

Statement of
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Under Secretary of Commerce for Intellectual Property
and
Director of the United States Patent and Trademark Office
before the
Subcommittee on Commerce, Justice, Science, and Related Agencies
Committee on Appropriations
U.S. House of Representatives
“USPTO FY 2012 Budget Request”
March 2, 2011

I. Introduction

Chairman Wolf, Ranking Member Fattah, and Members of the Subcommittee:

Thank you for this opportunity to discuss the United States Patent and Trademark Office's (USPTO) operations, programs, and initiatives, and the President's FY 2012 budget request to support those efforts.

Innovation continues to be a principal driver of economic growth and job creation in the United States, and intellectual property (IP) delivers that innovation to the marketplace. We at the USPTO are proud of the role we play in serving America's innovators, and granting the patents and registering the trademarks they need to secure investment capital, build companies, and bring new products and services to the marketplace. The work we do at the USPTO directly contributes to strengthening our economy and creating jobs and helps move us toward the President's goal of winning the future by out-innovating our competitors.

To effectively carry out our mission, the USPTO must be well-run and appropriately funded. Consistent with the directive from Commerce Secretary Locke, our overriding goal is to focus our resources more effectively on improving overall operations and reducing the time it takes to get a patent. I am pleased to report that during the last year the USPTO has increased patent production, reformed key processes, and improved quality. During this time we also developed and issued a metrics-based strategic plan to strengthen the capacity of the USPTO and ensure that our resources are appropriately focused on our strategic goals. These accomplishments have helped us begin to reduce the significant backlog of pending patent applications.

II. President's FY 2012 Budget

The President's Budget provides the USPTO with the funds we need to reduce our patent application backlog and pendency levels, improve patent quality, and make necessary investments in our information technology (IT) infrastructure. These investments will support actions we have already taken and have underway at the USPTO to create a more efficient and effective Office. We continue to work closely with the Department of Commerce in planning and preparing our priorities and budget requirements to ensure our goals and initiatives are aligned with and support the goals of the Department.

The President's Budget requests authority to access the \$2.7 billion in user fee collections currently projected for FY 2012 to execute our multi-year operating requirements. This results in an appropriation of \$0 budget authority. As a fully user-fee funded agency, the USPTO's requirements are addressed at no cost to the taxpayer. Our performance commitments for FY 2012 assume enactment in March of the FY 2011 President's Budget for the USPTO, including the interim increase in patent fees.

Availability of these budget resources will promote America's economic growth and competitiveness by enabling investments that are essential for reducing current patent application backlog and pendency levels; maintaining trademark pendency at current levels; moving to 21st century information technology systems; and helping improve IP protection and enforcement around the world. These goals will be supported by:

- Hiring 1,500 patent examiners for a net increase of 1,000;
- Establishing a nationwide workforce focused on hiring from around the country, telework, and hiring patent examiners with previous IP experience;
- Enabling patent applicants to fast-track their most important applications through a Three-Track Examination program;
- Facilitating work sharing arrangements with foreign IP offices;
- Continuing to develop and implement a new generation of patent and trademark IT systems; and
- Enhancing our international capacity-building, training, and advisory programs.

Under the FY 2012 budget, we anticipate receiving and processing 527,600 patent and 404,000 trademark applications and producing 573,700 patent units of production and 840,500 trademark balanced disposals.

By the end of FY 2012, we expect to reduce patent first action pendency to 22.3 months and the backlog level to 549,600.

In executing the FY 2012 budget, we expect to reduce patent first action pendency by 60 percent to 10.4 months in FY 2014 and reduce patent total pendency by 45 percent to 19.3 months in FY 2015, as compared to FY 2010 levels. Our backlog of unexamined patent applications would be reduced by 50 percent to 352,400 in FY 2014. This will represent an optimal level of inventory for ongoing efficient operation of the USPTO.

With respect to our Trademarks Operation, we expect to maintain trademark first action pendency on average between 2.5 to 3.5 months, with total pendency at 12.5 months.

III. Current Funding Overview

Mr. Chairman, ensuring stable funding for the USPTO will continue to be a critical component of our success. Fee collections are running very strong as a result of an improving economic outlook, strong patent renewal rates, and our increased production. We are getting more done and are collecting more fees in doing so. As you know, to enable these efforts, the President's FY 2011 Budget proposes that the USPTO be permitted to spend all of the fees it collects and proposes a 15 percent surcharge on patent fees. The USPTO's budget is fully supported by the fees it collects and uses no taxpayer funds.

Despite our strong fee collections, the USPTO has been forced to implement spending reductions as a result of the terms of the current Continuing Resolution. These include delaying critical IT projects, slowing down hiring, and restricting examiner overtime (examiner overtime is a highly efficient way to increase agency production and fee collections -- far outstripping the incremental cost of overtime pay).

Should the Continuing Resolution be extended beyond March 4, and hold the USPTO to its FY 2010 spending authority level, we will be forced to halt all hiring, overtime, and IT improvements. This unfortunately would reverse many of the gains we have begun to make. Such continued restriction in appropriations would also result in almost \$200 million of user fees collections being unavailable to support USPTO operations. Ensuring stable funding for USPTO will continue to be critical to our success in serving America's innovators.

IV. Progress

Mr. Chairman, while we have faced, and continue to face, financial challenges, we have implemented a broad array of changes during the last year, and have refocused our resources to our most important work, including reducing the current patent backlog. I am pleased to report that our dedicated employees have made progress in a number of important areas:

- Our Patents Operation set all-time records in total Agency work output, including the number of patents granted and applications rejected.
- As of the end of FY 2010, we reduced the backlog of utility patent applications to about 708,000 – the lowest level in several years.
- We have seen a sustained and substantial decrease in actions per disposal – an indication that patent application issues are being resolved more efficiently. Importantly, these accomplishments have been made without any sacrifice in quality. In fact, our quality metrics have actually risen – even while productivity has improved.
- We increased our total number of interviews hours – time spent working with patent applicants to understand their inventions and resolve issues – a full 40 percent last year, to 140,000 hours of interviews. This represents another all-time record for our agency.
- We have put a number of market driven pilots into action including: accelerated examination of Green Tech applications, project exchange and a “Three Track” examination process.
- Working with our patent examiner’s union POPA, the USPTO has installed a new examination “Count” system which gives our examiners more time to examine patent applications – increasing quality – while incenting earlier resolution of issues, resulting in improved examination efficiency.
- We expanded telework opportunities for our employees and, at the end of last year, almost 6,000 USPTO employees – 83% of those eligible – teleworked at least one day per week. More than 2,700 teleworked 4-5 days per week. Recent legislation will enable us to further expand and improve our telework programs.
- We have substantially expanded our work sharing arrangements with other major patent offices worldwide to speed the processing of applications filed in multiple jurisdictions. In fact, in FY 2010 we more than doubled the total usage of our benchmark Patent Prosecution Highway as compared to all previous years combined.

V. Conclusion

While we are aggressively making changes at the Office, I want to express the Administration’s support for continuing congressional efforts to enact patent reform legislation. Enactment of a number of the proposals considered in recent years will significantly improve our patent processes, reduce litigation uncertainties and costs, and increase the value of patent rights for American innovators. We are particularly pleased that the latest version provides necessary authority for the USPTO to adjust patent and trademark fees as needed to reflect the costs of providing services to applicants.

Mr. Chairman, we are ready to work with you to ensure that the jobs-creating, deficit-neutral work conducted at USPTO for the benefit of our nation's innovators is supported in FY 2012, as well as the final spending package enacted for the remainder of FY 2011.

We appreciate your continued leadership and support of the USPTO and look forward to working closely with you and the Members of the Subcommittee to meet the challenges before us.