

STATEMENT OF
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AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE**

BEFORE THE
**Subcommittee on Intellectual Property, Competition and the Internet
COMMITTEE ON THE JUDICIARY
U.S. House of Representatives**

**USPTO Oversight Hearing
“How an Improved U.S. Patent and Trademark Office Can Create Jobs”**

JANUARY 25, 2011

I. INTRODUCTION

Chairman Goodlatte, Ranking Member Watt, 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. The number one goal that Commerce Secretary Locke and I set during the last year and a half has been to focus our resources more effectively on improving overall operations and reducing the time it takes to get a patent. Today, I will explain why this is critical to improving our economy and creating jobs, and then focus my testimony on how we are improving operations at the USPTO.

Innovation continues to be a principal driver of economic growth and job creation in the United States. 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.

To be effective in carrying out our mission, the USPTO must be well-run and appropriately funded. While we continue to face financial challenges, I am pleased to report that, during the last year, the USPTO has increased patent production, reformed key processes, and improved quality. During the last year 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 applications pending at the USPTO.

II. PATENTS

Mr. Chairman, our greatest challenges at the USPTO continue to be on the patent side. Uncertainty about funding constrained our ability to hire or allow examiners to work overtime on

pending applications during the last year. Despite this challenge, our Patents Operation set records as to the number of patents granted and applications rejected. In fact, as a result of all of our productivity measures, we actually were able to work nearly a 13-month year -- accomplishing almost 13 months of work at our 2009 pace, in the 12 months of 2010. Importantly, this accomplishment was made without any sacrifice in quality. In fact, our non-final in-process compliance rate and our allowance/final compliance rate have increased at the same time productivity has improved.

The year's total production units were 522,407 versus 504,481 production units in FY 2009. Allowances have increased from 189,120 last year to 240,438 this year. Final rejections ended the year at 258,436, compared to 238,497 for the same period in FY 2009.

The initiatives described below represent some of the improvements we made to our operations during the last year, to fuel the performance mentioned above.

Patent Backlog Reduction

- The USPTO's Patent Operation is focused on optimizing patent quality and timeliness. This supports the Department of Commerce's strategic objective to facilitate intellectual property protection by reducing patent pendency and increasing quality of issued patents. In January 2009, the USPTO faced a backlog of more than 764,000 utility patent applications. By the end of FY 2010, we reduced the backlog of applications to 708,535. With the ability to hire new examiners and allow experienced examiners full overtime, our goal is to reduce the backlog to approximately 658,000 by the end of FY 2011. In FY 2010, first action pendency was 25.7 months. Our projections show that first action pendency will decline to 23 months by the end of FY 2011.

Revised Examiner Count System

- The USPTO and our Patent Office Professional Association (POPA) have implemented a new production crediting system – the tool we use to measure examiner performance and output. The new system provides more time for examination and more credit for first actions, which emphasizes high quality examination and puts a focus on quality early in prosecution. We are now seeing positive indicators such as the number of actions per disposal at approximately 2.4. This is down from more than 2.9 in FYs 2008 - 2009 and represents a significant increase in efficiency. The new system has also contributed to a reduction of the growth rate of Requests for Continued Examination (RCEs). In FY 2009, RCE applications grew by 23.1% over FY 2008. Due, in part, to successful implementation of the new production credit system, RCE growth in FY 2010 was only 10.7%, even in the face of rising Office production overall.

Compact Prosecution/First Action Interview Pilot

- We are using several vehicles to encourage Compact Prosecution of patent applications. Compact Prosecution is a change in practice and culture that encourages the examination practice of expeditiously identifying the core issues with patent applications and resolving them. One way to encourage such practice is to increase communication between applicants and examiners through interviews. Interview time granted in FY 2010 increased by more than 39% from FY 2009.

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- One of our programs contributing to the increased rate of interviews is the First Action Interview Pilot Program. The program allows participants to conduct an interview with the examiner after reviewing the results of a prior art search conducted by the examiner. This program was recently expanded to include additional technical areas, enhance efficiency, and provide more options to participants. Since inception, 1,164 applicants have availed themselves of the program. One major indication of the success of the program is the first action allowance rate of 33.6%, compared with an overall first action allowance rate of 15.5%.

Supervisory Patent Examiner (SPE) and Examiner Performance Plans

- The new SPE Performance Appraisal Plan (PAP) provides increased recognition of key SPE activities in coaching and mentoring examiners in their art units. The new PAP reflects the important and broad roles and responsibilities of SPEs, and gives rating officials greater flexibility to provide fair and accurate assessments of SPEs' accomplishments. We also worked with representatives of POPA to better align the performance standards for patent examiners with the USPTO's goals for increasing quality in patent examination and reducing the backlog of pending patent applications. This collaboration has resulted in the first major revision to the patent examiners' PAP since 1986, better aligning examiner goals with those of the agency, better defining expectations and measures for success, and encouraging mentoring and training – all while ensuring transparency and clarity. These PAP changes are an important step forward that will help create a foundation for future USPTO success.

Targeted Hiring of Experienced Professionals

- To increase our ranks of talented and dedicated patent examiners, we launched a targeted hiring program to focus on recruiting experienced former examiners and IP professionals. The program places more emphasis on recruiting candidates with significant IP experience to reduce training time and allow new examiners to begin examining patent applications within weeks of starting employment. In FY 2010, the USPTO hired 276 patent examiners, of which 98 were IP experienced hires. In FY 2011, our goal is to recruit a high proportion of experienced IP hires.

Revamping USPTO's Classification System

- To reduce the administrative burdens faced by our examiners, we are reengineering our patent classification system -- which is how we assign applications for examination and is critical to effectively locating prior art. Higher quality classifications mean higher quality searches and patent examination and lower costs for American inventors. The USPTO and the European Patent Office (EPO) have begun working together toward the formation of a joint patent classification system. Unlike other major patent document classification systems, the U.S. patent classification system is not based on the International Patent Classification (IPC) system because it predates the IPC. One of the goals of the partnership is to align the U.S. and the EPO classification systems with the IPC, which is administered by the World Intellectual Property Organization (WIPO), a specialized agency of the United Nations. The jointly developed classification system will be more detailed than the IPC to improve patent searching. As a result, the two offices will move closer to eliminating unnecessary duplication of work, thus promoting more efficient examination, while also enhancing patent examination quality.

Providing More Options to Applicants

- Because there are shortcomings in any one-size-fits-all system, the USPTO is proposing to adopt private sector business practices and offer market-driven services. We have been experimenting with various ways of enabling applicants to receive accelerated review of applications filed in technology areas that are critical to our Nation's future, such as green technology. The USPTO will continue to identify and implement the efficiencies, tools, and policies necessary to increase the number of applications it is capable of examining and disposing (via rejection or issuance).
- **Green Technology Pilot Expansion:** Recently, we extended the USPTO's successful Green Technology Pilot until December 31, 2011, or until 3,000 applications have been accepted into the pilot, and eliminated the previous requirement that applications had to be filed with the USPTO before December 8, 2009, and classified in specific technology areas at the USPTO.

To date, there have been more than 1,100 petitions granted for entry into the Green Technology pilot, and 160 of these applications with granted petitions have already issued as U.S. patents. Currently, the average time between granting of a Green Technology petition and first office action on the merits is just 52 days, and all 160 patents were issued within 12 months of the petition decision date -- significantly faster than standard examination.

- **"Three Track" Program:** Last fall, we proposed a new patent examination initiative that would provide applicants greater control over the speed with which their applications are examined. The "Three-Track" program would enable processing within 12 months for those applications deemed by applicants to be their most important applications. The USPTO expects to soon issue a notice of proposed rulemaking to implement the prioritized examination track (Track 1) of the program, and plans to move forward with the remainder of the Three-Track program within the next few months. Under the proposed initiative, an applicant may request:

Track I: A prioritized examination process with a 12-month completion target (including a cost recovery fee).

Track II: The traditional examination process, which currently takes 34 months on average to complete.

Track III: For non-continuing applications, an applicant-controlled delay lasting up to 30 months prior to docketing for examination.

- **Provisional Application Changes:** The USPTO has implemented a Missing Parts Pilot Program which effectively provides a 12-month extension to the existing 12-month provisional application period, allowing applicants additional time to attain financial help, evaluate a product's worth in the marketplace, or further develop the invention for commercialization.

II. TRADEMARKS

Similar to the trends in patents, during the last year we have seen trademark filings increase. The USPTO Trademark Organization continues to meet its goals and is looking at additional process improvements.

- The Trademark Organization has consistently met first and final action quality targets above 96%. Nevertheless, seeking continuous improvement, the USPTO has sought input from stakeholders in determining how to define excellence. To raise the bar even further, a new measure to assess comprehensive excellence in office actions, which expands upon the existing first and final action standards for correct decision-making, has been established.
- Trademark processing and examination have been at a steady rate, with first action pendency at or below 3 months for the past four years, and total pendency below 13 months for the past three years. The challenge is to maintain trademark first action pendency on average between 2.5 and 3.5 months with 13 months or less for final pendency by balancing forecasted new filings with workload, existing inventories, and examination capacity.
- As electronic filing and processing have become the primary means of conducting business within the Trademark Organization, efficiency and timeliness of examination have also improved. Fewer than 2% of applications are filed on paper and 68% of all applications that register or abandon trademark rights are processed electronically.

III. POLICY AND INTERNATIONAL

The USPTO plays a significant leadership role in promoting effective domestic and international protection and enforcement of IP rights and serves as the President's advisor, through the Secretary of Commerce, on questions of IP policy.

Enforcement of IP Rights and IP Law Development

- The USPTO works closely with the White House's IP Enforcement Coordinator and other agencies in the Administration to help formulate and implement a robust and effective IP enforcement plan. Related efforts by the USPTO include high-level IP rights training and capacity building programs for key IP officials from around the world through our Global Intellectual Property Academy (GIPA); work by our six IP Attachés -- located in U.S. Missions around the world -- with U.S. trading partners; and advice to other Federal agencies, including the United States Trade Representative (USTR), on IP policy matters.

Work Sharing

- Work sharing is an important tool for speeding the processing of applications filed in multiple jurisdictions, and we are focused on expanding and improving our work sharing practices.
- The USPTO has implemented the Patent Prosecution Highway (PPH) with other major patent offices worldwide, and our goal is to double the number of PPH cases year over year. By the end of FY 2010, the total number of PPH requests filed exceeded 4,100, more than double the total of 1,973 requests received in all of FYs 2006 through 2009 combined. Our goal for FY 2011 is to reach a total of 8,000 PPH requests. We are also piloting aspects of a concept known as SHARE (Strategic Handling of Applications for Rapid Examination). Under SHARE, the USPTO will prioritize and balance workloads to maximize the re-use of foreign search and examination results.

Chief Economist

- To better understand the role played by IP in fostering a stronger and more internationally competitive U.S. economy, we established the Office of the Chief Economist (OCE). The Chief Economist is responsible for advising on the economic implications of policies and programs affecting the U.S. IP system and for developing a better understanding of the economic implications of IP-related policy and operational decisions and activities. Our Chief Economist has established an ambitious research agenda, refined it through interactions with the IP-economics community, and is now refining the data sets that will enable execution of the research agenda.

IP Educational Outreach to U.S. Businesses

- The USPTO provides IP educational opportunities to domestic small and medium-sized enterprises (SMEs), to universities, and to the public at large. These opportunities include outreach to Native American tribes, programs on IP awareness in exporting, and China Road Shows providing IP information to SMEs seeking to do business in China.

Intellectual Property in the Internet Age

- The USPTO has partnered with Commerce's National Telecommunications and Information Administration (NTIA) and the Office of the Secretary, as part of the Internet Policy Task Force, and with stakeholders, to conduct a comprehensive review of the availability and protection of copyrighted works online and innovation in the Internet economy.

Patent Policy

- In 2010, the USPTO co-hosted a day long symposium with the Antitrust Division of the Department of Justice and the Federal Trade Commission which included several panels of economists, attorneys, entrepreneurs, and other government and private industry specialists discussing the intersection of competition and patent policy.

IV. INFORMATION TECHNOLOGY

Our current IT infrastructure at the USPTO is outdated, limits our efficiency, and costs the agency valuable time and money. Last year, we began undertaking an overhaul of that infrastructure.

- On the trademark side, the USPTO is upgrading its Trademark IT infrastructure -- our NextGen project -- to improve the stability, availability, and performance of the systems that support trademark examination and public access to Trademark Office information.
- On the patents side, we are building a new patent examination IT system from end to end. This project, known as "Patents End-to-End (PE2E)," includes the reengineering of pre-examination, examination, and publication processes. PE2E will provide a new core architecture including improved reliability and availability for all automated systems.

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- We are continuing to enhance our support for all USPTO employees, including replacing their office desktop hardware and software with a universal laptop running “Windows 7” and “Office 2010;” upgrading our campus broadband connection to support increased teleworking and modern collaboration tools; replacing our collaboration tool suite to support improved video, messaging, presence, and file sharing; and providing Voice-over IP throughout the campus and to homes of teleworking employees.

V. OTHER OPERATIONAL ISSUES

Telework

- The USPTO is committed to expanding telework programs agency-wide. The USPTO has shown how a teleworking program can be run effectively and in fact increase productivity, and our program has been a model for others within the Federal government. In 2010, that commitment continued with growing opportunities for eligible employees to telework. We appreciate the Committee’s support for enactment of H.R. 1722, the Telework Enhancement Act of 2010, which includes provisions specific to the USPTO that will enable us to further expand and improve our teleworking programs.
- As of the end of last year, 5,915 USPTO employees teleworked (83% of eligible positions); 2,739 of these were teleworking 4-5 days per week.
- In FY 2010, as part of our telework efforts, the USPTO implemented an Enterprise Remote Access (ERA) Portal. We also won the *Innovative Application of Technology to Support Telework* award. Further, during the past year, the USPTO met with and advised 30 agencies and organizations interested in starting or expanding their respective telework initiatives.

Nationwide Workforce Program

- Last month, the USPTO announced plans to pilot a satellite office in Detroit, Michigan, in 2011 – the USPTO’s first outside the Washington, DC metro area. We expect the new office to create more than 100 new jobs in its first year and provide a boost to the region’s innovation economy. The Program represents an effort to recruit and retain highly skilled patent examiners and seek out additional resources and technical expertise in locations across the country.
- Following initial steps forward with the first satellite office, the USPTO will consider expanding the program, which would provide the patent applicant community and our Nation’s innovators greater access to the USPTO and the services it offers. Expansion will offer us an even wider applicant pool for those who may be interested in USPTO employment, but do not wish to relocate to the Washington, D.C. area.

Organizational Leadership Development

- In FY 2010, the USPTO implemented an agency-wide Leadership Development Program featuring a world-class portfolio of online tools, resources, job aids, and classroom and computer-based courses. The program provides a diverse set of developmental strategies to help supervisors and employees improve their leadership competency as well as strengthen leadership values, knowledge, skills, and abilities. The program is easily accessible, technologically savvy, and advances organizational development by cultivating a culture of

continual learning and professional growth. The USPTO program has been recognized as a model of excellence and shared government-wide to assist other agencies that are considering launching similar initiatives. In FY 2010, USPTO also created a Senior Executive Service (SES) Council to develop USPTO senior leaders to their maximum potential by bringing them together to regularly network, engage with speakers from within the agency and externally, discuss agency strategic priorities, and collaborate by sharing knowledge and resources across Business Units.

Diversity/Outreach

- The USPTO is committed to broadly recruiting qualified and diverse job seekers and has been successful in those efforts. The USPTO actively recruits nationally at Historically Black Colleges and Universities (HBCUs), Hispanic Serving Institutions (HSIs), and universities with programs for people with disabilities. In the fall of 2010, USPTO recruited at several minority serving institutions such as the University of Puerto Rico, Howard University, Morgan State University, Arizona State University, and Rochester Institute for Technology - The National Technical Institute for the Deaf.

Transparency

- To increase USPTO communications with various audiences, we have significantly expanded the amount of information available online to include annual performance and accountability reports, patent examiner training materials, testimony and speeches from USPTO officials, and relevant program and policy information.
- In 2010, we launched “Inventors Eye”-- a bi-monthly newsletter for the independent inventor community. Each issue covers topics of interest to independent inventors and stories about people who have become successful inventors. It also includes tips on working with the USPTO and information on events, organizations, and meetings of interest to the inventor community.
- We also launched the Feedback Channel -- where the public can comment on various USPTO initiatives including the Green Tech pilot program, Project Exchange, and others.
- The USPTO continued to expand its public outreach efforts with the launch of an online Subscription Center. The Center enables the public to easily subscribe, via e-mail, to an array of USPTO newsletters and alerts. The hub, located on the USPTO Web site at: www.uspto.gov/subscribe, enables the public to sign up to receive one or more “subscriptions” via email, including press releases, Director’s Forum blog posts, new issues of “Inventor’s Eye,” a new monthly recap of recent USPTO activities, and patent and trademark alerts. This provides a convenient way for people to stay current with the latest information from the USPTO.
- We also launched a number of communication tools to facilitate dialogue between USPTO management, employees, and the stakeholder community at large. We launched a public “Directors Forum” blog, and we have begun sending the Director’s blog out via feedburner on a weekly basis.
- Building on the success of the weekly Director’s Forum blog, we expanded our use of social media channels in 2010. By using popular social media tools such as “Facebook” and “Twitter,” we are able to share information with a much wider audience. Our web site will

continue as the news source of record for the USPTO, but Facebook and Twitter allow us to engage and interact with the public in new ways and to reach a broader audience.

- Our Data Visualization Center, or “dashboard,” allows our stakeholders to monitor our progress each month in a number of key performance metrics such as patent pendency and backlog. When we are reaching our goals -- and when we are not -- our stakeholders will be able to track our progress on a monthly basis as this data is updated regularly.

VI. FUNDING OVERVIEW

Finally, ensuring stable funding for the USPTO will continue to be a critical part of our success. As such, I want to provide an overview of our current funding situation.

Fee collections at the USPTO remain strong as a result of an improving economic outlook, strong patent renewal rates (maintenance of existing patents in force), and our increased production. As you know, to enable our efforts, the President’s FY 2011 Budget Request 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. Our spending authority under the continuing funding resolutions and the lack of a surcharge assessment through early March, however, represent foregone revenue of approximately \$115 million as compared to what was proposed in the President’s FY 2011 Budget request.

As a result of operating under the current Continuing Resolution, the USPTO has been forced to implement several spending restraints. These include restricting examiner overtime, delaying critical IT projects, and slowing down hiring. Should the Continuing Resolution be extended for the full year, and hold the USPTO to the prior year funding level, we will have to halt all hiring, overtime, IT improvements, and PCT outsourcing. As a result, some of the progress we have made to reduce our backlog and pendency would be reversed, and we would expect these key metrics to begin moving in the wrong direction.

These actions will prevent the USPTO from reaching the pendency and backlog goals that were laid out in the President’s Budget and Strategic Plan.

We will continue working closely with the Congress and the Department of Commerce in planning and preparing our strategic priorities and budget requirements to ensure our goals and initiatives are properly supported.

VII. Conclusion

The initiatives detailed above catalog a broad-based, aggressive effort to entirely reengineer the USPTO. Of course, the success and progress toward reaching our goals – including improved quality and reduced pendency and backlog – are dependent on a number of elements. Our FY 2011 budget provides the framework for a sustainable funding model to enable us to continue the work we have started to make critical changes so that the USPTO is supporting innovation, enabling investment, and contributing to U.S. economic recovery.

To this end, the USPTO strongly supports comprehensive patent reform and applauds the efforts of Members of both the House and Senate to continue to push for these reforms -- particularly

Chairman Smith, Ranking Member Conyers, Rep. Berman, Chairman Leahy and Senators Sessions and Hatch, who have all made enacting this bipartisan jobs legislation a top priority.

Proposals in this legislation – many that will significantly improve USPTO effectiveness – have been discussed for the better part of the last 10 years. And this is the Congress where we should and must finish those many years of work.

Parties have debated proposals and amended language many times, to where we now have key provisions that most parties support and that – without a doubt – will add more certainty to litigation, enable greater work sharing between the USPTO and other countries, and help the USPTO continue with the operational changes we know are needed to support innovators, help companies create jobs and put new, and better products in the marketplace.

President Obama talked about patent reform in his meeting with CEOs last month. Secretary Locke has been, and will continue to be, a true champion in this endeavor. And, I am committed to continue working with Congress to put forth the best legislation possible.

And to do so, it will be important to use what we have learned from recent litigation and court decisions and from the previous Congressional attempts at Patent Reform.

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.