

# **U.S. Patent and Trademark Office**

## **Fiscal Year 2018 Congressional Justification**

**May 23, 2017**

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**UNITED STATES PATENT AND TRADEMARK OFFICE**  
**Fiscal Year 2018**  
**The USPTO Congressional Budget Justification**  
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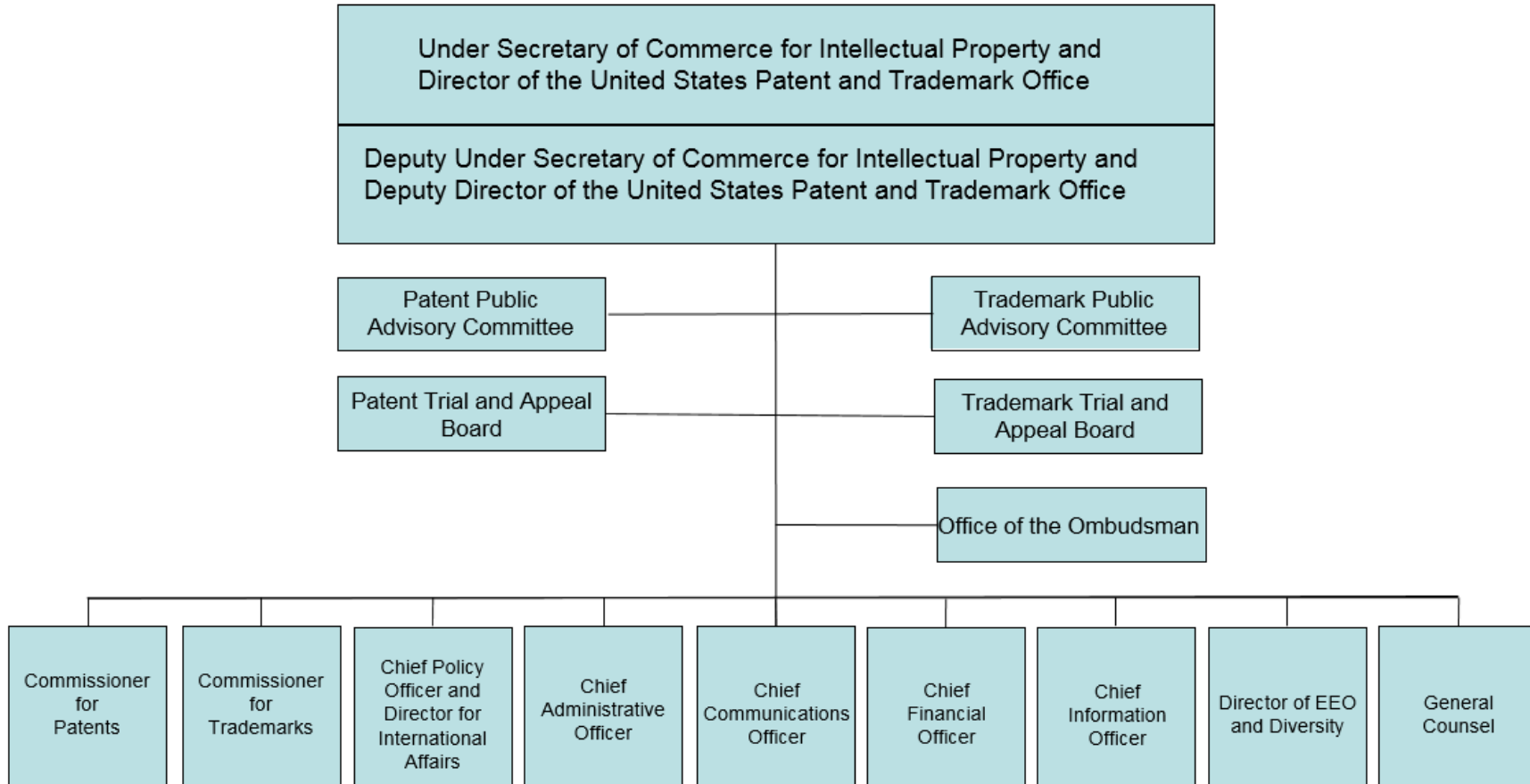
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# **INTRODUCTION**

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# Exhibit 2 – Organization Chart

## UNITED STATES PATENT AND TRADEMARK OFFICE



## **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 USPTO fosters innovation and competitiveness by providing high quality and timely examination of patent and trademark applications, guiding domestic and international intellectual property (IP) policy, 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 corporate and product identifications, and encourage innovation and scientific and technical advancement of United States (U.S.) industry through the preservation, classification, and dissemination of patent and trademark information.

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.

In fiscal year (FY) 2018, the USPTO is expected to employ approximately 13,438 federal employees including patent examiners, trademark examining attorneys, computer scientists, attorneys, and administrative staff. Employee engagement, which helps facilitate the recruitment and retention of a highly qualified workforce, is a core component of the Office's business strategy.

The USPTO serves 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 (formerly referred to as satellite 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.

In addition, the USPTO has two storage facilities located in Virginia and Pennsylvania.

The USPTO's legislative authorities are included in Exhibit 32/33 (page 109).



## Exhibit 3 – Executive Summary

USPTO’s FY 2018 President’s Budget (Budget) fully supports the *USPTO 2014-2018 Strategic Plan*<sup>1</sup> priorities of enhancing quality; reducing patent pendency and backlog; maintaining trademark pendency and quality; completing the Patent Trial and Appeal Board proceedings timely; providing domestic and global leadership in intellectual property (IP); investing in modernizing the USPTO’s information technology (IT); and conducting stakeholder and public outreach, including educating small businesses on obtaining and protecting IP.

The USPTO operates like a business by fulfilling requests from around the world for IP products and services in exchange for fee payments. In many instances, these requests with fees are received in one fiscal year and fulfilled in a subsequent year, requiring a multi-year planning and budgeting process.

The Budget is predicated on workload demand and fee collection estimates derived from production and workload models, including trademark fee adjustments effective January 2017; proposed patent fee adjustments expected to be implemented at the end of FY 2017; and global and domestic indicators of economic activity. The Budget also reflects USPTO’s commitment to fiscal responsibility and efficiency by making prudent choices when aligning spending priorities with revenue projections and ensuring sufficient operating reserves (OR) to shield mission-critical operations against potential disruptions. The Office’s performance targets are predicated on full production-related hiring in FY 2017. A reduction in planned hiring would reduce the Office’s ability to achieve current, and likely future, performance targets.

For FY 2018, the USPTO requests the authority to spend fee collections of \$3,586M. Along with \$29M from other income, these fee collections will fund operating requirements of \$3,501M, including 13,249 full-time equivalents (FTE); a transfer of \$2M to the DOC Office of the Inspector General (OIG); and the addition of \$113M to the OR balance, as shown in the following table. With full access to its fee collections to offset its funding requirements, the USPTO’s FY 2018 net appropriation would be \$0.

<b>USPTO Total Budget Requirements</b>			
<b>(Dollars in Millions)</b>			
	FY 2016	FY 2017	FY 2018
Total Obligations	\$3,147	\$3,297	\$3,501
Plus: Transfer to DOC/OIG	\$2	\$2	\$2
<b>Total Requirements</b>	<b>\$3,149</b>	<b>\$3,299</b>	<b>\$3,503</b>
Less: Offsetting Fee Collections	\$3,063	\$3,158	\$3,586
Budget Authority Temporarily Unavailable*		(\$6)	
Less: Other income	\$42	\$29	\$29
To (-) / From (+) Operating Reserve*	(\$43)	(\$111)	\$113
<b>Net Appropriation</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>FTE</b>	<b>12,436</b>	<b>12,769</b>	<b>13,249</b>

\* PTO assumes that when FY2017 is finalized, the \$6M additional Budget Authority lost in FY2017 will become available and therefore has not rolled the \$6M loss through the operating reserve balance into FY2017.

Due to rounding, numbers presented in tables throughout this document may not add up precisely to the totals provided and percentages may not precisely reflect the absolute figures.

### Highlights Include<sup>2</sup>:

- The USPTO scrutinized the budget and was able to limit FY 2018 program changes to an increase of 1.5% over the FY 2018 Base. FY 2018 requirements increase by \$204.0M over FY 2017 and represent \$151.9M in prescribed inflation/adjustments to base and \$52.1M in program changes despite Patent and Trademark production increasing by 2.3% and 8.7%, respectively, in FY 2018.

<sup>1</sup> [USPTO 2014-2018 Strategic Plan](https://www.uspto.gov/sites/default/files/documents/USPTO_2014-2018_Strategic_Plan.pdf) at [https://www.uspto.gov/sites/default/files/documents/USPTO\\_2014-2018\\_Strategic\\_Plan.pdf](https://www.uspto.gov/sites/default/files/documents/USPTO_2014-2018_Strategic_Plan.pdf)

<sup>2</sup> See USPTO FY 2018 Budget and Performance at-a-Glance (BPAG) Chart (pages 8-9) and Appendix II – Two Way Split (page 126)

- The FY 2018 fee collection estimate is \$3,586M, which is based on the most recent analysis and trends, including fee adjustments put in or expected to be put in place during FY 2017. For more information, refer to page 122 of the Budget.

### Program Changes – Highlights

#### Patent Program -- \$13.4M:

- Optimize the workforce by reducing examiner staffing by 77 through attrition (this is net attrition after replacement hiring of 350 patent examiners). This planned, gradual reduction in examiner staffing will allow the USPTO to meet pendency targets while aligning examination capacity with incoming workload to ensure a “soft landing” as pendency targets are achieved. Simultaneously, the program will continually improve patent quality and meet commitments under the Enhanced Patent Quality Initiative (EPQI).
- Increase Patent Trial and Appeal Board (PTAB) staffing by 4 positions to align capacity with workload projections, including meeting statutory trial proceeding deadlines.
- Increase investments in the Patent IT Portfolio, which reflects the continued development and deployment of new IT capabilities and continued retirement of specific legacy systems.

#### Trademark Program -- (\$9.9M):

- Optimize the workforce staff by adding/~~decreasing~~ 54 positions to align trademark application examination capacity with revised growth estimates, while meeting quality and pendency targets.
- Increase Trademark Trial and Appeal Board (TTAB) staffing by 1 position to align capacity with projected workload.
- Reduce investment in the Trademark IT Portfolio to reflect the level of FY 2018 modernization plans for the Trademark Next Generation (TMNG) IT systems.

#### Intellectual Property Policy, Enforcement and Protection Program -- \$0.6M

- Increase investment in the IT Portfolio to update existing systems for IP performance activities.

#### Management Program -- \$47.9M:

- Increase investment in the IT Infrastructure and Support Portfolio to replace employee laptops and network equipment at the end of their useful life. This equipment is a first line production tool used by examiners to process applications and communicate with customers
- Increase cross-cutting services to re-compete the lease of the USPTO’s Randolph Square facility in Arlington, VA; to appropriately dispose of files and relinquish space at the Franconia File Repository facility; and to address campus security needs.

### Sustainable Funding

As a fully fee-funded agency, the USPTO maintains an OR—consistent with standard private sector practices—to mitigate operational risks that can be caused by a temporary lack of financial resources. For example, the reserves enable the USPTO to mitigate cash flow stress that can occur during an economic recession (e.g., FY 2009) and to continue operations through disruptions in appropriations (e.g., the FY 2014 partial government shutdown).

Another critical financial planning tool is the authority to adjust both patent and trademark user fees via the regulatory process, which was granted to the USPTO by the AIA for a limited time. This authority enables the Office to recover the costs of its operations and plan and respond to changing market needs. It also allows the Office to set individual fees in ways that further key policy aims, such as better prosecution options for applicants or encouraging prosecution practices to facilitate the effective administration of the IP system. Absent congressional action, the AIA fee setting authority will expire on September 16, 2018.

*A full-year 2017 appropriation was not enacted at the time the FY 2018 Budget was prepared; therefore, the Budget assumes the Department is operating under the Further Continuing Appropriations Act, 2017 (P.L. 114–254). The amounts included for 2017 reflect the annualized level provided by the continuing resolution.*

**FY 2018 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 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 effect production models that are produced by the Patent and Trademark organizations, as well as by the PTAB. Further details about this process are included in Appendix I.

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 needed to fund those requirements.

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 2018 and out year estimates on the BPAG Chart build off of the FY 2017 Current Plan estimates that reflect a slower than average patent application filing growth rate for FY 2017-FY 2022 than was experienced prior to FY 2015. In addition, direct IT investments tend to level off over the planning horizon with only inflationary increases as shown in the IT Portfolio (pages 17-23).

The BPAG Chart summarizes the USPTO's FY 2018 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 funding requirements and FTE for FY 2018 and the out years, along with the projected fee collections and operating reserve activity.

Details about the USPTO's major performance measures can be found in Appendix VII, the FY 2018 Performance Planning and FY 2016 Reporting Backup.

## USPTO FY 2018 Budget and Performance-at-a-Glance

<i>(Dollars in thousands)</i>	FY 2016	FY 2017 President's Budget	FY 2017 Current Plan	FY 2018 President's Budget	FY 2019 Estimate	FY 2020 Estimate	FY 2021 Estimate	FY 2022 Estimate
<b>USPTO GOAL 1: OPTIMIZE PATENT QUALITY AND TIMELINESS</b>								
Amount	2,828,575	2,887,575	2,943,164	3,130,601	3,185,179	3,226,151	3,316,649	3,352,971
Full Time Equivalent (FTE)	11,288	11,517	11,496	11,867	11,741	11,479	11,182	10,902
Utility, Plant and Reissue (UPR) Applications Filed	610,005	594,900	614,300	627,300	634,900	639,900	636,600	638,900
UPR Applications Filed – Percent Change Over Previous FY	5.1%	1.5%	0.7%	2.1%	1.2%	0.8%	-0.5%	0.4%
Average First Action Pendency/UPR (Months)	16.2	13.7	14.8	15.1	10.98	10.7	9.9	9.6
Average Total Pendency/UPR (Months)	25.3	22.9	24.8	23.0	22.7	19.5	19.0	18.5
<i>Patent Correctness (Statutory Compliance metrics):<sup>1</sup></i>								
Statute 35 USC 101 (including utility and eligibility)	97.4%	N/A	93.0 - 98.0%	TBD	TBD	TBD	TBD	TBD
Statute 35 USC 102 (prior art compliance)	95.9%	N/A	90.0 - 95.0%	TBD	TBD	TBD	TBD	TBD
Statute 35 USC 103 (prior art compliance)	90.4%	N/A	88.0 - 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))	93.7%	N/A	87.0 - 92.0%	TBD	TBD	TBD	TBD	TBD
UPR Examiners On-Board at End-of-Year	8,169	8,087	8,375	8,300	8,097	7,812	7,540	7,280
UPR First Actions	609,612	622,800	654,600	670,300	674,200	667,200	632,200	616,500
UPR Disposals	645,910	609,600	640,800	656,100	660,000	654,200	619,900	604,500
UPR Units of Production	627,761	616,200	647,700	663,200	667,100	660,700	626,100	610,500
Obligation Cost Per Patent Production Unit <sup>2</sup>	\$4,569	\$4,754	\$4,607	\$4,786	\$4,841	\$4,951	\$5,372	\$5,570
UPR Issues	306,277	329,300	301,400	304,600	308,200	307,000	295,400	285,200
UPR Unexamined Patent Application Backlog	537,655	434,700	485,300	430,000	378,200	338,200	329,600	339,000
Forward Looking First Action Pendency/UPR (Months)	13.8	11.1	12.2	10.7	9.5	8.9	9.0	9.0
<b>USPTO GOAL 2: OPTIMIZE TRADEMARK QUALITY AND TIMELINESS</b>								
Amount	261,276	292,887	294,713	307,107	325,149	337,512	364,138	380,429
FTE	984	1,123	1,103	1,201	1,258	1,321	1,384	1,447
Applications Received (Includes Extra Classes)	530,270	579,000	570,000	610,000	663,000	720,000	772,000	822,100
Applications Received – Percent Change Over Previous FY	5.8%	7.4%	7.5%	7.0%	8.7%	8.6%	7.2%	6.5%
Exceptional Office Action rate	45.4%	40.00%	40.00%	40.00%	40.00%	40.00%	41.00%	42.00%
First Action Compliance Rate	97.1%	95.50%	95.50%	95.50%	95.50%	95.50%	95.50%	95.50%
Final Compliance Rate	97.8%	97.00%	97.00%	97.00%	97.00%	97.00%	97.00%	97.00%
Average First Action Pendency (Months)	3.1	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
Average Total Pendency (Months) Excluding Suspended and Inter Partes Proceedings	9.8	12.0	12.0	12.0	12.0	12.0	12.0	12.0
Balanced Disposals	1,061,055	1,151,400	1,121,500	1,219,500	1,320,800	1,434,600	1,542,700	1,645,400
Office Disposals	479,657	567,400	558,000	604,400	655,000	711,500	764,700	815,300
Obligation Cost Per Trademark Disposal <sup>2</sup>	\$580	\$556	\$561	\$540	\$527	\$502	\$503	\$493
Examining Attorneys On-Board at End-of- Year	505	537	546	589	634	679	722	771

<i>(Dollars in thousands)</i>	FY 2016	FY 2017 President's Budget	FY 2017 Current Plan	FY 2018 President's Budget	FY 2019 Estimate	FY 2020 Estimate	FY 2021 Estimate	FY 2022 Estimate
<b>USPTO GOAL 3: PROVIDE DOMESTIC AND GLOBAL LEADERSHIP TO IMPROVE INTELLECTUAL PROPERTY POLICY, PROTECTION AND ENFORCEMENT WORLDWIDE</b>								
Amount	56,756	63,393	59,016	63,166	63,912	64,808	67,289	68,697
FTE	164	194	170	181	181	181	181	181
Percentage of prioritized countries for which country teams have implemented at least 75% of action steps in the country-specific action plans toward progress along four dimensions: <ul style="list-style-type: none"> <li>• Institutional improvements of IP office administration</li> <li>• Institutional improvements of IP enforcement entities</li> <li>• Improvements in IP laws and regulations</li> <li>• Establishment of government-to-government cooperative mechanisms</li> </ul>	100.0%	75.0%	75.0%	75.0%	75.0%	75.0%	75.0%	75.0%
Number of foreign officials trained on best practices to protect and enforce IP	4,975	5,500	5,000	5,000	5,000	5,000	5,000	5,000
Amounts not Supporting Goals <sup>3</sup>	2,100	2,000	2,000	2,000	2,000	2,000	2,000	2,000
USPTO Requirements	3,148,707	3,245,855	3,298,893	3,502,874	3,576,240	3,630,472	3,750,076	3,804,096
FTE	12,436	12,835	12,769	13,249	13,180	12,981	12,747	12,530
Fee Collections	3,063,247	3,321,024	3,158,427	3,586,193	3,558,809	3,703,950	3,823,486	4,093,708
Other Income/Recoveries	42,344	22,257	29,250	29,250	29,250	29,250	29,250	29,250
Funding to(-) / from(+) Operating Reserve <sup>4</sup>	43,115	(97,427)	111,216	(112,569)	(11,819)	(102,728)	(102,661)	(318,861)
Budget Authority Temporarily Unavailable <sup>4</sup>	-	-	(6,086)	-	-	-	-	-
<b>TOTAL FUNDING</b>	<b>3,148,707</b>	<b>3,245,855</b>	<b>3,298,893</b>	<b>3,502,874</b>	<b>3,576,240</b>	<b>3,630,472</b>	<b>3,750,076</b>	<b>3,804,096</b>
Operating Reserve: Patents	354,239	384,659	244,627	342,723	340,863	418,321	500,645	787,531
Operating Reserve: Trademarks	106,999	104,880	105,395	119,868	133,547	158,818	179,154	211,130

<sup>1</sup> Enhanced Patent Quality Initiative (EPQI) quality metrics program launched metrics on the correctness and clarity of patent work products for use in FY 2017.

<sup>2</sup> Budget requirements are used to calculate the results

<sup>3</sup> Amounts transferred to the Department of Commerce Office of the Inspector General.

<sup>4</sup> PTO assumes that when FY 2017 is finalized, the \$6M additional Budget Authority lost in FY 2017 will become available and therefore has not rolled the \$6M loss through the operating reserve balance into FY 2017.

Due to rounding, numbers presented in tables throughout this document may not add up precisely to the totals provided and percentages may not precisely reflect the absolute figures.

## **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 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.

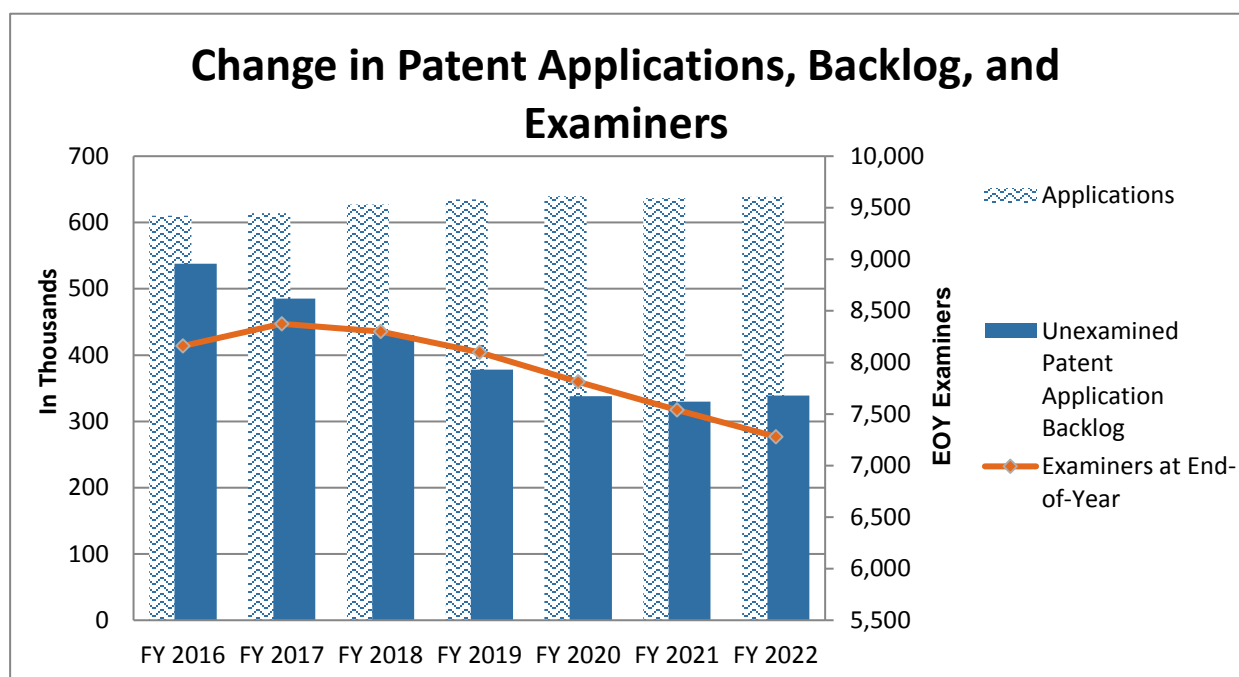
Similar to many businesses, the USPTO maintains operating reserves to mitigate financial risks. The Office has established an OR policy that guides its management and use of the Patent and Trademark ORs. The policy calls for the USPTO to manage the ORs within a range of acceptable balances. Minimum planning 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**

As Figure #1 demonstrates, the USPTO's patent application workload experienced a 0.3% decrease in FY 2015 and then rebounded with a 5.1% growth in FY 2016. For FY 2017-FY 2022 the USPTO is forecasting an average annual growth rate between -0.5% to 2.1%, somewhat lower than originally projected in the FY 2017 President's Budget due to revised real gross domestic product (RGDP) estimates and more conservative estimates of outyear growth. As a result, the USPTO has modified its patent examiner hiring plans for FY 2017 to 600 hires offset by 423 attritions and for FY 2018 to 350 hires offset by 427 attritions. Overall projected hires between FY 2017 and FY 2022 are below the number of projected examiner attritions during those years, resulting in an end of FY 2022 examiner-on-board level of 7,280 compared to 8,169 at the end of FY 2016. This staffing plan brings the examining capacity to an optimal level to address the current patent application inventory and the expected number of new patent applications, however changes to planned hiring levels 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.

**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 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Applications	610,005	614,253	627,274	634,900	639,900	636,600	638,900
Growth Rate	5.1%	0.7%	2.1%	1.2%	0.8%	-0.5%	0.4%
Production Units	627,761	647,695	663,199	667,100	660,700	626,100	610,500
Unexamined Patent Application Backlog	537,655	485,262	429,977	378,200	338,200	329,600	339,000
Ideal Backlog (10 months of apps)	343,740	381,021	390,345	392,700	388,300	367,500	358,100
Performance Measures							
Forward Looking First Action Pendency (Months)	13.8	12.2	10.7	9.5	8.9	9.0	9.0
Avg. First Action Pendency (Months)	16.2	14.8	15.1	10.98	10.7	9.9	9.6
Avg. Total Pendency (Months)	25.3	24.8	23.0	22.7	19.5	19.0	18.5
Examiners at End-of-Year	8,169	8,375	8,300	8,097	7,812	7,540	7,280

To achieve the performance commitments shown above and in the BPAG Chart on pages 8-9, the USPTO has developed its budgetary requirements, and projected its patent fee collections as shown in Figure #1c below.

**Figure #1(c) – Patent Financial Outlook**

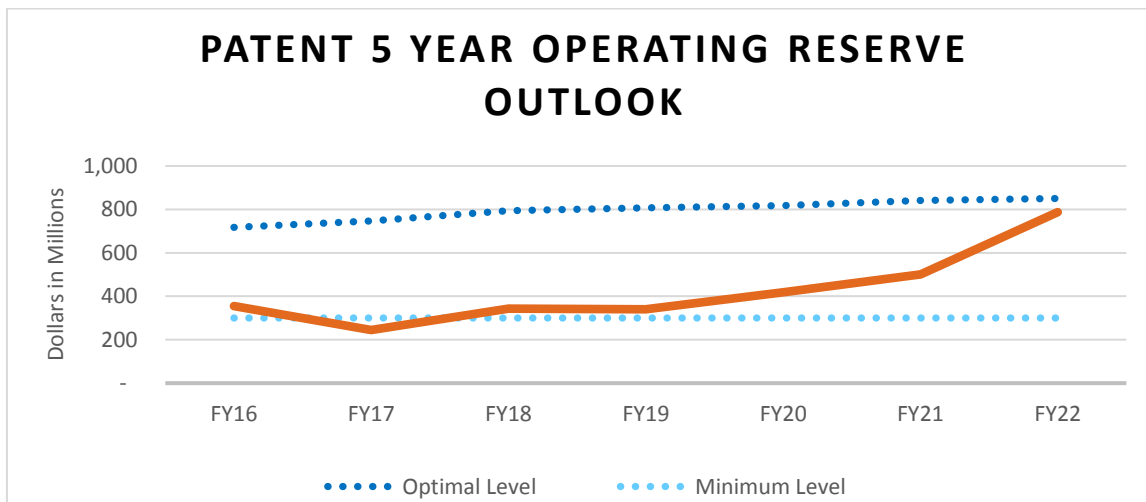
	FY2016	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022
(Dollars in Millions)							
<b>Projected Fee Collections and Other Income</b>							
Low Fee Estimate		2,786	3,103	3,047	3,150	3,237	3,457
<b>Working Fee Estimate</b>	2,821	2,876	3,274	3,229	3,350	3,447	3,689
High Fee Estimate		3,007	3,462	3,476	3,671	3,854	4,184
<b>Budgetary Requirements</b>	2,870	2,986	3,176	3,231	3,273	3,365	3,402
<b>Funding to (+) and from (-) Operating Reserve</b>	(48)	(110)	98	(2)	77	82	287
<b>EOY Operating Reserve Balance</b>	354	245	343	341	418	501	788
<b>Over/(Under) \$300M Minimum Level</b>	54	(55)	43	41	118	201	488
<b>Over/(Under) Optimal Level</b>	(363)	(502)	(451)	(467)	(400)	(341)	(63)

- All of the above fee estimates include approximately \$24-34 million in other income, such as income from reimbursable agreements and recoveries.
- The budgetary requirements for each fiscal year include \$1.9 million transfer to the DOC OIG.
- Note: A report showing the Patent and Trademark Split per Two Way Business Line for FY 2016 through FY 2022 is included in Appendix II.

Projected Fee Collections. Early in FY 2017, the USPTO published a notice of proposed rulemaking to adjust the patent fee structure through regulatory actions. The Office has obtained and incorporated public input on this proposal. The fee collection estimates shown above reflect the USPTO’s patent fee proposal after incorporation of public comments. Currently, the rulemaking is undergoing review prior to being published in final. The USPTO currently anticipates the final rule and new patent fee schedule will be published in the summer of 2017 with an effective date of September 1, 2017.

Budgetary Requirements (the annual estimated operating requirements, excluding deposits in the operating reserve). The patent budgetary requirements increase at a 2.9 percent compound annual growth rate (CAGR) through FY 2022 compared to the FY 2016 level.

**Figure #2 – Patent Operating Reserve**





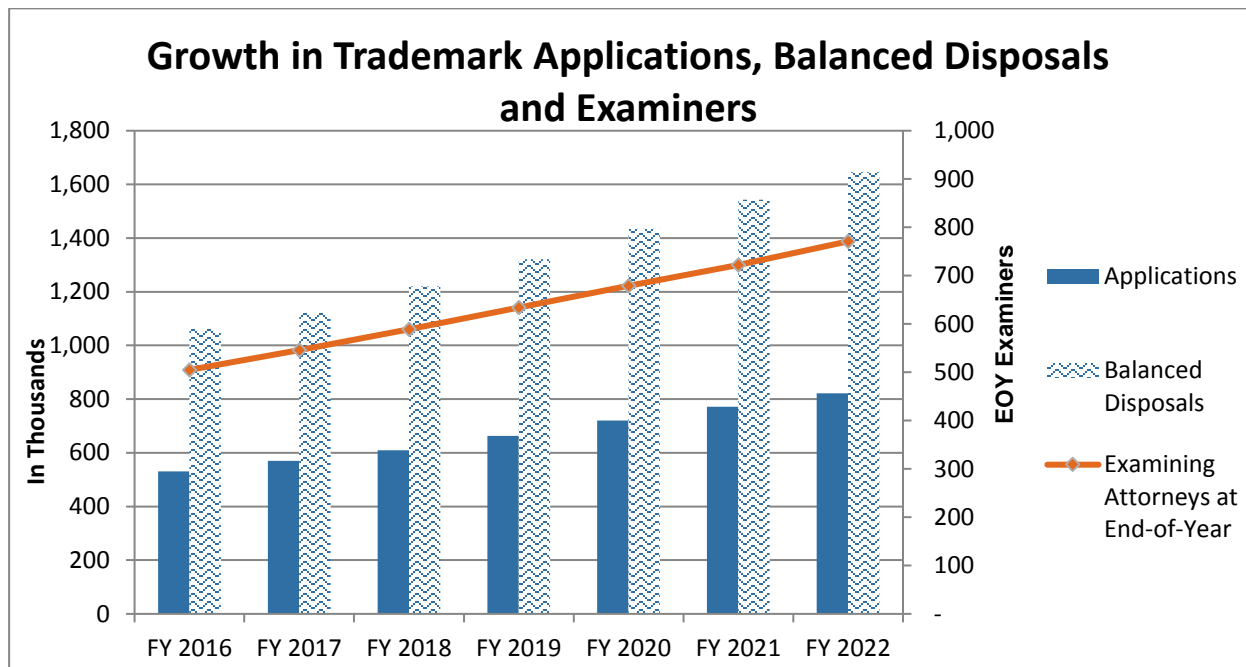
Patent Operating Reserve (Figure #2). The OR mitigates operational risk caused by temporary changes in the economy and the USPTO's operating and financial environments. As previously noted, the USPTO's OR policy calls for the Office to manage its ORs within a range of acceptable balances. For the Patent Business Line, a minimum planning level of approximately \$300 million has been established for FY 2017 and FY 2018. In future years, the USPTO anticipates building the Patent OR to an optimal level of three months operating requirements. The OR level is expected to dip below the minimum target in FY 2017 as the USPTO continues critical investments in areas such as IT modernization. However, assuming implementation of the revised patent fee schedule discussed above, the USPTO would meet the minimal OR in FY 2018 through FY 2022. The USPTO does not currently expect to reach the optimal level of three months during the planning horizon, but approaches it in FY 2022. If the projected Patent OR exceeds the estimated optimal level by 10 percent for two consecutive years, the USPTO would consider lowering fees. However, the Office's ability to do so assumes that its AIA fee setting authority is either extended or made permanent.

### Trademark Business: Five-Year Horizon.

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. As shown in Figure # 3(a) below, trademark applications are expected to grow at an average rate of 7.6 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. Since the recession of 2009, the U.S. economy has been on a slow recovery that has proven to be resilient in the face of persistent economic malaise in Europe, the Middle East, and North Africa. The Budget assumes that the economic recovery will be sustained and, within the next few years, will increase to reach its full potential, which will boost trademark filings to the projected average annual growth rate between six 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 targets.

**Figure #3 – Trademark Business Line: Financial and Performance Outlook**

**Figure #3(a) – Trademark Performance Outlook**



**Figure #3(b) – Trademark Performance Outlook**

Trademarks	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Applications	530,270	570,000	610,000	663,000	720,000	772,000	822,100
Growth Rate	5.2%	7.5%	7.0%	8.7%	8.6%	7.2%	6.5%
Balanced Disposals	1,061,055	1,121,500	1,219,500	1,320,800	1,434,600	1,542,700	1,645,400
<b>Performance Measures</b>							
Avg. First Action Pendency (Months)	3.1	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)	9.8	12.0	12.0	12.0	12.0	12.0	12.0
Examining Attorneys at End-of-Year	505	546	589	634	679	722	771

This five-year framework to achieve these performance targets requires the trademark budgetary resources and projected fee collections as shown in Figure #3(c).

**Figure #3(c) – Trademark Financial Outlook**

	FY2016	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022
(Dollars in Millions)							
<b>Projected Fee Collections and Other Income</b>							
Low Fee Estimate		305	323	328	339	348	363
<b>Working Fee Estimate</b>	284	312	341	359	383	405	434
High Fee Estimate		320	360	391	432	465	507
<b>Budgetary Requirements</b>	279	313	327	345	358	385	402
<b>Funding to (+) and from (-) Operating Reserve</b>	5	(2)	14	14	25	20	32
<b>EOY Operating Reserve Balance</b>	107	105	120	134	159	179	211
<b>Over/(Under) Minimum Level</b>	52	45	60	74	99	119	151
<b>Over/(Under) Optimal Level</b>	14	1	11	19	40	51	77

- All of the above fee estimates include approximately \$5-8 million in other income, such as income from reimbursable agreements and recoveries.
- The budgetary requirements for each fiscal year include \$0.2 million transfer to the DOC OIG.
- Note: A report showing the Patent and Trademark Split per Two Way Business Line for FY 2016 through FY 2022 is included in Appendix II.

Projected Fee Collections: The USPTO completed its FY 2015 biennial fee review, a final rule was published, and adjusted fees went into effect in January 2017. The primary objective of the fee adjustment was to incentivize changes in behavior to improve process efficiencies and timeliness.

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 292,000 applications (classes) by FY 2022 compared to FY 2016 or a 7.6 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. Total annual Trademark budgetary requirements are projected to increase at a 6.3 percent CAGR through FY 2022 compared to the FY 2016 level.

Trademark Operating Reserve. Although budgetary requirements barely exceed fee collections and other income in FY 2017, in FY 2018–FY 2022, fee collections are estimated to exceed budgetary requirements. The trademark OR is estimated to stay above both the minimum and optimal levels during the planning horizon. If the projected OR exceeds the estimated optimal level by 15 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 estimates 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 to the USPTO and the percentage of shared services. For example, 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. Therefore, considering risk factors such as these and information available at this time, the USPTO has estimated that the optimal OR is at least four months of operating expenses.

# 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 USPTO has produced a *Strategic Information Technology Plan for FY 2015-2018*, which contains additional information for the initiatives and systems described below. The plan can be found at <http://www.uspto.gov/about/offices/cio/strategic2.0-web-508.pdf>

## The IT Portfolio Budget

The USPTO requests \$696.8 million in FY 2018 for its IT portfolio, which will address the following priorities in support of the Office's four programs: Patents; Trademarks; IP Policy, Protection and Enforcement (IP PP&E); and Management (including IT infrastructure and IT support services). This total represents a 6.8 percent increase from FY 2017. Of the \$696.8 million, \$372.1 million is associated with operational activities, where \$324.7 million is associated with project and improvement activities.

Operations and Maintenance (O&M) 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 for compensation for all the USPTO mission support staff who have a technology focus, O&M contractor services, hardware maintenance and routine service agreements, software license renewal and purchase, telecommunications, and IT support for the nationwide workforce program.

IT Project Funds. Also known as the USPTO's Capital Improvement Fund (CIF), these funds were grouped together in 2008 in recognition that future success for the USPTO core mission depends upon transparent and continuous funding for IT improvements. CIF resources are administered in accordance with the USPTO's Capital Planning and Investment Control (CPIC) process. The USPTO manages these resources to ensure a sufficient level of funding for IT capital improvements from year-to-year as projects are initiated and completed, new projects are approved, and as adjustments are warranted by other factors, such as the USPTO staffing levels. The CIF consists of the following three components:

- Business Project funds for development and enhancement projects for the IT components of business improvement efforts.
- Enterprise Infrastructure Project funds to maintain the USPTO's IT infrastructure at a level that will support the USPTO's strategic goals and objectives.
- Capital Hardware Replacement funds to replace IT equipment on a regular cycle in order to keep operations and maintenance costs stable and low, to take advantage of vendor releases for new Commercial Off-The-Shelf (COTS) products, and to manage capital hardware replacement projects that will improve business capabilities.

New Hires & Telework Equipment includes the funds required to purchase new 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 2016 through FY 2022 through the Information Resources (IR) sub-programs.

### IT Portfolio by Program

(Dollars in Millions)

	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Patent IR	182.5	174.1	188.0	187.5	191.4	197.3	199.5
Trademark IR	44.7	53.4	42.7	51.0	50.6	51.0	51.7
IP PP&E IR	0.2	0.4	1.0	1.1	1.1	1.1	1.1
Management IR	48.2	48.7	52.4	52.4	53.0	53.5	54.2
Management - IT Infrastructure and IT Support Services	342.4	375.6	412.6	410.0	408.4	469.4	479.2
TOTAL	618.0	652.2	696.8	702.0	704.4	772.4	785.8

For additional information about all IT investments, please see the U.S. IT Dashboard at <https://itdashboard.gov/>.

## PATENT PROGRAM

A key objective in the *USPTO 2014-2018 Strategic Plan* is to ensure 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 to include “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 USPTO initially introduced and deployed industry-leading technologies that offer the following benefits to Patent employees:

- Scalable infrastructure to meet the needs of a growing, geographically dispersed patent examination corps;
- Stable technology to minimize service outages;
- Well-supported tools that provide large support communities; and
- New technologies supporting text-based (XML) functionality.

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

- Document and Application Viewer (DAV): DAV is fully operational and being used by all examiners; eDAN was retired in December 2016. The USPTO plans to implement MADRAS (an interface used to access the image file wrapper system) messaging functionality, and add Global Dossier (GD) features in FY 2017. It will begin to retire MADRAS (customer access and services) in FY 2018.
- PE2E Official Correspondence: The pilot production version was released in December 2016. The USPTO plans to deploy the tool to entire patent examination corps

in FY 2017; integrate with PE2E examiner tools, and begin to retire the legacy Office Action Correspondence Subsystem (OACS) in FY 2018.

- PE2E Search – The pilot version was released in December 2016. In FY 2017, the USPTO plans to deploy search tools to the patent examination corps and implement additional foreign data collections to meet Patent Cooperation Treaty (PCT) minimum search requirements with transactions. The Office will add text highlighting on images, expand functionality, and begin to retire East and West (customer access and services) in FY 2018.
- Presearch: The USPTO will deploy the automated pre-examination search system to pilot audience in FY 2017.
- Cooperative Patent Classification (CPC): The USPTO will replace the existing electronic forum with an enhanced Classification Revision Management System and integrate with PE2E search in FY 2018. In FY 2018, the Office will implement a web-based workflow system to support CPC member offices.
- Global Dossier (GD): The USPTO plans to expand active component services to transmit and receive additional examination document types among offices using Web services in FY 2018. The USPTO will deploy alerting functionality to notify stakeholders when a change is made to a patent application in related family and develop a consolidated citation solution.
- Patent Center: The USPTO will expand and deploy functionality for applicants to file, view, and retrieve patent applications in text-based documents; and will achieve functional parity with legacy systems in FY 2018.
- Patent Application and Location Monitoring (PALM): USPTO will continue the replacement of the legacy PALM system with a more highly available, open standards-based architecture solution.

Patent Legacy Systems. The Patent organization currently relies on over 40 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, extensive commercial databases are accessed by patent examiners as part of their application review process.

The IT goals are to retire these legacy systems as quickly as practicable. However, until that milestone is achieved, the USPTO must ensure stability of the legacy systems to meet both internal and external user needs; improve their scalability to support growing user base and data requirements; upgrade legacy systems to meet legislative and federal mandates and international treaty agreements; and develop 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 2017, the USPTO will complete deployment of internal and external functionality for Derivations, begin development of Appeals functionality, provide data migration from legacy Adjudicated Case Tracking System (ACTS) database to PTAB E2E database, retire legacy Patent Review Processing System (PRPS) system, and integrate PTAB E2E with Fee Processing Next Generation (FPNG) for AIA trial fee payment processing.
- In FY 2018, the USPTO plans to continue development and deployment of Appeals functionality, provide production support for the four AIA trial types, provide Appeals capability to send notifications to stakeholders on their trial cases that involve re-examination procedures, and complete appeals and interferences development in PTAB PE2E.

## TRADEMARK PROGRAM

A key objective in the *USPTO 2014-2018 Strategic Plan* is to modernize IT systems by developing and implementing the TMNG IT system to create full 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:

- **TMNG Examination:** The USPTO will deliver TMNG full examination workflow for all remaining law offices in FY 2017 and incorporate and deploy end-user feedback and bug fixes in FY 2018.
- **TMNG Madrid:** The USPTO will continue to deliver TMNG capabilities supporting Madrid processing in FY 2017 and FY 2018.
- **TMNG Petitions:** The USPTO will deliver initial petitions capability (e.g., petitions to the Director) in FY 2017, and will complete petitions capability in FY 2018.
- **TMNG eFile:** The Office will deliver initial capabilities related to Smart User Interface and an Administrative Console in FY 2017, and will complete capabilities in FY 2018.
- **TTAB Capabilities:** The USPTO will deliver enhanced TTAB capabilities into production and implement the FY 2016 rules package in FY 2017.
- **Legacy Systems:** The USPTO plans to retire Trademark legacy capabilities related to the First Actions System for Trademarks (FAST1), and Trademark In-House Photocomposition System (TIPS) in FY 2017; and in FY 2018, retire legacy applications, services and hardware based on business priorities and progress made with TMNG.

*Trademark Legacy Systems.* The Trademark organization currently relies on 27 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. The IT goals are to plan for and retire these systems between FY 2017 and FY 2018 as replacement functionality is delivered.

*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.

**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](http://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 Trademark Trial and Appeal Board (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 2018 and FY 2019.
- Establish internal processing pipeline for all Trademark documents and all Patent and Trademark published assignments in FY 2018.
- Rebuild stage 1 of OEMS replacement leveraging FPNG, Role-Based Access Control (RBAC), and MyUSPTO (a personalized homepage for USPTO tasks) to enhance the experience and protect customer's Personally Identifiable Information (PII).
- Provide search, display and download capability for Patent File Wrapper images to Patent Examination Data Search (PEDS), and enhance user interface, system performance and architecture.
- Enhance the initial application programming interface (API) to provide more automated access to electronic bulk data and data types (FY 2018).
- Enhance improved user interface and security capabilities, and provide improved and advanced searching capabilities to the Patent Application Information Retrieval (PAIR) bulk data (FY 2017 – 2018).

## IP POLICY, PROTECTION, AND ENFORCEMENT PROGRAM (IP PP&E)

The USPTO's Office of Policy and International Affairs (OPIA) has primary responsibility for the agency's IP policy, protection and enforcement 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:

- Electronic Document Management System (EDMS): Augment the EDMS to support IP PP&E product requirements and support a separate workflow within the EDMS software in FY 2017.
- Big Data: Outline the process to develop an overall readiness score for incoming patent applications in FY 2017; and deliver a solution that assigns each incoming patent

application with a readiness score with the ability for application text indexing, along with query, retrieval, and analysis capabilities in FY 2018.

## MANAGEMENT PROGRAM

The USPTO's seven management 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 21<sup>st</sup> century technology by implementing the Fee Processing Next Generation (FPNG) that aids in the implementation of fee collection process recommendations. Planned activities for FPNG include the following:

- In FY 2017, the USPTO plans to integrate FPNG with the Patent Center, approve and process refunds using next generation technology, and retire Office of Finance Imaging System (OFIS).
- In FY 2018, the Office plans to add the capability to request and track refunds on-line process payments using NG technology, reconcile international payments to international applications. The USPTO is on track retire the Revenue Accounting Management (RAM) system in FY 2018.

Other planned activities to support managerial, legal, administrative, communication and human resources functions include the following:

- Prototype the big data reservoir and implement an initial patent, and/or corporate use case; and expand the reservoir by adding data sets (FY 2017).
- Deliver a robust reporting tool within employee relations/labor relations (ER/LR) case management capability to meet workforce needs (FY 2017).
- Provide compensation budget projection functionality in FY 2017, with budget formulation and budget book functionalities being added in FY 2018.
- Continue to modernize and introduce new efficiencies in the USPTO acquisition process by providing the vendor-side of a vendor portal to enable registration, log-in, etc. in FY 2017; the USPTO-side of the vendor portal to enable solicitations, proposals, evaluations and awards is currently planned for FY 2018.
- Deliver enhancements to the Office of Enrollment and Discipline Information System (OEDIS) to allow grievances on practitioners to be electronically processed and tracked (FY 2017), and to include online registration applications, expanded self-service portal for practitioners, and payment processing (FY 2018).
- Deliver a system to capture employee entry/exit data at all USPTO sites (FY 2017)
- Deliver improved features, design, and content management capabilities for [www.uspto.gov](http://www.uspto.gov) (FY 2017 and FY 2018).
- Deliver a new reporting functionality to capture and compare reasonable accommodation data across fiscal years (FY 2018).
- Implement the newest version of WebTA software, and deliver an update that addresses prioritized feedback from management and unions after adequate testing and deployment (FY 2017).

## 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 deliver compliance to IT mandates.

Planned activities include the following:

In FY 2017 and FY 2018, planned activities include the following:

- Complete Windows 10 Baselines, Automated Information Systems (AIS) readiness, hardware selection, and beta testing ahead of laptop and desktop replacement (FY 2017);
- Replace approximately 3,500 universal laptops (ULs) and universal desktops (UDs) (FY 2017); and complete remaining replacements in FY 2018.
- Improve data center operations by completing the installation of a more efficient cooling solution (FY 2017); and completing overhead cable tray implementation (FY 2018).
- Continue expansion of USPTO's Business Continuity/Disaster Recovery (BC/DR) capability (FY 2017 and FY 2018).
- Complete end-of-life equipment upgrades for USPTO network (PTONet) through replacement of data centers network replacement (FY 2017) and deployment of the perimeter network (FY 2018).

## Program Changes

Specific IT program changes can be found in the Program Change narrative for the Information Resources Sub-Programs found in each of the four Program sections, plus the IT Infrastructure and Support Services Sub-Program found in the Management Program. The following table shows the total program change amounts for FY 2018 and the out years for each of these sub-programs.

### **IT Portfolio Program Changes**

(Dollars in Millions)

	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>
Patent IR	7.8	4.3	4.3	6.3	4.5
Trademark IR	(13.0)	(5.9)	(7.6)	(8.5)	(9.2)
IP PP&E IR	0.6	0.7	0.7	0.7	0.7
Management IR	2.5	1.5	1.1	0.5	0.1
Management - IT Infrastructure and IT Support Services	23.9	13.9	4.3	56.5	57.6
<b>TOTAL</b>	<b>21.8</b>	<b>14.5</b>	<b>2.8</b>	<b>55.4</b>	<b>53.7</b>

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

- Patent Program, Sub-Program #3 – Patent Information Resources
- Trademark Program, Sub-Program #3 – Trademark Information Resources
- IP PP&E Program, Sub-Program #5 – IP PP&E Information Resources
- Management Program, Sub-Program #5 – Management Information Resources
- Management Program, Sub-Program #6 – IT Infrastructure and IT Support Services

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# **TOTAL BUDGET AND FINANCING**

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## Exhibit 4A – Program Increases, Decreases and Terminations

**Department of Commerce**  
**U.S. Patent and Trademark Office**  
**Salaries and Expenses Appropriation**  
**FY 2018 PROGRAM INCREASES / DECREASES / TERMINATIONS**  
 (Dollar amounts in thousands)  
 (Largest to Smallest)

### Increases

Page No. in CJ	Budget Program	Activity/Subactivity	FTE	Budget Authority
100	Management Program	IT Infrastructure and IT Support Services	0	23,864
101	Management Program	Cross Cutting Services / Miscellaneous General Expense (MGE)	0	21,431
55	Patent Program	Patent Information Resources	3	7,779
48	Patent Program	Patent Examining	-16	5,158
68	Trademark Program	Trademark Examining	36	2,907
99	Management Program	Management Information Resources	0	2,507
85	Intellectual Property Policy, Protection and Enforcement Program	IP PP&E Information Resources	0	641
52	Patent Program	Patent Trial and Appeals	2	458
70	Trademark Program	Trademark Trial and Appeals	1	236
98	Management Program	Human Resources Management and Administrative Services	1	106
Subtotal, Increases			26	65,087

### Decreases

Page No. in CJ	Budget Program	Activity/Subactivity	FTE	Budget Authority
72	Trademark Program	Trademark Information Resources	0	-13,006
Subtotal, Decreases			0	-13,006

### Terminations

NA	NA	-	-	-
Subtotal, Terminations			0	0

Total, Increases, Decreases and Terminations			26	52,081
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## Exhibit 5 – Summary of Resource Requirements

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

Page No.	Positions	FTE	Total Obligations
FY 2017 Current Plan	13,405	12,769	3,296,893
FY 2018 Adjustments to base:	-	454	151,901
FY 2018 Base	13,405	13,223	3,448,793
plus: 2018 Program changes	33	26	52,081
FY 2018 Estimate	13,438	13,249	3,500,874

		FY 2016		FY 2017 Current Plan		FY 2018 Base		FY 2018 Estimate		Increase/(Decrease) over 2018 Base	
		Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount
<b>Comparison by activity:</b>											
Patents	Pos./Obl.	11,565	2,827,232	12,050	2,943,164	12,050	3,075,955	12,028	3,130,601	(22)	54,646
	FTE	11,188		11,496		11,878		11,867		(11)	
Trademarks	Pos./Obl.	1,083	261,467	1,169	294,713	1,169	310,709	1,224	307,107	55	(3,602)
	FTE	991		1,103		1,163		1,201		37	
IP Policy Protection and Enforcement	Pos./Obl.	294	57,910	186	59,016	186	62,129	186	63,166	0	1,037
	FTE	256		170		181		181		0	
Total Obligations	Pos./Obl.	12,942	3,146,607	13,405	3,296,893	13,405	3,448,793	13,438	3,500,874	33	52,081
	FTE	12,436		12,769		13,223		13,249		26	
Adjustments for:											
	Offsetting Fee Collections		(3,063,247)		(3,158,427)		(3,586,193)		(3,586,193)		-
	Other Income / Recoveries		(42,344)		(29,250)		(29,250)		(29,250)		-
	Operating Reserve, start of year		(504,353)		(461,238)		(350,022)		(350,022)		-
	Operating Reserve, end of year <sup>1</sup>		461,238		337,850		514,672		462,591		(52,081)
	Budget Authority Temporarily Unavailable <sup>1</sup>		-		6,086		-		-		-
	<b>Total Budget Authority</b>		(2,100)		(8,086)		(2,000)		(2,000)		0
Financing from transfers / other:											
	Amounts Temporarily Unavailable for Spending <sup>1</sup>		-		6,086		-		-		-
	Transfer to other accounts (+)		2,100		2,000		2,000		2,000		0
	<b>Total Net Appropriation</b>		0		0		0		0		0

<sup>1</sup>POT assumes that when FY17 is finalized, the \$6M shown on the Fee Collections - Temporarily Unavailable line will become available and therefore has not rolled the \$6M loss through the operating reserve balance into FY17.



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

		FY 2018		FY 2019		FY 2020		FY 2021		FY 2022	
		Estimate		Estimate		Estimate		Estimate		Estimate	
<b>Comparison by activity:</b>		Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount
Patents	Pos./Obl.	12,028	3,130,601	11,806	3,185,179	11,504	3,226,151	11,213	3,316,649	10,940	3,352,971
	FTE	11,867		11,741		11,479		11,182		10,902	
Trademarks	Pos./Obl.	1,224	307,107	1,285	325,149	1,350	337,512	1,411	364,138	1,475	380,429
	FTE	1,201		1,258		1,321		1,384		1,447	
IP Policy Protection and Enforcement	Pos./Obl.	186	63,166	186	63,912	186	64,808	186	67,289	186	68,697
	FTE	181		181		181		181		181	
Total Obligations	Pos./Obl.	13,438	3,500,874	13,277	3,574,240	13,040	3,628,472	12,810	3,748,076	12,601	3,802,096
	FTE	13,249		13,180		12,981		12,747		12,530	
Adjustments for:											
	Offsetting Fee Collections		(3,586,193)		(3,558,809)		(3,703,950)		(3,823,486)		(4,093,708)
	Other Income / Recoveries		(29,250)		(29,250)		(29,250)		(29,250)		(29,250)
	Operating Reserve, start of year		(350,022)		(462,591)		(474,410)		(577,138)		(679,799)
	Operating Reserve, end of year		462,591		474,410		577,138		679,799		998,660
<b>Total Budget Authority</b>			(2,000)		(2,000)		(2,000)		(2,000)		(2,000)
Financing from transfers / other:											
	Transfer to other accounts (+)		2,000		2,000		2,000		2,000		2,000
<b>Total Net Appropriation</b>			(0)		0		0		0		0

## Exhibit 7 – Summary of Financing

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

	FY 2016	FY 2017 Current Plan	FY 2018 Base	FY 2018 Estimate	Increase/ Decrease/ over 2018 Base
Total Obligations	3,146,607	3,296,893	3,448,793	3,500,874	52,081
Offsetting collections from:					
Non-Federal sources / User Fee Collections	(3,063,247)	(3,158,427)	(3,586,193)	(3,586,193)	-
Other Income	(6,078)	(7,250)	(7,250)	(7,250)	-
Adjustments for:					
Recoveries	(36,266)	(22,000)	(22,000)	(22,000)	-
Unobligated balance, start of year	(504,353)	(461,238)	(350,022)	(350,022)	-
Unobligated balance, end of year <sup>1</sup>	461,238	350,022	514,672	462,591	(52,081)
Budget Authority Temporarily Unavailable <sup>1</sup>		(6,086)			
<b>Total Budget Authority</b>	(2,100)	(8,086)	(2,000)	(2,000)	0
Financing:					
Amounts Temporarily Unavailable for Spending <sup>1</sup>	-	6,086	-	-	-
Transfer to other accounts (+)	2,100	2,000	2,000	2,000	0
<b>Net Appropriation</b>	0	0	0	0	0

<sup>1</sup> PTO assumes that when FY17 is finalized, the \$6M additional Budget Authority lost in FY2017 will become available and therefore has not rolled the \$6M loss through the operating reserve balance into FY17.

## Exhibit 8 – Adjustments to Base

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

	<u>FTE</u>	<u>Amount</u>
<b>Adjustments to Base:</b>		
2017 Pay raise		10,780
2018 Pay raise		21,336
Full-year cost in 2018 of positions financed for part-year in 2017	454	57,246
Other Compensation Adjustments		32,104
Change in compensable days		-
Civil Service Retirement System (CSRS)		(734)
Federal Employees Retirement System (FERS)		1,436
Thrift Savings Plan		210
Federal Insurance Contribution Act (FICA) - OASDI		615
Health insurance		4,308
Post-Retirement Benefits to OPM		4,476
Travel		126
Rental payments to GSA		1,773
Postage		146
Printing and reproduction		2,679
DOC Working Capital Fund		(4,566)
General Pricing Level Adjustment		19,966
		151,901
<b>Total, adjustments to base</b>	<b>454</b>	<b>151,901</b>

## Exhibit 9 – Justification of Adjustments to Base

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

	FTE	Amount \$000	FTE	Amount \$000
<u>Pay Raises</u>				10,780
Full-year cost of 2017 pay increase and related costs:				
A general pay raise of 2.1% to be effective January 1, 2017.				
Total cost in 2018 of 2017 pay increase		43,121		
Less amount funded in 2017		(32,341)		
Amount requested in 2018 to provide full-year cost of 2017 pay increase		10,780		
 2018 pay increase and related costs:				 21,336
A general pay raise of 1.9% is assumed to be effective January 1, 2018.				
Total cost in 2018 of pay increase		21,336		
Payment to Working Capital Fund		0		
Total, adjustment for 2018 pay increase		21,336		
 <u>Full-year cost in 2018 of positions financed for part-year in 2017</u>			 454	 57,246
An increase of \$57,246k is required to fund the full-year cost in 2018 of positions financed for part-year in 2017 as the number of net FTE increased by 454. The computation follows:				
 Cost of personnel compensation increase of 454 FTE	 454	 43,417		
Adjustment for 2018 pay raise for 3/4 of year		619		
Add'l amount required for personnel compensation	454	44,036		
Benefits	0	13,211		
Total adjustment-to-base	454	57,246		

	FTE	Amount \$000	FTE	Amount \$000
<u>Other Compensation Adjustments</u>				32,104
This adjustment reflects the net difference between USPTO detailed Compensation Model and the prescribed formulation. As a result of increased hires, WIGI, and accelerated promotions for Patent hires, USPTO has a higher requirement than could be absorbed through the formulation process. The Compensation Model calculates on an individual basis compensation including factoring in WIGI, promotions, hires, attritions, and lapses.				
<u>Changes in compensable days</u>				0
There is no change in compensable days from FY2017 to FY2018 (remains at 260) which results in no additional costs.				
<u>Civil Service Retirement System (CSRS)</u>				(734)
The number of employees covered by the Civil Service Retirement System (CSRS) continues to drop as positions become vacant and are filled by employees who are covered by the Federal Employees Retirement System (FERS). The estimated percentage of payroll for employees covered by CSRS will drop from 2.5% in 2017 to 1.8% in 2018. Contribution rates will remain at 7%.				
Regular:				
2018		\$1,497,273.975 x 1.8 x .07	1,887	
2017		\$1,497,273.975 x 2.5 x .07	2,620	
			(734)	
Total adjustment-to-base			(734)	
<u>Federal Employee Retirement System (FERS)</u>				1,436
The number of employees covered by FERS continues to rise as employees covered by CSRS leave and are replaced by employees covered by FERS. The estimated percentage of payroll for employees covered by FERS will rise from 97.5% in 2017 to 98.2% in 2018. The contribution rate for regular employees is 13.7% for 2017 and 13.7% for 2018.				
Regular:				
2018		\$1,497,273.975 x .982 x .137	201,434	
2017		\$1,497,273.975 x .975 x .137	199,998	
			1,436	
Total adjustment-to-base			1,436	

	FTE	Amount \$000	FTE	Amount \$000
<u>Thrift Savings Plan</u>				210
The cost of agency contributions to the Thrift Savings Plan will also rise as FERS participation increases. The contribution rate is expected to be 2%.				
Regular:				
2018		\$1,497,273.975 x .982 x .02	29,406	
2017		\$1,497,273.975 x .975 x .02	29,197	
			<u>210</u>	
Total adjustment-to-base				
			210	
<u>Federal Insurance Contribution Act (FICA)</u>				615
As the percentage of payroll covered by FERS rises, the cost of OASDI contributions will increase. In addition, the maximum salary subject to OASDI tax will increase from \$127,200 in 2017 to \$130,950 in 2018. The OASDI tax rate will remain at 6.2% in both 2017 and FY 2018.				
2018		\$1,497,273.975 x .982x .9458 x .062	86,220	
2017		\$1,497,273.975 x .975 x .9458 x .062	85,605	
			<u>615</u>	
Total adjustment-to-base				
			615	
<u>Health Insurance</u>				4,308
Effective January 2017, this bureau's contribution to Federal employees' health insurance premiums increased by 4.1%. Applied against the 2017 estimate of \$105,080,799 the additional amount required is \$4,308k.				
<u>Post-Retirement Benefits to OPM</u>				4,476
The USPTO is required to fund the present costs of post-retirement benefits for the Federal Employees Health Program (FEHB), Federal Employees Group Life Insurance and the Civil Service Retirement System (CSRS) and Federal Employees Retirement System pension liabilities. Funds for this purpose are transferred to the Office of Personnel Management. The required increase reflects the increase in retiree medical costs along with the increase in number of employees.				
<u>Travel</u>				126
The standard OMB economic inflation factor of 2.0% was utilized.				
<u>Rental Payments to GSA</u>				1,773
GSA rates are projected to increase 2.0% in 2018. This percentage was applied to the 2017 estimate to arrive at an increase of \$1,773k.				

	FTE	Amount \$000	FTE	Amount \$000
<u>Postage</u>				
Effective February 2010, the Postal Service implemented a rate increase of 9.5%. This percentage was applied to the 2017 estimate of \$3,387k.				146
<u>GPO / Non GPO Printing</u>				
The standard OMB economic inflation factor of 2.0% was utilized.				2,679
<u>Working Capital Fund – (DOC Departmental Management)</u>				(4,566)
<u>General Pricing Level Adjustment</u>				19,966
This request applies OMB economic assumptions for FY 2018 to object classes where the prices the government pays are established through the market system. Inflation Factors at an average of 2.0% were applied to transportation of things, rental payments to others, communications, utilities and miscellaneous charges; other contractual services; supplies and materials and equipment.				
Subtotal, Other Changes			454	151,901
Total, Adjustments to Base				

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# **PATENT PROGRAM**

## Exhibit 10 – Program Performance: Total Obligations

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

Activity: Patent Program  
 Subactivity: Patents

Sub-Activity:		FY 2016		FY 2017 Current Plan		FY 2018 Base		FY 2018 Estimate		Increase/ (Decrease)	
		Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount
Patent Examining	Pos./Obl	10,068	1,950,873	10,359	2,012,427	10,359	2,108,143	10,327	2,113,301	(32)	5,158
	FTE	9,874		9,924		10,209		10,193		(16)	
Patent Trial and Appeals	Pos./Obl	438	77,630	439	86,780	439	93,018	443	93,476	4	458
	FTE	373		415		438		440		2	
Patent Information Resources	Pos./Obl	244	182,479	255	174,078	255	180,248	260	188,027	5	7,779
	FTE	227		238		257		259		3	
Subtotal Direct	Pos./Obl	10,750	2,210,982	11,053	2,273,286	11,053	2,381,410	11,030	2,394,804	(23)	13,395
	FTE	10,474		10,577		10,904		10,892		(12)	
Management Goal - Allocated	Pos./Obl	815	616,249	998	669,878	998	694,545	999	735,797	1	41,251
	FTE	714		918		975		975		1	
<b>Total</b>	Pos./Obl	11,565	2,827,232	12,050	2,943,164	12,050	3,075,955	12,028	3,130,601	(22)	54,646
	FTE	11,188		11,496		11,878		11,867		(11)	

## Exhibit 12 – Justification of Patent Program and Performance

### BUDGET PROGRAM: Patent Program

For FY 2018, the USPTO requests a total of \$3,130.6 million and 11,867 FTE for the Patent Program.

<b>PROGRAM BUDGET PROFILE</b>							
(Dollars in thousands)							
<b>Funding Requirements by Sub Program</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>
Patent Examining	\$1,950,873	\$2,012,427	\$2,113,301	\$2,178,111	\$2,216,670	\$2,208,357	\$2,222,967
Patent Trial and Appeals	\$77,630	\$86,780	\$93,476	\$95,229	\$97,133	\$99,920	\$103,036
Patent Information Resources	\$182,479	\$174,078	\$188,027	\$187,530	\$191,383	\$197,314	\$199,519
Management Goal - Allocated	\$616,249	\$669,878	\$735,797	\$724,310	\$720,965	\$811,058	\$827,448
<b>TOTAL</b>	<b>\$2,827,232</b>	<b>\$2,943,164</b>	<b>\$3,130,601</b>	<b>\$3,185,179</b>	<b>\$3,226,151</b>	<b>\$3,316,649</b>	<b>\$3,352,971</b>
<b>FTE</b>	<b>11,188</b>	<b>11,496</b>	<b>11,867</b>	<b>11,741</b>	<b>11,479</b>	<b>11,182</b>	<b>10,902</b>

### PROGRAM JUSTIFICATION

#### Patent Program Overview

The Patent Program is dedicated to carrying out the Office’s mission to deliver “...high quality and timely examination of patent ... applications...” in accordance with laws, regulations and practices, and consistent with the strategies and objectives in the *USPTO 2014-2018 Strategic Plan*. The Patent Program, through its strategic goal to optimize patent quality and timeliness, supports the Department’s strategic goal to foster a more innovative U.S. economy – one that is better at inventing, improving, and commercializing products and technologies that lead to higher productivity and competitiveness.

The Patent Program objectives recognize that innovation is the foundation of American economic growth and national competitiveness. Economic growth in advanced economies like that of the United States is driven by creating new and better ways of producing goods and services, a process that triggers new and productive investments.

The Patent Program also supports the Agency Priority Goal to Advance Commercialization of New Technologies by Reducing Patent Application Pendency and Backlog:

Improve Patent Processing Time and Quality. By September 30, 2017, the Patent and Trademark Office will reduce patent pendency to less than 14 months for first action

and less than 23 months for total pendency from end of fiscal year 2015 results of 17.3 and 26.6 months. The priority goal supports the Department of Commerce's longer term goal focused on achieving 10 months for first action pendency and 20 months for total pendency by FY 2019.

These goals are being met by achieving the objectives set forth in the *USPTO 2014-2018 Strategic Plan*. Objectives and summary progress through the end of FY 2016 are as follows:

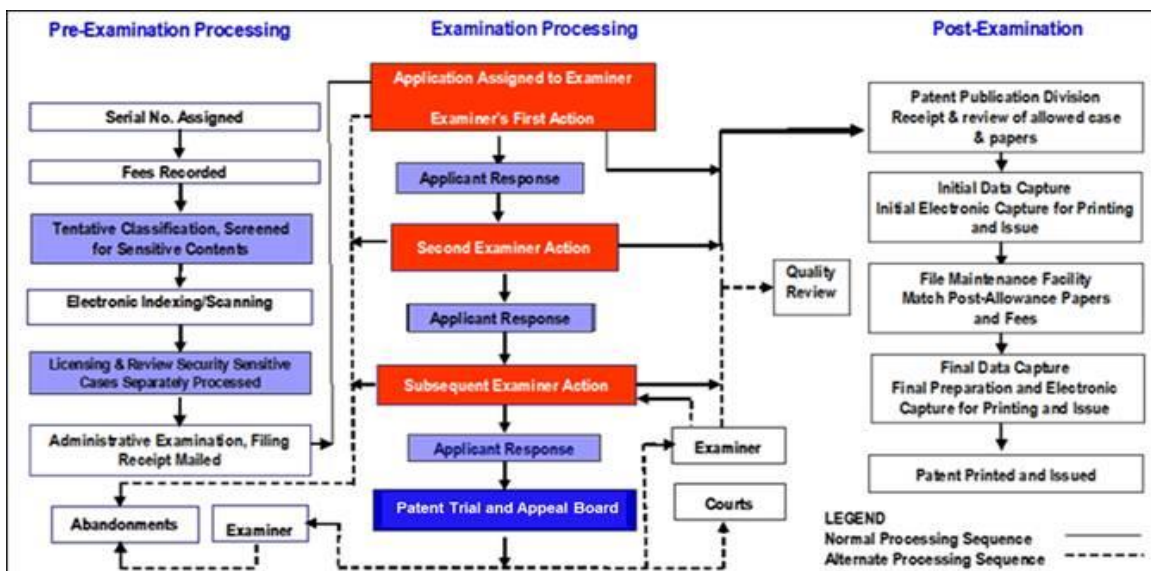
- Refine Optimal Patent Pendency:
  - Deployed a redesigned Patent Data Visualization Center in response to stakeholder feedback. The Patent Dashboard provides information on major metrics, many of which are being provided for the first time as part of our continuing efforts to be open and transparent about our operations and to provide useful information to our stakeholders in a timely manner.
- Increase Efficiencies and Patent Examination Capacity to Align with the Optimal Pendency:
  - Between the beginning of FY 2010 through September 2016, first action pendency was reduced from 25.8 months to 16.2 months; total pendency was reduced from 34.6 months to 25.3 months; and the backlog of unexamined applications was reduced from 718,835 to 537,655. Continued to hire and train the required number of examiners to align with optimal pendency.
- Increase International Cooperation and Work Sharing:
  - Continued to pursue international collaboration and work sharing, which is a critical component of an increasingly global IP system; for example, by bilateral collaborative search pilots and electronic sharing of information and documents.
- Continue to Enhance Patent Quality:
  - Established the Enhanced Patent Quality Initiative (EPQI), which focuses on improving patent operations and procedures to provide the best possible work products, to enhance the customer experience, and to improve existing quality metrics. This resulted in the launch of 12 programs based on stakeholder feedback. Currently developing new, world-class patent quality metrics using existing and new data.
- Ensure Optimal IT Service Delivery to All Users:
  - Continued to deploy the USPTO's PE2E system, which ultimately will provide examiners with an improved way of processing patent applications, integrating activities currently managed across separate systems into a central place, and leveraging modern technology. Deployed the next generation of examiner tools with the Docket and Application Viewer (DAV) to the Patent Corps, and continued a multi-pronged effort to stabilize the Patent Application Monitoring (PALM) system.
- Continue and Enhance Stakeholder and Public Outreach:
  - Hosted/participated in numerous conferences, and internal and public informational and training sessions, as well as expanded use of the USPTO website to further enhance and promote external outreach on and other support resources for users. Leveraged the Regional Office areas to promote the availability of educational resources for applicants and other users.

- Maintain the PTAB's Ability to Provide Timely and High Quality Decisions:
  - Met all statutory deadlines under the AIA, and maintained six-month average pendency for reexamination proceedings.
  - Continued to address AIA trial workload, kept pace with the incoming ex parte appeals, and achieved a reduction in the backlog.

Base Justification

The patent process consists of the activities shown on the following schematic and major functions, as described below, with budget estimates for sub-programs allocated according to processing functions.

PATENT PROCESS



**Sub-Program #1: Patent Examining**

**Patent Examining (\$2,108.1 million and 10,209 FTE)**

*Patent Pre-Examination Processing: \$144.2 million and 161 FTE*

When a patent application is received at the USPTO, the Office conducts an administrative review to determine compliance with requirements for form, content, adequacy, and payment of appropriate fees. Currently, approximately 97 percent of patent applications are filed electronically. If the application is filed in paper form, it is converted to an electronic image, and from this point forward, the application is managed electronically, including 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.

Most applications are subject to the pre-grant publication process, whereby the patent application is published 18 months after the earliest effective filing date sought regardless of whether a first action has been taken by the Office, as is the norm in most patent examining countries. Where an applicant certifies that he/she has not and will not file the invention disclosed in the attached application in another country or under a multilateral international

agreement that requires 18-month publication, the USPTO will not publish the application unless and until a patent is granted (currently, about six percent of applicants opt out). Where the applicant does not make such a certification, the USPTO publishes the application at 18 months from its earliest effective filing date sought to provide an English language publication for those applications whose counterpart applications are already being published abroad (generally in languages other than English).

*Patent Examination Processing: \$1,877.2 million and 10,020 FTE*

In this stage, the application is placed on the docket of one of the UPR or Design patent examiners working in one of the nine technology centers. During the examination process, the patent examiner compares the application's subject matter to a large body of technological information to determine the patentability of the claimed invention, whether or not the invention is new, useful, non-obvious, adequately described or enabled, and claimed in definite terms that are clearly understood by individuals knowledgeable in that subject matter.

During the search and patentability review, the patent examiner generally performs a first and possibly second office action on the merits, which can include any of the following actions: office action of rejection, final rejection, abandonment or notice of allowance. Patent Information Management activities are carried out within the Patent organization and provide patent scientific, technical, and search support. Patent Information Management also provides examiners with access to over one thousand commercial databases containing non-patent technical literature documents.

Quality and Training, under the direction of a Deputy Commissioner for Patent Quality, are integral parts of the entire examination process, and the resources required for a quality examination and quality patent are integrated with the total examination costs. This includes the quality assurance program whereby a random sample of patent examiners' work products are reviewed to provide timely, reliable and meaningful indicators of examination quality. This sub-activity also provides the resources for carrying out the initiatives identified in the *USPTO 2014-2018 Strategic Plan* and in this Budget.

With the increased visibility and recognition of the importance of IP to our economy, the sustainable funding model created by the AIA, and near steady state optimal pendency, the USPTO has a unique opportunity to increase dedication to quality excellence. The USPTO developed the EPQI that will focus on providing the best work products and services possible. This initiative includes expanding and refining examiner training and guidance, improving the customer experience with an emphasis on excellent customer service by delivering customer service training to all Patent organization employees, and engaging the public by creating partnerships that educate and seek input.

Additionally, the USPTO provides its patent examiners detailed training in efficient interview techniques and in compact prosecution. This training aims to streamline the examination process by working with the applicants to identify and resolve issues early in the process, thereby reducing patent application backlogs and overall pendency.

Policy and Legal activities are critical components of the patent examination process. These components include establishing patent examination and documentation policy standards; serving as the authority on patent laws, rules, and examining practices and procedures; implementing court decisions; publishing rules for public comment and then publishing final

rules; and maintaining the Manual of Patent Examining Procedure. Policy and legal activities include processing petitions and Patent Cooperation Treaty (PCT) legal advisory activities.

International Patent Cooperation (IPC) programs and initiatives, that enable IP protections for U.S. innovators abroad, are a reflection of the strong commitment that the USPTO has to the internal and external stakeholders in the IP community to improve the international patent system, in two basic respects – increasing certainty of IP rights and reducing costs for U.S. and international innovators. The USPTO aims to do this by continually improving the efficiency of our patent examination processes and IT tools, and evaluating and improving on unnecessary or burdensome filing processes by, for example, instituting reciprocal agreements. These programs and initiatives will not only make the international filing and prosecution system more efficient between offices and users, but also for U.S. examiners, as well as examiners around the world. These improvements will benefit all economies, most importantly the U.S. economy, by fostering increased innovation and subsequent job creation.

*Patent Post-Examination Processing: \$86.7 million and 28 FTE*

Patent issuance occurs after the examiner has allowed the application, and the issue fee has been paid. The application is then 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.

## **Sub-Program #2: Patent Trials and Appeals**

### **Patent Trials and Appeals (\$93.0 million and 438 FTE)**

If the applicant has received two actions from the examiner and disagrees with the position of the examiner, the applicant can appeal the examiner's decision by filing a notice of appeal and an appeal brief. The examiner may file an examiner's answer to the appeal brief. A streamlined review procedure has been instituted for all briefs filed in appeals in patent applications, as well as appeals in both ex parte and inter partes reexamination proceedings. PTAB has the sole responsibility for determining whether appeal briefs comply with the formality requirements governing the content of these briefs. Under the streamlined procedure, only the PTAB conducts a compliance review of appeal briefs when the appeal brief is filed.

The PTAB will continue to determine priority and patentability of inventions in interferences in appropriate cases.

Under the AIA, the PTAB conducts inter partes reviews, post grant reviews, the transitional program for covered business method patents, and derivation proceedings.

## **Sub-Program #3: Patent Information Resources**

### **Patent Information Resources (\$180.2 million and 257 FTE)**

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

## **Sub-Program #4: Management Goal – Allocated**

### **Management Goal – Allocated (\$694.5 million and 975 FTE)**

This sub-program 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 Management Goal while the costs are allocated to Patents based on the USPTO's Activity Based Information (ABI) analysis and results.

## **RISK ASSESSMENT**

Fostering innovation is a crucial driver of job creation, economic recovery, and prosperity. Reducing patent pendency and the backlog of patent applications awaiting examiner action is an Administration priority and promotes fostering innovation. If the USPTO is unable to continue with the patent pendency and unexamined patent application backlog reduction program, then American innovators and businesses would not obtain the legal rights associated with the issuance of a quality patent in a timely manner in order to reap the benefits of their innovations. The longer it takes for the USPTO to review a patent application, the longer it will take for an applicant to receive the patent rights that ultimately may be granted for the invention.

## **INFLATIONARY ADJUSTMENTS**

The USPTO requires a net increase of 383 FTE and \$132.8 million to fund adjustments to current programs for the Patent Program activities. This increase will provide the annualization of the FY 2017 FTE increase and inflationary increases for non-labor activities, including service contracts, utilities, lease payments, and rent charges from the General Services Administration (GSA).

## **PATENT PERFORMANCE GOALS AND MEASURES**

Historical and projected metrics can be found in the BPAG Chart on pages 8-9, and on the Data Visualization Center at <http://www.uspto.gov/about/stratplan/dashboards.jsp>



## Exhibit 13 – 15: Patent Program Changes by Sub-Program

**Department of Commerce**  
**U.S. Patent and Trademark Office**  
**PATENT PROGRAM**  
**INCREASES FOR 2018**  
 (Dollar amounts in thousands)

		2018 Base		2018 Estimate		Increase (Decrease)	
		Personnel	Amount	Personnel	Amount	Personnel	Amount
<b>Direct Total, Patent Program</b>	<b>Pos./Obl.</b>	<b>11,053</b>	<b>2,381,410</b>	<b>11,030</b>	<b>2,394,804</b>	<b>(23)</b>	<b>13,395</b>
	<b>FTE</b>	<b>10,904</b>		<b>10,892</b>		<b>(12)</b>	
<b>Patent Examining</b>	<b>Pos./Obl.</b>	<b>10,359</b>	<b>2,108,143</b>	<b>10,327</b>	<b>2,113,301</b>	<b>(32)</b>	<b>5,158</b>
	<b>FTE</b>	<b>10,209</b>		<b>10,193</b>		<b>(16)</b>	
	<b>Workload-Driven</b>						
Patent Examiner New Hires	Pos./Obl.					(32)	(5,015)
	FTE					(16)	
Overtime / Production Incentives	Pos./Obl.					-	3,395
	FTE					-	
Patent Cooperation Treaty (PCT) Searching Contract	Pos./Obl.					-	3,448
	FTE					-	
Workload Processing Contracts	Pos./Obl.					-	1,729
	FTE					-	

		FY 2018 Base		FY2018 Estimate		Increase/(Decrease)	
		Personnel	Amount	Personnel	Amount	Personnel	Amount
<b>Quality</b>							
Patent Quality Improvement	Pos./Obl.					-	1,218
	FTE					-	
Technical Training and Expertise	Pos./Obl.					-	383
	FTE					-	
<b>Patent Trial and Appeals</b>	<b>Pos./Obl.</b>	<b>439</b>	<b>93,018</b>	<b>443</b>	<b>93,476</b>	<b>4</b>	<b>458</b>
	<b>FTE</b>	<b>438</b>		<b>440</b>		<b>2</b>	<b>-</b>
PTAB Production and AIA Workload	Pos./Obl.					4	458
	FTE					2	-
<b>Patent Information Resources</b>	<b>Pos./Obl.</b>	<b>255</b>	<b>180,248</b>	<b>260</b>	<b>188,027</b>	<b>5</b>	<b>7,779</b>
	<b>FTE</b>	<b>257</b>		<b>259</b>		<b>3</b>	
Patent Business Projects	Pos./Obl.					5	7,779
	FTE					3	

**Department of Commerce  
U.S. Patent and Trademark Office  
PATENT PROGRAM  
INCREASES FOR 2018 - 2022**  
(Dollar amounts in thousands)

		FY 2018		FY 2019		FY 2020		FY 2021		FY 2022	
		Increase (Decrease)		Increase (Decrease)		Increase (Decrease)		Increase (Decrease)		Increase (Decrease)	
		Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount
<b>Direct Total, Patent Program</b>	<b>Pos./Obl.</b>	<b>(23)</b>	<b>13,395</b>	<b>(245)</b>	<b>(2,322)</b>	<b>(547)</b>	<b>(37,188)</b>	<b>(838)</b>	<b>(103,251)</b>	<b>(1,111)</b>	<b>(150,528)</b>
	<b>FTE</b>	<b>(12)</b>		<b>(133)</b>		<b>(396)</b>		<b>(696)</b>		<b>(974)</b>	
<b>Patent Examining</b>	<b>Pos./Obl.</b>	<b>(32)</b>	<b>5,158</b>	<b>(250)</b>	<b>(7,317)</b>	<b>(555)</b>	<b>(42,441)</b>	<b>(849)</b>	<b>(111,196)</b>	<b>(1,127)</b>	<b>(157,733)</b>
	<b>FTE</b>	<b>(16)</b>		<b>(140)</b>		<b>(402)</b>		<b>(705)</b>		<b>(987)</b>	
	<b>Workload</b>										
Patent Examiner New Hires	Pos./Obl.	(32)	(5,015)	(250)	(25,318)	(555)	(61,385)	(849)	(104,445)	(1,127)	(148,685)
	FTE	(16)		(140)		(402)		(705)		(987)	
Overtime / Production Incentives	Pos./Obl.	-	3,395	-	4,125	-	2,418	-	(22,814)	-	(25,360)
	FTE	-		-		-		-		-	
Patent Cooperation Treaty (PCT) Searching Contract	Pos./Obl.	-	3,448	-	6,748	-	6,964	-	7,192	-	6,482
	FTE	-		-		-		-		-	
Workload Processing Contracts	Pos./Obl.	-	1,729	-	5,054	-	7,012	-	5,880	-	6,316
	FTE	-		-		-		-		-	

<i>Quality</i>		FY 2018		FY 2019		FY 2020		FY 2021		FY 2022	
		Increase (Decrease)		Increase (Decrease)		Increase (Decrease)		Increase (Decrease)		Increase (Decrease)	
		Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount
Patent Quality Improvement	Pos./Obl. FTE	-	1,218	-	1,728	-	2,210	-	2,662	-	3,192
Technical Training and Expertise	Pos./Obl. FTE	-	383	-	347	-	339	-	329	-	321
<b>Patent Trial and Appeals</b>	<b>Pos./Obl. FTE</b>	<b>4</b>	<b>458</b>	<b>-</b>	<b>714</b>	<b>3</b>	<b>910</b>	<b>6</b>	<b>1,675</b>	<b>11</b>	<b>2,728</b>
PTAB Production and AIA Workload	Pos./Obl. FTE	4 2	458	- 2	714	3 2	910	6 5	1,675	11 9	2,728
<b>Patent Information Resources</b>	<b>Pos./Obl. FTE</b>	<b>5</b>	<b>7,779</b>	<b>5</b>	<b>4,281</b>	<b>5</b>	<b>4,343</b>	<b>5</b>	<b>6,270</b>	<b>5</b>	<b>4,478</b>
Patent Business Projects	Pos./Obl. FTE	5 3	7,779	5 5	4,281	5 5	4,343	5 5	6,270	5 5	4,478

## **Sub-Program: Patent Examining**

The Patent Examining sub-program contributes to the accomplishment of the strategic goal to optimize patent quality and timeliness and the Agency Priority Goal through the following objectives for which funds are required in FY 2018:

- Refine Optimal Patent Pendency
- Increase Efficiencies and Patent Examination Capacity to Align with the Optimal Pendency
- Increase International Cooperation and Work Sharing
- Continue to Enhance Patent Quality
- Continue and Enhance Stakeholder and Public Outreach

The significant progress made since the beginning of this decade is expected to continue under the *USPTO 2014-2018 Strategic Plan*, which is supported by this Budget. Between the beginning of FY 2010 through the end of FY 2016, first action pendency was reduced from 25.8 months to 16.2 months; total pendency was reduced from 34.6 months to 25.3 months; and the backlog of unexamined applications was reduced from 718,835 to 537,655. During this same time, examiner staffing increased from 6,145 to a high of 8,466 at the end of FY 2014 when it began to decline to its current level.

### **PROGRAM CHANGES**

Patent Examining (\$5.2 million and -16 FTE): The USPTO requires an increase of \$5.2 million and a decrease of 16 FTE for a total of \$2,113.3 million and 10,190 FTE 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 Innovation strategic goal to foster a more innovative U.S. economy by using IP as a tool to create a business environment that cultivates and protects new ideas, technologies, services, and products. Failure to fund this sub-program puts the Department and the USPTO at risk for mission failure.

Patent Examining consists of the following three components that are described in the Patent Program section above: Pre-Examination, Examination, and Post-Examination.

#### Proposed Actions:

The Patent Examining program change provides funding for the quality and timely examination of patent applications. Along with base resources, this program change will enable the Patent Program to provide timely examination by processing incoming work, reducing the current backlog, and reducing pendency. It will also enhance the quality of patents thereby increasing the value of the patent to the inventor.

Assuming planned hiring levels in FY 2017, this program change represents a number of inter-related initiatives that collectively will enable the Patent Program to:

- Address the 627,274 new applications (total UPR) expected to be filed in FY 2018 (2.1 percent above the projected FY 2017 level); 614,253 in FY 2017

- Reduce the current backlog of unexamined patent applications to approximately 430,000 in FY 2018 or almost 60 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 15.1 months in FY 2018; and
- Reduce average total pendency to 23.0 months in FY 2018.

The FY 2018 Budget initiatives are categorized as follows:

- **Workload Initiatives.** These initiatives are driven by the requirement to process incoming work for which applicants have paid fees. Such initiatives, more fully described below, maintain examination capacity and include patent examiner staffing and overtime to ensure that there is adequate production support to complete the work carried out by the patent examiners.
- **Quality Initiatives.** Quality and training are an integral part of the examination process, and include initiatives focused on improving the quality of the examiner search, and legal training for examiners. The Patent organization has launched a multi-faceted world-class patent quality initiative that includes improving the work products produced by patent examiners; providing excellent customer service with an emphasis on improving the customer experience; and providing increased education and outreach to the public on quality efforts.

Patent Workload-Driven Initiatives

**Patent Examiner New Hires.** In FY 2018, 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 2.0 percent in each of FY 2017 and FY 2018. The production model takes into consideration this revised incoming work as well as the increasing output of examiners hired in prior years due to their seniority and mastery of the patent examination process. This careful calibration between workload and hires has enabled the USPTO to continue making progress on its patent pendency and inventory reduction plan.

Assuming full hiring in FY 2017, in FY 2018, the projected level of workload requires the hiring of 350 new patent examiners (offset by attritions of 427) to fulfill the Agency Priority Goal for the USPTO to continue reducing pendency, ultimately meeting pendency targets, and achieving an appropriately sized inventory of unexamined applications. In FY 2018, there will be a reduction of 77 patent examiner positions or 39 FTE. The number of examiners on board at the end of FY 2018 will be approximately 8,300.

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Amount (\$ in thousands)	\$ (5,015)	\$ (25,318)	\$ (61,385)	\$(104,445)	\$(148,685)
FTE	(16)	(140)	(402)	(705)	(987)

**Overtime/Production Incentives** is another tool used by the USPTO to continue aligning production with workload demand. Each overtime hour worked is directly tied to production output. 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.

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Amount (\$ in thousands)	\$ 3,395	\$ 4,125	\$ 2,418	\$ (22,814)	\$ (25,360)
FTE	-	-	-	-	-

**Patent Cooperation Treaty (PCT) Searching Contract.** The USPTO continues to contract for international search reports and written opinions for approximately 21,000 PCT Chapter I cases, roughly equal to the FY 2018 projected receipts. Investments in contracting enable the USPTO to meet its obligations as an International Searching Authority 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. At the same time, the USPTO is placing greater emphasis on re-using results in corresponding national cases. In the complete absence of this program, PCT filings would have to be examined by USPTO examiners, resulting in fewer U.S. national applications being processed, which would equate to reduced production and fewer fee collections.

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Amount (\$ in thousands)	\$ 3,448	\$ 6,748	\$ 6,964	\$ 7,192	\$ 6,482
FTE	-	-	-	-	-

**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.

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Amount (\$ in thousands)	\$ 1,729	\$ 5,054	\$ 7,012	\$ 5,880	\$ 6,316
FTE	-	-	-	-	-

Patent Quality Initiatives

**Patent Quality Improvement.** Funds are required to continue providing the tools and resources needed by patent examiners to deliver high quality work products. This includes scientific and technical support, access to commercial data bases and non-patent literature,

translation services, IT resource providers and search and information retrieval services. Quality and training are a necessary part of the examination process, and this initiative focuses on improving the quality of the examiner search. The quality initiative includes improving the work products produced by patent examiners; providing excellent customer services with an emphasis on improving the customer experience; and providing increased education and outreach to the public on quality efforts.

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Amount (\$ in thousands)	\$ 1,218	\$ 1,728	\$ 2,210	\$ 2,662	\$ 3,192
FTE	-	-	-	-	-

**Technical Training and Expertise.** Funds in FY 2018 will be used to continue providing robust technical training to examiners in the area of high-tech patent issues, and expand the Patent Examiner Technical Training Program (PETTP). This will help patent examiners keep up with fast-changing technological fields by making it easier for technologists, engineers, and other experts to provide relevant technical training and guidance to patent examiners. Under this initiative, examiners will be afforded the opportunity to visit real-world sites, such as companies and educational institutions, and receive a direct hands-on education specific to the technology area in which they work. In this regard, the administration is calling on innovators to volunteer their time and expertise to help ensure that USPTO training is robust and reflects the state-of-the-art.

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Amount (\$ in thousands)	\$ 383	\$ 347	\$ 339	\$ 329	\$ 321
FTE	-	-	-	-	-

### Statement of Need and Economic Benefit

Timely and quality issuance of patents provides certainty in the market and allows businesses and innovators to make informed and timely decisions on product and service development. The longer it takes to review a patent application, the longer it takes for the benefit of the IP protection to accrue. Failure to complete the examination in a timely manner creates uncertainty regarding the scope and timing of any IP rights. This not only impacts the innovators, but it has a negative impact on other innovators and businesses in that field that are awaiting the outcome of the pending application.

The quality of application review is critical to ensure the value of an issued patent. Without well-defined claims, for example, the value of a patent is uncertain. Uncertainty means there is a risk that a patent is invalid, does not cover the patentee's product, or that a competitor infringes the patent because they cannot determine its scope. Such patents exact a high cost by decreasing public confidence in the IP system. On the other hand, the economic value of a patent increases when its metes and bounds are clearly defined and consistently interpreted under the law. Clarity leads to certainty, which enables efficient and confident determination of value. This in turn creates high value for high quality patents and bolsters public confidence.

**Schedules/Milestones/Deliverables** for the strategic objectives related to patent examining can be found in the Balanced Scorecard that accompanies the *USPTO 2014-2018 Strategic Plan*.



## **Sub-Program: Patent Trials and Appeals**

The Patent Trials and Appeals sub-program contributes to the accomplishment of the strategic goal to optimize patent quality and timeliness through the following objective for which funds are required in FY 2018:

- Maintain the Patent Trial and Appeal Board's Ability to Provide Timely and High Quality Decisions

### **PROGRAM CHANGE**

PTAB Production and AIA Workload (\$.5 million and 2 FTE): The USPTO requires an increase of \$.5 million and 2 FTE for a total of \$93.5 million and 440 FTE to provide the PTAB with an adequate number of Administrative Patent Judge (APJ) positions to handle AIA and Appeals projected workload.

This program change supports the Department's strategic goal to foster a more innovative U.S. economy – one that is better at inventing, improving, and commercializing products and technologies that lead to higher productivity and competitiveness. Delaying decisions on appeals to the PTAB has an adverse impact on America's economy. When inventions are developed commercially, they create jobs for the companies that are marketing those inventions, and for their suppliers, distributors and retailers. Proper and promptly-issued patents are vital to the growth of the economy.

#### Proposed Action

The PTAB is an administrative tribunal that consists of APJs who conduct AIA trials and review appeals from the rejection of a patent application. The PTAB also reviews AIA petitions requesting institution of a trial, provides written notice of its determination whether to institute trial, and issues final written decisions with respect to the patentability of challenged claims and any proposed substitute claims. The PTAB must manage 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 filing of a patent owner 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. There is no timeliness requirement for ex parte appeals, but the PTAB is committed to reducing the backlog of cases by hiring APJs to the extent possible, clearing the oldest cases, and reassigning judges according to the greatest need. This requirement outlines a consolidated effort to increase PTAB capacity, increase PTAB productivity and quality, and optimize workflow.

**PTAB Production and AIA Workload.** Funds are required to continue addressing the results of historic growth in workload; however, at a lower level than projected in the FY 2017 President's Budget. The overall increase in work is due in part to the implementation of the AIA patent reform legislation, which created new programs to be administered by the USPTO and changed some existing programs. Under the AIA, the PTAB is required to conduct four new types of trial proceedings: Inter partes reviews, derivation proceedings, and a transitional program for covered business methods patents (all effective September 16, 2012), and post grant reviews (only applicable for patents that are subject to first-inventor-to-file provisions that went into effect on March 16, 2013).

With the advent of the AIA, the PTAB rapidly became one of the most popular venues for resolution of patentability disputes. However, projections of incoming filing rates for Appeal and AIA workload are difficult to project due to various internal and external factors. For example, Appeal filings are dependent on the filing rates for patent applications, the impact of court decisions, and proposed fee changes. AIA filing rates can be affected by rule changes, the impact of pending legislative patent reforms, and the number of litigation cases in the district courts, as well as proposed fee increases. Finally, given the relatively recent enactment of the AIA, there is a lack of robust historical filing trends upon which to base projections.

As a result, the PTAB has calibrated its projected workload for FY 2017 and FY 2018 in accordance with the most current actual and projected information, particularly workload filing trends in FY 2016.

The following table shows the change in workload, and projected APJ staffing levels needed to meet the statutory timeline requirements and reduce ex parte appeal pendency.

	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
	Actual		Estimates					
<b>APPEALS</b>								
<b>Incoming Appeals</b> (incl. Ex Parte Appeals, Inter Parte Reexams, Ex Parte Reexams and Supplemental Exam)	8,384	8,688	11,800	9,100	9,355	9,607	9,838	10,074
<b>Appeals Disposed</b> (incl. Ex Parte Appeals, Inter Parte Reexams, Ex Parte Reexams and Supplemental Exam)	12,597	14,726	14,817	13,453	11,248	10,237	9,124	8,412
<b>Appeal Inventory/Backlog</b> (incl. Ex Parte Appeals, Inter Parte Reexams, Ex Parte Reexams and Supplemental Exam)	21,556	15,504	12,487	8,134	6,241	5,612	6,326	7,988
<b>Pendency of Decided Appeals in months</b> (incl. Ex Parte, Inter Parte Re-Exams, Ex Parte Re-Exams and Supplemental Exams)	29.7	25.5	-	-	-	-	-	-
<b>Board Months of Inventory<sup>1</sup></b>	--	--	10	7	7	7	8	11
<b>AIA/ TRIAL</b>								
<b>AIA Petitions Filed</b> (incl. IPRs, CBMs, and PGRs)	1,896	1,683	1,700	1,717	1,768	1,821	1,912	2,008
<b>Trial Pendency</b> (months)	11.6	11.6	12	12	12	12	12	12
<b>AIA Petitions disposed</b> (incl. trials not instituted, instituted petitions disposed for IPRs, CBMs and PGRs)	1,592	1,778	2,051	1,593	1,588	1,687	1,811	1,916
<b>ADMINISTRATIVE PATENT JUDGES</b>								
<b>New Hire APJs</b> (not incl. Executive Judges)	28	30	10	10	-	3	3	5
<b>Total APJs</b> (incl. Executive APJs and reflect attrition)	242	272	287	297	297	300	303	308

<sup>1</sup>In efforts to improve tracking time from jurisdiction, a new PTAB methodology for calculating regular ex parte appeals pendency will be used for FY 2017 and beyond. Pendencies shown above for FY 2015 and FY 2016 have been recalculated to reflect this new methodology.

To align capacity with revised projected incoming workload demands in both ex parte appeals and AIA proceedings, the PTAB projects promoting 10 existing Patent Attorneys to APJ positions in FY 2018 and increasing its production support staff by two FTE. The revised staffing needs for FY 2018 and beyond are established to meet the statutory time requirements. Without the FY 2018 required total funding level, the PTAB will be unable to provide the timely and quality review and adjudication of appealed applications called for by stakeholders, and meet specific objectives outlined in the *USPTO 2014-2018 Strategic Plan*. Delaying decisions on these appeals has a negative impact on America's economy, particularly job creation.

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Amount (\$ in thousands)	\$ 458	\$ 714	\$ 910	\$ 1,675	\$ 2,728
FTE	2	2	2	5	9

### Statement of Need and Economic Benefit

Decisions made by the PTAB on appeals involve some of the most important applications pending in the Office. When these decisions are delayed, it can and will continue to have an adverse impact on America's economy. When patented inventions are developed commercially, they create jobs for the companies that are marketing products and for their suppliers, distributors, and retailers. Proper and promptly-issued patents are vital to the growth of the economy. Additionally, any one appeal may hold a scientific, engineering, or technological breakthrough in any number of fields, such as medicine, materials, electronics, or energy. A lack of adequate resources to review and decide on appeals can unnecessarily delay commercial development of the patented invention and delay the breakthrough from reaching the market.

**Schedules/Milestones/Deliverables** for the strategic objective to increase the PTAB's ability to provide timely and high quality decisions can be found in the Balanced Scorecard that accompanies the *USPTO 2014-2018 Strategic Plan*.

## Sub-Program: Patent Information Resources

The Patent Information Resources sub-program contributes to the accomplishment of the strategic goal to optimize patent quality and timeliness through the following objective for which funds are required in FY 2018:

- Ensure Optimal Information Technology Service Delivery to All Users

### PROGRAM CHANGE

Patent Information Resources (\$7.8 million and 3 FTE): The USPTO requires an increase of \$7.8 million and 3 FTE for a total of \$188.0 million and 259 FTE for the Patent IT Portfolio.

#### Proposed Action

**Patent Business Projects.** Funds are required in FY 2018 to continue development and deployment of new patent IT capabilities. This will enable the USPTO to continue retiring specific legacy systems by ensuring that initial and additional end-to-end processing capabilities deliver the data and workflows necessary for comprehensive patent application processing.

Funds also are required for 5 positions and 3 FTE in the Patent organization to facilitate communication between program staff and OCIO staff.

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Amount (\$ in thousands)	\$ 7,779	\$ 4,281	\$ 4,343	\$ 6,270	\$ 4,478
FTE	3	5	5	5	5

### Statement of Need and Economic Benefit

IT is a mission critical enabler for every USPTO business function. The productivity of patent and trademark operations is directly correlated to the performance of its IT systems, which must be kept modern to meet current and future demands.

The USPTO's CPIC process governs how the USPTO manages the selection, control, and evaluation of major IT investments. The CPIC process complies with and supports Federal legislation and guidance, and requires quantifiable measurements for determining the net benefits and risks of a proposed investment.

**Schedules/Milestones/Deliverables.** Detailed information regarding schedules, milestones, and deliverables can be found in the USPTO's Exhibit 300 submissions that are located on the Federal IT Dashboard website. Additionally, information for the objective to ensure optimal IT service delivery to all users can be found in the Balanced Scorecard that accompanies the *USPTO 2014-2018 Strategic Plan*.

Exhibit 14

**PROGRAM CHANGE PERSONNEL DETAIL**

Activity: Patents

Subactivity:

<b>Title:</b>	<b>Location</b>	<b>Grade</b>		<b>Number of Positions</b>	<b>Annual Salary</b>	<b>Total Salaries</b>
Patent Examiner	Various	GS	5	11	56,783	624,613
Patent Examiner	Various	GS	7	180	70,334	12,660,120
Patent Examiner	Various	GS	9	150	77,884	11,682,600
Patent Examiner	Various	GS	11	5	87,282	436,410
Patent Examiner	Various	GS	12	2	94,544	189,088
Patent Examiner	Various	GS	13	1	112,422	112,422
Patent Examiner	Various	GS	14	1	132,851	132,851
Patent Examiner Attritions	Various	Avg	GS 12	-427	83,513	(35,659,962)
Patent Examiner Support Positions	Various	Various		45	73,666	3,314,980
Administrative Patent Judges	Various	GS	SES	10	172,100	1,721,000
Administrative Patent Judges / Patent Lawyer Attritions	Various	GS	SES	-10	149,337	(1,493,370)
PTAB Production Support	Alexandria, VA	GS	13	2	107,435	214,870
PTAB Support	Alexandria, VA	GS	13	2	107,435	214,870
IT Specialists	Alexandria, VA	Various		5	96,739	483,695
<b>Total</b>				<b>(23)</b>		<b>(5,365,813)</b>
Less Average Lapse			48%	(11)		(2,563,947)
Total full-time permanent (FTE)				(12)		(2,801,866)
2018 Pay Adjustment 1.9%						(101,950)
<b>TOTAL</b>						<b>(2,903,816)</b>
<b>Personnel Data</b>				<b>Number</b>		
Full-Time Equivalent Employment						
Full-time permanent				(12)		
Other than full-time permanent				-		
Total				(12)		
Authorized Positions:						
Full-time permanent				(23)		
Other than full-time permanent				-		
Total				(23)		

**PROGRAM CHANGE DETAIL BY OBJECT CLASS****PROGRAM CHANGE DETAIL BY OBJECT CLASS**

(Dollar amounts in thousands)

Activity: **Patents**

Subactivity:

<b>Object Class</b>	<b>2018 Increase</b>
11 Personnel compensation	
11.1 Full-time permanent	(2,904)
11.3 Other than full-time permanent	
11.5 Other personnel compensation	3,408
11.8 Special personnel services payments	-
11.9 Total personnel compensation	<u>504</u>
12 Civilian personnel benefits	(966)
13 Benefits for former personnel	-
21 Travel and transportation of persons	359
22 Transportation of things	(0)
23.1 Rental payments to GSA	-
23.2 Rental payments to others	0
23.3 Communications, utilities and miscellaneous charges	13
24 Printing and reproduction	162
25.1 Advisory and assistance services	2,142
25.2 Other services	2,146
25.3 Purchases of goods & services from Gov't accounts	-
25.4 Operation and maintenance of facilities	248
25.5 Research and development contracts	-
25.6 Medical care	-
25.7 Operation and maintenance of equipment	(428)
25.8 Subsistence and support of persons	-
26 Supplies and materials	327
31 Equipment	9,019
32 Lands and structures	-
33 Investments and loans	-
41 Grants, subsidies and contributions	-
42 Insurance claims and indemnities	(128)
43 Interest and dividends	-
44 Refunds	(4)
99 Total obligations	<u><b>13,395</b></u>

# **TRADEMARK PROGRAM**

## Exhibit 10 – Program Performance: Total Obligations

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

Activity: Trademark Program  
 Subactivity: Trademarks

Sub-Activity:		FY 2016		FY 2017 Current Plan		FY 2018 Base		FY 2018 Estimate		Increase/ (Decrease)	
		Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount
Trademark Examining	Pos./Obl	761	120,069	830	133,486	830	142,629	884	145,537	54	2,907
	FTE	713		788		827		863		36	
Trademark Appeals and Inter Partes Proceedings	Pos./Obl	78	12,855	79	14,182	79	15,194	80	15,431	1	236
	FTE	69		75		79		80		1	
Trademark Information Resources	Pos./Obl	75	44,728	80	53,412	80	55,704	80	42,697	-	(13,006)
	FTE	60		72		80		80		-	
Subtotal Direct	Pos./Obl	914	177,652	989	201,080	989	213,528	1,044	203,665	55	(9,863)
	FTE	842		935		986		1,023		37	
Management Goal Allocated	Pos./Obl	169	83,814	181	93,632	181	97,182	181	103,443	-	6,261
	FTE	150		168		177		177		-	
<b>Total</b>	Pos./Obl	1,083	261,467	1,169	294,713	1,169	310,709	1,224	307,107	55	(3,602)
	FTE	991		1,103		1,163		1,201		37	



## Exhibit 12 – Justification of Trademark Program and Performance

### BUDGET PROGRAM: Trademark Program

For FY 2018, the USPTO requests a total of \$307.1 million and 1,201 FTE for the Trademark Program.

PROGRAM BUDGET PROFILE (Dollar amounts in thousands)							
Funding Requirements by Sub Program	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Trademark Examining	\$120,069	\$133,486	\$145,537	\$156,415	\$167,968	\$181,374	\$194,735
Trademark Appeals and Inter Partes Proceedings	\$12,855	\$14,182	\$15,431	\$15,919	\$16,450	\$17,039	\$17,643
Trademark Information Resources	\$44,728	\$53,412	\$42,697	\$50,987	\$50,568	\$51,034	\$51,739
Management Goal Allocated	\$83,814	\$93,632	\$103,443	\$101,828	\$102,527	\$114,691	\$116,312
<b>TOTAL</b>	<b>\$261,467</b>	<b>\$294,713</b>	<b>\$307,107</b>	<b>\$325,149</b>	<b>\$337,512</b>	<b>\$364,138</b>	<b>\$380,429</b>
<b>FTE</b>	<b>991</b>	<b>1,103</b>	<b>1,201</b>	<b>1,258</b>	<b>1,321</b>	<b>1,384</b>	<b>1,447</b>

### PROGRAM JUSTIFICATION

#### Trademark Program Overview

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, consistent with the strategies and objectives in the *USPTO 2014-2018 Strategic Plan*. The Trademark Program, through its strategic goal to optimize trademark quality and timeliness, supports the Department’s strategic goal to foster a more innovative U.S. economy – one that is better at inventing, improving, and commercializing products and technologies that lead to higher productivity and competitiveness.

The Trademark Program performs a valuable function by identifying the source of products and services and serving as an indicator of reliable quality to the consumer. By registering trademarks, the USPTO has a significant role in protecting consumers, as well as providing important benefits to American businesses by allowing them to strengthen and safeguard their brands and related investments. Over the last ten years, the Trademark organization has met and exceeded its performance targets as it continues to reap the benefits of its significant investments in human capital and in automation and process reengineering.

The Trademark goal is being met by achieving the objectives set forth in the *USPTO 2014-2018 Strategic Plan*. Objectives and summary progress through the end of FY 2016 are as follows:

- Maintain Trademark First Action Pendency on Average between 2.5-3.5 Months with 12.0 Months Final Pendency.
  - Met the 2016 pendency targets, with average first action pendency at 3.1 months and average total pendency at 9.8 months in spite of a 5.2 percent increase in new filings from FY 2015.
- Maintain High Trademark Quality.
  - Set and achieved high quality standards: all three Trademark quality targets were met, evidence that the specialized training, online tools, and enhanced communication efforts are proving effective.
- Ensure Optimal IT Service Delivery to All Users.
  - Continued making progress in the development of the TMNG, which enables end-to-end processing that is faster, more practical, more feature-rich, and more reliable for USPTO employees, trademark applicants, trademark owners, and the public at large.
- Continue and Enhance Stakeholder and Public Outreach.
  - Continued to expand outreach to practitioners across the country by hosting roundtables for open discussion to explore a number of topics, including the current state of trademark operations; updates and improvements for entries in the Identifications and Classifications Manual for social media, finance, and computer terminology; and the impact of technology changes on descriptions of goods and services in registered marks.
- Enhance Operations of Trademark Trial and Appeal Board (TTAB).
  - TTAB continued its commitment to transparent reporting of data and performance measures by welcoming comments on the utility of these measures from the TPAC and other stakeholders. Continued showing improvement (declines) in overall average pendency (from commencement to completion) of appeals, trial cases and Accelerated Case Resolution (ACR) trial cases.

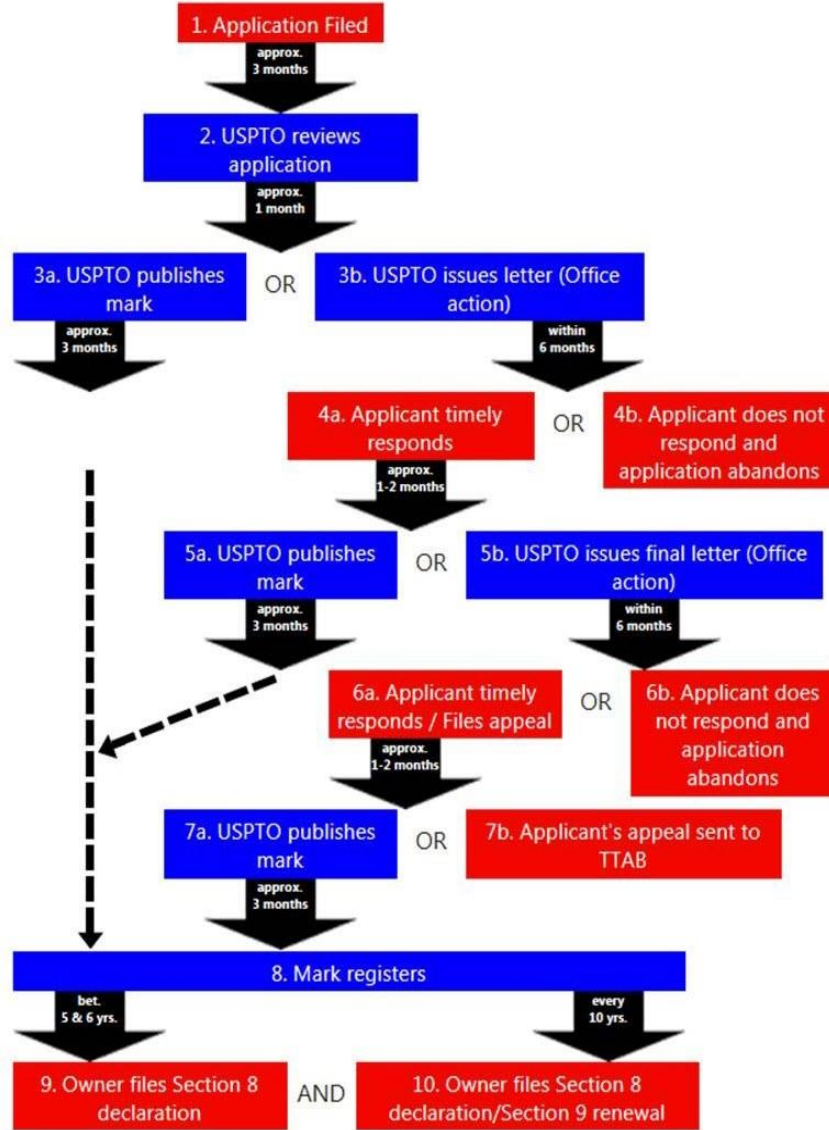
### Base Justification

The trademark process begins when a customer desires information on trademarks or becomes interested in registering a trademark and proceeds to submit a trademark application based on a mark currently used, or intended for use, in commerce. During the examination process, trademark examining attorneys evaluate applications for compliance with current trademark laws, regulations, and policies. At this time, the applicant may submit amendments and the examining attorney may enter amendments or refuse registration unless certain requirements are met. Upon completion of the examination process, including TTAB review of any appeal from a refusal, a trademark application is published in the electronic Official Gazette. Trademarks or other marks, such as service marks, certification marks and collective membership marks, are published prior to registration to permit interested parties to file an opposition at the TTAB within a 30-day time period if they believe that they may be harmed by the registration. Those marks that pass through the opposition period without challenge, or survive any opposition, move along to issuance of either a trademark registration for an application based on use, or a notice of allowance for an application based on intent to use.

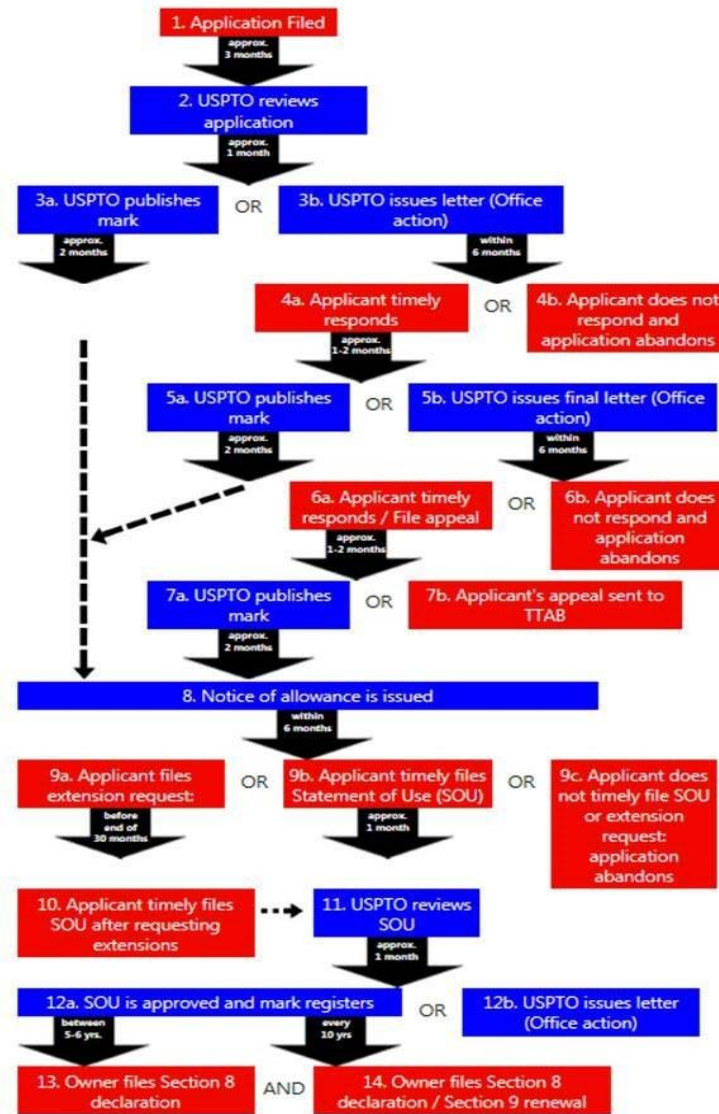
The examination of trademark applications consists of the activities shown on the following schematic and major functions as described below.

# Trademark Process

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



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



## **Sub-Program #1: Trademark Examining**

### **Trademark Examining (\$142.6 million and 827 FTE)**

The USPTO plays a critical role in providing notice of 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 would be able to survey existing marks in use or proposed for use by utilizing online resources and support services available for customers to prepare and 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 trademark basics "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: \$10.8 million and 68 FTE*

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 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](http://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 that are registered for those in use and registrations that are maintained by registrants. Initial examination also encompasses the processing of applications filed under the Madrid Protocol.

*Examination Processing: \$127.0 million and 724 FTE*

One of the approximately 550 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 534,000 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. This program also provides prompt feedback to examining attorneys when their work products are reviewed. Specific comments on any work product found to be either "excellent" or "deficient," are sent to the appropriate examining attorney and supervisor. As a result, training takes place on the micro level, with specific feedback, as well as on the macro level, with training modules that address trends, targeting topics that warrant improvement. 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 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.

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: \$4.8 million and 35 FTE*

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, the owner must first file an affidavit between the fifth and sixth years from the date of registration. To renew a Trademark registration, the owner must file an acceptable affidavit 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.

## **Sub-Program #2: Trademark Appeals and Trial Proceedings**

### **Trademark Appeals and Trial Proceedings (\$15.2 million and 79 FTE)**

Administrative Trademark Judges (ATJs) on the TTAB review adverse registrability determinations by examining attorneys when the applicant appeals the 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 conduct other proceedings involving registrations where a third party wishes to challenge the validity of, or restrict, a registration.

## **Sub-Program #3: Trademark Information Resources**

### **Trademark Information Resources (\$55.7 million and 80 FTE)**

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.

## **Sub-Program #4: Management Goal – Allocated**

### **Management Goal – Allocated (\$97.2 million and 177 FTE)**

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.

## **RISK ASSESSMENT**

The Trademark Program supports the mission of the Office to convey federal registration of trademarks. This program is a high priority for the USPTO and is funded through user fees that directly support all aspects of the program. If the USPTO were unable to fund the Trademark program, it would negatively impact the Office's responsibility to render decisions regarding federal registration impacting owners ability to defend or protect their business investments, and to or maintain pendency targets, thereby affecting relationships with user groups and stakeholders.

## **INFLATIONARY ADJUSTMENTS**

The USPTO requires a net increase of 60 FTEs and \$16.0 million to fund adjustments to current programs for the Trademark Program activities. This increase will provide the annualization of the FY 2017 FTE increase and will also provide inflationary increases for non-labor activities, including service contracts, utilities, lease payments, and rent charges from the GSA.

## **TRADEMARK PERFORMANCE GOALS AND MEASURES.**

Historical and projected metrics can be found in the USPTO BPAG Chart on pages 8-9, and on the Data Visualization Center at <http://www.uspto.gov/about/stratplan/dashboards.jsp>.

## Exhibit 13 – 15: Trademark Program Changes by Sub-Program

Department of Commerce  
 U.S. Patent and Trademark Office  
**TRADEMARK PROGRAM**  
**INCREASES FOR 2018**  
 (Dollar amounts in thousands)

		2018 Base		2018 Estimate		Increase (Decrease)	
		Personnel	Amount	Personnel	Amount	Personnel	Amount
<b>Direct Total, Trademark Program</b>	<b>Pos./Obl.</b>	<b>989</b>	<b>213,528</b>	<b>1,044</b>	<b>203,665</b>	<b>55</b>	<b>(9,863)</b>
	<b>FTE</b>	<b>986</b>		<b>1,023</b>		<b>37</b>	
<b>Trademark Examining</b>	<b>Pos./Obl.</b>	<b>830</b>	<b>142,629</b>	<b>884</b>	<b>145,537</b>	<b>54</b>	<b>2,907</b>
	<b>FTE</b>	<b>827</b>		<b>863</b>		<b>36</b>	
Trademark Workload	Pos./Obl.					54	2,907
	FTE					36	
<b>Trademark Trial and Appeals</b>	<b>Pos./Obl.</b>	<b>79</b>	<b>15,194</b>	<b>80</b>	<b>15,431</b>	<b>1</b>	<b>236</b>
	<b>FTE</b>	<b>79</b>		<b>80</b>		<b>1</b>	
TTAB Staffing	Pos./Obl.					1	236
	FTE					1	
<b>Trademark Information Resources</b>	<b>Pos./Obl.</b>	<b>80</b>	<b>55,704</b>	<b>80</b>	<b>42,697</b>	<b>-</b>	<b>(13,006)</b>
	<b>FTE</b>	<b>80</b>		<b>80</b>		<b>-</b>	
Trademark Business Projects	Pos./Obl.					-	(13,006)
	FTE					-	

**Department of Commerce  
U.S. Patent and Trademark Office  
TRADEMARK PROGRAM  
INCREASES FOR 2018 - 2022**  
(Dollar amounts in thousands)

		FY 2018 Increase (Decrease)		FY 2019 Increase (Decrease)		FY 2020 Increase (Decrease)		FY 2021 Increase (Decrease)		FY 2022 Increase (Decrease)	
		Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount
<b>Direct Total, Trademark Program</b>	<b>Pos./Obl. FTE</b>	<b>55 37</b>	<b>(9,863)</b>	<b>116 95</b>	<b>3,127</b>	<b>181 158</b>	<b>7,388</b>	<b>242 221</b>	<b>13,318</b>	<b>306 284</b>	<b>19,074</b>
<b>Trademark Examining</b>	<b>Pos./Obl. FTE</b>	<b>54 36</b>	<b>2,907</b>	<b>112 92</b>	<b>8,525</b>	<b>176 153</b>	<b>14,217</b>	<b>234 214</b>	<b>20,808</b>	<b>297 275</b>	<b>26,983</b>
Trademark Workload	Pos./Obl. FTE	54 36	2,907	112 92	8,525	176 153	14,217	234 214	20,808	297 275	26,983
<b>Trademark Trial and Appeals</b>	<b>Pos./Obl. FTE</b>	<b>1 1</b>	<b>236</b>	<b>2 2</b>	<b>480</b>	<b>3 3</b>	<b>732</b>	<b>4 4</b>	<b>991</b>	<b>5 5</b>	<b>1,258</b>
TTAB Staffing	Pos./Obl. FTE	1 1	236	2 2	480	3 3	732	4 4	991	5 5	1,258
<b>Trademark Information Resources</b>	<b>Pos./Obl. FTE</b>	<b>- -</b>	<b>(13,006)</b>	<b>2 1</b>	<b>(5,878)</b>	<b>2 2</b>	<b>(7,561)</b>	<b>4 3</b>	<b>(8,481)</b>	<b>4 4</b>	<b>(9,167)</b>
Trademark Business Projects	Pos./Obl. FTE	- -	(13,006)	2 1	(5,878)	2 2	(7,561)	4 3	(8,481)	4 4	(9,167)



## **Sub-Program: Trademark Examining**

The Trademark Examining sub-program contributes to the accomplishment of the strategic goal to optimize trademark quality and timeliness through the following objectives for which funds are required in FY 2018:

- Maintain Trademark First Action Pendency on Average Between 2.5-3.5 Months With 12.0 Months or Less Final Pendency
- Maintain High Trademark Quality

### **PROGRAM CHANGE**

Trademark Examining (\$2.9 million and 36 FTE): The USPTO requires an increase of \$2.9 million and 36 FTE for a total of \$145.5 million and 863 FTE to align trademark application examination capacity with estimated workloads and enhance the quality of legal services. These resources and FTEs will enable the Trademark organization to process incoming work in a timely manner and address quality issues. Since the 2009 contraction, filings of new trademark applications have registered average annual growth rates of more than four percent, a pattern that is expected to continue and strengthen over the next few years as the economic recovery continues. From FY 2016 through FY 2022, the Trademark organization projects a workload increase of 55 percent.

Filings of new applications are expected to increase on average by about six to nine percent year over year. To handle the expected increase in workloads, the Office plans to increase its staff in FY 2018 by a net total of 54 positions consisting of new examining attorney positions, as well as support and specialized positions. Offsetting the incremental costs, the Office expects to manage overtime usage through timely hiring and by setting appropriate levels of production incentives.

The Trademark organization is making good use of its electronic systems and is successfully motivating applicants to conduct correspondence electronically. More than 99 percent of all new applications and the majority of post registration affidavits are filed electronically. With greater end-to-end electronic processing, the Office will continue to realize cost reductions that partially offset the incremental cost of the new hires in FY 2017.

This program change is necessary to accomplish the strategic goal to optimize trademark quality and timeliness that is a critical part of the Department's Innovation strategic goal for transforming the Nation's economy, fostering U.S. competitiveness, and driving the development of new businesses. The *USPTO 2014-2018 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.

#### **Proposed Action**

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 six to eight percent year over year), existing inventories, and examination capacity.

**Trademark Workload.** An increase of \$2.9 million and 36 FTE is required to align trademark application examination capacity with the revised estimated workloads. This will enable the Trademark organization to process incoming work in a timely manner. The positive momentum in new application filings is expected to continue being influenced by the economic recovery. The projected 55 percent increase in annual trademark application filings from FY 2016 to FY 2022 requires a corresponding 53 percent increase in examination capacity over the same period to continue to meet pendency and quality performance goals. With electronic filings and higher end-to-end electronic processing, the office continues to realize offsetting cost reductions in contract services that support manual paper based processes.

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Amount (\$ in thousands)	\$ 2,907	\$ 8,525	\$ 14,217	\$ 20,808	\$ 26,983
FTE	36	92	153	214	275

**Statement of Need and Economic Benefit**

The Trademark Program performs a valuable function by identifying the source of products and services, as well as being an indicator of reliable quality to the consumer. A mark registered with the USPTO serves as prima facie evidence of ownership and the right to use the mark, which can provide access to the Federal court system. When registered with U.S. Customs and Border Protection, the registered mark can be used to stop the importation of infringing or counterfeit goods. Timely indication of the viability of a trademark application enables businesses to develop their financial and marketing plans.

**Schedules/Milestones/Deliverables** for the objective to maintain trademark first action pendency on average between 2.5-3.5 months with 12.0 months final pendency can be found in the Balanced Scorecard that accompanies the *USPTO 2014-2018 Strategic Plan*.

## Sub-Program: Trademark Appeals and Trial Proceedings

The Trademark Appeals and Trial Proceedings sub-program contributes to the accomplishment of the strategic goal to optimize trademark quality and timeliness through the following objective for which funds are required in FY 2018:

- Enhance Operations of the Trademark Trial and Appeal Board

### PROGRAM CHANGE

TTAB Staffing (\$0.2 million and 1 FTE): The USPTO requires an increase of \$0.2 million and 1 FTE for a total of \$15.4 million and 80 FTE.

#### Proposed Action

**TTAB Staffing.** In FY 2018, the Trademark Program requires an increase of \$0.2 million and 1 FTE for one ATJ to handle projected workload increases in FY 2018 and beyond, primarily from anticipated growth in ex parte appeals and trial cases; and the possible deployment of a streamlined cancellation proceeding that would allow petitioners to seek cancellation of registrations for marks that are no longer in use and should not remain on the register. The growth in appeals and trial cases has and will result from actual increased filings of trademark applications dating to FY 2011, and projected increases through FY 2022. Also, the TTAB's processes and procedures for handling trial cases were revamped in early 2017 to increase process efficiencies, provide greater flexibility to parties involved in proceedings and to ease burdens on their introduction of evidence. The latter may entail more hands-on case management to ensure that appeals and trial cases are completed in shorter time periods, and may lead to a higher percentage of trial cases being decided on the merits, rather than settled, which may have occurred in the past because of the expense of litigation considerations. The TTAB's FY2017 rule changes are intended, in part, to reduce litigation expense. While the TTAB actively encourages settlement talks in trial cases, it also promotes process and procedure changes that will allow parties to pursue decisions on the merits, when desired, without being priced out of the process.

**Figure 1: TTAB Projected Workload – FY 2015 through FY 2022**

	FY 2015 Actual	FY 2016 Projected	FY 2017 Projected	FY 2018 Projected	FY 2019 Projected	FY 2020 Projected	FY 2021 Projected	FY 2022 Projected
Trademark Filings	503,889	530,270	570,000	610,000	663,000	720,000	772,000	822,100
Trademark Filing Growth Rate	10.7%	5.2%	7.5%	7.0%	8.7%	8.6%	7.2%	6.5%
Appeals	2,992	3,121	3,306	3,599	3,912	4,248	4,555	4,850
% change	7.0%	4.3%	5.9%	8.9%	8.7%	8.6%	7.2%	6.5%
Oppositions	5,290	5,881	6,282	6,710	7,293	7,920	8,492	9,043
% change	(4.00%)	11.2%	6.8%	6.8%	8.7%	8.6%	7.2%	6.5%
Cancellations	1,763	1,848	2,018	2,135	2,321	2,520	2,702	2,877
% change	2.0%	4.8%	9.2%	5.8%	8.7%	8.6%	7.2%	6.5%

In the table above, the FY 2015 decrease in opposition proceedings and the minimal increase in filing of cancellation proceedings could be attributable to uncertainty among practitioners

about the ramifications of the Supreme Court’s decision in *B & B Hardware v. Hargis*, which some commentators have suggested may result in significant changes to the ways in which practitioners prosecute and defend TTAB trial cases. In particular, some commentators suggested that TTAB proceedings could become more involved and potentially more expensive. The TTAB, however, disagreed with these predictions and expects no significant changes in practice and procedures as a result of the *B & B Hardware v. Hargis* decision. Further, FY 2016 filings of new trial cases resumed their general pattern of increasing along with appeals, based on increasing trademark application filings. Through the first half of FY 2017, filings of new trial cases continues to increase. In addition, new appeals from examiner refusals have increased each year since FY 2012 and this has resulted in more work for judges, notwithstanding the FY 2015 decrease in new trial cases, as a much higher percentage of all filed appeals eventually require decision on the merits by judges than do trial cases, which, like civil litigation, often settle. The TTAB anticipates needing the one additional ATJ to maintain the TTAB’s commitment to 1) issue a significant number of precedential decisions (35-40) on an annual basis, 2) update the TTAB Manual of Procedure (TBMP) on at least an annual basis, and 3) pursue outreach and other TTAB-related policy and rule development initiatives.

In FY 2018, the TTAB anticipates continuing increases in appeal and trial case filings, as well as contested motion work needing Judge disposition and/or review; and extensive work implementing rule changes that may take effect in early FY 2018, if the streamlined cancellation proceeding desired by stakeholders for removing unused marks from the register are deployed; and more robust outreach and continuing increased complexity and size of case records.

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Amount (\$ in thousands)	\$ 236	\$ 480	\$ 732	\$ 991	\$ 1,258
FTE	1	2	3	4	5

**Statement of Need and Economic Benefit**

Failure to fund this initiative could have a negative impact on pendency (time to decision) of appeals and trial cases ready for decision, which could threaten the TTAB’s ability to meet its goal of deciding appeals and trial cases, on average, within 10-12 weeks from when the cases become ready for decision on the merits. Delaying decisions on appeals and trial cases will have an adverse impact on America’s economy. When trademarks are developed for commercial enterprises, they create jobs for the businesses marketing products and for their suppliers, distributors, and retailers. The TTAB may have any number of such trademarks in its inventory of appeals and trial cases awaiting decision.

**Schedules/Milestones/Deliverables** for the objective to enhance operations of the TTAB can be found in the Balanced Scorecard that accompanies the *USPTO 2014-2018 Strategic Plan*.

## Sub-Program: Trademark Information Resources

The Trademark Information Resources sub-program contributes to the accomplishment of the strategic goal to optimize trademark quality and timeliness through the objective to ensure optimal IT service delivery to all users for which funds are required in FY 2018.

### PROGRAM CHANGE

Trademark Information Resources (-\$13.0 million): The USPTO requires a decrease of \$13.0 million for a total of \$42.7 million and 80 FTE for the Trademark IT Portfolio.

#### Proposed Action

**Trademark Business Projects.** In FY 2017, TMNG full examination workflow will be delivered to the Trademark Law Offices. In FY 2018, the Trademark Program requires a decrease of \$13.0 million for the Trademark IT Portfolio to continue developing and delivering full electronic processing, but at a lower level of investment.

In addition, the Trademark organization will require additional positions in the out years to help support Trademark staff that utilize automated systems.

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Amount (\$ in thousands)	\$ (13,006)	\$ (5,878)	\$ (7,561)	\$ (8,481)	\$ (9,167)
FTE	-	1	2	3	4

### Statement of Need and Economic Benefit

IT is a mission critical enabler for every USPTO business function. The productivity of trademark and patent operations is directly correlated to the performance of its IT systems, which must be kept modern to meet current and future demands.

The USPTO's CPIC process governs how USPTO manages the selection, control, and evaluation of major investments. The CPIC process complies with and supports Federal legislation and guidance, and requires quantifiable measurements for determining the net benefits and risks of a proposed investment.

**Schedules/Milestones/Deliverables.** Detailed information regarding schedules, milestones, and deliverables can be found in the USPTO's Exhibit 300 submissions that are located on the Federal IT Dashboard web site. Additionally, information for the objective to ensure optimal IT service delivery to all users can be found in the Balanced Scorecard that accompanies the *USPTO 2014-2018 Strategic Plan*.

Exhibit 14

**PROGRAM CHANGE PERSONNEL DETAIL**

Activity: Trademarks  
 Subactivity:

<b>Title:</b>	<b>Location</b>	<b>Grade</b>	<b>Number of Positions</b>	<b>Annual Salary</b>	<b>Total Salaries</b>
TM Examiner Attorney	Alexandria, VA	GS 11	66	73,160	4,828,560
TM Supervisory Attorney / Group Director	Alexandria, VA	GS 15	4	144,945	579,780
TM Staff Attorney	Alexandria, VA	GS 15	1	144,945	144,945
TM Technical Info Specialist	Alexandria, VA	GS 8	2	49,771	99,542
TM Business Intelligence Analyst	Alexandria, VA	GS 14	2	112,021	224,042
TM Madrid Specialist	Alexandria, VA	GS 11	1	66,510	66,510
TM ID Class Attorney	Alexandria, VA	GS 15	1	131,767	131,767
TM Information Specialist	Alexandria, VA	GS 11	1	66,510	66,510
TM Attritions	Alexandria, VA Avg	Various	(24)	126,958	(3,046,992)
TTAB Administrative Trademark Judge (ATJ)	Alexandria, VA	AA 5	1	172,100	172,100
<b>Total</b>			<b>55</b>	<b>3,266,764</b>	<b>3,393,722</b>
less Lapse		28%	18	920,385	1,049,756
Total full-time permanent (FTE)			37	2,346,379	2,343,966
2018 Pay Adjustment 1.9%				62,069	64,481
<b>TOTAL</b>					<b>2,408,447</b>
<b>Personnel Data</b>			<b>Number</b>		
Full-Time Equivalent Employment					
Full-time permanent			37		
Other than full-time permanent			-		
Total			37		
Authorized Positions:					
Full-time permanent			55		
Other than full-time permanent			-		
Total			55		

## PROGRAM CHANGE DETAIL BY OBJECT CLASS

### PROGRAM CHANGE DETAIL BY OBJECT CLASS (Dollar amounts in thousands)

Activity: **Patents**  
Subactivity:

Object Class	2018 Increase
11 Personnel compensation	
11.1 Full-time permanent	2,408
11.3 Other than full-time permanent	-
11.5 Other personnel compensation	40
11.8 Special personnel services payments	-
11.9 Total personnel compensation	<u>2,448</u>
12 Civilian personnel benefits	778
13 Benefits for former personnel	-
21 Travel and transportation of persons	(0)
22 Transportation of things	(0)
23.1 Rental payments to GSA	-
23.2 Rental payments to others	0
23.3 Communications, utilities and miscellaneous charges	0
24 Printing and reproduction	(1)
25.1 Advisory and assistance services	(1)
25.2 Other services	(124)
25.3 Purchases of goods & services from Gov't accounts	(0)
25.4 Operation and maintenance of facilities	3
25.5 Research and development contracts	-
25.6 Medical care	-
25.7 Operation and maintenance of equipment	(2,250)
25.8 Subsistence and support of persons	-
26 Supplies and materials	(1)
31 Equipment	(10,714)
32 Lands and structures	-
33 Investments and loans	-
41 Grants, subsidies and contributions	-
42 Insurance claims and indemnities	-
43 Interest and dividends	-
44 Refunds	(2)
99 Total obligations	<u>(9,863)</u>

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**INTELLECTUAL PROPERTY POLICY,  
PROTECTION, AND ENFORCEMENT  
PROGRAM**

## Exhibit 10 – Program Performance: Total Obligations

**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:		FY 2016		FY 2017 Current Plan		FY 2018 Base		FY 2018 Estimate		Increase/ (Decrease)	
		Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount
Policy, External Affairs and Administrative Support	Pos./Obl	104	21,821	107	25,501	107	27,331	107	27,331	-	-
	FTE	89		100		107		107		-	-
Global Intellectual Property Academy (GIPA)	Pos./Obl	18	3,257	21	3,707	21	3,885	21	3,885	-	-
	FTE	18		20		21		21		-	-
IPR Attaché Program	Pos./Obl	2	10,785	3	10,818	3	11,023	3	11,023	-	-
	FTE	2		3		3		3		-	-
IP PP&E Information Resources	Pos./Obl	-	186	-	389	-	396	-	1,037	-	641
	FTE	-		-		-		-		-	-
Subtotal Direct	Pos./Obl	124	36,048	131	40,414	131	42,636	131	43,276	-	641
	FTE	109		123		131		131		-	-
Management Goal - Allocated	Pos./Obl	170	21,861	55	18,601	55	19,494	55	19,889	0	396
	FTE	148		47		50		50		0	-
<b>Total</b>	Pos./Obl	294	57,910	186	59,016	186	62,129	186	63,166	0	1,037
	FTE	256		170		181		181		0	-

## Exhibit 12 – Justification of IP Policy, Protection and Enforcement Program and Performance

### BUDGET PROGRAM: Intellectual Property Policy, Protection and Enforcement (IP PP&E) Program

For FY 2018, the USPTO requests a total of \$63.2 million and 181 FTE for the IP PP&E Program.

<b>PROGRAM BUDGET PROFILE</b> (Dollar amounts in thousands)							
Funding Requirements by Sub Program	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Policy, External Affairs and Administrative Support	\$21,821	\$25,501	\$27,331	\$27,807	\$28,329	\$28,932	\$29,539
Global Intellectual Property Academy (GIPA)	\$3,257	\$3,707	\$3,885	\$3,951	\$4,025	\$4,110	\$4,196
IPR Attaché Program	\$10,785	\$10,818	\$11,023	\$11,242	\$11,477	\$11,729	\$11,975
IP PP&E Information Resources	\$186	\$389	\$1,037	\$1,088	\$1,091	\$1,091	\$1,096
Management Goal - Allocated	\$21,861	\$18,601	\$19,889	\$19,825	\$19,886	\$21,427	\$21,890
<b>TOTAL</b>	\$57,910	\$59,016	\$63,166	\$63,912	\$64,808	\$67,289	\$68,697
<b>FTE</b>	256	170	181	181	181	181	181

### PROGRAM JUSTIFICATION

#### IP PP&E Program Overview

The USPTO's IP PP&E Program, through its strategic goal to provide domestic and global leadership to improve IP policy, protection, and enforcement worldwide, supports the Department's strategic goals to expand the U.S. economy through increased exports and inward foreign investment that lead to more and better American jobs; and to foster a more innovative U.S. economy – one that is better at inventing, improving, and commercializing products and technologies that lead to higher productivity and competitiveness.

The USPTO promotes the protection and enforcement of IP of American innovators and creators on both the domestic and international levels. 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. The Administration has announced that it is a top priority to renegotiate the North American Free Trade Agreement (NAFTA), and to pursue bilateral trade agreements. OPIA is preparing to provide substantial support and technical expertise in negotiations of the IP provisions of these agreements.

The USPTO is also authorized to provide guidance, conduct programs and studies, and otherwise interact with foreign IP offices and international intergovernmental organizations on matters involving the protection of IP.

This IP PP&E goal will be met by achieving the objectives set forth in the *USPTO 2014-2018 Strategic Plan*. Objectives and summary progress through the end of FY 2016 are as follows:

- Provide Leadership and Education on IP Policy and Awareness.
  - Conducted a wide variety of IP-related educational programs by leveraging technology to enhance those programs, encouraging and enhancing empirical studies on the economic impacts of IP and innovation, and improving access to IP-related data.
  - Continued to play a leadership role in domestic and international IP initiatives and policy development for the administration, and to engage with Congress and U.S. Government (USG) agencies on legislation that improves the IP system. Examples include the USPTO's role as co-lead of the DOC's Internet Policy Task Force that released the *White Paper on Remixes, First Sale, and Statutory Damages*; and held a symposium on trade secrets and provided technical assistance as Congress formulated and considered legislative proposals regarding trade secrets.
  
- Provide Leadership and Education on International Agreements and Policies for Improving the Protection and Enforcement of IP Rights.
  - Continued to lead the promotion of harmonization by working closely with other international entities, an effort that enactment of the AIA moved forward with the adoption of the first-inventor-to-file principle in the United States. For example, in collaboration with foreign IP offices, continued to develop an "objectives and principles" document that specified the principles for an internationally harmonized patent system, as well as the goals such a system should strive to achieve.
  - The Patent Prosecution Highway (PPH) and Cooperative Patent Classification (CPC) are examples of international work-sharing cooperation programs that both benefit from and contribute to international harmonization of patent laws and operations.

#### Base Justification

### **Sub-Program #1: Policy, External Affairs and Administrative Support**

#### **Policy, External Affairs and Administrative Support (\$27.3 million and 107 FTE)**

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, copyright, and trademarks) 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

The USPTO, primarily through the OPIA, plays a critical role in the 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.

OPIA participates in the World Intellectual Property Organization (WIPO), a specialized agency of the United Nations (UN) devoted to IP matters. WIPO has standing committees devoted to IP law. OPIA initiates, crafts, coordinates, negotiates, and represents the USG position. OPIA

also participates in the World Trade Organization (WTO), which is an international forum for liberalizing trade. 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. OPIA also participates at the World Health Organization (WHO), which is the directing and coordinating authority for health within the UN system. IP issues surround access to medicines for influenza pandemics, among others.

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. These efforts benefit the USG and U.S. interests by ensuring the availability and enforceability of IP rights, thereby leveling the playing field for U.S. IP-based trade. 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 IP5<sup>3</sup>, which lead to work-sharing and PPH projects that will help address the patent backlog.

#### 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. Staff also review and prepare analyses of legislative proposals concerning IP matters that originated in other executive agencies or that were proposed by members of Congress. GA prepares congressional testimony on IP for the Under Secretary and other USPTO and DOC officials, and maintains liaison with the Congress, the IP bar associations, industry, and others concerned with proposed and pending legislation. The group analyzes other IP-related policy issues that are before the Executive Branch and obtains

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<sup>3</sup> 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

public views through various means, including public hearings. 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 liaison with the DOC and other agencies.

## **Sub-Program #2: Global Intellectual Property Academy (GIPA)**

### **Global Intellectual Property Academy (GIPA) (\$3.9 million and 21 FTE)**

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. These include customs officials, police officers, IP enforcement office administrators, public prosecutors, and members of the judiciary. GIPA offers 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.

Specific programs include:

- High-level capacity building and technical assistance training to foreign government officials (judges, prosecutors, customs officials, IP enforcement personnel, as well as officials from IP offices).
- Providing patent officials from other countries with patent examiner training at the Patent Training Academy with financial support from those countries.
- Conducting advanced trademark examination programs for examiners and senior officials from other IP offices including Brazil and India. These programs provide the officials with an in-depth analysis of the U.S. approach to the examination of trademark applications in order to strengthen the practices and procedures in other countries.
- Organizing and hosting capacity-building joint projects with organizations such as the Asia Pacific Economic Cooperation (APEC); the Association of South East Asian Nations (ASEAN); and the Pacific Islands Forum (PIF).
- Conducting programs on IP rights enforcement and the U.S. legal system for foreign government judges and prosecutors.
- Conducting an IP "boot camp" for U.S. small businesses including an IP "needs assessment" on patents, trade secrets, trademarks, copyright, IP and the Internet; and one-on-one consultations to assist businesses to protect themselves against IP theft from abroad, and to prepare themselves for exporting their goods or services.
- Offering online instruction and outreach through webinars and e-learning modules, providing easy, global access to information tools.

## **Sub-Program #3: Intellectual Property Rights (IPR) Attaché Program**

### **Intellectual Property Rights (IPR) Attaché Program (\$11.0 million and 3 FTE)**

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. Since its creation, the IPR Attaché Program has placed or is working to place individuals in the following countries: Brazil, China (posts exist in Beijing, Guangzhou, and Shanghai), Kuwait

(for the Middle East), India, Mexico, Peru, Russia, and Thailand, as well as Brussels, Belgium at the U.S. Mission to the European Union and 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 PP&E strategic goal, and the objectives identified in the *USPTO 2014-2018 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.

#### **Sub-Program #4: IP PP&E Information Resources**

##### **IP PP&E Information Resources (\$.4 million)**

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

#### **Sub-Program #5: Management Goal – Allocated**

##### **Management Goal – Allocated (\$19.5 million and 50 FTE)**

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

### **RISK ASSESSMENT**

Given the demonstrated importance of high-quality IP, the USPTO is a key component of the Administration's strategy to encourage American innovation and global competitiveness. As a result, the USPTO is striving to meet the challenges to maintaining effective IP rights, which include: gathering data on how IP rights function in the marketplace, deepening the dialogue on global IP policy, facilitating technical cooperation with foreign countries, optimizing the interaction of the IP system with other legal regimes, arriving at agreement on standards for IP protection, and improving IP enforcement. If the USPTO does not have the spending authority to carry out these programs, this would undermine accomplishment of the Department and USPTO missions.

### **INFLATIONARY ADJUSTMENTS**

The USPTO requires a net increase of 11 FTEs and \$3.1 million to fund adjustments to current programs for the IP PP&E Program activities. This increase will provide the annualization of the FY 2017 FTE increase and will also provide inflationary increases for non-labor activities, including service contracts, utilities, lease payments, and rent charges from the GSA.

### **IP PP&E PERFORMANCE GOALS AND MEASURES**

Historical and projected metrics can be found in the BPAG Chart on pages 8-9, and on the Data Visualization Center at <http://www.uspto.gov/about/stratplan/dashboards.jsp>

## Exhibit 13 – 15: IP Policy, Protection and Enforcement Program Changes by Sub-Program

Exhibit 13

**Department of Commerce**  
**U.S. Patent and Trademark Office**  
**INTELLECTUAL PROPERTY POLICY PROTECTION & ENFORCEMENT**  
**INCREASES FOR 2018**  
 (Dollar amounts in thousands)

		2018 Base		2018 Estimate		Increase (Decrease)	
		Personnel	Amount	Personnel	Amount	Personnel	Amount
<b>Direct Total, Intellectual Property Policy, Protection and Enforcement Program</b>	<b>Pos./Obl.</b>	<b>131</b>	<b>42,636</b>	<b>131</b>	<b>43,276</b>	<b>-</b>	<b>641</b>
	<b>FTE</b>	<b>131</b>		<b>131</b>		<b>-</b>	
<b>IP PP&amp;E Information Resources</b>	<b>Pos./Obl.</b>	<b>-</b>	<b>396</b>	<b>-</b>	<b>1,037</b>	<b>-</b>	<b>641</b>
	<b>FTE</b>	<b>-</b>		<b>-</b>		<b>-</b>	
IP PP&E Business Projects	Pos./Obl.	-	396	-	1,037	-	641
	FTE	-		-		-	



**Department of Commerce**  
**U.S. Patent and Trademark Office**  
**INTELLECTUAL PROPERTY POLICY PROTECTION & ENFORCEMENT**  
**INCREASES FOR 2018 - 2022**

(Dollar amounts in thousands)

		FY 2018		FY 2019		FY 2020		FY 2021		FY 2022	
		Increase (Decrease)		Increase (Decrease)		Increase (Decrease)		Increase (Decrease)		Increase (Decrease)	
		Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount
<b>Direct Total, Intellectual Property Policy, Protection and Enforcement Program</b>	<b>Pos./Obl.</b>	-	<b>641</b>	-	<b>684</b>	-	<b>678</b>	-	<b>669</b>	-	<b>665</b>
	<b>FTE</b>	-		-		-		-		-	
<b>IP PP&amp;E Information Resources</b>	<b>Pos./Obl.</b>	-	<b>641</b>	-	<b>684</b>	-	<b>678</b>	-	<b>669</b>	-	<b>665</b>
	<b>FTE</b>	-	-	-	-	-	-	-	-	-	-
IP PP&E Business Projects	Pos./Obl.	-	641	-	684	-	678	-	669	-	665
	FTE	-		-		-		-		-	

## Sub-Program: IP PP&E Information Resources

The IP PP&E Information Resources sub-program contributes to the accomplishment of the strategic goal to provide leadership to improve IP policy, protection and enforcement through the following management goal objective for which funds are required in FY 2018:

- Leverage IT Investments to Achieve Business Results

### Program Change

IP PP&E Information Resources (\$0.6 million): The USPTO requires an increase of \$0.6 million for a total of \$1.0 million for its CIF.

#### Proposed Action

**IP PP&E Business Projects.** This increase is required to update existing IT systems that are utilized for IP performance reporting and to administer IP surveys and evaluate the results.

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Amount (\$ in thousands)	\$ 641	\$ 684	\$ 678	\$ 669	\$ 665
FTE	-	-	-	-	-

### Statement of Need and Economic Benefit

IT is a mission critical enabler for every USPTO business function. The productivity of patent and trademark operations is directly correlated to the performance of its IT systems, which must be kept modern to meet current and future demands.

The USPTO's CPIC process governs how USPTO manages the selection, control, and evaluation of major IT investments. The CPIC process ensures that major IT investments selected for implementation address legitimate needs of the Office, and represent cost-effective business solutions.

**Schedules/Milestones/Deliverables.** Detailed information regarding schedules, milestones, and deliverables can be found in the USPTO's Exhibit 300 submissions that are located on the Federal IT Dashboard website. Additionally, information for the objective to leverage IT investments to achieve business results can be found in the Balanced Scorecard that accompanies the *USPTO 2014-2018 Strategic Plan*.

Exhibit 14

**PROGRAM CHANGE PERSONNEL DETAIL**

Activity: IP PP&E

Subactivity:

Title:	Location	Grade	Number of Positions	Annual Salary	Total Salaries
None			0		-
<b>Total</b>			<b>0</b>		<b>-</b>
less Lapse			0		-
Total full-time permanent (FTE)			0		-
2018 Pay Adjustment		1.9%			-
<b>TOTAL</b>					<b>-</b>

**Personnel Data**

	Number
Full-Time Equivalent Employment	
Full-time permanent	0
Other than full-time permanent	0
Total	0
Authorized Positions:	
Full-time permanent	0
Other than full-time permanent	0
Total	0

Exhibit 15

**PROGRAM CHANGE DETAIL BY OBJECT CLASS**

(Dollar amounts in thousands)

Activity: **IP PP&E**  
 Subactivity:

<b>Object Class</b>	<b>2018 Increase</b>
11 Personnel compensation	-
11.1 Full-time permanent	-
11.3 Other than full-time permanent	-
11.5 Other personnel compensation	-
11.8 Special personnel services payments	-
11.9 Total personnel compensation	-
12 Civilian personnel benefits	-
13 Benefits for former personnel	-
21 Travel and transportation of persons	-
22 Transportation of things	-
23.1 Rental payments to GSA	-
23.2 Rental payments to others	-
23.3 Communications, utilities and miscellaneous charges	-
24 Printing and reproduction	-
25.1 Advisory and assistance services	3
25.2 Other services	-
25.3 Purchases of goods & services from Gov't accounts	-
25.4 Operation and maintenance of facilities	-
25.5 Research and development contracts	-
25.6 Medical care	-
25.7 Operation and maintenance of equipment	60
25.8 Subsistence and support of persons	-
26 Supplies and materials	-
31 Equipment	578
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	<b>641</b>

# **MANAGEMENT PROGRAM**

## Exhibit 10 – Program Performance: Total Obligations

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

Activity: Management Program  
 Subactivity: Achieve Organization Excellence

Sub-Activity:		FY 2016		FY 2017 Current Plan		FY 2018 Base		FY 2018 Estimate		Increase/ (Decrease)	
		Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount
Executive Direction and Communications	Pos./Obl	78	8,198	87	12,502	87	13,954	87	13,954	-	-
	FTE	47		63		71		71		-	
Financial Management Services	Pos./Obl	130	24,671	134	27,828	134	29,287	134	29,287	-	-
	FTE	114		129		133		133		-	
Human Resource Management and Administrative Services	Pos./Obl	240	42,403	247	48,587	247	52,143	248	52,249	1	106
	FTE	217		232		246		246		1	
Legal Services	Pos./Obl	131	22,791	132	26,568	132	27,073	132	27,073	-	-
	FTE	115		128		128		128		-	
Management Information Resources	Pos./Obl	54	48,178	59	48,748	59	49,895	59	52,402	-	2,507
	FTE	49		55		58		58		-	
IT Infrastructure and IT Support Services	Pos./Obl	520	342,412	574	375,556	574	388,752	574	412,616	-	23,864
	FTE	468		526		566		566		-	
Miscellaneous General Expense	Pos./Obl	-	233,272	-	242,324	-	250,117	-	271,548	-	21,431
	FTE	-		-		-		-		-	
<b>Total</b>	Pos./Obl	1,153	721,925	1,233	782,112	1,233	811,221	1,234	859,129	1	47,908
	FTE	1,012		1,133		1,202		1,203		1	

		FY 2016		FY 2017 Current Plan		FY 2018 Base		FY 2018 Estimate		Increase/ (Decrease)	
		Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount
<b>Management Goal - Allocation:</b>											
Patent Program	Pos./Obl	815	616,249	998	669,878	998	694,545	999	735,797	1	41,251
	FTE	714		918		975		975		1	
Trademark Program	Pos./Obl	169	83,814	181	93,632	181	97,182	181	103,443	0	6,261
	FTE	150		168		177		177		0	
IPPP&E Program	Pos./Obl	170	21,861	55	18,601	55	19,494	55	19,889	0	396
	FTE	148		47		50		50		0	
Total Management Goal Allocation	Pos./Obl	1,153	721,925	1,233	782,112	1,233	811,221	1,234	859,129	1	47,908
	FTE	1,012		1,133		1,202		1,203		1	

## Exhibit 12 – Management Program and Performance

### BUDGET PROGRAM: Management Program

For FY 2018, the USPTO requests a total of \$859.1 million and 1,203 FTE for the Management Program. The costs associated with the Management Program activities have already been allocated to the Patent, Trademark, and IP PP&E Programs using the Office’s ABI results.

<b>PROGRAM BUDGET PROFILE</b>							
(Dollar amounts in thousands)							
Funding Requirements by Sub Program	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Executive Direction and Communications	\$8,198	\$12,502	\$13,954	\$14,198	\$14,462	\$14,769	\$15,079
Financial Management Services	\$24,671	\$27,828	\$29,287	\$29,785	\$30,344	\$30,989	\$31,640
Human Resource Management and Administrative Services	\$42,403	\$48,587	\$52,249	\$53,191	\$54,200	\$55,359	\$56,525
Legal Services	\$22,791	\$26,568	\$27,073	\$27,403	\$27,840	\$28,430	\$29,028
Management Information Resources	\$48,178	\$48,748	\$52,402	\$52,383	\$52,977	\$53,510	\$54,208
IT Infrastructure and IT Support Services	\$342,412	\$375,556	\$412,616	\$409,994	\$408,427	\$469,415	\$479,205
Miscellaneous General Expense	\$233,272	\$242,324	\$271,548	\$259,009	\$255,128	\$294,704	\$299,965
<b>TOTAL</b>	<b>\$721,925</b>	<b>\$782,112</b>	<b>\$859,129</b>	<b>\$845,962</b>	<b>\$843,379</b>	<b>\$947,175</b>	<b>\$965,649</b>
<b>FTE</b>	<b>1,012</b>	<b>1,133</b>	<b>1,203</b>	<b>1,203</b>	<b>1,203</b>	<b>1,203</b>	<b>1,203</b>

### PROGRAM JUSTIFICATION

#### Management Program Overview

The USPTO’s Management Program, through its strategic goal to achieve organizational excellence, enables the USPTO to carry out its mission and accomplish its goals and objectives. The USPTO’s management goal is consistent with the DOC’s Data and Operational Excellence strategic goals.

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

This Management goal will be met by achieving the objectives set forth in the *USPTO 2014-2018 Strategic Plan*. Objectives and summary progress through the end of FY 2016 are as follows:



- Leverage IT Investments to Achieve Business Results:
  - Continued to make progress toward improved operations and services, as well as on next-generation systems.
- Continue to Build and Maintain a Flexible, Diverse, and Engaged Workforce:
  - Continued to focus on the critical role that employee engagement plays in impacting the USPTO's ability to fulfill its mission, and effectively and efficiently serve the public. The USPTO's 2015-2018 People Plan is centered on three pillars that have a direct impact on organizational performance: Lead, Engage, and Enable that empower employees to provide outstanding service to the public.
  - Continued to enhance the USPTO telework environment by expanding telework opportunities and developing skill sets specific to managing in a telework environment. At the end of FY 2016, 10,567 employees were working from home at least one day per week, which equates to 83 percent of the workforce.
  - Promoted learning and job opportunities for all levels of employee that are designed to increase employee knowledge, skills and abilities needed by a high performing organization.
- Enhance Internal and External Relations:
  - Continued to pursue active engagements with DOC, OMB, other federal agencies and the Congress on IP-related issues including USPTO operations, abusive patent litigation practices, proposed copyright reforms, and enhanced protection of trade secrets.
  - Continued to expand IP education and pro bono services through the USPTO Law School Clinic Certification Program, and to support government-wide efforts to promote science, technology, engineering and mathematics (STEM) education.
- Secure Sustainable Funding to Deliver Value to Fee-Paying Customers and the Public
  - Conducted the biennial USPTO fee review, which included hearings by both the TPAC and PPAC. Trademark fee adjustments went into effect in mid-January 2017 and the patent rulemaking is in the regulatory review process.
  - The Financial Advisory Board (FAB) continued to provide oversight, accountability, and analysis for financial activities.
  - The USPTO continues to rely on its Operating Reserve Policy to set minimum and optimal reserve levels.
  - Continuing to pursue removal of the Section 10 sunset provision to ensure that fee-setting is made permanent.
  - Continued to meet with the PPAC and TPAC on activity-based information.
- Establish Regional Offices and a Regional Presence
  - All four permanent Regional Offices have been opened, and are staffed and operational. The regional offices fulfill the administration's commitment to promoting innovation and entrepreneurship across the United States. In addition, they are helping facilitate the hiring and retention of a highly qualified, diverse nationwide workforce.

## Base Justification

### **Sub-Program #1: Executive Direction and Communications**

#### **Executive Direction and Communications (\$14.0 million and 71 FTE)**

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.

Communications entail media relations and speech writing; business liaison, outreach, and community relations; internal communications; and museum services, special events, and web services.

Education and Outreach -- The USPTO provides educational activities and participates in educational programs for students, educators, and young inventors and innovators of all ages.

### **Sub-Program #2: Financial Management Services**

#### **Financial Management Services (\$29.3 million and 133 FTE)**

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 set appropriately; and actionable information is provided to executive management.
- Awarding quality, fiscally-responsible, and timely procurement actions by anticipating and exceeding stakeholders' ever-changing 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 2016, these activities have enabled the USPTO to earn an unqualified audit opinion on its annual financial statements for 24 consecutive years, and the Association of Government Accountants' Certificate of Excellence in Accountability Reporting award for 14 consecutive years.

### **Sub-Program #3: Human Resource Management and Administrative Services**

#### **Human Resource Management and Administrative Services (\$52.1 million and 246 FTE)**

Efficient and effective human resources management, administrative services, and telework programs under the responsibility of the Chief Administrative Officer, entail:

- Using approved and appropriate personnel practices, tools, and policies for recruiting, developing, and retaining a high-performing, highly-skilled, and diverse workforce necessary for mission success, and to foster the next generation of USPTO employees and leaders. This includes attracting employees with the right skill sets while focusing on a results-oriented performance culture, leadership and development, and talent management.
- Expanding and promoting structured USPTO-wide telework as a corporate business strategy, which supports mission achievement and goal fulfillment via a distributed workforce.
- Overseeing a broad range of administrative and employee service programs (for example, occupational/safety/health services; printing and graphics; mail center operations; move services; transportation services; conference services; cafeteria,

concessions, 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 (EEO)

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 EEO 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.

## **Sub-Program #4: Legal Services**

### **Legal Services (\$27.1 million and 128 FTE)**

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 IP law matters, and works in collaboration with the DOC on interagency IP law matters. Primary responsibilities of the SO include defending decisions by the PTAB and the TTAB before the United States Court of Appeals for the Federal Circuit (CAFC) and the Federal District courts; representing the Under Secretary in district court actions that are filed against the USPTO pursuant to the Administrative Procedure Act (APA); providing legal advice on IP law policy and regulation; prosecuting attorneys and agents who practice before the Office for alleged ethical violations or misconduct; and defending USPTO employees at deposition.
- The Office of General Law (OGL) represents the USPTO in legal matters other than those involving IP, such as providing advice, writing legal opinions, and litigating in areas concerning the management of the USPTO, such as administrative, employment, contract/procurement, fiscal, and labor law.
- The Office of Enrollment and Discipline (OED) evaluates applications of persons seeking registration as attorneys and agents and reciprocal recognition of Trademark agents; registers and maintains a roster of registered attorneys and agents to practice before the USPTO in patent cases; and investigates and brings disciplinary proceedings against registered attorneys and agents as well as attorneys practicing in trademark matters.

## **Sub-Program #5: Management Information Resources**

### **Management Information Resources (\$49.9 million and 58 FTE)**

Management Information Resources includes ongoing operations and maintenance, and making capital improvements to management business systems.

## **Sub-Program #6: IT Infrastructure and IT Support Services**

### **IT Infrastructure and IT Support Services (\$388.8 million and 566 FTE)**

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.

## **Sub-Program #7: Cross-Cutting Management Services: Miscellaneous General Expense**

### **Cross-Cutting Management Services: Miscellaneous General Expense (\$250.1 million)**

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, including the Enterprise Services Initiative. 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).

## **RISK ASSESSMENT**

It is imperative that the USPTO's mission support activities continue to modernize and aid the delivery of world class patent and trademark services. This requires USPTO leadership to make prudent management decisions, drive efficiency throughout the organization, and make informed trade-offs in determining how best to manage the Office's resources. If the USPTO does not have spending authority for Management initiatives, this has the potential for putting the USPTO at risk in numerous categories, but three are particularly high:

- Operational Risk would be the result if the USPTO were unable to hire the number of people with the technical expertise needed to carry out mission-related activities such as examining patent and trademark applications, carrying out international negotiations, and developing and maintaining IT systems.
- Financial Risk would occur if the USPTO were unable to accurately forecast its fee collections and keep all fees collected as planned in annual budget submissions.
- A Technology Risk would occur if the USPTO were unable to operate and maintain the underlying infrastructure supporting the business systems and the IT support services (e.g., operations and maintenance); and make needed capital improvements to that IT infrastructure.

## **INFLATIONARY ADJUSTMENTS**

The Management Program ATBs have already been allocated back to the three main Budget Programs and included with their costs.

## Exhibit 13 – 15: Management Program Changes by Sub-Program

Exhibit 13

**Department of Commerce**  
**U.S. Patent and Trademark Office**  
**MANAGEMENT PROGRAM**  
**INCREASES FOR 2018**  
 (Dollar amounts in thousands)

		2018 Base		2018 Estimate		Increase (Decrease)	
		Personnel	Amount	Personnel	Amount	Personnel	Amount
<b>Total, Management Program</b>	<i>Pos./Obl.</i>	1,233	811,221	1,234	859,129	1	47,908
	<i>FTE</i>	1,202		1,203		1	
<b>Executive Direction and Communications</b>	<i>Pos./Obl.</i>	87	13,954	87	13,954	-	-
	<i>FTE</i>	71		71		-	
Office of the Chief Communications Office Training	<i>Pos./Obl.</i>					-	-
	<i>FTE</i>					-	
<b>Human Resources Management and Administrative Services</b>	<i>Pos./Obl.</i>	247	52,143	248	52,249	1	106
	<i>FTE</i>	246		246		1	
Office of Human Resources Staffing	<i>Pos./Obl.</i>					1	106
	<i>FTE</i>					1	
<b>Management Information Resources</b>	<i>Pos./Obl.</i>	59	49,895	59	52,402	-	2,507
	<i>FTE</i>	58		58		-	
Management Business Projects	<i>Pos./Obl.</i>					-	2,507
	<i>FTE</i>					-	
<b>IT Infrastructure and IT Support Services</b>	<i>Pos./Obl.</i>	574	388,752	574	412,616	-	23,864
	<i>FTE</i>	566		566		-	
IT Projects	<i>Pos./Obl.</i>					-	23,864
	<i>FTE</i>					-	
<b>Miscellaneous General Expense (MGE)</b>	<i>Pos./Obl.</i>	-	250,117	-	271,548	-	21,431
	<i>FTE</i>	-		-		-	
Cross Cutting Services	<i>Pos./Obl.</i>					-	21,431
	<i>FTE</i>					-	

**Department of Commerce  
U.S. Patent and Trademark Office  
MANAGEMENT PROGRAM  
INCREASES FOR 2018 - 2022**  
(Dollar amounts in thousands)

		FY 2018		FY 2019		FY 2020		FY 2021		FY 2022	
		Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount
<b>Total, Management Program</b>	<b>Pos./Obl.</b>	<b>1</b>	<b>47,908</b>	<b>1</b>	<b>18,099</b>	<b>1</b>	<b>(1,849)</b>	<b>1</b>	<b>83,079</b>	<b>1</b>	<b>82,677</b>
	<b>FTE</b>	<b>1</b>		<b>1</b>		<b>1</b>		<b>1</b>		<b>1</b>	
<b>Executive Direction and Communications</b>	<b>Pos./Obl.</b>	-	-	-	9	-	9	-	10	-	10
	<b>FTE</b>	-		-		-		-		-	
Office of the Chief Communications Office Training	Pos./Obl.	-	-	-	9	-	9	-	10	-	10
<b>Human Resources Management and Administrative Services</b>	<b>Pos./Obl.</b>	<b>1</b>	<b>106</b>	<b>1</b>	<b>152</b>	<b>1</b>	<b>159</b>	<b>1</b>	<b>166</b>	<b>1</b>	<b>173</b>
	<b>FTE</b>	<b>1</b>		<b>1</b>		<b>1</b>		<b>1</b>		<b>1</b>	
Office of Human Resources Staffing	Pos./Obl.	1	106	1	152	1	159	1	166	1	173
	<b>FTE</b>	<b>1</b>		<b>1</b>		<b>1</b>		<b>1</b>		<b>1</b>	
<b>Management Information Resources</b>	<b>Pos./Obl.</b>	-	<b>2,507</b>	-	<b>1,530</b>	-	<b>1,087</b>	-	<b>488</b>	-	<b>73</b>
	<b>FTE</b>	-		-		-		-		-	
Management Business Projects	Pos./Obl.	-	2,507	-	1,530	-	1,087	-	488	-	73
	<b>FTE</b>	-		-		-		-		-	
<b>IT Infrastructure and IT Support Services</b>	<b>Pos./Obl.</b>	-	<b>23,864</b>	-	<b>13,863</b>	-	<b>4,282</b>	-	<b>56,490</b>	-	<b>57,620</b>
	<b>FTE</b>	-		-		-		-		-	
IT Projects	Pos./Obl.	-	23,864	-	13,863	-	4,282	-	56,490	-	57,620
	<b>FTE</b>	-		-		-		-		-	
<b>Miscellaneous General Expense (MGE)</b>	<b>Pos./Obl.</b>	-	<b>21,431</b>	-	<b>2,545</b>	-	<b>(7,387)</b>	-	<b>25,925</b>	-	<b>24,801</b>
	<b>FTE</b>	-		-		-		-		-	
Cross Cutting Services	Pos./Obl.	-	21,431	-	2,545	-	(7,387)	-	25,925	-	24,801
	<b>FTE</b>	-		-		-		-		-	

## Sub-Program: Human Resources Management and Administrative Services

The Human Resources (HR) Management and Administrative Services sub-program contributes to the accomplishment of the goal to achieve organizational excellence through the objectives to:

- Continue to Build and Maintain a Flexible, Diverse, and Engaged Workforce

### PROGRAM CHANGE

HR Management and Administrative Services (\$0.1 million and 1 FTE): The USPTO requires an increase of \$0.1 million and 1 FTE for a total of \$52.2 million and 246 FTE. This will enable the Office of Human Resources to handle an increased number of conduct and performance cases, and meet regulatory requirements for suitability adjudications.

This initiative supports the Department's Data and Operational Excellence strategic goals and addresses USPTO commitments to its workforce.

### Proposed Actions

#### Human Resources Staffing

Funding and one position are required to handle an increased number of conduct and performance actions due to an increase in the overall USPTO employee population, and an increase in the complexity of cases, for example, cases related to time fraud. The additional position is also required to meet regulations that require that employees occupying public trust positions be investigated at least once every five years.

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Amount (\$ in thousands)	\$106	\$152	\$159	\$166	\$173
FTE	1	1	1	1	1

#### Statement of Need and Economic Benefit

The provision of quality and timely administrative services supports the USPTO's effective operations. Timely adjudication of conduct and performance actions, as well as timely completion mandatory background investigations, help to reinforce the public's trust in the integrity and accountability of the USPTO's workforce.

**Schedules/Milestones/Deliverables** for the Management Goal to achieve organizational excellence are identified in the Balanced Scorecard that accompanies the *USPTO 2014-2018 Strategic Plan*.

## Sub-Program: Management Information Resources

The Management Information Resources sub-program contributes to the accomplishment of the management goal to achieve organizational excellence through the following objective for which funds are required in FY 2018:

- Leverage IT Investments to Achieve Business Results

### PROGRAM CHANGE

Management Information Resources (\$2.5 million): The USPTO requires an increase of \$2.5 million for a total of \$52.4 million and 58 FTE for its management business systems. This request supports the Department's Data and Operational Excellence strategic goals.

#### Proposed Action

**Management Business Projects.** Funds are required to continue supporting managerial, legal, administrative, communication and human resources IT systems; and continued operations of consolidated financial systems. These requirements are offset by funding reductions for re-baselining the mission critical FPNG portfolio to allow the USPTO to retire the legacy Revenue Accounting Management (RAM) system, and for big data systems.

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Amount (\$ in thousands)	\$ 2,507	\$ 1,530	\$ 1,087	\$ 488	\$ 73
FTE	-	-	-	-	-

### Statement of Need and Economic Benefit

IT is a mission critical enabler for every USPTO business function. The productivity of patent and trademark operations is directly correlated to the performance of its IT systems, which must be kept modern to meet current and future demands.

The USPTO's CPIC process governs how USPTO manages the selection, control, and evaluation of major IT investments. The CPIC process ensures that major IT investments selected for implementation address legitimate needs of the Office, and represent cost-effective business solutions.

**Schedules/Milestones/Deliverables.** Detailed information regarding schedules, milestones, and deliverables can be found in the USPTO's Exhibit 300 submissions that are located on the Federal IT Dashboard website. Additionally, information for the objective to leverage IT investments to achieve business results can be found in the Balanced Scorecard that accompanies the *USPTO 2014-2018 Strategic Plan*.



## Sub-Program: IT Infrastructure and IT Support Services

The IT Infrastructure and IT Support Services sub-program contributes to the accomplishment of the management goal to achieve organizational excellence through the following objective for which funds are required in FY 2018:

- Leverage IT Investments to Achieve Business Results

### PROGRAM CHANGE

Improve IT Infrastructure and Tools (\$23.9 million): The USPTO requires an increase of \$23.9 million for a total of \$412.6 million and 566 FTE for its IT infrastructure. This supports the Department's Data and Operational Excellence strategic goals.

#### Proposed Action

**IT Projects.** Funds are required to continue the capital hardware IT replacement program, which focuses primarily on the cyclical replacement of laptops that are at the end of their supported life span; the enterprise infrastructure program, which addresses systems such as SharePoint, security systems and the Boyers data center; OCIO program governance and support services, such as acquisition documentation, parametric cost estimating, and portfolio planning and management; technology sustaining activities, which focus on enterprise architecture; and enterprise business systems.

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Amount (\$ in thousands)	\$ 23,864	\$ 13,863	\$ 4,282	\$ 56,490	\$ 57,620
FTE	-	-	-	-	-

### Statement of Need and Economic Benefit

IT is a mission-critical enabler for every USPTO business function. The productivity of patent and trademark operations is directly correlated to the performance of its IT systems, which are in need of modernization, including its telecommunications technology upon which fulfillment of USPTO goals and objectives depends.

The USPTO's CPIC process governs how USPTO manages the selection, control, and evaluation of major IT investments. The CPIC process ensures that major IT investments selected for implementation address legitimate needs of the Office, and represent cost-effective business solutions.

**Schedules/Milestones/Deliverables.** Detailed information regarding schedules, milestones, and deliverables can be found in the USPTO's Exhibit 300 submissions that are located on the Federal IT Dashboard website. Additionally, information for the objective to leverage IT investments to achieve business results can be found in the Balanced Scorecard that accompanies the *USPTO 2014-2018 Strategic Plan*.

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

The Cross-Cutting Services/MGE sub-program contributes to the accomplishment of the management goal to achieve organizational excellence by enabling the effective funding and implementation of cross-cutting activities, primarily corporate support services that affect all USPTO employees and operations. Cross-cutting activities are funded through the MGE budget account, which includes the expenses incurred in connection with the general management of the USPTO that are not provided for elsewhere. These cross-cutting activities also facilitate adherence to regulations, Executive Orders (EO) and guidance documents, and support the USPTO management goal to achieve organizational excellence.

### PROGRAM CHANGE

Cross-Cutting Services/MGE (\$21.4 million): The USPTO requires an increase of \$21.4 million for a total of \$271.5 million for cross-cutting services that support the Department's Organizational Excellence strategic goal.

#### Proposed Actions

**Cross-Cutting Services.** Funds are required in FY 2018 and the out years to continue providing cost-effective corporate support services that affect all USPTO employees and operations. The FY 2018 funding requirement includes \$10,000 to purchase uniforms to be worn by USPTO personnel at recruitment events, consistent with common recruiting practices, and the following:

- The lease at Randolph Square expires in March 2019 and the USPTO is working with the GSA on executing a new competitive lease. The USPTO needs to continue housing approximately 1,041 employees and contractors. Given the square footage requirements, this is a prospectus level lease and Congressional approval is needed. GSA revised the original estimate and recommended that USPTO budget for construction (\$19.5 million in FY18) and move costs (\$8.5 million in FY19) for a total of \$28 million. Note, these costs will only be incurred if the current Lessor is not awarded the new lease.
- Franconia Warehouse. The USPTO's Franconia File Repository manages the maintenance, storage, retrieval and loan of over 10 million patent and trademark files. The warehouse is owned by GSA and is neither temperature nor humidity-controlled so the condition of the files is at peril. In March 2016, the National Archives and Record Administration (NARA) issued a letter to the USPTO summarizing non-compliance with 36 CFR 1234 for the storage for Federal Records. The USPTO is developing plans for the appropriate disposition of the files (e.g., accession to NARA, move to an appropriate storage location, destroy, etc.). Ultimately, the USPTO will relinquish almost 300,000 square feet of warehouse space. For FY 2018, \$1.4 million is required to begin the process of disposing of the files and relinquishing the space.
- Security and Other. \$.5 million is required in FY 2018 to address heightened security awareness, including security system upgrades, RFID readers and antennas for tagging of assets, and Department of Homeland Security services. In addition, funds will be used for photocopier services, and to provide safe and operational appliances in support of food services on campus.

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Amount (\$ in thousands)	\$ 21,431	\$ 2,545	\$ (7,387)	\$ 25,925	\$ 24,801
FTE	-	-	-	-	-

**Statement of Need and Economic Benefit**

Recruiting and retaining a highly qualified workforce with the skills needed to fulfill the core mission requires the USPTO to provide a safe and comfortable work environment by investing in the safety and security of the campus, as well as maintenance of the facilities.

**Schedules/Milestones/Deliverables** – Actions toward implementing the above initiatives will be taken in FY 2018.

Exhibit 14

**PROGRAM CHANGE PERSONNEL DETAIL**

Activity: Management  
 Subactivity:

<b>Title:</b>	<b>Location</b>	<b>Grade</b>	<b>Number of Positions</b>	<b>Annual Salary</b>	<b>Total Salaries</b>
HR Specialist	Alexandria, VA	13	1	107,435	107,435
<b>Total</b>			<u>1</u>		<u>107,435</u>
less Lapse		27%	<u>0</u>		<u>(28,626)</u>
Total full-time permanent (FTE)			1		78,809
2018 Pay Adjustment	1.9%				<u>2,041</u>
<b>TOTAL</b>					<b>80,850</b>

**Personnel Data**

	<b>Number</b>
Full-Time Equivalent Employment	
Full-time permanent	1
Other than full-time permanent	-
Total	<u>1</u>
Authorized Positions:	
Full-time permanent	1
Other than full-time permanent	-
Total	<u>1</u>

Exhibit 15

**PROGRAM CHANGE DETAIL BY OBJECT CLASS**

(Dollar amounts in thousands)

Activity: **Management**  
 Subactivity:

<b>Object Class</b>	<b>2018 Increase</b>
11 Personnel compensation	
11.1 Full-time permanent	81
11.3 Other than full-time permanent	-
11.5 Other personnel compensation	-
11.8 Special personnel services payments	-
11.9 Total personnel compensation	<u>81</u>
12 Civilian personnel benefits	25
13 Benefits for former personnel	-
21 Travel and transportation of persons	31
22 Transportation of things	(2)
23.1 Rental payments to GSA	(1,246)
23.2 Rental payments to others	471
23.3 Communications, utilities and miscellaneous charges	(18)
24 Printing and reproduction	-
25.1 Advisory and assistance services	(61)
25.2 Other services	1,007
25.3 Purchases of goods & services from Gov't accounts	7,304
25.4 Operation and maintenance of facilities	13,976
25.5 Research and development contracts	-
25.6 Medical care	-
25.7 Operation and maintenance of equipment	3,468
25.8 Subsistence and support of persons	-
26 Supplies and materials	31
31 Equipment	22,843
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	<u><b>47,908</b></u>

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# **EXHIBITS: 16 - 37**

## Exhibit 16 – Summary of Requirements by Object Class

Department of Commerce  
U.S. Patent and Trademark Office  
**SUMMARY OF REQUIREMENTS BY OBJECT CLASS**  
(Dollar amounts in thousands)

<b>Object Class</b>	FY 2016	FY 2017 Current Plan	FY 2018 Base	FY 2018 Estimate	Increase/ Decrease over 2018 Base
11.1 Salaries	1,429,850	1,497,274	1,591,145	1,590,730	(415)
11.5 Other personnel compensation	141,314	146,888	149,869	153,317	3,448
<b>11.9 Total personnel compensation</b>	<b>1,571,164</b>	<b>1,644,162</b>	<b>1,741,014</b>	<b>1,744,048</b>	<b>3,034</b>
12.1 Civilian personnel benefits	532,519	555,294	590,220	590,057	(163)
13 Benefits to Former Employees	208	208	208	208	0
21 Travel and transportation of persons	4,867	6,644	6,770	7,159	389
22 Transportation of things	288	304	310	308	(2)
23.1 Rental payments to GSA	93,417	93,312	95,085	93,839	(1,246)
23.2 Rental payments to others	13,161	14,568	14,845	15,316	471
23.3 Commun., util., and misc. charges	21,006	17,814	18,152	18,147	(5)
24 Printing and reproduction	139,742	140,878	143,556	143,718	161
25.1 Advisory and assistance services	57,302	64,592	65,823	67,906	2,083
25.2 Other services from non-federal sources	130,647	124,700	126,501	129,530	3,029
25.3 Other goods and services from federal sources	43,423	52,631	53,470	60,773	7,304
25.4 Operation and maintenance of facilities	18,309	16,039	16,343	35,868	19,525
25.7 Operation and maintenance of equipment	294,210	270,334	275,471	271,022	(4,449)
26 Supplies and materials	43,934	44,218	45,058	45,415	357
31 Equipment	178,985	247,448	252,150	273,876	21,726
32 Land and Structures	-	-	-	-	0
4x Insurance claims , indemnities, and refunds	3,425	3,747	3,818	3,685	(133)
<b>99.9 Total Obligations</b>	<b>3,146,607</b>	<b>3,296,893</b>	<b>3,448,793</b>	<b>3,500,874</b>	<b>52,081</b>
Fee Collections	(3,063,247)	(3,158,427)	(3,586,193)	(3,586,193)	0
Less Fee Collections Temporarily Unavailable <sup>1</sup>	-	6,086	-	-	0
Less prior year other income/recoveries	(42,344)	(29,250)	(29,250)	(29,250)	0
Less prior year unobligated balance	(504,353)	(461,238)	(350,022)	(350,022)	0
Less end year unobligated balance	461,238	350,022	514,672	462,591	(52,081)
Budget Authority Temporarily Unavailable <sup>1</sup>	-	(6,086)	-	-	0
Total Budget Authority	(2,100)	(8,086)	(2,000)	(2,000)	0
Personnel Data					
Full-Time equivalent Employment:	12,436	12,769	13,223	13,249	26
Positions:	12,942	13,405	13,405	13,438	33

<sup>1</sup>PTO assumes that when FY17 is finalized, the \$6M additional Budget Authority lost in FY2017 will become available and therefore has not rolled the \$6M loss through the operating reserve balance into FY17.



## 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, ~~\$3,230,000,000~~ \$3,586,193,000 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 ~~2017~~ 2018, so as to result in a fiscal year ~~2017~~ 2018 appropriation from the general fund estimated at \$0: *Provided further*, That during fiscal year ~~2017~~ 2018, should the total amount of such offsetting collections be less than ~~\$3,230,000,000~~ \$3,586,193,000 this amount shall be reduced accordingly: *Provided further*, That any amount received in excess of ~~\$3,230,000,000~~ \$3,586,193,000 in fiscal year ~~2017~~ 2018 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 ~~2017~~ 2018 for official reception and representation expenses: *Provided further*, That in fiscal year ~~2017~~ 2018 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 notwithstanding any other provision of law, all fees and surcharges assessed and collected by USPTO are available for USPTO only pursuant to section 42(c) of title 35, United States Code, as amended by section~~

~~22 of the Leahy-Smith America Invents Act (Public Law 112-29):~~ *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><del>...\$3,230,000,000</del> \$3,586,193,000  <del>...2016</del> 2018</p>	<p>Retains the appropriation language in H.R.5393 and S.2837 for FY 2017, but changes the amount available to the USPTO in FY 2018 to be the total amount of fees collected during FY 2018, and changes all references to FY 2017 to FY 2018.</p>
<p><i>Provided further,</i> That the Director of USPTO shall submit a <del>spending plan notification</del> <i>notification to reprogram funds</i> to the Committees on Appropriations of the House of Representatives and the Senate for any amounts made available by the preceding proviso and such <del>spending plan notification</del> 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:</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>
<p><del><i>Provided further,</i> That notwithstanding any other provision of law, all fees and surcharges assessed and collected by USPTO are available for USPTO only pursuant to section 42(c) of title 35, United States Code, as amended by section 22 of the Leahy-Smith America Invents Act (Public Law 112-29):</del></p>	<p>The need for this section has been overtaken by Section 22 of the America Invents Act, which provides for USPTO funding, and establishes the Patent and Trademark Fee Reserve Fund.</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.

## Exhibit 37

U.S. Department of Commerce  
United States Patent and Trademark Office

Statement of Actions on GAO Recommendations made from November 1, 2015 through September 30, 2016

Date of Report	GAO Job Code	Recommendation	Action Plan for Recommendation	Actions Taken to-Date	Status of Recommendation: Open or Closed
7/20/2016	361611	1. Develop a consistent definition of patent quality, and clearly articulate this definition in agency documents and other guidance.	Develop a consistent definition of patent quality. Clearly articulate this definition in agency documents and other guidance.	In Progress. Per USPTO response to GAO draft report – <i>“A quality patent is one that is correctly issued in compliance with all the requirements of Title 35 as well as the relevant case law at the time of issuance.”</i> The USPTO is still in the process of identifying all relevant guidance and training needing updating to include the agency’s consistent definition of patent quality.	Open
7/20/2016	361611	2. Further develop measurable, quantifiable goals and performance indicators related to patent quality as part of the agency’s strategic plan.	Based on data from the Master Review Form, update existing measurable, quantifiable performance indicators related to patent quality, as appropriate, and develop new measurable, quantifiable performance indicators related to patent quality, as appropriate. Update any measurable, quantifiable goals that are based on the performance indicators that were updated above, as appropriate, and develop goals based on any new performance indicators developed above, as appropriate.	Completed. USPTO announced a new quality metrics via Director’s blog on December 6, 2016. In addition, the USPTO has focused during this year on improving its performance indicators and goals related to patent quality based, in part, on additional data that the Agency is collecting through improved mechanisms. Quality metrics targets identified and announced during the December 13th Patent Quality Conference. Submitted documentation to GAO to close out recommendation.	Open

Date of Report	GAO Job Code	Recommendation	Action Plan for Recommendation	Actions Taken to-Date	Status of Recommendation: Open or Closed
7/20/2016	361611	3. Analyze the time examiners need to perform a thorough patent examination. This action could be taken in conjunction with the recommendation in our report on USPTO's prior art search capabilities (GAO-16-479).	Further analyze examiners' current examination expectancies in the framework of CPC. Analyze the current set of required examination duties and whether this set of duties meets the Agency's current needs, e.g., quality requirements.	In Progress. The USPTO has completed an initial investigation of the time examiners need to perform a thorough patent examination prior art search. As part of the Enhanced Patent Quality Initiative, the USPTO is conducting a project, the Clarity of the Record Pilot, to study the additional time it takes for examiners to employ best practices to enhance the clarity of the prosecution record.	Open
7/20/2016	361611	4. Analyze how current performance incentives affect the extent to which examiners perform thorough examinations of patent applications.	Assess the quality, including completeness, of Office actions of examiners who receive different tiers of awards, both production and docket management, as well as the quality, including completeness, of Office actions of examiners who do not receive awards.	In Progress.	Open
7/20/2016	361611	5. Establish a process to provide data on the results of the PTAB proceedings to managers and staff in the TCs, and analyze PTAB data for trends in patent quality issues to identify whether additional training, guidance, or other actions are needed to address trends.	Establish process to notify examiners of related applications that a patent is involved in an AIA-trial. Establish process to collect post-grant outcome information and feed it back to examiners through additional training, guidance, or other actions. Establish process to collect information about the outcomes of <i>ex parte</i> appeals and feed it back to the technology centers and examiners.	Completed. A new tab was inserted in the examiner docket and application viewer (DAV) that notifies an examiner that a related patent is involved in an AIA-trial and provides the examiner with access to the trial documents. Refocused efforts on case law, specific to technology center issues. Submitted documentation to GAO to close out recommendation.	Open
7/20/2016	361611	6. Evaluate the effects of compact prosecution and other agency application and examination policies on patent quality. In doing so, USPTO should determine if any changes are needed to ensure that the policies are not adversely affecting patent quality.	Assess whether the quality of Office actions is affected by an examiner following the principles of compact prosecution. Assess whether the quality of Office actions is affected by a policy of allowing an unlimited number of patent claim. Assess whether the quality of Office actions is affected by a policy of allowing unlimited requests for examination.	In Progress. .	Open

Date of Report	GAO Job Code	Recommendation	Action Plan for Recommendation	Actions Taken to-Date	Status of Recommendation: Open or Closed
7/20/2016	361611	7. Consider whether to require patent applicants to include claim clarity tools, such as a glossary of terms, a check box to signal functional claim language or claim charts, in each application.	Do a request for comments on what, if any, additional claim clarity tools the USPTO should require as a follow-up to our previous Request for Comments on Preparation of Patent Applications, 78 Fed. Reg. 2960. Based on the received comments, determine whether to require patent applicants to include claim clarity tools.	In Progress.	Open
7/20/2016	361612	1. To ensure that USPTO's collaborative efforts on classification help examiners find relevant prior art, USPTO should work with EPO to identify a target level of consistency of Cooperative Patent Classification decisions between USPTO and EPO and develop a plan to monitor consistency to achieve the target.	Hold a workshop with the EPO to discuss objective quality metrics (kick-off). Begin holding ongoing meetings with EPO on quality assurance to share feedback on classification decisions to ensure USPTO and EPO are aligned in what the targets should be. Agree to consistent target levels with EPO. Use results of consistent target level review/result (once implemented) to implement and monitor corrective actions for classification activities.	In Progress. Held Cooperative Patent Classification Quality Assurance Meeting on November 11-13, 2014 with the EPO at the Hague. Held Cooperative Patent Classification Joint Governance Board (CPC JB) 14th Meeting at USPTO September 20-23, 2016.	Open
7/20/2016	361612	2. To ensure that USPTO is able to take full advantage of its investment in new information technology tools and capabilities, USPTO should develop and periodically update a documented strategy to identify key sources of nonpatent literature for individual technology centers and to assess the optimal means of providing access to these sources, such as including them in USPTO's search system.	Assess the usage of nonpatent literature (NPL) through the Patent Business. Develop and document a strategy for optimizing NPL. Consider increasing NPL data associated with the Patents End-to-End (PE2E) Search tool based on the results of the assessment of NPL usage throughout the Patent Business.	In Progress.	Open

Date of Report	GAO Job Code	Recommendation	Action Plan for Recommendation	Actions Taken to-Date	Status of Recommendation: Open or Closed
7/20/2016	361612	3. To improve its monitoring of prior art searches and provide USPTO the ability to examine and address trends in prior art search quality at the technology center level, USPTO should – Develop written guidance on what constitutes a thorough prior art search within each technology field (i.e., mechanical, chemical, electrical), technology center, art area, or art unit, as appropriate, and establish goals and indicators for improving prior art searches.	Develop written guidance on what constitutes a thorough prior art search within each technology field, technology center, art area, or art unit, as appropriate. Establish goals and indicators for improving prior art searches.	In Progress. Written guidance on what constitutes a thorough prior art search is available via Training Modules and Refresher Courses materials which are accessible to Examiners via the Office of Patent Training website on the USPTO intranet. Chapter 900 of the Manual of Patent Examining Procedure provides written guidance on prior art, classification and search for examiners.	Open
7/20/2016	361612	4. To improve its monitoring of prior art searches and provide USPTO the ability to examine and address trends in prior art search quality at the technology center level, USPTO should – Ensure that sufficient information is collected in reviews of prior art searches to assess the quality of searches at the technology center level, including how often examiners search for U.S. patents, foreign patents, and nonpatent literature.	Evaluate the Master Review Form to ensure it captures sufficient information to assess the quality of searches, including how often examiners search for U.S. patents, foreign patents, and nonpatent literature. Perform a sufficient number of reviews in FY 2017 to allow the Office to assess the quality of searches at the technology center level.	In Progress.	Open
7/20/2016	361612	5. To improve its monitoring of prior art searches and provide USPTO the ability to examine and address trends in prior art search quality at the technology center level, USPTO should – Use the audits and supervisory reviews to monitor the thoroughness of examiners' prior art searches and improvements over time.	Develop metrics to convey the quality of prior art searches at the technology center level. Develop processes to incorporate information learned from the analysis of the search quality metrics to improve examiners' prior art searches.	In Progress.	Open

Date of Report	GAO Job Code	Recommendation	Action Plan for Recommendation	Actions Taken to-Date	Status of Recommendation: Open or Closed
7/20/2016	361612	6. To ensure that examiners have sufficient time to conduct a thorough prior art search, USPTO should, in conjunction with implementing the recommendation from our patent quality report to analyze the time examiners need to perform a thorough examination, specifically assess the time examiners need to conduct a thorough prior art search for different technologies.	Further analyze examiners' current examination expectancies in the framework of CPC. Analyze the current set of required examination duties and whether this set of duties meets the Agency's current needs. Analyze what, if any, additional time should be given to examiners	In Progress. The USPTO has completed an initial investigation of the time examiners need to perform a thorough patent examination prior art search. This initial investigation found that additional time for searching was warranted in certain technologies, and the USPTO has provided additional examination time for approximately 1000 examiners. Additional technology areas are being reviewed for consideration to complete the investigation.	Open
7/20/2016	36112	7. To ensure that examiners have the technical competence needed to complete thorough prior art searches, USPTO should assess whether the technical competencies of examiners in each technology center match those necessary; develop strategies to address any gaps identified, such as a technical training strategy; and establish measures to monitor progress toward closing any gaps.	Develop technical training needs assessment tools and administer the tools to technology center employees and managers. Assess training needs in each technology center based on data received by the needs assessment tools. Develop a plan to address any gaps in technical competencies identified. Survey technology center employees to measure progress toward closing any identified technology competency gaps.	In Progress. Developed the tool to assess technical training needs for the managers. The assessment tool/survey has been reviewed and is ready for implementation. It is planned that the tool will be distributed to all patent examiners and supervisory patent examiners in the technology centers. Upon distribution, the tool will be open for 3 weeks to allow for voluntary completion by examiners and supervisors. Upon completion of the tool's open period the responses received will be compiled and analyzed to allow for the assessment of training needs in each technology center.	Open



# **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 an operating reserve 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.

This planning framework is itself built upon several subsidiary frameworks:

The FY 2018 Budget is based on the *USPTO 2014-2018 Strategic Plan*, and continues the long-term initiatives that were first identified in prior year budgets.

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, because 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 developed the current patent fee structure 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; and ad hoc fee/cost calculations and business case studies. 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; and ad hoc fee/cost calculations and business case studies. 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 biennially reviews the existing patent and trademark fee schedules as well as research, analysis, and recommendations for potential revisions and additions to that schedule. The fee proposals finalized in FY 2017 are the result of the fee review that commenced in FY 2015. The FY 2017 fee review is underway. Fee reviews are distinct but closely related to the rulemaking process for fee setting. However, fee reviews do not always lead to fee setting. The results of the FY 2017 fee review will be discussed in the FY 2019 budget.

### 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.

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, variations in filings and revenue collections within the year, 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 any 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 five 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 presents a range of aggregate fee collections.

### ECONOMIC AND MARKET OUTLOOK

Requests for the USPTO services and products are dependent 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 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 between two and three percent for FY 2017 and FY 2018 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, and anticipated applicant behavior 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 accomplishments of the *USPTO 2010-2015 Strategic Plan* and the strategies and objectives in the *USPTO 2014-2018 Strategic Plan*. Both plans identify and implement 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 2018 estimates include assumptions of payment behavior based on the current trademark fee schedule, which includes new fee rates effective January 14, 2017 and anticipated fees that will be published in a patent fees final rule before the end of FY 2017.

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. As expected, the range for FY 2018 is fairly narrow and gradually increases in the out-years as uncertainty grows.

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 2018 estimated patent fee collections include collections for applications filed in FY 2018, as well as work processed in FY 2018 (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 it also has 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 \$3,079 and \$3,438 million for FY 2018 excluding \$24 million in other income. These projections are based on assumptions that patent filings will be between a negative growth rate of one-half percent and a positive growth rate of five percent, issues will reflect a continued commitment to strengthened examination capacity and efficiencies, and patent maintenance fee payments will continue with similar renewal rates.

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 \$317 and \$355 million for FY 2018, excluding \$6 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 one percent and 13 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.

The FY 2017 and out years fee collection estimates include the latest trademark fee schedule (effective January 2017) and a patent fee proposal that is expected to be implemented during FY 2017. Both fee setting efforts involved careful consideration of feedback offered by the respective PACs and the public following the USPTO's FY 2015 comprehensive biennial fee review. 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. The USPTO is committed to continuously improving the 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 2018 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 2018 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.

The FY 2015 President's Budget assumed reprioritization of approximately \$15.5 million to other FY 2015 initiatives, and the FY 2016 President's Budget assumed additional reprioritizations. 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 fund the patent and trademark operating reserves at fiscally prudent minimal levels. This FY 2018 Budget continued the reprioritization of resources to other initiatives.



## 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 2016			FY 2017			FY 2018		
	Total	Patents	Trademarks	Total	Patents	Trademarks	Total	Patents	Trademarks
Patent Examining	1,941,889	1,941,889		2,002,557	2,002,557		2,103,751	2,103,751	
Patent Trial and Appeals	77,630	77,630		86,780	86,780		93,476	93,476	
Patent Information Resources	187,114	187,114		179,897	179,897		193,402	193,402	
Trademark Examining	120,069		120,069	133,486		133,486	145,537		145,537
Trademark Appeals and <i>Inter Partes</i> Proceedings	12,855		12,855	14,182		14,182	15,431		15,431
Trademark Information Resources	34,082		34,082	46,926		46,926	36,953		36,953
Policy, External Affairs and Administrative Support	21,821	15,090	6,731	25,501	17,633	7,868	27,331	18,893	8,438
Global Intellectual Property Academy (GIPA)	3,257	2,296	960	3,707	2,614	1,093	3,885	2,739	1,146
IPR Attaché Program	10,785	6,340	4,445	10,818	6,360	4,458	11,023	6,481	4,543
IP PP&E Information Resources	186	183	3	389	361	28	1,037	1,008	29
Executive Direction and Communications	8,198	7,276	921	12,502	11,144	1,358	13,954	12,435	1,519
Financial Management Services	24,671	20,159	4,513	27,828	22,767	5,061	29,287	23,959	5,328
Human Resource Management and Administrative Services	42,403	37,617	4,786	48,587	43,129	5,458	52,249	46,351	5,898
Legal Services	22,791	18,922	3,869	26,568	21,971	4,597	27,073	22,388	4,684
Management Information Resources	48,178	40,015	8,164	48,748	40,593	8,156	52,402	44,335	8,068
IT Infrastructure and IT Support Services	357,407	303,607	53,800	386,094	329,477	56,616	422,536	360,300	62,236
Miscellaneous General Expense	233,272	210,461	22,811	242,324	218,596	23,727	271,548	244,754	26,794
<b>Total</b>	<b>3,146,608</b>	<b>2,868,598</b>	<b>278,009</b>	<b>3,296,893</b>	<b>2,983,878</b>	<b>313,015</b>	<b>3,500,874</b>	<b>3,174,271</b>	<b>326,603</b>

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 2019			FY 2020			FY 2021			FY 2022		
	Total	Patents	Trademarks	Total	Patents	Trademarks	Total	Patents	Trademarks	Total	Patents	Trademarks
Patent Examining	2,168,166	2,168,166		2,206,541	2,206,541		2,198,038	2,198,038		2,212,434	2,212,434	
Patent Trial and Appeals	95,229	95,229		97,133	97,133		99,920	99,920		103,036	103,036	
Patent Information Resources	193,344	193,344		197,399	197,399		203,546	203,546		205,878	205,878	
Trademark Examining	156,415		156,415	167,968		167,968	181,374		181,374	194,735		194,735
Trademark Appeals and <i>Inter Partes</i> Proceedings	15,919		15,919	16,450		16,450	17,039		17,039	17,643		17,643
Trademark Information Resources	46,676		46,676	46,815		46,815	47,248		47,248	47,854		47,854
Policy, External Affairs and Administrative Support	27,807	19,221	8,585	28,329	19,583	8,747	28,932	19,999	8,933	29,539	20,419	9,120
Global Intellectual Property Academy (GIPA)	3,951	2,786	1,165	4,025	2,838	1,187	4,110	2,898	1,212	4,196	2,959	1,237
IPR Attaché Program	11,242	6,609	4,633	11,477	6,747	4,730	11,729	6,896	4,834	11,975	7,040	4,935
IP PP&E Information Resources	1,088	1,058	30	1,091	1,060	31	1,091	1,060	31	1,096	1,064	32
Executive Direction and Communications	14,198	12,652	1,545	14,462	12,888	1,574	14,769	13,161	1,608	15,079	13,437	1,641
Financial Management Services	29,785	24,366	5,419	30,344	24,823	5,521	30,989	25,351	5,638	31,640	25,883	5,756
Human Resource Management and Administrative Services	53,191	47,185	6,005	54,200	48,081	6,119	55,359	49,108	6,250	56,525	50,143	6,382
Legal Services	27,403	22,663	4,740	27,840	23,035	4,805	28,430	23,523	4,907	29,028	24,018	5,010
Management Information Resources	52,383	44,503	7,880	52,977	44,988	7,990	53,510	45,426	8,084	54,208	46,006	8,202
IT Infrastructure and IT Support Services	418,436	357,933	60,504	416,293	355,567	60,726	477,287	408,657	68,630	487,265	417,796	69,469
Miscellaneous General Expense	259,009	233,650	25,359	255,128	230,261	24,867	294,704	265,587	29,118	299,965	270,349	29,616
<b>Total</b>	<b>3,574,240</b>	<b>3,229,365</b>	<b>344,875</b>	<b>3,628,472</b>	<b>3,270,944</b>	<b>357,527</b>	<b>3,748,076</b>	<b>3,363,171</b>	<b>384,905</b>	<b>3,802,096</b>	<b>3,400,463</b>	<b>401,633</b>

## Appendix III- Change from FY 2017 PB to FY 2018 PB

(Dollars in Millions)	FY 2016		FY 2017				FY 2018			
	Actuals	FY 2017 President's Budget Working Estimate December 2015	FY 2018 President's Budget Working Estimate January 2017	Increase/ (Decrease)		FY 2017 President's Budget Working Estimate December 2015	FY 2018 President's Budget Working Estimate January 2017	Increase/ (Decrease)		
Date										
Filing (with Excess Claims)	\$835.4	\$858.6	\$842.9	(\$15.7)	-1.8%	\$913.5	\$923.1	\$9.6	1.1%	
Post Allowance Fees	\$273.2	\$285.2	\$271.9	(\$13.4)	(\$0.0)	\$300.2	\$289.1	(\$11.1)	(\$0.0)	
Maintenance	\$1,212.4	\$1,299.7	\$1,252.0	(\$47.7)	(\$0.0)	\$1,508.1	\$1,514.4	\$6.3	\$0.0	
PCT	\$179.2	\$197.5	\$184.7	(\$12.8)	(\$0.1)	\$211.1	\$201.3	(\$9.8)	(\$0.0)	
Extensions of Time	\$148.4	\$146.9	\$149.9	\$3.0	\$0.0	\$149.9	\$152.8	\$2.9	\$0.0	
Other	\$135.5	\$198.4	\$150.9	(\$47.5)	(\$0.2)	\$246.7	\$169.6	(\$77.1)	(\$0.3)	
<b>Total Patent Fee Collections</b>	<b>\$2,784.1</b>	<b>\$2,986.4</b>	<b>\$2,852.2</b>	<b>(\$134.2)</b>	<b>(\$0.0)</b>	<b>\$3,329.5</b>	<b>\$3,250.2</b>	<b>(\$79.3)</b>	<b>(\$0.0)</b>	
<b>Trademarks</b>	<b>\$277.6</b>	<b>\$334.6</b>	<b>\$306.2</b>	<b>(\$28.4)</b>	<b>(\$0.1)</b>	<b>\$375.6</b>	<b>\$335.9</b>	<b>(\$39.7)</b>	<b>(\$0.1)</b>	
<b>USPTO Fee Collections</b>	<b>\$3,061.7</b>	<b>\$3,321.0</b>	<b>\$3,158.4</b>	<b>(\$162.6)</b>	<b>(\$0.0)</b>	<b>\$3,705.1</b>	<b>\$3,586.1</b>	<b>(\$119.0)</b>	<b>(\$0.0)</b>	

This appendix provides a more detailed discussion of how fee collection estimates changed within major fee categories between the FY 2017 President's Budget and the FY 2018 President's Budget. For additional information on the high-level methodology for fee collection estimates at the USPTO, see the discussion, "Developing Workload and Fee Collection Estimates" in Appendix I.

In comparison to the FY 2017 President's Budget, aggregate projected fee collections have decreased in the FY 2018 President's Budget across all future fiscal years for both patents and trademarks. The decreased revenue is primarily the result of smaller fee increase proposals and a delayed fee change effective date for patent fees. The fee projection models used to project fee collections for the FY 2018 President's Budget have also been refined to account for FY 2016 year-end data, year-to-date FY 2017 data, updated workload and productivity models (including staffing), and methodology enhancements.

Major highlights of the changes are:

### Fee Rate Changes:

- Trademarks issued a final rule on October 21, 2016 with an effective date for new fees of January 14, 2017. In response to written and oral comments received from the Trademark Public Advisory Committee (TPAC) and the public, certain final rule fee rates were reduced from those proposed and captured in the FY 2017 President's Budget. The revised (lower) fee rates as well as updated assumptions result in lower collections estimates—8.5% lower in FY 2017 and 10.6% lower in FY 2018.
- The patent fee notice of proposed rulemaking (NPRM) was published in the *Federal Register* on October 3, 2016 for a 60-day public comment period. The FY 2017 President's Budget assumed fee rates as presented to the Patent Public Advisory Committee (PPAC) in October 2015 and an implementation date of April 2017. The FY 2018 President's Budget assumes new fee rates that are generally lower than those initially proposed, in response to feedback from the PPAC and public. The FY 2018 President's Budget also assumes an implementation date of September 2017. The revised (lower) fee rates, later implementation date, and updated assumptions result in lower collections estimates, 4.5% lower in FY 2017 and 2.4% lower in FY 2018.

### Patent Application Filings:

- In the FY 2018 President's Budget, FY 2017 total utility, plant, and reissue (UPR) filings are estimated at 614,300, a 3% increase over the FY 2017 President's Budget estimate of 594,900. The revised estimate represents 0.7% growth from 610,005 filings in FY 2016 and follows 5.1% growth from FY 2015 to FY 2016.
- Estimated serialized filings growth is 2.0% in both years. In the FY 2017 President's Budget, the estimated filings growth was 1.5% in FY 2017 and 2.0% in FY 2018.

- The request for continued examination (RCE) filing estimate increased between the FY 2017 and FY 2018 President's Budgets. The revised FY 2017 estimate is 187,356 compared to an earlier estimate of 163,910 (14.3% higher); the revised FY 2018 estimate is 191,839 compared to an earlier estimate of 160,878 (19.2% higher). Compared to FY 2016 actuals (191,479), the revised FY 2017 estimate represents a negative growth rate of 2.2%. The negative growth in RCE workloads in FY 2017 comes off of a substantial workload increase, 13.5% growth, from FY 2015 to FY 2016.
- As a percentage of UPR filings, the FY 2018 President's Budget estimates that RCEs will be 30.5% in FY 2017 and 30.6% in FY 2018 before falling to 27.7% in FY 2022.

#### Post Allowance:

- The Patent Production Model (PPM) estimates an allowance rate (i.e., the rate at which the USPTO issues patents) of 50% for all forecasted years. This is lower than the 54% rate for FY 2017 and the 55% rate for FY 2018 that were estimated in the FY 2017 President's Budget.
- The change in allowance rates is due to revised staffing assumptions and the subsequent impact on first office actions, i.e., a smaller number of examiner hires results in a smaller examining corps, which leads to fewer applications being reviewed. The resulting effect is fewer allowances and fewer patents printed compared to FY 2016, which had 327,489 total allowances and 306,277 total patents printed.
- Compared to the FY 2017 President's Budget, in the FY 2018 President's Budget total patents printed are expected to decrease from 307,140 to 301,379 (-1.9%) in FY 2017 and from 311,171 to 304,589 (-2.1%) in FY 2018.

#### Maintenance:

- Projected maintenance renewal rates (based on issues) changed slightly between the two budget iterations. For first stage renewals in both FY 2017 and FY 2018, the estimated renewal rate went from 86.6% to 87.1% between the FY 2017 President's Budget and the FY 2018 President's Budget. The second stage renewal rate assumption remained constant for both years at 68.2%. The third stage renewal rate assumption decreased slightly between the two budget iterations, from 49.4% to 48.4%.
- All renewal rates are based on moderate economic growth assumptions, a 10-year average of demand for intellectual property rights, and external stakeholder discussions, including the PPAC.
- As a result of the revised assumptions, in the FY 2018 President's Budget, estimated maintenance fee collections in FY 2017 decrease \$47.7 million (-3.7%), while estimated collections in FY 2018 increase by \$6.3 million (0.4%).

#### Patent Cooperation Treaty (PCT)

- Compared to the FY 2017 President's Budget, in the FY 2018 President's Budget, projected PCT fee collections fall each year during the five-year period: -6.5% in FY 2017, -4.6% in FY 2018, -5.3% in FY 2019, -5.9% in FY 2020, and -6.8% in FY 2021.
- The decreased revenue projections are due to PCT filings returning to a more stable growth rate following a filing surge in previous years. The earlier surge in PCT filings was caused by a change in application filing rules. Updated modeling assumptions lead to \$64.0 million less revenue over the forecasting period.

#### Patent Trial and Appeal Board (PTAB)

- Projected notice of appeal workloads increase slightly (2.0%) between FY 2017 and FY 2018 in the FY 2018 President's Budget. However, the largest projected increase in appeal workloads is for forwarding an appeal to the board. Appeal forwarding workloads are expected to increase by 33.1% between FY 2016 and FY 2017 before falling 24.2% in FY 2018, per the FY 2018 President's Budget. The temporary growth in FY 2017 is attributable to a change in how the Board manages its workload. The USPTO expects

steady growth (2.5% – 3%) in workloads to forward an appeal to the board beginning in FY 2019 through FY 2022.

- Year-over-year workload growth for AIA trial proceedings is positive for inter partes reviews and post-grant or covered business method reviews in FY 2017 before falling nearly 10% in FY 2018. In all subsequent fiscal years, growth is positive across these fee categories.
- As a result of these factors and revised PTAB fees in the final rule, in the FY 2018 President's Budget PTAB fee collections are projected to increase by 18% over the FY 2016 collections in FY 2017 and by 6% over the FY 2017 estimate in FY 2018 before settling at 3 – 4% annual growth in later years. Still, compared to the FY 2017 President's Budget, PTAB collections in the President's Budget are \$194.7 million lower over the five-year period.

#### Trademarks

- Compared to the FY 2017 President's Budget, the filing growth rate is projected to increase slightly, from 7.4% to 7.5% in the FY 2018 President's Budget. However, in the earlier budget iteration, year-end estimates for FY 2016 filings were higher (539,000) than FY 2016 actuals (530,270). As a result, estimated filings are actually lower in the FY 2018 President's Budget than they are in the FY 2017 President's Budget (570,000 vs. 579,000 filings).
- In FY 2018, the filing growth rate is expected to decrease between the two budget iterations, from 8.1% to 7.0%, based on consensus economic growth assumptions (namely lower gross domestic product growth) and demand for intellectual property rights.
- The updated assumptions about total registrations are based on new data about examiner production, including an increase in planned non-examination time to train and mentor incoming examiners.

## Appendix IV- FY 2017 Estimated and Actual Fees and Assumptions

USPTO Fee Collections							
Estimates and Assumptions							
	FY 2016	FY 2017			FY 2018		
(Dollars in Millions)	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 2016	February 2017	February 2017	February 2017	February 2017	February 2017	February 2017
<b>Total USPTO Fee Collections</b>	<b>\$3,062</b>	<b>\$3,062</b>	<b>\$3,158</b>	<b>\$3,298</b>	<b>\$3,396</b>	<b>\$3,586</b>	<b>\$3,793</b>
Total Patent Fee Collections	\$2,784	\$2,762	\$2,852	\$2,983	\$3,079	\$3,250	\$3,438
Total Trademark Fee Collections	\$278	\$300	\$306	\$315	\$317	\$336	\$355
Major Patent Fee Collections:							
Filing (with Excess Claims)	\$835	\$829	\$843	\$872	\$882	\$923	\$984
Post Allowance	\$273	\$259	\$272	\$285	\$262	\$289	\$316
Maintenance	\$1,212	\$1,212	\$1,252	\$1,320	\$1,443	\$1,514	\$1,584
PCT	\$179	\$183	\$185	\$187	\$197	\$201	\$206
Extensions of Time	\$148	\$139	\$150	\$163	\$136	\$153	\$174
Other	\$136	\$140	\$151	\$156	\$158	\$170	\$175
<b>Assumptions Used to Develop Fee Collection Estimates</b>							
Filing Growth Rates:	Patent filings growth rate 5.1% (610,005 UPR filings, 191,479 RCEs). Trademark filings growth rate 5.2% (530,270 filings).	Patent filings growth rate -0.5% (606,955 UPR filings, 185,121 RCEs). Trademark filings growth rate 5.0% (556,784 filings). These filing rates are based on estimates of slowed patent demand and slowed global economic growth.	Patent filings growth rate 0.7% (614,253 UPR filings, 187,356 RCEs). Trademark filings growth rate 7.5% (570,000 filings). These filing rates are based on estimates of continued economic growth.	Patent filings growth rate 3.5% (631,355 UPR filings, 192,563 RCEs). Trademark filings growth rate 10.0% (583,297 filings). These filing rates are based on high estimates of continued economic growth.	Patent filings growth rate -0.5% (603,920 UPR filings, 184,800 RCEs). Trademark filings growth rate 1.0% (562,351 filings). These filing rates are based on estimates of slowed patent demand and slowed global economic growth.	Patent filings growth rate 2.1% (627,274 UPR filings, 191,839 RCEs). Trademark filings growth rate 7.0% (610,000 filings). These filing rates are based on estimates of continued economic growth.	Patent filings growth rate 5.0% (662,923 UPR filings, 202,854 RCEs). Trademark filings growth rate 13.0% (659,126 filings). These filing rates are based on high estimates of continued economic growth.
Patent Issue:	Patents printed of 306,227	Patents printed of 286,310 based on conservative estimates of increased patent examination production efficiencies.	Patents printed of 301,379 based on moderate estimates of increased patent examination production efficiencies.	Patents printed of 316,488 based on high estimates of increased patent examination production efficiencies.	Patents printed of 274,130 based on conservative estimates of increased patent examination production efficiencies.	Patents printed of 304,589 based on moderate estimates of increased patent examination production efficiencies.	Patents printed of 335,048 based on high estimates of increased patent examination production efficiencies.
Patent Maintenance (Post Renewal):	Renewal Rates: 85.2% first stage, 66.5% second stage, 47.2% third stage	Renewal rates: 86.4% first stage, 67.5% second stage, and 47.7% third stage due to conservative estimates of continued economic growth and patent demand.	Renewal rates: 87.1% first stage, 68.3% second stage, 48.4% third stage due to moderate estimates of continued economic growth and patent demand.	Renewal rates: 88.2% first stage, 68.9% second stage, 48.7% third stage due to high estimates of continued economic growth and patent demand.	Renewal rates: 83.8% first stage, 65.5% second stage, 46.3% third stage due to conservative estimates of continued economic growth and patent demand.	Renewal rates: 87.1% first stage, 68.3% second stage, 48.4% third stage due to moderate estimates of continued economic growth and patent demand.	Renewal rates: 90.8% first stage, 70.9% second stage, 50.1% third stage due to high estimates of continued economic growth and patent demand.
Enhanced Examination Timing	Track 1 filings: 9,503 filings	Track 1 filings: 8,000 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:	N/A	Fee rates based on proposal (October 2016), assumed effective date of October 2017.	Fee rates based on proposal (October 2016), assumed effective date of September 2017.	Fee rates based on proposal (October 2016), assumed effective date of August 2017.	Fee rates based on proposal (October 2016), assumed effective date of October 2017.	Fee rates based on proposal (October 2016), assumed effective date of September 2017.	Fee rates based on proposal (October 2016), assumed effective date of August 2017.
Trademark Fee Adjustments:	N/A	Fee rates based on final rule (October 2016), effective January 14, 2017.	Fee rates based on final rule (October 2016), effective January 14, 2017.	Fee rates based on final rule (October 2016), effective January 14, 2017.	Fee rates based on final rule (October 2016), effective January 14, 2017.	Fee rates based on final rule (October 2016), effective January 14, 2017.	Fee rates based on final rule (October 2016), effective January 14, 2017.

## Appendix V- FY 2016 Estimated and Actual Fees and Assumptions

USPTO Fee Collections						
FY 2016 Estimated and Actual Fees and Assumptions						
	FY 2015	FY 2016				
(Dollars in Millions)	Actual	President's Budget	Revised Working Estimate	Revised Low Estimate	Revised High Estimate	Actual
Date of Projection	September 2015	February 2015	February 2016	February 2016	February 2016	September 2016
<b>Total USPTO Fee Collections</b>	<b>\$3,006</b>	<b>\$3,207</b>	<b>\$3,089</b>	<b>\$2,860</b>	<b>\$3,333</b>	<b>\$3,062</b>
Total Patent Fee Collections	\$2,733	\$2,923	\$2,802	\$2,606	\$3,014	\$2,784
Total Trademark Fee Collections	\$273	\$283	\$287	\$254	\$319	\$278
Major Patent Fee Collections:						
Filing (with Excess Claims)	\$812	\$871	\$807	\$779	\$857	\$835
Post Allowance Fees	\$267	\$282	\$274	\$248	\$300	\$273
Maintenance	\$1,188	\$1,264	\$1,242	\$1,120	\$1,363	\$1,212
PCT	\$180	\$188	\$185	\$185	\$185	\$179
Extensions of Time	\$144	\$148	\$145	\$135	\$153	\$148
Other	\$142	\$171	\$150	\$140	\$156	\$136
<b>Assumptions Used to Develop Fee Collection Estimates</b>						
Filing Growth Rates:	Patent filings growth rate -0.3% (580,327 UPR filings, 168,594 RCEs). Trademark filings growth rate 10.7% (503,889 filings).	Patent filings growth rate 3.5% (620,658 UPR filings, 186,286 RCEs). Trademark filings growth rate 6.8% (516,000 filings).	Patent filings growth rate 1.0% (586,130 UPR filings, 170,280 RCEs). Trademark filings growth rate 7.0% (539,000 filings).	Patent Filings growth rate -2.0% (568,720 UPR filings, 165,222 RCEs). Trademark filings growth rate 0.0% (503,889 filings).	Patent filings growth rate 6.0% (615,147 UPR filings, 178,710 RCEs). Trademark filings growth rate 13.5% (571,760 filings).	Patent filings growth rate 5.1% (610,005 UPR filings, 191,479 RCEs). Trademark filings growth rate 5.2% (530,270 filings).
Filing Growth Rates Trends:	Patent filings decreased 0.3% in FY 2015, this was driven by a 3.7% decrease in requests for continued examinations (RCEs) as serialized filings increased by 1.1%. In the FY 2016 President's Budget, it was assumed there would be 3.5% growth in patent filings, and that RCEs would grow by 3.5%. The actual growth rate came in higher than estimated, at 5.1%, which was mostly due to a 13.6% increase to RCEs. Patent filings are expected to grow slowly over then next two fiscal years. Trademark filings grew 10.7% in FY 2015. FY 2016 Trademark filings were estimated at 6.8% growth in the President's Budget and were revised to 7.0%. The actual growth rate came in lower than the revised estimated growth rate at 5.2%. Growth is expected to continue in FY 2017 and FY 2018.					
Patent Issue:	Patents printed of 298,375	Patents printed of 319,030 based on moderate estimates of increased patent examination production efficiencies.	Patents printed of 306,785 based on moderate estimates of increased patent examination production efficiencies.	Patents printed of 276,107 based on conservative estimates of increased patent examination production efficiencies.	Patents printed of 337,464 based on high estimates of increased patent examination production efficiencies.	Patents printed of 306,227
Patent Issue Trends:	Patents printed is a process and resource driven workload. The FY 2016 President's Budget levels reflected the strong FY 2014 numbers, the same allowance rate, and even showed the expectation of increased issues. The number of patents printed increased from FY 2015 to FY 2016 by 2.6%. The USPTO expects the number of issued patents in FY 2017 and FY 2018 to decrease from the FY 2016 actual levels.					
Patent Maintenance (Post Renewal):	Renewal rates: 86.9% first stage, 69.2% second stage, and 51.7% third stage.	Renewal rates: 87.0% first stage, 69.8% second stage, and 52.3% third stage.	Renewal rates: 86.6% first stage, 68.2% second stage, and 49.3% third stage.	Renewal rates: 83.0% first stage, 62.3% second stage, and 40.7% third stage.	Renewal rates: 90.3% first stage, 74.5% second stage, and 59.2% third stage.	Renewal rates: 85.2% first stage, 66.5% second stage, and 47.2% third stage.
Patent Maintenance (Post Renewal) Trends:	Renewal rates in FY 2015 were consistent with FY 2014 renewal rates. The estimates of renewal rates in the FY 2016 President's Budget were based on continued moderate economic growth. During the FY 2017 budget process, the estimates for FY 2016 were updated, which resulted in a slight decrease in projected renewal rates for all three stages. Actual FY 2016 renewal rates came in close, but lower than the revised estimate. These renewal rates may go up slightly as renewals continue to come in. It is expected that FY 2017 and FY 2018 renewal rates will be slightly lower than FY 2016 actuals.					
Fee Adjustments:	New Trademark fee rates for filing and renewals implemented January 2015.	N/A	N/A	N/A	N/A	N/A

## Appendix VI -- USPTO 2014-2018 Strategic Plan

<i>GOAL I: OPTIMIZE PATENT QUALITY AND TIMELINESS</i>			
Objective 1: Refine Optimal Patent Pendency	Objective 2: Increase Efficiencies and Patent Examination Capacity to Align with the Optimal Patent Pendency	Objective 3: Increase International Cooperation and Work Sharing	Objective 4: Continue to Enhance Patent Quality
<p>A. Work with stakeholders to refine long-term pendency goals, while considering requirements of the intellectual property (IP) community</p> <p>B. Continue to refine patent pendency metrics throughout the examination process and provide increased transparency of those metrics</p>	<p>A. Hire/retain a nationwide workforce to meet pendency targets</p> <p>B. Develop and train an adaptable workforce to respond to emerging technologies, Office priorities, and the evolution of law</p> <p>C. Enhance compact prosecution initiatives</p> <p>D. Offer patent application prosecution options</p>	<p>A. Fully implement Cooperative Patent Classification (CPC)</p> <p>B. Leverage the Patent Cooperation Treaty (PCT) to effectively use the work completed at the international stage</p> <p>C. Maximize use of the Patent Prosecution Highway (PPH) to increase sharing and re-use of information between USPTO and its partner offices</p> <p>D. Implement the Global Dossier, which will improve examiner and external stakeholder access to work products of other IP offices to exploit the efficiencies that sharing search and examination results will provide</p>	<p>A. Evaluate and refine the measurement of patent quality data</p> <p>B. Maximize usage of patent quality data</p> <p>C. Evaluate effectiveness of changes to the count system and performance appraisal plans; make additional modifications as needed</p> <p>D. Continually improve and provide timely technical and legal training</p>



**GOAL I: OPTIMIZE PATENT QUALITY AND TIMELINESS**

Objective 5: Ensure Optimal Information Technology (IT) Service Delivery to All Users	Objective 6: Continue and Enhance Stakeholder and Public Outreach	Objective 7: Maintain the Patent Trial and Appeal Board's (PTAB) Ability to Provide Timely and High Quality Decisions
<ul style="list-style-type: none"> <li>A. Stabilize the Patent Application Location Monitoring (PALM) and other legacy IT systems</li> <li>B. Redesign and re-architect current patent IT systems to provide end-to-end electronic processing</li> <li>C. Increase the acceptance, creation, and publication of standardized, structured, and searchable patent data and documents</li> <li>D. Upgrade search systems</li> <li>E. Identify IT opportunities with other IP offices to invoke work sharing efficiencies</li> </ul>	<ul style="list-style-type: none"> <li>A. Expand stakeholder awareness of the various support resources for users</li> <li>B. Continue facilitating the growth of the patent pro bono program</li> <li>C. Expand technology-specific and topic-specific partnerships</li> <li>D. Expand outreach related to CPC</li> <li>E. Increase awareness and transparency of patent information, and patent application and ownership information</li> <li>F. Engage stakeholders to advance the implementation of the <i>Leahy-Smith American Invents Act (AIA)</i> and explore opportunities for further reforms by the Office</li> </ul>	<ul style="list-style-type: none"> <li>A. Define optimal pendencies for PTAB proceedings</li> <li>B. Hire/retain an adaptable nationwide PTAB workforce, including management staff, to meet pendency and quality targets</li> <li>C. Develop an automated tool for centralizing the collection, retrieval, and sharing of operational data</li> <li>D. Ensure consistency in PTAB decisions</li> <li>E. Expand outreach to stakeholders by providing opportunities for interaction and updates on PTAB operations and other important issues</li> </ul>

**GOAL II: OPTIMIZE TRADEMARK QUALITY AND TIMELINESS**

Objective 1: Maintain Trademark First Action Pendency on Average Between 2.5-3.5 Months with 12 Months Final Pendency	Objective 2: Maintain High Trademark Quality	Objective 3: Ensure Optimal IT Service Delivery to All Users	Objective 4: Continue and Enhance Stakeholder and Public Outreach	Objective 5: Enhance Operations of the Trademark Trial and Appeal Board (TTAB)
<ul style="list-style-type: none"> <li>A. Align examination capacity with incoming workloads</li> <li>B. Continue to define and validate optimal pendencies</li> <li>C. Work with stakeholders to develop long term pendency goals that increase examination efficiency, maintain an optimal pendency level, and meet the expectations of the IP community</li> </ul>	<ul style="list-style-type: none"> <li>A. Continually maintain and improve quality measurements by: continually evaluating examination quality; providing targeted training to address quality issues; and providing legal training and education</li> </ul>	<ul style="list-style-type: none"> <li>A. Modernize IT systems by developing and implementing the Trademark Next Generation (TMNG) IT system to create full electronic workflow, and state-of-the-art IT resources for external and internal users</li> <li>B. Continue to provide optimal service on legacy systems to employees and public users</li> </ul>	<ul style="list-style-type: none"> <li>A. Expand outreach to stakeholders by providing opportunities for interaction and updates on Trademark operations and other important issues</li> <li>B. Assist in providing access to pro bono trademark legal services through USPTO's law school clinic program</li> <li>C. Encourage use of the Federal registration system for trademark owners who are unfamiliar with the application and registration maintenance processes</li> <li>D. Engage stakeholders to ensure integrity of the register</li> </ul>	<ul style="list-style-type: none"> <li>A. Develop consistent pendency measures and reduce overall pendency for appeal and trial cases</li> <li>B. Enhance quality of TTAB orders and opinions, and contribute to development of the law through issuance of precedential decisions</li> <li>C. Expand outreach to stakeholders by providing opportunities for interaction and updates on TTAB operations and other important issues</li> </ul>

**GOAL III: PROVIDE DOMESTIC AND GLOBAL LEADERSHIP TO IMPROVE INTELLECTUAL PROPERTY POLICY, PROTECTION AND ENFORCEMENT WORLDWIDE**

Objective 1: Provide Leadership and Education on IP Policy and Awareness

- A. Provide policy formulation and guidance on key IP issues in all fields of IP protection and enforcement
- B. Engage other U.S. Government agencies and Congress on legislation that improves the IP system
- C. Lead domestic and international copyright initiatives and policy development for the administration
- D. Provide domestic education outreach at all levels, including through distance learning, knowledge enhancement and capacity building
- E. Leverage technology to increase domestic and international education, training and outreach at all levels
- F. Expand knowledge of the domestic and international IP landscape and public impacts of IP through empirical research and fact-finding

Objective 2: Provide Leadership and Education on International Agreements and Policies for Improving the Protection, and Enforcement of IP Rights

- A. Lead administration efforts at the World Intellectual Property Organization (WIPO) and other international fora to improve IP protection and enforcement, and to further efficiency and cooperation in the global IP system
- B. Prioritize 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
- C. Provide technical expertise in the negotiation and implementation of bilateral and multilateral agreements that improve IP rights protection and enforcement
- D. Support and advise the administration in leading and negotiating the IP aspects of free trade agreements
- E. As appropriate, work jointly with Congress on matters that pertain to international agreements
- F. Work jointly with the administration to improve IP protection and enforcement in China

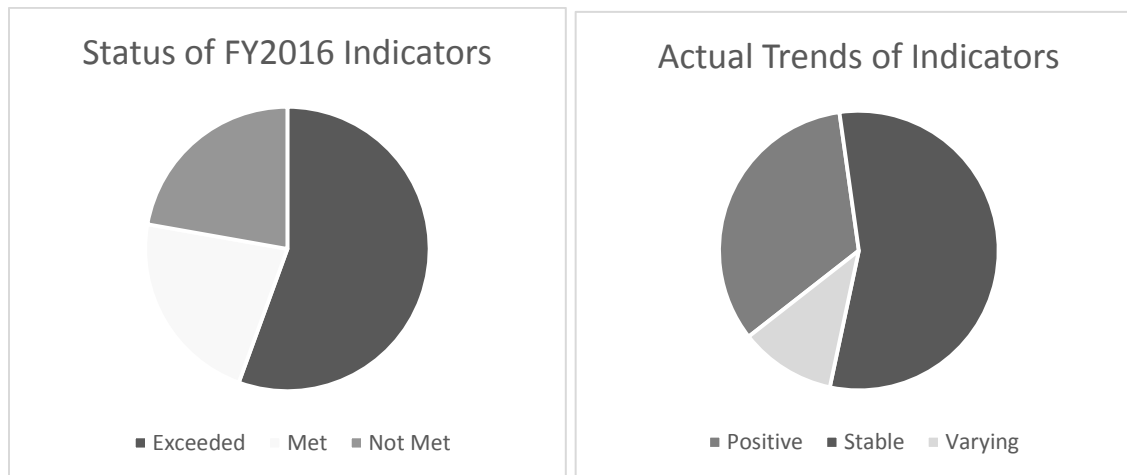
**MANAGEMENT GOAL: ACHIEVE ORGANIZATIONAL EXCELLENCE**

Objective 1: Leverage IT Investments to Achieve Business Results	Objective 2: Continue to Build and Maintain a Flexible, Diverse, and Engaged Workforce	Objective 3: Enhance Internal and External Relations	Objective 4: Secure Sustainable Funding to Deliver Value to Fee Paying Customers and the Public	Objective 5: Establish Regional Offices and a Regional Presence
<ul style="list-style-type: none"> <li>A. Leverage IT to improve internal and external collaboration and information sharing</li> <li>B. Enhance the internal and external user experience; for example, by developing user-driven products, including those accessible in a mobile environment</li> <li>C. Evolve and improve IT infrastructure and services</li> <li>D. Continue to provide cost-effective, transparent operations, processes, and information</li> <li>E. Deliver cost-effective and seamless next generation IT solutions; including, integrations of Patent End-to-End (PE2E), Trademark Next Generation (TMNG), and Fee Processing Next Generation (FPNG)</li> </ul>	<ul style="list-style-type: none"> <li>A. Continue to enhance our telework environment by expanding telework opportunities and developing skill sets specific to managing in a telework environment</li> <li>B. Implement programs aimed at enhancing employee engagement, and ensuring the nationwide workforce stays integrated with the corporate culture</li> <li>C. Promote learning and job opportunities for all levels of employees</li> <li>D. Enhance recruitment and hiring efforts to help sustain and develop a highly-qualified, and diverse workforce, including the senior team</li> <li>E. Continue to foster and enhance a strong labor-management relationships</li> <li>F. Continue to build collaborative relationships with our affinity groups</li> </ul>	<ul style="list-style-type: none"> <li>A. Improve information and communication channels</li> <li>B. Strengthen relationships with the Department of Commerce (DOC), the Office of Management and Budget (OMB), other Federal agencies, and Congress</li> <li>C. Promote a culture across USPTO of outstanding customer service for both internal and external customers</li> <li>D. Streamline stakeholder access to USPTO services and programs</li> <li>E. Increase stakeholder partnerships and collaborations</li> <li>F. Support Government-wide efforts to promote Science, Technology, Engineering, and Mathematics (STEM) education initiatives</li> </ul>	<ul style="list-style-type: none"> <li>A. Ensure spending authority to use all fee collections</li> <li>B. Make the USPTO fee setting authority permanent</li> <li>C. Continuously optimize the fee structure</li> <li>D. Continue identifying, obtaining and implementing private sector business tools</li> <li>E. Maximize cost efficiency and transparency</li> </ul>	<ul style="list-style-type: none"> <li>A. Finalize permanent presence in regional office regions</li> <li>B. Further develop regional cooperative opportunities</li> </ul>

## Appendix VII - FY 2018 Performance Planning and FY 2016 Reporting Backup

### *U.S. Patent and Trademark Office*

#### Performance Indicator Information



#### Summary of Performance

- A total of 9 indicators; 5 (55.6%) were exceeded, 2 (22.2%) were met, and 2 (22.2%) were not met
- A total of 9 indicators had trends (more than three years of data); and,
- Of those 9 indicators with trends, 1 (11.1%) was varying, 3 (33.3%) were positive, and 5 (55.6%) were stable.

**Summary of FY 2016 Indicator Performance**

Indicator	Target	Actual	Status	Trend
Number of Foreign Government Officials Trained on Best Practices to Protect and Enforce Intellectual Property	5,000	4,975	Not Met	Varying
Patent Average First Action Pendency (Months)	14.8	16.2	Not Met	Positive
Patent Average Total Pendency (Months)	25.4	25.3	Met	Positive
Trademark Average First Action Pendency (Months)	2.5-3.5	3.1	Met	Stable
Trademark Average Total Pendency (Months)	12.0	9.8	Exceeded	Stable
Trademark First Action Compliance Rate (Percent)	95.5	97.1	Exceeded	Stable
Trademark Final Compliance Rate (Percent)	97.0	97.8	Exceeded	Stable
Trademark Exceptional Office Action (Percent)	40.0	45.4	Exceeded	Positive
Percentage of prioritized countries for which country teams have implemented at least 75 percent of action steps in the country-specific action plans toward progress along following dimensions: <ol style="list-style-type: none"> <li>1. Institutional improvements of IP office administration for advancing IPR</li> <li>2. Institutional improvements of IP enforcement entities</li> <li>3. Improvements in IP laws and regulations</li> <li>4. Establishment of government-to-government cooperative mechanisms</li> </ol>	75.0	100.0	Exceeded	Stable

Detailed Indicator Plans and Performance

Strategic Goal 1	Trade and Investment: Expand the U.S. economy through increased exports and inward foreign investment that lead to more and better American jobs.							
Objective 1.1	Increase opportunities for U.S. companies by opening markets globally.							
Indicator	NUMBER OF FOREIGN GOVERNMENT OFFICIALS TRAINED ON BEST PRACTICES TO PROTECT AND ENFORCE INTELLECTUAL PROPERTY							
Category	Key							
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 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Target				4,300	6,300	5,000	5,000	5,000
Actual	4,338	9,217	7,078	4,960	5,283	4,975		
Status				Met	Not Met	Not Met		
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 FY 2016)	GIPA narrowly missed its target to train 5,000 foreign government officials by one training course. Due to budget cuts the number of courses slated for FY2016 was reduced from other years with full travel funding. Some courses slated for FY2016 were postponed to FY2017, due to global or cultural circumstances, which shifted the participant count for the year. Ideal goals for foreign government participation in GIPA education going forward will leverage the GIPA e-Learning initiative to engage participants throughout the year in a nimble and modern blended learning strategy.							
Actions to be taken / Future Plans	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	USPTO had actual information for this indicator from FY 2011 to FY 2013, it did not use this as a GPRA indicator until FY 2014 and thus did not have targets for FY 2011 to FY 2013.							
Information Gaps	None							

Strategic Goal 2	Innovation: Foster a more innovative U.S. economy – one that is better at inventing, improving, and commercializing products and technologies.							
Objective 2.3	Catalyze innovation ecosystems.							
Indicator	PATENT AVERAGE FIRST ACTION PENDENCY (MONTHS)							
Category	Key							
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 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Target	23.0	22.6	18.0	17.4	15.7	14.8	14.8	15.1
Actual	28.0	21.9	18.2	18.4	17.3	16.2		
Status	Not Met	Exceeded	Not Met	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 FY 2016)	The USPTO achieved its total pendency target; however, it missed its first action pendency target. Given the lower-than-expected filings in FY 2015, at the beginning of FY 2016 the USPTO projected a 1 percent overall growth in UPR filings; however, actual growth was in excess of 5 percent, and the first action pendency result was negatively impacted. The USPTO will continue to monitor incoming patent application filings and will make any necessary adjustments to long-term planning projections to ensure progress toward its pendency targets.							
Actions to be taken / Future Plans	Leveraging the nationwide workforce and continuing to use overtime and incentives to increase production, will enable the USPTO to work toward achieving an optimal working level inventory of unexamined patent applications. This will work toward stakeholder expectations and also allow the Office to effectively align the demands of incoming workload with production capacity.							
Adjustments to targets	Reducing patent pendency is an Agency Priority Goal. We continue to make progress in reducing patent pendency and will continue, with stakeholder input, to modify long-term Patent plans as needed.							
Notes	None							
Information Gaps	None							



Strategic Goal 2	Innovation: Foster a more innovative U.S. economy – one that is better at inventing, improving, and commercializing products and technologies.							
Objective 2.3	Catalyze innovation ecosystems.							
Indicator	PATENT AVERAGE TOTAL PENDENCY (MONTHS)							
Category	Key							
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 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Target	34.5	34.7	30.1	26.7	26.4	25.4	24.8	23.0
Actual	33.7	32.4	29.1	27.4	26.6	25.3		
Status	Exceeded	Exceeded	Exceeded	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 FY 2016)								
Actions to be taken / Future Plans	Leveraging the nationwide workforce and continuing to use overtime and incentives to increase production, will enable the USPTO to work toward achieving an optimal working level inventory of unexamined patent applications. This will work toward stakeholder expectations and also allow the Office to effectively align the demands of incoming workload with production capacity.							
Adjustments to targets	Reducing patent pendency is an Agency Priority Goal. We continue to make progress in reducing patent pendency and will continue to modify long-term Patent plans as needed.							
Notes	None							
Information Gaps	None							

Strategic Goal 2	Innovation: Foster a more innovative U.S. economy – one that is better at inventing, improving, and commercializing products and technologies.							
Objective 2.3	Catalyze innovation ecosystems.							
Indicator	PATENT STATUTORY COMPLIANCE METRICS							
Category	Key							
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 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Statute 35 USC 101 (including utility and eligibility)								
Target						Baseline	93.0 - 98.0%	TBD
Actual						97.4%		
Status								
Statute 35 USC 102 (prior art compliance)								
Target						Baseline	90.0 – 95.0%	TBD
Actual						95.9%		
Status								
Statute 35 USC 103 (prior art compliance)								
Target						Baseline	88.0 – 93.0%	TBD
Actual						90.4%		
Status								
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%	TBD
Actual						93.7%		
Status								
Trend								
Explanation (if not met in FY 2016)								

Strategic Goal 2	Innovation: Foster a more innovative U.S. economy – one that is better at inventing, improving, and commercializing products and technologies.
Actions to be taken / Future Plans	The FY 2017 Statutory Compliance Targets are ranges to take into account each metric's statistical confidence level. The bounds of each range were set to project the impact of a new review standard that were implemented in FY 2017. Under this new review standard, the USPTO will focus not only on assessing the correctness of the examiner's ultimate decision to allow or reject under a particular statute, but will also evaluate whether the examiner's rationale for supporting their rejection is sufficient. It is anticipated that more instances of non-compliance will be identified since this standard sets more rigorous criteria for compliance on each statutory basis compared to the previous review standard which emphasized assessing the overall correctness of the examiner's decision to allow or reject a claim under a particular statute.
Adjustments to targets	As the USPTO becomes more familiar with the new standard, adjustments are anticipated for the target compliance rate ranges in future FY targets.
Notes	
Information Gaps	None

Strategic Goal 2	Innovation: Foster a more innovative U.S. economy – one that is better at inventing, improving, and commercializing products and technologies.							
Objective 2.3	Catalyze innovation ecosystems.							
Indicator	TRADEMARK AVERAGE FIRST ACTION PENDENCY (MONTHS)							
Category	Supporting (Non-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 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
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	3.0	3.1	3.2	3.1	2.9	3.1		
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 FY 2016)								
Actions to be taken / Future Plans								
Adjustments to targets	None							
Notes	None							
Information Gaps	None							

Strategic Goal 2	Innovation: Foster a more innovative U.S. economy – one that is better at inventing, improving, and commercializing products and technologies.							
Objective 2.3	Catalyze innovation ecosystems.							
Indicator	TRADEMARK AVERAGE TOTAL PENDENCY (MONTHS)							
Category	Supporting (Non-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 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Target	12.5	12.0	12.0	12.0	12.0	12.0	12.0	12.0
Actual	10.5	10.2	10.0	9.8	10.1	9.8		
Status	Exceeded	Exceeded	Exceeded	Exceeded	Exceeded	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 FY 2016)								
Actions to be taken / Future Plans								
Adjustments to targets	None							
Notes	None							
Information Gaps	None							

Strategic Goal 2	Innovation: Foster a more innovative U.S. economy – one that is better at inventing, improving, and commercializing products and technologies.							
Objective 2.3	Catalyze innovation ecosystems.							
Indicator	TRADEMARK FIRST ACTION COMPLIANCE RATE (PERCENT)							
Category	Supporting (Non-Strategic Plan)							
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 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Target	95.5	95.5	95.5	95.5	95.5	95.5	95.5	95.5
Actual	96.5	96.2	96.3	95.8	96.7	97.1		
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 FY 2016)								
Actions to be taken / Future Plans	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							

Strategic Goal 2	Innovation: Foster a more innovative U.S. economy – one that is better at inventing, improving, and commercializing products and technologies.							
Objective 2.3	Catalyze innovation ecosystems.							
Indicator	TRADEMARK FINAL COMPLIANCE RATE (PERCENT)							
Category	Supporting (Non-Strategic Plan)							
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 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Target	97.0	97.0	97.0	97.0	97.0	97.0	97.0	97.0
Actual	97.0	97.1	97.1	97.2	97.6	97.8		
Status	Met	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 FY 2016)								
Actions to be taken / Future Plans	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							

Strategic Goal 2	Innovation: Foster a more innovative U.S. economy – one that is better at inventing, improving, and commercializing products and technologies.							
Objective 2.3	Catalyze innovation ecosystems.							
Indicator	TRADEMARK EXCEPTIONAL OFFICE ACTION (PERCENT)							
Category	Supporting (Non-Strategic Plan)							
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 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Target	15.0	20.0	23.0	28.0	36.0	40.0	40.0	40.0
Actual	23.6	26.1	35.1	43.0	48.3	45.4		
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 FY 2016)								
Actions to be taken / Future Plans	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							



Strategic Goal 2	Innovation: Foster a more innovative U.S. economy – one that is better at inventing, improving, and commercializing products and technologies.							
Objective 2.3	Catalyze innovation ecosystems.							
Indicator	PERCENTAGE OF PRIORITIZED COUNTRIES FOR WHICH COUNTRY TEAMS HAVE IMPLEMENTED AT LEAST 75 PERCENT OF ACTION STEPS IN THE COUNTRY-SPECIFIC ACTION PLANS TOWARD PROGRESS ALONG FOLLOWING DIMENSIONS: 1. INSTITUTIONAL IMPROVEMENTS OF IP OFFICE ADMINISTRATION FOR ADVANCING IPR 2. INSTITUTIONAL IMPROVEMENTS OF IP ENFORCEMENT ENTITIES 3. IMPROVEMENTS IN IP LAWS AND REGULATIONS 4. ESTABLISHMENT OF GOVERNMENT-TO-GOVERNMENT COOPERATIVE MECHANISMS							
Category	Key							
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 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Target	75.0	75.0	75.0	75.0	75.0	75.0	75.0	75.0
Actual	100.0	75.0	100.0	100.0	100.0	100.0		
Status	Exceeded	Met	Exceeded	Exceeded	Exceeded	Exceeded		
Trend	The trend line indicates that the performance trend is maintaining standards with significant variability of the direction of the trend line in predicting future results.							
Explanation (if not met in FY 2016)								
Actions to be taken / Future Plans	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	None							
Information Gaps	None							

## Resource Requirements Table

<i>(Dollars in thousands)</i>	FY 2016	FY 2017 President's Budget	FY 2017 Current Plan	FY 2018 President's Budget	FY 2019 Estimate	FY 2020 Estimate	FY 2021 Estimate	FY 2022 Estimate
<b>USPTO GOAL 1: OPTIMIZE PATENT QUALITY AND TIMELINESS</b>								
Amount	2,828,575	2,887,575	2,943,164	3,130,601	3,185,179	3,226,151	3,316,649	3,352,971
Full Time Equivalent (FTE)	11,288	11,517	11,496	11,867	11,741	11,479	11,182	10,902
<b>USPTO GOAL 2: OPTIMIZE TRADEMARK QUALITY AND TIMELINESS</b>								
Amount	261,276	292,887	294,713	307,107	325,149	337,512	364,138	380,429
FTE	984	1,123	1,103	1,201	1,258	1,321	1,384	1,447
<b>USPTO GOAL 3: PROVIDE DOMESTIC AND GLOBAL LEADERSHIP TO IMPROVE INTELLECTUAL PROPERTY POLICY, PROTECTION AND ENFORCEMENT WORLDWIDE</b>								
Amount	56,756	63,393	59,016	63,166	63,912	64,808	67,289	68,697
FTE	164	194	170	181	181	181	181	181
Amounts not Supporting Goals <sup>1</sup>	2,100	2,000	2,000	2,000	2,000	2,000	2,000	2,000
USPTO Requirements	3,148,707	3,245,855	3,298,893	3,502,874	3,576,240	3,630,472	3,750,076	3,804,096
FTE	12,436	12,835	12,769	13,249	13,180	12,981	12,747	12,530
Fee Collections	3,063,247	3,321,024	3,158,427	3,586,193	3,558,809	3,703,950	3,823,486	4,093,708
Fee Collections – Temporarily Unavailable <sup>2</sup>	-	-	(6,086)	-	-	-	-	-
Other Income/Recoveries	42,344	22,257	29,250	29,250	29,250	29,250	29,250	29,250
Funding to(-) / from(+) Operating Reserve <sup>2</sup>	43,115	(97,427)	111,216	(112,569)	(11,819)	(102,728)	(102,661)	(318,861)
Budget Authority Temporarily Unavailable <sup>2</sup>	-	-	(6,086)	-	-	-	-	-
<b>TOTAL FUNDING</b>	<b>3,148,707</b>	<b>3,245,855</b>	<b>3,298,893</b>	<b>3,502,874</b>	<b>3,576,240</b>	<b>3,630,472</b>	<b>3,750,076</b>	<b>3,804,096</b>
Operating Reserve: Patents	354,239	384,659	244,627	342,723	340,863	418,321	500,645	787,531
Operating Reserve: Trademarks	106,999	104,880	105,395	119,868	133,547	158,818	179,154	211,130

<sup>1</sup> Amounts transferred to the Department of Commerce Office of the Inspector General.

<sup>2</sup> PTO assumes that when FY 2017 is finalized, the \$6M additional Budget Authority lost in FY 2017 will become available and therefore has not rolled the \$6M loss through the operating reserve balance into FY 2017.

Due to rounding, numbers presented in tables throughout this document may not add up precisely to the totals provided and percentages may not precisely reflect the absolute figures.

## Appendix VIII -- Glossary of Acronyms and Abbreviation List

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
EO	Executive Order
EPO	European Patent Office
EPQI	Enhanced Patent Quality Initiative
FAB	Financial Advisory Board
FAB	<u>Financial Advisory Board</u>
FAOM	First Action on the Merits
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

<b>Acronym</b>	<b>Definition</b>
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 PP&E	Intellectual Property Policy, Protection and Enforcement
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
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
OFIS	Office of Finance Imaging 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

<b>Acronym</b>	<b>Definition</b>
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
PTFRF	Patent and Trademark Fee Reserve Fund
RAM	Revenue Accounting Management
RBAC	Role-Based Access Control
RGDP	Real Gross Domestic Product
SBDC	Small Business Development Center
SIPO	State Intellectual Property Office (SIPO) of the People's Republic of China
SO	Office of the Solicitor
STEM	Science, Technology, Engineering and Mathematics
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

