



United States Patent and Trademark Office

Performance and Accountability Report

Fiscal Year 2011



FINANCIAL HIGHLIGHTS

(Dollars in Thousands)	% Change 2011 over 2010	September 30, 2011	September 30, 2010
Fund Balance with Treasury	13.6%	\$ 1,631,206	\$ 1,436,432
Property, Plant, and Equipment, Net	18.5%	206,628	174,397
Other Assets	(8.5%)	15,663	17,124
Total Assets	13.9%	<u>\$ 1,853,497</u>	<u>\$ 1,627,953</u>
Deferred Revenue	9.2%	\$ 845,782	\$ 774,388
Accounts Payable	22.1%	85,640	70,114
Accrued Payroll, Benefits, and Leave	14.3%	203,956	178,465
Other Liabilities	2.8%	115,859	112,681
Total Liabilities	10.2%	<u>\$ 1,251,237</u>	<u>\$ 1,135,648</u>
Net Position	22.3%	602,260	492,305
Total Liabilities and Net Position	13.9%	<u>\$ 1,853,497</u>	<u>\$ 1,627,953</u>
Total Program Cost	7.0%	\$ 2,148,097	\$ 2,006,938
Total Earned Revenue	6.4%	(2,236,374)	(2,101,682)
Net Income from Operations	(6.8%)	<u>\$ (88,277)</u>	<u>\$ (94,744)</u>
Budgetary Resources Available for Spending	8.2%	\$ 2,338,600	\$ 2,161,632
Total Collections, Net of Outlays	56.9%	<u>\$ (191,593)</u>	<u>\$ (122,074)</u>
Federal Personnel	7.4%	10,210	9,507
Disbursements by Electronic Funds Transfer (EFT)	—	100%	99%
On-Time Payments to Vendors	4.2%	100%	96%

PERFORMANCE HIGHLIGHTS

Performance Measures	FY 2011 Target	FY 2011 Actual	Performance Results ¹
Patent Average First Action Pendency (months)	23.0	28.0	Not Met
Patent Average Total Pendency (months)	34.5	33.7	Met
Patent Final Disposition Compliance Rate	95.6% - 96.5%	95.4%	Met
Patent In-Process Compliance Rate	94.6% - 95.6%	95.2%	Met
Patent Applications Filed Electronically	90.0%	93.1% ²	Met
Trademark Average First Action Pendency (months)	2.5 to 3.5	3.1	Met
Trademark Average Total Pendency (months)	12.5	10.5	Met
Trademark First Action Compliance Rate	95.5%	96.5%	Met
Trademark Final Compliance Rate	97.0%	97.0% ³	Met
Trademark Applications Processed Electronically	68.0%	73.0%	Met
Percentage of prioritized countries that have implemented at least 75% of action steps in the country-specific action plans toward progress along following dimensions: 1. Institutional improvements of IP office administration for advancing IPR 2. Institutional improvements of IP enforcement entities 3. Improvements in IP laws and regulations 4. Establishment of government-to-government cooperative mechanisms	75.0%	100.0%	Met
Percentage of foreign officials trained who have initiated or implemented a positive change in the IP systems in their organizations and/or countries	Baseline	*	*

¹ The performance result of a given measure is either met (100 percent or greater of target), slightly below (95 to 99 percent of the target), or not met (below 95 percent of target).

² This is preliminary data and is expected to be final by December 2011 and will be reported in the fiscal year (FY) 2012 PAR.

³ Within the target range of 97 percent considering the margin of error (+/- 0.6 percent).

* FY 2011 is a baseline year for this new measure. A target will be assigned after baseline data has been analyzed, and actuals reported subsequently in FY 2012.

T A B L E O F C O N T E N T S

Message from the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office	3
Management’s Discussion and Analysis	7
Mission and Organization of the USPTO	8
Performance Goals and Results	12
USPTO Strategic Plan	13
Strategic Goal 1: Optimize Patent Quality and Timeliness	15
Strategic Goal 2: Optimize Trademark Quality and Timeliness	24
Strategic Goal 3: Provide Domestic and Global Leadership to Improve Intellectual Property Policy, Protection and Enforcement Worldwide	31
Management Goal: Achieve Organizational Excellence	38
Management Challenges and What’s Ahead	45
Accompanying Information on USPTO Performance	50
Performance Audits and Evaluations	50
Management Assurances and Compliance with Laws and Regulations	52
Financial Discussion and Analysis	58
Financial Section	71
Message from the Chief Financial Officer	72
Principal Financial Statements and Related Notes	74
Independent Auditors’ Report	103
Other Accompanying Information	111
Inspector General’s Top Management Challenges Facing the USPTO	112
Improper Payments Information Act of 2002, as amended	151
Summary of Financial Statement Audit and Management Assurances	153
The Nature of the Training Provided to USPTO Examiners	154
FY 2011 USPTO Workload Tables	158
Glossary of Acronyms and Abbreviation List	189

Web address for the USPTO Performance and Accountability Report

<http://www.uspto.gov/about/stratplan/ar/index.jsp>

ABOUT THIS REPORT

The USPTO Performance and Accountability Report for FY 2011 provides a comprehensive summary of program and financial results and is structured to help the President, the Congress, and the American public assess our performance relative to our mission and accountability for our financial resources.



Message from the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office

Now more than ever, the work of the United States Patent and Trademark Office (USPTO) is vital to our nation's well-being. As we stand at an important crossroads in the country's economic evolution, our ability to foster new products and cultivate new inventions proves instrumental in creating the next generation of jobs, investments, and growth. We are committed to accomplishing our mission of fostering an intellectual property (IP) system that allows

American business and entrepreneurs to thrive. And in order to strengthen the very infrastructure that marshals new innovation to the marketplace, under our **2010-2015 Strategic Plan**, the entire USPTO team made some important strides in Fiscal Year (FY) 2011.

We've undertaken a series of initiatives to improve the speed and quality of patent processing in an ongoing effort to further strengthen the examination capacity of the USPTO. We've also aggressively been reengineering many systems and processes including our internal information technology (IT) systems. We are working toward a 21st Century system that is smarter, better, faster, and stronger for all stakeholders. For the first time in several years, the USPTO team was able to push the number of patent applications awaiting first action well below 700,000—an important milestone proving that our range of initiatives are helping to usher technological innovations from the drawing board into the economic sphere more quickly. Another



significant milestone the Agency surpassed this year was the issuance of its 8,000,000th patent. This is an important signal of the technological vigor and creative industry underpinning a healthy and highly-productive U.S. IP system.

And for the fifth consecutive year, our outstanding Trademark organization has consistently exceeded its pendency targets for first action and final disposition.

Going above and beyond expectations with final pendency below 11 months, we've also implemented the new "excellent quality" measure.

But even with all of this activity, the USPTO faces enormous challenges with the likelihood that FY 2012 will be a difficult year financially. That is why the historic patent reform legislation—passed this summer by Congress, and signed into law in September by the President—is pivotal to our operations. The America Invents Act ensures that the USPTO remains sufficiently resourced to modernize our IT infrastructure, hire more examiners, and swiftly implement new cost-effective provisions that will increase the efficiency and the quality of our patent system. Various working groups have already been convened to roll out a staged implementation of the bill over the next 18 months. Ultimately, this sweeping legislation will offer inventors the strong property protections they need to grow their businesses, and afford our Agency the tools it needs to drive



Under Secretary Kappos speaks at the Innovation Alliance Conference January 21, 2011, in Washington, D.C.

down the backlog, and deliver cutting-edge technologies to the marketplace—all without adding a dime to the deficit.

But, in order to remain competitive in a global economy, and in order to ensure that businesses can create more jobs and increase their hiring, develop and invest faster, there's more we must do. That's why we will continue to work with the Administration, Congress, and our stakeholders to identify and implement solutions for a sustainable and robust IP system that better equips the nation's innovators.

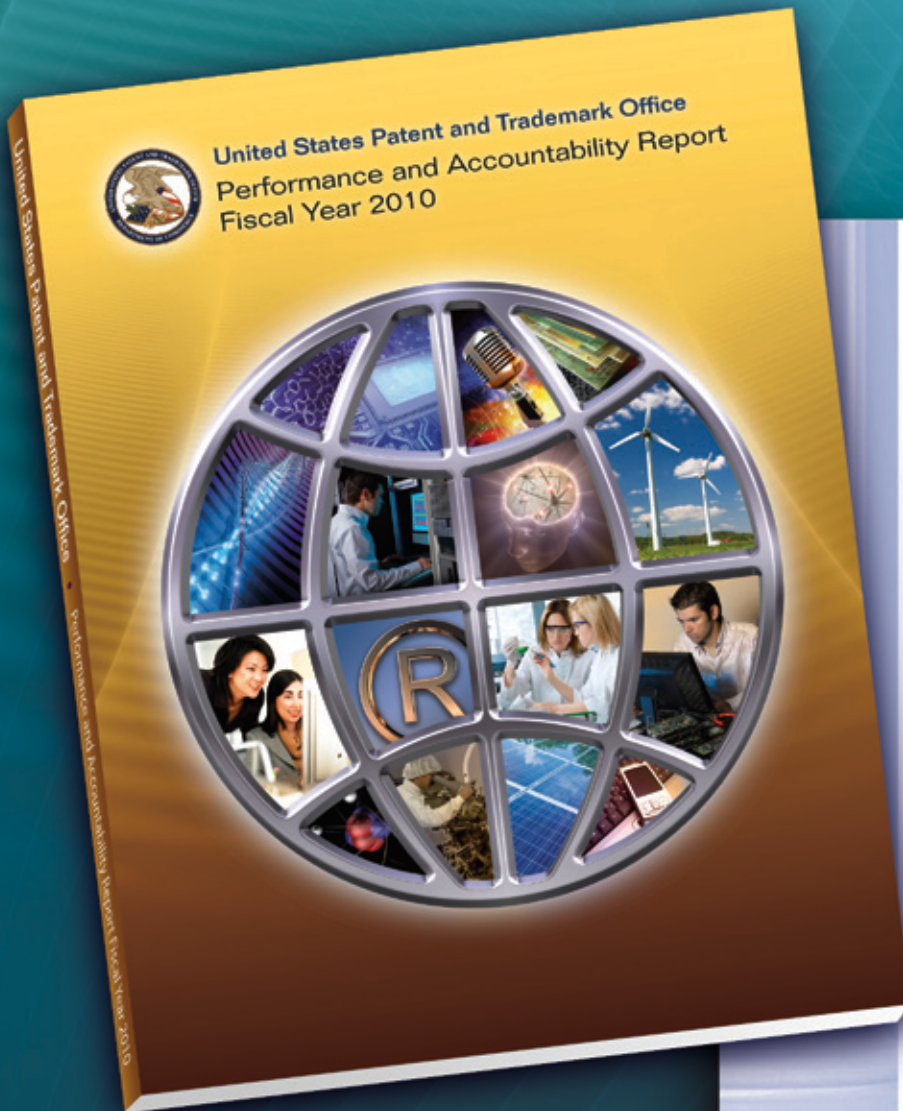
We are confident that the USPTO's financial and performance data are complete, reliable, accurate, and consistent as we improve our ability to measure progress toward our performance goals. For the 19th consecutive year, we earned an unqualified audit opinion on our annual financial statements. For FY 2011 financial reporting, the independent auditors did not identify any material weaknesses, significant deficiencies, or instances of non-compliance with laws and regulations.

Even though we're proud of what we achieved, we look forward to challenges that remain ahead. I know that the requisite talent, creativity, and innovative spirit are alive and well among USPTO employees and are producing positive results for the American people and our economy. That's why I look forward to another productive year, working with you all to ensure that the USPTO drives innovation, creates jobs, and guarantees America's competitiveness in the century ahead.

A handwritten signature in black ink that reads "David J. Kappos".

David J. Kappos
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office
November 4, 2011

2010 CERTIFICATE OF EXCELLENCE



CERTIFICATE OF EXCELLENCE IN ACCOUNTABILITY REPORTING®

Presented to the

*U.S. Patent and
Trademark Office*

In recognition of your outstanding efforts
preparing PTO's Performance and
Accountability Report for the fiscal
year ended **September 30, 2010.**

A Certificate of Excellence in Accountability Reporting is presented
by AGA to federal government agencies whose annual
Performance and Accountability Reports achieve the
highest standards demonstrating accountability
and communicating results.




John H. Hummel, CCFM
Chair, Certificate of Excellence
in Accountability Reporting Board


Reinhold P. Van Dierker, DFR, CMA
Executive Director, AGA



President Barack Obama signs the America Invents Act into law September 16, 2011, at Thomas Jefferson High School for Science and Technology in Alexandria, Virginia.

Management's Discussion and Analysis



Mission and Organization of the USPTO



Mission

Fostering innovation, competitiveness and economic growth, domestically and abroad to deliver high quality and timely examination of patent and trademark applications, guiding domestic and international intellectual property policy, and delivering intellectual property information and education worldwide, with a highly skilled, diverse workforce.

The United States Patent and Trademark Office's (USPTO) mission is anchored in Article I, Section 8, Clause 8, of the Constitution "to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writing and discoveries," and the Commerce Clause of the Constitution (Article 1, Section 8, Clause 3) supporting the federal registration of trademarks.

For most of the last century, the United States has been the clear leader in developing new technologies, products, and entire industries that provide high-value jobs for Americans, enabling us to maintain our economic and technological leadership.

As a part of the Department of Commerce (DOC), the USPTO is uniquely situated to support the accomplishment of the Department's mission to *create the conditions for economic growth and opportunity by promoting innovation, entrepreneurship, competitiveness, and stewardship.*



Under Secretary Kappos signs Patent No. 8,000,000 at a signing ceremony at the Smithsonian American Art Museum, once the home of the first U.S. Patent Office, August 16, 2011.

Our Organization

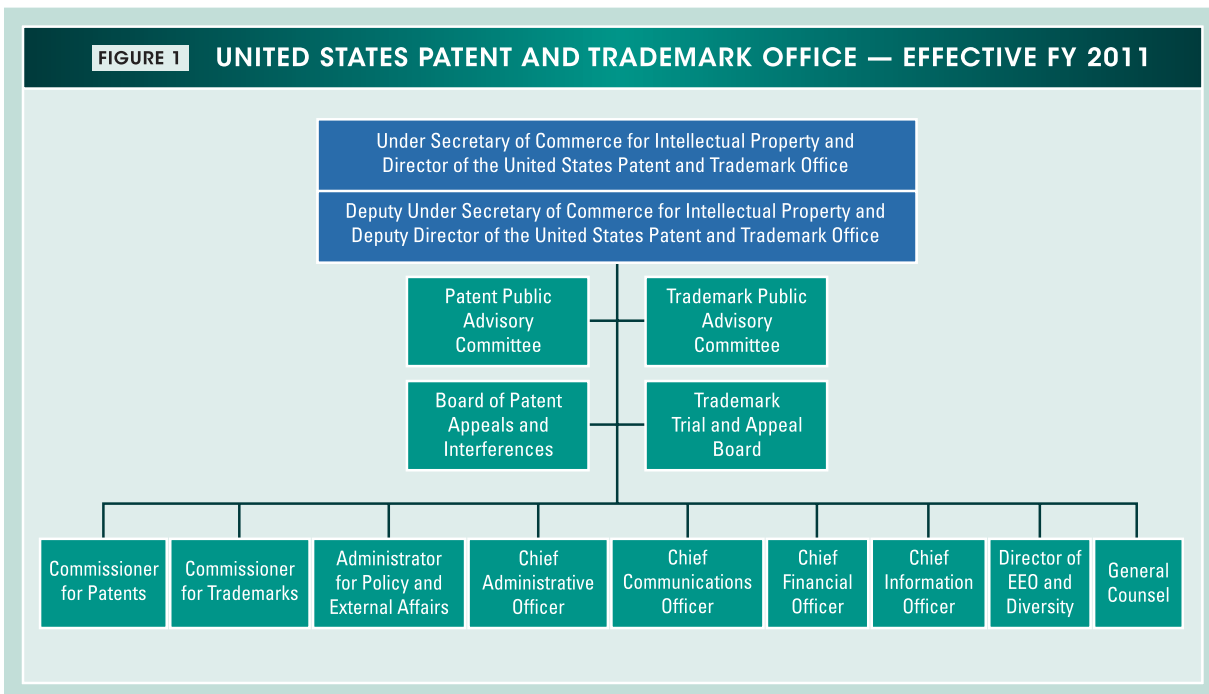
The USPTO is an agency of the United States within the DOC. As shown in Figure 1, the Agency is led by the Under Secretary of Commerce for Intellectual Property and Director of the USPTO who consults with the Patent Public Advisory Committee (PPAC) and the Trademark Public Advisory Committee. The USPTO has two major components: the Patent organization and the Trademark organization, which are teamed with several other supporting units, as shown in the organization chart below (Figure 1). Headquartered in Alexandria, Virginia, the USPTO also has two storage facilities located in Virginia and Pennsylvania.

The USPTO has evolved into a unique government agency. In 1991 – under the *Omnibus Budget Reconciliation Act (OBRA) of 1990* – the USPTO became fully supported by user fees to fund its operations. In 1999, the *American Inventors Protection Act (AIPA)* established the USPTO as an agency with performance-based attributes, for example, a clear mission statement, measurable services and a performance measurement system, and known sources of funding. On September 16, 2011, the President signed into law the *Leahy-Smith America Invents Act (AIA)*. The new law will promote innovation and job creation by improving patent quality, clarifying patent rights, reducing the application

backlog, and offering effective alternatives to costly patent litigation. It also provides fee-setting authority that will be essential to USPTO's sustainable funding model.

As the clearinghouse for U.S. patent rights, the USPTO is an important catalyst for U.S. economic growth as it plays a key role in fostering the innovation that drives job creation, investment in new technology, and economic recovery. Through the prompt granting of patents, the USPTO promotes the economic vitality of American business, paving the way for investment, research, scientific development, and the commercialization of new inventions. The USPTO also promotes economic vitality by ensuring that only valid patent applications are approved for granting, thus providing certainty that enhances competition in the marketplace.

The Patent organization examines patent applications to compare the scope of claimed subject matter to a large body of technological information to determine whether the claimed invention is new, useful, and non-obvious. Patent examiners also provide answers on applications appealed to the Board of Patent Appeals and Interferences (BPAI), prepare initial memoranda for interference proceedings to





Registered trademark characters at the 2010 National Trademark Expo in Alexandria, Virginia.

determine priority of invention, and prepare search reports and international preliminary examination reports for international applications filed under the *Patent Cooperation Treaty (PCT)*. The patent process includes performing an administrative review of newly filed applications, publishing pending applications, issuing patents to successful applicants, and disseminating issued patents to the public.

The Trademark organization registers marks (trademarks, service marks, certification marks, and collective membership marks) that meet the requirements of the *Trademark Act of 1946*, as amended, and provides notice to the public and businesses of the trademark rights claimed in the pending applications and existing registrations of others. The core process of the Trademark organization is the examination of applications for trademark registration. As part of that process, examining attorneys make determinations of registrability under the provisions of the Trademark Act, which includes searching the electronic databases for any pending or registered marks that are confusingly similar to the mark in a subject application, preparing letters

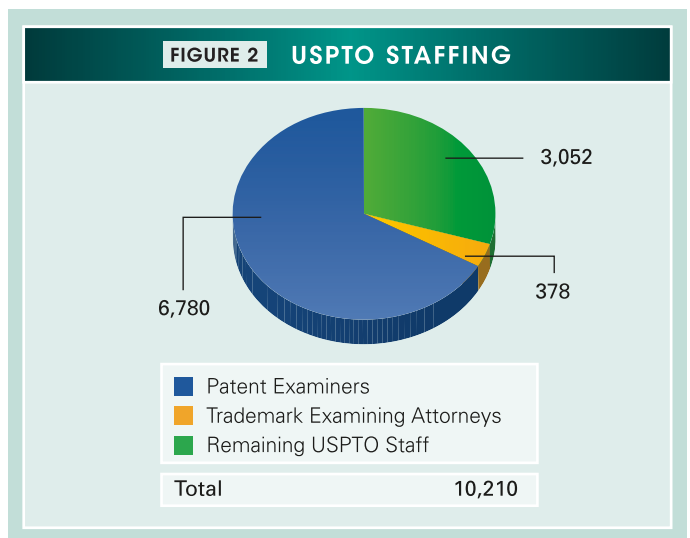
informing applicants of the attorney's findings, approving applications to be published for opposition, and examining statements of use in applications filed under the Intent-to-Use provisions of the Trademark Act.

Domestically, the USPTO provides technical advice and information to executive branch agencies on intellectual property (IP) matters and trade-related aspects of IP rights. Internationally, the USPTO works with foreign governments to establish regulatory and enforcement mechanisms that meet international obligations relating to the protection of IP.

The performance information presented in this report is the joint effort of the Under Secretary's Office, the Patent organization, the Trademark organization, the Office of the Administrator for Policy and External Affairs, and Office of the Chief Financial Officer (OCFO).

Our People

At the end of FY 2011, the USPTO work force (Figure 2) was composed of 10,210 federal employees (including 6,780 patent examiners and 378 trademark examining attorneys).



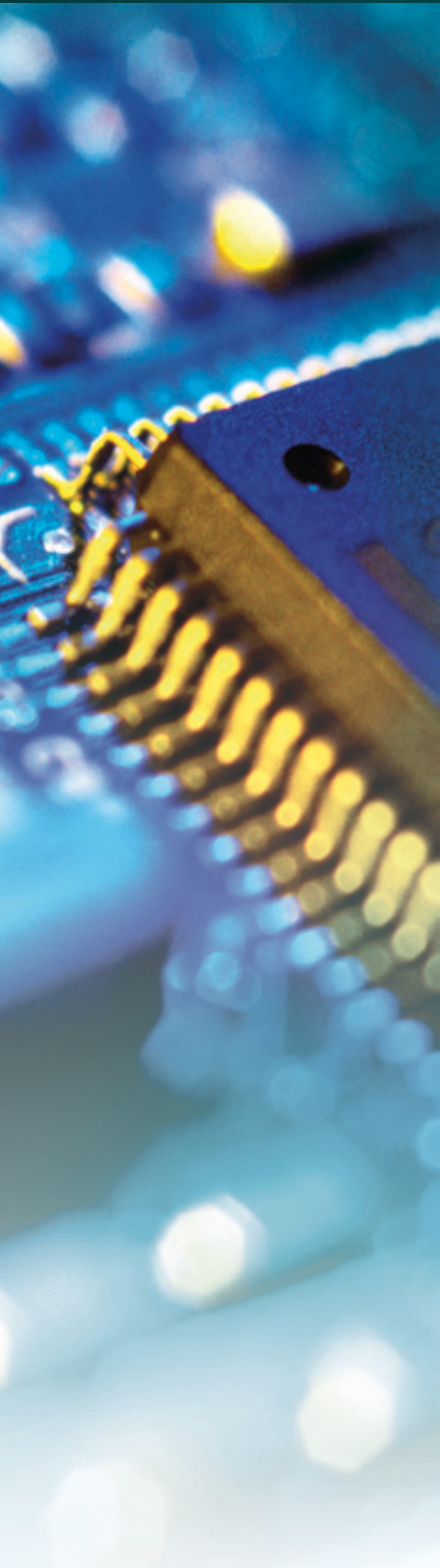
AMERICA INVENTS ACT

After six years of tireless efforts by the Congress, the Administration and stakeholders, the President signed into law the *Leahy-Smith America Invents Act* (AIA) (Pub. L. No. 112-29) on September 16, 2011. The AIA supports the USPTO's efforts to improve patent quality, reduce the backlog of patent applications, reduce domestic and global patenting costs for U.S. companies, provide greater certainty in patent rights, and offer effective alternatives to costly and complex litigation. It sets forth some of the biggest changes to the patent system in almost 200 years. It moves the invention precedence standard from first-to-invent to a first-inventor-to-file system, which is more aligned with global IP standards. It also significantly moves the USPTO toward a more sustainable funding model (fee setting authority). It also provides enhanced proceedings for post-grant patent reviews. Some other key provisions of this groundbreaking Act:

- Third party submissions of Prior Art
- Priority Examination for Important Technologies
- Supplemental Examination Procedure
- Prior User Defense – expands defense to technologies beyond current business methods
- Creates Patent and Trademark Fee Reserve Fund for excess fees to be appropriated – reserved for Agency use and spending authorized in annual appropriations
- Established the following new fees:
 - Post-grant review
 - Inter partes review
 - Preissuance submissions by a third party
 - Supplemental Examination
 - Derivation proceedings
 - Prioritized Examination
- Established a new definition and segment of applicants – micro entities that are a distinct subset of small entities for fee purposes
- Provided the Board of Patent Appeals and Interferences the following new review proceedings:
 - Derivation Proceedings
 - Inter partes review
 - Post grant review
 - Transitional program for covered business method patents



Performance Goals and Results

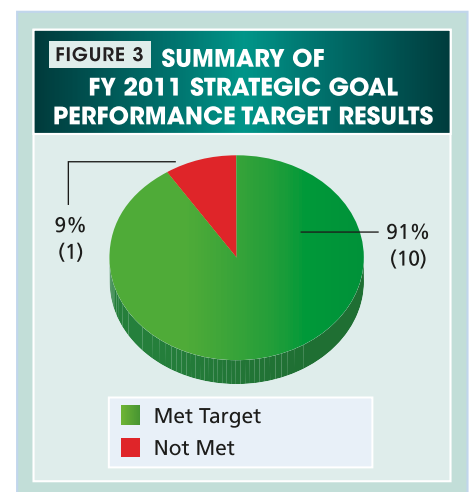


Introduction to Performance

In FY 2010, the USPTO issued its *2010-2015 Strategic Plan*, which recognizes that innovation has become the principal driver of our modern economy by stimulating economic growth and creating high-paying jobs. America's innovators rely on the U.S. patent and trademark systems to secure investment capital and to bring their products and services to the marketplace as soon as possible. Therefore, it is critical for America's innovators to have a well-run USPTO.

The *USPTO 2010-2015 Strategic Plan* (www.uspto.gov/about/stratplan/index.jsp) is designed to strengthen the capacity of the USPTO by focusing on a specific set of goals and the steps we must take to reach those goals, as follows:

- Provide timely examination of patent applications: Reduce the average time to first office action for patent applications to 10 months (average time from filing until an examiner's initial determination on patentability), and average total pendency to 20 months (average time from filing until the application is issued as a patent or abandoned)
- Improve quality of patent examination
- Improve/enhance patent appeal and post-grant processes
- Optimize trademark quality and maintain pendency
- Demonstrate global leadership in all aspects of IP policy development
- Improve information technology (IT) infrastructure and tools
- Implement a sustainable funding model for operations
- Improve relations with employees and stakeholders.



While funding constraints this past year caused us to take actions that postponed full implementation of some strategic plan initiatives, we are still committed to achieving the goals and objectives in the *USPTO 2010-2015 Strategic Plan*.

These priorities support the DOC's theme of economic growth, and the goal of delivering the tools, systems, policies and technologies critical to transforming our economy, fostering U.S. competitiveness, and driving the development of new businesses.

Our plan communicates the USPTO's priorities and directions, and serves as the foundation for programmatic and management functions. As a management tool for tracking progress in meeting each of our performance commitments, the plan includes a Balanced Scorecard which identifies the objectives, initiatives, and performance measures associated with each strategic goal. These performance commitments are outlined in the strategic framework presented in Table 1.

Following the presentation of the Strategic Planning Framework, a summary table (Table 2) provides trend information on performance results within each strategic goal. This is followed by a more detailed discussion of our strategy and performance results, by strategic objective within each strategic goal.

TABLE 1 2010-2015 Strategic Plan

Mission	
<i>Fostering innovation, competitiveness and economic growth, domestically and abroad by delivering high quality and timely examination of patent and trademark applications, guiding domestic and international intellectual property policy, and delivering intellectual property information and education worldwide, with a highly skilled, and diverse workforce.</i>	
Vision	
<i>Leading the Nation and the World in Intellectual Property Protection and Policy.</i>	
Strategic Goals with Resources Invested	Objectives
<p style="text-align: center;">GOAL 1: <i>Optimize Patent Quality and Timeliness</i></p> <p style="text-align: center;">Obligations: \$1,915.3 million</p>	Re-Engineer Patent Process to Increase Efficiencies and Strengthen Effectiveness
	Increase Patent Application Examination Capacity
	Improve Patent Pendency and Quality by Increasing International Cooperation and Work Sharing
	Measure and Improve Patent Quality
	Improve Appeal and Post-Grant Processes
	Develop and Implement the Patent End-to-End Processing System
<p style="text-align: center;">GOAL 2: <i>Optimize Trademark Quality and Timeliness</i></p> <p style="text-align: center;">Obligations: \$196.4 million</p>	Maintain Trademark First Action Pendency on Average between 2.5 – 3.5 Months with 12.5 Months Final Pendency
	Continuously Monitor and Improve Trademark Quality
	Ensure Accuracy of Identifications of Goods and Services in Trademark Applications and Registrations
	Enhance Operations of Trademark Trial and Appeal Board (TTAB)
	Modernize IT System by Developing and Implementing the Trademark Next Generation IT System
<p style="text-align: center;">GOAL 3: <i>Provide Domestic and Global Leadership to Improve Intellectual Property Policy, Protection and Enforcement Worldwide</i></p> <p style="text-align: center;">Obligations: \$49.2 million</p>	Provide Domestic Leadership on IP Policy Issues and Development of a National IP Strategy
	Provide Leadership on International Policies for Improving the Protection and Enforcement of IP Rights (IPR)
<p style="text-align: center;">MANAGEMENT GOAL: <i>Achieve Organizational Excellence</i></p>	Improve IT Infrastructure and Tools
	Implement a Sustainable Funding Model for Operations
	Improve Employee and Stakeholder Relations

Summary of Strategic Goal Results

The following table summarizes FY 2011 actual performance results against established goals and targets for each key performance measure. The table also includes actual performance results for the past four fiscal years.

TABLE 2 Strategic Goals Performance Measures	FY 2007 Actual	FY 2008 Actual	FY 2009 Actual	FY 2010 Actual	FY 2011 Target	FY 2011 Actual
GOAL 1: Optimize Patent Quality and Timeliness						
Average First Action Pendency	25.3	25.6	25.8	25.7	23.0	28.0 ¹
Average Total Pendency	31.9	32.2	34.6	35.3	34.5	33.7 ¹
Final Disposition Compliance Rate	N/A	N/A	94.4%	96.3%	95.6%-96.5%	95.4% ²
In-Process Examination Compliance Rate	N/A	N/A	93.6%	94.9%	94.6%-95.6%	95.2%
Patent Applications Filed Electronically	49.3%	71.7%	82.4%	89.5%	92.0%	93.1% ³
GOAL 2: Optimize Trademark Quality and Timeliness						
Average First Action Pendency	2.9	3.0	2.7	3.0	2.5 to 3.5	3.1
Average Total Pendency	13.4	11.8	11.2	10.5	12.5	10.5
First Action Compliance Rate	95.9%	95.8%	96.4%	96.6%	95.5%	96.5%
Final Compliance Rate	N/A	N/A	97.6%	96.8%	97.0%	97.0%
Trademark Applications Processed Electronically	N/A	N/A	62.0%	68.1%	68.0%	73.0%
GOAL 3: Provide Domestic and Global Leadership to Improve Intellectual Property Policy, Protection and Enforcement Worldwide						
Percentage of prioritized countries that have implemented at least 75% of action steps in the country-specific action plans toward progress along following dimensions:	N/A	N/A	NA	75%	75%	100% ¹
1. Institutional improvements of IP office administration for advancing IPR						
2. Institutional improvements of IP enforcement entities						
3. Improvements in IP laws and regulations						
4. Establishment of government-to-government cooperative mechanisms						
Percentage of foreign officials trained who have initiated or implemented a positive change in the IP systems in their organizations and/or countries	N/A	N/A	N/A	N/A	Baseline	4

The performance result of a given measure is either ■ Met (100 percent or greater of target), ■ Slightly Below (95 to 99 percent of the target), or ■ Not Met (below 95 percent of target).

N/A: Denotes new performance measures where data was not available.

¹ The FY 2011 DOC PAR reported preliminary data for this measure.

² Within the target range of 95.6%–96.5% considering the margin of error of +/- 0.8%.

³ This is preliminary data and is expected to be final by December 2011 and will be reported in the fiscal year (FY) 2012 PAR.

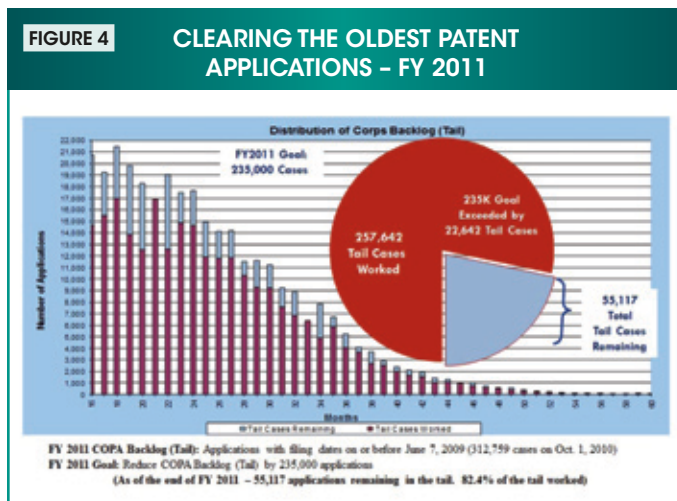
⁴ FY 2011 is a baseline year for this new measure. A target will be assigned after baseline data has been analyzed, and actuals reported subsequently in FY 2012.

Strategic Goal 1: Optimize Patent Quality and Timeliness

The USPTO made significant progress in FY 2011 in meeting our goal of providing timely and quality patents. While less-than-planned spending authority has greatly impacted the USPTO's ability to decrease patent pendency and the backlog, the Patent organization continued to respond to these challenges and obstacles by launching new and innovative initiatives to achieve its strategic goals. Despite budget constraints suspending routine programs such as examiner hiring, overtime, and training, the Patent organization succeeded in making progress by focusing on new methods and processes to increase efficiencies and strengthen effectiveness through collaboration, communication, and transparency.

In order to achieve its goal to reduce the backlog, the USPTO launched a major program to clean up the older cases in the pending backlog and more strictly manage its inventory in a first-in, first-out (FIFO) inventory environment. This initiative has resulted in a temporary rise in pendency in the near-term, because pendency is determined by cases that were examined during a particular period. However, clearing the oldest patent applications is important to the USPTO's long-term success in reducing pendency and the backlog of unexamined patent applications. In an effort to eliminate the "tail" of backlog applications that were more than 16 months old at the beginning of the fiscal year and which had not yet received a first office action, the USPTO launched a unique initiative known as "Clearing the Oldest Patent Applications" (COPA). This initiative (Figure 4) was a critical first step toward reaching the USPTO's strategic goal of providing first office actions on all new applications in an average of 10 months from their date of filing by 2015.

The improvements and increased efficiencies are shown in our performance metrics.



OBJECTIVE 1: RE-ENGINEER PATENT PROCESS TO INCREASE EFFICIENCIES AND STRENGTHEN EFFECTIVENESS

During this fiscal year, the USPTO worked to reengineer the entire patent examination system to improve workload prioritization, decrease duplicative work, and streamline reviews in collaboration with applicants. Establishing and improving mechanisms that would result in accelerated examination were critical to this effort. Accelerating the patent process and boosting patent quality are essential in translating inventors' ideas into job-creating businesses that spur economic growth and ensure U.S. competitiveness in the global market. In recognizing that applicants' needs vary in patent prosecution time as well as in application costs, this has resulted in the development and implementation of new programs aimed at meeting these varied needs of stakeholders.

Project Exchange is an application acceleration pilot initiative that empowers qualifying applicants having two or more pending patent applications to accelerate the review status of one of the applications by abandoning a second

unexamined application. This initiative, which gives applicants greater control over the processing speed of their applications, helps the USPTO to prioritize its workload while reducing the backlog of unexamined patent applications. After first testing the pilot by permitting its use only by qualifying independent inventors and small entities, the pilot was recently expanded to permit use by all patent applicants.

The *Green Technology Pilot Program* provides accelerated examination of inventions involving green technology, thereby promoting innovation in green technologies and reducing the pendency of patent applications critical to climate change mitigation. In response to feedback from applicants, the USPTO revised the Green Technology Pilot Program to allow more categories of technology to be eligible for expedited processing under the program. As a result, the Green Technology Pilot Program has increased the development and deployment of green technology and contributed to promoting U.S. competitiveness in this vital sector. More than 1,900 petitions have been granted to green technology patent applicants since the pilot began in December 2009.

A new patent examination initiative that would provide applicants greater control over the speed with which their applications are examined, promote greater efficiency in the patent examination process, and allow the USPTO to deploy its resources to better meet the needs of innovators is the *"Three-Track" Program*. This new "Three-Track"

Program has targeted application processing within 12 months for those applications deemed to be most important to applicants. Under the "Three-Track" Program, an applicant may request one of the following:

- Track I: a prioritized examination with an aggregate 12 month pendency goal;
- Track II: a traditional examination under the current procedures; or
- Track III: an applicant-controlled delay for up to 30 months prior to docketing for examination.

The Track I, prioritized examination, was put into motion after the passing of the AIA in late September. When fully implemented, the "Three-Track" Program will bring new products and services to the global market more quickly, thus helping to build businesses and create new jobs in the U.S.

The *First Action Interview Program* is another mechanism in which the USPTO is improving the examination process to increase effectiveness of patent prosecution. This program encourages examiners to hold interviews with applicants early in the prosecution process in order to facilitate resolution of issues for a timely disposal. This program has been expanded to include all utility applications in all technology areas, enhance efficiency, and provide more options to participants. The benefits of the program include the ability to advance prosecution of an application, enhanced interaction between applicant and the examiner, the opportunity to resolve patentability issues one-on-one with the examiner at the beginning of the prosecution process, and the opportunity to facilitate possible early allowance. The First Action Interview Program has not only provided applicants with more options in regards to procedures needed for examination, but it also has contributed dramatically to improving patent application quality.

For the first time in history, the IP community is able to work with the USPTO collaboratively in making the *Manual of Patent Examining Procedure* (MPEP) a state-of-the-art practice document through an interactive discussion tool specifically designed to solicit input from stakeholders on the revision and publication process of the MPEP. The inno-



The USPTO's brochure illustrating the details of the Green Technology Program.

vative use of Web-based technology to successfully reengineer the MPEP has not only transformed the way the MPEP is expeditiously updated, but also has established a more collaborative revision process to foster interaction and contributions from stakeholders. This tool benefits practitioners as well as examiners by providing easy, accurate, and current guidance to ensure that all patent applications comply with the laws and regulations governing the patent system.

Another innovative use of Web-based technology is the USPTO's launch of its new *e-Petition System* which automates the filing and decision process for eight patent related routine petition types. With e-Petition, data is input through a secure Web interface and the petition is decided automatically, eliminating months of waiting for these types of petitions to be docketed, decided, and uploaded into Public Patent Application Information Retrieval. Petitioners will have more control over when their petitions are filed and answered through the new e-Petition system and this is especially advantageous for critical petitions, such as petitions to withdraw from issue. Moreover, electronic petition decisions will also decrease the need for renewed petitions and reduce the inventory of petitions awaiting decision, thus freeing up resources currently used to decide the eight types of petitions. Processing and issuing more petition decisions electronically provides a great improvement in service to patent applicants as well as increases the efficiency of the USPTO. Table 3 below indicates the relative cost effectiveness of the entire patent examination process over time, or the efficiency with which the organization applies its resources to production.

FISCAL YEAR	TARGET	ACTUAL
2007	\$4,253	\$3,961
2008	\$3,982	\$3,773
2009	\$3,562	\$3,523
2010	\$3,530	\$3,471
2011	\$4,041	\$3,594
2012	\$4,115	
Target Met.		



Deputy Director of the USPTO Teresa Stanek Rea speaks at the Patent Training Academy's May graduation in Alexandria, Virginia.

OBJECTIVE 2: INCREASE PATENT APPLICATION EXAMINATION CAPACITY

The USPTO continues to increase its examination capacity by employing new recruitment and development models to hire, train, and retain a highly skilled and diverse workforce. While continuing to draw candidates from traditional sources, a targeted hiring program was launched to focus on recruiting experienced former examiners and IP professionals. The new hiring model seeks individuals with appropriate technology backgrounds who also have previous IP experience for patent examiner positions. In contrast with previous hiring which focused on scientific background and experience, this new hiring model places more emphasis on recruiting candidates with significant IP experience. This will result in reduced training time as well as an increased ability to examine applications much sooner than a new hire with little or no IP experience, thereby increasing overall production output.

Additionally, plans provide for the establishment of a nationwide workforce using telework from off-site locations to hire highly skilled, experienced IP professionals interested in joining the USPTO, but who do not wish to relocate to the Washington, D.C. region. This will directly aid in the hiring of patent examiners as well as expand the presence of the USPTO. Development of a nationwide workforce enables the USPTO to widen its hiring practices in an effort to meet



its hiring targets as well as tap into the expertise that lies outside the USPTO's geographical boundary. Plans for opening the first satellite office, initially scheduled to open in Detroit, Michigan in August 2011, were temporarily suspended due to FY 2011 budget constraints, but have now been resumed with the passage of the AIA.

Use of overtime is a vital component in reducing the backlog of pending patent applications and achieving the USPTO's pendency goals. Each overtime hour worked is directly tied to production output because it is straight examining time. As such, overtime has proven to be more efficient on a per-hour basis than equivalent regular-time hours, which must also incorporate the cost of training, employee leave, and other benefits. Unfortunately, overtime has been reduced this year due to the lack of adequate funding in FY 2011.

Additional patent examination capacity will also be gained by continuing to contract for the searching on PCT international applications thereby allowing examiners to conduct the examination process on U.S. national applications. By contracting this function, contractors, instead of patent examiners, would provide international search reports and written opinions of the International Searching Authority, thus allowing examiners to focus on reducing the backlog of U.S. applications. PCT search contracting has been greatly reduced this year, also due to the lack of adequate funding.

However, despite the fiscal challenges in FY 2011, the USPTO is nonetheless managing to work within its means to continue making improvements and maintaining a highly efficient workforce.

OBJECTIVE 3: IMPROVE PATENT PENDENCY AND QUALITY BY INCREASING INTERNATIONAL COOPERATION AND WORK-SHARING

Patent processing times are primarily gauged by two measures – Average First Action Pendency (Table 4) and Average Total Pendency (Table 5). Average First Action Pendency is the average length of time it takes from filing until an examiner's initial determination of the patentability of an invention. Average Total Pendency is the average length of time it takes from filing until the application is

TABLE 4 Measure: Patent Average First Action Pendency (Months)

FISCAL YEAR	TARGET	ACTUAL
2007	23.7	25.3
2008	26.9	25.6
2009	27.5	25.8
2010	25.4	25.7
2011	23.0	28.0
2012	22.3*	
2013	15.2*	

Target Not Met.
* Outyear targets subject to change.

TABLE 5 Measure: Patent Average Total Pendency (Months)

FISCAL YEAR	TARGET	ACTUAL
2007	33.0	31.9
2008	34.7	32.2
2009	37.9	34.6
2010	34.8	35.3
2011	34.5	33.7
2012	32.1*	
2013	29.1*	

Target Met.
* Outyear targets subject to change.

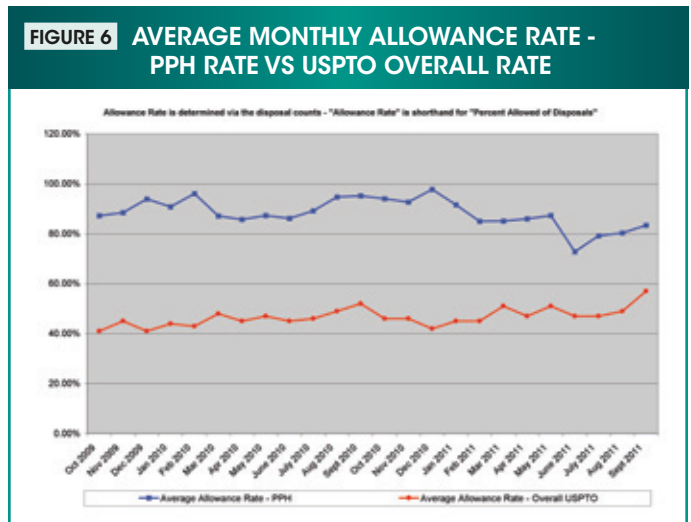
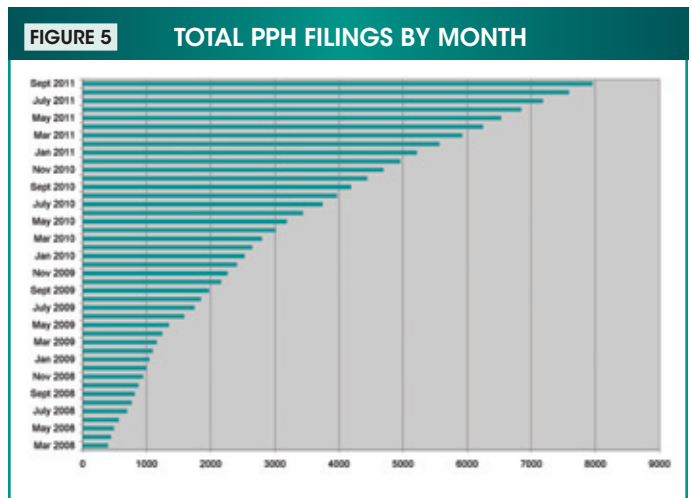
issued as a patent or abandoned by the applicant. Average First Action Pendency has slightly increased from the previous year. This increase was expected due to the efforts focused on clearing up the oldest patent applications from the backlog through the COPA initiative. However, with sufficient funding and the ability to hire and utilize overtime, the USPTO is confident that it will not only meet but exceed its target goals for next year.

An ongoing effort to improve examination efficiency and to use resources wisely is the development of work sharing. Work sharing has evolved as a significant tool in addressing pendency. Under the work sharing umbrella are the Patent Prosecution Highway (PPH), Strategic Handling of Applications for Rapid Examination (SHARE), and First Look Application SHaring (FLASH). These work sharing programs reduce re-work, increase collaboration, and provide consistency between IP offices. The benefits of work sharing are immense. The USPTO continues to work with the major IP offices toward collaborative work sharing solutions that aid in faster, higher quality patents.

PPH has been implemented with 15 other offices worldwide. In the PPH program, after an office of first filing determines that an application contains at least one allowable claim, the applicant may request that the second office fast-track examination of corresponding claims in its corresponding application filed in the office of second filing. By using the PPH, an applicant can receive patentability determinations faster in multiple jurisdictions, saving time and money in the process. Offices greatly benefit from work sharing efficiency and quality gains.

Beginning with the first PPH with the Japan Patent Office (JPO) in 2006, the USPTO has received over 7,900 PPH requests (Figure 5), and is close to meeting the goal of 8,000 requests by the end of calendar year 2011. Other important PPH metrics include:

- An overall allowance (Figure 6) rate of over 88 percent, about double the overall USPTO average allowance rate;
- A reduction of almost one entire office action per disposal versus the USPTO average of 2.5 actions/disposal;
- A lower average appeal rate of 1.7 percent versus the overall USPTO average appeal rate of 2.3 percent; and



- An 8.8 percent rate of requests for continued examination versus the USPTO rate of 30.6 percent requests for continued examination.

This program was selected by the then Secretary of Commerce, Gary Locke, as one of the first two programs to be awarded the Department's first Performance Excellence Award for outstanding efforts to improve business processes.

Furthermore, the USPTO is piloting aspects of a concept known as SHARE. According to the SHARE concept, where corresponding applications are filed in multiple offices, the USPTO appropriately prioritizes and balances workloads to be able to maximize the re-use of foreign search and examination results, and minimize duplication

of examination work done in other IP offices. One important advantage of SHARE relative to the PPH is that SHARE does not depend on an applicant's request to reutilize work; it operates independently of such requirements. As such, its potential is not limited in the same way that PPH is limited as an applicant-driven process.

Additionally, the USPTO launched a pilot with the European Patent Office (EPO) and the JPO in their implementation of the SHARE concept, called FLASH. Under FLASH, the USPTO identifies applications filed with it for which a corresponding application was later filed at EPO or JPO, and then undertakes a search and examination of that application within a time frame in which that work can be optimally reused by the EPO or JPO on their corresponding application.

To date, the USPTO has issued 506 examination reports out of 1,058 applications identified for FLASH participation, and has provided 221 of the reports to the EPO and JPO for reuse. The remaining reports will be released once the U.S. application has been published. Significant metrics captured to date include:

- Average number of days from notification to the examiner to mailing of a first office action: 39 days; and
- Average number of months pendency from application filing to first office action: 15.1 months for FLASH as compared to 28.0 months USPTO average pendency to first action (Table 4) for all applications.

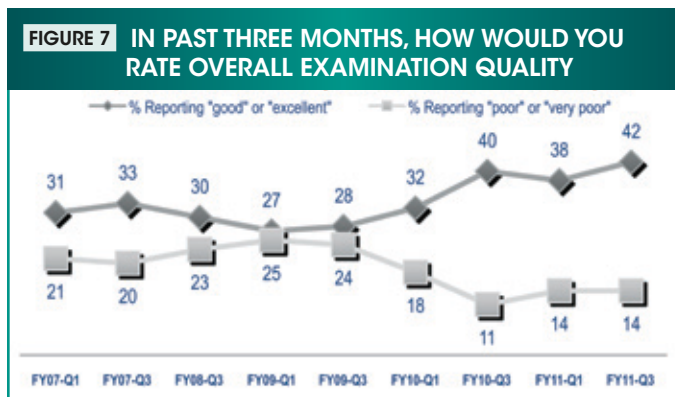
OBJECTIVE 4: MEASURE AND IMPROVE PATENT QUALITY

Reducing patent pendency is only one part in improving the IP system – patent quality must also be maintained and improved. The USPTO continues to expand its quality management program from top to bottom by focusing on improving the quality of the initial patent application and the entire examination and prosecution process. Quality improvement is a continuous process that must include public input on the best ways to improve quality as well as measure that improvement without extending the overall examination process. As a result of the collaboration

between the USPTO, the PPAC Quality Task Force and the patent community, a new *Composite Quality Metric* was developed for reporting in FY 2012. This metric measures seven diverse aspects of the examination process to form a more comprehensive composite of quality metric. One measure of the composite metric, the *Quality Index Report* tracks the actions taken by examiners during prosecution of patent applications. It further provides a statistical analysis of quality-related events in the prosecution, such as the reopening of final rejections and second non-final actions. Identifying quality issues prior to final action allows for corrective actions to be taken via coaching, mentoring, and training.

To better measure the quality of services provided by the patent examining staff, the USPTO expanded its *Patents External Quality Survey*. This survey gives applicants an opportunity to provide feedback on the patent process on a semi-annual basis. The survey provides a valuable complement to other quality initiatives, such as enhancing interview practice. The survey results (Figure 7), along with customer outreach efforts and other initiatives, enable the USPTO to improve service quality based upon the input collected through the survey process. In the Spring 2011 survey, 36 percent of customers felt that overall examination quality had slightly or significantly improved over the previous three months. These levels are consistent with those observed over the past year and remain some of the most positive ratings the USPTO has achieved since the inception of the survey in 2006.

Other measures of patent quality include – the Final Disposition Compliance Rate (Table 6) and the In-Process Compliance Rate (Table 7). The Final Disposition Compliance



Rate provides the percentage of Utility, Plant, Reissue, Design (UPRD) allowances and final rejections reviewed that were found to be compliant with applicable rules and laws regarding final patentability determination. The In-Process Compliance Rate provides the percentage of UPRD office actions prior to allowance or final rejection that were found to be compliant with applicable rules and laws. In changing its focus from end-process reviews to an emphasis on front-end quality, the USPTO continues to make strides in improving the quality of its products and services.

TABLE 6 Measure: Patent Final Disposition Compliance Rate

FISCAL YEAR	TARGET	ACTUAL
2009	N/A	94.4%
2010	94.5%	96.3%
2011	95.6% - 96.5%	95.4%
2012	95.6% - 96.7%	
2013	95.6% - 96.7%	

Target Met.

TABLE 7 Measure: Patent In-Process Examination Compliance Rate

FISCAL YEAR	TARGET	ACTUAL
2009	N/A	93.6%
2010	94.0%	94.9%
2011	94.6% - 95.6%	95.2%
2012	94.6% - 96.0%	
2013	94.6% - 96.3%	

Target Met.

In providing more effective training, the USPTO further enhances patent examination fundamentals, communication, and cooperation between the examiner and applicant. In addition to the highly successful compact prosecution training and refresher training program that encompasses over 20 training modules designed to enhance examiners' knowledge and skills in procedural and legal topics pertaining to patent examination, the USPTO has also implemented the *Patent Examiner Technical Training Program (PETTP)* which provides patent examiners with direct access to experts who are able to share their technical

knowledge on prior art and industry standards in areas of emerging technologies and established technologies. The PETTP provides an excellent opportunity for communication between patent examiners and the experts who work in the various technologies that are examined throughout the USPTO. This enhanced communication contributes to improving overall patent quality and decreasing patent pendency.

In addition, the Office of Patent Training (OPT) has provided a two-phase training program to new supervisory patent examiners which provides coaching and mentoring modules in an effort to help patent examiners reach their full potential. Patent managers and supervisors will continue to participate in a *Leadership Development Program* which focuses on educating and creating leaders. Lastly, OPT will continue to maintain and improve the effectiveness of the ISO-9001 (International Organization for Standardization) certified *New Patent Examiner Training Program*.

Quality improvement also relies on clearly defining objective measures that will be universally applied during the performance appraisal process, as well as developing a framework that focuses on coaching, mentoring, and training. Revising Senior Executive Service (SES) Performance Appraisal Plans (PAPs) to ensure alignment with the *USPTO 2010-2015 Strategic Plan* goals and objectives as well as developing the framework for modifying new patent examiner PAPs that focus on patent quality and reducing pendency will provide greater transparency, educate employees on their responsibilities, and enable managers to set clear expectations and objectives for the achievement of organizational goals. Reformulating PAPs not only advances management and employee development, but lays the foundation for long-term improvement in providing timely and high quality examination of patent applications.

The BPAI issued numerous informative decisions on substantive and procedural issues in FY 2011. This year's decisions relate to current issues of concern to the IP community, including: the written description requirement; the limits of the BPAI's jurisdiction in reexamination proceedings; in interferences,¹ the rules pertaining to publication of the record of an interference; and burden of proof the party seeking to assert inventorship rights in an interference proceeding bears. BPAI's informative opinions

¹ A patent interference is a determination of which party first invented the commonly claimed invention (priority contest) between an application and either another application or an issued patent.

help provide insight into BPAI procedural issues and legal standards, and clarify its jurisdiction. The Agency is currently considering whether and what kind of metrics will result from the implementation of the AIA.

OBJECTIVE 5: IMPROVE APPEAL AND POST-GRANT PROCESSES

The BPAI continues to improve communications with the Patent organization. This year, BPAI launched a program where senior patent examiners are detailed to the BPAI in order to develop a high-level understanding of its operations, decision-making processes, and constraints. Detailed examiners will work with Administrative Patent Judges by researching both technical issues raised in appealed cases and legal issues, and applying court decisions in legal analysis to assist as the judges craft their decisions. BPAI continues to liaise with technology center representatives in order to enhance operational understanding throughout the USPTO.

OBJECTIVE 6: DEVELOP AND IMPLEMENT THE PATENT END-TO-END PROCESSING SYSTEM

Under Secretary Kappos stated, "The intellectual property community deserves to have high quality patents and trademarks issued in a timely manner. Intelligent investment in the USPTO IT infrastructure holds the potential to dramatically accelerate the USPTO towards that goal. That's why I'm aggressively pushing the agency to completely modernize our IT systems—not just to incrementally improve, but to radically re-invent our systems from scratch."² A new patent processing system that meets the USPTO's goals of timely patent examination is critical to innovators and to the American economy. The USPTO proposes to modernize its patent prosecution system by migrating to fully-electronic, text-based application and examination processes and by eliminating the fragmentation of existing examination tools.

In FY 2011, the USPTO: (1) released the Patent Application Text Initiative project to two patent work units to develop in-house Optical Character Recognition capability and provide text-based documents and analytical tools; (2) established the integrated program team and hired its portfolio manager; (3) developed three prototypes for front-end solutions and received feedback from more than 2,000 examiners; (4) oversaw and analyzed three competing back-end prototypes to assess Patent End-to-End (PE2E) implementation needs; (5) implemented an enterprise-class, scalable architecture that runs on an infrastructure that leverages industry-leading technology; and (6) initiated agile development of high-priority functionality and deployed initial PE2E functionality to users in the Patent organization Central Reexamination Unit.

The USPTO continues to provide and enhance the tools for applicant's use for patent application filing. The use of electronic filings as shown in Table 8 continues to rise, now at 93.1 percent, from last year when 89.5 percent of applications were filed electronically.

TABLE 8 Measure: Patent Applications Filed Electronically		
FISCAL YEAR	TARGET	ACTUAL
2007	40.0%	49.3%
2008	69.0%	71.7%
2009	80.0%	82.4%
2010	90.0%	89.5%
2011	90.0%	93.1%*
2012	90.0%**	
2013	94.0%**	

Target Met.

* Preliminary data and is expected to be final by December 2011 and will be reported in the FY 2012 PAR.

** Outyear targets subject to change.

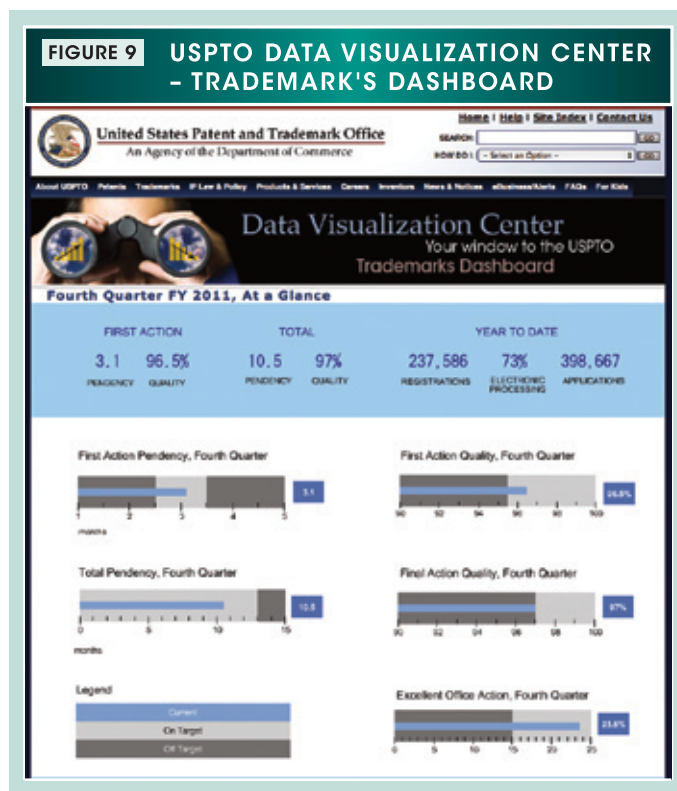
The improvements and increased efficiencies can be seen in some of our metrics in Figure 8.

² David Kappos Blog: "Re-Thinking our IT Infrastructure", April 2010

Strategic Goal 2: Optimize Trademark Quality and Timeliness

The Trademark organization has served an important purpose throughout recorded history, as owners of goods and services historically affixed their names to their products. Trademarks perform a valuable function by identifying the source of products and services and serving as an indicator of reliable quality to the consumer. By registering trademarks, the USPTO has a significant role in protecting consumers, as well as providing important benefits to American businesses by allowing them to strengthen and safeguard their brands and related investments.

Over the last six years, the Trademark organization has met and exceeded its performance targets as it continues to reap the benefits of its significant investments in human capital and in automation and process reengineering. Additional performance targets and metrics are reported on a quarterly basis throughout the year at the USPTO Data Visualization Center – Trademark’s Dashboard (Figure 9) is available at <http://www.uspto.gov/dashboards/trademarks/main.dashboard>. Reporting these metrics, along with definitions, increases transparency as well as providing a more useful and interactive dialog with the IP community.



OBJECTIVE 1: MAINTAIN TRADEMARK FIRST ACTION PENDENCY ON AVERAGE BETWEEN 2.5-3.5 MONTHS WITH 12.5 MONTHS FOR FINAL PENDENCY

For the sixth consecutive year, the Trademark organization has consistently met and exceeded its pendency targets for first action and final disposition. With final pendency less than 11 months, a record low for the office, a new application is registered or issued a notice of allowance on average in less than a year. This rapid processing allows applicants to act quickly on marketing strategies and business plans. The examiner’s first action is issued approximately three months from the filing date, giving the applicant an important early indication of registrability. First action pendency has been consistently maintained between 2.5 and 3.5 months despite large monthly variability in incoming workloads and persistent economic uncertainty.

Pendency has improved as electronic processing and filing have become the primary means of conducting business within the Trademark organization. Increased use of electronic forms, particularly *Trademark Electronic Application System (TEAS) Plus* filings, has improved the efficiency and timeliness of examination. While 30 percent of new applications are TEAS Plus filings, these applications account for 48 percent of first action approvals.

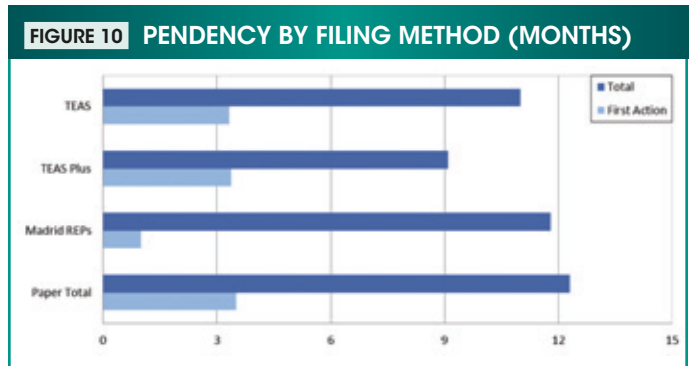
The Trademark organization has managed to dynamically align examination capacity with incoming workloads by maintaining appropriate staffing levels, sustaining high productivity, and judiciously adjusting production incentives to maintain first action pendency at 2.5 to 3.5 months and final pendency at less than 11 months.

Trademark Pendency Performance

Trademark first action pendency measures the average number of months from the date of application filing to the first office action. Trademark final pendency measures the average number of days from date of filing to notice of allowance, notice of abandonment, or registration for applications based on use in that month. Final pendency is measured two ways: *excluding* and *including* cases that were previously suspended or were involved in *inter partes* proceedings at the TTAB. First action pendency (Table 9) has been maintained within its optimized range of 2.5 to 3.5 months every month for more than five years now. Average final pendency, including suspended and *inter partes* cases, was 12.6 months. Excluding applications that were suspended or delayed for *inter partes* proceedings, average final pendency (Table 10) was 10.5 months. TEAS Plus remains the filing method of choice being the fastest and most cost-effective method to apply and register a mark, as illustrated in Figure 10 to the right.

TABLE 9 Measure: Trademark Average First Action Pendency (Months)		
FISCAL YEAR	TARGET	ACTUAL
2007	3.7	2.9
2008	2.5 to 3.5	3.0
2009	2.5 to 3.5	2.7
2010	2.5 to 3.5	3.0
2011	2.5 to 3.5	3.1
2012	2.5 to 3.5	
2013	2.5 to 3.5	
Target Met.		

TABLE 10 Measure: Trademark Average Total Pendency (Months)		
FISCAL YEAR	TARGET	ACTUAL
2007	14.8	13.4
2008	14.3	11.8
2009	13.0	11.2
2010	13.0	10.5
2011	12.5	10.5
2012	12.5	
2013	12.5	
Target Met.		



OBJECTIVE 2: CONTINUOUSLY MONITOR AND IMPROVE TRADEMARK QUALITY

The Trademark organization continues to meet and exceed high quality standards and achieve year-to-year gains and enhancements. About 97 percent of all first actions and final decisions (approvals and rejections) were compliant with the registrability standards set by statute, and also met or exceeded agency standards for writing quality. Results for both the first and final action measures are



above their targets and indicate high accuracy in decision-making and high quality of writing. To sustain these high performance levels, the Trademark organization continues to emphasize and improve training, to promote electronic filing and processing, and to make greater use of on-line tools and enhanced processes.

Nevertheless, the Trademark organization strives to enhance the quality of examination by adopting more rigorous customer-centric measures. The new "excellent quality" measure—which reflects comprehensive excellence of the search, evidence, writing, and decision-making of the initial office action, while also emphasizing the appropriate use of telephone and e-mail communications to settle or clarify issues with the applicant or its attorney—exceeded its first year target by almost nine percentage points. The target is an indication of the high standard that has been set in defining excellence. The Trademark organization has used feedback from user groups to ensure that the standards of excellence applied by the Trademark organization reflect users' perception of excellence as well.

Trademark Quality Performance

The Trademark organization evaluates examination quality for all issues that could be considered deficient in making a first and final action substantive decision. Evaluations are conducted on a random sample of applications. The evaluations review the quality of decision making of the examiner's first office action and final action (an approval for publication or a final refusal).

The "in-process review" for assessing excellent and deficient work creates a comprehensive, meaningful, and rigorous review of what constitutes quality. The results of an examiner's first action (Table 11) and final office action (Table 12) are reviewed for the correctness of the substantive decision-making, and the quality of the search strategy, evidence, and writing. The measures consider a wide scope of elements for review and evaluation, and the results are used for targeted training on topics that warrant improvement. Examiners are given feedback about excellent as well as deficient work to further improve quality.

TABLE 11 Measure: Trademark First Action Compliance Rate

FISCAL YEAR	TARGET	ACTUAL
2007	95.5%	95.9%
2008	95.5%	95.8%
2009	95.5%	96.4%
2010	95.5%	96.6%
2011	95.5%	96.5%
2012	95.5%	
2013	95.5%	

Target Met.

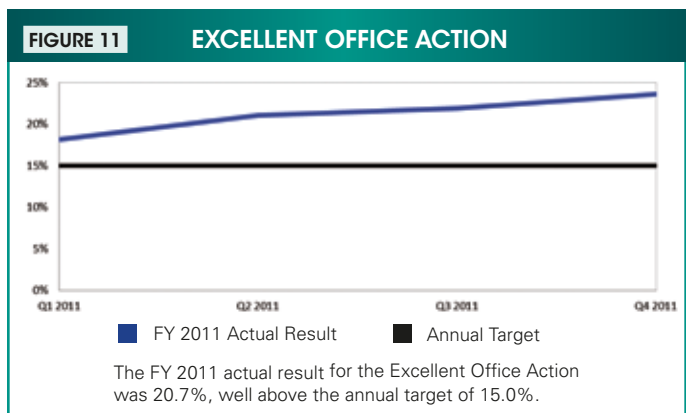
TABLE 12 Measure: Trademark Final Compliance Rate

FISCAL YEAR	TARGET	ACTUAL
2009	97.0%	97.6%
2010	97.0%	96.8%*
2011	97.0%	97.0%
2012	97.0%	
2013	97.0%	

Target Met.

* Within the target range of 97.0% considering the margin error of (+/- 0.6%).

Trademark quality has continued to demonstrate high levels and sustained improvement of the search and examination process. To increase quality performance even further, a new measure and a new incentive award that focuses on the comprehensive excellence of the entire office action was developed effective FY 2011. The new quality measure raises the examination standards and aims at excellence as perceived by customers and internal stakeholders (Figure 11).



Trademark Efficiency Performance

The efficiency measure (Table 13) is calculated by dividing total expenses associated with the examination and processing of trademarks (including associated overhead and allocated expenses) by outputs or office disposals. The measure is a relative indicator of the efficiency of the trademark process and related services over time, it does not represent the unit cost of a trademark since office disposals are only one measure among many products and services that the USPTO performs each year.

FISCAL YEAR	TARGET	ACTUAL
2007	\$685	\$660
2008	\$697	\$470
2009	\$639	\$474
2010	\$607	\$520
2011	\$650	\$541
2012	\$621*	
2013	\$619*	

Target Met.
* Outyear targets subject to change.

OBJECTIVE 3: ENSURE ACCURACY OF IDENTIFICATIONS OF GOODS AND SERVICES IN TRADEMARK APPLICATIONS AND REGISTRATIONS

Following changes in the standard for fraud at the USPTO, and resulting concerns about the potential for inaccuracy in the identifications of goods and services on the register, the Trademark organization began taking steps to assess this issue. The Trademark organization hosted a roundtable in 2010 with the George Washington University School of Law to discuss improvement to the accuracy of identifications with members of the user community. Public comments were collected on a suggestion from the roundtable. The Trademark organization also discussed the issue with the Trademark Public Advisory Committee.

Following up on one of the leading suggestions from the 2010 event, in July 2011 the Trademark organization issued a Notice of Proposed Rulemaking that would permit the USPTO to require additional specimens or other evidence in connection with a Section 8 Affidavit of Continued Use.

Comments on the proposed rule were due September 12, 2011. Once finalized, the rule changes initially would facilitate a limited pilot in a relatively small number of cases to assess the level of accuracy of the identifications. The pilot could yield information about the reliability of the trademark register in this regard, so that the USPTO and stakeholders may determine whether an inaccuracy problem exists and consider measures to address it, if necessary.

OBJECTIVE 4: ENHANCE OPERATIONS OF TRADEMARK TRIAL AND APPEAL BOARD

The TTAB issued 38 precedential decisions on a wide variety of substantive and procedural matters. The TTAB's precedential decisions on ex parte appeals provide procedural and substantive guidance to the Agency's trademark examining attorneys, trademark owners, and the trademark bar. The TTAB's precedential decisions in opposition and cancellation proceedings provide guidance to trademark owners and the bar on procedural matters pertaining to the Trademark Rules of Practice, the application of the Federal Rules of Civil Procedure to Board cases, and on substantive legal matters.

In May 2011, TTAB issued a new edition of the *Trademark Board Manual of Procedure*, which was revised to incorporate new material related to the 2007 amendments of the Trademark Rules and the more than 300 precedential decisions that have issued since the last revision. The revised manual is posted at: http://www.uspto.gov/trademarks/process/appeal/TBMP_Master_Document_May_2011.pdf, and is in a searchable format for the first time. This version of the manual is easier to use and will be easier to revise on a regular basis than the previous edition.

The TTAB also continues to work closely with the bar to expand and refine its Accelerated Case Resolution (ACR) practice options. The TTAB has already seen increased use of ACR to expedite the disposition of *inter partes* cases. To facilitate the use of ACR, the TTAB posted on its Web page suggested approaches to ACR from practitioners and expects to post additional suggestions as they are developed by innovative practitioners and the TTAB's own attorneys and judges. In addition, the TTAB issued a Notice

of Inquiry to solicit suggestions from stakeholders about the TTAB's involvement in the settlement discussions of parties. Finally, the TTAB began discussions with the bar regarding development and possible adoption of new and informative performance measures that will inform stakeholders about the state of TTAB practice.

OBJECTIVE 5: MODERNIZE IT SYSTEM BY DEVELOPING AND IMPLEMENTING THE TRADEMARK NEXT GENERATION IT SYSTEM

The Trademark organization is progressively becoming a fully electronic organization. More than 98 percent of new applications are received electronically and 73 percent are processed completely electronically from filing to final disposition (Table 14). This performance measure exceeds the target of 68 percent and demonstrates that the Trademark organization is making good use of its electronic systems and is successfully motivating applicants to conduct correspondence electronically. In an effort to further improve upon the rate of electronic processing, the Trademark organization has held a number of roundtables and focus sessions with user groups to identify process enhancements and novel practices that eliminate the need for paper-based filings and communications.

TABLE 14 Measure: Trademark Applications Processed Electronically		
FISCAL YEAR	TARGET	ACTUAL
2009	62.0%	62.0%
2010	65.0%	68.1%
2011	68.0%	73.0%
2012	74.0%*	
2013	76.0%*	
Target Met.		
* Outyear targets subject to change.		

Given the critical importance of the IT systems and the existing state of its infrastructure and systems, the USPTO has embarked on an ambitious IT modernization program for Trademark systems. The modernization program will enhance functionality, availability, security, scalability, quality of service, and overall cost efficiencies.

The program represents a major multi-year investment that underwent a rigorous approval process with extensive technical and managerial reviews. The USPTO has reached out to all key external and internal stakeholders to identify the needs, define the requirements, assess and track the cost-benefits of the investment, and will continue to seek input from stakeholders as progress is made on the program. An internal Business Architecture Group has been established and tasked with refining and articulating a capability map that defines the current business environment, the future requirements and the top priorities.

The Trademark organization is in the process of separating its current IT systems and creating a virtual environment to support the Trademark organization's *Next Generation* computer-based resources. The transition will require judicious maintenance of legacy systems and legacy system improvements while migrating to a virtual architecture.

The development of the Trademark organization's Next Generation IT systems is bearing its first fruit with the "cloud" deployment of the Trademark Data Retrieval (TDR) system and functionality. TDR, which now offers multimedia functionality, provides an important communication link for applicants to retrieve electronic notifications of office actions.

Trademark E-Management

The number of electronically filed trademark applications has progressed steadily over the years as a result of promotional events, increased number and type of applications available for filing electronically, improved functionality and enhancements, and lower fees for filing electronically. The USPTO completed the launch of 10 informational trademark instructional videos that are available at the Trademark Information Network through <http://www.uspto.gov/trademarks/basics/index.jsp>. The Network was designed to present information in an entertaining manner as news style broadcast how-to videos covering important topics and critical application filing tips to address common filing mistakes.

The Trademark organization has created an electronic trademark application record management process by capturing all incoming application and registration filings as an electronic file, that includes text and image of the initial

application and subsequent applicant and office correspondence. Examining attorneys use the electronic record to process and examine applications, manage their dockets of pending work, and take action on applications. The same electronic files are similarly used to process registration maintenance documents. All paper documents associated with active registrations have been converted into electronic files.

A new measure was introduced in 2009 to address the major USPTO strategic challenge to complete full electronic workflow and file management for receiving and processing trademark applications and related documents. The measure (Table 14), "Applications Processed Electronically," has been developed to identify the degree to which the Trademark organization is able to encourage applicants to file and submit correspondence electronically as well as implement systems that can electronically process, examine, and dispose of an application in a completely electronic environment. This measure reports the percentage of trademark applications that were filed, processed, and disposed of relying completely on electronic systems and communications. This measure replaced the electronic filing performance measure of which the target has been achieved.

To increase electronic processing further, the Trademark organization has been transforming notices from paper to electronic form, sending these notices electronically rather than by regular mail to those applicants and registrants who have authorized e-mail communication. Customer focus sessions have also been conducted to identify best practices and issues that prevent them from conducting all their transactions and communications electronically. As a result of the feedback, changes are being made in the electronic forms. The Trademark organization is making great

progress in becoming a paperless organization that is responsive, efficient, and environmentally friendly, as shown in the data for Figure 12, below.

OBJECTIVE 6: DEVELOP A NEW GENERATION OF TRADEMARK LEADERS

The Trademark organization witnessed a change in two of its executive positions in the past year. Deborah Cohn was named the Commissioner for Trademarks, succeeding Lynne Beresford who had served in the position for five years. The transition included the appointment of Mary Boney Denison as Deputy Commissioner for Trademark Operations, the position that was previously held by Ms. Cohn.

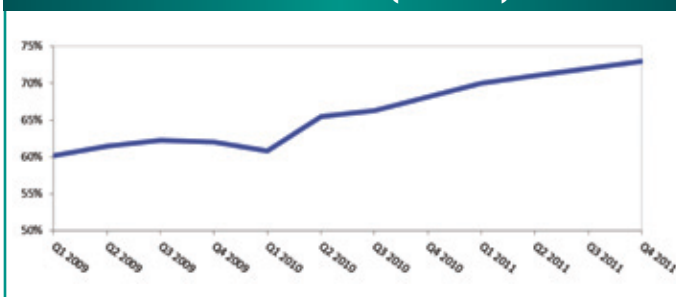
For a fourth year, the Trademark organization continued programs in support of the Trademark Human Capital Strategic Plan. The Trademark plan, which was developed to further the objectives of the Office of Personnel Management Federal Human Capital Strategic Plan, has shown results. Teams have continued work on programs and training in support of the three "human capital" objectives of talent management, results-oriented performance culture, and leadership and knowledge management.

The Trademark organization continues to improve upon its successful telework program through the continued expansion of telework opportunities and by expanding the use of remote access and collaboration tools:

- 97 percent of trademark employees are eligible to work from home;
- 88 percent of all eligible Trademark employees (78 percent of all Trademark employees) are working from home at least one day per week; and
- 90 percent of eligible examining attorneys work from home nearly full time.

In past years, the program was expanded to provide work-at-home opportunities for employees in the Examination Support Unit, the Intent-To-Use/Divisional Unit (ITU), and Pre-Examination Unit. As a result, programs exist throughout the organization to expand the number of employees and functions supported by telework.

FIGURE 12 APPLICATIONS COMPLETELY PROCESSED ELECTRONICALLY (CLASSES)



Strategic Goal 3: Provide Domestic and Global Leadership to Improve Intellectual Property Policy, Protection and Enforcement Worldwide

In addition to the examination and issuance of patents and trademarks, the USPTO promotes the protection and enforcement of the IP of American innovators and creators on both the domestic and international levels. Under the AIPA of 1999 (Pub. L. No. 106-113), the USPTO is directed to advise the President, through the Secretary of Commerce, and all Federal agencies, on national and international IP policy issues including IP protection in other countries. The USPTO is also authorized by the AIPA to provide guidance, conduct programs and studies, and otherwise interact with foreign IP offices and international intergovernmental organizations on matters involving the protection of IP.

As described below, during FY 2011, the USPTO provided domestic and global leadership on a broad range of IP issues. The USPTO played a very active role in advising Congress on critical IP legislation, including patent reform, and the Federal Courts on major IP litigation. The USPTO continued to engage with other Federal agencies in bilateral,

plurilateral, and multilateral negotiations involving the protection and enforcement of IP around the globe. The USPTO's cooperation with IP offices was greatly expanded during FY 2011, including an expansion of the PPH program to several new partner offices. Through the USPTO's Global IP Academy (GIPA), we greatly expanded IP rights training, capacity building, and technical assistance offerings to promote improved IP protection and enforcement. The USPTO also continued to work closely with the White House's IP Enforcement Coordinator (IPEC) to implement the Administration's IP enforcement plan, including improving the *USPTO IP Attaché Program* and establishing a U.S. Government-wide database of training and capacity building efforts.

OBJECTIVE 1: PROVIDE DOMESTIC LEADERSHIP ON IP POLICY ISSUES AND DEVELOPMENT OF A NATIONAL IP STRATEGY

Supplying America with a National IP Strategy

The USPTO committed in its *2010-2015 Strategic Plan* to develop a *National IP Strategy for the 21st Century (Strategy)* as a central component of the President's evolving Strategy for American Innovation. To date, the USPTO has formed an internal task force composed of representatives from all business units, and has conducted a series of internal meetings in which the task force has fully developed the outline and fundamental narrative for the *Strategy*. The *Strategy* will address: (a) how the IP system promotes innovation, economic growth, and competitiveness; (b) the necessity of building the IP infrastructure; (c) the importance of improving the operation of the IP system; (d) the need to show global IP leadership; and (e) using IP to support national technology priorities. The task force is in the process of drafting the *Strategy*.



Under Secretary Kappos testifies at a House Subcommittee Hearing on Intellectual Property, Competition, and the Internet on Capitol Hill, January 25, 2011.

The draft document is slated to be completed and – after internal USPTO review – submitted for interagency review in the fall of 2011.

Monitoring and Providing Policy Guidance on Key IP Issues in Cases

The USPTO continues to heavily shape IP law and policy through domestic litigation, both as a party and as an *amicus curiae*. The Agency's IP litigation responsibilities fall primarily on the Office of the Solicitor within the Office of General Counsel (OGC). The Solicitor's Office defends, among other things, the decisions of the Agency's two administrative boards (*i.e.*, the BPAI and TTAB), decisions of the Director, and the Agency's rulemaking and policies in court. These cases involve a wide variety of issues, affecting both substantive IP law and Agency practice concerning patent applications and trademark registrations. As the BPAI has tripled the number of decisions it has issued in recent years, the Solicitor's Office has seen a dramatic increase in the number of appeals it is litigating in FY 2011. Whereas the Solicitor's Office typically defended 50-60 BPAI and TTAB decisions annually over the past 10 years, the number of appeals being handled by the Solicitor's Office topped 100 cases at the beginning of the fourth quarter. Larger numbers of appeals are expected for next year. Despite budget cuts and hiring freezes, the Solicitor's Office has not seen any significant decrease in its litigation success.

OGC also plays an important role advising the Solicitor General of the United States on IP matters before the U.S. Supreme Court. The Solicitor's Office aided the Solicitor General in developing the Government's *amicus* position in *Microsoft Corp. v. i4i Limited Partnership*, which challenged the presumption of validity accorded patents under 35 U.S.C. § 282. Specifically, Microsoft challenged the strength of that presumption – arguing that a low “preponderance” standard for proving invalidity should be sufficient rather than the higher “clear and convincing” standard required by the U.S. Court of Appeals for the Federal Circuit – when evidence raised during litigation was not expressly considered by the USPTO during the original examination. A unanimous Supreme Court rejected Microsoft's argument and, in straightforward language, wrote: “We consider whether § 282 requires an invalidity defense to be proved by clear and convincing evidence. We hold it does.” The decision in *i4i* represents an important vote of confi-

dence by the Supreme Court in the ability of the USPTO to correctly perform its core patent examination functions.

Another Supreme Court matter being handled by OGC, this time as a party, is *Hyatt v. Kappos*. The *Hyatt* case concerns the circumstances under which new evidence of patentability may be introduced by a patent applicant in a civil action in federal district court under 35 U.S.C. § 145 for review of the BPAI decision affirming the rejection of its patent claims by the USPTO. In late 2010, the Federal Circuit issued an *en banc* decision in *Hyatt*, holding that under Section 145, an applicant can introduce new evidence, even if that evidence could have been submitted to the USPTO during its proceedings. At the USPTO's request, the Supreme Court granted *certiorari* to consider: (1) Whether the plaintiff in a Section 145 action may introduce new evidence that could have been presented to the Agency in the first instance, and (2) Whether, when new evidence is introduced under Section 145, the district court may decide *de novo* the factual questions to which the evidence pertains, without giving deference to the prior decision of the USPTO.

OGC established the *Law School Clinic Certification Pilot Program* in 2008 to give law students an opportunity to practice patent and trademark law before the USPTO (e.g., by drafting applications, filing applications, responding to Agency actions). The Program benefits the IP community by increasing the number of highly-qualified IP attorneys, and encourages participating students to consider a career with the USPTO when they graduate. The Program began with six schools and expanded to include 16 schools in FY 2011.

Providing Domestic Education Outreach and Capacity Building

The USPTO, through the GIPA in the Office of Policy and External Affairs, provides IP educational opportunities to domestic small and medium-sized enterprises, universities, foreign officials, and the public. The GIPA provides expertise on administration, protection, and enforcement in all areas of domestic and international IP. In FY 2011, the GIPA conducted more than 120 training programs with more than 5,500 attendees from 138 different countries. The attendees included officials from foreign IP offices, law enforcement authorities (including prosecutors, police, and customs officials), and members of the judiciary. Domestic opportunities include outreach to Native American

tribes, educational programs on IP awareness, and China Road Shows providing IP information to small and medium-sized enterprises seeking to do business in China. Additionally, the GIPA partners to develop and deliver educational outreach programs with other areas of the United States Government (USG), in particular the Small Business Administration, bureaus of the DOC including the Minority Business Development Agency, and the U.S. Export Assistance Centers of the U.S. Commercial Service. The GIPA also worked with the Office of the White House IPEC to coordinate all USG IP training including hosting a database of all training and capacity building activities. The efforts by the USPTO will facilitate the export capabilities of domestic industry and small and medium-sized enterprises, and ensure their competitiveness around the world. As illustrated in Figures 14, 15, and 16 below, these charts provide the number of programs, officials, and countries trained by the GIPA. These data reflect USPTO's contributions to the development of strong IP systems, domestically and abroad.

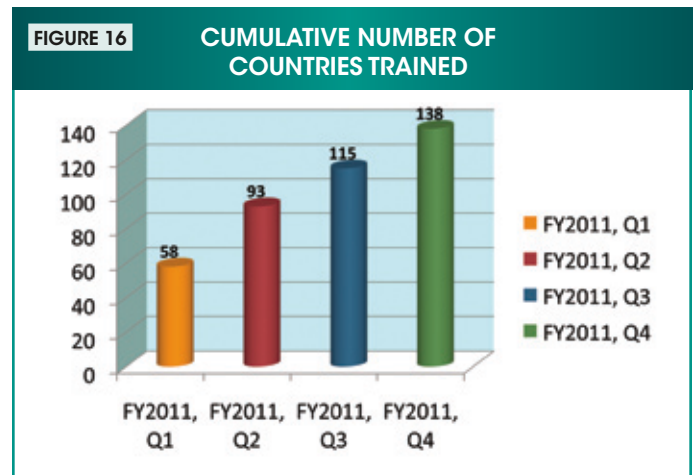
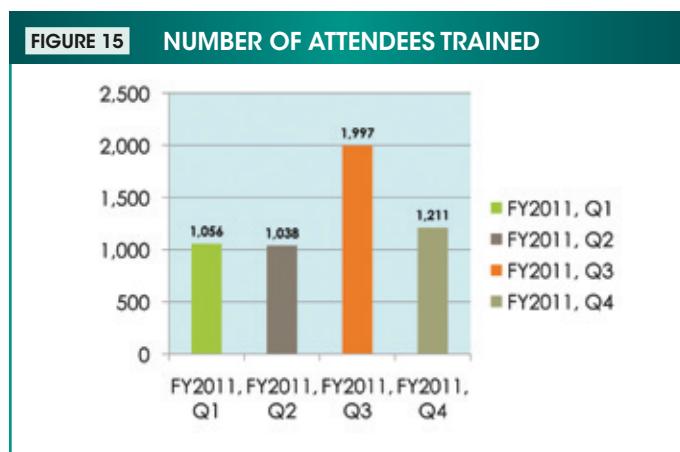
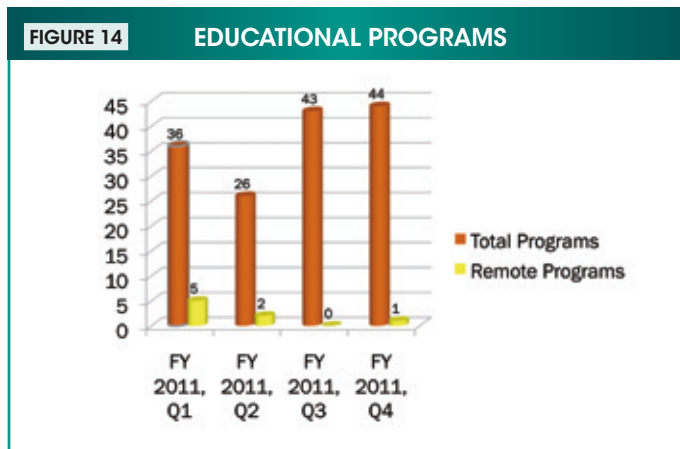
Engaging USG Agencies and Congress on Legislation that Improves the IP System

Throughout FY 2011, the USPTO continued its engagement with the Congress, other USG agencies, and its stakeholders to promote effective IP legislation. Patent reform legislation continued to be the focus of the first session of the 112th Congress. The AIA, as signed into law (Pub. L. No. 112-29) on September 16, 2011, supports USPTO's efforts to improve patent quality, reduce the backlog of patent applications, reduce domestic and global patenting costs for U.S. companies, provide greater certainty in patent rights, and offer effective alternatives to costly and complex litigation.

Director Kappos, Deputy Director Rea, Commissioner for Patents Stoll, and USPTO staff conducted numerous briefings and meetings with hundreds of Members of Congress, Senators, and congressional staff to discuss the intricacies of proposed patent reforms. USPTO staff will work closely with stakeholders on implementation of this important legislation.

During the year, the USPTO provided policy guidance on various other IP bills, including legislation to crack down on rogue websites that traffic in counterfeit merchandise.

In FY 2011, Under Secretary Kappos testified on Capitol Hill on three occasions – including twice before the House Judiciary Committee on “How an Improved U.S. Patent and Trademark Office Can Create Jobs” and on patent reform legislation. The Director also testified before the House Appropriations Committee on USPTO's FY 2012 budget request.



The USPTO also increased its engagement with Members of Congress and their Staff. Senator Mary Landrieu was the keynote speaker at the Women's Entrepreneurship Symposium; Representative Jim Moran was the keynote speaker at the opening ceremonies of the USPTO Trademark Expo; and Senator Mark Warner of Virginia and Congresswoman Sandy Adams of Florida also visited the USPTO for meetings with the Under Secretary. Twice this year the USPTO hosted congressional staffers for "A Day in the Life" of a typical patent and trademark examiner. The USPTO also hosted several staff from the Senate Small Business Committee.

OBJECTIVE 2: PROVIDE LEADERSHIP ON INTERNATIONAL POLICIES FOR IMPROVING THE PROTECTION AND ENFORCEMENT OF IP RIGHTS

Leading efforts at the World Intellectual Property Organization (WIPO) and other Intergovernmental/International Organizations to Improve International IP Rights Systems

Throughout FY 2011, the USPTO continued to seek enhanced cooperation and improved protection for IP multilaterally in several fora including the WIPO, the World Trade Organization (WTO), and other intergovernmental organizations. The USPTO continued its efforts to improve the WIPO filing and registration systems. In the copyright area, the USPTO advanced work on issues relating to the protection of broadcasting, the protection of audio-visual performers, and the access to copyrighted works by persons with print disabilities. Within the WIPO Standing Committee on Copyright and Related Rights, the USPTO brokered a deal to end the 11-year stalemate on conclusion of the *WIPO Audiovisual Performers' Treaty*, a treaty effort that has been dormant since a failed diplomatic conference in 2000. Separately, the USPTO participated in "four way" meetings between a group of Latin American countries, the European Union, African countries, and the U.S. to forge a common text for an international instrument addressing copyright exceptions for the benefit of blind persons and the cross-border sharing of special format copies for the blind.



Senator Mary Landrieu of Louisiana speaks at the USPTO's Women's Entrepreneurship Symposium March 11, 2011, in Alexandria, Virginia.

The International Union for the Protection of New Plant Varieties (UPOV) is celebrating its 50th anniversary this year. To help commemorate this anniversary, the USPTO and the Department of Agriculture's Plant Variety Protection Office hosted the 45th Technical Working Party on Vegetable Crops in Monterey, California, on July 24-29, 2011. The USPTO and UPOV also worked together in providing assistance to the African Regional IP Office and its members in drafting and adopting plant variety protection laws in conformity with the UPOV Convention. The USPTO and UPOV also worked with Japan in supporting the Association of South East Asian Nations' countries plant variety testing and application examination under the UPOV Convention.

Improving Efficiency and Cooperation in the Global IP System

Throughout FY 2011, the USPTO continued to emphasize work-sharing among patent offices as a key to efficient management of office workloads, reduction of backlogs and pendency, and improvement of the international patent system. The USPTO's primary work sharing vehicle—the PPH—has proven to be a major success, producing significant efficiency gains in terms of higher allowance rates, fewer office actions per disposal, and substantially lower percentages of appeals and continuation applications. The USPTO has doubled the total number of PPH requests in 2011 that it has received in the preceding four years combined.

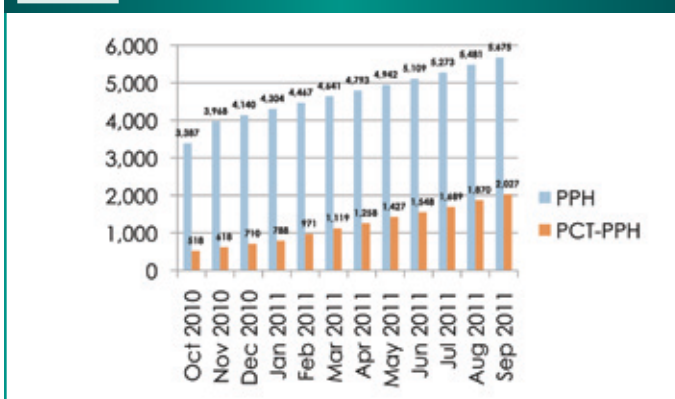


Under Secretary Kappos, Japan Patent Office Commissioner Yoshiyuki Iwai, and President of the European Patent Office Benoît Battistelli celebrate further work sharing agreements, November 14, 2010, in Alexandria, Virginia.

The USPTO continues to work with its international partners to evolve and improve the PPH and, to this end, began testing a new approach in July 2011 that enhances flexibility and expands PPH eligibility. In parallel, the offices are working out details of a USPTO proposal for a next-generation framework—PPH 2.0—that will replace the existing network of bilateral arrangements with a more centralized, easy-to-use system incorporating the new approach being tested, as well as other user-friendly enhancements.

As illustrated in Figure 17 below, this chart provides the number of PPH requests filed with the USPTO. PPH is a framework in which an application whose claims have been determined to be patentable in one country's patent office is eligible to go through an accelerated examination in another country's patent office.

FIGURE 17 PATENT PROSECUTION HIGHWAY REQUESTS



The USPTO, along with its Trademark Trilateral partners, i.e., the JPO, and the Office for the Harmonization of the Internal Market, have been accelerating work on one particular Trilateral Project, known as the “Trilateral ID Project.” The Trademark Trilateral partners have collaborated to compile a list of identifications of goods and services (IDs) that are acceptable in each of their respective offices. The USPTO, with the approval of the Trilateral partners, is taking the lead to invite other national trademark offices to participate in the project. To date, Canada, Philippines, South Korea, Mexico, Singapore, and the Russian Federation have joined the project.

The USPTO also worked with WIPO to ensure that the Trilateral ID list is incorporated into the Madrid System for the International Registration of Marks to provide applicants with IDs that will be accepted by certain national offices. Additionally, upon request by the USPTO, WIPO has started to revise the Madrid application forms to better accommodate some U.S. application requirements.

Improving Enforcement and Providing Capacity Building and Technical Assistance to Key Countries/Regions

The USPTO continued to work closely with other USG agencies to increase the accessibility, efficiency, and effectiveness of civil, border, and criminal enforcement mechanisms in global trade, foreign markets, and electronic commerce, and to encourage foreign trading partners to adopt laws against illegal camcording of movies. The USPTO also continued to organize capacity-building activities for foreign officials on IP enforcement topics, effective border enforcement, investigation and prosecution of digital piracy, and combating counterfeit medicines and infringing hard goods. Domestically, the USPTO played a key role in assisting small businesses to protect and enforce their IP, and regularly participated in the IP Theft Enforcement Teams training programs organized by the National IPR Coordination Center for Federal, state and local law enforcement personnel.

The GIPA offers training programs on protection, utilization, and enforcement of IP rights including patents, trademarks, and copyrights (Table 15). It is through the GIPA training programs that the USPTO is instrumental in achieving its objectives of advancing IP right policies and halting IP theft. The USPTO is developing survey tools to evaluate the effectiveness and impact of these training programs. These evaluation and survey tools provide methodologically rigorous data collection and analyses in place of more subjective, ad hoc, non-standardized anecdotal materials. The survey questions have been approved by the Office of Management and Budget (OMB). The tools will include pre-program, post-program, and alumni surveys. The use of the three surveys will allow the USPTO to collect data spanning the life of the GIPA training cycle.

TABLE 15 Measure: Percentage of foreign officials trained who have initiated or implemented a positive change in the IP systems in their organizations and/or countries

FISCAL YEAR	TARGET	ACTUAL
2011	Baseline	*
2012	*	*
2013	*	*

* FY 2011 is a baseline year for this new measure. A target will be assigned after baseline data has been analyzed, and actuals reported subsequently in FY 2012.

Providing Policy Advice and Expertise to Other USG Agencies

The USPTO continued to provide policy advice and technical expertise on IP administration, protection, and enforcement in several contexts, including in the consideration of domestic legislation involving IP and in the formulation and negotiation of bilateral and multilateral agreements and initiatives.

The USPTO worked with the U.S. Trade Representative (USTR), the State Department, the Department of Health and Human Services and several other agencies, as well as U.S. stakeholders, to finalize a draft framework agreement in the World Health Organization (WHO) on the sharing of influenza samples and related benefits. The framework agreement was adopted by the General Assembly of the WHO in April 2011.

The USPTO also worked closely with the USTR throughout FY 2011 in ongoing IP discussion in the WTO in seeking to maintain the integrity of the Trade-Related Aspects of IPR (TRIPS) Agreements and defeat attempts to weaken it. The USPTO also advised the USTR during the WTO accession process of several countries in evaluating IP laws, regulations, and practices of countries in the process of accession, and advising the USTR as to their TRIPS-consistency.

The range of policy advice and expertise provided by the USPTO included:

- Legislative and regulatory analysis and drafting;
- Identification of deficiencies and needed improvements to foreign laws and regulations;
- Identification of potential administrative improvements to existing foreign IP regimes; and
- Technical and strategic policy advice in international IP negotiations.

Providing Technical Expertise in Negotiation and Implementation of Bilateral and Multilateral Agreements

The USPTO continued to provide expert technical advice on the full range of substantive IP protection and enforcement issues to the USTR in connection with on-going trade negotiations. The USPTO played an active role in the successful conclusion of the Anti-Counterfeiting Trade Agreement negotiations, the ongoing Trans-Pacific Partnership negotiations, and the implementation and monitoring for compliance of other bilateral and free trade agreements.

Increasing the effectiveness of IP Attachés in Prioritized Countries/Regions

The USPTO places a high priority on increasing the effectiveness of IPR in prioritized countries/regions. In FY 2011, the USPTO established an IP Attaché Task Force to explore options to improve and expand the Attaché Program. The task force has developed 19 proposals and is currently working to implement many of these proposals. As part of

this work, IP attachés and their country/region teams at USPTO headquarters have developed Master Action Plans that eliminate any inconsistencies and redundancies between the numerous work plans at USPTO in Alexandria, Virginia and at post, and serve as blueprints that guide the work of the country team and the attaché. Standardized operating procedures and standardized performance measures have also been developed.

Through its attachés, USPTO has met a number of important objectives in host countries. For example, an agreement was signed with the Russian Federal Service for IP, Patents and Trademarks (Rospatent) in which Rospatent agreed to undertake international search and international preliminary examination for international applications filed with the USPTO as the receiving office. This will be beneficial for U.S. applicants as it will provide them with an additional choice of international authorities for searches and preliminary examinations based on the field of technology of the invention, as well as the speed and cost of service. Other accomplishments include the introduction of legislation to improve Brazil's criminal IP laws and the government of India's decision to maintain patent protection for certain computer-related inventions. The implementation of country-specific action plans in prioritized countries is shown in Table 16. This reflects the USPTO's continued efforts in engaging foreign IP offices, enforcement entities, and their respective legislative organizations.

TABLE 16 Measure: Percentage of prioritized countries that have implemented at least 75% of action steps in the country-specific action plans toward progress along following dimensions:

- 1. Institutional improvements of IP office administration for advancing IPR
- 2. Institutional improvements of IP enforcement entities
- 3. Improvements in IP laws and regulations
- 4. Establishment of government-to-government cooperative mechanisms

FISCAL YEAR	TARGET	ACTUAL
2010	50.0%	75.0%
2011	75.0%	100.0%
2012	75.0%	
2013	75.0%	
Target Met.		

Management Goal: Achieve Organizational Excellence

Fulfillment of the USPTO's mission requires strong leadership and collaborative management. While the three strategic goals focus on our core mission, our overarching management priorities focus on the shared responsibility that is a prerequisite for achieving those goals and objectives, namely, the priorities of sound resource management, solid workforce planning, corporate support services, and effective use of IT.

OBJECTIVE 1: IMPROVE IT INFRASTRUCTURE AND TOOLS

The USPTO continued to make improvements in our IT enterprise architecture, internal processes, and organizational alignment to improve our ability to be more responsive and better manage and deliver quality products at enhanced service levels. In particular, these initiatives directly support the *USPTO 2010-2015 Strategic Plan* to:

- Improve overall efficiency;
- Improve availability of and streamline access to USPTO information, data, and services with improvements to the USPTO Website;
- Serve an increasingly geographically dispersed workforce with the deployment of the Universal Laptop (UL);
- Implement faster, more secure information exchange by adhering to the Federal Information Security Management Act (FISMA);
- Continue expansion and improvement of e-filing, e-processing, and other e-government efforts; and
- Improve the USPTO's IT infrastructure and tools.

In October 2010, OMB released the "25 Point Implementation Plan to Reform Federal Information Technology Management." This "25 point action plan"



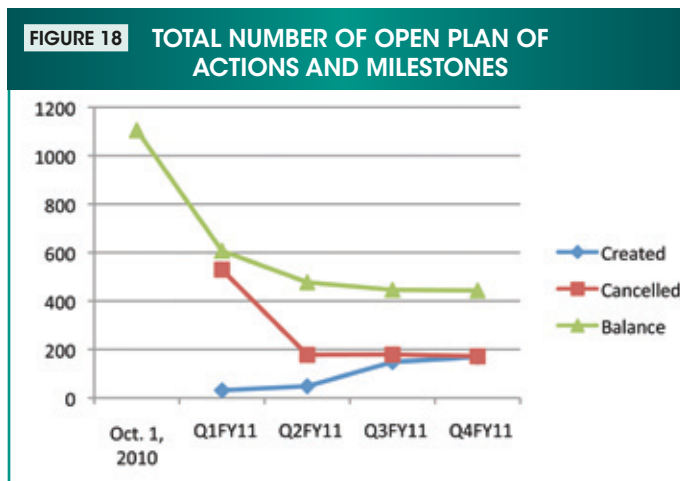
directs the Federal Chief Information Officer (CIO), OMB, and Federal agencies to take specific steps in solving the most pressing Federal IT problems. The USPTO is implementing many of these points while keeping with the Administration's commitments for "Transparency, Participation, and Collaboration." The USPTO expanded access to all patent and trademark data through the www.data.gov and www.google.com Websites; has a "cloud first" policy; is working to align the IT budget with modular development; is reforming and strengthening the Agency's Investment Review Boards; and has created a "TechStat" model for the USPTO.

The Office of the Chief Information Officer (OCIO) continues to work in improving the visibility of IT costs by instituting a standardized budget execution system with assistance from the OCFO. This has allowed for the OCIO to work with all of the USPTO business units to create an improved long-term IT investment strategy, which is discussed further in the USPTO Strategic Information Technology Plan. See http://www.uspto.gov/about/offices/cio/ITP_Overview.pdf.

In fulfilling responsibilities under 44 U.S.C. § 3504(h), the USPTO uses a *Capital Planning and Investment Control* process to prioritize investments and determine funding levels for subsequent fiscal years. Projects are carefully managed throughout their life cycle, and progress reviews are conducted at key milestone dates to compare the project's status to planned benefit, cost, and schedule, along with technical efficiency and effectiveness measures. All major IT system investments are reported in OMB Circular A-11, Exhibit 53, Exhibit 300A and 300B, and the USPTO's IT Investment Portfolio.

The USPTO's OCIO continued to work diligently with the Office of the Inspector General (OIG) and the DOC to improve the USPTO's overall IT security program and the quality of the certification and accreditation.

The chart (Figure 18) shows trend of total number of Open Plan of Actions and Milestones (POA&M) for the USPTO 33 operational systems at the end of FY 2010 and every quarter of FY 2011. Any known security weakness requiring remediation is tracked using POA&M. Our goal is to bring total number of open POA&M as low as possible by remediating security weaknesses in the systems.



OBJECTIVE 2: IMPLEMENT A SUSTAINABLE FUNDING MODEL FOR OPERATIONS

The USPTO operating structure is like a business in that it receives requests for services—applications for patents and trademark registrations—and charges fees projected to cover the cost of performing the services it provides. Unlike a business, however, the USPTO did not until recently have the flexibility to adjust its fees or spending authority if actual application filings and revenues are different than those previously estimated. A USPTO funding model must span multiple years and be adaptable to fluctuations. Anything less will not sustain operation of our nation's IP system over an extended period of time.

The FY 2011 President's Budget began to move the USPTO toward a sustainable funding model by proposing:

- (1) Ensuring access to fee collections to support the performance objectives;
- (2) Instituting an interim increase on certain patent fees as a financial bridge until the USPTO obtains fee setting authority and develops a new fee structure that will provide sufficient financial resources in the long term;
- (3) Pursuing the legislative authority to adjust our fee structure by regulation to better align fees with the cost of providing services; and
- (4) Creating an operating reserve to manage operations on a multi-year basis.

Unfortunately, the Full Year Continuing Appropriations Act, 2011, did not include authority for the USPTO to apply the 15 percent interim increase on certain patent fees that was included in the FY 2011 President's Budget. Without this interim financial bridge, the USPTO did not have sufficient funding to implement the Administration's Priority Goal of reducing the patent application backlog and pendency or the patent pendency performance targets outlined in the FY 2011 President's Budget.



Student and Inventor Rebecca Hyndman introduces President Barack Obama to the stage at Thomas Jefferson High School for Science and Technology September 16, 2011, in Alexandria, Virginia, before he signed the Leahy-Smith America Invents Act (AIA) into law.

The Leahy-Smith AIA (Pub. L. No. 112-29) was enacted on September 16, 2011. The AIA authorizes the USPTO to set and adjust fees by regulation. It also improves the USPTO's funding model and access to fee collections by establishing a fee reserve fund where the Agency will deposit all fees collected in excess of the annual appropriation. These fees will be reserved for USPTO's use and the spending will be authorized in annual appropriations. Fee setting authority, along with maintaining an operating reserve and ensuring access to fee collections, will begin to put the USPTO on solid ground to support performance objectives and adjust for volatility in the economy and/or demand for products and services without putting the Agency at risk.

OBJECTIVE 3: IMPROVE EMPLOYEE AND STAKEHOLDER RELATIONS

The Office of the Chief Administrative Officer (OCAO) plays a critical role in the Agency's efforts to meet the management goal to "achieve organizational excellence" by making significant and continuous improvements to many of our routine programs and services in the areas of human capital, telework, security, safety, and environmental awareness.

Effective and Efficient Recruitment plus Employee Satisfaction Equals Retention

In line with the President's call for hiring reform and in an effort to streamline the hiring process, the USPTO implemented *Monster Hiring Management*, and simplified the application process for candidates. As a result, the Agency is able to provide timely notifications to applicants, as well as more quickly generate a list of qualified applicants for the hiring managers. This resulted in increased external and internal customers' satisfaction with the process and the results.

In support of the USPTO's goal of optimizing patent quality and timeliness, a targeted hiring plan was developed to recruit highly qualified individuals who have had meaningful IP experience. These enhanced recruitment initiatives stem from a marketing strategy aimed at building the USPTO's brand at the forefront of technological advancement and innovation.

Effective recruitment and employee satisfaction are essential to mission achievement. Employee feedback obtained through the annual *Employee Viewpoint Survey* (EVS) is critical to understanding our employees' concerns and satisfaction with the agency overall. In an effort to increase employee participation, the Office of Human Resources (OHR) embarked on a strategic campaign to market the 2011 EVS to USPTO employees. Multiple communication techniques were employed. As a result of these efforts, the USPTO response rate on the 2011 EVS was 65 percent, an increase of 17 percent from the 2010 survey. Using the results of the EVS, OHR partnered with business units to help identify and address human capital opportunities. One program that was identified based on EVS results, was the newly implemented agency-wide *USPTO Creativity and Innovation Challenge*. This program provides employees with an opportunity to submit ideas and suggestions for improving all aspects of the Agency.

The USPTO continued to offer training and development opportunities through its *Leadership Development Program*. The diverse set of development strategies in the program are designed to efficiently and effectively identify and close competency gaps, as well as strengthen leadership values, knowledge, skills, and abilities. Additionally, an *Executive*



USPTO and union executives sign a telework enhancement agreement July 5, 2011 at the USPTO headquarters in Alexandria, Virginia. (Left to right, standing: Tim Callahan, David Dalke, Pam Schwartz, Bob Oberleitner, Andrew Lawrence and Meryl Herschkowitz. Left to right, sitting: Harold Ross, Pat Richter, Robert Budens and Howard Friedman. Danette Campbell is not pictured.)

Education Program was established to address both individual and common development challenges across the executive ranks. It consists of a 360 degree leadership assessment; executive coaching; online, classroom, and mobile training (book abstracts and Web/pod-casts); and executive development plans. The Executive Education Program is designed to maximize the capabilities, contributions, and potential of our entire SES team, build and sustain a common leadership vision, and enhance learning across the Agency.

This year a *Leadership in Action Program* was implemented to provide employees an opportunity to acknowledge supervisors and mentors who model best practices in leadership or mentoring, and exemplify the values set forth in the USPTO Leadership Vision. The program was designed based on requests from employees wanting an agency-wide method to recognize their supervisors. In FY 2011, 106 supervisors were presented with Leadership in Action Awards.

The USPTO promotes and fully embraces a wellness culture through a voluntary program of formal and informal activities designed to improve the health and well-being of

all employees to foster positive lifestyle change. The Agency drafted a comprehensive wellness plan and held a very successful wellness fair this past year. The USPTO has set a goal to have 75 percent of all employees participating in wellness and fitness activities by the year 2017.

Advancements in Telework

Telework at the USPTO continues to be a primary corporate business strategy and the USPTO continues to be a model for telework in the federal government. The USPTO started its telework programs more than 13 years ago with 18 Trademark examining attorneys. Today, more than 6,200 employees agency-wide are working from home at least one day per week. The successful program continues to draw industry attention as more than 30 agencies and organizations interested in starting or expanding their respective telework initiatives contacted the USPTO.

The *Telework Enhancement Act* was signed into law on December 9, 2010. The law specifies roles, responsibilities, and expectations for Federal agencies with regard to telework policies, employee eligibility and participation, program implementation, and reporting. In addition, the Telework Enhancement Act enables the USPTO to conduct a pilot program called the *Telework Enhancement Act Pilot Program* (TEAPP). This pilot program will enhance USPTO's current telework programs and will allow employees teleworking full-time to decide, for their convenience, to live farther than 50 miles from the USPTO Headquarters located in Alexandria, Virginia. Pilot program participants will be able to change their duty station to their home, or in some instances, a location near their home.

The legislation specifies that an oversight committee be established and be comprised of equal representation of management and labor. The USPTO's Oversight Committee included representatives from the Patent Office Professional Organization, National Treasury Employees Union (NTEU) 245, NTEU 243, the Patent and Trademark organization, and the OCAO. This committee designed the TEAPP's operating procedures. The Memorandum of Understanding for the TEAPP was signed on July 5, 2011. Implementation of this pilot program will have a significantly positive impact on the effectiveness, productivity, and work-life balance for USPTO employees.

“Telework has been shown to save money on infrastructure, transportation, and other costs. At the U.S. Patent and Trademark Office, for instance, millions of dollars have been saved through the reduction of office space due to increased use of telework.”

—Representative JASON CHAFFETZ (R-UT),
on May 5, 2010, on the House floor while discussing
H.R. 1722, the Telework Improvements Act of 2010

Safe, Secure and Green

The USPTO has created an environment for employees that is favorable to enhancing their effectiveness by taking measures to ensure the workplace is modern, safe, secure, attractive, and energy efficient. For example, with the full-scale issuance of new identification cards, the USPTO made significant progress in implementing Homeland Security Presidential Directive 12, the government-wide mandate to establish a common identification standard for all Federal employees and contractors. Approximately 2,000 new cards have been issued as of September 30, 2011.

To further employee awareness during emergency situations, the Agency’s emergency preparedness program was expanded to include computer-based training to 500-plus Occupant Emergency Plan team members. Additionally, the USPTO’s *Continuity of Operations Plan* (COOP) was updated and valuable COOP-related tabletop exercises were held with Business Unit COOP managers, Emergency Response Group personnel, and Reconstitution Team members in June 2011.

The USPTO continues to develop energy and environmental programs to meet Federal mandates and to educate employees on the benefits of sustainability. To that end, the *Green at the USPTO* intranet Website was redeveloped to focus on new sustainability initiatives; the third annual “Green Fair” was hosted in April 2011; a commuter survey was conducted, which launched a ridesharing Website; and recycling policies were expanded to include many more options in single-stream recycling beyond glass and cans.

Equal Employment Opportunity and Diversity

On October 1, 2010, the Agency reorganized its operational structure establishing the new Office of Equal Employment Opportunity and Diversity (OEEOD). The Director of OEEOD reports directly to the Under Secretary and Director and is a member of the Agency’s Executive Committee and Management Council. The reorganization resulted in a more strategic, proactive, and organizationally independent functional unit than its predecessor, the Office of Civil Rights, with the goal of supporting an increasingly diverse workforce. Notably, the USPTO is 26 percent Asian, 24 percent African-American, 2 percent Hispanic (Figure 19). Also, females comprise 39 percent of the USPTO’s employee population.

The reorganization paved the way for a number of new initiatives. Including one designed to increase diverse interest in the Agency’s senior-most positions. In support of this initiative, OEEOD hosted a seminar designed to expand the pool of qualified SES applicants. The program consisted of two-parts: an overview about the SES and the application process; and executive-led roundtable discussions about SES candidacy.



The *Green at the USPTO* intranet site.

OEEOD also piloted a *New Examiner Mentoring Program*. The program's goal is to help new examiners acclimate to the Agency and improve retention past the initial probationary period.

OEEOD actively supports a network of 11 new affinity groups. This support involves conducting quarterly meetings with the leaders of the affinity groups to discuss joint projects, delivering a leadership training retreat for the affinity group leaders, hosting an annual International Food Sample Festival that allowed the affinity groups to showcase diversity through food. Comprising the 11 affinity groups are the:

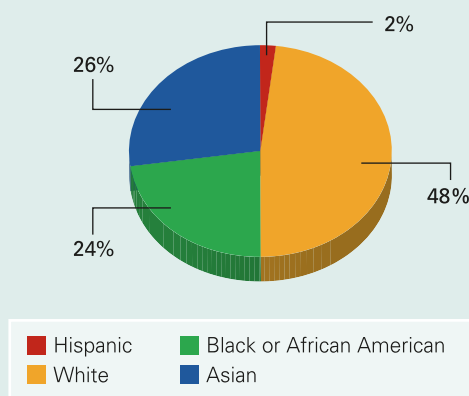
- American and Muslim and Arabic Cultural Association
- Asian Pacific American Network
- Blacks in Government
- Caribbean Intellectual Property Association
- Intellectual Property Society of Iranian Americans
- Lambda PTO
- National Society of Black Engineers Alumni Extension Chapter
- Responsibility
- Society of Hispanic Professional Engineers
- Society of Ethiopian American Engineers and Scientists
- Women in Science and Engineering.

In addition to these new initiatives, the Agency hosted its annual Community Day event, a major celebration of the Agency's diversity. The Agency also held observances for National Hispanic Heritage Month, National Disability Employment Awareness Month, Black History Month, Asian Pacific American Heritage Month, Caribbean Heritage Month, and Lesbian, Gay, Bisexual, and Transgender Pride Month.

Providing Information and Feedback Channels for Employees and the Public

Implementation of the *Patent Ombudsman Program* was a direct response to the public's request for a dedicated resource to provide patent applicants, attorneys, and agents

FIGURE 19 WORKFORCE DISTRIBUTION BY RACE AND ETHNICITY



assistance with application-specific issues related to patent prosecution advancement. This program serves as a means for maintaining the lines of communication between practitioners and examiners. The Patent Ombudsman Program has resulted in improved, high-quality customer service by advancing the status of patent applications while simultaneously demonstrating the Agency's commitment to achieving its strategic goals by improving patent quality and timeliness, promoting confidence in the patent examination process, and improving relations with stakeholders, all in an effort to ultimately spur innovation and economic growth.

The USPTO continues to support the independent inventor community and enhanced its efforts with the newly created Office of Innovation Development (OID) within the Patent organization. The OID serves a key role in promoting innovation and technology creation in the United States. The OID oversees programs that foster and support innovation in the independent inventor communities, universities, and non-profits. The OID also works closely with other officials and agencies throughout the government in support of the Administration's efforts to promote small business, entrepreneurship and job creation. The OID designs and implements outreach programs to a wide range of groups including independent inventors, women, small business concerns, minorities, and other underserved communities. As part of this effort, the OID held a Women's Entrepreneurship Symposium and a California Regional Conference.

The USPTO also participates in outreach initiatives with inventor organizations throughout the United States. These non-profit inventor organizations assist inventors with innovations and the desire to start a business based on those inventions.

Online public chats are held bi-monthly. These chats provide ongoing education opportunities and allow the public to ask questions in a live chat room and receive an answer.

The USPTO encouraged the establishment of pro bono IP services through universities and law associations. In all cases, the USPTO will be instrumental in helping in the development of concepts and finding partners. The USPTO

acts as an information conduit for independent inventors through our Website and outreach events. There are 13 universities currently offering IP law clinics on IP rights education aimed at independent inventors and small businesses. The IP law clinics will also provide basic IP education. A first pilot program was launched in June of 2010 in Minnesota by an association of law offices and private companies to assist individuals and small businesses with certain financial needs to protect their valuable inventions and innovations. This program, in conjunction with the OID, will offer education and guidance to new and financially needy inventors. Independent inventors can work directly with experts to gain assistance in filing a new application or improving their existing applications.

Management Challenges and What's Ahead

The distance between innovation and the marketplace is shrinking. Said another way, innovation is moving more quickly from creation to manufacture and distribution. IP is a necessary instrument for innovators and businesses to capture value as ideas move to the marketplace. In performing its mission—quality examination and disposition of patents and trademarks—the USPTO faces significant challenges.

The America Invents Act (AIA) will promote innovation and job creation by improving patent quality, clarifying patent rights, reducing the application backlog, and offering effective alternatives to costly patent litigation. Implementation of the Act's provisions presents numerous challenges and the USPTO looks forward to actively engaging stakeholders to ensure that implementation is accomplished in a proper and timely manner.

BUILD AND FOCUS ON IMPROVEMENTS

The Patent and Trademark organizations will build on their accomplishments and work toward meeting the objectives of the *USPTO 2010-2015 Strategic Plan* while working with customers to ensure that the objectives remain aligned with their needs.

The Patent organization's continuing challenges are to reduce patent pendency and the backlog of patent applications, optimize examination capacity, improve the quality of patent processing, provide applicants with greater control over examination timing, and increase efficiency as a result of collaboration in areas including automation, global patent classification and work sharing. As the Patent organization forges ahead in meeting these challenges by continuing to recruit, develop, train, and retain a highly skilled diverse workforce, it will yield high efficiency gains to achieve its goals.

The Trademark organization's biggest challenge is to maintain its quality and pendency achievements, given the uncertainty of trademark filings, future revenues, and costs. The Trademark organization strives to support a high quality operation and maintain consistent first-action pendency of 2.5 to 3.5 months, even in the face of monthly fluctuations in filings, the unpredictability of projecting new filings in the current economy, and the need to secure congressional approval for certain aspects of funding and fee changes.

The Trademark organization must strike a proper balance between forecasting filing levels, existing inventories, and managing an appropriately sized staff to ensure sufficient resources are available to maintain pendency goals on a consistent basis. Efficiency gains have been realized through process improvement and cost reduction, along with greater use of IT.





Team members from the OCIO hold an online chat about USPTO IT systems in Alexandria, Virginia, February 8, 2011.

Although first and final quality compliance rates are very high and consistently exceed 96 percent, the Trademark organization continues efforts to improve quality in a cost-effective manner. To sustain these high performance levels, the Trademark organization is emphasizing comprehensive excellence in office actions, which expands upon the existing first and final action standards for correct decision-making. While a comprehensive and excellent office action certainly reflects correct decision-making, it also includes excellent evidentiary support and is very well-written. The success of this initiative depends on novel and focused training, best practice benchmarking and sharing, new quality incentives, sustained communication, and close collaboration with key stakeholders.

MANAGE AND EXECUTE TO GOALS

The USPTO's promotion, protection, and enforcement of IPR have never been more important to our nation's economic prosperity. The USPTO must harness the expertise and skills within the Agency and leverage new technology to achieve its goals. The actions we have taken to create a unified system to deliver timely, high-quality patents and trademarks must be carefully managed. The Agency continues to face the external pressures of increasing application volume and rapid technology changes. We will meet these challenges by continuing to update our antiquated IT infrastructure as well as hiring,

retaining, and training examiners and improving our operations to be more effective and efficient. As we improve our Agency, we must continue to focus on building relationships with our workforce, applicants, owners of patents and trademarks, Congress, and the public.

CONTINUE TO MOVE TO AN ELECTRONIC WORKPLACE

The Patent and Trademark organizations have made significant progress to eliminate paper documents and manual transactions from their processes. Electronic communications are improving and encouraging more applicants to do business electronically by using Web-based systems. The Patent and Trademark organizations now rely heavily on data submitted or captured electronically to support examination, publish documents, and issue registrations. Because of the high degree of reliance on electronic operations, both organizations are dependent on the management and support of internal IT systems and services to manage their operations and provide services to the public.

The Patent and Trademark organizations, along with the support of the OCIO, are working to address the challenge of completing an electronic docket and file management system for each organization. These systems will link all operations and processing that support core examination and post-issuance activities. A fully electronic workflow will allow both organizations to better manage the fluctuations in filings and be more efficient, as well as timely, in processing and responding to filings.

Another major challenge is to integrate and modernize legacy systems, especially those now used for Patent operations. The legacy systems were developed over the past 30+ years, and most have their own user interface, do not allow for easy movement of data to other systems, and were built on now obsolete technology. The goal of our Next Generation IT systems is to provide a common user interface and full data integration using modern IT tools, replacing the current antiquated and decaying infrastructure. This increased reliance on electronic systems presents other challenges to the USPTO in the event of an unplanned outage or disruption in processing. To address this need, the USPTO has embarked on an aggressive, phased

business continuity/disaster recovery program. The USPTO has established a remote data bunker which contains on-line backups of mission critical data.

STRENGTHEN GLOBAL IPR SYSTEMS

The USPTO faces numerous challenges in seeking to strengthen global IP systems, including a lack of political will in some countries to make the changes needed to improve their IP systems. In many countries, IP protection and enforcement compete with other national priorities for attention, and some governments lack coordination in the development and implementation of IP policy. Thus, despite sustained efforts, only limited progress is possible in some countries. Progress on substantive IP issues in multilateral institutions may also be blocked by a relatively small group of countries that oppose strengthening of global IP systems. Funding insecurity caused by the global recession is also a major challenge for many IP institutions around the world. The USPTO also continues to face funding uncertainty for many programs that support its policy mission, including the GIPA programs and the IP Attaché Program.

The USPTO will continue to promote the strengthening of IP systems through its policy advocacy and leadership, and training and education efforts. In close cooperation with other agencies of the USG, the USPTO will continue to promote the adequate and effective protection and enforcement of IPR overseas. The USPTO will continue its efforts to streamline and improve global systems for the registration and grant of IP rights. To expand the USPTO's work sharing initiatives, the USPTO will continue to promote the use of search and examination results among IP offices around the world.

USPTO FUNDING MODEL

The current financial model constrains the USPTO's ability to foster the innovation that is a crucial driver of job creation, economic recovery, and prosperity. Today, the funding model does not ensure that the USPTO always has the resources necessary – year after year – to implement multi-year plans for critical work such as reducing the patent application backlog and improving IT tools. The USPTO is challenged to establish a sustainable funding model that

provides the requirements-based authority to spend all fees collected on operations and work received, spans multiple years, and is adaptable to fluctuations inherent in estimates. Another important aspect of a sustainable funding model is the authority to set and adjust fees by regulation, so that we can properly establish and align fees in a timely, fair, and consistent manner without the inherent time impediments of the legislative process. For almost all of FY 2011, the USPTO did not have the ability to proactively adjust over 80 percent of its fee collections in response to changes in demand for services, processing costs, or other factors. However, this fee-setting authority is contained in the AIA.

Over the next year, the USPTO will be engaging the public advisory committees, stakeholders, and the public in reformulating the fee structure to provide sufficient financial resources to facilitate the effective administration of the United States IP system.

RECRUIT AND HIRE, DEVELOP AND RETAIN THE RIGHT SKILLS AND TALENT

The USPTO's mission requires a highly-skilled, well-educated, and diverse workforce. The Agency faces the ongoing need to recruit, hire, develop, and retain sufficient numbers of qualified professionals in a highly competitive environment.



Attendees of an event at the USPTO's GIPA listen to the speaker through language translation headphones.

In order to retain our highly-skilled employees, the USPTO strives to be recognized as an employer of choice. Our retention strategies must continually be updated to reflect industry best practices. Attrition data will be tracked and survey results monitored in an effort to discern the effectiveness of our retention initiatives and to identify developing trends. The challenge is to recruit, hire, develop, and retain a highly-skilled, well-educated, and diverse workforce from a specialized and competitive technological and professional IP environment.

COMMUNICATION AND HUMAN CAPITAL MANAGEMENT

Recognizing the importance of building an active and engaged communication culture, the USPTO continues to identify new and innovative ways to communicate and collaborate with employees and stakeholders. These communication avenues are a vital component of the Agency's strategic goal of transparency, accountability, and interactivity. They allow the Agency to share human capital programs and information, solicit employee feedback and recommendations, and gather information on current human capital activities, as well as new ones of interest.

Because of the aforementioned competitiveness of the IP labor pool, the recruitment and retention of highly-qualified employees are critical to the Agency's ability to meet mission-critical requirements. As such, the Agency continues to focus its efforts on improvements and worklife enhancements which increase employee satisfaction at the USPTO. The results of the annual EVS are used extensively to direct these efforts and resources. The **2011-2015 Strategic Human Capital Plan (SHCP)**, which is aligned with the **USPTO 2010-2015 Strategic Plan**, provides guidance, structure, and specific human capital goals and objectives to address Agency needs.

CREATE IT ENTERPRISE ARCHITECTURE THAT SUPPORTS MISSION-CRITICAL BUSINESS AND PROGRAMMATIC REQUIREMENTS

In FY 2012, the USPTO will continue to take steps to improve its ability to be more responsive, better manage, and deliver quality products at enhanced service levels. This will be accomplished by reducing the complexity of systems, establishing and enforcing more standards, and practicing continual process improvement.

In the current constrained fiscal environment, the challenge facing the OCIO will be in continuing efforts to:

- Work on strengthening our IT Infrastructure and moving to a "cloud" computing environment;
- Expand IT infrastructure to include faster network connections to/from USPTO campus, a UL, Voice over Internet Protocol telephones, and additional collaboration tools in support of a nationwide workforce;
- Plan, implement, and maintain IT systems that support and improve business processes in the Patent and Trademark organizations;
- Continue development of a PE2E System and a Trademark Next Generation System;



Chief Administrative Officer Patricia Richter and Under Secretary David Kappos support the USPTO's Creativity Challenge, which asked employees for ways they would improve Agency processes.

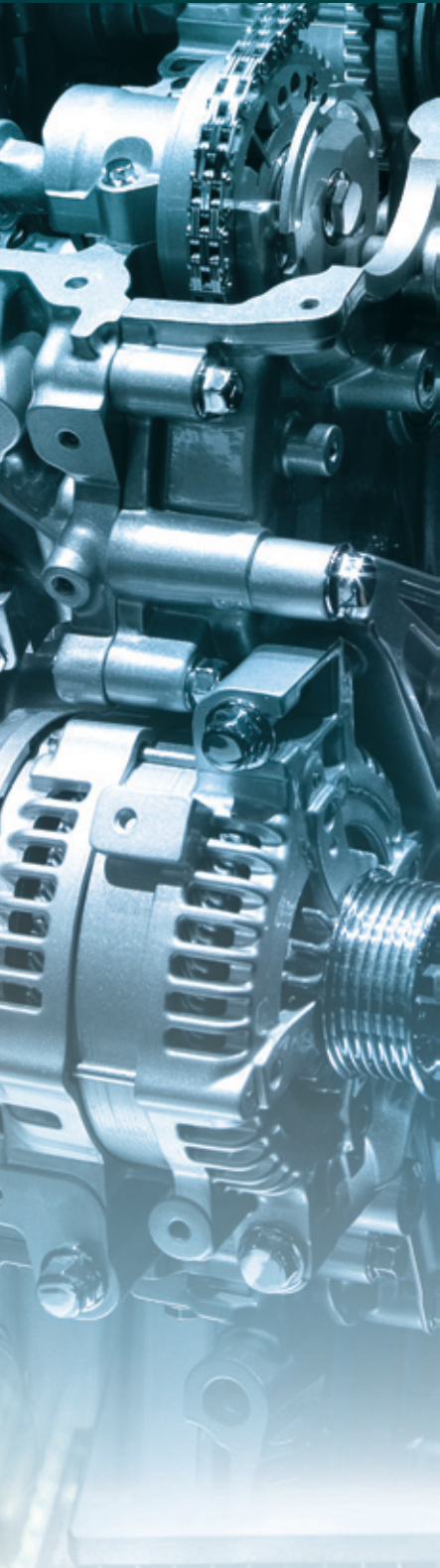
- Work to develop and fully implement an IT Human Capital Strategic Plan, in alignment with the *USPTO 2010-2015 Strategic Plan*;
- Assist OMB in designing and developing a federal job series for specialized IT acquisition professionals. USPTO's *2011-2015 SHCP* will set the foundation to hire, develop, and retain a highly competent IT Workforce now and in the future;
- Improve the security, availability, and quality of IT systems and services while reducing their complexity and cost; support business area needs to accommodate the hiring and equipping of new employees; provide internal on-line tools (regarding consistency and quality of searching and examination); provide electronic file management and workflow; develop interactive on-line electronic filing capabilities and upgrade e-tools to the public; help move the USPTO to full electronic records and eliminate the need to collect and store paper records; and continue to improve overall data quality;
- Work with the OCFO to plan, implement and support Fee Processing Next Generation (FPNG) system that integrates with the IT systems for the Patent and Trademark organizations; and



The USPTO holds regular online chats to answer customer questions and help with USPTO systems and processes.

- Continue to add datasets to the USG's *www.data.gov* and *www.google.com* Website, providing the public with no-cost access to bulk text and image data collections of current and retrospective patent and trademark data.

Accompanying Information on USPTO Performance



Performance Audits and Evaluations

The OIG completed two evaluations during FY 2011. The first report, *Stronger Management Controls Are Needed Over USPTO's Projection of Patent Fee Collections (December 2010)*, focused on effectiveness of the process for projecting patent revenue, which is necessary for meeting the mission and the strategic goals for the Patent organization. The OIG made a series of recommendations for stronger management controls that would enhance transparency and accountability in the projection of patent fee collections. The USPTO concurred with the OIG's audit findings and began to address all recommendations. The USPTO has delivered standard procedures manuals for fee collection forecasts including portion of the patent production model that documents roles, responsibilities, and underlying components used with fee collection forecasts. This evaluation was performed in support of the Management Goal: Achieve Organizational Excellence.

The second report, *USPTO Patent Quality Assurance Process (November 2010)*, evaluated the effectiveness of the USPTO's patent quality assurance program in ensuring that established quality standards are met, and whether the USPTO's patent quality assurance process complies with applicable Federal, bureau, and other laws, regulations, policies, procedures, and guidelines. The OIG identified internal control weaknesses and recommended steps to improve the internal controls related to the quality assurance program. The USPTO generally concurred with the OIG's audit findings and began to address the recommendations. The USPTO will develop standard procedures for handling of cases with errors reported in the Office of Patent Quality Assurance (OPQA), and will define the role of OPQA in the final adjudication of agreed-upon errors within the Technology Centers. This evaluation was performed in support of the Strategic Goal I: Improve Patent Quality and Timeliness.

PERFORMANCE DATA VERIFICATION AND VALIDATION

In accordance with the Government Performance and Results Act requirements, the USPTO is committed to making certain the performance information it reports is complete, accurate, and consistent. The USPTO developed a strategy to validate and verify the quality, reliability, and credibility of USPTO performance results and has taken the following actions:

ACCOUNTABILITY — Responsibility for providing performance data lies with managers of USPTO programs who are held accountable for making certain that procedures are in place to ensure the accuracy of data and the performance measurement sources are complete and reliable.

QUALITY CONTROL — Automated systems and databases that collect, track, and store performance indicators are monitored and maintained by USPTO program managers, with systems support provided by the OCIO. Each system, such as the Patent Application Location and Monitoring or Trademark Reporting And Application Monitoring, incorporates internal program edits to control the accuracy of supporting data. The edits typically evaluate data for reasonableness, consistency, and accuracy. Crosschecks between other internal automated systems also provide assurances of data reasonableness and consistency. In addition to internal monitoring of each system, experts outside of the business units routinely monitor the data-collection methodology. The OCFO is responsible for monitoring the Agency's performance, providing direction and support on data collection methodology and analysis, ensuring that data quality checks are in place, and reporting performance management data.

DATA ACCURACY — The USPTO conducts verification and validation of performance measures periodically to ensure quality, reliability, and credibility. At the beginning of each fiscal year, and at various points throughout the reporting or measurement period, sampling techniques and sample counts are reviewed and adjusted to ensure data are statistically reliable for making inferences about the population as a whole. Data analyses are also conducted to assist the business units in interpreting program data, such as the identification of statistically significant trends and underlying factors that may be impacting a specific performance indicator. For examination quality measures, the review programs themselves are assessed in terms of reviewer variability, data entry errors, and various potential biases.

COMMISSIONER'S PERFORMANCE FOR FY 2011

The AIPA, Title VI, Subtitle G, the Patent and Trademark Office Efficiency Act, requires that an annual performance agreement be established between the Commissioner for Patents and the Secretary of Commerce, and the Commissioner for Trademarks and the Secretary of Commerce. The Commissioners for Patents and Trademarks have FY 2011 performance agreements with the Secretary of Commerce, which outline the measurable organizational goals and objectives for which they are responsible. They may be awarded a bonus, based upon an evaluation of their performance as defined in the agreement, of up to 50 percent of their base salary. The results achieved in FY 2011 are documented in this report. FY 2011 bonus information is currently not available. For FY 2010, the Commissioner for Patents was awarded a bonus of 20.8 percent of base salary and the Commissioner for Trademarks a bonus of 13.9 percent of base salary.

Management Assurances and Compliance with Laws and Regulations

This section provides information on the USPTO's compliance with the following legislative mandates:

- Federal Managers' Financial Integrity Act
- Federal Financial Management Improvement Act
- Federal Information Security Management Act
- Agency's Financial Management Systems Strategy
- Inspector General (IG) Act Amendments
- OMB Financial Management Indicators
- Prompt Payment Act
- Civil Monetary Penalty Act
- Debt Collection Improvement Act
- Biennial Review of Fees

Management Assurances

FEDERAL MANAGERS' FINANCIAL INTEGRITY ACT (FMFIA)

The FMFIA requires Federal agencies to provide an annual statement of assurance regarding management controls and financial systems. The USPTO management is responsible for establishing and maintaining effective internal control and financial management systems that meet the objectives of the FMFIA. The objectives of internal control, as defined by the Government Accountability Office (GAO), are to ensure:

- Effectiveness and efficiency of operations;
- Reliability of financial reporting; and
- Compliance with laws and regulations.

The statement of assurance that follows is based on the wide variety of evaluations, control assessments, internal analyses, reconciliations, reports, and other information, including the DOC OIG audits, and the independent public accountants' opinion on the USPTO's financial statements and their reports on internal control and compliance with laws and regulations. In addition, USPTO is not identified on the GAO's High Risk List related to controls governing various areas.

FEDERAL FINANCIAL MANAGEMENT IMPROVEMENT ACT (FFMIA)

The FFMIA requires Federal agencies to report on agency substantial compliance with Federal financial management system requirements, Federal accounting standards, and the U.S. Standard General Ledger at the transaction level. In accordance with OMB Circular A-127 (revised), substantial compliance is achieved when an agency's financial management systems routinely provide reliable and timely financial information for managing day-to-day operations, as well as to produce reliable financial statements, maintain effective internal control, and comply with legal and regulatory requirements. The USPTO complied substantially with the FFMIA for FY 2011.

Other Compliance with Laws and Regulations

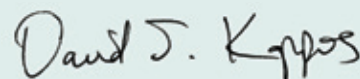
FEDERAL INFORMATION SECURITY MANAGEMENT ACT

The USPTO continues to stay vigilant in reviewing administrative controls over information systems and is always seeking methods of improving our security program. During FY 2011, the USPTO continued its dedicated efforts in support of compliance with FISMA standards and improvement of our security program. The USPTO IT Security Program includes a strategy for continuous monitoring, which conducts credentialed compliance and vulnerability scans on servers, network devices, database, and Web-application on a quarterly basis. The analysis is being performed to ensure that operating systems have been configured in accordance with their security baseline and appropriate software patch levels. Additionally, the IT Security program has integrated artifacts to support Security Impact Analysis within the systems development lifecycle that allow assessment of testing requirements for systems undergoing new developments, enhancements, or maintenance. This proactive approach to security within the development process has successfully assessed changes and enabled security compliance for systems as they are being developed or updated.

As a result, the Chief Information Security Officer and the OCIO staff working together made a concerted effort to meet the new compliance requirements of FISMA, while also meeting the reporting requirements to OMB.

On the basis of the USPTO's comprehensive internal control program during FY 2011, the USPTO can provide reasonable assurance that its internal control over the effectiveness and efficiency of operations and compliance with applicable laws and regulations as of September 30, 2011, was operating effectively. Accordingly, I am pleased to certify with reasonable assurance that our Agency's systems of internal control, taken as a whole, comply with Section 2 of the Federal Managers' Financial Integrity Act of 1982. Our Agency also is in substantial compliance with applicable federal accounting standards and the U.S. Standard General Ledger at the transaction level and with Federal financial system requirements. Accordingly, our Agency fully complies with Section 4 of the Federal Managers' Financial Integrity Act of 1982, with no material non-conformances.

In addition, the USPTO conducted its assessment of the effectiveness of our Agency's internal control over financial reporting, which includes safeguarding of assets and compliance with applicable laws and regulations, in accordance with OMB Circular A-123, Management's Responsibility for Internal Control. Based on the results of this evaluation, the USPTO provides reasonable assurance that its internal control over financial reporting as of June 30, 2011 was operating effectively and no material weaknesses were found in the design or operation of the internal control over financial reporting. In addition, no material weaknesses related to internal control over financial reporting were identified between July 1, 2011 and September 30, 2011.



David J. Kappos

Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office
November 4, 2011

These endeavors were a complete success. All USPTO systems (35 government and contractor systems) achieved a 100 percent FISMA compliance reporting level prior to the end of FY 2011. There were no deficiencies identified that are considered to be the result of any material weaknesses in internal control. As a result of the work accomplished, the USPTO was able to continue with continuous monitoring and provide an accurate summary of information consistent with OMB reporting requirements for year-end reporting.

The Inspector General's Statement of Management Challenges for the DOC (in the Other Accompanying Information section of this report) identifies IT security as a cause for concern Department-wide, to include at the USPTO. While the OIG continues to report IT security as a Commerce-wide concern, USPTO management has concluded that IT security issues within the Agency have been sufficiently resolved beginning in FY 2009 to remove the material weakness.

The USPTO continues to coordinate closely with the OIG throughout the year, as well as review annual assessments with the OIG, to gain additional insight and ensure compliance with requirements.

AGENCY'S FINANCIAL MANAGEMENT SYSTEMS STRATEGY

The USPTO's Consolidated Financial System (CFS) provides support for financial management, fee collections, procurement, and travel management functions to the USPTO. CFS leverages several Commercial-off-the-shelf (COTS)/Government-off-the-shelf (GOTS) products, including a core financial and acquisition system (Momentum Financials), an eTravel system (FedTraveler), a budget execution and compensation projection system (Corporate Planning Tool using the Cognos Planning tool), a cost accounting system (Activity Based Information System built using the Profitability and Cost Management tool), and a data warehouse (Enterprise Data Warehouse accessed using the Business Objects tool). Additionally, CFS includes an internally developed fee collection system (Revenue Accounting and Management (RAM)), an imaging system (Office of Finance Imaging System built using the Documentum tool), and an internally developed application to automate the transit subsidy program (Transit Subsidy System).

FPNG replaces the previous initiative to modernize RAM, the USPTO's legacy fee collection system. FPNG will focus on retiring legacy RAM and look into using COTS, GOTS, and open source code, using custom code as a last resort. Developing and implementing FPNG supports USPTO's Strategic Priority, "Improve IT Infrastructure and Tools", and will replace legacy RAM with modern 21st Century technology that has more automated internal controls, electronic commerce capabilities, and will be able to meet the Patent and Trademark fee collection needs of the future. As the USPTO progresses with its Patent and Trademark IT strategies (PE2E and Trademarks Next Generation), the fee processing system also needs to progress to the next generation. The lack of modern technology in legacy RAM hinders the USPTO from taking full advantage of the potential benefits from PE2E and Trademarks Next Generation initiatives.

INSPECTOR GENERAL ACT AMENDMENTS

The Inspector General Act, as amended, requires semi-annual reporting on IG audits and related activities, as well as any requisite agency follow-up. The report is required to provide information on the overall progress on audit follow-up and internal management controls, statistics on audit reports with disallowed costs, and statistics on audit reports with funds put to better use. The USPTO did not have audit reports with disallowed costs or funds put to better use in FY 2011.

The USPTO's follow-up actions on audit findings and recommendations are essential to improving the effectiveness and efficiency of our programs and operations. As of September 30, 2011, management had resolved the one recommendation outstanding from a report issued in FY 2009 (ATL-9999-9-3418: "International Intellectual Property Institute (IIP), DC, Audit of MOU No. 2006-069-039").

Two new audit reports were issued during FY 2011 (OIG-11-014-A: "Stronger Management Controls Are Needed Over USPTO's Projection of Patent Fee Collections" and OIG-11-033-A: "Patent End-to-End Planning and Oversight Need to Be Strengthened to Reduce Development Risk"). For details on these audits, refer to page 50. Three recommendations were outstanding as of September 30, 2011.

Status of IG Act Amendment Audit Recommendations as of September 30, 2011				
Report for Fiscal Year	Status	Recommendation	Action Plan	Completion Date
FY 2009	Closed	IIPi should ensure that independent personnel are documenting the review of bank and other reconciliations.	The USPTO will ensure expenditures received from IIPi have proper documentation, are certified by the Office of Intellectual Property, Policy, and Enforcement that services or goods were received, and are submitted to the Office of Finance for payment.	March 2011
FY 2011	Closed	The Chief Financial Officer (CFO) should establish and implement written policies and procedures for developing fee collection forecasts.	The USPTO has developed a manual for fee collection forecasts, and has documented roles, responsibilities, and underlying components used with fee collection forecasts.	March 2011
FY 2011	Closed	The CFO should report annually on the variances between projected and actual specific patent fee collections, including the potential causes for significant variances and possible trends to consider.	The USPTO has reported variances, trends, and causes included as appendixes one and two in the FY 2012 President's Budget.	March 2011
FY 2011	Closed	The Commissioner for Patents should establish and implement written policies and procedures for the patent production model.	The USPTO has developed standard procedures and definitions for the patent production model development portions of the fee forecasting process documentation manual.	August 2011
FY 2011	Open	Before development starts on the next (second) release of PE2E, the USPTO Director should direct the appropriate USPTO officials to improve PE2E planning by developing: <ol style="list-style-type: none"> a) A description and schedule of releases based on prioritized high-level requirements for the entire project, and b) High-level designs for the service architecture for the entire project. 	The report was issued on September 29, 2011. The action plan will be developed in the first quarter of FY 2012.	To be determined
FY 2011	Open	The USPTO Director should direct the appropriate USPTO officials to update the current acquisition plan before seeking contractor support for future PE2E releases. The plan should describe: <ol style="list-style-type: none"> a) The strategy for acquiring contracting resources that includes the overall acquisition approach, the process for acquiring, and how it will motivate contractor performance, and b) How USPTO will manage risks to avoid development delays, overcome limited resources for soliciting and administering multiple contractors, and successfully manage multiple contractors. 	The report was issued on September 29, 2011. The action plan will be developed in the first quarter of FY 2012.	To be determined
FY 2011	Open	The USPTO Director should direct the appropriate USPTO officials to improve oversight of PE2E by: <ol style="list-style-type: none"> a) Updating USPTO oversight procedures for PE2E by establishing <ul style="list-style-type: none"> • the key milestone oversight review schedule, • criteria for evaluating project progress at oversight reviews, and • thresholds for convening special oversight reviews b) Seeking independent expert advice on technical and project management for input into milestone reviews and defining the rules of engagement for independent reviewers, including when advice will be sought and access given to project artifacts and personnel. 	Report was issued on September 29, 2011. The action plan will be developed in the first quarter of FY 2012.	To be determined

OMB FINANCIAL MANAGEMENT INDICATORS

The OMB prescribes the use of quantitative indicators to monitor improvements in financial management. The USPTO tracks other financial performance measures as well. The table below shows the USPTO's performance during FY 2011 against performance targets established internally and by OMB and the government-wide Metric Tracking System (MTS).

Financial Performance Measure	FY 2011 Target	FY 2011 Performance
Percentage of Timely Vendor Payments (MTS)	98%	100%
Percentage of Payroll by Electronic Transfer (OMB)	90%	100%
Percentage of Treasury Agency Locations Fully Reconciled (OMB)	95%	100%
Timely Reports to Central Agencies (OMB)	95%	100%
Audit Opinion on FY 2011 Financial Statements (OMB)	Unqualified	Unqualified
Material Weaknesses Reported by OIG (OMB)	None	None
Timely Posting of Inter-Agency Charges (USPTO)	30 days	25 days
Average Processing Time for Travel Payments (USPTO)	8 days	6 days

PROMPT PAYMENT ACT

The Prompt Payment Act requires Federal agencies to report on their efforts to make timely payments to vendors, including interest penalties for late payments. In FY 2011, the USPTO did not pay interest penalties on 99.9 percent of the 6,472 vendor invoices processed, representing payments of approximately \$522.1 million. Of the 12 invoices that were not processed in a timely manner, the USPTO was required to pay interest penalties on 6 invoices, and was not required to pay interest penalties on 6 invoices, where the interest was calculated at less than \$1. The USPTO paid only \$1 in interest penalties for every million dollars disbursed in FY 2011. Virtually all recurring payments were processed by EFT in accordance with the EFT provisions of the Debt Collection Improvement Act of 1996.

CIVIL MONETARY PENALTY ACT

There were no Civil Monetary Penalties assessed by the USPTO during FY 2011.

DEBT COLLECTION IMPROVEMENT ACT

The Debt Collection Improvement Act prescribes standards for the administrative collection, compromise, suspension, and termination of Federal agency collection actions, and referral to the proper agency for litigation. Although the Act has no material effect on the USPTO since it operates with minimal delinquent debt, all debt more than 180 days old has been transferred to the U.S. Department of the Treasury for cross-servicing.

BIENNIAL REVIEW OF FEES

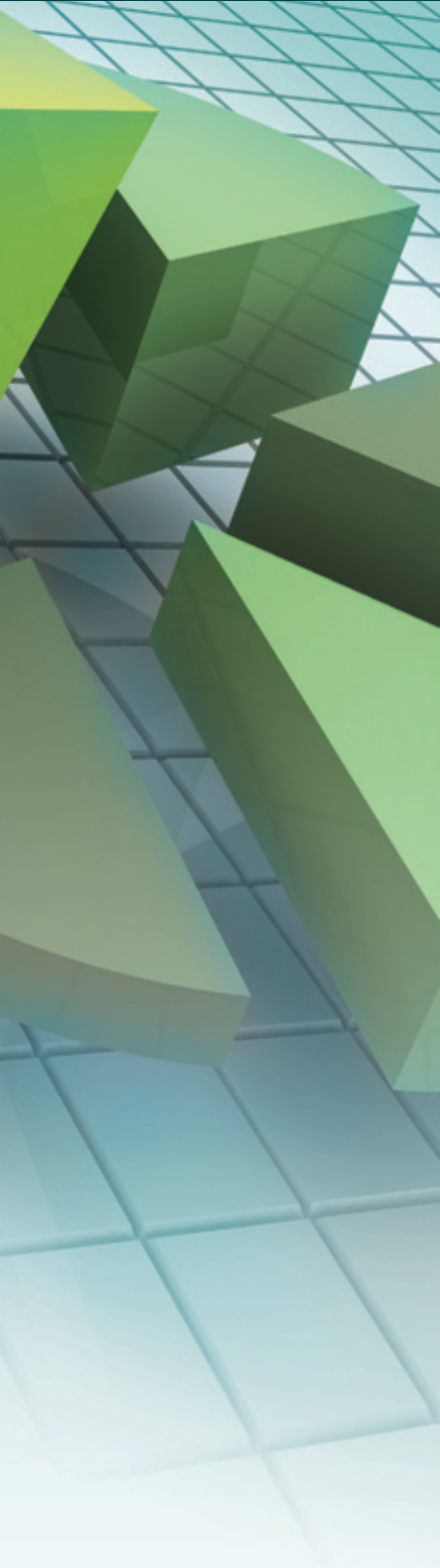
The Chief Financial Officers Act of 1990 requires a biennial review of agency fees, rents, and other charges imposed for services and things of value it provides to specific beneficiaries as opposed to the American public in general. The objective of the review is to identify such activities and to begin charging fees, where permitted by law, and to periodically adjust existing fees to reflect current costs or market value so as to minimize general taxpayer subsidy of specialized services or things of value (such as rights or privileges) provided directly to identifiable non-Federal beneficiaries. The USPTO is a fully fee-funded agency without subsidy of general taxpayer revenue. The USPTO uses Activity Based Costing (ABC) to calculate the cost of

activities performed for each fee, and uses this information to evaluate and inform when setting fees. When appropriate, fees are adjusted to be consistent with the legislative requirement to recover full cost of the goods or services provided to the public.

In anticipation of the new authority recently passed on September 16, 2011 (AIA, Pub. L. No. 112-29) to set fees

by regulation previously set by statute, the USPTO has taken steps to begin developing a new fee structure based on ABC models, historical cost analyses of activities supporting fees, conducting fee analyses such as cost-obligation-revenue comparisons, economic and elasticity analyses, and developing business case studies. Plans are under-way to implement the new fee structure in FY 2013.

Financial Discussion and Analysis



Financial Highlights

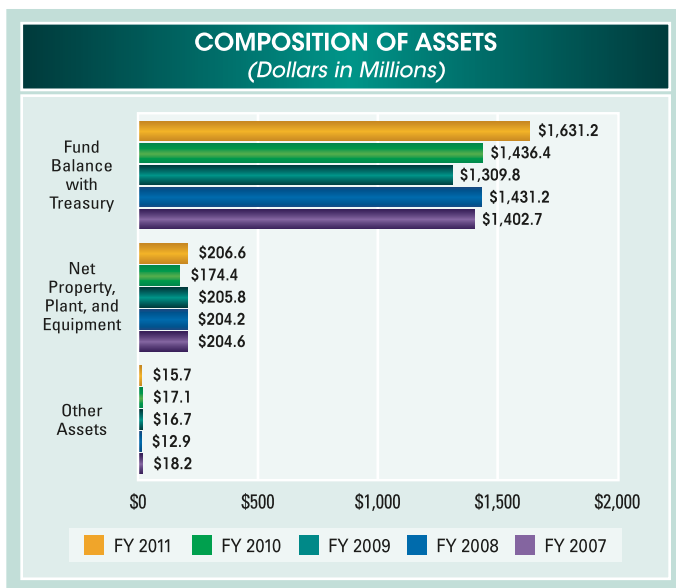
The USPTO received an unqualified (clean) audit opinion from the independent public accounting firm of KPMG LLP on its FY 2011 financial statements, provided in the Financial Section of this report. This is the 19th consecutive year that the USPTO received a clean opinion. Our unqualified audit opinion provides independent assurance to the public that the information presented in the USPTO financial statements is fairly presented, in all material respects, in conformity with accounting principles generally accepted in the United States of America. In addition, KPMG LLP reported no material weaknesses or significant deficiencies in the USPTO's internal control, and no instances of non-compliance with laws and regulations affecting the financial statements. Refer to the Other Accompanying Information section for the Summary of Financial Statement Audit and Management Assurances.

The summary financial highlights presented in this section provide an analysis of the information that appears in the USPTO's FY 2011 financial statements. The USPTO financial management process ensures that management decision-making information is dependable, internal controls over financial reporting are effective, and that compliance with laws and regulations is maintained. The issuance of these financial statements is a component of the USPTO's objective to continually improve the accuracy and usefulness of its financial management information.

BALANCE SHEET AND STATEMENT OF CHANGES IN NET POSITION

At the end of FY 2011, the USPTO's consolidated Balance Sheet presents total assets of \$1,853.5 million, total liabilities of \$1,251.2 million, and a net position of \$602.3 million.

Total assets increased 14.0 percent over the last four years, resulting largely from the increase in Fund Balance with Treasury. The decrease in Fund Balance with Treasury during FY 2009 is a result of the decrease in fee income. The following graph shows the changes in assets during this period.



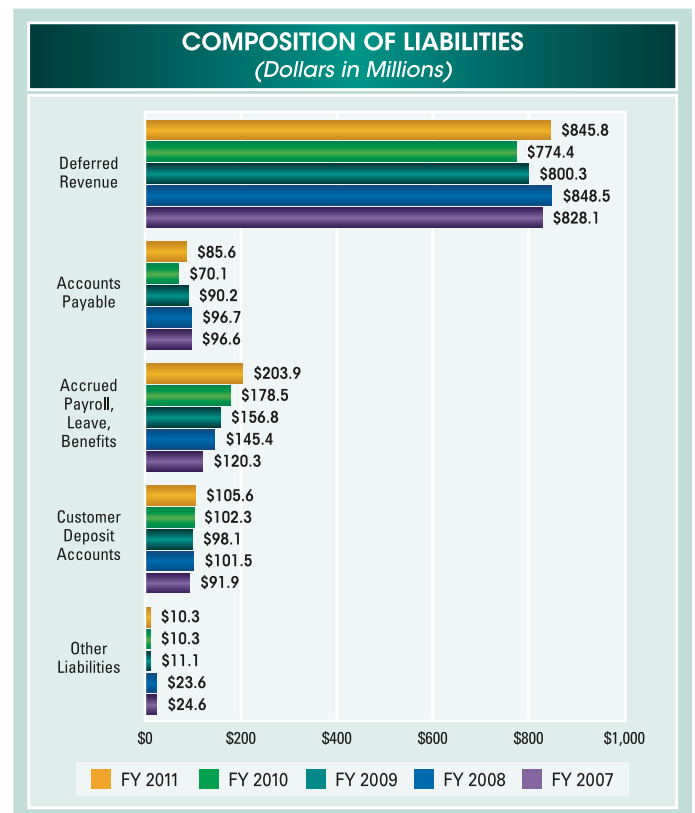
Fund Balance with Treasury is the single largest asset on the Balance Sheet and represents 88.0 percent of total assets at the end of FY 2011. Over half of the Fund Balance with Treasury represents fees the USPTO has collected, but has not been authorized to spend through the annual appropriation process – this includes temporarily unavailable fees of \$790.1 million and unavailable special receipt funds under OBRA of \$233.5 million, which total \$1,023.6 million in unavailable fees. This asset is also comprised of unpaid obligated funds of \$325.0 million, other funds held on deposit for customers of \$104.9 million, and unobligated funds of \$177.7 million.

The unavailable special receipt funds and the temporarily unavailable funds require Congressional appropriation before they will be available for USPTO's use. These funds,

together with amounts obligated and held on deposit, represent 89.1 percent of the Fund Balance with Treasury.

The other major asset is property, plant, and equipment. The net balance of this asset has increased by \$2.0 million during the past four years, with the acquisition values of property, plant, and equipment increasing by \$185.5 million. Investments in IT software and software in development from FY 2007 to FY 2009 increased \$45.5 million, in conjunction with enhancing the existing e-government capabilities in areas such as e-filing, application information retrieval, data and image capture, and Web-based search systems. This increase slowed to only \$6.8 million in FY 2010 as the USPTO chose to stop modifications to existing, outdated systems. Instead, the USPTO is beginning to completely re-invent our IT systems from end-to-end, which will lead to future increases in IT hardware, software, and software in development values. This was evidenced by an increase in FY 2011 of \$70.8 million for IT equipment.

Total liabilities increased from \$1,135.6 million at the end of FY 2010 to \$1,251.2 million at the end of FY 2011, representing an increase of \$115.6 million, or 10.2 percent. The following graph shows the composition of liabilities during the past five years.

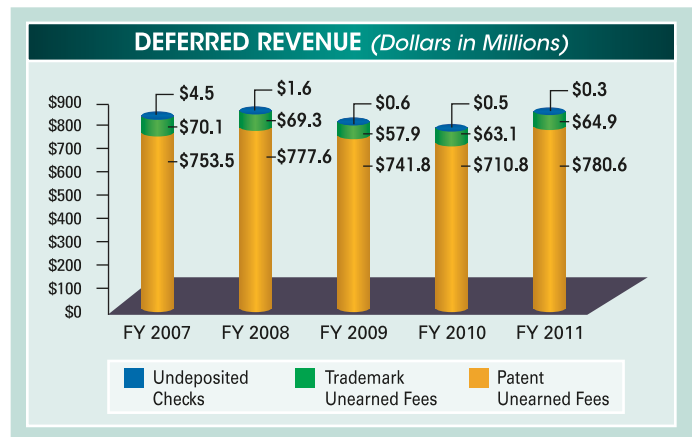


The USPTO's deferred revenue is the largest liability on the Balance Sheet. The liability for deferred revenue is calculated by analyzing the process for completing each service provided. The percent incomplete based on the inventory of pending work is applied to fee collections to estimate the amount for deferred revenue liability.

FY 2011 resulted in an increase to the deferred revenue liability of \$71.4 million, or 9.2 percent from FY 2010. The deferred revenue liability for FY 2011 includes unearned patent and trademark fees, as well as undeposited checks. The unearned patent fees represented 92.3 percent of this liability. During FY 2007 through FY 2008, the deferred revenue liability increased \$74.1 million, or 9.6 percent. These increases were followed by decreases to the deferred revenue liability in FY 2009 and FY 2010, for a cumulative decrease of \$74.1 million, or 8.7 percent. The following graph depicts the composition of the deferred revenue liability, in addition to the change in this liability during each of the past five years.

Deferred revenue at the USPTO is largely impacted by the change in patent and trademark filings, changes in the first action pendency rates, and changes in fee rates. Increases in patent and trademark filings, first action pendency rates, and fee rates result in increases in deferred revenue.

The following table depicts the changes in the filings and pendencies during the past five years.



In FY 2011, unearned patent fees increased 9.8 percent, a temporary increase as a result of the COPA initiative to clean up the older cases in the pending backlog and more strictly manage its inventory in a FIFO inventory environment. During FY 2007 and FY 2008, unearned patent fees increased 12.2 percent, with the majority of the increase occurring during FY 2007. The increase during FY 2007 was consistent with the increase in first action pendency of 11.9 percent. In FY 2009 and FY 2010, unearned patent fees decreased 4.6 percent and 4.2 percent, respectively. As a result of process improvements and increased efficiencies combined with decreased patent filings in FY 2009 that accompanied the economic downturn, the USPTO was able to make progress in reducing the existing inventory. This was evidenced by the Patent organization

Filings and Pendencies	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Patent Filings	468,330	496,886	486,499	510,060	536,604 ¹
Percentage Change in Patent Filings	5.1%	6.1%	(2.1)%	4.8%	5.2%
Patent First Action Pendency (months)	25.3	25.6	25.8	25.7	28.0
Percentage Change in Patent First Action Pendency	11.9%	1.2%	0.8%	(0.4)%	8.9%
Total Patent Pendency (months)	31.9	32.2	34.6	35.3	33.7
Percentage Change in Total Patent Pendency	2.6%	0.9%	7.5%	2.0%	(4.5)%
Trademark Filings	394,368	401,392	352,051	368,939	398,667
Percentage Change in Trademark Filings	11.2%	1.8%	(12.3)%	4.8%	8.1%
Trademark First Action Pendency (months)	2.9	3.0	2.7	3.0	3.1
Percentage Change in Trademark First Action Pendency	(39.6)%	3.4%	(10.0)%	11.1%	3.3%
Total Trademark Average Pendency (months)	13.4	11.8	11.2	10.5	10.5
Percentage Change in Total Trademark Average Pendency	(13.5)%	(11.9)%	(5.1)%	(6.2)%	–%

¹ Preliminary data

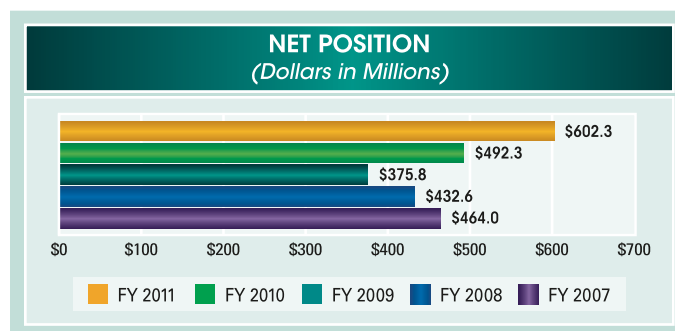
disposing of 22.9 percent and 13.6 percent in FY 2010 and FY 2009, respectively, more applications than were disposed of during the preceding year. Despite overall increases in Patent applications from FY 2007 through FY 2010, first action pendency had remained fairly constant as a result of increased Patent staffing and increased focus on workload.

Deferred revenue associated with the patent process is expected to resume decreasing. In the FY 2012 President's Budget, the number of patent applications filed from FY 2012 through FY 2016 is expected to gradually increase, with first action pendency decreasing to 10.3 months by FY 2016 and total pendency at 18.8 months by FY 2016. The pendency decreases will result in patent deferred revenue decreases.

The deferred revenue associated with the trademark process increased in FY 2011. Trademark deferred revenue increased by \$1.8 million, or 2.9 percent, from FY 2010, with an overall 7.4 percent decrease over the past four years. The FY 2011 increase was consistent with trademark first action pendency increasing to 3.1 months and the increase in trademark applications, with total trademark average pendency remaining constant at 10.5 months. Estimates included in the FY 2012 President's Budget project the pendencies to remain constant in the upcoming years.

The Statement of Changes in Net Position presents the changes in the financial position of the USPTO due to results of operations and unexpended appropriations. The movement in net position is the result of the net income or net cost for the year. The change in the net position during the past five years is presented in the following graph.

The increase in net position from \$492.3 million at the end of FY 2010 to \$602.3 million at the end of FY 2011, or 22.3 percent, is attributable largely to the results of operations.



STATEMENT OF NET COST

The Statement of Net Cost presents the USPTO's results of operations by the following responsibility segments – Patent, Trademark, and Intellectual Property Policy, Protection and Enforcement Worldwide. The following table presents the total USPTO's results of operations for the past five fiscal years. In FY 2011, the USPTO generated a net income of \$88.3 million due to the continued increase of maintenance fees received, offset by decreased revenue recognition of previously collected deferred revenue. During FY 2007, FY 2008, and FY 2009 the USPTO's operations resulted in a net cost of \$33.9 million, \$30.4 million, and \$54.8 million, respectively. In FY 2010, the USPTO generated a net income of \$94.7 million due to the increased maintenance fees received and revenue recognition of previously deferred revenue collected as we work off the backlog.

The Statement of Net Cost compares fees earned to costs incurred during a specific period of time. It is not necessarily an indicator of net income or net cost over the life of a patent or trademark. Net income or net cost for the fiscal year is dependent upon work that has been completed over the various phases of the production life cycle. The net income calculation is based on fees earned during the fiscal year being reported, regardless of when those fees were collected. Maintenance fees also play a large part in whether a total net income or net cost is recognized. Maintenance fees collected in FY 2011 are a reflection of

Net (Cost)/Income (Dollars in Millions)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Earned Revenue	\$ 1,735.7	\$ 1,862.2	\$ 1,927.1	\$ 2,101.7	\$ 2,236.4
Program Cost	(1,769.6)	(1,892.6)	(1,981.9)	(2,007.0)	(2,148.1)
Net (Cost) /Income	\$ (33.9)	\$ (30.4)	\$ (54.8)	\$ 94.7	\$ 88.3

patent issue levels 3.5, 7.5, and 11.5 years ago, rather than a reflection of patents issued in FY 2011. Therefore, maintenance fees can have a significant impact on matching costs and revenue.

During FY 2011, the number of patent filings increased by 5.2 percent over the prior year, resulting in an increase in patent deferred revenue and a decrease in earned revenue. This shift in focus was evidenced by the Patent organization disposing of 3.5 percent less applications than were disposed of during FY 2010.

During FY 2011, with the number of trademark applications increasing by 8.1 percent over the prior year, the Trademark organization was able to continue to address the existing inventory and maintain pendency between 2.5 and 3.5 months during FY 2011. The Trademark organization was able to do this while recognizing a slight increase in deferred revenue and corresponding decrease in revenue earned.

EARNED REVENUE

The USPTO's earned revenue is derived from the fees collected for patent and trademark products and services. Fee collections are recognized as earned revenue when the activities to complete the work associated with the fee are completed. The earning process is the same for all collections even through a certain portion of the fees may not be made available to the USPTO for spending. Temporarily unavailable fee collections occur when the USPTO is not appropriated the authority to spend all fees collected during a given year. During FY 2011, the USPTO collected \$208.9 million in fee collections that were designated as temporarily unavailable.

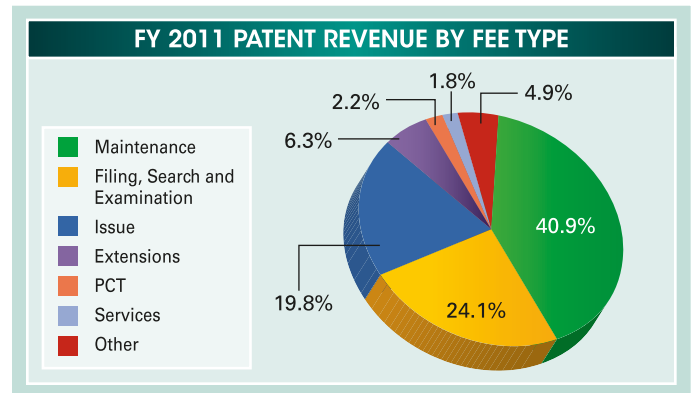
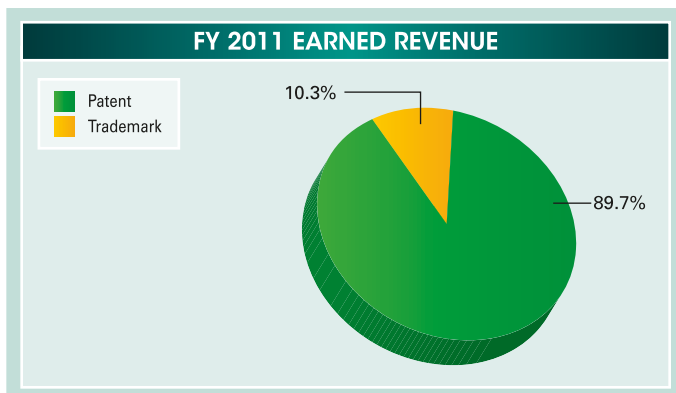
Earned revenue totaled \$2,236.4 million for FY 2011, an increase of \$134.7 million, or 6.4 percent, over FY 2010 earned revenue of \$2,101.7 million. Of revenue earned during FY 2011, \$375.8 million related to fee collections that were deferred for revenue recognition in prior fiscal years, \$819.3 million related to maintenance fees collected during FY 2011, which were considered earned immediately, \$1,035.8 million related to work performed for fees collected during FY 2011, and \$5.5 million were not fee-related.

For fees collected and earned during FY 2011, there was an increase of \$38.5 million over these same fees earned during FY 2010. This increase can primarily be attributed to \$33.1 million in earned patent issue fees, \$5.9 million in trademark application, \$1.9 million in trademark post-registration fees, \$4.5 million in trademark statement of use, and \$10.9 million in fees considered earned immediately, offset by a decrease of \$10.4 million in earned patent filing fees and \$6.8 million in patent appeal fees.

Patent

Traditionally, the major components of earned revenue derived from patent operations are maintenance fees, initial application fees for filing, search, and examination, and issue fees. These fees account for approximately 85 percent of total patent income. The following chart depicts the relationship among the most significant patent fee types.

Patent maintenance fees are the largest source of earned revenue by fee type. During FY 2011, maintenance fees collected increased \$146.2 million, or 21.7 percent, from FY 2010. A significant portion of this increase was due to early renewals that were paid prior to the implementation of the 15 percent surcharge on September 26, 2011.



Patent Renewal Rates*	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011**
First Stage	90.1%	83.1%	80.3%	99.4%	101.3%
Second Stage	71.4%	73.7%	63.5%	71.2%	80.6%
Third Stage	48.5%	49.2%	45.4%	50.0%	60.0%

* Note: the First Stage refers to the end of the 3rd year after the initial patent is issued; the Second Stage refers to the end of the 7th year after the initial patent is issued; and the Third Stage refers to the end of the 11th year after the initial patent is issued. For example, in FY 2011, 101.3 percent of the patents issued three years ago were renewed, 80.6 percent of the patents issued seven years ago were renewed, and 60.0 percent of the patents issued 11 years ago were renewed.

** Note: Due to the implementation of the 15 percent fee surcharge on September 26, 2011, the FY 2011 renewal rates include some early renewals that would have otherwise been renewed in FY 2012.

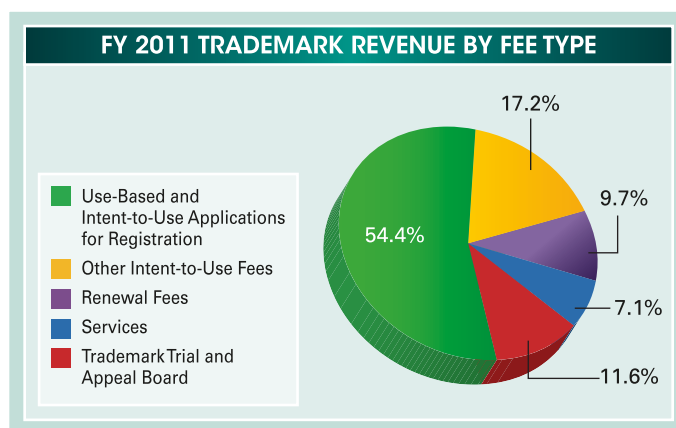
Since these fees are recognized immediately as earned revenue, any fluctuations in the rates of renewal have a significant impact on the total earned revenue of the USPTO. To some extent, renewals recoup costs incurred during the initial patent process. As shown above, the renewal rates for all three stages of maintenance fees increased this year.

Application fee revenue earned upon filing increased from \$95.0 million in FY 2010 to \$102.8 million in FY 2011 (increase of 8.2 percent), with the number of applications increasing from 510,060 to 536,604 over the same period (increase of 5.2 percent). The FY 2012 President's Budget projects a 4.4 percent increase in patent applications filed beginning in FY 2012 and increasing through FY 2016, which will contribute to a renewed growth in budgetary resources, as well as earned fee revenue.

Earned issue fee revenue increased from \$364.5 million in FY 2010 to \$397.2 million in FY 2011, with the number of patents issued increasing from 223,127 to 244,430 over the same period, an increase of 9.0 percent and 4.8 percent, respectively. These increases are in line with the increases in the patent allowance rate. The FY 2012 President's Budget projects that patents issued will increase an average of 4.3 percent each fiscal year through FY 2016, which will result in increases in maintenance fees in future years.

Trademark

Trademark fees are comprised of application filing, renewals, services, and TTAB fees. Additional fees are charged for intent-to-use filed applications, as additional requirements must be met for registration. The following chart depicts the relationship among the most significant trademark fee types.



Earned revenue for trademark applications increased from \$112.5 million in FY 2010 to \$125.4 million in FY 2011, with the number of trademarks registered increasing from 221,090 to 237,586 over the same period, increases of 11.5 percent and 7.5 percent, respectively. The FY 2012 President's Budget projects that trademark applications filed will continue to increase, which will contribute to the continued growth in budgetary resources, as well as earned fee revenue.

Trademark registration can be a recurring source of revenue. To some extent, renewal fees recoup costs incurred during the initial examination process. As shown below, the renewal rates for trademarks have remained fairly stable over the last five years, indicating continued earned revenue from this source. Further, in the FY 2012 President's Budget, earned revenue from trademark renewals is expected to continue in the future.

Trademark Renewal Rates	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011 ¹
Renewals	28.6%	28.9%	29.3%	29.3%	27.9%

Note: the renewals occur every 10th year for trademarks registered after November 15, 1989. For trademarks issued or renewed before November 15, 1989, renewal will occur after the 20th year and the renewal will be for a ten-year period. For example, in FY 2011, 27.9 percent of the trademarks granted ten and 20 years ago were renewed.

¹ Preliminary data

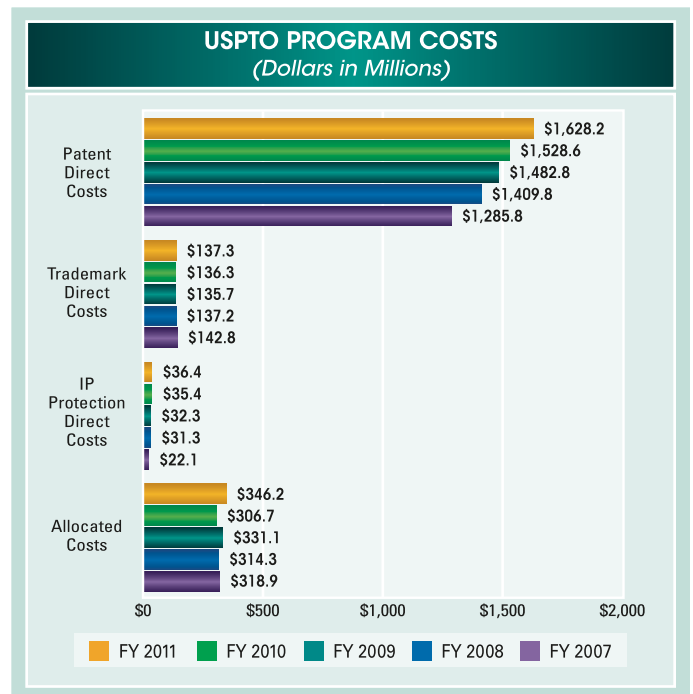
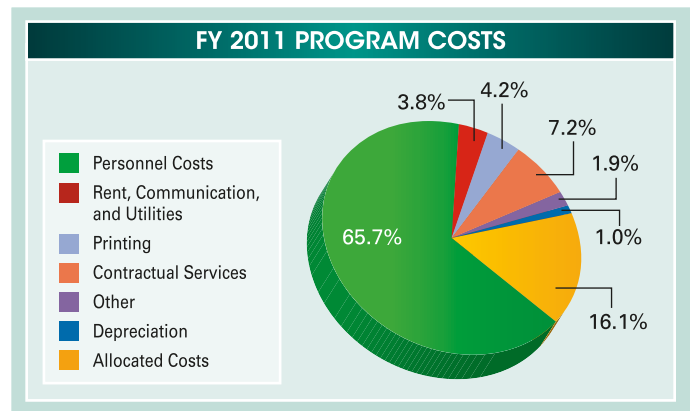
PROGRAM COSTS

Program costs totaled \$2,148.1 million for the year ended September 30, 2011, an increase of \$141.1 million, or 7.0 percent, over FY 2010 program costs of \$2,007.0 million. The USPTO's most significant program cost is personnel services and benefits, which comprise approximately 70 percent of USPTO's total program costs. Any significant change or fluctuation in staffing or pay rate directly impacts the change in total program costs from year-to-year. Total personnel services and benefits costs for the year ended September 30, 2011, were \$1,514.0 million, an increase of \$114.6 million, or 8.2 percent, over FY 2010 personnel services and benefits costs of \$1,399.4 million. This change was predominantly the result of a net increase of 703 personnel, from 9,507 at the end of FY 2010 to 10,210 at the end of FY 2011.

The USPTO directs maximum resources to the priority functions of patent and trademark examination, as well as IP policy, protection, and enforcement worldwide. For FY 2011, costs directly attributable to the Patent, Trademark, and IP protection business areas represent 83.9 percent of total USPTO costs. The remaining costs, representing support costs, are allocated to the business areas using ABC accounting. Allocated costs increased 12.9 percent over the past year in line with increased IT investments.

Patent

Total costs for the Patent business unit increased \$380.3 million, 24.8 percent, from FY 2007 through FY 2011. The Patent organization's most significant program costs relate to personnel services, and account for 109.0 percent of the increase in total cost of Patent operations during the past four years. Patent personnel costs for the year ended September 30, 2011, were \$1,281.6 million, an increase of \$109.4 million, or 9.3 percent, over FY 2010 personnel costs of \$1,172.2 million. Rent, communications, and utilities, printing and reproduction, and contractual service



costs represent 15.3 percent of the Patent program costs for FY 2011. From FY 2007 through FY 2008, contractual costs increased in line with the overall increase in Patent costs due to increases in the number of patents issued and

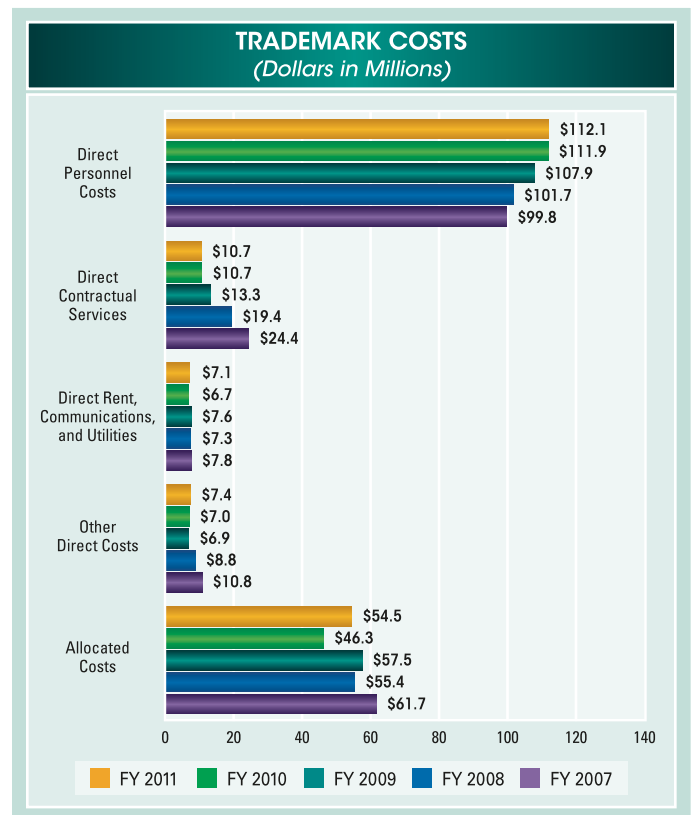
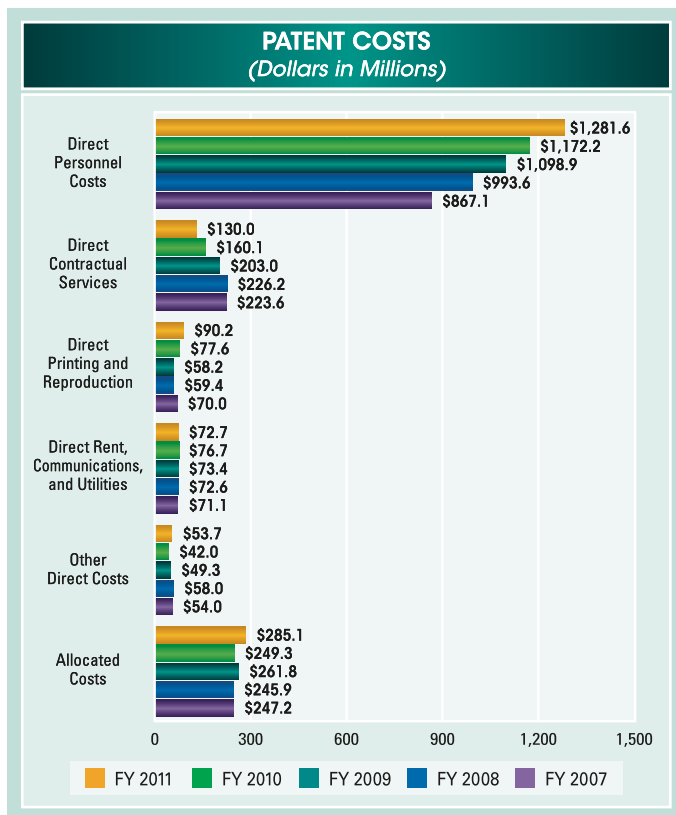
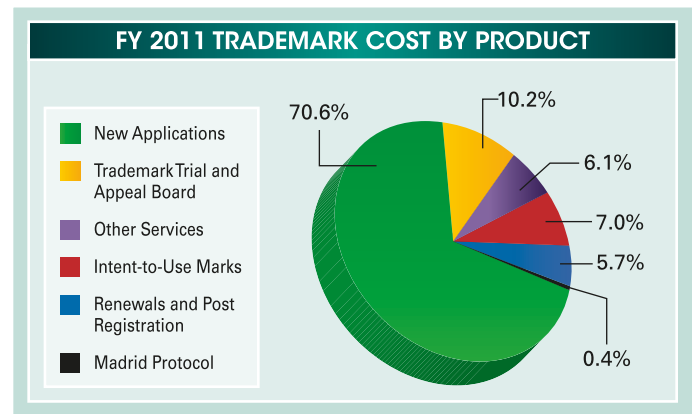
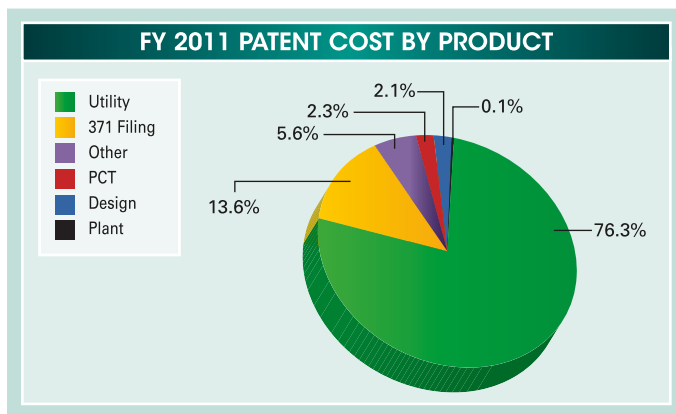
increased spending on indexing and scanning documents for the electronic file wrapper, offset by minor decreases to printing and reproduction. From FY 2009 through FY 2011, contractual costs decreased in line with the budget cuts implemented agency-wide.

Patent costs were predominantly spread over two patent products: utility patents and 371 filings (an international application designated to the U.S. that has entered the national stage). The cost percentages presented are based on direct and indirect costs allocated to patent operations

and are a function of the volume of applications processed in each product area.

Trademark

Total costs for the Trademark business unit decreased \$12.7 million, 6.2 percent, from FY 2007 through FY 2011. The Trademark organization's most significant program costs relate to personnel services, and account for most of the increase in total cost of Trademark operations during the past four years. This increase of \$12.3 million was

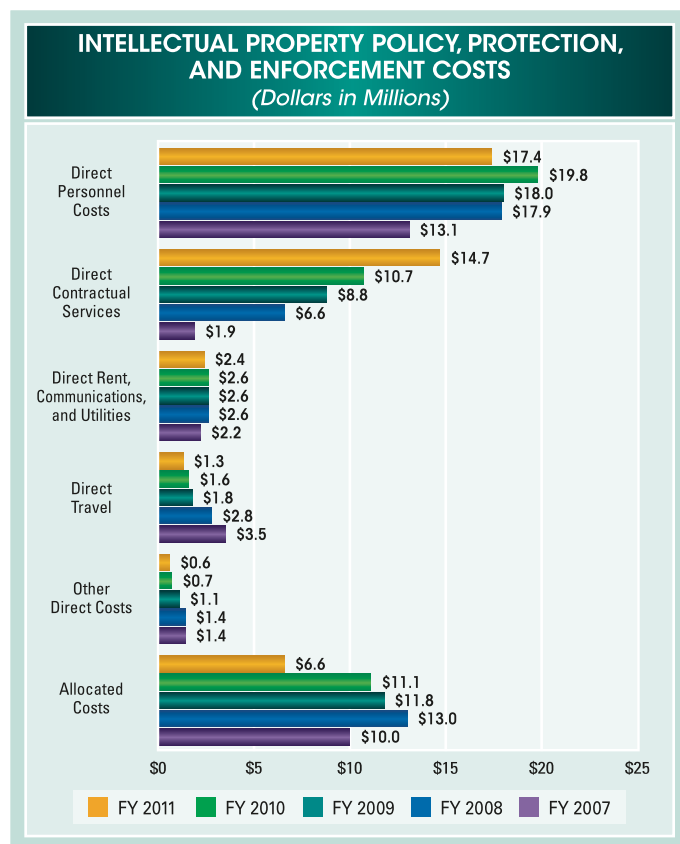


offset by other cost increases and decreases. Contractual services have decreased \$13.7 million over the past four years, which represents the majority of the total Trademark cost change over the past four years, as a result of being able to rely more on automated tools, rather than contractors. Cost allocated to the Trademark organization decreased over the past four years, but increased over the past year in line with increased IT investments.

The Intent-to-Use cost includes costs related to examining both the application and the additional intent to use disclosures. The overall cost percentages presented below are based on both direct costs and indirect costs allocated to trademark operations and are a function of the volume of applications processed in each product area.

Intellectual Property Policy, Protection, and Enforcement Worldwide

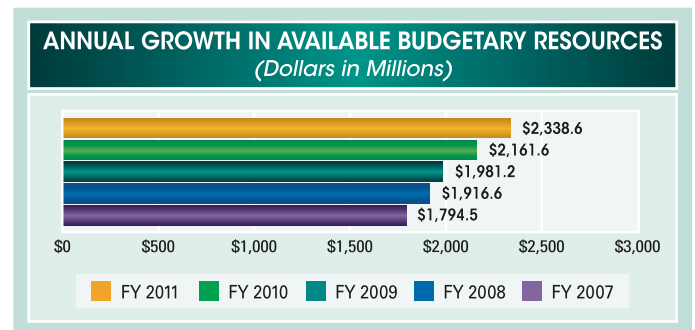
Total costs for IP Protection increased \$10.9 million, or 34.0 percent, from FY 2007 through FY 2011. The most significant program costs for IP Protection in FY 2011 relate to personnel services, and account for 40.5 percent of the



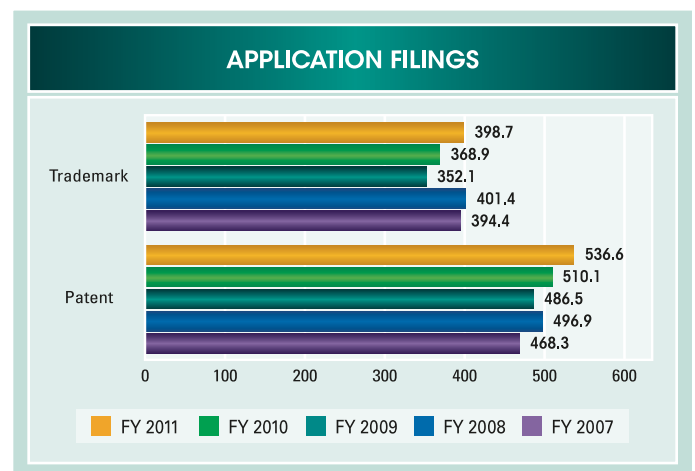
total cost for IP Protection operations. The next largest cost associated with the policy, protection, and enforcement of IP worldwide is contractual services, which include joint project agreements. These costs were incurred in line with the Strategic Goal 3 activities discussed on pages 31 to 37.

STATEMENT OF BUDGETARY RESOURCES

During FY 2011, total budgetary resources available for spending was 8.2 percent over the amount available in the preceding year, with a 30.3 percent increase over the past five fiscal years. The increase in budgetary resources available for use is depicted by the graph below.



Through FY 2008, the increase in available budgetary resources was used to fund the increased cost of additional human capital to address the backlog of patent applications. In FY 2009, the increase in available budgetary resources minimally covered inflationary increases and was \$200 million less than planned for. As a result, budget reductions and cost-savings measures were implemented.



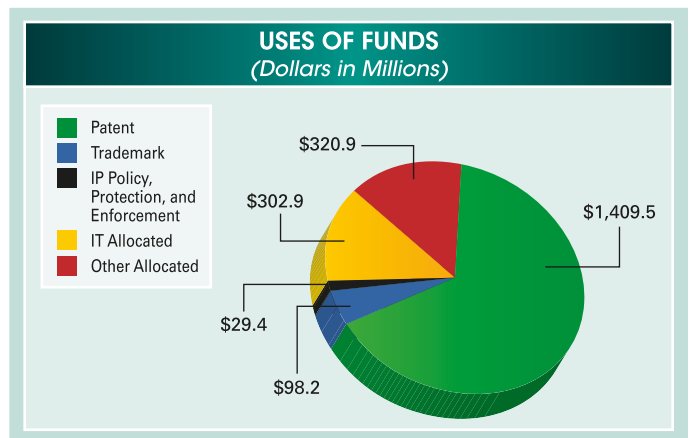
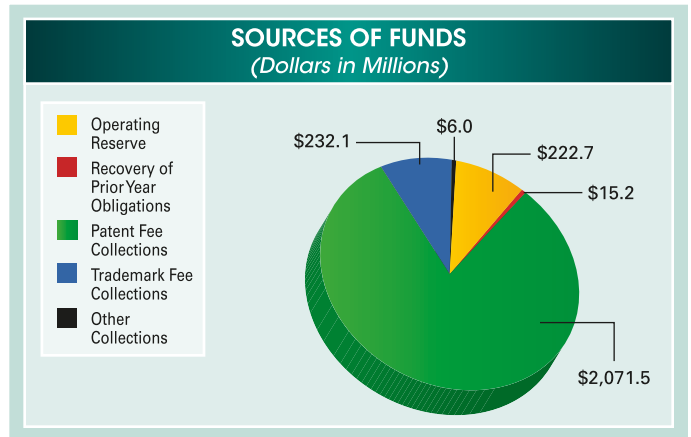
However, while fee collections were showing a rebound at the beginning of FY 2010, the USPTO was operating under a smaller appropriation that was based on the FY 2009 financial picture with lower than average fee collections. This was a result of the slower economy and actual collections in FY 2009. The lack of enactment of the 15 percent increase on certain patent fees as proposed in the FY 2011 President's Budget resulted in an appropriation \$241.3 million less than planned for and requested in the FY 2011 President's Budget. As we are an Agency funded entirely by user fees, this affects our operations significantly.

As the economy has begun showing signs of recovering, the Patent and Trademark application filings have also been slowly recovering.

The USPTO was provided appropriation authority to spend anticipated fee collections in FY 2011 for an amount up to \$2,090.0 million. This was less than the amount of total fees collected in FY 2011. When spending authority is less than fee collections, the additional fee collections are temporarily unavailable. As a result of the AIA, the USPTO was provided with the authority to collect additional offsetting collections beginning September 26, 2011 of (1) a 15 percent interim surcharge on certain patent fees that will continue until each fee is adjusted by regulation and (2) fees paid by patent applicants to request expedited, prioritized examination. This authority provided the USPTO with \$4.8 million of additional budgetary resources. However, after the enactment of the AIA, there was a rush on fee payments during the 10 days from enactment to the fee increase effective date of September 26, 2011. As a result, during FY 2011, the USPTO collected an additional \$208.9 million in fees that were temporarily unavailable for spending.

The following charts present the source of funds made available to the USPTO in FY 2011, and the use of such funds representing FY 2011 total obligations incurred, as reflect on the Statement of Budgetary Resources.

USPTO operations rely on patent maintenance fees to fund a portion of the work being completed each fiscal year. During FY 2011, maintenance fees collected increased \$146.2 million, or 21.7 percent, from FY 2010. However, a large part of the increase in maintenance fees were paid during the 10 days before the 15 percent surcharge increase – making a lot of the increase unavailable for spending. As



maintenance fees are one of the largest sources of budgetary resources and are recognized immediately as earned revenue, any fluctuations in the rates of renewal have a significant impact on the total resources available to the USPTO. To some extent, renewals recoup costs incurred during the initial patent process. As shown on page 63, the renewal rates for all three stages of maintenance fees increased during FY 2011. The renewal rates have rebounded as the economy rebounds.

As defined earlier, temporarily unavailable fee collections occur when the USPTO is not appropriated the authority to spend all fees collected during a given year. During FY 2011, the USPTO collected \$208.9 million in fee collections that were designated as temporarily unavailable. As a result, the \$581.2 million in temporarily unavailable fee collections at the end of FY 2010 increased to \$790.1 million at the end of FY 2011.

Temporarily Unavailable Fee Collections (Dollars in Millions)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Fiscal year fee collections	\$ 1,783.2	\$ 1,879.3	\$ 1,874.2	\$ 2,068.5	\$ 2,298.9
Fiscal year collections appropriated	(1,771.0)	(1,879.3)	(1,874.2)	(2,016.0)	(2,090.0)
Fiscal year unavailable collections	\$ 12.2	\$ –	\$ –	\$ 52.5	\$ 208.9
Prior year collections unavailable	516.5	528.7	528.7	528.7	581.2
Subtotal	\$ 528.7	\$ 528.7	\$ 528.7	\$ 581.2	\$ 790.1
Special fund unavailable receipts	233.5	233.5	233.5	233.5	233.5
Cumulative temporarily unavailable fee collections	\$ 762.2	\$ 762.2	\$ 762.2	\$ 814.7	\$ 1,023.6

The above chart illustrates amounts of fees that Congress has appropriated to the USPTO for spending over the past five fiscal years, as well as the cumulative unavailable fee collections.

These cumulative unavailable fee collections remain in the USPTO's general fund account at the U.S. Department of the Treasury (Treasury) until appropriated for use by Congress. In addition to these annual restrictions, collections of \$233.5 million are unavailable in accordance with the OBRA of 1990, and deposited in a special fund receipt account at the Treasury. Effective in FY 2012, all additional unavailable fee collections will be deposited in a new fee reserve fund created by the AIA. It is anticipated that fee collections in the fee reserve fund will be appropriated for use by Congress.

As the USPTO returns to financial health, the Agency will use the new authority in the AIA to set fees so that we are able to manage patent and trademark revenue fluctuations and properly align fees in a timely, fair, and consistent manner.

STATEMENT OF CASH FLOWS

The Statements of Cash Flow, while not a required financial statement, are audited and are presented for purposes of additional analysis. The Cash Flow statement records the company's cash transactions (the inflows and outflows) during the given period. The document provides aggregate data regarding all cash inflows received from both its ongoing operations and external investment sources, as well as all cash outflows that pay for business activities and investments during the period. Cash flow is calculated by making certain adjustments to net income/cost by

adding or subtracting differences in revenue and expense transactions (appearing on the Balance Sheet and Statement of Net Cost) resulting from transactions that occur from one year to the next. These adjustments are made because non-cash items are included in preparing the net income/cost (Statement of Net Cost) and total assets and liabilities (Balance Sheet). Since not all transactions involve actual cash items, many items have to be adjusted when calculating cash flow.

The USPTO receives fees for its primary activities of issuing patents and registering trademarks and chooses to include information on the sources and amounts of cash provided to assist report users in understanding its operating performance. While the fees received are an increase in cash flow, they may not necessarily be available for spending based on budgetary restrictions. Over half of the Fund Balance with Treasury represents fees the USPTO has collected, but has not been authorized to spend through the annual appropriation process – this includes cumulative temporarily unavailable fees of \$790.1 million and unavailable special receipt funds under OBRA of \$233.5 million, which total \$1,023.6 million in unavailable fees. Cash flow is determined by looking at three components by which cash enters and leaves the USPTO: operations, investing, and financing.

Historically at the USPTO, cash flow adjustments to operational activities result in an increase to net income. Depreciation and Accrued Payroll, Leave, and Benefits operate similarly, as the accrued expenses that do not affect the cash flow are adjusted for, thereby increasing net income. Deferred revenue is also a significant factor, as the USPTO has received the fees, but not completed all of the work; in a year when the deferred revenue liability

Composition of USPTO Cash Flow (Dollars in Millions)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Cash Flow from Operations					
Net Income/(Cost)	\$ (33.9)	\$ (30.4)	\$ (54.8)	\$ 94.7	\$ 88.3
Operating Adjustments					
Depreciation	\$ 61.7	\$ 67.6	\$ 63.3	\$ 59.1	\$ 52.7
Accrued Payroll, Leave, and Benefits	19.2	25.2	11.1	43.6	47.2
Deferred Revenue	53.6	20.4	(48.2)	(25.9)	71.4
Other Adjustments	2.3	11.3	(15.1)	(17.3)	20.0
Total Adjustments	\$ 136.8	\$ 124.5	\$ 11.1	\$ 59.5	\$ 191.3
Net Cash Provided/(Used) by Operating Activities	\$ 102.9	\$ 94.1	\$ (43.7)	\$ 154.2	\$ 279.6
Net Cash Used in Investing Activities					
Property, Plant, and Equipment	\$ (101.8)	\$ (67.2)	\$ (65.0)	\$ (27.6)	\$ (84.9)
Financing Activities					
Non-Expenditure Transfer	\$ –	\$ (1.0)	\$ (2.0)	\$ –	\$ –
Accounting Standard Change	–	–	(11.9)	–	–
Net Cash Used in Investing Activities	\$ –	\$ (1.0)	\$ (13.9)	\$ –	\$ –
Net Cash Provided/(Used)	\$ 1.1	\$ 25.9	\$ (122.6)	\$ 126.6	\$ 194.7

decreases, such as FY 2010, net income increases without a corresponding increase in the cash flow; the increase to net income is removed for determining cash flow. Other adjustments is predominantly comprised of changes in accounts payable balances; in a year when the overall liability balance decreases, then a reader can conclude that an increased amount of cash was disbursed, thereby requiring a reduction to net income/cost; alternately, in a year when the overall liability balance increases, a reader can conclude that a lesser amount of cash was disbursed.

The *investment* of property, plant, and equipment is a cash transaction that has not been accounted for in net income/cost. This investment reduces net income/cost further for calculating cash flow. Investments decreased in FY 2010 as the USPTO chose to refocus IT investing modifications. Instead, the USPTO is beginning to completely re-invent our IT systems from end-to-end, which resulted in increases beginning in FY 2011 in IT software and software in development values. In addition, the USPTO began deploying ULs Agency-wide in FY 2011, replacing outdated desktop computers and work-at-home laptops.

Adjustments to *financing*-type activities are infrequent at the USPTO. Non-expenditure transfers at the USPTO are the movement of appropriated fee collections to other federal governmental entities, without an impact to net income/cost. In addition, due to the implementation of Statement of Federal Financial Accounting Standard (SFFAS) 31, *Accounting for Fiduciary Activities*, in FY 2009, the presentation of fiduciary funds were removed from the Balance Sheet and are therefore reflected as a decrease of cash.

LIMITATION ON FINANCIAL STATEMENTS

The principal financial statements included in this report have been prepared by USPTO management to report the financial position and results of operations of the USPTO, pursuant to the requirements of 31 U.S.C. §3515(b). While the statements have been prepared from the books and records of the USPTO in accordance with GAAP for federal entities and the formats prescribed by OMB in OMB Circular A-136 (revised), the statements are in addition to the financial reports used to monitor and control budgetary resources, which are prepared from the same books and records. The statements should be read with the understanding that they are for a component of the U.S. Government, a sovereign entity.

MANAGEMENT RESPONSIBILITIES

USPTO management is responsible for the fair presentation of information contained in the principal financial statements, in conformity with GAAP, the requirements of OMB Circular A-136, and guidance provided by the DOC. Management is also responsible for the fair presentation of the USPTO's performance measures in accordance with OMB requirements. The quality of the USPTO's internal control rests with management, as does the responsibility for identifying and complying with pertinent laws and regulations.

Financial Section



Message from the Chief Financial Officer

I am pleased to present the USPTO's FY 2011 financial information. For the 19th consecutive year we have received an unqualified opinion on the Agency's financial statements. Along with the unqualified opinion, the auditors reported no material weaknesses or significant deficiencies in the design and operation of the USPTO's system of internal control over financial reporting. Also, the auditors reported that our financial system complies with federal financial systems requirements. Finally, for the ninth consecutive year, the Association of Government Accountants awarded the USPTO the Certificate of Excellence in Accountability Reporting for our *FY 2010 Performance and Accountability Report*, clearly demonstrating our excellence in integrating performance and accountability reporting.



The financial planning challenges of fiscal years 2009 and 2010 continued into FY 2011. Implementation of the *USPTO 2010-2015 Strategic Plan* was predicated on enactment of the FY 2011 President's Budget, which included a proposed 15 percent interim patent fee surcharge. However, the USPTO's final FY 2011 appropriation did not include this surcharge. As a result, the USPTO operated at a level that was about 10 percent below its FY 2011 requirements. This resulted in the need to limit or postpone the implementation of many strategic plan initiatives, such as hiring additional patent examiners to reduce patent pendency and backlog, opening our first field office, and investing in information technology.

In our *2010-2015 Strategic Plan*, we identified funding authority to support agency performance objectives as a significant challenge in accomplishing our vision and mission. To address this challenge, we have proposed the establishment of a sustainable funding model that spans multiple years. Such a funding model would provide the USPTO with authority to set fees at the rates necessary to recover the cost of operations, spend the fees collected

to support the Agency's objectives, and the ability to adapt and manage Agency funding and spending as needs and workload demands change, thereby protecting the Agency against unforeseen disruptions in revenue.

The USPTO continues to work with the Administration and Congress to identify a funding model that is agile and employs a tolerance for variables and the inherent characteristics of forecasting workload demand, operations requirements, and resulting fee estimates. Recently, the Congress passed – and the President signed into law – the AIA (Pub. L. No. 112-29). The Act gives the USPTO, for the first time, the authority to set its fees by rule. In addition, the Act authorizes the USPTO to implement a 15 percent surcharge on most patent fees to provide for additional financial resources in the interim until the USPTO exercises its fee setting authority and develops a new fee structure that will provide better alignment of fees with the cost of operations over the long term. Further, to address our stakeholder's concerns about unavailable fee collections, the Act creates the Patent and Trademark Fee Reserve Fund. Going forward, all fees that the Agency collects above our appropriated spending authority will be deposited in this Fee Reserve Fund, and will be available for spending to the extent provided for by annual appropriations acts.

The AIA was a huge step towards helping the USPTO to achieve financial stability. However, due to the mid-September timing of enactment, the Agency experienced an unanticipated surge in fee collections during the final two weeks of the fiscal year, as stakeholders rushed to pay fees in advance of the 15 percent surcharge taking effect. Unfortunately, this surge in fees collected was all in excess of our FY 2011 appropriation and therefore unavailable for expenditure. Additionally, these same fees were originally included in our FY 2012 projections. They will now not be

collected and available to the agency in FY 2012 as originally expected. The USPTO continues to adjust our FY 2012 plans to account for this change.

Toward this end, we have already begun making advances in other areas of our sustainable funding model. During FY 2011, even faced with funding challenges, we maintained an operating reserve to manage multi-year plans and undertake long-term strategies for improvement in a financially viable way. This operating reserve is helping the USPTO to adapt to the changing FY 2012 funding outlook while continuing to focus scarce resources on the Administration's goals to reduce patent pendency and the application backlog.

Our talented and committed employees continue to display great dedication toward producing a high standard of financial management at the USPTO. We look forward to the future with confidence as we continue to support the strategic direction of the USPTO by working as a trusted partner within the organization and providing sound advice to enable informed program and financial decision-making into FY 2012.



Anthony P. Scardino
 Chief Financial Officer
 November 4, 2011

Principal Financial Statements and Related Notes



Members of the FY 2011 Performance and Accountability Report Team. From top left: Roger Williams, David Fitzpatrick, Mark Krieger; middle row: Maureen Brown, Jennifer Jacobs; front: Kim Kenney, Kelly Boudreau.

UNITED STATES PATENT AND TRADEMARK OFFICE CONSOLIDATED BALANCE SHEETS

As of September 30, 2011 and 2010

(Dollars in Thousands)	2011	2010
ASSETS		
Intragovernmental:		
Fund Balance with Treasury (Note 2)	\$ 1,631,206	\$ 1,436,432
Accounts Receivable (Note 3)	296	608
Other Assets - Advances and Prepayments (Note 6)	2,053	2,988
Total Intragovernmental	1,633,555	1,440,028
Cash (Note 4)	3,091	3,199
Accounts Receivable, Net (Note 3)	138	150
Property, Plant, and Equipment, Net (Note 5)	206,628	174,397
Other Assets - Advances and Prepayments (Note 6)	10,085	10,179
Total Assets	\$ 1,853,497	\$ 1,627,953
LIABILITIES		
Intragovernmental:		
Accounts Payable	\$ 5,631	\$ 4,732
Accrued Payroll and Benefits	15,247	12,974
Accrued Workers' and Unemployment Compensation	1,869	1,878
Customer Deposit Accounts (Note 7)	6,170	5,823
Total Intragovernmental	28,917	25,407
Accounts Payable	80,009	65,382
Accrued Payroll and Benefits	111,903	94,473
Accrued Leave	76,806	71,018
Customer Deposit Accounts (Note 7)	99,414	96,481
Deferred Revenue (Note 9)	845,782	774,388
Actuarial Liability (Note 10)	8,406	8,299
Contingent Liability (Note 12)	—	200
Total Liabilities (Note 8)	\$ 1,251,237	\$ 1,135,648
NET POSITION		
Cumulative Results of Operations – Earmarked Funds (Note 14)	\$ 602,260	\$ 492,305
Total Net Position	\$ 602,260	\$ 492,305
Total Liabilities and Net Position	\$ 1,853,497	\$ 1,627,953

The accompanying notes are an integral part of these consolidated financial statements.

UNITED STATES PATENT AND TRADEMARK OFFICE CONSOLIDATED STATEMENTS OF NET COST

For the years ended September 30, 2011 and 2010

(Dollars in Thousands)	2011	2010
Strategic Goal 1: Optimize Patent Quality and Timeliness		
Total Program Cost	\$ 1,913,354	\$ 1,777,871
Total Program Earned Revenue	(2,005,269)	(1,887,538)
Net Program Income	(91,915)	(109,667)
Strategic Goal 2: Optimize Trademark Quality and Timeliness		
Total Program Cost	191,760	182,565
Total Program Earned Revenue	(231,105)	(214,144)
Net Program Income	(39,345)	(31,579)
Strategic Goal 3: Provide Domestic and Global Leadership to Improve Intellectual Property Policy, Protection and Enforcement Worldwide		
Total Program Cost	42,983	46,502
Net Income from Operations (Notes 14 and 15)	\$ (88,277)	\$ (94,744)
TOTAL ENTITY		
Total Program Cost (Notes 16 and 17)	\$ 2,148,097	\$ 2,006,938
Total Earned Revenue	(2,236,374)	(2,101,682)
Net Income from Operations (Notes 14 and 15)	\$ (88,277)	\$ (94,744)

The accompanying notes are an integral part of these consolidated financial statements.

UNITED STATES PATENT AND TRADEMARK OFFICE CONSOLIDATED STATEMENTS OF CHANGES IN NET POSITION

For the years ended September 30, 2011 and 2010

(Dollars in Thousands)	2011	2010
	Earmarked Funds	Earmarked Funds
CUMULATIVE RESULTS OF OPERATIONS		
Beginning Balances	\$ 492,305	\$ 375,794
Other Financing Sources:		
Imputed Financing	21,678	21,767
Total Financing Sources	21,678	21,767
Net Income from Operations	88,277	94,744
Net Change	109,955	116,511
Cumulative Results of Operations	\$ 602,260	\$ 492,305
Net Position, End of Year	\$ 602,260	\$ 492,305

The accompanying notes are an integral part of these consolidated financial statements.

UNITED STATES PATENT AND TRADEMARK OFFICE COMBINED STATEMENTS OF BUDGETARY RESOURCES

For the years ended September 30, 2011 and 2010

(Dollars in Thousands)	2011	2010
BUDGETARY RESOURCES		
Unobligated Balance - Brought Forward, October 1	\$ 222,674	\$ 118,692
Recoveries of Prior Year Unpaid Obligations	15,165	19,796
Budget Authority		
Spending Authority from Offsetting Collections:		
Earned:		
Collected	2,236,213	2,101,227
Customer Receivables and Refund Payables	575	248
Change in Unfilled Customer Orders - Advance Received	72,829	(25,788)
Total Spending Authority from Offsetting Collections	2,309,617	2,075,687
Temporarily not Available Pursuant to Public Law	(208,856)	(52,543)
Total Budgetary Resources	\$ 2,338,600	\$ 2,161,632
STATUS OF BUDGETARY RESOURCES		
Obligations Incurred - Reimbursable	\$ 2,160,895	\$ 1,938,958
Unobligated Balance:		
Apportioned for Current Year	177,705	222,674
Total Status of Budgetary Resources	\$ 2,338,600	\$ 2,161,632
CHANGE IN OBLIGATED BALANCE		
Obligated Balance, Net		
Unpaid Obligations, Brought Forward, October 1	\$ 297,047	\$ 331,250
Customer Receivables and Refund Payables, Brought Forward, October 1	277	525
Total Unpaid Obligated Balance Brought Forward, Net	297,324	331,775
Obligations Incurred, Net	2,160,895	1,938,958
Gross Outlays	(2,117,449)	(1,953,365)
Recoveries of Prior Year Unpaid Obligations, Actual	(15,165)	(19,796)
Change in Customer Receivables and Refund Payables	(575)	(248)
Total Unpaid Obligated Balance, Net, Current Year	27,706	(34,451)
Obligated Balance, Net, End of Year		
Unpaid Obligations	325,328	297,047
Uncollected Customer Receivables and Unpaid Refund Payables	(298)	277
Total Unpaid Obligated Balance, Net, End of Year	\$ 325,030	\$ 297,324
NET OUTLAYS		
Gross Outlays	\$ 2,117,449	\$ 1,953,365
Offsetting Collections	(2,309,042)	(2,075,439)
Net Collections	\$ (191,593)	\$ (122,074)

The accompanying notes are an integral part of these consolidated financial statements.

UNITED STATES PATENT AND TRADEMARK OFFICE CONSOLIDATED STATEMENTS OF CASH FLOWS (INDIRECT METHOD)

For the years ended September 30, 2011 and 2010

(Dollars in Thousands)	2011	2010
CASH FLOWS FROM OPERATING ACTIVITIES		
Net Income from Operations	\$ 88,277	\$ 94,744
Adjustments Affecting Cash Flow:		
Imputed Financing from Cost Absorbed by Others	21,678	21,767
Decrease/(Increase) in Accounts Receivable	324	(320)
Decrease/(Increase) in Advances and Prepayments	1,029	(105)
Increase/(Decrease) in Accounts Payable	15,526	(20,074)
Increase in Accrued Payroll and Benefits	19,703	18,203
Increase in Accrued Leave and Workers' and Unemployment Compensation	5,779	3,613
Increase in Customer Deposit Accounts	3,280	4,226
Increase/(Decrease) in Deferred Revenue	71,394	(25,868)
Decrease in Contingent Liability	(200)	(1,200)
Increase in Actuarial Liability	107	202
Depreciation, Amortization, or Loss on Asset Dispositions	52,695	59,083
Total Adjustments	191,315	59,527
Net Cash Provided by Operating Activities	279,592	154,271
CASH FLOWS FROM INVESTING ACTIVITIES		
Purchases of Property and Equipment	(84,926)	(27,678)
Net Cash Used in Investing Activities	(84,926)	(27,678)
Net Cash Provided by Operating and Investing Activities	\$ 194,666	\$ 126,593
Fund Balance with Treasury and Cash, Beginning of Year	1,439,631	1,313,038
Net Cash Provided by Operating and Investing Activities	\$ 194,666	\$ 126,593
Fund Balance with Treasury and Cash, End of Year	\$ 1,634,297	\$ 1,439,631

The accompanying notes are an integral part of these consolidated financial statements.

UNITED STATES PATENT AND TRADEMARK OFFICE NOTES TO FINANCIAL STATEMENTS

As of and for the years ended September 30, 2011 and 2010

NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Reporting Entity

The United States Patent and Trademark Office (USPTO) is an agency of the United States within the U.S. Department of Commerce. The USPTO administers the laws relevant to patents and trademarks and advises the Secretary of Commerce, the President of the United States, and the Administration on patent, trademark, and copyright protection, and trade-related aspects of intellectual property.

These financial statements include the USPTO's three core business activities – granting patents, registering trademarks, and intellectual property policy, protection, and enforcement – that promote the use of intellectual property rights as a means of achieving economic prosperity. These activities give innovators, businesses, and entrepreneurs the protection and encouragement they need to turn their creative ideas into tangible products, and also provide protection for their inventions and trademarks.

These financial statements report the accounts for salaries and expenses (13X1006), special fund receipts (135127), customer deposits from the public and other federal agencies (13X6542), Patent Cooperation Treaty collections (13X6538), and the Madrid Protocol Collections (13X6554) that are under the control of the USPTO. The federal budget classifies the USPTO under the Other Advancement of Commerce (376) budget function. The USPTO does not have custodial responsibility, nor does it have lending or borrowing authority. The USPTO does not transact business among its own operating units, and therefore, no intra-entity eliminations are necessary.

The USPTO is not subject to federal, state, or local income taxes. Accordingly, no provision for income taxes is recorded.

Basis of Presentation

As required by the Chief Financial Officers' Act of 1990 and 31 United States Code (U.S.C.) §3515(b), the accompanying financial statements present the financial position, net cost of operations, budgetary resources, and cash flows for the USPTO's core business activities. The books and records of the USPTO serve as the source of this information.

These financial statements were prepared in accordance with accounting principles generally accepted in the United States (GAAP) and the form and content for entity financial statements specified by the Office of Management and Budget (OMB) in Circular A-136, *Financial Reporting Requirements*, as amended, as well as the accounting policies of the USPTO. Therefore, they may differ from other financial reports submitted pursuant to OMB directives for the purpose of monitoring and controlling the use of the USPTO's budgetary resources. The GAAP for federal entities are the standards prescribed by the Federal Accounting Standards Advisory Board, which is the official body for setting the accounting standards of the federal government.

Throughout these financial statements, assets, liabilities, revenues, and costs have been classified according to the type of entity with which the transactions are associated. Intra-governmental assets and liabilities are those from or to other federal entities. Intra-governmental earned revenues are collections or accruals of revenue from other federal entities and intra-governmental costs are payments or accruals to other federal entities.

Allocation transfers are legal delegations by one department of its authority to obligate budget authority and outlay funds to another department. A separate fund account (allocation account) is created in the U.S. Treasury as a subset of the parent fund account for tracking and reporting purposes. All allocation transfers of balances are credited to this account, and subsequent obligations and outlays incurred by the child entity are charged to this allocation account as they execute the delegated activity on behalf of the parent entity.

NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES *(Continued)*

Generally, all financial activity related to these allocation transfers (e.g., budget authority, obligations, and outlays) is reported in the financial statements of the parent entity, from which the underlying legislative authority, appropriations, and budget apportionments are derived. The USPTO does not receive any allocation transfers.

Basis of Accounting

Transactions are recorded on the accrual basis of accounting, as well as on a budgetary basis. Accrual accounting allows for revenue to be recognized when earned and expenses to be recognized when goods or services are received, without regard to the receipt or payment of cash. Budgetary accounting allows for compliance with the requirements for and controls over the use of federal funds. The accompanying financial statements are presented on the accrual basis of accounting.

Earmarked Funds

Statement of Federal Financial Accounting Standard (SFFAS) 27, *Identifying and Reporting Earmarked Funds*, requires separate identification of the earmarked funds on the *Consolidated Balance Sheets* (Net Position section), *Consolidated Statements of Changes in Net Position*, and further disclosures in a footnote (Note 14).

Earmarked funds are financed by specifically identified revenues, which remain available over time. These specifically identified revenues are required by statute to be used for designated activities, benefits, or purposes, and must be accounted for separately from the government's general revenues. At the USPTO, earmarked funds include the salaries and expenses fund (13X1006) and the special fund receipts (135127).

Fiduciary Activities

SFFAS 31, *Accounting for Fiduciary Activities*, requires that fiduciary activities not be recognized on the financial statements, but will be reported on schedules in the notes to the financial statements. Additional details are provided in Note 19.

Fiduciary cash and other assets are not assets of the federal government. Fiduciary activities are the collection or receipt, and the management, protection, accounting, and disposition by the federal government of cash or other assets in which non-federal individuals or entities have an ownership interest that the federal government must uphold. At the USPTO, fiduciary activities are recorded in the Patent Cooperation Treaty fund (13X6538) and the Madrid Protocol fund (13X6554).

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities as of the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from these estimates.

Revenue and Other Financing Sources

The USPTO's fee rates are established by law and, consequently, in some instances may not represent full cost or market price. Since FY 1993, the USPTO's funding has been primarily through the collection of user fees. Fees that are remitted with initial applications and requests for other services are recorded as exchange revenue when received, with an adjustment to defer revenue for services that have not been performed. All amounts remitted by customers without a request for service are recorded as liabilities in customer deposit accounts until services are ordered.

The USPTO also receives some financial gifts and gifts-in-kind. All such transactions are included in the consolidated Gifts and Bequests Fund financial statements of the U.S. Department of Commerce. These gifts are not of significant value and are not reflected in the USPTO's financial statements. Most gifts-in-kind are used for official travel to further attain the USPTO mission and objectives.

NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES *(Continued)***Entity/Non-Entity**

Assets that an entity is authorized to use in its operations are termed entity assets, while assets that are held by an entity and are not available for the entity's use are termed non-entity assets. Most of the USPTO's assets are entity assets and are available to carry out the mission of the USPTO, as appropriated by Congress, with the exception of a portion of the Fund Balance with Treasury and cash. Additional details are provided in Note 7.

Fund Balance with Treasury

The USPTO deposits fees collected in commercial bank accounts maintained by the Treasury's Financial Management Service (FMS). All moneys maintained in these accounts are transferred to the Federal Reserve Bank on the next business day following the day of deposit. In addition, many customer deposits are wired directly to the Federal Reserve Bank. All banking activity is conducted in accordance with the directives issued by the FMS. Treasury processes all disbursements. Additional details are provided in Note 2.

Accounts Receivable

Accounts receivable balances are established for amounts owed to the USPTO from its customers. The USPTO's accounts receivable balances are comprised of amounts due from former employees for the reimbursement of education expenses and other benefits, amounts due from foreign intellectual property offices for the reimbursement of services provided, amounts due from other federal agencies for the reimbursement of services provided, and other revenue-related receivables. This balance in accounts receivable remains as a very small portion of the USPTO's assets, as the USPTO requires payment prior to the provision of goods or services during the course of its core business activities. Additional details are provided in Note 3.

Advances and Prepayments

On occasion, the USPTO prepays amounts in anticipation of receiving future benefits. Although a payment has been made, an expense is not recorded until goods have been received or services have been performed. The USPTO has prepayments and advances with non-governmental, as well as governmental vendors. Additional details are provided in Note 6.

Cash

The USPTO's cash balance primarily consists of checks, electronic funds transfer, and credit card payments for deposits that are in transit and have not been credited to the USPTO's Fund Balance with Treasury. The cash balance also consists of undeposited checks for fees that were not processed at the Balance Sheet date due to the lag time between receipt and initial review. All such undeposited check amounts are considered to be cash equivalents. Cash is also held outside the Treasury to be used as imprest funds. Additional details are provided in Note 4.

NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES *(Continued)*

Property, Plant, and Equipment, Net

The USPTO's capitalization policies are summarized below:

Classes of Property, Plant, and Equipment	Capitalization Threshold for Individual Purchases	Capitalization Threshold for Bulk Purchases
IT Equipment	\$50 thousand or greater	\$250 thousand or greater
Software	\$50 thousand or greater	\$250 thousand or greater
Software in Progress	\$50 thousand or greater	\$250 thousand or greater
Furniture	\$50 thousand or greater	\$ 50 thousand or greater
Equipment	\$50 thousand or greater	\$250 thousand or greater
Leasehold Improvements	\$50 thousand or greater	Not applicable

Costs capitalized are recorded at actual historical cost. Depreciation is expensed on a straight-line (SL) basis over the estimated useful life of the asset with the exception of leasehold improvements, which are depreciated over the remaining life of the lease or over the useful life of the improvement, whichever is shorter. Additional details are provided in Note 5.

Contractor costs for developing custom internal use software are capitalized when incurred for the design, coding, and testing of the software. Software in progress is not amortized until placed in service.

Property, plant, and equipment acquisitions that do not meet the capitalization criteria are expensed upon receipt.

Workers' Compensation

Claims brought by USPTO employees for on-the-job injuries fall under the Federal Employees' Compensation Act (FECA) administered by the U.S. Department of Labor (DOL). The DOL bills each agency annually as its claims are paid, but payment on these bills is deferred approximately two years to allow for funding through the budget process.

Unemployment Compensation

USPTO employees who lose their jobs through no fault of their own may receive unemployment compensation benefits under the unemployment insurance program administered by the DOL. The DOL bills each agency quarterly as its claims are paid.

Annual, Sick, and Other Leave

Annual leave and compensatory time are accrued as earned, with the accrual being reduced when leave is taken. An adjustment is made each fiscal quarter to ensure that the balances in the accrued leave accounts reflect current pay rates. No portion of this liability has been obligated. To the extent current year funding is not available to pay for leave earned but not taken, funding will be obtained from future financing sources. Sick leave and other types of non-vested leave are expensed as used.

Employee Retirement Systems and Post-Employment Benefits

USPTO employees participate in either the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS). The FERS was established by the enactment of Pub. L. No. 99-335. Pursuant to this law, the FERS and Social Security automatically cover most employees hired after December 31, 1983. Employees who had five years of federal civilian service prior to 1984 and who are rehired after a break in service of more than one year may elect to join the FERS and Social Security system or be placed in the CSRS offset retirement system.

NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES *(Continued)*

The USPTO's financial statements do not report CSRS or FERS assets, accumulated plan benefits, or liabilities applicable to its employees. The reporting of such amounts is the responsibility of the U.S. Office of Personnel Management (OPM), who administers the plans. While the USPTO reported no liability for future payments to employees under these programs, the federal government is liable for future payments to employees through the OPM who administers these programs. The USPTO financial statements recognize a funded expense and an imputed cost for the USPTO's share of the costs to the federal government of providing pension, post-retirement health, and post-retirement life insurance benefits to all eligible USPTO employees. The USPTO's appropriation requires full funding of the present costs, as determined by the OPM, of post-retirement benefits for the Federal Employees Health Benefit Program (FEHB), the Federal Employees Group Life Insurance Program (FEGLI), and pensions under the CSRS. While ultimate administration of any post-retirement benefits or retirement system payments will continue to be administered by the OPM, the USPTO is responsible for the payment of the present value associated with these costs calculated using the OPM factors. Any difference between the OPM factors for funding purposes and the OPM factors for reporting purposes is recognized as an imputed cost. Additional details are provided in Note 13.

For the years ended September 30, 2011 and 2010, the USPTO made current year contributions through agency payroll contributions and quarterly supplemental payments to OPM equivalent to approximately 18.8 percent and 18.2 percent of the employee's basic pay for those employees covered by CSRS, based on OPM cost factors. For the years ended September 30, 2011 and 2010, the USPTO made current year contributions through agency payroll contributions and quarterly supplemental payments to OPM equivalent to approximately 11.7 percent and 11.2 percent of the employee's basic pay for those employees covered by FERS, based on OPM cost factors, respectively.

All employees are eligible to contribute to a Thrift Savings Plan. For those employees participating in the FERS, a Thrift Savings Plan is automatically established, and the USPTO makes a mandatory contribution to this plan equal to one percent of the employees' compensation. In addition, the USPTO makes matching contributions ranging from one to four percent of the employees' compensation for FERS-eligible employees who contribute to their Thrift Savings Plans. No matching contributions are made to the Thrift Savings Plans for employees participating in the CSRS. Employees participating in the FERS are also covered under the Federal Insurance Contributions Act (FICA), for which the USPTO contributes a matching amount to the Social Security Administration.

Deferred Revenue

Deferred revenue represents fees that have been received by the USPTO for requested services that have not been substantially completed. Two types of deferred revenue are recorded. The first type results from checks received, accompanied by requests for services, which were not yet deposited due to the lag time between receipt and initial review. The second type of deferred revenue relates primarily to fees for applications that have been partially processed. The deferred revenue calculation is a complex accounting estimate, dependent upon numerous business and administrative processes, workloads, and inventories. Additional details are provided in Note 9.

Environmental Cleanup

The USPTO does not have any liabilities for environmental cleanup.

NOTE 2. FUND BALANCE WITH TREASURY

As of September 30, 2011 and 2010, Fund Balance with Treasury consisted of the following:

(Dollars in Thousands)	2011	2010
Fund Balances by Treasury Fund Type:		
Special Funds	\$ 233,529	\$ 233,529
General Funds	1,292,820	1,101,228
Deposit Funds	104,857	101,675
Total Fund Balance with Treasury	\$ 1,631,206	\$ 1,436,432
Status of Fund Balance with Treasury:		
Obligated Balance Not Yet Disbursed	\$ 325,030	\$ 297,324
Unobligated Balance Available	177,705	222,674
Temporarily Not Available Pursuant to Public Law	790,085	581,230
Non-Budgetary Fund Balance with Treasury	338,386	335,204
Total Fund Balance with Treasury	\$ 1,631,206	\$ 1,436,432

No discrepancies exist between the Fund Balance reflected in the general ledger and the balance in the Treasury accounts.

As of September 30, 2011 and 2010, the Non-Budgetary Fund Balance with Treasury includes surcharge receipts of \$233,529 thousand and non-entity customer deposit accounts of \$104,857 thousand and \$101,675 thousand, respectively.

NOTE 3. ACCOUNTS RECEIVABLE, NET

As of September 30, 2011 and 2010, USPTO accounts receivables consisted of the following:

(Dollars in Thousands)	2011		
	Accounts Receivable, Gross	Allowance for Uncollectible Accounts	Accounts Receivable, Net
Intragovernmental	\$ 296	\$ —	\$ 296
With the Public	\$ 336	\$ (198)	\$ 138

(Dollars in Thousands)	2010		
	Accounts Receivable, Gross	Allowance for Uncollectible Accounts	Accounts Receivable, Net
Intragovernmental	\$ 608	\$ —	\$ 608
With the Public	\$ 385	\$ (235)	\$ 150

NOTE 4. CASH

As of September 30, 2011 and 2010, cash consisted of the following:

(Dollars in Thousands)	2011	2010
Deposits in Transit	\$ 2,790	\$ 2,747
Undeposited Collections	301	451
Imprest Funds	—	1
Total	\$ 3,091	\$ 3,199

NOTE 5. PROPERTY, PLANT, AND EQUIPMENT, NET

As of September 30, 2011, property, plant, and equipment, net consisted of the following:

(Dollars in Thousands)					
Classes of Property, Plant, and Equipment	Depreciation/ Amortization Method	Service Life (Years)	Acquisition Value	Accumulated Depreciation/ Amortization	Net Book Value
IT Equipment	SL	3-5	\$ 362,755	\$ 269,654	\$ 93,101
Software	SL	3-5	294,365	263,549	30,816
Software in Progress	—	—	14,573	—	14,573
Furniture	SL	5-7	15,579	13,005	2,574
Equipment	SL	3-8	13,461	13,210	251
Leasehold Improvements	SL	5-20	99,747	34,434	65,313
Total Property, Plant, and Equipment			\$ 800,480	\$ 593,852	\$ 206,628

As of September 30, 2010, property, plant, and equipment, net consisted of the following:

(Dollars in Thousands)					
Classes of Property, Plant, and Equipment	Depreciation/ Amortization Method	Service Life (Years)	Acquisition Value	Accumulated Depreciation/ Amortization	Net Book Value
IT Equipment	SL	3-5	\$ 291,893	\$ 249,092	\$ 42,801
Software	SL	3-5	280,916	246,359	34,557
Software in Progress	—	—	22,763	—	22,763
Furniture	SL	5-7	23,265	18,433	4,832
Equipment	SL	3-8	13,738	12,405	1,333
Leasehold Improvements	SL	5-20	97,218	29,107	68,111
Total Property, Plant, and Equipment			\$ 729,793	\$ 555,396	\$ 174,397

NOTE 6. OTHER ASSETS

As of September 30, 2011 and 2010, other assets consisted of the following:

(Dollars in Thousands)	2011	2010
Intragovernmental		
Advances and Prepayments	\$ 2,053	\$ 2,988
With the Public		
Advances and Prepayments	10,085	10,179
Total	\$ 12,138	\$ 13,167

The largest governmental prepayments include the USPTO deposit accounts held with the U.S. Government Printing Office (GPO) to facilitate recurring transactions and the U.S. Postal Service for postage. Deposit accounts held with the GPO as of September 30, 2011 and 2010 were \$750 thousand and \$1,436 thousand, respectively. Deposit accounts held with the U.S. Postal Service as of September 30, 2011 and 2010 were \$576 thousand and \$880 thousand, respectively.

The largest prepayments with the public as of September 30, 2011 and 2010 were \$5,898 and \$6,005 thousand for various hardware and software maintenance agreements; \$1,201 thousand and \$1,136 thousand for various library and online database subscriptions; and \$2,871 thousand and \$2,870 thousand for various joint project agreements with the National Inventors Hall of Fame, the International Intellectual Property Institute, the World Intellectual Property Organization (WIPO), the Light Years IP, the Innovators Network Foundation, and the Institute for Policy Innovation, respectively. Travel advances to personnel as of September 30, 2011 and 2010 were \$2 thousand and \$6 thousand, respectively.

NOTE 7. ENTITY AND NON-ENTITY ASSETS

Non-entity assets are amounts held on deposit for the convenience of the USPTO's customers.

Customers have the option of maintaining a deposit account at the USPTO to facilitate the order process. Customers can draw from their deposit account when they place an order and can replenish their deposit account as desired. Funds maintained in customer deposit accounts are not available for the USPTO use until an order has been placed. Once an order has been placed, the funds are reclassified to entity funds.

As of September 30, 2011 and 2010, entity and non-entity assets consisted of the following:

(Dollars in Thousands)	2011	2010
Fund Balance with Treasury:		
Intragovernmental Deposit Accounts	\$ 6,170	\$ 5,823
Customer Deposit Accounts with the Public	98,687	95,852
Total Fund Balance with Treasury	104,857	101,675
Cash:		
Customer Deposit Accounts with the Public	727	629
Total Non-Entity Assets	105,584	102,304
Total Entity Assets	1,747,913	1,525,649
Total Assets	\$ 1,853,497	\$ 1,627,953

NOTE 8. LIABILITIES COVERED AND NOT COVERED BY BUDGETARY RESOURCES

The USPTO records liabilities for amounts that are likely to be paid as the direct result of events that have already occurred. The USPTO considers liabilities covered by three types of resources: realized budgetary resources; unrealized budgetary resources that become available without further Congressional action; and cash and Fund Balance with Treasury. Realized budgetary resources include obligated balances funding existing liabilities and unobligated balances as of September 30, 2011. Unrealized budgetary resources are amounts that were not available for spending through September 30, 2011, but become available for spending on October 1, 2011 once apportioned by the OMB. In addition, cash and Fund Balance with Treasury cover liabilities that will never require the use of a budgetary resource. These liabilities consist of deposit accounts, refunds payable to customers for fee overpayments, and undeposited collections.

Liabilities not covered by budgetary resources include Accrued Workers' Compensation, Accounts Payable, Accrued Payroll and Benefits, Accrued Leave, Deferred Revenue, Actuarial Liability, and Contingent Liability. Although future appropriations to fund these liabilities are probable and anticipated, Congressional action is needed before budgetary resources can be provided.

As of September 30, 2011 and 2010, liabilities covered and not covered by budgetary resources were as follows:

(Dollars in Thousands)	2011	2010
Liabilities Covered by Resources		
Intragovernmental:		
Accounts Payable	\$ 5,631	\$ 4,732
Accrued Payroll and Benefits	15,247	12,974
Accrued Unemployment Compensation	79	186
Customer Deposit Accounts	6,170	5,823
Total Intragovernmental	27,127	23,715
Accounts Payable	79,923	65,382
Accrued Payroll and Benefits	70,900	58,114
Customer Deposit Accounts	99,414	96,481
Deferred Revenue	178,006	223,125
Total Liabilities Covered by Resources	\$ 455,370	\$ 466,817
Liabilities Not Covered by Resources		
Intragovernmental:		
Accrued Workers' Compensation	\$ 1,790	\$ 1,692
Total Intragovernmental	1,790	1,692
Accounts Payable	86	—
Accrued Payroll and Benefits	41,003	36,359
Accrued Leave	76,806	71,018
Deferred Revenue	667,776	551,263
Actuarial Liability	8,406	8,299
Contingent Liability	—	200
Total Liabilities Not Covered by Resources	\$ 795,867	\$ 668,831
Total Liabilities	\$ 1,251,237	\$ 1,135,648

NOTE 9. DEFERRED REVENUE

As of September 30, 2011, deferred revenue consisted of the following:

(Dollars in Thousands)	Patent	Trademark	Total
Unearned Fees	\$ 780,623	\$ 64,858	\$ 845,481
Undeposited Checks	271	30	301
Total Deferred Revenue	\$ 780,894	\$ 64,888	\$ 845,782

As of September 30, 2010, deferred revenue consisted of the following:

(Dollars in Thousands)	Patent	Trademark	Total
Unearned Fees	\$ 710,807	\$ 63,130	\$ 773,937
Undeposited Checks	403	48	451
Total Deferred Revenue	\$ 711,210	\$ 63,178	\$ 774,388

NOTE 10. ACTUARIAL LIABILITY

The FECA provides income and medical cost protection to covered federal civilian employees injured on the job and for those who have contracted a work-related occupational disease, and beneficiaries of employees whose death is attributable to a job-related injury or occupational disease. Claims incurred for benefits under the FECA for the USPTO's employees are administered by the DOL and are paid ultimately by the USPTO.

The DOL estimated the future workers compensation liability by applying actuarial procedures developed to estimate the liability for FECA benefits. The actuarial liability estimates for FECA benefits include the expected liability for death, disability, medical, and miscellaneous costs for approved compensation cases, plus a component for incurred but not reported claims. The actuarial liability is updated annually.

The DOL method of determining the liability uses historical benefit payment patterns for a specific incurred period to predict the ultimate payments for that period. Consistent with past practice, these projected annual benefit payments have been discounted to present value using the OMB's economic assumptions for ten-year Treasury notes and bonds. Interest rate assumptions utilized for discounting were as follows:

2011	2010
3.54% in year 1, 4.03% in year 2, and thereafter	3.65% in year 1, 4.30% in year 2, and thereafter

Based on information provided by the DOL, the U.S. Department of Commerce estimated the USPTO's liability as of September 30, 2011 and 2010 was \$8,406 thousand and \$8,299 thousand, respectively.

NOTE 11. LEASES

Operating Leases:

The General Services Administration (GSA) negotiates long-term office space leases and levies rent charges, paid by the USPTO, approximate to commercial rental rates. These operating lease agreements for the USPTO's office buildings expire at various dates between FY 2014 and FY 2024. During the years ended September 30, 2011 and 2010, the USPTO paid \$89,762 thousand and \$91,876 thousand, respectively, to the GSA for rent.

Under existing commitments, the future minimum lease payments as of September 30, 2011 are as follows:

Fiscal Year	(Dollars in Thousands)
2012	\$ 67,479
2013	67,630
2014	65,720
2015	64,827
2016	63,341
Thereafter	452,828
Total Future Minimum Lease Payments	\$ 781,825

The commitments shown above relate primarily to the operating lease for the USPTO headquarters in Alexandria, Virginia, beginning in FY 2004 and extending to FY 2024. The operating lease commitments for the USPTO offices in Shirlington, Virginia are also included above, which will expire in FY 2019.

NOTE 12. COMMITMENTS AND CONTINGENCIES

The USPTO is a party to various routine administrative proceedings, legal actions, and claims brought by or against it, including threatened or pending litigation involving labor relations claims, some of which may ultimately result in settlements or decisions against the federal government.

As of September 30, 2011, management expects it is reasonably possible that approximately \$83,726 thousand may be owed for awards or damages involving labor relations claims. As of September 30, 2010, management expects it is reasonably possible that approximately \$85,612 thousand may be owed for awards or damages involving labor relations claims.

As of September 30, 2011, the USPTO was not subject to any suits where adverse outcomes are probable. The USPTO was subject to suits where adverse outcomes were probable and claims were \$200 thousand as of September 30, 2010.

For the years ended September 30, 2011 and 2010, the USPTO was not required to make any payments to the Judgment Fund.

As of September 30, 2011 and 2010, the USPTO did not have any major long-term commitments.

NOTE 13. POST-EMPLOYMENT BENEFITS

For the years ended September 30, 2011 and 2010, the post-employment benefit expenses were as follows:

(Dollars in Thousands)	2011			2010		
	Funded	Imputed	Total	Funded	Imputed	Total
CSRS	\$ 12,446	\$ 2,801	\$ 15,247	\$ 12,610	\$ 3,435	\$ 16,045
FERS	112,076	12,890	124,966	96,424	15,711	112,135
FEHB	51,387	3,233	54,620	48,253	2,621	50,874
FEGLI	172	—	172	160	—	160
FICA	71,170	—	71,170	66,811	—	66,811
Total Cost	\$ 247,251	\$ 18,924	\$ 266,175	\$ 224,258	\$ 21,767	\$ 246,025

NOTE 14. EARMARKED FUNDS

Earmarked funds are financed by specifically identified revenues, which remain available over time. These specifically identified revenues are required by statute to be used for designated activities, benefits, or purposes, and must be accounted for separately from the government's general revenues. At the USPTO, earmarked funds include the salaries and expenses fund and the special fund receipts. Non-entity funds, as disclosed in Note 7, are not earmarked funds and are therefore excluded from the below amounts.

The following tables provide the status of the USPTO's earmarked funds as of and for the years ended September 30, 2011 and 2010.

(Dollars in Thousands)	Salaries and Expenses Fund	Surcharge Fund	Total Earmarked Funds
Balance Sheet as of September 30, 2011			
Fund Balance with Treasury	\$ 1,292,820	\$ 233,529	\$ 1,526,349
Cash	2,364	—	2,364
Accounts Receivable, Net	434	—	434
Other Assets	218,766	—	218,766
Total Assets	\$ 1,514,384	\$ 233,529	\$ 1,747,913
Total Liabilities	\$ 1,145,653	\$ —	\$ 1,145,653
Cumulative Results of Operations	368,731	233,529	602,260
Total Liabilities and Net Position	\$ 1,514,384	\$ 233,529	\$ 1,747,913
Statement of Net Cost For the Year Ended September 30, 2011			
Total Program Cost	\$ 2,148,097	\$ —	\$ 2,148,097
Less Earned Revenue	(2,236,374)	—	(2,236,374)
Net Income from Operations	\$ (88,277)	\$ —	\$ (88,277)
Statement of Changes in Net Position For the Year Ended September 30, 2011			
Net Position, Beginning of Year	\$ 258,776	\$ 233,529	\$ 492,305
Other Financing Sources:			
Imputed Financing	21,678	—	21,678
Net Income from Operations	88,277	—	88,277
Change in Net Position	109,955	—	109,955
Net Position, End of Year	\$ 368,731	\$ 233,529	\$ 602,260

NOTE 14. EARMARKED FUNDS *(Continued)*

(Dollars in Thousands)	Salaries and Expenses Fund	Surcharge Fund	Total Earmarked Funds
Balance Sheet as of September 30, 2010			
Fund Balance with Treasury	\$ 1,101,228	\$ 233,529	\$ 1,334,757
Cash	2,570	—	2,570
Accounts Receivable, Net	758	—	758
Other Assets	187,564	—	187,564
Total Assets	\$ 1,292,120	\$ 233,529	\$ 1,525,649
Total Liabilities	\$ 1,033,344	\$ —	\$ 1,033,344
Cumulative Results of Operations	258,776	233,529	492,305
Total Liabilities and Net Position	\$ 1,292,120	\$ 233,529	\$ 1,525,649
Statement of Net Cost For the Year Ended September 30, 2010			
Total Program Cost	\$ 2,006,938	\$ —	\$ 2,006,938
Less Earned Revenue	(2,101,682)	—	(2,101,682)
Net Income from Operations	\$ (94,744)	\$ —	\$ (94,744)
Statement of Changes in Net Position For the Year Ended September 30, 2010			
Net Position, Beginning of Year	\$ 142,265	\$ 233,529	\$ 375,794
Other Financing Sources:			
Imputed Financing	21,767	—	21,767
Net Income from Operations	94,744	—	94,744
Change in Net Position	116,511	—	116,511
Net Position, End of Year	\$ 258,776	\$ 233,529	\$ 492,305

The *Salaries and Expenses Fund* contains moneys used for the administering of the laws relevant to patents and trademarks and advising the Secretary of Commerce, the President of the United States, and the Administration on patent, trademark, and copyright protection, and trade-related aspects of intellectual property. This fund is used for the USPTO's three core business activities – granting patents, registering trademarks, and intellectual property policy, protection, and enforcement – that promote the use of intellectual property rights as a means of achieving economic prosperity. These activities give innovators, businesses, and entrepreneurs the protection and encouragement they need to turn their creative ideas into tangible products, and also provide protection for their inventions and trademarks. The USPTO may use moneys from this account only as authorized by Congress via appropriations.

The *Surcharge Fund* was created through the Patent and Trademark Office Surcharge provision in the Omnibus Budget Reconciliation Act (OBRA) of 1990 (Section 10101, Pub. L. No. 101-508). This required that the USPTO impose a surcharge on certain patent fees and set in statute the amounts of money that the USPTO should deposit in a special fund receipt account at the U.S. Department of the Treasury. This surcharge expired at the end of FY 1998. The USPTO may use moneys from this account only as authorized by Congress, and only as made available by the issuance of a Treasury warrant.

NOTE 15. INTRAGOVERNMENTAL COSTS AND EXCHANGE REVENUE

Total intragovernmental costs and exchange revenue, by Strategic Goal, for the years ended September 30, 2011 and 2010 were as follows:

(Dollars in Thousands)	2011			
	Patent	Trademark	Intellectual Property Protection	Total
Strategic Goal 1: Optimize Patent Quality and Timeliness				
Intragovernmental Gross Cost	\$ 406,294	\$ —	\$ —	\$ 406,294
Gross Cost with the Public	1,507,060	—	—	1,507,060
Total Program Cost	1,913,354	—	—	1,913,354
Intragovernmental Earned Revenue	(7,572)	—	—	(7,572)
Earned Revenue from the Public	(1,997,697)	—	—	(1,997,697)
Total Program Earned Revenue	(2,005,269)	—	—	(2,005,269)
Net Program Income	\$ (91,915)	\$ —	\$ —	\$ (91,915)
Strategic Goal 2: Optimize Trademark Quality and Timeliness				
Intragovernmental Gross Cost	\$ —	\$ 40,719	\$ —	\$ 40,719
Gross Cost with the Public	—	151,041	—	151,041
Total Program Cost	—	191,760	—	191,760
Intragovernmental Earned Revenue	—	(488)	—	(488)
Earned Revenue from the Public	—	(230,617)	—	(230,617)
Total Program Earned Revenue	—	(231,105)	—	(231,105)
Net Program Income	\$ —	\$ (39,345)	\$ —	\$ (39,345)
Strategic Goal 3: Provide Domestic and Global Leadership to Improve Intellectual Property Policy, Protection and Enforcement Worldwide				
Intragovernmental Gross Cost	\$ —	\$ —	\$ 9,127	\$ 9,127
Gross Cost with the Public	—	—	33,856	33,856
Total Program Cost	—	—	42,983	42,983
Net (Income)/Cost from Operations	\$ (91,915)	\$ (39,345)	\$ 42,983	\$ (88,277)
Total Entity				
Total Program Cost (Notes 16 and 17)	\$ 1,913,354	\$ 191,760	\$ 42,983	\$ 2,148,097
Total Earned Revenue	(2,005,269)	(231,105)	—	(2,236,374)
Net (Income)/Cost from Operations	\$ (91,915)	\$ (39,345)	\$ 42,983	\$ (88,277)

NOTE 15. INTRAGOVERNMENTAL COSTS AND EXCHANGE REVENUE *(Continued)*

(Dollars in Thousands)	2010			
	Patent	Trademark	Intellectual Property Protection	Total
Strategic Goal 1: Optimize Patent Quality and Timeliness				
Intragovernmental Gross Cost	\$ 377,272	\$ —	\$ —	\$ 377,272
Gross Cost with the Public	1,400,599	—	—	1,400,599
Total Program Cost	1,777,871	—	—	1,777,871
Intragovernmental Earned Revenue	(8,652)	—	—	(8,652)
Earned Revenue from the Public	(1,878,886)	—	—	(1,878,886)
Total Program Earned Revenue	(1,887,538)	—	—	(1,887,538)
Net Program Income	\$ (109,667)	\$ —	\$ —	\$ (109,667)
Strategic Goal 2: Optimize Trademark Quality and Timeliness				
Intragovernmental Gross Cost	\$ —	\$ 38,741	\$ —	\$ 38,741
Gross Cost with the Public	—	143,824	—	143,824
Total Program Cost	—	182,565	—	182,565
Intragovernmental Earned Revenue	—	(723)	—	(723)
Earned Revenue from the Public	—	(213,421)	—	(213,421)
Total Program Earned Revenue	—	(214,144)	—	(214,144)
Net Program Income	\$ —	\$ (31,579)	\$ —	\$ (31,579)
Strategic Goal 3: Provide Domestic and Global Leadership to Improve Intellectual Property Policy, Protection and Enforcement Worldwide				
Intragovernmental Gross Cost	\$ —	\$ —	\$ 9,868	\$ 9,868
Gross Cost with the Public	—	—	36,634	36,634
Total Program Cost	—	—	46,502	46,502
Net (Income)/Cost from Operations	\$ (109,667)	\$ (31,579)	\$ 46,502	\$ (94,744)
Total Entity				
Total Program Cost (Notes 16 and 17)	\$ 1,777,871	\$ 182,565	\$ 46,502	\$ 2,006,938
Total Earned Revenue	(1,887,538)	(214,144)	—	(2,101,682)
Net (Income)/Cost from Operations	\$ (109,667)	\$ (31,579)	\$ 46,502	\$ (94,744)

Intragovernmental expenses relate to the source of the goods or services, not the classification of the related revenue.

NOTE 16. PROGRAM COSTS

Program costs consist of both costs related directly to the individual business lines and overall support costs allocated to the business lines. All costs are assigned to specific programs. Total program or operating costs for the years ended September 30, 2011 and 2010 by cost category were as follows:

(Dollars in Thousands)	2011		
	Direct	Allocated	Total
Personnel Services and Benefits	\$ 1,411,130	\$ 102,855	\$ 1,513,985
Travel and Transportation	1,726	591	2,317
Rent, Communications, and Utilities	82,185	31,282	113,467
Printing and Reproduction	90,510	366	90,876
Contractual Services	155,394	140,174	295,568
Training	716	845	1,561
Maintenance and Repairs	3,792	31,795	35,587
Supplies and Materials	33,030	903	33,933
Equipment not Capitalized	1,866	5,960	7,826
Insurance Claims and Indemnities	282	—	282
Depreciation, Amortization, or Loss on Asset Dispositions	21,219	31,476	52,695
Total Program Costs	\$ 1,801,850	\$ 346,247	\$ 2,148,097

(Dollars in Thousands)	2010		
	Direct	Allocated	Total
Personnel Services and Benefits	\$ 1,303,805	\$ 95,599	\$ 1,399,404
Travel and Transportation	1,877	720	2,597
Rent, Communications, and Utilities	86,042	28,887	114,929
Printing and Reproduction	77,742	309	78,051
Contractual Services	181,474	113,850	295,324
Training	569	846	1,415
Maintenance and Repairs	4,145	35,727	39,872
Supplies and Materials	9,736	961	10,697
Equipment not Capitalized	1,309	3,860	5,169
Insurance Claims and Indemnities	308	89	397
Depreciation, Amortization, or Loss on Asset Dispositions	33,269	25,814	59,083
Total Program Costs	\$ 1,700,276	\$ 306,662	\$ 2,006,938

The unfunded portion of personnel services and benefits for the years ended September 30, 2011 and 2010 was \$10,638 thousand and \$13,149 thousand, respectively.

NOTE 17. PROGRAM COSTS BY CATEGORY AND RESPONSIBILITY SEGMENT

The program costs for the years ended September 30, 2011 and 2010 by cost category and business line were as follows:

(Dollars in Thousands)	2011			
	Patent	Trademark	Intellectual Property Protection	Total
Direct Costs				
Personnel Services and Benefits	\$ 1,281,576	\$ 112,142	\$ 17,412	\$ 1,411,130
Travel and Transportation	306	114	1,306	1,726
Rent, Communications, and Utilities	72,679	7,135	2,371	82,185
Printing and Reproduction	90,208	300	2	90,510
Contractual Services	129,991	10,700	14,703	155,394
Training	372	318	26	716
Maintenance and Repairs	1,947	1,791	54	3,792
Supplies and Materials	31,707	1,056	267	33,030
Equipment not Capitalized	1,428	374	64	1,866
Insurance Claims and Indemnities	282	—	—	282
Depreciation, Amortization, or Loss on Asset Dispositions	17,726	3,290	203	21,219
Subtotal Direct Costs	\$ 1,628,222	\$ 137,220	\$ 36,408	\$ 1,801,850
Allocated Costs				
Automation	\$ 145,308	\$ 31,915	\$ 1,288	\$ 178,511
Resource Management	139,824	22,625	5,287	167,736
Subtotal Allocated Costs	\$ 285,132	\$ 54,540	\$ 6,575	\$ 346,247
Total Program Costs	\$ 1,913,354	\$ 191,760	\$ 42,983	\$ 2,148,097

The unfunded portion of personnel services and benefits for the year ended September 30, 2011 was \$10,638 thousand.

NOTE 17. PROGRAM COSTS BY CATEGORY AND RESPONSIBILITY SEGMENT *(Continued)*

(Dollars in Thousands)	2010			
	Patent	Trademark	Intellectual Property Protection	Total
Direct Costs				
Personnel Services and Benefits	\$ 1,172,190	\$ 111,862	\$ 19,753	\$ 1,303,805
Travel and Transportation	195	105	1,577	1,877
Rent, Communications, and Utilities	76,690	6,725	2,627	86,042
Printing and Reproduction	77,611	119	12	77,742
Contractual Services	160,082	10,671	10,721	181,474
Training	306	225	38	569
Maintenance and Repairs	2,274	1,777	94	4,145
Supplies and Materials	9,183	336	217	9,736
Equipment not Capitalized	880	384	45	1,309
Insurance Claims and Indemnities	292	16	—	308
Depreciation, Amortization, or Loss on Asset Dispositions	28,848	4,081	340	33,269
Subtotal Direct Costs	\$ 1,528,551	\$ 136,301	\$ 35,424	\$ 1,700,276
Allocated Costs				
Automation	\$ 131,047	\$ 25,176	\$ 2,640	\$ 158,863
Resource Management	118,273	21,088	8,438	147,799
Subtotal Allocated Costs	\$ 249,320	\$ 46,264	\$ 11,078	\$ 306,662
Total Program Costs	\$ 1,777,871	\$ 182,565	\$ 46,502	\$ 2,006,938

The unfunded portion of personnel services and benefits for the year ended September 30, 2010 was \$13,149 thousand.

NOTE 18. BUDGETARY RESOURCES

Total budgetary resources are primarily comprised of Congressional authority to spend current year fee collections. In FY 2011, the USPTO was appropriated up to \$2,090,000 thousand for fees collected during the fiscal year. In FY 2010, the USPTO was appropriated up to \$1,887,000 thousand for fees collected during the fiscal year. However, as FY 2010 progressed, fee collections exceeded the anticipated amounts. As a result, the USPTO was issued a supplemental appropriation (Pub. L. No. 111-224) in FY 2010, thereby increasing the available amount of fee collections for use to \$2,016,000 thousand. For the year ended September 30, 2011, the USPTO collected \$177,182 thousand more than the amount apportioned through September 30, 2011 (over-collections of fees of \$208,856 thousand and under-collections of other budgetary resources of \$31,674 thousand). For the year ended September 30, 2010, the USPTO collected \$46,082 thousand more than the amount apportioned through September 30, 2010 (over-collections of fees of \$52,543 thousand and under-collections of other budgetary resources of \$6,461 thousand).

The USPTO receives an apportionment of Category A funds from OMB, which apportions budgetary resources by fiscal quarter. The USPTO does not receive any Category B funds, or those exempt from apportionment.

PERMANENT INDEFINITE APPROPRIATIONS

Permanent indefinite appropriations are open-ended; that is, the dollar amount is unknown at the time the authority is granted. These appropriations are available for specific purposes without current year action by Congress. In addition to the appropriation of fee collections mentioned above, the USPTO received a permanent indefinite appropriation in the America Invents Act (Pub. L. No. 112-29). The permanent indefinite appropriation is comprised of offsetting collections for (1) a 15 percent interim surcharge on certain patent fees that will continue until each fee is adjusted by regulation and (2) fees paid by patent applicants to request expedited, prioritized examination. These offsetting collections are deposited in the salaries and expenses (13X1006) no year fund. For the year ended September 30, 2011, the USPTO collected \$4,801 thousand in accordance with the permanent indefinite appropriation.

FUNDING LIMITATIONS

Pursuant to the *Patent and Trademark Office Fee Fairness Act of 1999* (35 U.S.C. §42(c)), all fees available to the Director under section 31 of the Trademark Act of 1946 are used only for the processing of trademark registrations and for other activities, services, and materials relating to trademarks, as well as to cover a proportionate share of the administrative costs of the USPTO.

In addition, the FY 2009 appropriation language restricted from obligation \$5,000 thousand of offsetting collections until "the USPTO has completed a comprehensive review of the assumptions behind the patent examiner expectancy goals and adopted a revised set of expectancy goals for patent examination". These restricted funds were released and made available in the third quarter of FY 2011.

The total temporarily unavailable fee collections pursuant to Public Law as of September 30, 2011 are \$1,023,614 thousand. Of this amount, certain USPTO collections of \$233,529 thousand were withheld in accordance with the OBRA of 1990, and deposited in a special fund receipt account at the U.S. Department of the Treasury.

UNDELIVERED ORDERS

In addition to the future lease commitments discussed in Note 11, the USPTO is obligated for the purchase of goods and services that have been ordered, but not yet received. Total undelivered orders for all of the USPTO's activities were \$165,684 thousand and \$169,709 thousand as of September 30, 2011 and 2010, respectively. Of these amounts, \$153,546 thousand and \$156,542 thousand, respectively, were unpaid.

NOTE 19. FIDUCIARY ACTIVITIES

Fiduciary activities are the collection or receipt, and the management, protection, accounting, and disposition by the federal government of cash or other assets in which non-federal individuals or entities have an ownership interest that the federal government must uphold. Fiduciary cash and other assets are not assets of the federal government and accordingly are not recognized on the proprietary financial statements.

The Patent Cooperation Treaty authorized the USPTO to collect patent filing and search fees on behalf of the WIPO, EPO, Korean Intellectual Property Office, and the Australian Patent Office from U.S. citizens requesting an international patent. The Madrid Protocol Implementation Act authorized the USPTO to collect trademark application fees on behalf of the International Bureau of the WIPO from U.S. citizens requesting an international trademark.

Schedule of Fiduciary Activity For the years ended September 30, 2011 and 2010

(Dollars in Thousands)	2011			2010		
	Patent Cooperation Treaty	Madrid Protocol	Total Fiduciary Funds	Patent Cooperation Treaty	Madrid Protocol	Total Fiduciary Funds
Fiduciary Net Assets, Beginning of Year	\$ 9,452	\$ 576	\$ 10,028	\$ 9,134	\$ 452	\$ 9,586
Contributions	131,755	14,551	146,306	121,679	9,923	131,602
Disbursements To and on Behalf of Beneficiaries	(128,343)	(14,789)	(143,132)	(121,361)	(9,799)	(131,160)
Increase/(Decrease) in Fiduciary Net Assets	3,412	(238)	3,174	318	124	442
Fiduciary Net Assets, End of Year	\$ 12,864	\$ 338	\$ 13,202	\$ 9,452	\$ 576	\$ 10,028

Fiduciary Net Assets As of September 30, 2011 and 2010

(Dollars in Thousands)	2011			2010		
	Patent Cooperation Treaty	Madrid Protocol	Total Fiduciary Funds	Patent Cooperation Treaty	Madrid Protocol	Total Fiduciary Funds
Cash and Cash Equivalents	\$ 12,864	\$ 338	\$ 13,202	\$ 9,452	\$ 576	\$ 10,028
Total Fiduciary Net Assets	\$ 12,864	\$ 338	\$ 13,202	\$ 9,452	\$ 576	\$ 10,028

NOTE 20. RECONCILIATION OF NET COST OF OPERATIONS TO BUDGET

Most entity transactions are recorded in both budgetary and proprietary accounts. However, because different accounting bases are used for budgetary and proprietary accounting, some transactions may appear in only one set of accounts. The following reconciliation provides a means to identify the relationships and differences that exist between the aforementioned budgetary and proprietary accounts.

The reconciliation of net cost of operations to budget for the years ended September 30, 2011 and 2010 is as follows:

(Dollars in Thousands)	2011	2010
RESOURCES USED TO FINANCE ACTIVITIES		
Budgetary Resources Obligated:		
Obligations Incurred	\$ 2,160,895	\$ 1,938,958
Spending Authority from Offsetting Collections and Recoveries	(2,324,782)	(2,095,483)
Net Obligations	(163,887)	(156,525)
Other Resources		
Imputed Financing from Cost Absorbed by Others	21,678	21,767
Total Resources Used to Finance Activities	(142,209)	(134,758)
RESOURCES USED TO FINANCE ITEMS NOT PART OF THE NET COST OF OPERATIONS		
Change in Budgetary Resources Obligated for Goods, Services and Benefits Ordered but not yet Provided	4,025	22,840
Resources that Fund Costs Recognized in Prior Periods	(200)	(1,363)
Budgetary Offsetting Collections that do not Affect Net Cost of Operations	71,600	(26,161)
Resources that Finance the Acquisition of Assets Capitalized on the Balance Sheet	(84,926)	(27,678)
Total Resources Used to Finance Items not Part of the Net Cost of Operations	(9,501)	(32,362)
COMPONENTS OF NET COST OF OPERATIONS THAT WILL NOT REQUIRE OR GENERATE RESOURCES IN THE CURRENT PERIOD		
Components Requiring or Generating Resources in Future Periods:		
Costs that will be Funded by Resources in Future Periods	10,725	13,148
Net Increase in Revenue Receivables not Generating Resources until Collected	(30)	(28)
Total Components of Net Cost of Operations that will Require or Generate Resources in Future Periods	10,695	13,120
Components not Requiring or Generating Resources:		
Depreciation, Amortization, or Loss on Asset Dispositions	52,695	59,083
Other Costs that will not Require Resources	43	173
Total Components of Net Cost of Operations that will not Require or Generate Resources	52,738	59,256
Total Components of Net Cost of Operations that will not Require or Generate Resources in the Current Period	63,433	72,376
Net Income from Operations	\$ (88,277)	\$ (94,744)

Independent Auditors' Report





UNITED STATES DEPARTMENT OF COMMERCE
The Inspector General
Washington, D.C. 20230

November 9, 2011

MEMORANDUM FOR: David Kappos
Under Secretary of Commerce for Intellectual Property and
Director of the U.S. Patent and Trademark Office

FROM: Todd J. Zinser

SUBJECT: FY 2011 Financial Statements
Final Report No. OIG-12-006-A

I am pleased to provide you with the attached audit report, which presents an unqualified opinion on the U.S. Patent and Trademark Office's fiscal year 2011 financial statements. KPMG LLP, an independent public accounting firm, performed the audit in accordance with U.S. generally accepted government auditing standards and Office of Management and Budget Bulletin 07-04, *Audit Requirements for Federal Financial Statements*, as amended.

In its audit of USPTO, KPMG found

- that the financial statements were fairly presented in all material respects and in conformity with U.S. generally accepted accounting principles;
- no deficiencies in internal control over financial reporting that were considered to be a material weakness, as defined in the report; and
- no instances of reportable noncompliance with applicable laws, regulations, and contracts.

My office oversaw the audit performance. We reviewed KPMG's report and related documentation, and made inquiries of its representatives. Our review disclosed no instances where KPMG did not comply, in all material respects, with generally accepted government auditing standards. However, our review cannot be construed as an audit in accordance with these standards; it was not intended to enable us to express—nor do we express—any opinion on USPTO's financial statements, conclusions about the effectiveness of internal controls, or conclusions on compliance with laws, regulations, and contracts. KPMG is solely responsible for the attached audit report, dated November 4, 2011, and the conclusions expressed in the report.

If you wish to discuss the contents of this report, please call me at (202) 482-4661, or Ann C. Eilers, Principal Assistant Inspector General for Audit and Evaluation, at (202) 482-2754.



We appreciate the cooperation and courtesies USPTO extended to KPMG and my staff during the audit.

Attachment

cc: Scott B. Quehl, Chief Financial Officer and Assistant Secretary for Administration
Anthony P. Scardino, Chief Financial Officer, USPTO



KPMG LLP
2001 M Street, NW
Washington, DC 20036-3389

Independent Auditors' Report

Inspector General, U.S. Department of Commerce and
Under Secretary of Commerce for Intellectual Property and
Director of the U.S. Patent and Trademark Office:

We have audited the accompanying consolidated balance sheets of the United States Patent and Trademark Office (USPTO) as of September 30, 2011 and 2010, and the related consolidated statements of net cost and changes in net position, and combined statements of budgetary resources for the years then ended (hereinafter referred to as "consolidated financial statements"). The objective of our audits was to express an opinion on the fair presentation of these consolidated financial statements. In connection with our fiscal year 2011 audit, we also considered the USPTO's internal control over financial reporting and tested the USPTO's compliance with certain provisions of applicable laws, regulations, and contracts that could have a direct and material effect on these consolidated financial statements.

Summary

As stated in our opinion on the consolidated financial statements, we concluded that the USPTO's consolidated financial statements referred to above, are presented fairly, in all material respects, in conformity with U.S. generally accepted accounting principles.

Our consideration of internal control over financial reporting was not designed to identify all deficiencies in internal control over financial reporting that might be deficiencies, significant deficiencies, or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses as defined in the Internal Control Over Financial Reporting section of this report.

The results of our tests of compliance with certain provisions of laws, regulations, and contracts disclosed no instances of noncompliance or other matters that are required to be reported herein under *Government Auditing Standards* and OMB Bulletin No. 07-04, *Audit Requirements for Federal Financial Statements*, as amended.

The following sections discuss our opinion on the USPTO's consolidated financial statements; our consideration of the USPTO's internal control over financial reporting; our tests of the USPTO's compliance with certain provisions of applicable laws, regulations, and contracts; and management's and our responsibilities.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of the United States Patent and Trademark Office as of September 30, 2011 and 2010, and the related consolidated statements of net cost and changes in net position, and the combined statements of budgetary resources for the years then ended.

KPMG LLP is a Delaware limited liability partnership, the U.S. member firm of KPMG International Cooperative ("KPMG International"), a Swiss entity.



United States Patent and Trademark Office
Independent Auditors' Report
November 4, 2011
Page 2 of 5

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the United States Patent and Trademark Office as of September 30, 2011 and 2010, and its net costs, changes in net position, and budgetary resources for the years then ended, in conformity with U.S. generally accepted accounting principles.

The information in the Management's Discussion and Analysis and Required Supplementary Information section is not a required part of the consolidated financial statements, but is supplementary information required by U.S. generally accepted accounting principles. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of this information. However, we did not audit this information and, accordingly, we express no opinion on it.

Our audits were conducted for the purpose of forming an opinion on the consolidated financial statements taken as a whole. The consolidated statements of cash flow for the years ended September 30, 2011 and 2010 are presented for purposes of additional analysis of the consolidated financial statements and are not a required part of the consolidated financial statements. The consolidated statements of cash flow for the years ended September 30, 2011 and 2010 have been subjected to the auditing procedures applied in the audit of the consolidated financial statements and, in our opinion, are fairly stated, in all material respects, in relation to the consolidated financial statements taken as a whole. The information in the Message from the Under Secretary of Commerce for Intellectual Property and Director of the USPTO section, the Message from the Chief Financial Officer section, and the Other Accompanying Information section are presented for purposes of additional analysis and are not required as part of the consolidated financial statements. This information has not been subjected to auditing procedures and, accordingly, we express no opinion on it.

Internal Control Over Financial Reporting

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis.

Our consideration of internal control over financial reporting was for the limited purpose described in the Responsibilities section of this report and was not designed to identify all deficiencies in internal control over financial reporting that might be deficiencies, significant deficiencies, or material weaknesses. In our fiscal year 2011 audit, we did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above.

Exhibit I presents the status of the prior year significant deficiency.

We noted certain additional matters that we have reported to management of the USPTO in a separate letter.



United States Patent and Trademark Office
 Independent Auditors' Report
 November 4, 2011
 Page 3 of 5

Compliance and Other Matters

The results of our tests of compliance described in the Responsibilities section of this report disclosed no instances of noncompliance or other matters that are required to be reported herein under *Government Auditing Standards* or OMB Bulletin No. 07-04.

* * * * *

Responsibilities

Management's Responsibilities. Management is responsible for the consolidated financial statements; establishing and maintaining effective internal control; and complying with laws, regulations, and contracts applicable to the USPTO.

Auditors' Responsibilities. Our responsibility is to express an opinion on the fiscal year 2011 and 2010 consolidated financial statements of the USPTO based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and OMB Bulletin No. 07-04. Those standards and OMB Bulletin No. 07-04 require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the USPTO's internal control over financial reporting. Accordingly, we express no such opinion.

An audit also includes:

- Examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements;
- Assessing the accounting principles used and significant estimates made by management; and
- Evaluating the overall consolidated financial statement presentation.

We believe that our audits provide a reasonable basis for our opinion.

In planning and performing our fiscal year 2011 audit, we considered the USPTO's internal control over financial reporting by obtaining an understanding of the USPTO's internal control, determining whether internal controls had been placed in operation, assessing control risk, and performing tests of controls as a basis for designing our auditing procedures for the purpose of expressing our opinion on the consolidated financial statements, but not for the purpose of expressing an opinion on the effectiveness of the USPTO's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the USPTO's internal control over financial reporting. We did not test all internal controls relevant to operating objectives as broadly defined by the *Federal Managers' Financial Integrity Act of 1982*.

As part of obtaining reasonable assurance about whether the USPTO's fiscal year 2011 consolidated financial statements are free of material misstatement, we performed tests of the USPTO's compliance with certain provisions of laws, regulations, and contracts, noncompliance with which could have a direct and material effect on the determination of the consolidated financial statement amounts, and certain provisions of other laws and regulations specified in OMB Bulletin No. 07-04. We limited our tests of



United States Patent and Trademark Office
Independent Auditors' Report
November 4, 2011
Page 4 of 5

compliance to the provisions described in the preceding sentence, and we did not test compliance with all laws, regulations, and contracts applicable to the USPTO. However, providing an opinion on compliance with laws, regulations, and contracts was not an objective of our audit and, accordingly, we do not express such an opinion.

This report is intended solely for the information and use of the USPTO management, U.S. Department of Commerce management, the U.S. Department of Commerce Office of Inspector General and is not intended to be and should not be used by anyone other than these specified parties.

KPMG LLP

November 4, 2011

United States Patent and Trademark Office
 Independent Auditors' Report
 November 4, 2011
 Page 5 of 5

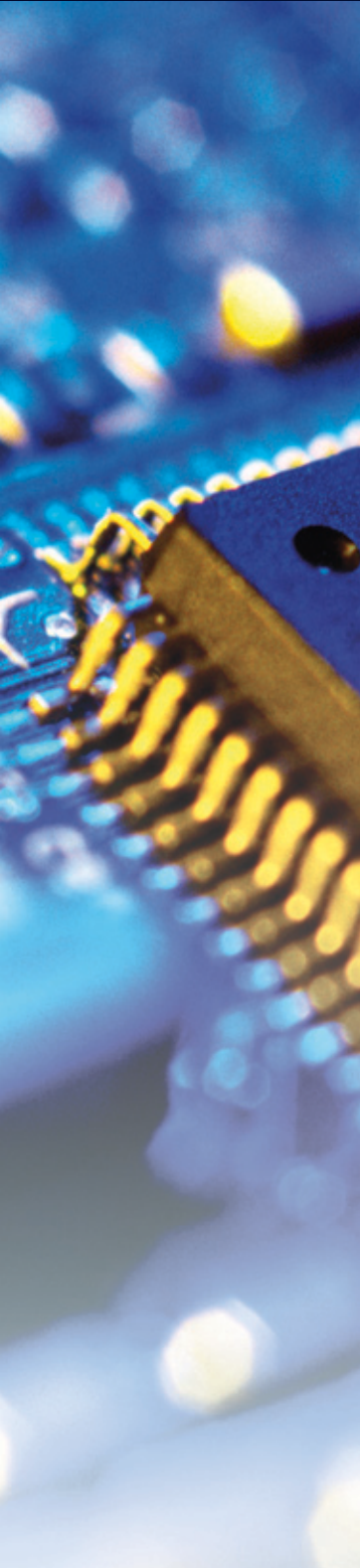
Exhibit I – Status of Prior Year Significant Deficiency

Reported Issue	Prior Year Recommendation	Fiscal Year 2011 Status
<i>Financial Management Systems Need Improvement</i>		
Weaknesses in general controls were identified in four FISCAM review areas.	The USPTO should monitor actions to ensure effective implementation of our recommendations.	Closed

Other Accompanying Information



Inspector General's Top Management Challenges Facing the USPTO



Each year, the Inspector General provides the management challenges for the DOC in accordance with the provisions of the Reports Consolidation Act of 2000 (Pub. L. No. 106-531). The IG's statement of management challenges can be found below.

The USPTO is responsible for resolving several elements within the first Department-wide management challenge – Effectively Promote Exports, Stimulate Economic Growth, and Create Jobs. Reducing the patent application backlog, improving processing times, and effectively implementing patent reform will help to support the Departments' overarching goals of advancing economic growth and promoting trade and job creation. Long waits for application decisions could negatively impact innovation, economic development, and job growth. An additional USPTO element is related to improving regulatory reviews to protect and promote public interests – the USPTO is responsible for incorporating cost-benefit analyses as a part of our patent and trademark regulatory process.

The USPTO has begun taking action towards implementing initiatives to improve administrative and acquisition operational efficiencies, actions taken in line with the second Department-wide challenge to reduce costs and improve operations to optimize resources for a decade of constrained budgets.

The USPTO is also responsible for strengthening and enhancing information technology security on its infrastructure in support of resolving the third Department-wide management challenge.

In addition, improvements have been identified for long-term technical and acquisition planning of the PE2E project. PE2E is the largest, most complex multi-year IT investment USPTO has undertaken in several years. These improvements will help support the delivery of cost savings and efficiencies on major IT investments, a component of the overall Department-wide management challenge of managing acquisition and contract operations more effectively to obtain quality goods and services in a manner most beneficial to taxpayers.

October 24, 2011



UNITED STATES DEPARTMENT OF COMMERCE
The Inspector General
Washington, D.C. 20230

MEMORANDUM TO THE SECRETARY

Todd J. Zinser

FROM: Todd J. Zinser

SUBJECT: Top Management Challenges Facing the Department of Commerce
in Fiscal Year 2012

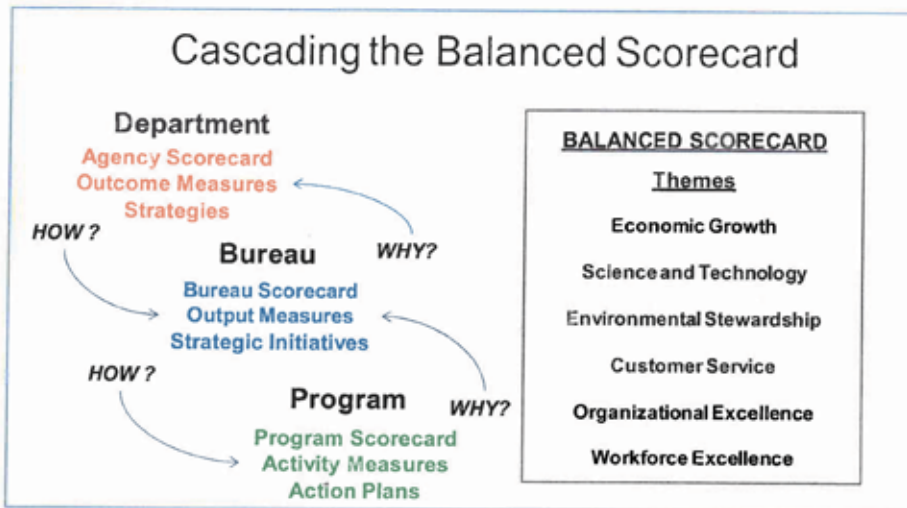
Enclosed is our final report on the Department of Commerce's top management challenges for fiscal year (FY) 2012. The Department plays a pivotal role in implementing the President's initiatives for economic recovery and job creation and plans to spend about \$10 billion on a wide range of programs in the upcoming year. The report identifies what we consider, from our oversight perspective, to be the most significant management and performance issues facing the Department.

The five major challenges we have identified for FY 2012 represent cross-cutting issues that focus on the President's most important goals. The first two challenges in the report are new additions: challenge 1 discusses the Department's mission to *promote the export of American goods, stimulate economic growth, and create jobs while simultaneously enforcing trade laws and protecting U.S. trade interests*; and challenge 2 explains the Department's need to *reduce operating costs in the face of an extended period of constrained federal budgets*. The remaining three challenges are longstanding departmental concerns: *enhancing IT security across the Department, improving Commerce-wide acquisitions and contracting practices, and ensuring NOAA meets its milestones to develop and launch its new environmental satellites while minimizing expected data gaps*. Under the leadership of former Secretary Locke and Acting Secretary Blank, the Department has a solid foundation upon which to make continued improvements when addressing these challenges.

Former Secretary Locke's legacy included adopting a *balanced scorecard* management approach focusing on themes that reflect the Department's priorities. This approach gives a greater emphasis to Commerce's three programmatic themes of Economic Growth, Science and Information, and Environmental Stewardship as well as its management themes of Customer Service, Organizational Excellence, and Workforce Excellence (see diagram, on next page). Since the beginning of FY 2011, the Deputy Secretary has met each quarter with operating unit heads to review the scorecard, which tracks performance and measures progress. This management approach has helped to institutionalize the Department's efforts in working



toward cross-cutting performance goals and to better position the Department to respond promptly and suitably to challenges as they emerge. We would recommend that you continue to exercise these capabilities consistent with your goals and objectives in leading the Department.



Source: OIG, based on the Department's balanced scorecard overview

We remain committed to keeping the Department's decision makers informed of longstanding as well as emerging problems identified through our audits and investigations so that timely corrective actions can be taken. This final report and the Department's response to it (which appears as an appendix) will be included in the Department's *Performance and Accountability Report*, as required by law.¹

We appreciate the cooperation received from the Department, and we look forward to working with you and the Secretarial Officers in the coming months. If you have any questions concerning this report, please contact me at (202) 482-4661.

cc: Rebecca Blank, Acting Deputy Secretary
Cameron Kerry, General Counsel
Bruce Andrews, Chief of Staff
Scott Quehl, CFO/ASA
Simon Szykman, Chief Information Officer
Operating Unit Heads
Operating Unit Audit Liaisons

¹ 31 U.S.C. § 3516(d).

Contents

Challenge 1: Effectively Promote Exports, Stimulate Economic Growth, and Create Jobs	1
Implement Administration Initiatives with Effective Interagency Partnerships	1
Enhance Commerce Unit Operations to Help Promote Trade and Job Creation.....	2
Correct Unfair Trade Practices and Protect Our National Security Through Enforcement Activities.....	5
Improve Regulatory Reviews to Protect and Promote Public Interests	6
Challenge 2: Reduce Costs and Improve Operations to Optimize Resources for a Decade of Constrained Budgets	7
Implement and Expand Initiatives to Improve Operational Efficiency and Economy	8
Strengthen Oversight of Improper Payments for Additional Recoveries.....	9
Reduce the Risk of Misuse, Abuse, or Waste of Federal Funds Awarded to Grantees.....	10
Continue Oversight of the Broadband Technology Opportunities Program	11
Apply Lessons Learned from 2010 Decennial to Planning for the 2020 Census to Avoid Cost Overruns	11
Protect Against Cost Overruns and Schedule Slippages for Headquarters Renovation	12
Challenge 3: Strengthen Department-Wide Information Security to Protect Critical Information Systems and Data	14
Continue Working to Improve IT Security by Addressing Ongoing Security Weaknesses	14
Implement Security Policy Effectively Through Consistent, Proactive Management.....	16
Challenge 4: Manage Acquisition and Contract Operations More Effectively to Obtain Quality Goods and Services in a Manner Most Beneficial to Taxpayers	18
Develop and Retain a Qualified Acquisition Workforce.....	19
Ensure High Ethical Standards in the Acquisition Workforce and in Procurement Practices.....	19
Strengthen Processes to Govern the Appropriate Use of High-Risk Contracts and to Maximize Competition ..	20
Achieve Efficiency and Savings in Acquiring Goods and Services, and Improve Oversight and Tracking of Contract Savings	21
Deliver Cost Savings and Efficiency on Major IT Investments.....	22
Challenge 5: Manage the Development and Acquisition of NOAA's Environmental Satellite Systems to Avoid Launch Delays and Coverage Gaps	23
Prevent a Near-Term Polar Satellite Coverage Gap Between NOAA-19 and NPP	24
Ensure Solid Program Management and Systems Engineering Principles Are Applied to Mitigate JPSS Coverage Gaps	25
Maintain Robust Program Management and Systems Engineering Disciplines to Prevent Geostationary Coverage Gaps.....	27
Acronym List	29
Appendix A: Related OIG Publications	30
Appendix B: Comparison of FY 2011 Challenges to FY 2012	34
Appendix C: Management Response to OIG Draft Report	35

Challenge 1:

Effectively Promote Exports, Stimulate Economic Growth, and Create Jobs

The Department is at the center of the federal government's efforts to promote exports and stimulate economic development, while at the same time regulating exports. The Secretary plays a visible role in carrying out the Department's trade promotion mission, with export- and trade-related activities—such as leading trade missions and representing the United States in bilateral or multilateral meetings—accounting for a significant portion of the Secretary's time. The President also tasked Commerce with leading the government-wide SelectUSA initiative by attracting and retaining domestic and foreign investments. We estimated that Commerce planned to devote approximately \$994 million (11 percent) of its FY 2011 budget request to fund direct international programs and activities, most of which is represented by the budgets of the International Trade Administration (ITA) and the Bureau of Industry and Security (BIS).

Implement Administration Initiatives with Effective Interagency Partnerships

Many federal agency missions are related to international trade. We reviewed their missions and found more than 20 performed trade-related functions, such as policy development and negotiation, export promotion, financing, and licensing and regulation (table 1).

Table 1. U.S. Government Agencies with Trade-Related Functions

Agency	Member of			Function		
	Export Promotion Cabinet	Trade Promotion Coordinating Committee	Policy Development, Negotiation & Cooperation	Export Promotion *	Finance, Insurance, Grants & Adjustment Assistance	Licensing, Inspection & Regulation
Council of Economic Advisors	•	•	•			
Department of Agriculture	•	•	•	•	•	•
Department of Commerce	•	•	•	•	•	•
Department of Defense		•	•			•
Department of Energy		•	•	•		•
Department of Homeland Security		•	•			•
Department of the Interior		•	•			•
Department of Labor	•	•	•	•	•	
Department of State	•	•	•	•		•
Department of Transportation		•	•			
Department of the Treasury	•	•	•			•
Environmental Protection Agency		•	•			•
Export-Import Bank	•	•			•	
Food and Drug Administration			•			•
National Economic Council	•	•	•			
National Security Council	•	•	•			
Office of Management and Budget	•	•	•			
Office of the U.S. Trade Representative	•	•	•	•		
Overseas Private Investment Corporation	•	•			•	
Small Business Administration	•	•		•	•	
U.S. Agency for International Development		•	•			
U.S. International Trade Commission			•			•
U.S. Trade Development Agency	•	•		•		

Source: OIG analysis of government agency information

* Export Promotion includes export counseling and assistance, providing trade leads and market research, conducting feasibility studies, and advocating for U.S. businesses.

OFFICE OF INSPECTOR GENERAL

The Department has a critical part in the success of the administration's three government-wide initiatives: promote U.S. exports, reform the export control system, and reorganize the federal government's trade promotion responsibilities. The following efforts require the Secretary to work effectively with interagency partners and to marshal and integrate Commerce resources:

- **Increase Collaboration Among Partner Agencies to Implement the National Export Initiative.** In March 2010, the President formalized a government-wide strategy called the National Export Initiative (NEI), which aims to double U.S. exports by 2014 by enhancing the private sector's ability to export goods and services. The NEI is led by a secretarial-level body called the Export Promotion Cabinet that is charged with implementing the initiative's trade-related activities in coordination with the Trade Promotion Coordinating Committee (TPCC; see member agencies in table 1),² which is chaired by the Secretary. Historically, collaboration among TPCC agencies on specific trade promotion has not been strong, and the TPCC has not developed any working groups to improve coordination among its members. Despite these limitations the Department reports that, as of August 2011, the efforts of these organizations have resulted in a 17 percent increase in exports since 2009.³
- **Work with Partner Agencies to Implement the Export Control Reform Initiative.** The Department, along with the Departments of Defense and State, is a central part of implementing the Export Control Reform Initiative. This initiative envisions more effective export administration and enforcement by consolidating agency efforts and using a single IT system and list of controlled goods and technologies with military and commercial applications. Through this approach, the government would create a single source to help businesses obtain the information they need to export sensitive goods and technology. To date, the Department has succeeded in revising some of its export control regulations and is helping establish an export enforcement coordination center.
- **Support Reorganization of U.S. Government Trade and Export Promotion Functions.** The Office of Management and Budget (OMB) is leading an effort to reduce overlap in government trade-related responsibilities and identify potential cost savings, thereby improving agencies' efficiency and effectiveness. As noted in table 1 and later in table 2, trade functions and responsibilities are spread across multiple federal agencies—and even within the Department's own operating units. Although the plan is not yet public, it is likely that the reorganization will affect the Department significantly; Commerce should be prepared for the possibility of major program changes.

Enhance Commerce Unit Operations to Help Promote Trade and Job Creation

At the same time as it is involved in these government-wide efforts, the Department must continue to enhance its own mission to promote U.S. economic growth and associated job

² The TPCC was established in 1993 by Executive Order 12870 under the authority of the Export Enhancement Act of 1992 to coordinate governmental efforts to promote U.S. exports.

³ OIG has not verified the accuracy of this claim.

gains. Our office analyzed the Department's trade-related responsibilities. The results of our analysis are displayed in table 2, which outlines Commerce's international functions and the missions of responsible operating units.

Table 2. International Function by Commerce Operating Unit^a

International Function	Commerce Operating Unit									
	ITA	USPTO	NIST	EDA	ESA	BIS	MBDA	NOAA	NTIA	
Represent the nation in international forums	•	•	•		•	•		•	•	
Formulate policy and negotiate agreements	•	•	•			•		•	•	
Manage international cooperation and exchanges	•	•	•		•	•		•		
Promote U.S. exports and commercial advocacy	•	•	•			•		•	•	
Promote U.S. international competitiveness	•	•	•	•		•	•			
Promote U.S. standards	•		•							•
Regulate trade and investment	•					•				
Collect, analyze, and disseminate trade data	•				•					
Protect U.S. intellectual property rights	•	•								
Mitigate negative effects of international trade	•			•						
Enforce international law and U.S. treaty obligations						•		•		
Combat unfair trade practices	•									

Source: OIG analysis, based on bureau information.
^a Commerce's operating units are International Trade Administration (ITA), U.S. Patent and Trademark Office (USPTO), National Institute of Standards and Technology (NIST), Economic Development Administration (EDA), Economics and Statistics Administration (ESA), Bureau of Industry and Security (BIS), Minority Business Development Agency (MBDA), National Oceanic and Atmospheric Administration (NOAA), and National Telecommunications and Information Administration (NTIA).

The Department began improving coordination among its operating units by launching the "CommerceConnect" initiative in 2009 to help U.S. businesses be more competitive and create jobs by coordinating and providing a portfolio of government assistance to businesses via the Internet, a national call center, and field offices throughout the country. However, a more structured and broad-based approach is needed to adequately address Commerce-wide coordination efforts and address possible duplication of activities, as reported in a recent Government Accountability Office (GAO) study.⁴ The Department also faces the following specific challenges to help promote trade and create jobs:

- **Repatriate Manufacturing Jobs in America.** Repatriation of jobs that have moved abroad will help create U.S. jobs and improve the economy. The House Appropriations Committee has recently proposed tasking the Secretary with establishing a Repatriation Task Force to examine incentives needed to encourage U.S. companies to bring manufacturing and research and development jobs back to the United States. The Senate Appropriations Committee also proposed giving the Department the task of developing a national manufacturing strategy.⁵
- **Appropriately Allocate Resources to Support the NEI.** ITA is involved with both the NEI and the potential reorganization/consolidation of U.S. export promotion

⁴ GAO, March 1, 2011. *Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue*, GAO-11-318SP. Washington, D.C.

⁵ See the pending House appropriations bill for FY 2012 (H.R. 2596) and Senate Report 112-78 accompanying the Senate appropriations bill for FY 2012 (S. 1572), as reported by the respective Appropriations Committees.

OFFICE OF INSPECTOR GENERAL

activities. As part of the NEI, ITA intends to promote U.S. exports by increasing the number of trade specialists, outreach, and guidance to small- and medium-sized businesses capable of entering new markets, as well as the number and size of trade missions. The bureau's proposed FY 2012 budget provides additional funding to carry out NEI activities. With its increased workload, ITA must effectively manage its resources to meet the established goal of doubling U.S. exports by 2014 and must also fulfill congressional reporting requirements.

- Reduce the Patent Backlog, Improve Processing Times, and Effectively Implement Patent Reform.** USPTO fosters innovation and protects inventors' intellectual property rights by registering trademarks and granting patents. Patents can help make initial investments in an invention worth the effort and expense; a granted patent can help investors secure capital, create or expand businesses, and create jobs. Over the past decade, the patent backlog has doubled, and the completion of patent reviews has increased from an average of 2 years to almost 3 years. Long waits for application decisions could negatively impact innovation, economic development, and job growth. USPTO continues to contend with the large number of patents awaiting review, making it imperative that USPTO maintain its focus and increase its efforts to address these challenges.⁶

USPTO also faces new administrative and operational challenges in implementing the recently enacted Leahy–Smith America Invents Act (Pub. L. No. 112-29). This act contains many changes to patent laws and USPTO practices, such as moving the United States to a “first-to-file” system, creating new proceedings for review of granted patents, allowing USPTO the authority to set fees, and imposing a 15 percent surcharge on all patent-related fees. These changes—many of which must be made between 10 days and 12 months of the enactment—will require USPTO to issue new regulations, set new fees, modify current business processes, and conduct new studies and report on them to Congress.

- Improve Technical and Financial Assistance Programs to Promote Job Growth in the United States.** The two departmental operating units that provide assistance to U.S. companies are NIST and EDA. NIST fosters trade through a variety of programs that support business innovation, promote research, and help companies improve their business processes. The \$125 million-per-year Manufacturing Extension Partnership, for example, works with small and mid-sized U.S. manufacturers to help create and retain jobs, increase profits, and save time and money through a public/private partnership. In FY 2011, EDA provided approximately \$250 million in grants and assistance programs that focus on helping businesses in disadvantaged and distressed communities and mitigating the negative impacts of trade. EDA grants enhance the export potential of U.S. businesses, and increase the competitiveness of

⁶ USPTO reports that the backlog of patent applications has decreased from 716,428 in October 2010 to 683,991 in August 2011 (www.uspto.gov/dashboards/patents/kpis/kpiBacklogDrilldown.kpixonl).

regions across the country. Our office has identified needs to improve program and grant management in these areas.

- Ensure the Elimination of Important Surveys Does Not Adversely Affect the Formulation of Vital National Social or Economic Indicators.** Composed of the U.S. Census Bureau and the Bureau of Economic Analysis (BEA), ESA is responsible for collecting and maintaining key statistics on the U.S. economy, international trade, and investment. The constrained budget environment may result in an adverse impact on this critical mission. For example, the Department has proposed eliminating the Census Bureau's 2012 Economic Census, which would affect the quality and production of major economic indicators such as BEA's National Income and Product Accounts and Gross Domestic Product, and the Bureau of Labor Statistics' Producer Price Index. The Department and Congress need to ensure that the elimination of these important surveys does not have an adverse effect on the formulation of vital national social or economic indicators.

The entire Department has to effectively and efficiently coordinate efforts and manage resources to meet the goals of the various trade and export initiatives, avoid program duplication, and maximize resources. Workforce planning, program improvements, and well-defined missions can assist with meeting those goals. If all operating units do not successfully manage their programs and coordinate efforts, valuable resources may be wasted, jeopardizing Commerce's ability to help U.S. companies increase exports and strengthen the national economy.

Correct Unfair Trade Practices and Protect Our National Security Through Enforcement Activities

While trade promotion is an essential part of its mission, the Department must also maintain strong trade enforcement programs so that the United States can thrive in the global marketplace. Long-term, sustainable U.S. economic growth depends on the effective enforcement of trade agreements and laws to ensure U.S. companies can compete fairly in the international arena. ITA's Import Administration works to counteract unfair trade practices by U.S. trading partners, such as dumping and foreign subsidies, while its Market Access and Compliance unit works to ensure compliance by these same trading partners with international trade agreements and to resolve trade disputes.

Additionally, the Department facilitates trade in a manner that protects U.S. national interests. This mission is carried out by BIS, which protects national security interests by regulating the export of controlled goods and technology to prevent their acquisition by our country's adversaries. While each bureau vigorously carries out its respective missions, BIS faces the greatest challenge as it contends with fundamental changes to the country's export control system.

BIS is currently helping to implement the long-term goals of the Export Control Reform Initiative. In the near term, the initiative will result in the transfer of a significant number of export-controlled items from the jurisdiction of the State Department's Directorate of Defense

OFFICE OF INSPECTOR GENERAL

Trade Controls to BIS. The bureau will need to ensure that its resources are adequate to handle the increased workload. In addition, BIS will need to increase its outreach efforts to educate exporters about changes in export control regulations and provide the necessary guidance to ensure compliance with new regulations. Finally, with more goods and technology shipped under its jurisdiction, BIS will need to increase its enforcement efforts to detect, prosecute, and deter violations of the regulations. Effective administration and enforcement of the revised dual-use export regulations will be critical. Otherwise, U.S. companies risk losing export sales because of delays in processing license applications, and controlled goods and technology may be shipped to unsuitable end users by exporters who willfully or unintentionally violate the regulations.

Improve Regulatory Reviews to Protect and Promote Public Interests

The Department plays a vital role in regulating marine fisheries and protected resources (NOAA), patents and trademarks (USPTO), and the import and export of goods (ITA and BIS). In August 2011, the Department submitted its *Plan for Retrospective Analysis of Existing Rules* in response to Executive Order 13563, *Improving Regulation and Regulatory Review*, issued January 18, 2011. In this order, the President stated:

Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science....It must take into account benefits and costs.... It must measure, and seek to improve, the actual results of regulatory requirements.

Conducting adequate cost-benefit analyses and identifying meaningful performance measures for regulatory activities are critical to avoid overburdening affected industries, as required by the President's Order. This is especially important for NOAA to consider. In recent years, members of the fishing industry and congressional leaders from the New England region have repeatedly questioned the costs and benefits of certain fishery regulations. Last year, we also reported that balancing NOAA's goals of protecting the environment and supporting the fishing industry was one of the top management challenges facing the Department.

NOAA has committed to working with stakeholders and Congress to improve performance metrics for its U.S. fishery management policies and to revisit previous cost-benefit analyses as part of the retrospective regulatory analysis. USPTO, ITA, and BIS also plan to incorporate cost-benefit analyses as part of their regulatory reviews. To implement the President's Order, the Department needs to ensure the quality of cost-benefit analyses conducted by these regulatory operating units and appropriate actions taken to revise/update regulatory activities.

Challenge 2:

Reduce Costs and Improve Operations to Optimize Resources for a Decade of Constrained Budgets

OMB has issued FY 2013 budget guidance directing federal agencies to provide scenarios with their FY 2013 requests reflecting funding at levels 5 and 10 percent below their FY 2011 enacted budgets. At the same time, OMB encouraged agencies to develop programs supporting economic growth. OMB has stated that it will be difficult, but possible, to find savings to support these investments in growth; agencies have to cut or eliminate low-priority and ineffective programs while consolidating duplicate ones, improve program efficiency by driving down costs, and support fundamental program reforms that will generate the best outcomes per dollar spent.

The pending House appropriations bill for FY 2012, as reported by the Committee on Appropriations, would reduce the Department's appropriations by 6 percent compared with FY 2011—and was almost 20 percent below the administration's FY 2012 budget request. In addition, the Joint Select Committee on Deficit Reduction is seeking \$1.5 trillion in government-wide savings over the next 10 years. The Committee could target additional cuts in specific Commerce programs; if the Committee fails to agree on spending reductions, or the Committee's proposal is not enacted by January 15, 2012, across-the-board cuts will begin with the FY 2013 budget. Some Commerce programs, both small and large, have already been deeply affected by constrained budgets:

- The Department requested \$22.6 million for two key IT security strategic initiatives intended to enhance system monitoring and detect and respond to cyber attacks. However, due to budget uncertainties, the Department is identifying alternative funding sources internally, and has to carefully prioritize the elements of both initiatives so that funds can be used to implement the most critical elements first. Information technology and cybersecurity are discussed in detail in challenge 3.
- Based on the current FY 2011 funding level, NOAA expects a potential coverage gap between its two new polar weather satellites—the National Polar-orbiting Operational Environmental Satellite System (NPOESS) Preparatory Project, scheduled for launch in October 2011, and the first Joint Polar Satellite System satellite, scheduled for launch in February 2017. According to NOAA's studies, its weather forecasting at 5, 4, and 3 days before weather events could be significantly degraded during the coverage gap. We discuss NOAA's ability to minimize the gap in severe weather forecasting in challenge 5.

As the Department prepares for an extended period of tighter budgets and decreased spending, it is more important than ever to target waste, reduce inefficiency, and ensure that taxpayers' dollars are being spent wisely. OIG has reviewed and recommended improvements in several areas of the Department's operations. Opportunities to save money and optimize efficiency lie in such diverse areas as administrative operations; improper payments; program and grants management; 2020 decennial census planning; and the ongoing renovation of the Department's Washington, D.C., headquarters.

Implement and Expand Initiatives to Improve Operational Efficiency and Economy

In view of the constrained budget environment for FY 2012 and beyond, the Department has already started looking for additional savings by reforming the way it does business.

Commerce has an initiative in place to save \$143 million in administrative costs in FY 2011 and 2012 (table 3). Savings will be realized in part through an \$86 million reduction in facilities and information technology as well as human resources. For example, Commerce is one of more than 12 federal agencies that have received approval to authorize voluntary early retirement and separation incentives for employees who volunteer to retire from federal service. The Department has also committed to close 22 of its 56 data centers by December 31, 2012, as part of the federal government's long-term plan to lower operating costs by consolidating data centers.⁷

Table 3. Commerce's Cost-Saving Initiatives

Initiatives	Savings in FYs 2011–2012 ^a
Acquisition:	
Strategic Sourcing	\$ 25 million
Acquisition:	
Contract Management	\$ 32 million
Other Administrative Activities	\$ 86 million
Total Savings	\$143 million =====

Source: Department of Commerce
^a Although some of the initiatives began in FY 2011, the total administrative savings are estimated for FY 2012.

The remaining \$57 million in savings will be derived from changes in the Department's acquisition activities. As we discuss in challenge 4, the Department needs to handle acquisitions more effectively and efficiently; it can do so in part by reducing the use of high-risk acquisition contracts. The Department reported it has already saved about \$4 million by focusing on strategic sourcing for six services: cellular service, office supplies, personal computers and accessories, print management and energy, small package delivery, and support services. But relentless management attention and active oversight of reported savings are critical to achieving the Department's goal.

The Department demonstrated leadership in taking these cost-saving initiatives; however, the budget environment will require that Commerce continue to search for similar opportunities to optimize efficiency and cut operational costs. For example, in our audit of the Department's motor pool operations, we found that Commerce needed more effective oversight of its vehicle inventory, records, and cost; over 730 fleet credit cards—with transactions totaling over \$1 million—could not be matched to a motor pool vehicle. Our recommendations to improve the inventory and use fraud monitoring tools to prevent or detect credit card abuses will improve the economy and efficiency of motor pool operations. In addition, the Census Bureau, in an effort to reduce costs and improve the quality of the hundreds of surveys it executes annually, plans to realign its 12 regional offices into 6. An annual cost saving of \$15–18 million is projected once this realignment is complete.

⁷ Department of Commerce. September 28, 2011. *2011 Data Consolidation Center Plan and Progress Report* (draft).

Strengthen Oversight of Improper Payments for Additional Recoveries

The Department can increase efforts to implement the Improper Payments Elimination and Recovery Act of 2010 (IPERA) and increase the dollars it recovers from improper payments. The law defines improper payments as payments that either should not have been made or that were made to ineligible recipients or for ineligible goods and services. Our 2011 report on improper payments highlighted the opportunity to test payments for almost \$6 billion in FY 2010 grants. Commerce can recover more improper payments by testing more types of payments, lowering its dollar limit for testing payments, beginning testing sooner, and following the guidance of OMB and IPERA to determine which programs may have the most risk of losses due to improper payments.

IPERA expanded the criteria for determining whether a program may be susceptible to improper payments, lowered the review threshold for programs and activities from \$500 million to \$1 million in payments, and expanded the types of programs required to conduct recovery audits, if cost-effective, to include any contract, grant, or cooperative agreement. OMB also has lower dollar thresholds for testing potential improper payments. For example, according to OMB's updated criteria, single payments of more than \$5,000 to an individual or \$25,000 to an entity can be tested for high-risk programs. By lowering the threshold for testing, agencies have a better chance of detecting and recovering improper payments. Currently, the Department only tests single payments greater than \$100,000. While focusing on a few high-dollar payments addresses the very highest risk, the Department does not have an adequate assessment of the total improper payments.

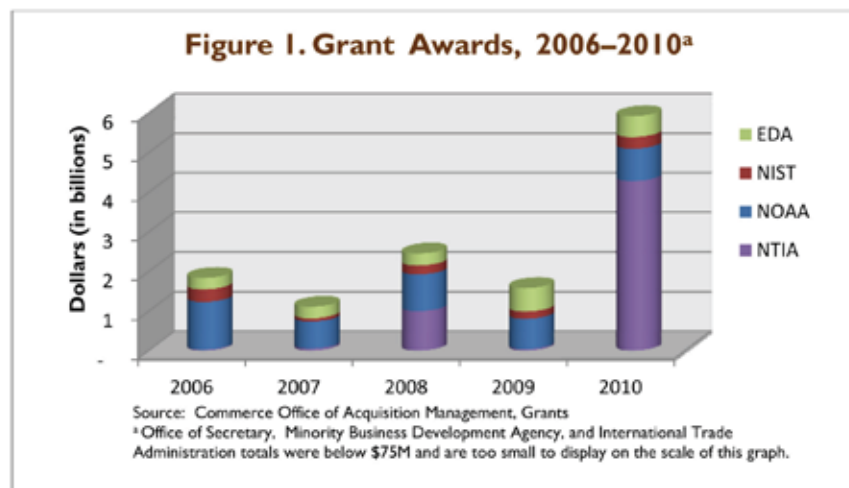
Since FY 2006, OMB guidance on improper payment testing has encouraged, but not required, that grants be included in recovery audits, which are post-payment reviews designed to identify improper payments and return the payments to the Treasury. The Department, however, excludes from these reviews grants, travel payments, bank and purchase cards, procurements with other federal agencies, and procurements with non-federal entities unless the associated contracts have expired. Because the Department did not elect to include grants in its recovery audits from FYs 2006–2010, annual amounts of \$1–6 billion were not tested. For these fiscal years, Commerce identified and reported only one contract recovery—for less than \$100,000—from a recovery audit. We have recommended that the Department include grant funds in future audits, increasing the chance that significant erroneous payments will be found, reported, and recovered. In response, the Department, beginning in FY 2011, has expanded its payment recapture audits to include grants and other cooperative agreements. An independent contractor is currently performing a Department-wide payment recapture audit of closed grants and other cooperative agreements. The Department should also consider including ongoing grant and procurement activities in its review to ensure timely recovery of any improper payments made. Deferring improper payment reviews until contracts have been closed—years after payments have been made—undercuts IPERA's requirement to give priority to the most recent payments.

OFFICE OF INSPECTOR GENERAL

Reduce the Risk of Misuse, Abuse, or Waste of Federal Funds Awarded to Grantees

The Department's annual grant obligations increased from approximately \$2 billion in FY 2006 to almost \$6 billion in FY 2010, as shown below in figure 1 (the additional \$4 billion was due to Recovery Act funds). As of June 2011, the Department reported about \$10 billion accumulative outstanding obligations, more than half of which were for grants. Strong oversight and program management are needed to ensure responsible spending and timely de-obligation of unneeded funds.

Shrinking grant management budgets will in turn challenge pre- and post-award grant processes. Pre-award application processes need to target for funding only the most highly qualified applicants performing mission-critical functions. Post-award processes have to focus on obtaining the maximum benefit for taxpayer dollars through program office oversight of grant recipients' performance, compliance with program rules, and reporting, as well as ensuring the financial integrity of programs by overseeing expenditures, matching share, and indirect costs.



The diversity and duration of Commerce grant programs (grants can have a performance period of 3 years or more) also highlight the Department's need to examine options such as the following to standardize and streamline its management processes:

- Better use of OIG audits and single audit reports (which are performed by independent audit firms) that include financial and compliance testing to evaluate grantees during grant implementation so that emerging issues can be promptly identified and remedied. Examples of these issues include grantees needing better cash management, improved procurement practices, and more accurate financial reporting. Since FY 2009, OIG audits and single audits have identified more than \$56 million in questioned costs and funds to be put to better use.

- Consolidation of the Department's three separate grants management systems into a single system to improve efficiency and reduce the need for grants personnel to manually correct errors or inconsistencies. Currently, the Department's grants and contracts personnel have to perform many manual procedures to compensate for errors or inconsistencies in the grants and contracts systems. Updated systems could result in a more efficient use of time and resources, as well as ensure consistently high data quality and lower error rates. This will help the Department meet future requirements of the Government Accountability and Transparency Board that is being formed in response to an Executive Order by the President.

Continue Oversight of the Broadband Technology Opportunities Program

At some \$4 billion, the Broadband Technology Opportunities Program (BTOP) represents a significant investment of federal funds to develop and deploy broadband services nationwide. The success of this program depends on the efforts of the National Telecommunications and Information Administration (NTIA)—along with its grant management partners, NOAA and NIST—and the rigor and strength of its oversight. The uncertain funding for BTOP oversight in FY 2012 and beyond raises significant concerns about NTIA's ability to adequately oversee the program in the future. BTOP is a high-risk program that requires continuous, long-term oversight for several reasons. The approximately 230 BTOP awards represent the largest and most complex grant program NTIA has ever overseen. These grants went to a diverse group of recipients, many of them first-time federal award recipients. As of September 30, 2011, only about 19 percent of BTOP funds had been disbursed; the potential for fraud, waste, and abuse associated with such a large dollar amount of awards will increase substantially as recipient spending rises. As a result of the current spending pace, we are concerned that some grantees will not complete projects within three years of the grant issuance date. This completion goal is required by NTIA, as well as a recent memo by OMB requiring agencies to ensure that recipients complete all Recovery Act spending by September 30, 2013. Meeting completion and spending goals will require close monitoring by management.

We have issued several reports on the program underscoring the need to continue active program oversight, and we have provided training and guidance to program staff, contract staff, and grant recipients. We will continue to track BTOP's progress toward achieving program goals and its compliance with statutory and programmatic requirements.

Apply Lessons Learned from 2010 Decennial to Planning for the 2020 Census to Avoid Cost Overruns

While decennial field operations were successfully completed in 2010, if the next census uses the same design its life-cycle cost estimate ranges from a low of \$22 billion to a high of \$30 billion. Given these projections, Census has to fundamentally change the design, implementation, and management of the decennial census to obtain a quality count for a reasonable sum of money.

OFFICE OF INSPECTOR GENERAL

The decade's early years are critical for deciding on a design and for implementing these changes. According to the bureau, the research and testing phase determines how much change can be made to decennial operations; this phase has to occur early in the decade to reduce cost and risk. With funding constraints likely, the bureau needs to prioritize its research and testing to determine the feasibility, cost, and data quality impacts of proposed census design changes.

This summer, we issued our final report to Congress on the 2010 decennial. In the report, we outlined several challenges the Census Bureau has to effectively address in time for the 2020 Census:

1. revamp cost estimation and budget processes to increase accuracy, flexibility, and transparency;
2. use the Internet and administrative records to contain costs and improve accuracy;
3. implement a more effective decennial test program using existing surveys as a test environment;
4. effectively automate field data collection;
5. avoid a massive end-of-decade field operation through continuous updating of address lists and maps; and
6. implement improved project planning and management techniques early in the decade.

“Our historical review had found that the census costs will have escalated by more than 600 percent over the period 1960–2010, even after adjusting for inflation and the growth in housing units.”

National Research Council
Envisioning the 2020 Census (2010)

Protect Against Cost Overruns and Schedule Slippages for Headquarters Renovation

For the first time in its 79-year history, the Herbert C. Hoover Building (HCHB)—Commerce's Washington, D.C., headquarters—is undergoing a comprehensive renovation. The project, currently scheduled for completion in 2021, has a budgeted cost of \$958 million. Although the General Services Administration (GSA) owns the building, the Department is responsible for funding tenant improvements, such as

- upgrading all mechanical, electrical, and safety systems to alleviate code deficiencies, conform to industry standards, meet GSA guidelines, and extend the building's useful life;
- increasing usable space;
- increasing energy and environmental efficiencies; and
- incorporating security improvements.

The President's FY 2012 budget included over \$16 million for Commerce to fund tenant improvements. However, the pending House appropriations bill for FY 2012 would reduce the Department's requested appropriation for the renovation by almost \$1.2 million. This

reduction, along with budget cuts to meet OMB's FY 2013 guidance and a decade of restricted spending, will increase the risk of delays and could cause the project to miss the scheduled completion date. We will continue our ongoing review of construction activities and decisions critical to the renovation's success.

Commerce also needs to continue to work closely with GSA as an advocate for the operating units housed in HCHB since the project has the potential to disrupt Commerce operations and adversely affect its workforce. We are overseeing how effectively Commerce is working with GSA, and we will examine the project's cost schedules, performance, and any health or safety issues that may emerge as the renovation continues.

Challenge 3:

Strengthen Department-Wide Information Security to Protect Critical Information Systems and Data

The Department of Commerce—along with other government agencies, private industry, and the public—relies on its 280 IT systems to perform critical actions and provide vital information. The Department's varied IT functions include processing census and economic data, managing patent and trademark applications, developing trade information, delivering meteorological information and severe weather alerts, modeling atmospheric conditions for weather and climate forecasting, and controlling weather satellites.

In recent years, the federal government—and the Department in particular—have increasingly taken advantage of Internet-based technologies to interconnect IT systems and conduct business with the public. According to the Department's June 2011 green paper,⁸ today the Internet has become central to the nation's mission to "promote growth and retool the economy for sustained U.S. leadership in the 21st century." As this trend continues, cyber attacks on Internet commerce, vital business sectors, and government agencies have grown exponentially. In 2010, an estimated 55,000 new viruses, worms, spyware, and other threats bombarded the Internet daily; according to OMB's FY 2010 Federal Information Security Management Act of 2002 (FISMA) report to Congress, the number of cyber incidents reported for federal systems alone in FY 2010 had increased by approximately 39 percent over FY 2009.

To address cybersecurity threats, the Department is playing a leading role in developing public policies and private-sector standards and practices that can markedly improve the United States' overall cybersecurity posture. For instance, the President's National Strategy for Trusted Identities in Cyberspace has tasked the Department this year to coordinate federal government and private-sector efforts to raise the level of trust associated with the identities of individuals, organizations, networks, services, and devices involved in online transactions.

But Commerce's own IT systems are constantly exposed to an increasing number of cyber attacks, which are becoming more sophisticated and more difficult to detect. And clearly, cybersecurity threats are exacerbated by the globally interconnected and interdependent architecture of today's computing environment. As a result, security weaknesses in one area may provide opportunities for exploitations elsewhere. With this in mind, the Department must continue to improve the effectiveness of its security measures to protect the confidentiality, integrity, and availability of critical systems and information.

Continue Working to Improve IT Security by Addressing Ongoing Security Weaknesses

For our FY 2010 FISMA audit report, we evaluated 18 Commerce IT systems and concluded that the Department's information security program and practices have not adequately secured

⁸ *Cybersecurity, Innovation and the Internet Economy*, The Department of Commerce Internet Policy Task Force, June 2011.

Department systems. The report presented major findings that required senior management attention, as shown in table 4.

Table 4. OIG's FY 2010 FISMA Findings Show Significant Weaknesses in Commerce's Systems

Measure	Finding
High-risk vulnerabilities identified	Extensive vulnerabilities in system software suggest considerable likelihood of a security breach; patch management and vulnerability scanning practices are not effective. Scans identified significantly more high-risk vulnerabilities than were previously known.
Configuration settings defined and documented	Only 4 of 18 systems (1 high-impact) adequately defined and documented secure settings for operating systems and major applications. This is a long-standing deficiency in a crucial security practice.
Configuration settings securely implemented	Only 1 of 18 systems securely configured settings for its operating systems.
Security weaknesses and corrective actions adequately reported and tracked	Most systems exhibited significant deficiencies in reporting and tracking security weaknesses. As a result, the information about corrective action that the Department is using for performance measurement is inaccurate and inconsistent.
Contingency plans adequately tested	Six of 18 systems' contingency plans were inadequately tested, including 2 systems that support the primary mission-essential weather forecasting function; testing of these 2 systems' contingency plans had not been done since FY 2007.
Alternate processing sites arranged	Five systems that are required to have alternate processing sites do not have them, including three systems—two high-impact and one moderate-impact—that support weather forecasting. Documents attribute the lack of alternate sites primarily to budget constraints.

Source: OIG, 2010 FISMA report

According to OMB's FY 2010 FISMA report to Congress, while the Department reported spending more than \$165 million on IT security, its standing related to IT security posture is generally lower compared to other federal agencies (table 5).

Table 5. Summary of OMB FY 2010 FISMA Report to Congress (Selected IT Security Key Metrics)^a

Key Metrics	Commerce's Standing Among 24 Agencies (From the Top)
Smartcard issuance	19
IT assets with automated inventory capability	18
IT assets with automated vulnerability management capability	20
Portable computers with encryption	10
Security training for users with significant security responsibilities	16
Security training for new users	15

Source: OMB

^a Information in the table is based on data provided to OMB by the agencies, not agency inspectors general.

Last year, we recommended that Commerce revise its IT security policy by providing specific implementation guidance that will ensure more effective and consistent practices across the

OFFICE OF INSPECTOR GENERAL

Department. Further, we recommended the Department increase management attention to ensure that the deficiencies we identified are rectified Department-wide.

In responding to our recommendations, the Department developed an action plan to address the security weaknesses we identified; in the past year, the Department has taken several steps toward improving IT security. It has continued to enhance IT security workforce training, has increased collaboration between Department and operating unit chief information officers, and is currently revising its IT security program policy to address recommendations from our FY 2010 FISMA audit report. The Department has also taken the significant step of including information security measures in the Deputy Secretary's quarterly balanced scorecard review with bureau heads during FY 2011.

While we believe these efforts should strengthen the Department's IT security program, much more needs to be done. Until the Department successfully implements the items in its action plan, we can expect to find recurring security weaknesses—in both agency and contractor systems—that undermine the Department's ability to defend its systems and information, and that require greater attention and commitment from the Department's senior management. In fact, our ongoing FY 2011 FISMA work continues to find significant security weaknesses in Department and contractor systems. Our review of the Department's web applications identified significant security weaknesses that put them at risk of cyber attack, and our assessment of the selected Department IT systems found continued lapses in implementing critical security controls related to secure configuration settings, auditing and monitoring, and controlling access.

Implement Security Policy Effectively Through Consistent, Proactive Management

Our findings this year reaffirm the need for increased management attention by the Department's Chief Information Officer, senior operating unit leadership, and senior program officials to ensure security policy and practices, including the associated performance evaluation, are applied consistently and effectively across the Department. For example, in 2010, the Department's Office of the Chief Information Officer and the Office of Human Resources issued joint memorandums to address performance management and accountability issues identified in our 2009 IT security workforce audit. These memorandums provided specific performance requirements to be incorporated in performance plans for individuals holding critical IT security roles within the Department. If fully implemented, this would be a positive step toward increasing management accountability to the Department's IT security posture. However, we reviewed a sample of FY 2010 and FY 2011 performance plans for authorizing officials, system owners, and other individuals holding critical IT security roles in two operating units, and found that specific requirements for these roles are not consistently incorporated in some of the performance plans. We found plans that did not incorporate any of the requirements and other plans that incorporated only some. The Department, therefore, needs to determine the extent to which operating units are incorporating these requirements into their performance plans and whether the incorporation is producing the desired effect.

The Department also faces the challenge of transitioning from a traditional certification and accreditation process, which assessed a system's security controls every 3 years, to NIST's

current risk management framework, which emphasizes continuous monitoring of security controls. The Department is modifying its policy to adapt to the risk management framework and taking two critical initiatives to secure Commerce's cyber infrastructure:

- In response to a mandate by OMB, the Department is planning to strengthen its networks' peripheral security protection with Trusted Internet Connections (TICs) equipped with monitoring devices provided by the Department of Homeland Security. Commerce has identified hundreds of Internet connection points that need to be secured. Currently, the majority of operating units have awarded a contract to implement TIC protection during 2011 or 2012; however, NOAA's timetable for implementing TIC protection extends all the way to 2014. Considering the vulnerabilities that we have identified in Commerce systems and increased threats on the Internet, management should strive to accelerate the TIC implementation timetable.
- The Department is planning to implement two key elements of its IT security strategic plan developed in FY 2010: enterprise continuous monitoring capability and an enterprise cybersecurity center. These initiatives are critical to proactively protecting Commerce networks. However, as we discuss in challenge 2, Department management needs to carefully prioritize the elements of these initiatives so that the limited funds that are available can be used to implement the most critical elements first.

Challenge 4:

Manage Acquisition and Contract Operations More Effectively to Obtain Quality Goods and Services in a Manner Most Beneficial to Taxpayers

The Department's acquisition and contract operations are critical to its ability to effectively fulfill its mission. In FY 2010, the Department obligated nearly \$4 billion through more than 26,000 contract actions⁹ to acquire a wide range of goods and services to support mission-critical programs, including satellite acquisitions, intellectual property protection, broadband technology opportunities, management of coastal and ocean resources, information technology, and construction and facilities management. Table 6 illustrates the growing dollar amounts that Commerce's operating units have obligated through contracts in recent years.

Table 6. Contract Actions by Operating Unit, FY 2008 Through 2010^a

Commerce Acquisition Office	FY 2008		FY 2009 ^b		FY 2010 ^b	
	Contract actions	Dollars (in millions)	Contract actions	Dollars (in millions)	Contract actions	Dollars (in millions)
NOAA	15,625	\$990	16,831	\$1,159	16,087	\$1,624
Census	2,267	\$681	3,332	\$1,308	3,187	\$1,312
USPTO	1,794	\$489	1,776	\$384	1,619	\$431
NIST	4,481	\$233	4,768	\$286	4,992	\$505
Office of Secretary	903	\$79	768	\$63	870	\$53
Total	25,070	\$2,472	27,475	\$3,200	26,755	\$3,925

Source: Department of Commerce Office of Acquisition Management
^a Dollar amounts are rounded.
^b FY 2009 and 2010 include \$361 million and \$754 million, respectively, in contract actions obligated under the American Recovery and Reinvestment Act. These years also reflect significant contract spending related to the 2010 decennial census.

In order to maximize its investments, the Department needs to strengthen its acquisition and contract management practices. Acquisition management is not just the act of awarding a contract; while a contract is a product of an acquisition, there is an entire process that begins with identifying a mission need and developing a comprehensive strategy to fulfill that need through a thoughtful, balanced approach that considers cost, schedule, and performance. While the Department has made some progress in this important area, our audits continue to find weaknesses in how the Department plans, administers, and oversees its contracts and acquisitions.

Commerce has made important efforts to address these challenges. In June 2010, the Secretary, in an effort to strengthen and improve the quality of Commerce's acquisitions, initiated a comprehensive review of the Department's acquisition processes. The study found fragmented, overlapping, and inadequate departmental oversight and unclear roles and responsibilities of the offices involved in acquisitions. These problems allowed the operating units to initiate large acquisitions without the benefit of Department-level governance and insight. While the Department has established working teams to develop and implement solutions to these

⁹ Contract actions include contracts, delivery orders, task orders, and contract modifications.

problems, it is early in the process. Commerce hopes to have a framework in place for a Department-wide acquisition improvement project by the end of October 2011. However, developing the framework is just the first step in implementing solutions to the problems identified in the Secretary's acquisition study. Commerce must follow through on the Secretary's commitment—as well as take other needed actions to address the weaknesses we have identified—to establishing an efficient and effective acquisition process.

Develop and Retain a Qualified Acquisition Workforce

The Department needs to maintain an acquisition workforce that can effectively oversee its expanding and increasingly complex contract practices. As we reported in our September 2010 memorandum on Commerce's Recovery Act contracts and grants workforce, the Department claimed that almost all contracting personnel have met the Office of Federal Procurement Policy's requirements for job-related certifications and continuous learning. Nonetheless, recruitment, training, and retention still pose risks to the Department's ability to meet its increasing acquisition workload. For example, in FY 2010, the Department's attrition rate was 15 percent for contracting officers and 6 percent for contracting officer representatives and project managers. The Department estimates that maintaining a sufficient number of contract staff will require a 41 percent increase in contracting positions, a 56 percent increase in contracting officer representatives, and a 77 percent increase in project managers over the next 4 years.

In addition to staff lost through attrition, between FYs 2009 and 2019, 54 percent of the senior-level acquisition employees in the Department's contracting series will be eligible to retire. According to the Department, it lacks a sufficient pipeline of entry- to mid-level professionals with the knowledge and leadership skills to adequately sustain operations during the projected retirement wave. As experienced professionals leave the Department, Commerce must implement a strategy to keep its workforce at the needed size and skill levels to support its mission.

By 2019, the Department expects to lose over half of its senior acquisitions work force to retirement.

Ensure High Ethical Standards in the Acquisition Workforce and in Procurement Practices

Prevention and deterrence of ethical violations in any organization depends upon internal controls, oversight, and robust ethics awareness and training programs. Government contracting is risky by nature, and Commerce employees in contract-related positions represent the first—and best—line of defense in ensuring program integrity by promptly recognizing and reporting ethics violations and fraud indicators. Their vigilance, along with effective internal controls, is essential to combating fraud.

Because federal acquisition professionals have considerable control over how and to whom contracts are awarded, the profession has an inherent need for strong ethics monitoring and effective internal controls. Ethics training should include discussions of actual ethics violations

OFFICE OF INSPECTOR GENERAL

and “what-if” scenarios illustrating situations to avoid. Staff should also receive training on how to avoid the appearance of a conflict of interest. As an added safeguard, Commerce ethics officials should periodically review the ethics programs of contractors to help identify and prevent conflicts or violations.

Historically, our investigations have identified the need for more vigilant oversight and stronger process controls to detect and prevent procurement fraud, waste, and abuse within the Department and among its fund recipients and contractors. The following examples of OIG investigative findings illustrate the need for Commerce’s continued attention to procurement integrity issues:

- questionable sole sourcing practices by local program officials against advice of counsel,
- regional officials steering contracts to acquaintances,
- improper splitting of purchase card transactions to circumvent spending limits, and
- improper communications with unsuccessful contract bidders.

Another control that the Department needs to strengthen is its suspension and debarment program, which would help to ensure Commerce awards contracts and grants only to responsible parties. In January 2011, we reported that the Department’s ability to safeguard itself against awarding contracts and grants to improper parties was limited by delays in its suspension and debarment decisions. The Government Accountability Office has also recently issued a report disclosing that the Department needed to improve its suspension and debarment practices.

In April 2011, the Department made its first decision to debar a contractor (or any other party) in over 15 years. In this case, we recommended debarment to Commerce’s senior procurement officials because the contractor had been convicted of conspiracy to commit money laundering and sentenced to 9 years in prison. But a more than 3-year lapse between our initial recommendation to bureau officials and the Department’s final action highlights the problems with the Department’s approach to suspensions and debarments. Commerce’s current Suspending and Debarring Official has begun to develop the processes and policies that form the foundation of a successful suspension and debarment program but, despite this recent progress, creating an efficient and durable program remains a challenge.

Strengthen Processes to Govern the Appropriate Use of High-Risk Contracts and to Maximize Competition

Recent OMB contracting initiatives promote agency use of competition and fixed-price contracts and require agencies to effectively analyze prices to mitigate risks for noncompetitive contract awards. In FY 2010, the Department obligated over \$473 million under contracts considered to be high risk. High-risk contracts increase the risk of loss to the government because they

OMB defines high-risk contracts as contracts awarded noncompetitively or in which only one bid was received in response to a solicitation; cost-reimbursement contracts; and time-and-materials and labor-hour contracts.

provide fewer incentives for contractors to control costs while requiring more government resources for oversight. New high-risk contracts awarded by Commerce represented 39.5 percent of the total dollar value of all new awards made in FY 2010. The Department was required to reduce the amount obligated for new awards of high-risk contracts by at least 10 percent in FY 2010.¹⁰ However, our recent work illustrates that the Department needs to further improve its controls over high-risk contracts.

In our ongoing work, we have found that the Department has reduced its ratio of new high-risk contracts to total new contracts by over 15 percent. However, it did not report any FY 2010 cases to OMB in which a high-risk contract was reduced or eliminated. In fact, the dollar value of high-risk contracts actually *increased* significantly from 2008 to 2010. Specifically, total dollars obligated for new high-risk contracts in FY 2010 increased by \$143 million (more than 43 percent) from FY 2008. Although there were no reported reductions or eliminations of high-risk contracts in FY 2010, operating unit acquisition officials have taken actions that should result in more extensive use of competitive fixed-priced contracts in FY 2011 and beyond.

Further, without strong oversight, cost-plus-award-fee (CPAF) contracts can represent an additional risk of loss to the Department. The award fee in CPAF contracts is intended to motivate excellence in contractor performance and can also serve as a tool to control program risk and cost. However, the monitoring and evaluation of contractor performance necessary under a CPAF contract requires additional administrative effort and cost; federal regulations provide that such a contract is suitable only when the expected benefits of the contract are sufficient to warrant the added effort and cost. As we noted in our FY 2011 report, *Top Management Challenges Facing the Department of Commerce*, during 2010 decennial operations, the Census Bureau paid contractors millions of dollars in contract award fees that were not sufficiently designed or administered as required by regulations. For instance, for the Field Data Collection Automation (FDCA) contract, there were award fees that were excessive and not supported by technical assessments of the contractor's performance. Our 2009 review of two FDCA contract performance periods revealed that the contractor received over 90 percent of the available fees despite serious performance problems noted by Census's technical reviewers. Furthermore, the fee determination process lacked key features—such as qualitative measures and midpoint assessments—for ensuring awards were appropriate.

Achieve Efficiency and Savings in Acquiring Goods and Services, and Improve Oversight and Tracking of Contract Savings

OMB's contracting initiatives require agencies to improve oversight of contractors and focus on cutting contract costs by using smarter buying practices. The Department was required to develop an acquisition savings plan to review its existing contracts and acquisition practices and reduce contract spending by 3.5 percent in FY 2010 and an additional 7 percent by the end of FY 2011. Commerce had claimed cost savings of several million dollars resulting from the implementation of several initiatives in its November 2009 acquisition savings improvement plan; however, we found that the actual amount of cost savings achieved to date is uncertain because many of the amounts reported by the operating units are unsupported or

¹⁰ OMB Memorandum M-09-25, July 29, 2009. *Improving Government Acquisition*.

OFFICE OF INSPECTOR GENERAL

overestimated, and controls used to develop the methods for estimating savings are not adequate or well defined. Several factors contributed to this problem, including the lack of effective coordination, monitoring, and verification processes. For example, the Department's Office of Acquisition Management did not verify a nearly \$18 million savings claim by the Census Bureau for its bulk purchase of scanners. We disagreed with the bureau's calculation of its claimed savings, which was based on list prices; a more realistic value for the savings would have been the difference between what Census would have spent for the scanners in the absence of the savings initiative—based on prices it would have received for smaller-quantity, regional purchases—and what it ultimately paid as a result of pursuing the initiative to consolidate the acquisitions into a single nationwide action.

The Department has taken steps to improve its monitoring and verification of the cost savings reported by the operating units' procurement offices. Specifically, it is developing a process to standardize the contract savings reporting among the procurement offices and also requiring each office to report monthly on its actual contract savings; the Department will validate a sample of the reported savings each quarter. While such efforts to improve reporting represent real progress, continued attention will be needed to meet the level of accountability called for by OMB. In challenge 2, we describe additional departmental actions to achieve cost savings by eliminating improper payments.

Deliver Cost Savings and Efficiency on Major IT Investments

The Department spends about 25 percent of its annual budget (\$2.5 billion) on IT investments (excluding satellite spacecraft)—one of the highest percentages among all federal agencies. With such a large amount being spent on technology, the Department must watch for any opportunity to save money, improve efficiency, and prevent setbacks to these important projects.

The Department spends about 25 percent of its annual budget on IT investments—one of the highest percentages among federal agencies.

For instance, OMB requires agencies to compile the cost and schedule variances of major IT investment projects, the results of which are posted publicly on the government's IT Dashboard website for accountability and transparency. In its results, the Department reported serious cost and schedule problems concerning four NOAA IT investment projects, totaling \$265 million of Commerce's annual investments. NOAA management also expressed concerns that these IT system deficiencies, if not properly resolved, could result in serious disruptions to its 24/7 weather forecasting capability or satellite support operations.

In addition, USPTO has embarked on its Patent End-to-End (PE2E) acquisition initiative to significantly improve or replace nearly all of its aging patent processing systems. At a cost of \$130 million (by USPTO's current estimate), PE2E is the largest, most complex multi-year IT investment USPTO has undertaken in several years. In evaluating USPTO's management of the acquisition, we have identified challenges and offered recommendations related to improving long-term technical and acquisition planning, as well as strengthening USPTO's oversight of the project.

Challenge 5:

Manage the Development and Acquisition of NOAA's Environmental Satellite Systems to Avoid Launch Delays and Coverage Gaps

For the past 50 years, NOAA, in partnership with the National Aeronautics and Space Administration (NASA), has been responsible for developing and operating polar and geostationary environmental satellite systems. NOAA's environmental satellite operations and weather forecasting are designated primary mission-essential functions of the Department of Commerce because they directly support government functions the President has deemed necessary to lead and sustain the nation during a catastrophe. But NOAA's current constellation of polar and geostationary operational environmental satellites is aging, and its capabilities will degrade over time. As a result, the risk of gaps in critical satellite data is increasing.

Between 1995 and early 2010, NOAA partnered with the Department of Defense and NASA in the development of the National Polar-orbiting Operational Environmental Satellite System (NPOESS), which was at that time the planned replacement system for NOAA's Polar Operational Environmental Satellite System and Defense's Defense Meteorological Satellite Program. The original NPOESS program was to develop six satellites, with first launch planned for 2009 and an estimated life-cycle cost of \$6.5 billion through 2018. By late 2009, however, the program had reduced its scope to four satellites, with the first launch delayed until 2014, while its life-cycle cost estimate had escalated to \$14 billion through 2026.

In February 2010, the White House's Office of Science and Technology Policy announced its decision to have NOAA, in partnership with NASA, establish the Joint Polar Satellite System (JPSS) program as part of the restructuring of NPOESS due to its long history of cost overruns and schedule delays. At that time, the JPSS program planned to launch two satellites—at an estimated cost of \$11.9 billion—to collect data for short- and long-term weather and climate forecasting through 2026. But in order to be included in the FY 2011 President's budget request, the JPSS budget estimate had to be developed so quickly that, while NOAA had existing NPOESS requirements in place, it did not have time to formally approve high-level requirements for JPSS.¹¹

"Polar-orbiting satellites are the backbone of all model forecasts at three days and beyond. . . . NOAA is faced with a nearly 100% chance of a data gap in the U.S. civilian polar orbit, on which both civilian and military users rely, by late 2016 to early 2017."

Dr. Kathryn D. Sullivan, Assistant Secretary of Commerce for Environmental Observation and Prediction and Deputy Administrator of NOAA, in July 28, 2011, written testimony to the U.S. Senate Committee on Appropriations, Subcommittee on Financial Services and General Government

¹¹ In a September 23, 2011, hearing before the House Subcommittees on Investigations and Oversight and Energy and Environment, Committee on Science, Space, and Technology, the Assistant Secretary of Commerce for Environmental Observation and Prediction and Deputy Administrator of NOAA stated that NOAA has recently completed high-level JPSS requirements, refining its cost estimate, and will incorporate updated baselines (cost, schedule, and performance) in the upcoming FY 2013 budget submission.

OFFICE OF INSPECTOR GENERAL

The second system, the Geostationary Operational Environmental Satellite-R Series (GOES-R), is intended to offer uninterrupted short-range severe weather warning and “now-casting” through 2036. With an estimated cost of \$10.9 billion for four satellites, this program experienced projected cost changes and reduced capabilities, which occurred while GOES-R was in the midst of defining the system architecture. Working with NASA, NOAA is responsible for managing the entire program and for acquiring the ground segment, which is used to control satellite operations and to generate and distribute instrument data products.

Given their histories, both of these critical satellite programs require strong program management and close oversight to minimize further delays and prevent any interruptions in satellite coverage. Our work has identified three near-term priorities for NOAA as it manages JPSS and GOES-R:

1. timely launch and complete the data checkout for the NPOESS Preparatory Project (NPP);
2. strengthen program management and systems engineering to mitigate JPSS coverage gaps; and
3. maintain robust program management and systems engineering to prevent GOES-R coverage gaps.

Prevent a Near-Term Polar Satellite Coverage Gap Between NOAA-19 and NPP

The first JPSS satellite (JPSS-1) will be preceded in orbit by the NPP satellite, originally a NASA-led risk reduction effort to test NPOESS’ new instruments in flight. Scheduled for an October 28, 2011, launch, NPP will now be used operationally to maintain continuity of climate and weather forecast data (used, for example, in the prediction of heavy snowstorms and flooding) between NOAA’s current polar-orbiting operational environmental satellite (NOAA-19) and JPSS-1. Recent efforts by NASA’s NPP team (including contractors) have put the satellite on track to launch in late October, but late development of the ground system has compressed the mission schedule and delayed the schedule for data product availability after launch.

After the launch, NOAA originally planned to make NPP operationally ready in 18 months, which coincides with the end of the design life of NOAA-19 (approximately March 2013). This plan left little room for contingencies. Both NOAA and OIG have identified a number of risks that, if not properly mitigated, could cause further delays in NPP operational readiness and degradation of NOAA’s weather and climate forecasting capability:

- According to the ground system’s contractor, Raytheon, the ground system will not be able to support the validation of a significant number of data records until after a system upgrade, planned for March 2012. In addition, NOAA has not finalized coordination between the NPP/JPSS program and NOAA’s Center for Satellite Applications and Research (STAR), which is critical to transferring satellite observation into operations. Consequently, NOAA has extended its projection for readiness from 18 to 24 months after launch, which could lead to a coverage gap between NOAA-19 and NPP if NOAA-19 stops functioning properly at the end of its design life.

- We also observed that, unlike NOAA's existing operational satellite systems, NPP has only a single mission management center for controlling the satellite, and NPP's ground station has the system's only science data downlink (the means to transmit a signal from the satellite to the ground station). JPSS program officials told us they have commissioned studies to develop an alternate mission management center and hope to have one ready well in advance of the JPSS-I launch. They also told us that the ground station has redundancy in terms of antennas and equipment. However, while there is redundancy, the use of a single ground station in a single geographic location is not consistent with NOAA's existing polar and geostationary operational environmental satellite systems, in which more than one location is used.
- NASA conducted two ground system/NPP satellite compatibility tests in 2011; the first test had been delayed when ground system software builds took longer than expected to produce. Both tests experienced further delays and compressed the remaining work schedule for the October 2011 NPP launch. NASA has had to postpone analysis of some test results and requirements verification until after NPP's launch. Also, in response to an independent review team's recommendations, the project has completed a stress test in late September and early October to evaluate NPP's operational readiness. Any system fixes required to mitigate concerns identified during the stress test would add to the postlaunch data production workload.

In order to reduce the risk of a data gap between NOAA-19 and NPP, NOAA management needs to provide sufficient oversight to enable communication and coordination between the JPSS program and STAR as well as ensure additional resources are available after launch to support activities needed for data production. NOAA should also determine the feasibility of establishing an alternate mission management center and an additional science data downlink for NPP as soon as possible.

Ensure Solid Program Management and Systems Engineering Principles Are Applied to Mitigate JPSS Coverage Gaps

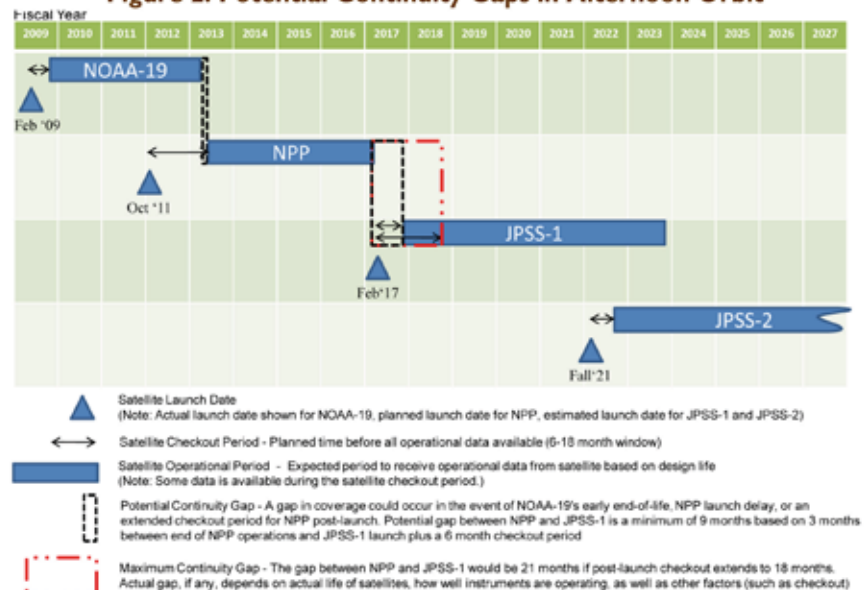
NOAA expects a gap in weather and climate observations between NPP's end of design life and the operational date of JPSS-I. NPP's projected end of design life is November 2016, NOAA plans to launch JPSS-I in the first quarter of 2017,¹² and there is a minimum 6-month checkout period before key data products from JPSS-I can be used operationally. We believe that, due to continued budget uncertainty and probable FY 2012 funding somewhat below the President's budget request, the JPSS-I launch date will be no earlier than February 2017. Based on a February 2017 launch, the gap would last at least 9 months (3 months from November to February, plus the additional 6 months for checkout). Should checkout take 18 months (as NPP's is projected to do), the gap would extend a total of 21 months (figure 2, next page). NOAA's studies have found that its weather forecasting at 5, 4, and 3 days before an event could be significantly degraded during the coverage gap period.

¹² According to NOAA, JPSS-I could launch in the first quarter of FY 2017 with (1) the program receiving the full President's budget request for FY 2012 (\$1.07 billion) and beyond and (2) no FY 2012 continuing resolution beyond the first quarter of FY 2012.

OFFICE OF INSPECTOR GENERAL

A checkout period longer than 6 months will be necessary to achieve full operational capability (versus an interim capability to produce key data products). Full checkout may take longer because JPSS-1 instruments will have manufacturing changes from the models flown on NPP and, in all probability, NPP will no longer be operational when JPSS-1 is on-orbit, thus leaving the JPSS-1 mission without a direct, and more efficient, means for comparison.

Figure 2. Potential Continuity Gaps in Afternoon Orbit



Source: OIG analysis of NOAA data, as of August 22, 2011

We have identified the following areas that require senior management attention to help ensure JPSS-1 operational readiness and minimize the potential impact of the coverage gap:

- Prioritize all JPSS requirements, develop reliable cost estimates to support future funding requests, and systematically communicate planned actions and progress with decision makers.** NOAA is currently developing a revised life-cycle cost estimate. Additionally, NOAA tasked NASA with developing contingencies that prioritize some of the most important requirements and maintain a launch readiness date no later than February 2017. We believe the JPSS program should formally prioritize all of its requirements, not just the subset in this contingency exercise, so that it can efficiently adjust the program's performance capabilities or launch dates, if needed, in response to year-to-year funding variances. Further, the program should develop a plan to accommodate requirements that may have to be removed or relaxed when annual funding falls short of the program's budget but could be recouped in future appropriations. Finally, due to the importance and complexity of the JPSS program, NOAA must ensure that a program baseline (cost, schedule, and requirements) is established as soon as possible, and keep the Department and

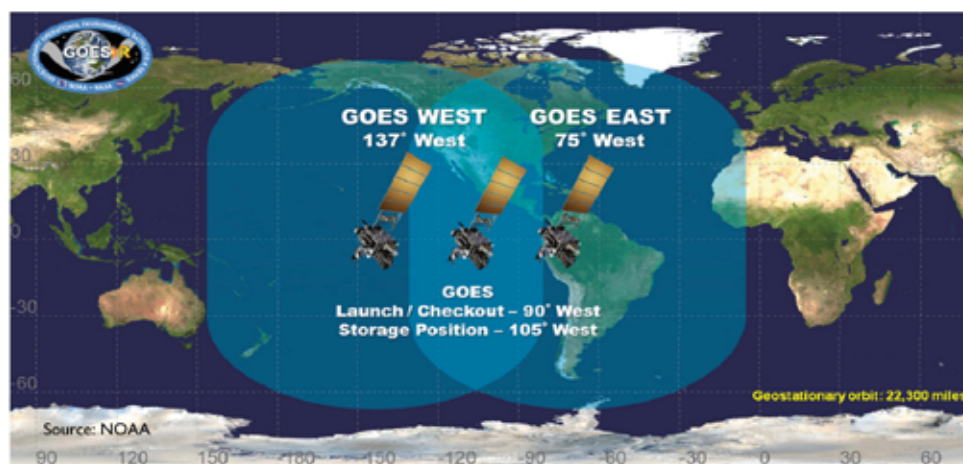
Congress informed of its planned actions and progress against this baseline to facilitate decision making.

- Coordinate NOAA response, in case NPP does not live through its 5-year design life.** The NPP spacecraft was designed to last 5 years and carries enough fuel to last 7 years. However, most of its instruments were managed and developed under the NPOESS contract, which received limited government oversight and had a history of technical issues. Additionally, NASA lacked technical oversight during the instrument development, manufacturing, and testing phases, creating uncertainty about the instruments' ability to operate for the length of the spacecraft's design life. For these reasons, NASA's revised criteria for NPP mission success called for only 3 years of operability. Although NOAA's current analysis assumes that NPP will have a 5-year operational life, NOAA understands that a residual risk of a shorter life expectancy remains due to the lack of oversight during the development of most of NPP's instruments. In order to sufficiently prepare for an expected gap in polar satellite data from the afternoon orbit, NOAA should coordinate efforts from across its line offices to minimize the degradation of weather and climate forecasting during gaps in coverage.

Maintain Robust Program Management and Systems Engineering Disciplines to Prevent Geostationary Coverage Gaps

NOAA's policy for its geostationary satellites is to have three satellites in orbit—two operational satellites (GOES-East and GOES-West) and one on-orbit spare that is ready for use operationally should either of the active satellites fail (figure 3).

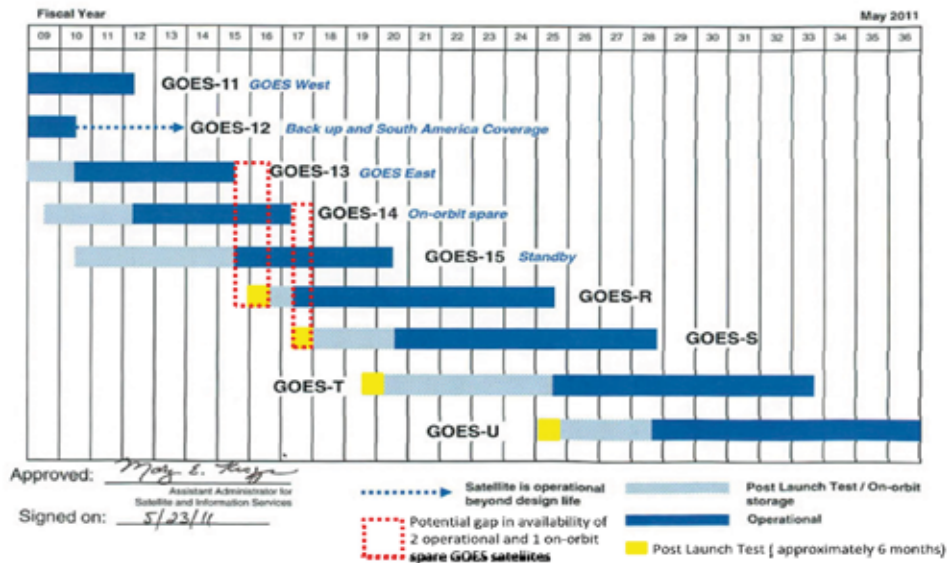
Figure 3. GOES-R Orbital Coverage



When GOES-R is launched in October 2015, NOAA may not be able to meet its policy of having an on-orbit spare because GOES-13 will have exceeded its operational life (figure 4, next page). Until GOES-R completes its 6-month postlaunch test, there would be only two

operational satellites (GOES-14 and GOES-15). A similar lack of an on-orbit spare will occur when the next GOES satellite, GOES-S, is launched in February 2017 (only GOES-15 and GOES-R would be operational).¹³

Figure 4. Continuity of GOES Operational Satellite Programs



Source: OIG analysis of NOAA data

GOES-R development is proceeding towards its next key technical milestone (critical design) in the 4th quarter of FY 2012. According to August 2011 program documentation, the GOES-R program's overall schedule and technical development remain on track; however, the ground project's development is being modified to control costs. The program is changing the ground segment's security architecture and has chosen not to implement some optional data products. The program is also revising the ground segment's schedule to a more incremental development approach—which will increase schedule flexibility, as well as better align the delivery schedule for GOES-R spacecraft, instruments, documentation and other flight-to-ground segment dependencies. In light of these developments, NOAA should ensure that solid program management and system engineering principles are effectively implemented to control costs, keep schedules on track, and maintain required technical performance.

¹³ The launch dates for GOES-R and GOES-S are based on NOAA's current projections.

Acronym List

BEA	Bureau of Economic Analysis
BIS	Bureau of Industry and Security
BTOP	Broadband Technology Opportunities Program
CPAF	cost-plus-award-fee
EDA	Economic Development Administration
ESA	Economics and Statistics Administration
FDCA	Field Data Collection Automation
FISMA	Federal Information Security Management Act
FY	fiscal year
GAO	Government Accountability Office
GOES-R	Geostationary Operational Environmental Satellite-R Series
GSA	General Services Administration
HCHB	Herbert C. Hoover Building
IPERA	Improper Payments Elimination and Recovery Act
ITA	International Trade Administration
JPSS	Joint Polar Satellite System
MBDA	Minority Business Development Agency
NASA	National Aeronautics and Space Administration
NEI	National Export Initiative
NIST	National Institute of Standards and Technology
NOAA	National Oceanic and Atmospheric Administration
NPOESS	National Polar-orbiting Operational Environmental Satellite System
NPP	NPOESS Preparatory Project
NTIA	National Telecommunications and Information Administration
OIG	Office of Inspector General
OMB	Office of Management and Budget
PE2E	Patent End-to-End
STAR	Center for Satellite Applications and Research
TIC	Trusted Internet Connections
TPCC	Trade Promotion Coordinating Committee
USPTO	U.S. Patent and Trademark Office

Appendix A: Related OIG Publications

This list presents OIG's past and current work related to FY 2012's top management challenges. Challenges 3, 4, and 5 are ongoing challenges that were also featured in FY 2011's *Top Management Challenges Facing the Department of Commerce* (OIG-11-015, December 20, 2010). These products can be viewed at www.oig.doc.gov. If the product contains information that cannot be released publicly, a redacted version or an abstract will be available on the website.

Challenge 1: Trade and Export Promotion

BUREAU OF ECONOMIC ANALYSIS (BEA)

- FY 2008 FISMA Assessment of BEA Estimation Information Technology System (BEA-015) (OSE-19001, September 22, 2008)

INTERNATIONAL TRADE ADMINISTRATION (ITA)

- Greater Interagency Involvement and More Effective Strategic Planning Would Enhance National Export Strategy (IPE-18589, September 25, 2007)
- Commerce Can Further Assist U.S. Exporters by Enhancing Its Trade Coordination Efforts (IPE-18322, March 30, 2007)
- CS Brazil Is Operating Well Overall but Needs Management Attention in Some Areas (IPE-18114, March 30, 2007)
- Commercial Service Operations in Argentina and Uruguay Are Mostly Sound but Financial Processes Need Attention (IPE-18111, September 29, 2006)
- CS China Generally Performs Well but Opportunities Exist for Commerce to Better Coordinate Its Multiple China Operations (IPE-17546, March 31, 2006)

ECONOMIC DEVELOPMENT ADMINISTRATION (EDA)

- Aggressive EDA Leadership and Oversight Needed to Correct Persistent Problems in RLF Program (OA-18200, March 30, 2007)
- EDC Fund, Inc. Revolving Loan Fund EDA Grant No. 01-39-01829 (ATL-17285, January 11, 2006)

BUREAU OF INDUSTRY AND SECURITY (BIS)

- Briefing on Issues Related to BIS Budget and Responsibilities for International Treaty Implementation and Compliance (October 7, 2008)

- U.S. Dual-Use Export Controls for India Should Continue to Be Closely Monitored (IPE-18144, March 30, 2007)
- U.S. Dual-Use Export Controls for China Need to Be Strengthened (IPE-17500, March 30, 2006)
- Export Licensing Process for Chemical and Biological Commodities Is Generally Working Well, but Some Issues Need Resolution (IPE-16946, March 31, 2005)

U.S. PATENT AND TRADEMARK OFFICE (USPTO)

- Status of USPTO Initiatives to Improve Patent Timeliness and Quality (OIG-11-032-I, September 29, 2011)
- Stronger Management Controls Needed over USPTO's Projection of Patent Fee Collections (OIG-11-014-A, December 14, 2010)
- USPTO Patent Quality Assurance Process (OIG-11-006-I, November 5, 2010)
- Overseas Intellectual Property Rights Attaché Program Is Generally Working Well, but Comprehensive Operating Plan Is Needed (IPE-19044, July 17, 2008)

The following reviews are in progress:

- USPTO's Largest Telework Program—Patent Hoteling Program

Challenge 2: Operating Effectively in a Constrained Budget Environment

- Census 2010: Final Report to Congress (OIG-11-030-I, June 27, 2011)
- Commerce Has Procedures in Place for Recovery Act Recipient Reporting, but Improvements Should Be Made (OIG-11-031-A, July 29, 2011)
- Commerce Needs to Strengthen Its Improper Payment Practices and Reporting (OIG-11-021-A, March 25, 2011)
- IG's Testimony on Recovery Act Broadband Spending: House Committee on Energy and Commerce (OIG-11-019-T, February 10, 2011)
- Commerce Should Strengthen Accountability and Internal Controls in Its Motor Pool Operations, OIG-11-004-A (October 27, 2010)
- Inspector General's Semiannual Reports to Congress (September 2010 and March 2011)
- Management of the Herbert C. Hoover Building Renovation (OAE-19885, August 5, 2010)

OFFICE OF INSPECTOR GENERAL

The following reviews are in progress:

- Review of 2020 Census Planning Efforts
- Review of the Effectiveness of NTIA's Monitoring of BTOP Grant Awards
- Review of NTIA BTOP Grantees' Match

Challenge 3: IT Security

- Improvements Are Needed For Effective Web Security Management (OIG-12-002-A, October 21, 2011)
- Federal Information Security Management Act Audit Identified Significant Issues Requiring Management Attention (OIG-11-012-A, November 15, 2010)
- Respondent Data Safeguards in the Decennial Response Integration System (DRIS) (OAE-19888, September 24, 2010)
- FY 2009 FISMA Assessment of the Environmental Satellite Processing Center (OAE-19730, January 11, 2010) [abstract only]
- FY 2009 FISMA Assessment of the Enterprise UNIX Services System (OAE-19729, November 20, 2009)
- FY 2009 FISMA Assessment of the Patent Cooperation Treaty Search Recordation System (OAE-19731, November 20, 2009)
- FY 2009 FISMA Assessment of the Field Data Collection Automation System (OAE-19728, November 20, 2009)
- FY 2009 FISMA Assessment of BIS Information Technology Infrastructure (OSE-19574, September 30, 2009)
- FY 2009 FISMA Assessment of Bureau Export Control Cyber Infrastructure, Version 2 (OSE-19575, September 30, 2009)

The following reviews are in progress:

- Effectiveness of IT Security Controls Implemented in Department Systems

Challenge 4: Contracts and Acquisitions

- Commerce's Office of Acquisition Management Must Continue to Improve Its Ongoing Oversight of Acquisition Savings Initiatives (OIG-12-001-A, October 6, 2011)
- Patent End-to-End Planning and Oversight Need to Be Strengthened to Reduce Development Risk (OIG-11-033-A, September 29, 2011)

- 2010 Census: Contract Modifications and Award-Fee Actions on the Decennial Response Integration System (DRIS) Demonstrate Need for Improved Contracting Practices (OIG-11-020-A, February 15, 2011)
- Census 2010: Revised Field Data Collection Automation Contract Incorporated OIG Recommendations, but Concerns Remain Over Fee Awarded During Negotiations (CAR-18702, March 3, 2009)

The following reviews are in progress:

- Department of Commerce's Acquisition Workforce
- NOAA's Management of Cost-Plus-Award-Fee Contracts
- NIST Oversight of Recovery Act Construction Grants
- NIST's Oversight of Recovery Act Construction Contracts

Challenge 5: Satellites

- Audit of JPSS: Challenges Must Be Met to Minimize Gaps in Polar Environmental Satellite Data (OIG-11-034-A, September 30, 2011)
- IG Memorandum, NOAA's Joint Polar Satellite System Audit Observations (OIG-11-029-M, June 10, 2011)
- IG Testimony before the Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies, United States House of Representatives (OIG-11-018-T, February 9, 2011)
- IG Testimony before the Subcommittee on Commerce, Justice, Science, and Related Agencies, Committee on Appropriations, United States Senate (March 4, 2010)
- Inspector General's Semiannual Reports to Congress (March 2009–September 2010)

Appendix B: Comparison of FY 2011 Challenges to FY 2012

FY 2012 Challenges	FY 2011 Challenges
1. Effectively Promote Exports, Stimulate Economic Growth, and Create Jobs ^a	5. Improving USPTO's Patent Processing Times, Reducing Its Pendency and Backlogs, and Mitigating Its Financial Vulnerabilities 6. Effectively Balancing NOAA's Goals of Protecting the Environment and Supporting the Fishing Industry
2. Reduce Costs and Improve Operations to Optimize Resources for a Decade of Constrained Budgets ^a	4. Enhancing Accountability and Transparency of the American Recovery and Reinvestment Act's Key Technology and Construction Programs 8. Effectively Planning the 2020 Decennial 7. Protecting Against Cost Overruns and Schedule Delays for the Commerce Headquarters Renovation
3. Strengthen Department-Wide Information Security to Protect Critical Information Systems and Data	1. Strengthening Department-Wide Information Security
4. Manage Acquisition and Contract Operations More Effectively to Obtain Quality Goods and Services in a Manner Most Beneficial to Taxpayers	3. Managing Acquisition and Contract Operations More Effectively to Obtain Quality Goods and Services at Reasonable Prices and on Schedule
5. Effectively Manage the Development and Acquisition of NOAA's Environmental Satellite Systems to Avoid Launch Delays and Coverage Gaps	2. Effectively Managing the Development and Acquisition of NOAA's Environmental Satellite Programs
^a The FY 2012 challenge is cross-cutting and broad-based. The FY 2011 challenge was bureau-specific and could be traced as a subset under the corresponding FY 2012 challenge.	

U.S. DEPARTMENT OF COMMERCE

OFFICE OF INSPECTOR GENERAL

Appendix C: Management Response to OIG Draft Report



UNITED STATES DEPARTMENT OF COMMERCE
The Secretary of Commerce
Washington, D.C. 20230

OCT 20 2011

MEMORANDUM FOR Todd J. Zinser
Inspector General

FROM: Rebecca M. Blank *Rebecca Blank*
Acting Secretary of Commerce

SUBJECT: Response to OIG Report on Top Management
Challenges

Thank you for the opportunity to review the Office of Inspector General's report, "Top Management Challenges Facing the Department of Commerce." Every day the Department's bureaus work with American businesses, communities, and private citizens to promote innovation, entrepreneurship, competitiveness, and stewardship—and we want to do that in the most effective and efficient way possible. As you stated in your report, one of our challenges, which we are working to meet head-on, is to reduce costs and improve operations to optimize resources for a decade of constrained budgets. In fact, having adequate resources is a common theme throughout the report.

We are aware that we have challenges in all of the areas discussed in your report, and we realize these areas require continued oversight, planning, and work. We look forward to working with you to address those challenges during fiscal year 2012.

We value your opinions and the hard work of your staff to provide audits and investigations that keep Departmental and bureau leadership apprised of both longstanding and emerging issues. Thank you for recognizing our hard work in many of our mission areas, including promoting exports and stimulating economic growth, and for acknowledging the tough decisions that went into finding cost-saving initiatives. As you mentioned in your memorandum, we are continuing to use the balanced scorecard approach to track performance and measure progress on the Department's priorities. This approach will help ease the transition to our new Secretary.

(011200000129)

OFFICE OF THE SECRETARY: TOP MANAGEMENT CHALLENGES

35

Improper Payments Information Act (IPIA) of 2002, as amended

IPIA of 2002, as amended by the Improper Payments Elimination and Recovery Act (IPERA) of 2010, requires agencies to annually estimate and report on improper payments and agency actions to reduce them to the President and Congress. A review of all programs and activities that the USPTO administers is performed annually to assist in identifying and reporting erroneous or improper payments. The USPTO has not identified any significant problems with improper payments. However, the USPTO recognizes the importance of maintaining adequate internal controls to ensure the accuracy and integrity of payments made by the agency, and the USPTO maintains a strong commitment to continuous improvement in the overall disbursement management process. The USPTO has implemented procedures to detect and prevent improper payments. For FY 2012 and beyond, the USPTO will continue its efforts to ensure the integrity of its disbursements.

The USPTO annually conducts an assessment of the effectiveness of internal control over financial reporting, in compliance with OMB Circular A-123, *Management's Responsibility for Internal Control*. Furthermore, the FY 2010 assessment included a review of internal controls over disbursement processes, which indicated that current internal controls over disbursement processes are sound.

The USPTO completes an annual improper payments risk assessment covering all of its programs/activities as required by OMB Circular A-123, Appendix C. These improper payments risk assessments of the entity's programs/activities also include assessments of the corporate control and procurement environment. The improper payments program/activity risk assessment has revealed no risk-susceptible programs.

The results of the USPTO assessments revealed no risk-susceptible programs, and demonstrated that, overall, the USPTO has strong internal controls over disbursement processes, the amount of improper payments by the USPTO is immaterial, and the risk of improper payments is low. An estimated improper payment rate, accordingly, was deemed not necessary.

During FY 2011, the USPTO did not have any erroneous payments that exceeded the ten million dollar threshold. The USPTO continuously seeks to identify overpayments and erroneous payments by reviewing (1) credit memos and refund checks issued by vendors or customers and (2) undelivered electronic payments returned by financial institutions.

During FY 2008, the USPTO initiated an internal recovery audit program. Under this program, a letter similar to that sent by our recovery audit contractor is sent to vendors on a rotational basis. This program excludes grants, travel payment, purchase card transactions, inter-agency agreements, government bills of lading, and gift and bequest transactions. This program continued through FY 2011. There were no items identified as recoverable.



Improper Payment Reduction Outlook <i>(Dollars in Millions)</i>									
Program	FY 2010			FY 2011			FY 2012	FY 2013	FY 2014
	Outlays	Improper Payment Percent	Improper Payment Dollars	Outlays	Improper Payment Percent	Improper Payment Dollars	Estimated Outlays	Estimated Outlays	Estimated Outlays
Patent	\$1,730	0.01%	\$0.02	\$1,886	0.00%	\$ –	\$2,410	\$2,496	\$2,712
Trademark	178	0.01%	–	189	0.00%	–	242	250	272
Intellectual Property	45	0.01%	–	42	0.00%	–	54	56	61
Total	\$1,953	0.01%	\$0.02	\$2,117	0.00%	\$ –	\$2,706	\$2,802	\$3,045

During FY 2005, the USPTO entered into an agreement with the DOC to use an existing contract for recovery audit services. The audit was limited to closed obligations greater than \$0.1 million. Further excluded were grants, travel payments, purchase card transactions, inter-agency agreements, government bills of lading, and gift and bequest transactions.

The audit was completed in FY 2006 and resulted in three invoices that were identified as recoverable improper payments, which are statistically insignificant. The improper payments identified of \$0.1 million were recovered during FY 2006. Accordingly, no recovery audit services were conducted from FY 2007 through FY 2011.

FY 2005 Summary of Recovery Audit Effort

(Dollars in Millions)

Amount subject to review	\$ 159.4
# of invoices	4,433
Actual amount reviewed	\$ 107.3
# of invoices	985

In FY 2011, the USPTO continued its reporting procedures to senior management and to the DOC on improper payments, identifying the nature and magnitude of any improper payments, along with any necessary control enhancements to prevent further occurrences of the types of improper payments identified.

Summary of Financial Statement Audit and Management Assurances


Table 1. – Summary of Financial Statement Audit

Audit Opinion	Unqualified				
Restatement	No				
Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Ending Balance
NONE	0	0	0	0	0
Total Material Weaknesses	0	0	0	0	0

Table 2. – Summary of Management Assurances

Effectiveness of Internal Control over Financial Reporting (FMFIA § 2)						
Statement of Assurance	Unqualified					
Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Reassessed	Ending Balance
NONE	0	0	0	0	0	0
Total Material Weaknesses	0	0	0	0	0	0
Effectiveness of Internal Control over Operations (FMFIA § 2)						
Statement of Assurance	Unqualified					
Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Reassessed	Ending Balance
NONE	0	0	0	0	0	0
Total Material Weaknesses	0	0	0	0	0	0
Conformance with Financial Management System Requirements (FMFIA § 4)						
Statement of Assurance	Systems conform to financial management system requirements					
Non-Conformances	Beginning Balance	New	Resolved	Consolidated	Reassessed	Ending Balance
NONE	0	0	0	0	0	0
Total Non-Conformances	0	0	0	0	0	0
Compliance with Federal Financial Management Improvement Act (FFMIA)						
	Agency		Auditor			
Overall Substantial Compliance	Yes		Yes			
1. System Requirements	Yes		Yes			
2. Accounting Standards	Yes		Yes			
3. USSGL at Transaction Level	Yes		Yes			

The Nature of the Training Provided to USPTO Examiners



Achieving organizational excellence demands a high performance workforce that delivers high quality work products and provides customer service excellence. Training is a critical component in achieving consistently high quality products and services. Patent examiners and trademark examining attorneys received extensive legal, technical, and automation training in FY 2011. The USPTO has a comprehensive training program for new patent examiners and trademark examining attorneys, embedding a well-established curriculum including initial legal training, automation training, and training in examination practice and procedure. Automation training is provided to all examiners as new systems are deployed and existing systems are enhanced. New technology-specific legal and technical training was conducted throughout the examining operations. This specific training either focuses on practices particular to a technology or was developed to address training needs identified through patent and trademark examination reviews or staff requests.

The USPTO training staff works with the Patent and Trademark organizations to address specific training concerns and serve as consultants to design specific internal programs to fit the education needs of each business unit. Training is reviewed and evaluated on an ongoing basis to ensure it is up-to-date and that coursework reflects developments and changes that have taken place in the industry. In FY 2011, the Agency was forced to reduce training opportunities in response to patent funding shortfalls.

PATENT EXAMINER TRAINING

U.S. Patent Training Academy

- Mandatory training for first year examiners

Training in the Academy

Two training programs: Intellectual Property Experienced Examiner Training and an Entry Level Two-phase, a 12-month program.

- **Intellectual Property Experienced Examiner Training Curriculum**

This training included enhanced instruction in automation, including classes in more than a dozen specialized applications used in patent examination, multiple search systems, databases and commonly used office applications, areas such as: Classification Systems, Searching (classification, text), Claim Interpretation, Advanced Text Searching, training on Technology Center (TC) Specific tools such as STN and Dialog, Writing an Effective Examiner's Answer, Appeal Procedure and Practice (Appeal Conference and Pre-Conference; Prevent Administrative Remand).

- **Entry Level Two-Phased 12-Month New Examiner Training Curriculum**

The legal and procedural training includes enhanced instruction in areas such as: Classification Systems, Searching (classification, text), Claim Interpretation, and Advanced Text Searching, Writing an Effective Examiner's Answer, Appeal Procedure and Practice (Appeal Conference and Pre-Conference; Prevent Administrative Remand).

Technical training includes: Introduction to examining applications in specific areas of technology, the current state of specific technologies, ongoing technology topics, etc.

Automation training includes classes in more than a dozen specialized applications used in patent examination, multiple search systems, databases, and commonly-used office applications.

Life skills training includes: time management, ethics training, stress management, balancing quality and production, professionalism, benefits and financial planning basics, balancing work and personal life, diversity training and negotiating conflict.

Individual Development Plan

The Academy training program includes creating an Individual Development Plan (IDP) for each examiner. The IDP is composed of formal training courses, development assignments, and on-the-job training. The IDP is designed to assist the examiner from day one, through the first 24 months of employment. When the examiner graduates from the Academy, and is transferred to a TC, the IDP will continue to enable the examiner to acquire the competencies essential to perform assigned duties and to prepare for further development.

PATENT EXAMINER TRAINING *(Continued)*

Programs for all Examiners

Legal Practice and Procedure Training

- **Examiner Refresher Training**

Courses developed to enhance examiners' knowledge and skills in procedural and legal topics pertaining to patent examination. Participants may enroll in one or more courses in consultation with their supervisor.

- **Legal Lecture Series**

Training offered periodically to examiners based on major court decisions and office policies.

- **In-House Patent Law and Evidence Course**

Training for Examiners on authoritative court decisions on statutory issues under 35 U.S.C. §§ 101, 102, 103, and 112 and the handling of evidence during the examination of applications.

- **Negotiating in the Patent Examination Process**

An interactive lecture and workshop designed to teach the fundamentals of negotiating issues which arise during the patent examination process utilizing effective collaborative communication skills.

- **Continuing Education Series**

Training for patent examiners to enhance their technical and legal knowledge in the examination of patent applications.

Courses Offered:

- Non-Duty Hours Legal Studies Program (Budget Dependent)*
- Non-Duty Hours Technical Training Program (Budget Dependent)*
- Examiner Education Program (Budget Dependent)*
- Technology Center Specific Technological Training (Budget Dependent)*
- Updated Automation Tools Training (in coordination with Office of Patent Information Management)
- Brown Bag Informational Seminars
- Patent Administrative Professional Training
- Patent Examiner's Initial Training for Non-Examiners
- Legal Secretaries and Administrators Conference

* These programs remained suspended during FY 2011 due to budget constraints.

TRADEMARK EXAMINING ATTORNEY TRAINING

In FY 2011 the Trademark organization prepared, using data gathered from the results of quality reviews that were analyzed, the content of on-line e-learning training materials for trademark examining attorneys. Live and Web cast Training Sessions and Modules were developed and released covering the following list of topics.

- Trademark Manual of Examining Procedures (TMEP) Seventh Edition – Training
- American Intellectual Property Law Association Legal Lecture – Ethics in Trademark Prosecution
- Section 2(f) Training
- Review of Recent Federal Court Cases Regarding Trademarks, Trade Dress, and Dilution
- Industry training on trademark issues in the Communications industry sponsored by the International Trademark Association
- Model/Grade Exam Guide Training
- Examiner-Led Degree of Stylization Workshop

Law Office Presentations and Computer-Based Training (CBT) Modules were developed and released covering the following list of topics.

- TMEP Seventh Edition – Highlights CBT
- Class 16 Examining Marks Used on Publications
- Section 2(f) CBT

Two Exam Guides and One Exam Note was published:

- Examination Note 11-01 – Suspending Action on Section 44(d) Applications
- Examination Guide 1-11 – Section 2(a) Deceptiveness for Class 5 Goods
- Examination Note 11-02 – Life After a Non-final Action: An Examination Processing Guide
- Examination Guide 2-11 – Examination Procedures for Marks with Model and Grade Designations
- Examination Note 11-03 – TEAS Applications with Matter Other than an Individual Attorney Name in the Attorney “Name” Field

Other Guidance covering the following topics was also published and released.

- TMEP Seventh Edition
- TMEP Seventh Edition – Additional Training Materials
- TMEP Seventh Edition – Follow-up Questions & Answers
- Transcript of TMEP Seventh Edition Highlights CBT
- Highlights for TMEP Seventh Edition
- Section 2(f) CBT – Follow-Up Questions & Answers
- Section 2(a) Deceptiveness – Follow-Up Questions & Answers
- Trade Dress Training – Follow-Up Questions & Answers
- Conditional Functionality Refusal – Excellent First Action
- Identification of Goods and Services Requirement Writing and Samples

FY 2011 USPTO Workload Tables



Index of Tables

		Page
Table 1	Summary of Patent Examining Activities	159
Table 2	Patent Applications Filed	160
Table 3	Patent Applications Pending Prior to Allowance	161
Table 4	Patent Pendency Statistics	162
Table 5	Summary of Total Pending Patent Applications	162
Table 6	Patents Issued	163
Table 7	Patent Applications Filed by Residents of the United States	164
Table 8	Patents Issued to Residents of the United States	165
Table 9	United States Patent Applications Filed by Residents of Foreign Countries	166
Table 10	Patents Issued by the United States to Residents of Foreign Countries	168
Table 11	Utility Patents Issued to Small Entities	169
Table 12	Statutory Invention Registrations Published	170
Table 13	United States Government Agency Patents	170
Table 14A	Ex Parte Reexamination	171
Table 14B	Inter Partes Reexamination	171
Table 15	Summary of Contested Patent Cases	172
Table 16	Summary of Trademark Examining Activities	173
Table 17	Trademark Applications Filed for Registration and Renewal and Trademark Affidavits Filed	174
Table 18	Summary of Pending Trademark Applications	175
Table 19	Trademarks Registered, Renewed, and Published Under Section 12(C)	176
Table 20	Trademark Applications Filed by Residents of the United States	177
Table 21	Trademarks Registered to Residents of the United States	178
Table 22	Trademark Applications Filed by Residents of Foreign Countries	179
Table 23	Trademarks Registered to Residents of Foreign Countries	181
Table 24	Summary of Contested Trademark Cases	183
Table 25	Actions on Petitions to the Director of the U.S. Patent and Trademark Office	184
Table 26	Cases in Litigation	185
Table 27	Patent Classification Activity	186
Table 28	Scientific and Technical Information Center Activity	186
Table 29	End of Year Personnel	187
Table 30A	Top 50 Trademark Applicants	188
Table 30B	Top 50 Trademark Registrants	188

TABLE 1

SUMMARY OF PATENT EXAMINING ACTIVITIES
(FY 2007 - FY 2011)(PRELIMINARY FOR FY 2011)¹

Patent Examining Activity	2007	2008	2009	2010	2011
Applications filed, total^{1,2}	468,330	496,886	486,499	510,060	536,604
Utility ³	439,578	466,258	458,901	479,332	504,089
Reissue	1,057	1,080	1,035	1,138	1,139
Plant	1,002	1,331	988	1,013	1,106
Design	26,693	28,217	25,575	28,577	30,270
Provisional applications filed^{2,4}	132,459	143,034	134,438	140,561	150,173
First actions					
Design	29,029	28,756	27,858	26,051	25,042
Utility, Plant, and Reissue	367,953	422,065	469,946	447,485	505,651
PCT/Chapter	24,741	51,300	20,797	15,574	13,297
Patent application disposals, total	362,227	396,228	487,140	553,549	533,943
Allowed patent applications, total	195,530	187,607	214,523	264,119	266,580
Design	25,747	24,735	25,403	23,681	22,683
Utility, Plant, and Reissue	169,783	162,872	189,120	240,438	243,897
Abandoned, total	166,690	208,610	272,607	289,419	267,353
Design	2,661	2,936	3,840	3,101	2,701
Utility, Plant, and Reissue	164,029	205,674	268,767	286,318	264,652
Statutory invention registration disposals, total	7	11	10	11	10
PCT/Chapter II examinations completed	5,336	2,937	3,468	2,265	3,191
Applications published⁵	302,678	309,194	325,988	338,452	321,115
Patents issued^{2,6}	184,376	182,556	190,122	233,127	244,430
Utility	160,306	154,699	165,213	207,915	221,350
Reissue	548	662	398	861	969
Plant	979	1,179	1,096	978	816
Design	22,543	26,016	23,415	23,373	21,295
Pendency time of average patent application ⁷	31.9	32.2	34.6	35.3	33.7
Reexamination certificates issued	367	575	698	776	909
PCT international applications received by USPTO as receiving office	54,214	54,488	47,572	45,701	48,285
National requirements received by USPTO as designated/elected office	52,339	57,345	57,879	61,587	65,463
Patents renewed under Pub. L. No. 102-204 ⁸	343,894	353,923	304,096	361,668	378,830
Patents expired under Pub. L. No. 102-204 ⁸	67,122	67,127	66,330	79,993	82,146

¹ FY 2011 filing data are preliminary and will be finalized in the FY 2012 PAR.² FY 2010 application data has been updated with final end of year numbers.³ Utility patents include chemical, electrical and mechanical applications.⁴ Provisional applications provided for in Pub. L. No. 103-465.⁵ Eighteen-month publication of patent applications provided for in the AIPA of 1999, Pub. L. No. 106-113.⁶ Excludes withdrawn numbers. Past years' data may have been revised from prior year reports.⁷ Average time (in months) between filing and issuance or abandonment of utility, plant, and reissue applications. This average does not include design patents.⁸ The provisions of Pub. L. No. 102-204 regarding the renewal of patents superseded Pub. L. No. 96-517 and Pub. L. No. 97-247.

TABLE 2

PATENT APPLICATIONS FILED
(FY 1991 - FY 2011)*(PRELIMINARY FOR FY 2011)¹*

Year	Utility	Design	Plant	Reissue	Total
1991	166,765	10,368	414	536	178,083
1992	171,623	12,907	335	581	185,446
1993	173,619	13,546	362	572	188,099
1994	185,087	15,431	430	606	201,554
1995	220,141	15,375	516	647	236,679
1996	189,922	15,160	557	637	206,276
1997	219,486	16,272	680	607	237,045
1998	238,850	16,576	658	582	256,666
1999	259,618	17,227	759	664	278,268
2000	291,653	18,563	786	805	311,807
2001	324,211	18,636	914	956	344,717
2002	331,580	19,706	1,134	974	353,394
2003	331,729	21,966	785	938	355,418
2004	353,319	23,457	1,212	996	378,984
2005	381,797	25,304	1,288	1,143	409,532
2006	417,453	25,853	1,204	1,103	445,613
2007	439,578	26,693	1,002	1,057	468,330
2008	466,258	28,217	1,331	1,080	496,886
2009	458,901	25,575	988	1,035	486,499
2010 ²	479,332	28,577	1,013	1,138	510,060
2011¹	504,089	30,270	1,106	1,139	536,604

¹ FY 2011 data are preliminary and will be finalized in the FY 2012 PAR.

² FY 2010 application data has been updated with final end of year numbers.

TABLE 3

PATENT APPLICATIONS PENDING PRIOR TO ALLOWANCE¹
(FY 1991 - FY 2011)

Year	Awaiting Action by Examiner	Total Applications Pending ²
1991	104,086	254,507
1992	112,201	269,596
1993	99,904	244,646
1994	107,824	261,249
1995	124,275	298,522
1996	139,943	303,720
1997	112,430	275,295
1998	224,446	379,484
1999	243,207	414,837
2000	308,056	485,129
2001	355,779	542,007
2002	433,691	636,530
2003	471,382	674,691
2004	528,685	756,604
2005	611,114	885,002
2006	701,147	1,003,884
2007	760,924	1,112,517
2008	771,529	1,208,076
2009	735,961	1,207,794
2010	726,331	1,163,751
2011	690,967	1,168,928

¹ Includes patent applications pending at end of period indicated, and includes utility, reissue, plant, and design applications. Does not include allowed applications.

² Applications under examination, including those in preexamination processing.

TABLE 4

PATENT PENDENCY STATISTICS
(FY 2011)

UPR Pendency Statistics by Technology Center (in months)	Average First Action Pendency	Total Average Pendency
Total UPR Pendency	28.0	33.7
Tech Center 1600 - Biotechnology & Organic Chemistry	23.8	33.6
Tech Center 1700 - Chemical and Materials Engineering	26.0	34.6
Tech Center 2100 - Computer Architecture, Software & Information Security	30.9	39.6
Tech Center 2400 - Networks, Multiplexing, Cable & Security	33.6	40.7
Tech Center 2600 - Communications	31.4	40.8
Tech Center 2800 - Semiconductor, Electrical, Optical Systems & Components	26.5	29.3
Tech Center 3600 - Transportation, Construction, Agriculture & Electronic Commerce	26.0	33.6
Tech Center 3700 - Mechanical Engineering, Manufacturing & Products	29.6	37.4

TABLE 5

SUMMARY OF TOTAL PENDING PATENT APPLICATIONS
(FY 2011)

Stage of Processing	Utility, Plant and Reissue Applications	Design Applications	Total Patent Applications
Pending patent applications, total	1,217,134	33,057	1,250,191
In preexamination processing, total	82,176	3,597	85,773
Under examination, total	1,059,365	23,047	1,082,412
Undocketed	151,113	5,000	156,113
Awaiting first action by examiner	436,336	12,745	449,081
Subtotal applications awaiting first action by examiner ³	669,625	21,342	690,967
Rejected, awaiting response by applicant	284,323	4,318	288,641
Amended, awaiting action by examiner	143,911	868	144,779
In interference	2,073	16	2,089
On appeal, and other ¹	41,609	100	41,709
In post-examination processing, total	75,593	6,413	82,006
Awaiting issue fee	50,347	4,476	54,823
Awaiting printing ²	22,005	1,936	23,941
D-10s (secret cases in condition for allowance)	3,241	1	3,242

¹ Includes cases on appeal and undergoing petitions.

² Includes withdrawn cases.

³ Subtotal is not included in pending patent applications total.

TABLE 6

PATENTS ISSUED
(FY 1991 - FY 2011)¹

Year	Utility ²	Design	Plant	Reissue	Total
1991	91,819	9,387	318	334	101,858
1992	99,406	9,612	336	375	109,729
1993	96,675	9,946	408	302	107,331
1994	101,270	11,138	513	346	113,267
1995	101,895	11,662	390	294	114,241
1996	104,900	11,346	338	291	116,875
1997	111,977	10,331	400	267	122,975
1998	139,297	14,419	577	284	154,577
1999	142,852	15,480	436	393	159,161
2000	164,486	16,718	453	561	182,218
2001	169,571	17,179	563	504	187,817
2002	160,838	15,096	912	465	177,311
2003	171,493	16,525	1,178	394	189,590
2004	169,295	16,533	998	343	187,169
2005	151,077	13,395	816	195	165,483
2006	162,509	19,072	1,106	500	183,187
2007	160,306	22,543	979	548	184,376
2008	154,699	26,016	1,179	662	182,556
2009	165,213	23,415	1,096	398	190,122
2010	207,915	23,373	978	861	233,127
2011	221,350	21,295	816	969	244,430

¹ Past years' data may have been revised from prior year reports.

² Includes chemical, electrical, and mechanical applications.

TABLE 7

PATENT APPLICATIONS FILED BY RESIDENTS OF THE UNITED STATES¹
(FY 2007 - FY 2011)²

State/Territory	2007	2008	2009	2010 ²	2011 ³	State/Territory	2007	2008	2009	2010 ²	2011 ³
Total	247,898	257,818	246,777	254,895	N/A	Nebraska	689	592	504	600	N/A
Alabama	886	996	912	977	N/A	Nevada	1,629	1,996	1,680	1,785	N/A
Alaska	82	88	95	85	N/A	New Hampshire	1,450	1,564	1,510	1,547	N/A
Arizona	4,486	4,460	3,927	4,024	N/A	New Jersey	8,649	9,428	9,622	9,861	N/A
Arkansas	406	420	418	456	N/A	New Mexico	960	857	814	863	N/A
California	63,027	66,370	66,132	66,287	N/A	New York	15,518	16,838	15,098	15,279	N/A
Colorado	4,918	4,898	5,019	5,244	N/A	North Carolina	5,841	7,008	5,803	6,053	N/A
Connecticut	4,281	4,326	4,009	4,229	N/A	North Dakota	218	178	207	168	N/A
Delaware	954	922	904	993	N/A	Ohio	8,104	7,791	7,528	8,139	N/A
District of Columbia	250	262	261	261	N/A	Oklahoma	1,129	1,048	1,052	1,138	N/A
Florida	8,184	8,480	7,839	8,624	N/A	Oregon	4,841	4,487	3,911	4,203	N/A
Georgia	4,818	4,946	5,051	5,214	N/A	Pennsylvania	7,811	7,951	7,568	8,068	N/A
Hawaii	294	300	293	267	N/A	Rhode Island	716	740	666	739	N/A
Idaho	2,495	1,905	1,544	1,635	N/A	South Carolina	1,506	1,585	1,596	1,669	N/A
Illinois	9,323	9,340	8,985	9,278	N/A	South Dakota	198	193	220	224	N/A
Indiana	3,178	3,345	3,181	3,515	N/A	Tennessee	2,320	2,010	2,034	2,287	N/A
Iowa	1,490	1,641	1,481	1,581	N/A	Texas	15,886	17,339	15,667	16,568	N/A
Kansas	1,475	1,587	1,671	1,678	N/A	Utah	2,391	2,516	2,594	2,782	N/A
Kentucky	1,129	1,215	1,132	1,124	N/A	Vermont	1,001	1,309	616	679	N/A
Louisiana	838	709	795	882	N/A	Virginia	3,554	3,532	3,402	3,582	N/A
Maine	415	411	344	415	N/A	Washington	11,163	12,602	12,619	12,815	N/A
Maryland	3,840	3,694	3,503	3,551	N/A	West Virginia	294	274	300	292	N/A
Massachusetts	11,218	11,534	11,417	12,376	N/A	Wisconsin	4,631	4,341	4,054	3,991	N/A
Michigan	8,249	8,447	7,881	7,834	N/A	Wyoming	198	183	158	198	N/A
Minnesota	7,997	8,164	7,805	7,852	N/A	Puerto Rico	70	70	82	67	N/A
Mississippi	329	320	337	338	N/A	Virgin Islands	10	10	11	13	N/A
Missouri	2,273	2,335	2,285	2,314	N/A	U.S. Pacific Islands ⁴	3	-	1	1	N/A
Montana	281	258	239	249	N/A	United States ⁵	2	3	-	1	N/A

- Represents zero.

¹ Data include utility, plant, design, and reissue applications.

² Finalized data for FY 2007 to 2010 provided.

³ FY 2011 preliminary data should be available January 2012 at www.uspto.gov, and finalized in the FY 2012 PAR.

⁴ Represents residents of American Samoa, Guam, and miscellaneous U.S. Pacific Islands.

⁵ State/Territory information not available.

TABLE 8

PATENTS ISSUED TO RESIDENTS OF THE UNITED STATES¹
(FY 2010 - FY 2011)⁵

State/Territory	2010 ⁴	2011	State/Territory	2010 ⁴	2011
Total	115,864	120,178	Nebraska	235	258
Alabama	492	460	Nevada	612	640
Alaska	43	30	New Hampshire	780	793
Arizona	2,080	2,193	New Jersey	4,164	4,309
Arkansas	210	205	New Mexico	449	414
California	28,560	30,397	New York	7,383	8,026
Colorado	2,380	2,397	North Carolina	2,810	2,908
Connecticut	2,024	2,112	North Dakota	118	80
Delaware	399	399	Ohio	3,837	3,850
District of Columbia	85	103	Oklahoma	551	556
Florida	3,585	3,730	Oregon	2,288	2,278
Georgia	2,108	2,162	Pennsylvania	3,689	3,702
Hawaii	119	147	Rhode Island	340	363
Idaho	1,125	1,098	South Carolina	613	748
Illinois	4,237	4,453	South Dakota	76	108
Indiana	1,592	1,600	Tennessee	975	1,083
Iowa	789	832	Texas	7,618	8,054
Kansas	687	752	Utah	1,119	1,117
Kentucky	606	530	Vermont	618	599
Louisiana	383	341	Virginia	1,627	1,731
Maine	196	213	Washington	5,884	5,227
Maryland	1,615	1,674	West Virginia	131	104
Massachusetts	5,003	5,466	Wisconsin	2,170	2,127
Michigan	4,194	4,202	Wyoming	79	92
Minnesota	3,773	4,172	Puerto Rico	26	26
Mississippi	180	166	Virgin Islands	3	3
Missouri	1,110	1,013	U.S. Pacific Islands ²	1	-
Montana	91	134	United States ³	2	1

- Represents zero.

¹ Data include utility, design, plant, and reissue patents.

² Represents residents of American Samoa, Guam, and miscellaneous U.S. Pacific Islands.

³ No State indicated in database.

⁴ Finalized data for FY 2010 provided.

⁵ Past year's data may have been revised from prior year reports.

TABLE 9

UNITED STATES PATENT APPLICATIONS FILED BY RESIDENTS OF FOREIGN COUNTRIES¹
(FY 2007 - FY 2011)

Residence	2007	2008	2009	2010 ²	2011 ³	Residence	2007	2008	2009	2010 ²	2011 ³
Total	220,432	239,068	239,722	255,165	N/A	Denmark	1,232	1,654	1,783	1,852	N/A
Afghanistan	-	-	1	1	N/A	Dominican Republic	7	9	5	7	N/A
Albania	-	-	1	-	N/A	Ecuador	5	5	9	5	N/A
Algeria	3	1	-	1	N/A	Egypt	33	53	33	55	N/A
Andorra	5	8	5	4	N/A	El Salvador	3	-	1	1	N/A
Anguilla	-	-	3	-	N/A	Estonia	18	35	36	52	N/A
Antigua & Barbuda	2	1	1	2	N/A	Ethiopia	1	-	-	1	N/A
Argentina	166	139	151	141	N/A	Faroe Islands ⁴	-	-	-	1	N/A
Armenia	3	9	2	8	N/A	Fiji	-	-	1	-	N/A
Australia	3,612	4,194	4,211	4,111	N/A	Finland	2,517	2,782	2,793	2,908	N/A
Austria	1,417	1,785	1,713	1,872	N/A	France	8,204	9,281	9,726	10,641	N/A
Azerbaijan	1	1	3	5	N/A	Georgia	14	5	2	5	N/A
Bahamas	13	20	16	15	N/A	Germany	23,535	26,331	26,855	28,157	N/A
Bahrain	1	-	2	5	N/A	Ghana	3	1	3	2	N/A
Bangladesh	-	1	-	2	N/A	Gibraltar	3	3	7	7	N/A
Barbados	6	7	6	8	N/A	Greece	86	128	118	138	N/A
Belarus	15	11	7	11	N/A	Greenland	3	4	-	-	N/A
Belgium	1,700	1,748	1,917	2,186	N/A	Guatemala	3	2	2	8	N/A
Belize	-	4	1	-	N/A	Guinea	-	-	1	-	N/A
Benin	-	1	-	-	N/A	Haiti	1	-	-	1	N/A
Bermuda	4	8	8	5	N/A	Honduras	1	1	1	1	N/A
Bolivia	2	3	4	1	N/A	Hungary	193	203	234	251	N/A
Bosnia & Herzegovina	3	6	-	1	N/A	Iceland	37	41	49	52	N/A
Brazil	385	499	497	584	N/A	India	2,280	2,869	2,878	3,696	N/A
British Virgin Islands	11	10	11	3	N/A	Indonesia	37	25	19	27	N/A
Brunei Darussalam	1	-	1	1	N/A	Iran	18	28	29	67	N/A
Bulgaria	49	83	114	89	N/A	Iraq	-	1	1	-	N/A
Burkina Faso	1	-	-	-	N/A	Ireland	561	740	711	785	N/A
Burundi	-	1	-	-	N/A	Isle of Man ⁴	-	-	-	2	N/A
Cameroon	3	1	9	5	N/A	Israel	4,114	4,916	4,772	5,119	N/A
Canada	10,788	11,436	11,250	12,203	N/A	Italy	3,832	4,273	4,460	4,576	N/A
Cayman Islands	4	6	10	25	N/A	Jamaica	4	12	11	3	N/A
Chile	105	63	65	68	N/A	Japan	79,725	84,473	86,456	84,842	N/A
China (Hong Kong)	1,447	1,419	1,254	1,267	N/A	Jersey ⁴	-	-	-	9	N/A
China (Macau)	3	5	5	7	N/A	Jordan	12	8	14	5	N/A
China (People's Republic)	4,422	5,148	5,301	8,358	N/A	Kazakhstan	1	2	3	8	N/A
Colombia	27	35	28	53	N/A	Kenya	9	4	4	2	N/A
Costa Rica	33	20	18	28	N/A	Korea, Dem. Republic of	1	2	1	-	N/A
Croatia	32	39	35	31	N/A	Korea, Republic of	23,589	25,507	24,066	26,648	N/A
Cuba	16	38	23	26	N/A	Kuwait	25	18	39	49	N/A
Cyprus	5	8	12	18	N/A	Latvia	10	6	15	19	N/A
Czech Republic	129	180	245	279	N/A	Lebanon	12	11	17	8	N/A
						Libya	-	-	1	-	N/A
						Liechtenstein	26	35	42	40	N/A

TABLE 9
CONT.**UNITED STATES PATENT APPLICATIONS FILED BY RESIDENTS OF FOREIGN COUNTRIES¹**
(FY 2007 - FY 2011)

Residence	2007	2008	2009	2010 ²	2011 ³	Residence	2007	2008	2009	2010 ²	2011 ³
Lithuania	11	13	13	13	N/A	San Marino	1	-	3	1	N/A
Luxembourg	118	102	94	92	N/A	Saudi Arabia	69	90	153	267	N/A
Macedonia	1	-	2	-	N/A	Serbia	12	16	5	27	N/A
Madagascar	1	-	-	-	N/A	Seychelles	-	1	1	1	N/A
Malaysia	378	326	325	387	N/A	Singapore	1,192	1,376	1,278	1,490	N/A
Malta	5	10	11	10	N/A	Slovakia	32	36	30	42	N/A
Mauritius	2	1	-	1	N/A	Slovenia	53	71	69	111	N/A
Mexico	216	269	244	316	N/A	South Africa	280	319	323	356	N/A
Moldova	1	1	1	1	N/A	Spain	1,080	1,294	1,224	1,470	N/A
Monaco	15	16	21	21	N/A	Sri Lanka	9	16	12	14	N/A
Morocco	2	11	6	4	N/A	Sweden	3,132	3,508	3,610	3,906	N/A
Namibia	-	1	-	-	N/A	Switzerland	3,138	3,681	3,714	4,168	N/A
Nepal	-	-	2	-	N/A	Syria Arab Rep	-	1	2	-	N/A
Netherlands	4,249	4,240	4,510	4,639	N/A	Taiwan	20,447	19,733	17,974	21,282	N/A
Netherlands Antilles	1	1	4	1	N/A	Thailand	111	127	116	111	N/A
New Zealand	474	580	579	658	N/A	Trinidad & Tobago	4	6	8	12	N/A
Niger ⁴	-	-	-	1	N/A	Tunisia	7	9	5	5	N/A
Nigeria	5	1	2	7	N/A	Turkey	86	103	113	142	N/A
Norway	662	856	871	1,024	N/A	Turkmenistan	-	-	1	-	N/A
Oman	2	5	4	7	N/A	Turks and Caicos Islands	5	2	1	2	N/A
Pakistan	10	21	7	20	N/A	Ukraine	35	46	61	67	N/A
Panama	7	12	6	3	N/A	United Arab Emirates	22	30	54	45	N/A
Paraguay	-	1	-	-	N/A	United Kingdom	9,185	10,795	11,205	11,852	N/A
Peru	9	9	5	8	N/A	Uruguay	8	13	27	16	N/A
Philippines	87	72	61	84	N/A	Uzbekistan	-	-	1	-	N/A
Poland	104	122	150	178	N/A	Vanuatu (New Hebrides)	-	4	-	2	N/A
Portugal	66	91	87	113	N/A	Venezuela	37	27	32	35	N/A
Qatar	4	-	4	2	N/A	Vietnam	3	13	4	10	N/A
Romania	39	47	58	64	N/A	West Bank/Gaza	-	-	-	1	N/A
Russian Federation	443	531	498	600	N/A	Zimbabwe	3	2	2	-	N/A
Samoa	-	4	1	2	N/A	Other ⁵	-	-	-	-	N/A

- Represents zero.

¹ Data include utility, design, plant, and reissue applications. Country listings include possessions and territories of that country unless listed separately in the table. Data are subject to minor revisions.

² FY 2010 data are updated and final.

³ FY 2011 preliminary data should be available in January 2012 at www.uspto.gov, and finalized in the FY 2012 PAR.

⁴ Countries/Territories not previously reported.

⁵ Country of origin information not available.

TABLE 10

**PATENTS ISSUED BY THE UNITED STATES TO RESIDENTS OF FOREIGN COUNTRIES^{1,3}
(FY 2007 - FY 2011)²**

Residence	2007	2008	2009	2010	2011	Residence	2007	2008	2009	2010	2011
Total	89,760	90,713	96,395	117,263	124,252	El Salvador	-	-	-	1	-
Albania ⁴	-	-	-	-	1	Estonia	10	2	4	11	14
Algeria	-	-	-	1	-	Ethiopia	1	-	-	-	-
Andorra	1	1	2	8	4	Fiji	1	-	-	-	-
Anguilla	1	-	1	-	1	Finland	967	894	974	1,223	1,030
Antigua and Barbuda	-	1	-	1	-	France	3,757	3,683	3,836	4,835	5,024
Argentina	52	46	47	60	49	French Polynesia	1	-	1	-	-
Armenia	1	1	1	2	4	Gabon	1	-	-	-	-
Australia	1,493	1,485	1,717	1,940	2,213	Georgia	7	3	1	2	2
Austria	553	572	729	850	916	Germany	10,256	9,794	10,279	12,916	13,021
Azerbaijan	2	2	-	-	1	Ghana	1	-	-	1	1
Bahamas	3	5	6	9	12	Gibraltar	1	3	1	-	3
Bahrain	-	-	-	1	-	Greece	26	25	26	59	57
Bangladesh	-	1	-	-	-	Greenland	-	-	3	-	-
Barbados	2	2	3	2	2	Guatemala	-	4	1	2	-
Belarus	7	8	6	7	4	Honduras	2	-	-	-	1
Belgium	629	602	677	853	945	Hungary	55	68	53	92	103
Belize	-	-	1	-	-	Iceland	20	23	26	22	27
Benin	1	-	-	-	-	India	560	650	678	1,076	1,195
Bermuda	6	1	-	2	5	Indonesia	16	21	20	5	10
Bolivia	-	1	-	1	1	Iran	4	3	6	7	15
Bosnia and Herzegovina	-	-	2	-	-	Iraq	-	1	-	-	-
Brazil	112	131	146	209	232	Ireland	174	174	180	259	313
British Virgin Islands	1	1	4	-	1	Israel	1,218	1,322	1,426	1,828	2,054
Brunei Darussalam	-	-	1	-	1	Italy	1,791	1,890	1,842	2,150	2,322
Bulgaria	3	18	31	57	45	Jamaica	1	2	4	4	2
Burkina Faso	-	-	1	-	-	Japan	36,658	35,847	37,879	44,893	47,674
Cameroon	1	-	1	4	-	Jordan	1	1	1	-	4
Canada	3,974	4,052	4,361	5,225	5,687	Kazakhstan	3	-	2	1	-
Cayman Islands	12	2	1	3	4	Kenya	1	2	6	4	1
Chad	-	1	-	-	-	Korea, Democratic People's Rep of ⁴	-	-	-	-	1
Chile	25	19	28	23	30	Korea, Republic of	6,882	8,410	9,401	11,811	12,858
China (Hong Kong)	733	738	576	726	679	Kuwait	7	12	12	17	23
China (Macau)	-	2	1	2	6	Kyrgyzstan	-	1	-	-	-
China (Mainland)	1,139	1,684	2,195	3,059	3,466	Latvia	2	2	4	5	3
Colombia	8	9	11	10	15	Lebanon	2	5	4	5	8
Costa Rica	14	17	14	13	14	Liechtenstein	14	15	20	18	15
Croatia	15	14	19	9	18	Lithuania	9	13	4	7	10
Cuba	2	6	5	8	4	Luxembourg	58	40	55	50	41
Cyprus	4	1	2	5	3	Macedonia	-	-	1	-	1
Czech Republic	39	58	48	79	76	Malaysia	154	179	173	230	176
Denmark	494	573	512	706	836	Malta	1	2	7	3	4
Dominican Republic	2	3	5	3	2	Mauritius	-	1	-	-	-
Ecuador	5	3	3	5	1	Mexico	89	78	82	105	116
Egypt	10	6	2	14	19	Monaco	13	9	8	9	8

TABLE 10
CONT.**PATENTS ISSUED BY THE UNITED STATES TO RESIDENTS OF FOREIGN COUNTRIES^{1,3}**
(FY 2007 - FY 2011)²

Residence	2007	2008	2009	2010	2011	Residence	2007	2008	2009	2010	2011
Morocco	1	3	4	1	2	Singapore	457	426	496	591	692
Namibia	-	1	-	-	-	Slovakia	8	13	13	15	22
Netherlands	1,594	1,670	1,634	1,822	1,959	Slovenia	23	17	27	26	30
Netherlands Antilles	1	-	-	1	-	South Africa	117	111	148	143	134
New Zealand	157	180	179	243	238	Spain	350	386	415	484	528
Nigeria	1	1	-	-	1	Sri Lanka	5	1	6	4	8
Norway	285	288	303	414	411	Sweden	1,298	1,249	1,230	1,509	1,757
Oman	-	2	4	2	3	Switzerland	1,283	1,340	1,428	1,833	1,825
Pakistan	4	6	5	2	2	Syrian Arab Rep	1	-	-	-	1
Panama	-	1	3	4	1	Taiwan	7,569	7,424	7,958	9,202	9,584
Paraguay	-	-	-	1	-	Thailand	29	38	32	58	65
Peru	2	1	8	1	5	Trinidad & Tobago	1	-	3	5	1
Philippines	26	22	24	33	37	Tunisia	1	2	-	2	2
Poland	37	64	50	48	61	Turkey	19	35	32	49	45
Portugal	16	30	18	28	34	Turks and Caicos Islands	1	1	-	-	-
Qatar	-	1	1	1	1	Ukraine	14	16	21	12	13
Romania	11	11	7	17	24	United Arab Emirates	5	6	10	7	11
Russian Federation	183	186	206	246	311	United Kingdom	4,100	3,882	3,904	4,830	4,925
Saint Kitts & Nevis	-	1	-	-	-	Uruguay	3	3	5	5	4
Samoa	4	-	-	2	-	Vanuatu ⁴	-	-	-	-	1
Saudi Arabia	23	28	20	51	56	Venezuela	13	19	11	16	19
Senegal	-	-	-	1	-	Vietnam	1	-	2	2	-
Serbia	6	2	5	4	5	Zimbabwe	1	-	4	-	-
Seychelles	2	1	-	-	-						

- Represents zero.

¹ Data includes utility, design, plant, and reissue patents.

² Past years' data may have been revised from prior year reports to reflect patent withdrawal information that was updated during the year. It is not uncommon for the withdrawal status of patents issued in prior years to change.

³ Each patent grant is listed under only one country of residence. Country listings include possessions and territories of that country unless separately listed in the table.

⁴ Countries/Territories not previously reported.

TABLE 11**UTILITY PATENTS ISSUED TO SMALL ENTITIES**
(FY 2007 - 2011)

Fiscal Year of Grant	2007	2008	2009	2010	2011
Percentage Small Entity	22.14%	20.87%	19.76%	19.87%	19.80%
US origin ¹	30.38%	28.76%	27.54%	27.76%	27.87%
Foreign origin ¹	13.66%	13.06%	12.27%	12.22%	12.16%
Percentage Large Entity	77.86%	79.13%	80.24%	80.13%	80.19%
US origin ¹	69.62%	71.24%	72.46%	72.24%	72.13%
Foreign origin ¹	86.34%	86.94%	87.73%	87.78%	87.84%

¹ Patent origin is based on residence of the first-named inventor.

TABLE 12

STATUTORY INVENTION REGISTRATIONS PUBLISHED
(FY 2007 - 2011)

Assignee	2007	2008	2009	2010	2011
Air Force	7	3	2	-	1
Army	-	-	-	-	-
Energy	-	-	-	-	-
Navy	4	6	3	5	7
Health & Human Services	-	-	-	-	-
VA	-	-	-	-	1
USA ^{1,2}	-	-	-	-	-
Other Than U.S. Government	16	12	4	12	6
Total	27	21	9	17	15

- Represents zero.

¹ United States of America - no agency indicated in database.

² Past year's data may have been revised from prior year reports.

TABLE 13

UNITED STATES GOVERNMENT AGENCY PATENTS¹
(FY 2007 - FY 2011)³

Activity	2007	2008	2009	2010	2011	TOTAL
Agriculture	30	27	24	39	44	164
Air Force	33	36	45	51	40	205
Army	155	134	119	136	141	685
Attorney General	-	-	-	1	1	2
Commerce	2	3	5	10	15	35
Energy	22	20	17	42	25	126
EPA	9	10	9	9	12	49
FCC	-	-	-	-	-	-
HEW/HHS	116	101	105	128	146	596
Interior	6	1	4	4	1	16
NASA	65	72	86	89	106	418
Navy	255	241	230	284	300	1,310
NSA	11	16	15	24	11	77
NSF	1	-	-	1	-	2
Postal Service	15	19	14	37	25	110
State Department	-	-	-	-	-	-
Transportation	-	-	-	1	-	1
TVA	-	1	-	1	-	2
USA ²	1	3	3	5	3	15
VA	5	8	10	9	13	45
Total	726	692	686	871	883	3,858

- Represents zero.

¹ Data in this table represent utility patents assigned to agencies at the time of patent issue. Data subject to minor revisions.

² United States of America - no agency indicated in database.

³ Past years' data may have been revised from prior year reports to reflect patent withdrawal information that was updated during the year. It is not uncommon for the withdrawal status of patents issued in prior years to change.

TABLE 14A

EX PARTE REEXAMINATION
(FY 2007 - FY 2011)

Activity	2007	2008	2009	2010	2011
Requests filed, total	643	680	658	780	759
By patent owner	124	87	67	63	104
By third party	519	593	591	717	654
Commissioner ordered	-	-	-	-	1
Determinations on requests, total	594	666	614	662	773
Requests granted:					
By examiner	575	626	574	606	685
By petition	2	-	-	1	6
Requests denied	17	40	40	55	82
Requests known to have related litigation	369	316	372	347	349
Filings by discipline, total	643	680	658	780	759
Chemical	133	138	120	137	143
Electrical	275	305	335	414	395
Mechanical	235	237	203	229	221

- Represents zero.

TABLE 14B

INTER PARTES REEXAMINATION
(FY 2007 - FY 2011)

Activity	2007	2008	2009	2010	2011
Requests filed, total	126	168	258	281	374
Determinations on requests, total	119	150	229	231	366
Requests granted:					
By examiner	118	142	217	224	342
By petition	-	-	1	-	2
Requests denied	1	8	11	7	22
Requests known to have related litigation	81	115	220	196	280
Filings by discipline, total	126	168	258	281	374
Chemical	30	38	35	45	57
Electrical	53	67	153	174	216
Mechanical	43	63	70	62	101

- Represents zero.

TABLE 15

SUMMARY OF CONTESTED PATENT CASES
(Within the USPTO, as of September 30, 2011)

Item	Total
Ex parte cases	
Appeals	
Cases pending as of 9/30/10	17,851
Cases filed during FY 2011	13,740
Disposals during FY 2011, total	
Decided, total	7,551
Affirmed	3,612
Affirmed-in-Part	1,045
Reversed	2,422
Dismissed/Withdrawn	243
Remanded	229
Cases pending as of 9/30/11	24,040
Rehearings	
Cases pending as of 9/30/11	20
Inter partes cases	
Cases pending as of 9/30/10	46
Cases declared or reinstated during FY 2011	64
Inter partes cases, FY 2011 total	110
Cases terminated during FY 2011	51
Cases pending as of 9/30/11	59

TABLE 16

SUMMARY OF TRADEMARK EXAMINING ACTIVITIES
(FY 2007 - FY 2011)

Item	2007	2008	2009	2010	2011
Applications for Registration:					
Applications including Additional Classes	394,368	401,392	352,051	368,939	398,667
Applications Filed	298,796	302,253	266,939	280,649	301,826
Disposal of Trademark Applications:					
Registrations including Additional Classes	194,327	274,250	241,637	221,090	237,586
Abandonments including Additional Classes	129,200	156,093	189,687	151,027	141,908
Trademark First Actions including Additional Classes	455,802	415,896	372,830	367,027	389,084
Applications Approved for Publication including Additional Classes	344,617	345,067	320,246	307,001	323,072
Certificates of Registration Issued:¹					
1946 Act Principal Register	98,564	120,173	102,607	93,238	103,233
Principal Register					
ITU-Statements of Use Registered	44,108	81,387	69,920	64,086	66,796
1946 Act Supplemental Register	7,392	8,344	7,993	7,006	7,632
Total Certificates of Registration	150,064	209,904	180,520	164,330	177,661
Renewal of Registration:*					
Section 9 Applications Filed	40,786	42,388	43,953	48,214	49,000
Section 8 Applications Filed**	40,798	42,395	43,868	48,275	49,037
Registrations Renewed	47,336	42,159	42,282	46,734	44,873
Affidavits, Sec. 8/15:					
Affidavits Filed	49,241	68,470	65,322	61,499	65,771
Affidavits Disposed	55,888	65,222	63,483	58,510	58,341
Amendments to Allege Use Filed	9,646	9,140	8,633	7,629	7,647
Statements of Use Filed	76,866	96,415	90,493	80,927	86,159
Notice of Allowance Issued	172,422	220,333	181,702	169,085	166,035
Total Active Certificates of Registration	1,380,150	1,497,131	1,547,168	1,614,121	1,719,247
Pendency - Average Months:					
Between Filing and Examiner's First Action	2.9	3.0	2.7	3.0	3.1
Between Filing, Registration (Use Applications)					
Abandonments and NOAs - including suspended and inter partes proceedings	15.1	13.9	13.5	13.0	12.6
Between Filing, Registration (Use Applications)					
Abandonments and NOAs - excluding suspended and inter partes proceedings	13.4	11.8	11.2	10.5	10.5

- Represents zero.

¹ With the exception of Certificates of Registration, Renewal of Registration, Affidavits filed under Section 8/15 and 12(c), the workload count includes extra classes. "Applications filed" refers simply to the number of individual trademark applications received by the PTO. There are, however, 47 different classes of items in which a trademark may be registered. An application must request registration in at least one class, but may request registration in multiple classes. Each class application must be individually researched for registerability. "Applications filed, including additional classes" reflects this fact, and therefore more accurately reflects the Trademark business workload. With the exception of Certificates of Registration, Renewal of Registration, Affidavits filed under Section 8/15 and 12(c), the workload count includes extra classes.

* Renewal of registration is required beginning 10 years following registration concurrent with 20 - year renewals coming due.

** Section 8 Affidavit is required for filing a renewal beginning October 30, 1999 (FY 2000) with the implementation of the Trademark Law Treaty.

TABLE 17

**TRADEMARK APPLICATIONS FILED FOR REGISTRATION
AND RENEWAL AND TRADEMARK AFFIDAVITS FILED
(FY 1991 - FY 2011)**

Year	For Registration	For Renewal ¹	Section 8 Affidavit
1991	120,365	5,634	25,763
1992	125,237	6,355	20,982
1993	139,735	7,173	21,999
1994	155,376	7,004	20,850
1995	175,307	7,346	23,497
1996	200,640	7,543	22,169
1997	224,355	6,720	20,781
1998	232,384	7,413	33,231
1999	295,165	7,944	33,104
2000	375,428	24,435	28,920
2001	296,388	24,174	33,547
2002	258,873	34,325	39,484
2003	267,218	35,210	43,151
2004	298,489	32,352	41,157
2005	323,501	39,354	47,752
2006	354,775	36,939	48,444
2007	394,368	40,786	49,241
2008	401,392	42,388	68,470
2009	352,051	43,953	65,322
2010	368,939	48,214	61,499
2011	398,667	49,000	65,771

¹ Renewal of registration term changed with implementation of the Trademark Law Reform Act (Pub. L. No. 100-667) beginning November 16, 1989 (FY 1990).

TABLE 18

SUMMARY OF PENDING TRADEMARK APPLICATIONS
(FY 2011)

Stage of Processing	Application Files	Classes
Pending applications, total	423,836	586,020
In preexamination processing	74,783	93,229
Under examination, total	266,173	379,896
Applications under initial examination	83,649	122,821
Amended, awaiting action by Examiner	80,661	118,738
Awaiting first action by Examiner	2,988	4,083
Intent-To-Use applications pending Use	142,385	198,493
Applications under second examination	8,785	11,894
Administrative processing of Statements of Use	74	92
Undergoing second examination	2,729	3,575
Amended, awaiting action by Examiner	5,955	8,227
Other pending applications¹	31,381	46,688
In post-examination processing	82,880	112,895
(Includes all applications in all phases of publication and issue and registration)		

¹ Includes applications pending before the TTAB, and suspended cases.

TABLE 19**TRADEMARKS REGISTERED, RENEWED, AND PUBLISHED
UNDER SECTION 12(C)¹
(FY 1991 - FY 2011)**

Year	Certificates of Regis. Issued	Renewed ²	Registrations (Incl. Classes)
1991	43,152	6,416	-
1992	62,067	5,733	-
1993	74,349	6,182	86,122
1994	59,797	6,136	68,853
1995	65,662	6,785	75,372
1996	78,674	7,346	91,339
1997	97,294	7,389	112,509
1998	89,634	6,504	106,279
1999	87,774	6,280	104,324
2000	106,383	8,821	127,794
2001	102,314	31,477	124,502
2002	133,225	29,957	164,457
2003	143,424	34,370	185,182
2004	120,056	34,735	155,991
2005	112,495	32,279	143,396
2006	147,118	37,305	188,899
2007	150,064	47,336	194,327
2008	209,904	42,159	274,250
2009	180,520	42,282	241,637
2010	164,330	46,734	221,090
2011	177,661	44,873	237,586

- Represents zero.

¹ Includes withdrawn numbers.

² Includes Renewal of registration term changed with implementation of the Trademark Law Reform Act (Pub. L. No. 100-667) beginning November 16, 1989 (FY 1990).

TABLE 20

TRADEMARK APPLICATIONS FILED BY RESIDENTS OF THE UNITED STATES
(FY 2011)

State/Territory	2011	State/Territory	2011	State/Territory	2011
Total	313,551	Kentucky	1,822	Oklahoma	1,540
Alabama	1,478	Louisiana	1,829	Oregon	3,364
Alaska	261	Maine	746	Pennsylvania	8,930
Arizona	5,858	Maryland	5,434	Rhode Island	1,220
Arkansas	1,051	Massachusetts	8,032	South Carolina	2,132
California	66,407	Michigan	6,550	South Dakota	487
Colorado	6,788	Minnesota	6,017	Tennessee	4,403
Connecticut	4,823	Mississippi	683	Texas	19,360
Delaware	3,055	Missouri	4,172	Utah	3,639
District of Columbia	2,935	Montana	605	Vermont	690
Florida	22,627	Nebraska	1,111	Virginia	7,325
Georgia	8,014	Nevada	5,243	Washington	6,499
Hawaii	992	New Hampshire	1,114	West Virginia	449
Idaho	822	New Jersey	13,121	Wisconsin	3,786
Illinois	13,301	New Mexico	805	Wyoming	336
Indiana	3,437	New York	32,569	Puerto Rico	454
Iowa	1,535	North Carolina	5,913	Virgin Islands	37
Kansas	1,564	North Dakota	264	U.S. Pacific Islands ¹	27
		Ohio	7,738	United States ²	157

¹ Represents residents of American Samoa, Guam, and miscellaneous U.S. Pacific Islands.

² No state indicated in database, includes Army Post Office (APO) filings.

TABLE 21

TRADEMARKS REGISTERED TO RESIDENTS OF THE UNITED STATES¹
(FY 2011)

State/Territory	2011	State/Territory	2011	State/Territory	2011
Total	143,909	Kentucky	609	Oklahoma	587
Alabama	489	Louisiana	578	Oregon	1,440
Alaska	98	Maine	340	Pennsylvania	2,847
Arizona	1,861	Maryland	1,636	Rhode Island	329
Arkansas	336	Massachusetts	2,254	South Carolina	613
California	15,950	Michigan	2,384	South Dakota	261
Colorado	2,164	Minnesota	2,466	Tennessee	1,215
Connecticut	1,207	Mississippi	201	Texas	5,694
Delaware	27,202	Missouri	1,578	Utah	1,185
District of Columbia	1,011	Montana	294	Vermont	222
Florida	6,785	Nebraska	504	Virginia	2,122
Georgia	2,814	Nevada	3,230	Washington	2,486
Hawaii	266	New Hampshire	419	West Virginia	123
Idaho	315	New Jersey	3,446	Wisconsin	1,768
Illinois	4,331	New Mexico	287	Wyoming	250
Indiana	1,399	New York	8,316	Puerto Rico	153
Iowa	676	North Carolina	1,934	Virgin Islands	61
Kansas	601	North Dakota	96	U.S. Pacific Islands ²	17
		Ohio	2,936	United States ³	21,523

¹ When a trademark is registered, the trademark database is corrected to indicate the home state of the entity registering the trademark.

² Represents residents of American Samoa, Guam, and miscellaneous U.S. Pacific Islands.

³ No state indicated in database, includes APO filings.

TABLE 22

**TRADEMARK APPLICATIONS FILED BY RESIDENTS OF FOREIGN COUNTRIES
(FY 2007 - FY 2011)**

Residence	2007	2008	2009	2010	2011	Residence	2007	2008	2009	2010	2011
Total	84,072	86,882	77,448	79,664	85,116	Cyprus	88	101	115	151	210
Afghanistan	2	2	9	3	11	Czechoslovakia	212	256	266	164	256
Albania	1	3	-	-	6	Denmark	922	1,197	997	884	827
Algeria	1	-	-	-	-	Dominica	2	9	-	2	2
Andorra	2	1	8	7	-	Dominican Republic	70	77	50	79	51
Angola	-	-	-	11	11	Ecuador	28	24	32	27	47
Anguilla	4	7	23	3	17	Egypt	11	11	14	27	38
Antarctica	-	1	-	-	-	El Salvador	69	56	34	36	36
Antigua & Barbuda	2	20	4	18	15	Estonia	26	35	48	64	37
Argentina	253	266	223	279	283	Ethiopia	-	2	1	-	1
Armenia	5	4	10	7	32	Faroe Islands	-	12	1	-	2
Aruba	18	1	3	3	1	Fiji	3	1	-	6	5
Australia	3,685	3,164	3,025	3,004	3,154	Finland	548	526	547	746	675
Austria	1,187	1,344	1,181	980	1,212	France	5,460	6,254	5,620	6,176	5,868
Azerbaijan	2	3	-	-	8	French Polynesia	9	3	2	-	11
Bahamas	218	152	121	99	153	Gabon	-	-	-	-	10
Bahrain	17	11	19	20	31	Georgia	2	3	11	8	27
Bangladesh	10	3	4	1	7	Germany	11,455	12,686	11,345	10,300	10,603
Barbados	322	310	164	274	161	Ghana	-	2	1	-	1
Belarus	16	20	10	46	35	Gibraltar	59	32	52	30	61
Belgium	804	869	997	788	760	Greece	126	244	137	209	166
Belize	30	19	20	20	30	Grenada	1	-	-	-	1
Benin	-	-	-	-	1	Guadeloupe	2	-	-	3	-
Bermuda	353	296	178	164	182	Guatemala	56	39	29	27	16
Bhutan	1	-	-	-	-	Guinea	-	1	-	3	-
Bolivia	3	5	8	3	4	Guyana	2	7	1	-	1
Bosnia & Herzegovina	2	-	1	1	1	Haiti	2	1	-	5	2
Botswana	-	-	3	1	48	Honduras	5	9	17	15	2
Brazil	525	517	477	546	548	Hungary	135	77	155	118	87
British Virgin Islands	625	623	498	558	597	Iceland	140	240	87	67	62
Brunei Darussalam	3	3	8	13	2	India	412	697	461	645	717
Bulgaria	145	101	95	77	72	Indonesia	35	62	64	51	56
Burkina Faso	-	-	-	1	-	Iran	9	39	27	38	28
Cambodia	-	-	2	1	-	Iraq	-	-	4	-	1
Cameroon	-	-	-	-	1	Ireland	634	724	441	567	615
Canada	9,127	9,614	8,354	8,707	9,257	Isle of Man	82	101	36	82	56
Cape Verde	1	-	-	-	-	Israel	761	764	679	598	677
Cayman Islands	296	360	390	263	292	Italy	4,912	4,395	4,203	3,770	4,284
Channel Islands	104	68	37	73	127	Jamaica	32	49	53	14	20
Chile	201	206	185	193	263	Japan	5,258	4,764	4,832	4,633	5,054
China (Hong Kong)	1,305	1,211	1,162	1,190	1,492	Jordan	15	23	21	28	33
China (Macau)	1	-	-	1	-	Kazakhstan	5	7	-	-	3
China (mainland)	2,364	2,262	2,096	2,808	3,652	Kenya	1	3	2	9	1
Colombia	249	187	183	185	184	Korea, Dem. Republic of	2	-	1	6	-
Cook Islands	-	-	5	4	-	Korea, Republic of	1,599	1,566	1,554	2,069	2,028
Costa Rica	68	100	66	91	65	Kuwait	37	37	16	20	10
Croatia	12	22	42	33	14	Latvia	29	20	30	48	33
Cuba	3	13	6	1	3	Lebanon	7	22	24	28	34
Curacao	-	-	-	-	60	Liberia	-	2	-	-	1
						Liechtenstein	202	247	240	99	182

TABLE 22
CONT.**TRADEMARK APPLICATIONS FILED BY RESIDENTS OF FOREIGN COUNTRIES**
(FY 2007 - FY 2011)

Residence	2007	2008	2009	2010	2011	Residence	2007	2008	2009	2010	2011
Lithuania	6	25	17	10	30	Saint Lucia	5	17	12	21	12
Luxembourg	403	550	499	888	807	Saint Marten	-	-	-	-	2
Macao	2	20	12	5	10	Saint Vincent/Grenadines	-	-	6	17	1
Macedonia	8	7	-	8	4	Samoa	6	11	5	15	11
Madagascar	-	-	7	-	-	San Marino	4	3	17	10	8
Malaysia	93	119	126	122	89	Sao Tome/Principe	-	-	-	1	1
Malta	24	48	81	34	63	Saudi Arabia	71	61	49	61	66
Marshall Islands	-	5	4	4	12	Scotland	93	73	18	27	56
Martinique	1	-	-	-	1	Senegal, Republic of	-	1	-	-	7
Mauritania	-	-	1	-	-	Serbia/Montenegro	42	11	14	38	47
Mauritius	63	32	28	39	64	Seychelles	24	27	26	19	38
Mexico	1,592	1,484	1,393	1,790	1,792	Singapore	503	479	526	470	695
Micronesia	1	7	2	-	1	Slovakia	67	82	46	56	65
Monaco	158	113	81	96	168	Slovenia	171	105	152	82	129
Mongolia	1	4	7	2	30	South Africa	241	218	183	232	253
Montserrat	-	-	-	-	6	Spain	1,742	1,864	1,798	1,789	2,200
Morocco	26	60	35	48	23	Sri Lanka	16	33	15	17	19
Mozambique	4	-	-	-	-	Suriname	-	-	-	1	-
Myanmar	-	-	-	1	-	Swaziland	-	-	-	-	1
N. Mariana Island	-	-	5	9	2	Sweden	1,521	1,482	1,222	1,467	1,536
Namibia	-	3	2	-	2	Switzerland	4,692	4,772	3,883	4,750	4,770
Nepal	-	1	2	-	5	Syria	1	6	7	14	7
Netherlands	2,367	2,618	2,220	2,387	2,357	Taiwan	1,257	1,283	1,221	1,359	1,525
Netherlands Antilles	130	76	68	113	41	Tanzania	-	2	-	1	2
New Zealand	648	534	486	482	520	Thailand	155	206	146	105	174
Nicaragua	4	7	5	7	8	Timor-Leste	-	-	-	-	1
Nigeria	12	1	25	8	4	Togo	-	5	-	-	8
Norway	616	630	835	556	638	Trinidad & Tobago	37	1	23	13	5
Oman	1	2	11	5	6	Tunisia	6	2	7	14	17
Pakistan	25	27	19	17	17	Turkey	632	602	511	363	571
Palau	-	-	1	-	-	Turks and Caicos Islands	4	13	10	30	18
Panama	88	149	114	167	148	Uganda	-	3	1	-	3
Papua New Guinea	-	3	1	3	-	Ukraine	81	90	63	102	92
Paraguay	7	11	7	4	12	United Arab Emirates	171	307	212	135	172
Peru	46	101	49	38	69	United Kingdom	9,431	9,463	7,624	7,727	8,451
Philippines	55	62	66	54	65	Uruguay	57	35	35	47	35
Poland	196	273	300	225	240	Uzbekistan	-	1	3	-	-
Portugal	268	372	318	335	261	Vanuatu (New Hebrides)	30	-	-	-	-
Qatar	34	16	10	20	43	Venezuela	77	120	35	38	62
Republic Moldova	18	6	9	14	9	Vietnam	40	61	101	71	61
Romania	53	73	37	78	83	West Bank/Gaza	-	-	-	3	1
Russian Federation	441	733	676	650	591	Yemen	3	4	-	1	4
Rwanda	-	-	1	-	-	Yugoslavia	8	4	-	3	-
Saint Christ-Nevis	26	31	16	6	-	Zimbabwe	-	1	1	-	-
Saint Kitts & Nevis	-	-	-	-	31	Other ¹	35	16	33	11	8

- Represents zero.

¹ Country of Origin information not available or not indicated in database, includes African Regional Industrial Property Organization filings.

TABLE 23

TRADEMARKS REGISTERED TO RESIDENTS OF FOREIGN COUNTRIES (FY 2007 - FY 2011)

Residence	2007	2008	2009	2010	2011	Residence	2007	2008	2009	2010	2011
Total	27,798	38,800	34,648	31,855	33,752	Cuba	3	16	6	7	7
Afghanistan	3	5	2	3	4	Curacao	-	-	-	-	1
Albania	7	6	6	4	-	Cyprus	19	41	37	44	78
Algeria	4	3	3	3	2	Czechoslovakia	37	79	69	68	57
Andorra	2	2	1	1	4	Denmark	349	424	424	378	372
Angola, Republic of	-	1	2	-	2	Djibouti	-	1	-	-	-
Anguilla	2	8	5	7	7	Dominica	4	2	1	1	2
Antarctica	1	-	-	-	-	Dominican Republic	29	32	25	26	47
Antigua & Barbuda	20	18	13	4	3	East Timor	2	-	-	-	-
Argentina	130	182	131	127	161	Ecuador	17	17	17	15	23
Armenia	7	19	6	8	17	Egypt	8	5	6	6	8
Aruba	2	18	5	-	2	El Salvador	22	64	38	36	20
Australia	1,076	1,609	1,383	1,295	1,338	Eritrea	1	-	-	-	-
Austria	273	397	367	322	337	Estonia	12	9	13	16	15
Azerbaijan	-	-	-	-	1	Ethiopia	1	3	1	4	3
Bahamas	52	61	56	44	60	Faroe Islands	-	-	1	-	1
Bahrain	1	-	2	3	18	Fiji	3	1	2	-	1
Bangladesh	3	4	1	3	1	Finland	203	218	221	196	225
Barbados	84	115	92	62	89	France	2,046	2,638	2,278	2,154	2,353
Belarus	6	10	10	6	13	French Guiana	1	1	-	-	-
Belgium	283	399	337	309	287	French Polynesia	7	10	2	-	2
Belize	11	14	5	20	12	Georgia	1	-	-	3	4
Benelux Convention	5	9	13	9	18	Germany	3,708	4,674	4,409	3,759	3,730
Benin	-	2	1	1	-	Ghana	1	5	2	3	2
Bermuda	129	164	197	161	105	Gibraltar	11	32	30	10	29
Bhutan	-	1	-	-	-	Greece	40	68	53	52	42
Bolivia	4	4	5	7	1	Greenland	1	-	-	1	-
Bosnia & Herzegovina	-	1	1	-	1	Grenada	1	-	-	-	-
Brazil	164	235	227	188	180	Guatemala	30	-	-	24	-
British Virgin Islands	242	381	323	302	315	Guinea (Equitorial)	-	-	-	-	1
Brunei Darussalam	1	8	-	1	-	Guinea-Bissau	-	-	-	-	1
Bulgaria	46	47	26	24	21	Guyana	2	4	5	-	4
Burkina Faso	-	-	-	-	1	Haiti	1	6	2	5	2
Burundi	-	1	-	-	-	Honduras	2	12	8	17	4
Cambodia	1	1	-	1	1	Hungary	39	45	36	64	36
Cameroon	1	-	2	2	3	Iceland	32	62	66	48	17
Canada	3,168	4,396	4,084	3,714	4,069	India	129	186	213	202	252
Cape Verde	1	-	3	-	-	Indonesia	23	36	29	36	23
Cayman Islands	129	146	170	151	133	Iran	12	16	13	9	4
Channel Islands	25	5	2	15	25	Iraq	-	-	-	1	2
Chile	86	145	84	97	100	Ireland	165	264	260	211	212
China (Hong Kong)	424	633	521	502	562	Isle of Man	12	10	7	-	24
China (Macau)	-	-	2	5	2	Israel	240	392	319	348	341
China (mainland)	1,020	1,601	1,459	1,356	1,705	Italy	1,693	2,281	1,819	1,556	1,733
Colombia	79	114	115	105	94	Jamaica	26	41	23	24	21
Congo	1	-	-	1	-	Japan	2,216	2,941	2,453	2,344	2,272
Cook Islands	1	3	1	1	-	Jordan	3	4	13	7	16
Costa Rica	16	24	27	36	21	Kazakhstan	-	1	1	-	1
Cote D'Ivoire	-	-	1	-	1	Kenya	2	2	4	5	3
Croatia	8	22	8	10	14	Korea, Dem. Republic of	4	1	7	4	2
						Korea, Republic of	496	849	760	773	904

TABLE 23 CONT. TRADEMARKS REGISTERED TO RESIDENTS OF FOREIGN COUNTRIES (FY 2007 - FY 2011)

Residence	2007	2008	2009	2010	2011	Residence	2007	2008	2009	2010	2011
Kuwait	1	3	6	6	3	Russian Federation	118	168	162	154	206
Kyrgyzstan	-	-	-	1	-	Saint Christ & Nevis	10	16	26	26	10
Laos	-	-	-	-	1	Saint Lucia	2	4	8	2	6
Latvia	10	17	6	8	14	Saint Vincent/Grenadines	-	1	2	1	2
Lebanon	7	7	6	12	15	San Marino	3	4	2	7	-
Liberia	4	8	22	12	8	Saudi Arabia	10	19	13	14	10
Liechtenstein	49	85	75	48	37	Scotland	8	30	50	15	17
Lithuania	7	7	8	7	11	Senegal	1	-	-	3	2
Luxembourg	131	168	184	177	246	Serbia	-	-	-	4	6
Macao	1	-	-	-	-	Serbia/Montenegro	2	-	-	-	-
Macedonia	1	6	1	-	3	Seychelles	5	11	8	12	14
Malawi	-	-	-	-	1	Sierra Leone	-	-	-	-	2
Malaysia	52	58	57	63	78	Singapore	134	199	174	220	230
Mali	1	-	-	1	-	Slovakia	12	9	26	12	17
Malta	3	12	5	11	20	Slovenia	14	27	33	15	29
Marshall Islands	2	3	3	6	3	South Africa	-	125	104	140	119
Martinique	-	-	-	-	1	Spain	709	1,000	821	780	797
Mauritius	13	33	25	13	15	Sri Lanka	13	7	21	13	16
Mexico	589	952	830	736	954	St. Kitts & Nevis	4	-	-	-	-
Micronesia	1	4	1	3	2	Sudan	1	-	-	-	-
Monaco	25	32	24	19	25	Swaziland	5	1	4	-	-
Mongolia	-	1	1	-	3	Sweden	441	644	603	566	524
Montenegro	-	-	-	1	-	Switzerland	1,345	1,953	1,672	1,338	1,566
Morocco	1	3	7	8	9	Syria	3	2	2	-	5
Mozambique	1	2	-	-	-	Taiwan	820	1,096	845	782	843
Myanmar	-	-	-	-	1	Tajikistan	-	1	-	-	-
N. Mariana Island	7	2	-	3	5	Tanzania	-	-	-	-	1
Namibia	1	-	-	-	-	Thailand	57	82	71	53	49
Nauru	-	2	-	-	-	Togo	-	-	1	-	-
Nepal	-	-	1	-	2	Trinidad & Tobago	8	13	7	14	5
Netherlands	788	1,001	931	883	831	Tunisia	-	3	3	3	5
Netherlands Antilles	33	47	32	39	30	Turkey	169	206	169	167	167
New Zealand	194	333	265	267	285	Turks and Caicos Islands	1	5	2	-	12
Nicaragua	2	7	5	2	6	Uganda	-	1	3	1	1
Nigeria	4	16	10	4	6	Ukraine	19	33	18	30	41
Norway	142	192	175	212	197	United Arab Emirates	21	27	36	56	52
Oman	1	-	-	1	6	United Kingdom	2,246	3,136	3,098	3,010	2,989
Pakistan	7	19	11	15	20	Uruguay	17	21	20	23	24
Palstinian Authority	-	-	-	-	3	Uzbekistan	1	-	2	-	1
Panama	63	98	58	68	88	Vanuatu (New Hebrides)	1	4	1	-	-
Papua New Guinea	-	1	1	-	-	Vatican City	-	1	-	-	1
Paraguay	-	6	4	5	7	Venezuela	26	49	45	42	41
Peru	26	49	57	26	31	Vietnam	32	42	34	39	37
Philippines	27	42	50	41	38	Western Samoa/Samoa	4	-	-	8	9
Poland	60	104	103	74	87	Yemen	-	2	1	1	-
Portugal	89	147	136	123	130	Yugoslavia	-	2	3	1	1
Qatar	1	9	6	9	5	Zambia	-	-	-	-	1
Republic Moldova	4	8	3	2	4	Zimbabwe	-	2	2	-	4
Romania	13	23	20	11	17	Other ¹	3	40	55	19	14
Rwanda	-	-	-	-	1						

- Represents zero.

¹ Country of origin information not available.

TABLE 24

SUMMARY OF CONTESTED TRADEMARK CASES
 (Within the USPTO, as of September 30, 2011)

Activity	Ex Parte	Cancellations	Concurrent Use	Interference	Opposition	Total
Cases pending as of 9/30/10, total	1,430	1,456	70	-	5,453	8,409
Cases filed during FY 2011	2,639	1,362	39	-	4,985	9,025
Disposals during FY 2011, total	2,856	1,298	33	-	4,972	9,159
Before hearing	2,525	1,275	33	-	4,874	8,707
After hearing	331	23	-	-	98	452
Cases pending as of 9/30/11, total	1,213	1,520	76	-	5,466	8,275
Awaiting decision	161	12	-	-	40	213
In process before hearing ¹	1,052	1,508	76	-	5,426	8,062
Requests for extension of time to oppose FY 2011	16,420	-	-	-	-	16,420

- Represents zero.

¹ Includes suspended cases.

TABLE 25

**ACTIONS ON PETITIONS TO THE DIRECTOR OF THE
U.S. PATENT AND TRADEMARK OFFICE
(FY 2007 - FY 2011)**

Nature of Petition	2007	2008	2009	2010	2011
Patent matters					
Actions on patent petitions, total	51,420	51,774	51,482	51,649	53,755
Acceptance of:					
Late assignments	619	621	628	773	892
Late issue fees	1,787	1,819	1,792	1,720	1,920
Late priority papers	7	10	13	5	4
Access	12	12	42	14	9
Certificates of correction	28,715	26,878	25,527	27,611	26,033
Deferment of issue	20	21	20	9	8
Entity Status Change	1,389	1,263	1,246	2,567	2,842
Filing date	1,090	975	723	539	531
Maintenance fees	2,355	2,774	1,949	2,173	2,457
Revivals	8,279	10,339	11,478	9,326	9,949
Rule 47 (37 Code of Federal Regulations (CFR) 1.47)	1,864	1,837	2,583	2,259	3,077
Supervisory authority	137	183	347	411	470
Suspend rules	214	228	301	237	275
Withdrawal from issue	1,476	1,642	1,423	1,912	1,948
Withdrawals of holding of aband.	3,456	3,172	3,410	2,093	3,340
Late Claim for Priority	981	986	1,121	1,094	1,389
Withdraw as Attorney	5,246	6,164	6,133	5,237	5,798
Matters Not Provided For (37 CFR 1.182)	994	1,009	1,334	1,236	1,603
To Make Special	3,913	4,653	4,797	4,264	10,573
Patent Term Adjustment/Extension	608	476	1,613	28,775	2,117
Trademark matters					
Actions on trademark petitions, total	21,755	29,703	24,747	21,852	23,133
Filing date restorations ¹	72	28	20	13	6
Inadvertently issued registrations	173	178	134	116	78
Letters of Protest	735	876	1,011	1,003	1,213
Madrid Petitions	19	13	21	28	46
Make special	205	121	94	225	170
Reinstatements ²	575	1,249	851	563	547
Revive (reviewed on paper)	4,275	6,524	2,526	1,096	1,276
Revive (granted electronically) ³	14,850	19,654	18,967	17,686	18,802
Waive fees/refunds	11	30	18	18	5
Miscellaneous Petitions to the Director	749	940	1,008	971	840
Board Matters	13	9	11	16	9
Post Registration Matters	78	81	86	117	141
Petitions awaiting action as of 9/30					
Trademark petitions awaiting response	166	56	72	51	60
Trademark petitions awaiting action	117	95	3	5	2
Trademark pending filing date issues	2	-	-	-	-

- Represents zero.

¹ Trademark Applications entitled to a particular filing date; based on clear evidence of Trademark organization error.

² Trademark Applications restored to pendency; inadvertently abandoned by the Trademark organization.

³ The petition to revive numbers were not separated into two categories (paper versus electronic) in previous years.

TABLE 26

CASES IN LITIGATION
(Selected Courts of the United States, as of September 30, 2011)

	Patents	Trademarks	OED	Total
United States District Courts				
Civil actions pending as of 9/30/10, total	113	-	2	115
Filed during FY 2011	37	2	1	40
Disposals, total	36	1	1	38
Reversed	-	-	-	-
Remanded	3	1	-	4
Dismissed	28	-	1	29
Summary Judgement (SJ) Granted - USPTO	4	-	-	4
SJ Granted - Opposing Party	-	-	-	-
Transfer	1	-	-	1
Civil actions pending as of 9/30/11, total	114	1	2	117
United States Courts of Appeals¹				
Ex parte cases				
Cases pending as of 9/30/10	49	3	3	55
Cases filed during FY 2011	103	7	1	111
Disposals, total	59	4	4	67
USPTO Affirmed	28	2	1	31
District Court Affirmed	-	-	-	-
Reversed	3	-	-	3
Remanded	13	1	-	14
Dismissed	15	1	1	17
Vacated	-	-	-	-
Transfer	-	-	2	2
Mandamus Denied	-	-	-	-
Mandamus Granted	-	-	-	-
Total ex parte cases pending as of 9/30/11	93	6	-	99
Inter partes cases				
Cases pending as of 9/30/10	4	10	-	14
Cases filed during FY 2011	8	20	-	28
Disposals, total	4	18	-	22
Affirmed	2	5	-	7
Reversed	-	-	-	-
Remanded	1	1	-	2
Dismissed	1	12	-	13
Transferred	-	-	-	-
Total inter partes cases pending as of 9/30/11	8	12	-	20
Total United States Courts of Appeals cases pending as of 9/30/11	101	18	-	119
Supreme Court				
Ex parte cases				
Cases pending as of 9/30/10	3	-	-	3
Cases filed during FY 2011	2	-	-	2
Disposals, total	4	-	-	4
Cases pending as of 9/30/11, total	1	-	-	1
Notices of Suit filed in FY 2011	2,314	2,369	-	4,683

- Represents zero.

¹ Includes Federal Circuit and Other Appellate Courts

TABLE 27

**PATENT CLASSIFICATION ACTIVITY
(FY 2007 - FY 2011)**

Activity	2007	2008	2009	2010	2011
Original patents professionally reclassified - completed projects	14,875	13,727	9,955	90,869	25,540
Subclasses established	1,466	1,037	631	1,429	753
Reclassified patents clerically processed, total	192,898	111,507	60,778	156,590	165,019
Original U.S. patents	4,991	25,903	18,765	52,036	55,090
Cross-reference U.S. patents	187,907	85,604	42,013	104,554	109,929

TABLE 28

**SCIENTIFIC AND TECHNICAL INFORMATION CENTER ACTIVITY
(FY 2011)**

Activity	Quantity
Prior Art Search Services Provided:	
Automated Prior Art Searches Completed	30,033
Genetic Sequence Searches Completed	6,799
Number of Genetic Sequences Searched	24,926
Computer Readable Form Submissions Processed	19,940
Patent Linguistic Utility Service Searches Completed	65,261
Foreign Patent Searches Completed	7,392
Document Delivery Services Provided:	
Document Delivery/Interlibrary Loan Requests Processed	20,032
Copies of Foreign Patents Provided	10,843
Information Assistance and Automation Services:	
One-on-One Examiner Information Assistance	23,862
One-on-One Examiner Automation Assistance	27,249
Patents Employee Attendance at Automation Classes	25,546
Foreign Patents Assistance for Examiners and Public	9,983
Examiner Briefings on Scientific & Technical Information Center Information Sources and Services	10,690
Translation Services Provided for Examiners:	
Written Translations of Documents	4,132
Number of Words Translated (Written)	14,467,530
Documents Orally Translated	1,832
Total Number of Examiner Service Contacts	280,244
Collection Usage and Growth:	
Print/Electronic Non-Patent Literature (NPL) Collection Usage	1,308,848
Print Books/Subscriptions Purchased	67,941
Full Text Electronic Journal Titles Available	24,871
Full Text Electronic Book Titles Available	52,430
NPL Databases Available for Searching (est.)	1,575

TABLE 29

END OF YEAR PERSONNEL¹
(FY 2007 - FY 2011)

Activity	2007	2008	2009	2010	2011
Business					
Patent Business Line	7,959	8,582	8,786	8,645	9,234
Trademark Business Line	954	936	930	862	976
Total USPTO	8,913	9,518	9,716	9,507	10,210
Examination Staff					
Patent Examiners					
Utility, Plant, and Reissue Examiners	5,376	5,955	6,145	6,128	6,690
Design Examiners	101	100	98	97	95
Total UPRD Examiners	5,477	6,055	6,243	6,225	6,785
Trademark Examining Attorneys	404	398	388	378	378

¹ Number of positions.

OTHER ACCOMPANYING INFORMATION

TABLE 30A TOP 50 TRADEMARK APPLICANTS (FY 2011)

Name of Applicant	Classes ¹
JOHNSON & JOHNSON	546
MATTEL, INC.	544
LG ELECTRONICS INC.	321
NOVARTIS AG	321
Disney Enterprises, Inc.	299
The Procter & Gamble Company	255
Glaxo Group Limited	254
DreamWorks Animation L.L.C.	238
The Saul Zaentz Company	236
Bally Gaming, Inc.	232
Advance Magazine Publishers Inc.	198
American Express Marketing & Development	196
Bristol-Myers Squibb Company	196
Sears Brands, LLC	191
salesforce.com, inc.	185
DAIMLER AG	184
TEMASEK HOLDINGS (PRIVATE) LIMITED	183
Twentieth Century Fox Film Corporation	183
S. C. Johnson & Son, Inc.	168
Wal-Mart Stores, Inc.	167
Societe des Produits Nestle S.A.	163
T-Mobile USA, Inc.	163
The McGraw-Hill Companies, Inc.	157
SANOFI-AVENTIS	154
Abercrombie & Fitch Trading Co.	153
UnitedHealth Group Incorporated	151
HUAWEI TECHNOLOGIES CO., LTD.	146
DA LIAN YA TU TOU ZI ZI XUN YOU XIAN GON	143
Fluff Monkey Enterprises, LLC	140
Boehringer Ingelheim International GmbH	139
Cellco Partnership	138
Merck KGaA	137
Monster Cable Products, Inc.	136
Global Grid, LLC	134
Board of Regents of the University System	133
UNITED STATES POSTAL SERVICE	132
Marvel Characters, Inc.	131
L'Oreal USA Creative, Inc.	130
Project Miracle, LLC	129
The Wine Group LLC	128
HASBRO, INC.	127
Walgreen Co.	127
Koninklijke Philips Electronics N.V.	124
Target Brands, Inc.	124
Home Box Office, Inc.	123
Conair Corporation	121
DUNCAN ENTERPRISES	121
GHC Specialty Brands, LLC	120
SAMSUNG ELECTRONICS CO., LTD.	120
Victoria's Secret Stores Brand Management	118

¹ Applications with Additional Classes.

TABLE 30B TOP 50 TRADEMARK REGISTRANTS (FY 2011)

Name of Registrant	Registrations
MATTEL, INC.	262
JOHNSON & JOHNSON	227
Disney Enterprises, Inc.	183
IGT	130
LG Electronics Inc.	123
Aristocrat Technologies Australia Pty Ltd	114
Target Brands, Inc.	102
The Procter & Gamble Company	95
Sears Brands, LLC	92
L'Oreal USA Creative, Inc.	91
Novartis AG	89
Warner Bros. Entertainment Inc.	80
Glaxo Group Limited	72
WMS GAMING INC.	72
Nintendo of America Inc.	71
Retail Royalty Company	63
Twentieth Century Fox Film Corporation	63
Milux Holding S.A.	58
Wakefern Food Corp.	58
WORLD WRESTLING ENTERTAINMENT, INC.	58
ASICS Corporation	57
Boehringer Ingelheim International GmbH	57
Cisco Technology, Inc.	57
Hershey Chocolate & Confectionery Corporation	57
Lockheed Martin Corporation	57
APPLE INC.	55
Bally Gaming, Inc.	55
LF, LLC	55
L'Oreal	54
Microsoft Corporation	54
Konami Gaming, Inc.	53
AOL INC.	52
S. C. Johnson & Son, Inc.	52
Abbott Laboratories	51
ALOXXI INTERNATIONAL CORPORATION	51
Kraft Foods Global Brands LLC	51
Samsung Electronics Co., Ltd.	51
sanofi-aventis	51
HASBRO, INC.	50
Home Box Office, Inc.	50
MINISTERO DELLE POLITICHE AGRICOLE,; ALI	50
Lidl Stiftung & Co. KG	49
Market Studies, LLC	49
Televisa, S.A. de C.V.	49
American Express Marketing & Development	48
Columbia Insurance Company	48
UHS of Delaware, Inc.	48
HEB GROCERY COMPANY, LP	47
Koninklijke Philips Electronics N.V.	47
Kohler Co.	46

Glossary of Acronyms and Abbreviation List



Glossary of Acronyms and Abbreviation List



ABC	Activity Based Cost
ACR	Accelerated Case Resolution
AIA	America Invents Act
AIPA	American Inventors Protection Act
APO	Army Post Office
BPAI	Board of Patent Appeals and Interferences
CAO	Chief Administrative Officer
CBT	Computer-Based Training
CFO	Chief Financial Officer
CFR	Code of Federal Regulations
CFS	Consolidated Financial System
COOP	Continuity of Operations Plan
COPA	Clearing the Oldest Patent Applications (Initiative)
COTS	Commercial-off-the-shelf (software)
CSRS	Civil Service Retirement System
DOC	Department of Commerce
DOL	Department of Labor
EFT	Electronic Funds Transfer
EPO	European Patent Office
EVS	Employee Viewpoint Survey
FECA	Federal Employees' Compensation Act

FEGLI	Federal Employees Group Life Insurance	IPR	Intellectual Property Rights
FEHB	Federal Employees Health Benefit Program	ISO	International Organization for Standardization
FERS	Federal Employees Retirement System	IT	Information Technology
FFMIA	Federal Financial Management Improvement Act	ITA	Internal Trade Administration
FICA	Federal Insurance Contributions Act	ITU	Intent-To-Use/Division Unit
FIFO	First-In, First-Out	JPO	Japanese Patent Office
FISMA	Federal Information Security Management Act	MBDA	Minority Business Development Agency
FLASH	First Look Application Sharing	MOU	Memoranda of Understanding
FMFIA	Federal Managers' Financial Integrity Act	MPEP	Manual of Patent
FMS	Financial Management Services	MTS	Metric Tracking System
FPNG	Fee Processing Next Generation	N/A	Not Available
FY	Fiscal Year	NASA	National Aeronautics and Space Administration
GAAP	Generally Accepted Accounting Principles	NIST	National Institute of Standards and Technology
GAO	Government Accountability Office	NOAA	National Oceanic and Atmospheric Administration
GIPA	Global Intellectual Property Academy	NPL	Non-Patent Literature
GOTS	Government-off-the-shelf	NTEU	National Treasury Employees Union
GPO	U.S. Government Printing Office	NTIA	National Telecommunications and Information Administration
GSA	U.S. General Services Administration	OBRA	Omnibus Budget Reconciliation Act
ID	Identifications of Goods and Services	OCAO	Office of the Chief Administration Officer
IDP	Individual Development Plan	OCFO	Office of Chief Financial Officer
IG	Inspector General	OCIO	Office of Chief Information Officer
IIPi	International Intellectual Property Institute	OEEOD	Office of Equal Employment Opportunity and Diversity
IP	Intellectual Property	OGC	Office of General Counsel
IPEC	Intellectual Property Enforcement Coordinator	OHR	Office of Human Resources
IPIA	Improper Payments Information Act		

GLOSSARY OF ACRONYMS AND ABBREVIATION LIST

OID	Office of Innovation Development	TEAS	Trademark Electronic Application System
OIG	Office of the Inspector General	TC	Technology Center
OMB	Office of Management and Budget	TDR	Trademark Data Retrieval
OPM	Office of Personnel Management	TEAPP	Telework Enhancement Act Pilot Program
OPQA	Office of Patent Quality Assurance	TMEP	Trademark Manual of Examining Procedure
OPT	Office of Patent Training	TRIPS	Trade-Related Aspects of Intellectual Property Rights
PAP	Performance Appraisal Plan	TTAB	Trademark Trial and Appeal Board
PCT	Patent Cooperation Treaty	UL	Universal Laptop
PE2E	Patent End-to-End	UPRD	Utility, Plant, Reissue, Design
PETTP	Patent Examiner Technical Training Program	UPOV	(International) Union for the Protection of New Plant Varieties
POA&M	Plan of Actions and Milestones	U.S.	United States
PPAC	Patent Public Advisory Committee	U.S.C.	United States Code
PPH	Patent Prosecution Highway	USG	United States Government
Pub. L. No.	Public Law	USPTO	United States Patent and Trademark Office
RAM	Revenue Accounting and Management System	USTR	United States Trade Representative
Rospatent	Russian Federal Service for IP, Patents and Trademark	WHO	World Health Organization
SHCP	Strategic Human Capital Plan	WIPO	World Intellectual Property Organization
SES	Senior Executive Service	WTO	World Trade Organization
SFFAS	Statements of Federal Financial Accounting Standards		
SHARE	Strategic Handling of Applications for Rapid Examination		
SJ	Summary Judgement		
SL	Straight-Line		

ACKNOWLEDGMENTS



This Performance and Accountability Report was produced with the energies and talents of the USPTO staff.

To these individuals we would like to offer our sincerest thanks and acknowledgement.

In particular, we would like to recognize the following organizations and individuals for their contributions:

Office of the Under Secretary and Director – Andrew Baluch and Azam Khan; Office of the Chief Communications Office – Peter Pappas; Office of the Chief Administrative Officer – Roger Williams; Office of the Chief Financial Officer – Michelle Picard; Office of Planning and Budget – Bonita Royall, Ali Emgushov, Robert Fawcett, and Candice Goodman; Office of Finance – Shana Willard, Dennis Detar, and Mark Krieger; Office of External Affairs – Janette Brown; Office of the Chief Information Officer – Scott Williams and Maureen Brown; Office of the General Counsel – Debra Decker and Mary Kelly; Board of Patent Appeal and Interferences – Kurt Brown; Trademark Trial and Appeal Board – Latoya Brown; Office of the Commissioner for Patents – Kimberly Kenney and David Fitzpatrick; Office of the Commissioner for Trademarks – Robert Allen, Karen Strohecker, and Nabil Chbouki.



We would also like to acknowledge the Office of the Inspector General and KPMG LLP for the professional manner in which they conducted the audit of the FY 2011 Financial Statements.

We offer special thanks to AOC Solutions, Inc. and The DesignPond for their outstanding contributions in the design and production of this report. To send comments or get additional information about this report, please contact:

Office of Planning and Budget
600 Dulany Street
Alexandria, VA 22314
PARmail@uspto.gov
Phone: 571-272-3333
Fax: 571-273-0127





United States Patent and Trademark Office

600 Dulany Street
Alexandria, Virginia 22314

www.uspto.gov