



## UNITED STATES PATENT AND TRADEMARK OFFICE

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UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND  
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

**Questions and Answers for the Record  
United States Patent and Trademark Office Oversight Hearing  
Before the Committee on the Judiciary  
Subcommittee on Courts, the Internet, and Intellectual Property  
February 27, 2008**

Questions Submitted by Chairman Berman

**1. Accurate projection of the number of patent applications that the USPTO will receive in coming years is critical to planning and resource allocation decisions being made today. Please describe in detail the methods the USPTO uses to project the number of future patent applications. What economic and legal factors, including anticipated rule changes, does the USPTO assume in developing its patent application projections? What kind of computer models and other tools do you employ to make such projections?**

Answer: The USPTO uses quantitative methods, from straightforward time-series to very sophisticated forecasting models, along with qualitative methods, such as applicant surveys, discussions with the patent community, and collaboration with other patent offices to forecast patent application filings.

The forecasting models used by the USPTO extrapolate historical trends and utilize relevant indicators and factors including research and development (R&D) expenditures, gross domestic product (GDP) spending and venture capital (VC) investments. Correlations to the U.S. economic growth, as well as the global economy, are made with these indicators to include spending on technological innovation activities and investments leading to the commercialization of new products as indicators of projected patent applications to be filed at the USPTO. The USPTO uses software such as Statistical Analysis Software (SAS), Statistical and Forecast Pro to produce dozens of forecasts.

Nearly 50 percent of U.S. patent applications are filed by residents of foreign countries. The USPTO has partnered with the European Patent Office (EPO) and the Japan Patent Office (JPO) for many years to share research, models, trends, and results of national and international patent application forecasting efforts. Recently, the Korean Intellectual Property Office (KIPO) and the Chinese State Intellectual Property Office (SIPO) have contributed to this effort.

Legislative and economic factors, such as anticipated rule changes, Congressional legislation, and adjustments to fee rates are analyzed and any assumed applicant behavior adjustments are incorporated into patent application filing projections.

A team of cross-disciplinary experts within the USPTO arrives at a consensus application growth rate projection after carefully considering all models, methods, assumptions, and related information.

**2. In the USPTO's FY2008 budget document, it was projected that the number of patent applications would grow by 8% over each of the next 5 years. (See attachment 1). This projection was supported by the FY2007-2012 Strategic Plan, which stated "the strategic plan anticipates that patent application filings will continue to rise at the rate of eight percent per year, through 2012. This growth is not a surprise, nor is it new." (See attachment 2). However, in the FY2009 budget document, it was projected that patent applications would grow by only 5% per year over the next 5 years. (See attachment 3). Please explain why the projected rise in patent applications was reduced in your FY2009 budget document.**

Answer: The FY2008 budget and the FY2007-2012 Strategic Plan projected patent applications would grow by 8% each year. The Congressional Budget Office's economic forecast envisioned that recent growth would moderate. The USPTO's most recent patent application growth rates were 7%, 8% and 9% for FY 2004, FY 2005 and FY 2006, respectively. With CBO projections and application filing growth in past years, patent application filings were forecast to grow 8% each year.

The economic outlook changed for the FY2009 budget. The Congressional Budget Office's economic forecast had been revised downward. As contrasted with GDP growth of near 4% in 2006, estimates were less than 3% for the near term. In addition to the assumption of future economic growth at a slowed pace, the most recent year's patent application filing growth rate had decreased to 5%. Forecasting models indicated a more conservative growth rate of 5%, which the USPTO adopted in the FY2009 budget.

**3. Also the FY2009 budget document mentioned that the projected 5% application growth rate "may be affected by the Agency's rule governing continuation practice," but didn't indicate how it would be affected. (See attachment 3). Please explain what was meant by this statement. Also, if the 5% application growth rate projection took into account assumptions or expectations that no longer apply, such as the implementation of the continuation and claims rules that were recently enjoined, please provide revised growth projections.**

Answer: The USPTO, using historical and projected counts of continuation applications, assumed there would be a change in applicant behavior with implementation of the continuations rule. The limitations proposed in the continuations rule were assumed to result in a 1% reduction of applications received (approximately 5,000), beginning in FY2010. Although the reduced applications total assumed was not significant, the

statement intended to inform the audience that the proposed continuations rule was an element of forecasted future year patent applications.

The FY2009 budget assumed that the continuations and claims rules would not be implemented until FY2010. The 5% application growth rate projection for FY2009 was not influenced by the continuations and claims rules. The enjoinder of the rules could slightly increase the 5% application growth rate beginning in FY 2010, but assumptions and expectations related to the U.S. economy may have a stronger influence. Revised growth rates for FY2010 and future years have not yet been determined.

**4. What role, if any, did the USPTO's Patent Public Advisory Committee have in determining and reviewing the agency's patent application filing projections in the FY2008 and FY2009 budget documents?**

Answer: The Patent Public Advisory Committee, in its role of reviewing the policies, goals, performance, budget, and user fees of patent operations, and advising the Agency on these matters, provided advice on the patent application filing projections in the FY2008 and FY2009 budget documents.

**5. Aside from implementing the recently enjoined continuation and claims rules, describe all the possible actions the USPTO or Congress can take that would impact patent pendency and the respective impact each action would have on reducing patent pendency? What combination of these actions would be needed to reduce patent pendency if the application growth rate was held constant at 5% over the next 10 years? What combination of these actions would be needed to reduce patent pendency if the application growth rate was held constant at 8% over the next 10 years? Please provide whatever computer or mathematical models used in answering these projections.**

Answer: Suggestions for Effectively Reducing the Application Backlog:

1. Applicant Quality Submissions. Improve application quality and examination efficiency by requiring applicants to conduct a minimum search of the prior art and submit a relevancy analysis of pending claims in view of the references deemed most closely related to the claimed invention by applicant before examination on the merits is begun. This basic responsibility, if applied to pending, unexamined applications would significantly improve the Office's ability to reduce the current backlog of applications.
2. Worksharing. Pilot worksharing to determine the degree of reliability the search and examination results of foreign intellectual property offices have during examination at the USPTO. Assuming the pilots regarding search results are successful, utilize the searches of foreign intellectual property offices offset with increased examination goals. Similarly, determine if the examination results are of sufficient reliability to create streamlined examination procedures for applications that claim the benefit of prior applications filed in another office. This would be implemented with sufficient quality

assurance measures that the search results of a particular office were of sufficient quality. Implementation would occur following a transparent proof of concept.

3. Increase capacity.

- a. Telework /Virtual Offices. The concept of creating new satellite offices has been thoroughly discussed at the management level after a review of consulting reports. Because of the success of Telework programs in terms of increased productivity and improved employee morale, our decision was to expand Telework opportunities as opposed to pursuing a brick and mortar satellite office concept. A preferred approach is to work with the Congress on a pilot program allowing the USPTO to waive the requirement that our teleworkers check into headquarters every week to maintain their duty station and instead allow our teleworkers the flexibility of re-locating anywhere in the United States. This would be the start of a Nationwide Workforce for the USPTO and would help us recruit new employees and retain our current workforce.
- b. Work with universities to provide a "Certificate in Patent Examination" to ease transition to patent examination. The Office would benefit by reducing its training academy obligations and should be able to offer escalated promotion and hiring bonuses to new graduates with certificates.
- c. Utilize retirees (primary or equivalent to include patent practitioners) for (1) examination on per case or flat goal basis; (2) training; (3) review of junior examiners; or (4) work as roving expert/trainer.

4. Deferred examination. [Please see also the USPTO response to Rep. Issa's question on deferred examination.] Implement in a step-wise fashion:

- a. Provide an increased notice to file missing parts time period for response within our existing regulatory and statutory authority (e.g., increase from a two month extendible period to a 14-month extendible period);
- b. Obtain statutory authority to implement an examination fee through regulations based on windows of time after filing where the greatest fee is due on filing, or within one year of filing, and lesser fees for later submissions. Note: Third parties would be able to pay such fee.
- c. Increase provisional rights associated with publication and permit a provisional applicant to request publication. Increase the time period within which a nonprovisional application must be filed to claim benefit of the provisional application filing date to five years. As a result, many inventions would not be the subject of non-provisional applications because they would be recognized as obsolete before expiration of the five year period and therefore would not require examination resources.

Anticipated impact: While it is anticipated that each of the initiatives would improve the Office's ability to reduce the backlog, it is difficult to model the degree of impact with

precision because of the incremental nature of the changes and proofs of concept that the USPTO would prudently undergo before implementation of the initiatives.

**6. According to the recent GAO report titled “*Hiring Efforts Are Not Sufficient to Reduce the Patent Application Backlog*,” the GAO found that the USPTO cannot hire enough patent examiners to reduce patent pendency in the next five years. It seems, however, that this projection is based on estimates provided by the USPTO. The report states “According to USPTO estimates, even if the agency were able to hire 2,000 patent examiners per year in fiscal year 2007 and each of the next five years, the backlog would continue to increase by about 260,000 applications to 953,643 at the end of fiscal year 2011.” (See attachment 4). Please provide all data related to these “USPTO estimates,” including mathematical models, and underlying statistics and assumptions such as examiner retention and productivity. Under these same assumptions, hypothetically, how many patent examiners would have to be hired in the next five years in order to reduce the patent backlog?**

Answer: The GAO is referring to a Hiring Model prepared on October 23, 2006. See attachment. The USPTO obtains continuous feedback on both hiring and other factors, which helps us refine our projections over time. For example, as noted in our response to Question 1 above, application growth is not as high as was anticipated just a couple of year ago. Lower attrition rates – which we have seen in FY 2007 and anticipate in FY 2008 and beyond – are important data. Our current modeling (involving anticipated filings and the rate of examination based on current and projected numbers of patent examiners) reflects a reduction in the backlog of pending patent applications within five years.

As a practical matter, the USPTO is interested in a combination of prudent hiring, retaining its talented examiner corps, and leveraging telework flexibilities to avoid space-crunch issues. While it is theoretically possible to hire at some pace that eventually offers a “one application per examiner” rate of examination, this is not an efficient model. Most cost models for hiring employees tend to ignore the “fully burdened” costs of hiring a new employee, which involve the real dollar, materiel, and morale impacts on other parts of an enterprise.

Hiring models are important, but exclusive reliance on modeling can lead to false choices. For that reason, we rely on feedback from the examining corps to streamline patent examination. For example, updating our patent classification system (that is, how inventions are categorized - - similar in concept to the Dewey Decimal system for library classification) increases search efficiency and accuracy. In this effort, we are also working with international partners to improve search strategies. Hiring models don’t capture the organizational impacts of large-scale hiring, and for this reason should not be used in isolation as forecasting tools. Nor do hiring models compare the hiring option with efficient, necessary process-improvements. The examination process has developed over time, the Agency is beginning to undertake systematic process reviews of examination elements to identify inconsistencies, inefficiencies, unnecessary steps, or identify quality improvements. Only with that additional information can an accurate algorithm of the necessary on-board count be evaluated.

We also appreciate that it is important to factor in the cost to the following USPTO business areas as they ensure that each new employee is fully served throughout their career. The hiring process begins with collaboration between, in this case, our Patents and Chief Administrative Officer (CAO) organizations, including recruitment trips, advertising, and calling applicants, among other things. The decision to extend an offer of employment is followed by an offer letter (CAO prepares, working with Patents), answering questions (CAO primarily), security checks (CAO) and ensuring that the newly hired person will receive pay timely (Office of the Chief Financial Officer (CFO)). Once the new employee is welcomed to the USPTO, they have many choices with respect to healthcare, the Thrift Savings Plan, insurance, and other administrative items, which need to be accurately and timely processed by our CAO and CFO organizations. In addition to the general personnel processing items of pay, insurance, etc., that are common to any Federal organization, we must ensure that the new employee has the proper work-station equipment (Office of the Chief Information Officer(OCIO)), that the equipment is accounted for (CAO working with the local business unit), that the employee has a telephone and computer account (CAO and OCIO), and that the equipment is maintained (OCIO). Simply implementing the good-housekeeping practice of upgrading computer equipment takes more human time as we have more employees, and accurately tracking all equipment obviously takes on complexity as one adds people to the system.

Doubling our workforce in a short period of time has also put some strain on facilities management. Again, we have very positive employees who enthusiastically embrace the flexibilities such as telework that reduce pressure on existing facilities. However, a reality of significant hiring efforts has been doubling of employees in offices and the need to procure additional space to provide the amount of preparation necessary to ensure that our examiners – and other employees – receive the training they need. And, as our CAO and CFO offices staff-up to meet the service needs of the USPTO, there are accompanying requirements for additional space to house their expanded operations.

Integral to our hiring and retention efforts – for all employees – is assessing our systems and processes to identify and remove inefficiencies. For example, in 2005, we realized that our existing intake process for finger-printing and giving badges to new employees simply didn't scale to timely provide service for over 100 new employees arriving at 8:00 a.m. on a Monday. Our CAO team met with Patents and other business units to quickly re-tool the process by permitting new hires to stop by in advance for finger-printing and picking up paperwork, thus reducing the pressure on our Security team - - and allowing us to process without having to hire additional employees to handle the upfront influx of new patent examiners who were steadily arriving every two weeks. This constant "process re-engineering" approach is crucial to ensuring that we provide services in the most efficient, cost-effective manner possible.

Retention Efforts: While we have just discussed all the challenges attendant to hiring significant numbers of employees over a sustained period, it must be emphasized that the USPTO has achieved notable successes in patent examiner retention efforts. In addition

to simply being the right thing to do, retaining our employees is the most cost-effective way to ensure long-term stability and the ability to timely review a growing number of complex patent applications. The USPTO's FY 2007 attrition rate was 8.5% -- lower than comparable industry averages and a significant improvement over comparable past years. It is a USPTO priority to offer all employees the kind of workplace, benefits, and opportunities that will keep those employees onboard for years to come. The USPTO has implemented, and will continue to improve and expand, a variety of initiatives that support and promote its image as an "employer of choice." The initiatives include:

Telework Efforts: Telework opportunities; recruitment/retention incentives for patent examiners; special pay rate (above GS levels) and production and quality-based bonuses for patent examiners; flexible, family-friendly working schedules; a voluntary flat goal pilot program for patent examiners that offers increased bonuses and flexibility; reimbursement to patent examiners for advanced technical education and law school; increased training opportunities tailored to examiners' needs; increased and better communication with employees through management and employee training.

Other Flexibilities That Improve Retention, Morale, and Productivity: During FY 2007 the USPTO achieved productivity gains resulting from various programs, including: Hoteling program, laptop program, and flat goal pilot.

- Patent Hoteling Program -- In 2006, the USPTO implemented the Patents Hoteling Program (PHP) which maximizes examiner opportunities for telework. PHP examiners work one day per week at the Alexandria campus and work the remainder of their time from home. PHP examiners have a USPTO-issued computer, monitor and printer in their home office that allows them remote access to all USPTO automated systems and collaboration tools. Over 1,000 examiners have joined PHP, and we continue to add 500 examiners per year. Survey results indicate that 98% of participants were satisfied with the program and 87% of participants reported that the program has positively impacted their willingness to extend their years of service with the USPTO. Further, 56% stated that their productivity increased. The goal of PHP is to change the boundaries of the old workplace patterns allowing for decreased commute time, a more efficient use of office space, and even a more balanced lifestyle for our employees. This translates into increased employee productivity and satisfaction, as well as higher employee retention. We hope to create a workplace where an examiner can be successful from anywhere in the nation.

- Patent Examiner Laptop Program (PELP) -- In 2007, the USPTO issued laptop computers that allowed access to all USPTO automated systems to those examiners who wished to work from home. The voluntary program, still on-going, provides flexibility of when and where overtime work is performed. This increase in overtime work translates to an increase in the number of applications each examiner completes. 2,244 examiners were participating at the end of 2007. This initiative also allows examiners in the telework program (a pre-existing one day per week work-at-home program with no automated support) to increase the effectiveness of their work from home.

- **Flat Goal Pilot** -- Initiated in April of 2007, the voluntary Flat Goal Pilot Program is a test program to determine if a concept that has already generated success in the Trademark Operations will translate well into a similar production environment in Patents.

Inspired both by the Trademark Operations' success, and by the GAO's review at the time, suggesting that the USPTO re-assess some of the assumptions underlying its production goals, the USPTO undertook a one-year pilot program. The 173 examiners who volunteered for the one-year pilot (April 2007 – April 2008) are given flexibility in choosing when and how to do their work, and may earn larger, quarterly bonuses for every application examined above a particular target goal rather than earning bonuses on an annual basis. Examiners who participate are assigned a target at the beginning of each quarter rather than tracking their use of time throughout the quarters of the fiscal year. Preliminary results indicate not only an increase in production by five-percent, but also, well over 80% of participants reported an improvement in morale and satisfaction with the program as a whole. Further, 86 % of pilot participants said they worked more efficiently, and 77.7% would recommend the program to other examiners. These results may help USPTO reassess some of the assumptions underlying the examiner production goals.

**7. After release of the above mentioned GAO report, the USPTO issued a press release on October 4, 2007 that stated the USPTO would “review assumptions the agency uses to establish production goals for patent examiners.” (See attachment 5). Then, before the Subcommittee, Director Dudas confirmed that the USPTO has begun to study patent examiner production goals. Please provide details on the methodology of the study and personnel conducting it. What is the current progress of the study and when can Congress expect the study to be completed? To what extent is the Patent Office Professional Organization and the Patent Public Advisory Committee involved in this study?**

Answer: In 2004 and 2007, the USPTO received reports from the Commerce OIG and the GAO, respectively, which made opposing recommendations about the patent examiner production system. Based largely on the percentage of organizational units that reached their targets and the percentage of examiners who received performance awards, the Commerce OIG seemed to conclude that the production goals are set too low. Based largely on a survey related to the hypothetical question why an examiner might leave, the GAO seemed to conclude that the production goals are set too high.

Neither study analyzed the specifics of the production system. More important, neither study recognized that with nearly 6,000 talented scientists and engineers, there is no “average patent examiner.” The key to establishing the optimal production goals is to be sure that the system allows for maximum flexibility and maximum opportunity for each and every examiner. Examiners are intelligent and hard working. We must ensure the production system allows them to appropriately choose their level of work and bonuses.



Production beyond 95% by any examiner in FY 2007 was sufficient for a fully successful rating on production. Out of 4,172 examiners with over one year of service, only 8.1% did not meet that goal. 91.9 percent did 95% or more. 74.7 percent did 100% of goal or more. 50.5% did 110 % of goal or more. 16.9% did 120% or more of goal. 7.3 % did 130% of goal or more. From September 2007 through late November 2007, the USPTO began analyzing data that lies at the heart of the GAO's September 2007 report. On December 4, 2007, the USPTO provided an interim update on its follow-up to GAO's study to the House Committee on Oversight and Government Reform. *See Attached USPTO Letter of December 4, 2007.*

To summarize the findings included in our letter of December 4, 2007, the following are facts regarding USPTO patent examiner attrition:

- **Attrition Among Patent Examiners is Lower at the USPTO than in the Federal workforce as a whole.** The attrition rate for Patent Examiners in FY 2007 is 8.5 percent which is lower than the attrition rate for Federal workers as determined by OPM(8.9%)<sup>1</sup> and BLS(9.2%)<sup>2</sup> in the same time period.

Interestingly, while different sources of attrition or labor turnover data differ on actual percentages, the USPTO's attrition rate compares favorably. For example, the U.S. Department of Labor's Bureau of Labor Statistics (BLS) identifies – among other statistics – the total annual percent of Federal government separations. For calendar years 2001 – 2007, the annual Federal government quit rate varied from a low of 6.0% (2004) to a high of 10.7% (2006). See <http://data.bls.gov> (with search in the “Job Openings and Labor Turnover Survey Statistics” (JOLTs) database for “Total Quit Rate, Government.”)

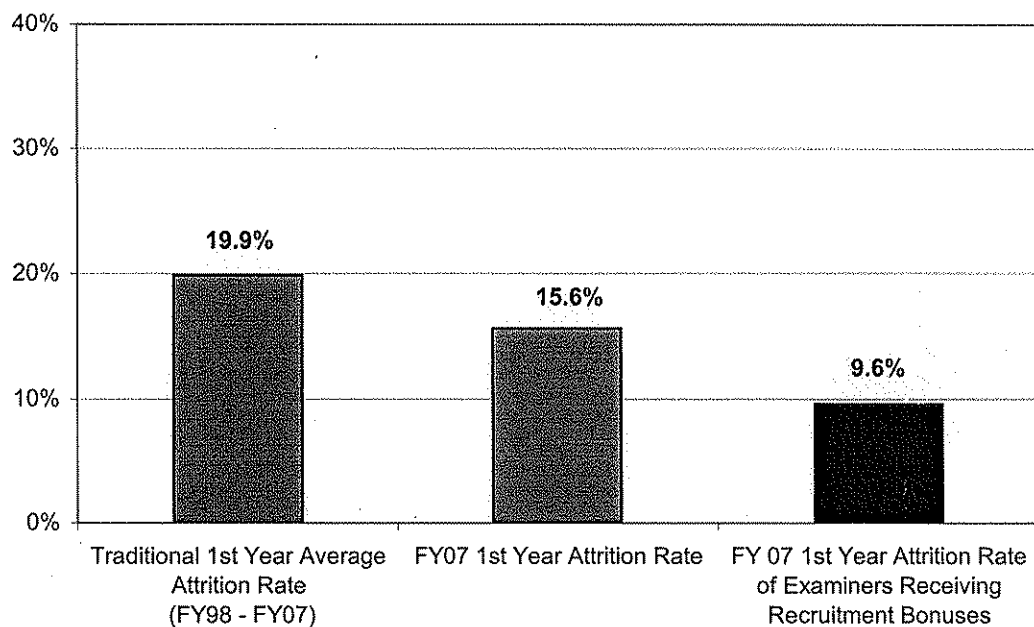
The salient point is, while the USPTO does indeed have turnover in its patent-examiner ranks - - which turnover the USPTO wants to minimize - - it is somewhat misleading to characterize the USPTO's attrition rate as out of proportion with that experienced by the Federal government as a whole, and certainly as compared with the private sector. Further, given the differences in the way statistical entities collect and characterize turnover data, it is possible to have varying independent attrition numbers apply to a single agency, such as the USPTO.

- **Recruitment/retention bonuses have reduced attrition during the first year.** During FY 07, examiners who received recruitment/retention bonuses left the USPTO at a rate of 9.6%, less than half the historical average of 19.9%. (See chart below).

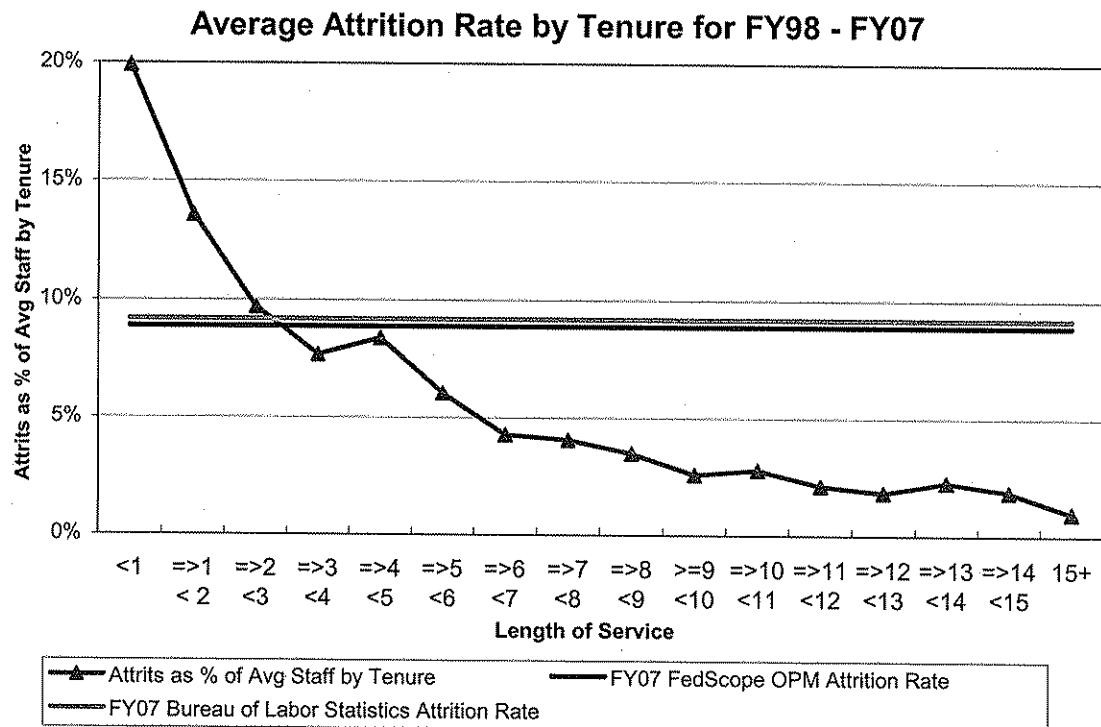
<sup>1</sup> Data source: FedScope from the Office of Personnel Management, Civilian Personnel Data File (CPDF) which is accessed via the OPM website. The data is from the September 2007 data file which provided the entire Fiscal Year 2007 government employment and attrition statistics

<sup>2</sup> See <http://data.bls.gov>

### Attrition Rates of USPTO First Year Examiners



- **Beyond the first three years of service, the USPTO has low attrition.** The average attrition rate for USPTO patent examiners with 0-3 years experience is 15.5%. The average attrition rate for USPTO patent examiners with 3-30 years experience is 3.95%.



- **Attrition in the early years is substantially lower at the USPTO than at similarly situated entities.** The attrition rate of examiners with 3 or less years of service, though measurably higher than the rest of the patent corps, appears to be well below the attrition rate experienced by similarly situated entities hiring entry level college graduates in a year.<sup>3</sup>

<sup>3</sup> Business Week, "50 Best Places to Launch a Career," September 18, 2006.

[\*\*\*\*Given the country's demographics, some accommodation is inevitable. Entry-level hiring is expected to surge in 2007 by more than 17%, the fourth consecutive double-digit increase, according to the National Association of Colleges & Employers (NACE). And this could be only the beginning. By 2010, as the exodus of baby boomers from the workforce accelerates, census data suggest, two employees will be leaving for every new hire entering, and new college grads will be a precious commodity.\*\*\*]

\*\*\*If recruiting is employers' first hurdle, retention is by far the highest. Those employers who provided the data reported that more than one-third of their new hires bolted within three years. And replacing them isn't cheap. Training costs averaged nearly \$10,000 a head, which can add up quickly when you're hiring more than 1,000 college grads each year, as more than one-third of the ranked employers do.\*\*\* The main reason young employees are heading for the exits, oddly enough, is the very thing boomers thrived on: the perpetual work day.\*\*\*]

See also, Business Week, "Best Places to Launch a Career," September 13, 2007 [\*\*\*\*Boeing Co. (BA) (No. 14) is starting to move in that direction. The aerospace giant has one of the lowest retention rates in its industry (59%), and one way it hopes to improve upon this is by teaching managers how to deliver criticism—harsh, if necessary—along with praise.\*\*\*\*]

- **Higher production requirements do not necessarily translate to higher attrition.** Approximately 70% of all work in FY 2007 was done by examiners with 3 or more years of experience, with an average attrition rate of 3.95%. Examiners with three or more years of experience tend to have the highest production goals. This could suggest that other factors, such as work environment and the type of work done by patent examiners, influences attrition more than production goals.

#### Study of Attrition Data

As noted earlier, the USPTO agrees with the GAO that hiring alone is insufficient to address the backlog of unexamined applications. In looking further, the GAO determined that production goals (the amount of work a patent examiner is required to complete in a given time period) were undermining retention efforts and leading to very high attrition. The GAO recommended that the USPTO undertake a comprehensive evaluation of the assumptions used to establish patent examiner production goals and revise those assumptions as appropriate. Implicit in the recommendation to review the assumptions underlying the production goals, was the GAO's suggestion that production goals be reduced.<sup>4</sup>

Because the GAO report pointed to high attrition (suggesting difficult-to-meet production goals as the root cause of high attrition), the USPTO determined that it must have accurate attrition data. The result of this initial look at attrition was the December 4, 2007, response to the House Committee on Oversight and Government Reform, detailing our methodology and findings up to that point. Keeping in mind the purpose of the study and the context of the GAO's recommendation, the USPTO believed that a rigorous analytic approach required understanding of its attrition data.

USPTO will obtain an independent review of the assumptions used to establish production goals from a professional entity with demonstrated extensive working knowledge, organizational experience, and analytical expertise assessing practices in large scale production environments to perform an assessment of the current production goal system and provide recommendations regarding process improvements.

Office of Personnel Management sent several vendors a Statement of Objectives (SOO) in April 2008 requesting a proposal/presentation. Once the presentations have been completed, a vendor will be selected to perform the assessment. The results of the assessment will be shared broadly, and with the Patent Office Professional Organization and the Patent Public Advisory Committee and request their feedback. USPTO analysis of the results will be provided to the Committee by the end of calendar year 2008.

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<sup>4</sup> As is demonstrated later in this response, collection of more data, together with deeper analysis, suggests that lowering production standards is not the answer to examiner retention – because it is not the root cause of attrition. We have found that increasing opportunities and flexibility – in essence, creating a nicer work environment, not a less rigorous one – are the keys to both increased employee morale and higher retention.

In addition to the data and analysis, which will result from this independent study, we will include our assessment of the year-long “Flat Goal” pilot (initiated as part of early feedback from the GAO and following the success of our Trademark Operations in implementing a flat-goal system). Preliminary results indicate not only an increase in production by 5% , but also, well over 80% of participants reported an improvement in morale and satisfaction with the program as a whole. Further, 86 percent of pilot participants said they worked more efficiently, and 77.7% would recommend the program to other examiners.

**8. According to the above-mentioned GAO report, 67% of patent examiners feel “that the [USPTO’s] production goals are among the primary reasons they would consider leaving the USPTO.” This statistic held true “regardless of their tenure”. The GAO also reported the USPTO management felt that patent examiners primarily left the USPTO due to personal reasons. (See attachment 6). And, according to Director Dudas’ testimony, exit interviews of employees who had been with the USPTO for 3 to 10 years showed that they left because of “supervisor issues or management issues,” and that no interviewees in this category said that they left because of the nature of the work (i.e. production goals). What may account for the discrepancy between what USPTO management believes are the reasons patent examiners leave the agency and the GAO’s survey results? What percentage of people who left the agency after 3 to 10 years actually participated in the exit interviews Director Dudas cited? Are there any distinguishing characteristics of these people that would set them apart from those who didn’t participate in the exit interviews (i.e. disproportionately high production performance relative to peers)?**

Answer: As noted, USPTO management conducts exit surveys with employees as they actually leave employment at the USPTO. Of the 125 patent examiners with between 3 and 10 years of service who left the USPTO during fiscal 2007, roughly 14% participated in the exit survey. Due to the need to ensure respondent confidentiality, individuals who participate in the survey are not required to provide their name. Therefore, it is impossible to relate exit survey responses with individual employee performance data. However, as mentioned before, the highest attrition rates tend to be for people with the lowest production goals. This suggests that production goals are not the lone influence on attrition rates.

The GAO Report asked employees who have not left, and are currently working at the USPTO the hypothetical question “if they were to leave” what would be their primary reason for leaving? While the GAO used its survey instrument to posit why employees might consider leaving, the USPTO conducts actual exit surveys with employees as they leave service. The USPTO approach is a more reliable and informative business practice compared to hypothetical inquiries.

During FY 2007, 27% of the 587 employees exiting the USPTO completed a voluntary exit survey – well above the typical exit survey rate of 17.5%. Of those completing the survey, 41% of employees with less than one year of service cited the nature of the work as the primary reason for leaving. Twenty-one percent (21%) of employees with three or less years of service cited the nature of the work as their primary reason for leaving. No

employees who left the USPTO after working here for 3 – 10 years indicated that the nature of the work was the primary reason for leaving.

Reasons for Leaving: All Respondents	% Citing as Reason for Leaving**	% Citing as #1 Reason for Leaving
<b>Nature of Work</b>	<b>59%</b>	<b>20%</b>
USPTO's Culture/Environment	37%	5%
Work/Life Balance	34%	13%
Personal Circumstances	33%	19%
Management	29%	12%
Career Advancement/Development	28%	7%
Career Change	20%	8%
Compensation/Benefits/	19%	5%
Retirement	9%	7%

\*\* Because respondents may give more than one reason, percentages add up to more than 100%

#### **Primary Reasons for Leaving by Tenure:**

- < 1 Year = Nature of the work (41%)
- 1-3 Years = Personal reasons (27%)
- 3-10 Years = Management (23%)
- >10 Years = Retirement (47%)

#### **Nature of the Work as a Primary Reason for Leaving the USPTO:**

- **< 1 Year:** Attrition is the highest within the first year of employment.
- **41%** of employees that left within the first year indicated the nature of the work as their primary reason for leaving.
- **1-3 Years: 21%** cited the nature of the work as their primary reason for leaving.
- **No employees (0%)** who left the USPTO after working here for **3-10 years** indicated that the nature of work was the primary reason for leaving the USPTO.
- **Six percent (6%)** of employees with 10+ years of service indicated that the nature of the work was the primary reason for leaving the USPTO.

Employees who have been with the USPTO 3 or more years represent 49% of our staff, and complete 70% of the work. However, the “nature of the work” is not their primary reason for leaving service.

**9. According to the language of the 2006 Science, State, Justice, Commerce Appropriations Act, before the USPTO can reprogram appropriated funds, it must notify the appropriations committees of both houses of Congress 15 days prior to any such reprogramming. For purposes of the Act, reprogramming includes eliminating a program, project or activity and reorganizing or renaming offices. Was the USPTO action that created the Office of Enforcement considered a reprogramming? If so, did the USPTO notify Congress pursuant to its statutory obligations? If so, please provide a copy of the notification you sent to Congress.**

Answer: The USPTO action that created the Office of Enforcement was a reprogramming, and Congress was notified. A copy of the notification is attached.

**10. According to the Department of Commerce's Department Administrative Order (DAO) 203-13, a reorganization includes "the establishment, consolidation, abolishment or other significant change affecting an organizational unit's status, configuration, or mission, or the authority and duties of its management and staff." The DAO goes on to say that a reorganization is generally considered a reprogramming that requires both Congressional and Department notification. Is the USPTO subject to this and other DAOs issued by the Department of Commerce? Assuming the USPTO is subject to this DAO, when the Office of Enforcement was created, was the action creating it determined to be a reorganization? If so, please provide a copy of the notification you sent to Congress.**

Answer: Pursuant to the American Inventors Protection Act, (Public Law 106-113), the USPTO retains the responsibility for decisions regarding the management and administration of its operations and exercises independent control of its budget allocations and expenditures, personnel decisions and processes, procurements, and other administrative and management functions in accordance with applicable law. The USPTO has the authority to establish its own administrative orders and is not governed by DAO 203-13. In accordance with the Department of Commerce Department Organization Order (DOO) 10-14, the Under Secretary shall exercise the responsibilities relating to USPTO operations and functions including developing and issuing agency administrative orders, policies, standards and procedures for administrative functions in USPTO; the USPTO may otherwise promulgate rules relating to agency management or personnel, agency organization, agency procedures or practices, or public property, benefits, or contracts without further review.

Furthermore, Department of Commerce's DOO for USPTO 30-3, section 2.01 states, "The organizational structure of USPTO is independently established by the Under Secretary except as provided by statute, including reprogramming requirements in appropriations Acts."

The USPTO action that created the Office of Enforcement was considered a reprogramming and Congress was notified. A copy of the notification is attached.

**11. In Director Dudas' testimony before the Subcommittee, he termed the action that eliminated the Office of Enforcement a "realignment." What criteria do you apply to classify an action as a "realignment" instead of a reprogramming as defined in the appropriations act or a reorganization as defined in DAO 203-13?**

Answer: Every change to the USPTO organizational structure goes through a rigorous review process to determine whether the action should be considered a reorganization or realignment. In order to complete a change to the organizational structure, the requesting program office must provide the Office of the Chief Financial Officer with the following material to aid in the realignment/reorganization determination: a narrative justification, a modified Agency Organizational Order (if necessary), current and proposed organization charts, an organizational code crosswalk down to the lowest level, and an employee crosswalk.

The documents are then analyzed and compared to the criteria contained in Congressional reprogramming language provisions and USPTO guidance similar to DAO 203-13. To be classified as a reorganization in accordance with Congressional reprogramming language and our AAO, a reorganization would occur when new programs/commissions are created, or when existing programs are substantially augmented; programs, projects or activities are deleted; projects or activities have increased funding that have been denied or restricted by Congress; the physical relation of offices or employees has significantly changed; or the activity/function performed by Federal employees has been contracted out or privatized.

The changes made in the Office of External Affairs did not trigger any of the above criteria. All functions were continued and no programs, projects, or activities were deleted nor did the responsibilities, duties, authorities and mission objectives change.

**12. What other actions has the USPTO taken over the last 7 years that have also been or can be described as a "realignment"? Please list these actions and provide a detailed description of the nature and justification for each so-called realignment.**

Answer: The USPTO has undertaken a number of realignments over the last few years as indicated below.

#### Office of Corporate Planning

The Office of Corporate Planning (OCP) has enterprise-wide functional responsibilities including: strategic planning, budget formulation and performance management; budget execution; and forecasting and analysis of fee collections and Patent/Trademark workloads. Division directors are responsible for each of the functional areas to provide leadership and management, as well as technical skill and knowledge. The duties and responsibilities of the three functional areas were realigned into divisions. The first division, Budget Formulation and Performance Management, is responsible for the USPTO Strategic Plan, budget submissions, strategic initiative tracking and performance reporting, as well as Congressional inquiries. The second division, Budget Execution, is



responsible for monitoring and analyzing current year budgets, external audits and approval of Agency reorganizations and realignments. The third division, Forecasting and Analysis, is responsible for projections and examinations of Agency fee collections and key business workloads.

The realignment aligns OCP personnel to their division of responsibility, allowing OCP to concentrate on the core functions and activities of each division and the office with correct leadership and management. It also provides OCP staff the framework to strengthen their skills and provide customers more useful, thorough analysis while meeting critical deadlines. Additionally, all functions were continued and no programs, projects, or activities were deleted nor did the responsibilities, duties, authorities and mission objectives change.

#### Office of Finance Management Systems

This realignment elevated the Financial System Division within the Office of Finance to a “direct report” to the CFO and renamed it the Office of Financial Management Systems (FMS). Financial systems are the accelerators by which the OCFO can leverage to achieve significant results and deliver timely, accurate and useful information for decision making. OCFO systems are crosscutting in that they provide data and information not only to the Office of Finance but for the Office of Procurement, Office of Corporate Planning and the USPTO as a whole. The realignment will ensure that our systems efforts are delivering value, contributing to results and exceeding the expectations of our offices and customers. All functions were continued and no programs, projects, or activities were deleted nor did the responsibilities, duties, authorities and mission objectives change.

#### Trademark Law Offices

Realignment to consolidate Trademark Law Office support functions into two separate units, under Trademark Examination within the Trademark Organization. An assessment of the impact of process changes was conducted to identify potential improvements in process and efficiency. Significant changes were made in how work was performed that led to recommendations for aligning functional responsibilities to create a greater focus on managing work, assessing and reinforcing quality. The duties which were realigned to the new organizational units were:

Examination Support Workload and Production includes Examination Support Units which are responsible for verifying database accuracy regarding all data elements of applications for the registration of trademarks, enter amendments and make changes to the application record as needed, review and prepare the contents of applications for publication or registration in the weekly on-line Trademark Official Gazette.

Examination Support Quality and Training which assesses the quality of the work produced by the Examination Support Units to determine the accuracy of the changes made to the application data in the trademark database; ensures adherence to

established practice and procedures; provides information to Examination Support on the results of its review; makes recommendations for maintaining or improving the quality of Examination Support; identifies problem areas and develops training materials and conducts training to improve quality.

#### Office of Human Resources

A process improvement team analyzed the Office of Human Resources' (OHR) procedures in addressing pay, benefits, and compensation issues. After a thorough review of OHR procedures, it found that many of the tasks performed within the Compensation Branch (Employment Division – Trademark and Corporate), the Worklife and Benefits Branch (Workforce Relations Division) and the Quality Review Branch (Employment Division – Patents) were overlapping. The team recommended that overlapping and related functions be managed under a single division. This realignment to a Compensation and Benefits Division provided for centralized responsibility and accountability. Further, it allowed the other divisions to focus on their core business goals and objectives and improve the quality of their performance. All functions were continued and no programs, projects, or activities were deleted nor did the responsibilities, duties, authorities and mission objectives change.

**13. On August 15, 2007, Barry Hudson, Chief Financial Officer for the USPTO, sent an email to top USPTO officials that stated the realignment of the Office of External Affairs “was a result of a five-year management review.” (See attachment 7). In the USPTO Weekly Update dated September 10, 2007, Lois Boland, Director of the Office of Intellectual Property Policy and Enforcement, was quoted as saying that the realignment of the Office of External Affairs occurred “after a five-year management review of the programs within [External Affairs].” (See attachment 8). Please provide the Subcommittee a copy of this management review. Has the USPTO taken any other actions based on this management review? Does it plan to take any other actions based on this management review? Please provide a list of all senior USPTO officials who participated in this management review?**

Answer: The August 15, 2007, realignment in the Office of External Affairs was the result of a five-year management review. The management review was an ongoing discussion of the effectiveness of the structure and organization of the office since 2002. It was not based upon, nor did it culminate in a written review or report other than a new organizational chart.

The discussions involved, at varying times, senior employees in the Office of External Affairs, External Affairs management, senior employees in the Office of the Chief Administrative Officer, the Chief Administrative Officer, the Chief Financial Officer, the Chief Information Officer, the Commissioner of Patents, the Commissioner of Trademarks, the Office of General Counsel, the Chief of Staff to the Under Secretary, the Deputy Under Secretary and the Under Secretary.

**14. As evidence of greater quality, Director Dudas mentioned in his testimony that in 2000, 70% of all applications led to a patent while in the first quarter of 2007, only 44% of all applications led to a patent. How did the USPTO account in these statistics for Request for Continuing Examination (RCE) applications, continuation applications and the applications that had to be abandoned in order to file continuation applications?**

Answer: 70% and 44% are the fraction of applications that were allowed by the examiner out of all applications that were either allowed or abandoned during the relevant time.

The calculation is the same for FY 2000 and for FY 2007. Applications that are abandoned include Request for Continuing Examination filings and Continued Prosecution Application (CPA, a precursor to current RCE practice) filings.

The filing of a continuation application is neither an allowance nor an abandonment.

Applications, which are the parent of a continuation application, count either as allowances or as abandonments when prosecution ends, depending on the outcome of the prosecution in the parent application. 35 U.S.C. §120 allows applicants to claim priority in a child application "filed before the patenting or abandonment of or termination of proceedings" in the parent application; it does not require abandonment of the parent application.

**15. According to USPTO organizational charts for the last several years, the Administrator of the Office of External Affairs reports directly to the USPTO Director and Deputy Director. (See attachment 9). However, as I understand from Director Dudas' testimony, the Administrator's position "rests" in the Deputy Director's office. Does this mean that the Deputy Director essentially runs the Office of External Affairs? If yes, why is there still an Administrator of External Affairs position listed in USPTO organizational charts? If so, does running the Office of External Affairs interfere with the other duties of the Deputy Director?**

Answer: The Office of External Affairs reports directly to the USPTO's Under Secretary and Deputy Under Secretary. Because of the significance of national and international policy and decision making authority, the Deputy Under Secretary appropriately serves also as the Administrator for External Affairs. The Office of External Affairs includes two subsidiary offices -- the Office of Intellectual Property Policy and Enforcement and the Office of Governmental Affairs -- both of which are led by SES Directors. Those directors have full responsibility for the substantive duties and day-to-day operations of their respective offices. As such, this does not interfere with other duties of the Deputy Under Secretary.

**16. According to a *Time* article dated April 2, 2006, and supported by an email allegedly from James Toupin dated January 3, 2005, senior USPTO officials met with Research in Motion (RIM) CEO Jim Balsillie while a reexamination concerning patents owned by NTP and at issue in a lawsuit filed by NTP against**

**RIM, was before the USPTO. (See attachments 10 and 11). Did this meeting take place? What was discussed at this meeting? What is the USPTO's policy concerning ex parte communications between senior USPTO officials and parties who have an interest in the outcome of proceedings before the Office? In what other instances, if any, did senior USPTO officials engage in similar ex parte communications with parties that had an interest in the outcome of a proceeding being conducted before the Office?**

Answer: Research in Motion (RIM) requested a meeting to discuss whether the United States would participate as *amicus curiae* in support of a petition for rehearing that RIM was pursuing in the Court of Appeals for the Federal Circuit. The Department of Commerce, led by then-Acting General Counsel Jane Dana, held a meeting on this subject. In attendance were Ms. Dana, Joan Maginnis, Assistant General Counsel for Finance and Litigation of the Department of Commerce, members of the Appellate staff of the Civil Division of the Department of Justice, and Mr. Toupin and John Whealan, Deputy General Counsel for Intellectual Property and Solicitor, from the USPTO. A member of the Commercial Litigation Branch of the Civil Division of the Department of Justice also participated by phone.

The subject of discussion was RIM's request that the United States support its position in the Court of Appeals for the Federal Circuit that patent infringement not be found when alleged infringement includes acts outside the United States. Citing the USPTO's policy of not discussing any aspect of a pending USPTO reexamination, Ms. Dana and all other government representatives in attendance refused to discuss or listen to statements, questions, or arguments regarding any matter pending in reexamination. The government did not make the amicus filing that RIM requested.

As stated, the USPTO's policy prohibits *ex parte* communications that directly relate to matters pending on reexaminations. This policy does not prohibit contacts with anyone with respect to matters that are not at issue in proceedings before the USPTO. Thus, for example, the USPTO officials regularly meet with patentees and members of the patent bar, even though those parties may be pursuing matters before the Office. In such conversations, consistent with the policy followed during the meeting with RIM representatives, its officials do not discuss particular matters pending before the Office.

**17. The FY 2008 USPTO budget document mentioned that the USPTO was exploring the possibility of establishing regional offices that would house patent examiners. (See attachment 12). However, no mention of this effort was made in the FY 2009 USPTO budget document. Is the USPTO still looking into this possibility? Over the last three years, what resources have been dedicated to the planning and establishment of USPTO offices outside of Alexandria, Virginia? If the USPTO has concluded its evaluation of establishing satellite, back-up or other additional facilities, what were the agencies conclusions about the location, expense and general feasibility associated with establishing and operating such facilities?**

Answer: In FY 2007, in response to various public comments, including inquiries from the Patent Public Advisory Committee that a more national USPTO presence would be helpful, the USPTO commissioned a feasibility study from Jones, Lang, LaSalle that evaluated establishing regional offices for patent examiners. The study made clear that the USPTO would have to invest significantly, whether any of a spectrum of options (from an independent, leased space to renting space in an existing government building) were pursued.

Given that technology now permits flexibilities such as completely independent work-at-home options, the USPTO has determined that – as a strategic matter – it is financially and strategically prudent to pursue a nationwide workforce approach, rather than build offices or lease offices throughout the United States. For this reason, we are focusing on our Patents Hoteling Program (PHP) and Telework efforts.

USPTO has had great success with the PHP where examiners work from home and come into the office one day per week. The goal for FY 2008 is to add 500 additional examiners to the over 1,000 patent examiners who began this program in 2006-2007. In light of this success, the USPTO is exploring a Nationwide Work Force (NWF) concept, to enable patent examiners to live anywhere in the continental United States, and perform all job functions and receive requisite training remotely. The USPTO is also working with the General Services Administration and Congress to enable the Agency to exercise flexibility in the travel regulations to allow for NWF.

The USPTO is pleased that H.R. 4106, the Telework Improvements Act of 2007, and S. 1000, the Telework Enhancement Act of 2007, were introduced during the 110th Congress. Both the House and Senate versions of telework legislation would ensure maximum participation in telework among the Federal workforce without diminishing employee performance or agency operations. Although some Federal agencies have made great strides with their telework efforts, more can be done to produce even greater benefits.

The USPTO fully supports Section 10 of S. 1000 that would allow GSA to approve travel expense test programs for agencies to test new and innovative methods of reimbursing travel expenses and giving employees more choices of where to live. Outside of the Washington, D.C. metropolitan area, the USPTO has teleworking employees residing in Pennsylvania, New York, Illinois, North Carolina, South Carolina, Georgia, Colorado, Texas, West Virginia, and Delaware. These employees voluntarily requested to live and telework outside the local commuting area. However, they are required to report to the office at least once per week to maintain the official duty station at USPTO headquarters.

Maintaining Washington, D.C. as the duty station for these teleworkers allows the USPTO to avoid placing them on travel status, which would entitle them to reimbursement for their travel expenses and also to travel during official working hours. A GSA approved pilot program would allow employees to maintain their homes as their official duty stations and only commute when their job requires them to do so.

USPTO believes that having travel discretion would permit more teleworkers to voluntarily locate outside the local area, assist their employees in balancing work and

personal needs, help them retain valued employees, and remove barriers to the expansion of telework programs.

The USPTO continues to review options for establishing a business continuity/disaster recovery data center in the San Antonio, Texas, area. A Request for Offers issued in 2007 failed to produce an acceptable offer within the allocated budget. Acquisition support services have been retained to assist in the ongoing effort.

**18. Please provide information concerning the diversity of the USPTO's workforce. Please breakdown this information by GS-level and function within the agency (i.e., SES, Schedule C, manager, examiner, support staff, etc.)**

Answer: Responsive information is contained in the attached charts. Please note that these charts provide snapshot statistics only and do not reflect either application rates or the qualified labor pool.

#### Questions Submitted by Representative Issa

**1. Examination on Request (or, as the USPTO called it, Deferred Examination) is used in many countries such as Canada and Japan. Under such a system, applications are not examined automatically, as in the U.S., but only upon a specific Request for Examination within a set time period, say 3 years. If no request is filed within that period, the application is deemed abandoned and is never examined. From experience of other patent offices, 10% to 40% of applications are never examined under Examination on Request systems, resulting in substantial workload reduction. This is due to applicants' voluntary abandonment of obsolete applications prior to the Request for Examination deadline. Under current USPTO practice, applications that become obsolete, but receive examination by the USPTO, are the worst investment that USPTO can make because their obsolescence means that the patents are unlikely to fetch any renewal fees.**

**2. Why did the USPTO reject such a method that has the potential to reduce its workload and increase efficiency?**

Answer: In the USPTO's original strategic plan of 2002, the agency proposed three distinct programs which collectively would have reduced the pendency of patent applications to 18 months: (1) deferred examination, (2) competitive sourcing of searches and (3) a 50% increase in fees. When the agency proposed this strategic plan to the public, there was strong and unified opposition to deferred examination from bar associations and patent user groups. In early discussions, congressional staffers advised that no proposal including deferred examination or a fifty percent increase would be acceptable.

Consequently, the agency revised its strategic plan to lower fee increases to twenty percent and removed the deferred examination proposal. That bill was introduced as H.R. 1561 on April 2, 2003. Ultimately, Congress approved the twenty percent increase

in fees and allowed a pilot for competitively sourcing searches (Division B of P.L. 108-447, December 8, 2004). However, the limitations placed on competitively sourcing searches in the legislation were too restrictive to allow for a meaningful pilot. Essentially, the combination of deferred examination, a 50% increase in fees and competitive sourcing of searches proposed by the USPTO was judged in the legislative process to be too much change to justify reducing pendency to 18 months.

However, with the 20% increase in fees, the women and men of the USPTO have done a remarkable job avoiding more dramatic increases in pendency. Record level hiring and innovative programs increasing examiner flexibility, opportunity and efficiency have led to an increase in production of 22% in the last two years alone.

Further, increasing production is not the single most efficient answer. The essence of your question was how to avoid examining applications that should not be examined—in other words—how to reduce demand that is unnecessary. Reducing unnecessary demand is critical to the efficient running of the patent system. Your question is posed at an important time. The patent allowance rate is a simple measure of what percentage of applications examined in a given year are allowed as patents. That number has been steadily dropping over the last several years—from 72% in FY 2000 to about 44% thus far this year. This means that more and more of what is applied for does not lead to a patent.

The USPTO's experience of proposing deferred examination in 2002 is instructive. The Applicant Quality Submission provision in the Committee passed version of S. 1145 is an even better way to ensure that examination resources are not wasted but are focused on inventions.

#### Questions Submitted by Representative Goodlatte

**1. You have had great success in reducing pendency rates in the trademark section of the USPTO. Are some of the ideas that brought forth those successes applicable on the patent side as well?**

Answer: Yes, in reviewing our operations and procedures to optimize examination quality and timeliness, we make evaluations of best practices that may be transferable from one business group to the other. The USPTO is piloting a voluntary flat goal program for patent examiners that builds upon the successful system in Trademarks and moves production away from an hourly-based system. Highlights of the program include awards of up to \$5,000 per quarter; flexibility in how work is done; and a predetermined amount of work based on grade and docket. Under the year-long pilot (April 2007 - April 2008), examiners may earn larger, quarterly bonuses for every application examined above a particular target goal. Early indications are that participants prefer the per-application bonus as opposed to the present productivity award structure and enjoy

the flexibility of choosing when and how to do their work. The USPTO will evaluate the results of the pilot and incorporate that information into future planning.

**2. The PTO has been a leader in the rollout of telecommuting opportunities for employees, and it is my understanding that those who choose to work at home are generally even more productive than those who choose to work at the PTO's headquarters. However, I have heard that additional tools may be needed to allow the expansion of the tele-work program to other areas of the country. What additional tools do you need to further unleash the benefits of the tele-work program? How can Congress help?**

Answer: The USPTO has spent over 10 years perfecting its telework program, which is among the most innovative and progressive programs in the entire Federal Government. A successful telework program can result in greater employee productivity, higher levels of sustained performance, reduced traffic congestion and air pollution, and reduced real estate costs. In addition, telework provides options for individuals with disabilities, assists agencies with their recruitment and retention efforts, helps to reduce fuel expenses, and provides agencies with continuity of operations in the event of a future threat or disaster.

The USPTO wants to optimize employee flexibility and production, and increase job satisfaction. While our electronic tools are currently sufficient to support our examining and processing operations, we are always looking for ways to maximize our flexibilities. Unfortunately, current administrative rules and regulations have not kept pace with the expanding needs of a millennial workforce.

Accordingly, the USPTO is pleased that H.R. 4106, the Telework Improvements Act of 2007, and S. 1000, the Telework Enhancement Act of 2007, were introduced during the 110<sup>th</sup> Congress. Both the House and Senate versions of telework legislation would ensure maximum participation in telework among the Federal workforce without diminishing employee performance or agency operations.

The USPTO fully supports Section 10 of S. 1000 that would allow GSA to approve travel expense test programs for agencies to test new and innovative methods of reimbursing travel expenses and giving employees more choices of where to live. Outside of the Washington, D.C. metropolitan area, the USPTO has teleworking employees residing in Pennsylvania, New York, Illinois, North Carolina, South Carolina, Georgia, Colorado, Texas, West Virginia, and Delaware. These employees voluntarily requested to live and telework outside the local commuting area. However, they are required to report to the office at least once per week to maintain the official duty station at USPTO headquarters.

Maintaining Washington, D.C. as the duty station for these teleworkers allows the USPTO to avoid placing them on travel status, which would entitle them to reimbursement for their travel expenses and also to travel during official working hours.



A GSA approved pilot program would allow employees to maintain their homes as their official duty stations and only commute when their job requires them to do so.

The USPTO believes that having travel discretion would permit more teleworkers to voluntarily locate outside the local area, assist their employees in balancing work and personal needs, help them retain valued employees, and remove barriers to the expansion of telework programs. Therefore, the USPTO would fully support the House agreeing to Section 10 of S. 1000 in any future telework discussions or legislative conferences.

**3. Have you seen the same kind of attrition rates among trademark examiners participating in the tele-work program that you have seen with patent examiners, and do you believe that the further rollout of tele-work opportunities across the PTO will help reduce patent examiner attrition?**

Answer: Attrition among Trademark Examining Attorneys participating in the telework/hoteling program has been low since the inception of the program. For example, thus far in FY2008, the resignation rate has been 2% and the attrition rate, including resignations and promotions to other positions, has been 3%. Surveys have indicated that the Trademark telework/hoteling program has contributed to job satisfaction and employee morale. We expect that the Patent telework/hoteling program will also have a positive effect on attrition rates for Patent examiners.

**4. A while back, I was told that the error rate for trademark design searches was over 50%. Is that still the case? What is the error rate today? What has been done to increase the accuracy of design code searches that do not involve words?**

Answer: Beginning several years ago, in response to concerns about design code quality, the USPTO engaged in a number of efforts to improve the quality of design coding under the Vienna Classification system in the electronic database. We are unaware of any reliable data that would substantiate a 50% error rate. Within the Trademark Services Division, the work of all contracted specially trained design coders has been subject to 100% quality review. The USPTO has created new design search codes to allow for greater specificity and accuracy in identifying and coding designs and has updated all active applications and registrations affected by the new codes. In addition, the USPTO now seeks input from applicants and registrants by informing applicants of the codes applied to their design marks and by offering applicants and registrants the opportunity to submit corrections or additions to the coding through electronic mailboxes specifically designated for this purpose.

Internal review of the quality of design search coding indicates that the efforts to improve quality succeeded. A study done in 2006 indicated that 4.5% of the records reviewed contained errors relating to significant elements of a mark that would impact search ability.

Currently a new quality enhancement procedure is under development. Under the new procedure, upon acceptance of a registrant's section 8 affidavit, the registration will be

reviewed by the design coders to ensure that the correct codes have been assigned to the registration. The USPTO will then notify the registrant of any changes and will provide information about how to request additions or corrections to these codes. We anticipate a further improvement in design code quality as a result of this effort.

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