

U.S. Patent and Trademark Office

**Fiscal Year 2020
Congressional Justification**

March 2019

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DEPARTMENT OF COMMERCE
UNITED STATES PATENT AND TRADEMARK OFFICE
Budget Estimates, Fiscal Year 20BY
Congressional Submission
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INTRODUCTION

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Description/Scope of Responsibilities

The United States Patent and Trademark Office (USPTO/Office) is an agency within the United States Department of Commerce (DOC). The Office 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 (TPAC) on Office policies, goals, performance, budget, and user fees. The Patent organization is under the direction of the Commissioner for Patents, and the Trademark organization is under the direction of the Commissioner for Trademarks. The Commissioners each enter into an annual performance agreement with the Secretary of Commerce, which outlines the measurable organizational goals for which each is responsible.

The USPTO fosters innovation, competitiveness and job growth in the United States by conducting high quality and timely patent and trademark examination and review proceedings in order to produce reliable and predictable intellectual property rights; guiding intellectual property (IP) policy and improving intellectual property rights protection; and delivering IP information and education worldwide. Two distinct business lines, Patents and Trademarks, administer the patent and trademark laws which provide protection to inventors and businesses for their inventions and brands, and encourage innovation and entrepreneurship in the United States (U.S.) through the preservation, classification, and dissemination of patent and trademark information. The issuance of patents and the registration of trademarks, and providing domestic and global leadership on IP issues, are inherently governmental functions, so there are no private sector alternatives to carrying out these activities. However, the USPTO assesses functions routinely and relies heavily on the private sector for those aspects of its operations which are not inherently governmental; for example, contracting out the processing of the administrative aspects of the patent and trademark examination processes, as well as certain mission-support activities.

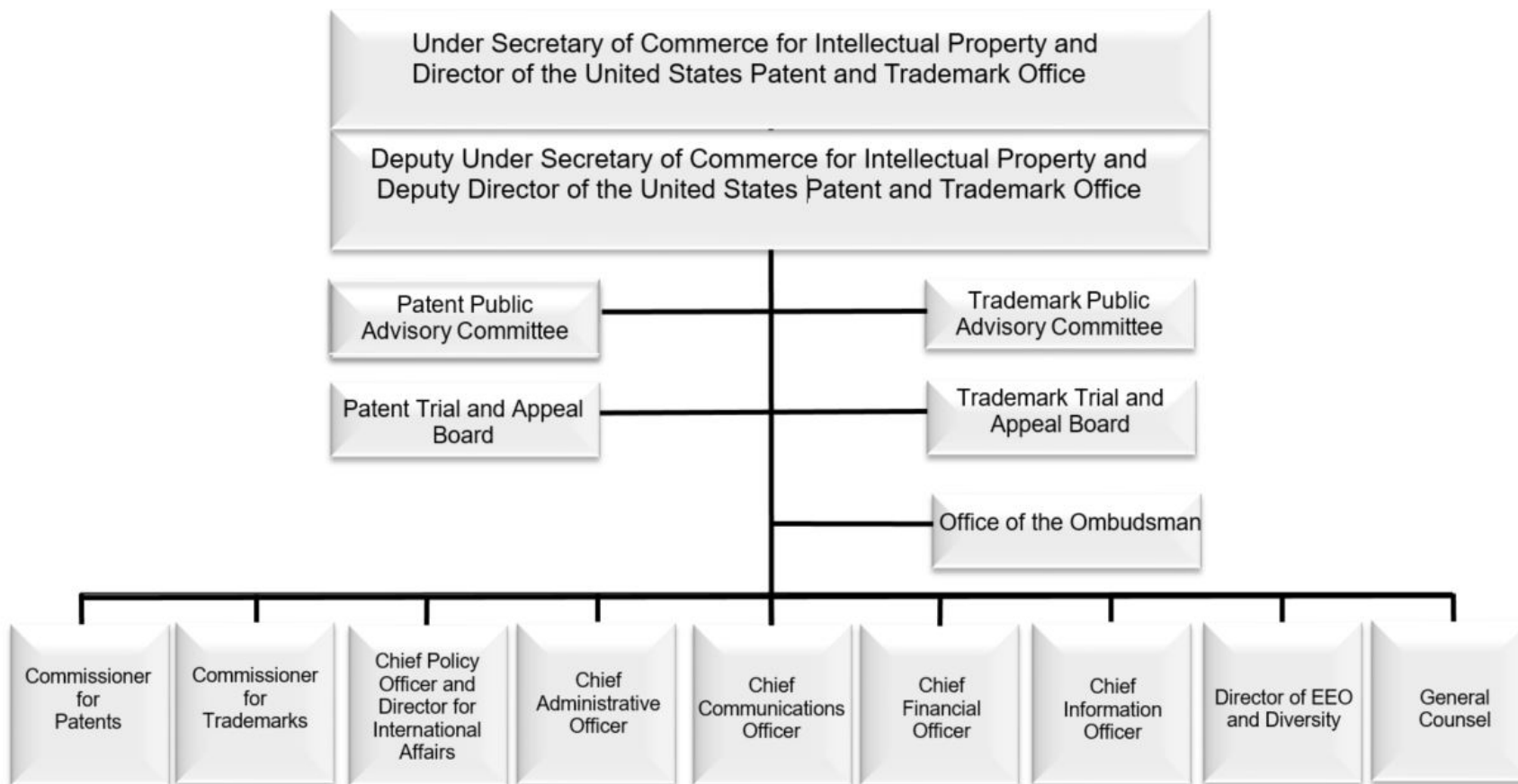
In fiscal year (FY) 2020, the USPTO expects to employ 13,456 federal employees including patent examiners, trademark examining attorneys, computer scientists, attorneys, and administrative staff. Employee engagement is a core component of the Office's business strategy, as it contributes to the recruitment and retention of a diverse, high-performing nationwide workforce to execute the Office's mission.

The USPTO is a demand-driven, fee funded organization with a commitment to delivering reliable IP protection and information to its various stakeholders; serving inventors, entrepreneurs, and businesses in the United States and around the world. Stakeholders also include IP organizations and international entities, such as the World Intellectual Property Organization (WIPO).

The USPTO is headquartered in Alexandria, Virginia, and has four regional offices around the country. The USPTO opened the Elijah J. McCoy Midwest Regional Office in Detroit, Michigan in July 2012; the Rocky Mountain Regional Office in Denver, Colorado in June 2014; the Silicon Valley Regional Office in San Jose, California in October 2015; and the Texas Regional Office in Dallas, Texas in November 2015.

The USPTO's legislative authorities are included in Exhibit 32/33 (page 99).

**Department of Commerce
U.S. Patent and Trademark Office**



**Department of Commerce
U.S. Patent and Trademark Office
Budget Estimates, Fiscal Year 2020**

Executive Summary

The USPTO's FY 2020 President's Budget (Budget) seeks authority to spend fee collections of \$3,451M. Along with \$41M from other income and \$47M from the operating reserve (OR), these collections will fund operating requirements of \$3,539M, including 13,456 positions, and a transfer of \$2M to the DOC Office of the Inspector General (OIG), as shown in the adjacent table.

The Budget is predicated on workload demand and fee collection estimates derived from production and workload models and global and domestic indicators of economic activity. Being a demand driven organization poses unique risks. The Office must be able to react quickly to changes in the global IP environment. The OR discussed below with the ability to access and spend all fees collected and the authority to adjust fees via the regulatory process allow the Office to mitigate these risks.

As a fully fee-funded agency, the USPTO maintains ORs—consistent with standard private sector practices—to provide sufficient resources to operate when the revenue stream or funding availability are uncertain; to preserve planned operational capacity when fee collections fall short of estimates; and to provide supplemental funding when budgetary requirements grow due to unexpected increases in application filings, capital investment needs, or other factors. The USPTO remains committed to fiscal responsibility and makes prudent choices when aligning spending priorities with revenue projections. Maintaining the fee setting authority granted by the 2011 *Leahy-Smith America Invents Act* (AIA) as extended by the Study of Underrepresented Classes Chasing Engineering and Science Success (SUCCESS) Act of 2018, and ensuring sufficient ORs allows the Office to shield mission-critical operations against potential economic or financial disruptions.

Full access to estimated collections provides the Office with the resources and flexibility needed to implement the *USPTO 2018-2022 Strategic Plan*. This plan highlights the priorities to continue: issuing reliable and predictable IP rights; shortening patent application pendency; enhancing patent administrative appeal and post-grant processes; fine tuning trademark operations; conducting outreach, education and engagement both domestically and internationally; promoting and protecting patent and trademark IP rights; and investing in our information technology (IT) stabilization and modernization. This also enables the USPTO to continue to leverage nationwide talent to build, retain, and effectively manage the highly educated and talented workforce it needs to properly serve its stakeholder community and the country.

With full access to its fee collections to offset its funding requirements, the USPTO's FY 2020 net appropriation would be \$0.

**USPTO Total Budget Requirements
(Dollars in Millions)**

| | FY 2018 | FY 2019 | FY 2020 |
|-------------------------------------|----------------|----------------|----------------|
| Fee Collections | \$3,337 | \$3,359 | \$3,451 |
| Other income | \$41 | \$41 | \$41 |
| Total Requirements* | \$3,305 | \$3,475 | \$3,539 |
| To (-) / From (+) Operating Reserve | (\$73) | \$75 | \$47 |
| Net Appropriation | \$0 | \$0 | \$0 |
| FTE | 12,319 | 12,699 | 13,035 |
| Positions | 12,972 | 13,082 | 13,456 |

*Total Requirements include an annual transfer to the DOC Office of the Inspector General.

Highlights Include:

- USPTO's contribution to the Administration's Reform Agenda is reflected in the FY 2020 Budget through a focus on effectively and efficiently delivering reliable and predictable intellectual property rights to customers; creating jobs and investment in the U.S. economy; and encouraging innovation.
- The USPTO continues to seek operational efficiencies in line with the Agenda, as reflected in its budgetary requirements, with a request of only \$64.6M above FY 2019. This reflects \$64.7M below the \$129.3M of prescribed inflation/adjustments to base, primarily due to focusing on critical IT improvements in FY 2019 while postponing less critical projects until FY 2021.
- USPTO's FY 2020 fee collection estimate is \$3,451M, which is based on the most recent analysis, trends, and assumptions of workload demands. With a patent fee proposal in process, outyear estimates include patent fee adjustments anticipated to be in place during FY 2021. For more information, refer to Appendix I of the Budget.

Program Changes – HighlightsPatent Program – (\$18.9M):

- Optimize the workforce by hiring approximately 600 examiners (or roughly 265 over attrition levels) with production support to align examination capacity with incoming workload, and place a primary focus on the Office's commitment to issue reliable patents. This level of hiring will allow the USPTO to continue to make progress toward pendency targets and expectations to issue reliable and predictable patents, while also addressing the anticipated growth in application filings. Simultaneously, the program will continually manage examination capacity with inventory levels to ensure a "soft landing" (i.e., to ensure the USPTO is not overstaffed as application inventories reach optimal levels).
- Leverage existing Patent Trial and Appeal Board (PTAB) staffing and production incentives to manage increased workload projections and enhance operations to meet statutory trial proceeding deadlines.
- Reduce annual planned investments in the Patent IT Portfolio while continuing development and deployment of new IT capabilities and continuing to retire specific legacy systems.

Trademark Program – (\$7.6M):

- Optimize the workforce by adding 74 positions to align trademark application examination capacity with revised growth estimates, while continuing to meet high quality and pendency targets.
- Increase Trademark Trial and Appeal Board (TTAB) staffing by 1 position to align capacity with projected workload.
- Reduce planned investment in Trademark IT to reflect the completion of deliverables while managing FY 2020 stabilization and modernization plans for the Trademark Next Generation (TMNG) IT systems and adding 8 staff to support IT efforts.

Intellectual Property Policy, Enforcement and Protection Program – (\$0.007M)

- Reduce planned investment in the IT Portfolio to maintain existing systems for IP performance activities.

Management Program – (\$38.2M):

- Reduce planned investment in the IT Infrastructure and Mission Support Portfolio reflecting reduced investment levels for Digital Services/Big Data and other improvements after peak investments in FY 2018 and FY 2019.
- Increase financial management services staffing by 4 positions to support expanding workload to meet agency needs in critical areas such as fee forecasting and contract management.
- Increase staffing by 3 positions in legal services to administer new programs in the Office of Enrollment and Discipline (OED).
- Increase cross-cutting services to address leasehold and security improvements.

U.S. Patent and Trademark Office

FY 2020 Budget Plans: **Budget and Performance at a Glance (BPAG) Chart**

As a business-like organization, the USPTO fulfills requests for IP products and services from around the world that are paid for by customers. Since these requests are frequently received in one fiscal year and fulfilled in a subsequent year, the Office engages in multi-year planning and budgeting. In doing this, the Office assesses indicators of global and domestic economic activity, as well as policies and legislation, process efficiencies, applicant behavior, and past performance when forecasting workload and fee collections. These workload variables in turn affect production models that are produced by the Patent and Trademark organizations, as well as by the PTAB, which make up over two-thirds of the Office's budgetary requirements. Further details about this process are included in Appendix I.

The Budget and Performance at a Glance (BPAG) Chart that follows reflects the USPTO's multi-year planning activities. Current budget planning must take into consideration prior year actual circumstances and anticipated future year actions. Therefore, the FY 2020 and out year estimates on the BPAG Chart build off of the FY 2019 Current Plan estimates for both funding and performance projections.

In formulating its annual budget requirements, the USPTO identifies the performance targets it expects to achieve in order to fulfill its mission, goals, and objectives as documented in its strategic plan. It then identifies the budget requirements needed to meet these performance targets and the fee collections and operating reserves needed to fund those requirements. Current updates to this FY 2020 President's Budget reflect new proposed goals, objectives and initiatives included in the final *USPTO 2018-2022 Strategic Plan* released November 2018. The Budget and updated plan reflect the Office's continuous efforts to issue reliable intellectual property rights and support the Department of Commerce's strategic objective to: *Strengthen Intellectual Property Protection*.

The BPAG Chart summarizes the USPTO's FY 2020 performance commitments through the major performance and workload indicators that will be achieved with the required funding. The performance indicators are a combination of the USPTO's Government Performance and Results Act (GPRA) measures, and those that are used for internal management purposes. Current performance information can be found at the [Data Visualization Center](http://www.uspto.gov/about-us/performance-and-planning/data-visualization-center) at <http://www.uspto.gov/about-us/performance-and-planning/data-visualization-center>. The BPAG Chart also shows the estimated budgetary requirements and FTE for FY 2020 and the out years, along with the projected fee collections and operating reserve activity.

USPTO FY 2020 Budget and Performance-at-a-Glance

| <i>(Dollars in thousands)</i> | 2018 Actual | 2019 Current Plan | 2020 PB Submission | 2021 Estimate | 2022 Estimate | 2023 Estimate | 2024 Estimate |
|---|----------------|-------------------------|--------------------------|------------------|------------------|------------------|------------------|
| USPTO GOAL 1: OPTIMIZE PATENT QUALITY AND TIMELINESS | | | | | | | |
| Amount | 2,956,669 | 3,075,849 | 3,129,702 | 3,281,662 | 3,390,090 | 3,479,747 | 3,580,797 |
| Full Time Equivalent (FTE) | 11,076 | 11,289 | 11,535 | 11,884 | 12,278 | 12,536 | 12,666 |
| Utility, Plant and Reissue (UPR) Applications Filed | 598,101 | 609,600 | 611,200 | 612,600 | 621,500 | 629,200 | 636,600 |
| UPR Applications Filed – Percent Change Over Previous FY | -1.2% | 1.9% | 0.2% | 0.2% | 1.4% | 1.2% | 1.2% |
| Percent of Actions Completed within 14 months | 44% | 47% | 46% | 47% | 48% | 49% | 51% |
| Average First Action Pendency/UPR (Months) | 15.8 | 14.7 | 14.7 | 14.7 | 14.5 | 14.3 | 14.0 |
| Average Total Pendency/UPR) (Months) | 23.8 | 23.9 | 22.8 | 22.8 | 22.9 | 22.7 | 22.4 |
| <i>Patent Correctness (Statutory Compliance metrics):¹</i> | | | | | | | |
| Statute 35 USC 101 (including utility and eligibility) | 96.8% | >97.0% | TBD | TBD | TBD | TBD | TBD |
| Statute 35 USC 102 (prior art compliance) | 95.2% | >95.0% | TBD | TBD | TBD | TBD | TBD |
| Statute 35 USC 103 (prior art compliance) | 91.9% | >93.0% | TBD | TBD | TBD | TBD | TBD |
| Statute 35 USC 112 (35 USC 112(a),(b) including (a)/(b) rejections related to 35 USC 112(f)) | 92.9% | >93.0% | TBD | TBD | TBD | TBD | TBD |
| UPR Examiners On-Board at End-of-Year | 8,007 | 8,067 | 8,313 | 8,686 | 9,046 | 9,174 | 9,297 |
| UPR First Actions | 589,966 | 617,100 | 607,300 | 597,000 | 612,500 | 624,000 | 634,200 |
| UPR Disposals | 597,204 | 617,100 | 607,300 | 597,000 | 612,500 | 624,000 | 634,200 |
| UPR Units of Production | 601,011 | 617,100 | 607,300 | 597,000 | 612,500 | 624,000 | 625,500 |
| Obligation Cost Per Patent Production Unit ² | \$4,970 | \$5,086 | \$5,220 | \$5,567 | \$5,604 | \$5,645 | \$5,794 |
| UPR Issues | 308,632 | 314,800 | 313,300 | 308,100 | 311,700 | 318,300 | 323,700 |
| UPR Unexamined Patent Application Backlog | 522,149 | 504,700 | 498,600 | 504,000 | 502,700 | 497,500 | 489,400 |
| Forward Looking First Action Pendency/UPR (Months) | 14.2 | 14.0 | 14.0 | 13.8 | 13.5 | 13.2 | 13.2 |
| ¹ Patent quality metrics program launched metrics on the correctness and clarity of patent work products for use in FY 2017. | | | | | | | |
| ² Budget requirements are used to calculate the results | | | | | | | |

| <i>(Dollars in thousands)</i> | 2018 Actual | 2019 Current Plan | 2020 PB Submission | 2021 Estimate | 2022 Estimate | 2023 Estimate | 2024 Estimate |
|---|------------------------|----------------------------------|-----------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| USPTO GOAL 2: OPTIMIZE TRADEMARK QUALITY AND TIMELINESS | | | | | | | |
| Amount | 303,832 | 338,738 | 348,281 | 366,866 | 383,965 | 396,283 | 412,379 |
| FTE | 1,106 | 1,247 | 1,339 | 1,417 | 1,482 | 1,546 | 1,611 |
| Applications Received (Includes Extra Classes) | 638,847 | 678,000 | 703,000 | 756,000 | 811,000 | 869,000 | 928,000 |
| Applications Received – Percent Change Over Previous FY | 7.5% | 6.1% | 3.7% | 7.5% | 7.3% | 7.2% | 6.8% |
| Exceptional Office Action rate | 48.0% | 46.0% | 47.0% | 40.0% | 40.0% | 41.0% | 42.0% |
| First Action Compliance Rate | 96.9% | 95.5% | 95.5% | 95.5% | 95.5% | 95.5% | 95.5% |
| Final Compliance Rate | 97.9% | 97.0% | 97.0% | 97.0% | 97.0% | 97.0% | 97.0% |
| Average First Action Pendency (Months) | 3.37 | 2.5 - 3.5 | 2.5 - 3.5 | 2.5 - 3.5 | 2.5 - 3.5 | 2.5 - 3.5 | 2.5 - 3.5 |
| Average Total Pendency (Months) Excluding Suspended and Inter Partes Proceedings | 9.6 | 12 | 12 | 12 | 12 | 12 | 12 |
| Balanced Disposals | 1,215,956 | 1,334,700 | 1,428,800 | 1,503,500 | 1,627,200 | 1,745,000 | 1,850,700 |
| Office Disposals | 563,138 | 604,800 | 638,800 | 669,200 | 718,600 | 766,700 | 810,500 |
| Obligation Cost Per Trademark Disposal ² | \$563 | \$591 | \$575 | \$578 | \$562 | \$543 | \$534 |
| Examining Attorneys On-Board at End-of-Year | 579 | 659 | 712 | 765 | 807 | 848 | 903 |
| USPTO GOAL 3: PROVIDE DOMESTIC AND GLOBAL LEADERSHIP TO IMPROVE INTELLECTUAL PROPERTY POLICY, PROTECTION AND ENFORCEMENT WORLDWIDE | | | | | | | |
| Amount | 43,977 | 57,988 | 59,185 | 61,860 | 62,315 | 63,104 | 64,071 |
| FTE | 138 | 162 | 162 | 162 | 162 | 162 | 162 |
| Percentage of prioritized countries for which intellectual property country teams have made progress on at least 3 of the 4 performance criteria: <ul style="list-style-type: none"> • Institutional improvements of IP office administration • Institutional improvements of IP enforcement entities • Improvements in IP laws and regulations • Establishment of government-to-government cooperative mechanisms | 100.0% | 66.0% | 66.0% | 66.0% | 66.0% | 66.0% | 66.0% |
| Number of people, including foreign government officials and U.S. stakeholders, trained on best practices to protect and enforce IP | 7,242 | 4,500 | 4,500 | 4,500 | 4,500 | 4,500 | 4,500 |
| Amounts not Supporting Goals ³ | 1,000 | 2,000 | 2,000 | 2,000 | 2,000 | 2,000 | 2,000 |
| ² Budget requirements are used to calculate the results. | | | | | | | |
| ³ Transfer to DOC OIG. In FY 2019, enacted level of \$1.5M for the transfer to IG will be revised from \$2.0M after the publication of this document. Subsequent impact on budget authority levels will be modified. | | | | | | | |

| <i>(Dollars in thousands)</i> | 2018 Actual | 2019 Current | 2020 PB Submission | 2021 Estimate | 2022 Estimate | 2023 Estimate | 2024 Estimate |
|---|------------------------|-------------------------|-----------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| USPTO Requirements | 3,305,478 | 3,474,575 | 3,539,168 | 3,712,388 | 3,838,371 | 3,941,133 | 4,059,247 |
| FTE | 12,319 | 12,699 | 13,035 | 13,462 | 13,923 | 14,245 | 14,440 |
| Fee Collections | 3,337,445 | 3,358,710 | 3,450,681 | 3,734,989 | 4,091,720 | 4,121,031 | 4,291,539 |
| Other Income/Recoveries | 41,295 | 41,295 | 41,295 | 41,295 | 41,295 | 41,295 | 41,295 |
| Funding to(-) / from(+) Operating Reserve | (73,262) | 74,570 | 47,192 | (63,896) | (294,644) | (221,192) | (273,587) |
| TOTAL FUNDING | 3,305,478 | 3,474,575 | 3,539,168 | 3,712,388 | 3,838,371 | 3,941,133 | 4,059,247 |
| Operating Reserve: Patents | 313,149 | 243,662 | 203,519 | 275,522 | 568,767 | 775,238 | 1,025,820 |
| Operating Reserve: Trademarks | 133,688 | 128,603 | 121,554 | 113,447 | 114,846 | 129,567 | 152,572 |

Patent and Trademark Businesses: Five-Year Horizon

The USPTO's planning and budget priorities are reflected in the following five-year horizon summary for the USPTO's two business lines and primary revenue sources: Patents and Trademarks.

As a fully fee-funded organization, the USPTO relies on user fee collections, which fluctuate based on various external and internal factors, to fund operations. Given the uncertainty in both fee collection estimates and budgetary requirements five years out, the USPTO carefully monitors risk factors and financial estimates on a regular basis. A detailed description of how the USPTO develops workload and fee collection estimates for the two business lines is included in Appendix I.

Similar to many businesses, the USPTO maintains operating reserves to mitigate uncertainty and financial risks. The USPTO manages the ORs within a range of acceptable balances. Minimum planning targets are assessed annually and are intended to address immediate unplanned changes in the economic or operating environments as the Office builds its reserves to their optimal levels. The optimal reserve targets, which are reviewed at least biennially, are established based on an assessment of the likelihood and severity of an array of financial risks, including: the broader economic and fiscal climates; uncertainty surrounding changes in IP policy, laws, and regulations; forecasting uncertainty; the balance of the USPTO's fee structure; the ratio of fixed and variable costs; and the potential for unplanned operating requirements.

Patent Business: Five-Year Horizon

The USPTO continues its mission-critical examination strategy to focus on accurate and consistent results in search and examination, while making progress in first action and total pendency. While timeliness remains a focus, ensuring reliability of issued patents so that stakeholders have confidence in patent grants is a commitment that requires investments of time, training and other resources as supported by the Budget.

The Budget assumes continued investments in workforce optimization through the time allowed for search and examination to reach refined production standards in efforts to achieve more consistent outcomes. The Office has initiated a comprehensive analysis of examination time known as Examiner Time Analysis (ETA). The intent is to enable the Patent Business to have a better comprehension of the factors impacting examination time and make better informed decisions about the future of examination time. The last comprehensive assignment of expectancies for examination time was over 40 years ago. Since that time, significant changes to the examination process have occurred, including new technologies, growth of available prior art, increased use of electronic tools, transition to a new classification system, and changes in the legal landscape and examination practices. The Agency conducted an analysis of examination time, including the historical and current factors influencing examination time, stakeholders' perceptions of what impedes and enhances examination, and methodologies of assigning time for Patent examination. As an input to the analysis, the Agency published a Federal Register Notice to gather public input on priorities regarding quality, predictability, pendency, cost for services, and related topics. At a summary level, the next

steps include: complete negotiations with the union on implementation of the planned changes to examination time; and establish the IT infrastructure needed to support the changes to examination time.

The FY 2020 Budget projects 1.0 percent growth annually for serialized (original) filings--which are the largest component of the overall growth rate-- between FY 2020 through FY 2024. As seen in the chart below (Figure #1(a)), there is an overall annual growth rate of 0.2 percent for utility, plant and reissue (UPR) filings in FY 2020. As a result of these filing trends, the USPTO has modified its patent examiner hiring plans to 400 new hires in FY 2019, 600 new hires in FY 2020, and 750 in FY 2021, which represents roughly 740 cumulative net new examiner hires by FY 2021.

The staffing plan provides the human capital required to address increasing workloads, and balance pendency targets within the framework of the Patent Term Adjustment (PTA) examination timeframes. PTA was established by the American Inventors Protection Act of 1999 and provides for day-for-day adjustment of patent term (i.e., the period of time a patent is in force) for certain USPTO administrative delays (“the 14-4-4-4-36 timeframes”) for certain patent applications. The specified timeframes are to: issue an Office Action within 14 months after application filing, respond to a reply or appeal within four months, act on the application within four months after a decision from the Patent Trial and Appeal Board (PTAB) or from a Federal court, and issue the patent within four months after payment of the issue fee. Additionally, a 36-month timeframe applies if the USPTO does not issue a patent within three years of the filing date or national stage commencement, with certain exceptions. Further, time consumed by interference or derivation proceedings, delays caused by placing the application under a secrecy order under 35 U.S.C. 181, or time consumed by a successful appellate review may result in positive patent term adjustment (PTA). Any positive PTA is offset by any period that an applicant failed to engage in reasonable efforts to conclude prosecution. In the continued efforts to improve certainty and timeliness, the Office will continue to closely monitor inventory and application filing levels, calibrating the examination capacity to refine patent pendency goals while optimizing issuance of reliable, predictable and consistent patents. Changes to planned hiring levels or other assumptions will change projected results.

Figure #1 – Patent Business Line: Financial and Performance Outlook

Figure #1(a) – Patent Performance Outlook

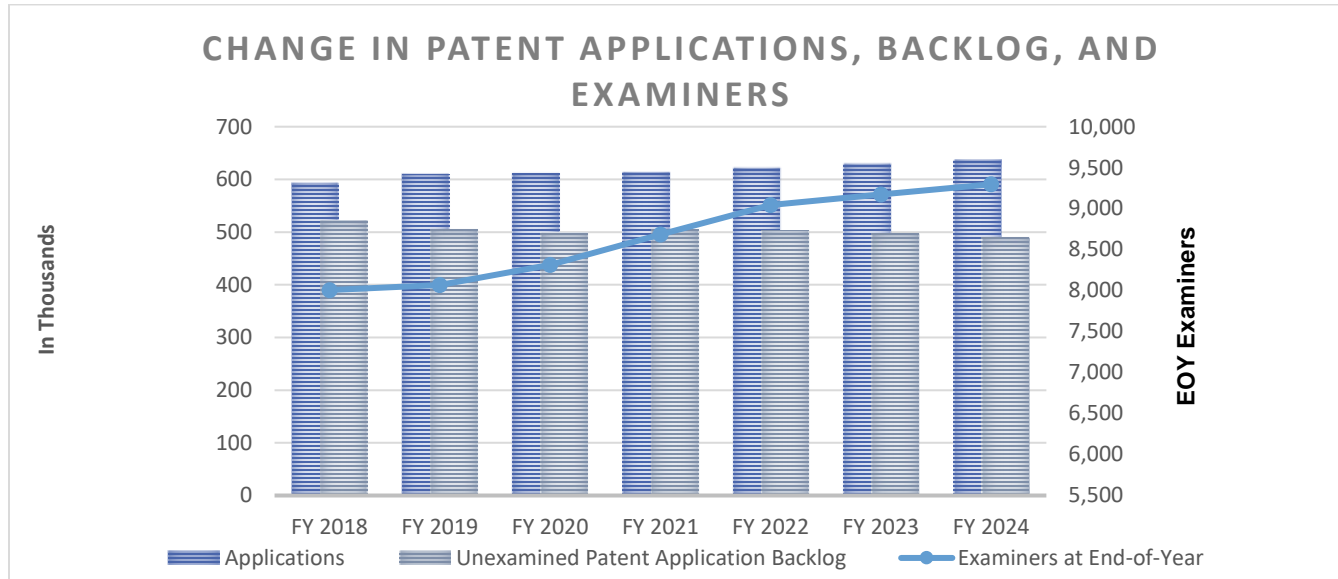


Figure #1(b) – Patent Performance Outlook (Continued)

| Utility, Plant and Reissue | FY 2018 | FY 2019 | FY 2020 | FY 2021 | FY 2022 | FY 2023 | FY 2024 |
|--|---------|---------|---------|---------|---------|---------|---------|
| Applications: | 598,101 | 609,600 | 611,200 | 612,600 | 621,500 | 629,200 | 636,600 |
| Growth Rate | -1.2% | 1.9% | 0.2% | 0.2% | 1.4% | 1.2% | 1.2% |
| Serialized Growth Rate | 1.7% | 1.5% | 1.0% | 1.0% | 1.0% | 1.0% | 1.0% |
| Production Units | 601,011 | 617,100 | 607,300 | 597,000 | 612,500 | 624,000 | 625,500 |
| Unexamined Patent Application Backlog | 522,149 | 504,700 | 498,600 | 504,000 | 502,700 | 497,500 | 489,400 |
| Ideal Backlog (10 months of apps) | 343,108 | 359,000 | 353,100 | 347,000 | 356,300 | 363,100 | 369,200 |
| Performance Measures | | | | | | | |
| Percent of Actions Completed within 14 months | 44% | 47% | 46% | 47% | 48% | 49% | 51% |
| Forward Looking First Action Pendency (Months) | 14.2 | 14.0 | 14.0 | 13.8 | 13.5 | 13.2 | 13.2 |
| Avg. First Action Pendency (Months) | 15.8 | 14.7 | 14.7 | 14.7 | 14.5 | 14.3 | 14.0 |
| Avg. Total Pendency (Months) | 23.8 | 23.9 | 22.8 | 22.8 | 22.9 | 22.7 | 22.4 |
| Examiners at End-of-Year | 8,007 | 8,067 | 8,313 | 8,686 | 9,046 | 9,174 | 9,297 |

To achieve the performance commitments shown above and in the BPAG Chart on pages 8-10, the USPTO has developed its budgetary requirements, and projected its patent fee collections as shown in Figure #1(c).

Figure #1(c) – Patent Financial Outlook

| | FY2018 | FY2019 | FY2020 | FY2021 | FY2022 | FY2023 | FY2024 |
|--|--------|--------|--------|--------|--------|--------|--------|
| (Dollars in Millions) | | | | | | | |
| Projected Fee Collections | 3,011 | 3,012 | 3,095 | 3,361 | 3,690 | 3,694 | 3,840 |
| Other Income | 37 | 37 | 37 | 37 | 37 | 37 | 37 |
| Total Projected Fee Collections and Other Income | 3,048 | 3,049 | 3,132 | 3,398 | 3,727 | 3,731 | 3,877 |
| Budgetary Requirements | 2,990 | 3,117 | 3,172 | 3,326 | 3,434 | 3,524 | 3,626 |
| Funding to (+) and from (-) Operating Reserve | 59 | (68) | (40) | 72 | 293 | 206 | 251 |
| EOY Operating Reserve Balance | 312 | 244 | 203 | 276 | 569 | 775 | 1,026 |
| Over/(Under) \$300M Minimum Level | 12 | (56) | (97) | (24) | 269 | 475 | 726 |
| Over/(Under) Optimal Level | (436) | (536) | (589) | (556) | (290) | (106) | 119 |

- All of the above fee estimates include approximately \$37 million in other income, such as income from reimbursable agreements and recoveries.
- The budgetary requirements for each fiscal year includes annually appropriated transfer to the DOC OIG.
- Note: A report showing the Patent and Trademark Split per Two Way Business Line for FY 2018 through FY 2024 is included in Appendix II.

The chart above does not reflect the 2019 1.9 percent pay raise as authorized in the *Consolidated Appropriation Act, 2019*, which will impact the patent budgetary requirements by approximately \$31M-\$44M per year. This will result in a cumulative impact of \$245M over the budget horizon, with a projected patent operating reserve balance of \$781M by the end FY2024.

Projected Fee Collections. Serialized patent application growth rates are projected to be 1.5 percent in FY 2019 and 1.0 percent in FY 2020 and every year after over the planning horizon, which has a direct impact on fee collections. FY 2021 and out year fee collection estimates include a proposal to adjust patent-related fees. The USPTO first shared with the public and PPAC an initial proposal to adjust patent-related fees on August 8, 2018. PPAC held a hearing for public comments on the proposal September 6, 2018. After considering the written and hearing testimony, PPAC provided the PPAC Fee Setting Report on October 29, 2018, which summarized the Committee's views. The updated fee proposal on which the outyear fee estimates are based considers the comments received from the public hearing and the views of the PPAC Fee Setting Report, and will be shared for public comments in an upcoming notice of proposed rulemaking. The Office continues to conduct biennial fee reviews in an effort to ensure the fee structure allows for continuous strategic improvements to address stakeholder needs and maintaining a sustainable funding model to avoid disruptions caused by fluctuations in available financial resources.

Budgetary Requirements (the annual estimated operating requirements, excluding deposits in the operating reserve). The patent budgetary requirements increase at a 3.3 percent compound annual growth rate (CAGR) through FY 2024 compared to the FY 2018 level.

Patent Operating Reserve. The OR mitigates operational risk caused by temporary changes in the economy and the USPTO's operating and financial environments. As previously noted, the USPTO manages its ORs within a range of acceptable balances. For the Patent business line, a minimum planning level of approximately \$300 million—just over one month's operating expenses—has been established for FY 2019 and FY 2020. A recent assessment of the Patent OR relative to the current financial risk environment revalidated the three months optimal level as the appropriate long-range target given various risk factors, such as the high percentage of fixed costs in the Patent business and recent and potential changes in the legal, judicial, and policy environments.

The OR level is expected to be below the minimum target through FY 2021 as the USPTO absorbs cost increases and continues investments in mission-critical areas. In future year projections (see Figure #1(c)), the USPTO anticipates building the Patent OR to an optimal level of three months operating requirements. As seen in the table, over a five-year planning horizon the OR balance can change significantly; underscoring the Office's financial vulnerability to varying risk factors and the importance of retaining fee setting authority. These projections are based on point-in-time estimates and assumptions that are subject to change. For instance, they assume that the new fee rates will be implemented in early FY 2021 exactly in line with the fee proposal that is currently under review. Further, there is considerable uncertainty in out-year budgetary requirements. A number of risks could materialize over the next several years—e.g., associated with recompletions of workload and other major contracts, lease renewals, etc.—that could increase the USPTO's budgetary requirements in the short- to medium- term.

Trademark Business: Five-Year Horizon

The Trademark organization is committed to enhancing the customer experience while maintaining high quality examination of trademark applications and a continued focus on timeliness. As shown in Figure # 2(a) below, trademark applications are expected to grow at an average rate of 6.4 percent over the five-year planning horizon. Trademark application filings exhibit a strong correlation with the general state of the economy as measured by the growth of the Gross Domestic Product (GDP) and venture capital. International filings have been growing faster than domestic ones and represent a larger portion of total applications than in years past. They are fueled by the growth of the world economy, by international trade, and by the enhanced global value of IP rights. Over the next few years, filing models indicate a growth rate of trademark filings from foreign countries from 17 percent, eventually slowing down to 12 percent. The Budget assumes that the economic growth will be sustained, which will boost trademark filings to the projected average annual growth rate between three and eight percent. Given this continued growth in applications, the Trademark organization will need to continue increasing its trademark examining attorney staffing levels to maintain its quality and pendency at an average first action pendency of 2.5 to 3.5 months and an average disposal pendency of 12 months or less.

Figure #2 – Trademark Business Line: Financial and Performance Outlook

Figure #2(a) – Trademark Performance Outlook

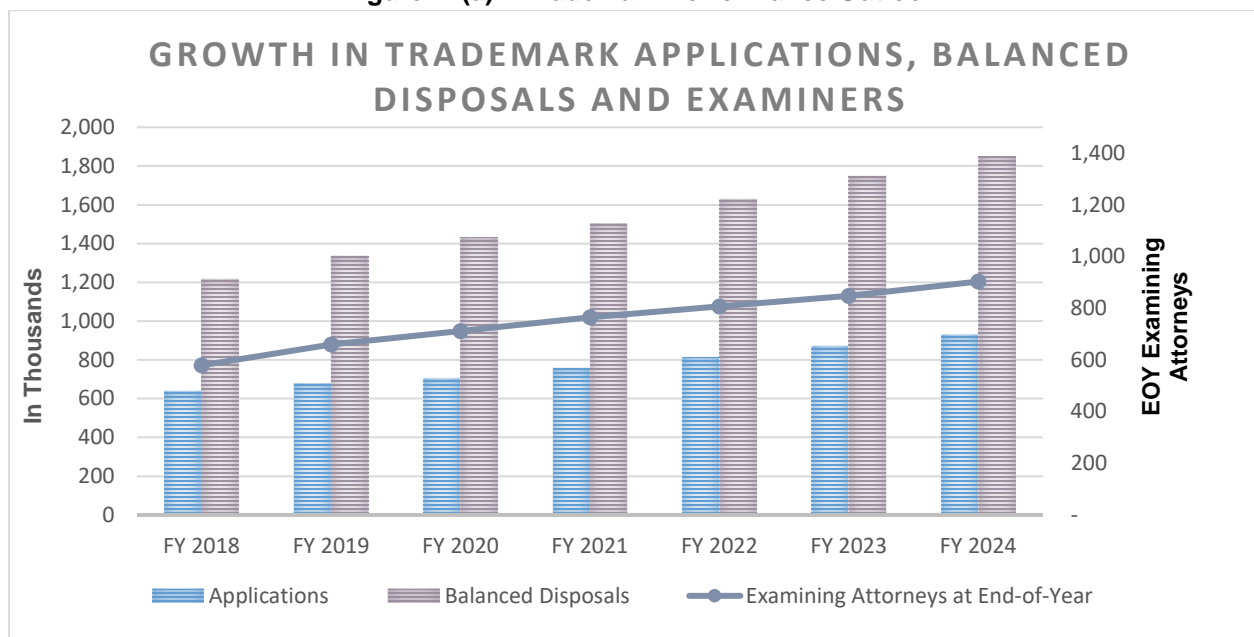


Figure #2(b) – Trademark Performance Outlook

| Trademarks | FY 2018 | FY 2019 | FY 2020 | FY 2021 | FY 2022 | FY 2023 | FY 2024 |
|-------------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Applications | 638,847 | 678,000 | 703,000 | 756,000 | 811,000 | 869,000 | 928,000 |
| Growth Rate | 7.5% | 6.1% | 3.7% | 7.5% | 7.3% | 7.2% | 6.8% |
| Balanced Disposals | 1,215,956 | 1,334,700 | 1,428,800 | 1,503,500 | 1,627,200 | 1,745,000 | 1,850,700 |
| Performance Measures | | | | | | | |
| Avg. First Action Pendency (Months) | 3.37 | 2.5 - 3.5 | 2.5 - 3.5 | 2.5 - 3.5 | 2.5 - 3.5 | 2.5 - 3.5 | 2.5 - 3.5 |
| Avg. Total Pendency (Months) | 12.0 | 12.0 | 12.0 | 12.0 | 12.0 | 12.0 | 12.0 |
| Examining Attorneys at End-of-Year | 579 | 659 | 712 | 765 | 807 | 848 | 903 |

This five-year framework to achieve these performance targets requires the trademark budgetary resources and projected fee collections as shown in Figure #2(c).

Figure #2(c) – Trademark Financial Outlook

| | FY2018 | FY2019 | FY2020 | FY2021 | FY2022 | FY2023 | FY2024 |
|--|--------|--------|--------|--------|--------|--------|--------|
| (Dollars in Millions) | | | | | | | |
| Projected Fee Collections | 326 | 347 | 356 | 374 | 401 | 427 | 452 |
| Other Income | 4 | 4 | 4 | 4 | 4 | 4 | 4 |
| Total Projected Fee Collections and Other Income | 330 | 351 | 360 | 379 | 406 | 431 | 456 |
| Budgetary Requirements | 316 | 357 | 367 | 387 | 404 | 417 | 433 |
| Funding to (+) and from (-) Operating Reserve | 15 | (7) | (7) | (8) | 1 | 15 | 23 |
| EOY Operating Reserve Balance | 135 | 129 | 122 | 113 | 115 | 130 | 153 |
| Over/(Under) Minimum Level | 75 | 69 | 62 | 53 | 55 | 70 | 93 |
| Over/(Under) Optimal Level | 4 | (20) | (32) | (48) | (54) | (44) | (28) |

- All of the above fee estimates include approximately \$4 million in other income, such as income from reimbursable agreements and recoveries.
- The budgetary requirements for each fiscal year includes annually appropriated transfer to the DOC OIG.
- Note: A report showing the Patent and Trademark Split per Two Way Business Line for FY 2018 through FY 2024 is included in Appendix II.

The chart above does not reflect the 2019 1.9 percent pay raise as authorized in the *Consolidated Appropriation Act, 2019*, which will impact the trademark budgetary requirements by approximately \$3M-\$5M per year. This will result in a cumulative impact of \$27M over the budget horizon, with a projected trademark operating reserve balance of \$125M by the end FY2024.

Projected Fee Collections: Application filing growth rates range from 3.7 to 7.5 percent over the planning horizon, impacting the growth of fee collection estimates. The USPTO continues to conduct biennial fee reviews to ensure fees are aligned with the full cost of the relevant products and services to the greatest extent possible. Additionally, fee review efforts aim to protect the integrity of the register by incentivizing more timely filing or examination of applications and other filings and more efficient resolution of appeals and trials; and promote the efficiency of the process in large part through lower-cost electronic filing options.

Budgetary Requirements (the annual estimated operating requirements, excluding deposits in the operating reserve). With a sustained economic recovery, new application filings are expected to approach their historical growth patterns and increase by about 289,000 applications (classes) by FY 2024 compared to FY 2018 or a 6.4 percent CAGR. To keep pace with the incremental workloads and to support business development and implementation of new and improved IT systems, the Trademark organization will increase the number of examining attorneys and support personnel. Total annual Trademark budgetary requirements are projected to increase at a 5.4 percent CAGR through FY 2024 compared to the FY 2018 level.

Trademark Operating Reserve. In 2017 the USPTO recently completed an assessment of its operating reserve targets relative to the current financial risk environment. This assessment concluded that the financial risk associated with the Trademark business is higher than that of the Patent business. This greater risk is due to factors such as (a) the speed in which the sensitivity and volatility related to economic fluctuations impact trademark operations, (b) the fact that a greater percentage of fees are collected from application and related filings, and (c) the relative size of the trademark program and the comparatively high ratio of mission support services to direct program expenses. In the past, sporadic large magnitude increases in application filings of more than 27 percent have been followed by declines of more than 10 to 20 percent in filings reducing revenues quickly in the short term. The USPTO assessed the potential risks for Trademarks and determined that the optimal OR should be five months of operating expenses.

The Trademark OR is estimated to stay above the minimum during the planning horizon, but somewhat under the optimal level through FY 2024. If the projected OR exceeds the estimated optimal level by 25 percent for two consecutive years, the USPTO would examine the contributing factors and determine whether there is a need to adjust fee rates.

The USPTO Information Technology (IT) Portfolio

As a production-oriented entity, the USPTO relies upon IT as a mission-critical enabler for every aspect of its operation. The quality, efficiency, and productivity of patent and trademark operations correlate to the performance of their IT systems. To accomplish its performance-based strategies, the USPTO continuously engages in multi-year efforts to upgrade its business systems, and the IT infrastructure supporting those systems, to keep pace with emerging business, legislative, and court needs and technology standards.

The IT Portfolio Budget

The USPTO requests \$654.0 million in FY 2020 for its IT portfolio, which will address the IT priorities of the Office's four programs: Patents; Trademarks; IP Policy, Enforcement and Protection (IP PE&P); and Mission Support (including IT infrastructure and IT support services). This total represents a 9.3 percent decrease from the FY 2019 Current Plan. Of the \$654.0 million, \$456.3 million is associated with operational activities, while \$197.7 million is associated with project and improvement activities.

Operations and Maintenance (Ops) funds are required to sustain the current level of functionality, performance and compliance with Federal laws, regulations, and directives. Funds in this category are used to maintain the USPTO's existing IT capability and includes such items as compensation for all the USPTO mission support staff who have a technology focus, operations contractor services, hardware maintenance and routine service agreements, software license renewal and purchase, telecommunications, and IT support for the nationwide workforce program and the Regional Offices.

IT Capital Improvement Fund (CIF). Also known as the IT project funds, these resources are grouped together in recognition that future success for the USPTO core mission depends upon transparent and continuous funding for IT improvements. CIF funds are administered in accordance with the USPTO's Capital Planning and Investment Control (CPIC) process and formal project management processes. The USPTO manages these resources to ensure a sufficient level of funding for IT improvements from year-to-year. As projects are completed, new projects are proposed, reviewed, and approved. The CIF consists of the following three components:

- Business Project funds that directly support business improvement efforts by developing and enhancing mission-enabling IT.
- Enterprise Infrastructure Project funds to maintain the USPTO's IT infrastructure at a level that will support the USPTO's strategic goals and objectives.
- Hardware and Software Replacement funds to replace IT equipment on a regular cycle in order to: keep operational costs stable and low, take advantage of vendor releases for Commercial Off-The-Shelf (COTS) products, and manage capital hardware replacement projects that will improve business capabilities.

New Hires & Telework Equipment includes the funds required to purchase end-user equipment for new hires (e.g., universal laptops, monitors, printers, etc.) and new teleworker equipment (e.g., routers, docking stations, monitors, printers, etc.).

Total USPTO IT Portfolio by Program

The following table shows how total IT funds are allocated by USPTO budget program in FY 2018 through FY 2024 through the Information Resources (IR) sub-programs.

IT Portfolio by Program
(Dollars in Millions)

| | FY 2018 | FY 2019 | FY 2020 | FY 2021 | FY 2022 | FY 2023 | FY 2024 |
|---|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Patent IR | 181.5 | 196.0 | 165.7 | 165.8 | 167.0 | 167.7 | 174.7 |
| Trademark IR | 47.2 | 69.1 | 57.3 | 55.5 | 58.6 | 55.9 | 55.0 |
| IP PE&P IR | 0.1 | 0.6 | 0.6 | 0.6 | 1.6 | 0.7 | 0.7 |
| Mission Support IR | 45.4 | 51.6 | 47.2 | 54.0 | 48.5 | 47.4 | 48.5 |
| Mission Support - IT Infrastructure and IT Support Services | 393.1 | 403.9 | 383.1 | 454.2 | 461.0 | 469.2 | 481.8 |
| TOTAL | 667.3 | 721.2 | 654.0 | 730.1 | 736.8 | 740.9 | 760.8 |

For additional information about government-wide IT spending, please see the U.S. IT Dashboard at <https://itdashboard.gov/>.

PATENT PROGRAM

A key USPTO objective focuses on providing optimal IT service delivery to all users, including continued development and implementation of the Patent End-to-End (PE2E) IT capability. This will be done by expanding upon the initial end-to-end processing capability including specialized processing to enable the Patent Program to phase-out its legacy systems and existing IT capabilities; expanding the amount and use of intelligent data in end-to-end processing; and continuing development of tools for sharing patent processes and work products among global IP stakeholders.

The PE2E development continues to provide releases of new functionality to its designated audiences. Planned activities include the following:

- Document and Application Viewer (DAV): DAV, the Next Generation tool replacing the legacy Electronic Desktop Application Navigator (eDAN), is fully operational and used by all Patent employees that assist in application processing. First deployed in FY 2015, DAV development continues to deliver new features and enhancements like better messaging functionality and Global Dossier (GD) features. The latter allows examiners to view application data from participating IP Offices around the world. In FY 2020, DAV will offer additional business-related functionality including enhanced user customization; support for policy, legal, union, and court mandates; automated double patenting; and extended Global Dossier features to better consolidate prior art.

- PE2E Official Correspondence (OC): The OC tool allows users to create correspondence that is sent to patent applicants and their attorneys. The USPTO deployed the tool into production and continues to make enhancements to allow for the full decommissioning of the legacy Office Action Correspondence Subsystem (OACS), planned in FY 2020.
- PE2E Search – PE2E Search is a modern, scalable enterprise search tool for patent examiners. Search reproduces the best aspects of the current patent search tools but presents a modern interface design and will introduce new tools and capabilities. Search offers filtering by inventor, assignee, and classification (US, CPC, and IPC), advanced highlighting, workspace manager, and advanced tagging with both text and image options. Over time, more capabilities will be added, such as statistical tools for finding relevant documents, linguistic analysis tools, a robust pre-Search, and non-patent literature collections. Performance and quality improvements continue to be made and will continue through FY 2020. In FY 2019, the USPTO has begun to assess its plans to retire legacy systems EAST and WEST.
- Cooperative Patent Classification (CPC): The USPTO replaced the existing electronic forum with an enhanced Classification Revision Management System, a web-based workflow system to support CPC member offices and integrate with PE2E Search in FY 2018. In FY 2019 and FY 2020, the Office will implement additional enhancements to advanced editors and dashboards to assist in revision projects and assist other member offices.
- Patent Center: Patent Center is a tool that will allow applicants to file, view, and retrieve patent applications in text-based documents. In FY 2018, a production release of Patent Center Text in EFS-Web/Private Patent Application Information Retrieval (PAIR) occurred, allowing text filing of initial application for non-provisional utility applications. Expansions and subsequent deployments will allow Patent Center to achieve functional parity with legacy systems (EFS-Web/Private PAIR) in FY 2019 and FY 2020.

Patent Legacy Systems. The Patent organization currently relies on over 35 legacy systems that support nearly every aspect of Patent business operations. These applications are grouped into patent capture and processing systems, which focus on initial processing and examination support, and patent search systems, which focus on both primary and specialized search and retrieval. In addition, patent examiners access extensive commercial databases as part of their application review process.

The IT goals are to retire these legacy systems as quickly as practicable. However, until the retirements are achieved, the USPTO must ensure stability of the legacy systems to meet both internal and external user needs; improve legacy system scalability to support a growing user base and data requirements; upgrade legacy systems to meet new and revised legislative and federal mandates and international treaty agreements; and develop sound legacy system retirement plans.

Patent Information Activities. The modernization, development, and management of patent IT systems are coordinated under the Patent Information Resources sub-program. This includes patent support personnel who serve as business process experts in working with IT experts by providing technical expertise and project management in the development of Patent Program systems supporting electronic filing and patent business operations.

Patent Trial and Appeal Board (PTAB). The AIA called for many changes in PTAB operations. As a result, the IT goal is to support the PTAB's ability to provide timely and high-quality decisions. Planned activities include the following:

Continue deployment of PTAB End-to-End (PTAB E2E):

- In FY 2019 – FY 2020, development efforts will focus on appeals functionality and migration of appeals data/content into PTAB E2E to allow for the retirement of the legacy Adjudicated Case Tracking System (ACTS); provide accessibility of PTAB appeals and AIA trials decision data for both public and internal consumption; and implement platforms to better deliver PTAB analytics, reporting, and data visualizations.
- In FY 2020 – FY 2022, efforts will target the transition of AIA trials functionality into the updated PTAB E2E user interface, integration of new business workflows into PTAB E2E, and integration with Patent E2E.

TRADEMARK PROGRAM

A key USPTO objective is to modernize IT systems by developing and implementing the TMNG IT system to create a fully electronic workflow and state-of-the-art IT resources for external and internal users. Combined with the deployment of new systems that enhance access for external trademark customers and stakeholders, operational gains will strengthen the IP system. These gains will allow for a broader public base to apply for and register trademarks and continue to invest and reap the benefits of strong brands, which will ultimately benefit American consumers and sustain economic activities.

Planned activities include the following:

- Overall TMNG Program: In FY 2018, the USPTO engaged an independent third-party to conduct an architectural review of TMNG. The USPTO considered the recommendations from this review to determine next steps and create a path forward for the Trademark IT Program. The immediate priority for FY 2019 is to complete an assessment of the progress made towards the TMNG vision, decide which business capabilities fit into that vision, and determine how to deliver that vision in a cost-effective manner.
 - A. TMNG Examination: In FY 2019, the USPTO will continue to fine-tune future TMNG activities. Current plans include a roll-out of a new TMNG Examination tool to an expanded group of users by the end of FY 2019. The USPTO will enhance production systems (IDM, eOG, TSDR) while maintaining backend services (CMS and Data Synchronizer). Development work for Image Search will begin in FY 2019.
 - B. TMNG Innovation: The Office will explore and begin to appropriately apply artificial intelligence and machine learning to determine how its use can be applied to improve the accuracy and consistency of the initial search.

Trademark Legacy Systems. The Trademark organization currently relies on 26 legacy systems that support all areas of Trademark business operations. These legacy systems are categorized under six different groupings that focus on e-government, internal operations, records management, trademark search, trademark reference, and other operational aspects. In parallel with development of TMNG capability, the USPTO must ensure stability of the legacy systems to meet both internal and external user needs. To that end, planned efforts focus on improving legacy scalability to support a growing user base and data requirements and upgrading legacy systems to meet new and revised business processes, legislative and federal mandates, and international treaty agreements. Legacy stability efforts aim to avoid an adverse impact on USPTO's ability to receive and process trademark applications and related documents. The IT goals are to plan

for and retire these systems beginning in FY 2019 and continuing through the budget planning horizon as replacement functionality is delivered. Enhancement work will focus on FAST, TRADEUPS, Madrid, and TEAS systems in addition to legacy TTAB systems. TRAM support will be extended as well until the Office successfully develops and tests a replacement solution.

Trademark Information Activities. The modernization, development, and management of the trademark IT systems are coordinated under the Trademark Information Resources sub-program. This also includes trademark support personnel who serve as business process experts in working with the IT experts by providing technical expertise and project management in the development of Trademark Program systems supporting electronic filing, and trademark business operations.

IP POLICY, ENFORCEMENT AND PROTECTION PROGRAM (IP PE&P)

The USPTO's Office of Policy and International Affairs (OPIA) works on the agency's IP policy, enforcement and protection functions. The IT goal is to deliver high-quality IT capability supporting the IPP&E goal, as follows:

- Deliver improved IT capability to support the delivery of IP training domestically and internationally.
- Provide technical oversight and direction for international cooperative IT initiatives.

Planned activities include the following:

- The Office of the Chief Economist will be upgrading and patching the COTS products used for statistical analysis of Patent and Trademark activities and services. These products enable data management, graphics, simulations, and regression analysis.

MISSION SUPPORT PROGRAM

The USPTO's seven mission support offices are the Office of the Under Secretary and Director, Office of the General Counsel (OGC), Office of the Chief Information Officer, Office of the Chief Financial Officer (OCFO), Office of the Chief Administrative Officer (OCAO), Office of Equal Employment Opportunity and Diversity (OEEO&D), and Office of the Chief Communications Officer (OCCO).

A major IT goal is to replace the current fee collection system with 21st century technology by implementing the Fee Processing Next Generation (FPNG) that executes fee collection process recommendations. The USPTO will complete the FPNG investment in FY 2019, which will include retiring the legacy Revenue Accounting and Management system.

Other recently completed and planned activities to support managerial, legal, administrative, communication, human resources and financial management functions including the following:

- Implement the Annual Patent Practitioner Maintenance Fee and Continuing Legal Education Incentives Program by developing the capability for applicants to submit and pay for online applications, retrieve transcripts, and integrate with the agency's single-sign-on authentication products.
- Replace the aging Time & Attendance solution, which is used to assess the costs of the Office's services, with one that offers more system stability and security to support the USPTO's continued ability to accurately record employee hours.
- Completed eAcquisition rollout and deployment of initial functionality associated with a Vendor Portal, which will enable vendors to submit invoices electronically and serve as USPTO's e-invoicing solution (OMB mandate), in FY 2018. Roll-out Vendor Portal to vendors and provide internal USPTO acquisition community with functionality for posting solicitations, obtaining vendor proposals, performing technical evaluations/scoring, and posting awards (FY 2019).
- Implement an Automated Staffing System and Position Description Classification Module (FY 2020).
- Enhance external customer experience by adding on-line refund request/tracking and deposit account pre-authorization functionality to the Financial Manager system (FY 2020).
- Provide internal USPTO budget community with decentralized budget execution and budget formulation functionality.

IT Infrastructure Portfolio

As a production-oriented entity, the USPTO relies heavily upon a sophisticated IT infrastructure. The purpose is to provide the infrastructure foundation for the Next Generation efforts, take advantage of emerging technologies to retain and improve the infrastructure, and comply with relevant and applicable IT mandates. Additionally, the USPTO procured leading industry experts to provide an assessment and recommendations to stabilize and modernize its IT operations. The Office's planned infrastructure activities over the budget horizon further prioritize IT compliance and stabilization efforts in support of the USPTO mission.

In FY 2019 through FY 2020, planned activities include the following:

- A. Manage the obsolescence and replacement of IT infrastructure to support a standardized and optimized data center infrastructure in FY 2019 and FY 2020.
- B. Replace all obsolete SOHO routers by FY 2019
- C. Continue expansion of USPTO's Business Continuity/Disaster Recovery (BC/DR) capability in FY 2019 and FY 2020.
- D. Replace the Analog, Voice and ECC Gateways used by Call Manager for fax machines and analog phones in FY 2020.
- E. Replace current PIV hardware in FY 2020.
- F. Replace EOL router equipment supporting WAN services to the Regional Offices and Boyers in FY 2019 and FY 2020.
- G. Continued modernization of Boyers data center in support of highly available / disaster recovery prepared Next Gen products in FY 2019 and FY 2020.
- H. Replace USPTO aging security Infrastructure perimeter devices and continue Security Infrastructure and Monitoring enhancements (FY 2019).

Patent and Trademark Dissemination. The IT goal to provide public access to both patent and trademark information and services supports both the Patent Program and the Trademark Program. Most of the systems that are accessible via the USPTO's public website (www.uspto.gov) are used to disseminate data about patents (e.g., patent grants, published patent applications, PTAB decisions, and patent classification information) and trademarks (e.g., trademark applications and registered marks, decisions of the TTAB, and trademark assignment data). The USPTO also provides the public with existing bulk electronic files, which companies like Google host using their infrastructure and offers their search capabilities to the public free-of-charge.

Planned activities include the following:

- Continue to enhance the public data and search capabilities separate from internal examination systems in FY 2019.
- Implement new order entry and workflow assignment management system of internal users and integrate with existing systems and then develop document image processing & formatting capability and integrate with external patent systems.

USPTO Digital Services and Big Data (DSBD) Program. The Department of Commerce Strategic Plan for 2018-2022 identifies the following strategic objectives applicable to USPTO and its DSBD program: (1) Promote research, applications and standards for artificial intelligence; (2) Provide strong and effective (IP) rights and encourage the development of follow on innovation; (3) Increase the understanding and use of Commerce data in partnership with industry; (4) Develop new data products and services that capture the dynamic U.S. economy / leverage Big Data; and (5) Modernize and consolidate information technology.

To support the DOC Strategic Plan, the USPTO has deployed its Open Data Portal into Production which provides visualizations of USPTO Patent Data and Federal Data, an Application Programming Interface (API) Catalog for Developers/Researchers to search/download patent data, and a Rich Site Summary (RSS) Feed to alert customers of PTAB decisions.

USPTO's Big Data Program also directly supports the DOC Strategic Plan. USPTO has deployed its Big Data Reservoir (BDR) into Production supporting Artificial Intelligence (AI), Machine Learning (ML), and Natural Language Processing (NLP). Through the BDR, USPTO now has a Patent Quality Search Tool to analyze over 7 million office actions, an Office Action Dashboard for SPEs to identify anomalies with visualizations and ML features, and a Trademark Quality Review (TQR) product which replaces the previous labor intensive and error prone process of manually selecting applications for review and transcribing information between various systems. By leveraging the Big Data infrastructure, the BDR-TQR product was delivered three times faster and at a significant cost savings to the USPTO compared with traditional development efforts. This new capability paves the way to leveraging advanced analytics to improve trademark quality programs and efforts.

In FY 2019 and FY 2020, planned activities for the USPTO DSBD program include the following:

- Leverage the newly-formed USPTO AI Working Group to form strategy and direction, and brief and advise the Under Secretary.
- Continue expanding BDR capability with additional tools, models and features to meet targeted agency needs, particularly tools that leverage AI, ML, and NLP to assist examiners and public stakeholders by increasing quality and consistency of USPTO services.
- Share Big Data insights and research through USPTO's Open Data Developer Hub.
- Expand public access to USPTO data with additional public APIs and services.
- Extend customer outreach to obtain feedback on future tools and capabilities.

Program Changes

Specific IT program changes can be found in the Program Change narrative for the Information Resources Activities found in each of the four Program sections, plus the IT Infrastructure and Support Services Sub-Activity found in the Management Program. The following table shows the total program change amounts for FY 2020 and the out years for each of these sub-programs.

IT Portfolio Program Changes (Dollars in Millions)

| | FY 2020 | FY 2021 | FY 2022 | FY 2023 | FY 2024 |
|---|---------------|---------------|---------------|---------------|---------------|
| Patent IR | (34.5) | (40.1) | (42.8) | (46.1) | (43.1) |
| Trademark IR | (13.9) | (17.4) | (15.7) | (19.9) | (22.4) |
| IP PE&P IR | (0.0) | 0.0 | 0.9 | 0.1 | 0.1 |
| Mission Support IR | (5.0) | 0.2 | (6.5) | (8.9) | (9.1) |
| Mission Support - IT Infrastructure and IT Support Services | (34.6) | 26.7 | 25.6 | 25.8 | 30.4 |
| TOTAL | (87.9) | (30.7) | (38.5) | (49.0) | (44.1) |

Details about the above program changes can be found as follows:

- Patent Program, Sub-Activity – Patent Information Resources
- Trademark Program, Sub-Activity – Trademark Information Resources
- IP PE&P Program, Sub-Activity – IP Policy, Enforcement and Protection (IP PE&P) Information Resources
- Mission Support Program, Sub-Activity – Mission Support Information Resources
- Mission Support Program, Sub-Activity – IT Infrastructure and IT Support Services

TOTAL BUDGET AND FINANCING

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**Department of Commerce
U.S. Patent and Trademark Office
FY 2020 PROGRAM INCREASES / DECREASES / TERMINATIONS**

(Dollar amounts in thousands)
(By Appropriation, Largest to Smallest)

Increases

| Page No. In CJ | Appropriations | Budget Program | Title of Increase | Positions | Budget Authority |
|---------------------|-----------------------|-------------------------|---|-----------|------------------|
| USPTO-44 | Salaries and Expenses | Patent Program | Patent Examining | 284 | 15,603 |
| USPTO-61 | Salaries and Expenses | Trademark Program | Trademark Examining | 74 | 6,029 |
| USPTO-91 | Salaries and Expenses | Mission Support Program | Miscellaneous General Expense | 0 | 530 |
| USPTO-88 | Salaries and Expenses | Mission Support Program | Financial Management Services | 4 | 389 |
| USPTO-62 | Salaries and Expenses | Trademark Program | Trademark Appeals and Inter Partes Proceedings | 1 | 249 |
| USPTO-89 | Salaries and Expenses | Mission Support Program | Legal Services | 3 | 248 |
| USPTO-89 | Salaries and Expenses | Mission Support Program | Human Resource Management and Administrative Services | 0 | 115 |
| USPTO-88 | Salaries and Expenses | Mission Support Program | Executive Direction and Communications | 0 | 95 |
| Subtotal, Increases | | | | 366 | 23,258 |

Decreases

| Page No. In CJ | Appropriations | Budget Program | Title of Increase | Positions | Budget Authority |
|-------------------|-----------------------|---|--|-----------|---------------------|
| | Salaries and Expenses | Mission Support Program | IT Infrastructure and IT Support Services | 0 | (34,554) |
| USPTO-90 | Salaries and Expenses | Patent Program | Patent Information Resources | 0 | (34,514) |
| USPTO-48 | Salaries and Expenses | Trademark Program | Trademark Information Resources | 8 | (13,885) |
| USPTO-63 | Salaries and Expenses | Mission Support Program | Mission Support Information Resources | 0 | (4,976) |
| USPTO-90 | Salaries and Expenses | Intellectual Property Policy Protection and Enforcement Program | IP PP&E Information Resources | 0 | (7) |
| USPTO-82 | Subtotal, Decreases | | | 8 | (87,936) |

Terminations

| Page No. In CJ | Appropriations | Budget Program | Title of Increase | Positions | Budget Authority |
|------------------------|----------------|----------------|-------------------|-----------|---------------------|
| Subtotal, Terminations | | | | | |

**Department of Commerce
U.S. Patent and Trademark Office
Salaries and Expenses
SUMMARY OF RESOURCE REQUIREMENTS
(Dollar amounts in thousands)**

| | Positions | FTE | Budget Authority | Direct Obligations |
|--|-----------|--------|------------------|--------------------|
| Current Plan, 2019 | 13,082 | 12,699 | 3,472,575 | 3,472,575 |
| 2020 Adjustments to Base | | | | |
| Plus: Restoration of recoveries/unobligated balances used to offset 2019 appropriation/non-recurring | | | | |
| Plus: Inflationary adjustments to base | - | 116 | 129,270 | 129,270 |
| Less: Estimated recoveries, 2020 | | | | |
| 2020 Base | 13,082 | 12,815 | 3,472,575 | 3,601,846 |
| Plus: 2020 Program changes | 374 | 220 | (64,678) | (64,678) |
| 2020 Estimate | 13,456 | 13,035 | 3,537,168 | 3,537,168 |

**Comparison by activity /subactivity
with totals by activity**

| | | 2018 | | 2019 | | 2020 | | 2020 | | Increase/Decrease | |
|--------------------------------------|----------------------------------|-----------|-------------|--------------|-------------|-----------|-------------|-----------|-------------|-------------------|----------|
| | | Actual | | Current Plan | | Base | | Estimate | | from 2020 Base | |
| | | Personnel | Amount | Personnel | Amount | Personnel | Amount | Personnel | Amount | Personnel | Amount |
| Patents | Pos./Obl. | 11,594 | 2,956,669 | 11,613 | 3,075,849 | 11,613 | 3,187,075 | 11,904 | 3,129,702 | 290 | (57,373) |
| | FTE | 11,076 | | 11,289 | | 11,371 | | 11,535 | | 164 | |
| Trademarks | Pos./Obl. | 1,210 | 303,832 | 1,301 | 338,738 | 1,300 | 355,055 | 1,384 | 348,281 | 84 | (6,774) |
| | FTE | 1,106 | | 1,247 | | 1,283 | | 1,339 | | 56 | |
| IP Policy Enforcement and Protection | Pos./Obl. | 168 | 43,977 | 168 | 57,988 | 168 | 59,715 | 168 | 59,185 | 0 | (531) |
| | FTE | 138 | | 162 | | 161 | | 162 | | 0 | |
| Total | Pos./Obl. | 12,972 | 3,304,478 | 13,082 | 3,472,575 | 13,082 | 3,601,846 | 13,456 | 3,537,168 | 374 | (64,678) |
| | FTE | 12,319 | | 12,699 | | 12,815 | | 13,035 | | 220 | |
| Adjustments for | | | | | | | | | | | |
| | Offsetting Fee Collections | | (3,337,445) | | (3,358,710) | | (3,450,681) | | (3,450,681) | | - |
| | Other Income / Recoveries | | (41,295) | | (41,295) | | (41,295) | | (41,295) | | - |
| | Operating Reserve, start of year | | (373,575) | | (446,835) | | (372,265) | | (372,265) | | - |
| | Operating Reserve, end of year | | 446,837 | | 372,265 | | 260,395 | | 325,073 | | 64,678 |
| Financing from transfers | | | | | | | | | | | |
| | Transfer from other accounts (-) | | | | | | | | | | |
| | Transfer to other accounts (+)* | | 1,000 | | 2,000 | | 2,000 | | 2,000 | | - |
| Appropriation | | | 0 | | 0 | | 0 | | 0 | | 0 |

*In FY 2019, enacted level of \$1.5M for the transfer to IG will be revised from \$2.0M after the publication of this document. Subsequent impact on budget authority levels will be modified.

**Department of Commerce
U.S. Patent and Trademark Office
Salaries and Expenses
SUMMARY OF RESOURCE REQUIREMENTS**
(Dollar amounts in thousands)

**Comparison by activity
/subactivity with totals by
activity**

| | | 2020 Estimate | | 2021 Estimate | | 2022 Estimate | | 2023 Estimate | | 2024 Estimate | |
|--------------------------------------|----------------------------------|------------------|-------------|------------------|-------------|------------------|-------------|------------------|-------------|------------------|-------------|
| | | Personnel | Amount | Personnel | Amount | Personnel | Amount | Personnel | Amount | Personnel | Amount |
| Patents | Pos./Obl. | 11,904 | 3,129,702 | 12,309 | 3,281,662 | 12,697 | 3,390,090 | 12,827 | 3,479,747 | 12,952 | 3,580,797 |
| | FTE | 11,535 | | 11,884 | | 12,278 | | 12,536 | | 12,666 | |
| Trademarks | Pos./Obl. | 1,384 | 348,281 | 1,457 | 366,866 | 1,519 | 383,965 | 1,585 | 396,283 | 1,651 | 412,379 |
| | FTE | 1,339 | | 1,417 | | 1,482 | | 1,546 | | 1,611 | |
| IP Policy Enforcement and Protection | Pos./Obl. | 168 | 59,185 | 168 | 61,860 | 168 | 62,315 | 168 | 63,104 | 168 | 64,071 |
| | FTE | 162 | | 162 | | 162 | | 162 | | 162 | |
| Total | Pos./Obl. | 13,456 | 3,537,168 | 13,934 | 3,710,388 | 14,384 | 3,836,371 | 14,580 | 3,939,133 | 14,771 | 4,057,247 |
| | FTE | 13,035 | | 13,463 | | 13,923 | | 14,245 | | 14,440 | |
| Adjustments for | | | | | | | | | | | |
| | Offsetting Fee Collections | | (3,450,681) | | (3,734,989) | | (4,091,720) | | (4,121,031) | | (4,291,539) |
| | Other Income / Recoveries | | (41,295) | | (41,295) | | (41,295) | | (41,295) | | (41,295) |
| | Operating Reserve, start of year | | (372,265) | | (325,073) | | (388,969) | | (683,613) | | (904,805) |
| | Operating Reserve, end of year | | 325,073 | | 388,969 | | 683,613 | | 904,805 | | 1,178,392 |
| Financing from transfers | | | | | | | | | | | |
| | Transfer from other accounts (-) | | | | | | | | | | |
| | Transfer to other accounts (+) | | 2,000 | | 2,000 | | 2,000 | | 2,000 | | 2,000 |
| Appropriation | | | 0 | | 0 | | 0 | | 0 | | 0 |

**Department of Commerce
U.S. Patent and Trademark Office
Salaries and Expenses
SUMMARY OF FINANCING**
(Dollar amounts in thousands)

| | 2018 Actual | 2019 Current Plan | 2020 Base | 2020 Estimate | Increase/ Decrease from 2020 Base |
|--|----------------|----------------------|--------------|------------------|---|
| Total Obligations | 3,304,478 | 3,472,575 | 3,601,846 | 3,537,168 | (64,678) |
| Offsetting collections from: | | | | | |
| Non-Federal sources / User Fee Collections | (3,337,445) | (3,358,710) | (3,450,681) | (3,450,681) | - |
| Other Income | (5,637) | (5,637) | (5,637) | (5,637) | - |
| Recoveries | (35,657) | (35,657) | (35,657) | (35,657) | - |
| Unobligated balance, start of year | (373,575) | (446,835) | (372,265) | (372,265) | - |
| Unobligated balance, transferred | | | | | |
| Unobligated balance, end of year | 446,837 | 372,265 | 260,395 | 325,073 | 64,678 |
| Unobligated balance, expiring | | | | | |
| Budget Authority | (1,000) | (2,000) | (2,000) | (2,000) | 0 |
| Financing: | | | | | |
| Transfer from other accounts (-) | | | | | |
| Transfer to other accounts (+)* | 1,000 | 2,000 | 2,000 | 2,000 | 0 |
| Appropriation | 0 | 0 | 0 | 0 | 0 |

*In FY 2019, enacted level of \$1.5M for the transfer to IG will be revised from \$2.0M after the publication of this document. Subsequent impact on budget authority levels will be modified.

**Department of Commerce
U.S. Patent and Trademark Office
ADJUSTMENTS TO BASE**
(Dollar amounts in thousands)

| | <u>FTE</u> | <u>Amount</u> |
|--|------------|---------------|
| Adjustments to Base: | | |
| 2019 Pay raise | | - |
| 2020 Pay raise | | - |
| Full-year cost in 2020 of positions financed for part-year in 2019 | 116 | 15,613 |
| Other Compensation Adjustments | | 21,396 |
| Change in compensable days | | 8,856 |
| Civil Service Retirement System (CSRS) | | (550) |
| Federal Employees Retirement System (FERS) | | 36,828 |
| Thrift Savings Plan | | 157 |
| Federal Insurance Contribution Act (FICA) - OASDI | | 464 |
| Health insurance | | 3,345 |
| Post-Retirement Benefits to OPM | | 24,315 |
| Travel | | 151 |
| Rental payments to GSA | | 2,590 |
| Postage | | 160 |
| Printing and reproduction | | 3,807 |
| Workload Adjustment | | 10,682 |
| DOC Working Capital Fund | | 1,006 |
| National Archives and Records Administration (NARA) storage costs | | 450 |
| General Pricing Level Adjustment | | - |
| | <hr/> | |
| Total, adjustments to base | 116 | 129,270 |

PATENT PROGRAM

Department of Commerce
U.S. Patent and Trademark Office
PATENT PROGRAM
Salaries and Expenses
PROGRAM AND PERFORMANCE: DIRECT OBLIGATIONS
(Dollar amounts in thousands)

Activity: Patent Program
Subactivity: Patents

| Line Item | | 2018 | | 2019 | | 2020 | | 2020 | | Increase/Decrease | |
|----------------------------------|----------|-----------|-----------|--------------|-----------|-----------|-----------|-----------|-----------|-------------------|----------|
| | | Actual | | Current Plan | | Base | | Estimate | | from 2020 Base | |
| | | Personnel | Amount | Personnel | Amount | Personnel | Amount | Personnel | Amount | Personnel | Amount |
| Patent Examining | Pos./Obl | 9,953 | 2,013,405 | 9,965 | 2,070,673 | 9,965 | 2,137,172 | 10,249 | 2,152,775 | 284 | 15,603 |
| | FTE | 9,645 | | 9,726 | | 9,768 | | 9,930 | | 161 | |
| Patent Trial and Appeals | Pos./Obl | 430 | 79,339 | 430 | 90,287 | 430 | 93,125 | 430 | 93,125 | - | - |
| | FTE | 377 | | 421 | | 429 | | 429 | | - | |
| Patent Information Resources | Pos./Obl | 190 | 181,503 | 187 | 195,981 | 185 | 200,244 | 185 | 165,730 | - | (34,514) |
| | FTE | 174 | | 178 | | 181 | | 181 | | - | |
| Subtotal Direct | Pos./Obl | 10,573 | 2,274,247 | 10,582 | 2,356,940 | 10,580 | 2,430,541 | 10,864 | 2,411,630 | 284 | (18,911) |
| | FTE | 10,195 | | 10,325 | | 10,378 | | 10,539 | | 161 | |
| Mission Support Goal - Allocated | Pos./Obl | 1,021 | 682,422 | 1,031 | 718,909 | 1,034 | 756,534 | 1,040 | 718,072 | 6 | (38,462) |
| | FTE | 880 | | 964 | | 993 | | 996 | | 3 | |
| Total | Pos./Obl | 11,594 | 2,956,669 | 11,613 | 3,075,849 | 11,613 | 3,187,075 | 11,904 | 3,129,702 | 290 | (57,373) |
| | FTE | 11,076 | | 11,289 | | 11,371 | | 11,535 | | 164 | |

Department of Commerce
U.S. Patent and Trademark Office
Salaries and Expenses
JUSTIFICATION OF PROGRAM AND PERFORMANCE
(Dollar amounts in thousands)

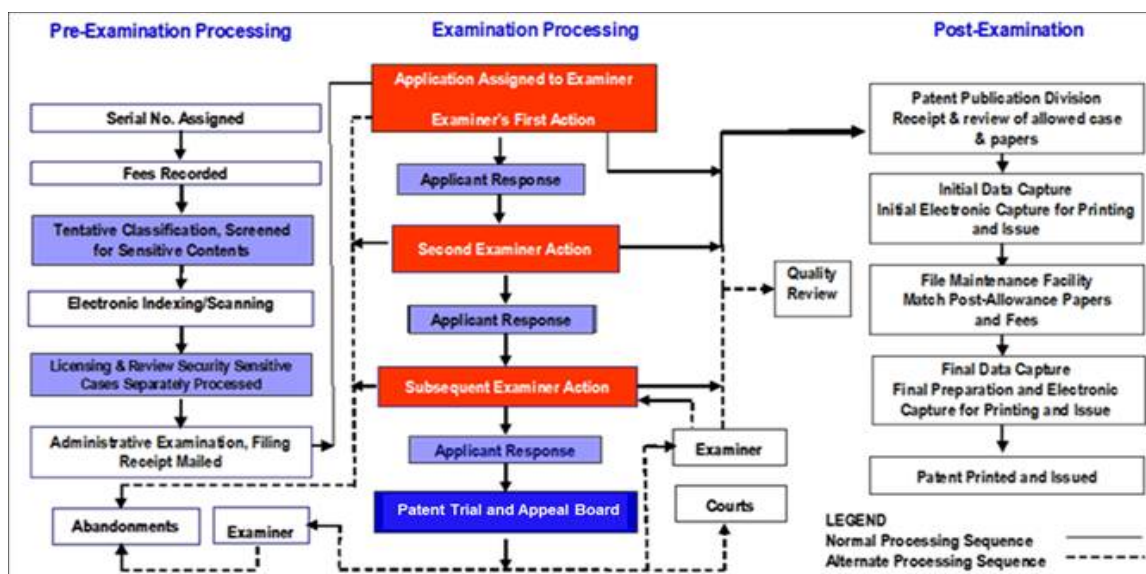
Activity: Patent Program
Subactivity: Patent Program

Goal Statement

The Patent Program activity remains dedicated to achieving the strategic goal of optimizing patent quality and timeliness, to carry out the Office's mission "by conducting high quality and timely patent...examination and review proceedings in order to produce reliable and predictable intellectual property rights..." in accordance with laws, regulations and practices, as outlined in the *USPTO 2018-2022 Strategic Plan* framework.

Base Program

The Patent Program consists of the activities of the Patent Examination function as well as the Patent Trial and Appeals Board (PTAB) and support by the Patent Information Resources function to provide the tools and resources to carry out the mission-critical activities. The functions of the Patent Program are primarily demand-driven; thus the FY 2020 base program requirements are heavily derived from production-based workload modeling to determine the resources needed to carry out the mission of the Office. Such base resources include training, production incentives programs, investments in IT tools, etc. The patent examination process comprises the majority of the requirements of the base Patent Program and consists of the activities shown on the following schematic and major functions, as described below, with budget estimates for line items allocated according to processing functions.



Statement of Operating Objectives

The objectives of the Patent Program align with the Office's focus on enhancing the country's innovation ecosystem and providing strong, reliable and predictable intellectual property rights. The strategic goal of the Patent Program is being met by achieving these objectives, set forth in the *USPTO 2018-2022 Strategic Plan*, and the corresponding initiatives. Objectives include:

- Optimize Patent Application Pendency
- Issue Highly Reliable Patents
- Foster Innovation Through Business Effectiveness
- Enhance operations of the Patent Trial and Appeal Board

| Line Item | | <u>Explanation and Justification</u> | | | | | |
|----------------------------------|-----------|--------------------------------------|-----------|--------------|-----------|-----------|-----------|
| | | 2018 | | 2019 | | 2020 | |
| | | Actual | | Current Plan | | Base | |
| | | Personnel | Amount | Personnel | Amount | Personnel | Amount |
| Patent Examining | Pos./Obl. | 9,953 | 2,013,405 | 9,965 | 2,070,673 | 9,965 | 2,137,172 |
| | FTE | 9,645 | | 9,726 | | 9,768 | |
| Patent Trial and Appeals | Pos./Obl. | 430 | 79,339 | 430 | 90,287 | 430 | 93,125 |
| | FTE | 377 | | 421 | | 429 | |
| Patent Information Resources | Pos./Obl. | 190 | 181,503 | 187 | 195,981 | 185 | 200,244 |
| | FTE | 174 | | 178 | | 181 | |
| Mission Support Goal - Allocated | Pos./Obl. | 1,021 | 682,422 | 1,031 | 718,909 | 1,034 | 756,534 |
| | FTE | 880 | | 964 | | 993 | |
| Total | Pos./Obl. | 11,594 | 2,956,669 | 11,613 | 3,075,849 | 11,613 | 3,187,075 |
| | FTE | 11,076 | | 11,289 | | 11,371 | |

Patent Examining

For FY 2020, the base budget reflects the continuation of programs required to conduct the Office's mission-critical patent examining operations in efforts to further reduce the patent application backlog, shorten patent pendency, and improve patent quality.

Patent Pre-Examination Processing: \$135.2 million and 149 Pos

The patent application process begins upon receipt by the USPTO, which marks the onset of the pre-examination stage. In FY 2020 the office anticipates receiving 611,200 UPR applications, representing a 0.2 percent growth over the previous year. Resources for the pre-examination function allows the office to conduct an administrative review, determining compliance with requirements for form, content, adequacy, and payment of appropriate fees for both paper and electronic filings. For paper filings, which still represent roughly 1 percent of new applications filed annually, additional resources are required to convert the file to an electronic image, after which, the application is managed electronically. This process includes assignment of the official filing date and patent application tracking number, and inputting the patent bibliographic data (e.g., filing date, priority date, inventor(s) title) in the Patent Application Location Monitoring (PALM) system. Pre-examination resources are also required to support the pre-grant publication process for applicable filings.

Patent Examination Processing: \$1,904.2 million and 9,762 Pos.

The examination stage is the critical component for achieving many of the Office's strategic and performance goals. Primarily, funding is required to support the functioning of a highly educated and specialized workforce to produce the office actions required to process the patent application inventory. In FY 2020, the Office will require resources to support the 607,300 UPR production units estimated for this fiscal year generated by staffing over 8,300 patent examiners augmented with management and contractor support, IT tools, legal and policy resources as well as training and quality investments to maintain the Office's standards of excellence in patent examination.

The Office remains committed to its emphasis on quality and training to ensure it continues to issue reliable and predictable patents, which are patents that are issued in compliance with all the requirements of Title 35 of the United States Code as well as the relevant case law at the time of issuance. This year the Office has invested in the development of the examining corps by providing a range of technical and legal training opportunities, including training on subjects relating to, for example, 35 U.S.C. §102; 35 U.S.C. §103; 35 U.S.C. §101; 35 U.S.C. §112; and Search. Additionally, the Office continues to run pilot programs to train stakeholders on Office practice and procedure to improve applicant submissions, including initial filings and Office action responses, and to improve collaboration between applicants and examiners. Further, the foundation for assessing the Office's multiple efforts on improving reliability and consistency continues to be its quality assurance program whereby a random sample of patent examiners' work products are reviewed to provide timely, reliable and meaningful indicators of examination quality.

Patent Post-Examination Processing: \$97.8 million and 54 Pos.

Resources are needed to continue the required post-examination processing activities, which take place after the examiner has allowed the application and the issue fee has been paid. This will support the current FY 2020 estimates of 313,300 patents to be prepared for issue, printing, and publication in a weekly edition of the electronic Official Gazette for dissemination to the public. Post-issue activities also include processing withdrawals and assignments.

The significant progress made since the beginning of this decade is expected to continue under the USPTO 2018-2022 Strategic Plan, which is supported by this Budget. Between the beginning of FY 2010 through the end of FY 2018, first action pendency was reduced from 25.7 months to 15.8 months; total pendency was reduced from 35.3 months to 23.8 months; and the backlog of unexamined applications was reduced from 718,885 to 522,149. The Budget supports a continued effort toward improving timeliness and reliability in the patent examination process over the planning horizon.

Patent Trials and Appeals

The USPTO's Patent and Trial Appeal Board (PTAB) manages dual jurisdictions, adjudicating ex parte appeals of examiners' final rejections and conducting AIA trial proceedings (inter partes reviews, post grant reviews, the transitional program for covered business method patents, and derivation proceedings). The PTAB is an administrative tribunal that consists of Administrative Patent Judges (APJs) who conduct AIA trials and review appeals from the rejection of a patent application. In this regard, the PTAB's work contributes significantly to the issuance of reliable/predictable patents. In FY 2020, 9,696 incoming appeals are projected in current workload requirements. The FY 2020 base resources fund the legal staffing and support needed to meet statutory requirements, aligning capacity with projected workloads to continuously meet objectives outlined in the USPTO 2018-2022 Strategic Plan. In doing so, resources will allow PTAB to reach and maintain pendency for three different activities: the AIA trials which, by statute, must have a decision on whether to institute trial within three months of the patent owner filing a preliminary response and must be adjudicated within one year of the institution of a trial; re-examination appeals which, by statute, must be completed with "special dispatch"; and ex parte appeals. Although there is no timeliness requirement for ex parte appeals, PTAB remains committed to reducing the backlog of cases to reach a strategic inventory level, hiring APJs as needed to support workload projections, clearing the oldest cases, and reassigning judges according to the greatest need. The PTAB strives to issue reliable and timely decisions by utilizing these resources for judge and legal staff, systematic training, data analytics and conducting and publishing trial-related studies with a focus on enhancing decisional quality and educating and engaging stakeholders.

Patent Information Resources

Within this activity is funding for Patent Information Resources, which includes base resources for making capital improvements and operating and maintaining legacy systems as well as planned IT modernization investments in PE2E and PTAB E2E projects. Further details on the IT investments funded through this activity can be found in the IT Portfolio section on pages 19-26.

Mission Support Goal – Allocated

This sub-activity represents all of the management activities that support the accomplishment of the Patent goal. These can be specifically Patent-related, such as Office of Human Resources activities dedicated to recruitment of patent examiners and APJs, or cross-cutting management functions that are dedicated to overall USPTO activities, such as financial management systems. These activities are described under the Mission Support Goal while the costs are allocated to Patents based on the USPTO's Activity Based Information (ABI) analysis and results.

**Department of Commerce
U.S. Patent and Trademark Office
PATENT PROGRAM
Salaries and Expenses
PROGRAM CHANGES FOR 2020**
(Dollar amounts in thousands)

| | | 2020 Base | | 2020 Estimate | | Increase/Decrease from 2020 base | |
|----------------------------------|-----------|-----------|-----------|---------------|-----------|-------------------------------------|----------|
| | | Personnel | Amount | Personnel | Amount | Personnel | Amount |
| Patent Examining | Pos./Obl. | 9,965 | 2,137,172 | 10,249 | 2,152,775 | 284 | 15,603 |
| | FTE | 9,768 | | 9,930 | | 161 | |
| Patent Examiner New Hires | Pos./Obl. | | | | | 284 | 7,838 |
| | FTE | | | | | 161 | |
| Overtime / Production Incentives | Pos./Obl. | | | | | - | 2,764 |
| | FTE | | | | | - | |
| Workload Processing Contracts | Pos./Obl. | | | | | - | 5,001 |
| | FTE | | | | | - | |
| Patent Trial and Appeals | Pos./Obl. | 430 | 93,125 | 430 | 93,125 | - | - |
| | FTE | 429 | | 429 | | - | |
| Patent Information Resources | Pos./Obl. | 185 | 200,244 | 185 | 165,730 | - | (34,514) |
| | FTE | 181 | | 181 | | - | |
| Direct Total, Patent Program | Pos./Obl. | 10,580 | 2,430,541 | 10,864 | 2,411,630 | 284 | (18,911) |
| | FTE | 10,378 | | 10,539 | | 161 | |

**Department of Commerce
U.S. Patent and Trademark Office
PATENT PROGRAM
PROGRAM CHANGES FOR 2020 - 2024**
(Dollar amounts in thousands)

| | | 2020 | | 2021 | | 2022 | | 2023 | | 2024 | |
|------------------------------|-----------|-------------------|----------|-------------------|----------|-------------------|----------|-------------------|----------|-------------------|----------|
| | | Increase/Decrease | | Increase/Decrease | | Increase/Decrease | | Increase/Decrease | | Increase/Decrease | |
| | | Personnel | Amount | Personnel | Amount | Personnel | Amount | Personnel | Amount | Personnel | Amount |
| Patent Examining | Pos./Obl. | 284 | 15,603 | 686 | 47,381 | 1,075 | 94,599 | 1,205 | 131,712 | 1,330 | 158,515 |
| | FTE | 161 | | 501 | | 896 | | 1,155 | | 1,285 | |
| Patent Examiner New Hires | Pos./Obl. | 284 | 7,838 | 686 | 33,494 | 1,075 | 69,379 | 1,205 | 97,260 | 1,330 | 115,725 |
| | FTE | 161 | | 501 | | 896 | | 1,155 | | 1,285 | |
| Overtime / Production | | | | | | | | | | | |
| Incentives | Pos./Obl. | - | 2,764 | - | 6,075 | - | 10,255 | - | 13,523 | - | 15,670 |
| | FTE | - | | - | | - | | - | | - | |
| Workload Processing | | | | | | | | | | | |
| Contracts | Pos./Obl. | - | 5,001 | - | 7,813 | - | 14,965 | - | 20,929 | - | 27,120 |
| | FTE | - | | - | | - | | - | | - | |
| Patent Trial and Appeals | Pos./Obl. | - | - | - | (1,087) | - | (1,099) | - | (1,111) | - | (1,123) |
| | FTE | - | | - | | - | | - | | - | |
| Patent Information Resources | Pos./Obl. | 0 | (34,514) | - | (40,142) | - | (42,836) | - | (46,052) | - | (43,066) |
| | FTE | - | | - | | - | | - | | - | |
| Direct Total, Patent Program | Pos./Obl. | 284 | (18,911) | 686 | 6,152 | 1,075 | 50,664 | 1,205 | 84,549 | 1,330 | 114,326 |
| | FTE | 161 | | 501 | | 896 | | 1,155 | | 1,285 | |

Sub-Activity: Patent Examining

Patent Examining (+\$15.6 million and 161 FTE/284 Positions): In FY 2020, the Patent Examining program change and base resources provide funding for the quality and timely examination of patent applications, leading to the issuance of reliable and predictable patents. These program requirements will enable the Patent Program to provide timely examination by processing incoming work and reducing pendency. It will also enhance the customer experience through accuracy, consistency and reliability of patent examination thereby increasing the value of the patent to the inventor. These resources will allow the Office to process incoming work for which fees have been paid, and which are focused on accomplishment of the goals and objectives identified above. This requirement supports the Department’s strategic objective to strengthen intellectual property protection. Failure to fund this sub-program puts the Department and the USPTO at risk for mission failure.

As traditional pendency measures approach acceptable levels, USPTO has started focusing on more refined pendency measures based on the PTA timeframes, which will reduce the need for patent term adjustments, and also give all applicants greater certainty of the pendency of their own cases.

Assuming planned hiring, workload, and productivity levels in FY 2019 and FY 2020, these program requirements collectively will enable the Patent Program to:

- Address the 437,700 new serialized applications (total UPR – 611,200) expected to be filed in FY 2020 (1.0 percent above the projected FY 2019 level);
- Reduce the current backlog of unexamined patent applications to approximately 498,500 in FY 2020 or 31 percent below the beginning of FY 2010 level, as documented in patent production modeling;
- Provide timely examination of patent applications by reducing the time to first office action to 14.7 months in FY 2020; and
- Reduce average total pendency to 22.8 months in FY 2020.

| Performance Measures | 2020 | 2021 | 2022 | 2023 | 2024 |
|--|--------|--------|--------|---------|---------|
| Avg First Action Pendency with Patent Examining total increases | 14.7 | 14.7 | 14.5 | 14.3 | 14.0 |
| Avg First Action Pendency without Patent Examining total increases | 14.9 | 15.4 | 16.2 | 17.6 | 19.4 |
| Outyear Costs: | | | | | |
| Direct Obligations | 15,603 | 47,831 | 94,599 | 131,712 | 158,515 |
| FTE | 161 | 501 | 896 | 1,155 | 1,285 |
| Positions | 284 | 686 | 1,075 | 1,205 | 1,330 |

Patent Examiner New Hires. In FY 2020, the USPTO will continue calibrating the size of the patent examining staff with projected application filings and desired performance results, as documented by patent production modeling. Serialized patent application filings are

projected to increase by 1.0 percent in FY 2020 each year through FY 2024. Because of these filing trends, coupled with investments in enhanced quality, particularly the issuance of reliable/predictable patents, the USPTO has modified its patent examiner hiring plans for FY 2019 through FY 2024 to range from 400 to 750 annual examiner hires, offset by approximately 330-380 attritions, each year. The production model takes into consideration this revised incoming work as well as the revised output of examiners due to a proposed enhanced emphasis on quality search and examination that will result in a reduction in the number of production units. The careful calibration between quality, workload and hires will enable the USPTO to continue making progress on its patent pendency targets.

| | 2020 | 2021 | 2022 | 2023 | 2024 |
|--------------------|-------|--------|--------|--------|---------|
| Outyear Costs: | | | | | |
| Direct Obligations | 7,838 | 33,494 | 69,379 | 97,260 | 115,725 |
| FTE | 161 | 501 | 896 | 1,155 | 1,285 |
| Positions | 284 | 686 | 1,075 | 1,205 | 1,330 |

Overtime/Production Incentives are another tool used by the USPTO to continue aligning production with workload demand. Each overtime hour worked is directly tied to production output, as are production incentives. As such, overtime has proven to be more efficient on a per-hour basis than equivalent regular-time hours, which must also incorporate the costs of training, employee leave, and other benefits. Funding the full amount of examiner overtime is essential to achieving pendency and backlog goals. Overtime’s inherent flexibility allows the Patent organization to more easily expand its production capacity while maintaining optimal staffing levels.

| | 2020 | 2021 | 2022 | 2023 | 2024 |
|--------------------|-------|-------|--------|--------|--------|
| Outyear Costs: | | | | | |
| Direct Obligations | 2,764 | 6,075 | 10,255 | 13,523 | 15,670 |
| FTE | | | | | |
| Positions | | | | | |

Workload Processing Contracts. The Patent organization’s largest contracts are driven by work based on numbers of applications, examiner production, and output, and must be funded commensurately in order to continue processing work and issuing patents. Specifically, funds are used for:

- Front end processing of newly filed applications and incoming/outgoing documents, and quality assurance of electronic filings – based on the increase in electronically-filed applications, as well as the number of pages per application.
- Data capture of applications subject to publication at 18 months as a pre-grant publication.

- Pre-grant publication and initial classification services whereby the contractor classifies all incoming applications once they have been through the initial security review.
- Patent publication, which includes the data capture of granted patents that generate both a text searchable file and an image file for paper printing and electronic dissemination on the Internet.

The projected funding reflects the increased level of effort by the contractors due to the increase in patent application filing growth rates.

| | 2020 | 2021 | 2022 | 2023 | 2024 |
|--------------------|-------|-------|--------|--------|--------|
| Outyear Costs: | | | | | |
| Direct Obligations | 5,001 | 7,813 | 14,965 | 20,929 | 27,120 |
| FTE | | | | | |
| Positions | | | | | |

Additional performance information about the strategic objectives related to patent examining will be found in the Key Performance Indicators associated with each of the objectives in the *USPTO 2018-2022 Strategic Plan*.

Sub-Activity: Patent Trials and Appeals

PTAB Production and AIA Workload (+\$0 million) – In FY 2021-FY 2024, PTAB costs decrease as positions stay relatively constant, but the Judicial Decision Gainsharing (JDG) award program planned for FY 2019-FY 2020 is terminated as the PTAB should be able to meet its increased workload after the 2 year ramp up of new hires. The temporary award program being reinstated in FY 2019 is necessitated to bridge the immediate deficiency in judge capacity that resulted from the recent Supreme Court ruling in *SAS Institute v. Iancu*. As a result of the Supreme Court decision in *SAS Institute v. Iancu*, the average workload for PTAB Administrative Patent Judges working on AIA trials is projected to increase by 20%. SAS has already resulted in a significant amount of “re-work” for the AIA judges in approximately 45% of the on-going cases in which PTAB had acted under previous standards. Additionally, PTAB is already receiving remands from the Court of Appeals for the Federal Circuit, due to the SAS decision, adding to the increased AIA workload.

| | 2020 | 2021 | 2022 | 2023 | 2024 |
|--------------------|------|---------|---------|---------|---------|
| Outyear Costs: | | | | | |
| Direct Obligations | - | (1,087) | (1,099) | (1,111) | (1,123) |
| FTE | | | | | |
| Positions | | | | | |

Additional performance information about the strategic objective related to the PTAB’s ability to provide timely and high-quality decisions can be found in the Key Performance Indicators associated with each of the objectives in the *USPTO 2018-2022 Strategic Plan*.

| | FY 2017 | FY 2018 | FY 2019 | FY 2020 | FY 2021 | FY 2022 | FY 2023 | FY 2024 |
|--|---------|---------|---------|---------|---------|---------|---------|---------|
| | Actual | Actual | | | | | | |
| APPEALS | | | | | | | | |
| Incoming Appeals (incl. Ex Parte Appeals, Inter Parte Reexams, Ex Parte Reexams and Supplemental Exam) | 11,862 | 9,301 | 9,600 | 9,696 | 9,793 | 9,891 | 9,990 | 10,090 |
| Appeals Disposed (incl. Ex Parte Appeals, Inter Parte Reexams, Ex Parte Reexams and Supplemental Exam) | 14,049 | 11,630 | 9,840 | 10,986 | 9,908 | 9,571 | 9,571 | 9,571 |
| Appeal Inventory/Backlog (incl. Ex Parte Appeals, Inter Parte Reexams, Ex Parte Reexams and Supplemental Exam) | 12,993 | 10,980 | 10,777 | 9,487 | 9,372 | 9,692 | 10,111 | 10,630 |
| Pendency of Decided Appeals in months (incl. Ex Parte, Inter Parte Re-Exams, Ex Parte Re-Exams and Supplemental Exams) | 18 | 15 | -- | -- | -- | -- | -- | -- |
| Board Months of Inventory ^{1/} | 11 | 11 | 13 | 10 | 11 | 12 | 13 | 13 |
| AIA/ TRIAL | | | | | | | | |
| AIA Petitions Filed (incl. IPRs, CBMs, and PGRs) | 1,901 | 1,613 | 1,773 | 1,791 | 1,809 | 1,827 | 1,845 | 1,863 |
| Trial Pendency (months) | 11.6 | -- | -- | -- | -- | -- | -- | -- |
| AIA Petitions disposed (incl. trials not instituted, instituted petitions disposed for IPRs, CBMs and PGRs) | 1,465 | 1,411 | 1,560 | 1,573 | 1,781 | 1,846 | 1,846 | 1,846 |
| ADMINISTRATIVE PATENT JUDGES | | | | | | | | |
| New Hire APJs (not incl. Executive Judges or Backfills) | 1 | 0 | 10 | 0 | 0 | 0 | 0 | 0 |
| Total APJs (incl. Executive APJs and reflect attrition) | 263 | 257 | 284 | 284 | 284 | 284 | 284 | 284 |

Sub-Program: Patent Information Resources

Patent Business Projects (-\$34.5 million) – In FY 2020, a reduction in funding is proposed due to lower investment in Patent projects after the major increase in investment levels in FY 2018 and FY 2019, reflecting the impact of updated IT priority timeframes. Planned IT activities for the Patent Program can be found in the IT Portfolio narrative in the Introduction to this Budget.

| Performance Measures | 2020 | 2021 | 2022 | 2023 | 2024 |
|---|----------|----------|----------|----------|----------|
| Additional information regarding schedules, milestones, and deliverables can be found in the USPTO's Exhibit 300 submissions that are located on the Federal IT Dashboard | | | | | |
| Outyear Costs: | | | | | |
| Direct Obligations | (34,514) | (40,142) | (42,836) | (46,052) | (43,066) |
| FTE | | | | | |
| Positions | | | | | |

**Department of Commerce
U.S. Patent and Trademark Office
Salaries and Expenses
PROGRAM CHANGE PERSONNEL DETAIL**

Activity: Patents
Subactivity: Patents
Program Change:

| Title: | Grade | Number | Annual Salary | Total Salaries |
|-----------------------------------|--------------|---------------|----------------------|-----------------------|
| Patent Examiner | 5 | 9 | 57,574 | 518,166 |
| Patent Examiner | 7 | 336 | 71,312 | 23,960,832 |
| Patent Examiner | 9 | 247 | 78,973 | 19,506,331 |
| Patent Examiner | 11 | 7 | 88,510 | 619,570 |
| Patent Attritions | Various | (334) | 98,226 | (32,807,349) |
| Patent Examiner Support Positions | Various | 19 | 76,294 | 1,449,595 |
| Administrative Patent Judges | SES | 1 | 174,500 | 174,500 |
| Patent Attorney Attritions | Various | (1) | 152,760 | (152,760) |
| Total | | 284 | | 13,268,886 |
| Less lapse | 41% | 122 | | 7,378,703 |
| Total full-time permanent (FTE) | | 161 | | 5,890,183 |
| 2020 Pay Adjustment (0%) | | | | - |
| Total | | | | 5,890,183 |

Personnel Data

Full-Time Equivalent Employment
Full-time permanent
Other than full-time permanent
Total

161
-

161

Authorized Positions:
Full-time permanent
Other than full-time permanent
Total

284
-

284

**Department of Commerce
U.S. Patent and Trademark Office
Salaries and Expenses
PROGRAM CHANGE DETAIL BY OBJECT CLASS
(Direct Obligations amounts in thousands)**

Activity: Patent Program
Subactivity: Patent Program

| | Object Class | 2018 Actual | 2019 Current Plan | 2020 Base | 2020 Estimate | Increase/Decrease from 2020 base |
|------|---|------------------------|------------------------------|----------------------|--------------------------|---|
| 11 | Personnel compensation | | | | | |
| 11.1 | Full-time permanent | 1,243,612 | 1,283,156 | 1,308,290 | 1,314,180 | 5,890 |
| 11.3 | Other than full-time permanent | - | - | - | - | - |
| 11.5 | Other personnel compensation | 121,794 | 126,310 | 126,306 | 129,086 | 2,780 |
| 11.8 | Special personnel services payments | - | - | - | - | - |
| 11.9 | Total personnel compensation | 1,365,407 | 1,409,465 | 1,434,596 | 1,443,266 | 8,671 |
| 12 | Civilian personnel benefits | 409,764 | 422,306 | 460,797 | 462,745 | 1,948 |
| 13 | Benefits for former personnel | - | - | - | - | - |
| 21 | Travel and transportation of persons | 1,791 | 2,820 | 2,874 | 3,101 | 227 |
| 22 | Transportation of things | 42 | 33 | 34 | 34 | 0 |
| 23.1 | Rental payments to GSA | - | - | - | - | - |
| 23.2 | Rental payments to others | 748 | 488 | 497 | 490 | (7) |
| 23.3 | Communications, utilities and miscellaneous charges | 3,305 | 3,923 | 3,998 | 4,087 | 89 |
| 24 | Printing and reproduction | 142,952 | 151,158 | 154,030 | 155,515 | 1,484 |
| 25.1 | Advisory and assistance services | 51,835 | 52,097 | 53,087 | 56,052 | 2,966 |
| 25.2 | Other services | 92,283 | 104,903 | 106,896 | 99,515 | (7,381) |
| 25.3 | Purchases of goods & services from Gov't accounts | 254 | 818 | 833 | 833 | - |
| 25.4 | Operation and maintenance of facilities | 2,779 | 13,845 | 14,109 | 13,498 | (610) |
| 25.5 | Research and development contracts | - | - | - | - | - |
| 25.6 | Medical care | - | - | - | - | - |
| 25.7 | Operation and maintenance of equipment | 38,324 | 30,653 | 31,235 | 32,841 | 1,606 |
| 25.8 | Subsistence and support of persons | - | - | - | - | - |
| 26 | Supplies and materials | 52,069 | 41,039 | 41,819 | 42,074 | 255 |
| 31 | Equipment | 110,702 | 119,892 | 122,170 | 94,012 | (28,158) |
| 32 | Lands and structures | - | - | - | - | - |
| 33 | Investments and loans | - | - | - | - | - |
| 41 | Grants, subsidies and contributions | - | - | - | - | - |
| 42 | Insurance claims and indemnities | 10 | - | - | - | - |
| 43 | Interest and dividends | 6 | 0 | 0 | 0 | - |
| 44 | Refunds | 1,976 | 3,500 | 3,567 | 3,567 | - |
| 99 | Total obligations | 2,274,247 | 2,356,940 | 2,430,541 | 2,411,630 | (18,911) |

TRADEMARK PROGRAM

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**Department of Commerce
U.S. Patent and Trademark Office
TRADEMARK PROGRAM
Salaries and Expenses
PROGRAM AND PERFORMANCE: DIRECT OBLIGATIONS**
(Dollar amounts in thousands)

Activity: Trademark Program
Subactivity: Trademark Program

| Line Item | 2018 | | 2019 | | 2020 | | 2020 | | Increase/Decrease | |
|--|-----------|---------------|---------------|---------------|---------------|------------|-----------|--------|-------------------|--------|
| | Actual | | Current Plan | | Base | | Estimate | | from 2020 Base | |
| | Personnel | Amount | Personnel | Amount | Personnel | Amount | Personnel | Amount | Personnel | Amount |
| Trademark Examining | Pos./Obl | 868 140,557 | 953 156,747 | 953 164,571 | 1,027 170,600 | 74 6,029 | | | | |
| | FTE | 812 | 921 | 949 | 1,000 | 51 | | | | |
| Trademark Appeals and Inter Partes Proceedings | Pos./Obl | 80 13,489 | 81 15,948 | 81 17,463 | 82 17,712 | 1 249 | | | | |
| | FTE | 70 | 81 | 81 | 82 | 1 | | | | |
| Trademark Information Resources | Pos./Obl | 86 47,211 | 88 69,148 | 86 71,225 | 94 57,340 | 8 (13,885) | | | | |
| | FTE | 71 | 78 | 79 | 83 | 4 | | | | |
| Subtotal Direct | Pos./Obl | 1,034 201,257 | 1,122 241,843 | 1,120 253,259 | 1,203 245,653 | 83 (7,607) | | | | |
| | FTE | 953 | 1,080 | 1,109 | 1,164 | 56 | | | | |
| Mission Support Goal Allocated | Pos./Obl | 176 102,575 | 179 96,894 | 181 101,796 | 181 102,628 | 1 832 | | | | |
| | FTE | 153 | 167 | 174 | 174 | 0 | | | | |
| Total | Pos./Obl | 1,210 303,832 | 1,301 338,738 | 1,300 355,055 | 1,384 348,281 | 84 (6,774) | | | | |
| | FTE | 1,106 | 1,247 | 1,283 | 1,339 | 56 | | | | |

Department of Commerce
U.S. Patent and Trademark Office
Salaries and Expenses
JUSTIFICATION OF PROGRAM AND PERFORMANCE
(Dollar amounts in thousands)

Activity: Trademark Program
Subactivity Trademark Program

Goal Statement

The USPTO's Trademark Program is dedicated to carrying out the Office's mission to deliver "high quality and timely examination of ... trademark applications" in accordance with laws, regulations and practices, and consistent with the strategies and objectives in the *USPTO 2018-2022 Strategic Plan*. The Trademark Program, through its strategic goal to optimize trademark quality and timeliness, supports the Department's strategic objective to promote the strong and effective protection of intellectual property.

Base Program

The Trademark Program performs a valuable function by identifying the source of products and services and serving as a reliable indicator of quality to the consumer. By registering trademarks, the USPTO has a significant role in protecting consumers, as well as in providing important benefits to American businesses by allowing them to strengthen and safeguard their brands and related investments. Over the last twelve years, the Trademark organization has met or exceeded its performance targets as it continues to reap the benefits of its significant investments in human capital and in automation and process reengineering. The examination of trademark applications consists of the activities shown on the following schematic and major functions as described below.

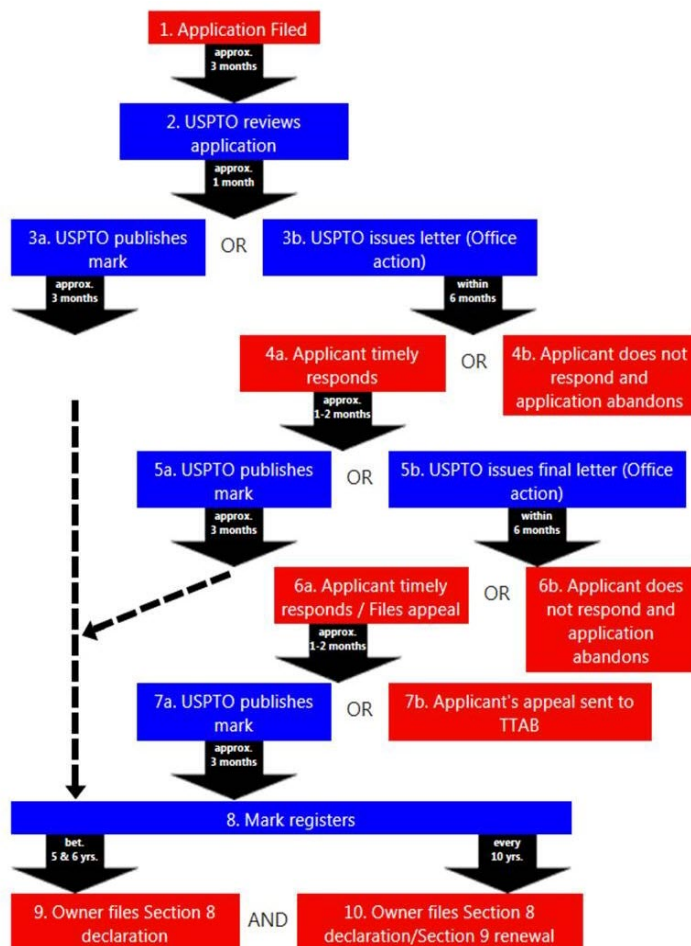
Statement of Operating Objectives

The Trademark goal will be met by achieving the objectives set forth in the *USPTO 2018-2022 Strategic Plan, Goal II*. Objectives include:

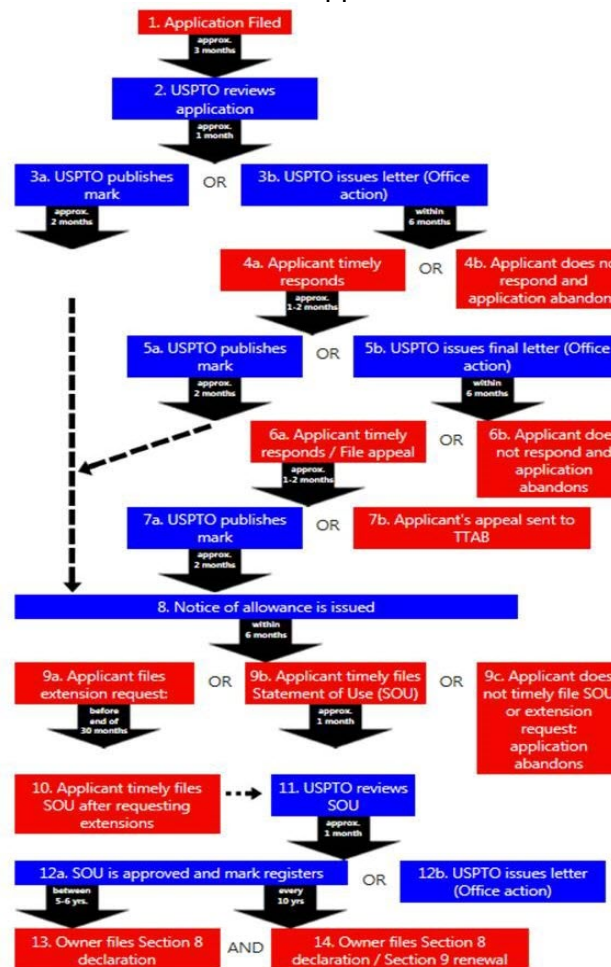
- Optimize Trademark Application Pendency
- Issue High Quality Trademarks
- Foster Business Effectiveness
- Enhance Operations of Trademark Trial and Appeal Board (TTAB)

Trademark Process

Section 1a. Timeline: Application based on use in commerce



Section 1b. Timeline: Application based on intent to use



Explanation and Justification

| Line Item | | 2018 Actual | | 2019 Current Plan | | 2020 Base | |
|----------------------------------|-----------|----------------|---------|----------------------|---------|--------------|---------|
| | | Personnel | Amount | Personnel | Amount | Personnel | Amount |
| Trademark Examining | Pos./Obl. | 868 | 140,557 | 953 | 156,747 | 953 | 164,571 |
| | FTE | 812 | | 921 | | 949 | |
| Trademark Trial and Appeals | Pos./Obl. | 80 | 13,489 | 81 | 15,948 | 81 | 17,463 |
| | FTE | 70 | | 81 | | 81 | |
| Trademark Information Resources | Pos./Obl. | 86 | 47,211 | 88 | 69,148 | 86 | 71,225 |
| | FTE | 71 | | 78 | | 79 | |
| Mission Support Goal - Allocated | Pos./Obl. | 176 | 102,575 | 179 | 96,894 | 181 | 101,796 |
| | FTE | 153 | | 167 | | 174 | |
| Total | Pos./Obl. | 1,210 | 303,832 | 1,301 | 338,738 | 1,300 | 355,055 |
| | FTE | 1,106 | | 1,247 | | 1,283 | |

Trademark Examining

The USPTO plays a critical role in providing notice of public marks in use, or for which there is an intention to use, through its online databases of registered and pending trademarks. Prior to filing an application for registration, or establishing or investing in a mark, a business owner can survey existing marks in use or proposed for use by utilizing online resources and support services available for customers preparing to file their applications with the Office. This support consists of the public search rooms located at the USPTO's facilities in Alexandria VA, support for the Patent and Trademark Depository Resource Centers (formerly Depository Libraries) located across the country, the USPTO online information on trademark basics and "how-to videos", frequently asked questions (FAQs) manuals, search systems, electronic filing, and a customer service call center operated by the Trademark Assistance Center.

Input Processing: \$9.4 million and 73 Pos.

More than 99 percent of trademark applications for registration of a mark are currently filed electronically, and more than 86 percent are processed electronically from receipt to final disposition. When an application is received at the USPTO, it is subject to a quality review process. In that process the electronically tagged application data is reviewed to add the international classification and design search codes that facilitate searching and examination. The tagged data in a trademark application is transferred automatically to the appropriate data fields in trademark electronic automated systems. Trademark automated systems are the source for application and registration data that is used throughout the processing, examination, and maintenance of registered trademarks; and the information that is made available to the public through www.uspto.gov. The automated systems are also the source of the Official Gazette, published electronically, which provides notice of marks approved by examiners, marks registered following commencement of use, and registrations maintained by registrants. Initial examination also encompasses the processing of applications filed under the Madrid Protocol.

Examination Processing: \$151.5 million and 836 Pos.

One of the more than 700 Trademark examining attorneys will determine if the mark in each newly filed application is entitled to registration under the provisions of the Trademark Act of 1946, as amended. As part of the process, the examining attorney conducts a search of prior filed and registered marks to evaluate if a conflict exists between the mark in the application and a previously filed application or registration. Examining attorneys evaluate many types of marks, such as trademarks, service marks, certification marks, and collective membership marks against the criteria for registrability set out in the Trademark Act of 1946, as amended, and make a determination to approve or deny an application for registration. The examining attorney searches a database of more than two million registered marks and 750,000 pending marks in order to determine if the mark in the subject application is confusingly similar to an existing mark.

An approved application is published prior to registration to provide notice to interested parties who may file an opposition to registration. Marks based on use in commerce that are unopposed, or survive any filed opposition, are registered. Marks filed based on intent to use receive a notice of allowance following the opposition period, if they are unopposed or survive any filed opposition, with registration occurring following issuance of a Notice of Allowance by the Office and subsequent filing and acceptance of a Statement of Use from the applicant.

Quality and Training are important components of the examination process. The resources required for the quality aspect of examination and registration of trademark applications are integrated with the total examination costs.

Under the quality assurance program, the results of an examiner's first and final office action are reviewed for the quality of the substantive basis for decision making, search strategy, evidence, and writing. Based on the data collected from those reviews, the Office has targeted both electronic and traditional training initiatives addressing specific problem areas. Part of the USPTO's commitment to improving the quality of examination is ensuring that all examiners possess the knowledge, skills, and abilities necessary to perform their jobs. For example, examiners have the opportunity to take a series of self-paced e-learning tutorials; and new e-learning modules are implemented throughout the year based on topics that are identified through quality review evaluations.

The Trademark organization continues its efforts to improve quality in a cost-effective manner. To raise the bar, the Trademark organization has instituted what is known as an Exceptional Office Action, which emphasizes comprehensive excellence in office actions and expands upon the existing first and final action standards for correct decision-making. An Exceptional Office Action is one that reflects correct decision-making, includes excellent evidentiary support, and is exceptionally well-written.

Policy and Legal. A critical component of the trademark examination process is its policy and legal function. This consists of establishing trademark examination policy standards; serving as the authority on trademark laws, rules, and examining practices and procedures; implementing treaty obligations; implementing judicial and TTAB decisions; publishing rules for public comment and then publishing final

rules; and maintaining the Trademark Manual of Examining Procedure. The costs of performing these functions are included in the cost of examination.

Trademark-Post Registration Processing: \$3.6 million and 35 Pos.

Trademark registrations can be maintained indefinitely, for as long as the registered mark is in use under the Trademark Act. Registrations require periodic renewal – every 10 years for marks on the Principal and Supplemental registers. In order to maintain rights to a mark, between the fifth and sixth years from the date of registration, the owner must first file an affidavit attesting to the use of the registered mark. To renew a Trademark registration, the owner must again file an acceptable affidavit of use and an application for renewal within one year before the end of every ten-year registration period. Owners of marks on the Principal Register can also make a claim of incontestability to claim exclusive rights after the mark has been in continuous use in commerce for a period of five consecutive years after the date of registration. The owner can also file requests to correct or amend a Trademark registration.

Filings are examined for completeness and compliance with statutory requirements. Failure to file the required affidavit and proof of use results in cancellation of the registration. These requirements serve to remove trademarks from the register when the marks are no longer in use, to facilitate the clearance and selection of marks by others.

Trademark Appeals and Trial Proceedings

Administrative Trademark Judges (ATJs) on the TTAB review adverse registrability determinations (refusals of registration) by examining attorneys when the applicant appeals the adverse determination. The ATJs also conduct and decide opposition (trial) proceedings where an interested party believes that it will be harmed by, and therefore challenges, the registration of a published mark; and they conduct other proceedings involving registrations where a third party wishes to challenge the validity of, or restrict, a registration.

Trademark Information Resources

Trademark Information Resources includes base resources for making capital improvements to, and operating and maintaining, existing trademark systems. The Trademark Program's share of both direct and indirect costs is allocated to this sub-program.

Mission Support Goal – Allocated

This sub-program represents all of the management activities that support the accomplishment of the Trademark goal. These can be specifically Trademark-related or cross-cutting management functions that are dedicated to supporting overall USPTO activities, such as financial management systems. These activities are further described under the management goal. The costs are allocated to Trademarks and funded from trademark fee collections based on the USPTO's ABI analysis and results.

**Department of Commerce
U.S. Patent and Trademark Office
TRADEMARK PROGRAM
Salaries and Expenses
PROGRAM CHANGES FOR 2020
(Dollar amounts in thousands)**

| | | 2020 Base | | 2020 Estimate | | Increase/Decrease from 2020 base | |
|---------------------------------|-----------|-----------|---------|---------------|---------|-------------------------------------|----------|
| | | Personnel | Amount | Personnel | Amount | Personnel | Amount |
| Trademark Examining | Pos./Obl. | 953 | 164,571 | 1,027 | 170,600 | 74 | 6,029 |
| | FTE | 949 | | 1,000 | | 51 | |
| Trademark Trial and Appeals | Pos./Obl. | 81 | 17,463 | 82 | 17,712 | 1 | 249 |
| | FTE | 81 | | 82 | | 1 | |
| Trademark Information Resources | Pos./Obl. | 86 | 71,225 | 94 | 57,340 | 8 | (13,885) |
| | FTE | 79 | | 83 | | 4 | |
| Direct Total, Trademark Program | Pos./Obl. | 1,120 | 253,259 | 1,203 | 245,653 | 83 | (7,607) |
| | FTE | 1,109 | | 1,164 | | 56 | |

**Department of Commerce
U.S. Patent and Trademark Office
TRADEMARK PROGRAM
PROGRAM CHANGES FOR 2020 - 2024**
(Dollar amounts in thousands)

| | | 2020 | | 2021 | | 2022 | | 2023 | | 2024 | |
|---------------------------------|-----------|-------------------|----------|-------------------|----------|-------------------|----------|-------------------|----------|-------------------|----------|
| | | Increase/Decrease | | Increase/Decrease | | Increase/Decrease | | Increase/Decrease | | Increase/Decrease | |
| | | Personnel | Amount | Personnel | Amount | Personnel | Amount | Personnel | Amount | Personnel | Amount |
| Trademark Examining | Pos./Obl. | 74 | 6,029 | 143 | 12,493 | 204 | 18,395 | 268 | 22,582 | 333 | 29,395 |
| | FTE | 51 | | 122 | | 184 | | 248 | | 317 | |
| Trademark Trial and Appeals | Pos./Obl. | 1 | 249 | 2 | 499 | 3 | 756 | 4 | 1,019 | 5 | 1,288 |
| | FTE | 1 | | 2 | | 3 | | 4 | | 5 | |
| Trademark Information Resources | Pos./Obl. | 8 | (13,885) | 10 | (17,418) | 10 | (15,738) | 11 | (19,938) | 11 | (22,443) |
| | FTE | 4 | | 9 | | 10 | | 11 | | 11 | |
| Direct Total, Trademark Program | Pos./Obl. | 83 | (7,607) | 155 | (4,426) | 217 | 3,413 | 283 | 3,664 | 349 | 8,239 |
| | FTE | 56 | | 133 | | 197 | | 263 | | 334 | |

Sub-Activity: Trademark Examining

Trademark Examining (+\$6.0 million and 51 FTE/74 Positions): The USPTO requires an increase of \$6.0 million and 74 positions to align trademark application examination capacity with estimated workloads and enhance the quality of legal services. To handle the expected increase in workloads, the Office plans to increase its staff in FY 2020 by a net total of 85 positions consisting of new examining attorney positions, as well as support and specialized positions. These resources and additional staff will enable the Trademark organization to process incoming work in a timely manner and further enhance the customer experience.

The Trademark Examining program change will enable the USPTO to maintain trademark pendency at the current levels, particularly first action pendency, which is an indicator of the registrability of the mark and investment decisions, by addressing the need to balance forecasted new filings and workload (application classes are projected to increase about four to eight percent year over year), existing inventories, and examination capacity. These resources are necessary to accomplish the strategic goal to optimize trademark quality and timeliness that is a critical part of the Department’s strategic objective to promote the strong and effective protection of intellectual property. The *USPTO 2018-2022 Strategic Plan* notes the challenge for the Trademark organization to continue to maintain the consistent timeliness and high-quality standards that users of the U.S. trademark system have come to expect.

Offsetting the incremental costs, the Office expects to manage overtime usage through timely hiring and by setting appropriate levels of production incentives and realizing contract savings with increased use of end-to-end electronic processing.

| Performance Measures | 2020 | 2021 | 2022 | 2023 | 2024 |
|---|-----------|-----------|-----------|-----------|-----------|
| First Action Pendency (months) with increase | 2.5 – 3.5 | 2.5 – 3.5 | 2.5 – 3.5 | 2.5 – 3.5 | 2.5 – 3.5 |
| First Action Pendency (months) without increase | 5.9 | 6.7 | 7.4 | 8.1 | 8.7 |
| Outyear Costs: | | | | | |
| Direct Obligations | 6,029 | 12,493 | 18,395 | 22,582 | 29,395 |
| FTE | 51 | 122 | 184 | 248 | 317 |
| Positions | 74 | 143 | 204 | 268 | 333 |

Sub-Activity: Trademark Appeals and Trial Proceedings

TTAB Staffing (+\$0.2 million and 1 FTE/1 Position): The USPTO requires an increase of \$0.2 million and 1 judge position (ATJ) annually to handle projected workload increases in ex parte appeals and trial cases in FY 2020 and beyond. This growth in the TTAB workload will follow directly from increased filing of trademark applications, which has already prompted increased Trademark examiner hiring; and may also result from shifting to alternate work models stemming from the TTAB rules changes that were implemented in FY 2017. The rules changes entail more hands-on management of cases to ensure that appeals and trial cases are completed in shorter time periods. The Board is also anticipating an increase of work stemming from increases in application filings from China, complicating the work of both Trademarks and the Board. The Board anticipates increases in appeal and trial case filings, increases of contested motion work needing judge disposition and/or review, continued implementation of new rules, more outreach and continuing increases in complexity and size of case records in FY 2020 and beyond. The Board expects this scenario to increase workload from current levels by more than 7 percent as a conservative estimate. Historically, when workloads have experienced these increases, adding ATJ FTEs has proven a critical action in bringing and keeping the Board closer to goal, and it is anticipated that the proposed additional ATJ FTEs will again be critical to allow the Board to meet its goals and be able to sustain pendency at expected levels.

| Performance Measures | 2020 | 2021 | 2022 | 2023 | 2024 |
|--|-------|-------|-------|-------|-------|
| Final Decision Pendency with increase | 10-12 | 10-12 | 10-12 | 10-12 | 10-12 |
| Final Decision Pendency without increase | 15-17 | 16-17 | 17-19 | 18-20 | 18-20 |
| Incoming Appeals per ATJ FTE with increase | 146 | 160 | 175 | 189 | 204 |
| Incoming Appeals per ATJ FTE without increase | 158 | 173 | 190 | 205 | 221 |
| Incoming Oppositions per ATJ FTE with increase | 284 | 311 | 340 | 367 | 397 |
| Incoming Oppositions per ATJ FTE without increase | 308 | 337 | 369 | 398 | 430 |
| Incoming Cancellation per ATJ FTE with increase | 98 | 107 | 117 | 126 | 137 |
| Incoming Cancellation per ATJ FTE without increase | 106 | 116 | 127 | 137 | 148 |
| Outyear Costs: | | | | | |
| Direct Obligations | 249 | 499 | 756 | 1,019 | 1,288 |
| FTE | 1 | 2 | 3 | 4 | 5 |
| Positions | 1 | 2 | 3 | 4 | 5 |

Additional performance information about the strategic objectives related to trademark examining and TTAB proceedings will be found in the Key Performance Indicators associated with each of the objectives in the *USPTO 2018-2022 Strategic Plan*.

Sub-Activity: Trademark Information Resources

Trademark Information Resources (-\$13.9 million and 4 FTE/8 Positions) – The USPTO requires a decrease of \$13.9 million and 4 FTE for a total of \$57.3 million and 94 positions for the Trademark IT Portfolio. In FY 2020, a reduction in funding is proposed due to lower investment in Trademark projects after the major increase in investment levels in FY 2018 and FY 2019, reflecting the impact of updated IT priority timeframes and captured operations savings as new systems are put into production and legacy systems are stabilized, replaced or retired. Planned IT activities for the Trademark Program can be found in the IT Portfolio narrative in the Introduction to this Budget.

| Performance Measures | 2020 | 2021 | 2022 | 2023 | 2024 |
|---|----------|----------|----------|----------|----------|
| Additional information regarding schedules, milestones, and deliverables can be found in the USPTO's Exhibit 300 submissions that are located on the Federal IT Dashboard | | | | | |
| Outyear Costs: | | | | | |
| Direct Obligations | (13,885) | (17,418) | (15,738) | (19,938) | (22,443) |
| FTE | 4 | 9 | 10 | 11 | 11 |
| Positions | 8 | 10 | 10 | 11 | 11 |

**Department of Commerce
U.S. Patent and Trademark Office
Salaries and Expenses
PROGRAM CHANGE PERSONNEL DETAIL**

Activity: Trademarks
Subactivity:
Program Change:

| <u>Title:</u> | <u>Grade</u> | <u>Number</u> | <u>Annual Salary</u> | <u>Total Salaries</u> |
|--|--------------|---------------|----------------------|-----------------------|
| TM Examiner Attorney | 11 | 80 | 68,036 | 5,442,880 |
| TM Supervisory Attorney / Group Director | 15 | 6 | 148,267 | 889,602 |
| TM Staff Attorney | 15 | 3 | 134,789 | 404,367 |
| TM Staff Attorney | 15 | 4 | 148,267 | 593,068 |
| TM ITU Specialist | 11 | 1 | 68,036 | 68,036 |
| TM Program Analyst | 12 | 1 | 81,548 | 81,548 |
| TM Business Intelligence Analyst / Process Improvement Analyst | 14 | 4 | 114,590 | 458,360 |
| TM Exam Admin Support | 8 | 1 | 49,926 | 49,926 |
| TM Ombudsman | 12 | 1 | 81,548 | 81,548 |
| TM TAC KM Specialist/Analyst | 13 | 1 | 96,970 | 96,970 |
| TM Technical Information Specialist | 8 | 1 | 50,912 | 50,912 |
| TM Madrid Specialist | 11 | 1 | 68,036 | 68,036 |
| TM ID Class Attorney, CX Project Manager | 15 | 2 | 134,789 | 269,578 |
| TM Lead Editor | 14 | 2 | 114,590 | 229,180 |
| TM Attritions | Various | (27) | 147,000 | (3,969,000) |
| TTAB Administrative Trademark Judge (ATJ) | AA | 1 | 174,500 | 174,500 |
| Total | | 83 | | 5,086,481 |
| less Lapse | 33% | 27 | | 1,419,960 |
| Total full-time permanent (FTE) | | 56 | | 3,666,521 |
| 2020 Pay Adjustment (0%) | | | | - |
| Total | | | | 3,666,521 |

Personnel Data

| <u>Personnel Data</u> | <u>Number</u> |
|---------------------------------|---------------|
| Full-Time Equivalent Employment | |
| Full-time permanent | 56 |
| Other than full-time permanent | - |
| Total | 56 |
| Authorized Positions: | |
| Full-time permanent | 83 |
| Other than full-time permanent | - |
| Total | 83 |

**Department of Commerce
U.S. Patent and Trademark Office
Salaries and Expenses
PROGRAM CHANGE DETAIL BY OBJECT CLASS
(Dollar amounts in thousands)**

Activity: Trademarks Program
Subactivity: Trademarks Program

| Object Class | 2018 Actual | 2019 Current Plan | 2020 Base | 2020 Estimate | Increase/Decrease from 2020 base |
|--|------------------------|------------------------------|----------------------|--------------------------|---|
| 11 Personnel compensation | | | | | |
| 11.1 Full-time permanent | 113,612 | 125,605 | 130,815 | 134,481 | 3,667 |
| 11.3 Other than full-time permanent | - | - | - | - | - |
| 11.5 Other personnel compensation | 10,805 | 12,362 | 12,586 | 13,318 | 732 |
| 11.8 Special personnel services payments | - | - | - | - | - |
| 11.9 Total personnel compensation | 124,416 | 137,967 | 143,401 | 147,799 | 4,399 |
| 12 Civilian personnel benefits | 36,501 | 40,391 | 45,166 | 46,337 | 1,171 |
| 13 Benefits for former personnel | - | - | - | - | - |
| 21 Travel and transportation of persons | 199 | 453 | 462 | 208 | (253) |
| 22 Transportation of things | 4 | 5 | 5 | 5 | 0 |
| 23.1 Rental payments to GSA | - | - | - | - | - |
| 23.2 Rental payments to others | 4 | 4 | 4 | 110 | 106 |
| 23.3 Communications, utilities and miscellaneous charges | 2 | 0 | 0 | 0 | 0 |
| 24 Printing and reproduction | 36 | 32 | 33 | 71 | 38 |
| 25.1 Advisory and assistance services | 142 | 230 | 235 | 512 | 277 |
| 25.2 Other services | 4,492 | 7,621 | 7,766 | 8,343 | 577 |
| 25.3 Purchases of goods & services from Gov't accounts | 73 | 75 | 76 | 75 | (1) |
| 25.4 Operation and maintenance of facilities | 2,135 | 0 | 0 | 0 | - |
| 25.5 Research and development contracts | - | - | - | - | - |
| 25.6 Medical care | - | - | - | - | - |
| 25.7 Operation and maintenance of equipment | 10,503 | 18,933 | 19,292 | 11,459 | (7,833) |
| 25.8 Subsistence and support of persons | - | - | - | - | - |
| 26 Supplies and materials | 1,799 | 1,761 | 1,795 | 1,990 | 195 |
| 31 Equipment | 20,854 | 34,273 | 34,924 | 28,643 | (6,280) |
| 32 Lands and structures | - | - | - | - | - |
| 33 Investments and loans | - | - | - | - | - |
| 41 Grants, subsidies and contributions | - | - | - | - | - |
| 42 Insurance claims and indemnities | - | - | - | - | - |
| 43 Interest and dividends | 0 | - | - | - | - |
| 44 Refunds | 99 | 100 | 102 | 100 | (2) |
| 99 Total obligations | 201,257 | 241,844 | 253,260 | 245,653 | (7,607) |

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INTELLECTUAL PROPERTY POLICY, ENFORCEMENT AND PROTECTION PROGRAM

**Department of Commerce
U.S. Patent and Trademark Office
Intellectual Property Policy Protection and Enforcement Program
PROGRAM AND PERFORMANCE: TOTAL OBLIGATIONS
(Dollar amounts in thousands)**

Activity: Intellectual Property Policy
Subactivity: Intellectual Property Policy

| Sub-Activity: | | 2018 | | 2019 | | 2020 | | 2020 | | Increase/Decrease | |
|---|----------|--------|--------|--------------|--------|------|--------|----------|--------|-------------------|--------|
| | | Actual | Amount | Current Plan | Amount | Base | Amount | Estimate | Amount | Personnel | Amount |
| Policy, External Affairs and Administrative Support | Pos./Obl | 105 | 21,371 | 104 | 25,484 | 104 | 26,316 | 104 | 26,316 | - | - |
| | FTE | 89 | | 102 | | 102 | | 102 | | - | |
| Global Intellectual Property Academy (GIPA) | Pos./Obl | 20 | 2,761 | 20 | 4,238 | 20 | 4,380 | 20 | 4,380 | - | - |
| | FTE | 14 | | 20 | | 19 | | 19 | | - | |
| IPR Attaché Program | Pos./Obl | 3 | 7,421 | 4 | 13,085 | 4 | 13,341 | 4 | 13,341 | - | - |
| | FTE | 3 | | 4 | | 4 | | 4 | | - | |
| IP PP&E Information Resources | Pos./Obl | - | 59 | - | 589 | - | 601 | - | 594 | - | (7) |
| | FTE | - | | - | | - | | - | | - | |
| Subtotal Direct | Pos./Obl | 128 | 31,611 | 128 | 43,396 | 128 | 44,638 | 128 | 44,631 | - | (7) |
| | FTE | 106 | | 126 | | 125 | | 125 | | - | |
| Mission Support Goal - Allocated | Pos./Obl | 40 | 12,365 | 40 | 14,592 | 40 | 15,078 | 40 | 14,554 | 0 | (523) |
| | FTE | 32 | | 36 | | 36 | | 36 | | 0 | |
| Total | Pos./Obl | 168 | 43,977 | 168 | 57,988 | 168 | 59,715 | 168 | 59,185 | 0 | (531) |
| | FTE | 138 | | 162 | | 161 | | 162 | | 0 | |

Department of Commerce
U.S. Patent and Trademark Office
Salaries and Expenses
JUSTIFICATION OF PROGRAM AND PERFORMANCE
(Dollar amounts in thousands)

Activity: IP Policy, Enforcement and Protection Program
Subactivity IP Policy, Enforcement and Protection Program

Goal Statement

The IP Policy, Enforcement and Protection Program's strategic goal is to provide domestic and global leadership to improve intellectual property policy, enforcement and protection worldwide, as outlined in the *USPTO 2018-2022 Strategic Plan* framework.

Base Program

The USPTO promotes the enforcement and protection of the IP of American innovators and creators on both the domestic and international levels. Through this program, the USPTO advises the President, through the Secretary of Commerce, and all Federal agencies, on national and international IP policy issues including IP protection in other countries. This program also provides guidance, participates in trade agreement and treaty negotiations, conducts programs and studies, and interacts with foreign IP offices and international intergovernmental organizations on matters involving the protection of IP. The base program consists of four major program areas to carry out these functions: Policy and Administration (including Office of the Chief Economist and Governmental Affairs), Global Intellectual Property Academy (GIPA) and Intellectual Property Rights Attaché Program.

Statement of Operating Objectives

The objectives of the IP Policy, Enforcement and Protection Program work to advocate for the value of IP as a critical driver of innovation and creativity domestically and internationally. Objectives include:

- Provide Leadership and Education on Domestic Intellectual Property, Policy and Awareness
- Provide Leadership and Education on International Intellectual Property, Policy and Awareness

Explanation and Justification

| Line Item | | 2018 | | 2019 | | 2020 | |
|---|-----------|-----------|--------|--------------|--------|-----------|--------|
| | | Actual | | Current Plan | | Base | |
| | | Personnel | Amount | Personnel | Amount | Personnel | Amount |
| Policy, External Affairs and Administrative Support | Pos./Obl. | 105 | 21,371 | 104 | 25,484 | 104 | 26,316 |
| | FTE | 89 | | 102 | | 102 | |
| Global Intellectual Property Academy (GIPA) | Pos./Obl. | 20 | 2,761 | 20 | 4,238 | 20 | 4,380 |
| | FTE | 14 | | 20 | | 19 | |
| IPR Attaché Program | Pos./Obl. | 3 | 7,421 | 4 | 13,085 | 4 | 13,341 |
| | FTE | 3 | | 4 | | 4 | |
| IP, PE&P Information Resources | Pos./Obl. | - | 59 | - | 589 | - | 601 |
| | FTE | - | | - | | - | |
| Mission Support Goal - Allocated | Pos./Obl. | 40 | 12,365 | 40 | 14,592 | 40 | 15,078 |
| | FTE | 32 | | 36 | | 36 | |
| Total | Pos./Obl. | 168 | 43,977 | 168 | 57,988 | 168 | 59,715 |
| | FTE | 138 | | 162 | | 161 | |

IP Policy, Enforcement and Protection Base Program

For FY 2020, funding is required to continue the Office's critical role in the U.S. Government's (USG's) efforts and obligations to provide IP technical assistance throughout the world, which includes providing policy advice, and defining a course or method of action that is intended to guide and determine present and future decisions on IP.

Policy, External Affairs and Administrative Support

The Chief Policy Officer and Director for International Affairs heads OPIA and is the principal advisor to the Under Secretary on public policy matters relating to IP protection including proposed legislation and international activities of the United States. OPIA includes attorneys in various subject matter fields (trade, enforcement, patents, trademarks, and copyright) who perform policy and representation work, and representation travel, as well as program analysts and a number of administrative support specialists who support the entire office.

Intellectual Property Policy

OPIA participates in the World Intellectual Property Organization (WIPO), a specialized agency of the United Nations (UN) devoted to IP matters and in the World Trade Organization (WTO), which is an international forum for liberalizing trade and other IP related organizations. The United States is a WTO member and has worked to include a substantial IP component known as the Trade-Related Aspects of IP

(TRIPS) agreement. OPIA provides technical expertise in IP dispute-settlement cases before the WTO, in support of and at the request of the office of the United States Trade Representative (USTR). OPIA has been the USG's IP technical representative in several cases, most recently in the USG's successful copyright challenge to certain aspects of China's IP regime.

The USPTO's statutory obligation to provide IP guidance and advice to the Administration with respect to international IP policy and protection includes bilateral, regional, and multilateral IP discussions, and IP-Office cooperation, which has led directly to patent work sharing. Some of these initiatives include supporting Free Trade Agreements (FTA), Trilateral cooperative activities, and working to simplify and harmonize administrative and technical processing of patent and trademark applications.

OPIA also coordinates patent cooperative activities with the IP5¹, which lead to work sharing and Patent Prosecution Highway (PPH) projects that will help improve operational efficiencies and address the patent backlog. Performance related to Policy and International affairs can be found at the Data Visualization Center: <https://www.uspto.gov/dashboards/externalaffairs/main.dashxml>.

Chief Economist

The Chief Economist (CE) is the primary advisor to the Under Secretary regarding economic issues at the USPTO. The CE undertakes research that influences and guides USPTO regulatory initiatives and policy recommendations with respect to the broader functioning of IP systems. This involves long-term research and policy planning on an ongoing basis. The CE assists the USPTO and other USG agencies by evaluating market data and trends to assist in targeting examination, enforcement, and outreach resources. The CE also conducts research into the causes and consequences of significant developments in U.S. markets, prevailing practices among users and producers of IP, and U.S. IP policy.

Edison Visiting Scholars Program

The Edison Scholars Program enlists the services of leaders in academia and the IP industry who devote up to six months of service to the agency on a full-time basis.

Governmental Affairs (GA)

GA formulates legislative and policy proposals and prepares supporting documentation to carry out the USPTO proposals. The GA mission is to provide information and technical assistance to the Congress on the USPTO's initiatives and proposed IP legislation; generate goodwill; provide education and outreach; prepare for hearings and legislation; manage responses to congressional inquiries; and liaise with the DOC and other agencies.

Global Intellectual Property Academy (GIPA)

GIPA provides web-based and on-site training, technical assistance, and capacity building programs and activities to foreign government officials from other IP offices and other foreign government officials responsible for IP enforcement policy and law enforcement. GIPA offers

¹ IP5 – The USPTO, the European Patent Office (EPO), the Japan Patent Office (JPO), the Korean Intellectual Property Office (KIPO) and the State Intellectual Property Office (SIPO) of China

a variety of programs, information booths, and educational materials for SMEs throughout the United States on protecting and enforcing IP in the United States and abroad. GIPA also offers dedicated programs to minorities, women, and Native Americans. GIPA carries out “train-the-trainers” programs for the Small Business Development Centers (SBDCs), the National Institute of Standards and Technology Manufacturing Extension Partnership (NIST MEP), and others. In addition, GIPA offers specialized programs on doing business in the BRIC (Brazil, Russia, India and China) countries. More information on GIPA Can be found at <https://www.uspto.gov/learning-and-resources/global-intellectual-property-academy>.

Intellectual Property Rights (IPR) Attaché Program

The IPR Attaché Program was formally instituted in 2006 to promote strong IP protection and enforcement internationally for the benefit of U.S. foreign, economic, and political interests. In FY 2020, the IPR Attaché Program will have presence in 13 IP Attaché positions: Rio de Janeiro, Brazil; New Delhi, India; Beijing, Shanghai, and Guangzhou, China; Kuwait City, Kuwait; Bangkok, Thailand; Lima, Peru; Brussels, Belgium; Mexico City, Mexico; Kiev, Ukraine; and 2 in Geneva, Switzerland. When USPTO employees are posted, during their time abroad they leave the USPTO and become Foreign Commercial Service (FCS) employees with full return rights to the USPTO. The IPR Attaché Program is closely aligned with and supports achievement of USPTO's mission, the IP, PE&P strategic goal, and the objectives identified in the *USPTO 2018-2022 Strategic Plan*. The IP attachés bring unique technical IP expertise and experience to their posts. Attachés have helped influence laws, regulations, and IPR practices in their host countries. More information on the IP Attaché program can be found at <https://www.uspto.gov/learning-and-resources/ip-policy/intellectual-property-rights-ipr-attach-program/intellectual>.

IP, PE&P Information Resources

IP, PE&P Information Resources includes base resources for making capital improvements to, and operating and maintaining, existing IP, PE&P systems. The IP, PE&P Program's share of both direct and indirect IT costs is allocated to this sub-program.

Mission Support Goal – Allocated

This sub-program represents all of the management activities that support accomplishment of the IP, PE&P goal. These can be specifically IP, PE&P related or cross-cutting functions that are dedicated to overall USPTO activities, such as financial management systems. These activities are described under the Mission Support Goal while the costs are allocated to the IP, PE&P program based on the Office's ABI analysis and results.

**Department of Commerce
U.S. Patent and Trademark Office
Salaries and Expenses
PROGRAM CHANGES for 2020**
(Dollar amounts in thousands)

Activity: Intellectual Property, Policy and Enforcement

| | | FY2020 Base | | FY2020 Estimate | | Increase/Decrease | |
|--|-----------|-------------|--------|-----------------|--------|-------------------|--------|
| | | Personnel | Amount | Personnel | Amount | Personnel | Amount |
| Policy, External Affairs and Administrative Support | Pos./Obl. | 104 | 26,316 | 104 | 26,316 | - | - |
| | FTE | 102 | | 102 | | - | |
| Global Intellectual Property Academy (GIPA) | Pos./Obl. | 20 | 4,380 | 20 | 4,380 | - | - |
| | FTE | | - | | - | - | - |
| IP, PE&P Information Resources | Pos./Obl. | - | 601 | - | 594 | - | (7) |
| | FTE | - | | - | | - | - |
| Direct Total, Intellectual Property Policy, Enforcement and Protection Program | Pos./Obl. | 128 | 44,638 | 128 | 44,631 | - | (7) |
| | FTE | 125 | | 125 | | - | |

**Department of Commerce
U.S. Patent and Trademark Office
Salaries and Expenses
PROGRAM CHANGES for 2020 - 2024**
(Dollar amounts in thousands)

Activity: Intellectual Property, Policy and Enforcement

| | | FY 2020 | | FY 2021 | | FY 2022 | | FY 2023 | | FY 2024 | |
|--|-----------|--------------------------------|--------|--------------------------------|--------|--------------------------------|--------|--------------------------------|--------|--------------------------------|--------|
| | | Increase/Decrease Personnel | Amount | Increase/Decrease Personnel | Amount | Increase/Decrease Personnel | Amount | Increase/Decrease Personnel | Amount | Increase/Decrease Personnel | Amount |
| Policy, External Affairs and Administrative Support | Pos./Obl. | - | - | - | 1,398 | - | 1,398 | - | 1,398 | - | 1,398 |
| | FTE | - | - | - | - | - | - | - | - | - | - |
| IP, PE&P Information Resources | Pos./Obl. | - | (7) | - | 14 | - | 946 | - | 102 | - | 90 |
| | FTE | - | - | - | - | - | - | - | - | - | - |
| Direct Total, Intellectual Property Policy, Enforcement and Protection Program | Pos./Obl. | - | (7) | - | 1,412 | - | 2,344 | - | 1,500 | - | 1,488 |
| | FTE | - | - | - | - | - | - | - | - | - | - |

Sub-Activity: Policy, External Affairs and Administrative Support

IP Policy Activities (\$0 million) – Although no increase is sought in FY 2020, \$1.4 million is required in FY 2021 and beyond to restore policy activity to historical levels as reductions were taken to fund priorities in support of the attaché function in FY 2019 and FY 2020.

| | 2020 | 2021 | 2022 | 2023 | 2024 |
|--------------------|------|-------|-------|-------|-------|
| Outyear Costs: | | | | | |
| Direct Obligations | 0 | 1,398 | 1,398 | 1,398 | 1,398 |
| FTE | | | | | |
| Positions | | | | | |

Additional performance information about the strategic objectives related to IP PE&P activities will be found in the Key Performance Indicators associated with each of the objectives in the draft *USPTO 2018-2022 Strategic Plan*.

Sub-Activity: IP, PE&P Information Resources

IP, PE&P Business Projects (-\$0.007 million) – A reduced level of funds are required to continue existing IT systems that are utilized for IP performance reporting and to administer IP surveys and evaluate the results. Planned IT activities for beyond FY 2020 include delivering enhanced training capabilities and translation services for web conferences to improve the quality of international IP functions. Other activities for this Program can be found in the IT Portfolio narrative in the Introduction to the Budget.

| Performance Measures | 2020 | 2021 | 2022 | 2023 | 2024 |
|---|------|------|------|------|------|
| Additional information regarding schedules, milestones, and deliverables can be found in the USPTO’s Exhibit 300 submissions that are located on the Federal IT Dashboard | | | | | |

| | | | | | |
|--------------------|-----|----|-----|-----|----|
| Outyear Costs: | | | | | |
| Direct Obligations | (7) | 14 | 946 | 102 | 90 |
| FTE | | | | | |
| Positions | | | | | |

Department of Commerce
U.S. Patent and Trademark Office
Salaries and Expenses
PROGRAM CHANGE DETAIL BY OBJECT CLASS
(Direct Obligations amounts in thousands)

Activity: IP PE&P Program
Subactivity: IP PE&P Program

| | Object Class | 2018 Actual | 2019 Current Plan | 2020 Base | 2020 Estimate | Increase/Decrease from 2020 base |
|-----------|---|----------------|----------------------|---------------|------------------|-------------------------------------|
| 11 | Personnel compensation | | | | | |
| 11.1 | Full-time permanent | 14,438 | 17,224 | 17,463 | 17,463 | - |
| 11.3 | Other than full-time permanent | - | - | - | - | - |
| 11.5 | Other personnel compensation | 840 | 880 | 889 | 889 | - |
| 11.8 | Special personnel services payments | - | - | - | - | - |
| 11.9 | Total personnel compensation | 15,278 | 18,104 | 18,352 | 18,352 | - |
| 12 | Civilian personnel benefits | 4,463 | 5,208 | 5,668 | 5,668 | - |
| 13 | Benefits for former personnel | - | - | - | - | - |
| 21 | Travel and transportation of persons | 844 | 1,381 | 1,407 | 1,407 | - |
| 22 | Transportation of things | 3 | - | - | - | - |
| 23.1 | Rental payments to GSA | - | - | - | - | - |
| 23.2 | Rental payments to others | 4 | 25 | 26 | 26 | - |
| 23.3 | Communications, utilities and miscellaneous charges | - | 1 | 1 | 1 | - |
| 24 | Printing and reproduction | 6 | 5 | 5 | 5 | - |
| 25.1 | Advisory and assistance services | 285 | 222 | 227 | 227 | - |
| 25.2 | Other services | 2,267 | 2,891 | 3,048 | 3,048 | - |
| 25.3 | Purchases of goods & services from Gov't accounts | 7,440 | 13,840 | 14,080 | 14,080 | - |
| 25.4 | Operation and maintenance of facilities | 66 | 9 | 9 | 9 | - |
| 25.5 | Research and development contracts | - | - | - | - | - |
| 25.6 | Medical care | - | - | - | - | - |
| 25.7 | Operation and maintenance of equipment | 330 | 120 | 121 | 101 | (21) |
| 25.8 | Subsistence and support of persons | - | - | - | - | - |
| 26 | Supplies and materials | 574 | 820 | 917 | 917 | - |
| 31 | Equipment | 52 | 769 | 776 | 790 | 13 |
| 32 | Lands and structures | - | - | - | - | - |
| 33 | Investments and loans | - | - | - | - | - |
| 41 | Grants, subsidies and contributions | - | - | - | - | - |
| 42 | Insurance claims and indemnities | - | - | - | - | - |
| 43 | Interest and dividends | - | - | - | - | - |
| 44 | Refunds | - | - | - | - | - |
| 99 | Total obligations | 31,611 | 43,396 | 44,638 | 44,631 | (7) |

MISSION SUPPORT PROGRAM

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**Department of Commerce
U.S. Patent and Trademark Office
MANAGEMENT PROGRAM
PROGRAM AND PERFORMANCE: DIRECT OBLIGATIONS**
(Dollar amounts in thousands)

Activity: Mission Support Program
Subactivity:

| Sub-Activity: | | 2018 Actual | | 2019 Current Plan | | 2020 Base | | 2020 Estimate | | Increase/Decrease from 2020 Base | |
|---|----------|-------------|---------|-------------------|---------|-----------|---------|---------------|---------|----------------------------------|----------|
| | | Personnel | Amount | Personnel | Amount | Personnel | Amount | Personnel | Amount | Personnel | Amount |
| Executive Direction and Communications | Pos./Obl | 86 | 9,532 | 86 | 14,466 | 86 | 14,864 | 86 | 14,959 | - | 95 |
| | FTE | 51 | | 65 | | 65 | | 65 | | - | |
| Financial Management Services | Pos./Obl | 135 | 27,093 | 139 | 30,189 | 139 | 31,479 | 143 | 31,869 | 4 | 389 |
| | FTE | 123 | | 136 | | 138 | | 141 | | 3 | |
| Human Resource Management and Administrative Services | Pos./Obl | 252 | 45,712 | 255 | 51,567 | 255 | 53,402 | 255 | 53,517 | - | 115 |
| | FTE | 218 | | 254 | | 253 | | 253 | | - | |
| Legal Services | Pos./Obl | 132 | 26,068 | 132 | 28,505 | 132 | 29,438 | 135 | 29,686 | 3 | 248 |
| | FTE | 126 | | 131 | | 132 | | 133 | | 1 | |
| Mission Support Information Resources | Pos./Obl | 58 | 45,398 | 60 | 51,582 | 55 | 52,191 | 55 | 47,215 | - | (4,976) |
| | FTE | 53 | | 57 | | 55 | | 55 | | - | - |
| IT Infrastructure and IT Support Services | Pos./Obl | 574 | 393,101 | 578 | 403,943 | 587 | 417,683 | 587 | 383,130 | - | (34,554) |
| | FTE | 494 | | 523 | | 560 | | 560 | | - | |
| Miscellaneous General Expense | Pos./Obl | - | 250,458 | - | 250,143 | - | 274,351 | - | 274,881 | - | 530 |
| | FTE | - | | - | | - | | - | | - | |
| Total | Pos./Obl | 1,237 | 797,362 | 1,250 | 830,396 | 1,255 | 873,408 | 1,262 | 835,255 | 7 | (38,153) |
| | FTE | 1,065 | | 1,166 | | 1,203 | | 1,206 | | 3 | |

| | | 2018 Enacted | | 2019 President's Budget | | 2020 Base | | 2020 Estimate | | Increase/Decrease from 2020 Base | |
|---|----------|-----------------|---------|----------------------------|---------|--------------|---------|------------------|---------|-------------------------------------|----------|
| | | Personnel | Amount | Personnel | Amount | Personnel | Amount | Personnel | Amount | Personnel | Amount |
| Mission Support Goal - Allocation: | | | | | | | | | | | |
| Patent Program | Pos./Obl | 1,021 | 682,422 | 1,031 | 718,909 | 1,034 | 756,534 | 1,040 | 718,072 | 6 | (38,462) |
| | FTE | 880 | | 964 | | 993 | | 996 | | 3 | |
| Trademark Program | Pos./Obl | 176 | 102,575 | 179 | 96,894 | 181 | 101,796 | 181 | 102,628 | 1 | 832 |
| | FTE | 153 | | 167 | | 174 | | 174 | | 0 | |
| IPPP&E Program | Pos./Obl | 40 | 12,365 | 40 | 14,592 | 40 | 15,078 | 40 | 14,554 | 0 | (523) |
| | FTE | 32 | | 36 | | 36 | | 36 | | 0 | |
| Total Mission Support Goal Allocation | Pos./Obl | 1,237 | 797,362 | 1,250 | 830,396 | 1,255 | 873,408 | 1,262 | 835,255 | 7 | (38,153) |
| | FTE | 1,065 | | 1,166 | | 1,203 | | 1,206 | | 3 | |

Department of Commerce
U.S. Patent and Trademark Office
Salaries and Expenses
JUSTIFICATION OF PROGRAM AND PERFORMANCE
(Dollar amounts in thousands)

Activity: Mission Support Program
Subactivity Mission Support Program

Goal Statement

The Mission Support program's strategic goal is to deliver organizational excellence, which encompasses the shared responsibility, leadership, IT infrastructure, employee engagement and financial stewardship needed to fulfill the Office's mission-related requirements, as outlined in the *USPTO 2018-2022 Strategic Plan* framework.

Base Program

The Mission Support activity is comprised of the support functions of the Office, necessary to conduct the operations to fulfill the mission, including executive direction, financial and legal services, human capital and facilities management activities, and support of the IT infrastructure.

Statement of Operating Objectives

The objectives of the Mission Support Program, enables the USPTO to carry out its mission and accomplish its goals and objectives. Objectives include:

- Enhance Human Capital Management and Foster Employee Engagement
- Optimize Speed, Quality, and Cost Effectiveness of the Information Technology (IT) Delivery to Achieve Business Value
- Ensure Financial Sustainability to Facilitate Effective USPTO Operations
- Enhance USPTO's Interactions with Internal and External Stakeholders, and the Public at Large

Explanation and Justification

| Line Item | | 2018 Actual | | 2019 Current Plan | | 2020 Base | |
|---|----------|----------------|---------|----------------------|---------|--------------|---------|
| | | Personnel | Amount | Personnel | Amount | Personnel | Amount |
| Executive Direction and Communications | Pos./Obl | 86 | 9,532 | 86 | 14,466 | 86 | 14,864 |
| | FTE | 51 | | 65 | | 65 | |
| Financial Management Services | Pos./Obl | 135 | 27,093 | 139 | 30,189 | 139 | 31,479 |
| | FTE | 123 | | 136 | | 138 | |
| Human Resource Management and Administrative Services | Pos./Obl | 252 | 45,712 | 255 | 51,567 | 255 | 53,402 |
| | FTE | 218 | | 254 | | 253 | |
| Legal Services | Pos./Obl | 132 | 26,068 | 132 | 28,505 | 132 | 29,438 |
| | FTE | 126 | | 131 | | 132 | |
| Mission Support | Pos./Obl | 58 | 45,398 | 60 | 51,582 | 55 | 52,191 |
| Information Resources | FTE | 53 | | 57 | | 55 | |
| IT Infrastructure and IT Support Services | Pos./Obl | 574 | 393,101 | 578 | 403,943 | 587 | 417,683 |
| | FTE | 494 | | 523 | | 560 | |
| Miscellaneous General Expense | Pos./Obl | - | 250,458 | - | 250,143 | - | 274,351 |
| | FTE | - | | - | | - | |
| Total | Pos. | 1,237 | 797,362 | 1,250 | 830,396 | 1,255 | 873,408 |
| | FTE/Obl | 1,065 | | 1,166 | | 1,203 | |

Mission Support Program

For FY 2020, the USPTO base totals \$873.4 million and 1,203 FTE/1,255 Positions for the Mission Support Program. The costs associated with the Mission Support Program activities have already been allocated to the Patent, Trademark, and IP, PE&P Programs using the Office's ABI results.

Executive Direction and Communications

Executive Direction and Communications entails determining the policies and directing the programs of the USPTO. The Under Secretary and Director receives advice from the PPAC and the TPAC on Office policies, goals, performance, budget, and user fees.

In FY 2020, the Office will continue its management of agency policies to ensure the mission and vision of the Office is met while also supporting government-wide efforts to attract and retain students in STEM-based education, especially as it relates to intellectual property. Through strategic partnerships with other Federal agencies, school districts and universities, and non-profit organizations, such as National Science & Technology Medals Foundation and the National Inventor's Hall of Fame, the Office will continue participating in and supporting programs that further educate and encourage innovation.

Financial Management Services

Financial Management Services contributes to the efficient and effective management of organizational resources in support of the strategic goals by:

- Ensuring that the USPTO's annual performance supports the strategic plan; the budget is efficiently and effectively formulated and executed to achieve optimal performance levels across all business units; fees are reviewed and set appropriately; and actionable information is provided to executive management.
- Awarding quality, fiscally-responsible, and timely procurement actions by anticipating and exceeding USPTO's ever-changing business needs with their knowledge of business practices and market dynamics, innovative strategies, and well-defined and standardized processes.
- Implementing and managing financial accounting and control systems, collecting financial data, and analyzing financial reports leading to sound financial decisions. As of FY 2018, these activities have enabled the USPTO to earn an unqualified audit opinion on its annual financial statements for 26 consecutive years, and the Association of Government Accountants' Certificate of Excellence in Accountability Reporting award for 16 consecutive years.

Human Resource Management and Administrative Services

In FY 2020 the efficient and effective human resources management, administrative services, and telework programs under the responsibility of the Chief Administrative Officer, entail:

- Analyzing organizational capacity through external workforce assessments to improve the alignment of workload demand to direct capacity in human resources. Adequate human resource management staffing supports recruiting, developing, and retaining a high-performing, highly-skilled, and diverse workforce necessary for mission success.
- Promoting an engaged and evolving workforce through succession planning; fostering the next generation of USPTO leaders through leadership development training, after-work education initiatives and mentoring programs.
- Overseeing a broad range of administrative and employee service programs (for example, occupational/safety/health services; printing and graphics; mail center operations; office move services; transportation services; conference services; cafeteria, and food services; personnel property management services; and file repository services) that are responsive to the needs of the USPTO workforce.
- Providing real property services (e.g., lease/facilities management, space planning/design, coordination of building renovations), as well as energy conservation and environmental management services.
- Providing for protection of personnel, facilities, and property; coordinating the USPTO's Occupant Emergency, Emergency Preparedness, and Continuity of Operations' planning efforts.

Equal Employment Opportunity and Diversity (EEOD)

The promotion of EEO and a diverse, inclusive workforce is achieved by providing: reasonable accommodation of employees and job applicants with disabilities; sign language interpreting services, as needed; strategic affirmative employment programs; special emphasis programs; workforce diversity initiatives; EEO complaint processing, including alternative dispute resolution when applicable; and facilitating

recruitment, development, and retention of a diverse and multicultural work force. The Office of EEOD partners with each USPTO business unit to maintain a fair and inclusive workforce. The organization reports directly to the Office of the Under Secretary.

Ombudsman Program

The Ombudsman Program, which launched through a successful pilot initiative in FY 2016, helps any USPTO employee or manager explore options to prevent, address, and resolve workplace issues.

Legal Services

Legal services provided by the offices under the General Counsel entail:

- The Office of the Solicitor (SO) serves as legal counsel to the USPTO on intellectual property law matters. The SO also works in collaboration with DOC on interagency intellectual property law matters; defends decisions by the PTAB and the TTAB before the United States Court of Appeals for the Federal Circuit and the federal district courts; represents the Under Secretary of Commerce for Intellectual Property and Director of the USPTO (Director) in district court actions that are filed against the USPTO pursuant to the Administrative Procedure Act (APA); provides legal advice on intellectual property law policy and regulation; prosecutes attorneys and agents who practice before the agency for alleged ethical violation; and defends USPTO employees at deposition.
- The Office of General Law (OGL) is responsible for representing the USPTO in matters other than those involving intellectual property issues. In this regard, the Deputy General Counsel's office provides advice and written legal opinions on areas concerning the administration and management of the USPTO. The OGL also represents USPTO in various administrative proceedings.
- The Office of Enrollment and Discipline (OED) is responsible for the investigation of complaints relating to attorney and agent misconduct, determining what disciplinary proceedings are appropriate, and suspending or excluding from practice before the USPTO any person, attorney, or registered agent shown to be incompetent, disreputable, or found culpable of unethical, unprofessional, or gross misconduct. OED also is responsible for maintaining a roster of individuals who are registered to practice in patent matters before the USPTO, including reviewing the legal, technical, and moral character qualifications of individuals seeking recognition to practice and administers and oversees the USPTO Law School Clinic Certification Program and Patent Pro Bono Program.

Mission Support Information Resources

Mission Support Information Resources includes ongoing operations and maintenance and making capital improvements to mission support business systems.

IT Infrastructure and IT Support Services

IT Infrastructure and IT Support Services entails operating and maintaining the underlying infrastructure supporting the business systems and the IT support services (e.g., operations and maintenance); making capital improvements to those same IT infrastructure and support services; and disseminating information to the public.

Cross-Cutting Management Services: Miscellaneous General Expense

This sub-program entails cross-cutting services that affect all USPTO employees and/or operations, such as space rental, utilities, lease management, security, telecommunications, transportation, postage, and the USPTO's participation in the DOC Working Capital Fund. It also includes funding for post-retirement benefits, whereby the USPTO is required to fund the present costs of post-retirement benefits for the Federal Employees Health Benefits (FEHB) Program, Federal Employees Group Life Insurance (FEGLI) Program, and the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) pension liabilities. Funds for this purpose are paid to the Office of Personnel Management (OPM). Base funds also include \$10,000 to purchase uniforms to be worn by USPTO personnel at recruitment events, consistent with common recruiting practices.

**Department of Commerce
U.S. Patent and Trademark Office
MISSION SUPPORT PROGRAM
PROGRAM CHANGES FOR 2020**
(Dollar amounts in thousands)

| | | 2020 Base | | 2020 Estimate | | Increase/Decrease from 2020 base | |
|---|-----------|-----------|---------|---------------|---------|-------------------------------------|----------|
| | | Personnel | Amount | Personnel | Amount | Personnel | Amount |
| Executive Direction and Communications | Pos./Obl. | 86 | 14,864 | 86 | 14,959 | - | 95 |
| | FTE | 65 | | 65 | | - | |
| Financial Management Services | Pos./Obl. | 139 | 31,479 | 143 | 31,869 | 4 | 389 |
| | FTE | 138 | | 141 | | 3 | |
| Human Resources Management and Administrative Services | Pos./Obl. | 255 | 53,402 | 255 | 53,517 | - | 115 |
| | FTE | 253 | | 253 | | - | |
| Legal Services | Pos./Obl. | 132 | 29,438 | 135 | 29,686 | 3 | 248 |
| | FTE | 132 | | 133 | | 1 | |
| Mission Support Information Resources | Pos./Obl. | 55 | 52,191 | 55 | 47,215 | - | (4,976) |
| | FTE | 55 | | 55 | | - | |
| IT Infrastructure and IT Support Services | Pos./Obl. | 587 | 417,683 | 587 | 383,130 | - | (34,554) |
| | FTE | 560 | | 560 | | - | |
| Miscellaneous General Expense (MGE) | Pos./Obl. | - | 274,351 | - | 274,881 | - | 530 |
| | FTE | - | | - | | - | |
| Total, Mission Support Program | Pos./Obl. | 1,255 | 873,408 | 1,262 | 835,255 | 7 | (38,153) |
| | FTE | 1,203 | | 1,206 | | 3 | |

**Department of Commerce
U.S. Patent and Trademark Office
MISSION SUPPORT PROGRAM
PROGRAM CHANGES FOR 2020 - 2024**
(Dollar amounts in thousands)

| | | 2020 | | 2021 | | 2022 | | 2023 | | 2024 | |
|--|-----------|-------------------|-----------------|-------------------|---------------|-------------------|---------------|-------------------|---------------|-------------------|---------------|
| | | Increase/Decrease | | Increase/Decrease | | Increase/Decrease | | Increase/Decrease | | Increase/Decrease | |
| | | Personnel | Amount | Personnel | Amount | Personnel | Amount | Personnel | Amount | Personnel | Amount |
| Executive Direction and Communications | Pos./Obl. | - | 95 | - | 95 | - | 95 | - | 95 | - | 95 |
| | FTE | - | | - | | - | | - | | - | |
| Financial Management Services | Pos./Obl. | 4 | 389 | 6 | 856 | 6 | 999 | 6 | 1,007 | 6 | 1,017 |
| | FTE | 3 | | 5 | | 6 | | 6 | | 6 | |
| Human Resources Management and Administrative Services | Pos./Obl. | - | 115 | - | 150 | - | 165 | - | 50 | - | 265 |
| | FTE | - | | - | | - | | - | | - | |
| Legal Services | Pos./Obl. | 3 | 248 | 4 | 777 | 4 | 784 | 4 | 792 | 4 | 799 |
| | FTE | 1 | | 4 | | 4 | | 4 | | 4 | |
| Mission Support Information Resources | Pos./Obl. | - | (4,976) | - | 197 | - | (6,466) | - | (8,901) | - | (9,074) |
| | FTE | - | | - | | - | | - | | - | |
| IT Infrastructure and IT Support Services | Pos./Obl. | - | (34,554) | - | 26,669 | - | 25,618 | - | 25,825 | - | 30,427 |
| | FTE | - | | - | | - | | - | | - | |
| Miscellaneous General Expense (MGE) | Pos./Obl. | - | 530 | - | (16) | - | (1,274) | - | (2,569) | - | (3,904) |
| | FTE | - | | - | | - | | - | | - | |
| Total, Mission Support Program | Pos./Obl. | 7 | (38,153) | 11 | 28,729 | 10 | 19,920 | 10 | 16,299 | 10 | 19,625 |
| | FTE | 3 | | 9 | | 10 | | 10 | | 10 | |

Sub-Activity: Executive Direction and Communication

Chief Communication Office Outreach (+\$.1 million) – This request will increase the exposure of inventors and inventor stories to educate the public on the importance of on the American system of IP protection at targeted outreach events. This program change will support the USPTO 2018-2022 Strategic Plan objective to enhance USPTO’s interactions with internal and external stakeholders, and the public at large by increasing the Office’s presence at industry events and engaging and educating stakeholders on IP with an emphasis on underserved communities.

| | 2020 | 2021 | 2022 | 2023 | 2024 |
|--------------------|------|------|------|------|------|
| Outyear Costs: | | | | | |
| Direct Obligations | 95 | 95 | 95 | 95 | 95 |
| FTE | | | | | |
| Positions | | | | | |

Sub-Activity: Financial Management Services

Office of the Chief Financial Officer Staff (+\$.4 million, 3 FTE/4 Positions) – In FY 2020 funds are required to increase staff by 2 economist positions in the Forecasting and Analysis Division. As a fully-fee funded agency, the Office is highly dependent on accurate and timely fee projections as well as dedicated resources for multi-year fee reviews and fee setting efforts. The gradual hiring growth in this area will serve to better align the division’s capacity with the steadily growing demand for fee-related initiatives and expertise throughout the Office. The budget also provides for 1 additional contracting officer and a Deputy Director for the Office of Procurement. This minor expansion of the USPTO’s procurement staff will help ensure return on investment from recent acquisition policy and process changes and will support a high-value contracting function to aide USPTO’s implementation of the *2018-2022 Strategic Plan*.

The expansion of both of these teams aims to improve the quality of mission support services provided to the USPTO. Without the additional capacity in its Forecasting team, the USPTO will be challenged to provide in-depth analysis of revenue trends and fee schedule options that are needed to ensure the Office’s ongoing financial sustainability. Absent the additional contracting support, the USPTO’s procurement team will be challenged to engage in the level of market analysis, negotiations, and contract administration needed to ensure USPTO receives the best value for every dollar it spends on contracts and acquisitions.

| | 2020 | 2021 | 2022 | 2023 | 2024 |
|--------------------|------|------|------|-------|-------|
| Outyear Costs: | | | | | |
| Direct Obligations | 389 | 856 | 999 | 1,007 | 1,017 |
| FTE | 3 | 5 | 6 | 6 | 6 |
| Positions | 4 | 6 | 6 | 6 | 6 |

Sub-Activity: Human Resource Management and Administrative Services

Hiring Human Resources Staff (+\$.1 million) – This request will fund required management training to maintain a high level of supervisory performance, motivation, and knowledge related to federal supervisory rules and guidelines. In FY 2020, the additional funding will support SES training and a bi-annual Leadership Forum, which provides more than 1,200 managers and supervisors with leadership development including performance management training required by 5 CFR 412. The Office works diligently to sufficiently develop our executives in pace with their peers, in order to provide the leadership skills and knowledge necessary for managing a production-based government workforce. Without this funding, the Office jeopardizes losing the ability to develop leadership interest and potential as part of our succession planning efforts to build and retain an engaged and diverse workforce.

| | 2020 | 2021 | 2022 | 2023 | 2024 |
|--------------------|------|------|------|------|------|
| Outyear Costs: | | | | | |
| Direct Obligations | 115 | 150 | 165 | 50 | 265 |
| FTE | | | | | |
| Positions | | | | | |

Sub-Activity: Legal Services

Hiring Legal Services Staff (+\$.2 million, 1 FTE/3 Positions) – This request will support the increased workload in the OED by providing four positions including one attorney and three paraprofessionals. These positions will provide the resources necessary to continue administering OED programs, as well as additional outreach efforts. Without these additional staff, the Office will be unable to explore and administer new practitioner programs and relative outreach efforts in support of stakeholder feedback, while maintaining existing disciplinary workload standards.

| | 2020 | 2021 | 2022 | 2023 | 2024 |
|--------------------|------|------|------|------|------|
| Outyear Costs: | | | | | |
| Direct Obligations | 248 | 777 | 784 | 792 | 799 |
| FTE | 1 | 4 | 4 | 4 | 4 |
| Positions | 3 | 4 | 4 | 4 | 4 |

Sub-Activity: Mission Support Information Resources

Mission Support Information Resources (-\$5.0 million): This request will fund existing projects in the Mission Information Resources area in FY 2020 and support increases in FY 2021 due to investing in enhancements for systems for the Chief Communication Officer to improve internal intranet and Office of General Counsel. In FY 2022 – FY 2024 Mission Information Resource are currently projected to return to normal operations levels, causing the decline after the completion of various business support system improvements.

| Performance Measures | 2020 | 2021 | 2022 | 2023 | 2024 |
|---|---------|------|---------|---------|---------|
| Additional information regarding schedules, milestones, and deliverables can be found in the USPTO’s Exhibit 300 submissions that are located on the Federal IT Dashboard | | | | | |
| Outyear Costs: | | | | | |
| Direct Obligations | (4,976) | 197 | (6,466) | (8,901) | (9,074) |
| FTE | | | | | |
| Positions | | | | | |

Sub-Activity: IT Infrastructure and IT Support Services

IT Infrastructure and Tools (-\$34.6 million): The USPTO proposes a decrease of \$34.6 million for a total of \$383.1 million and 587 positions for its IT infrastructure. Enterprise Infrastructure decreases in FY 2020 primarily as a result of reduced investments levels for Digital Services/Big Data and cross-agency systems after initial major investments in FY 2018 and FY2019, along with numerous other reductions based on agency funding priorities. In FY 2021 and beyond, infrastructure spending increases primarily due to the cyclical spending on end-user and IT facilities equipment purchases as the technology refresh cycle kicks-off in FY 2021. These activities support the *USPTO 2018-2022 Strategic Plan* objective to optimize speed, quality, and cost-effective IT delivery to achieve business value.

| Performance Measures | 2020 | 2021 | 2022 | 2023 | 2024 |
|---|----------|--------|--------|--------|--------|
| Additional information regarding schedules, milestones, and deliverables can be found in the USPTO’s Exhibit 300 submissions that are located on the Federal IT Dashboard | | | | | |
| Outyear Costs: | | | | | |
| Direct Obligations | (34,554) | 26,669 | 25,618 | 25,825 | 30,427 |
| FTE | | | | | |
| Positions | | | | | |

Sub-Activity: Cross-Cutting Services/Miscellaneous General Expense (MGE)

Improvements to Cross-Cutting Services/MGE (+\$.5 million) – This request will support the continuous efforts to invest in cost-effective corporate support services improvements that affect all USPTO employees and operations. Cross-cutting activities are funded through the MGE budget, which includes the expenses incurred in connection with the general management of the USPTO that are not provided for elsewhere. Most program changes in this function require one-time investments with lower costs for operations and maintenance, resulting in reductions reflected in the outyears. These cross-cutting activities also facilitate adherence to regulations, Executive Orders (EO) and guidance documents. Additionally, program changes reflect offsets caused by reductions to rent projections and other related functions. Funds are required in FY 2020 to:

- Complete security related campus improvement projects resulting from recommendations in a 2014 Federal Protective Service (FPS) facility security assessment and physical security survey of USPTO’s Alexandria facilities. Projects will include installation of K4 rated anti-ram bollard barriers and replacement of obsolete surveillance cameras and related equipment.
- Invest in campus lighting upgrades, replacing existing inefficient lighting with LED bulbs and fixtures, which will result in long-term cost savings and efficiencies. This program change supports compliance with Executive Order 13834, Efficient Federal Operations, achieving and maintaining annual reductions in building energy use and implementing energy efficient measures that reduce costs.

| | 2020 | 2021 | 2022 | 2023 | 2024 |
|--------------------|------|------|---------|---------|---------|
| Outyear Costs: | | | | | |
| Direct Obligations | 530 | (16) | (1,274) | (2,569) | (3,904) |
| FTE | | | | | |
| Positions | | | | | |

Additional performance information about the strategic objectives related to mission support activities will be found in the Key Performance Indicators associated with each of the objectives in the *USPTO 2018-2022 Strategic Plan*.

**Department of Commerce
U.S. Patent and Trademark Office
Salaries and Expenses
PROGRAM CHANGE PERSONNEL DETAIL**

Activity: Mission Support
Subactivity: Mission Support
Program Change:

| <u>Title:</u> | <u>Grade</u> | <u>Number</u> | <u>Annual Salary</u> | <u>Total Salaries</u> |
|---------------------------------|--------------|---------------|----------------------|-----------------------|
| Attorney | 15 | 1 | 164,200 | 164,200 |
| OGC Program Analyst | 13 | 1 | 126,062 | 126,062 |
| Paralegal Specialist | 12 | 1 | 106,012 | 106,012 |
| Economist | 13 | 2 | 109,900 | 219,800 |
| Contracting Officers | 14 | 2 | 129,869 | 259,738 |
| Total | | <u>7</u> | | <u>875,812</u> |
| less Lapse | 55% | <u>4</u> | | <u>(481,993)</u> |
| Total full-time permanent (FTE) | | <u>3</u> | | <u>393,819</u> |
| 2020 Pay Adjustment (0%) | | | | <u>-</u> |
| Total | | | | <u>393,819</u> |

Personnel Data

| | | | | |
|---------------------------------|--|----------|--|--|
| Full-Time Equivalent Employment | | | | |
| Full-time permanent | | 3 | | |
| Other than full-time permanent | | - | | |
| Total | | <u>3</u> | | |
| Authorized Positions: | | | | |
| Full-time permanent | | 7 | | |
| Other than full-time permanent | | - | | |
| Total | | <u>7</u> | | |

**Department of Commerce
U.S. Patent and Trademark Office
Salaries and Expenses
PROGRAM CHANGE DETAIL BY OBJECT CLASS**
(Direct Obligations amounts in thousands)

Activity: Mission Support Program
Subactivity: Mission Support Program

| | | 2018 | 2019 | 2020 | 2020 | Increase/Decrease |
|------|---|---------|--------------|---------|----------|-------------------|
| | Object Class | Actual | Current Plan | Base | Estimate | from 2020 base |
| 11 | Personnel compensation | | | | | |
| 11.1 | Full-time permanent | 131,315 | 144,719 | 150,472 | 150,866 | 394 |
| 11.3 | Other than full-time permanent | - | - | - | - | |
| 11.5 | Other personnel compensation | 7,712 | 9,254 | 9,201 | 9,207 | 5 |
| 11.8 | Special personnel services payments | - | - | - | - | |
| 11.9 | Total personnel compensation | 139,028 | 153,973 | 159,674 | 160,073 | 399 |
| 12 | Civilian personnel benefits | 112,123 | 123,933 | 154,115 | 154,300 | 185 |
| 13 | Benefits for former personnel | - | - | - | - | |
| 21 | Travel and transportation of persons | 1,268 | 2,767 | 2,821 | 2,933 | 112 |
| 22 | Transportation of things | 150 | 495 | 504 | 508 | 4 |
| 23.1 | Rental payments to GSA | 93,978 | 95,806 | 97,626 | 96,807 | (820) |
| 23.2 | Rental payments to others | 27,957 | 15,253 | 15,543 | 15,473 | (70) |
| 23.3 | Communications, utilities and miscellaneous charges | 17,703 | 20,815 | 21,210 | 17,702 | (3,508) |
| 24 | Printing and reproduction | 266 | 221 | 213 | 213 | |
| 25.1 | Advisory and assistance services | 2,075 | 3,909 | 3,985 | 3,623 | (362) |
| 25.2 | Other services | 28,372 | 40,959 | 41,669 | 31,324 | (10,345) |
| 25.3 | Purchases of goods & services from Gov't accounts | 32,672 | 38,337 | 36,926 | 42,101 | 5,176 |
| 25.4 | Operation and maintenance of facilities | 27,567 | 24,052 | 24,513 | 24,496 | (17) |
| 25.5 | Research and development contracts | - | - | - | - | |
| 25.6 | Medical care | - | - | - | - | |
| 25.7 | Operation and maintenance of equipment | 223,577 | 216,291 | 219,512 | 216,948 | (2,564) |
| 25.8 | Subsistence and support of persons | - | - | - | - | |
| 26 | Supplies and materials | 1,523 | 1,998 | 2,031 | 2,016 | (14) |
| 31 | Equipment | 88,803 | 91,565 | 93,043 | 66,714 | (26,329) |
| 32 | Lands and structures | 203 | - | - | - | |
| 33 | Investments and loans | - | - | - | - | |
| 41 | Grants, subsidies and contributions | - | - | - | - | |
| 42 | Insurance claims and indemnities | 93 | - | - | - | |
| 43 | Interest and dividends | 5 | 22 | 23 | 23 | |
| 44 | Refunds | (0) | - | - | - | |
| 99 | Total obligations | 797,362 | 830,396 | 873,408 | 835,255 | (38,153) |

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EXHIBITS: 16 - 37

Exhibit 16 – Summary of Requirements by Object Class

| Object Class | FY 2018 | FY 2019 | FY 2020 Base | FY 2020 Estimate | Increase/Decrease from 2020 Base |
|--|------------------|------------------|------------------|---------------------|-------------------------------------|
| 11.1 Salaries | 1,502,977 | 1,570,703 | 1,607,040 | 1,616,990 | 9,951 |
| 11.5 Other personnel compensation | 141,151 | 148,805 | 148,982 | 152,500 | 3,518 |
| 11.9 Total personnel compensation | 1,644,128 | 1,719,508 | 1,756,022 | 1,769,490 | 13,469 |
| 12.1 Civilian personnel benefits | 562,642 | 591,629 | 665,539 | 668,843 | 3,304 |
| 13 Benefits to Former Employees | 208 | 208 | 208 | 208 | 0 |
| 21 Travel and transportation of persons | 4,102 | 7,421 | 7,563 | 7,650 | 86 |
| 22 Transportation of things | 200 | 533 | 543 | 547 | 4 |
| 23.1 Rental payments to GSA | 93,978 | 95,806 | 97,626 | 96,807 | (820) |
| 23.2 Rental payments to others | 28,713 | 15,771 | 16,070 | 16,099 | 29 |
| 23.3 Commun., util., and misc. charges | 21,010 | 24,739 | 25,209 | 21,789 | (3,420) |
| 24 Printing and reproduction | 143,260 | 151,417 | 154,282 | 155,805 | 1,523 |
| 25.1 Advisory and assistance services | 54,336 | 56,459 | 57,533 | 60,414 | 2,881 |
| Other services from non-federal | 127,414 | 156,374 | 159,379 | 142,229 | (17,150) |
| 25.2 sources | | | | | |
| Other goods and services from federal | 40,439 | 53,069 | 51,915 | 57,089 | 5,174 |
| 25.3 sources | | | | | |
| 25.4 Operation and maintenance of facilities | 19,155 | 19,674 | 20,052 | 20,761 | 709 |
| Operation and maintenance of | 286,125 | 284,228 | 288,739 | 278,591 | (10,148) |
| 25.7 equipment | | | | | |
| 26 Supplies and materials | 55,964 | 45,618 | 46,560 | 46,997 | 436 |
| 31 Equipment | 220,411 | 246,499 | 250,914 | 190,160 | (60,754) |
| 32 Land and Structures | 203 | - | - | - | 0 |
| 4x Insurance claims , indemnities, and refunds | 2,189 | 3,622 | 3,691 | 3,689 | (2) |
| 99.9 Total Obligations | 3,304,478 | 3,472,575 | 3,601,846 | 3,537,168 | (64,678) |
| Fee Collections | (3,337,445) | (3,358,710) | (3,450,681) | (3,450,681) | 0 |
| Less prior year other income/recoveries | (41,295) | (41,295) | (41,295) | (41,295) | 0 |
| Less prior year unobligated balance | (373,575) | (446,835) | (372,265) | (372,265) | 0 |
| Less end year unobligated balance | 446,837 | 372,265 | 260,395 | 325,073 | 64,678 |
| Total Budget Authority | (1,000) | (2,000) | (2,000) | (2,000) | 0 |
| Personnel Data | | | | | |
| Full-Time equivalent Employment: | 12,319 | 12,699 | 12,815 | 13,035 | 220 |
| Positions: | 12,972 | 13,082 | 13,082 | 13,456 | 374 |

Department of Commerce
U.S. Patent and Trademark Office
PATENT BUSINESS LINE BY OBJECT CLASS

(Dollar amounts in thousands)

| Object Class | 2018 | 2019 | 2020 Base | 2020 Estimate | Increase/Decrease from 2020 Base |
|--|------------------|------------------|------------------|------------------|-------------------------------------|
| 11.1 Salaries | 1,364,810 | 1,417,557 | 1,447,565 | 1,453,799 | 6,235 |
| 11.5 Other personnel compensation | 128,872 | 134,749 | 134,712 | 137,498 | 2,785 |
| 11.9 Total personnel compensation | 1,493,682 | 1,552,307 | 1,582,277 | 1,591,297 | 9,020 |
| 12.1 Civilian personnel benefits | 511,954 | 535,386 | 601,209 | 603,320 | 2,110 |
| 13 Benefits to Former Employees | 208 | 208 | 208 | 208 | 0 |
| 21 Travel and transportation of persons | 3,381 | 6,059 | 6,175 | 6,507 | 332 |
| 22 Transportation of things | 177 | 469 | 478 | 481 | 4 |
| 23.1 Rental payments to GSA | 83,409 | 85,032 | 86,647 | 85,920 | (728) |
| 23.2 Rental payments to others | 25,092 | 13,811 | 14,073 | 14,007 | (66) |
| 23.3 Commun., util., and misc. charges | 18,690 | 22,055 | 22,474 | 19,456 | (3,019) |
| 24 Printing and reproduction | 143,190 | 151,356 | 154,222 | 155,706 | 1,484 |
| 25.1 Advisory and assistance services | 53,777 | 55,550 | 56,607 | 59,257 | 2,650 |
| 25.2 Other services from non-federal sources | 118,133 | 142,115 | 144,822 | 128,345 | (16,477) |
| Other goods and services from federal sources | 33,465 | 42,376 | 41,268 | 45,589 | 4,321 |
| 25.3 | | | | | |
| 25.4 Operation and maintenance of facilities | 16,968 | 17,427 | 17,761 | 18,403 | 642 |
| 25.7 Operation and maintenance of equipment | 240,644 | 244,375 | 248,230 | 239,951 | (8,278) |
| 26 Supplies and materials | 53,790 | 43,341 | 44,214 | 44,457 | 243 |
| 31 Equipment | 188,405 | 199,894 | 203,455 | 153,406 | (50,050) |
| 32 Land and Structures | 180 | - | - | - | 0 |
| 4x Insurance claims , indemnities, and refunds | 2,077 | 3,520 | 3,587 | 3,587 | 0 |
| 99.9 Total Obligations | 2,987,223 | 3,115,281 | 3,227,707 | 3,169,896 | (57,811) |
| Fee Collections | (3,011,339) | (3,012,191) | (3,094,541) | (3,094,541) | 0 |
| Less prior year other income/recoveries | (37,015) | (37,015) | (37,015) | (37,015) | 0 |
| Less prior year unobligated balance | (252,920) | (311,539) | (243,662) | (243,662) | 0 |
| Less end year unobligated balance | 313,149 | 243,662 | 145,708 | 203,519 | 57,811 |
| Total Budget Authority | (903) | (1,803) | (1,803) | (1,803) | 0 |
| Personnel Data | | | | | |
| Full-Time equivalent Employment: | 11,102 | 11,319 | 11,401 | 11,565 | 164 |
| Positions: | 11,627 | 11,646 | 11,646 | 11,937 | 290 |

Department of Commerce
U.S. Patent and Trademark Office
TRADEMARK BUSINESS LINE BY OBJECT CLASS

(Dollar amounts in thousands)

| Object Class | 2018 | 2019 | 2020 Base | 2020 Estimate | Increase/ Decrease over 2020 Base |
|--|----------------|----------------|----------------|------------------|---|
| 11.1 Salaries | 138,168 | 153,146 | 159,475 | 163,191 | 3,716 |
| 11.5 Other personnel compensation | 12,278 | 14,056 | 14,270 | 15,002 | 733 |
| 11.9 Total personnel compensation | 150,446 | 167,201 | 173,745 | 178,193 | 4,448 |
| 12.1 Civilian personnel benefits | 50,480 | 56,035 | 64,122 | 65,316 | 1,194 |
| 13 Benefits to Former Employees | 208 | 208 | 208 | 208 | 0 |
| 21 Travel and transportation of persons | 721 | 1,363 | 1,389 | 1,143 | (246) |
| 22 Transportation of things | 23 | 64 | 65 | 66 | 0 |
| 23.1 Rental payments to GSA | 10,569 | 10,774 | 10,979 | 10,887 | (92) |
| 23.2 Rental payments to others | 3,621 | 1,960 | 1,997 | 2,092 | 95 |
| 23.3 Commun., util., and misc. charges | 2,320 | 2,684 | 2,735 | 2,334 | (401) |
| 24 Printing and reproduction | 69 | 61 | 60 | 99 | 38 |
| 25.1 Advisory and assistance services | 559 | 908 | 926 | 1,157 | 231 |
| 25.2 Other services from non-federal sources | 9,282 | 14,259 | 14,557 | 13,884 | (673) |
| 25.3 Other goods and services from federal sources | 6,974 | 10,693 | 10,646 | 11,500 | 853 |
| 25.4 Operation and maintenance of facilities | 2,187 | 2,248 | 2,291 | 2,357 | 66 |
| 25.7 Operation and maintenance of equipment | 45,481 | 39,853 | 40,510 | 38,640 | (1,870) |
| 26 Supplies and materials | 2,174 | 2,276 | 2,346 | 2,540 | 193 |
| 31 Equipment | 32,005 | 46,605 | 47,458 | 36,754 | (10,704) |
| 32 Land and Structures | 23 | - | - | - | 0 |
| 4x Insurance claims , indemnities, and refunds | 112 | 103 | 104 | 103 | (2) |
| 99.9 Total Obligations | 317,254 | 357,294 | 374,139 | 367,272 | (6,868) |
| Fee Collections | (326,105) | (346,519) | (356,140) | (356,140) | 0 |
| Less prior year other income/recoveries | (4,279) | (4,279) | (4,279) | (4,279) | 0 |
| Less prior year unobligated balance | (120,655) | (135,296) | (128,603) | (128,603) | 0 |
| Less end year unobligated balance | 133,688 | 128,603 | 114,687 | 121,554 | 6,868 |
| Total Budget Authority | (98) | (197) | (197) | (197) | 0 |
| Personnel Data | | | | | |
| Full-Time equivalent Employment: | 1,219 | 1,380 | 1,414 | 1,470 | 56 |
| Positions: | 1,345 | 1,436 | 1,436 | 1,519 | 84 |

Exhibit 32/33 – Appropriation Language and Code Citations

PATENT AND TRADEMARK OFFICE SALARIES AND EXPENSES (INCLUDING TRANSFERS OF FUNDS)

For necessary expenses of the United States Patent and Trademark Office (USPTO) provided for by law, including defense of suits instituted against the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, ~~\$3,500,000,000~~ **\$3,450,681,000** to remain available until expended: *Provided*, That the sum herein appropriated from the general fund shall be reduced as offsetting collections of fees and surcharges assessed and collected by the USPTO under any law are received during fiscal year ~~2019~~ 2020, so as to result in a fiscal year ~~2019~~ 2020 appropriation from the general fund estimated at \$0: *Provided further*, That during fiscal year ~~2019~~ 2020, should the total amount of such offsetting collections be less than ~~\$3,500,000,000~~ **\$3,450,681,000** this amount shall be reduced accordingly: *Provided further*, That any amount received in excess of ~~\$3,500,000,000~~ **\$3,450,681,000** in fiscal year ~~2019~~ 2020 and deposited in the Patent and Trademark Fee Reserve Fund shall remain available until expended: *Provided further*, That the Director of USPTO shall submit a ~~spending plan~~ *notification to reprogram funds* to the Committees on Appropriations of the House of Representatives and the Senate for any amounts made available by the preceding proviso and such ~~spending plan~~ notification shall be treated as a reprogramming under section 505 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section: *Provided further*, That any amounts reprogrammed in accordance with the preceding proviso shall be transferred to the United States Patent and Trademark Office "Salaries and Expenses" account: *Provided further*, That from amounts provided herein, not to exceed \$900 shall be made available in fiscal year ~~2019~~ 2020 for official reception and representation expenses: *Provided further*, That in fiscal year ~~2019~~ 2020 from the amounts made available for "Salaries and Expenses" for the USPTO, the amounts necessary to pay (1) the difference between the percentage of basic pay contributed by the USPTO and employees under section 8334(a) of title 5, United States Code, and the normal cost percentage (as defined by section 8331(17) of that title) as provided by the Office of Personnel Management (OPM) for USPTO's specific use, of basic pay, of employees subject to subchapter III of chapter 83 of that title, and (2) the present value of the otherwise unfunded accruing costs, as determined by OPM for USPTO's specific use of post-retirement life insurance and post-retirement health benefits coverage for all USPTO employees who are enrolled in Federal Employees Health Benefits (FEHB) and Federal Employees Group Life Insurance (FEGLI), shall be transferred to the Civil Service Retirement and Disability Fund, the FEGLI Fund, and the Employees FEHB Fund, as appropriate, and shall be available for the authorized purposes of those accounts: *Provided further*, That any differences between the present value factors published in OPM's yearly 300 series benefit letters and the factors that OPM provides for USPTO's specific use shall be recognized as an imputed cost on USPTO's financial statements, where applicable: *Provided further*, That within the amounts appropriated, \$2,000,000 shall be transferred to the "Office of Inspector General" account for activities associated with carrying out investigations and audits related to the USPTO.

Explanation of Proposed Changes to Appropriation Language

| Proposed Change | Explanation |
|---|--|
| <p>...\$3,500,000,000 \$3,450,681,000 ...2019 2020</p> | <p>Retains the appropriation language in H.R.3267 and S.1662 for FY 2019, but changes the amount available to the USPTO in FY 2020 to be the total amount of fees collected during FY 2020, and changes all references to FY 2019 to FY 2020.</p> |
| <p><i>Provided further, That the Director of USPTO shall submit a spending plan notification to reprogram funds to the Committees on Appropriations of the House of Representatives and the Senate for any amounts made available by the preceding proviso and such spending plan notification shall be treated as a reprogramming under section 505 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section:</i></p> | <p>As recommended in the Study and Report on the Implementation of the Leahy-Smith America Invents Act Report to Congress in September 2015, eliminates the requirement for a redundant spending plan to accompany a reprogramming notice to transfer funds to the operating reserve. USPTO submits a detailed spend plan to the Committees on Appropriations as a part of the annual appropriation process.</p> |

Legislative Authorities

The programs of the USPTO are conducted under the following main legislative authorities:

- 15 U.S.C. 1051-1141n contain provisions of the Trademark Act that govern the administration of the USPTO's trademark registration system, provide for administrative proceedings before the USPTO, and set forth procedures relating to international registration of trademarks pursuant to the Madrid Protocol;
- 15 U.S.C. 1511 states that the USPTO is under the jurisdiction and subject to the control of the Department of Commerce;
- 35 U.S.C. 1-13, 21-26, 32-33, 100-105, 111-122, 131-135, 141-146, 151-157, 161-164, 171-173, 251-256, 261, 262, 267, 301-307, and 311-318 contain basic authorities for administration of patent laws, derived from the Act of July 19, 1952, and subsequent enactments;
- 35 U.S.C. 41 provides for collection of specific fees for identified services and establishment of fees at an estimated average cost for processing, services or materials not specified;
- 35 U.S.C. 41(i)(2) provides for deployment of automated search systems of the Office to the public;
- 35 U.S.C. 42(d) provides that the Director may refund any fee paid by mistake or in excess of that required;
- 35 U.S.C. 181-188 provides authorities for actions relating to secrecy of certain inventions and filing of applications in foreign countries;
- 35 U.S.C. 361-368, 371-375 contain authorities related to Patent Cooperation Treaty applications, national stage entry and related procedures;
- 35 U.S.C. 376 authorizes the USPTO to charge fees for activities related to the Patent Cooperation Treaty, and the Director may set fee amounts, except for the international and handling fees.
- Leahy Smith America Invents Act (Pub. L. No. 112-29) provides specific authority for the USPTO to collect a number of fees related to patent services, including a 15 percent surcharge on most patent fees and a prioritized examination fee.
- Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018 (Pub. L. No. 115-273), extending the USPTO fee setting authority, granted in the Leahy Smith America Invents Act, by 8 years.

**Department of Commerce
Operating Unit of Commerce
Salaries and Expenses
ADVISORY AND ASSISTANCE SERVICES**

| | 2018 Actual | 2019 Current Plan | 2020 Estimate |
|---|----------------|----------------------|------------------|
| Patent Cooperation Treaty (PCT) outsourcing | 35,216 | 35,780 | 36,496 |
| Patent publication and classification | 11,453 | 11,817 | 14,971 |
| IT consulting services | 6,321 | 7,120 | 6,894 |
| Other consulting services | 1,346 | 1,742 | 2,053 |
| Total | 54,336 | 56,459 | 60,414 |

The USPTO continues to contract for international search reports and written opinions for Patent Cooperation Treaty (PCT) Chapter I cases. Investments in contracting enable the USPTO to meet its obligations as an International Searching Authority (ISA) under PCT Chapter I, for example meeting the PCT time frames for issuance of the required reports, while focusing its examiner resources on reducing the backlog of pending national applications.

Patent publication and classification services covers the United States Patent Classification (USPC) routing and Cooperative Patent Classification for incoming non-Request for Continuing Examination (RCE) utility applications.

IT and Other consulting services are those services relating to agency administration and management and agency problem management. These services are normally provided by persons or organizations generally considered to have knowledge and special abilities that are not usually available within the agency. These services deal with management data collection, policy review or development, program development, review or evaluation, systems engineering and other support services.

**Department of Commerce
U.S. Patent and Trademark Office
Salaries and Expenses
PERIODICALS, PAMPHLETS AND AUDIOVISUAL PRODUCTS**

| | 2017 Actual | 2018 Actual | 2019 Current Plan | 2020 Estimate |
|--------------|----------------|----------------|----------------------|------------------|
| Periodicals | 36,738 | 52,897 | 39,653 | 40,770 |
| Pamphlets | 0 | 0 | 0 | 0 |
| Audiovisuals | 0 | 0 | 0 | 0 |
| Total | 36,738 | 52,897 | 39,653 | 40,770 |

Technical literature documents in the form of periodicals are essential in the patent and trademark examination process. These resources include reference materials such as books, periodicals, Lexis-Nexis and other research databases. The materials consist of more than 70,000 electronic journals, 385,000 electronic books and 85,000 print titles, as well as research databases. The cost for these materials is reflected above.

**Department of Commerce
U.S. Patent and Trademark Office
Salaries and Expenses
AVERAGE GRADES AND SALARIES**

| | 2018 Actual | 2019 Current Plan | 2020 Estimate |
|-------------------|----------------|----------------------|------------------|
| Average ES Grade | N/A | N/A | N/A |
| Average GS Grade | 13 | 13 | 13 |
| Average GS Salary | 121,183 | 121,482 | 121,863 |

APPENDICES

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Appendix I -- Multi-year Planning by Business Line and Cost Containment

Multi-year planning and budgeting requires an in-depth understanding of the USPTO's financial position, including cost drivers and revenue, unfunded liabilities, and political and economic realities as demonstrated by strategic plans, the patent production model, the trademark production model, and the fee projection model. These plans and models all look out over a five-year period. Specifically, the production work completed by the USPTO's employees generates future revenue essential for the Office to operate effectively and meet the needs of the American people. External influences that affect the productivity of the USPTO workforce and the demand for patent and trademark services and products have a significant impact on the Office's efforts to fulfill its mission.

The USPTO also provides five-year requirements and funding estimates in annual budget documents. Over the past few years, the USPTO has taken steps to establish and maintain operating reserves to facilitate execution of multi-year plans. Using fee setting authority and other tools, the USPTO continues to refine its multi-year planning and budgeting. Fee setting authority as prescribed in the 2011 Leahy-Smith America Invents Act was recently extended an additional 8 years by the Study of Underrepresented Classes Chasing Engineering and Science Success (SUCCESS) Act of 2018, which was signed into law on October 31, 2018. Independent fee setting authority has allowed the Office to effectively engage the stakeholder community on proposed increases; fully recover the aggregate costs of its planned operations; develop and maintain sufficient operating reserves; invest in strategic agency initiatives; and respond to changing market needs.

This planning framework is itself built upon several subsidiary frameworks:

The FY 2020 Budget is based on the *USPTO 2018-2022 Strategic Plan*, which, while continuing the long-term overarching goals of the Office, introduces new objectives and initiatives with an enhanced focus on high quality and reliability over the planning horizon. The plan for FY 2018-2022 was published November 29, 2018.

The USPTO operating structure is similar to a business in that it receives requests for services (e.g., applications for patents and trademark registrations) and charges fees projected to cover the cost of performing all of the services it provides. Unlike most businesses, however, fees set for the initial application filing do not cover the full cost of the services the USPTO performs; many of the costs are incurred either before or after all the fees have been paid. Therefore, it is critical that USPTO take a long-term view in projecting its budgetary requirements, which takes into consideration both the projected out-year workload and the costs associated with processing that workload.

The USPTO most recently adjusted the patent fee structure in January 2018. The patent fee structure is based on ABI cost models; historical cost analyses of activities supporting fees; fee analyses, such as cost-obligation-revenue comparisons and economic and elasticity analyses; ad hoc fee/cost calculations and business case studies; and stakeholder input. The USPTO is committed to transparency, fulfilling requirements for comprehensive regulatory analyses (e.g., impact on small businesses), and engagement with the PPAC and other stakeholders. The USPTO first set its patent fees using AIA fee setting authority in FY 2013 via participation in PPAC public hearings, publication of notices in the Federal Register and Official Gazette for public consideration, and solicitation of a review by the Congress.

The USPTO reduced several trademark fees in January 2015 and adjusted some fees again in January 2017 using AIA fee setting authority. The revised trademark fee structure is also based on ABI cost models; historical cost analyses of activities supporting fees; fee analyses, such as cost-obligation-revenue comparisons and economic and elasticity analyses; ad hoc fee/cost calculations; business case studies; and stakeholder input. The USPTO solicited public input via a Federal Register notice and partnered with TPAC in the design of a fee schedule that encourages applicants to communicate electronically with the USPTO while providing enough revenue to achieve strategic goals. As with the current patent fee structure, the USPTO demonstrated a commitment to transparency by fulfilling requirements for comprehensive regulatory analyses, and engagement with the TPAC and other stakeholders.

As part of the USPTO's requirements under the Chief Financial Officers Act of 1990 (CFO Act) and OMB Circular No. A-25 Revised, the USPTO reviews biennially the existing patent and trademark fee schedules and additionally researches, analyzes, and develops recommendations for potential revisions and additions to the schedules. The fee proposals finalized in FY 2017 and FY 2018 are the result of the fee review that commenced in FY 2015. Fee reviews are distinct but closely related to the rulemaking process for fee setting. The fee review that commenced in FY 2017 has resulted in a new proposal to set and adjust patent fees. An initial patent-related fee proposal was shared with the public and PPAC on August 8, 2018. The PPAC held a hearing for public comments on September 6, 2018. The comments received from the public hearing and the PPAC's report to the USPTO (PPAC Fee Setting Report October 29, 2018) are being considered as part of an upcoming patent fee adjustment rulemaking. The USPTO looks forward to a healthy, collaborative dialogue regarding the optimal fee schedule to enhance the operating environment and facilitate the effective administration of the U.S. IP system. While the proposals resulting from the FY 2017 review continue to move through the rulemaking process, another biennial fee review will be undertaken in FY 2019.

OPERATING RESERVE

To continue promoting confidence in the U.S. IP system, the USPTO established and is maintaining a patent operating reserve and a trademark operating reserve, which are necessary to absorb and respond to temporary changes in the economy and the USPTO's operating and financial environments. Research has shown that large fee-funded, business-like agencies without an operating reserve are at risk of cash flow stress, like that which the USPTO experienced in FY 2009 due to the economic recession, and again in FY 2010 through FY 2013 due to the delay in the authorization of spending authority for the fees collected primarily from patent applicants. FY 2014, which began with a majority of the federal government shut down as a result of a lapse in appropriations, also provided a compelling case for the operating reserves' significant value. While many government agencies were closed during this time, the USPTO received special consideration to remain open using funds available from the operating reserves. This allowed the USPTO to continue operations, thus preventing a significant degradation in services levels, such as patent and trademark pendency timeframes. The USPTO was also able to remain open during two brief lapses in appropriations in FY 2018.

A sufficient operating reserve for each of the Patent and Trademark business lines is designed to provide the USPTO with time to continue at an adequate operating tempo during temporary periods of significant revenue and funding disruption. For example, the reserves enable

the Office to avoid having to make short-term, crisis-based spending decisions that can detract from delivering on USPTO's performance commitments, particularly reducing the patent application backlog and pendencies and maintaining trademark pendencies.

The USPTO recognizes that the optimal operating reserve sizes may change over time. This could be due to economic volatility and variability in filings and revenue collections, changes to external and internal enterprise risk, or operational reasons. Therefore, in accordance with the Office's operating reserve policy, the USPTO conducts a comprehensive risk assessment and reevaluates the optimal sizes of each operating reserve at least biennially. As part of the annual budget formulation process, the Office also completes a comprehensive review of the reserve balances and assesses the minimum reserve levels necessary to mitigate known risks in the short-term (i.e., over a two-year horizon). This includes conducting a risk assessment with regard to cashflow and any planned use of the operating reserve funds, including the potential short and long-term impact on the reserve balances.

An existing healthy reserve for the Trademarks business line over the past eight years has been helpful to ensure that normal fluctuations in fee collections, obligations, and timing of annual congressional spending authority have not disrupted operations. The reserve allowed the Trademark line of business to plan and execute on a longer timeframe despite short term funding uncertainties or shortfalls.

The Patent operating reserve enables the USPTO to continue to support unplanned near-term stakeholder needs, such as growth in application filings. (As previously discussed, the fees collected at application filing are designed to be less than the cost to the USPTO to examine applications.) The reserve provides sufficient resources to operate the Patent business line when the revenue stream or funding availability are uncertain; to preserve planned operational capacity when fee collections fall short of estimates; or to provide supplemental funding when budgetary requirements grow due to unexpected increases in application filings, capital investment needs, or other factors.

USPTO Fee Collection Estimates

As a fee-funded organization, the USPTO relies on user fee collections, which fluctuate based on various external and internal factors, to fund operations. Due to inherent variability in estimating future year fee collections, the USPTO prepares a range of aggregate fee collections to guide its internal management and planning. Estimates presented in the Budget represent the "working estimate," or the most likely scenario within the planning range.

ECONOMIC AND MARKET OUTLOOK

Requests for the USPTO services and products depend upon many factors, including economic activity in the United States and around the world. The USPTO considers a number of economic factors and relevant indicators when forecasting its workloads (requests for services and products). Major factors include the overall condition of the U.S. and global economies, spending on technological innovation activities, and investments leading to the commercialization of new products and services. The most relevant indicator used by the USPTO is Real Gross Domestic Product (RGDP). RGDP is correlated with USPTO patent and/or trademark application filings, which are the key drivers of

patent and trademark workloads. The factors mentioned above provide insight into market conditions and the management of IP portfolios, which influence process requests for the year, and post-issuance decisions to maintain patent and trademark protection.

RGDP, the broadest measure of economic activity, is anticipated to grow around three percent for FY 2019 and two percent in FY 2020 based on Congressional Budget Office (CBO) estimates. Considerable uncertainty remains regarding the current and near-future prospects for growth. This uncertainty affects anticipated USPTO workloads and fee collection estimates.

DEVELOPING WORKLOAD AND FEE COLLECTION ESTIMATES

Economic activity is an important consideration when developing workload forecasts, primarily patent and trademark application filings. In addition to economic factors, the USPTO considers overseas activity, court decisions, policies and legislation, process efficiencies, anticipated applicant behavior, and past performance when preparing estimates. Estimates of incoming workload are independently developed after researching and modeling these elements, as economic and other variables influence patent and trademark activities differently. The estimates of these incoming patent and trademark application filings are very susceptible to variability in response to global economic fluctuations and shocks.

Estimates of workload production and examination and process requests are developed by incorporating the initiatives of the *USPTO 2018-2022 Strategic Plan*. The plan identifies and implements the efficiencies, tools, and policies necessary to increase examination capacity and improve efficiency. Estimates also factor in the resources available to complete the work. Certain process actions are mandatory; others may be considered discretionary, such as when applicants purchase an extended response timeframe within which to respond to USPTO actions.

Forecasts of post allowance activities, maintenance of patents in force, and renewal of trademark registrations are developed using the same assumptions on the economic environment as incoming work. Decisions on continuation of exclusivity of post allowance rights are determined with careful management of IP portfolios incorporating current economic and market conditions. All workload estimates are consistently compared to past and current workloads, and projection models are regularly adjusted with additional data, knowledge, and experience. Workload estimates are then transformed into individual estimates for each of the approximately 475 fee codes on the USPTO fee schedule. Individual estimates, multiplied by the accompanying fee amounts, become the fee collections estimate. The FY 2020 estimate includes assumptions of payment behavior based on the current patent and trademark fee schedule. The out-year estimates include assumptions of a patent fee adjustment expected to take effect in FY 2021.

The USPTO prepares a high-to-low range of fee collection estimates to account for the inherent sensitivity and volatility of predicting fluctuations in the global and national economy and market environment, policy and process changes (including the effects of IP related court decisions), patent and trademark fee schedule changes, and assumptions from these factors that impact workload and fee collection estimates. A range estimate facilitates operational flexibilities necessary to efficiently manage within an acceptable level of uncertainty.

Patent Fee Collections. Patent fees cover patent-related services and products occurring at different intervals within the patent application examination process and over the life of the pending patent application and granted patent. FY 2020 estimated patent fee collections include collections for applications filed in FY 2020, as well as work processed in FY 2020 (e.g., issues), examination and process requests for the year, and post-issuance decisions to maintain patent protection. More than half of all patent fee collections are from issue and maintenance fees. Changes in application filing levels have an immediate impact on current year fee collections because fewer patent application filings mean fewer fees collected in the current year, and also have out year impacts because fewer applications filed decreases the total possible production outputs resulting in fewer issue and maintenance fee payments in future years.

Patent fee collections are estimated to be between \$2,888 and \$3,298 million for FY 2020 excluding \$37 million in other income. These projections are based on assumptions that patent filings will be between a negative growth rate of 5.0 percent and a positive growth rate of 5.5 percent. Patent issues will reflect a continued commitment to strengthened examination reliability, capacity and efficiencies. Patent maintenance fee payments will continue with similar renewal rates for first and second stage, and assumed slightly lower renewal rates for third stage.

Trademark Fee Collections. Trademark fees are paid in advance of actions taken by the USPTO. Estimated trademark fee collections include amounts expected to be paid for applications filed each year, as well as affidavit and renewal fees paid on registrations at the sixth and following ten-year intervals. About half of all fees collected for Trademark related services and products are from trademark application and related filings, which are correlated to the strength of the economy and individual businesses.

Trademark fee collections are estimated to be between \$332 and \$381 million for FY 2020, excluding \$4 million in other income, based on the economic outlook and the expectations of the growth of trademark application filings. These projections are based on assumptions that the trademark filing growth rate will be between negative 1.7% and positive 9.1% percent.

FEE RATE ASSUMPTIONS

In March 2013 (with additional adjustments effective in January 2014) the USPTO adjusted the patent fee structure by regulation to better align fees with the cost of providing services using the fee setting authority provided in the AIA. Certain trademark fee adjustments, to lower the fees for all applicants willing to file and communicate electronically with the USPTO, were adjusted in January 2015. Further adjustments were made to trademark fees in January 2017 patent fees in January 2018.

The FY 2021 and out year patent fee collection estimates include proposed patent-related fee adjustments, based on a proposal first shared with the public and PPAC on August 8, 2018, and for which PPAC held a hearing for public comments on September 6, 2018. The comments received from the public hearing have been considered in the updated proposal, which will be shared for public comment as part of an upcoming notice of proposed rulemaking. The USPTO will continue to work with stakeholders and the PACs to review and adjust the fee structures by regulation to better align fees with the cost of providing services using the fee setting authority provided in the AIA, and

extended by the SUCCESS Act. The USPTO is committed to continuously improving fee schedule design to provide the Office with sufficient financial resources and facilitate the effective administration of the U.S. IP system, while maintaining a rigorous and transparent review process.

Continued Assessment of Estimates. The USPTO monitors the economic environment carefully by following economic indicators and trends in international IP offices, holding discussions with domestic filers of patent and trademark applications, and conferring with the PPAC and the TPAC. The USPTO analyzes workloads and fees collected on a continual basis to assess current and future year estimates and identify trends and behaviors.

USPTO COST CONTAINMENT

The FY 2020 Budget is based on a framework of continuous and comprehensive budget reviews designed to ensure that all operational and administrative costs are reviewed and funds are reallocated when necessary to focus on high-priority and effective programs – primarily core mission activities – and mitigate risk by retaining minimum operating reserve balances. In addition, the USPTO operates similarly to a business in that the Office makes a determined effort to monitor and adjust spending in response to changes in workload, income, and operating reserve balances. While these activities are carried out as regular parts of the budget execution and budget formulation processes, as background to the FY 2020 budget formulation process, major deviations from funding planned requirements are particularly notable:

In FY 2009, when the USPTO experienced a precipitous drop in fee collections, the Office evaluated its activities, and made nearly \$200 million in short and long-term reductions. As the economy rebounded in FY 2010, fee collections increased beyond the amount appropriated and a \$129 million supplemental appropriation of fee collections was provided. The supplemental funding was requested to provide the USPTO additional spending authority in closer alignment with projected fee collections for the full fiscal year. Funds were used toward reducing the patent backlog by expanding the examiner workforce, and making that workforce more productive by improving processes, IT, and tools.

In FY 2011, the Federal government operated under a continuing resolution and the Full-Year Continuing Appropriations Act did not include the USPTO's request for a 15 percent temporary increase to patent fees. The USPTO operated at a funding level that was below requirements, which necessitated approximately \$150 million of funding reallocations, deferments or reductions that included a freeze on hiring in virtually all levels of the USPTO, as well as changes to non-compensation requirements. These actions enabled the USPTO to operate within its FY 2011 appropriated level (note: refer to "Interim Adjustments to the USPTO 2010-2015 Strategic Plan" in the FY 2013 President's Budget).

With the passage of the AIA in September 2011, a 15 percent surcharge on most patent fees was instituted until such time that the USPTO could set its fees via the regulatory process. The timing of the legislative action resulted a surge in patent fee payments—primarily maintenance fees—in the final month of the fiscal year, as stakeholders sought to pay what fees they could before the surcharge took effect.

As a result, fee payments that the Office had expected to receive in early FY 2012 were instead collected in late FY 2011, and the USPTO fee collections exceeded its appropriation by \$209 million that year. These fees were not made available for the USPTO use, and caused a funding shortfall in FY 2012. The USPTO undertook cost reduction efforts which resulted in a combined budget reduction totaling \$190 million, primarily from a more temperate hiring schedule, deferring IT support and improvement efforts, and temporarily scaling back external agreements.

In FY 2013, the USPTO faced two distinct circumstances that put pressure on the available resources for the Office. First, the revised patent fee schedule that ultimately took effect in March 2013 included lower fee rates than had been assumed in the FY 2013 President's Budget, which caused overall patent fee revenue for the year to be less than planned. Second, sequestration was implemented against total collections, further reducing the resources available for spending in FY 2013. In response to the lower than planned fee rates, the USPTO took action early in the fiscal year to reduce planned obligations by approximately \$45 million. After the fiscal mid-year, the Office identified another \$220 million in reductions by minimizing hiring, deferring major IT spending, and implementing other significant cuts to discretionary projects.

As previously noted, the USPTO was able to continue operations during the October 2013 Government-wide shut down because it received special consideration from OMB to continue operations using available operating reserves carried over from FY 2013. For the remainder of FY 2014, the USPTO followed a measured spending approach. Cost containment continued to be a focus of the Office, in alignment with stakeholder expectations and administration policy.

Both the FY 2015 and FY 2016 President's Budget assumed reprioritizations to other high priority initiatives. Prior to completing the FY 2017 President's Budget, the USPTO created a Financial Advisory Board, which initiated a financial planning and budget prioritization effort to align spending plans with modified patent fee collection projections and to maintain the patent and trademark operating reserves at fiscally prudent minimal levels. The FY 2018 and FY2019 Budgets continued the careful assessment and prioritization of funding requests, as does this proposed FY 2020 Budget.

Appendix II -- Patent/Trademark Two-Way Business Line

Department of Commerce U.S. Patent and Trademark Office PATENT / TRADEMARK SPLIT PER TWO WAY BUSINESS LINE PROGRAM AND PERFORMANCE: TOTAL OBLIGATIONS

(Dollar amounts in thousands)

| Sub-Activity: | FY 2018 | | | FY 2019 | | | FY 2020 | | |
|---|------------------|------------------|----------------|------------------|------------------|----------------|------------------|------------------|----------------|
| | Total | Patents | Trademarks | Total | Patents | Trademarks | Total | Patents | Trademarks |
| | | | | | | | 2,152,775 | 2,152,775 | |
| Patent Examining | 2,013,405 | 2,013,405 | | 2,070,673 | 2,070,673 | | | | |
| Patent Trial and Appeals | 79,339 | 79,339 | | 90,287 | 90,287 | | 93,125 | 93,125 | |
| Patent Information Resources | 177,019 | 177,019 | | 191,428 | 191,428 | | 161,381 | 161,381 | |
| Trademark Examining | 140,557 | | 140,557 | 156,747 | | 156,747 | 170,600 | | 170,600 |
| Trademark Appeals and <i>Inter Partes</i> Proceedings | 13,489 | | 13,489 | 15,948 | | 15,948 | 17,712 | | 17,712 |
| Trademark Information Resources | 39,953 | | 39,953 | 52,841 | | 52,841 | 47,581 | | 47,581 |
| Policy, External Affairs and Administrative Support | 21,371 | 14,565 | 6,807 | 25,484 | 17,336 | 8,148 | 26,316 | 17,902 | 8,414 |
| Global Intellectual Property Academy (GIPA) | 2,761 | 1,451 | 1,310 | 4,238 | 2,227 | 2,011 | 4,380 | 2,301 | 2,078 |
| IPR Attaché Program | 7,421 | 4,142 | 3,279 | 13,085 | 7,303 | 5,782 | 13,341 | 7,446 | 5,895 |
| IP, PE&P Information Resources | 59 | 47 | 12 | 589 | 474 | 116 | 594 | 477 | 117 |
| Executive Direction and Communications | 9,532 | 8,197 | 1,335 | 14,466 | 12,409 | 2,056 | 14,959 | 12,839 | 2,119 |
| Financial Management Services | 27,093 | 22,279 | 4,814 | 30,189 | 24,870 | 5,318 | 31,869 | 26,271 | 5,598 |
| Human Resource Management and Administrative Services | 45,712 | 40,223 | 5,488 | 51,567 | 45,354 | 6,214 | 53,517 | 47,069 | 6,448 |
| Legal Services | 26,068 | 22,069 | 4,000 | 28,505 | 24,119 | 4,386 | 29,686 | 25,150 | 4,535 |
| Mission Support Information Resources | 45,398 | 37,997 | 7,401 | 51,582 | 43,309 | 8,274 | 47,215 | 39,547 | 7,668 |
| IT Infrastructure and IT Support Services | 404,843 | 342,924 | 61,919 | 424,803 | 362,181 | 62,622 | 397,237 | 337,830 | 59,407 |
| Miscellaneous General Expense | 250,458 | 223,568 | 26,891 | 250,143 | 223,312 | 26,831 | 274,881 | 245,783 | 29,098 |
| Total | 3,304,478 | 2,987,223 | 317,254 | 3,472,575 | 3,115,281 | 357,294 | 3,537,168 | 3,169,896 | 367,272 |

Department of Commerce
U.S. Patent and Trademark Office
PATENT / TRADEMARK SPLIT PER TWO WAY BUSINESS LINE
PROGRAM AND PERFORMANCE: TOTAL OBLIGATIONS
(Dollar amounts in thousands)

| Sub-Activity: | 2021 | | | 2022 | | | 2023 | | | 2024 | | |
|---|------------------|------------------|----------------|------------------|------------------|----------------|------------------|------------------|----------------|------------------|------------------|----------------|
| | Total | Patents | Trademarks | Total | Patents | Trademarks | Total | Patents | Trademarks | Total | Patents | Trademarks |
| Patent Examining | 2,223,820 | 2,223,820 | | 2,318,316 | 2,318,316 | | 2,393,696 | 2,393,696 | | 2,466,058 | 2,466,058 | |
| Patent Trial and Appeals | 93,082 | 93,082 | | 94,126 | 94,126 | | 95,183 | 95,183 | | 96,251 | 96,251 | |
| Patent Information Resources | 161,518 | 161,518 | | 162,698 | 162,698 | | 163,262 | 163,262 | | 170,206 | 170,206 | |
| Trademark Examining | 181,478 | | 181,478 | 192,630 | | 192,630 | 202,667 | | 202,667 | 214,925 | | 214,925 |
| Trademark Appeals and <i>Inter Partes</i> Proceedings | 18,162 | | 18,162 | 18,621 | | 18,621 | 19,089 | | 19,089 | 19,564 | | 19,564 |
| Trademark Information Resources | 45,707 | | 45,707 | 48,402 | | 48,402 | 47,953 | | 47,953 | 48,170 | | 48,170 |
| Policy, External Affairs and Administrative Support | 27,958 | 19,011 | 8,947 | 28,306 | 19,247 | 9,058 | 28,659 | 19,487 | 9,172 | 29,017 | 19,731 | 9,287 |
| Global Intellectual Property Academy (GIPA) | 4,540 | 2,386 | 2,154 | 4,601 | 2,418 | 2,183 | 4,663 | 2,450 | 2,213 | 4,726 | 2,483 | 2,242 |
| IPR Attaché Program | 13,602 | 7,591 | 6,011 | 13,868 | 7,740 | 6,128 | 14,140 | 7,892 | 6,248 | 14,417 | 8,046 | 6,371 |
| IP PP&E Information Resources | 627 | 503 | 123 | 1,571 | 1,252 | 319 | 739 | 593 | 146 | 740 | 594 | 146 |
| Executive Direction and Communications | 15,153 | 13,006 | 2,147 | 15,351 | 13,176 | 2,175 | 15,552 | 13,348 | 2,204 | 15,755 | 13,522 | 2,233 |
| Financial Management Services | 32,754 | 27,015 | 5,738 | 33,315 | 27,482 | 5,833 | 33,745 | 27,835 | 5,910 | 34,184 | 28,196 | 5,988 |
| Human Resource Management and Administrative Services | 54,259 | 47,723 | 6,536 | 54,994 | 48,371 | 6,623 | 55,611 | 48,911 | 6,700 | 56,568 | 49,759 | 6,809 |
| Legal Services | 30,582 | 25,956 | 4,625 | 30,951 | 26,271 | 4,680 | 31,325 | 26,589 | 4,736 | 31,704 | 26,912 | 4,792 |
| Management Information Resources | 53,970 | 45,908 | 8,062 | 48,542 | 40,873 | 7,670 | 47,375 | 39,626 | 7,749 | 48,517 | 40,576 | 7,941 |
| IT Infrastructure and IT Support Services | 468,259 | 401,355 | 66,904 | 475,573 | 406,920 | 68,653 | 481,531 | 411,661 | 69,870 | 493,189 | 421,494 | 71,695 |
| Miscellaneous General Expense | 284,917 | 254,844 | 30,073 | 294,503 | 263,504 | 30,998 | 303,945 | 272,033 | 31,912 | 313,258 | 280,445 | 32,814 |
| Total | 3,710,388 | 3,323,720 | 386,668 | 3,836,371 | 3,432,395 | 403,976 | 3,939,133 | 3,522,564 | 416,569 | 4,057,247 | 3,624,270 | 432,977 |

Appendix III -- USPTO Fees - Change from FY 2019 PB to FY 2020 PB

In comparison to the FY 2019 President's Budget (Budget), in the FY 2020 Budget, aggregate projected fee collections for the patent business line have decreased for FY 2019 and FY 2020, while increasing in FY 2021 and beyond. Projected fee collections for the trademark business line have increased slightly for FY 2019, but decreased for FY 2020 and beyond.

The decreased patent revenue through FY 2020 is the result of FY 2018 actual data and trends, as well as updated business unit production workload models. The factors also have a negative impact on patent revenue in FY 2021 and beyond; however, proposed fee rate changes expected to take effect in January 2021 outweigh these factors and lead to higher projected outyear revenue than reported in the FY 2019 Budget.

The decreased trademark revenue for FY 2020 and beyond is largely due to a decrease in filings growth rate assumptions in the trademark production model. No proposed fee rate changes impact trademark revenue.

| | FY 2019 | FY 2020 | FY2021 | FY 2022 | FY 2023 | FY2024 |
|-------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|
| <i>Working Estimate</i> | | | | | | |
| Patents | \$3,012,191,255 | \$3,094,540,652 | \$3,360,510,356 | \$3,690,427,745 | \$3,693,823,078 | \$3,839,640,115 |
| Trademarks | \$ 346,518,831 | \$ 356,140,461 | \$ 374,478,541 | \$ 401,291,921 | \$ 427,207,596 | \$ 451,899,356 |
| Total | \$3,358,710,086 | \$3,450,681,113 | \$3,734,988,897 | \$4,091,719,666 | \$4,121,030,674 | \$4,291,539,471 |

The following tables compare the projected fee collections, in millions, from the FY 2020 Budget to the projected fee collections from the FY 2019 Budget. The FY 2019 Budget only included projections through FY 2023, therefore FY 2024 is not included in the comparison.

| Total USPTO Collections | FY 2019 | FY 2020 | FY 2021 | FY 2022 | FY 2023 |
|---|----------------|----------------|----------------|----------------|----------------|
| FY 2019 Budget | \$3,416 | \$3,551 | \$3,713 | \$3,984 | \$4,009 |
| Revised Assumptions and Business Unit (Patent, Trademark, PTAB) Production Models | (\$58) | (\$101) | (\$148) | (\$190) | (\$186) |
| Fee Rule Proposals | \$0 | \$0 | \$169 | \$298 | \$298 |
| FY 2020 Budget (with fee rule proposals) | \$3,359 | \$3,451 | \$3,735 | \$4,092 | \$4,121 |
| Difference | (\$58) | (\$101) | \$21 | \$108 | \$112 |

| Patents | FY 2019 | FY 2020 | FY 2021 | FY 2022 | FY 2023 |
|--|----------------|----------------|----------------|----------------|----------------|
| FY 2019 Budget | \$3,072 | \$3,182 | \$3,313 | \$3,544 | \$3,531 |
| Revised Assumptions and Business Unit (Patent, PTAB) Production Models | (\$60) | (\$87) | (\$121) | (\$151) | (\$135) |
| Fee Rule Proposals | \$0 | \$0 | \$169 | \$298 | \$298 |
| FY 2020 Budget (with fee rule proposals) | \$3,012 | \$3,095 | \$3,361 | \$3,690 | \$3,694 |
| Difference | (\$60) | (\$87) | \$48 | \$147 | \$163 |

| Trademarks | FY 2019 | FY 2020 | FY 2021 | FY 2022 | FY 2023 |
|--|---------|---------|---------|---------|---------|
| FY 2019 Budget | \$345 | \$369 | \$401 | \$440 | \$478 |
| Revised Assumptions and Trademark Production Model | \$2 | (\$13) | (\$26) | (\$39) | (\$51) |
| FY 2020 Budget | \$347 | \$356 | \$374 | \$401 | \$427 |
| Difference | \$2 | (\$13) | (\$26) | (\$39) | (\$51) |

The table below shows, by category, the actual fee collections from FY 2018, along with FY 2019 and FY 2020 projected fee collections from the FY 2019 Budget, the FY 2020 Budget, and the difference between those projections. A few major estimation assumptions are also included in the table. Following the table, there is a category-by-category discussion of the major highlights of the FY 2020 Budget and the changes since the FY 2019 Budget.

| (Dollars in Millions) | FY 2018 | FY 2019 PB | | | FY 2020 | | |
|-------------------------------------|---|---|--|---------------------------------------|--|--|--|
| | Actuals | FY 2019 PB Working Estimate | FY 2020 PB Working Estimate | Increase/ (Decrease) | FY 2019 PB Working Estimate | FY 2020 PB Working Estimate | Increase/ (Decrease) |
| Patents | | | | | | | |
| Filing (with Excess Claims) | \$848.4 | \$883.6 | \$883.9 | \$0.4 | \$886.0 | \$876.1 | (\$9.8) |
| Post Allowance Fees | \$282.2 | \$296.7 | \$298.1 | \$1.4 | \$295.7 | \$293.0 | (\$2.7) |
| Maintenance | \$1,410.2 | \$1,385.4 | \$1,342.4 | (\$43.0) | \$1,486.7 | \$1,431.3 | (\$55.3) |
| PCT | \$194.4 | \$205.7 | \$202.3 | (\$3.5) | \$212.2 | \$209.8 | (\$2.5) |
| Extensions of Time | \$131.7 | \$131.9 | \$131.6 | (\$0.3) | \$131.7 | \$130.1 | (\$1.6) |
| Other Patent Fees | \$142.9 | \$168.5 | \$153.9 | (\$14.6) | \$169.6 | \$154.2 | (\$15.4) |
| Total Patent Fee Collections | \$3,009.9 | \$3,071.8 | \$3,012.2 | (\$59.6) | \$3,181.8 | \$3,094.5 | (\$87.3) |
| Trademarks | \$329.0 | \$344.6 | \$346.5 | \$1.9 | \$369.3 | \$356.1 | (\$13.2) |
| USPTO Fee Collections | \$3,338.8 | \$3,416.4 | \$3,358.7 | (\$57.7) | \$3,551.2 | \$3,450.7 | (\$100.5) |
| Estimation Assumptions | | | | | | | |
| Patent Filings: | Filings growth rate -1.2% (598,101 UPR filings, 171,171 RCEs) | Filings growth rate -0.1% (602,700 UPR filings, 176,100 RCEs) | Filings growth rate 1.9% (609,600 UPR filings, 176,300 RCEs) | 6,900 more UPR filings, 200 more RCEs | Filings growth rate 0.5% (605,400 UPR filings, 175,400 RCEs) | Filings growth rate 0.2% (611,200 UPR filings, 173,500 RCEs) | 5,800 more UPR filings, 1,900 fewer RCEs |
| Issue and Publication: | Patents printed of 308,632 | Patents printed of 311,800 | Patents Printed of 314,800 | 3,000 more patents printed | Patents printed of 308,700 | Patents Printed of 313,300 | 4,600 more patents printed |
| Trademark Filings | Filings growth rate 7.5% (638,847 filings) | Filings growth rate 5.4% (681,000 filings) | Filings growth rate 6.1% (678,000 filings) | 3,000 fewer filings | Filings growth rate 10.1% (750,000 filings) | Filings growth rate 3.7% (703,000 filings) | 47,000 fewer filings |

Proposed Fee Changes:

- The FY 2020 Budget includes proposed patent fee adjustments which would increase patent revenue by nearly \$300 million annually, once fully implemented. The proposed fees were presented at a Patent Public Advisory Committee public hearing on September 6, 2018, and are under review with plans to publish a Notice of Proposed Rulemaking in 2019. The anticipated effective date for the proposed fees is January 1, 2021.
- The proposed adjustments are consistent with the Office's fee structure philosophy to provide sufficient financial resources to facilitate the effective administration of the United States IP system. Transitioning to this proposed fee structure will provide USPTO with sufficient resources to support patent operations and related services. The Office's costs increase along with inflation, and the proposed five percent increase to most patent-related fees will help keep up with rising costs. Given the nearly three-year gap between the implementation of the last fee adjustments and the anticipated effective date of this fee setting effort, a five percent increase to fees is similar to fees rising by 1.6 percent annually. In addition to the

across the board increase in fees that will help raise needed revenue, this proposal includes introduction of new fees, targeted adjustments to existing fees, and discontinuation of some fees.

- One proposed new fee is a surcharge for filing in a non-DOCX format. This will encourage applicants to use DOCX format, and will in turn improve office efficiency and future search capabilities.
- Another proposed new fee is an annual active patent practitioner fee. This will be similar to the annual fees charged by the vast majority of state and territorial bars, and will allow the costs associated with the services the Office of Enrollment and Discipline (OED) provides practitioners in administering the disciplinary system and roster maintenance to be recovered directly from those practitioners.
- In harmony with the patent practitioner fee, a fee for non-registered practitioners to appear before the PTAB is proposed.
- Among the adjustments to existing fees, one proposal is to significantly increase the surcharge for late payment of maintenance fees in order to encourage timely payment.
- Another proposal is to increase the fee to request expedited examination of a design application, to help the Office manage staffing for these services.
- Issue and maintenance fees are proposed to be restructured in order to recover initial search and examination costs earlier in the patent lifecycle.
- Fees for America Invents Act (AIA) trials are proposed to increase by roughly 25 percent due to a variety of factors, including the Supreme Court decision in *SAS Institute Inc. v. Iancu*. PTAB will no longer be able to institute on less than all claims challenged in a petition, leading to significant additional work for a given instituted inter partes review (IPR).
- Finally, USPTO is proposing to discontinue three patent service fees, and instead provide those services, in a slightly modified form, for free.
- More information on the fee proposals is available at <https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

Patent Application Filings:

- This fee category contains fees related to filing patent applications, including requests for continued examination (RCE) and fees required based on specification size or the number of claims. Fee collections in this category are largely driven by filing application growth rates.
- FY 2019 total utility, plant, and reissue (UPR) filings are estimated at 609,639, increasing 1.9% from 598,101 filings in FY 2018. This follows a 1.2% decline from FY 2017 to FY 2018.
- The decrease in FY 2018 was due to the decline in RCEs, from 185,406 in FY 2017 to 171,171 in FY 2018 (a decline of 7.7%). This reflects, in part, the USPTO's focus on initiatives that reduce the need for RCEs, such as the Quick Path Information Disclosure Statement (QPIDS) pilot program and the After Final Consideration Pilot 2.0 (AFCP 2.0). It is assumed that the impact from these programs has been fully realized; in future years the rate of RCEs as a percentage of disposals is expected to hold steady, and therefore RCEs are projected to grow along with increases in total output.
- Total UPR filings are estimated to be 611,158 (0.2% growth) in FY 2020.
- Serialized (non-RCE) filings growth is estimated to be 1.5% in FY 2019, and 1.0% in FY 2020 and beyond, following 1.7% growth in FY 2018. This is up from the 0.8% growth estimated for all years in the FY 2019 Budget.
- FY 2018 patent filing fee collections were lower than estimated in the FY 2019 Budget. However, the higher projected filing growth rates offset this, and projected FY 2019 collections are slightly higher than in the FY 2019 Budget. However, excess claims as a percent of filings continue to fall, and lowered excess claims assumptions contribute to lower filing fee collections projections in FY 2020. Then in FY 2021, the proposed fee rates are anticipated to take effect, increasing collections in the out years.

Post Allowance:

- This fee category contains fees paid to issue a patent after the application has been allowed. Therefore collections in this category are driven directly by the number of patents printed in each fiscal year.
- The allowance rate is assumed to be 55.2% in all forecasted years. This is similar to the 55.1% rate that occurred in FY 2018, and slightly higher than the 54.9% that was previously forecast for FY 2019 and beyond.
- Total patents printed is forecasted to increase 2.0% to 314,759 in FY 2019 from 308,632 in FY 2018. The estimate then decreases in FY 2020 to 313,328, a change of -0.5%. Another decline is expected in FY 2021 to 308,142 (-1.7%). However, total patents printed is expected to increase in FY 2022 and beyond.
- Total allowances are forecasted to increase from 334,238 in FY 2018 to 340,544 in FY 2019, a change of 1.9%. FY 2020 is expected to decrease 1.6% (to 335,106) and FY 2021 is expected to decline 1.7% further (to 329,461), as total disposals decrease. However, in FY 2022 and beyond, total disposals, and therefore total allowances, are projected to grow.

Maintenance:

- This fee category contains fees paid to keep in force a utility or reissue patent, due at 3 ½, 7 ½, and 11 ½ years after the patent has been issued. Collections of maintenance fees vary from year to year based both on the number of patents issued in the past (i.e. the number available to be renewed) and the rate at which patentees decide to renew their patents.
- Projected maintenance renewal rates have changed since the FY 2019 Budget, based on recent trends. For first stage renewals, the rate assumption increased slightly from 85.7% to 86.3% for all projected years. The second stage renewal assumption decreased slightly from 66.6% to 65.9% for all projected years. The third stage renewal rate assumption decreased from 46.7% to 43.1% for FY 2019. Additionally, the FY 2019 Budget assumed a steady third-stage renewal rate, while the FY 2020 Budget includes an assumption that the third-stage rate will continue to decline slightly over the forecast period (e.g. 42.8% in FY 2020, 42.5% in FY 2021, etc.).
- The change in renewal rate assumptions results in a 3% to 4% decrease to estimated maintenance fee collections, equating to \$43 million in FY 2019 and \$55 million in FY 2020. In FY 2021, proposed fee rates are anticipated to take effect, but since there is a six-month window to pay maintenance fees, those eligible to do so are expected to pay their maintenance fees prior to the fee increase, reducing its effect on FY 2021 collections. In total, FY 2021 projected maintenance fee collections are slightly lower (\$9 million, or 0.5%) than in the FY 2019 Budget. However, in FY 2022 and beyond, when the new fees are fully in effect, the increases in fee rates are expected to offset the change in assumptions and lead to increased forecasted fee collections when compared to the FY 2019 Budget.

Patent Cooperation Treaty (PCT)

- This fee category contains fees collected from patent applications filed through the Patent Cooperation Treaty (PCT) process. The specific fees included here, and the factors driving collections, are similar to those for the patent application filings category.
- However, this does not mean collections follow exactly the same pattern as patent application filing fees. For instance, FY 2018 PCT International filings were lower than expected, and FY 2019 forecasts were lowered as a result. PCT collections are projected to be lower in FY 2019 than projected in the FY 2019 Budget, while patent application filing collections are projected slightly higher.
- Compared to the FY 2019 Budget, in the FY 2020 Budget, projected PCT fee collections are lower by 1.7% in FY 2019 and 1.2% in FY 2020, decreasing projected collections in those two years by a total of about \$6 million.

Patent Extensions of Time:

- This fee category contains fees paid to extend the period of time an applicant has to reply to an action by the Office. The amount of the fee is dependent upon the length of the extension.

- Extensions of time have been on the decline, and the FY 2019 Budget assumed this would continue in FY 2018. However, there were even fewer extensions requested in FY 2018 than expected.
- The FY 2020 Budget assumes lower rates of requests for extensions of time, lowering projected collections, but increased application filing growth rates have a positive effect on extension of time fee collections. In total, collection in this category are forecasted to be 0.3% (\$0.3 million) lower in FY 2019 and 1.2% (\$1.6 million) lower in FY 2020, compared to the FY 2019 Budget. However, projected collections are higher in FY 2021 and beyond due to the proposed fee rate increases.

Patent Trial and Appeal Board

- This fee category contains fees paid in relation to proceedings offered by the Patent Trial and Appeal Board (PTAB). This category is included in the "Other Patent Fees" line, and PTAB collections are the largest of the fee categories rolled into that line.
- Appeals filings experienced a 37% spike in FY 2017, attributable to a change in how the Board manages its workload and balances specific tasks between itself and the Patents organization. FY 2018 saw a 22% year-over-year decline when compared to the FY 2017 spike. Appeals filings are projected to have smoother growth from here on out, with 3% growth projected for FY 2019 and 1% annual growth in FY 2020 and beyond.
- AIA Trial filings also saw a sizable (15%) decline in FY 2018, likely due to uncertainty surrounding AIA trials while multiple Supreme Court cases were pending. Growth of 10% is projected in FY 2019, as filings rebound, followed by steady 1% annual growth in FY 2020 and beyond.
- As a result of these factors, the FY 2020 Budget projects PTAB FY 2019 fee collections to increase by 12.8% over the FY 2018 collections. Collections are then projected to grow slightly (0.7%) in FY 2020, followed by larger increases in FY 2021 (11.5%) and FY 2022 (4.1%) as the proposed fee rates are implemented. Steady 1.0% growth is then expected for FY 2023 and FY 2024.
- Building off of lower FY 2018 actual fee collections, the projected PTAB fee collections are lower in FY 2019 and FY 2020 when compared to the FY 2019 Budget, but higher in FY 2021 and beyond due to the proposed fee increases.

Trademarks

- In FY 2019, the trademark filing growth rate is projected to be 6.1%, following 7.5% growth in FY 2018. In FY 2020, the filing growth rate is projected at 3.7% based on consensus economic growth assumptions (lower gross domestic product growth) and uncertainty around demand for intellectual property rights.
- Compared to the FY 2018 Budget, projections for total registrations have decreased. The updated production model estimates 385,200 registrations in FY 2019 (down from 391,700), 412,400 in FY 2020 (down from 427,000), and 433,800 in FY 2021 (up from 481,400).
- Beginning in FY 2019, it is expected that new rulemaking will make filing electronically mandatory. Exceptions will be handled through the petitions process.
- For renewals, projections have been increased from the FY 2019 Budget to account for recent behavior.

Appendix IV – Actuals and Estimated Assumptions

USPTO Fee Collections (Dollars in Millions)

| | FY 2018 | FY 2019 | | | FY 2020 | | |
|---|---|---|--|--|--|--|---|
| | Actual | Revised Low Estimate | Revised Working Estimate | Revised High Estimate | President's Budget Low Estimate | President's Budget Working Estimate | President's Budget High Estimate |
| Date of Projection | September 2018 | February 2019 | February 2019 | February 2019 | February 2019 | February 2019 | February 2019 |
| Total USPTO Fee Collections | \$3,339 | \$3,147 | \$3,359 | \$3,558 | \$3,209 | \$3,451 | \$3,679 |
| Total Patent Fee Collections | \$3,010 | \$2,825 | \$3,012 | \$3,187 | \$2,878 | \$3,095 | \$3,298 |
| Total Trademark Fee Collections | \$329 | \$322 | \$347 | \$371 | \$332 | \$356 | \$381 |
| Major Patent Fee Collections: | | | | | | | |
| Filing (with Excess Claims) | \$848 | \$825 | \$884 | \$930 | \$816 | \$876 | \$924 |
| Post Allowance | \$282 | \$286 | \$298 | \$310 | \$265 | \$293 | \$321 |
| Maintenance | \$1,410 | \$1,251 | \$1,342 | \$1,434 | \$1,334 | \$1,431 | \$1,529 |
| PCT | \$194 | \$198 | \$202 | \$206 | \$201 | \$210 | \$218 |
| Extensions of Time | \$132 | \$124 | \$132 | \$139 | \$120 | \$130 | \$140 |
| Other | \$143 | \$141 | \$154 | \$167 | \$142 | \$154 | \$167 |
| Assumptions Used to Develop Fee Collection Estimates | | | | | | | |
| Filing Growth Rates: | Patent filings growth rate -1.2% (598,101 UPR filings, 171,171 RCEs). Trademark filings growth rate 7.5% (638,847 filings). | Patent Filings growth rate -3.4% (578,000 UPR filings, 167,100 RCEs). Trademark filings growth rate 0.7% (641,500 filings). These filing rates are based on estimates of slowed global economic growth. | Patent filings growth rate 1.9% (609,600 UPR filings, 176,300 RCEs). Trademark filings growth rate 6.1% (678,000 filings). These filing rates are based on estimates of continued economic growth. | Patent filings growth rate 7.2% (641,300 UPR filings, 185,500 RCEs). Trademark filings growth rate 11.5% (714,500 filings). These filing rates are based on high estimates of continued economic growth. | Patent filings growth rate -5.0% (579,400 UPR filings, 164,500 RCEs). Trademark filings growth rate -1.7% (666,500 filings). These filing rates are based on estimates of slowed global economic growth. | Patent filings growth rate 0.2% (611,200 UPR filings, 173,500 RCEs). Trademark filings growth rate 3.7% (703,000 filings). These filing rates are based on estimates of continued economic growth. | Patent filings growth rate 5.5% (642,900 UPR filings, 182,500 RCEs). Trademark filings growth rate 9.1% (739,500 filings). These filing rates are based on high estimates of continued economic growth. |
| Patent Issue: | Patents printed of 308,632 | Patents printed of 305,200 based on conservative estimates of patent examination production. | Patents printed of 314,800 based on moderate estimates of patent examination production. | Patents printed of 332,100 based on estimates of increased patent examination production. | Patents printed of 281,800 based on conservative estimates of patent examination production. | Patents printed of 313,300 based on moderate estimates of patent examination production. | Patents printed of 344,400 based on estimates of increased patent examination production. |
| Patent Maintenance (Post Renewal): | Renewal Rates: 86.3% first stage, 65.9% second stage, 43.3% third stage. | Renewal Rates: 84.0% first stage, 61.0% second stage, 35.2% third stage due to conservative estimates of continued economic growth and patent demand. | Renewal Rates: 86.3% first stage, 65.9% second stage, 43.1% third stage due to moderate estimates of continued economic growth and patent demand. | Renewal Rates: 88.6% first stage, 70.9% second stage, 51.8% third stage due to high estimates of continued economic growth and patent demand. | Renewal Rates: 84.0% first stage, 61.0% second stage, 35.0% third stage due to conservative estimates of continued economic growth and patent demand. | Renewal Rates: 86.3% first stage, 65.9% second stage, 42.8% third stage due to moderate estimates of continued economic growth and patent demand. | Renewal Rates: 88.6% first stage, 70.9% second stage, 51.5% third stage due to high estimates of continued economic growth and patent demand. |
| Enhanced Examination Timing Assumptions: | Track 1 filings: 9,887 filings | Track 1 filings: 5,000 filings | Track 1 filings: 10,000 filings | Track 1 filings: 10,000 filings | Track 1 filings: 5,000 filings | Track 1 filings: 10,000 filings | Track 1 filings: 10,000 filings |
| Patent Fee Adjustments: | Fee rates based on Patents Final Rule published November 14, 2017. Patent fee effective date: January 16, 2018. | N/A | N/A | N/A | N/A | N/A | N/A |
| Trademark Fee Adjustments: | N/A | N/A | N/A | N/A | N/A | N/A | N/A |

Appendix V – FY 2018 Estimated Assumptions and Actuals

USPTO Fee Collections

(Dollars in Millions)

| | FY 2017 | | FY 2018 | | | |
|---|--|---|--|---|---|--|
| | Actual | President's Budget | Revised Working Estimate | Revised Low Estimate | Revised High Estimate | Actual |
| Date of Projection | September 2017 | February 2017 | June 2017 | June 2017 | June 2017 | September 2018 |
| Total USPTO Fee Collections | \$3,076 | \$3,586 | \$3,529 | \$3,286 | \$3,793 | \$3,339 |
| Total Patent Fee Collections | \$2,770 | \$3,250 | \$3,198 | \$2,968 | \$3,438 | \$3,010 |
| Total Trademark Fee Collections | \$305 | \$336 | \$332 | \$318 | \$355 | \$329 |
| Major Patent Fee Collections: | | | | | | |
| Filing (with Excess Claims) | \$813 | \$923 | \$885 | \$807 | \$969 | \$848 |
| Post Allowance Fees | \$286 | \$289 | \$289 | \$259 | \$318 | \$282 |
| Maintenance | \$1,210 | \$1,514 | \$1,508 | \$1,423 | \$1,592 | \$1,410 |
| PCT | \$183 | \$201 | \$199 | \$193 | \$205 | \$194 |
| Extensions of Time | \$138 | \$153 | \$146 | \$128 | \$169 | \$132 |
| Other | \$140 | \$170 | \$171 | \$157 | \$185 | \$143 |
| Assumptions Used to Develop Fee Collection Estimates | | | | | | |
| Filing Growth Rates: | Patent filings growth rate - 0.8% (605,232 UPR filings, 185,406 RCEs). Trademark filings growth rate 12.0% (594,107 filings). | Filings growth rate 2.0% (627,274 UPR filings, 191,839 RCEs). Trademark filings growth rate 7.0% (610,000 filings). | Patent filings growth rate 0.4% (609,754 UPR filings, 180,702 RCEs). Trademark filings growth rate 4.8% (595,000 filings). | Patent Filings growth rate -3.5% (576,983 UPR filings, 162,632 RCEs). Trademark filings growth rate 1.0% (562,351 filings). | Patent filings growth rate 5.2% (653,605 UPR filings, 198,772 RCEs). Trademark filings growth rate 13.0% (659,126 filings). | Patent filings growth rate - 1.2% (598,101 UPR filings, 171,171 RCEs). Trademark filings growth rate 7.5% (638,847 filings). |
| Filing Growth Rates Trends: | Patent filings decreased 0.8% in FY 2017; this was driven by a 3.0% decrease in requests for continued examinations (RCEs) and an increase in serialized filings of 0.3%. Following what was happening in FY 2017, the FY 2018 President's Budget assumed there would be 2.0% growth in patent filings, and that RCEs would increase 1.7%. By the FY 2018 revised estimate, the USPTO adjusted the patent filings estimate down to 0.4% with estimated RCEs decreasing 2.0% over FY 2017 actuals. The FY 2018 actual growth rate came in lower than estimated, at -1.2%, which was due to a 7.7% decrease to RCEs, despite a 1.7% growth in serialized filings. Serialized patent filings are expected to grow slowly over the next two fiscal years. Trademark filings grew 12.0% in FY 2017. FY 2018 Trademark filings were estimated at 7.0% growth in the President's Budget and was revised downward to 4.8% in the revised estimate. The FY 2018 actual growth rate came in higher than the revised estimated growth rate at 7.5%. Growth in trademark filings is expected to continue in FY 2019 and FY 2020. | | | | | |
| Patent Issue: | Patents printed of 316,973 | Patents printed of 304,589 based on moderate estimates of increased patent examination production efficiencies. | Patents printed of 306,772 based on moderate estimates of increased patent examination production efficiencies. | Patents printed of 276,095 based on conservative estimates of increased patent examination production efficiencies. | Patents printed of 337,449 based on high estimates of increased patent examination production efficiencies. | Patents printed of 308,632 |
| Patent Issue Trends: | Patents printed is a process and resource driven workload. The FY 2018 President's Budget levels reflected the FY 2016 numbers, a similar allowance rate, and the expectation of increased issues. The estimated number of patents printed increased in the revised estimate to reflect updated allowance assumptions. FY 2018 actual patents printed came in higher than estimated at 308,632, a decrease of 2.6% from FY 2017. The USPTO expects the number of issued patents in FY 2019 to increase and then slightly decrease in FY 2020. | | | | | |
| Patent Maintenance (Post Renewal): | Renewal Rates: 85.7% first stage, 66.3% second stage, 45.9% third stage. | Renewal Rates: 87.1% first stage, 68.3% second stage, 48.4% third stage. | Renewal Rates: 86.7% first stage, 68.2% second stage, 48.7% third stage. | Renewal Rates: 84.2% first stage, 65.7% second stage, 46.0% third stage. | Renewal Rates: 89.2% first stage, 70.8% second stage, 51.4% third stage. | Renewal Rates: 86.3% first stage, 65.9% second stage, 43.3% third stage. |
| Patent Maintenance (Post Renewal) Trends: | Renewal rates in FY 2018 were higher than FY 2017 for first stage, but second and third stage renewal rates declined. The estimates of renewal rates in the FY 2018 President's Budget were based historical data through FY 2016. During the FY 2018 budget process, the estimates were updated with more recent data, which resulted in a slight decrease in projected renewal rates for the first and second stage, and a slight increase for third stage. Actual FY 2018 renewal rates came in lower than the revised estimate. The FY 2018 renewal rates may go up slightly as eligible renewals continue to come in. It is expected that FY 2019 and FY 2020 renewal rates will be similar to FY 2018 actuals. | | | | | |
| Fee Adjustments: | Fee rates based on Trademarks Final Rule published in October 2016 with a fee effective date of January 14, 2017. | Fee rates based on Patents NPRM published in October 2016. Patent fee assumed effective date: September 2017. | Fee rates based on draft Patents Final Rule developed in May 2017. Patent fee assumed effective date: December 2017. | Fee rates based on draft Patents Final Rule developed in May 2017. Patent fee assumed effective date: February 2018. | Fee rates based on draft Patents Final Rule developed in May 2017. Patent fee assumed effective date: October 2017. | Fee rates based on Patents Final Rule published November 2017 with a fee effective date of January 16, 2018. |

Appendix VI – USPTO 2018-2022 Strategic Plan Framework

(Goals, objectives and initiatives being updated)

The USPTO MISSION

Fostering innovation, competitiveness and job growth in the United States by conducting high quality and timely patent and trademark examination and review proceedings in order to produce reliable and predictable intellectual property rights; guiding intellectual property policy and improving intellectual property rights protection; and delivering intellectual property information and education worldwide.

The USPTO VISION

Leading the Nation and the world in intellectual property (IP)

| GOAL I: OPTIMIZE PATENT QUALITY AND TIMELINESS | | | |
|---|---|---|--|
| Objective 1: Optimize Patent Application Pendency | Objective 2: Issue Highly Reliable Patents | Objective 3: Foster Innovation Through Business Effectiveness | Objective 4: Enhance Operations of the Patent Trial and Appeal Board (PTAB) |
| Initiatives | Initiatives | Initiatives | Initiatives |
| <ul style="list-style-type: none"> A. Optimize pendency and examination timeframes. B. Align production capacity with incoming workload. C. Leverage value obtained from international work products. D. Identify and offer additional prosecution options. | <ul style="list-style-type: none"> A. Increase examiners' ability to obtain the best prior art during examination. B. Improve content, delivery, and timeliness of technical and legal training to achieve more predictable outcomes. C. Use patent quality data to identify areas for improvement to achieve more consistent outcomes. D. Refine production standards to achieve patent quality expectations and goals. E. Enhance transparency and communication of quality metrics. | <ul style="list-style-type: none"> A. Enhance patent customer experience. B. Optimize development and delivery of information technology (IT) tools for internal users of patent systems to ensure they have the tools that they need for a thorough search and examination. C. Enhance IT interfaces available to external users of patent systems. D. Improve searchable access to domestic and international patent application files, including to prior art and office actions. E. Retain and leverage nationwide talent. F. Document and standardize best practices to facilitate succession planning. G. Coordinate outreach efforts across the Patent organization and evaluate the impact of these efforts on the patent ecosystem. | <ul style="list-style-type: none"> A. Resolve appeals and inter partes matters in a timely manner. B. Streamline procedures and standards where feasible and appropriate to ensure balance and predictability. C. Emphasize overall written quality, well-supported reasoning of orders and opinions, and decisional consistency. D. Increase internal and external engagement on PTAB operations to promote understanding. E. Develop and enhance tools to promote transparency and enable increased use of operational data. F. Retain and leverage nationwide talent. |

| GOAL II: OPTIMIZE TRADEMARK QUALITY AND TIMELINESS | | | |
|--|--|--|---|
| Objective 1: Optimize Trademark Application Pendency | Objective 2: Issue High-Quality Trademarks | Objective 3: Foster Business Effectiveness | Objective 4: Enhance Operations of the Trademark Trial and Appeal Board (TTAB) |
| Initiatives | Initiatives | Initiatives | Initiatives |
| <ul style="list-style-type: none"> A. Align production capacity with incoming workload and inventory. B. Work with customers to develop pendency goals that increase examination efficiency, maintain an optimal pendency level, and meet the expectations of the intellectual property (IP) community. C. Optimize pendencies for all types of actions throughout the trademark process. | <ul style="list-style-type: none"> A. Continually improve quality measurements. B. Provide targeted training (including legal training and education) to address quality issues. C. Leverage analytics to drive training, process improvements, and consistency. D. Leverage state-of-the-art technologies that support high-quality examination and registration. | <ul style="list-style-type: none"> A. Develop innovative recruitment strategies for staffing trademark positions. B. Develop leadership programs for succession planning, knowledge management, and employee engagement. C. Develop the workforce to support IT modernization. D. Focus IT efforts on improving efficiencies in core business operations. E. Enhance the customer experience. F. Explore artificial and business intelligence to assist trademark customers. G. Partner with customers to define and address needs. | <ul style="list-style-type: none"> A. Resolve appeals and inter partes matters in a timely manner. B. Streamline processes and procedures where feasible and appropriate, and ensure procedural predictability. C. Emphasize overall written quality, well-supported reasoning of orders and opinions, and decisional consistency. D. Maintain increased internal and external engagement on TTAB operations to promote customer understanding of process and procedure. E. Document clear and comprehensive business requirements to facilitate enhancement of legacy IT systems and prepare for next generation IT systems. F. Retain and leverage nationwide talent. |

| GOAL III: PROVIDE DOMESTIC AND GLOBAL LEADERSHIP TO IMPROVE INTELLECTUAL PROPERTY (IP) POLICY, ENFORCEMENT, AND PROTECTION WORLDWIDE | |
|---|---|
| Objective 1: Provide Leadership and Education on Domestic IP Policy and Awareness | Objective 2: Provide Leadership and Education on International IP Policy and Awareness |
| Initiatives | Initiatives |
| <ul style="list-style-type: none"> A. Provide domestic policy formulation and guidance on key issues in all fields of IP enforcement and protection. B. Engage other U.S. government agencies, stakeholders, and Congress on legislation that improves the IP system. C. Provide domestic education on IP at all levels, including to stakeholders, the public, and state and local communities. D. Provide input to ongoing court considerations on key IP issues. E. Advocate for the value of IP as a critical driver of innovation and creativity. | <ul style="list-style-type: none"> A. Provide international policy formulation and guidance on key issues in all fields of IP enforcement and protection. B. Provide leadership, support, and advice to the administration in negotiating and monitoring compliance with IP agreements and IP provisions in trade agreements. C. Lead administration efforts at the World Intellectual Property Organization and other international organizations to improve IP enforcement, protection, and cooperation worldwide. D. Engage other governments to improve their IP enforcement and protection, including by providing education and capacity building. E. Work with Congress on matters pertaining to international agreements and their implementation. F. Work with the administration to improve IP enforcement and protection in countries of interest, including through the IP Attaché Program. G. Advocate for the value of IP as a critical driver of innovation and creativity. |

| MISSION SUPPORT GOAL: DELIVER ORGANIZATIONAL EXCELLENCE | | | |
|--|---|--|--|
| Objective 1. Enhance Human Capital Management and Foster Employee Engagement | Objective 2. Optimize Speed, Quality, and Cost-Effectiveness of Information Technology (IT) Delivery to Achieve Business Value | Objective 3. Ensure Financial Sustainability to Facilitate Effective USPTO Operations | Objective 4. Enhance the USPTO's Interactions with Internal and External Stakeholders and with the Public at Large |
| Initiatives | Initiatives | Initiatives | Initiatives |
| <p>A. Optimize performance culture.</p> <p>B. Leverage best practices to attract, recruit, and retain an engaged, diverse, mission-focused, and talented workforce.</p> <p>C. Optimize workspace to meet workforce needs.</p> <p>D. Continue to strengthen our telework environment.</p> <p>E. Enhance leadership capabilities to better develop, sustain, lead, and foster engagement and advocacy in the agency's diverse workforce.</p> <p>F. Identify and deploy an engagement strategy that ensures all employees understand how their work relates to the USPTO mission.</p> | <p>A. Involve the business unit experts in the IT acquisition source selection process.</p> <p>B. Refine the agency-wide IT prioritization process.</p> <p>C. Foster IT innovation from our highly skilled workforce.</p> <p>D. Maintain effective legacy systems during transition to their retirement.</p> <p>E. Establish agency-wide data governance.</p> <p>F. Strengthen the IT development and implementation lifecycle.</p> | <p>A. Maintain the authority for fee-setting.</p> <p>B. Obtain authority to spend all fees collected.</p> <p>C. Ensure that the USPTO fee structure continuously meets the needs of the intellectual property (IP) environment of the future.</p> <p>D. Optimize the management of financial resources.</p> <p>E. Achieve optimal value from resources deployed to support USPTO operations.</p> | <p>A. Strengthen relationships with the Department of Commerce, Office of Management and Budget, other federal agencies, and Congress.</p> <p>B. Foster a culture across the USPTO for providing outstanding customer experience.</p> <p>C. Foster relationships with internal and external stakeholders.</p> <p>D. Meet customer needs by timely delivery of IP information and education to support and encourage growth of an innovation-based economy.</p> <p>E. Strengthen the public's understanding of IP, including increasing the public's knowledge of how IP, and the product and services that USPTO offers, support our innovation-based economy.</p> |

Appendix VII -- Glossary of Acronyms and Abbreviations

| Acronym | Definition |
|---------|--|
| ABI | Activity Based Information |
| ACR | Accelerated Case Resolution |
| ACTS | Adjudicated Case Tracking System |
| AIA | Leahy Smith America Invents Act of 2011 |
| AIS | Automated Information Systems |
| APA | Administrative Procedure Act |
| APEC | Asia Pacific Economic Cooperation |
| API | Application Programming Interface |
| APJs | Administrative Patent Judges |
| ASEAN | Association of South East Asian Nations |
| ATJs | Administrative Trademark Judges |
| BC/DR | Business Continuity/Disaster Recovery |
| BPAG | Budget and Performance-at-a-Glance |
| BRIC | Brazil, Russia, India and China |
| CAFC | United States Court of Appeals for the Federal Circuit |
| CAGR | Compound Annual Growth Rate |
| CE | Chief Economist |
| CIF | Capital Improvement Fund |
| COTS | Commercial Off-The-Shelf |
| CPC | Cooperative Patent Classification |
| CPIC | Capital Planning and Investment Control |
| CSRS | Civil Service Retirement System |
| DAV | Document and Application Viewer |
| DOC | Department of Commerce |
| EDMS | Electronic Document Management System |
| EEO | Equal Employment Opportunity |
| EEOD | Equal Employment Opportunity and Diversity |

| Acronym | Definition |
|----------|--|
| EO | Executive Order |
| EPO | European Patent Office |
| FAST 1 | First Actions System for Trademarks |
| FCS | Foreign Commercial Service |
| FEGLI | Federal Employees Group Life Insurance |
| FEHB | Federal Employees Health Benefits |
| FERS | Federal Employees Retirement System |
| FPNG | Fee Processing Next Generation |
| FTA | Free Trade Agreement |
| FTE | Full-Time Equivalent |
| FY | Fiscal Year |
| GA | Governmental Affairs |
| GD | Global Dossier |
| GDP | Gross Domestic Product |
| GIPA | Global Intellectual Property Academy |
| GSA | General Services Administration |
| HR | Human Resources |
| IP | Intellectual Property |
| IP, PE&P | Intellectual Property Policy, Enforcement and Protection |
| IP5 | The Five IP Offices: USPTO, EPO, JPO, KIPO, SIPO |
| IPR | Intellectual Property Rights |
| IR | Information Resources |
| IT | Information Technology |
| JPO | Japan Patent Office |
| KIPO | Korean Intellectual Property Office |
| MGE | Miscellaneous General Expense |
| NAFTA | North American Free Trade Agreement |

| Acronym | Definition |
|----------|--|
| NARA | National Archives and Record Administration |
| NIST MEP | National Institute of Standards and Technology Manufacturing Extension Partnership |
| O&M | Operations and Maintenance |
| OACS | Office Action Correspondence Subsystem |
| OCAO | Office of the Chief Administrative Officer |
| OCCO | Office of the Chief Communications Officer |
| OCFO | Office of the Chief Financial Officer |
| OED | Office of Enrollment and Discipline |
| OEDIS | Office of Enrollment and Discipline Information System |
| OGC | Office of the General Council |
| OGL | Office of General Law |
| OIG | Office of the Inspector General |
| OMB | Office of Management and Budget |
| OPIA | Office of Policy and International Affairs |
| OPM | Office of Personnel Management |
| OR | Operating Reserve |
| PAIR | Patent Application Information |
| PALM | Patent Application Location Monitoring |
| PCT | Patent Cooperation Treaty |
| PE2E | Patents End-to-End |
| PEDS | Patent Examination Data Search |
| PETTP | Patent Examiner Technical Training Program |
| PIF | Pacific Islands Forum |
| PII | Personally Identifiable Information |
| PPAC | Patent Public Advisory Committee |
| PPH | Patent Prosecution Highway |
| PRPS | Patent Review Processing System |
| PTAB | Patent Trial and Appeal Board |
| PTAB E2E | Patent Trial and Appeal Board End-to-End |
| RBAC | Role-Based Access Control |
| RGDP | Real Gross Domestic Product |
| SBDC | Small Business Development Center |

| Acronym | Definition |
|---------|---|
| SIPO | State Intellectual Property Office (SIPO) of the People's Republic of China |
| SO | Office of the Solicitor |
| SUCCESS | Study of Underrepresented Classes Chasing Engineering and Science Success |
| TIPS | Trademark In-House Photocomposition System |
| TMNG | Trademark Next Generation |
| TPAC | Trademark Public Advisory Committee |
| TRIPs | Trade-Related Aspects of IP |
| TTAB | Trademark Trial and Appeal Board |
| U.S. | United States |
| ULs | universal laptops |
| UPR | Utility, Plant and Reissue |
| USG | U. S. Government |
| USPTO | United States Patent and Trademark Office |
| USTR | United States Trade Representative |
| WIPO | World Intellectual Property Organization |
| WTO | World Trade Organization |
| XML | eXtensible Markup Language |
| IPC | International Patent Classification |

Appendix VIII – FY 2020 ANNUAL PERFORMANCE PLAN AND REPORT BACK UP

OVERVIEW

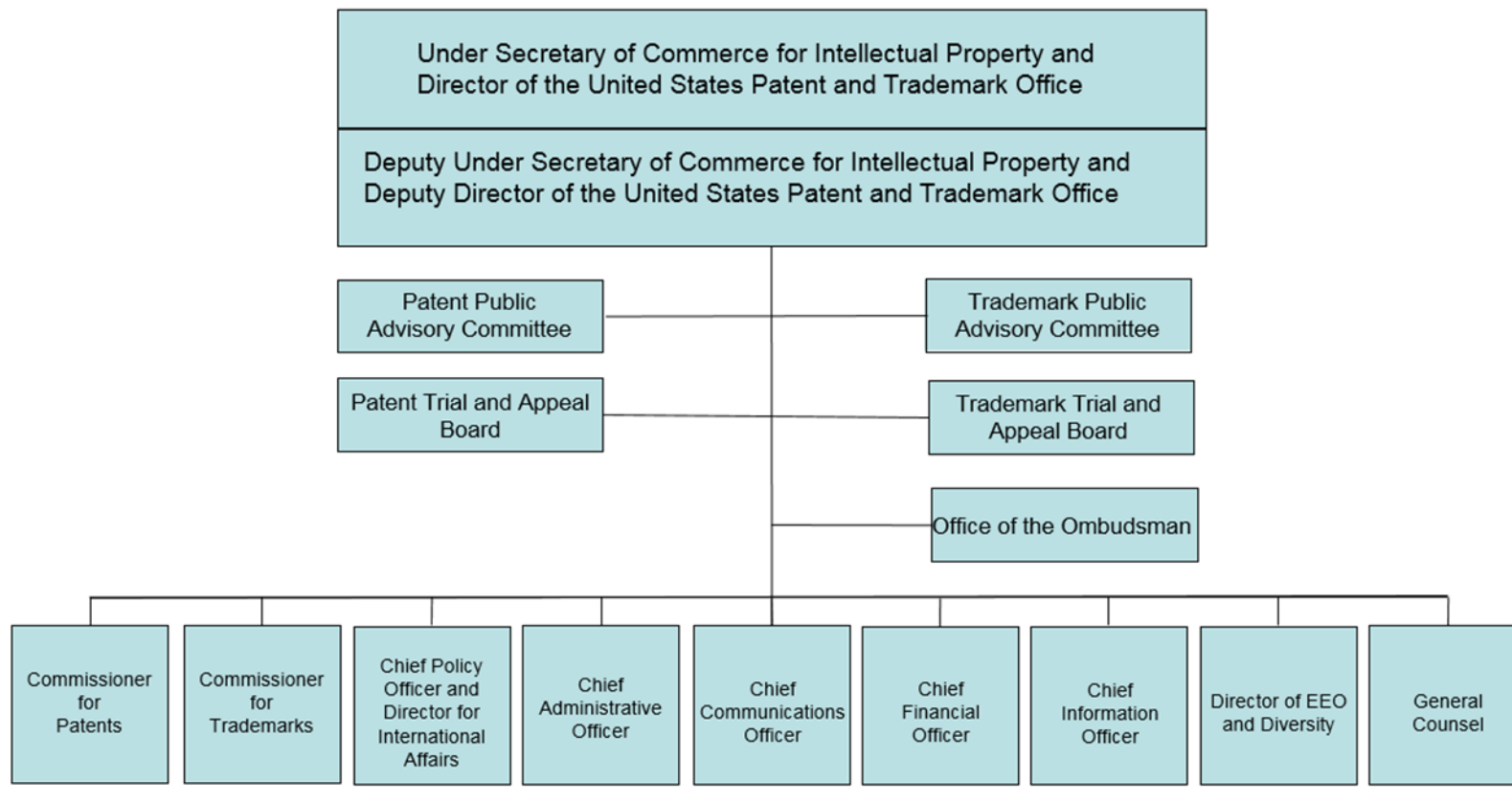
The United States Patent and Trademark Office (USPTO) is the federal agency for granting U.S. patents and registering trademarks. In doing this, the USPTO fulfills the mandate of Article I, Section 8, Clause 8, of the Constitution that the legislative branch "promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." The USPTO registers trademarks based on the commerce clause of the Constitution (Article I, Section 8, Clause 3). Under this system of protection, American industry has flourished. Two distinct business lines, Patents and Trademarks, administer the patent and trademark laws which provide protection to inventors and businesses for their inventions and brands, and encourage innovation and entrepreneurship in the United States (U.S.) through the preservation, classification, and dissemination of patent and trademark information.

MISSION STATEMENT

Fostering innovation, competitiveness and job growth in the United States by conducting high quality and timely patent and trademark examination and review proceedings in order to produce reliable and predictable intellectual property rights; guiding intellectual property policy, and improving intellectual property rights protection; and delivering intellectual property information and education worldwide.

ORGANIZATIONAL STRUCTURE

UNITED STATES PATENT AND TRADEMARK OFFICE



STRATEGIC GOAL(S) AND OBJECTIVE(S)

The following strategic goals and objectives apply to USPTO via the DOC FY 2018-2022 Strategic Plan:

A. Goal 1 – Accelerate American Leadership

- 1.2 – Advance Innovation
- 1.3 – Strengthen Intellectual Property Protection

B. Goal 2 – Enhance Job Creation

- 2.2 – Reduce and Streamline Regulations
- 2.3 – Strengthen Domestic Commerce and the U.S. Industrial Base

A. Goal 3 – Strengthen U.S. Economic and National Security

- 3.1 – Enforce the Nation’s Trade Laws and Security Laws

B. Goal 5 – Deliver Customer-Centric Service Excellence

- 5.1 – Engage Commerce Employees
- 5.2 – Accelerate Information Technology Modernization
- 5.3 – Consolidate Functions for Cost Savings

TRACKING PROGRESS ON STRATEGIC OBJECTIVE(S)

USPTO tracks the progress on each strategic objective through its semiannual milestone review. USPTO ‘s performance is predicated on workload demand and fee collection estimates derived from production and workload models and global and domestic indicators of economic activity which provide unique risks.

PLANNED ACTIONS FOR ACHIEVING FY 2020 PERFORMANCE TARGETS

As a business-like organization, the USPTO fulfills requests for IP products and services from around the world that are paid for by the customer. Since these requests are frequently received in one fiscal year and fulfilled in a subsequent year, the Office engages in multi-year planning and budgeting. In doing this, the Office relies heavily on indicators of global and domestic economic activity, as well as policies and legislation, process efficiencies, and applicant behavior in forecasting workload and fee collections. These workload variables in turn affect production models that are produced by the Patent and Trademark organizations, as well as by the PTAB. The principal actions USPTO will pursue over the course of FY 2019 and FY 2020 to ensure the achievement of the FY 2020 performance objectives in the DOC strategic plan are detailed below. Further details about this process are included in Appendix I.

Strategic Objective 1.3 Strengthen Intellectual Property Protection

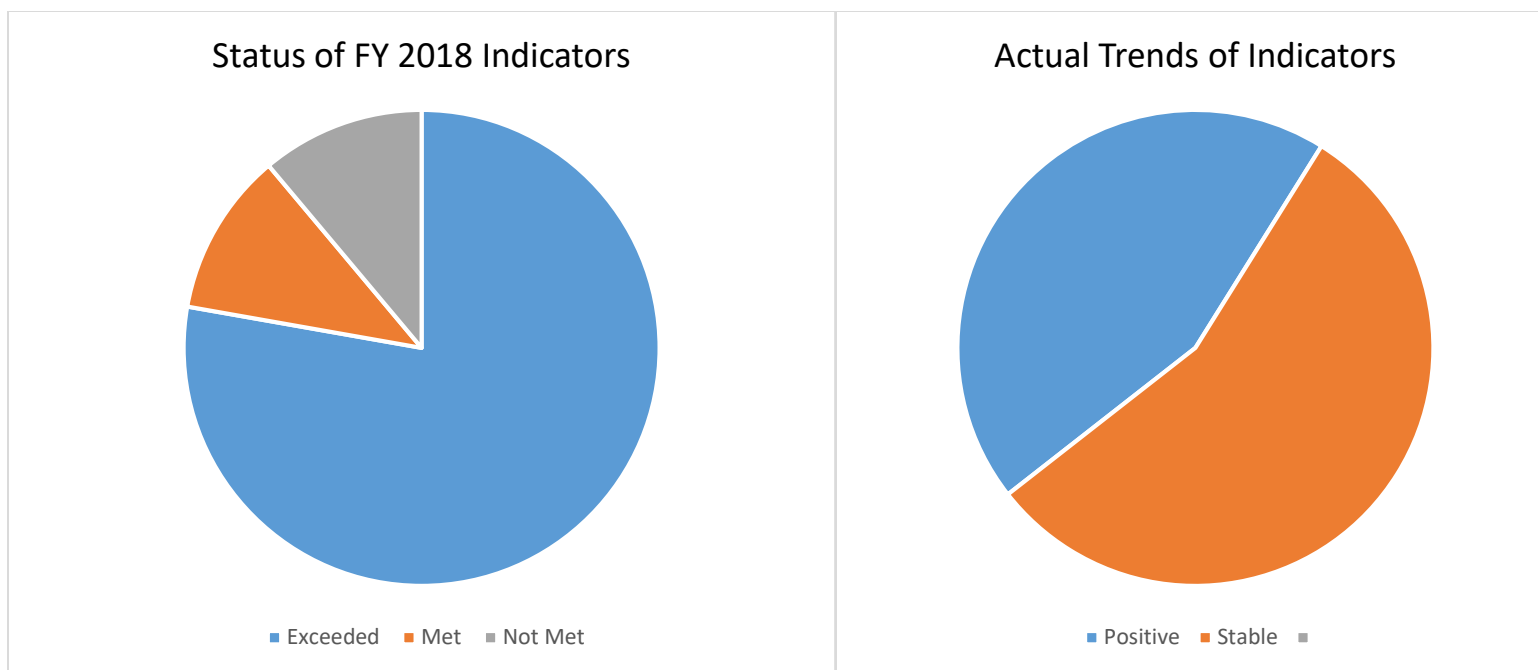
- A. Number of people, including foreign government officials and U.S. stakeholders, trained on best practices to protect and enforce intellectual property - Continue to promote the protection and enforcement of IP of American innovators and creators on both the domestic and international levels.
- B. Patent Average First Action Pendency/UPR (Months) - Optimize the workforce by hiring roughly 400 to 750 examiners between FY 2019 through FY 2024, offset by approximately 330-360 attritions, each year. This level of hiring will allow the USPTO to make progress toward pendency targets while aligning examination capacity with incoming workload to ensure a “soft landing” (i.e., to ensure the USPTO is not overstaffed as application pendencies reach optimal levels).
- C. Patent Average Total Pendency/UPR (Months) – Same as “Patent Average First Action Pendency/UPR”.
- D. Patent Statutory Compliance metrics - Optimize the workforce by providing training and feedback based on review of work products and leveraging patent quality data.
- E. Trademark Average First Action Pendency (Months) - With a sustained economic recovery, new application filings are expected to approach their historical growth patterns and increase by about 332,893 applications (classes) by FY 2023 compared to FY 2018 or a 7.7 percent CAGR. To keep pace with the incremental workloads and to support business development and implementation of new and improved IT systems, the Trademark organization will increase the number of examining attorneys.
- F. Trademark Average Total Pendency (Months) – Same as “Trademark Average First Action Pendency.”
- G. Trademark First Action Compliance Rate - Under the quality assurance program the results of an examiner’s first and final office action are reviewed for the quality of the substantive basis for decision making, search strategy, evidence, and writing. Based on the data collected from those reviews, the Office has targeted both electronic and traditional training initiatives addressing specific problem areas.
- H. Trademark Final Compliance Rate - Under the quality assurance program the results of an examiner’s first and final office action are reviewed for the quality of the substantive basis for decision making, search strategy, evidence, and writing. Based on the data collected from those reviews, the Office has targeted both electronic and traditional training initiatives addressing specific problem areas.
- I. Trademark Exceptional Office Action rate - the Trademark organization has instituted what is known as an Exceptional Office Action emphasizing comprehensive excellence in office actions, which expands upon the existing first and final action standards for correct decision-making.

Strategic Objective 3.1 Enforce the Nation’s Trade Laws and Security Laws

- J. Percentage of prioritized countries for which IP country teams have made progress on at least 3 of the 4 performance criteria
Continue to promote the protection and enforcement of IP of American innovators and creators on both the domestic and international levels.

AGENCY PRIORITY GOALS

| | | | | |
|------------------------------|--|-------------|-------------|-------------|
| Goal | Accelerate Patent Processing | | | |
| Performance Indicator(s) | Patent First Action Pendency and Patent Total Pendency | | | |
| Description | By September 30, 2019, the U.S. Patent and Trademark Office will reduce patent pendency to less than 15 months for first action pendency and less than 24 months for total pendency from end of fiscal year 2017 results of 16.3 months and 24.2 months, respectively. | | | |
| | FY 2016 | FY 2017 | FY 2018 | FY 2019* |
| Patent First Action Pendency | 16.2 months | 16.3 months | 15.8 months | 14.7 months |
| Patent Total Pendency | 25.4 months | 24.2 months | 23.8 months | 23.9 months |
| | | | | |
| Comments | *FY 2019 Patent First Action Pendency and Patent Total Pendency are projected targets. | | | |



Summary of Performance

- A total of 9 indicators; 7 (77.8%) were exceeded, 1 (11.1%) was met, and 1 (11.1%) was not met
- A total of 9 indicators had trends (more than three years of data); and,
- Of those 9 indicators with trends, 4 (44.4%) were positive, and 5 (55.6%) were stable.

Summary of FY 2018 Indicator Performance***Objective 1.3 Strengthen Intellectual Property Protection***

| Indicator | Target | Actual | Status | Trend |
|--|---------------|---------------|---------------|--------------|
| Number of people, including foreign government officials and U.S. stakeholders, trained on best practices to protect and enforce intellectual property | 5,000 | 7,242 | Exceeded | Positive |
| Patent Average First Action Pendency (Months) | 15.4 | 15.8 | Not Met | Positive |
| Patent Average Total Pendency (Months) | 25.0 | 23.8 | Exceeded | Positive |
| Trademark Average First Action Pendency (Months) | 2.5-3.5 | 3.4 | Met | Stable |
| Trademark Average Total Pendency (Months) | 12.0 | 9.6 | Exceeded | Stable |
| Trademark First Action Compliance Rate (Percent) | 95.5 | 96.9 | Exceeded | Stable |
| Trademark Final Compliance Rate (Percent) | 97.0 | 97.9 | Exceeded | Stable |
| Trademark Exceptional Office Action (Percent) | 45.0 | 48.0 | Exceeded | Positive |

Objective 3.1 Enforce the Nation's Trade Laws and Security Laws

| Indicator | Target | Actual | Status | Trend |
|--|---------------|---------------|---------------|--------------|
| Percentage of prioritized countries for which intellectual property country teams have made progress on at least 3 of the 4 performance criteria: a. Institutional improvements of IP office administration for advancing IP rights; b. Institutional improvements of IP enforcement entities; c. Improvements in IP laws and regulations; and d. Establishment of government-to-government cooperative mechanisms. | 66.0 | 100.0 | Exceeded | Stable |

Detailed Indicator Plans and Performance**Current / Recurring Indicators****Strategic Goal 1: Accelerate American Leadership****Objective 1.3 Strengthen Intellectual Property Protection**

| Indicator | NUMBER OF PEOPLE, INCLUDING FOREIGN GOVERNMENT OFFICIALS AND U.S. STAKEHOLDERS, TRAINED ON BEST PRACTICES TO PROTECT AND ENFORCE INTELLECTUAL PROPERTY | | | | | | | |
|---|---|---------|---------|---------|---------|----------|---------|---------|
| Category | Strategic Plan | | | | | | | |
| Type | Output | | | | | | | |
| Description | The Global Intellectual Property Academy (GIPA) offers training programs on protection, utilization and enforcement of IP rights, patents, trademarks, and copyrights. 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. | | | | | | | |
| | FY 2013 | FY 2014 | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020 |
| Target | | 4,300 | 6,300 | 5,000 | 5,000 | 5,000 | 4,500 | 4,500 |
| Actual | 7,078 | 4,960 | 5,283 | 4,975 | 4,134 | 7,242 | | |
| Status | | Met | Not Met | Not Met | Not Met | Exceeded | | |
| Trend | The trend line indicates that the performance trend is variable with significant variability of the direction of the trend line in predicting future results. | | | | | | | |
| Explanation (if not met in 2018) | Met | | | | | | | |
| Actions to be taken / Action to achieve FY20 target | Continue to promote the protection and enforcement of IP of American innovators and creators on both the domestic and international levels. | | | | | | | |
| Adjustments to targets | None | | | | | | | |
| Notes | While the USPTO has actual performance information for this indicator through FY 2013, it did not use this as a GPRA indicator until FY 2014, and thus did not have an FY 2013 target. | | | | | | | |
| Information Gaps | None | | | | | | | |

| Indicator | PATENT AVERAGE FIRST ACTION PENDENCY (MONTHS) | | | | | | | |
|---|--|---------|---------|---------|---------|---------|---------|---------|
| Category | Strategic Plan | | | | | | | |
| Type | Outcome | | | | | | | |
| Description | This measure indicates the average time from the Utility, Plant and Reissue (UPR) application filing date to the date of mailing the First Office action. The measure is based on a three-month rolling time period. This is one of the two primary measures to track timeliness in the Patent organization. | | | | | | | |
| | FY 2013 | FY 2014 | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020 |
| Target | 18.0 | 17.4 | 15.7 | 14.8 | 14.8 | 15.4 | 14.7 | 14.7 |
| Actual | 18.2 | 18.4 | 17.3 | 16.2 | 16.3 | 15.8 | | |
| Status | Not Met | Met | Not Met | Not Met | Not Met | Not Met | | |
| Trend | The trend line indicates that the performance trend is positive with some variability of the direction of the trend line in predicting future results. | | | | | | | |
| Explanation (if not met in 2018) | Filing growth rate exceeded plan, reaching 1.7%, which increased workload. Additionally, overtime usage fell about 6%, which reduced output. In combination, the resulting pendency was 2.6% higher than planned, though still lower than last year. | | | | | | | |
| Actions to be taken / Action to achieve FY20 target | The USPTO will continue calibrating the size of the patent examining staff with projected application filings and desired performance results, as documented by patent production modeling. Serialized patent application filings are projected to increase by 1.5 percent in FY 2020 and the growth rate is projected to remain flat (i.e., at 1.5%) through FY 2024. Because of these filing trends, and an investment in enhanced quality, the USPTO has modified its patent examiner hiring plans for FY 2019 through FY 2024 to range from 400 to 750 annual examiner hires, offset by approximately 330-360 attritions, each year. Although the target has been revised, the USPTO will continue to work toward achieving 10 months first action pendency and 20 months total pendency, as well as reducing the backlog. | | | | | | | |
| Adjustments to targets | The staffing plan brings the patent examining capacity to an optimal level to address the current patent application inventory and the expected number of new patent applications. Changes to planned hiring levels, however, will change projected results. Once the USPTO achieves the optimal pendency levels, the agency will continue to closely monitor inventory and application filing levels to continue calibrating the examination capacity to maintain patent pendency goals while investing in quality. | | | | | | | |
| Notes | None | | | | | | | |
| Information Gaps | None | | | | | | | |

| Indicator | PATENT AVERAGE TOTAL PENDENCY (MONTHS) | | | | | | | |
|---|--|---------|---------|---------|---------|---------|---------|---------|
| Category | Strategic Plan | | | | | | | |
| Type | Outcome | | | | | | | |
| Description | Patent total pendency is the average time in months for a complete review of a UPR patent application, from the filing date to issue or abandonment of the application. The measure is based on a three-month rolling time period. This is one of the two primary measures to track timeliness in the Patent organization. Requests for Continued Examination (RCEs) are not included. | | | | | | | |
| | FY 2013 | FY 2014 | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020 |
| Target | 30.1 | 26.7 | 26.4 | 25.4 | 24.8 | 25.0 | 23.9 | 22.8 |
| Actual | 29.1 | 27.4 | 26.6 | 25.3 | 24.2 | 23.8 | | |
| Status | Exceeded | Met | Met | Met | Met | Met | | |
| Trend | The trend line indicates that the performance trend is positive with little variability of the direction of the trend line in predicting future results. However, the trend line from 2000 to 2010 was negative. | | | | | | | |
| Explanation (if not met in 2018) | Met | | | | | | | |
| Actions to be taken / Action to achieve FY20 target | The USPTO will continue calibrating the size of the patent examining staff with projected application filings and desired performance results, as documented by patent production modeling. Serialized patent application filings are projected to increase by 1.5 percent in FY 2020 and the growth rate is projected to remain flat (i.e., at 1.5%) through FY 2024. Because of these filing trends, and an investment in enhanced quality, the USPTO has modified its patent examiner hiring plans for FY 2019 through FY 2024 to range from 400 to 750 annual examiner hires, offset by approximately 330-360 attritions, each year. Although the target has been revised, the USPTO will continue to work toward achieving 10 months first action pendency and 20 months total pendency, as well as reducing the backlog. | | | | | | | |
| Adjustments to targets | The staffing plan brings the patent examining capacity to an optimal level to address the current patent application inventory and the expected number of new patent applications. Changes to planned hiring levels, however, will change projected results. Once the USPTO achieves the optimal pendency levels, the agency will continue to closely monitor inventory and application filing levels to continue calibrating the examination capacity to maintain patent pendency goals while investing in quality. | | | | | | | |
| Notes | None | | | | | | | |
| Information Gaps | None | | | | | | | |

| Indicator | PATENT STATUTORY COMPLIANCE METRICS | | | | | | | |
|--|---|---------|---------|----------|--------------|---------|---------|----------|
| Category | Strategic Plan | | | | | | | |
| Type | Outcome | | | | | | | |
| Description | This metric measures the degree to which a patent is correctly issued in compliance with all the requirements of Title 35 as well as the relevant case law at the time of issuance. A statutorily compliant office action includes all applicable rejections and any asserted rejection is correct in that the decision to reject is based on sufficient evidence to support a conclusion of unpatentability. | | | | | | | |
| | FY 2013 | FY 2014 | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020* |
| Statute 35 USC 101 (including utility and eligibility) | | | | | | | | |
| Target | | | | Baseline | 93.0 - 98.0% | 97.0% | 97.0% | TBD |
| Actual | | | | 97.4% | 96.5% | 96.8% | | |
| Status | | | | | Met | Not Met | | |
| Statute 35 USC 102 (prior art compliance) | | | | | | | | |
| Target | | | | Baseline | 90.0 – 95.0% | 95.0% | 95.0% | TBD |
| Actual | | | | 95.9% | 94.4% | 95.2% | | |
| Status | | | | | Met | Met | | |
| Statute 35 USC 103 (prior art compliance) | | | | | | | | |
| Target | | | | Baseline | 88.0 – 93.0% | 93.0% | 93.0% | TBD |
| Actual | | | | 90.4% | 92.4% | 92.0% | | |
| Status | | | | | Met | Not Met | | |
| Statute 35 USC 112 (35 USC 112(a),(b) including (a)/(b) rejections related to 35 USC 112(f)) | | | | | | | | |
| Target | | | | Baseline | 87.0 - 92.0% | 93.0% | 93.0% | TBD |
| Actual | | | | 93.7% | 92.6% | 92.9% | | |
| Status | | | | | Met | Not Met | | |
| Trend | Not enough data to determine trend. | | | | | | | |
| Explanation (if not met in 2018) | Compliance metrics are based on a sample of examiner actions, which introduces a sampling error into the measurement. While the exact reported values are below target, they are within the sampling error of being at or above target. Therefore, it cannot be definitively stated whether actual performance was above or below the target. | | | | | | | |
| Actions to be taken / Action to achieve FY20 target | Continued training, mentoring and coaching will be provided to the patent corps to help continually improve quality. | | | | | | | |
| Adjustments to targets | Not applicable | | | | | | | |
| Notes | *This measure is currently being revised and will not be used in the future. | | | | | | | |
| Information Gaps | None | | | | | | | |

| Indicator | TRADEMARK AVERAGE FIRST ACTION PENDENCY (MONTHS) | | | | | | | |
|---|---|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Category | Strategic Plan | | | | | | | |
| Type | Outcome | | | | | | | |
| Description | This measure reflects the timeliness of the first office action as measured from the date of application filing (or notification date for 66(a) filings) to the first office action in months. | | | | | | | |
| | FY 2013 | FY 2014 | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020 |
| Target | 2.5 – 3.5 | 2.5 – 3.5 | 2.5 – 3.5 | 2.5 – 3.5 | 2.5 – 3.5 | 2.5 – 3.5 | 2.5 – 3.5 | 2.5 – 3.5 |
| Actual | 3.2 | 3.1 | 2.9 | 3.1 | 2.7 | 3.4 | | |
| Status | Met | Met | Met | Met | Met | Met | | |
| Trend | The trend line indicates that the performance trend is maintaining standards with slight variability of the direction of the trend line in predicting future results. | | | | | | | |
| Explanation (if not met in 2018) | Met | | | | | | | |
| Actions to be taken / Action to achieve FY20 target | The Trademark organization is committed to maintaining an average first action pendency of 2.5 to 3.5 months and an average total pendency of 12 months or less. Trademark applications are expected to grow at an average rate of 7.7 percent over the five-year planning horizon. Trademark application filings exhibit a strong correlation with the general state of the economy as measured by the growth of the Gross Domestic Product (GDP) and venture capital. International filings have been growing faster than domestic ones and representing a larger portion of total applications than in years past. They are fueled by the growth of the world economy, by international trade, and by the enhanced global value of IP rights. Over the next few years, the sub-models indicate a growth rate of trademark filings from foreign countries from 17 percent, eventually slowing down to 12 percent. Given this continued growth in applications, the Trademark organization will need to continue increasing its trademark examining attorney staffing levels to maintain its quality and pendency targets. | | | | | | | |
| Adjustments to targets | None | | | | | | | |
| Notes | None | | | | | | | |
| Information Gaps | None | | | | | | | |

| Indicator | TRADEMARK AVERAGE TOTAL PENDENCY (MONTHS) | | | | | | | |
|---|---|----------|----------|----------|----------|----------|---------|---------|
| Category | Strategic Plan | | | | | | | |
| Type | Outcome | | | | | | | |
| Description | This measure reflects the timeliness of the disposal of a trademark application. It is measured from the date of filing to date of registration, abandonment or issuance of a notice of allowance, excluding applications that are suspended, awaiting further action, or involved in inter partes proceedings. | | | | | | | |
| | FY 2013 | FY 2014 | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020 |
| Target | 12.0 | 12.0 | 12.0 | 12.0 | 12.0 | 12.0 | 12.0 | 12.0 |
| Actual | 10.0 | 9.8 | 10.1 | 9.8 | 9.5 | 9.6 | | |
| Status | Exceeded | Exceeded | Exceeded | Exceeded | Exceeded | Exceeded | | |
| Trend | The trend line indicates that the performance trend is maintaining standards with slight variability of the direction of the trend line in predicting future results. | | | | | | | |
| Explanation (if not met in 2018) | Met | | | | | | | |
| Actions to be taken / Action to achieve FY20 target | The Trademark organization is committed to maintaining an average first action pendency of 2.5 to 3.5 months and an average total pendency of 12 months or less. Trademark applications are expected to grow at an average rate of 7.7 percent over the five-year planning horizon. Trademark application filings exhibit a strong correlation with the general state of the economy as measured by the growth of the Gross Domestic Product (GDP) and venture capital. International filings have been growing faster than domestic ones and representing a larger portion of total applications than in years past. They are fueled by the growth of the world economy, by international trade, and by the enhanced global value of IP rights. Over the next few years, the sub-models indicate a growth rate of trademark filings from foreign countries from 17 percent, eventually slowing down to 12 percent. Given this continued growth in applications, the Trademark organization will need to continue increasing its trademark examining attorney staffing levels to maintain its quality and pendency targets. | | | | | | | |
| Adjustments to targets | None | | | | | | | |
| Notes | None | | | | | | | |
| Information Gaps | None | | | | | | | |

| Indicator | TRADEMARK FIRST ACTION COMPLIANCE RATE (PERCENT) | | | | | | | |
|---|--|----------|----------|----------|----------|----------|---------|---------|
| Category | Supporting | | | | | | | |
| Type | Outcome | | | | | | | |
| Description | This measure is the percentage of applications reviewed meeting the criteria for decision making conducted on random sample of applications including first office actions to determine the soundness of decision-making under the Trademark Act. | | | | | | | |
| | FY 2013 | FY 2014 | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020 |
| Target | 95.5 | 95.5 | 95.5 | 95.5 | 95.5 | 95.5 | 95.5 | 95.5 |
| Actual | 96.3 | 95.8 | 96.7 | 97.1 | 97.3 | 96.9 | | |
| Status | Exceeded | Exceeded | Exceeded | Exceeded | Exceeded | Exceeded | | |
| Trend | The trend line indicates that the performance trend is maintaining standards with slight variability of the direction of the trend line in predicting future results. | | | | | | | |
| Explanation (if not met in 2018) | Met | | | | | | | |
| Actions to be taken / Action to achieve FY20 target | Under the quality assurance program the results of an examiner's first and final office action are reviewed for the quality of the substantive basis for decision making, search strategy, evidence, and writing. Based on the data collected from those reviews, the Office has targeted both electronic and traditional training initiatives addressing specific problem areas. This program also provides prompt feedback to examining attorneys when their work products are reviewed. | | | | | | | |
| Adjustments to targets | None | | | | | | | |
| Notes | None | | | | | | | |
| Information Gaps | None | | | | | | | |

| Indicator | TRADEMARK FINAL COMPLIANCE RATE (PERCENT) | | | | | | | |
|---|--|----------|----------|----------|----------|----------|---------|---------|
| Category | Supporting | | | | | | | |
| Type | Outcome | | | | | | | |
| Description | This measure is the percentage of evaluations meeting the criteria for decision making conducted on a random sample of applications that received a final decision regarding registrability (i.e., registration eligibility) under the Trademark Act either by approval or final refusal. | | | | | | | |
| | FY 2013 | FY 2014 | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020 |
| Target | 97.0 | 97.0 | 97.0 | 97.0 | 97.0 | 97.0 | 97.0 | 97.0 |
| Actual | 97.1 | 97.2 | 97.6 | 97.8 | 98.3 | 97.9 | | |
| Status | Exceeded | Exceeded | Exceeded | Exceeded | Exceeded | Exceeded | | |
| Trend | The trend line indicates that the performance trend is maintaining standards with slight variability of the direction of the trend line in predicting future results. | | | | | | | |
| Explanation (if not met in 2018) | Met | | | | | | | |
| Actions to be taken / Action to achieve FY20 target | Under the quality assurance program the results of an examiner's first and final office action are reviewed for the quality of the substantive basis for decision making, search strategy, evidence, and writing. Based on the data collected from those reviews, the Office has targeted both electronic and traditional training initiatives addressing specific problem areas. This program also provides prompt feedback to examining attorneys when their work products are reviewed. | | | | | | | |
| Adjustments to targets | None | | | | | | | |
| Notes | None | | | | | | | |
| Information Gaps | None | | | | | | | |

| Indicator | TRADEMARK EXCEPTIONAL OFFICE ACTION (PERCENT) | | | | | | | |
|---|---|----------|----------|----------|----------|----------|---------|---------|
| Category | Support | | | | | | | |
| Type | Outcome | | | | | | | |
| Description | This measure is the percentage of evaluations exceeding the statutory requirement decision making conducted on a random sample of applications that received a first office action regarding registrability under the Trademark Act. | | | | | | | |
| | FY 2013 | FY 2014 | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020 |
| Target | 23.0 | 28.0 | 36.0 | 40.0 | 40.0 | 45.0 | 46.0 | 47.0 |
| Actual | 35.1 | 43.0 | 48.3 | 45.4 | 45.0 | 48.0 | | |
| Status | Exceeded | Exceeded | Exceeded | Exceeded | Exceeded | Exceeded | | |
| Trend | The trend line indicates that the performance trend is positive with slight variability of the direction of the trend line in predicting future results. | | | | | | | |
| Explanation (if not met in 2018) | Met | | | | | | | |
| Actions to be taken / Action to achieve FY20 target | The Trademark organization continues its efforts to improve quality in a cost-effective manner. To raise the bar, the Trademark organization has instituted what is known as an Exceptional Office Action emphasizing comprehensive excellence in office actions, which expands upon the existing first and final action standards for correct decision-making. An Exceptional Office Action is one that reflects correct decision-making, includes excellent evidentiary support, and is exceptionally well-written. | | | | | | | |
| Adjustments to targets | None | | | | | | | |
| Notes | None | | | | | | | |
| Information Gaps | None | | | | | | | |

Strategic Goal 3: Strengthen U.S. Economic and National Security**Objective 3.1 Enforce the Nation's Trade Laws and Security Laws**

| | | | | | | | | |
|---|--|----------|----------|----------|----------|----------|---------|---------|
| Indicator | Percentage of prioritized countries for which intellectual property country teams have made progress on at least 3 of the 4 performance criteria: 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 | | | | | | | |
| Category | Strategic Plan | | | | | | | |
| Type | Outcome | | | | | | | |
| Description | Tracks the USPTO's efforts in relation to prioritizing countries of interest for purposes of improved IP protection and enforcement, capacity building, and legislative reform, including creation of country/region strategic plans and specific action plans. | | | | | | | |
| | FY 2013 | FY 2014 | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020 |
| Target | 75.0 | 75.0 | 75.0 | 75.0 | 75.0 | 66.0 | 66.0 | 66.0 |
| Actual | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.00 | | |
| Status | Exceeded | Exceeded | Exceeded | Exceeded | Exceeded | Exceeded | | |
| Trend | The trend line indicates that the performance trend is positive with little to no variability of the direction of the trend line in predicting future results. | | | | | | | |
| Explanation (if not met in 2018) | Met | | | | | | | |
| Actions to be taken / Action to achieve FY20 target | Continue to promote the protection and enforcement of IP of American innovators and creators on both the domestic and international levels. | | | | | | | |
| Adjustments to targets | None | | | | | | | |
| Notes | Target updated in FY 2018 through FY 2020 to reflect a decrease in the number of prioritized countries from four to three. The projected target for FY 2018 through FY 2020 is two out of three prioritized countries. | | | | | | | |
| Information Gaps | None | | | | | | | |

Proposed New Indicators

| Indicator | PATENT FIRST ACTION COMPLETED WITHIN 14 MONTHS (PERCENT) | | | | | | | |
|---|--|---------|---------|---------|---------|---------|---------|---------|
| Category | Supporting | | | | | | | |
| Type | Outcome | | | | | | | |
| Description | The patent term adjustment provisions (35 USC 154) of the patent act require the USPTO to mail a First Office action in each utility and plant application within 14 months of filing, with failure to do so resulting in the term of the patent being extended commensurate with the delay. This metric tracks the percentage of First Office actions in the given fiscal year which were in fact mailed within 14 months of the application's filing date. | | | | | | | |
| | FY 2013 | FY 2014 | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 | FY 2020 |
| Target | | | | | | 47.0 | 47.0 | 46.0 |
| Actual | 34.0 | 34.0 | 35.0 | 40.0 | 39.0 | 44.0 | | |
| Status | | | | | | | | |
| Trend | First action PTA performance, while not previously a goal, has been improving over the last 5 years. | | | | | | | |
| Explanation (if not met in 2018) | N/A - New Indicator | | | | | | | |
| Actions to be taken / Action to achieve FY20 target | As traditional pendency measures approach acceptable levels, USPTO has started focusing on more refined pendency measures based on the Patent Term Adjustment (PTA) timeframes, which will reduce patent term adjustment given out, and also give all applicants greater certainty of the pendency of their own cases. Actions currently under consideration include targeted hiring, improved docketing practices and workload balancing, and revisions to performance appraisal plans and/or incentive agreements. | | | | | | | |
| Notes | | | | | | | | |
| Information Gaps | None | | | | | | | |
| Reason for new indicator | The 14-month PTA target is a statutory measure and provides increased certainty to applicants compared with traditional average pendency measures. | | | | | | | |
| Indicator being replaced | None | | | | | | | |