because we have to pull experienced people off the line to train new examiners.

And when we lose one, it's not like we can replace them if you lose a hamburger-maker at McDonald's. It's not 20 minutes of training. It takes about 6 years before one new examiner can sign off on a patent without supervisorial review.

And so it requires a sustained investment for us just to tackle the backlog that we're facing, not to mention what I expect will be a continued increase.

Mr. CANNON. I agree with Mr. Kirk's assessment earlier stated about the importance of paying these examiners in a way that will allow you to retain them. That seems to me to be the key, especially considering the intense training, and then their increased demand out in the market where companies are looking to hire.

Let me ask you about the move toward electronic filing, how that's proceeding. I've had a couple of visits over the year or so with lawyers in the IP field who have cited a study on electronic filing at the PTO, and that study showed that while great strides have been made toward the initial electronic filing of applications, the processing once a filing arrives is not electronic at all.

In fact, it was shown that sometimes a filing went through 60 separate human touches in hard copy form from the time it arrived electronically to the time it reached the patent examiner's desk.

To your knowledge, have we made any progress since you've arrived toward actually processing the filings electronically once they arrive and eliminating some of the hard copy shuffling that was cited? And if not, is this also a question of inadequate resources to upgrade your system?

Mr. ROGAN. I had indicated earlier that the decision had been made before my arrival to essentially role out the entire process on the trademark side. And that's what the PTO has been attempting to do.

We're hoping to have it fully automated by 2004. They've been making tremendous strides in that regard.

It's been slower on the patent side. The patent side is far more complex. And if there are bugs in the electronic filing and application system, we would prefer to find them out on the far less expensive—in an area where there were far less resources committed, where the fix would be much easier.

We have a wonderful fellow named Doug Bourgeois who came over from FedEx who is leading our IT program over at the U.S. PTO. He's bringing a business model to it.

Beyond that, I've asked Brad Huther, who is heading up the team looking at restructuring, to look at other alternatives. Are there technologies that are already on the shelf being used in other major offices that we might be able to license or get our hands on that will allow us to move quicker in this area?

I said earlier that one of the difficulties that bedeviled my predecessors was the inability to plan in advance for what would be—to be able to plan in advance to upgrade systems when the system relating to funding was always in question.

Mr. CANNON. Thank you, again. It's a pleasure to have you back with the Committee, one way or the other.

Mr. ROGAN. Thank you, Congressman Cannon.

Mr. CANNON. I yield back my time, Mr. Chairman.

Mr. COBLE. Thank you, Mr. Cannon.

The gentlelady from Pennsylvania.

Ms. HART. Thank you, Mr. Chairman.

I apologize for my temperamental attendance today. We have a markup in Financial Services.

I want to thank the panel as well for dealing with this. And if I'm a little redundant in my questioning, I apologize. But I believe that the gentleman from California has properly briefed me.

Regarding technology development in the United States and some of the, I guess, the really growth spurt that we had during the '90's, I understand the Patent and Trademark Office is extremely busy with new innovations. Has there now, as a result of

the economic downturn, been a downturn in the actual applications for new technology patents?

Mr. ROGAN. On the patent side, Congresswoman Hart, filings are flat. Right now, they're about where they were last year. It's hard for us to tell whether that is from any downturn economically or as a result of September 11th.

We've been dealing with a very practical problem post-September 11th, dealing with the United States mail service delivery. We've had to encourage filers now to use FedEx or some other method to try to get their applications to us because, for months and months, hundreds of thousands of letters apparently directed to the PTO were diverted off to Ohio. They sat on flatbed trucks for months to be irradiated sometimes three, four, five, six, seven times. And by the time we do get them, many of them on diskettes, are coming in warped and unusable. We have to then contact the applicant and have them start afresh.

And so I'm not sure how much—I guess what I'm saying is, we're not really able to put our finger on whether that is why they're flat at this time or whether there are some economic factors involved on the patent side.

Ms. HART. With the current flat situation, is there still a very large need for new examiners, then?

Mr. ROGAN. Yes, a huge need.

Ms. HART. Even if you don't see an increase or any kind of spike in the upcoming years, you need—I don't know. The number that's been tossed around is like 950 more people. Is it that many?

Mr. ROGAN. That's what the President's budget would allow us to hire. That doesn't mean we expect to net 950, because there will always be a natural attrition rate.

I think the estimates, if we were able to hire them in this fiscal year, would be about 700. But as I explained earlier—I'm not sure that you heard it—hiring an examiner, it's not like hiring somebody for a food service job, because the amount of training and experience that has to go into preparing them involves years. It takes about 6 or 7 years before one is able to just sign off on a patent on their own.

And so for those examiners that we bring on board, even if we brought on a 1,000 a year this year and next year, we might even see a drop initially in pendency because we have to pull experienced examiners off the line to train the new examiners.

So it is a very complex process that involves a commitment to investing in the examining corps and helping us to retain experienced examiners, because when we lose them to the private sector, it's more than just losing one person and replacing them with another. There is a tremendous economic cost to our government.

Ms. HART. Okay, thanks.

And I guess this next question I'm going to direct really to anybody on the panel. And I apologize again if you've discussed it already, because I believe you have to some degree.

But the issue of quality—and, basically, there have been some indications, especially some complaints, that quality has become a problem at the U.S. Patent and Trademark Office, not necessarily recently.

But I think maybe from the organizations that would represent applicants maybe the answer.

Can you explain to me what they mean by that? And has it been addressed in the new Administration?

Mr. KIRK. Ms. Hart, I think the issue of quality, first of all, in terms of what it means: It means that a patent has issued with claims in that patent that are not valid in view of prior information—called “prior art”—that exists that the examiner may not have found or that may not have been in the files. A patent could also be found to be invalid in court because there’s an inadequate disclosure of the invention.

There are many reasons why a patent could be found to be invalid.

The concern that exists is that—there appears to be, because of the turnover the office has experienced with constantly having to bring on new examiners, train them, get them up to speed, there continues to be examples of patents that should not have issued.

And I think right now that, within the user community, we are 100 percent in agreement with the statement that Undersecretary Rogan made regarding quality first. If you have to choose between quality and pendency, quality first.

We have got to establish some means by which to bring quality up. How will we do that? I know that within AIPLA we have established a task force to work with the PTO to address this issue. In fact, we’re meeting with them tomorrow morning. The task force that we’ll be meeting with is headed by Brad Huther, the individual that Undersecretary Rogan has mentioned.

We would endorse efforts to think outside the norm. It was mentioned that, in the business method patent area 705, they’ve established a second-look technique, so that every patent that issues goes through a second pair of eyes before it leaves the organization to become a patent. That has caught numerous situations where there was an error that was called back and corrected. Maybe this is a technique that needs to be expanded more broadly into other troublesome areas or maybe across the board.

Another area to look at is the span of control of supervisory examiners. If you have a small unit called an art unit, which is the basic management unit in the PTO, and you’ve got 15 examiners with 11 or 12 of them brand new, it’s unrealistic to think they can get adequate supervision by their supervisory primary examiner. Maybe what we need to do is shrink the size of the art units to allow better supervision, to allow better training.

There are a number of steps of this nature that could be taken. They all have a price tag. And we are looking forward to working with the office to design the most cost-effective way to deal with the patent quality issue.

Mr. ROGAN. Mr. Chairman, may I just follow up on that for 30 seconds—

Mr. COBLE. Sure.

Mr. ROGAN [continuing]. Because I think it’s important that everybody understand this.

I will be coming forward with some proposals, both for the Administration and for Congress and for the user community. But ultimately, we’re not trying to propose things that just sound good

for us in government. The purpose of these proposals are so that we can treat the PTO like a business that is servicing customers, and our customers are seated—represented here at the table.

If it's not going to work for them, then it certainly doesn't do me or the Administration or the Congress any favor to start making structural changes that are going to be of no benefit to those who are depending upon the service that we are supposed to provide.

Mr. COBLE. The gentlewoman's—

Ms. HART. Thank you. I'd like to say, with that philosophy, it sounds like you're on the way to, you know, answering everybody's concerns.

I want to thank you, Mr. Chairman.

Mr. COBLE. Thank the gentelady.

And, folks, I hate to impose inconvenience upon you all, but I want to have a couple more questions. We have three votes. I assume it'll be one 15 and two 5s, so if you all will rest easy, we will return imminently.

And without objection, I want to have the Ranking Member of the full Committee's statement, the gentleman from Michigan, Mr. Conyers, his statement will be made a part of the record.

[The prepared statement of Mr. Conyers follows in the Appendix]

Mr. COBLE. So you all rest easy, and we will be back shortly.

[Recess.]

Mr. COBLE. Folks, I apologize. My comment was correct. It was one 15 and two 5s; I didn't know the 15 was going to run into 30. But we're back.

I felt this was important enough to go a second round.

Mr. Kirk, your body language told me you wanted to insert your oars into the water regarding the electronic filing question I put to the judge.

Mr. KIRK. The one comment that I wanted to add, I think the electronic filing system, I believe the question you put was whether or not—what our reactions and views were on that. And I would share the views of I think of a lot of users, that the patent electronic filing system is lacking, it is very difficult to use, and it obviously needs a great deal of work.

I think there are reasons why it is where it is. Among those reasons I think is what I would call a rapid turnover in the position of Commissioner of Patents and Trademarks at the time, now Undersecretary and Director, because each new Commissioner had his own view as to how that should work.

Funding is an issue, because if you get lots of funding for a given year, you can gear up to begin moving in the direction of letting contracts and bringing people on to design and implement an electronic processing system in the office. The following year, the funding is not there; you cannot renew the contracts; you have to let the people go. So you're on a constant yo-yo, which makes it impossible, I think, to really design this kind of a system.

The other thing I would mention is that it is my understanding is that the PTO is looking now to work with the European Patent Office on their electronic filing system, to try to, in effect, work-share and come up with a common system. The European system I think is somewhat more advanced than what we have here in this

country. And I think that kind of cooperative endeavor should be fruitful.

And certainly, we look forward to seeing what results come from that.

Mr. COBLE. I thank you, sir.

Ms. Kelley, you stated in your written testimony that you oppose outsourcing work at PTO. Now, I think—I may stand corrected, but I think there's very limited outsourcing going on right now. I don't think there's that much going on. Is that correct, first of all?

Ms. KELLEY. My understanding is that is correct, Mr. Chairman.

Mr. COBLE. Okay. How about elaborating a little bit in more detail, Ms. Kelley, on your concerns about this?

Ms. KELLEY. Where it is occurring now, as far as I know, seems to be in areas like information technology. We have concerns about that, about any work of the Federal Government that is being performed by contractors, and we will look into that.

But the bigger issue of competitive sourcing is—and my concern comes from the Office of Management and Budget's recent directive to each agency to look at positions on their FAIR list of commercial activities and to competitively source 5 percent this year and 10 percent next year.

And one of the things that I wanted to have on the record was the concern that the work of PTO is work that I believe is exactly the kind of work that should always be done by the Federal Government and by Federal employees.

Mr. COBLE. In-house? In-house, you're saying?

Ms. KELLEY. Yes. Yes.

Because I believe that if Federal employees and agencies are provided with the appropriate budgets, with the appropriate training and support, there's no one who can do the work of the Federal Government better. So the concern is just ensure—keep this is as a visible issue and ensure that that work continues to be done by Federal employees.

Mr. COBLE. I thank you.

Judge Rogan—well, strike that. I'm going to ask it a different way.

Will you be tying the fiscal year '04 fee restructuring to the 5-year plan?

Mr. ROGAN. Yes.

Mr. COBLE. Good. I think that's a good idea to do that.

Finally, let me ask Mr. Kirk, Messrs. Kirk, Williamson, and Rogan this question. In which technical fields are pendency rates most acute? And what, in your opinions, is the best way to eliminate or reduce such fluctuation?

Mr. ROGAN. Well, if I may, Mr. Chairman, I think, hearkening back to something Mr. Kirk said before the break relating to title 5, that could be an area where we could get a lot of help.

For instance, we have the most acute pendency problems in the electrical arts. Part of that is something Congress and the PTO cannot fix. We graduated last year I think about 60,000 electrical engineers here in the United States of America. Law firms are very competitive for those engineers, and I think our starting salary is somewhere around \$40,000 or so a year. We have a signing bonus

up front to try to get the, but we simply cannot compete with the private sector. And that's one of the problems we have.

The average pendency right now, across the board at the PTO, is about 2 years, but in the electrical arts, it's over 3 years, because we just simply don't have the talent that we need to attack that.

Mr. COBLE. Anybody else want to be heard on this?

Mr. KIRK. I would just like to second the comment about title 5.

Right now you have lawyers graduating from the top law schools with an engineering background, some going into clerkships and then going into private practice.

Many of these recent graduates going to work for law firms where, were they to take the Undersecretary's job, they would have to take a pay cut. That's wrong.

Mr. COBLE. I don't disagree with that.

Ms. KELLEY. Title 5 surely is an issue that NTEU would be willing talk about to address issues, human capital issues, at PTO.

But I think we need to take a step back in that the whole issue of Federal pay goes a step below even the title 5 issue. There is such a gap today in the Federal pay comparability system by every estimate and every study—what was supposed to happen, based on a bill passed by Congress in 1990, was to close that gap that exists between the Federal employee pay system and the private sector.

Today that gap is somewhere between 16 and 30 percent, no matter what the occupation and what the location is. And I would hope that Congress would address the issue of the gap between the private and Federal sector as a first giant step. And it would be a giant step that would begin to address some of the very valid issues that are being raised in addition to the question of title 5.

Mr. COBLE. Well, folks, I want to thank you all for your attendance today, your appearance. I apologize for the belated return.

Mr. Rogan, I think you have heard from the Members of the Subcommittee: You have our support.

Mr. Kirk, always good to see you.

Mr. Williamson, it's good to have you and Ms. Kelley here.

You all know that our door remains open. You need no visa to come acalling on us, and I hope we don't need visas to come acalling on you.

The Subcommittee very much appreciates your contribution today.

This concludes the oversight hearing on the U.S. Patent and Trademark Office operations and fiscal year 2003 budget. The record will remain open for 1 week.

Thank you again, and the Committee stands adjourned.

[The prepared statement of the International Trademark Association follows in the Appendix]

[Whereupon, at 12:12 p.m., the Subcommittee was adjourned.]

APPENDIX

STATEMENTS SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE HOWARD COBLE, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF NORTH CAROLINA

“Good morning. The Subcommittee will come to order.

“Today we will review the operations of the Patent and Trademark Office in light of the Administration’s budget submission for fiscal year 2003. As I stated at our last oversight hearing on PTO, it pains me that we must continue to address the ongoing diversion of agency funds to other government programs. Our witnesses understand how this harms PTO operations, and ultimately how it can harm that sector of our economy which is dependent on the creativity of inventors and trademark owners. Once more, I pledge that our Subcommittee will work in a bipartisan manner with those in the intellectual property community to do whatever is viable and necessary to reverse this trend.

“That said, I am a realist, and realistically speaking, I do not believe that the appropriators will cede their authority to control PTO funding in the near future. We can no longer afford to chant the same mantra of more money. To my mind, the agency will be better positioned to acquire greater appropriations if it can do a better job of demonstrating how it is using available resources to meet clearly defined objectives, which ultimately means improving quality and reducing existing pendency rates and backlogs.

“Speaking of money, the Congress cannot blindly endorse a request by the Administration to raise patent and trademark fees as a stop-gap or even long-term solution to this problem. Anyone who has reviewed the fiscal year 2003 budget request for PTO is aware that it contains a recommendation that Congress apply new one-year surcharges to existing fees: 19% in the case of patents, and 10% for trademarks. I will be most interested to learn whether the user community endorses this request. Will implementing this change really reduce pendency and backlogs, or will it merely subsidize other government programs?

“In closing, I emphasize that I retain the highest confidence in Director Rogan to help us solve these problems. There is no doubt in my mind that he is the person best suited to lead the PTO into the 21st Century.

“I look forward to the testimony of the witnesses here this afternoon, and I now turn to the Ranking Member from California, Mr. Berman, for his opening statement.”

PREPARED STATEMENT OF THE HONORABLE HOWARD L. BERMAN, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman,

I am happy to join you for our annual, oversight hearing on the operations and budget of the Patent and Trademark Office.

I welcome our former colleague, the distinguished PTO Director and Undersecretary of Commerce, in his first appearance before the Subcommittee on which he served. He is to be commended for sacrificing his lucrative private practice to take on the difficult challenge of running such a large and complex agency.

I also welcome our other witnesses, some of whom are quite familiar to the Subcommittee, having testified before us many times. Your willingness to appear here and continued engagement on these outwardly mundane issues is much appreciated.

This year, I think we have cause for a muted celebration. It appears that our collective efforts over the past few years to secure adequate funding for the PTO have had measured success. Based on the pressure applied by relevant stakeholders testi-

fyng today, the PTO itself, and many Members of Congress, the President has submitted an FY 2003 budget that recommends the PTO have use of all its projected fees. This request indicates our message has finally gotten through: Without adequate funding, the PTO cannot carry out its critical role in stimulating innovation, technological advancement, and business growth.

Unfortunately, this forward movement comes with a price. The Bush administration has not repealed the innovation tax, it has simply renamed it a "surcharge."

The Bush Administration's FY 2003 budget request proposes a surcharge on patent and trademark fees. This surcharge, which will generate \$162 million to be used for non-PTO purposes, would be almost 20% on patent fees and over 10% on trademark fees.

In other words, the Bush Administration does not end the fee diversion, or innovation tax, of which we have long complained, it simply raises the fees so it can have its cake and eat it too. I do not intend to place the blame entirely at the feet of the Bush Administration, because there is no reason to believe our appropriators will end the practice on their own initiative. Indeed, we need remain vigilant lest they attempt to divert more.

To be sure, the surcharge approach to diversion is an improvement over the previous situation. It is still not the preferred course, however. Ideally, there would be no innovation tax regardless of whether it was called a carryforward, diversion, or surcharge.

I believe the surcharge approach is not an adequate solution because it will not solve the pendency, quality, staff retention, and technology problems facing the PTO. For instance, even assuming that the PTO has use of all its projected fee income through 2006, the FY 2002 Corporate Plan of the Department of Commerce still predicted that patent pendency would increase to 38.6 months by FY 2006. I'll repeat that: Even if the PTO can keep all its projected fees, patent pendency increases from about 24 months to nearly 39 months.

Whether 24 or 39 months, such patent pendencies are too long. Such pendencies hamstring the ability of inventors to commercialize their innovations, and when combined with increased fees, may even persuade inventors to rely on trade secret protection rather than patenting their inventions. This result would be the worst outcome, as it would deny the public, other inventors, and researchers the benefits of public disclosure of innovations.

For these reasons among others, Chairman Coble and I have insisted that the PTO complete a 5-year strategic plan. This strategic plan, as proposed in H.R. 2047, would set a course for the PTO to achieve its critical mission by improving patent quality, reducing pendency to reasonable levels, and increasing PTO efficiency. We look forward to receipt of this strategic plan, and look upon it as a key to demonstrating that patent and trademark fees bear a direct relationship to achievement of the PTO mission.

In conclusion, I believe the President's FY 2003 Budget request doesn't keep a bad situation from getting worse . . . it just keeps it from getting a lot worse. While we can feel some optimism that, throughout 2003, the PTO will not fall further behind in achieving its mission, I do not believe surcharges are an adequate permanent solution to the challenges the PTO faces.

Thank you again, Mr. Chairman, and I yield the balance of my time.

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF MICHIGAN

I'd first like to commend our former colleague and current Director of the PTO, Jim Rogan. In a short time, he has done a wonderful job of addressing the challenges facing American inventors.

The U.S. Patent & Trademark Office always has played a crucial role in America's economy. The last decade has seen an unprecedented boom in technology, due mainly to the invention of new technologies and patents granted on them by the PTO. The importance of patents to technological advancement is evidenced by the rapid increase in the number of patent applications. As our economy grows and technology advances, our oversight over the PTO becomes even more important.

Past oversight indicated that we needed to streamline the PTO. We were able to accomplish that to a certain extent with the American Inventors Protection Act of 1999. Among other things, the bill restructured the agency to make it more efficient and effective at examining patents and registering trademarks. Unfortunately, the PTO still faces obstacles to becoming completely efficient.

As you all may be aware, the PTO takes no money from taxpayers; instead, it is fully funded by user fees and generates approximately \$1 billion per year in reve-

nues from those fees. This success has been an Achilles' heel—appropriators take advantage of the revenues and treat the PTO as a cash cow, diverting hundreds of millions of dollars of fees every year for other government programs. That diversion is making it exceedingly difficult for the PTO to hire or even retain qualified examiners.

But these are not just concerns about personnel and efficiency—there are real world issues. The lack of resources has caused the time period between the filing of a patent application and a final decision on it to grow from 19.5 months to 26 months in just a few years and is expected to be 38.6 months by 2006. At that rate, inventions will be obsolete by the time they're patented. Our technological advancement and our economy can only suffer if Congress and the Administration sit idly by while this happens.

Fortunately, Chairman Coble, Ranking Member Berman, and I have worked on several pieces of legislation to address these issues and hope to work with other interested parties to secure their enactment into law.

PREPARED STATEMENT OF THE INTERNATIONAL TRADEMARK ASSOCIATION

Chairman Coble:

The International Trademark Association (“INTA”) is pleased to submit a statement in connection with the subcommittee’s oversight of the United States Patent and Trademark Office (“PTO”). We respectfully request that it be made part of the record for the hearing of April 11, 2002.

INTA is a 123-year-old not-for-profit organization comprised of over 4,000 member companies and firms. It is the largest organization in the world dedicated solely to the interests of trademark owners. The membership of INTA, which crosses all industry lines and includes both manufacturers and retailers, values the essential role that trademarks play in promoting effective commerce, protecting the interests of consumers, and encouraging free and fair competition. The members of INTA, who routinely apply for and maintain trademark registrations, are the customers of the PTO. INTA therefore has a strong interest in the agency’s performance and in working with the Congress, PTO officials, and others to ensure that the PTO can operate efficiently and in an effective, business-like manner.

INTA’s statement will deal principally with the operation and examination procedures on the trademark side of the PTO, and acknowledges the following:

- That the slowdown of the American economy in 2001 and early 2002 led to a reduction in trademark applications, which permitted the PTO to reduce certain key trademark indicators like pendency and the backlog of applications untouched by an examiner, as well as stem the tide of experienced trademark examiners who leave the agency for the private sector.
- That while the February 2002 PTO business plan represents a first step in presenting the means for maintaining efficient and timely operations at the agency, there remains a need to fulfill Congressional and private sector requests for a more substantive 5-year strategic plan.
- That the proper planning for the future must absolutely include a fully funded PTO, one that retains all of the money it raises, whether it is through normal fee-related functions or surcharges to handle special needs.

State of Trademark Operations

Beginning in 1992, the PTO experienced a steady rise in the number of applications for trademark registration. This rise peaked in FY 2000, when the U.S. economy, fueled in large part by a technology boom, had also reached its apex. During that year, the PTO received an all-time high of 375,438 trademark applications. But, a year later, as a result of the slowdown in the U.S. economy and the stilled euphoria of .com companies, trademark filings decreased dramatically. During FY 2001, the PTO received 296,388 trademark applications—a 21% reduction. As the American economy is only now beginning to recover, the PTO predicts zero percentage growth in the numbers for FY 2002. Some have argued that this connection between the economy and the trademark office, is nothing new. As a recent article pointed out, this “parallel path” between trademark applications and the economy has been going on since 1995; that article concluded that “One could argue that the [quarterly] rate of trademark filings are the result of general economic performance as plotted by the NASDAQ listed companies.”

This slowdown in trademark business has provided an opportunity for the trademark operation to “catch up” on the backlog that had accumulated, creating unac-

ceptable delays in processing trademark applications. Timeliness has improved. Today, first action pendency is at 2.8 months, down from a record high 7.2 months in FY1998. The backlog of applications untouched by an examiner has also been reduced to 39,900, a marked improvement from 130,600 at the beginning of FY 2001. This means that trademark owners do not have to wait as long to receive their federal trademark registration. The trademark registration provides important presumptions and protections to trademark owners and acts as a symbol that puts the public and potential infringers on notice that the owner of the mark has made a substantial investment in its product or service.

In addition, the slumping job market caused by the recent economic downturn has resulted in a slowdown of experienced trademark examiners leaving the agency for private practice, a temporary solution to a problem that had long plagued the PTO and its customers who rely on the examiners for quality service. According to PTO officials, the attrition rate, which was once as high as 14% during periods when the economy was moving at full steam and filings were high, is now down to almost nothing. When FY 2002 began, there were 389 examiners at the trademark office. Today, there are 383. The PTO has not needed to replace those examiners.

Preparing for Tomorrow

The real test for the PTO will be to maintain low trademark pendency and backlog numbers, as well as continue to retain experienced employees, especially during a period of sustained economic growth. Our collective goal - for the agency, its customers, and the Congress—must be to work towards an efficient trademark operation in a healthy economy. It is during times of prosperity when consumers and trademark owners alike need the protection afforded by a federal trademark registration.

INTA believes that the trademark office, under the leadership of Director Jim Rogan and Trademark Commissioner Anne Chasser, shares this vision. As the PTO's recently released business plan states, the agency must "keep the time for making decisions on applications at acceptable levels" and work towards enhancing quality of examination. We also note that the PTO makes reference at a number of points in its plan to promoting increased voluntary usage of electronic filing and processing of applications through automated means. INTA is on record both with this subcommittee and the PTO in supporting greater usage through voluntary means of new technologies to improve trademark office operations. We have actively supported trademark office officials in their education of the trademark bar on the advancements made with respect to e-filing. Also, at our upcoming annual meeting here in Washington (May 18–22), which will attract over 6,000 attendees, we have scheduled a program on how to file trademark applications and other documents electronically.

The PTO's business plan is a start to providing for a trademark office that can maintain high levels of efficiency during times when America has a fruitful economy. But, as we say, it is only a beginning. INTA agrees with the proposal in your bill (H.R. 2047), Mr. Chairman, for a more detailed strategic plan, one that includes "milestones and objective and meaningful criteria for evaluating the progress and successful achievement of the plan." We know that Director Rogan is committed to producing such a strategic plan, and we are currently working with the PTO to come up with specific goals and projects for the agency over the next five years. Below are some examples of specific ideas trademark owners would like to see incorporated into the strategic plan.

Enhanced Electronic Environment

Provide explicit dates, stages and/or milestones for steps that further the goal of creating an enhanced electronic trademark office operation (beyond the goal of a preferred 80% e-filing rate), including wider use of e-mail by examiners, incorporating more forms into the electronic system, an up-to-date assignment database, and a search database provided for public access that is the very same search database currently used by trademark examiners.

Qualified Personnel

Develop a means for increasing total compensation for trademark examiners to discourage them from leaving the PTO during times when jobs in the private sector are plentiful. It is when experienced examiners leave that quality of examination suffers and pendency tends to increase. The same consideration should be given to increasing the salary of support staff. The PTO should closely analyze its ability to attract qualified candidates at all levels, including administrative staff, compared to the relevant private sector market and should implement programs to address significant differences with the market that place the PTO at a competitive disadvantage in hiring and retaining talented personnel.

Training

Establish a detailed training program for examiners, including regular meetings among the examining corps that encourage sharing of ideas and best practices and promotes internal coordination and consistency of examination results.

Quality Assessment

In addition to the prototype internal quality review program that is planned for FY 2003 and, if successful, scheduled to be made part of the business practice for FY 2004, we suggest that the following be considered with respect to quality assessment:

- 1) Creating a trademark benchmark for a quality first office action.
- 2) Measuring the number of refusals to register trademark applications that are withdrawn after a request for reconsideration.
- 3) Measuring the number of refusals to register trademark applications that are reversed by the Trademark Trial and Appeals Board (TTAB).
- 4) Developing a template with timeline targets for all steps in the trademark registration process, rather than focusing only on first action and disposal. Such a template could provide insight into “bottlenecks” that may emerge.

Structural Review

Develop a plan for reengineering the overall structure of the PTO and for making recommended changes that result from this examination. For example, one proposal that was recently discussed by members of the INTA PTO Subcommittee was to look at the way the assignments branch is currently organized and consider whether it could more efficiently operate if integrated into patent and trademark examining operations. There are very likely many other options worth exploring.

Human Resources Evaluation

Conduct an examination of the allocation of human resources within the PTO. In order to ensure efficient use of resources, the agency should regularly analyze workflow in both the patent and trademark examining operations to identify areas of capacity and areas that are creating backlogs. The creation of an ombudsman’s office could assist in this process. A regular review can facilitate efficient allocation of personnel and ensure a fair workload for everyone. Because any increase in staff will need to be tied to demonstrable need, such as increased filings or pendency, the PTO should regularly survey the entire examination workflow for both patents and trademarks to identify trends that may point to a need for additional staff.

We look forward to working with the PTO leadership and our colleagues in the intellectual property community to incorporate these and other ideas into a detailed 5-year strategic plan.

Funding

INTA appreciates that the Administration understands the need for the PTO to have the financial resources necessary to operate efficiently and provide services in a timely manner. This is evident by the fact that for FY 2003, the Administration proposes a 21% increase in allocated funds beyond that which was provided in FY 2002. To help provide for this increase in funding, the Administration requests a 1-year surcharge on trademark and patent fees that will generate \$207 million dollars. INTA would consider supporting such a request, provided that all of the money raised through the surcharge is used to fund the initiatives mentioned above and meet long term goals related to pendency, quality and e-government. But this is clearly not the case. Of the \$207 million raised through the proposed surcharge, the PTO will be permitted to keep only \$45 million. The remaining \$162 million will be diverted to unnamed projects or agencies. We oppose this \$162 million diversion.

The PTO was never intended to be a source of income for the federal government. The agency’s mission is clear:

- Administer the laws relating to patents and trademarks while ensuring the creation of valid, prompt, and proper intellectual property rights; and
- Advise the Administration on all domestic and global aspects of intellectual property.

To accomplish this mission, the PTO is funded just like a private sector business—exclusively through fees paid by its customers. The trademark operation has been self-sustaining since FY 1983. Congress affirmed the PTO’s status as a private sector-like business when it adopted the “American Inventors Protection Act,” which was designed to allow the agency to keep pace with customer demand through independent control of budget allocations and expenditures, personnel decisions and processes, and procurement. This means that government red tape, which drastically reduces PTO efficiency and operations, was to be reduced to the bare min-

imum. It is this red tape that has often, in the past, led to delays in obtaining space, equipment and personnel.

Sound business practice suggests that if additional funds are to be raised by the PTO, whether they be through a formal fee increase or surcharge, that they be entirely set aside as a contingency, for a point in the future when the trademark office, for example, is faced with increased filings and when the economy is stronger and trademark examiners must be paid higher wages to stay at the agency. The money paid to the PTO is NOT taxpayer money. It is money paid exclusively for a service. If the past teaches us anything, it is that the PTO should have a contingency fund in place so that when filings rise, there is the capacity to quickly deal with this fact, prevent delays and provide quality service.

Conclusion

Mr. Chairman, as always, INTA is appreciative of your efforts and those of Ranking Member Berman to ensure that the PTO has the resources it needs to do its job and serve its customers. We look forward to working with you towards that end.

MATERIAL SUBMITTED FOR THE HEARING RECORD



Under Secretary of Commerce For Intellectual Property and
 Director of the United States Patent and Trademark Office
 Washington, DC 20231
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MAR 28 2002

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 Chairman, Committee on the Judiciary
 House of Representatives
 Washington, D.C. 20515

The Honorable John Conyers, Jr.
 Ranking Member
 Committee on the Judiciary
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The Honorable Howard Coble
 Chairman, Subcommittee on Courts,
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 Committee on the Judiciary
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The Honorable Howard L. Berman
 Ranking Member
 Subcommittee on Courts, the Internet
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 Committee on the Judiciary
 House of Representatives
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Gentlemen:

To meet the needs of intellectual property owners in the 21st Century, the United States Patent and Trademark Office (USPTO) -- a fully fee-supported agency that does not rely on taxpayer funding -- has developed the USPTO Business Plan (copy enclosed). This is a major step toward a long-range strategy to strengthen America's patent and trademark system by refocusing the agency's priorities on improving quality and timeliness in the products we deliver to our customers. This Business Plan also responds to the concerns of the Administration and the Congress that the USPTO establish realistic goals to use automation more effectively. The goals outlined in the Business Plan are both important and, many feel, ambitious.

In recent years we have seen enormous private sector investments in research and development, resulting in dramatic increases in the filing of patent applications. This, coupled with an inability to hire sufficient numbers of examiners to keep pace with increased workload demands, and a crippling attrition rate caused by more experienced examiners going to higher paying private sector jobs, has created a burdensome backlog for both our customers and our examiners. As a result, average patent pendency is now at 24.7 months. Furthermore, the very nature of unpredictable levels of agency funding over the past decade has resulted in starts and stops in IT projects that negatively impact overall agency performance.

Our past analysis has shown that unless dramatic changes are implemented, in the face of unprecedented growth in the number of patent applications filed, not to mention increasingly technical and complex applications, average patent pendency would have escalated to 38.6 months by FY 2008. This Business Plan will, however, avoid that

outcome and reduce that projected pendency rate to 26-month pendency by 2008, an improvement of more than one year over the projected rate.

President Bush's 2003 Budget proposes a very significant increase in funding for the USPTO. This investment by the Administration will allow us to fund the hiring of 950 new patent examiners, thereby beginning the lengthy process of training them to attack increasing patent complexity and workloads. History shows that such an investment will create a short-term increase in pendency (since experienced examiners must take time away from examining in order to train new hires). The long-term prospect for our being able to see improvement and continue to support the technological growth underlying our national prosperity from such investment is more encouraging.

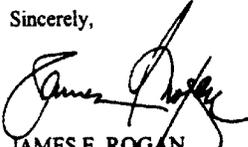
While the most significant challenge facing USPTO is hiring the examiners necessary to keep pace with an increasing workload, I believe additional steps can be taken to deal with the pendency issue. The Business Plan was completed before I assumed office last December; in reviewing it, I prefer to think of it as a "First Step Business Plan." I am preparing to begin a top-to-bottom review of all non-examination and administrative support operations, and will expect to see a compelling justification for every non-examination operation within the agency.

USPTO leads the Federal Government in the transition to e-Government, and we will continue to accelerate our goals to use this more efficient and customer-friendly means of doing business.

Thus, to improve patent pendency and quality, I am committed to shifting resources to the frontline examination process at a rate greater than the current Business Plan anticipates if it appears such changes are warranted. I am also fully prepared to propose other changes, including both regulatory and statutory reforms, that will allow the USPTO to streamline processes to accomplish what I know we all want: efficiency, quality, and timeliness.

I expect the agency to focus on these core principles. This Business Plan is a significant first step toward that refocusing, but only a first step. President Bush and Secretary Evans are committed to ensuring that the USPTO continues to lead the world in producing the most timely and reliable intellectual property rights protection for American innovators. I look forward to helping them succeed in that vision.

Sincerely,



JAMES E. ROGAN
Under Secretary and Director

Enclosure

cc: Members of Judiciary Committee

USPTO Business Plan

February 2002

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EXECUTIVE SUMMARY

Over the course of the past decade, the United States Patent and Trademark Office (USPTO) has faced unprecedented challenges including soaring workloads, increasingly complex technology, growing demands from our customers, resource limitations, our establishment as a performance-based organization, new legislative mandates, and unprecedented need for policy guidance in all fields of intellectual property including patents, trademarks, and copyrights. It is abundantly clear, however, that intellectual property laws have become the "currency of the 21st century." The U.S. economy and global economy are driven by new technology, which is spread by the incentives provided by our intellectual property laws. Now more than ever, it is critical that the USPTO further establish itself as the leading intellectual property organization in the world by providing the highest quality patents and trademarks in a timely manner.

To further establish the USPTO as the world intellectual property leader, the USPTO has assessed its needs to achieve the simple goals set in this business plan: 1) enhance the quality of USPTO products and services, and 2) minimize patent and trademark applicant processing time.

The Patent Business targets and strategies identified in this business plan will reverse the trend of increasing patent pendency and address the quality issues that have been expressed. While the USPTO's FY 2002 budget request predicted increasing pendency to 38.6 months in 2006, this business plan establishes initiatives to reduce that by 1 full year to 26.8 months and to establish a trend to an ultimate goal of 18 months pendency in the future. Further, bolstering confidence in the quality of U.S. patents is essential. By decreasing the patent error rate to the lowest levels in history and by increasing our customer satisfaction rate to world-class service levels, the USPTO will further establish the confidence in the quality of products and services needed to increasingly spur our economy and reduce unneeded litigation costs.

Patent business quality initiatives include increased participation by applicants and third parties in aiding the USPTO in the examination process to improve quality. The USPTO will also reengineer processes to free more time for the critical examination functions performed by examiners. Additionally, by aggressively moving toward complete electronic processing, greater levels of quality and customer service will be achieved.

Timeliness goals, even in the face of unprecedented workload increases, will be met through a balanced set of timeliness initiatives that include increasing the examining staff, reducing attrition rates even further, outsourcing non-critical functions to free examiner time to address backlogs, and redesigning processes. Additionally, customers will be offered a choice in the processing time, providing a "Rocket Docket" that will deliver the promise of extremely fast processing for those applications where time is critical.

Similarly in the Trademark Business, this business plan identifies the highest standard of quality examination to be achieved through complete electronic processing of trademark applications from filing to publication. With electronic processing, world-class customer relationship management is attainable through the leveraging of the information available in an electronic environment.

Timeliness goals for the Trademark Business have been established at unprecedented levels – two months to first action, and 12 months total pendency. Through the use of electronic processing, innovative management processes such as creative incentive award programs based on a "billable hours" concept and the expansion of a successful telecommuting program that has reduced the attrition rate and increased productivity, the Trademark Business will continue to be successful in achieving its timeliness targets.

The resources needed to achieve the results set forth in this business plan are in excess of our currently projected fee income in FY 2003 – FY 2007. A portion of the increase is needed to fund the initiatives identified in this plan to meet plan goals and objectives while another portion is needed to cover full retirement costs (e.g., current and post-retirement benefits of USPTO employees), consistent with the Administration's requirement for all fee-funded agencies. We will finance this plan by proposing a one-year surcharge on patent statutory fees and selected trademark fees to ensure sufficient funds to begin plan implementation in FY 2003. We will subsequently propose regulations to raise trademark fees and a legislative proposal to realign current patent fees to support the longer-term goals of this business plan. Our approach is to adopt a fee structure commensurate with USPTO business requirements.

While the details of this plan are set forth below, the objective of this plan is clear – to set forth the needed initiatives and resources to further establish the USPTO as the preeminent intellectual property organization in the world. By performing our core business functions – the processing of patent and trademark applications – with the highest quality of products and services and the shortest pendency times possible, our goals will be achieved.

CURRENT ENVIRONMENT

The United States Patent and Trademark Office (USPTO) is an agency of the U.S. Department of Commerce, employing over 6,000 full-time equivalent (FTE) staff. The agency is located in Arlington, Virginia, where we occupy 18 buildings in the Crystal City neighborhood.

The USPTO's mission is to promote industrial and technological progress in the United States and strengthen the economy by:

- Administering the laws relating to patents and trademarks while ensuring the creation of valid, prompt, and proper intellectual property rights; and
- Advising the Administration on all domestic and global aspects of intellectual property.

Although the USPTO's mission in administering the intellectual property laws has a continuous tradition stretching back to the founding of the republic, the economic environment in which it undertakes that mission has changed in the past decade. Technological innovation and the marketing of new goods and services have increasingly driven U.S. economic growth. This has led to prolonged rapid growth in demand for the USPTO's principal products – patents and trademark registrations. Recognizing the mounting importance of intellectual property rights, Congress has enacted laws making the USPTO responsible for additional functions and reforming its organizational powers. At the same time, the globalization of economic activity has led to new cooperative initiatives between the USPTO, international bodies, and other intellectual property offices.

The USPTO has undertaken major projects to come to grips with these challenges. In doing so, we have been recognized as a leader in e-Government initiatives, especially with regard to the Trademark Business applications. The USPTO has applied technology that has facilitated examiners' searches of prior art relevant to patentability and of potentially conflicting marks relevant to the registrability of trademarks and allowed for the filing of both patent and trademark applications over the Internet, thereby enhancing the efficiency of interactions between the public and the USPTO.

Nevertheless, the USPTO finds itself trying to catch up in its efforts to maintain and improve accuracy rates in patent and trademark examinations and keep the time for making decisions on applications at acceptable levels. In planning for the next five years, the USPTO must first examine factors that will affect its efforts to break the cycle in which it is continually in danger of falling further behind. The following describes customer expectations, trends in demand for our products, developments in legislative direction, and international initiatives which will remain key elements of the environment in which we currently work and which will have future impacts on our endeavors to provide added value to our customers for the next five years.

Target Customers

The USPTO has many different customers and stakeholders. Individual inventors, as well as those affiliated with small businesses, corporations, government agencies, and academia file applications with the USPTO to obtain valuable intellectual property protection.

The USPTO receives patent and trademark applications from all over the world. For patents, roughly 55% of the applicants are from the United States with the remaining applications coming from non-U.S. citizens. For trademarks, 85% of the applicants are from the United States with the remaining applications coming from non-U.S. citizens.

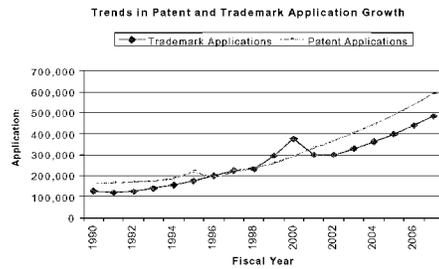
The USPTO invests considerable time and resources in understanding the unique needs of these various market segments. We hold focus sessions and roundtable discussions to identify customer and stakeholder needs and expectations. We partner with customers from various market segments to further our knowledge and understanding of new, emerging, and ever evolving technologies. We survey our customers to understand how well we are meeting their expectations. And, we leverage information and feedback from the membership of our Public Advisory Committees to gain a clearer understanding of the future needs of our customers and stakeholders. We have used this advice and assistance in shaping our business strategies.

The Market Environment

During the 1990's, the patent and trademark operations both faced similar challenges in satisfying customer demand as a result of steadily increasing workloads. That demand, however, has diverged somewhat in FY 2001. Patent applications rose at an average annual rate of 8 percent per year throughout the 1990s, but rose over 12 percent in FY 2000 and FY 2001. This rise shows no sign of slowing despite the downturn in economic growth in FY 2001. The USPTO has found that patent application volumes often are anticipated by the behavior of national research and development expenditures two to four years in the past. While leading indicators are currently still predicting strong patenting growth, continuing economic weakness over an extended period could negatively affect future filing plans.

Trademark applications grew at more than a 13 percent annual rate between 1990 and 1998, and by 27 percent per year in FY 1999 and FY 2000. However, the accelerating trend in trademark application filings came to an abrupt halt in FY 2001 when the filing rate for new applications dropped by approximately 20 percent.

These filing trends suggest that, while firms recognize the long-term necessity of continual innovation and protection of rights to inventions, commercialization of new products and services and the consequent need for trademark protection can rise and fall more unpredictably. Despite these fluctuations, the USPTO expects continued growth in demand for patent examinations in FY 2003 – FY 2007 while trademark applications are expected to grow modestly during this same time period after declining during FY 2000 and FY 2001.

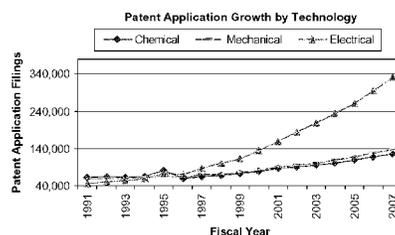


Patents

Today's technology is advancing faster than ever before in history, with new technologies emerging on the horizon. Well-known examples are in the computer software, business methods, telecommunications, and biotechnology areas. As the potential value of new inventions increases, the demand for intellectual property protection will increase. The value now being given to intellectual property is seeding our technology-based economy as the exclusivity and economic life cycle of an innovative product becomes the primary monetary stream for an entrepreneur or business.

New technologies are also merging with existing technologies in more complex ways. This results in increased technological complexity of inventions. An example is the field of bioinformatics. This interplay of technologies creates greater interdependencies between technologies, expanding each new patent's field of effect. This has a growing impact on the increasing scope of new innovations throughout all technology disciplines. At the same time, the globalization of economies has further expanded a business' range and interdependencies. When taken as a whole, a business' encounters with markets and cross-linkages to new and modified technologies are almost without limit for the foreseeable future. This virtually infinite realm of potential innovation defines the scope and complexity of technology currently being filed at the USPTO and anticipated for the future.

Looking at the change in demand for patents in different business arenas can help illuminate the challenge for which the USPTO must prepare. Although patent application filings have grown steadily at 12% per year in all technological areas in the past 2 years, that growth has been particularly explosive in the electrical technologies which experienced 19% growth. The USPTO can expect this trend to continue.



Finally, the USPTO has experienced growth in newly evolving technologies, as well as filing growth in areas that have arisen due to clarification of law by the courts, such as has been the case for biotechnology and business methods. Rather than rely on court decisions or other rulings, the USPTO must be prepared to predict our future workload and the types of patents that will be desired. This will require us to assess market, production, and scientific trends. This assessment will allow us to foresee trends that will in turn allow us to create the appropriate policies and organizations and hire the types of individuals necessary to handle requests for new types of patents in the future.

Trademarks

The Trademark Business has a long history of increasing demand for registering and maintaining trademarks. Over the past ten years, trademark applications for registration have tripled from 125,000 to more than 375,000 a year, with increases of 27% in both FY 1999 and FY 2000. Consistent with the decline in the U.S. economy, as reflected by reductions in business-related markets, trademark application filings are now projected to decrease from FY 2000 to FY 2001 by 20% with increases beginning again in 2003 of 10 percent each year based on historical trends. Filings for the continued maintenance and renewal of registered trademarks continue to meet projections. The trademark register currently contains more than 1 million marks in use. We cannot project with certainty what our filings will be several years into the future, and in the short term, we must be prepared to manage fluctuations in the demand for our services.

The Legislative Environment

The types of products and services and corresponding fees, the resources available to meet workload demands, and the nature of the USPTO organization itself are predominantly determined by law. Congressional action, therefore, constitutes a critical driver for the USPTO's operations and business planning.

Legislative changes in the Patent and Trademark Acts can be expected to continue. In 1999, for example, Congress mandated that the USPTO administer a process for adjusting patent terms, publish pending patent applications, and offer optional reexamination of patents. In the current Congressional session, bills are pending to integrate trademark

application processes with the Madrid Protocol regime and expand procedures for administrative review of patents after issuance.

The resources available to the USPTO also remain a matter of public debate. For the past decade, the USPTO has been funded from the fees it charges for its services. Congress has required the USPTO to perform a study of its fees. The outcome of such deliberations will of course affect USPTO operations.

This business plan seeks to anticipate the challenges and opportunities that legislative actions may create. However, outcomes are sometimes unpredictable and beyond the USPTO's control. In light of this, the USPTO has developed this plan to specifically identify its quality and timeliness performance goals for its core business and the resources needed to meet these goals. Our challenge will be the integration of these goals and objectives with other legislative actions and deliberations.

The International Environment

As part of its policy responsibilities, the USPTO is active in cooperative efforts with its major counterparts, the European Patent Office (EPO), Japan Patent Office (JPO), and European Union's Office for Harmonization in the Internal Market (OHIM) for trademarks and designs, as well as with international organizations such as the World Intellectual Property Organization (WIPO) and World Trade Organization (WTO). Efforts are under way toward developing a substantive patent law treaty to harmonize requirements for obtaining patent protection throughout the world. The USPTO is also engaged in efforts related to protecting Geographical Indications and in substantial training efforts in intellectual property enforcement. The USPTO is working with WIPO to consider steps in harmonizing national and regional patent and trademark law, on trademark issues related to domain names, and copyright issues. Finally, we are engaged in the international arena seeking support for simplifying the Patent Cooperation Treaty.

All three of the major international intellectual property offices have experienced the rapid increase in demand for intellectual property and the resulting consequences. The USPTO has been working with the JPO and EPO to address the increasing amount of work in each of the offices and seeking opportunities for work sharing and efficiency. Progress on issues such as mutual recognition of search/examination results and harmonizing classification systems and electronic filing systems could garner substantial efficiency benefits for all three offices and their customers.

We expect all of these activities to enhance international cooperation, as described above, to continue during the FY 2003 – FY 2007 timeframe.

Comparison with Other Intellectual Property Offices

Obtaining intellectual property protection is based on national or regional laws. For example, applicants wanting intellectual property protection in the United States must file in the United States, and U.S. protection does not confer protection in other countries. Therefore, the three major intellectual property offices, the USPTO, EPO, and JPO are not market competitors in a traditional sense but rather counterparts. The USPTO compares very favorably to both the EPO and JPO in timeliness and cost.

In regard to e-Commerce activities, the USPTO remains the first national intellectual property office in the world to offer electronic filing over the Internet for both patent and trademark applications. Although both the JPO and EPO offer some electronic filing, neither has achieved the level or breadth of services as the USPTO. The JPO implemented electronic filing in 1990 but has done so through a closed system using dedicated lines versus an Internet approach. The EPO has offered Internet filing since 2000, but only allows patent applications to be filed electronically.

Patents

The USPTO, EPO, and JPO grant the majority of the world's patents. At the end of 1999, a total of 4.4 million patents were in force. The contracting states of the European Patent Convention (EPC), JPO, and USPTO cover about 84% of the total patents granted worldwide. In the EPC contracting states, patents are granted by the National Offices or by the EPO.

There is considerable difficulty in presenting a comparison with respect to the operations, efficiency, and even workload of the three offices. This is because the three offices operate within different legal and cultural environments. These differences result in practical distinctions in the products and actions that are subject to measurement. Thus, setting out the offices' workload statistics is in large part an "apples to oranges" exercise. Nevertheless, an accounting of the production of these three major offices can help give an idea of the USPTO's role in the international intellectual property system. The chart below gives key patent statistics for each organization for calendar year 2000:

	EPO	JPO	USPTO
Application Filings	100,692	436,665	295,926
Patents Granted	27,523	125,680	157,497
Applications Awaiting Request for Examination	16,788	2,152,416	Not Applicable
Pendency to First Office Action in Months ¹	20.7	21.3	13
Overall Average Patent Pendency in Months ²	72.7	Not Reported	24.7
Patent Price ³	\$37,323 ⁴	\$12,058	\$7,740
Total Examiners	2653	1,088	2,905
Number of Applications Examined Per Examiner	Not Reported	177	85
Examiner Attrition Rate	2.3%	Not Reported	14%
Error Rate	Not Reported	Not Reported	6.6%

¹ EPO and JPO pendency statistics do not take into account the time applications are awaiting requests for examination. JPO applicants have 3 years from the date of filing during which requests for examination can be filed. In the EPO, requests for examination have to be filed not later than 6 months after publication of the search. U.S. pendency statistics are measured from the date of filing.

² For the EPO, statistics for pendency search in months (20.6) and pendency examination in months (52.1) were totaled to provide the pendency rate.

³ Rates are in U.S. dollars for fees collected through the 20-year life of a typical patent.

⁴ This amount reflects the full cost that an applicant pays to receive equal patent protection in Europe. However, the EPO only receives \$16,000 of that amount. The remaining amounts are paid to the National Offices.

Trademarks

The USPTO, OHIM, and JPO issue the majority of the world's trademark registrations. As is the case with patents, there is considerable difficulty in presenting a meaningful comparison with respect to the operations, efficiency, and even workload of the three offices that register trademarks. For example, the European Communities require that trademark applications be filed electing a primary and secondary Community language of which there exist eleven choices. The European Communities could recognize significant efficiencies in the timely examination of applications were only one language used as the official language for trademark filings. The political realities in the European Community are such that OHIM cannot itself impose such an "efficiency" on its trademark users.

Of the three offices, the USPTO receives the largest number of applications. In fact, the USPTO is, by volume of applications received and processed, the largest government trademark organization in the world.

All three offices offer substantive examination of trademark applications, however, the USPTO offers a more complete examination practice by considering existing marks in determining registration. This means that each application is reviewed for legal and regulatory compliance. The USPTO is the only one of the three offices that publishes its pendency statistics, including average months between filing and examiner's first action and between filing, registration, abandonment or issuance of a Notice of Allowance.

The chart below gives key trademark statistics for each organization for calendar year 2000:

	JPO	OHIM	USPTO
Trademark Applications	121,861	57,324	375,428
Trademark Registrations	94,369	34,242	127,794
Trademark Price ¹	\$4,203	\$4,159	\$2,475
Total Examiners	142	78	383
Number of Applications Examined Per Examiner	862	772	600
Examiner Attrition Rate	Not Reported	0%	13%
Error Rate	Not Reported	Not Reported	3.4%

¹ Includes 3 classes and one renewal. Exchange rates: 120 Yen = \$1.00 and 1.10 Euro = \$1.00

PATENT GOALS AND STRATEGIES

The continuing increase in the demand for our products and services reflects an appreciation for the value that we provide to our customers. Additionally, high quality standards for patents issued by USPTO must be maintained to instill confidence in patent holders and the public in general to preserve that value. Throughout the 1980s and into the 1990s, the principal vehicle to address timeliness and quality demands was singularly to hire more examiners. We need to expand this focus to include creative management, innovative business practices, and the latest technology. Accordingly, the Patent Business has set the following goals and strategic initiatives:

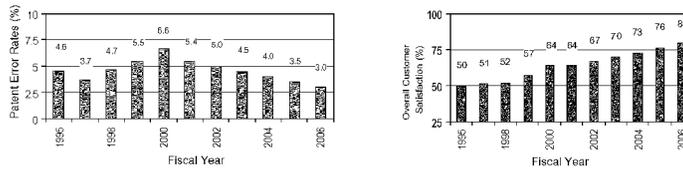
Goals

The goals of the Patent Business are as follows:

- Enhance the quality of our products and services
- Minimize patent application processing time

Quality Target: Improve quality of patents by 55% through reducing the error rate from 6.6% to 3% by FY 2006
 Increase overall customer satisfaction from 64% to 80% by FY 2006

Trends and Targets in Patent Error Rates and Customer Satisfaction



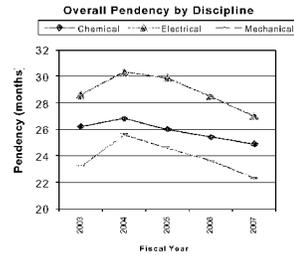
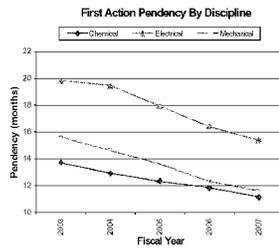
The Patent Business quality targets are derived from internal objective data and customer satisfaction data obtained through our annual survey. Our objective is to measure our performance with respect to both the quality of the patents we issue and the service we render to the users of the patent system. While benchmarking against other patent offices in the area of quality is difficult because of the lack of data available, our target of a 3% error rate would be the lowest that we have achieved in the 25 years that records have been kept. Additionally, customer satisfaction in world-class service organizations similar to the USPTO can be benchmarked at the 80% level. Increasingly, however, the quality of U.S. patents has been questioned as a result of litigation results and other quality indices. The Patent Business will develop a quality index that will incorporate a number of metrics, including those mentioned above, as well as external post examination data to achieve a balanced measure of quality. That index will be baselined and used in the future as a more

balanced tool for measuring our performance with respect to quality. Three quality initiatives are set forth below that will immediately begin to move the USPTO toward its quality targets.

Timeliness Target: Reduce average first action pendency to 12 months by FY 2006
 Reduce average total pendency to 26 months by FY 2006

The Patent Business timeliness targets are derived from customer input and the American Inventors Protection Act (AIPA) enacted in 1999. The AIPA provides that issuance of a first Office action on the merits of the claimed invention more than 14 months from the filing date, or issuance of a patent more than 36 months from the filing date, will result in a commensurate restoration of patent term to the applicant. The U.S. patent system encompasses both the incentives offered to inventors to share their discoveries, as well as the benefits that accrue to society as a whole from the disclosure of the inventive concepts. Therefore, to support these parallel objectives, it is incumbent upon the Patent Business to both maximize the term of patent protection for the inventor by reducing internal processing, as well as to minimize the extension of patent term resulting from processing delays.

The Patent Business ultimately strives for a total pendency of 18 months to grant a patent. Rationale for this target is based on the worldwide standard of publishing applications 18 months after filing. While no major intellectual property organization in the world comes close to issuing patents in 18 months, our ultimate goal would serve to fuel investments in our technology-driven economy. Current backlog and filing rates, particularly in the electrical arts, prevent us from reaching the 18 months total pendency during the course of this 5-year business plan. The 18 months total pendency target will be a challenge in the electrical arts. However, the Patent Business is confident that we can move toward this milestone in the longer-term, first in the mechanical and chemical areas, and eventually in the electrical area.



In addition, we recognize that customers have different demands for processing time depending on the invention and technology. For example, applicants in the computer areas may need a quicker turn-around time because of the short life cycle of computer products, whereas some applicants, possibly in the biotechnology and pharmaceutical areas, would rather have additional time to determine the commercial viability of their inventions. With this in mind, we have designed an initiative where customers will have the option of choosing the processing time best suited to their needs. Six timeliness initiatives are set forth below that will begin to drive pendency down toward our ultimate target.

Quality Initiatives

Process Reengineering Enhancements

We have a number of activities currently underway that we will continue to enhance as part of our quality improvement actions. First, we will focus on enhancing the quality of our patents by using process redesign and improvement. One way of raising the quality level is through an enhanced reexamination process whereby both patent owners and third parties have the ability to request that the USPTO reconsider patentability if new evidence is presented. Reexamination is an economical and potentially higher quality alternative to litigation for testing patent validity. We foresee that reexamination services will improve quality and reduce the customer cost of re-evaluating the patentability of issued patents rather than using litigation. Legislative action is needed to modify our current reexamination process to make it a viable alternative to litigation. Through this initiative, we expect greater applicant and third-party participation in the patent process and greater confidence in the quality of the patents that we issue.

We will also strengthen our in-process reviews of work performed by examiners. This will be accomplished by conducting quality reviews of patent applications prior to their disposal and using a number of our senior level Quality Assurance Specialists to function as a "Second Pair of Eyes" by reviewing for correctness each allowed application in a target technology. This is particularly useful for emerging technologies where the prior art is not well established or where the examining staff is less experienced. This enhanced review is not only effective in preventing the issuance of invalid patents, but is also useful in identifying trends in examination where training is needed, the ultimate result being better quality patents.

Finally, we will expand our process reengineering studies to look for ways to eliminate or transfer duties traditionally performed by patent examiners to other staff. This redistribution of functions frees examiners' time to focus on the technical and legal aspects of patent examination such as search and patentability determination, while moving paralegal-like duties to support staff who can also handle such activities. We will also test and implement other concepts that partner more with applicants and industry experts to empower and make them an active participant in the examination process. We further expect to perform other studies and scope out ways to use knowledge management systems to better train our examiners.

Search Tool Enhancements

Critical to the quality of the examination process is the search by an examiner for prior art pertinent to the invention claimed in an application. The search is an investigation of relevant patents and non-patent literature (technical journals, manuals, etc.) to determine if a claimed invention is new, useful, and non-obvious. In performing the search, an examiner relies on prior art and the body of public knowledge disclosed at the time the invention was

created. Much of the non-patent literature is available only through commercial database vendors. We will increase access to commercial databases, non-patent literature, and foreign patent documents. We will also harmonize the subject matter indexes of the other trilateral organizations to ease our ability to share the burden of creating patent classification systems and classifying patents.

e-Government

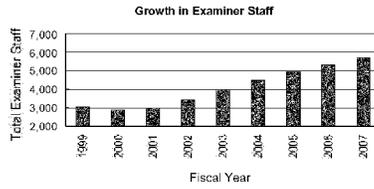
The continued growth in our workload cannot be effectively managed in our current paper-based environment. Implementing an e-Government strategy that includes electronic receipt, processing, reporting, and publication will enable us to migrate to a more efficient operating environment that supports our business goals to provide quality services and products in a timely manner to our customers and stakeholders.

At the center of our e-Government initiative is the Tools for Electronic Application Management (TEAM) project. TEAM is a document management and workflow system that will provide us the capability to electronically process a patent application. It will integrate and capitalize on features from a variety of information technology systems currently in use. TEAM will rely on the input of electronically submitted applications and continue the prosecution of patent applications in electronic format. Scheduled for a rolling deployment throughout the Patent Business during FY 2006, TEAM will be based on the creation of an electronic file wrapper (EFW). All the individual paper documents involved in the back and forth exchanges between the USPTO and patent applicants will be captured electronically in the EFW. TEAM will provide new electronic workflow tracking and document management capabilities that will improve application processing and provide increased information to external customers. With in this concept, the e-Petitions program will be implemented in 2005. TEAM will ultimately result in an electronic record being our official legal record of patent application processing. A preliminary benefit cost assessment indicates that the TEAM project will more than pay for itself through publication, space, and contract labor cost avoidance.

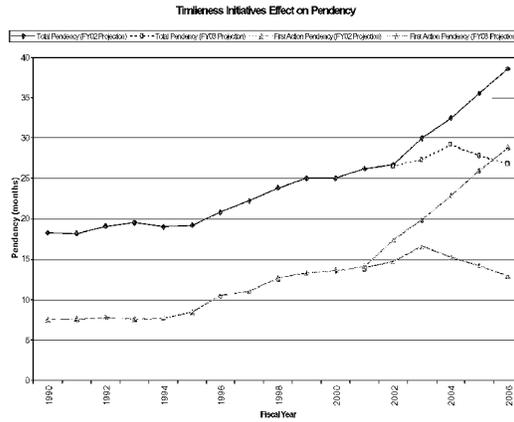
Timeliness Initiatives

Increase Examiner Staff

In order to meet our timeliness goals and offer a choice of services, an essential part of our strategy will be to hire new examiners and expand our examining staffing level. Though we are reengineering our processes, changing our procedures, and implementing information technology solutions, the total number of patent applications processed is principally determined by the number of patent examiners. This is because the heart of the patent examination process is the intellectual effort put forth by an individual patent examiner. Our plan is to hire 950 new examiners each year. Some of these hires will replace examiners lost through attrition and others are necessary to meet the growing workloads. The following chart displays our projected on-board examiner staff during the life of this business plan.



These aggressive timeliness initiatives will improve the pendency forecasts originally outlined in our FY 2002 budget submitted to Congress. Under this business plan, we will issue approximately 312,000 first office actions and achieve an average overall pendency of 27 months in FY 2003. By FY 2004, pendency to first action will begin trending downward. By FY 2006, our objective is to achieve an average of 12 months pendency to first action and 26 months total pendency. This is a substantial improvement when contrasted against the USPTO's FY 2002 budget, which assumed 28.8 months first action pendency and 38.6 average months total pendency in FY 2006.



Customer Choice in Processing Time

We will offer our customers a choice of processing time options, including an expedited review and the ability to choose a separate search and examination approach for patent applications. Customers will have the option of choosing the pendency timeframe best suited to their needs while receiving the same high quality examination regardless of the option they choose.

Standard Processing

Under the standard processing option, customers will receive the current search and examination services. Standard processing will continue to comprise the vast majority of our workload. By FY 2006, our objective is to achieve an average pendency of 12 months to first action and 28 months total pendency.

Expedited Processing (Rocket Docket)

In this option, the Patent Business will guarantee customers 12 months pendency from date of filing to patent issuance. Customers who choose this option will pay an additional fee for the quicker turnaround and agree to certain stipulations and actions to ensure the 12-month timeframe. These actions include:

- Mandatory electronic application filing
- Mandatory applicant search of prior art before submission of application
- Limit on the number of claims
- Examination of first-claimed invention
- Applicant waiver of extensions of time
- Limit to a single applicant-initiated amendment
- Pre-examination statement that claims will stand or fall together

Expedited processing will be offered to meet the needs of those customers whose business needs require a quick decision on their patent application. We anticipate that our standard processing will be satisfactory to the majority of customers and that only a small segment of our customers will request this option.

Deferred Examination

The deferred examination option will allow customers to protect their intellectual property while determining its future market viability. Under this option, customers will pay the initial fees for pre-examination and then pay the search and examine fee once they decide which applications to pursue. Upon their determination of commercial viability, applicants will only require the full patent processing and its associated costs for those they wish to further pursue. We estimate that 10% of applications filed may "drop out" and as a result, USPTO examination resources will not be expended for applications that are not considered economically viable. Mandatory publication and sacrifice of any patent term adjustments would be required of those applicants choosing this option. Legislative action is needed to modify our current fee structure to allow for this specific option.

These processing choices will also ensure that the USPTO minimizes patent term extensions and provides products and services that continue to stimulate the U.S. and global economies.

Recruitment and Retention

One critical factor that affects our achievement of business goals is our ability to recruit and retain a quality workforce. A well-educated, experienced, and properly trained staff is key to achieving higher quality and lower pendency timeframes. The Bureau of Labor Statistics has projected that the demand for electrical engineers, scientists, and computer and information systems specialists – all critical positions for the USPTO – will grow by 40% over the next 7 years.

For the USPTO, the competition will be steep. We have to compete with the private sector for the talent we need. To do so will require us to employ innovative methods for recruitment and retention. The USPTO's efforts will be focused on retaining our employees and expanding the examiner corps in all technology areas with a particular emphasis in the electrical discipline.

The standard federal benefits we offer compare quite favorably to those offered by top U.S. corporations, including substantial holiday, sick, annual and compensatory leave; paid overtime; outstanding health insurance; and excellent retirement packages. In addition to these and the generous Federal career advancement opportunities, we will offer our current and prospective employees a variety of other benefits to include flexible work arrangements, law school and technical tuition payment, generous awards, and recruitment bonuses. We have recently obtained approval from the Office of Personnel Management (OPM) to establish a special pay scale for patent professionals. In the event that these benefits do not allow us to hire and retain the best candidates, we will consider other incentives such as payment of relocation expenses, repayment of college loans, or other incentives to stay competitive.

Finally, the Patent Business has recently implemented a telecommuting work pilot. The pilot is geared toward allowing patent examiners to work remotely from home for one day each week without the fatigue and stress of daily commuting and balancing work with family and personal activities. Although this program is still in its infancy stage, we believe it will be successful and plan to expand the program after the pilot. We are hopeful to experience the same success that the program in the Trademark Business has demonstrated, including an increase in production per individual examiner along with increases in quality and employee satisfaction. Additionally, as the program expands, more efficient use of office space will be realized through space sharing or hoteling.

Productivity Incentives and Accelerated Career Track

The Patent Business delegates the authority and responsibility for making independent patentability decisions, including the decision to issue an application as a patent, when it appoints the examiner to be a "primary examiner". This achievement reflects the highest degree of competence and expertise. The current career track requires about 6 years for an examiner to become a primary examiner. Information gathered from other patent offices and intellectual property law firms indicates that they require between 4-6 years of training to reach a similar level of competency.

Recognizing that gains in productivity must be balanced with the quality of the work produced, we will explore the implementation of a new performance-based awards system. In addition to producing more output, this initiative will bring a junior examiner up to speed more quickly by examining more applications. By implementing a generous monetary award, the examiner will be enticed to produce more work and work more efficiently, which will make our examiners more knowledgeable in less time. Combined with improved

training programs and knowledge-based management tools, these mechanisms may be conducive to an expedited path for reaching full signatory authority, where an examiner can make patentability decisions independently while improving quality standards. We expect this initiative will result in 29,500 or approximately 10% additional patent applications being processed annually.

Outsource Non-Examination Functions

We will outsource classification functions currently performed by examiners in the examination pipeline. As a result, examiner resources will be freed to focus on the principal patent examination functions, thereby increasing examiner productivity. The mandate to publish patent applications 18 months after filing, pursuant to the Pre-Grant Publication provision of the American Inventors Protection Act of 1999, has placed a tremendous additional burden upon the USPTO. In response, we intend to also contract out the Pre-Grant Publication classification functions currently being performed by patent professionals. Additionally, other classification duties required to maintain the U.S. classification system will be outsourced as needed. This initiative will allow the Patent Business to redirect approximately 30 full-time equivalent patent examiners and associated hours to examination.

Similar to classification, certain stages of work on international applications that do not lead to patent issuance will be contracted out. The search related to completion of Patent Cooperation Treaty (PCT) Search Reports will be outsourced, thus freeing examiners to act on the backlog of U.S. applications. This initiative will allow the Patent Business to redirect approximately 100 full-time equivalent patent examiners and associated hours to examination.

Workload Rebalancing

Traditionally, the three main disciplines within the Patent Business have been categorized as chemical, mechanical, and electrical art areas, which are further organized into 7 Technology Centers – 2 in chemical, 2 in mechanical, and 3 in electrical areas. We have seen an unprecedented growth in filings in the electrical engineering fields. Last fiscal year, we experienced a growth of 19% as compared to 8% in the mechanical and 7% in the chemical areas. To address these workload issues and reach our timeliness goals, we will rebalance the work in the Technology Centers. This approach envisions at the very least, identifying electrical technologies that overlap other disciplines, and integrating them into the corresponding chemical or mechanical areas. The emerging technologies have fewer experienced/senior examiners and managers, resulting in challenges of incorporating and training new examiners. By restructuring the Technology Centers, we will be able to take full advantage of the experienced staff available in greater numbers in the mechanical and chemical Technology Centers to improve training, retention, quality, and effectiveness in the other related technologies. We will also take advantage of our move to the new campus to restructure our organization and rebalance our workload to streamline our processes and enhance our effectiveness.

TRADEMARK GOALS AND STRATEGIES

The Trademark Business plans to complete its transition from a paper-based process to complete electronic processing by FY 2004. We have made substantial progress over the past eight years improving quality and timeliness by applying electronic communications and technology to our business processes. Currently, approximately 25% of trademark applications are filed electronically over the Internet, all new applications are captured electronically and are available at every employee's desktop, and the *Trademark Official Gazette (TMOG)* is published weekly on paper and electronically on the Internet. Completing the transition from paper to processes primarily based on electronic processing will result in an efficient and effective trademark examining function with greater flexibility to respond to fluctuations in demand for services. Although we will continue to address pendency, productivity, quality, and efficiency issues, the focus in FY 2003 will be on implementing changes that rely on technology and electronic communications to improve operations and expand access to the Federal registration system in the United States.

Our customers have significantly benefited from Internet access to USPTO systems that allow them to conduct searches of relevant trademark information to make business decisions related to adopting a trademark, checking the status of their pending application, or reviewing the TMOG on-line. The availability of the Internet for filing and disseminating information has increased customer expectations for how we respond to requests for information and service. In turn, this has required the Trademark Business to increasingly consider the impact on customers when we design and implement new systems. Electronic access has promoted greater understanding and awareness of the registration system and provided customers flexibility and convenience relative to how they interact with the USPTO. While we have witnessed a drop in trademark filings and a reduction in pendency times in FY 2001, the Trademark Business views this as an opportunity to position itself to expand the use of technology to address workload fluctuations and maintain high quality and timeliness standards. We believe that moving to e-Government will allow U.S. businesses to have better access to the value that flows from the Federal registration of their trademarks.

Goals

The goals of the Trademark Business are as follows:

- Enhance the quality of our products and services
- Minimize trademark application processing time

Quality Target:	Reduce the error rate from 6% to 3% by FY 2004 Increase overall customer satisfaction from 70% to 80% by FY 2005
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The Trademark Business quality targets are derived from internal objective data and customer satisfaction data obtained through our annual survey. Our objective is to measure our performance with respect to quality of the marks we register and the service we render to the users of the trademark system. The Trademark Business will develop a quality index that will incorporate a number of metrics, including those mentioned above, to achieve a balanced measure of quality. That index will be baselined and used in the future as a more balanced tool for measuring our performance with respect to quality.

<p>Timeliness Target: Reduce average first action pendency to 2 months by FY 2004 Reduce average total pendency to 12 months by FY 2006</p>

The Trademark Business will focus on reversing the trend of ever-increasing government spending by working within its authorization and minimizing the size of its program initiatives to handle workload increases. Our goals are designed to deliver cost-effective programs in support of the American people that will deliver substantially more value to the marketplace and the U.S. economy than the fees used to support direct examination operations. Our strategy is to continue to improve our operating efficiency by effectively leveraging technology and contribute directly to the national economy by creating a predictable and reliable trademark examination and registration system.

Quality Initiatives

Quality Review

Using available resources, we will prototype a comprehensive internal quality review program focused on improving examination quality to complement the corporate quality review program already in place. We intend to use the results from the internal quality review program to identify areas most in need of improvement. The internal quality review program will incorporate results from its findings into examiner reference materials, such as practice and procedure guidelines, and focused training programs to match individuals in need of remedial training with the type of training most beneficial to them. The expected results include improved quality and consistency and a reduction in the number of cases returned to examination. If successful, an internal quality review program will be incorporated into our business practices in FY 2004 based on the results of the FY 2003 prototype.

Customer Relationship Management

We will transition our existing Trademark Assistance Center to a full service Customer Relationship Management (CRM) center to reduce or eliminate the source of customer complaints related to internal processes. The program will be similar in concept to private sector programs that use CRM methodologies. CRM will provide a resource for the consolidation and sharing of information that we collect regarding customer inquiries and problem resolution. Moving to CRM will contribute to the re-engineering of our paper-based processes by providing customer-based requirements to ensure that new technologies meet the needs of our customers and address their complaints. We believe a CRM systems approach will improve customer satisfaction by reducing processing errors, provide a smoother transition to e-Government, and increase customer support for the move to full electronic processing. Eventually, the rest of the USPTO will be able to leverage the Trademark Business' experience with CRM and roll this system out enterprise-wide.

Peer-to-Peer

Trademark systems will be designed with the goal of implementing a "peer-to-peer" (P2P) pilot to investigate whether P2P will further improve the processing of Trademark applications and reduce costs once we complete our e-Government infrastructure in FY 2004. We expect that P2P has the potential to significantly enhance the benefits of electronic communications for large volume customers by creating a partnership focused on improving access to information specifically related to the customer. The concept offers the

potential for improved processes using fewer resources, maximization of trademark technology investments, and a reduction in processing and dissemination times.

Madrid Protocol

The Madrid Protocol requires that the USPTO process requests for extension of protection and other materials sent to and received from the International Bureau (IB) of the World Intellectual Property Organization (WIPO) within timeframes established by the Protocol. In anticipation of the U.S. joining the Madrid Protocol, all new systems will be implemented with a capability to electronically receive and process international registrations and requests for extension of protection. Requirements will focus on developing a peer-to-peer operating environment between the USPTO and the IB.

The Madrid Protocol provides a one-stop, streamlined registration process for U.S. businesses that need protection for their trademarks outside of the United States. The trademark owner, by filing one application in the USPTO, in English, can potentially receive protection for the trademark in each member country of the Protocol. Because the U.S. is not yet a member of the Protocol, American businesses operate at a disadvantage to businesses in Protocol member countries because Americans must seek trademark protection on a country-by-country basis. A streamlined, electronic system for filing for trademark applications in other countries will help all U.S. businesses, particularly small and medium-sized businesses, that frequently cannot afford to file separate trademark applications in each foreign country.

No additional resources will be required until the U.S. joins the Protocol. However, incorporating Protocol requirements into new systems as they are developed will minimize the cost of future development and permit the U.S. to quickly offer the benefits of the Protocol to our customers.

Timeliness Initiatives

e-Government

The Trademark Business plans to complete its transition from a paper-based to a fully electronic operation during FY 2004. There are a number of initiatives to be accomplished over the next two fiscal years to achieve this goal.

The first initiative involves increasing the number of applications filed electronically. In FY 2003, we plan to increase the number of new applications filed electronically to 80%. Our customers currently have the ability to conduct nearly all of their trademark-related business electronically but use of electronic communication is relatively low when compared to communication using paper. Specifically, only 25% of new applications are currently filed electronically and other electronic interactions are at lower levels despite the fact that electronic filing reduces the time that it takes to capture and process applications and ensures a level of quality and accuracy that is not possible with paper-filed documents. In FY 2003, we intend to promote the value and benefits of electronic filing and the distribution of information by creating a formal communication and education plan designed to encourage the adoption of electronic communication as the preferred method of doing business. We will also consider implementing changes in our rules and regulations, such as instituting processing fees for paper-filed documents and removing preferences for paper filers related to filing dates, as well as consider mandating electronic filing as an alternative if other efforts are unsuccessful in meeting our goal.

The second initiative, to also be accomplished in FY 2003, will be to implement full examination using electronic files. This will eliminate the current use of paper files for the examination process.

The final initiative to be implemented in FY 2003 is a "hotelling" plan in conjunction with our highly successful work-at-home project. The implementation of examination using electronic files facilitates hotelling, a concept in which 5-6 examining attorneys will share a single office and will further reduce the number of days they spend working in the office. Hotelling minimizes the need for office space at USPTO facilities and allows the Trademark Business to recover office space expenses for other uses.

In FY 2004, we will complete our transformation with the implementation of the Trademark Information System (TIS). TIS will integrate existing electronic systems to create an electronic file management system that will permit full electronic processing and examination of new applications and post-registration materials. It will allow us to process and examine more applications with greater quality in less time and with fewer resources. TIS will eliminate the need for paper-based records resulting in an electronic record being our official legal record of trademark application processing.

Workforce Flexibility

We will create a trained and ready workforce that provides more flexibility in managing fluctuating workloads and employees with more choice. Our most pressing challenge is to have options for increasing or reducing staffing related to our need for production capacity. We will consider creating variable positions and work schedules as an alternative to hiring permanent employees on a full-time work schedule. We also believe new technologies associated with our move to an e-Government operation will provide the USPTO the ability to better manage work by offering more employees the opportunity of working from home.

TECHNOLOGY ASSESSMENT AND INTEGRATION

Our full transition to an electronic, e-Government environment as defined in this business plan will result in the automation of the majority of complex requirements and business processes for both our customers and internal operations. We must, however, continue to maintain our technological superiority to allow us to meet customer demands, provide state-of-the-art products and services, maintain operational efficiencies, and minimize operating costs. Our approach includes the following:

- Ensure an information technology infrastructure that ties all of our distributed web applications, business logic applications, database servers, security functions, and backup/recovery functions together into a structured, responsive architecture
- Undertake a continual functional assessment to implement major enabling technologies

To build on our transition to a technology-based environment, we will establish a strategic architecture assessment program that will produce an enterprise-oriented, integrated, and coordinated approach to implementing emerging and enabling technologies. This will include coordinating and setting strategic direction as needed to meet information technology planning objectives. The result will be a more efficient, less complex architecture that increases systems performance and reduces the costs and timeframes for integrating new technologies.

We will also establish a team to evaluate a broad portfolio of technological advances and software packages, such as knowledge management/e-learning, intelligent searching, customer self-service/customer relationship management, workflow/document management, and web/e-Government. Though some of our information technology investments to date have been on the "bleeding edge", our intent is to assess new technologies and to integrate those that have proven their capacity and capabilities. This will allow the USPTO to continue to automate manual processes and provide customers and employees with additional and/or enhanced tools and technologies.

MOVE TO CARLYLE

The USPTO plans to consolidate its current operations on the Carlyle site in Alexandria, Virginia, about 3 miles from our current site. This space consolidation is a critical step in making the USPTO the best in the world with a world-class facility. On June 1, 2000, the General Services Administration (GSA), as agent for the USPTO, executed a 20-year lease for a 2 million-square-foot facility to consolidate the USPTO's operations that are now dispersed among 18 separate Crystal City buildings spanning a 1-mile distance, in space covered by 33 separate GSA leases. On December 19, 2001, the developer, LCOR Alexandria LLC, closed the bond financing that will cover the cost of the project, purchased the underlying land, and awarded excavation and construction contracts. Relocation to Carlyle will be phased to coincide with delivery of the five interconnected Carlyle buildings. Occupancy is expected to begin in late calendar year 2003 and be completed by mid-2005.

Economic analyses completed during the early stages of the project showed that this consolidation of agency operations into an interconnected complex will generate \$72 million in present value savings over the 20-year initial lease. A more recent report issued by the General Accounting Office (GAO), dated June 5, 2001, concluded that because the USPTO's Crystal City rentals have escalated faster than USPTO's studies had projected, consolidation now has the potential to realize \$98 million in savings. The GAO further noted that even if no savings were to occur, consolidation will enable the USPTO to provide better security for staff and to meet current fire, life safety, and accessibility standards for Federal facilities. Further, the per-square-foot rate for the USPTO's new consolidated lease is \$6 less than the per-square-foot rate for space recently leased by a major intellectual property law firm in a building directly across from the USPTO's planned Carlyle facility. These square-foot savings will increase even more over the 20-year lease term, because the base payment for the USPTO's consolidated lease is flat for the 20-year lease life as opposed to base rates for commercial leases that escalate annually.

Consolidation is critical to the agency's transition to e-Government. The USPTO now has the opportunity to tailor the design of a comprehensive state-of-the-art communication backbone for the facility and to provide for current communication methods such as videoconferencing. Also, in conjunction with the move and as part of the transformation to a fully electronic work place, the agency plans to eliminate paper files in both employee and public search areas to the maximum extent possible.

Consolidation will also benefit our employees. We will be able to provide employee amenities such as childcare, cafeteria, and expanded fitness facilities, which will aid in recruitment and retention of talented personnel.

The USPTO will face numerous logistical and operational challenges in executing the move to Carlyle. Dual operations, including dual computer operations, will be required during the phasing of the relocation, because the space will be delivered over a protracted period. Supporting employees and customers at geographically separate locations will require careful planning. The USPTO will also carefully monitor costs during project construction and ensure that any interim purchases are competitive and consistent with our standardized space utilization approach for the new facility. However, the long-term benefit will be a world-class facility with operational efficiencies and improved allocation of workspaces to accommodate our growing and changing workplace.

ORGANIZATION AND MANAGEMENT

The USPTO's organization and management philosophy is based on the direction that Congress gave the agency in the American Inventors Protection Act enacted in 1999. That Act reestablished the USPTO as an agency within the Department of Commerce. Recognizing the USPTO's dual role as a policy arm of government providing leadership on intellectual property issues and an operational unit issuing patents and granting trademark registrations, the Act redesignates the head of the agency as the Under Secretary of Commerce for Intellectual Property and Director of the USPTO.

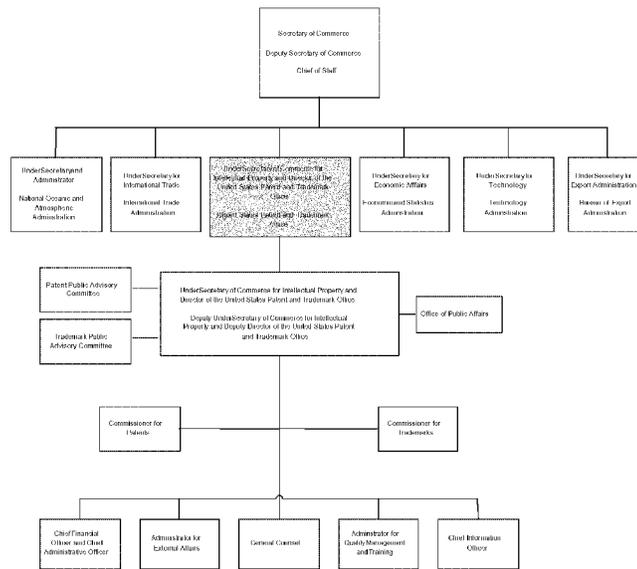
The Act designated the USPTO as a performance-based organization, which granted us greater management flexibility. Subject to the policy direction of the Secretary of Commerce, the USPTO is now responsible for its own management and administration and exercises independent control of such functions as budget allocations and expenditures, personnel decisions and processes, and procurements. Greater accountability accompanies that flexibility. The Commissioner for Patents and Commissioner for Trademarks have established performance agreements with the Secretary of Commerce. These agreements set out specific goals and performance expectations. The Act also created two Public Advisory Committees – one for Patents and one for Trademarks – to provide the USPTO with ongoing advice on budget and management issues of concern to its constituents.

The USPTO has reorganized its management structures in keeping with the more business-like approach expected of a performance-based organization. Its major management body is an Executive Committee, at which each of the major functional units is represented. Each unit regularly reports to the Committee on its progress toward meeting performance goals, so that cross-divisional monitoring of the USPTO's progress is ongoing. The Executive Committee is supported by Operations, Quality, and Policy Committees.

The USPTO has also restructured its operating divisions to make full use of its management flexibility. Two new divisions with substantive responsibilities cutting across the main business areas have been created – the Office of Quality Management and Training (OQMT) and the Office of General Counsel (OGC). OQMT holds corporate responsibility for monitoring the quality of products from both the Trademark and Patent examining operations. It also organizes training throughout the agency. The OGC creates, for the first time, a unified management structure for the several independent units concerned with legal review and representation – the Board of Patent Appeals and Interferences and the Trademark Trial and Appeal Board; the Office of the Solicitor and the newly formed Office of General Law; and the Office of Enrollment and Discipline. Formation of the Office of General Law reflects the USPTO's added administrative functions. Likewise, two other principal divisions of the agency -- the Office of the Chief Information Officer, and the Office of the Chief Financial Officer and Chief Administrative Officer -- provide the full range of support operations needed to operate the USPTO.

These structures have now been in place about a year. They are designed to create more flexible and accountable responses to developments in the environments in which the USPTO operates. Crucial, however, to our success is overall planning based on performance goals. Although this business plan focuses on the performance of the USPTO's main business units, all parts of the agency contributed to the plan's development and all will contribute to its accomplishment.

Organizational Structure



Management Team

James E. Rogan, Under Secretary of Commerce for Intellectual Property and Director, USPTO

Judge Rogan was sworn in as Under Secretary of Commerce for Intellectual Property and Director of the USPTO on December 7, 2001. Judge Rogan manages USPTO's operations and is principal policy advisor to the Bush Administration on all domestic and international intellectual property matters. Judge Rogan was a member of the United States House of Representatives from 1997 to 2001. He was one of only two members of the House of Representatives to serve on both the prestigious House Commerce Committee and the House Judiciary Committee. His service on the Judiciary Committee's Subcommittee on Courts and Intellectual Property earned him a reputation as a leader on both the protection of intellectual property and the modernization of intellectual property laws to protect America's economic interests. Judge Rogan was a gang murder prosecutor in the Los Angeles County District Attorney's office. He became California's youngest sitting state court judge in 1990, and served as presiding judge of his court until his election to the California State Assembly in 1994. Elected to Congress in 1996, Judge Rogan served two terms in the House of Representatives. Judge Rogan earned a B.A. degree from the University of California at Berkeley in 1979, and a J.D. from UCLA School of Law in 1983, where he served as a member of the UCLA Law Review.

John W. Dudas, Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director, USPTO

Jon Dudas was appointed Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the USPTO on January 11, 2002. In this capacity, Mr. Dudas assists the Under Secretary/Director in the overall coordination of policy and management of the USPTO. Prior to this appointment, Mr. Dudas served as the Counsel for Legal Policy and Senior Floor Assistant to Speaker of the House J. Dennis Hastert. In that capacity, Mr. Dudas was responsible for managing legislation on the floor of the House of Representatives and served as the primary advisor to the Speaker on issues ranging from intellectual property policy to counter terrorism. From 1997 to 2000, Mr. Dudas was the Deputy General Counsel and Staff Director for the House Judiciary Committee, where he was responsible for advancing legislation relating to intellectual property, technology law, antitrust, and constitutional law. His duties also included managing congressional oversight of the USPTO, Copyright Office, and Department of Justice. Mr. Dudas also served as Counsel to the Subcommittee on Courts and Intellectual Property and as Legislative Counsel to Congressman Henry Hyde. Prior to his employment with the House of Representatives, he practiced law in Chicago at Neal, Gerber & Eisenberg, where he represented clients in a variety of areas including intellectual property and antitrust. He is a member of the Illinois State Bar and the Bar of the United States District Court for the Northern District of Illinois. Mr. Dudas received a B.S. in Finance, *summa cum laude*, from the University of Illinois and a J.D. from the University of Chicago, with honors.

Nicholas P. Godici, Commissioner for Patents

Mr. Godici's current responsibility includes managing all aspects of the Patent Business, including administering and formulating policy relating to patent processing, examination, search, and procedural functions, and overseeing more than 4000 employees and an annual operating budget of over \$500 million. He is implementing a wide variety of changes in the organization to ensure that the agency functions as a performance-based organization. He has led efforts to reengineer USPTO processes that have resulted in

reduced processing time and increased customer satisfaction. He graduated from Pennsylvania State University with a B.S. in Engineering Mechanics and earned a graduate level Certificate of Advanced Public Management from the Maxwell School of Citizenship and Public Affairs at the Syracuse University.

Anne H. Chasser, Commissioner for Trademarks

Ms. Chasser oversees all aspects of the Trademark organization, including administering and formulating policy related to trademark examination and registration operations. She manages a budget of \$72 million and more than 700 employees, and is responsible for proposing programmatic changes in the trademark system. Prior to joining the USPTO, she was Director of Trademarks and Licensing Services at Ohio State University (OSU). Ms. Chasser established OSU's trademark licensing program, which is currently ranked third among all American colleges and universities in the amount of revenue generated annually from licensing university trademarks on goods and products. She also served as President of the International Trademark Association, a trade association of leading trademark owners with over 3,600 members from 120 countries. She is a recognized expert in the economics of trademarks and collegiate trademark licensing, and has a strong track record of successfully managing organizational change, business development, continuous quality improvement, and strategic planning. Ms. Chasser received a B.A. at the University of Dayton and a Master's in Public Policy and Management from Ohio State University.

Douglas J. Bourgeois, Chief Information Officer

Mr. Bourgeois directs the development, implementation, maintenance, enhancement, and operation of USPTO's automated information systems and the development of supporting strategic and operational information technology plans. He also serves as the agency's Senior Information Resources Management (IRM) official. Prior to joining USPTO, Mr. Bourgeois served as the Managing Director of Customer Service Technology for FedEx from 1999 to 2001, managing the computer application and telephony network environments at that company. He ensured that information technology services were available to support the customer-focused mission of FedEx. Mr. Bourgeois received a B.S. degree in Aeronautical Engineering from Cal Poly University in San Luis Obispo, California, and an M.B.A. in Finance and Marketing from Tulane University in New Orleans, Louisiana.

Clarence C. Crawford, Chief Financial Officer and Chief Administrative Officer

Mr. Crawford serves as the Chief Financial Officer and Chief Administrative Officer. Prior to coming to the USPTO, Mr. Crawford held senior executive positions in the White House and for the Congress. Mr. Crawford was the Associate Director for Administration at the Office of Management and Budget in the White House. Serving both as OMB's CFO and its CIO, Mr. Crawford focused on dramatically improving OMB's resource planning and investment decisions. At the General Accounting Office, an agency of the legislative branch, Mr. Crawford served as Associate Director for Education and Employment Issues, and later as Director of Operations of the National Security and International Affairs Division. Mr. Crawford frequently testified before the Congress as the GAO's chief witness. Mr. Crawford worked extensively with Congressional appropriations, budget, authorization, and oversight committees. Mr. Crawford also served as the Director of Planning and Project Management with the Internal Revenue Service and as a police officer with the District of Columbia. He received a B.S. in Criminal Justice and a Master's of Public Administration from American University.

Mary C. Lee, Administrator for Quality Management and Training

Ms. Lee is responsible for assessing USPTO's product quality and training programs, coordinating agency quality improvement and training activities, and developing agency skills and personal development opportunities and programs. She also chairs the USPTO Quality Council and the USPTO Training Council. Ms. Lee has been a leader in helping the agency streamline examination processes and procedures to reduce internal cycle time and improve quality of examination and customer service. She led various special projects, such as a team examination initiative and a team responsible for creating examination search guidelines, in an effort to increase the consistency and efficiency of the patent examination process. Ms. Lee joined the USPTO in 1973 upon receiving a B.S. in Chemistry from the State University of New York. Additionally, She earned a graduate level Certificate of Advanced Public Management from the Maxwell School of Citizenship and Public Administration at the Syracuse University in 1998.

Robert L. Stoll, Administrator for External Affairs

Mr. Stoll serves as Administrator for External Affairs. From 1995-2000, he served as Administrator for the Office of Legislative and International Affairs. He previously served as Executive Assistant to the Assistant Secretary of Commerce and Commissioner of Patents and Trademarks from November 1994-December 1995. He joined the Federal Government in 1979 as a Chemical Engineering Researcher in metallurgy at the U.S. Bureau of Mines where he worked until 1982, when he joined USPTO as a Patent Examiner in the area of metal containing complexes and compounds. While working at the USPTO, Mr. Stoll attended Catholic University where he earned a J.D. in 1985, and was admitted to the Maryland Bar. He received a B.S. in Chemical Engineering from the University of Maryland in 1979.

James A. Toupin, General Counsel

Mr. Toupin has served as General Counsel since January 2001. A member of the California and District of Columbia Bars, he began his career at Covington & Burling in Washington, D.C., specializing in trademark and copyright registration and litigation, as well as unfair competition and administrative agency litigation. In 1987, he was appointed Assistant General Counsel for Litigation of the United States International Trade Commission. He was subsequently promoted to Deputy General Counsel of that agency. In those positions, he was responsible for supervising defense of the Commission's actions in U.S. courts and international tribunals. The domestic court representation included defense of the Commission's determinations on patent and other intellectual property matters in the U.S. Court of Appeals for the Federal Circuit and of the Commission's determinations in antidumping and countervailing duty investigations in the U.S. Court of International Trade and the Federal Circuit. He received an A.B. degree with distinction from Stanford University, and a J.D. from the Boalt Hall School of Law, University of California at Berkeley.

FINANCIAL PLAN

Key Assumptions

This business plan has proposed a number of initiatives that support achievement of our quality and timeliness goals. There are, however, a number of critical drivers that can affect our performance. The charts below outline those factors and the key assumptions that we have made in projecting our funding and performance levels. Changes to these assumptions can affect the levels of pendency and quality we are able to achieve.

Projections of Key Patent Data

	2000	2001	2002	2003	2004	2005	2006	2007
EOY Examiner Staff	2,905	3,061	3,435	3,991	4,495	4,950	5,362	5,735
Examiners Hired	375	414	750	950	950	950	950	950
Examiners Attrited	437	263	272	351	408	490	506	548
Attrition Rate	14%	8.2%	9%	10%	10%	10%	10%	10%
Applications Filed	293,244	326,061	367,800	404,600	445,100	489,600	538,600	592,500
Growth Rate	12%	11.2%	12%	10%	10%	10%	10%	10%
Total Production								
Patents Issued	165,504	170,643	170,800	182,471	217,225	257,870	288,282	313,679
Disposals	234,344	239,493	238,840	286,015	338,930	403,122	419,556	481,024
First Office Actions	237,421	241,770	280,896	312,482	397,870	414,482	476,113	490,202
Inventory on Hand EOY	256,520	364,523	461,428	603,065	605,805	531,963	540,591	583,639
Total Pendency	25.0	24.7	26.5	27.3	29.2	27.8	26.8	25.5
First Action Pendency	13.6	14.4	14.7	16.6	15.2	14.2	12.9	12.7
Error Rate	6.6%	5.4%	5%	4.5%	4%	3.5%	3%	3%
Customer Satisfaction	64%	64%	67%	74%	73%	76%	80%	80%

Patent Sensitivity Analysis

The above-described factors are significantly interrelated and interdependent. A change in only one factor, e.g., higher growth rate in new applications filed, will have a direct and negative impact on the achievement of our quality and timeliness goals. However, a change in several factors may not have such an impact. For example, a greater growth rate in new applications filed may be manageable without impacting the achievement of our timeliness goals if our examiner attrition rate is also lower than anticipated. Our challenge will be to manage each of the factors and to find approaches for offsetting any impact while maintaining planned performance outcomes.

Projections of Key Trademark Data

	2000	2001	2002	2003	2004	2005	2006	2007
EOY Examiner Staff	383	389	353	321	338	362	395	433
Examiners Hired	74	60	0	0	46	54	66	74
Examiners Attrited	58	54	40	32	29	30	33	36
Attrition Rate	13%	12%	10%	9%	9%	9%	9%	9%
Applications Filed	375,428	295,388	300,000	330,000	363,000	399,000	439,000	483,000
Growth Rate	27%	-21%	0%	10%	10%	10%	10%	10%
Total Production								
Trademarks Registered	127,794	124,502	123,000	138,600	156,100	175,600	197,600	217,400
Applications Abandoned	101,099	142,973	96,000	101,900	109,500	118,100	128,800	141,500
Disposals	228,893	267,465	250,100	290,200	334,500	387,200	450,100	516,900
Inventory On Hand EOY	145,000	20,000	62,000	68,000	45,000	50,000	55,000	60,000
Applications Received Electronically	15%	24%	50%	60%	80%	80%	80%	80%
Total Pendency	17.3	17.8	15.5	13.5	13	13	12	12
First Action Pendency	5.7	2.7	3.0	2.5	2.0	2.0	2.0	2.0
Error Rate	3.4%	3.1%	3%	4%	3%	3%	3%	3%
Customer Satisfaction	65%	70%	72%	73%	78%	80%	80%	80%

Trademark Sensitivity Analysis

The budget requirements for the Trademark Business are principally based on the expectation of receiving and processing 80% of all applications electronically. Processing of electronic applications is more efficient than paper. It significantly reduces costs for paper handling and results in higher productivity per examiner. If this key driver is not met, budget requirements will have to be re-evaluated to process paper applications. Achievement of this key factor is critical to meeting the quality and timeliness goals and estimated resource requirements.

Budget Requirements

The following chart identifies the funding levels needed to meet the requirements identified in the USPTO's business plan. This chart also identifies the obligations for the specific initiatives in support of our goals. The amounts identified reflect the delta between amounts in our base funding and the total costs.

As the USPTO was formulating this business plan, which begins in FY 2003, it identified opportunities and funding in FY 2001 and FY 2002 to begin some of these initiatives. In this light, the USPTO was able to redirect significant funds to begin the Patent e-Government development and automation, as well as begin hiring new Patent Examiners, and to fund some portions of the remaining automation for Trademark's transition to a fully electronic environment. The resources identified below are necessary to complete those efforts, as well as support the other initiatives that comprise this business plan.

FUNDING REQUIREMENTS

	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
BASE					
Subtotal Base	\$1,212,975,810	\$1,419,456,610	\$1,616,843,167	\$1,723,832,349	\$1,832,859,630
WORKLOAD INCREASES					
Subtotal Workload	\$54,600,000	\$84,246,274	\$53,024,002	\$60,174,850	\$78,779,567
OTHER INCREASES					
Subtotal Other	\$30,550,879	\$29,729,256	\$21,069,180	\$41,130,564	\$40,193,176
INITIATIVES					
Patent – Quality Initiatives	5,000,000	52,577,720	47,489,928	42,142,138	38,056,812
Patent – Timeliness Initiatives	43,688,577	77,324,928	76,800,747	76,466,039	76,221,254
Subtotal Patent	\$48,688,577	\$129,902,648	\$124,290,676	\$118,608,177	\$114,278,066
TM – Quality Initiatives	N/A	718,761	747,022	755,839	764,974
TM – Timeliness Initiatives	18,092,800	15,474,828	17,671,459	15,646,787	10,745,200
Subtotal Trademarks	\$18,092,800	\$16,193,589	\$18,418,481	\$16,402,626	\$11,510,174
Subtotal Initiatives	\$66,781,377	\$146,096,237	\$142,709,157	\$135,010,803	\$125,788,240
TOTAL REQUIREMENTS	\$1,364,908,086	\$1,679,528,377	\$1,832,645,496	\$1,960,148,566	\$2,077,620,613
FEE INCOME					
TOTAL FEES					
Total Fee Income	\$1,528,908,066	\$1,679,528,377	\$1,832,645,496	\$1,980,148,566	\$2,077,620,613
Total USPTO Requirements	\$1,364,908,066	\$1,679,528,377	\$1,832,645,496	\$1,980,148,566	\$2,077,620,613
PATENT FEES					
Patent Fee Income	\$1,328,850,855	\$1,481,424,641	\$1,620,749,391	\$1,755,341,600	\$1,847,726,402
Patent Requirements	\$1,190,623,583	\$1,481,424,641	\$1,620,749,391	\$1,755,341,600	\$1,847,726,402
TRADEMARK FEES					
Trademark Fee Income	\$198,057,411	\$198,103,736	\$211,896,105	\$224,806,966	\$229,894,211
Trademark Requirements	\$174,264,483	\$198,103,736	\$211,896,105	\$224,806,966	\$229,894,211

Fee Strategy

The current USPTO fee structure had its genesis in legislation that was crafted to fully recover operational costs from the customers, foster use of the Federal trademark registration system, and mitigate the impact on small businesses and independent inventors who apply for patents and trademarks.

For Trademarks, the Congress passed a fee schedule, which the USPTO adopted, that recovered 100 percent of the trademark costs and kept the filing fee as low as possible. The strategy for patents recovered 50 percent of the cost of processing a patent application through the filing and issue fees. The legislation also established maintenance fees to be paid at three stages throughout the life of the patent to recover the remaining 50 percent of the estimated cost. Both patent fees and trademark fees can be adjusted annually to reflect changes in the Consumer Price Index (CPI). However, fundamental changes to the underlying patent and trademark fee amounts require legislation.

The capital investment required to fund the initiatives contained in this business plan and the full retirement costs for USPTO employees as required by the Administration will outstrip projected fee income based on current established fee levels. To mitigate this problem, the USPTO will propose a one-year surcharge for FY 2003 to cover the costs to begin initiatives in support of the USPTO's longer-term pendency, quality, and e-Government goals. The USPTO will propose regulatory changes to Trademark fees and submit a fee restructuring legislative proposal to realign the current patent fee structure, effective in FY 2004, to provide sufficient funding to cover retirement costs and complete the initiatives and goals identified in this business plan.

PREPARED STATEMENT OF DAVID PEYTON, DIRECTOR, TECHNOLOGY POLICY,
NATIONAL ASSOCIATION OF MANUFACTURERS (NAM)

Dear Mr. Chairman:

The National Association of Manufacturers (NAM) is the nation's largest and oldest multi-industry trade association. The NAM represents 14,000 member companies (including more than 10,000 small and mid-sized manufacturers) and 350 member associations serving manufacturers and employees in every industrial sector and all 50 states. Headquartered in Washington, D.C., the NAM has 10 additional offices across the country. The NAM wishes to submit the following statement for the record of the Subcommittee's April 11, 2002 hearing on "The U.S. Patent and Trademark Office: Operations and the Fiscal Year 2003 Budget."

QUALITY MANAGEMENT AND MEASUREMENTS

The essential situation is that the PTO's performance has declined markedly over the past decade. Pendency has risen from 18–19 months to 26 months. Dubious patent issuances have resulted in high costs for targeted defendants and in outside criticism, occasionally severe, combined with generally declining confidence in the agency's work product. Put plainly, the agency needs a turnaround with respect to its patent business, on which these comments will concentrate.

Definition and Requirements

While a working definition of patent quality may seem innocuous on its face, it will have far-reaching consequences if followed to its logical end. A patent of acceptable quality fully meets all the statutory requirements and will withstand challenge in court. That is, the prior art has been searched rigorously for references; the description is complete; the claims are drafted and circumscribed carefully; and the prosecution history makes it possible to understand all the decisions that were reached.

The first consequence is a fundamental requirements statement: For each patent application, there must be—

- an analysis of the written description and claims;
- an exhaustive search of the prior art;
- a correct application of the law; and
- an accurate record of the prosecution history.

Timeliness and Quality

The NAM emphasizes the necessity of escaping the false choice of timeliness versus quality; compare the just-in-time inventory revolution, which overcame the earlier dilemma of timeliness versus cost control with a new concept of rapid replenishment. New initiatives must improve timeliness and quality simultaneously. At the hearing, Undersecretary Rogan conveyed seriousness about improving quality in stating that he held it ultimately as more important than reducing the backlog. At the same time, a new emphasis on specifying and meeting requirements, and doing it right the first time—the rudiments of quality management—will yield steady improvements in both timeliness and quality. To speak of trading off one against the other indicates either a short-run outlook, or else thinking inside an old management paradigm, neither of which will yield the desired results in the long term. The NAM understands and accepts that there will be no fast solutions to either the massive backlog or the issuance of dubious patents, but one need not be traded off against the other.

Electronic-Case Management

Stating firm goals for conversion to electronic-case management on an announced schedule is indispensable. Stating the goals does not insure meeting them, of course, but the failure to state them essentially guarantees further unacceptable delay. The Securities and Exchange Commission had EDGAR running in pilot form as early as 1986. The sources of delay are numerous, but for the PTO to be this far behind is extremely disappointing. Numerous topics to be addressed include—

- electronic-file management;
- online searching;
- policy on Internet linking for applications and issuances;
- telework (one area where the agency has excelled);
- e-filing policies, prices and targets; and
- final documentation.

The Examining Corps

Upgrading the professionalism of the examining corps also is indispensable. Topics to be addressed include—

- hiring and qualifications;
- in-service training (especially legal);
- salaries and retention;
- flextime and telework;
- union relations;
- justifying the cost of initiatives by the reduced cost of new hires;

- learnings from other agencies (for example, the Food and Drug Administration); and
- exit interviews and focus groups.

The NAM notes in particular the hopeless staffing situation created by the strict statutory limits on pay levels. The situation was already poor before the economic boom of the 1990s, with law firms in the Silicon Valley leading the way, legal salaries reached previously unimagined levels. Today there may be only one other instance in the entire federal establishment with such a yawning gap between government and private-sector compensation: military doctors, almost all of whom are all presumed to leave the military after short service. The PTO must get out of the “Army-doctor syndrome.” As it lies beyond the power of the government to make private-sector employment less attractive, it must make government service more attractive. Initiatives like flextime and telework should certainly be promoted to the maximum, but weak pay cannot be disguised.

By contrast, examiners at the European Patent Office (EPO) in Munich earn well over \$100,000, tax-free. In effect, being an EPO patent examiner is like being a World Bank employee in Washington: having a well-compensated, highly respected job that is hard to get and that one seldom chooses to leave. The NAM notes with regret that U.S. corporations often choose, when filing under the Patent Cooperation Treaty, to have primary searches done at the EPO rather than at the PTO. That U.S. corporations “vote with their feet” gives evidence of a clear judgment that the EPO does higher quality, albeit slower, work, which is not surprising, given the greater seniority of its examining corps.

Staff Management

Managing the PTO professional staff is another major area needing scrutiny. As we noted last year, the PTO’s initiative in Group 705 (business methods patents), while not specifically designed for that purpose, stands as a case study or proof of concept of sharply increasing the amount of examiner time per case, plus detailed senior review, in sharply reducing dubious issuances. The PTO has proved that this approach can deliver marked results, making it a clear candidate for quality improvement more broadly. In addition, reducing the size of art groups or the number of direct reports to overstretched senior examiners is another idea gaining increasing currency.

Management Goals and Policy

Overall, the NAM continues to call for a formal policy of zero defects. As we stated to the Subcommittee a year ago:

The matter of the overall quality of patents issued, in the business methods area in particular, begs for order and discipline. Faced with the need to improve quality themselves, manufacturers start by taking measurements, and the NAM strongly suggests the same here. Just as the logic of zero defects as a stated goal has prevailed in industry, we call on the PTO to declare a goal of zero patent issuances later invalidated by prior art. To be sure, attaining perfection in practice isn’t possible; against about 150,000 issuances a year, some mistakes are inevitable. A key lesson from industry, however, is that setting such a goal starts one on the path of what can be attained, which is continuous improvement.

The February 2002 Business Plan on the PTO Web site represents a highly welcome first step, and the NAM looks forward to improvements in successive versions. Furthermore, quality management should become the central feature of the agency’s annual report.

The PTO has publicly discussed creation of a quality index or indices. That approach may well have merit, once the baseline measures have been adopted and initiatives promising real payback have been selected. Then a primary PTO goal would be improvement in the index at least on an annual basis. Conceivably, incentive pay for senior management could be tied to improvement in the index. An index has the virtue of comparing the PTO to itself. While benchmarks—that is, comparable measurement—with the only other similar organizations in the world, the European Patent Office and the Japanese Patent Office, would be desirable and may be attainable in the future, they essentially do not exist today and do not seem to be immediately forthcoming.

More Reexaminations

There are many more immediate steps that can and should be taken. Reexamination remains underused, and the NAM continues to support H.R. 1866 and 1886 as passed by the House. Even before final passage of those bills, however, there is

nothing stopping the director from ordering more reexaminations on his own authority. Faced with demands by computer programmer Bruce Dickens and his attorney for payments based on a patent for the windowing technique for Y2K remediation (patent no. 5,806,063) numerous companies contributed prior art to back up the characterizations of the patent as outlandish by leading Y2K experts. The resulting Internet-based collection provided former Commissioner Dickinson with ample facts to order a reexamination himself. However, he was reluctant to do so and it took considerable persuasion from industry. That should not have been necessary.

A more recent controversy—one of a number—stems from patent no. 6,185,681 in the field of encryption, which has been criticized sharply by recognized industry experts including Bruce Schneier, Phil Zimmerman, and Matt Blaze. The NAM believes the PTO should do an about-face on director-ordered reexaminations. Instead of making them rare and hard to get, the PTO should establish an easy-to-find feature on its Web site where expert parties can deposit prior art, and the director should state publicly his readiness to order a reexamination upon receipt of persuasive evidence. Today, too high a burden rests on outside parties to bear a financial cost, especially when they have no immediate stake in the dubious new issuance. This is one step that can and should happen promptly.

Domestic Quality and International Harmonization

The NAM heartily welcomes Undersecretary Rogan's remarks in at the World Intellectual Property Organization in Geneva on March 26, and notes the critical connection between domestic quality management and international harmonization. The Paris Convention is like the Eiffel Tower: a famous relic of the 1880s, reflecting the best techniques of the time. But its country-by-country essential premise leads to enormous amounts of rework, which, in the quality management view, is wrong in principle. *It is no exaggeration to say that a worldwide workload crisis exists.* Mr. Rogan aptly cited the work of the 1966 President's Commission on the Patent System, which envisioned "a universal patent, respected throughout the world." The need to move in that direction is more urgent than ever. The rework—still almost all paper-based—is significant cost drag on larger firms and makes it prohibitively expensive for many smaller firms to export. Indeed, cutting the costs of foreign patent protection—most recently estimated by the Intellectual Property Owners several years ago at almost \$500,000 for the largest 50 countries for the lifetime of a patent—is one of the best steps that Congress could take to boost exports from smaller U.S. companies.

It is here that the parallel between patents and trademarks is most evident. The NAM again thanks the Subcommittee for its handling of legislation to enable the United States to ratify the Madrid Convention to provide the same kind of "one-stop shopping" for trademarks that the Patent Cooperation Treaty already affords in its domain. As with patents, the useless rework will remain until national governments sweep it away.

It would appear to be only a matter of time before one of the three major patent offices establishes a zero-defects policy. It is vastly preferable for the USPTO to be the leader rather than a follower. Moreover, mutual recognition of search results—the key step Undersecretary Rogan outlined in Geneva—evidently will depend on agreed-upon policies and procedures. All the better, then, that the United States undertake a fundamental requirements analysis now. All the better that a foundational U.S. analysis, if possible, serve as a starting point for negotiations.

Electronic filing must also work internationally. To avoid multiple incompatible formats, the PTO should continue to work as fast as possible through the Patent Trilateral with the EPO and the JPO to issue a standard template that will be acceptable in all three offices and, given their dominance, elsewhere in the world as well. Patent practices must catch up with the pace of global industry.

The detailed quality management analysis and electronic format standardization can also inform the statutory dimension of harmonization. Like other business parties, the NAM last year indicated to the PTO, with respect to international harmonization, that it believed the time had come for the mutual sweeping away of eccentric and cumbersome features of national laws, especially as regards European countries and the United States. Ideally, the electronic exercise can be carried out in the manner that systems integrators call "transformational outsourcing," that is, clearing away outmoded features and systems first rather than automating them.

To sum up, the PTO should—

- adopt a publicly stated policy of zero invalid patent issuances;
- establish a measured baseline with announced results;
- set clearly stated goals for continuous improvement; and
- make this effort a major feature of its annual report.

PTO FUNDING

The NAM remains convinced that the single most evident reason for inadequate PTO performance is Congress's decade-long bad habit of treating the agency as a convenient source of cash. After 10 years, the cumulative diversion or withholding amounts to about \$700 million. This situation continues to distress everyone who truly cares about the effective functioning of the patent system. In our view, it has become irrefutable that the continued funding drain has yielded deteriorating performance. Enclosed with the testimony is a series of charts detailing how continued and rising fee withholding has been the key factor in deteriorating PTO performance, with average patent pendency rising from 18 months to 26 months.

Permitting the PTO to spend all the fees it takes in every year—from a public policy standpoint, the only defensible outcome—would also lift the agency out of the dilemma of spending money to hire or to automate that has been forced upon it for far too long. Like quality versus timeliness, this is a false choice. For the PTO to add sufficient staff this year is a necessary step. Substantial progress on electronic filing and quality management are likewise necessary steps. It is not a matter of one or the other, but all of the above. At the same time that the agency keeps staffing up to adequate levels, full funding would enable automation to proceed as it should.

To these ends, the NAM supports the \$45 million of the Administration's proposed surcharge that would go to the PTO to do its work but strongly objects to the remaining \$162 million that constitutes, as noted at the hearing, a continuing hidden tax on inventors. Moreover, the NAM takes vigorous exception to any characterization of the fee diversion as supporting homeland security. Funds will simply go into general accounts in the Treasury; even if some new account were created, it would be an artifice, as it would be masking the management of that part of the government that runs on a unitary budget. Moreover, taking money away from the organization dedicated to serving the inventors who desire to go public with their inventions—rather than keeping them secret—can only be viewed as self-defeating from either an economic or defense standpoint.

THE NAM NOW CALLS FOR A BOLD, DETAILED AUTHORIZATION BILL

Mr. Chairman, the NAM supported your PTO authorization bill, H.R.2047, with the aims of retaining all fees in the PTO budget and specifically calling for a major automation program. But after another year with inadequate funding, issuance of some dubious patents and little management progress, the NAM now believes that the situation calls for a far broader and more detailed authorization bill that will set in law the major goals the agency must achieve.

Findings

- PTO performance has deteriorated over past decade, marked by increasing delays and dubious patent issuances in newer subject areas.
- Issuances of dubious new patents impose high costs on U.S. industry in terms of time and money for investigation or defense, as well as diversion of research and development resources to invent around them and avoid legal defense costs.
- PTO has been precluded from spending about \$700 million in fees it has collected over the past decade. The agency's inability to spend these funds has led to shortfalls in staffing and computerization that underlie the increasing delays and questionable issuances.
- The only sound fundamental basis for fees charged by a federal agency to an individual party for a particular service is the cost of rendering that service.
- PTO fees do not have an adequate cost basis today. They are not differentiated by difficulty of examination or modality of input; the fees are not directed in their entirety to their stated purpose of patent administration; and some users bear higher fees in the form of a hidden cross-subsidy to support lower fees for small entities.
- Discounting fees for small entities to promote patent system use is nonetheless a valid social purpose.
- Subsidies for social purposes should be open and transparent. Subsidies for some inventors should not come at the expense of other inventors, discouraging them from using the patent system.
- Improved practices and measurements, staffing, and computerization—in particular, electronic-case management—are needed to cut backlog and increase quality.

Financial Provisions

- The PTO is authorized to retain and spend all fees on annual basis.
- Fee structure is unified in statute, eliminating all surcharges. No surcharges are authorized. Annual increases are authorized up to the higher of 1) the Consumer Price Index; or 2) a moving three-year average of applications workload increase. (A fee chart needs to be worked out, but users must be prepared for significant increases.)
- The PTO is directed to offer discounts for filing electronically—to provide an incentive for applicants to make the changeover—taking into account expected long-term savings by discarding paper.
- The PTO is directed to impose handling fees in rough proportion to costs imposed by the length and complexity of individual filings (to encourage less lengthy applications where possible, and the attendant costs of having the lengthiest applications split up by the PTO).
- To pay for small entity subsidies, the PTO is authorized \$150 million a year from appropriated funds. (The amount of discounts would depend on sums actually appropriated.)

Performance Targets

- The PTO is expected to meet the following overall performance targets and will report to Congress every six months whether it is on target to cut the patent applications backlog and to eliminate paper case management on the following timetable:
- By two years from enactment, the PTO will have all-electronic case management in trademarks.
- By three years from enactment, the PTO will have all-electronic case management in patents.
- By six years from enactment, the PTO will—
 - have reduced average time to first action in patent cases to eight months; and
 - have reduced average patent pendency to eighteen months. (The specific numbers are negotiable, but clear timetables are essential.)
- In addition, the PTO will seek advice from its advisory committee as to which industry segments have the greatest need for prompt action on applications and whose needs would not be met by the above schedules. The PTO will report to Congress as to which industry segments they are and formulate a plan to process their work faster than the overall averages.

Management Measures

- Pursuit of zero defects—that is, the issuance of zero dubious patents—set forth as official management policy for the PTO.
- The PTO is directed to consult fully and openly with all interested private-sector vendors offering software and services in support of electronic filing and to use commonly accepted protocols and formats. Furthermore, the PTO is to lead discussions in the Patent Trilateral (with the European Patent Office and the Japanese Patent Office) on a harmonized, internationally accepted electronic format.
- The PTO is directed to undertake a major review of patent-quality policies, practices and procedures. After six months, it is to submit a report to Congress including 1) what collection of quality measures the PTO will use as a baseline and will track over time; 2) what quality-management methods proven out in private industry the PTO plans to adopt; and 3) what specific steps will be taken to raise the quality of patent applications, such that they better take into account all prior art, fully disclose the technology and make precise and defensible claims.

The discussion at the hearing raised the question of reconstituting the PTO as a wholly owned government corporation, as some early legislative versions of the American Inventors Protection Act would have done. While not part of an authorizing bill as such, the NAM welcomes the reintroduction of this concept into the current debate on improving the patent system. The NAM has favored the concept of managing the agency like Ex-Im Bank, for example, rather than part of a line agency and supports the testimony of the American Intellectual Property Law Association in this regard. The National Academy of Public Administration issued a favor-

able report on the matter in 1989 that remains the basic document. Opposition to this legislative provision rested on wholly unsubstantiated claims that corporations would subvert the agency into issuing weak patents through large donations. Just the same, the logic of the idea remains sound and would better enable the sorts of quality-management initiatives now under discussion than does today's line bureaucracy status.

SUMMARY AND CONCLUSIONS

Mr. Chairman, here is the NAM's vision for the PTO. By the end of the current Administration, the PTO—

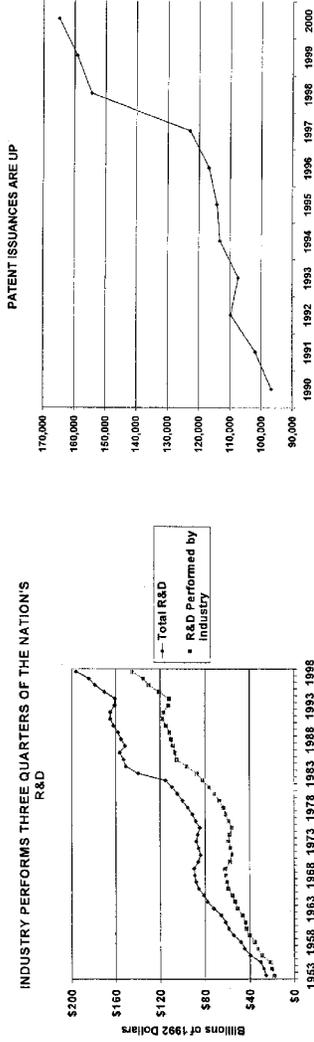
- will have completed the transition to electronic filing and file management for trademarks and be more than half completed in patents;
- will operate as a true performance-based organization with the same continuous improvement techniques well known in industry; and
- will be poised to leave its inefficient, disjointed office space for modern unified space at the new location.

If Congress shares that vision, then these implications are clear:

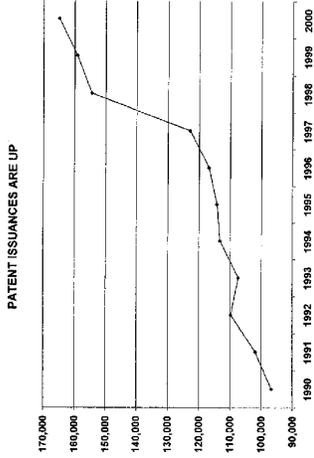
- Leave all the fees at the PTO, especially to ensure that full automation is achieved before the move. Conversely, it is hard to see how the PTO can make true progress if Congress continues to treat it as a convenient source of cash.
- Enact detailed authorizing legislation as outlined above, with regular oversight hearings every six months.

I would be pleased to provide any further information and appreciate your consideration of our views.

THE PATENT BOTTLENECK IN THE LONG ECONOMIC EXPANSION (1) Patents Contribute Centrally to the Expansion....

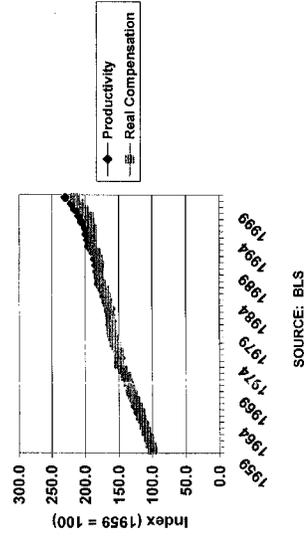


SOURCE: NSF



SOURCE: PTO

Productivity and Compensation



SOURCE: BLS

THE PATENT BOTTLENECK IN THE LONG ECONOMIC EXPANSION (2)
And, Patents Lead To Growth and Jobs

Patents pull overall state economic performance		
STATE	NEW ECONOMY INDEX RANK	PATENT PER CAPITA RANK
Massachusetts	1	4
California	2	7
Colorado	3	12
Washington	4	21
Connecticut	5	2
Utah	6	13
New Hampshire	7	8
New Jersey	8	5
Delaware	9	1
Arizona	10	16

Source: State New Economy Index

LEADING EXAMPLE: Healthcare Technology in Massachusetts		
YEAR	PATENTS	JOBES
1992	351	29,064
1993	425	30,447
1994	464	31,946
1995	467	31,128
1996	615	31,800
1997	846	32,722

Source: Regional Financial Associates, Collaborative Economics, Massachusetts Division of Employment and Training, and CHI Research

THE PATENT BOTTLENECK IN THE LONG ECONOMIC EXPANSION (3)
But, The PTO Can't Keep Up

