

# uspto



Performance and Accountability Report  
fiscal year 2012



## Financial and Related Highlights

(Dollars in Thousands)	% Change 2012 over 2011	September 30, 2012	September 30, 2011
Fund Balance with Treasury	5.9%	\$ 1,726,955	\$ 1,631,206
Property, Plant, and Equipment, Net	14.7%	236,980	206,628
Other Assets	16.1%	18,188	15,663
Total Assets	6.9%	<u>\$ 1,982,123</u>	<u>\$ 1,853,497</u>
Deferred Revenue	(1.8%)	\$ 830,955	\$ 845,782
Accounts Payable	(12.2%)	75,186	85,640
Accrued Payroll, Benefits, and Leave	6.6%	217,364	203,956
Other Liabilities	13.7%	131,744	115,859
Total Liabilities	0.3%	<u>\$ 1,255,249</u>	<u>\$ 1,251,237</u>
Net Position	20.7%	<u>726,874</u>	<u>602,260</u>
Total Liabilities and Net Position	6.9%	<u>\$ 1,982,123</u>	<u>\$ 1,853,497</u>
Total Program Cost	8.0%	\$ 2,320,947	\$ 2,148,097
Total Earned Revenue	8.5%	<u>(2,427,082)</u>	<u>(2,236,374)</u>
Net Income from Operations	20.2%	<u>\$ (106,135)</u>	<u>\$ (88,277)</u>
Budgetary Resources Available for Spending	11.7%	\$ 2,612,627	\$ 2,338,600
Total Collections, Net of Outlays	(57.8%)	<u>\$ (80,894)</u>	<u>\$ (191,593)</u>
Federal Personnel	12.9%	11,531	10,210
Disbursements by Electronic Funds Transfer (EFT)	—	100%	100%
On-Time Payments to Vendors	(1.0%)	99%	100%

## Performance Highlights

Performance Measures	FY 2012 Target	FY 2012 Actual	Performance Results <sup>1</sup>
Patent Average First Action Pendency (months)	22.6	21.9	Met
Patent Average Total Pendency (months)	34.7	32.4	Met
Patent Quality Composite Rate	48-56	72.4	Met
Patent Applications Filed Electronically	96.0%	97.1% <sup>2</sup>	Met
Trademark Average First Action Pendency (months)	2.5 to 3.5	3.2	Met
Trademark Average Total Pendency (months)	12.0	10.2	Met
Trademark First Action Compliance Rate	95.5%	96.2%	Met
Trademark Final Compliance Rate	97.0%	97.1%	Met
Exceptional Office Action	20.0%	26.1%	Met
Trademark Applications Processed Electronically	74.0%	77.0%	Met
Percentage of prioritized countries for which country teams have made progress on at least 75% of action steps in the country-specific action plans along the following dimensions: 1. institutional improvements of IP office administration for advancing IP rights, 2. institutional improvements of IP enforcement entities, 3. improvements in IP laws and regulations, and 4. establishment of government-to-government cooperative mechanisms.	75%	75%	Met

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

<sup>2</sup> This is preliminary data and is expected to be final by December 2012 and will be reported in the fiscal year (FY) 2013 PAR.

# Table of Contents

Message from the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office	3
Management's Discussion and Analysis	7
Mission and Organization of the USPTO	8
Performance Goals and Results	12
USPTO Strategic Plan	13
Strategic Goal 1: Optimize Patent Quality and Timeliness	15
Strategic Goal 2: Optimize Trademark Quality and Timeliness	27
Strategic Goal 3: Provide Domestic and Global Leadership to Improve Intellectual Property Policy, Protection and Enforcement Worldwide	35
Management Goal: Achieve Organizational Excellence	45
Management Challenges and What's Ahead	56
Accompanying Information on USPTO Performance	60
Performance Audits and Evaluations	60
Management Assurances and Compliance with Laws and Regulations	62
Financial Discussion and Analysis	68
Financial Section	81
Message from the Chief Financial Officer	82
Principal Financial Statements and Related Notes	84
Independent Auditors' Report	113
Other Accompanying Information	123
Schedule of Spending	124
Inspector General's Top Management Challenges Facing the USPTO	125
Summary of Financial Statement Audit and Management Assurances	166
Improper Payments Information Act of 2002, as amended	167
The Nature of the Training Provided to USPTO Examiners	169
Measures that Have Been Either Discontinued or Changed Since the FY 2011 PAR	173
FY 2012 USPTO Workload Tables	174
Glossary of Acronyms and Abbreviation List	205

## Web address for the USPTO Performance and Accountability Report

[www.uspto.gov/about/stratplan/](http://www.uspto.gov/about/stratplan/)

### ABOUT THIS REPORT

*The USPTO Performance and Accountability Report (PAR) for FY 2012 provides a comprehensive summary of program and financial results and is structured to help the President, the Congress, and the American public assess our performance relative to our mission and accountability for our financial resources.*



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

**N**avigating historic change is the new normal at the United States Patent and Trademark Office (USPTO). Our efforts here directly improve both the quality of life for our nation's citizens and the environment for innovation and invention. We are near completion of our implementation of paradigm-shifting patent reform legislation, and are reaping the fruits of newly developed metrics to accurately measure quality and performance across the agency.



Central to our historic change was the implementation of most of the provisions of the Leahy-Smith America Invents Act (AIA), the most significant reform to patent law since 1836. The USPTO has implemented several key rules addressing both the patent application process and administrative trials proceedings, through a newly renamed Patent Trial and Appeal Board (PTAB). Formerly the Board of Patent Appeals and Interferences, the PTAB boasts dozens of new administrative patent judges hired from the top echelon of the U.S. intellectual property community. The agency is on track to issue its final AIA rules on schedule in the spring of 2013. Throughout the AIA implementation process the agency has been transparent in its operations and has engaged with stakeholders and the public, soliciting input and providing education.

Innovators seeking quicker resolution of their patent applications now have access to our new Track One process, which prioritizes applications to reach final disposition in just 12 months, and offers a 50 percent discount for small businesses. We have already issued 606 patents through our Track One process in fiscal year 2012, and did so in an average of less than six months.

The USPTO made history in July when it opened its first ever satellite office. The Elijah J. McCoy Satellite Office in Detroit, Michigan, is already processing patent applications. One hundred patent examiners and 20 administrative patent judges are expected to be on staff within the office's first year of operation. History will be made three more times as the USPTO in the coming years opens more satellite offices in Dallas-Fort Worth, Denver, and Silicon Valley. The four offices will function as hubs of innovation and creativity, helping protect and

foster American innovation in the global marketplace, helping businesses cut through red tape and creating new economic opportunities in each of the local communities.

A highlight of this past year was our significant reduction in unexamined utility patent applications. We reduced our backlog to 608,283 applications from more than 750,000 applications at the start of our efforts in 2009. That is the lowest level in more than five years. We concurrently reduced first action pendency to 21.9 months from 25.4 months in August 2009, and reduced total patent application pendency to 32.4 months from 34.3 months in August 2009.

We continue to see an increase in trademark applications, and fiscal year 2012 was a historic year, with 415,026 new classes filed, a four percent increase over the previous year. We increased engagement with our stakeholder community through a series of roundtables, while extending our educational outreach to the small business and entrepreneurial community. The USPTO continues to maintain consistent first office action trademark pendency figures within the target range of

2.5 to 3.5 months, with disposal pendency also at a low rate of 10.2 months.

The USPTO continues to be a leader in telework programs, part of our ongoing efforts to work smarter and more efficiently. Today, more than 7,300 employees agencywide work from home at least one day per week, an increase of nearly 700 from the beginning of fiscal year 2012. Our program has emerged as a model for other Federal agencies as well as for the private sector. In fiscal year 2012, the USPTO met with dozens of Federal agencies to provide guidance as they implement or expand telework programs.

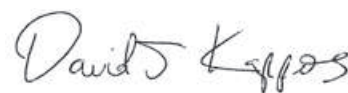
Information Technology (IT) is a mission-critical enabler for every USPTO business function. The performance of IT determines how well the agency can respond to its stakeholders, grant patents and issue trademarks. The agency is implementing an aggressive multi-year plan to upgrade its IT infrastructure by stabilizing its aging data center and networks, updating automated IT systems, and migrating to “cloud” computing. In our commitment to make the experience with USPTO better, we will implement a Patents End-to-End processing system, provide the Trademarks Next Generation system, improve financial processing with the Fee Processing Next Generation system, and continue working towards supporting a nationwide workforce.

Empowered by the AIA, the USPTO has taken the lead internationally in promoting a 21st century intellectual property system. We joined as part of the IP5—the five largest patent offices in the world—in a commitment to greater work sharing and harmonization of patent laws. We are currently partnering with 24 other patent offices around the world on the Patent Prosecution Highway, which allows an applicant to fast-track examination in one office after a finding by another office that one or more corresponding claims are allowable. We have also been active in the World Intellectual Property Organization (WIPO), playing a key role in the signing of the WIPO Audiovisual Performances Treaty in Beijing, China.

We are proud of the many things we have accomplished. Our goals for the future are ambitious. We move forward with a clear vision of what we must do to ensure our continued progress and achieve these goals, fully cognizant of near-term revenue uncertainty as we implement a more certain financial foundation in fiscal year 2013 through a fee system that fully recovers our costs.

We are confident that the USPTO’s financial and performance data are complete, reliable, accurate and consistent as we improve our ability to measure progress toward our performance goals. For the 20th consecutive year, we earned an unqualified audit opinion on our annual financial statements. For fiscal year 2012 financial reporting, the independent auditors did not identify any material weaknesses, or instances of non-compliance with laws and regulations.

It is clear that the USPTO has a clear mission and a capable staff dedicated to meeting it. We are leading the way to a 21st century intellectual property system that benefits all of society in ways large and small. We anticipate another fine year of accomplishments by our outstanding employees, working closely with our stakeholder community. Our shared sense of purpose ensures the United States will continue to lead the world in innovation and ingenuity.



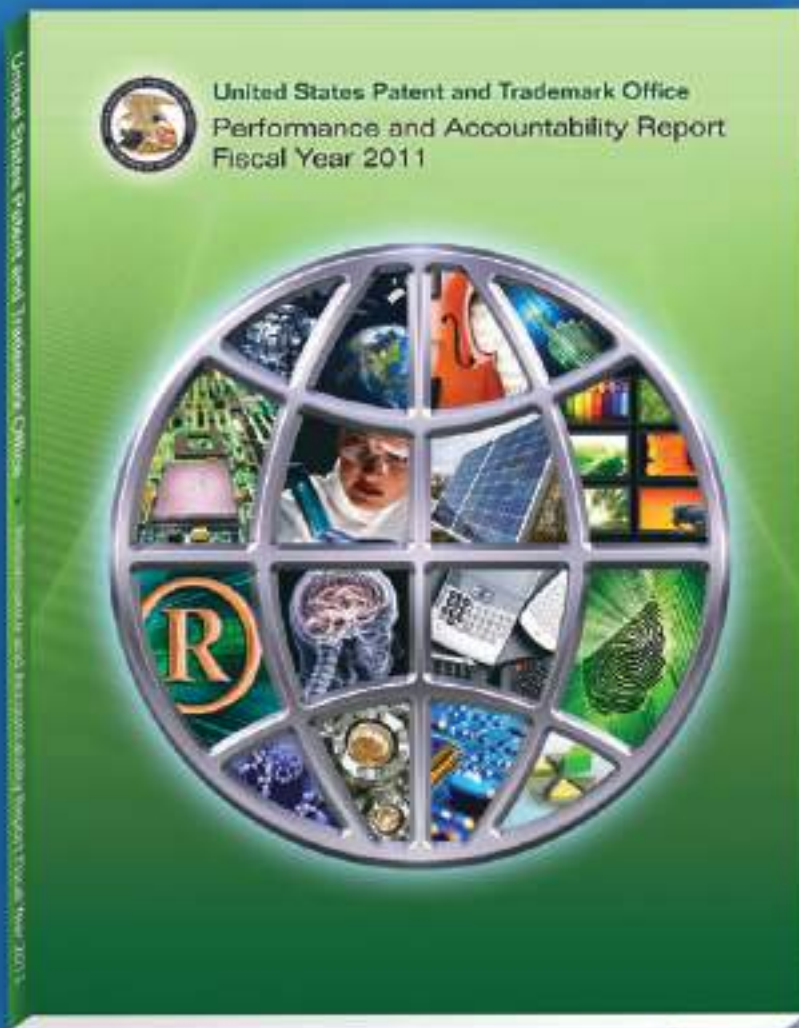
David J. Kappos

Under Secretary of Commerce for Intellectual Property and  
Director of the United States Patent and Trademark Office  
November 7, 2012



# 2011

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# **Management's Discussion and Analysis**





# Mission and Organization of the USPTO

## Mission

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

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

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

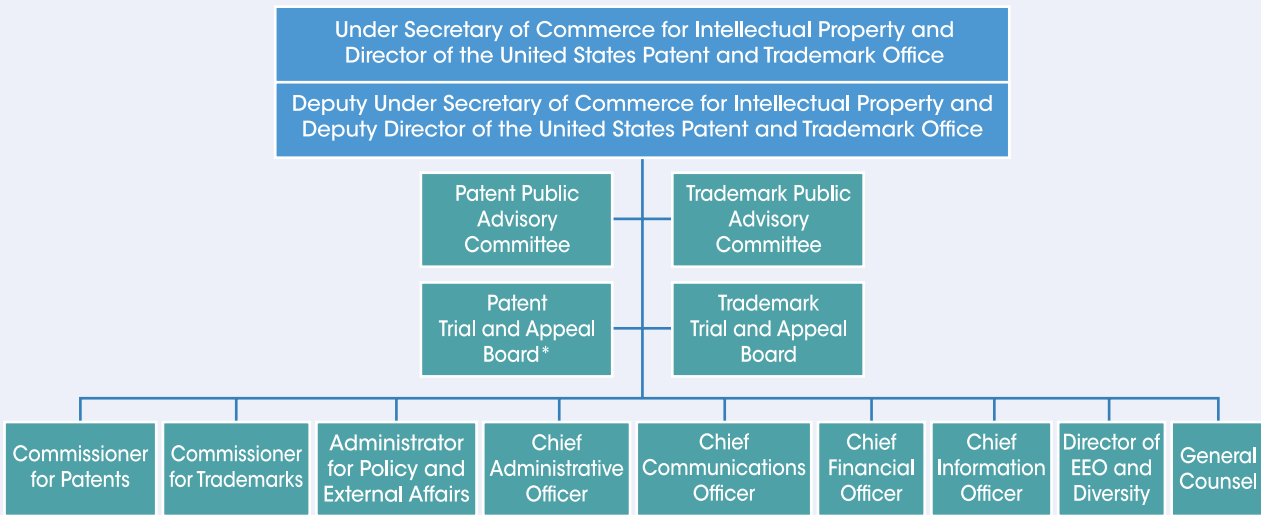
As a part of the Department of Commerce (DOC), the USPTO is uniquely situated to support the accomplishment of the Department's mission to *create the conditions for economic growth and opportunity by promoting innovation, entrepreneurship, competitiveness, and stewardship.*

## Our Organization

The USPTO is an agency of the United States within the DOC. As shown in Figure 1, the agency is led by the Under Secretary of Commerce for Intellectual Property and Director of the USPTO who consults with



Under Secretary David Kappos awards the National Inventors Hall of Fame medal on May 2, 2012.

**FIGURE 1****United States Patent and Trademark Office**

\*Board of Patent Appeals and Interferences changed its name to "Patent Trial and Appeal Board" on September 16, 2012.

the Patent Public Advisory Committee (PPAC) and the Trademark Public Advisory Committee (TPAC). The USPTO has two major components: the Patent organization and the Trademark organization, which are teamed with several other supporting units, as shown in the organization chart above (Figure 1). Headquartered in Alexandria, Virginia, the USPTO also has a satellite office in Detroit, Michigan, which opened on July 13, 2012. In addition, the USPTO has two storage facilities located in Virginia and Pennsylvania.

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

authority that will be essential to USPTO's sustainable funding model.

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

**The Patent Organization.** The Patent organization examines patent applications to compare the scope of claimed subject matter to a large body of technological information to determine whether the claimed invention is new, useful, and non-obvious. Patent examiners also provide answers on applications appealed to the Patent Trial and Appeal Board (PTAB), prepare initial memoranda for interference<sup>1</sup> proceedings to determine priority of invention, and prepare international preliminary examination reports for inter-

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



A patent drawing of an inline roller skate placed on the left-hand side of a child wearing inline roller skates.



T. Markey celebrates the National Trademark Expo on October 14, 2011.

national applications filed under the *Patent Cooperation Treaty* (PCT). The patent process includes performing an administrative review of newly-filed applications, publishing pending applications, issuing patents to successful applicants, and disseminating issued patents to the public.

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

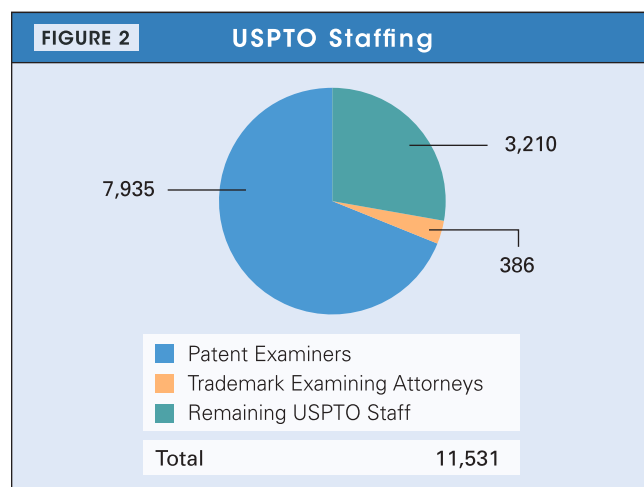
Domestically, the USPTO provides technical advice and information to executive branch agencies on IP matters and trade-related aspects of IP rights. Internationally, the USPTO works with foreign governments

to establish regulatory and enforcement mechanisms that meet international obligations relating to the protection of IP.

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

## Our People

At the end of FY 2012, the USPTO work force (Figure 2) was composed of 11,531 federal employees (including 7,935 patent examiners and 386 trademark examining attorneys).





# America Invents Act

President Obama signed the *Leahy-Smith America Invents Act* (AIA) (Pub. L. No. 112-29) into law on September 16, 2011. This sweeping reform introduced some of the biggest changes to the patent system in 200 years.

Since its enactment, the USPTO has worked diligently to implement the AIA's statutory requirements to improve patent quality, reduce the backlog of patent applications, reduce domestic and global patenting costs for U.S. companies, provide greater certainty in patent rights, and offer effective alternatives to costly and complex litigation.

In this fiscal year, the USPTO has accomplished the following significant milestones in implementing the AIA:

## Rulemaking

In order to implement the provisions of federal statutes, agencies typically must first make them a part of their regulatory scheme by engaging in rulemaking. The following is a summary of USPTO's rulemaking progress:

- 12 Notices of Proposed Rulemaking (NPRM) implementing five patent-related provisions and four Patent Trial and Appeal Board (PTAB)<sup>3</sup> related provisions were published for public comment by February 2012. Final Rules for these same provisions were published by mid-August 2012.
- One First-Inventor-to-File NPRM and one First-Inventor-to-File Proposed Examination Guidance were published for public comment in July 2012.
- One Fee Setting NPRM was published on September 6, 2012.

- Notice of Inquiry published in the Federal Register on August 16, 2012 to request public comment on options for adjusting trademark application fees.

For more information regarding AIA-related rulemaking, associated comments, etc. please go to [www.uspto.gov/aia\\_implementation/](http://www.uspto.gov/aia_implementation/).

## AIA Studies

The AIA requires the USPTO to conduct three studies into certain areas of the intellectual property law and make recommendations to Congress based on study findings. The AIA-mandated studies concern prior user rights, international patenting by small businesses, and confirmatory genetic testing. For more information about these AIA-required studies, please see [www.uspto.gov/aia\\_implementation](http://www.uspto.gov/aia_implementation).

## AIA Programs

The AIA requires the USPTO to establish certain programs to assist applicants to file and prosecute patent applications, to build a methodology for studying the diversity of patent applicants, and to establish three satellite offices. The initial satellite office opened in Detroit, Michigan on July 13, 2012. Three additional locations – Denver, Colorado; Dallas-Ft. Worth, Texas; and Silicon Valley, California – will be opening in the coming years. For more information about USPTO progress for these programs, please see [www.uspto.gov/aia\\_implementation](http://www.uspto.gov/aia_implementation).

## Target Outreach to AIA Specific Topics

It is the USPTO's top priority to keep our stakeholders informed and as involved in the AIA implementation as much as possible. These are a few of the important steps we took to ensure maximum transparency and participation:



**TOP:** The USPTO new satellite office locations.

**BOTTOM:** On September 12, 2012, the USPTO hosted a public roadshow in Alexandria, Virginia, to share information about new final rules implementing provisions of the America Invents Act.

- Public "roadshows" to share information about new final rules implementing provisions of the AIA.
- AIA micro-site created to house all AIA implementation information.
- AIA implementation status report posted monthly on AIA micro-site.
- AIA Subscription Center created and utilized to distribute AIA implementation information to subscribers.
- More than 200 external AIA presentations given in U.S. and abroad.
- Press releases, subscription center blasts, and social media communications issued for every major AIA implementation event, such as NPRM publication in the Federal Register.

<sup>3</sup> Note that the USPTO entity "Board of Patent Appeals and Interferences" (BPAI) was renamed "Patent Trial and Appeal Board" on September 16, 2012 in accordance with AIA requirements.



# Performance Goals and Results

## Introduction to Performance

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

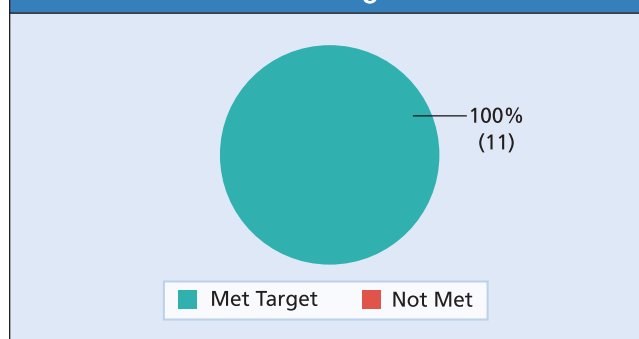
### Strategic Planning Performance Framework

The USPTO's mission is to foster innovation and competitiveness by providing high quality and timely examination of patent and trademark applications, guiding domestic and international intellectual property policy, and protecting intellectual property rights. The *USPTO 2010-2015 Strategic Plan* ([www.uspto.gov/about/stratplan/](http://www.uspto.gov/about/stratplan/)) provides three strategic goal and one management goal in support of the agency's mission with a focus on achieving results. The strategic objectives under the first three goals define what the agency needs to do in order to achieve the goals. The management goal provides the administrative support foundation for USPTO to achieve organizational excellence.

The USPTO strategic planning performance framework is designed to strengthen the capacity of the USPTO by focusing on a specific set of goals and the steps we must take to reach those goals, as follows:

- Provide timely examination of patent applications: Reduce the average time to first office action for patent applications to 10 months (average time from filing until an examiner's initial determination

**FIGURE 3** Summary of FY 2012 Strategic Goal Performance Target Results



on patentability), and average total pendency to 20 months (average time from filing until the application is issued as a patent or abandoned)

- Improve quality of patent examination
- Improve/enhance patent appeal and post-grant processes
- Optimize trademark quality and maintain pendency
- Demonstrate global leadership in all aspects of IP policy development
- Improve IT infrastructure and tools
- Implement a sustainable funding model for operations
- Improve relations with employees and stakeholders.

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



There are 11 Strategic Plan performance outcome measures, all designed to achieve the USPTO's strategic goals. Annual performance targets were developed for each measurable outcome.

The USPTO met its targets for all 11 performance measures as shown in Figure 3.

Our plan communicates the USPTO's priorities and directions, and serves as the foundation for programmatic and management functions. As a management tool for tracking progress in meeting each of our perfor-

mance commitments, the plan includes a Balanced Scorecard which identifies the objectives, initiatives, and performance measures associated with each strategic goal. These performance commitments are outlined in the strategic framework presented in Table 1.

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

**TABLE 1 2010-2015 Strategic Plan**

<b>Mission</b>	
<i>Fostering innovation, competitiveness and economic growth, domestically and abroad by delivering high quality and timely examination of patent and trademark applications, guiding domestic and international intellectual property policy, and delivering intellectual property information and education worldwide, with a highly skilled, and diverse workforce.</i>	
<b>Vision</b>	
<i>Leading the Nation and the World in Intellectual Property Protection and Policy.</i>	
<b>Strategic Goals with Resources Invested</b>	<b>Objectives</b>
<b>GOAL 1:</b> <b>Optimize Patent Quality and Timeliness</b>  Obligations: \$2,112.7 million Total Cost: \$2,079.4 million	Re-Engineer Patent Process to Increase Efficiencies and Strengthen Effectiveness
	Increase Patent Application Examination Capacity
	Improve Patent Pendency and Quality by Increasing International Cooperation and Work Sharing
	Measure and Improve Patent Quality
	Improve Appeal and Post-Grant Processes
	Develop and Implement the Patent End-to-End Processing System
<b>GOAL 2:</b> <b>Optimize Trademark Quality and Timeliness</b>  Obligations: \$216.9 million Total Cost: \$201.3 million	Maintain Trademark First Action Pendency on Average between 2.5 – 3.5 Months with 12.0 Months Final Pendency
	Continuously Monitor and Improve Trademark Quality
	Ensure Accuracy of Identifications of Goods and Services in Trademark Applications and Registrations
	Enhance Operations of Trademark Trial and Appeal Board (TTAB)
	Modernize IT System by Developing and Implementing the Trademark Next Generation IT System
	Develop a New Generation of Trademark Leaders
<b>GOAL 3:</b> <b>Provide Domestic and Global Leadership to Improve Intellectual Property Policy, Protection and Enforcement Worldwide</b>  Obligations: \$45.1 million Total Cost: \$40.3 million	Provide Domestic Leadership on IP Policy Issues and Development of a National IP Strategy
	Provide Leadership on International Policies for Improving the Protection and Enforcement of IP Rights (IPR)
<b>MANAGEMENT GOAL:</b> <b>Achieve Organizational Excellence</b>	Improve IT Infrastructure and Tools
	Implement a Sustainable Funding Model for Operations
	Improve Employee and Stakeholder Relations

## Summary of Strategic Goal Results

The following table summarizes FY 2012 actual performance results against established goals and targets for each key performance measure. The table also includes actual performance results for the past four fiscal years. For the latest updated status for these and other performance measures, please visit our Dashboard at our Data Visualization Center at: [www.uspto.gov/about/stratplan/dashboards.jsp](http://www.uspto.gov/about/stratplan/dashboards.jsp).

<b>TABLE 2 Summary of Strategic Goal Results for FY 2008 - FY 2012</b>						
Strategic Goals Performance Measures	FY 2008 Actual	FY 2009 Actual	FY 2010 Actual	FY 2011 Actual	FY 2012 Target	FY 2012 Actual
<b>GOAL 1: Optimize Patent Quality and Timeliness</b>						
Average First Action Pendency	25.6	25.8	25.7	28.0	22.6	21.9
Average Total Pendency	32.2	34.6	35.3	33.7	34.7	32.4
Patent Quality Composite Rate	N/A	N/A	N/A	30.7	48-56	72.4
Patent Applications Filed Electronically	71.7%	82.4%	89.5%	93.1%	96.0%	97.1% <sup>1</sup>
<b>GOAL 2: Optimize Trademark Quality and Timeliness</b>						
Average First Action Pendency	3.0	2.7	3.0	3.1	2.5 to 3.5	3.2
Average Total Pendency	11.8	11.2	10.5	10.5	12.0	10.2
First Action Compliance Rate	95.8%	96.4%	96.6%	96.5%	95.5%	96.2%
Final Compliance Rate	N/A	97.6%	96.8%	97.0%	97.0%	97.1%
Exceptional Office Action	N/A	N/A	N/A	23.6%	20.0%	26.1%
Trademark Applications Processed Electronically	N/A	62.0%	68.1%	73.0%	74.0%	77.0%
<b>GOAL 3: Provide Domestic and Global Leadership to Improve Intellectual Property Policy, Protection and Enforcement Worldwide</b>						
Percentage of prioritized countries for which country teams have made progress on at least 75% of action steps in the country-specific action plans along the following dimensions:  1. institutional improvements of IP office administration for advancing IP rights,  2. institutional improvements of IP enforcement entities,  3. improvements in IP laws and regulations, and  4. establishment of government-to-government cooperative mechanisms.	N/A	NA	75%	100%	75%	75%
<p>The performance result of a given measure is either <span style="color: green;">■</span> Met (100 percent or greater of target), <span style="color: orange;">■</span> Slightly Below (95 to 99 percent of the target), or <span style="color: red;">■</span> Not Met (below 95 percent of target).</p> <p>N/A: Denotes new performance measures where data was not available.</p> <p><sup>1</sup> This is preliminary data and is expected to be final by December 2012 and will be reported in the FY 2013 PAR.</p>						

## What is a patent?

A patent is an intellectual property right granted by the Government of the United States of America to an inventor "to exclude others from making, using, offering for sale, or selling the invention throughout the United States or importing the invention into the United States" for

a limited time in exchange for public disclosure of the invention when the patent is granted.



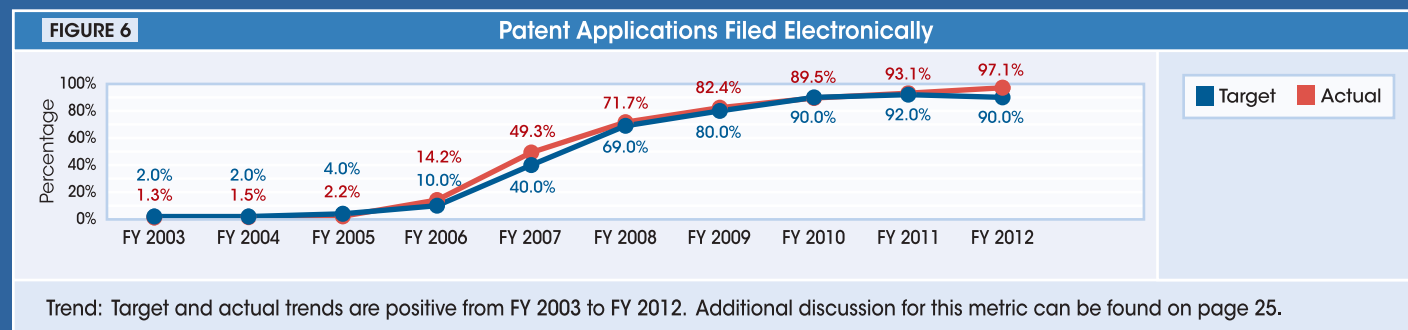
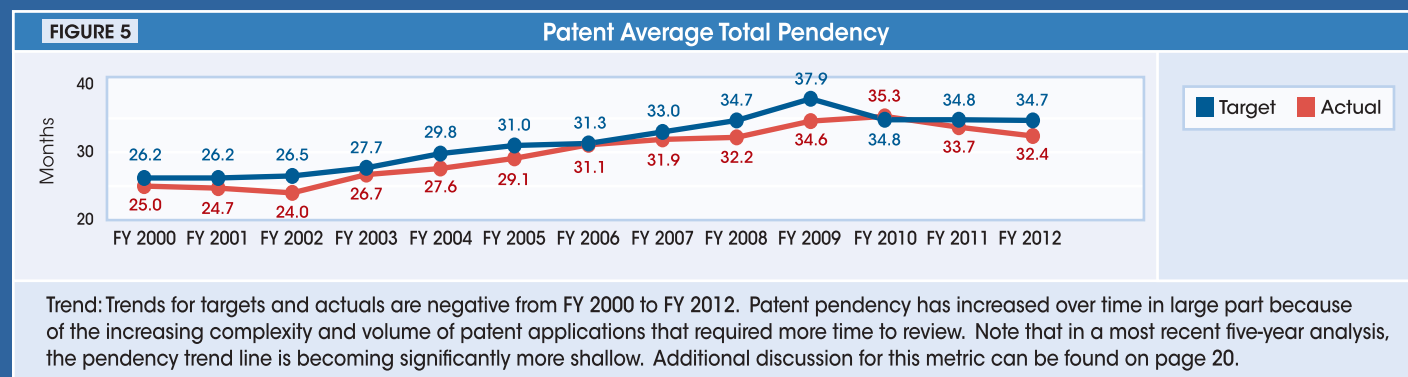
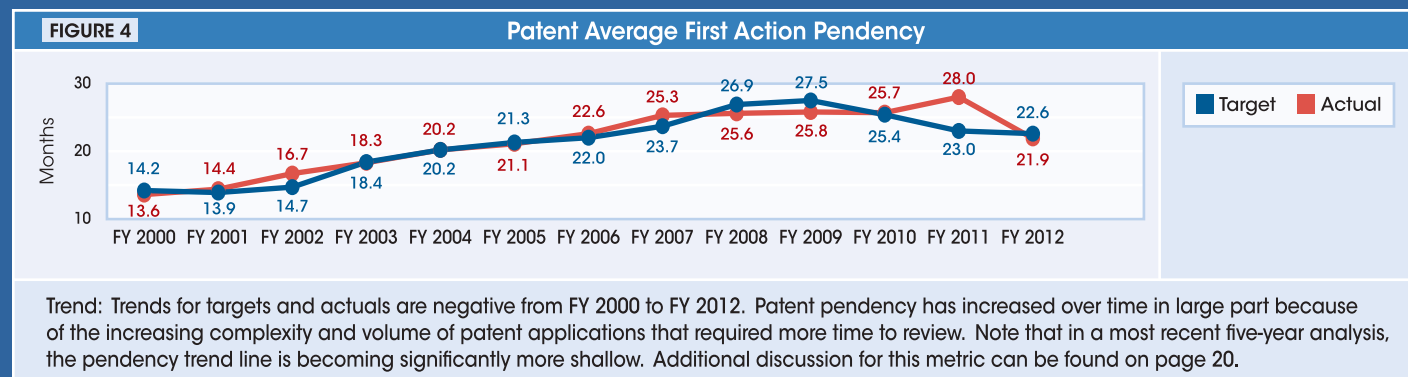
Patent number 2,091,077 for a "Lawn Mower," issued to H.C. Limbach in 1937.

There are three types of patents. Utility patents may be granted to anyone who invents or discovers any new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement thereof. Design patents may be granted to anyone who invents a new, original, and ornamental design for an article of manufacture. Plant patents may be granted to anyone who invents or discovers and asexually reproduces any distinct and new variety of plant.



# PATENTS: STRATEGIC GOAL 1

Below are those Strategic Goal 1 measures for which enough data is available to establish performance trends. The Patent Quality Composite Rate Measure is new and has insufficient data to show a trend this year.



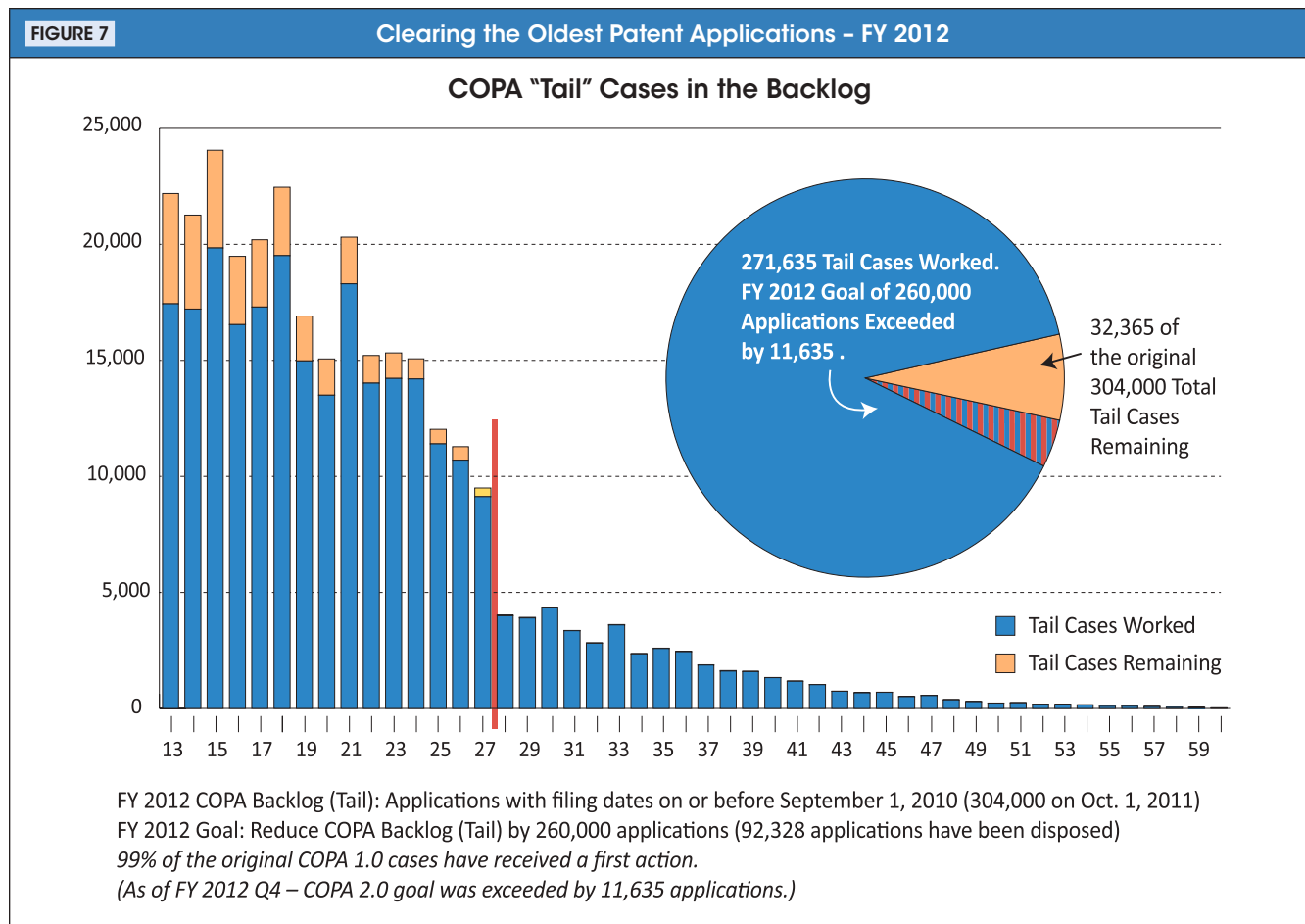
## Strategic Goal 1: Optimize Patent Quality and Timeliness

The USPTO is pleased to report that our AIA implementation efforts are proceeding on a timely basis. America's innovators are already seeing the benefits of this legislation. Seven provisions of the AIA have been implemented – all within the time frames prescribed by the Act – and proposed rules have been published for nine more provisions. The USPTO remains on track to timely implement all provisions of the AIA.

The USPTO is also proud of our ongoing, concurrent efforts to improve the patent examination process and more quickly move important innovations to the marketplace. For example, our backlog of patent applications has been reduced to 608,283, the lowest level in several years despite significant increases in filings last year and this year. Our total pendency was reduced to 32.4 months and our first action pendency was reduced to 21.9 months, much lower than the previous year.

In order to achieve its goal to reduce pendency, the USPTO launched a major program called Clearing Our Oldest Patent Applications 2.0 (COPA 2.0). COPA 2.0 is a continuation of the original COPA effort to eliminate the “tail” of backlog applications. For COPA 2.0, the “tail” is applications that were 13 months and older as of October 1, 2011, and had not received a first office action. The goal for FY 2012 was to complete a first office action on 260,000 applications. As of the end of the year, we addressed more than 271,635 COPA 2.0 applications and achieved over 100 percent of the goal. Clearing the oldest patent applications is important to the USPTO's long-term success in reducing pendency and the excess inventory of unexamined patent applications.

The improvements and increased efficiencies are shown in our COPA performance metrics in Figure 7, below.



## **OBJECTIVE 1: Re-engineer patent process to increase efficiencies and strengthen effectiveness**

The USPTO is realizing benefits from the success of various initiatives, pilots, and operational improvements. The agency is moving from a one-track patent examination process to a multi-track process by adopting procedures and initiatives that incentivize abandoning applications that are not important to applicants; accelerating critical technologies; permitting an applicant to accelerate applications; and exploring other incentive and accelerated examination options. Specific initiatives include:

### ***Track One***

The USPTO launched the AIA-mandated accelerated examination program (Track One) that allows patent applications to be processed to completion in 12 months and offers small businesses a discount on this option. Since its inception, the agency received more than 6,000 Track One patent applications, and more than 2,400 entrepreneurs have taken advantage of those 50 percent discounts. The agency completed more than 3,900 first actions on Track One examinations in an average of 50 days, mailed over 1,085 allowances, and issued more than 677 patents.

### ***First Action Interview Pilot Program***

The First Action Interview Pilot Program allows participants to conduct an interview with the examiner as soon as the prior art search has been conducted. This program was expanded from a small pilot program to include additional technical areas, enhance efficiency, and provide more options to participants. The program has many benefits including: (1) the ability to advance prosecution of an application; (2) enhanced interaction between the applicant and the examiner; (3) the opportunity to resolve patentability issues one-on-one with the examiner at the beginning of the prosecution process and; (4) the opportunity to facilitate early allowance. The First-Action Interview Pilot Program notice was originally signed March 24, 2008. The USPTO launched the Full First Action Interview Pilot Program on May 16, 2011. This program expands on the First Action Interview Pilot

Program by including all utility applications in all technology areas and filing dates. As with the previous First Action Interview pilot programs, the applicant is entitled to a first action interview, upon request, prior to the first office action on the merits. This pilot has been extended to run through November 16, 2012. A total of 3,533 applicants have joined the programs since April 2008, 870 interviews have been conducted, and 1,304 of the applications have been allowed. The program has an overall first action allowance rate of 29.4 percent as compared with 11.5 percent for all original non-continuing applications in FY 2012.

### ***After Final Practice and Quick Path IDS (QPIDS) Pilots***

As another part of our ongoing efforts toward compact prosecution and increased collaboration between examiners and stakeholders, we recently announced the start of the After Final Consideration Pilot (AFCP) and QPIDS pilots. The AFCP allows additional flexibility for applicants and examiners to work together in "after final" situations to move applications toward allowance.

Our QPIDS pilot provides consideration of an Information Disclosure Statement (IDS) submitted after the payment of the issue fee without requiring a Request for Continued Examination (RCE). The objective of this new pilot program is to reduce the number of RCEs filed for consideration of an IDS after the issue fee is paid.

Table 3 below provides the relative cost effectiveness of the entire patent examination process over time, or the efficiency with which the organization applies its resources to production.

<b>TABLE 3</b> Measure: Total Cost Per Patent Production Unit		
<b>FISCAL YEAR</b>	<b>TARGET</b>	<b>ACTUAL</b>
<b>2008</b>	\$3,982	\$3,773
<b>2009</b>	\$3,562	\$3,523
<b>2010</b>	\$3,530	\$3,471
<b>2011</b>	\$4,041	\$3,594
<b>2012</b>	\$3,970	\$3,617
<b>2013</b>	\$4,041	
<b>2014</b>	\$3,878	
<b>Target Met.</b>		



## OBJECTIVE 2: Increase patent application examination capacity

The USPTO continues to increase its examination capacity by employing new recruitment and development models to hire, train, and retain a highly skilled and diverse workforce. While continuing to draw candidates from traditional sources, a targeted hiring program was launched to focus on recruiting experienced former examiners and IP professionals. The new hiring model seeks individuals with appropriate technology backgrounds who also have previous IP experience for patent examiner positions. In contrast with previous hiring which focused on scientific background and experience, this new hiring model places more emphasis on recruiting candidates with significant IP experience. This will result in reduced training time as well as an increased ability to examine applications much sooner with an experienced new hire, thereby increasing overall production output.

For the first time ever, the USPTO has expanded its operations outside of the Washington, DC metropolitan area as part of our ongoing effort to recruit and retain the nation's top professionals. The first USPTO satellite office, the Elijah J. McCoy Satellite Office,

opened in Detroit, Michigan on July 13, 2012. This location and future locations will function as hubs of innovation and creativity, helping protect and foster American innovation in the global marketplace, assisting businesses to cut through red tape, and creating hundreds of highly-skilled jobs in each of the local communities. The IP experts in the office will work closely with entrepreneurs and help further reduce the backlog of patent applications and appeals. Reducing the backlog of patents and simultaneously speeding up the process will allow businesses to move their innovation to market more quickly. The new office is the first to open out of four announced USPTO satellite offices saving critical time and resources. The AIA, signed into law by President Obama on September 16, 2011, requires the USPTO to establish three satellite locations as part of a larger effort to modernize the U.S. patent system by September 16, 2014.

In the coming years, the USPTO plans to open in three new locations in or around Dallas, Texas, Denver, Colorado, and Silicon Valley, California. These efforts, in conjunction with our ongoing implementation of the AIA, are improving the effectiveness of our IP system, and breathing new life into the innovation ecosystem.



A group of Patent Training Academy graduates pose with management officials and Deputy Under Secretary Theresa Rea.

### OBJECTIVE 3: Improve patent pendency and quality by increasing international cooperation and work-sharing

Patent processing times are primarily gauged by two measures – Average First Action Pendency (Table 4) and Average Total Pendency (Table 5). Average First Action Pendency is the average length of time it takes from filing until an examiner's initial determination of the patentability of an invention. Average Total Pendency is the average length of time it takes from filing until the application is issued as a patent or abandoned by the applicant. Due to our successful effort, Average First Action Pendency has declined significantly from the previous year. This decrease was expected due to the efforts focused on clearing up the oldest patent applications from the backlog through the COPA 2.0 initiative.

<b>TABLE 4 Measure: Patent Average First Action Pendency (Months)</b>		
<b>FISCAL YEAR</b>	<b>TARGET</b>	<b>ACTUAL</b>
2008	26.9	25.6
2009	27.5	25.8
2010	25.4	25.7
2011	23.0	28.0
2012	22.6	21.9
2013	18.0 <sup>1</sup>	
2014	15.8 <sup>1</sup>	
<i>Target Met.</i>		
<sup>1</sup> Outyear targets subject to change.		

<b>TABLE 5 Measure: Patent Average Total Pendency (Months)</b>		
<b>FISCAL YEAR</b>	<b>TARGET</b>	<b>ACTUAL</b>
2008	34.7	32.2
2009	37.9	34.6
2010	34.8	35.3
2011	34.5	33.7
2012	34.7	32.4
2013	30.1 <sup>1</sup>	
2014	26.1 <sup>1</sup>	
<i>Target Met.</i>		
<sup>1</sup> Outyear targets subject to change.		

In recent years, the Patent Prosecution Highway (PPH) has proven to be a significant work sharing initiative for the USPTO, and a successful vehicle enabling faster and less expensive multi-country patent prosecution for the IP community.

Through a series of international work-sharing agreements, PPH has helped patent applicants receive IP protection in 24 different countries—faster and at a lower cost. This kind of international collaboration is especially important in breaking down the barriers that impede smaller companies trying to export their products into a global marketplace.

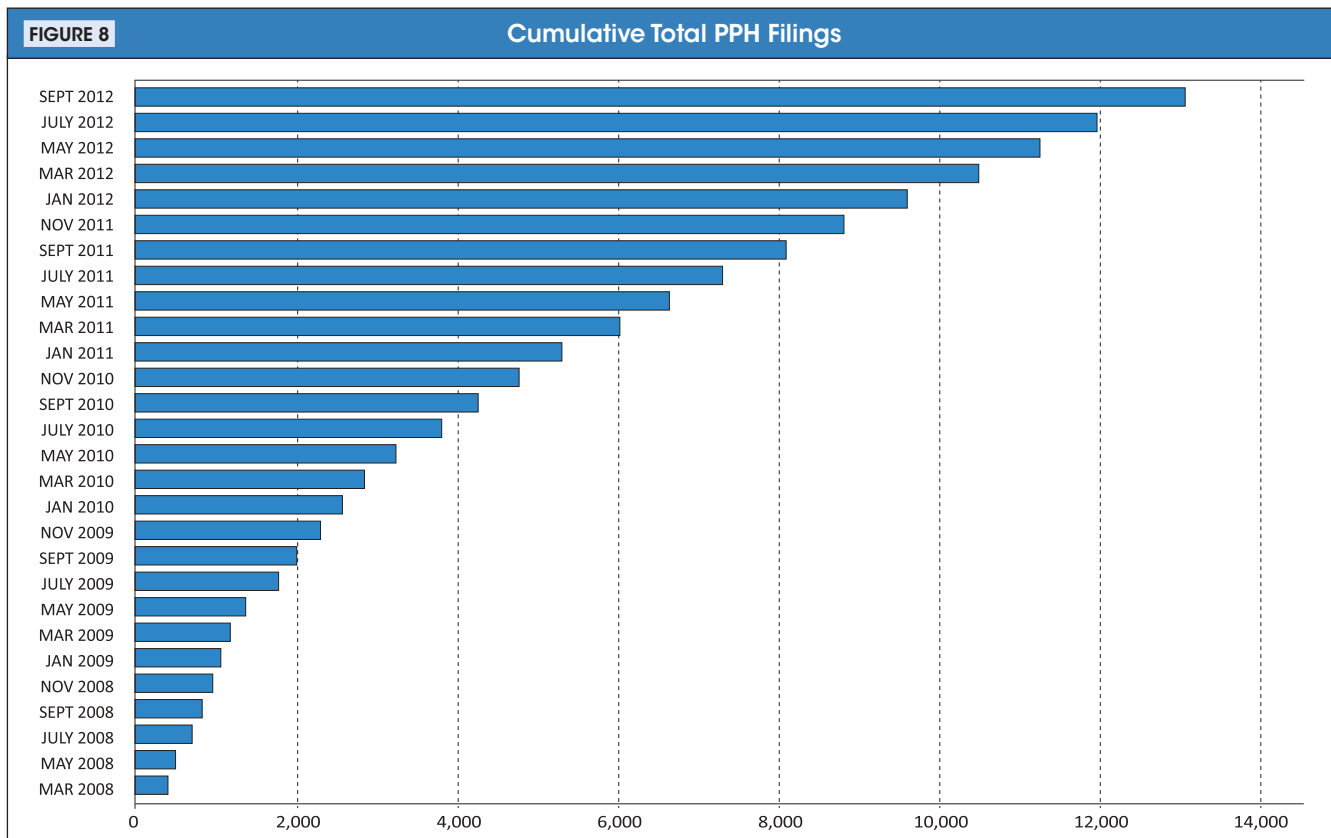
As of the end of FY 2012, over 17,400 applications at the USPTO had been received within the PPH program since its inception (Figure 8). This achieved the goal of driving significant increase in usage for three years running. Users benefit not only by fast portfolio-building, but also by enjoying the collective savings of millions of dollars in the process. A study by our user community demonstrated that—in a single application—anywhere from \$2,000 to \$13,000 in reduced prosecution costs can be realized through PPH. For international filers of all sizes, that level of savings adds up quickly.

While PPH has grown tremendously in usage, we are working with our international partner offices to further improve the program. One of the first major steps was expansion of the PPH into the PCT system. This opened up the advantages of PPH to an entire sector of international filers, while paving the way toward making PCT the work-sharing model it was originally intended to be. With the world's patent offices making productive use of each other's work, the USPTO can reduce the cost of doing business and help innovators move their products to market faster, with greater predictability and certainty.

Other important PPH metrics include:

- An overall allowance rate of 90 percent, significantly higher than the overall USPTO average allowance rate;
- A lower average appeal rate of 0.9 percent versus the overall USPTO average appeal rate of 3.0 percent; and
- An 11.0 percent rate of requests for continued examination versus the USPTO rate of 29.6 percent requests for continued examination.

This program was selected by former Secretary of Commerce, Gary Locke, as one of the first two programs to be awarded the Department's first Perfor-



mance Excellence Award for outstanding efforts to improve business processes.

#### **OBJECTIVE 4: Measure and improve patent quality**

The USPTO continues to focus on delivering high-quality patents to innovators. More than two years ago, the agency worked with our patent examiners' union to develop a new work credit system that gives examiners more time to review the merits of an application before making a decision. We have improved our hiring practices, recruiting experienced IP professionals as well as recent engineering graduates. Comprehensive training is provided for new as well as experienced examiners.

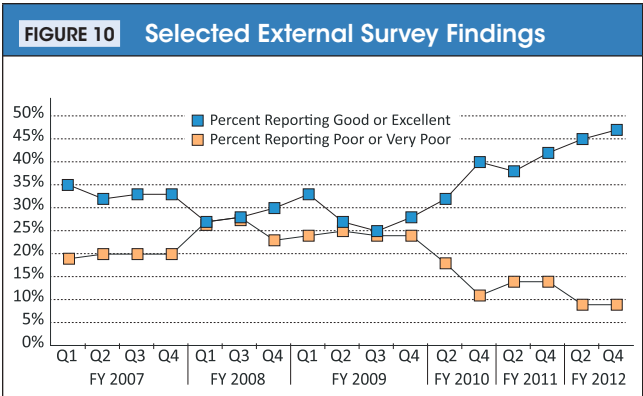
We implemented new performance standards that place a greater emphasis on examiners interacting with patent applicants earlier in the process to clarify claims and enhance the quality of patent reviews.

Collaboration with our PPAC - and the entire patent community - led to the development of a comprehensive set of metrics that we use to monitor patent quality from start to finish. These quality metrics are reported to our stakeholders on a monthly basis via the USPTO Data Visualization Center - Patent's Dashboard (Figure 9), available at [www.uspto.gov/about/stratplan/dashboards.jsp](http://www.uspto.gov/about/stratplan/dashboards.jsp).

To better measure the quality of services provided by the patent examining staff, the USPTO expanded its *Patents External Quality Survey*. This survey gives applicants an opportunity to provide feedback on the patent process on a semi-annual basis. The survey provides a valuable complement to other quality initiatives, such as enhancing interview practice. The survey results (Figure 10), along with customer outreach efforts and other initiatives, enable the USPTO to improve service quality based upon the input collected through the survey process. In the Fall 2012 survey, 35 percent of customers felt that overall examination quality had slightly or significantly improved over the previous three months. These levels are consistent with those observed over



the past year and remain some of the most positive ratings the USPTO has achieved since the inception of the survey.



Other measures of patent quality include the Patent In-Process Compliance Rate (Table 6) and the Patent Final Disposition Compliance Rate (Table 7). The Patent In-Process Compliance Rate provides the percentage of Utility, Plant, Reissue, Design (UPRD) allowances and final rejections reviewed that were found to be compliant with applicable rules and laws regarding final patentability determination. The Patent Final Disposition Compliance Rate provides the per-

centage of UPRD office actions prior to allowance or final rejection that were found to be compliant with applicable rules and laws. These quality measures contribute to changing our focus from end-process reviews to an emphasis on front-end quality. These measures are being subsumed within the more robust measure, the Patent Quality Composite Rate.

TABLE 6 Measure: Patent In-Process Compliance Rate		
FISCAL YEAR	TARGET	ACTUAL
2009	N/A	93.6%
2010	94.0%	94.9%
2011	94.6% - 95.6%	95.2%
2012	94.6% - 96.0%	95.9%

TABLE 7 Measure: Patent Final Disposition Compliance Rate		
FISCAL YEAR	TARGET	ACTUAL
2009	N/A	94.4%
2010	94.5%	96.3%
2011	95.6% - 96.5%	95.4%
2012	95.6% - 96.7%	96.6%

The USPTO implemented a new quality measure, "Patent Quality Composite Rate." The new composite quality metric is composed of seven total factors that take into account stakeholder comments, including three factors drawn from the USPTO's previous quality measurement procedure, and four new factors that focus upon data never before acquired and/or employed for quality measurement purposes. The following factors have been modified from the previous procedure measure: (1) the quality of the action setting forth the final disposition of the application; (2) the quality of the actions taken during the course of the examination; and (3) the perceived quality of the patent process as measured through external quality surveys of applicants and practitioners. The newly added factors measure: (1) the quality of the examiner's initial search; (2) the degree to which the first action on the merits follows best examination practices; (3) the degree to which global USPTO data is indicative of compact, robust prosecution; and (4) the degree to which patent prosecution quality is reflected in the perceptions of the examination corps as measured by internal quality surveys. Table 8 exhibits our recent progress on this new



measure. Note that FY 2011 was the baseline year for this new measure.

In providing more effective training, the USPTO further enhances patent examination fundamentals, communication, and cooperation between the examiner and applicant. The USPTO utilizes a highly successful compact prosecution training and refresher training program that encompasses over 20 training modules designed to enhance examiners' knowledge and skills in procedural and legal topics pertaining to patent examination. In addition, the USPTO has also implemented the *Patent Examiner Technical Training Program (PETTP)* which provides patent examiners with direct access to experts who are able to share their technical knowledge on prior art and industry standards in areas of emerging technologies and established technologies. The PETTP provides an excellent opportunity for communication between patent examiners and the experts who work in the various technologies that are examined throughout the USPTO. This enhanced communication contributes to improving overall patent quality and decreasing patent pendency. Another new program is the Site Examiner Education (SEE) program, this program allows examiners to travel to companies and educational institutions to learn about updates on technology or new technologies and experience how technologies operate in the field.

In addition, the Office of Patent Training (OPT) has provided a two-phase training program to new supervisory patent examiners which provides coaching and mentoring, leadership and software training modules in an effort to help patent examiners reach their full potential. Patent managers and supervisors will continue to participate in a *Leadership Development Program* which focuses on educating and creating leaders. Furthermore, the OPT received recertification for the ISO 9001:2008. In addition, the USPTO's Office of Patent Quality Assurance (OPQA) received a certificate of registration for the International Standard ISO 9001:2008. The ISO 9001 quality standard is the most widely recognized and established quality management system framework in the world, outlining requirements that provide the foundation for both OPQA and to meet customer expectations and achieve

customer satisfaction. One of the quality management principles of ISO 9001 is the continual improvement of overall performance.

Work product review, feedback, and training are interrelated quality components and are key to quality patent examination, a critical part of the USPTO's strategic plan. In achieving ISO 9001:2008 certification by OPQA, the USPTO has ensured that well-defined and documented standards and processes are in place and demonstrates to internal and external stakeholders alike that it is dedicated to providing consistent quality products and services.

**TABLE 8 Measure: Patent Quality Composite Rate**

FISCAL YEAR	TARGET	ACTUAL
2010	N/A	N/A
2011	N/A	30.7
2012	48-56	72.4
2013	65-73	
2014	83-91	
<i>Target Met.</i>		

#### **OBJECTIVE 5: Improve appeal and post-grant processes**

September 16, 2012 marked a momentous occasion for the Board of Patent Appeals and Interferences (BPAI). On that day, the BPAI became the PTAB. In keeping with that change, the Board opened for business to accept petitions for some of the new AIA post grant proceedings using the Patent Review Processing System (PRPS), our new, web-based e-filing tool.

The PTAB issued a record number of decisions in FY 2012; 10,180. Because of the outstanding efforts of the Judges and staff at the PTAB, the backlog of *ex parte* appeals has stopped growing for the first time in several years. While we expect to keep making progress, there are many factors which play into the reduction, including intake of new appeals, successful hiring in FY 2013, and intake of proceedings authorized by the AIA. All indications are presently favorable that the PTAB will be making steady progress in reducing the backlog to a manageable level. In addition, the PTAB coordinated and published new rules relating to the

processing of *ex parte* appeals. These new rules streamline and simplify the appeal process, resulting in greater efficiencies for both Appellants and the Board. In preparation for the implementation of the AIA, the PTAB wrote and published rules to implement the new procedures, and developed systems required to conduct Inter Partes Reviews, Post Grant Reviews, the Transitional Program Review for Covered Business Methods Patents, and Derivation Proceedings. PTAB is currently on track to implement the AIA on time.

The PTAB continues to improve communications with the Patent organization. PTAB continued its program where senior patent examiners are detailed to the PTAB in order to develop a high-level understanding of its operations, decision-making processes, and constraints. Patent examiners are detailed from the examination corps to work with Administrative Patent Judges by researching both technical and legal issues raised in appealed cases and apply court decisions in legal analysis to assist judges crafting quality decisions. PTAB continues to liaise with USPTO technology center representatives in order to enhance operational understanding throughout the agency.

#### **OBJECTIVE 6: Develop and implement the patent end-to-end processing system**

The USPTO is implementing a variety of IT initiatives to improve our patent operations.

The Patent End-to-End (PE2E) and Patent Application Text Initiative (PATI) will convert 55 million image-based pages into structured text. This effort will yield eXtensible Markup Language (XML) text versions of the key documents for the entire active patent backfile. Upon completion, legacy tools will provide the converted documents to all patent examiners for seamless use within the legacy examination tools. Furthermore, it lays the foundation for PE2E's content as PE2E grows to encompass the patent corps.

Universal Laptops (UL) have been deployed to patent examiners. This 18-month effort was on time and on budget, providing patent examiners with state-of-the-art laptops and collaboration tools to improve productivity and facilitate telework and remote collaboration through video conferencing and Voice over Internet Protocol capabilities.



The Patent Trial and Appeal Board swearing-in ceremony held at the USPTO headquarters on March 1, 2012.



E-petitions allow applicants to obtain real-time decisions on their petitions by automating the handling of common electronically filed petitions. E-petitions now account for more than a third of petitions received by the USPTO.

The USPTO's network infrastructure has been upgraded with connectivity to the internet at 3GBps, providing Internet Service Provider (ISP)-grade network bandwidth to our examiners. This ensures that teleworkers have the highest quality remote access into their examination tools, and it substantially improves the USPTO's ability to support high definition video conferences between examiners and applicants.

The USPTO continues to provide and enhance the tools for applicants' use for patent application filing. The use of electronic filings as shown in Table 9 continues to rise, now at 97.1 percent, from last year when 93.1 percent of applications were filed electronically.

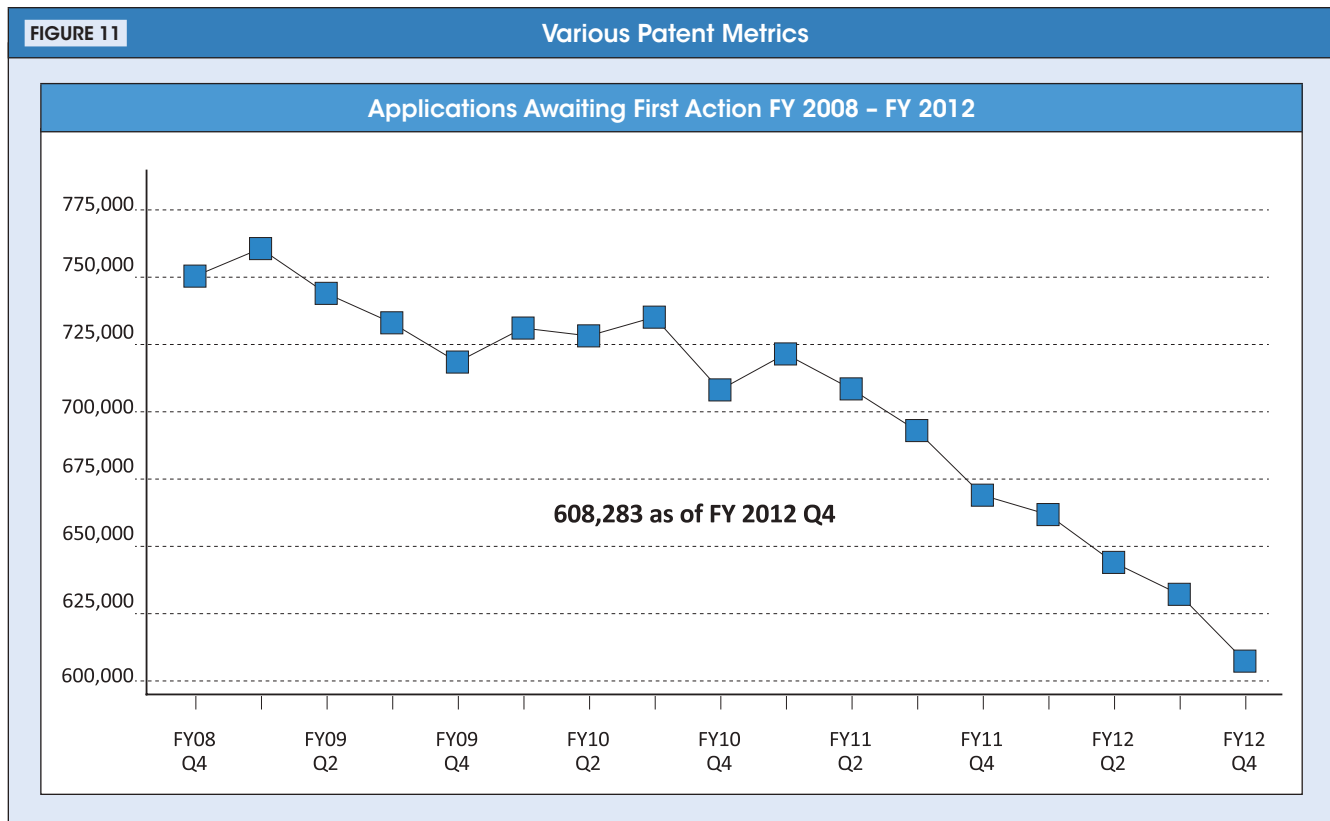
<b>TABLE 9 Measure: Patent Applications Filed Electronically</b>		
<b>FISCAL YEAR</b>	<b>TARGET</b>	<b>ACTUAL</b>
2008	69.0%	71.7%
2009	80.0%	82.4%
2010	90.0%	89.5%
2011	92.0%	93.1%
2012	96.0%	97.1 <sup>1</sup>
2013	97.0% <sup>2</sup>	
2014	97.0% <sup>2</sup>	

**Target Met.**

<sup>1</sup> Preliminary data and is expected to be final by December 2012 and will be reported in the FY 2013 PAR.

<sup>2</sup> Outyear targets subject to change.

The improvements and increased efficiencies can be seen in some of our metrics in Figure 11.

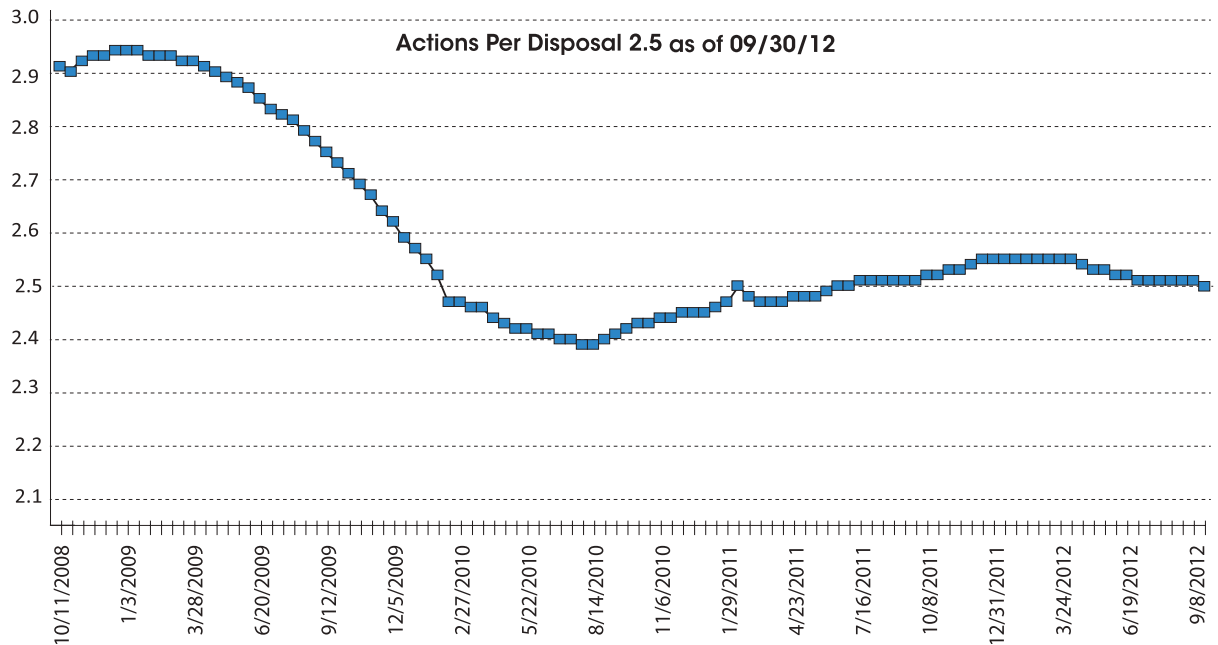


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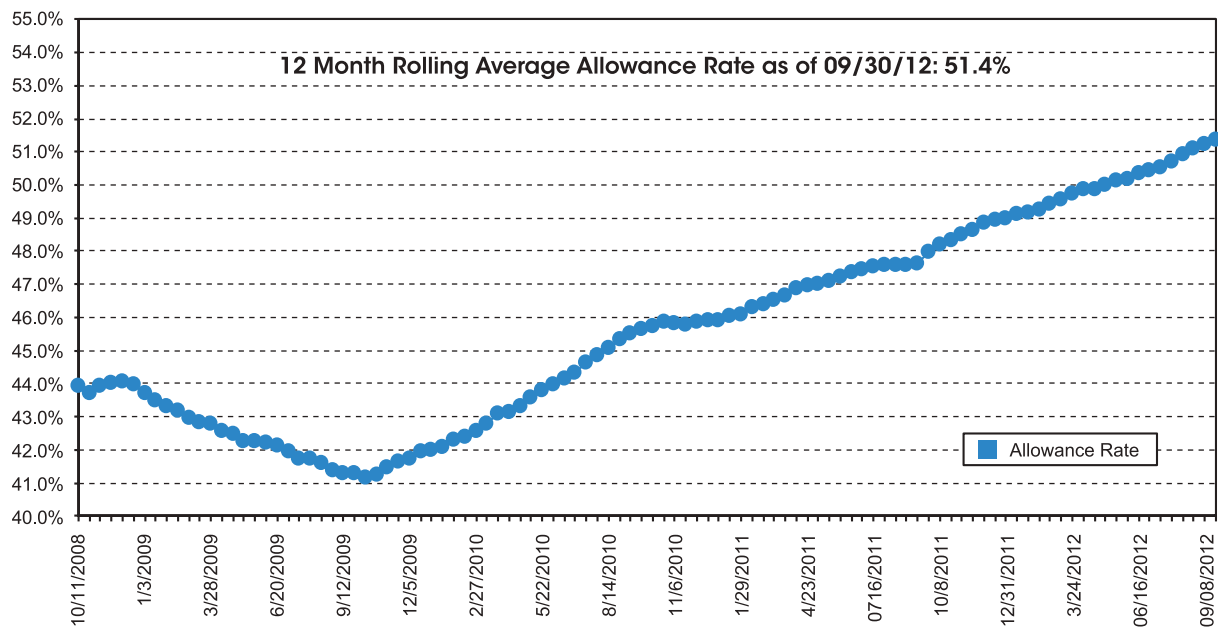
FIGURE 11 Continued

## Various Patent Metrics

## 12 Month Rolling Average Actions Per Disposal by Bi-Week FY 2009 – FY 2012



## 12 Month Rolling Average Allowance Rate by Bi-Week FY 2009 – FY 2012



## What is a trademark or service mark?

A trademark is a brand name. A trademark or service mark includes any word, name, symbol, device, or any combination, used or intended to be used to identify and distinguish the goods and services of one seller or provider from those of others, and to indicate the source of the goods



A Transformers action figure is a good representation of a trademark or service mark.

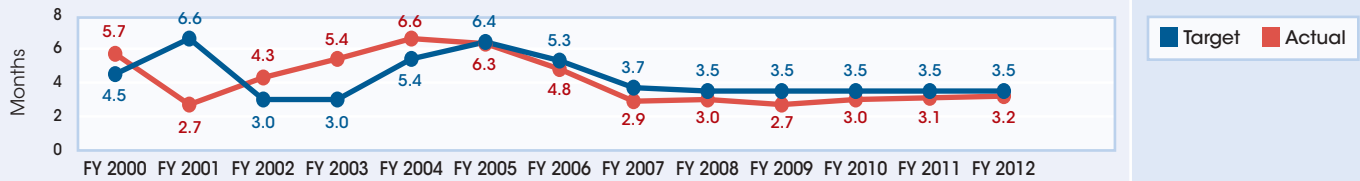
and services. Although federal registration of a mark is not mandatory, it has several advantages, including notice to the public of the registrant's claim of ownership of the mark, legal presumption of ownership nationwide, and exclusive right to use the mark on or in connection with the goods and services listed in the registration.



# TRADEMARKS: STRATEGIC GOAL 2

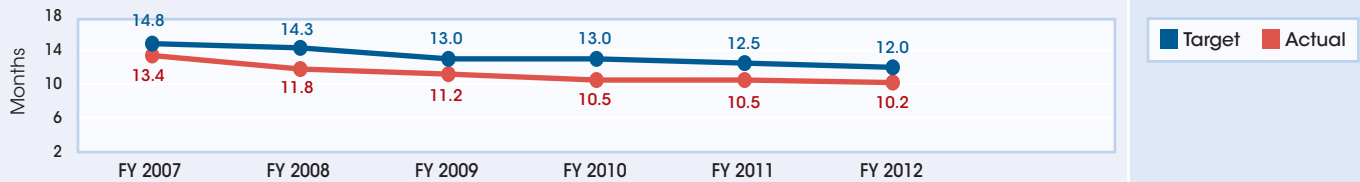
Below are those Strategic Goal 2 measures for which enough data is available to establish performance trends. The Exceptional Office Action Measure is new and has insufficient data to show a trend this year.

**FIGURE 12** Trademark Average First Action Pendency



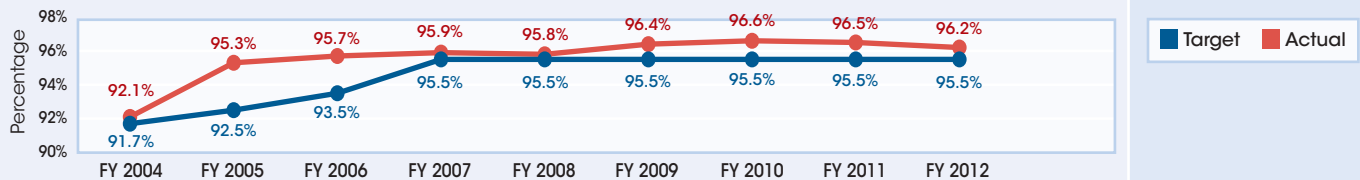
Trend: Target and actual trends are positive from FY 2000 to FY 2012. Additional discussion for this metric can be found on page 30.

**FIGURE 13** Trademark Average Total Pendency



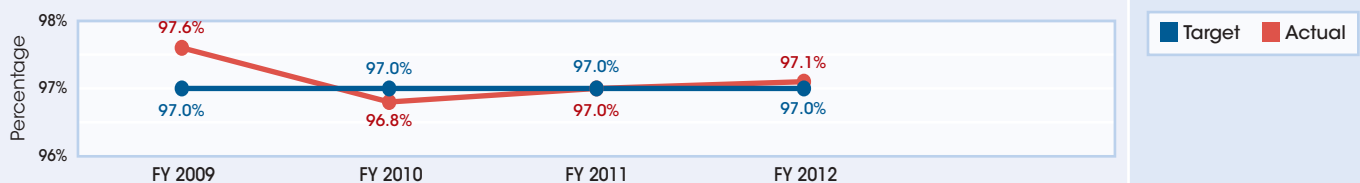
Trend: Target and actual trends are positive. Additional discussion for this metric can be found on page 30.

**FIGURE 14** Trademark First Action Compliance Rate



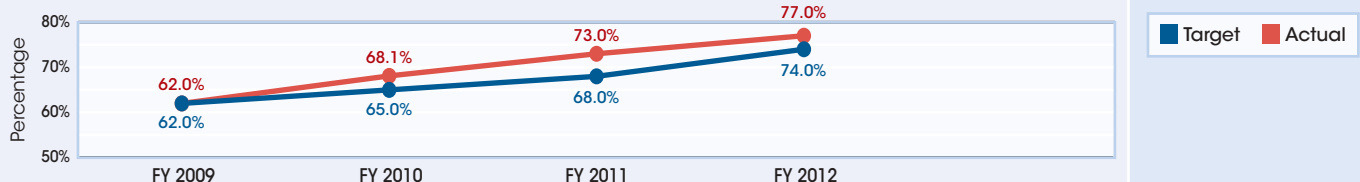
Trend: Target and actual trends are positive from FY 2004 to FY 2012. Additional discussion for this metric can be found on page 30.

**FIGURE 15** Trademark Final Compliance Rate



Trend: The target trend has remained stable. The actual trend has a slight variance. Additional discussion for this metric can be found on page 31.

**FIGURE 16** Trademark Applications Processed Electronically



Trend: Target and actual trends are positive from FY 2009 to FY 2012. Additional discussion for this metric can be found on page 33.

## Strategic Goal 2: Optimize Trademark Quality and Timeliness

Trademarks perform a valuable function by identifying the source of products and services and serve as an indicator of reliable quality to the consumer. By registering trademarks and providing notice of marks in use, the USPTO protects consumers and provides important benefits to American businesses by allowing them to strengthen and safeguard their brands and related investments.

The Trademark organization has met and exceeded its performance targets. Additional performance targets and metrics are reported on a quarterly basis throughout the year at the USPTO Data Visualization Center – Trademark's Dashboard (Figure 17) is available at [www.uspto.gov/about/stratplan/dashboards.jsp](http://www.uspto.gov/about/stratplan/dashboards.jsp). Reporting these metrics, along with definitions, increases transparency as well as providing a more useful and interactive dialog with the IP community.



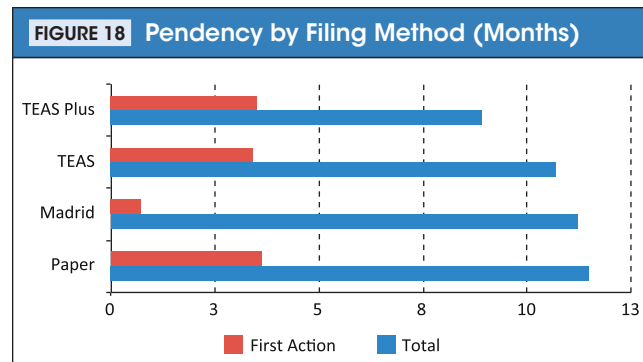
Commissioner for Trademarks Deborah Cohn speaks at the National Trademark Expo.

### OBJECTIVE 1: Maintain trademark first action pendency on average between 2.5-3.5 months with 12.0 months for final pendency

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

Pendency has improved as electronic filing and processing have become the primary means of conducting business. Increased use of electronic forms, particularly Trademark Electronic Application System (TEAS) Plus, has improved the efficiency and timeliness of examination. While 32 percent of new applications are TEAS Plus filings, these applications account for 49 percent of first action approvals – the





fastest and most cost-effective method to apply for and register a mark as illustrated in Figure 18.

### Trademark Pendency Performance

Trademark first action pendency measures the average number of months from the date of application filing to the first office action. Trademark average total pendency measures the average number of days from date of filing to notice of allowance, notice of abandonment, or registration for applications based on use in that month. First action pendency (Table 10) has been maintained within its optimized range of 2.5 to 3.5 months every month for the past six years. Average final pendency, including suspended and *inter partes* cases, was 12.0 months. Excluding applications that were suspended or delayed for *inter partes* proceedings, average total pendency (Table 11) was 10.2 months.

TABLE 10 Measure: Trademark Average First Action Pendency (Months)		
FISCAL YEAR	TARGET	ACTUAL
2008	2.5 to 3.5	3.0
2009	2.5 to 3.5	2.7
2010	2.5 to 3.5	3.0
2011	2.5 to 3.5	3.1
2012	2.5 to 3.5	3.2
2013	2.5 to 3.5	
2014	2.5 to 3.5	
Target Met.		

TABLE 11 Measure: Trademark Average Total Pendency (Months)		
FISCAL YEAR	TARGET	ACTUAL
2008	14.3	11.8
2009	13.0	11.2
2010	13.0	10.5
2011	12.5	10.5
2012	12.0	10.2
2013	12.0	
2014	12.0	
Target Met.		

### OBJECTIVE 2: Continuously monitor and improve trademark quality

The Trademark organization continues to meet and exceed standards for high quality examination. 96.2 percent of all first actions (Table 12) and 97.1 percent of all final (approvals and rejections) decisions (Table 13) were compliant with the registrability standards set by statute, and also met or exceeded agency standards for writing quality. Results for both the first and final compliance action measures are at or above their targets and indicate high accuracy in decision-making and writing. To sustain these high performance levels, the Trademark organization continues to emphasize and improve training and feedback, promote electronic filing and processing, and make greater use of online tools and enhanced processes.

TABLE 12 Measure: Trademark First Action Compliance Rate		
FISCAL YEAR	TARGET	ACTUAL
2008	95.5%	95.8%
2009	95.5%	96.4%
2010	95.5%	96.6%
2011	95.5%	96.5%
2012	95.5%	96.2%
2013	95.5%	
2014	95.5%	
Target Met.		

**TABLE 13** Measure: Trademark Final Compliance Rate

FISCAL YEAR	TARGET	ACTUAL
2009	97.0%	97.6%
2010	97.0%	96.8% <sup>1</sup>
2011	97.0%	97.0%
2012	97.0%	97.1%
2013	97.0%	
2014	97.0%	

*Target Met.*

<sup>1</sup> Within the target range of 97.0% considering the margin error of (+/- 0.6%).

The Trademark organization strives to enhance the quality of examination by adopting more rigorous customer-centric measures. The new “exceptional” quality measure—which reflects comprehensive excellence of the search, evidence, writing, and decision-making of the initial office action, while also emphasizing the appropriate use of telephone and e-mail communications to settle or clarify issues with the applicant or its attorney—exceeded its target by 6 percentage points (Figure 19). The target is an indication of the high standard that has been set in defining excellence. Feedback from user groups is used to ensure that the standards of excellence reflect users’ perception of excellence as well.

#### Trademark Efficiency Performance

The efficiency measure (Table 14) is calculated by dividing total expenses associated with the examination and processing of trademarks (including associated overhead and allocated expenses) by outputs or office disposals. The measure is a relative indicator of the efficiency of the trademark process

**TABLE 14** Measure: Total Cost Per Trademark Office Disposal

FISCAL YEAR	TARGET	ACTUAL
2008	\$697	\$470
2009	\$639	\$474
2010	\$607	\$520
2011	\$650	\$541
2012	\$607	\$560
2013	\$609 <sup>1</sup>	
2014	\$608 <sup>1</sup>	

*Target Met.*

<sup>1</sup> Outyear targets subject to change.

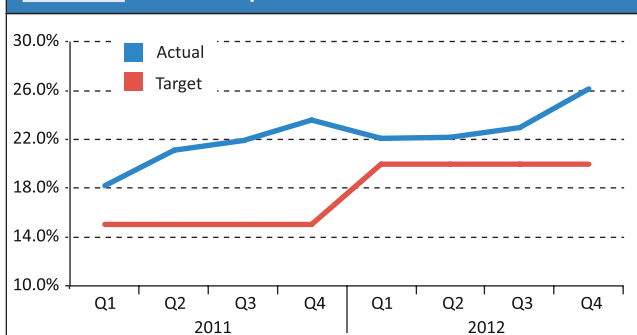
and related services over time; it does not represent the unit cost of a trademark since office disposals are only one measure among many products and services that the USPTO performs each year.

#### OBJECTIVE 3: Ensure accuracy of identifications of goods and services in trademark applications and registrations

The USPTO conducted public outreach and roundtables aimed at addressing concerns about the accuracy in the descriptions or identifications of goods and services. USPTO practice regarding the level of specificity of identifications, greater collaboration with industry groups, and sharing international databases of acceptable identifications were discussed with members of the user community.

The Trademark organization hosted a number of public meetings as a follow-up to address issues concerning fraud, policing measures, and tactics. Following up on one of the leading suggestions from an earlier report, the USPTO issued a final rule to implement a pilot program requiring additional specimens or other evidence in connection with a Section 8 and 71 Affidavit of Continued Use to assess the level of accuracy of the identifications. The results from the pilot are expected next year and could yield information about the reliability of the trademark register or whether a problem exists which may require measures to address it.

The USPTO extended its collaboration with the international community on acceptable identifications. The agency hosted the 10th Annual Meeting of the

**FIGURE 19** Exceptional Office Action

The FY 2012 actual result for the Excellent Office Action was 26.1%, well above the annual target of 20.0%.

Trademark Trilateral Offices at USPTO headquarters on December 5-7, 2011—the Japan Patent Office (JPO) and the Office for Harmonization in the Internal Market (OHIM), the European Union's trademark and design office. The meeting included both the Korean Intellectual Property Office (KIPO) and the Chinese State Administration for Industry and Commerce (SAIC) which were invited to join the Trademark Trilateral as full partners. The group will be renamed the "TM5" to recognize the expansion. The partners, along with the World Intellectual Property Organization (WIPO), shared information on the latest developments in each office. They discussed how to move forward on existing and potential cooperative projects such as the TM5 Identification of Goods and Services Project, a harmonized list of identifications of goods and services and their classifications that would be accepted in all TM5 offices, along with any additional national office that has "docked on" to the project, such as Canada, the Philippines, the Russian Federation, Mexico, and Singapore.

#### **OBJECTIVE 4: Enhance operations of Trademark Trial and Appeal Board**

The TTAB hosted a public, roundtable discussion with representatives of stakeholder organizations regarding Board performance measures in November, 2011. The discussion promoted transparency in relation to Board operations, explaining the basis for traditional performance measures, and involved the participants in discussion of what additional information and dashboards would serve a useful purpose for attorneys, applicants, and registrants. The Board also received suggestions from participants about desirable subjects for discussion in future roundtables.

The TTAB continued to work closely with the bar to expand and refine its Accelerated Case Resolution (ACR) practice options. The TTAB saw increased use of ACR to expedite the disposition of inter partes cases in FY 2012, with a 50 percent increase in the number of cases decided based on utilization of some form of ACR than in either of the two prior fiscal years. To facilitate the use of ACR, the TTAB revised materials posted on its Web page that provide stakeholders with information about ACR. In addition, the Board developed and posted on its Web page four suggested approaches, to add to the previously

posted suggestions from one intellectual property organization. The Board's attorneys and judges also continued to emphasize and promote the benefits of ACR options during speeches, panel discussions and through webinars.

In June 2012, the TTAB issued the first revision of the third edition of the *Trademark Board Manual of Procedure (TBMP)*: [www.uspto.gov/trademarks/process/appeal/](http://www.uspto.gov/trademarks/process/appeal/). The manual was revised to incorporate new material related to December 2010 amendments of the Federal Rules of Civil Procedure, many precedential decisions issued by the Board and the Court of Appeals for the Federal Circuit, and to acknowledge developments in practice since the third edition was posted on the Board's Web page in May 2011. The Board also hired a senior level attorney, who will serve as the TBMP editor and ensure the manual is regularly revised.

Throughout the year, the Board continued its commitment to developing the law by issuing a substantial number of precedential opinions and orders, with 45 such decisions issued on a wide variety of substantive and procedural matters. The TTAB's precedential decisions on ex parte appeals provide procedural and substantive guidance to the agency's trademark examining attorneys, trademark owners, and the trademark bar. The TTAB's precedential decisions in opposition and cancellation proceedings provide guidance to trademark owners and the bar on procedural matters pertaining to the Trademark Rules of Practice, the application of the Federal Rules of Civil Procedure to Board cases, and on substantive legal matters.

#### **OBJECTIVE 5: Modernize IT system by developing and implementing the Trademark Next Generation IT System**

The Trademark organization is progressively becoming a fully electronic organization. More than 98 percent of new applications are received electronically and, with progressive increases each year, in FY 2012 77.0 percent were processed completely electronically from filing to final disposition (Table 15). This performance result demonstrates the success of outreach efforts to improve electronic correspondence following the initial filing. An e-government task force

was formed to work with applicants to address their concerns. Six focus sessions were held across the country with user groups to identify process enhancements and novel practices that eliminate the need for paper-based filings and communications.

Trademark information has been combined into one logical system with the release of the Trademark Status and Data Retrieval (TSDR). The new system incorporates additional features and links assignment, status and file content information. It reengineers the existing functionality that the Trademark Application and Registration Retrieval and Trademark Document Retrieval systems previously provided separately, providing access to one place for viewing, printing, and downloading snapshots of the data the USPTO maintains about a trademark application or registration. TSDR is the first major release under the Trademark Next Generation project.

**TABLE 15** Measure: Trademark Applications Processed Electronically

FISCAL YEAR	TARGET	ACTUAL
2009	62.0%	62.0%
2010	65.0%	68.1%
2011	68.0%	73.0%
2012	74.0%	77.0%
2013	74.0% <sup>1</sup>	
2014	76.0% <sup>1</sup>	

*Target Met.*

<sup>1</sup> Outyear targets subject to change.

Given the critical importance of the IT systems and the existing state of its infrastructure and systems, the USPTO is engaged in an ambitious IT modernization program for Trademark systems. The program is being conducted with rigorous and extensive technical and managerial reviews to enhance functionality, availability, security, scalability, quality of service, and overall cost efficiencies.

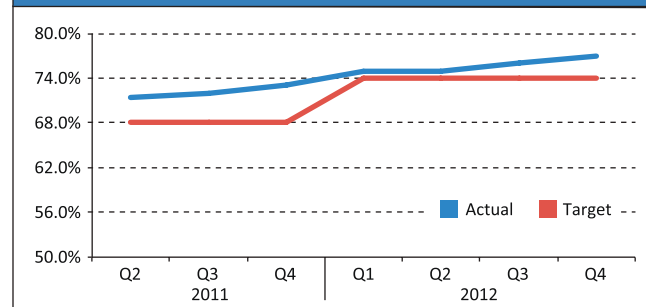
The program represents a major multi-year investment to deliver the next generation of trademark systems. The USPTO has reached out to all key external and internal stakeholders to identify needs, define requirements, and assess and track the cost-benefits of the investment. Prototypes are being developed to identify user preferences for the interface design. A number of demonstrations have been conducted along with a survey to gather user feedback. The organization

will continue to seek input from stakeholders as progress continues to be made.

### Trademark E-Management

The number of electronically filed trademark applications has progressed steadily over the years as a result of promotional events, increased number and type of applications available for filing electronically, improved functionality and enhancements, and lower fees for filing electronically. The USPTO completed the launch of 11 informational trademark instructional videos that are available at the Trademark Information Network through [www.uspto.gov/trademarks/basics/](http://www.uspto.gov/trademarks/basics/). The Network was designed to present information in an entertaining manner using news-style broadcast how-to videos, covering important topics and critical application filing tips, to address common filing mistakes.

**FIGURE 20** Applications Completely Processed Electronically (Classes)



The measure "Applications Completely Processed Electronically," identifies the degree to which the Trademark organization is able to encourage applicants to file and submit correspondence electronically as well as implement systems that can electronically process, examine, and dispose of an application in a completely electronic environment (Figure 20). This measure reports the percentage of trademark applications that were filed, processed, and disposed of relying completely on electronic systems and communications.

To increase electronic processing further, customer focus sessions were conducted to identify best practices, and issues that prevent them conducting all their transactions and communications electronically. As a result of the feedback, changes are being made in the electronic forms and notifications.

## **OBJECTIVE 6: Develop a new generation of Trademark leaders**

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

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

The Trademark organization has been proactive this year in providing multiple training opportunities for aspiring and current leaders. We emphasized the need for employee engagement and satisfaction in an organization that uses telework, including hoteling and remote work, as a successful business strategy. While 90 percent of the Trademark organization employees telework, we support our employees through the use of collaboration tools and strengthened leadership that motivates employees and takes the time to listen to their concerns.

This year the Trademark organization devoted a full day to bringing together all managers and supervisors to discuss and improve our customer service, communication, and motivation of diverse teams, all in an electronic environment. Managers and supervisors also attended training throughout the year as did aspiring leaders enthusiastically attending instructor-led as well as computer-based training to improve their leadership skills. Over 162 enrollees in a large variety of courses covering such subjects as encouraging creativity, dealing with conflict, and improving presentation skills will help us motivate and inspire others while we build more effective working relationships with employees and stakeholders.

The Trademark organization developed an organic Strategic Human Capital Plan that strengthens our ability to engage employees, improve knowledge management, and develop a future pool of aspiring leaders. We are developing an effective Succession Plan and already have focused on tools to help us preserve and pass down knowledge critical to the business unit. By creating and implementing a large variety of work projects and career development details, we are providing numerous avenues for aspiring and current leaders to learn other areas in the Trademark organization and the USPTO as a whole. We developed a sophisticated intranet site to preserve technical and legal knowledge in an accessible format with easy searching capability.



## What is the role of the USPTO and intellectual property policy?

The passage of the American Inventors Protection Act of 1999 mandates the USPTO to advise the President, through the Secretary of Commerce, and all Federal agencies, on national and international IP policy issues, including IP protection in other countries. The USPTO is also autho-



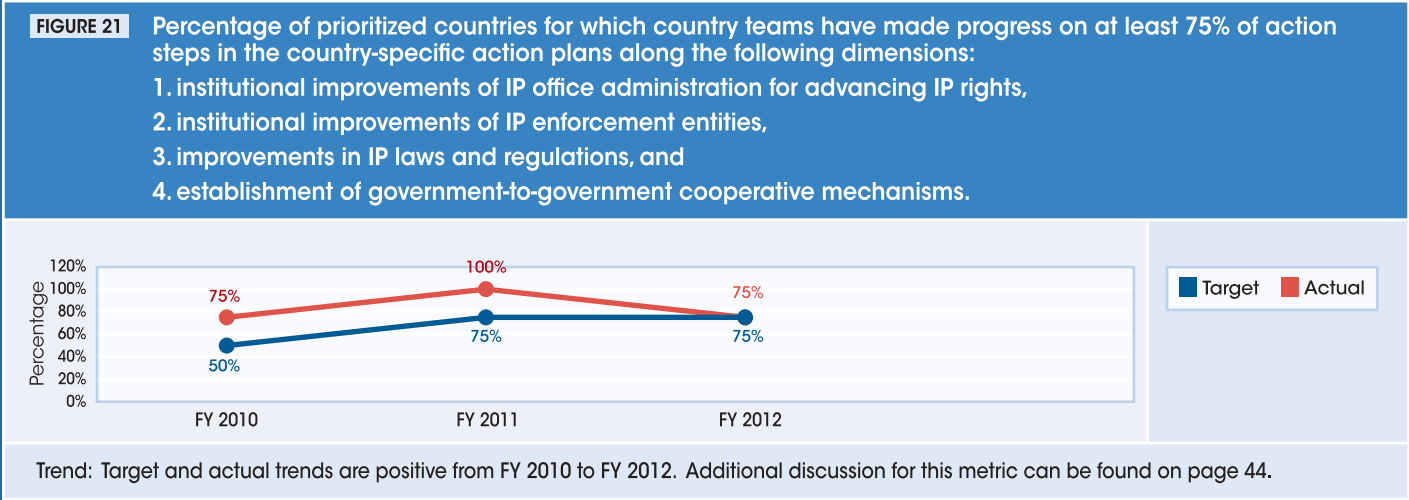
Under Secretary David Kappos testifies before the Senate Judiciary Committee regarding the implementation of the Leahy-Smith America Invents Act and international harmonization efforts on June 20, 2012.

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rized by the AIPA to provide guidance, conduct programs and studies, and otherwise interact with international IP offices and international intergovernmental organizations on matters involving the protection of intellectual property. The Office of Policy and External Affairs (OPEA) executes these functions authorized by the AIPA.



# INTELLECTUAL PROPERTY: STRATEGIC GOAL 3

Below is the Strategic Goal 3 measure for which enough data is available to establish performance trends. The following measure has insufficient data for trend calculation: Percentage of foreign officials trained who have initiated or implemented a positive change in the IP systems in their organizations and/or countries.



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

The USPTO develops and advances domestic and international U.S. IP policy objectives that include the establishment of strong and balanced IP systems to serve the needs of all stakeholders. The USPTO develops IP policy through information gathering and analysis and stakeholder consultations. Stakeholders include domestic and foreign IP rights holders and users, consumers, U.S. government agencies, foreign governments, and the public at large. The USPTO furthers IP policy goals through training foreign officials, providing domestic and international educational outreach, launching strategic cooperation projects between national IP offices, deploying IP Attachés to critical regions of the world, and advising on the IP aspects of U.S. trade efforts, including participation in the current Trans-Pacific Partnership (TPP) negotiations.

### OBJECTIVE 1: Provide domestic leadership on IP policy issues

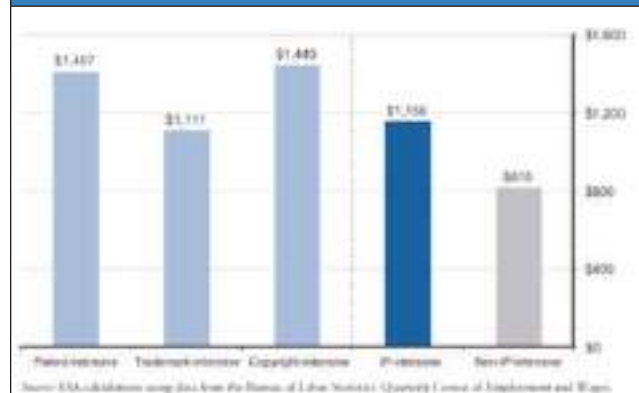
#### *Provide Evidence on the Economic Impacts of IP Protection*

On April 11, 2012, the Secretary of Commerce released a report titled *"Intellectual Property in the U.S. Economy: Industries in Focus"* co-authored by the USPTO and the Economics and Statistics Administration. The report details how U.S. companies in our most competitive industries are using patents and copyright to protect their innovations, and trademarks to distinguish their goods and services from those of competitors. The report identifies the 75 American industries most intensively using IP protections, and uses statistical data from across the U.S. government to examine both the important trends and economic characteristics of these highly IP-intensive industries. There are several important findings contained in the report, including:



Tina M. Tchen, Executive Director of the White House Council on Women and Girls, Director of the White House Office of Public Engagement speaks at the Woman Entrepreneurship event at USPTO headquarters on March 1, 2012.

**FIGURE 22** Average Weekly Wages of Private Wage and Salary Workers in IP-Intensive Industries, 2010



Graph demonstrating that wages in the IP-intensive industries are significantly higher than in other sectors of the economy (Source: *Intellectual Property in the U.S. Economy: Industries in Focus* Report, April 2011).

- The entire U.S. economy relies on some form of IP, because virtually every industry either produces or uses it.
- IP-intensive industries directly accounted for about 27 million American jobs in 2010, and indirectly supported an additional 13 million U.S. supply chain jobs. This equals 40 million American jobs, or 27.7 percent of all U.S. employment.
- Jobs in IP-intensive industries pay well compared to other jobs. Average weekly wages (Figure 22) for IP-intensive industries were 42 percent higher than average weekly wages in other private-sector industries in 2010. That wage differential was an impressive 75 percent higher for jobs in the patent- and copyright-intensive industries.
- IP-intensive industries accounted for just over \$5 trillion dollars in value added in 2010, or about 35 percent of U.S. gross domestic product.

#### **Monitoring and Providing Policy Guidance on Key IP Issues in Raised in Courts**

The USPTO continues to shape IP law and policy through domestic litigation, both as a party and as *amicus curiae* ("friend of the court"). The agency's IP litigation responsibilities fall primarily on the Office of the Solicitor (or, "Solicitor's Office") within the USPTO's Office of General Counsel (OGC). The Solicitor's Office defends, amongst other matters, the decisions of the agency's two administrative boards (i.e., PTAB and TTAB), decisions of the USPTO Director, and the agency's rulemaking and policies in court. These decisions involve a wide variety of issues, affecting agency practice as well as substantive patent and trademark law, and impacting a broad spectrum of IP law issues.

Over the past four years, the number of administrative decisions defended by the Solicitor's Office has more than doubled – a trend likely to continue as the PTAB expands by more than one hundred administrative patent judges over the next few years. Further expansion in the Solicitor's Office will most likely be necessary to respond to the PTAB's increase in size, as well as the anticipated increase in litigation following the full implementation of the AIA. Despite staffing challenges, the Solicitor's Office has not seen a significant decrease in its litigation success, particularly before the U.S. Court of Appeals for the Federal Circuit.

In addition to its work defending the USPTO Director and Boards, OGC also plays an important role advising the Government on IP matters before the U.S. Supreme Court, both as a party and as an *amicus curiae*. For example, OGC took steps to ensure that the USPTO's position is heard in federal district court copyright litigation concerning the copying and subsequent submission of prior art publications (known as "non-patent literature" or "NPL") to the USPTO by patent attorneys as part of their clients' duty to disclose information to the USPTO that is material to the examination of a patent application. In *John Wiley & Sons v. McDonnell, Boehnen, Hulbert & Berghoff LLP* and three other district court cases, copyright holders have sued patent law firms for copyright infringement for copying and submission of NPL without first obtaining permission from the copyright holders. The USPTO, working with the Department of Justice, successfully intervened on the side of patent applicants and patent attorneys to ensure, not only the integrity of USPTO patent examination and re-examination processes, but also that submission of these publications remains as easy and economical as possible for practitioners. The USPTO's position, on which it has asked the district court to render a declaratory judgment, is that where copying is "necessary and incidental" to the filing and prosecution of a U.S. patent application or proceedings concerning the scope or validity of an issued patent – even if the copied materials are not ultimately submitted – it constitutes "fair use" under copyright law.

OGC also continues to positively impact IP law and policy through the expansion of the Law School Clinical Certification Pilot Program, which is overseen by OGC's Office of Enrollment and Discipline. The Law School Clinic Certification Pilot Program currently includes 28 law school clinics practicing both patent and trademark law under the guidance of a Law School Faculty Clinic Supervisor. This year, the Program expanded to include twelve additional schools – a trend the agency hopes to continue over the next several years. The program also added a Request to Make Special component, intended to provide students with the opportunity to respond to a substantive Office action in patent applications they have prepared and filed with the agency. One of the main goals of the program is to increase

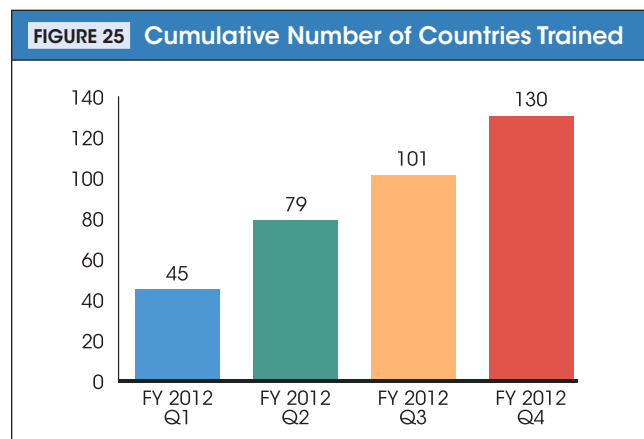
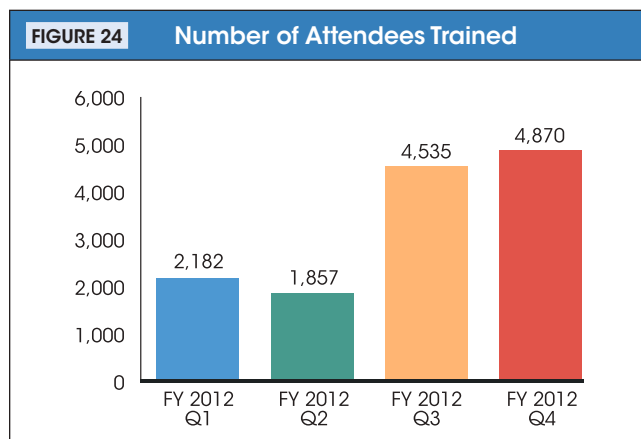
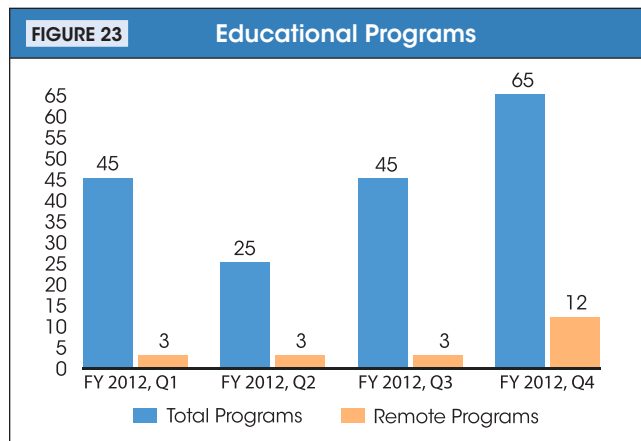
the number of highly-qualified patent and trademark attorneys practicing before the USPTO and in Federal Court. In keeping with the AIA, schools are required to provide pro bono legal services to independent inventors and small businesses.

### ***Providing Domestic Education Outreach and Capacity Building***

The USPTO, through the Global IP Academy (GIPA) in the Office of Policy and External Affairs, provides IP educational opportunities to U.S. and foreign government officials, domestic small and medium-sized enterprises (SMEs), universities, foreign officials, and the public. The GIPA provides expertise on administration, protection, and enforcement in all areas of domestic and international IP. In FY 2012, the GIPA conducted 140 training programs for foreign government officials, reaching an audience of more than 9,217 foreign government officials from 130 countries. The GIPA also conducted 40 programs targeted for

U.S. SMEs, with an audience of more than 4,227 people for those programs [These numbers reflect data through 9/30/2012 in Q4 of FY 2012]. Domestic programs include outreach to Native American tribes, educational programs on IP awareness, and China Road Shows providing IP information to SMEs seeking to do business in China. The GIPA has increasingly engaged members of the judiciary within the U.S. and abroad. Additionally, the GIPA partners to develop and deliver educational outreach programs with other areas of the United States Government (USG), in particular the Small Business Administration, bureaus of the Department of Commerce including the Minority Business Development Agency, and the U.S. Export Assistance Centers of the U.S. Commercial Service.

The GIPA is using technology to make training programs more efficient and to expand the reach of those programs. For example, the GIPA hosts a database of all training and capacity building activities conducted by U.S. government agencies. In addition, the GIPA hosts e-learning modules on its website. Those modules, which are available in seven different languages, have received over 20,000 hits since they were first posted on the site in 2010. The GIPA also is using webinars to provide "train-the-trainer" and small business outreach. The efforts by the USPTO will facilitate the export capabilities of domestic industry and SMEs, and ensure their competitiveness around the world. As illustrated in Figures 23, 24, and 25, these charts provide the number of programs, officials, and countries trained by the GIPA.





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

Throughout FY 2012, the USPTO continued to engage Congress, other U.S. government agencies, and stakeholders to discuss, develop, promote, and implement effective and balanced IP-related legislation. Discussions and briefings focused on continued implementation of the AIA and matters related to domestic and international IP rights.

In FY 2012, Under Secretary Kappos testified on Capitol Hill before the House Judiciary Committee on two occasions on the issues of "Prior User Rights" and "Implementation of the America Invents Act," and once before the Senate Judiciary Committee on "Implementation of the America Invents Act and International Harmonization Issues." He also testified on the "USPTO FY 2013 Budget Request" before the House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies. Deputy Under Secretary Rea provided testimony before the House Judiciary Subcommittee on Intellectual Property, Competition, and the Internet on "International IP Enforcement: Protecting Patents, Trade Secrets, and Market Access." USPTO Chief Economist, Dr. Stuart Graham provided testimony before the House Homeland Security Subcommittee on Counterterrorism and Intelligence on "Economic Espionage: A Foreign Intelligence Threat to American Jobs."

Under Secretary Kappos, Deputy Under Secretary Rea, USPTO managers, and staff conducted numerous briefings throughout the year for Congressional staff on IP policy issues, as well as budget, the potential impact of pending legislation and operational issues. USPTO staff co-hosted a weekly conference call of DOC and other administration officials that are involved with IP matters to discuss current and anticipated policy developments. Congressional staff as well as DOC's leadership participated in "Day in the Life of the USPTO" sessions at the Alexandria, Virginia headquarters to learn about the daily work activities of typical patent and trademark examiners. Congressman Gerald Connolly of Virginia participated in a town hall meeting with more than 100 USPTO staffers, toured the USPTO campus, and met with senior managers to discuss USPTO operations. Finally, the USPTO conducted extensive outreach with our stakeholder community on implementation

of the AIA, through speaking engagements, webcasts, a frequently updated microsite, roundtable discussions, and roadshows. Interested Capitol Hill staff was invited to attend these sessions.

### **OBJECTIVE 2: Provide leadership on international policies for improving the protection and enforcement of IP rights**

#### ***Leading efforts at the WIPO and other Intergovernmental/International Organizations to Improve International IP Rights Systems***

Throughout FY 2012, the USPTO continued to seek improved protection for IP multilaterally in several fora including the WIPO, the World Trade Organization (WTO), and other intergovernmental organizations.

In June 2012 in Beijing, China, a delegation from the USPTO joined U.S. Department of State and U.S. Copyright Office officials in negotiating and signing of a landmark multilateral treaty that advances IP rights for the creative content of audiovisual performers. The WIPO Beijing Treaty on Audiovisual Performances, or the "Beijing Treaty," strengthens IP protections for actors, musicians, and dancers globally by requiring countries to ensure updated and consistent standards of protection for performers in audiovisual works. The Treaty is the first significant advance in international norm-setting in the copyright area in more than fifteen years.

The USPTO also advanced work on issues relating to the protection of broadcast signals and the access to copyrighted works by persons with print disabilities in the WIPO Standing Committee on Copyright and Related Rights.

The USPTO actively engaged in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore to transmit a single consolidated text to the General Assembly that fully reflects the various proposals suggested by committee members, as well as the "no mandatory disclosure" option supported by the U.S. and several other countries. The USPTO also continued to seek improvements in the WIPO registration services under the PCT and the Madrid Protocol Concerning the International Registration of Marks.

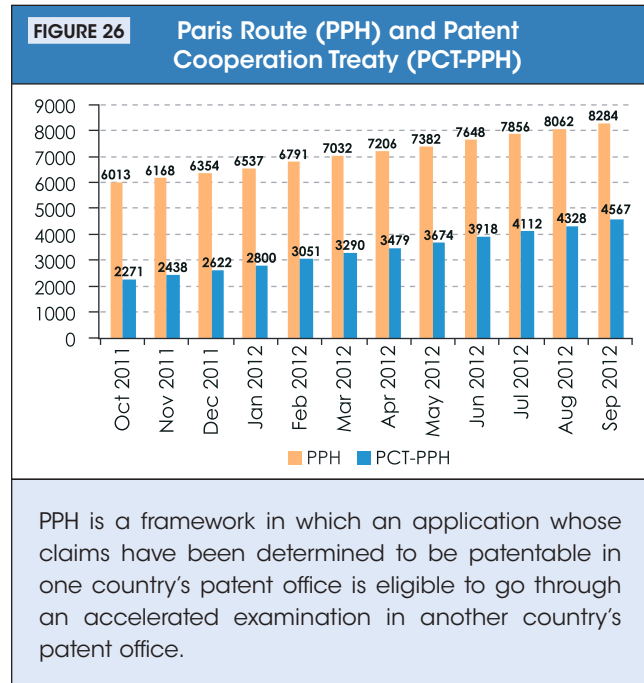
### Improving Efficiency and Cooperation in the Global IP System

In FY 2012, the USPTO continued to emphasize office-to-office “work sharing” as a key international engagement strategy for helping to reduce USPTO examination backlogs, improve examination quality, and promote streamlining of the international patent system. The PPH, first launched in 2006, remained the USPTO’s primary work sharing vehicle. The PPH allows applicants to obtain patents faster and more cheaply in multiple jurisdictions, while enabling the participating offices to leverage each other’s work in improving examination efficiency and quality. See the performance history in Figure 26.

The success of the PPH is evidenced by the continued trend in 2012 of substantial annual increases in user participation: As with 2010 and 2011, the number of PPH requests received by USPTO in 2012 is on track to nearly double the total number of requests received in all previous years combined. The average number of new requests per month continues to increase, with 2012 already exceeding 2011 by over 100 requests per month. The PPH is also gaining in popularity among patent offices around the world. The USPTO currently has PPH arrangements in place with 24 other patent offices, and is in discussions with several others. At the same time, the USPTO is working on the development of a next-generation PPH—PPH 2.0—that would consolidate the various PPHs into a single, uniform framework that includes a number of user-friendly enhancements.

The USPTO also made significant advances in other areas of work sharing-related cooperation. One key effort that has seen rapid progress in 2012 has been the Cooperative Patent Classification (CPC) project, jointly administered by the European Patent Office (EPO) and the USPTO. The CPC combines the European Classification system and the best classification practices of the two offices into a joint hierarchy that will promote greater harmonization and consistency in the classification and searching of patent documents. The initial launch of the CPC is scheduled for January 2013.

Another major project has been the joint development, with the JPO, of the “Global Dossier” initiative. The Global Dossier is envisioned as an electronic,



stakeholder-oriented environment in which applicants can plan and execute their global IP strategy and avoid the filing of duplicate documents in multiple offices. Among its many advantages, the Global Dossier would allow “one-stop” management of a patent portfolio and related documents, while at the same time optimizing work sharing and office-to-office collaboration.

The “TM5” brings together the largest trademark offices in the world to share information and collaborate on projects that increase efficiencies in filing for and maintaining international trademark portfolios. The USPTO, JPO, and the European Community’s OHIM invited the KIPO and the Chinese SAIC to the TM5 discussions to share information regarding the development of practice and procedure in these offices for the benefit of all trademark owners. Through this collaboration, the TM5 launched a series of technical seminars on the problem of “registry squatting,” *i.e.*, bad faith trademark applications. These seminars have been well-received, particularly in China, as collaborative attempts to find useful features of national Trademark Systems that can be implemented in different legal systems. The USPTO has led the effort to coordinate the TM5 discussions and move the solutions to implementation, particularly in China, but also in other countries desiring to combat this practice.

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

A key challenge with overseas IP enforcement is the need to increase awareness, skills, and resources of foreign enforcement officials. To improve enforcement in high-priority countries and regions, the USPTO has developed rigorous capacity-building programs for foreign enforcement officials, including police and investigators, prosecutors, border enforcement officials, as well as the judiciary. The USPTO has taken an active role in working with foreign judiciaries and prosecutors to increase their understanding of IP issues through direct training and exchanges with U.S. officials, including U.S. judges and prosecutors who are experts in handling IP cases. The USPTO's IP enforcement programs are also designed to address overarching rule-of-law as well as court administration concerns in foreign countries, by encouraging an environment of better consistency and predictability for IP litigants, which may have the added benefit of lowering litigation costs resulting from more efficient adjudication processes.

The USPTO and U.S. Court of Appeals for the Federal Circuit (CAFC) held a joint program in Beijing, China on IP adjudication with the Supreme People's Court of China. This brought together over 1,500 participants from a number of different countries and featured remarks by Chief Judge Rader and all of the judges from the CAFC, USPTO Director David Kappos, and many other Chinese and U.S. officials. The Beijing conference was followed by visits by the CAFC judges to Guangzhou and Shanghai, where they met with local judges and IP officials.

The USPTO also partnered with the CAFC as well as the Federal Judicial Center to host approximately 50 U.S. Federal judges from throughout the country for a program on the Patent Application Examination Process, Patent Reexamination, and Post-Grant Proceedings. The participants were part of the recently launched Patent Pilot Project, designed to strengthen patent law expertise among judges.

Combating the proliferation of counterfeit medicines is a training priority. The USPTO organized a series of workshops in Indonesia and Jordan. The U.S. Food and Drug Administration, U.S. Department of Justice, and the U.S. Immigration and Customs Enforcement, Homeland Security Investigations participated in the workshops.

The USPTO convened four roundtables (three in China and one in the U.S.) with U.S. industry representatives and published a Federal Register notice to solicit input on their experiences enforcing patents in China. The input received has been compiled into a report, which was published on the USPTO's website. The report will help guide the USPTO's engagement with China on patent enforcement.

The GIPA offers training programs on protection, utilization, and enforcement of IP rights including patents, trademarks, and copyrights. As demonstrated in Table 16, it is through the GIPA training programs that the USPTO is instrumental in achieving its objectives of advancing IP policies. Note that the FY 2012 results did not exceed the anticipated target. This was largely due to the emergent nature of the supporting goal itself. The baseline was established in 2011 based on the launch of GIPA's three-part survey methodology. A target was selected from a sampling of capacity building programs. The sampling for FY 2012 programs included two WIPO workshops that included students, but not foreign government officials. This somewhat skewed the evaluative efficacy of survey responses regarding the impact of the programs on the participants' work. Another program using the survey process was on a very narrow topic, which may also have caused an outlier effect on the results. To improve on both the methodology and enhance the value of the supporting performance metric, GIPA intends to apply the lessons learned from this initial round into the next fiscal year and apply the surveys to a larger pool of more diverse programs.

**TABLE 16** Supporting Measure: Percentage of foreign officials trained who have initiated or implemented a positive change in the IP systems in their organizations and/or countries

FISCAL YEAR	TARGET	ACTUAL
2011	Baseline	79%
2012	75%	69%

### ***Providing Policy Advice and Expertise to Other USG Agencies***

The USPTO continued to provide policy advice and technical expertise on IP administration, protection, and enforcement both domestically and internationally to the DOC and other federal agencies. The USPTO advised the Office of the United States Trade Representative during the WTO accession process of several countries in evaluating intellectual property rights (IPR) laws, regulations, and practices of countries and their consistency with the Agreement on Trade-Related Aspects of Intellectual Property.

The USPTO provides policy advice and expertise to the U.S. Department of State regarding IP issues that arise in various agencies of the United Nations including WIPO and the World Health Organization, as well as the Organization for Economic Cooperation and Development.

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

In FY 2012, the USPTO continued to provide expert technical advice on IP protection in connection with on-going negotiations and implementation of bilateral and multilateral agreements. For example, the USPTO played an active role in the ongoing TPP free trade agreement negotiations which seek to ensure an effective and balanced approach to intellectual property rights among the member countries. The USPTO worked closely with USTR to assist Korea, Colombia, and Panama with implementation of the IP provisions of their free trade agreements with the United States. Among other things, these agreements provide for state-of-the-art protection for U.S. trademarks such as expanding the definition of a trademark to include protection for non-visually perceptible marks, as well as recognizing the principles of priority and exclusivity in the relationship between trademarks and geographical indications. Improved transparency provisions provide interested parties the opportunity to oppose and cancel registrations and to know the reason for decisions with respect to registration. Finally, the agreements memorialized each country's commitment to improving its trademark system by implementing an electronic application filing system and developing



Under Secretary of Commerce for Intellectual Property and Director of the USPTO, David Kappos and President of EPO signing the Joint Cooperative Patent Classification (CPC) statement in October 2010.

a public on-line database of trademark applications and registrations. This will save U.S. companies time and money and make it easier for them to take the necessary steps to protect their trademarks in these markets.

The USPTO continued to play an active role in the negotiation of Science and Technology Agreements with several countries.

### ***Increasing the effectiveness of IP Attachés in Prioritized Countries/Regions***

The USPTO places a high priority on increasing the effectiveness of the IP systems in prioritized countries/regions. In 2012, The IP Attaché program instituted new vision and mission statements that clearly linked program objectives and priorities to the overall mission of the USPTO. Standard operating procedures, developed by the IP Attaché Task Force, were implemented. They require Attachés to: (1) consult with stakeholders to define and prioritize IP-related business objectives in their country and region; (2) build a matrix of U.S. and foreign stakeholder associations and companies, and their respective IP-related concerns; (3) identify any existing bilateral agreements that support our objectives; and (4) seek to negotiate bilateral agreements, or informal work plans, and associated metrics with host governments.



Two new Attaché post locations were established in Mexico City, Mexico and Shanghai, China, respectively. The addition of the Shanghai position will increase the USPTO’s presence in China from two cities to three, and the addition of the Mexico City position will expand the USPTO’s overseas presence from seven countries to eight. Vacant IP Attaché positions will be filled for Cairo, Egypt; Guangzhou, China; and Beijing, China before the calendar year’s end.

Through its Attachés, the USPTO has met a number of important objectives in host countries. Accomplishments include the issuance of a Management Notice on the Purchasing of Counterfeit and Pirated Goods by Embassy Bangkok and Singapore and resolution of



Deputy Administrator for Policy and External Affairs Jasemine Chambers meets with Vice Commissioner Li Yuguang of the State Intellectual Property Office of China to discuss how both offices can cooperate on matters concerning patent examination practice, patent quality, patent database exchanges, and other topics of interest to both offices.

a major trademark infringement case in Indonesia. In addition, construction began on a multi-million dollar patent-examination coordination center in Guangdong province in China. The Guangdong center is a critical component of China’s patent-examination system. It will become the patent-examination headquarters for South China and will represent the State Intellectual Property Office locally.

The implementation of country-specific action plans in prioritized countries is shown in Table 17. This reflects the USPTO’s continue efforts in engaging foreign IP offices, enforcement entities, and their respective legislative organizations.

TABLE 17 Measure: Percentage of prioritized countries for which country teams have made progress on at least 75% of action steps in the country-specific action plans along the following dimensions:		
1. institutional improvements of IP office administration for advancing IP rights, 2. institutional improvements of IP enforcement entities, 3. improvements in IP laws and regulations, and 4. establishment of government-to-government cooperative mechanisms.		
FISCAL YEAR	TARGET	ACTUAL
2010	50%	75%
2011	75%	100%
2012	75%	75%
2013	75%	
2014	75%	
Target Met.		



## What is management's focus on maximizing the USPTO's mission performance?

The USPTO's overarching management goal focuses on the shared responsibility that is a prerequisite for achieving success as the USPTO grows and modernizes. This goal advances the USPTO's performance on its three core mission strategic goals through effective alignment and management of human capital, information resources, infrastructure and security management, and sustainable financial capital.



# MANAGEMENT GOAL



## Management Goal: Achieve Organizational Excellence

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

### OBJECTIVE 1: Improve IT infrastructure and tools

The USPTO continued to make improvements in our IT enterprise architecture, internal processes, and organizational alignment to improve our ability to be more responsive and better manage and deliver quality products at enhanced service levels.

In particular, these initiatives directly support the *USPTO 2010-2015 Strategic Plan* to:

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

Completed seven of nine infrastructure modernization projects comprising our Office of the Chief Information Officer (OCIO) Road Map and Transformation Plan on time and on budget. These initiatives covered everything from basic network infrastructure to connectivity to systems virtualization to new

personal computers and laptops. The remaining two projects are expected to be completed in FY 2013.

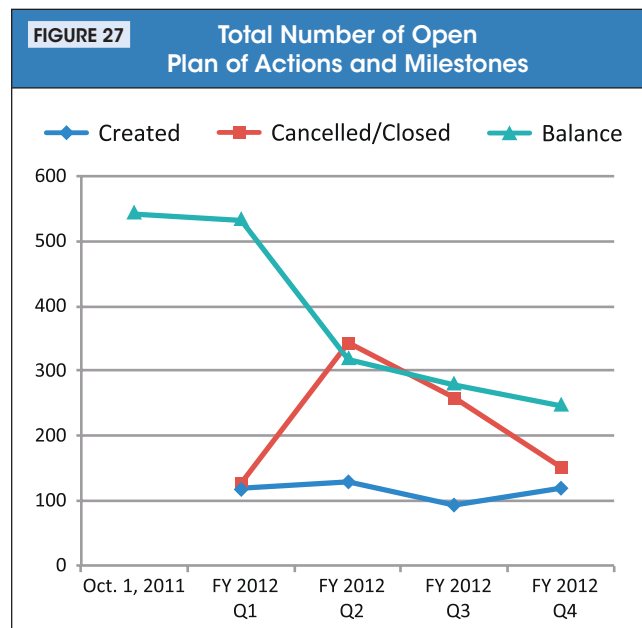
In keeping with the administration's commitments for "Transparency, Participation, and Collaboration", the USPTO expanded access to all patent and trademark data through the [www.data.gov](http://www.data.gov) and [www.google.com](http://www.google.com) websites; has a "cloud first" policy; is working to align the IT budget with modular development; is reforming and strengthening the agency's Investment Review Boards; and has created "TechStat" and "PortfolioStat" models for the USPTO. The OCIO continues to work in improving the visibility of IT costs through a standardized budget execution system with assistance from the OCFO. This has allowed for the OCIO to work with all of the USPTO business units to create an improved long-term IT investment strategy, which is discussed further in the *USPTO Strategic Information Technology Plan for 2010-2015*. See [www.uspto.gov/about/offices/cio/ITP\\_Overview.pdf](http://www.uspto.gov/about/offices/cio/ITP_Overview.pdf).

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

The USPTO's OCIO continued to work diligently with the Office of the Inspector General (OIG) and the DOC to improve the USPTO's overall IT security program and the quality of the certification and authorization. See [www.oig.doc.gov](http://www.oig.doc.gov) for more detailed information.

The chart (Figure 27) shows trend of total number of Open Plan of Actions and Milestones (POA&M) for the USPTO's 39 operational systems at the end of FY 2011 and every quarter of FY 2012. Any known

security weakness requiring remediation is tracked using POA&M. Our goal is to bring total number of open POA&Ms as low as possible by remediating security weaknesses in the systems.



## OBJECTIVE 2: Implement a sustainable funding model for operations

Section 10 of the AIA authorizes the Director of the USPTO to set or adjust by rule all patent and trademark fees established, authorized, or charged under Title 35 of the U.S. Code and the Trademark Act of 1946 (15 U.S.C. § 1051 et seq.), respectively. When fees are set, the aggregate revenue from the patent fees may only recover the aggregate estimated cost of the patent operations, including administrative costs of the USPTO. Likewise, the aggregate revenue from the trademark fees may only recover the aggregate estimated cost of the trademark operations, also including administrative costs to the USPTO.

Fee setting is an important initiative of the agency's Strategic Goal Objective to implement a sustainable funding model for its operations. In fact, of the six initiatives articulated within the Sustainable Funding Model Objective (Objective 2 of the *USPTO 2010-2015 Strategic Plan*), it remains the USPTO's sole remaining outstanding initiative. In FY 2012, the agency began

to implement its newly conferred fee-setting authority through the publication of a draft fee schedule. The agency consulted with its public advisory committees, stakeholders, and the public in reformulating the fee structure for its new fee setting authority. Specifically, the USPTO published a proposed rulemaking that is essential to establishing a sustainable funding model by focusing on reducing the current patent application backlog, decreasing patent pendency, improving patent quality, and upgrading the agency's patent business IT capability and infrastructure. The proposed rule also aims to reduce fees for micro entities under section 10(b) of the Act (75 percent discount), and will further key policy considerations. For example, the proposal includes multipart and staged fees for requests for continued examination and appeals, both of which aim to increase patent prosecution options for applicants. The proposed rule was published on September 6, 2012. The final rule is expected to be issued next fiscal year.

The FY 2012 President's Budget highlighted the agency's activities toward achieving a sustainable funding model, including:

- (1) The conduct of regular historical cost analyses of activities supporting fees to provide sufficient trending information to inform fee changes.
- (2) Ensuring access to fee collections to support the agency's objectives.
- (3) Instituting an interim patent fee increase.
- (4) Pursuing the authority to adjust our fee structure by regulation to better align fees with the cost of providing services.
- (5) Funding an operating reserve to manage operations on a multi-year basis and thereby protect the agency against unforeseen disruptions in revenue.

These activities support all aspects of budget formulation, performance reporting, and strategic planning, thus ensuring the USPTO meets reporting requirements, such as this PAR, strategic planning updates, and budget submissions.

### OBJECTIVE 3: Improve employee and stakeholder relations

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

#### *Targeted Recruitment and Employee Feedback, Development and Wellness*

In support of the USPTO goals, a targeted hiring plan was executed to recruit highly-qualified patent examiners with meaningful IP and technical knowledge and experience. The USPTO identified strategies that target top talent by conducting focus groups, surveys, and planning sessions with Patents Hiring Coordinators, recent patent examiner hires, human resource specialists, and subject matter experts. As a result, a stronger emphasis has been placed on:

- Developing deeper relationships with universities that yield successful hires;
- Creating vacancy announcement language that is specific, clear and exciting; and
- Marketing strategies that utilize research, social media, and targeted messaging and advertising.

Additionally, the USPTO established a veterans outreach program with specific goals and strategies.



The USPTO on Facebook.

We attended 16 veteran-specific job fairs, conducted targeted veteran's outreach activities including Facebook and Twitter, and created a new position to assist with the veteran's hiring initiatives. This year, the USPTO hired 115 veterans.

The USPTO established metrics to frequently measure progress against goals as well as performance. Hiring data is analyzed to understand where the agency's new hires heard about us and which universities yield the most successful hires. This allows USPTO to make data-driven decisions and develop deeper relationships with the universities and their target student population, making the agency more agile when it comes to responding to factors that impact efficiency and effectiveness.

#### *Effective and Efficient Recruitment Plus Employee Satisfaction Equals Retention*

Effective recruitment and employee satisfaction are essential to mission achievement. Employee feedback obtained through the annual Employee Viewpoint Survey (EVS) is critical to understanding our employees' concerns and satisfaction with the agency overall. To increase employee participation, the Office of Human Resources (OHR) developed a strategic campaign to market the 2012 EVS. Multiple communication techniques were employed and as a result, the USPTO response rate on the 2012 EVS was 74 percent—an increase of nine percent from the 2011 survey. Using the results of the EVS, OHR will partner with business units to help identify and address human capital opportunities.

The agency's Leadership Development Program (LDP) includes a diverse set of development strategies designed to efficiently and effectively identify and address competency gaps, as well as strengthen leadership values, knowledge, skills, and abilities. The LDP includes an Executive Education Program component designed to maximize the capabilities, contributions, and potential of our entire Senior Executive Service (SES) team, build and sustain a common leadership vision, and enhance learning across the agency.

The LDP includes a Leadership in Action Program component which provides employees an opportu-





Employee Development Specialist Rosie Saberton facilitates a mentoring session between Chief Judge James Smith and Group Director Seema Rao during a USPTO employee mentoring session.

nity to acknowledge supervisors and mentors who model best practices in leadership or mentoring, and exemplify the values set forth in the USPTO Leadership Vision. The program was designed based on requests from employees wanting an agency-wide method to recognize their supervisors. In FY 2012, 50 supervisors were presented with Leadership in Action Awards. Finally, an agency-wide mentoring program component of the LDP program was designed to provide access to mentoring opportunities to all USPTO employees.

### ***Advancements in USPTO's Physical Workspaces***

The USPTO continues to excel in creating a workplace that is modern, attractive, safe, secure, and energy efficient as evidenced by the following achievements in FY 2012:

- The USPTO partnered with the General Services Administration to program, design, and lead construction of the agency's first satellite office in Detroit, Michigan. The Elijah J. McCoy Satellite Office opened on July 13, 2012 and will house 100 newly-hired patent examiners, as well as a number of Administrative Patent Judges. Modeled after the interiors of the Alexandria, Virginia campus facility, the space provides a Public Search Facility, several team rooms for interviews, and infrastructure that ties back into the campus. This is the first of three additional satellite offices the USPTO will construct in the upcoming years.



USPTO's Elijah J. McCoy Satellite Office in Detroit opened in July 2012.

- The USPTO continued to closely monitor its energy consumption and created an energy dashboard documenting the campus' electricity use each month. The dashboard was displayed on our "Green at USPTO" website and on the lobby-level kiosks, complete with green tips showing employees how to reduce energy consumption at both work and home.
- The campus was the recipient of the Energy Star 2012 award.



The Energy Star 2012 award.

- The USPTO won a 2012 Energy and Environmental Stewardship Award from the DOC for its ability to measure and increase recycling to a 54 percent waste diversion rate, thereby exceeding the President's Executive Order 13514 of recycling at least 50 percent by FY 2013. See Figure 28.

- Significant strides were made in implementing Homeland Security Presidential Directive 12 (HSPD-12). In FY 2012, an additional 7,013 federal government identification cards have been issued as of September 30, 2012, bringing the total number of cards issued to 9,024.
- The USPTO's emergency preparedness programs were improved by the rollout of updated plans for continuity of operations and emergency operations. To further enhance its emergency preparedness posture, Continuity of Operations Plan (COOP)-related tabletop exercises were held with Business Unit COOP managers, Emergency Response Group personnel, and Reconstitution Team members.

### **Advancements in Telework**

Telework at the USPTO continues to be a primary corporate business strategy and the USPTO continues to be a model for telework in the federal government. More than 7,300 employees agency-wide are working from home at least one day per week, translating to 66 percent of the USPTO workforce. This is an increase of nearly 700 teleworking employees from last fiscal year. Additionally, between the 4th Quarter of FY 2011 and the 4th Quarter of FY 2012, the percent of:

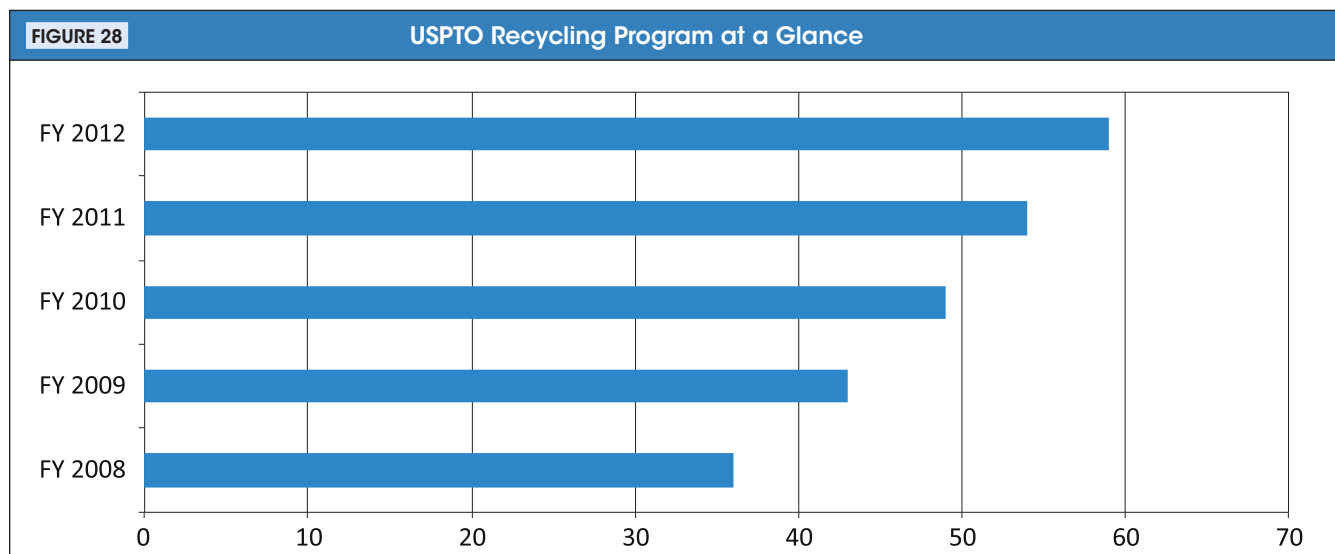
- Positions eligible to telework decreased from 78 percent to 73 percent (+462 eligible positions agency-wide)<sup>1</sup>

- Eligible employees teleworking increased from 83 percent to 86 percent (+695 teleworkers agency-wide). See Figure 29.

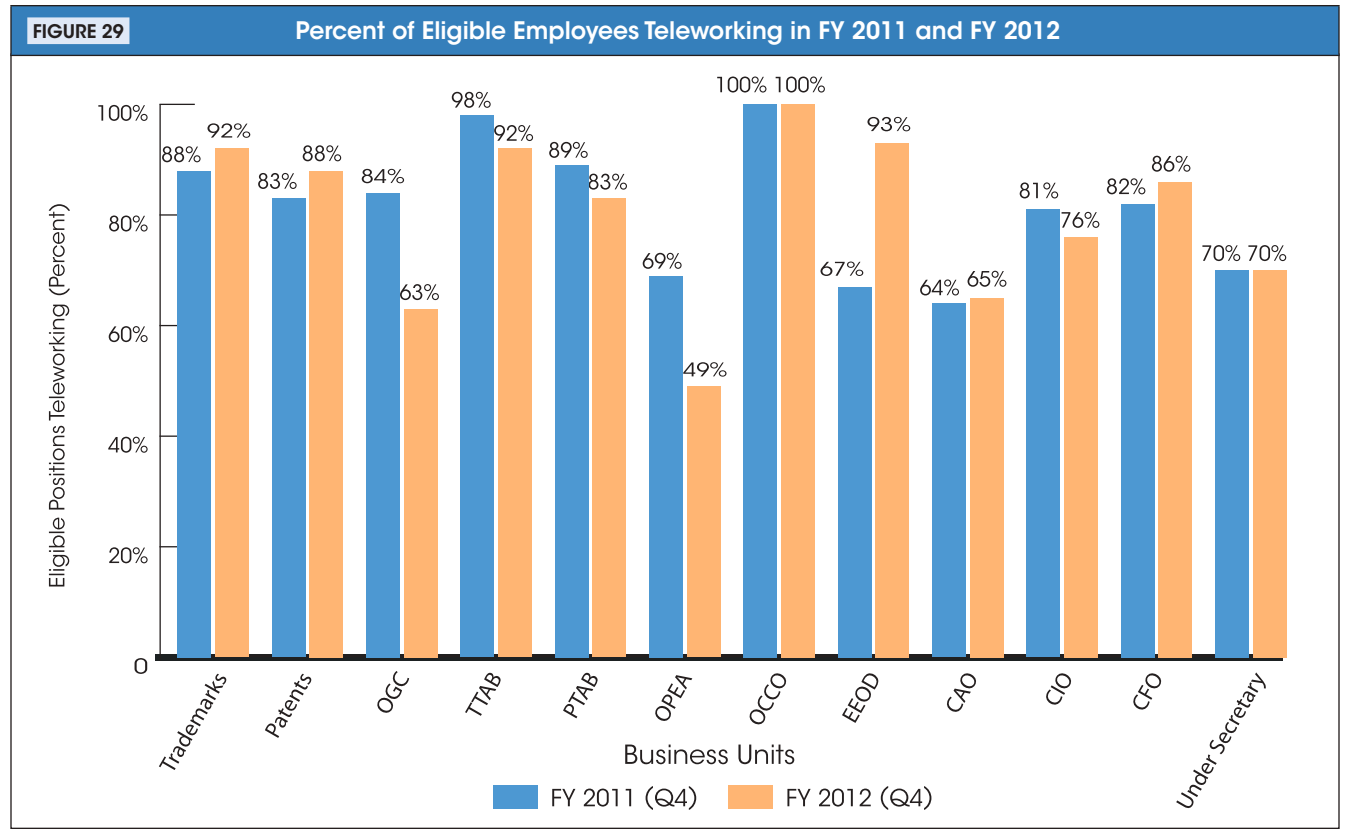
As part of the Telework Enhancement Act of 2010, the USPTO was granted legislative authority to conduct the federal government's initial Telework Travel Expenses Test Program. The Telework Enhancement Act Pilot Program (TEAPP) allows employees to waive their right to travel expenses for up to six annual mandatory trips back to the USPTO headquarters in Alexandria, Virginia. Hoteling (or full-time teleworking) employees may now elect, voluntarily and for their own convenience, to live greater than 50 miles from the USPTO campus, by becoming a TEAPP participant and thereby effectively changing their duty station. As of the end of the third quarter FY 2012, 846 employees were participating in the TEAPP. The map in Figure 30 shows where USPTO hoteling employees, including TEAPP participants, are residing.

### **Equal Employment Opportunity and Diversity**

On October 1, 2010, the agency reorganized its operational structure establishing the new Office of Equal Employment Opportunity and Diversity (OEEOD) with the goal of supporting an increasingly diverse workforce. In FY 2012, the USPTO upgraded, recruited, and filled the Director of OEEOD position at the SES level. The Director of OEEOD reports directly to the Under Secretary and Director and is a member of the agency's Executive Committee and Manage-



<sup>1</sup> New patent hires are not eligible for at least two years for telework but there was still a net gain of total positions deemed eligible agency-wide.



ment Council. The reorganization resulted in a more strategic, proactive, and organizationally independent functional unit than its predecessor, the Office of Civil Rights. Notably, the USPTO is 28 percent Asian, 21 percent African-American, and 3 percent Hispanic (Figure 31). Also, females comprise 35 percent of the USPTO's employee population.

The reorganization has improved the prominence of the USPTO's diversity program. Perhaps most importantly, on April 17, 2012, the USPTO hosted the first-ever White House Initiative on the Asian American and Pacific Islander Federal Employee Conference.

OEEOD led the drafting of the agency's first Diversity and Inclusion Strategic Plan (D&ISP) under Executive Order 13583. The D&ISP outlines of the agency's efforts to attract and engage a diverse workforce, and to equip managers with the tools they need to manage diversity and institutionalize a culture of inclusion.

OEEOD also managed the agency's National Engineering Week event in partnership with the Office of Education and several of the agency's affinity groups. The interactive, hands-on program focused on bringing in local students to build robots, with the hope of inspiring them to pursue careers in engineering and science.

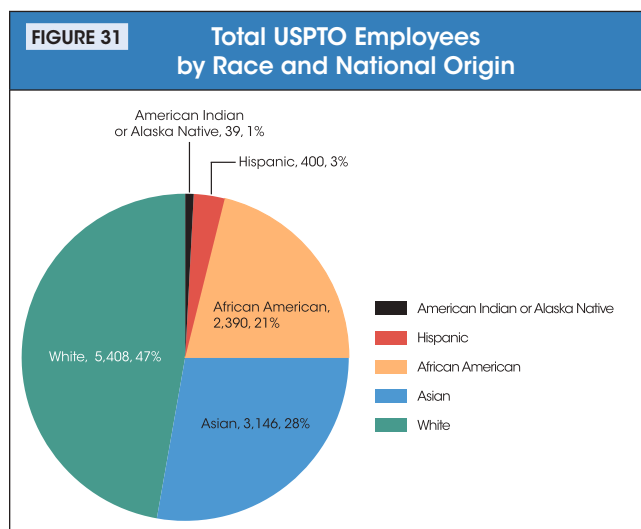
OEEOD expanded the *New Examiner Mentoring Program* from 50 mentoring pairs to over 100 pairs, after the initial pilot demonstrated overwhelmingly

positive results – the attrition rate for mentees was half that of new examiners who did not participate. The program's goal is to help new patent examiners acclimate to the agency and improve retention past the initial probationary period.

OEEOD actively supports a network of 12 affinity groups. To improve the institutional support, OEEOD created a Diversity Outreach Coordinator position whose function is to oversee and conduct the efforts of the agency's volunteer employee groups. OEEOD's work includes conducting quarterly meetings with the leaders of the affinity groups to discuss joint projects, delivering a leadership training retreat for the affinity group leaders, assisting with events, and hosting an annual International Food Sample Festival that allowed the affinity groups to showcase diversity through food.

On May 10, 2012, the agency hosted its annual capstone diversity event, Community Day. On Community Day, USPTO offices, unions, employee resource groups, and civic groups showcase their organizations through table-top displays in the outdoor area surrounding our main campus in Alexandria, Virginia. On Community Day, the agency's Director initiated the event, expressed a commitment to a diverse workforce, and presented the agency's Equal Employment Opportunity Award. The event also engages with our broader community, as the event is open to the public and is coordinated with the City of Alexandria.

Community Day has four core purposes: (1) inform employees of the agency equal employment opportunity policy and program; (2) provide recognition, in the form of the Equal Employment Opportunity Award, to employees that demonstrate superior accomplishments in support of the agency's diversity program, as required; (3) promote active engagement in recognized employee resource groups, and educate the workforce on office initiatives (e.g., employee viewpoint survey, computer security, wellness programs, green initiatives, etc.); and (4) expose employees to civic organizations in the broader community (City of Alexandria) to improve community conditions that affect employability.





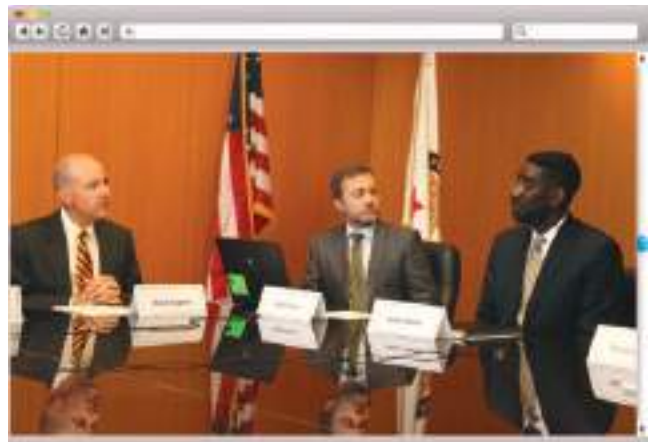
In conjunction with Community Day, OEEOD conducted focus group sessions with a variety of diverse employee groups (Hispanics, African-Americans, Multi-generational, and Veterans) to engage them about their concerns and ideas for improving the agency. OEEOD contracted with the Ivy Group, a recognized leader in the focus group facilitation field, to synthesize feedback and present recommendations. The information received via the focus groups has already been instrumental in working with the OHR to improve service to veterans and is informing other diversity and inclusion projects.

### ***Providing Information and Feedback Channels for Employees and the Public***

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

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

The USPTO created a Trademark Outreach Manager in response to recommendations made as a result of the congressionally mandated Litigation Study. The Manager works with trademark and non-trademark attorneys, the small business and entrepreneurial community, and students to develop



*Under Secretary David Kappos, Chief Communications Officer Todd Elmer, and The Honorable Chief Judge James Smith answer questions during the America Invents Act webinar on September 6, 2012.*

strategies that focus on educational activities, and policing measures. A number of sessions have been held to address the importance of IP early in business development planning.

The USPTO encouraged the establishment of pro bono IP services through universities and law associations. In all cases, the USPTO played an instrumental role in the development of concepts and finding partners. The USPTO acts as an information conduit for independent inventors through our website and outreach events. There are 13 universities currently offering IP law clinics on IPR education aimed at independent inventors and small businesses. The IP law clinics will also provide basic IP education. A first pilot program was launched in 2010 in Minnesota by an association of law offices and private companies to assist individuals and small businesses with certain financial needs to protect their valuable inventions and innovations. This program, in conjunction with the OID, continues to offer education and guidance to new and financially disadvantaged inventors. Independent inventors can work directly with experts to gain assistance in filing a new application or improving their existing applications.

Implementation of the *Patent Ombudsman Program* was a direct response to the public's request for a dedicated resource providing assistance to patent



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

#### ***AIA Implementation/Rulemaking Legal Support***

The Office of General Law (OGL) is the non-IP legal component of the Office of General Counsel. They are responsible for providing advice and written legal opinions on areas concerning the administra-

tion and management of the USPTO. The OGL also represents the USPTO in various administrative proceedings. In particular, OGL supports the USPTO's rulemaking efforts to ensure that regulations are issued to implement many of the important AIA provisions while complying with all rulemaking process requirements. OGL has been integrally involved in every stage of the rulemaking process with representatives from every business unit. OGL secured expedited clearances of AIA rules from external entities saving the agency time and money and facilitating the successful issuance of rules within the statutory deadlines. Further, OGL has successfully handled a steady stream of employment law matters resulting from the AIA initiative to hire additional patent examiners and PTAB personnel. OGL supports the USPTO's initiatives to improve stakeholder relations by procurement of cutting edge products and other agreements and services necessary to run a 21st century agency.



# Management Challenges and What's Ahead

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

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

The USPTO plans to open satellite offices in Dallas, Texas, Denver, Colorado, and Silicon Valley, California. These offices are in addition to the USPTO's first satellite office in Detroit, Michigan, which opened on July 13, 2012. The four offices will function as hubs of innovation and creativity, helping protect and foster American innovation in the global marketplace, helping businesses cut through red tape, and creating new economic opportunities in each of the local communities.

Completing the implementation of the AIA, and establishing the sustainable funding model that has been provided by the AIA will allow the agency to manage fluctuations in filings and revenues while sustaining operations on a multi-year basis, continues to be a priority into FY 2014. The process of implementing the AIA began upon enactment on September 16, 2011 and is expected to be concluded by September 16, 2015.

## **Build and Focus on Improvements**

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

The Patent organization's continuing challenges are to reduce patent pendency and the excess inventory of unexamined patent applications to an appropriate working inventory, while improving patent quality and building a highly trained and stable workforce. By providing patent applicants with additional options to accelerate the USPTO's review of their applications, they gain greater control over examination timing. Collaborative efforts in areas that include automation, global patent classification, and work sharing has resulted in increased efficiency. The Patent organization continues to forge ahead in meeting these challenges by hiring, training, and retaining highly skilled and diverse examiners. The success of this year's COPA 2.0 effort

to eliminate the "tail" of backlog applications, positions the USPTO for further significant patent pendency reductions in 2013.

The Trademark organization's biggest long-term challenge is to ensure that the investment being made in information technology systems improves our ability to serve a diverse applicant and registrant base. Our ability to provide better tools will support public education and outreach efforts to deliver useful products and services. The strength of the intellectual property system depends in part on participation and the notice of marks in use that comes from federal registration. We need to develop systems and processes that make filing and maintaining registrations more accessible, user-friendly, and cost-effective that supports our outreach efforts to work with and engage the small business, entrepreneurial, and educational communities in the value and benefits of trademark protection.

Maintaining record quality and pendency achievements, given the uncertainty of trademark filings, future revenues, and costs, remains a constant challenge. The Trademark organization has achieved an enviable record delivering consistent first-action pendency of 2.5 to 3.5 months for more than five years. This record has been achieved by carefully managing monthly fluctuations in filings and by planning an appropriately-sized staff to ensure sufficient resources are available. Efficiency gains have been realized through process improvement and cost reduction, along with greater use of IT and electronic communications.

Although first and final quality compliance rates are very high, it remains a challenge to achieve them on a consistent monthly basis. To sustain these high performance levels, the Trademark organization has set an even higher "exceptional" standard for evaluating office actions. The new standard expands upon the existing first and final action standards for correct decision-making. It also includes excellent evidentiary support and is "exceptionally" well-written. The success of this initiative depends on novel and focused training, best practice benchmarking, and sharing new quality incentives, sustained communication, and close collaboration with key stakeholders.

## **Manage and Execute to Goals**

The USPTO's promotion, protection, and enforcement of IPR have never been more important to our nation's economic prosperity. The USPTO must harness the expertise and skills within the agency and leverage new technology to achieve its goals. The actions we have taken to create a unified system to deliver timely, high-quality patents and trademarks must be carefully managed. The agency continues to face the external pressures of increasing application volume and rapid technology changes. We will meet these challenges by continuing to update our antiquated IT infrastructure as well as hiring, retaining, and training examiners and improving our operations to be more effective and efficient. As we improve our agency, we must continue to focus on building relationships with our workforce, applicants, owners of patents and trademarks, Congress, and the public.

## **Continue to Move to an Electronic Workplace**

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

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

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

### Strengthen Global IPR Systems

The USPTO faces numerous challenges in seeking to strengthen global IP systems, including funding insecurity caused by the global recession for many IP institutions around the world. The USPTO will continue to promote the strengthening of IP systems through its policy advocacy and leadership, and training and education efforts. In close cooperation with other agencies of the U.S. Government, the USPTO will continue to promote the adequate and effective protection and enforcement of IP rights overseas.

### USPTO Funding Model

The USPTO is challenged to finish establishing a sustainable funding model that provides the requirements-based authority to spend all fees collected on operations and work received, spans multiple years, and is adaptable to fluctuations inherent in estimates. An important aspect of a sustainable funding model is the authority to set and adjust fees by regulation, so that we can properly establish and align fees in a timely, fair, and consistent manner without the inherent time impediments of the legislative process. The USPTO obtained this authority in the AIA, signed on September 16, 2011, and the agency is working toward alleviating these challenges with an implementing rule that is expected to be published in FY 2013. Once this rule is implemented, the USPTO will be exercising, for the first time in its existence, the ability to adjust fees in such a way to establish a sustainable funding model, reduce the current patent application backlog, decrease patent pendency, improve patent quality,

and upgrade the agency's patent business IT capability and infrastructure.

Implementing this final rule in FY 2013 will mark the completion of our final component of the USPTO's Sustainable Funding Model Strategic Objective.

### Human Capital Management

The USPTO's mission requires a highly-skilled, well-educated, and diverse workforce. The agency continues to face the ongoing need to recruit, hire, develop, and retain sufficient numbers of qualified professionals in a highly competitive environment. In order to do so, the USPTO strives to be recognized as an employer of choice. The results of the annual EVS are used extensively to direct efforts and resources towards employer of choice programs, benefits, and strategies. The agency uses job fairs, targeted recruitment trips, an aggressive veteran's hiring program, and other recruitment venues to attract and hire highly sought after candidates in all engineering disciplines, computer sciences, and other professional fields. Once aboard, the agency turns its attention to retaining their services and skill sets. Our retention strategies are continually updated to reflect industry best practices. Attrition data is tracked and survey results monitored in an effort to discern the effectiveness of our retention initiatives and to identify developing trends. The agency continues to focus on work-life enhancements which increase employee satisfaction at the USPTO. The **2011-2015 Strategic Human Capital Plan** [www.uspto.gov/about/stratplan/USPTO\\_2011-](http://www.uspto.gov/about/stratplan/USPTO_2011-)



USPTO's 2012 extern group.



*2015\_Strategic\_Human\_Capital\_Plan.pdf*, which is aligned with the **USPTO 2010-2015 Strategic Plan**, provides guidance, structure, and specific human capital goals and objectives.

Moving forward and in line with the D&ISP, OEEOD intends to support the agency's hiring initiatives by helping to recruit a diverse pool of well-qualified applicants. OEEOD will support hiring by identifying sources of diverse and well-qualified applicants, coordinating with the affinity groups to support recruitment efforts, and assisting with the on-boarding process.

OEEOD is also working with OHR to develop an executive development program to increase the diversity of the agency's SES, which is currently not reflective of the agency's overall diversity. The development program will incorporate best practices for identifying and nurturing a diverse pool of future executives.

OEEOD continues its responsibility for ensuring that the agency remains a fair workplace with equal opportunity for all. OEEOD is working to maximize available technology to become a leader in user and results oriented investigations so that issues are handled in an efficient, collaborative, and accessible manner.

### **Create IT Enterprise Architecture and tools that Support Mission-Critical Business and Programmatic Requirements**

In FY 2013, the USPTO will continue to take steps to improve its ability to be more responsive, better manage, and deliver quality products at enhanced service levels. This will be accomplished by reducing the complexity of systems, establishing and enforcing more standards, and practicing continual process improvement.

The challenge facing the OCIO will be in continuing efforts to:

- Work on strengthening our IT Infrastructure and moving to a "cloud" computing environment;
- Complete the expansion of IT infrastructure to include faster network connections to/from USPTO



A card-sorting exercise used during website redesign usability testing.

campus and additional collaboration tools in support of a nationwide workforce;

- Plan, implement, and maintain IT systems that support and improve business processes in the Patent and Trademark organizations;
- Work to develop and fully implement an IT Human Capital Strategic Plan, in alignment with the **USPTO 2010-2015 Strategic Plan**;
- Improve the security, availability, and quality of IT systems and services while reducing their complexity and cost; support business area needs to accommodate the hiring and equipping of new employees; provide internal on-line tools (regarding consistency and quality of searching and examination); provide electronic file management and workflow; develop interactive on-line electronic filing capabilities and upgrade e-tools to the public; help move the USPTO to full electronic records and eliminate the need to collect and store paper records; and continue to improve overall data quality;
- Work with the OCFO to plan, implement, and support the Fee Processing Next Generation (FPNG) system that will integrate with the business IT systems for the Patent and Trademark organizations; and
- Continue to add datasets to the U. S. government's [www.data.gov](http://www.data.gov) and [www.google.com](http://www.google.com) website, providing the public with no-cost access to bulk text and image data collections of current and retrospective patent and trademark data.



## Accompanying Information on USPTO Performance

### Performance Audits and Evaluations

**T**he OIG issued two new audit final reports during FY 2012. The first report, *The Patent Hoteling Program Is Succeeding as a Business Strategy* (February 2012), focused on effectiveness of the Patent Hoteling Program (PHP) in relation to productivity, as well as the ability to leverage the PHP for further reductions of the patent application backlog in a cost-efficient manner. The OIG made three recommendations for stronger management controls surrounding the program, as well sharing the best practices that could aid telework programs within the rest of the Department of Commerce. The USPTO concurred with the OIG's final report findings and began to implement all recommendations. For example, the USPTO has begun working regularly with the Department of Commerce to address Departmental and bureau-specific telework concerns. In addition, the USPTO will conduct a comprehensive assessment of the costs and cost avoidances for the PHP, and will review the PHP eligibility process, procedures, and documentation requirements. This evaluation was performed in support of the Strategic Goal I: Improve Patent Quality and Timeliness.

The second final report, *USPTO's Other Backlog: Past Problems and Risks Ahead for the Board of Patent Appeals and Interferences* (August 2012), evaluated the BPAI (PTAB as of September 16, 2012) staffing and resources in relation to their caseload, and to what

extent BPAI operations and resources will be affected by the implementation of the AIA. The OIG made six recommendations for stronger management controls within BPAI. The USPTO generally concurred with the OIG's final report findings and began to implement the recommendations. The USPTO will develop BPAI performance measures, comprehensive management plans to address the AIA implementation specific to BPAI, ensure that the IT systems are adequate for BPAI's needs, and assess BPAI's staffing and resources for improvements. This evaluation was performed in support of the Strategic Goal I: Improve Patent Quality and Timeliness.

#### Performance Data Verification and Validation

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

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

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

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

## Commissioner's Performance for FY 2012

The AIPA, Title VI, Subtitle G, the Patent and Trademark Office Efficiency Act, requires that an annual performance agreement be established between the Commissioner for Patents and the Secretary of Commerce, and the Commissioner for Trademarks and the Secretary of Commerce. The Commissioners for Patents and Trademarks have FY 2012 performance agreements with the Secretary of Commerce, which outline the measurable organizational goals and objectives for which they are responsible. They may be awarded a bonus, based upon an evaluation of their performance as defined in the agreement, of up to 50 percent of their base salary. The results achieved in FY 2011 are documented in this report. FY 2012 bonus information is currently not available. For FY 2011, the Commissioner for Patents was awarded a bonus of 13.9 percent of base salary and the Commissioner for Trademarks a bonus of 13.9 percent of base salary.



# Management Assurances and Compliance with Laws and Regulations

**T**his section provides information on the USPTO's compliance with the following legislative mandates:

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

## Management Assurances

### **Federal Managers' Financial Integrity Act (FMFIA)**

The FMFIA requires Federal agencies to provide an annual statement of assurance regarding management controls and financial systems. The USPTO management is responsible for establishing and maintaining effective internal control and financial management systems that meet the objectives of the FMFIA. The objectives of internal control, as

defined by the Government Accountability Office (GAO), are to ensure:

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

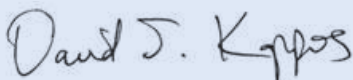
The statement of assurance that follows is based on the wide variety of evaluations, control assessments, internal analyses, reconciliations, reports, and other information, including the DOC OIG audits, and the independent public accountants' opinion on the USPTO's financial statements and their reports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

### **Federal Financial Management Improvement Act (FFMIA)**

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

On the basis of the USPTO's comprehensive internal control program during FY 2012, the USPTO can provide reasonable assurance that its internal control over the effectiveness and efficiency of operations and compliance with applicable laws and regulations as of September 30, 2012, was operating effectively. Accordingly, I am pleased to certify with reasonable assurance that our agency's systems of internal control, taken as a whole, comply with Section 2 of the Federal Managers' Financial Integrity Act of 1982. Our agency also is in substantial compliance with applicable federal accounting standards and the U.S. Standard General Ledger at the transaction level and with federal financial system requirements. Accordingly, our agency fully complies with Section 4 of the Federal Managers' Financial Integrity Act of 1982, with no material non-conformances.

In addition, the USPTO conducted its assessment of the effectiveness of our agency's internal control over financial reporting, which includes safeguarding of assets and compliance with applicable laws and regulations, in accordance with OMB Circular A-123, Management's Responsibility for Internal Control. Based on the results of this evaluation, the USPTO provides reasonable assurance that its internal control over financial reporting as of June 30, 2012 was operating effectively and no material weaknesses were found in the design or operation of the internal control over financial reporting. In addition, no material weaknesses related to internal control over financial reporting were identified between July 1, 2012 and September 30, 2012.



David J. Kappos  
Under Secretary of Commerce for Intellectual  
Property and Director of the United States  
Patent and Trademark Office  
November 7, 2012

effective internal control, and comply with legal and regulatory requirements. The USPTO complied substantially with the FFMA for FY 2012.

## Other Compliance with Laws and Regulations

### Federal Information Security Management Act

The USPTO continues to stay vigilant in reviewing administrative controls over information systems and is always seeking methods of improving our security program. During FY 2012, the USPTO continued its dedicated efforts in support of compliance with FISMA standards and improvement of our security program. The USPTO IT Security Program includes a strategy for continuous monitoring, which conducts credentialed compliance and vulnerability scans on servers, network devices, database, and Web-application on a quarterly basis. The analysis is being performed to ensure that operating systems have been configured in accordance with their security baseline and appropriate software patch levels. Additionally, the IT Security program has integrated artifacts to support Security Impact Analysis within the systems development lifecycle that allow assessment of testing requirements for systems undergoing new developments, enhancements, or maintenance. This proactive approach to security within the development process has successfully assessed changes and enabled security compliance for systems as they are being developed or updated.

As a result, the Chief Information Security Officer and the OCIO staff working together made a concerted effort to meet the compliance requirements of FISMA, while also meeting the reporting requirements to OMB. These endeavors were a complete success. All USPTO systems achieved a 100 percent FISMA compliance reporting level for FY 2012. There were no deficiencies identified that are considered to be the result of any material weaknesses in internal control. As a result of the work accomplished, the USPTO was able to continue with continuous monitoring and provide an accurate summary of information consistent with OMB reporting requirements for year-end reporting.



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

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

### **Agency's Financial Management Systems Strategy**

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

The FPNG investment replaces RAM, the USPTO's legacy fee collection system. FPNG will use a combination COTS, GOTS, and open source code, as well as a custom user interface that has the same look-and-feel as other USPTO websites. Developing and implementing FPNG supports USPTO's Strategic

Priority, "Improve IT Infrastructure and Tools", and will replace legacy RAM with modern 21st Century technology that has more automated internal controls, electronic commerce capabilities, and will be able to meet the Patent and Trademark fee collection needs of the future. As the USPTO progresses with its Patent and Trademark IT strategies (Patents End-to-End and Trademarks Next Generation), the fee processing system also needs to progress to the next generation. The lack of modern technology in legacy RAM hinders the USPTO from taking full advantage of the potential benefits from Patents End-to-End and Trademarks Next Generation initiatives.

### **Inspector General Act Amendments**

The Inspector General Act, as amended, requires semi-annual reporting on IG audits and related activities, as well as any requisite agency follow-up. The report is required to provide information on the overall progress on audit follow-up and internal management controls, statistics on audit reports with disallowed costs, and statistics on audit reports with funds put to better use. The USPTO did not have audit reports with disallowed costs or funds put to better use in FY 2012.

The USPTO's follow-up actions on audit findings and recommendations are essential to improving the effectiveness and efficiency of our programs and operations. As of September 30, 2012, management had resolved two recommendations outstanding from a report issued in FY 2011 (OIG-11-033-A: "Patent End-to-End Planning and Oversight Need to Be Strengthened to Reduce Development Risk"). One recommendation was outstanding as of September 30, 2012.

Two new audit reports were issued during FY 2012 (OIG-12-018-A: "The Patent Hoteling Program is Succeeding as a Business Strategy" and OIG-12-032-A: "USPTO Other Backlog: Past Problems and Risks Ahead for the Board of Patent Appeals and Interferences"). For details on these audits, refer to page 60. Seven recommendations were outstanding as of September 30, 2012.



Status of IG Act Amendment Audit Recommendations as of September 30, 2012				
Report for Fiscal Year	Status	Recommendation	Action Plan	Completion Date
FY 2011	Closed	Before development starts on the next (second) release of PE2E, the USPTO Director should direct the appropriate USPTO officials to improve PE2E planning by developing:  a) A description and schedule of releases based on prioritized high-level requirements for the entire project, and  b) High-level designs for the service architecture for the entire project.	a) The USPTO will create a description and schedule of releases based on prioritized, high-level requirements that covers the entire duration of PE2E development through the decommissioning of legacy USPTO systems.  b) The USPTO will complete a high-level design and architecture for the entire duration of PE2E development through the decommissioning of legacy systems.	September 2012
FY 2011	Closed	The USPTO Director should direct the appropriate USPTO officials to update the current acquisition plan before seeking contractor support for future PE2E releases. The plan should describe:  a) The strategy for acquiring contracting resources that includes the overall acquisition approach, the process for acquiring, and how it will motivate contractor performance, and  b) How USPTO will manage risks to avoid development delays, overcome limited resources for soliciting and administering multiple contractors, and successfully manage multiple contractors.	a) The USPTO will document plans for obtaining contracting resources during FY 2012; starting in the third quarter of FY 2012, the USPTO will document plans for obtaining contracting resources during FY 2013. This plan will include the strategy for acquiring contractor resources which includes the overall acquisition approach, the process for acquiring, and how it will motivate contractor performance.  b) The USPTO will create backup plans with assessed impacts on schedule so that such contingencies can be accommodated within a framework that allows for timely deliverable of PE2E releases.	February 2012
FY 2011	Open	The USPTO Director should direct the appropriate USPTO officials to improve oversight of PE2E by:  a) Updating USPTO oversight procedures for PE2E by establishing <ul style="list-style-type: none"><li>the key milestone oversight review schedule,</li><li>criteria for evaluating project progress at oversight reviews, and</li><li>thresholds for convening special oversight reviews</li></ul> b) Seeking independent expert advice on technical and project management for input into milestone reviews and defining the rules of engagement for independent reviewers, including when advice will be sought and access given to project artifacts and personnel.	a) The USPTO will ensure that key milestone reviews are conducted semi-annually with the ITIRB and quarterly with the CRB. In addition the CRB will receive monthly financial and summary progress reports.  b) To ensure PE2E is achieving its milestones and following applicable government and industry best practices for development, the USPTO has retained a world-class expert on legacy migration and business architecture to provide insight, validate, and offer corrective advice for PE2E development, deployment, and application migration strategies.	Estimated November 2012
FY 2012	Open	Conduct a more comprehensive calculation for costs and cost avoidance related to PHP in order to obtain more accurate estimates of the cost and benefits affiliated with this program.	Undertake an assessment of the costs and cost avoidance associated with the PHP as part of the Cost Benefit Analysis for the Telework Enhancement Act Pilot Program.	Estimated October 2012

(continued)

Status of IG Act Amendment Audit Recommendations (continued) as of September 30, 2012				
Report for Fiscal Year	Status	Recommendation	Action Plan	Completion Date
FY 2012	Closed	Have frequent informal interaction with various departmental and bureau staff members in addition to both hosting and participating in more formal events.	Work regularly with the Department of Commerce on departmental and bureau-specific telework program issues and implementation. Have frequent informal interaction with various departmental and bureau staff members in addition to both hosting and participating in more formal events.	March 2012
FY 2012	Open	Ensure that internal controls are in place so that only eligible patent examiners participate in PHP and appropriate documentation is maintained.	Review the eligibility, signup procedures, and records retention procedures for the PHP. Ensure procedures are in place to fully reflect the eligibility information for all PHP participants.	Estimated October 2012
FY 2012	Open	Align BPAI's <sup>1</sup> resource planning with the hiring actions and expected production levels of patent examiners.	Board resource (Administrative Patent Judge "APJ") planning and hiring actions will be made taking expected patent examiner hiring and production as one of the primary planning factors. The Board has already begun a significant APJ hiring effort, which is expected to continue. Ultimate hiring results will depend on fee revenue projections, attracting sufficient numbers of qualified candidates, and other factors.	Estimated Annually
FY 2012	Closed	Require BPAI to annotate current information on public websites to indicate that backlog data prior to FY 2010 is underreported and therefore should be used with caution.	The Board has made corrections on the USPTO website.	August 2012
FY 2012	Open	Direct BPAI to develop and publish performance measures and targets for ex parte appeals and other proceedings.	The Board will develop and publish performance measures for ex parte appeals and other proceedings.	Estimated January 2013
FY 2012	Open	Develop comprehensive management plans (including how to measure progress, gauge performance, and identify risk) to address the implementation and operational oversight of the new BPAI proceedings under the AIA.	The Board will develop comprehensive management plans to address the implementation and operational oversight of the new BPAI proceedings under the AIA.	Estimated January 2013
FY 2012	Open	Ensure that data processing systems meet the needs of all four AIA proceedings.	Work with Judges and staff on internal processing requirements. Liaise with OCIO to implement systems by required dates. Seek and receive input from public users.	Estimated March 2013
FY 2012	Open	Explore the feasibility of BPAI's current management and administrative structure and staffing, given the increase in the number of proceedings and staff at BPAI.	Work with OHR to assess the structure of the Board in relation to current work and staffing levels and expected growth in staffing to meet needs of new proceedings under the AIA.	Estimated February 2013
<sup>1</sup> Note, pursuant to the AIA, effective September 16, 2012, BPAI is now known as the PTAB.				

Financial Performance Measure	FY 2012 Target	FY 2012 Performance
Percentage of Timely Vendor Payments (MTS)	98%	99%
Percentage of Payroll by Electronic Transfer (OMB)	90%	100%
Percentage of Treasury Agency Locations Fully Reconciled (OMB)	95%	100%
Timely Reports to Central Agencies (OMB)	95%	100%
Audit Opinion on FY 2012 Financial Statements (OMB)	Unqualified	Unqualified
Material Weaknesses Reported by OIG (OMB)	None	None
Timely Posting of Inter-Agency Charges (USPTO)	30 days	16 days
Average Processing Time for Travel Payments (USPTO)	8 days	7 days

### OMB Financial Management Indicators

The OMB prescribes the use of quantitative indicators to monitor improvements in financial management. The USPTO tracks other financial performance measures as well. The table above shows the USPTO's performance during FY 2012 against performance targets established internally and by OMB and the government-wide Metric Tracking System (MTS).

### Prompt Payment Act

The Prompt Payment Act requires Federal agencies to report on their efforts to make timely payments to vendors, including interest penalties for late payments. In FY 2012, the USPTO did not pay interest penalties on 99.4 percent of the 7,080 vendor invoices processed, representing payments of approximately \$590.4 million. Of the 39 invoices that were not processed in a timely manner, the USPTO was required to pay interest penalties on all 39 invoices. The USPTO paid \$7 in interest penalties for every million dollars disbursed in FY 2012. Virtually all recurring payments were processed by EFT in accordance with the EFT provisions of the Debt Collection Improvement Act of 1996.

### Civil Monetary Penalty Act

There were no Civil Monetary Penalties assessed by the USPTO during FY 2012.

### Debt Collection Improvement Act

The Debt Collection Improvement Act prescribes standards for the administrative collection, compromise, suspension, and termination of Federal agency collection actions, and referral to the proper agency

for litigation. Although the Act has no material effect on the USPTO since it operates with minimal delinquent debt, all debt more than 180 days old has been transferred to the U.S. Department of the Treasury for cross-servicing.

### Biennial Review of Fees

The Chief Financial Officers Act of 1990 requires a biennial review of agency fees, rents, and other charges imposed for services and things of value it provides to specific beneficiaries as opposed to the American public in general. The objective of the review is to identify such activities and to begin charging fees, where permitted by law, and to periodically adjust existing fees to reflect current costs or market value so as to minimize general taxpayer subsidy of specialized services or things of value (such as rights or privileges) provided directly to identifiable non-Federal beneficiaries. The USPTO is a fully fee-funded agency without subsidy of general taxpayer revenue. The USPTO uses Activity Based Costing (ABC) to calculate the cost of activities performed for each fee, and uses this information to evaluate and inform when setting fees. When appropriate, fees are adjusted to be consistent with legislative requirements to recover full cost of the goods or services provided to the public as with the administrative trial proceedings established in the AIA.

Consistent with the provisions of the AIA, the USPTO expects to continuously assess fees, on at least a biennial basis after the initial fee adjustments anticipated for the Spring 2013. Section 10(c) of the AIA directs the USPTO to consult the PPAC and TPAC, respectively, annually on the advisability of reducing fees set or adjusted under Section 10(a).



# Financial Discussion and Analysis

## Financial Highlights

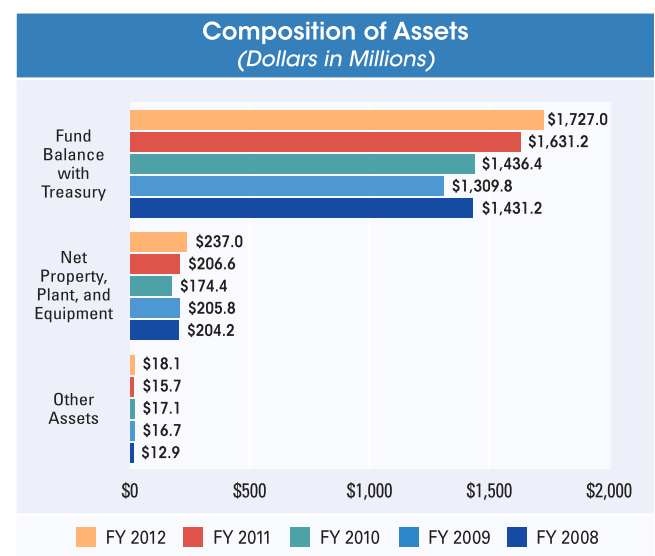
The USPTO received an unqualified (clean) audit opinion from the independent public accounting firm of KPMG LLP on its FY 2012 financial statements, provided in the Financial Section of this report. This is the 20th consecutive year that the USPTO received a clean opinion. Our unqualified audit opinion provides independent assurance to the public that the information presented in the USPTO financial statements is fairly presented, in all material respects, in conformity with accounting principles generally accepted in the United States of America. In addition, KPMG LLP reported no material weaknesses in the USPTO's internal control, and no instances of non-compliance with laws and regulations affecting the financial statements. Refer to the Other Accompanying Information section for the Summary of Financial Statement Audit and Management Assurances.

The summary financial highlights presented in this section provide an analysis of the information that appears in the USPTO's FY 2012 financial statements. The USPTO financial management process ensures that management decision-making information is dependable, internal controls over financial reporting are effective, and that compliance with laws and regulations is maintained. The issuance of these financial statements is a component of the USPTO's objective to continually improve the accuracy and usefulness of its financial management information.

## Balance Sheet and Statement of Changes in Net Position

At the end of FY 2012, the USPTO's consolidated Balance Sheet presents total assets of \$1,982.1 million, total liabilities of \$1,255.2 million, and a net position of \$726.9 million.

Total assets increased 20.3 percent over the last four years, resulting largely from the increase in Fund Balance with Treasury. The decrease in Fund Balance with Treasury during FY 2009 is a result of the decrease in fee income. The following graph shows the changes in assets during this period.





Fund Balance with Treasury is the single largest asset on the Balance Sheet and represents 87.1 percent of total assets at the end of FY 2012. Over half of the Fund Balance with Treasury represents fees the USPTO has collected, but has not been authorized to spend through the annual appropriation process – this includes temporarily unavailable fees of \$790.1 million and unavailable special fund receipts under OBRA of \$233.5 million, which total \$1,023.6 million in unavailable fees. This asset is also comprised of unpaid obligated funds of \$344.8 million, other funds held on deposit for customers of \$120.7 million, and unobligated funds carried over from one year to the next (operating reserve) of \$237.9 million.

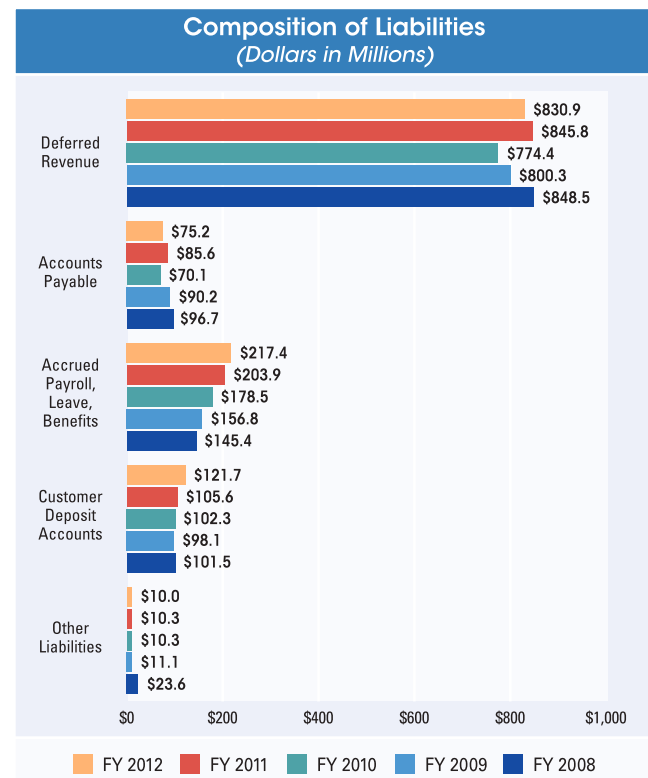
The unavailable special fund receipts and the temporarily unavailable funds require Congressional appropriation before they will be available for USPTO's use. These funds, together with amounts obligated and held on deposit, represent 86.2 percent of the Fund Balance with Treasury.

The operating reserve is available for use without further Congressional appropriation and is maintained to permit the USPTO to plan for long-term financial stability, as well as temporary changes in our cash flow. As such, the operating reserve is not tied to a specific event and enables the USPTO to address fluctuations in revenues or unexpected demands on resources. In addition, the operating reserve is used to manage cash flow at the beginning of the fiscal year to ensure the agency has adequate resources to sustain current operations. Total fee collections are lower than operating requirements early in the year, and do not fully cover the necessary expenses such as payroll and contractual obligations that occur close to the fiscal year start. The operating reserve is intended to provide sufficient resources to continue current operations until the collection of fees builds over the subsequent months.

As required by 35 U.S.C. 42(c)(3), the USPTO maintains and tracks two separate and distinct operating reserve balances – one for Patent operations and one for Trademark operations. At the end of FY 2012, the Patent operating reserve was \$111.8 million and the Trademark operating reserve was \$126.1 million, 0.6 and 7.5 months of operating expenses, respectively.

The other major asset is property, plant, and equipment. The net balance of this asset has increased by \$32.8 million during the past four years, with the acquisition values of property, plant, and equipment increasing by \$194.0 million. Investments in IT software and software in development from FY 2008 to FY 2009 increased \$12.7 million, in conjunction with enhancing the existing e-government capabilities in areas such as e-filing, application information retrieval, data and image capture, and web-based search systems. This increase slowed to only \$6.8 million in FY 2010 as the USPTO chose to stop modifications to existing, outdated systems. Instead, the USPTO is beginning to completely re-invent our IT systems from end-to-end, which will lead to future increases in IT hardware, software, and software in development values. This was evidenced by increases in FY 2011 and FY 2012 of \$76.1 million and \$55.4 million, respectively, for IT hardware, software, and software in development.

Total liabilities increased from \$1,251.2 million at the end of FY 2011 to \$1,255.2 million at the end of FY 2012, representing an increase of \$4.0 million, or 0.3 percent. The following graph shows the composition of liabilities during the past five years.

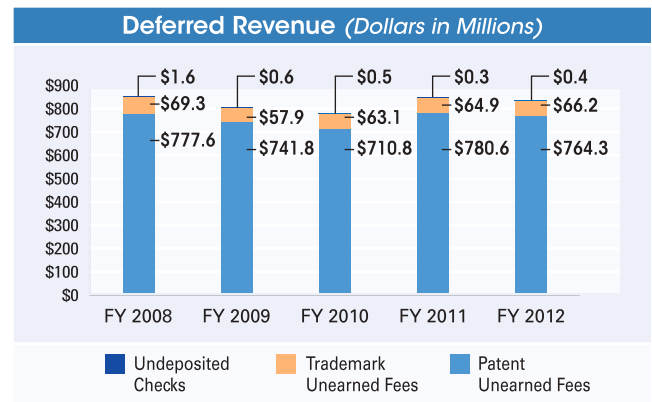




The USPTO's deferred revenue is the largest liability on the Balance Sheet. The liability for deferred revenue is calculated by analyzing the process for completing each service provided. The percent incomplete based on the inventory of pending work and completion status is applied to fee collections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

FY 2012 resulted in a decrease to the deferred revenue liability of \$14.9 million, or 1.8 percent from FY 2011. The deferred revenue liability for FY 2012 includes unearned patent and trademark fees, as well as undeposited checks. The unearned patent fees represented 92.0 percent of this liability. During FY 2008, the deferred revenue liability increased \$20.4 million, or 2.5 percent. This increase was followed by decreases to the deferred revenue liability in FY 2009 and FY 2010, for a cumulative decrease of \$74.1 million, or 8.7 percent. The deferred revenue liability temporarily increased in FY 2011 by \$71.4 million, or 9.2 percent. The following graph depicts the composition of the deferred revenue liability, in addition to the change in this liability during each of the past five years.

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



action pendency rates, and fee rates result in increases in deferred revenue.

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

In FY 2012, unearned patent fees decreased 2.1 percent, in line with the decrease in first action pendency of 6.1 months and the improvements and efficiencies realized with the successful completion of the COPA initiative. During FY 2008, unearned patent fees increased 3.2 percent, in line with the increase in first action pendency of 1.2 percent. In FY 2009 and FY 2010, unearned patent fees decreased 4.6 percent and 4.2 percent, respectively.

Filings and Pendencies	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Patent Filings	496,886	486,499	509,367	537,171 <sup>1</sup>	565,406 <sup>1</sup>
Percentage Change in Patent Filings	6.1%	(2.1)%	4.7%	5.5%	5.3%
Patent First Action Pendency (months)	25.6	25.8	25.7	28.0	21.9
Percentage Change in Patent First Action Pendency	1.2%	0.8%	(0.4)%	8.9%	(21.8)%
Total Patent Pendency (months)	32.2	34.6	35.3	33.7	32.4
Percentage Change in Total Patent Pendency	0.9%	7.5%	2.0%	(4.5)%	(3.9)%
Trademark Filings	401,392	352,051	368,939	398,667	415,026
Percentage Change in Trademark Filings	1.8%	(12.3)%	4.8%	8.1%	4.1%
Trademark First Action Pendency (months)	3.0	2.7	3.0	3.1	3.2
Percentage Change in Trademark First Action Pendency	3.4%	(10.0)%	11.1%	3.3%	3.2%
Total Trademark Average Pendency (months)	11.8	11.2	10.5	10.5	10.2
Percentage Change in Total Trademark Average Pendency	(11.9)%	(5.1)%	(6.2)%	—%	(2.9)%

<sup>1</sup> Preliminary data

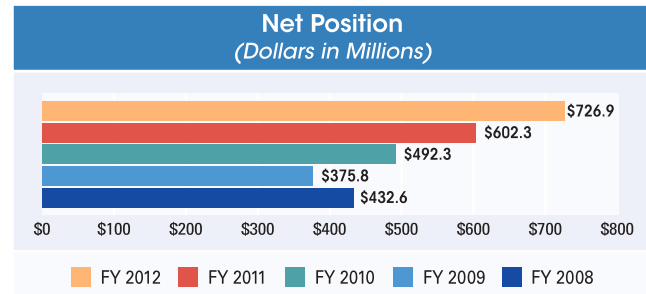
As a result of process improvements and increased efficiencies combined with decreased patent filings in FY 2009 that accompanied the economic downturn, the USPTO was able to make progress in reducing the existing inventory. This was evidenced by the Patent organization disposing of 22.9 percent and 13.6 percent in FY 2010 and FY 2009, respectively, more applications than were disposed of during the preceding year. Despite overall increases in Patent applications from FY 2008 through FY 2010, first action pendency had remained fairly constant as a result of increased Patent staffing and increased focus on workload. In FY 2011, unearned patent fees increased 9.8 percent, a temporary increase as a result of the COPA initiative to clean up the older cases in the pending backlog and more strictly manage its inventory in a first-in, first-out inventory environment.

Deferred revenue associated with the patent process is expected to resume decreasing. In the FY 2013 President's Budget, the number of patent applications filed from FY 2013 through FY 2017 is expected to gradually increase, with first action pendency decreasing to 9.4 months by FY 2017 and total pendency at 18.1 months by FY 2017. The pendency decreases will result in patent deferred revenue decreases.

The deferred revenue associated with the trademark process increased in FY 2012. Trademark deferred revenue increased by \$1.3 million, or 2.0 percent, from FY 2011, with an overall 4.5 percent decrease over the past four years. The FY 2012 increase was consistent with total trademark first action pendency slightly increasing to 3.2 months and the increase in trademark applications, offset by trademark average pendency decreasing to 10.2 months. Estimates included in the FY 2013 President's Budget project the pendencies to remain constant in the upcoming years.

The Statement of Changes in Net Position presents the changes in the financial position of the USPTO due to results of operations and unexpended appro-

priations. The movement in net position is the result of the net income or net cost for the year. The change in the net position during the past five years is presented in the following graph.



The increase in net position from \$602.3 million at the end of FY 2011 to \$726.9 million at the end of FY 2012, or 20.7 percent, is attributable largely to the results of operations.

### Statement of Net Cost

The Statement of Net Cost presents the USPTO's results of operations by the following responsibility segments – Patent, Trademark, and Intellectual Property Policy, Protection and Enforcement Worldwide. The following table presents the total USPTO's results of operations for the past five fiscal years. In FY 2012, USPTO generated a net income of \$106.1 million due to an increase in fees received and revenue recognition of previously deferred revenue collected as we work off the backlog. During FY 2008 and FY 2009, the USPTO's operations resulted in a net cost of \$30.4 million and \$54.8 million, respectively. In FY 2010, the USPTO generated a net income of \$94.7 million due to the increased maintenance fees received and revenue recognition of previously deferred revenue collected as we work off the backlog. In FY 2011, the USPTO generated a net income of \$88.3 million due to the continued increase of maintenance fees received, offset by decreased revenue recognition of previously collected deferred revenue.

Net (Cost)/Income (Dollars in Millions)	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Earned Revenue	\$ 1,862.2	\$ 1,927.1	\$ 2,101.7	\$ 2,236.4	\$ 2,427.1
Program Cost	(1,892.6)	(1,981.9)	(2,007.0)	(2,148.1)	(2,321.0)
Net (Cost)/Income	\$ (30.4)	\$ (54.8)	\$ 94.7	\$ 88.3	\$ 106.1

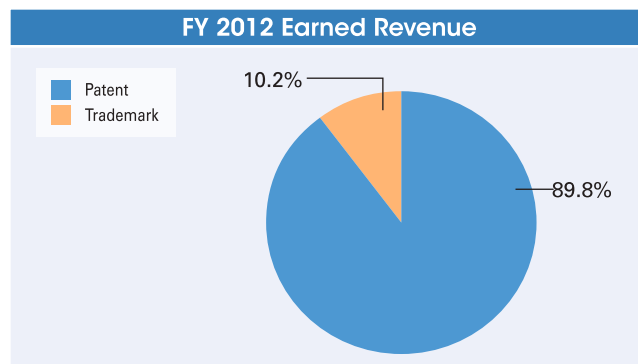
The Statement of Net Cost compares fees earned to costs incurred during a specific period of time. It is not necessarily an indicator of net income or net cost over the life of a patent or trademark. Net income or net cost for the fiscal year is dependent upon work that has been completed over the various phases of the production life cycle. The net income calculation is based on fees earned during the fiscal year being reported, regardless of when those fees were collected. Maintenance fees also play a large part in whether a total net income or net cost is recognized. Maintenance fees collected in FY 2012 are a reflection of patent issue levels 3.5, 7.5, and 11.5 years ago, rather than a reflection of patents issued in FY 2012. Therefore, maintenance fees can have a significant impact on matching costs and revenue.

During FY 2012, the number of patent filings increased by 5.3 percent over the prior year. Despite this increase, the Patent organization disposed 7.7 percent more applications than were disposed of during FY 2011. This resulted in a decrease in patent deferred revenue and an increase in earned revenue.

During FY 2012, with the number of trademark applications increasing by 4.1 percent over the prior year, the Trademark organization was able to continue to address the existing inventory and maintain pendency between 2.5 and 3.5 months during FY 2012. The Trademark organization was able to do this while recognizing a slight increase in deferred revenue and corresponding decrease in revenue earned.

### Earned Revenue

The USPTO's earned revenue is derived from the fees collected for patent and trademark products and services. Fee collections are recognized as earned revenue when the activities to complete the work associated with the fee are completed. The earning process is the same for all collections even though a certain portion of the fees may not be made available to the USPTO for spending. Temporarily unavailable fee collections occur when the USPTO is not appropriated the authority to spend all fees collected during a given year. During FY 2012, the USPTO did not collect any fee collections that were designated as temporarily unavailable.

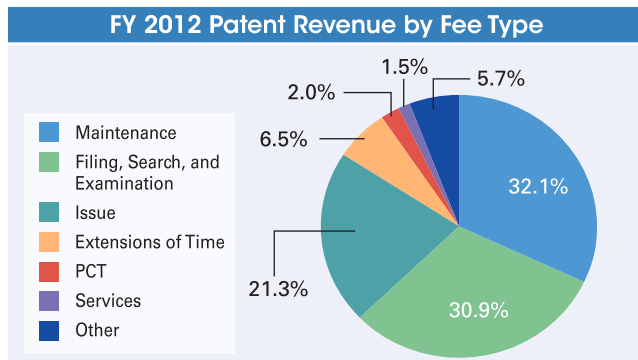


Earned revenue totaled \$2,427.1 million for FY 2012, an increase of \$190.7 million, or 8.5 percent, over FY 2011 earned revenue of \$2,236.4 million. Of revenue earned during FY 2012, \$558.7 million related to fee collections that were deferred for revenue recognition in prior fiscal years, \$697.9 million related to maintenance fees collected during FY 2012, which were considered earned immediately, \$1,165.3 million related to work performed for fees collected during FY 2012, and \$5.2 million were not fee-related.

For fees collected and earned during FY 2012, there was an increase of \$129.5 million over these same fees earned during FY 2011. This increase can primarily be attributed to \$66.1 million in earned patent issue fees, \$18.9 million in patent filing fees, \$12.9 million in trademark post-registration fees, and \$39.2 million in patent and trademark fees considered earned immediately, offset by a decrease of \$5.4 million in PTAB fees.

### Patent

Traditionally, the major components of earned revenue derived from patent operations are maintenance fees, initial application fees for filing, search, and examination, and issue fees. These fees account



Patent Renewal Rates <sup>1</sup>	FY 2008	FY 2009	FY 2010	FY 2011 <sup>2</sup>	FY 2012 <sup>2</sup>
First Stage	83.1%	80.3%	99.4%	101.3%	78.3%
Second Stage	73.7%	63.5%	71.2%	80.6%	55.7%
Third Stage	49.2%	45.4%	50.0%	60.0%	47.0%

<sup>1</sup> Note: the First Stage refers to the end of the 3rd year after the initial patent is issued; the Second Stage refers to the end of the 7th year after the initial patent is issued; and the Third Stage refers to the end of the 11th year after the initial patent is issued. For example, in FY 2012, 78.3 percent of the patents issued three years ago were renewed, 55.7 percent of the patents issued seven years ago were renewed, and 47.0 percent of the patents issued 11 years ago were renewed.

<sup>2</sup> Note: Due to the implementation of the 15 percent fee surcharge on September 26, 2011, the FY 2011 renewal rates include some early renewals that would have otherwise been renewed in FY 2012.

for approximately 84 percent of total patent income. The chart on the previous page depicts the relationship among the most significant patent fee types.

Patent maintenance fees are the largest source of earned revenue by fee type. During FY 2012, maintenance fees collected decreased \$121.4 million, or 14.8 percent, from FY 2011. A significant portion of this decrease was due to early renewals that were paid prior to the implementation of the 15 percent surcharge on September 26, 2011. Since these fees are recognized immediately as earned revenue, any fluctuations in the rates of renewal have a significant impact on the total earned revenue of the USPTO. To some extent, renewals recoup costs incurred during the initial patent process. As shown above, the renewal rates for all three stages of maintenance fees decreased this year.

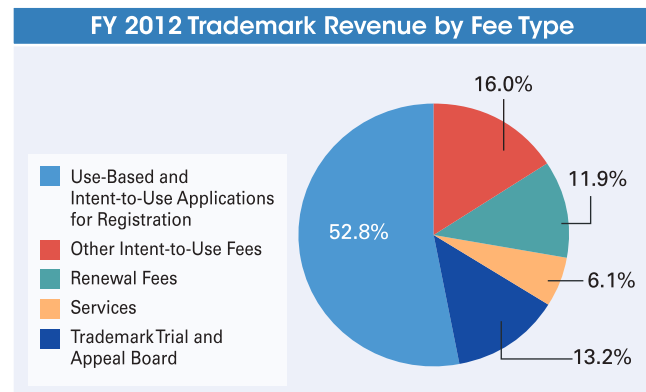
Application fee revenue earned upon filing increased from \$102.8 million in FY 2011 to \$124.2 million in FY 2012 (increase of 20.8 percent), with the number of applications increasing from 537,171 to 565,406 over the same period (increase of 5.3 percent). The FY 2013 President's Budget projects a 6.0 percent increase in patent applications filed beginning in FY 2013 and gradually decreasing to 5.0 percent through FY 2017, which will contribute to continued budgetary resources, as well as earned fee revenue.

Earned issue fee revenue increased from \$397.2 million in FY 2011 to \$463.3 million in FY 2012, with the number of patents issued increasing from 244,430 to 270,258 over the same period, an increase of 16.6 percent and 10.6 percent, respectively. These increases are in line with the increases in production and patent allowance

rate. The FY 2013 President's Budget projects that patents issued will increase an average of 4.4 percent each fiscal year through FY 2017, which will result in increases in maintenance fees in future years.

### Trademark

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



Earned revenue for trademark applications increased from \$125.4 million in FY 2011 to \$130.1 million in FY 2012, with the number of trademarks registered increasing from 237,586 to 243,459 over the same period, increases of 3.7 percent and 2.5 percent, respectively. The FY 2013 President's Budget projects that trademark applications filed will continue to increase, which will contribute to the continued growth in budgetary resources, as well as earned fee revenue.

Trademark Renewal Rates <sup>1</sup>	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012 <sup>2</sup>
Renewals	28.9%	29.3%	29.3%	29.3%	28.7%

<sup>1</sup> Note: the renewals occur every 10th year for trademarks registered after November 15, 1989. For trademarks issued or renewed before November 15, 1989, renewal will occur after the 20th year and the renewal will be for a ten-year period. For example, in FY 2012, 28.7 percent of the trademarks granted ten and 20 years ago were renewed.

<sup>2</sup> Preliminary data

Trademark registration can be a recurring source of revenue. To some extent, renewal fees recoup costs incurred during the initial examination process. As shown above, the renewal rates for trademarks have remained fairly stable over the last five years, indicating continued earned revenue from this source. Further, in the FY 2013 President's Budget, earned revenue from trademark renewals is expected to continue in the future.

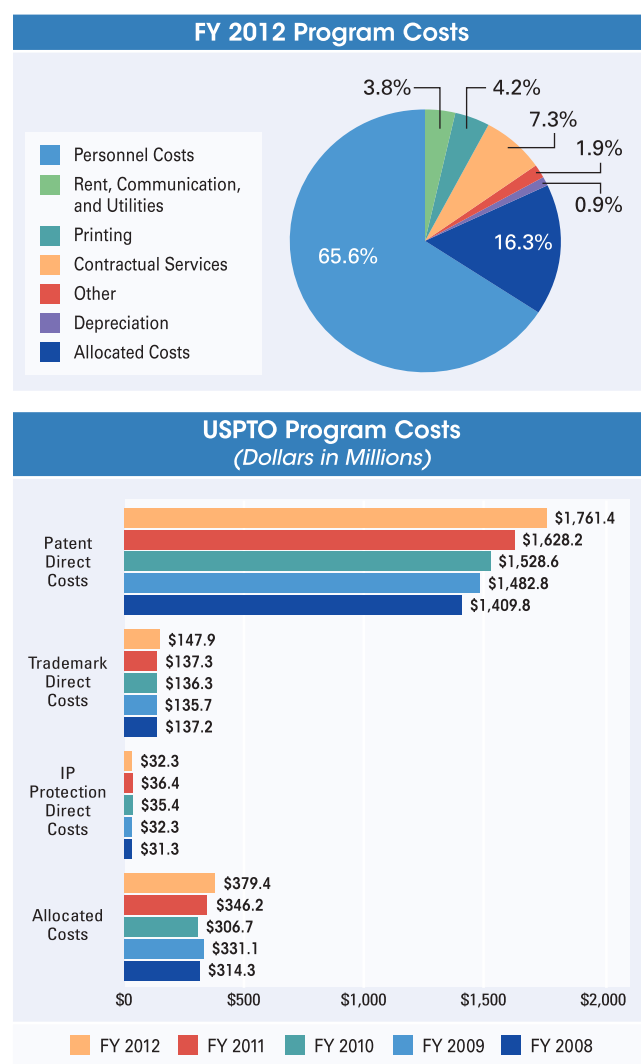
### Program Costs

Program costs totaled \$2,321.0 million for the year ended September 30, 2012, an increase of \$172.9 million, or 8.0 percent, over FY 2011 program costs of \$2,148.1 million. The USPTO's most significant program cost is personnel services and benefits, which comprise approximately 70 percent of USPTO's total program costs. Any significant change or fluctuation in staffing or pay rate directly impacts the change in total program costs from year-to-year. Total personnel services and benefits costs for the year ended September 30, 2012, were \$1,626.4 million, an increase of \$112.4 million, or 7.4 percent, over FY 2011 personnel services and benefits costs of \$1,514.0 million. This change was predominantly the result of a net increase of 1,321 personnel, from 10,210 at the end of FY 2011 to 11,531 at the end of FY 2012.

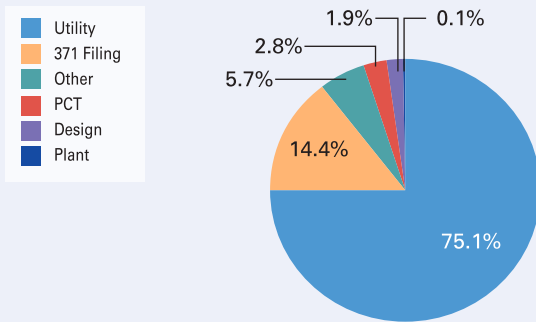
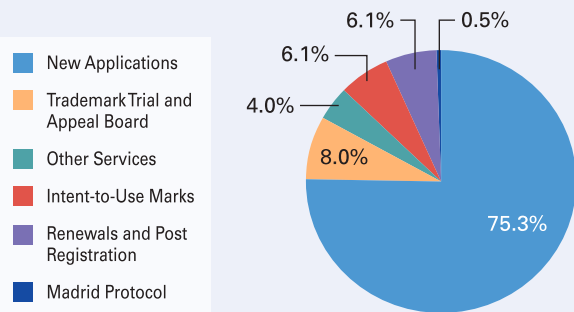
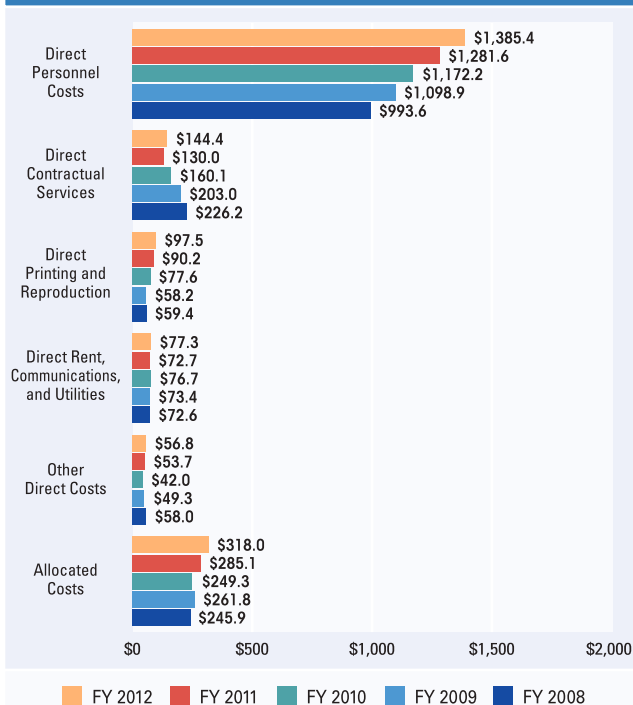
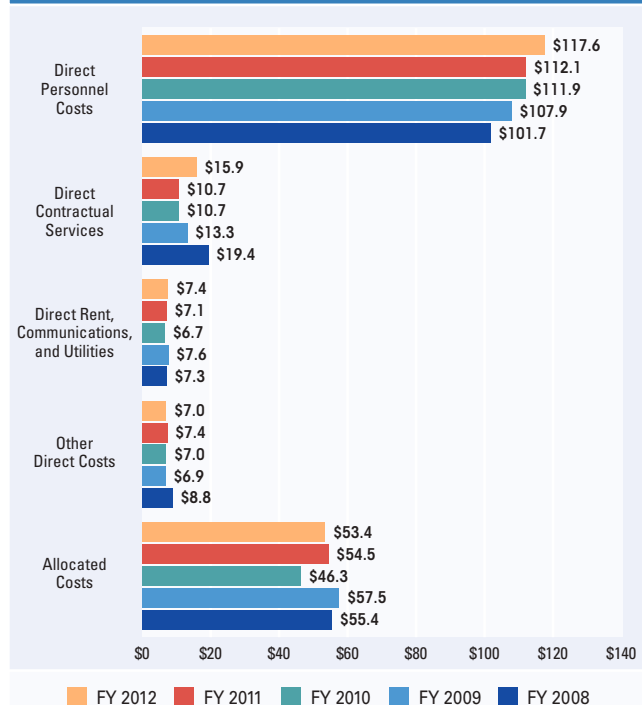
The USPTO directs maximum resources to the priority functions of patent and trademark examination, as well as IP policy, protection, and enforcement worldwide. For FY 2012, costs directly attributable to the Patent, Trademark, and IP protection business areas represent 83.7 percent of total USPTO costs. The remaining costs, representing support costs, are allocated to the business areas using ABC accounting. Allocated costs increased 9.6 percent over the past year in line with increased IT investments.

### Patent

Total costs for the Patent business unit increased \$423.7 million, 25.6 percent, from FY 2008 through FY 2012. The Patent organization's most significant program costs relate to personnel services, and account for 92.5 percent of the increase in total cost of Patent operations during the past four years. Patent personnel costs for the year ended September 30, 2012, were \$1,385.4 million, an increase of \$103.8 million, or 8.1 percent, over FY 2011 personnel





**FY 2012 Patent Cost by Product****FY 2012 Trademark Cost by Product****Patent Costs  
(Dollars in Millions)****Trademark Costs  
(Dollars in Millions)**

costs of \$1,281.6 million. Rent, communications, and utilities, printing and reproduction, and contractual service costs represent 15.4 percent of the Patent program costs for FY 2012. During FY 2008, contractual costs increased in line with the overall increase in Patent costs due to increases in the number of patents issued and increased spending on indexing and scanning documents for the electronic file wrapper, offset by minor decreases to printing and reproduction. From FY 2009 through FY 2011, contractual costs decreased in line with the cost efficiencies implemented agency-wide. During FY 2012, contractual and printing costs increased in line with the overall increase in Patent costs due to increases in the number of patents issued.

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

**Trademark**

Total costs for the Trademark business unit increased \$8.7 million, 4.5 percent, from FY 2008 through FY 2012. The Trademark organization's most significant program costs relate to personnel services,

and account for most of the increase in total cost of Trademark operations during the past four years. This increase of \$15.9 million was offset by other cost increases and decreases. Contractual services have decreased \$3.5 million over the past four years, which represents the majority of the total Trademark cost change over the past four years, as a result of being able to rely more on automated tools, rather than contractors.

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

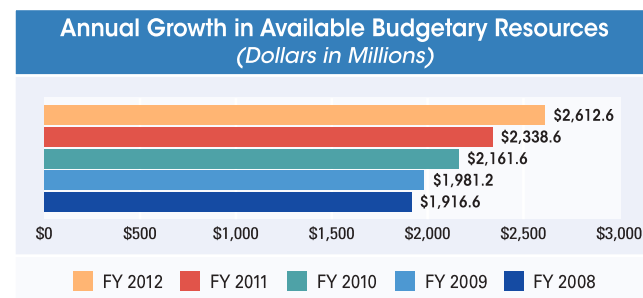
### *Intellectual Property Policy, Protection, and Enforcement Worldwide*

Total costs for IP Protection decreased \$4.0 million, or 9.0 percent, from FY 2008 through FY 2012. The most significant program costs for IP Protection in FY 2012 relate to personnel services, and account for 45.9 percent of the total cost for IP Protection opera-

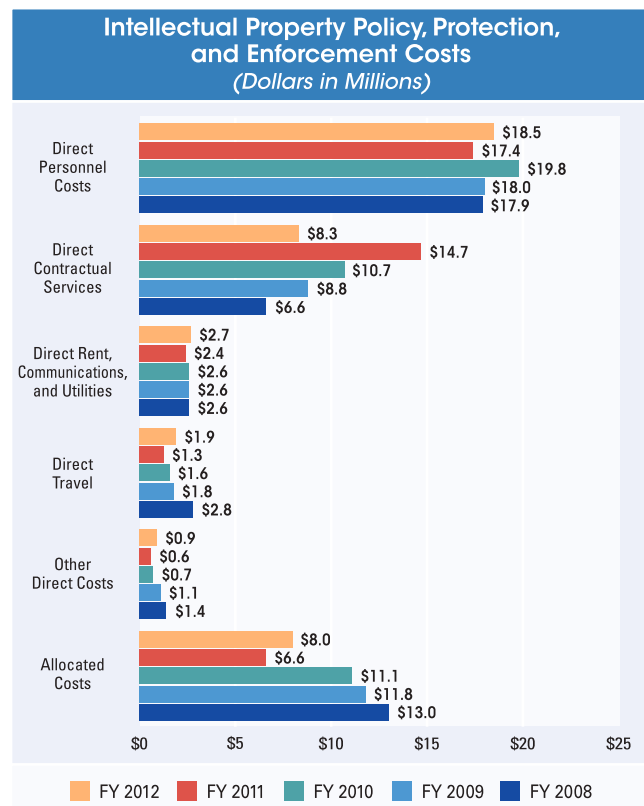
tions. The next largest cost associated with the policy, protection, and enforcement of intellectual property worldwide is contractual services, which include joint project agreements. These costs were incurred in line with the activities discussed on pages 37 to 44.

### **Statement of Budgetary Resources**

During FY 2012, total budgetary resources available for spending was 11.7 percent over the amount available in the preceding year, with a 36.3 percent increase over the past five fiscal years. The increase in budgetary resources available for use is depicted by the graph below.

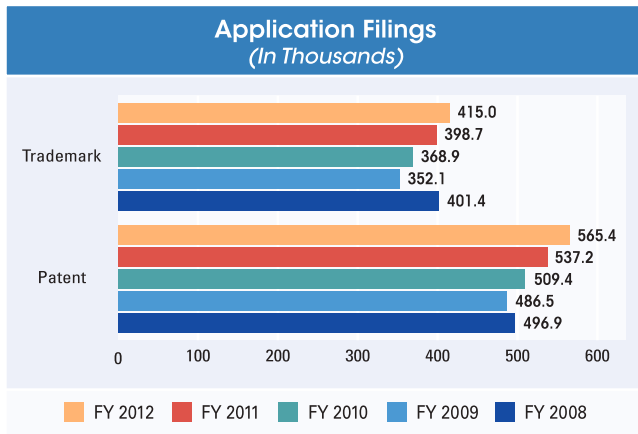


Through FY 2008, the increase in available budgetary resources was used to fund the increased cost of additional human capital to address the backlog of patent applications. In FY 2009, the increase in available budgetary resources minimally covered inflationary increases and was \$200 million less than planned. As a result, budget reductions and cost-savings measures were implemented. However, while fee collections were showing a rebound at the beginning of FY 2010, the USPTO was operating under a smaller appropriation that was based on the FY 2009 financial picture with lower than average fee collections. This was a result of the slower economy and actual collections in FY 2009. The lack of enactment of the 15 percent increase on certain patent fees as proposed in the FY 2011 President's Budget resulted in a FY 2011 appropriation \$241.3 million less than planned and as requested in the FY 2011 President's Budget. In FY 2012, all agency fee collections were available. The increase in available budgetary resources were used to fund the increased cost of additional human capital to increase examination capacity to address the backlog of patent applications, as well as to provide current-year funding for the reinven-



tion of our IT systems from end-to-end. As we are an agency funded entirely by user fees, this affects our operations significantly.

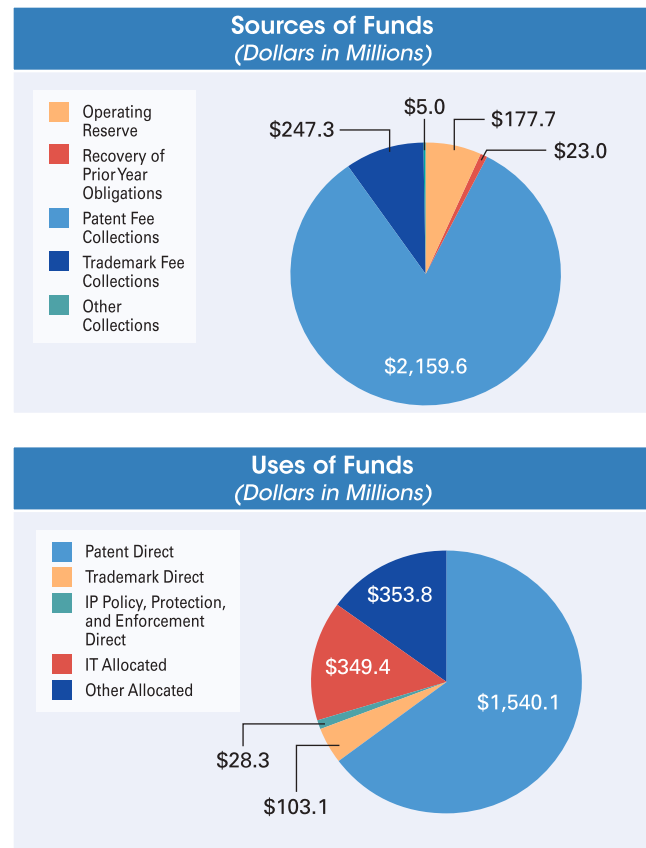
As the economy has begun showing signs of recovering, the Patent and Trademark application filings have also been slowly recovering.



The USPTO was provided appropriation authority to spend anticipated fee collections in FY 2012 for an amount up to \$2,706.3 million. This was more than the amount of total fees collected in FY 2012. A significant portion of the anticipated FY 2012 fee collections were collected in FY 2011 due to early renewals that were paid prior to the implementation of the 15 percent surcharge on September 26, 2011. When spending authority is less than fee collections, the additional fee collections are temporarily unavailable.

The following charts present the source of funds made available to the USPTO in FY 2012, and the use of such funds representing FY 2012 total obligations incurred, as reflect on the Statement of Budgetary Resources.

USPTO operations rely on patent maintenance fees to fund a portion of the work being completed each fiscal year. During FY 2012, maintenance fees collected decreased \$121.4 million, or 14.8 percent, from FY 2011. As maintenance fees are one of the largest sources of budgetary resources and are recognized immediately as earned revenue, any fluctuations in the rates of renewal have a significant impact on the total resources available to the USPTO. To some extent, renewals recoup costs



incurred during the initial patent process. As shown on page 73, the renewal rates for all three stages of maintenance fees decreased during FY 2012. Due to the implementation of the 15 percent fee surcharge on September 26, 2011, the FY 2011 renewal rates include some early renewals that would have otherwise been renewed in FY 2012 (increased FY 2011 renewal rates, but decreased FY 2012 renewal rates).

As defined earlier, temporarily unavailable fee collections occur when the USPTO is not appropriated the authority to spend all fees collected during a given year. During FY 2012, the USPTO did not collect any fee collections that were designated as temporarily unavailable. As a result, the \$790.1 million in temporarily unavailable fee collections at the end of FY 2011 remained the same through FY 2012.

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

<b>Temporarily Unavailable Fee Collections</b> (Dollars in Millions)	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>
Fiscal year fee collections	\$ 1,879.3	\$ 1,874.2	\$ 2,068.5	\$ 2,298.9	\$ 2,406.8
Fiscal year collections appropriated	(1,879.3)	(1,874.2)	(2,016.0)	(2,090.0)	(2,406.8)
Fiscal year unavailable collections	\$ —	\$ —	\$ 52.5	\$ 208.9	\$ —
Prior year collections unavailable	528.7	528.7	528.7	581.2	790.1
Subtotal	\$ 528.7	\$ 528.7	\$ 581.2	\$ 790.1	\$ 790.1
Special fund unavailable receipts	233.5	233.5	233.5	233.5	233.5
Cumulative temporarily unavailable fee collections	\$ 762.2	\$ 762.2	\$ 814.7	\$ 1,023.6	\$ 1,023.6

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

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

### Statement of Cash Flows

The Statements of Cash Flow, while not a required financial statement, are audited and are presented for purposes of additional analysis. The Cash Flow statement records the company's cash transactions (the inflows and outflows) during the given period. The document provides aggregate data regarding all cash inflows received from both its ongoing operations and external investment sources, as well as all cash outflows that pay for business activities and investments during the period. Cash flow is calculated by making certain adjustments to net income/cost by adding or subtracting differences in revenue and expense transactions (appearing on the Balance Sheet and Statement of Net Cost) resulting from transactions that occur from one year to the next. These adjustments are made because non-cash items are included in preparing the net income/cost

(Statement of Net Cost) and total assets and liabilities (Balance Sheet). Since not all transactions involve actual cash items, many items have to be adjusted when calculating cash flow.

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

Historically at the USPTO, cash flow adjustments to operational activities result in an increase to net income. Depreciation and Accrued Payroll, Leave, and Benefits operate similarly, as the accrued expenses that do not affect the cash flow are adjusted for, thereby increasing net income. Deferred revenue is also a significant factor, as the USPTO has received the fees, but not completed all of the work; in a year when the deferred revenue liability decreases, such as FY 2010, net income increases without a corresponding increase in the cash flow; the increase to net income is removed for determining cash flow. Other adjustments are predominantly comprised of changes in accounts payable balances; in a year when the overall liability balance

Composition of USPTO Cash Flow (Dollars in Millions)	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Cash Flow from Operations					
Net Income/(Cost)	\$ (30.4)	\$ (54.8)	\$ 94.7	\$ 88.3	\$ 106.1
Operating Adjustments					
Depreciation	\$ 67.6	\$ 63.3	\$ 59.1	\$ 52.7	\$ 67.9
Accrued Payroll, Leave, and Benefits	25.2	11.1	43.6	47.2	32.9
Deferred Revenue	20.4	(48.2)	(25.9)	71.4	(14.8)
Other Adjustments	11.3	(15.1)	(17.3)	20.0	4.1
Total Adjustments	\$ 124.5	\$ 11.1	\$ 59.5	\$ 191.3	\$ 90.1
Net Cash Provided/(Used) by Operating Activities	\$ 94.1	\$ (43.7)	\$ 154.2	\$ 279.6	\$ 196.2
Net Cash Used in Investing Activities					
Property, Plant, and Equipment	\$ (67.2)	\$ (65.0)	\$ (27.6)	\$ (84.9)	\$ (98.2)
Financing Activities					
Non-Expenditure Transfer	\$ (1.0)	\$ (2.0)	\$ —	\$ —	\$ (1.0)
Accounting Standard Change	—	(11.9)	—	—	—
Net Cash Used in Investing Activities	\$ (1.0)	\$ (13.9)	\$ —	\$ —	\$ (1.0)
Net Cash Provided/(Used)	\$ 25.9	\$ (122.6)	\$ 126.6	\$ 194.7	\$ 97.0

decreases, then a reader can conclude that an increased amount of cash was disbursed, thereby requiring a reduction to net income/cost; alternately, in a year when the overall liability balance increases, a reader can conclude that a lesser amount of cash was disbursed.

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

Adjustments to *financing*-type activities are infrequent at the USPTO. Non-expenditure transfers at the USPTO are the movement of appropriated fee collections to other federal governmental entities, without an impact to net income/cost. In addition, due to the implementation of Statement of Federal Financial

Accounting Standard (SFFAS) 31, *Accounting for Fiduciary Activities*, in FY 2009, the presentation of fiduciary funds were removed from the Balance Sheet and are therefore reflected as a decrease of cash.

### Limitation on Financial Statements

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

### Management Responsibilities

USPTO management is responsible for the fair presentation of information contained in the principal financial statements, in conformity with GAAP, the



requirements of OMB Circular A-136, and guidance provided by the Department of Commerce. Management is also responsible for the fair presentation of the USPTO's performance measures in accordance

with OMB requirements. The quality of the USPTO's internal control rests with management, as does the responsibility for identifying and complying with pertinent laws and regulations.

# Financial Section





# Message from the Chief Financial Officer

**T**his past fiscal year was remarkable, with many challenges and even more opportunities. In spite of the magnitude of change and advancements, I am pleased to report that this fiscal year marks our 20th anniversary for receiving unqualified opinions on the agency's financial statements. Along with the unqualified opinion, this year the auditors reported no material weaknesses in the design and operation of the USPTO's system of internal control over financial reporting. Also, the auditors reported that our financial system complies with federal financial systems requirements. In addition, the Association of Government Accountants awarded the USPTO the Certificate of Excellence in Accountability Reporting for the 10th consecutive year for our *Fiscal Year 2011 Performance and Accountability Report*, as well as the Certificate of Excellence in Citizen-Centric Reporting for our first ever Citizen-Centric Report, clearly demonstrating the USPTO's excellence in integrating performance and accountability reporting.

In our **2010 – 2015 Strategic Plan**, the USPTO set forth the ambitious goal of establishing a sustainable funding model. This funding model is designed to be agile and employ a tolerance for variables and the inherent uncertainty associated with forecasting workload demand, operations requirements, and



resulting revenue estimates, while also providing the resources necessary to execute on the performance goals and plans.

We continue to make considerable progress towards achieving a sustainable funding model. The AIA, which was enacted at the end of FY 2011, granted the USPTO the authority to set its fees by rule. The AIA also authorized the USPTO to implement a 15 percent surcharge on most patent fees as an interim step to provide a

bridge for necessary resources until the agency exercises its fee setting authority and develops a new fee structure that better aligns USPTO's revenue with the cost of operations over the long term.

Using our new fee setting authority, the USPTO has developed a revised patent fee structure, scheduled to be implement in spring of 2013. This updated fee structure has been designed to ensure that the agency generates sufficient patent revenue to recover our patent operating costs, as well as to further key policy considerations, such as fostering innovation and offering patent prosecution options to our stakeholders.

Throughout the fee setting process, the USPTO has demonstrated its commitment to transparency. The GAO has commended the agency on its fee

setting process, recognized our efforts at communicating with stakeholders, and encouraged the USPTO to build on these successes in the future. We have actively engaged with the PPAC and stakeholders to solicit feedback on the patent fee structure. A preliminary proposed patent fee structure was delivered to PPAC, released to the public, and discussed during two public hearings held by the PPAC in February. Subsequently, the Office considered comments and incorporated changes suggested by the PPAC and the public in the fee setting NPRM published in the Federal Register in September.

The AIA was a major milestone in helping the USPTO to achieve financial stability. However, we are ever cognizant of the need to balance the agency's tremendous opportunities for growth and improvement against its challenges and risks associated with operating in an environment of numerous unknowns and uncertainties. Looking ahead, there are many variables that we cannot predict—changes in the fiscal climate; fluctuations in demand for USPTO's services; and continued turbulence in economic conditions. As such, the agency is committed to smart, scalable growth that allows us to continually make adjustments and course corrections, which will enable us to achieve our goals without putting the financial and operational health of the USPTO unnecessarily at risk.

We are also mindful of the added responsibility that comes with fee setting authority. More than ever the agency is operating with an eye toward efficiency, cost-consciousness, and improved service and accountability. In the financial management area, this is translating into efforts to enhance outreach and transparency around our FPNG initiative, which aims to improve our stakeholders' payment experience. We're also looking to facilitate USPTO's mission success by improving our service to internal stake-

holders through efforts to provide more meaningful financial analysis to decision-makers and to improve the acquisition process with a focus on instilling a customer-centric service culture.

In addition, our financial management team helped to manage the many challenges of planning, funding, procuring, staffing, monitoring, and ensuring continued operations at the agency's first-ever satellite office, which opened in Detroit, Michigan in July 2012. These challenges were met successfully, and this experience will inform the agency's approach as we look to open the agency's next three satellite offices around the country in upcoming fiscal years.

Our talented and committed employees continue to display great dedication toward producing a high standard of financial management at the USPTO. Our employees approach challenges as future rewards, both for the agency and for themselves. We look to the future with confidence, as we continue to support the strategic direction of the USPTO by working as a trusted partner within the organization and providing sound advice to enable informed program and financial decision-making.



Anthony P. Scardino  
Chief Financial Officer  
November 7, 2012



# Principal Financial Statements and Related Notes



Members of the FY 2012 Performance and Accountability Report Team. *From top left:* Arva Adams, Mark Krieger; *second row:* Roger Williams, Shana Willard; *third row:* Walter Schlueter, Jennifer Jacobs, Dennis Detar; *front:* Karen Strohecker, Cheron Green, Patrick Ross.



## United States Patent and Trademark Office

### Consolidated Balance Sheets

As of September 30, 2012 and 2011

(Dollars in Thousands)	2012	2011
<b>ASSETS</b>		
Intragovernmental:		
Fund Balance with Treasury (Note 2)	\$ 1,726,955	\$ 1,631,206
Accounts Receivable (Note 3)	36	296
Other Assets - Advances and Prepayments (Note 6)	2,450	2,053
Total Intragovernmental	1,729,441	1,633,555
Cash (Note 4)	4,331	3,091
Accounts Receivable, Net (Note 3)	715	138
Property, Plant, and Equipment, Net (Note 5)	236,980	206,628
Other Assets - Advances and Prepayments (Note 6)	10,656	10,085
Total Assets	\$ 1,982,123	\$ 1,853,497
<b>LIABILITIES</b>		
Intragovernmental:		
Accounts Payable	\$ 5,866	\$ 5,631
Accrued Payroll and Benefits	16,969	15,247
Accrued Workers' and Unemployment Compensation	1,822	1,869
Customer Deposit Accounts (Note 7)	5,977	6,170
Total Intragovernmental	30,634	28,917
Accounts Payable	69,320	80,009
Accrued Payroll and Benefits	117,489	111,903
Accrued Leave	82,906	76,806
Customer Deposit Accounts (Note 7)	115,736	99,414
Deferred Revenue (Note 9)	830,955	845,782
Actuarial Liability (Note 10)	8,209	8,406
Total Liabilities (Note 8)	\$ 1,255,249	\$ 1,251,237
<b>NET POSITION</b>		
Cumulative Results of Operations – Earmarked Funds (Note 14)	\$ 726,874	\$ 602,260
Total Net Position	\$ 726,874	\$ 602,260
Total Liabilities and Net Position	\$ 1,982,123	\$ 1,853,497

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

## United States Patent and Trademark Office

### Consolidated Statements of Net Cost

For the years ended September 30, 2012 and 2011

(Dollars in Thousands)	2012	2011
<b>Strategic Goal 1: Optimize Patent Quality and Timeliness</b>		
Total Program Cost	\$ 2,079,357	\$ 1,913,354
Total Program Earned Revenue	(2,180,532)	(2,005,269)
Net Program Income	(101,175)	(91,915)
<b>Strategic Goal 2: Optimize Trademark Quality and Timeliness</b>		
Total Program Cost	201,307	191,760
Total Program Earned Revenue	(246,550)	(231,105)
Net Program Income	(45,243)	(39,345)
<b>Strategic Goal 3: Provide Domestic and Global Leadership to Improve Intellectual Property Policy, Protection and Enforcement Worldwide</b>		
Total Program Cost	40,283	42,983
Net Income from Operations (Notes 14 and 15)	\$ (106,135)	\$ (88,277)
<b>TOTAL ENTITY</b>		
Total Program Cost (Notes 16 and 17)	\$ 2,320,947	\$ 2,148,097
Total Earned Revenue	(2,427,082)	(2,236,374)
Net Income from Operations (Notes 14 and 15)	\$ (106,135)	\$ (88,277)

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

## United States Patent and Trademark Office

### Consolidated Statements of Changes in Net Position

For the years ended September 30, 2012 and 2011

(Dollars in Thousands)	2012	2011
	Earmarked Funds	Earmarked Funds
<b>CUMULATIVE RESULTS OF OPERATIONS</b>		
Beginning Balances	\$ 602,260	\$ 492,305
Budgetary Financing Sources:		
Transfers Out Without Reimbursement	(1,000)	—
Other Financing Sources:		
Imputed Financing	19,479	21,678
Total Financing Sources	18,479	21,678
Net Income from Operations	106,135	88,277
Net Change	124,614	109,955
Cumulative Results of Operations	\$ 726,874	\$ 602,260
Net Position, End of Year	\$ 726,874	\$ 602,260

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

## United States Patent and Trademark Office

### Combined Statements of Budgetary Resources

For the years ended September 30, 2012 and 2011

(Dollars in Thousands)	2012	2011
<b>BUDGETARY RESOURCES</b>		
Unobligated Balance - Brought Forward, October 1	\$ 177,705	\$ 222,674
Recoveries of Prior Year Unpaid Obligations	23,026	15,165
Spending Authority from Offsetting Collections (discretionary)	2,411,896	2,100,761
Total Budgetary Resources	\$ 2,612,627	\$ 2,338,600
<b>STATUS OF BUDGETARY RESOURCES</b>		
Obligations Incurred	\$ 2,374,755	\$ 2,160,895
Unobligated Balance, End of Year:		
Apportioned	237,872	177,705
Total Status of Budgetary Resources	\$ 2,612,627	\$ 2,338,600
<b>CHANGE IN OBLIGATED BALANCE</b>		
Unpaid Obligations:		
Unpaid Obligations, Brought Forward, October 1	\$ 325,328	\$ 297,047
Obligations Incurred	2,374,754	2,160,895
Gross Outlays	(2,332,263)	(2,117,449)
Recoveries of Prior Year Unpaid Obligations	(23,026)	(15,165)
Unpaid Obligations, End of Year	\$ 344,793	\$ 325,328
Uncollected Payments:		
Uncollected Customer Payments from Federal Sources, Brought Forward, October 1	\$ (298)	\$ 277
Change in Uncollected Customer Payments from Federal Sources	261	(575)
Uncollected Customer Payments from Federal Sources, End of Year	\$ (37)	\$ (298)
Memorandum (non-add) entries:		
Obligated Balance, Net, Start of Year	\$ 325,030	\$ 297,324
Obligated Balance, Net, End of Year	\$ 344,756	\$ 325,030
<b>BUDGET AUTHORITY AND NET OUTLAYS</b>		
Budget Authority, Gross (discretionary)	\$ 2,411,896	\$ 2,100,761
Actual Offsetting Collections (discretionary)	(2,413,157)	(2,309,042)
Change in Uncollected Customer Payments from Federal Sources (discretionary)	261	(575)
Budget Authority, Net (discretionary)	\$ (1,000)	\$ (208,856)
Gross Outlays (discretionary)	\$ 2,332,263	\$ 2,117,449
Actual Offsetting Collections (discretionary)	(2,413,157)	(2,309,042)
Net Collections (discretionary)	\$ (80,894)	\$ (191,593)

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

# United States Patent and Trademark Office

## Consolidated Statements of Cash Flows (Indirect Method)

For the years ended September 30, 2012 and 2011

(Dollars in Thousands)	2012	2011
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Net Income from Operations	\$ 106,135	\$ 88,277
Adjustments Affecting Cash Flow:		
Imputed Financing from Cost Absorbed by Others	19,479	21,678
(Increase)/Decrease in Accounts Receivable	(317)	324
(Increase)/Decrease in Advances and Prepayments	(968)	1,029
(Decrease)/Increase in Accounts Payable	(10,454)	15,526
Increase in Accrued Payroll and Benefits	7,308	19,703
Increase in Accrued Leave and Workers' and Unemployment Compensation	6,053	5,779
Increase in Customer Deposit Accounts	16,129	3,280
(Decrease)/Increase in Deferred Revenue	(14,827)	71,394
Decrease in Contingent Liability	—	(200)
(Decrease)/Increase in Actuarial Liability	(197)	107
Depreciation, Amortization, or Loss on Asset Dispositions	67,900	52,695
Total Adjustments	90,106	191,315
Net Cash Provided by Operating Activities	196,241	279,592
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Purchases of Property and Equipment	(98,252)	(84,926)
Net Cash Used in Financing Activities	(98,252)	(84,926)
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
Transfers Out Without Reimbursement	(1,000)	—
Net Cash Used in Financing Activities	(1,000)	—
Net Cash Provided by Operating, Investing, and Financing Activities	\$ 96,989	\$ 194,666
Fund Balance with Treasury and Cash, Beginning of Year	\$ 1,634,297	\$ 1,439,631
Net Cash Provided by Operating, Investing, and Financing Activities	96,989	194,666
Fund Balance with Treasury and Cash, End of Year	\$ 1,731,286	\$ 1,634,297

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



## United States Patent and Trademark Office

# Notes To Financial Statements

As of and for the years ended September 30, 2012 and 2011

### NOTE 1. Summary of Significant Accounting Policies

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#### Reporting Entity

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

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

These financial statements report the accounts for salaries and expenses (13X1006), fee reserve fund (13X1008), special fund receipts (135127), customer deposits from the public and other federal agencies (13X6542), Patent Cooperation Treaty collections (13X6538), and the Madrid Protocol Collections (13X6554) that are under the control of the USPTO. The federal budget classifies the USPTO under the Other Advancement of Commerce (376) budget function. The USPTO does not have lending or borrowing authority. The USPTO does not transact business among its own operating units, and therefore, no intra-entity eliminations are necessary.

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

#### Basis of Presentation

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

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

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

Allocation transfers are legal delegations by one department of its authority to obligate budget authority and outlay funds to another department. A separate fund account (allocation account) is

## NOTE 1. Summary of Significant Accounting Policies *(continued)*

created in the U.S. Treasury as a subset of the parent fund account for tracking and reporting purposes. All allocation transfers of balances are credited to this account, and subsequent obligations and outlays incurred by the child entity are charged to this allocation account as they execute the delegated activity on behalf of the parent entity.

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

### Reclassifications

In FY 2012, changes to the presentation of the Combined Statements of Budgetary Resources were made, in accordance with guidance provided in OMB Circular A-136 and as such, activity and balances reported on the FY 2011 Combined Statement of Budgetary Resources have been reclassified to conform to the presentation in the current year. Certain prior year balances were reclassified to conform with current year presentation.

### Basis of Accounting

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

### Earmarked Funds

Statement of Federal Financial Accounting Standard (SFFAS) 27, *Identifying and Reporting Earmarked Funds*, requires separate identification of the earmarked funds on the *Consolidated Balance Sheets* (Net Position section), *Consolidated*

*Statements of Changes in Net Position*, and further disclosures in Note 14.

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

### Fiduciary Activities

SFFAS 31, *Accounting for Fiduciary Activities*, requires that fiduciary activities not be recognized on the financial statements, but reported on schedules in the notes to the financial statements. Additional details are provided in Note 20.

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

### Use of Estimates

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

### Revenue and Other Financing Sources

*Exchange Revenue:* The USPTO's fee rates are established by law and, consequently, in some instances may not represent full cost or market

## NOTE 1. Summary of Significant Accounting Policies *(continued)*

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

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

*Imputed Financing Sources from Cost Absorbed by Others (and Related Imputed Costs):* In certain cases, operating costs of the USPTO are paid for in full or in part by funds appropriated to other federal entities. For example, Civil Service Retirement System (CSRS) pension benefits for applicable USPTO employees are paid for in part by the U.S. Office of Personnel Management (OPM), and certain legal judgments against the Department are paid for in full from the Judgment Fund maintained by Treasury. Also, the cost of collections for the USPTO are paid for in full by Treasury. The USPTO includes applicable Imputed Costs on the *Consolidated Statements of Net Cost*. In addition, an Imputed Financing Source from Cost Absorbed by Others is recognized on the *Consolidated Statements of Changes in Net Position*.

*Transfers Out:* Intragovernmental transfers of budget authority without reimbursement are recorded at book value.

### Entity/Non-Entity

Assets that an entity is authorized to use in its operations are termed entity assets, while assets that are held by an entity and are not available for the entity's use are termed non-entity assets. Most of the USPTO's

assets are entity assets and are available to carry out the mission of the USPTO, as appropriated by Congress, with the exception of a portion of the Fund Balance with Treasury and cash. Additional details are provided in Note 7.

### Fund Balance with Treasury

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

### Accounts Receivable

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

The USPTO has written off, but not closed out, certain accounts receivables that are considered not collectible. These offsets are established for receivables older than two years with little or no collection activity that have been transferred to Treasury, subsequently adjusting the gross amount of its employee-related accounts receivable to the net realizable value. The USPTO regards all of the intergovernmental receivables balances as fully collectable.

## NOTE 1. Summary of Significant Accounting Policies *(continued)*

### Advances and Prepayments

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

### Cash

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

### Property, Plant, and Equipment, Net

The USPTO's capitalization policies are summarized below:

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

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

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

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

### Workers' Compensation

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

### Unemployment Compensation

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

### Annual, Sick, and Other Leave

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

## NOTE 1. Summary of Significant Accounting Policies *(continued)*

### Employee Retirement Systems and Post-Employment Benefits

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

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

For the years ended September 30, 2012 and 2011, the USPTO made current year contributions through agency payroll contributions and quarterly supplemental payments to OPM equivalent to approximately 19.0 percent and 18.8 percent of the employee's basic pay for those employees covered by CSRS, based on OPM cost factors. For the years ended September 30, 2012 and 2011, the USPTO made current year contributions through agency payroll contributions equivalent to approximately 11.9 percent and 11.7 percent of the employee's basic pay for those employees covered by FERS, based on OPM cost factors, respectively. As contribution funding increases, imputed costs will correspondingly decrease.

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

### Deferred Revenue

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



## NOTE 1. Summary of Significant Accounting Policies *(continued)*

The percent incomplete based on the inventory of pending work and completion status is applied to fee collections to estimate the amount for deferred revenue. Determining completion status is a difficult process. The components of the liability can be found in Note 9.

### Net Position

Net Position is the residual difference between assets and liabilities, and is composed of Cumulative Results of Operations.

Cumulative Results of Operations is the net result of the USPTO's operations since inception.

### Environmental Cleanup

The USPTO does not have liabilities for environmental cleanup.

## NOTE 2. Fund Balance with Treasury

As of September 30, 2012 and 2011, Fund Balance with Treasury consisted of the following:

<b>(Dollars in Thousands)</b>	<b>2012</b>	<b>2011</b>
Fund Balances by Treasury Fund Type:		
Special Funds	\$ 233,529	\$ 233,529
General Funds	1,372,713	1,292,820
Deposit Funds	120,713	104,857
Total Fund Balance with Treasury	\$ 1,726,955	\$ 1,631,206
Status of Fund Balance with Treasury:		
Obligated Balance Not Yet Disbursed	\$ 344,756	\$ 325,030
Unobligated Balance Available	237,872	177,705
Temporarily Not Available Pursuant to Public Law	790,085	790,085
Non-Budgetary Fund Balance with Treasury	354,242	338,386
Total Fund Balance with Treasury	\$ 1,726,955	\$ 1,631,206

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

To help smooth the impact of economic downturns on operations and to help mitigate funding uncertainty, the USPTO has been reserving a portion of the amount Congress makes available annually through appropriations as a designated operating reserve that will be carried over for use in future years. This is allowable because USPTO is appropriated no-year funds. The Unobligated Balance Available amount above is the agency operating reserve. As of September 30, 2012, the Patent operating reserve was \$111,749 thousand and the Trademark operating reserve was \$126,123 thousand. As of September 30, 2011, the Patent operating reserve was \$74,443 thousand and the Trademark operating reserve was \$103,262 thousand.

As of September 30, 2012 and 2011, the Non-Budgetary Fund Balance with Treasury includes surcharge receipts of \$233,529 thousand and non-entity customer deposit accounts of \$120,713 thousand and \$104,857 thousand, respectively.

## NOTE 3. Accounts Receivable, Net

As of September 30, 2012, USPTO accounts receivables consisted of the following:

<b>(Dollars in Thousands)</b>		<b>2012</b>	
	<b>Accounts Receivable, Gross</b>	<b>Allowance for Uncollectible Accounts</b>	<b>Accounts Receivable, Net</b>
Intragovernmental	\$ 36	\$ —	\$ 36
With the Public	\$ 866	\$ (151)	\$ 715

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

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

## NOTE 4. Cash

As of September 30, 2012 and 2011, cash consisted of the following:

<b>(Dollars in Thousands)</b>	<b>2012</b>	<b>2011</b>
Deposits in Transit	\$ 3,943	\$ 2,790
Undeposited Collections	388	301
Total	\$ 4,331	\$ 3,091

## NOTE 5. Property, Plant, and Equipment, Net

As of September 30, 2012, property, plant, and equipment, net consisted of the following:

<b>(Dollars in Thousands)</b>				
<b>Classes of Property, Plant, and Equipment</b>	<b>Service Life (Years)</b>	<b>Acquisition Value</b>	<b>Accumulated Depreciation/ Amortization</b>	<b>Net Book Value</b>
IT Equipment	3-5	\$ 381,368	\$ 276,265	\$ 105,103
Software	3-5	316,218	278,010	38,208
Software in Progress	—	29,536	—	29,536
Furniture	5-7	15,317	12,996	2,321
Equipment	3-8	10,809	10,499	310
Leasehold Improvements	5-20	101,785	40,283	61,502
Total Property, Plant, and Equipment		\$ 855,033	\$ 618,053	\$ 236,980

## NOTE 5. Property, Plant, and Equipment, Net *(continued)*

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

**(Dollars in Thousands)**

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

## NOTE 6. Other Assets

As of September 30, 2012 and 2011, other assets consisted of the following:

<b>(Dollars in Thousands)</b>	<b>2012</b>	<b>2011</b>
Intragovernmental		
Advances and Prepayments	\$ 2,450	\$ 2,053
With the Public		
Advances and Prepayments	10,656	10,085
Total	\$ 13,106	\$ 12,138

The largest governmental prepayments include the USPTO deposit accounts held with the U.S. Government Printing Office (GPO) to facilitate recurring transactions, the U.S. Postal Service for postage, and the Department of Commerce for centralized services. Deposit accounts held with the GPO as of September 30, 2012 and 2011 were \$401 thousand and \$750 thousand, respectively. Deposit accounts held with the U.S. Postal Service as of September 30, 2012 and 2011 were \$993 thousand and \$576 thousand, respectively. Deposit accounts held with the Department of Commerce as of September 30, 2012 and 2011 were \$1,056 thousand and \$727 thousand, respectively.

The largest prepayments with the public as of September 30, 2012 and 2011 were \$6,982 thousand and \$5,898 thousand, respectively, for various hardware and software maintenance agreements; \$1,569 thousand and \$1,201 thousand, respectively, for various library and online database subscriptions; and \$2,081 thousand and \$2,871 thousand, respectively, for various joint project agreements with the National Inventors Hall of Fame, the International Intellectual Property Institute, the World Intellectual Property Organization (WIPO), the Light Years IP, the Innovators Network Foundation, the Girl Scout Council of the Nation's Capital, and the Institute for Policy Innovation. Travel advances to personnel as of September 30, 2012 and 2011 were \$1 thousand and \$2 thousand, respectively.

## NOTE 7. Entity and Non-Entity Assets

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

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

As of September 30, 2012 and 2011, entity and non-entity assets consisted of the following:

<b>(Dollars in Thousands)</b>	<b>2012</b>	<b>2011</b>
Fund Balance with Treasury:		
Intragovernmental Deposit Accounts	\$ 5,977	\$ 6,170
Customer Deposit Accounts with the Public	114,736	98,687
Total Fund Balance with Treasury	120,713	104,857
Cash:		
Customer Deposit Accounts with the Public	1,000	727
Total Non-Entity Assets	121,713	105,584
Total Entity Assets	1,860,410	1,747,913
Total Assets	\$ 1,982,123	\$ 1,853,497

## NOTE 8. Liabilities Covered and Not Covered by Budgetary Resources

The USPTO records liabilities for amounts that are likely to be paid as the direct result of events that have already occurred. The USPTO considers liabilities covered by three types of resources: realized budgetary resources; unrealized budgetary resources that become available without further Congressional action; and cash and Fund Balance with Treasury. Realized budgetary resources include obligated balances funding existing liabilities and unobligated balances (operating reserve) as of September 30, 2012. Unrealized budgetary resources are amounts that were not available for spending through September 30, 2012, but become available for spending on October 1, 2012 once apportioned by the OMB. In addition, cash and Fund Balance with Treasury cover liabilities that will never require the use of a budgetary resource. These liabilities consist of deposit accounts, refunds payable to customers for fee overpayments, and undeposited collections.

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

As of September 30, 2012 and 2011, liabilities covered and not covered by budgetary resources were as follows:

**NOTE 8. Liabilities Covered and Not Covered by Budgetary Resources** *(continued)*

<b>(Dollars in Thousands)</b>	<b>2012</b>	<b>2011</b>
Liabilities Covered by Resources		
Intragovernmental:		
Accounts Payable	\$ 5,866	\$ 5,631
Accrued Payroll and Benefits	16,969	15,247
Accrued Unemployment Compensation	7	79
Customer Deposit Accounts	5,977	6,170
Total Intragovernmental	28,819	27,127
Accounts Payable	69,320	79,923
Accrued Payroll and Benefits	78,038	70,900
Customer Deposit Accounts	115,736	99,414
Deferred Revenue	238,127	178,006
Total Liabilities Covered by Resources	\$ 530,040	\$ 455,370
Liabilities Not Covered by Resources		
Intragovernmental:		
Accrued Workers' Compensation	\$ 1,815	\$ 1,790
Total Intragovernmental	1,815	1,790
Accounts Payable	—	86
Accrued Payroll and Benefits	39,451	41,003
Accrued Leave	82,906	76,806
Deferred Revenue	592,828	667,776
Actuarial Liability	8,209	8,406
Total Liabilities Not Covered by Resources	\$ 725,209	\$ 795,867
Total Liabilities	\$ 1,255,249	\$ 1,251,237

**NOTE 9. Deferred Revenue**

As of September 30, 2012, deferred revenue consisted of the following:

<b>(Dollars in Thousands)</b>	<b>Patent</b>	<b>Trademark</b>	<b>Total</b>
Unearned Fees	\$ 764,323	\$ 66,244	\$ 830,567
Undeposited Checks	348	40	388
Total Deferred Revenue	\$ 764,671	\$ 66,284	\$ 830,955

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

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



## NOTE 10. Actuarial Liability

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

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

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

2012	2011
2.29% in year 1, 3.14% in year 2, and thereafter	3.54% in year 1, 4.03% in year 2, and thereafter

Based on information provided by the DOL, the U.S. Department of Commerce estimated the USPTO's liability as of September 30, 2012 and 2011 was \$8,209 thousand and \$8,406 thousand, respectively.

## NOTE 11. Leases

### Operating Leases:

The General Services Administration (GSA) negotiates long-term office space leases and levies rent charges, paid by the USPTO, approximate to commercial rental rates. These operating lease agreements for the USPTO's office buildings expire at various dates between FY 2014 and FY 2024. During the years ended September 30, 2012 and 2011, the USPTO paid \$94,795 thousand and \$89,762 thousand, respectively, to the GSA for rent.

Under existing commitments, the future minimum lease payments as of September 30, 2012 are as follows:

Fiscal Year	(Dollars in Thousands)
2013	\$ 67,699
2014	66,366
2015	65,593
2016	64,284
2017	63,185
Thereafter	392,034
Total Future Minimum Lease Payments	\$ 719,161

## NOTE 11. Leases *(continued)*

The commitments shown above relate primarily to the operating lease for the USPTO headquarters in Alexandria, Virginia, beginning in FY 2004 and extending to FY 2024. The operating lease commitments for the USPTO offices in Shirlington, Virginia; Detroit, Michigan; and Denver, Colorado are also included above. The operating leases in Shirlington, Virginia and Detroit, Michigan will expire in FY 2019 and FY 2022, respectively. The new operating lease in Denver, Colorado will begin in FY 2014 and will expire in FY 2024.

## NOTE 12. Commitments and Contingencies

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

As of September 30, 2012, management expects it is reasonably possible that approximately \$5,600 thousand may be owed for awards or damages involving labor relations claims. As of September 30, 2011, management expects it is reasonably possible that approximately \$83,726 thousand may be owed for awards or damages involving labor relations claims.

As of September 30, 2012 and 2011, the USPTO was not subject to any suits where adverse outcomes are probable.

For the years ended September 30, 2012 and 2011, the USPTO was not required to make any payments to the Judgment Fund.

As of September 30, 2012 and 2011, the USPTO did not have any major long-term commitments.

## NOTE 13. Post-employment Benefits

For the years ended September 30, 2012 and 2011, the post-employment benefit expenses were as follows:

(Dollars in Thousands)	2012			2011		
	Funded	Imputed	Total	Funded	Imputed	Total
CSRS	\$ 11,599	\$ 2,273	\$ 13,872	\$ 12,446	\$ 2,801	\$ 15,247
FERS	122,660	10,378	133,038	112,076	12,890	124,966
FEHB	50,582	4,152	54,734	51,387	3,233	54,620
FEGLI	183	—	183	172	—	172
FICA	78,223	—	78,223	71,170	—	71,170
Total Cost	\$ 263,247	\$ 16,803	\$ 280,050	\$ 247,251	\$ 18,924	\$ 266,175

## NOTE 14. Earmarked Funds

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

The following tables provide the status of the USPTO's earmarked funds as of and for the years ended September 30, 2012 and 2011.

<b>(Dollars in Thousands)</b>	<b>Salaries and Expenses Fund</b>	<b>Surcharge Fund</b>	<b>Total Earmarked Funds</b>
<b>Balance Sheet as of September 30, 2012</b>			
Fund Balance with Treasury	\$ 1,372,713	\$ 233,529	\$ 1,606,242
Cash	3,331	—	3,331
Accounts Receivable, Net	751	—	751
Other Assets	250,086	—	250,086
<b>Total Assets</b>	<b>\$ 1,626,881</b>	<b>\$ 233,529</b>	<b>\$ 1,860,410</b>
<b>Total Liabilities</b>	<b>\$ 1,133,536</b>	<b>\$ —</b>	<b>\$ 1,133,536</b>
Cumulative Results of Operations	493,345	233,529	726,874
<b>Total Liabilities and Net Position</b>	<b>\$ 1,626,881</b>	<b>\$ 233,529</b>	<b>\$ 1,860,410</b>
<b>Statement of Net Cost For the Year Ended September 30, 2012</b>			
Total Program Cost	\$ 2,320,947	\$ —	\$ 2,320,947
Less Program Earned Revenue	(2,427,082)	—	(2,427,082)
<b>Net Income from Operations</b>	<b>\$ (106,135)</b>	<b>\$ —</b>	<b>\$ (106,135)</b>
<b>Statement of Changes in Net Position For the Year Ended September 30, 2012</b>			
Net Position, Beginning of Year	\$ 368,731	\$ 233,529	\$ 602,260
Budgetary Financing Sources:			
Transfers Out Without Reimbursement	(1,000)	—	(1,000)
Other Financing Sources:			
Imputed Financing	19,479	—	19,479
Net Income from Operations	106,135	—	106,135
<b>Change in Net Position</b>	<b>124,614</b>	<b>—</b>	<b>124,614</b>
<b>Net Position, End of Year</b>	<b>\$ 493,345</b>	<b>\$ 233,529</b>	<b>\$ 726,874</b>

**NOTE 14. Earmarked Funds** *(continued)*

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

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

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

## NOTE 15. Intragovernmental Costs and Exchange Revenue

Total intragovernmental costs and exchange revenue, by Strategic Goal, for the years ended September 30, 2012 and 2011 were as follows:

(Dollars in Thousands)		2012			
	Patent	Trademark	Intellectual Property Protection	Total	
Strategic Goal 1: Optimize Patent Quality and Timeliness					
Intragovernmental Gross Cost	\$ 433,079	\$ —	\$ —	\$ 433,079	
Gross Cost with the Public	1,646,278	—	—	1,646,278	
Total Program Cost	2,079,357	—	—	2,079,357	
Intragovernmental Earned Revenue	(7,434)	—	—	(7,434)	
Earned Revenue from the Public	(2,173,098)	—	—	(2,173,098)	
Total Program Earned Revenue	(2,180,532)	—	—	(2,180,532)	
Net Program Income	\$ (101,175)	\$ —	\$ —	\$ (101,175)	
Strategic Goal 2: Optimize Trademark Quality and Timeliness					
Intragovernmental Gross Cost	\$ —	\$ 41,927	\$ —	\$ 41,927	
Gross Cost with the Public	—	159,380	—	159,380	
Total Program Cost	—	201,307	—	201,307	
Intragovernmental Earned Revenue	—	(389)	—	(389)	
Earned Revenue from the Public	—	(246,161)	—	(246,161)	
Total Program Earned Revenue	—	(246,550)	—	(246,550)	
Net Program Income	\$ —	\$ (45,243)	\$ —	\$ (45,243)	
Strategic Goal 3: Provide Domestic and Global Leadership to Improve Intellectual Property Policy, Protection and Enforcement Worldwide					
Intragovernmental Gross Cost	\$ —	\$ —	\$ 8,390	\$ 8,390	
Gross Cost with the Public	—	—	31,893	31,893	
Total Program Cost	—	—	40,283	40,283	
Net (Income)/Cost from Operations	\$ (101,175)	\$ (45,243)	\$ 40,283	\$ (106,135)	
Total Entity					
Total Program Cost (Notes 16 and 17)	\$ 2,079,357	\$ 201,307	\$ 40,283	\$ 2,320,947	
Total Earned Revenue	(2,180,532)	(246,550)	—	(2,427,082)	
Net (Income)/Cost from Operations	\$ (101,175)	\$ (45,243)	\$ 40,283	\$ (106,135)	



**NOTE 15. Intragovernmental Costs and Exchange Revenue** *(continued)*

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

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

## NOTE 16. Program Costs

Program costs consist of both costs related directly to the individual business lines and overall support costs allocated to the business lines. All costs are assigned to specific programs. Total program or operating costs for the years ended September 30, 2012 and 2011 by cost category were as follows:

(Dollars in Thousands)	2012		
	Direct	Allocated	Total
Personnel Services and Benefits	\$ 1,521,472	\$ 104,879	\$ 1,626,351
Travel and Transportation	2,758	757	3,515
Rent, Communications, and Utilities	87,427	33,045	120,472
Printing and Reproduction	97,653	347	98,000
Contractual Services	168,506	142,240	310,746
Training	746	1,670	2,416
Maintenance and Repairs	3,766	41,650	45,416
Supplies and Materials	35,051	1,342	36,393
Equipment not Capitalized	3,566	6,073	9,639
Insurance Claims and Indemnities	10	89	99
Depreciation, Amortization, or Loss on Asset Dispositions	20,538	47,362	67,900
Total Program Costs	\$ 1,941,493	\$ 379,454	\$ 2,320,947

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

The unfunded portion of personnel services and benefits for the years ended September 30, 2012 and 2011 was \$4,374 thousand and \$10,638 thousand, respectively.

## NOTE 17. Program Costs by Category and Responsibility Segment

The program costs for the years ended September 30, 2012 and 2011 by cost category and business line were as follows:

(Dollars in Thousands)	2012			
	Patent	Trademark	Intellectual Property Protection	Total
Direct Costs				
Personnel Services and Benefits	\$ 1,385,426	\$ 117,596	\$ 18,450	\$ 1,521,472
Travel and Transportation	790	97	1,871	2,758
Rent, Communications, and Utilities	77,339	7,391	2,697	87,427
Printing and Reproduction	97,547	99	7	97,653
Contractual Services	144,366	15,866	8,274	168,506
Training	289	418	39	746
Maintenance and Repairs	2,987	600	179	3,766
Supplies and Materials	33,487	1,172	392	35,051
Equipment not Capitalized	2,890	475	201	3,566
Insurance Claims and Indemnities	10	—	—	10
Depreciation, Amortization, or Loss on Asset Dispositions	16,193	4,200	145	20,538
Subtotal Direct Costs	\$ 1,761,324	\$ 147,914	\$ 32,255	\$ 1,941,493
Allocated Costs				
Automation	\$ 166,476	\$ 31,564	\$ 2,600	\$ 200,640
Resource Management	151,557	21,829	5,428	178,814
Subtotal Allocated Costs	\$ 318,033	\$ 53,393	\$ 8,028	\$ 379,454
Total Program Costs	\$ 2,079,357	\$ 201,307	\$ 40,283	\$ 2,320,947

The unfunded portion of personnel services and benefits for the year ended September 30, 2012 was \$4,374 thousand.

**NOTE 17. Program Costs by Category and Responsibility Segment** *(continued)*

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

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

**NOTE 18. Budgetary Resources**

Total budgetary resources are primarily comprised of Congressional authority to spend current year fee collections. In FY 2012, the USPTO was appropriated up to \$2,706,313 thousand for fees collected during the fiscal year. In FY 2011, the USPTO was appropriated up to \$2,090,000 thousand for fees collected during the fiscal year. For the year ended September 30, 2012, the USPTO collected \$302,391 thousand less than the amount apportioned through September 30, 2012 (under-collections of fees of \$299,487 thousand and under-collections of other budgetary resources of \$2,904 thousand). For the year ended September 30, 2011, the USPTO collected \$177,183 thousand more than the amount apportioned through September 30, 2011 (over-collections of fees of \$208,856 thousand and under-collections of other budgetary resources of \$31,673 thousand).

Total budgetary resources also include carryover of prior year budgetary resources (operating reserve). Carryover is derived from year-end fees that have not been obligated. Usage of the fees in the following fiscal year is for compensation and operational requirements on a first-in, first-out basis.

## NOTE 18. Budgetary Resources *(continued)*

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The USPTO receives an apportionment of Category A funds from OMB, which apportions budgetary resources by fiscal quarter. The USPTO does not receive any Category B funds, or those exempt from apportionment. As of September 30, 2012 and 2011, reimbursable obligations incurred were \$2,374,755 thousand and \$2,160,895 thousand, respectively.

### Permanent Indefinite Appropriations

In addition to the appropriation of fee collections mentioned above, the USPTO received a permanent indefinite appropriation in the *America Invents Act* (Pub.L.No. 112-29). The permanent indefinite appropriation is comprised of offsetting collections for (1) a 15 percent interim surcharge on certain patent fees that will continue until each fee is adjusted by regulation and (2) fees paid by patent applicants to request expedited, prioritized examination. These offsetting collections are deposited in the salaries and expenses (13X1006) no year fund. For the year ending September 30, 2012, no collections were received against the permanent indefinite appropriation; the FY 2012 appropriation language superseded the *America Invents Act* language, eliminating the permanent indefinite appropriation authority for a one-year period. For the year ending September 30, 2011, the USPTO collected \$4,801 thousand in accordance with the permanent indefinite appropriation.

### Funding Limitations

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

Pursuant to the *America Invents Act* (35 U.S.C. §42(c)), all fees available to the Director under sections 41, 42, and 376 of 35 U.S.C. are used only for the processing of patent applications and for other activities, services, and materials relating to patents, as well as to cover a proportionate share of the administrative costs of the USPTO.

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

The total temporarily unavailable fee collections pursuant to Public Law as of September 30, 2012 are \$1,023,614 thousand. Of this amount, certain USPTO collections of \$233,529 thousand were withheld in accordance with the OBRA of 1990, and deposited in a special fund receipt account at the U.S. Department of the Treasury.

### Undelivered Orders

In addition to the future lease commitments discussed in Note 11, the USPTO is obligated for the purchase of goods and services that have been ordered, but not yet received. Total reimbursable undelivered orders for all of the USPTO's activities were \$187,830 thousand and \$165,684 thousand as of September 30, 2012 and 2011, respectively. Of these amounts, \$174,724 thousand and \$153,546 thousand, respectively, were unpaid.



## NOTE 19. Incidental Custodial Collections

Custodial collections represent miscellaneous general fund receipts, such as non-electronic patent filing fees and gains on foreign exchange rates. Non-electronic patent filing fee collections began in November 2012. Custodial collection activities are considered immaterial and incidental to the mission of the USPTO.

<b>(Dollars in Thousands)</b>	<b>2012</b>	<b>2011</b>
<b>Revenue Activity:</b>		
Sources of Collections:		
Miscellaneous	\$ 1,059	\$ 119
Total Cash Collections	1,059	119
Accrual Adjustments	—	—
Total Custodial Revenue	1,059	119
<b>Disposition of Collections:</b>		
Transferred to Others:		
Treasury	(1,059)	(119)
(Increase)/Decrease in Amounts Yet to be Transferred	—	—
Net Custodial Activity	\$ —	\$ —

## NOTE 20. Fiduciary Activities

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

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

### Schedule of Fiduciary Activity

For the years ended September 30, 2012 and 2011

(Dollars in Thousands)	2012			2011		
	Patent Cooperation Treaty	Madrid Protocol	Total Fiduciary Funds	Patent Cooperation Treaty	Madrid Protocol	Total Fiduciary Funds
Fiduciary Net Assets, Beginning of Year	\$ 12,864	\$ 338	\$ 13,202	\$ 9,452	\$ 576	\$ 10,028
Contributions	153,716	14,361	168,077	131,755	14,551	146,306
Disbursements To and on Behalf of Beneficiaries	(153,960)	(14,299)	(168,259)	(128,343)	(14,789)	(143,132)
(Decrease)/Increase in Fiduciary Net Assets	(244)	62	(182)	3,412	(238)	3,174
Fiduciary Net Assets, End of Year	\$ 12,620	\$ 400	\$ 13,020	\$ 12,864	\$ 338	\$ 13,202

### Fiduciary Net Assets

As of September 30, 2012 and 2011

(Dollars in Thousands)	2012			2011		
	Patent Cooperation Treaty	Madrid Protocol	Total Fiduciary Funds	Patent Cooperation Treaty	Madrid Protocol	Total Fiduciary Funds
Cash and Cash Equivalents	\$ 12,620	\$ 400	\$ 13,020	\$ 12,864	\$ 338	\$ 13,202
Total Fiduciary Net Assets	\$ 12,620	\$ 400	\$ 13,020	\$ 12,864	\$ 338	\$ 13,202

## NOTE 21. Reconciliation of Net Cost of Operations to Budget

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

The reconciliation of net cost of operations to budget for the years ended September 30, 2012 and 2011 is as follows:

<b>(Dollars in Thousands)</b>	<b>2012</b>	<b>2011</b>
<b>RESOURCES USED TO FINANCE ACTIVITIES</b>		
Budgetary Resources Obligated:		
Obligations Incurred	\$ 2,374,755	\$ 2,160,895
Spending Authority from Offsetting Collections and Recoveries	(2,435,922)	(2,324,782)
Net Obligations	(61,167)	(163,887)
Other Resources		
Imputed Financing from Cost Absorbed by Others	19,479	21,678
Total Resources Used to Finance Activities	(41,688)	(142,209)
<b>RESOURCES USED TO FINANCE ITEMS NOT PART OF THE NET COST OF OPERATIONS</b>		
Change in Budgetary Resources Obligated for Goods, Services and Benefits		
Ordered but not yet Provided	(22,146)	4,025
Resources that Fund Costs Recognized in Prior Periods	(1,836)	(200)
Budgetary Offsetting Collections that do not Affect Net Cost of Operations	(15,793)	71,600
Resources that Finance the Acquisition of Assets Capitalized on the Balance Sheet	(98,252)	(84,926)
Total Resources Used to Finance Items not Part of the Net Cost of Operations	(138,027)	(9,501)
<b>COMPONENTS OF NET COST OF OPERATIONS THAT WILL NOT REQUIRE OR GENERATE RESOURCES IN THE CURRENT PERIOD</b>		
Components Requiring or Generating Resources in Future Periods:		
Costs that will be Funded by Resources in Future Periods	6,258	10,725
Net Decrease/(Increase) in Revenue Receivables not Generating Resources until Collected	70	(30)
Total Components of Net Cost of Operations that will Require or Generate Resources in Future Periods	6,328	10,695
Components not Requiring or Generating Resources:		
Depreciation, Amortization, or Loss on Asset Dispositions	67,900	52,695
Other Costs that will not Require Resources	(648)	43
Total Components of Net Cost of Operations that will not Require or Generate Resources	67,252	52,738
Total Components of Net Cost of Operations that will not Require or Generate Resources in the Current Period	73,580	63,433
Net Income from Operations	\$ (106,135)	\$ (88,277)

# **Independent Auditors' Report**





November 15, 2012

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

**FROM:** Todd J. Zinser

**SUBJECT:** FY 2012 Financial Statements  
Final Report No. OIG-13-004-A

I am pleased to provide you with the attached audit report, which presents an unqualified opinion on USPTO's fiscal year 2012 financial statements. KPMG LLP, an independent public accounting firm, performed the audit in accordance with U.S. generally accepted government auditing standards and Office of Management and Budget Bulletin 07-04, *Audit Requirements for Federal Financial Statements*, as amended.

In its audit of USPTO, KPMG found:

- financial statements that were fairly presented in all material respects and in conformity with U.S. generally accepted accounting principles;
- one significant deficiency related to controls over general information technology (this deficiency was not considered a material weakness in internal control as defined in the report); and
- no instances of reportable noncompliance with applicable laws, regulations, and contracts.

My office oversaw the audit performance. We reviewed KPMG's report and related documentation and made inquiries of its representatives. Our review disclosed no instances where KPMG did not comply, in all material respects, with generally accepted government auditing standards. However, our review cannot be construed as an audit in accordance with these standards; it was not intended to enable us to express—nor do we express—any opinion on USPTO's financial statements, conclusions about the effectiveness of internal controls, or conclusions on compliance with laws, regulations, and contracts. KPMG is solely responsible for the attached audit report, dated November 7, 2012, and the conclusions expressed in it.

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





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

Attachment

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



**KPMG LLP**  
 Suite 12000  
 1801 K Street, NW  
 Washington, DC 20006

## Independent Auditors' Report

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

We have audited the accompanying consolidated balance sheets of the United States Patent and Trademark Office (USPTO) as of September 30, 2012 and 2011, and the related consolidated statements of net cost and changes in net position, and combined statements of budgetary resources for the years then ended (hereinafter referred to as "consolidated financial statements"). The objective of our audits was to express an opinion on the fair presentation of these consolidated financial statements. In connection with our fiscal year 2012 audit, we also considered the USPTO's internal control over financial reporting and tested the USPTO's compliance with certain provisions of applicable laws, regulations, and contracts that could have a direct and material effect on these consolidated financial statements.

### Summary

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

As discussed in Note 1 Reclassifications to the consolidated financial statements, the USPTO changed its presentation for reporting the combined statement of budgetary resources in fiscal year 2012.

Our consideration of internal control over financial reporting resulted in identifying certain deficiencies relating to information technology general controls that we consider to be, collectively, a significant deficiency, as defined in the Internal Control Over Financial Reporting section of this report.

We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses as defined in the Internal Control Over Financial Reporting section of this report.

The results of our tests of compliance with certain provisions of laws, regulations, and contracts disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*, issued by the Comptroller General of the United States, and Office of Management and Budget (OMB) Bulletin No. 07-04, *Audit Requirements for Federal Financial Statements*, as amended.

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



United States Patent and Trademark Office  
Independent Auditors' Report  
November 7, 2012  
Page 2 of 7

### Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of the United States Patent and Trademark Office as of September 30, 2012 and 2011, and the related consolidated statements of net cost and changes in net position, and the combined statements of budgetary resources for the years then ended.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the United States Patent and Trademark Office as of September 30, 2012 and 2011, and its net costs, changes in net position, and budgetary resources for the years then ended, in conformity with U.S. generally accepted accounting principles.

As discussed in Note 1 Reclassifications to the consolidated financial statements, the USPTO changed its presentation for reporting the combined statement of budgetary resources in fiscal year 2012, based on new reporting guidance under OMB Circular No. A-136, *Financial Reporting Requirements*. As a result, the USPTO's combined statement of budgetary resources for fiscal year 2011 has been adjusted to conform to the current year presentation.

U.S. generally accepted accounting principles require that the information in the Management's Discussion and Analysis section be presented to supplement the basic consolidated financial statements. Such information, although not a part of the basic consolidated financial statements, is required by the Federal Accounting Standards Advisory Board who considers it to be an essential part of financial reporting for placing the basic consolidated financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic consolidated financial statements, and other knowledge we obtained during our audits of the basic consolidated financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Our audits were conducted for the purpose of forming an opinion on the basic consolidated financial statements as a whole. The consolidated statements of cash flows for the years ended September 30, 2012 and 2011 are presented for purposes of additional analysis and are not a required part of the basic consolidated financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the basic consolidated financial statements. The consolidated statements of cash flows for the years ended September 30, 2012 and 2011 have been subjected to the auditing procedures applied in the audit of the basic consolidated financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic consolidated financial statements or the basic consolidated financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the consolidated statements of cash flows for the years ended September 30, 2012 and 2011 are fairly stated in all material respects in relation to the basic consolidated financial statements as a whole. The information in the Message from the Under Secretary of Commerce for Intellectual Property and Director of the USPTO section, the Message from the Chief Financial Officer section, and the Other Accompanying Information section are presented for purposes of additional analysis



United States Patent and Trademark Office  
 Independent Auditors' Report  
 November 7, 2012  
 Page 3 of 7

and are not a required part of the basic consolidated financial statements. Such information has not been subjected to the auditing procedures applied in the audits of the basic consolidated financial statements, and accordingly, we do not express an opinion or provide any assurance on them.

### **Internal Control Over Financial Reporting**

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

Our consideration of internal control over financial reporting was for the limited purpose described in the Responsibilities section of this report and was not designed to identify all deficiencies in internal control over financial reporting that might be deficiencies, significant deficiencies, or material weaknesses. In our fiscal year 2012 audit, we did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above. However, we identified certain deficiencies in internal control over financial reporting described in Exhibit I that we consider to be a significant deficiency in internal control over financial reporting. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

**General information technology controls.** We found that although the USPTO has taken partial corrective actions to address certain information technology (IT) control weaknesses, general IT weaknesses still exist. Despite the positive efforts made by the USPTO, the USPTO needs to make continued improvement in its IT general control environment to fully ensure that financial data processed on the USPTO's systems is complete, reliable, and has integrity.

We noted certain additional matters that we have reported to management of USPTO in a separate letter dated November 7, 2012.

### **Compliance and Other Matters**

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

\* \* \* \* \*

### **Responsibilities**

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

**Auditors' Responsibilities.** Our responsibility is to express an opinion on the fiscal year 2012 and 2011 consolidated financial statements of the USPTO based on our audits. We conducted our audits in



United States Patent and Trademark Office  
 Independent Auditors' Report  
 November 7, 2012  
 Page 4 of 7

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

An audit also includes:

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

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

In planning and performing our fiscal year 2012 audit, we considered the USPTO's internal control over financial reporting by obtaining an understanding of the USPTO's internal control, determining whether internal controls had been placed in operation, assessing control risk, and performing tests of controls as a basis for designing our auditing procedures for the purpose of expressing our opinion on the consolidated financial statements, but not for the purpose of expressing an opinion on the effectiveness of the USPTO's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the USPTO's internal control over financial reporting. We did not test all controls relevant to operating objectives as broadly defined by the *Federal Managers' Financial Integrity Act of 1982*.

As part of obtaining reasonable assurance about whether the USPTO's fiscal year 2012 consolidated financial statements are free of material misstatement, we performed tests of the USPTO's compliance with certain provisions of laws, regulations, and contracts, noncompliance with which could have a direct and material effect on the determination of the consolidated financial statement amounts, and certain provisions of other laws and regulations specified in OMB Bulletin No. 07-04. We limited our tests of compliance to the provisions described in the preceding sentence, and we did not test compliance with all laws, regulations, and contracts applicable to the USPTO. However, providing an opinion on compliance with laws, regulations, and contracts was not an objective of our audit and, accordingly, we do not express such an opinion.

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The USPTO's written response to the findings identified in our audit and presented in Exhibit I was not subjected to the auditing procedures applied in the audit of the USPTO's consolidated financial statements and, accordingly, we express no opinion on it.



United States Patent and Trademark Office  
Independent Auditors' Report  
November 7, 2012  
Page 5 of 7

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

KPMG LLP

November 7, 2012



United States Patent and Trademark Office  
 Independent Auditors' Report  
 November 7, 2012  
 Page 6 of 7

### ***Exhibit I – Significant Deficiency***

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#### **Information Technology Access and Configuration Management Controls Need Improvement**

The U.S. Department of Commerce (Commerce) Office of Inspector General (OIG), and departmental self-assessments identified weaknesses in USPTO's information technology (IT) and financial systems controls for several years. During fiscal year 2012 new deficiencies were identified that require management's attention.

Our fiscal year 2012 IT assessment, using the Government Accountability Office's (GAO's) *Federal Information System Controls Audit Manual* (FISCAM), was focused on the IT general controls over USPTO's major financial management systems and supporting network infrastructure. The IT general controls that we consider collectively to be a significant deficiency under the standards issued by the American Institute of Certified Public Accountants are as follows:

- **Access controls.** In close concert with an organization's security management, access controls for general support systems and applications should provide reasonable assurance that computer resources such as data files, application programs, and computer-related facilities and equipment are protected against unauthorized modification, disclosure, loss, or impairment. Access controls are facilitated by an organization's entity-wide security program. Such controls include physical controls, such as keeping computers in locked rooms to limit physical access, and logical controls, such as security software programs designed to prevent or detect unauthorized access to sensitive files. Inadequate access controls diminish the reliability of computerized data and increase the risk of destruction or inappropriate disclosure of information.

The objectives of limiting access are to ensure that users have only the access needed to perform their duties; that access to sensitive resources, such as security software programs, is limited to few individuals; and that employees are restricted from performing incompatible functions or duties beyond their responsibility. This is reiterated by Federal guidelines. For example, Office of Management and Budget (OMB) Circular No. A-130 and the supporting National Institute of Standards and Technology (NIST) publications provide guidance related to the maintenance of technical access controls. In addition, the Commerce *IT Security Program Policy* contains many requirements for operating Commerce IT devices in a secure manner.

During fiscal year 2012, we noted that access controls should be improved by USPTO, primarily in the areas of: (1) managing user accounts to appropriately disable and recertify network, financial system, database and operating system accounts, (2) improving logical controls over financial applications and database system access, (3) ensuring compliance with audit log review requirements, and (4) preventing the use of shared database and operating system accounts and passwords. We recognize that USPTO has certain compensating controls in place to help reduce the risk of the identified weaknesses, and we have considered such compensating controls as part of our USPTO financial statement audit.

- **Configuration management.** Configuration management involves the identification and management of security features for all hardware, software, and firmware components of an information system at a given point and systematically controls configuration changes throughout the system's life cycle. Establishing controls over modifications to information system components and related documentation helps to ensure that only authorized systems and related program modifications are implemented. This is accomplished by instituting policies, procedures, and techniques to ensure that hardware, software

United States Patent and Trademark Office  
Independent Auditors' Report  
November 7, 2012  
Page 7 of 7

and firmware programs, and program modifications are properly authorized, tested, and approved, and that access to and distribution of programs is carefully controlled. Without proper controls, there is a risk that security features could be inadvertently or deliberately omitted or turned off, or that processing irregularities or malicious code could be introduced into the IT environment.

During fiscal year 2012, we noted that configuration management controls should be improved at USPTO, primarily in the areas of: (1) addressing patch and configuration management vulnerabilities, and (2) improving configuration and change management system specific procedures. We recognize that USPTO has certain compensating controls in place to help reduce the risk of the identified weaknesses, and we have considered such compensating controls as part of our USPTO financial statement audit.

### **Recommendations**


Specific recommendations are included in a separate limited distribution IT general controls report, issued as part of the USPTO fiscal year 2012 financial statement audit. USPTO management should monitor actions to ensure effective implementation of our recommendations.

### **Management's Response**

We agreed with the auditors' findings, conclusions, and recommendations related to improving the USPTO's financial management systems controls. The USPTO is in the process of developing corrective action plans to address the recommendations presented in the separate limited distribution IT general controls report.

# **Other Accompanying Information**





# United States Patent and Trademark Office Schedule of Spending

For the years ended September 30, 2012 and 2011

<b>(Dollars in Thousands)</b>	<b>2012</b>	<b>2011</b>
<b>What Money is Available to Spend?</b>		
Total Resources	\$ 2,612,627	\$ 2,338,600
Less Amount Not Agreed to be Spent	237,873	177,705
<b>Total Amounts Agreed to be Spent</b>	<b>\$ 2,374,754</b>	<b>\$ 2,160,895</b>
<b>How was the Money Spent?</b>		
Payroll	\$ 1,598,013	\$ 1,468,250
Rent, Communications, & Utilities	119,925	113,787
Travel	3,209	2,105
Supplies	38,406	30,181
Equipment	105,069	77,062
Land, Buildings, & Structures	2,038	2,529
Contractual Services	362,229	332,180
Printing	101,903	89,492
Other	1,472	1,864
Total Spending	\$ 2,332,262	\$ 2,117,449
Amounts Remaining to be Spent	\$ 42,492	\$ 43,446
<b>Total Amounts Agreed to be Spent</b>	<b>\$ 2,374,754</b>	<b>\$ 2,160,895</b>
<b>Who did the Money go to?</b>		
Federal Government	\$ 198,850	\$ 183,280
Non-Federal	2,175,905	1,977,616
<b>Total Amounts Agreed to be Spent</b>	<b>\$ 2,374,754</b>	<b>\$ 2,160,895</b>
<b>How was the Money Given?</b>		
Contracts	\$ 760,431	\$ 674,050
Direct Payments	1,613,088	1,485,273
Other	1,235	1,573
<b>Total Amounts Agreed to be Spent</b>	<b>\$ 2,374,754</b>	<b>\$ 2,160,895</b>



# Inspector General's Top Management Challenges Facing the USPTO

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

The USPTO is responsible for resolving several elements within the first Department-wide management challenge – Stimulate Economic Growth in Key Industries, Increase Exports, and Enhance Stewardship of Marine Fisheries. Reducing the patent application backlog, improving processing times, and effectively implementing patent reform will help to support the Departments' overarching goals of advancing economic growth. Long waits for application decisions could negatively impact innovation, economic development, and job growth, inhibiting U.S. companies from exporting until they procure the appropriate patents for their products.

Recent concerns over conference spending and unauthorized reprogramming of funds have highlighted the importance of strong internal controls and the continued need for effective oversight. The USPTO has begun taking action towards implementing new initiatives to improve internal controls

and management oversight of day-to-day operations, actions taken in line with the second Department-wide challenge to increase oversight of resources entrusted by the public and invest for long-term benefits.

The USPTO is also responsible for strengthening and enhancing information technology security on its infrastructure in support of resolving the third Department-wide management challenge. In addition, improvements have been identified for long-term technical and acquisition planning of the PE2E project. PE2E is the largest, most complex multi-year IT investment USPTO has undertaken in several years. These improvements will help support the delivery of cost savings and efficiencies on major IT investments, an additional component of the third Department-wide management challenge to strengthen security and investments in IT.

In addition, the USPTO continues to review its internal controls with the goal of strengthening its acquisition and contract management practices, a component of the overall fourth Department-wide management challenge of implementing a framework for acquisition project management and improve contract oversight.





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

November 9, 2012

**MEMORANDUM TO THE ACTING SECRETARY**

**FROM:**

  
Todd J. Zinser

**SUBJECT:**

Top Management Challenges Facing the Department of Commerce  
in Fiscal Year 2013

Enclosed is our final report on the Department of Commerce's top management challenges for fiscal year (FY) 2013. The Department plays a pivotal role in implementing the President's initiatives for economic recovery and job creation and, like other federal agencies, faces significant financial uncertainties in the upcoming year. The report identifies what we consider, from our oversight perspective, to be the most significant management and performance challenges facing the Department.

The five top challenges we reported last year have been updated for FY 2013, to reflect progress made as well as current events.

- **Stimulate economic growth in key industries, increase exports, and enhance stewardship of marine fisheries.** The Department has engaged in multiple government-wide initiatives to implement the President's priorities. Successful implementation of these initiatives could have a profound impact on the nation's economy; however, it requires focused attention by senior management, close coordination with the private sector and other federal agencies, and sustained congressional support.
- **Increase oversight of resources entrusted by the public and invest for long-term benefits.** In an era of constrained budgets, there is a greater risk that management will take shortcuts, loosen internal controls, and deemphasize oversight, in order to devote resources to other requirements. Recent concerns over conference spending and unauthorized reprogramming of funds have highlighted the need for more effective oversight. Also, several planned modernization efforts, including redesign of the 2020 decennial, could provide significant long-term benefits but require increased management attention.
- **Strengthen security and investments in information technology.** Recent cyberattacks on bureau systems confirm the urgent need to fix the Department's persistent security weaknesses. While we support senior management's recent actions to strengthen the departmental Chief Information Officer's governance, it is too early to judge their effectiveness.



Note: The USPTO is required to include the entire Department of Commerce Office of the Inspector General's Top Management Challenges Report. The part of the Top Management Challenges Report directly discussing the USPTO can be found on (PAR) Pages 130 and 131 of this Performance and Accountability Report.



- **Implement framework for acquisition project management and improve contracts oversight.** The Department has recently issued an Acquisition Project Management Framework/Guidebook in response to a special study mandated by former secretary Locke. The new guidance provides more comprehensive coverage of acquisition life-cycle activities and, if implemented consistently, should help mitigate risks of cost overruns and schedule delays. Incorporating the new framework into the Department's acquisition policy and exercising relentless departmental oversight will be critical to the implementation's success.
- **Reduce risks of cost overruns, schedule delays, and coverage gaps for NOAA's satellite programs.** Satellite programs remain the largest investment in the Department, comprising nearly 20 percent of the Commerce budget. Preventing significant cost overruns and minimizing the impact of satellite coverage gaps will continue to require top-level management attention.

Over the past several years, the Department has experienced many problems—such as inappropriate acquisition and contracting practices, improper accounting of millions of dollars in reimbursable agreement services, and unjustified use of forfeited assets—due to lapsed internal controls. Recent incidents involving unauthorized reprogramming of funds and cyberattacks on bureau systems are the latest in a series of wake-up calls. To its credit, Department top-level management has issued directives requiring immediate and across-the-board corrective actions when becoming aware of these deficiencies. The Offices of the Chief Financial Officer and Chief Information Officer also took actions to strengthen Department oversight and promulgate consistent practices among bureaus. Commerce leadership must continue showing the way forward to establish an accountability culture with increased transparency, readily available support, and independent validation. This is perhaps the Department's biggest challenge of all.

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

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

cc: Cameron Kerry, General Counsel  
 Scott Quehl, Chief Financial Officer and Assistant Secretary for Administration  
 Simon Szykman, Chief Information Officer  
 Bruce Andrews, Chief of Staff to the Secretary  
 Justin Ehrenwerth, Chief of Staff to the Deputy Secretary  
 Ellen Herbst, Senior Advisor to the Deputy Secretary  
 Operating Unit Heads  
 Operating Unit Audit Liaisons

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<sup>1</sup> 31 U.S.C. §3516(d).

## Contents

Challenge 1: Stimulate Economic Growth in Key Industries, Increase Exports, and Enhance Stewardship of Marine Fisheries .....	1
Stimulate Economic Growth in Manufacturing, Intellectual Property, and Wireless Industries.....	1
Promote and Regulate Exports.....	4
Protect and Promote Marine Fisheries.....	6
Challenge 2: Increase Oversight of Resources Entrusted by the Public and Invest for Long-Term Benefits.....	8
Increase Internal Controls and Oversight of Departmental Operations Under a Constrained Budget ..	8
Invest for Efficiencies and Long-Term Benefits .....	11
Implement Bold Design Changes to Contain 2020 Decennial Costs While Maintaining Enumeration Quality .....	12
Challenge 3: Strengthen Security and Investments in Information Technology.....	15
Continue Improving Commerce's IT Security Posture by Addressing Persistent Security Weaknesses.....	15
Develop Resilient Incident Response and Recovery Capabilities with Increased Monitoring of Internet Traffic.....	17
Manage Commerce's IT Portfolio with Enhanced Governance Structure.....	17
Strengthen Oversight of IT Investments .....	18
Challenge 4: Implement Framework for Acquisition Project Management and Improve Contracts Oversight.....	20
Implement the Planned Framework for Acquisition Project Management .....	21
Oversee High-Risk Contracts.....	22
Maintain an Acquisition Workforce That Holds Bureau Officials Accountable .....	23
Implement an Effective Suspension and Debarment Program.....	24
Challenge 5: Reduce Risks of Cost Overruns, Schedule Delays, and Coverage Gaps for NOAA's Satellite Programs.....	25
Communicate with Stakeholders to Define JPSS Capabilities, Schedule, and Cost Baselines .....	25
Ensure Adequate Leadership and Governance Structure over JPSS Development.....	27
Develop a Plan to Support NOAA Weather Forecasting Capabilities During Coverage Gaps.....	28
Reduce Program Risks Associated with GOES-R Development.....	29
Acronym List .....	31
Appendix A: Related OIG Publications .....	33
Appendix B: Comparison Between FY 2012 and FY 2013 Challenges.....	36
Appendix C: Management Response to OIG Draft Report.....	37



## Challenge 1:

### Stimulate Economic Growth in Key Industries, Increase Exports, and Enhance Stewardship of Marine Fisheries

The Department is at the center of the federal government's efforts to stimulate economic and job growth in key industries and promote exports, while at the same time regulating exports and maintaining the delicate balance between promoting and regulating the commercial use of marine fisheries. These efforts require the Department to work effectively with interagency partners and the private sector as well as to marshal and integrate Commerce resources. We have identified three areas for management attention:

- Stimulate economic growth in manufacturing, intellectual property, and wireless industries
- Promote and regulate exports
- Protect and promote marine fisheries

### *Stimulate Economic Growth in Manufacturing, Intellectual Property, and Wireless Industries*

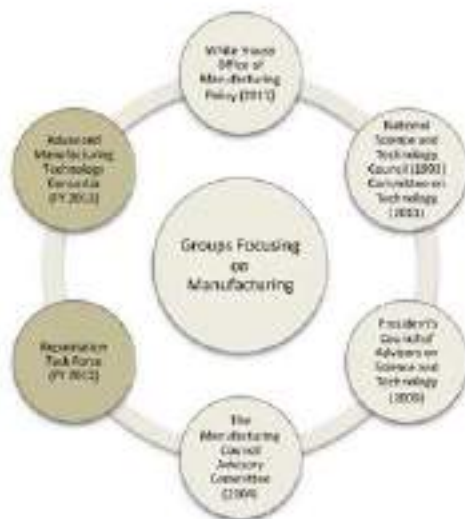
In early FY 2011, the Department laid out its vision to support manufacturing jobs in America by implementing the President's Advanced Manufacturing Partnership—a nationwide effort that brings together industry, universities, and the federal government to invest in the emerging technologies and strengthen intellectual property protection. Further, to support the explosive growth in wireless industries and foster job creation, the President has tasked the Department to make more spectrum available for commercial use. Successful implementation of these initiatives could have a profound impact on the nation's economy; however, it will require focused attention by senior management, close coordination with the private sector and other federal agencies, and sustained congressional support.

#### *Support Job Insourcing and Manufacturing Initiatives*

Recent reports<sup>2</sup> emphasize the role of manufacturing in creating high-paying jobs, providing U.S. exports, and spurring innovation. The President's Council of Advisors on Science and Technology's July 2012 report cites three keys to strengthening U.S. manufacturing: innovation, a skilled workforce, and a business climate that "spurs investment and fosters partnerships between government, academia, and industry" through the development of policies in the areas of tax, regulation, trade, and energy. Many offices, task forces, and councils are involved with

<sup>2</sup> U.S. Department of Commerce, in consultation with the National Economic Council, January 2012. *The Competitiveness and Innovative Capacity of the United States*. [http://www.commerce.gov/sites/default/files/documents/2012/january/competes\\_010511\\_0.pdf](http://www.commerce.gov/sites/default/files/documents/2012/january/competes_010511_0.pdf); President's Council of Advisors on Science and Technology, July 2012. *Report to the President on Capturing Domestic Competitive Advantage in Advanced Manufacturing*. Washington, D.C.: Executive Office of the President.

Figure 1. Sample of Groups Focused on Manufacturing



Source: OIG analysis of departmental data.

studying and establishing manufacturing initiatives. A sample of these groups is presented in figure 1.

The two dark circles represent recent initiatives led by the Department of Commerce. Last year, in response to a requirement in its FY 2012 appropriation, the Department established the Repatriation Task Force—chaired by a representative of the Secretary's Office of Policy and Strategic Planning and including officials from the International Trade Administration, the Economic Development Administration, the Minority Business Development Agency, and the National Institute of Standards and Technology—and issued a report that identified incentives to repatriate jobs that had moved abroad back to America (job insourcing).

A second departmental program, the Advanced Manufacturing Technology Consortia (AMTech) program, is supported

in NIST's FY 2013 budget. AMTech will provide cost-shared funding to consortia focused on developing advanced technologies to spur manufacturing in the United States. In addition, the President's FY 2013 budget proposed \$1 billion of mandatory spending to establish a National Network for Manufacturing Innovation grants program—which requires collaboration among the Department of Commerce, Defense, Energy, and the National Science Foundation. Since this program requires congressional authorization, the administration needs to work with Congress to develop a legislative solution.

In conclusion, while the goal is clear—support job creation by bringing manufacturing jobs back to the United States—the departmental challenge is to implement new initiatives with coordinated policy guidance while avoiding duplicative efforts with its partners.

#### *Reduce the Patent Backlog, Improve Processing Times, and Effectively Implement Patent Reform*

The U.S. Patent and Trademark Office (USPTO) fosters innovation and protects inventors' intellectual property rights by registering trademarks and granting patents, which support \$5 trillion of the U.S. economy. Long waits for application decisions could adversely affect innovation, economic development, and job growth, inhibiting U.S. companies from exporting until they procure the appropriate patents for their products.

- Over the past decade, the patent backlog has almost doubled, and the completion of patent reviews takes almost 3 years. While USPTO has reduced the backlog from more than



## U.S. DEPARTMENT OF COMMERCE

## OFFICE OF INSPECTOR GENERAL

700,000 in FY 2010, it remains above 600,000 at the end of FY 2012.<sup>3</sup> Initially, the Under Secretary of Commerce for Intellectual Property set forth the goals of reducing the backlog of applications awaiting examiner action to a 10-month inventory (approximately 350,000 applications<sup>4</sup>) through decreasing the total processing time for patent applications to 10 months for the first office action by FY 2014 and 20 months total by FY 2015. USPTO later postponed these target dates to FY 2015 and FY 2016, and again to FY 2016 and FY 2017.<sup>5</sup> To reduce the long waits for patent application decisions, it is imperative that USPTO maintain its focus and increase its efforts to address these challenges.

- USPTO also has the challenge of reducing a second backlog: ex parte appeals for rejected patent applications. As the number of patent examiners has grown, the number of new ex parte appeals has grown significantly. Although it is difficult to estimate the exact increase in the number of new appeals before FY 2010 because of inaccuracies in the appeal data, new ex parte appeals have averaged nearly 12,800 between FY 2010 and FY 2012. The time it takes an appellant to receive a decision on an ex parte appeal has doubled in the past 2 years. Although USPTO hired additional judges in FY 2012 and enhanced their performance benchmarks, continued management attention will be needed.<sup>6</sup>

In addition, USPTO faces new administrative and operational challenges in implementing the Leahy-Smith America Invents Act (Pub. L. No. 112-29). This act, signed into law in September 2011, contains many fundamental changes to patent laws and USPTO practices, such as moving the United States to a "first inventor-to-file" system from a "first-to-invent" system. These significant changes will require USPTO to issue new regulations. USPTO has successfully implemented new rules scheduled for September 2012 implementation and is addressing public rulemaking requirements to implement provisions scheduled to take effect next March. Significant planning, outreach, and communication with stakeholders will be needed to implement these fundamental changes.

The James Madison Building at USPTO Headquarters



Source: OIG

<sup>3</sup> Current indicators on patent pendency and quality are available on USPTO's Patent Dashboard: <http://www.uspto.gov/dashboards/patents/main.dashwml>.

<sup>4</sup> The exact number of applications that would comprise a 10 month inventory will vary based on the size of the patent examiner corps.

<sup>5</sup> Sources for USPTO target dates for decreasing patent application processing time: USPTO FYs 2010–2015 strategic plan (FYs 2014 and 2015), FY 2013 President's budget request (FYs 2015 and 2016), and USPTO's October 2012 proposal (FYs 2016 and 2017).

<sup>6</sup> U.S. Department of Commerce Office of Inspector General, August 2012. *USPTO's Other Backlog: Past Problems and Risks Ahead for the Board of Patent Appeals*, OIG-12-032-A, Washington, D.C.: Department of Commerce OIG.

## U.S. DEPARTMENT OF COMMERCE

## OFFICE OF INSPECTOR GENERAL

*Strengthen Spectrum Management and Public Safety*

Radio frequency spectrum provides an array of wireless communications services critical to the US economy and supports a variety of government functions.<sup>7</sup> In June 2010, the President requested that 500 MHz of spectrum be freed up for commercial sale. The National Telecommunications and Information Administration (NTIA) announced in March 2012, that the federal government intends to repurpose 95 MHz of prime spectrum for commercial use, if certain challenges are met. However, the \$18 billion price tag to relocate existing federal users could make this cost prohibitive. A July 2012 report by the President's Council of Advisors on Science and Technology recommended that up to 1000 MHz of federal spectrum be made available for a "shared use spectrum superhighway,"<sup>8</sup> between federal agencies and commercial providers. Recent technology advances make the shared-use architecture feasible in the near future; however, many challenges such as lack of incentive for commercial providers to bid for shared spectrum, revenue generation, and rights of use issues must be addressed to make this effort a possibility. A strong partnership between the federal government (NTIA and FCC) and commercial providers will be needed to make this program a reality.

On February 22, 2012, the President signed the Middle Class Tax Relief and Job Creation Act of 2012, which assigned the D-Block spectrum and provided \$7 billion to NTIA to establish an interoperable nationwide Public Safety Broadband Network (PSBN). NTIA is required to establish an independent authority called First Responder Network Authority (FirstNet) to be the holder of the existing public safety spectrum and be responsible for the establishment and deployment of the PSBN. It is important for NTIA to take into consideration the lessons learned from earlier public safety network efforts when establishing FirstNet, such as establishing local/state governance structures in compressed timeframes.

*Promote and Regulate Exports*

The Department plays a critical role in the success of government-wide initiatives to promote U.S. exports and ensure an effective export control system—approximately 12 percent (\$990 million) of its FY 2013 budget request is dedicated to funding international programs and activities.

*Appropriately Allocate Resources and Increase Collaboration to Support the National Export Initiative*

The Department's International Trade Administration (ITA) plays a leading role in supporting the National Export Initiative (NEI), which was formalized by executive order in March 2010. To support NEI, the Department proposed in its FY 2013 budget a reorganization of ITA to eliminate overlapping functions and streamline operations to enhance foreign market access and U.S. industry competitiveness. Also, in FY 2012, its U.S. and Foreign Commercial Service unit began shifting resources away from lower-priority markets to higher-priority markets, in accordance with a congressionally approved plan. According to ITA, 14 offices have been

<sup>7</sup> U.S. Government Accountability Office, April 2011. *Spectrum Management*, Washington, D.C.: GAO, 1.

<sup>8</sup> President's Council of Advisors on Science and Technology, July 2012. *Realizing the Full Potential of Government-Held Spectrum to Spur Economic Growth*. Washington, D.C.: President's Council of Advisors on Science and Technology, 11.



## U.S. DEPARTMENT OF COMMERCE

## OFFICE OF INSPECTOR GENERAL

closed, and 2 more will remain open only through FY 2014, pending State Department reviews to close them. To make this successful, the Department must continue to strategically reorganize its personnel and resources while providing seamless assistance to the public.



A secretarial-level body called the Export Promotion Cabinet is charged with implementing trade-related activities in coordination with the Trade Promotion Coordinating Committee,<sup>9</sup> chaired by the Secretary. The Department plays an instrumental role in carrying out these activities with external partners. As of December 2011, the value of exports had increased 33 percent in the 2 years since 2009, appearing to be on track to meet the NEI's target of doubling U.S. exports by 2014. However, U.S. export growth for the first 6 months of 2012 was only 6 percent rather than the 15 percent a year necessary to reach the doubling target. The Department reports it has responded to these economic conditions by ramping up its trade advocacy and export promotion efforts, as well as aggressively investigating unfair trade practices affecting U.S. exports or imports into the U.S. market. In addition, we have identified opportunities for ITA to improve training for trade specialists on enhancing collaboration and improving sharing with partner agencies.<sup>10</sup>

#### *Combat Unfair Trade Practices and Continue Implementing the Export Control Reform Initiative*

While trade promotion is an essential part of its mission, the Department must also maintain strong trade enforcement and export control programs, so that U.S. companies can thrive in the global marketplace. These key functions are carried out by both ITA and the Bureau of Industry and Security (BIS). Long-term, sustainable U.S. economic growth depends on the effective enforcement of trade agreements and export controls. Recently, for example, the Import Administration, another ITA business unit, issued a final determination that Chinese manufacturers sold at less than fair value (i.e., "dumped") solar panels in the United States and that the manufacturers received trade-distorting government subsidies. The Import Administration also issued a preliminary determination this summer that Chinese manufacturers dumped wind turbines in the U.S. market as well. These kinds of decisions are necessary to level the playing field for U.S. companies. In February 2012, the President signed Executive Order 13601, creating a new Interagency Trade Enforcement Center within the Office of the U.S. Trade Representative, co-led by the Department of Commerce. This center seeks to efficiently leverage existing federal government resources, including those within ITA, in challenging unfair trade practices and foreign trade barriers by trade partners. ITA reports it has been dedicating staff and resources to the new enforcement center since its inception in February 2012. ITA's FY 2013 budget request also contains dedicated staff and resources to support this center.

<sup>9</sup> The TPCC was established in 1993 by Executive Order 12870 under the authority of the Export Enhancement Act of 1992 to coordinate governmental efforts to promote U.S. exports.

<sup>10</sup> U.S. Department of Commerce Office of Inspector General, September 2012. *U.S. Export Assistance Centers Could Improve Their Delivery of Client Services and Cost Recovery Efforts* [Draft report]. Washington, D.C.: Department of Commerce OIG.

## U.S. DEPARTMENT OF COMMERCE

## OFFICE OF INSPECTOR GENERAL

The task of administering and enforcing dual-use export controls presently falls on BIS. In April 2010, the Administration proposed the Export Control Reform Initiative to streamline the country's export control system and facilitate U.S. export of high-tech goods while protecting U.S. national security interests. Over the past year, BIS has worked with its interagency partners to review the munitions and dual-use lists to assess whether changes to controls on certain products are warranted. Also in response to Executive Order 13558, BIS, along with other federal agencies, shall provide resources for a new export enforcement coordination center to collect and share information to help prosecute and deter export control violations. Commerce must ensure that it continues to support these important programs and initiatives as the effort to reorganize the Department's and the federal government's trade promotion and enforcement functions continues.

### **Protect and Promote Marine Fisheries**

For several years, we have reported about NOAA's challenge in balancing two competing interests: promoting commercial and recreational fishing as vital elements of our national economy and preserving populations of fish and other marine life.<sup>11</sup> In recent years, members of the fishing industry and elected officials from the New England region have repeatedly questioned certain fishery regulations and whether NOAA has abandoned a core mission to develop the commercial fishing industry and increase industry participation.

An April 2011 independent review of the New England fishery management process<sup>12</sup> suggested many ways to strengthen fishery management rulemaking processes and specifically recommended increased "collection and use of socioeconomic data in fishery management plans in order to make socioeconomic analysis a more visible and meaningful part of the process." This type of analysis includes understanding the impact that fisheries management has on local economies.

As we noted last year, the Department submitted its *Plan for Retrospective Analysis of Existing Rules* in August 2011,<sup>13</sup> in response to Executive Order 13563, *Improving Regulation and Regulatory Review*.<sup>14</sup> In August 2012, the Department's General Counsel informed us that the Department had convened a "regulatory cost-benefit working group" with representatives from USPTO, BIS, and NOAA, since these bureaus engage in most of the Department's rulemaking activity. As a result of these working group meetings, the General Counsel reported that economists and social scientists from the National Marine Fisheries Service have engaged in long-term research to assess the U.S. public's willingness to pay the costs associated with conservation of protected species and marine protected areas. In its rulemaking, the

<sup>11</sup> The Marine Mammal Protection Act of 1972 and the Endangered Species Act of 1973 gave NOAA fisheries responsibility for preventing the extinction of marine fish and other species. The Magnuson-Stevens Fishery Conservation and Management Act of 1976 made the NOAA fisheries the primary federal agency for managing marine fisheries and established a regional fishery management system to help the agency carry out its mission.

<sup>12</sup> Preston Pate and SRA-Touchstone Consulting Group, April 2011. *A Review of the New England Fishery Management Process*. Washington, D.C.: Touchstone Consulting Group.

<sup>13</sup> U.S. Department of Commerce, August 2011. *Plan for Retrospective Analysis of Existing Rules*. Washington, D.C.: Department of Commerce.

<sup>14</sup> Exec. Order No. 13563, 76 Fed. Reg. 3821 (Jan. 21, 2011).

## U.S. DEPARTMENT OF COMMERCE

## OFFICE OF INSPECTOR GENERAL

Department and NOAA will continue to be challenged in balancing the competing interests of promoting fishing and preserving populations of fish and other marine life.

We are currently reviewing NOAA's controls and processes surrounding fisheries rulemaking as the first phase of our assessment of transparency and the role of fishery management councils in rulemaking. An effective regulatory environment requires a fair and transparent rulemaking process. Our review will consider the interactions among federal officials, fishing industry members, and nongovernment organizations in the development of fishing regulations.



## Challenge 2:

### Increase Oversight of Resources Entrusted by the Public and Invest for Long-Term Benefits

The Joint Select Committee on Deficit Reduction was tasked with seeking \$1.5 trillion in government-wide savings over the next 10 years. The Committee did not agree on spending reductions, resulting in a potential sequestration that will trigger across-the-board budget cuts beginning in January 2013. Commerce programs will be deeply affected. As the Department prepares for this extended period of tighter budgets and decreased spending, it is more important than ever to understand the risks associated with making trade-offs in allocating resources between the implementation of programs and the oversight of those programs.

Also, after experiencing significant cost increases in the last decennial (from \$8.2 billion to \$12.8 billion between 2000 and 2010 decennials), the Census Bureau—a departmental component—has vowed to contain cost of the 2020 decennial by making critical design decisions by the end of FY 2014. However, it has already encountered significant challenges in achieving this goal. While the nation is facing significant financial hardship, the Department and Census Bureau simply cannot afford to repeat the cost growth experienced over prior decennials. We have identified three areas for management attention during a period of funding uncertainty:

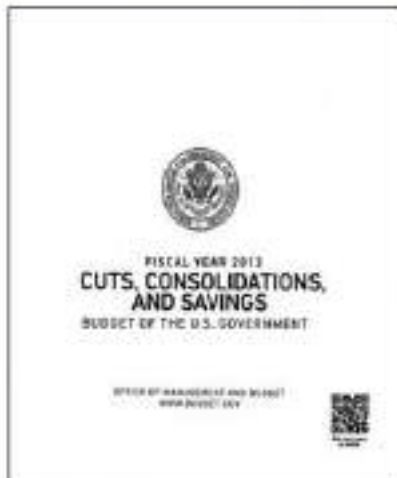
- Increase internal controls and oversight of departmental operations under a constrained budget
- Invest for efficiencies and long-term benefits
- Implement bold design changes to contain 2020 decennial costs while maintaining enumeration quality

### *Increase Internal Controls and Oversight of Departmental Operations Under a Constrained Budget*

Since FY 1999, the Department has received unqualified audit opinions on its financial statements. While this is a testimony of the health of departmental financial reporting systems, it is not an adequate benchmark for internal controls and management oversight of day-to-day operations, especially in today's constrained budget environment. In an era of constrained budgets, there is a greater risk that management will take shortcuts, loosen internal controls, and deemphasize oversight, in order to devote resources to other requirements.

## U.S. DEPARTMENT OF COMMERCE

## OFFICE OF INSPECTOR GENERAL



Source: Office of Management and Budget

While management has increased departmental-level oversight in recent years, such as reviewing high-risk IT investments (challenge 3) and reducing use of high-risk contracts (challenge 4), more needs to be done. Recent concerns over conference spending and unauthorized reprogramming of funds have highlighted the importance of strong internal controls and the continued need for effective oversight.

#### *National Weather Service Reprogramming*

In June 2012, the Appropriations Subcommittee approved the Department's \$35.6 million reprogramming request to support NOAA National Weather Service (NWS) operations. An internal inquiry report prepared by the Department highlighted

mismanagement of budgetary resources and manipulation of accounting records deeply embedded in NWS. This highlights the need for increased oversight and transparency.

To its credit, the Department has issued directives requiring immediate and across-the-board corrective actions and expanded management's review of internal controls (per OMB Circular A-123<sup>15</sup>) in response to this incident. However, the 6-month-long investigation of this incident and subsequent development/implementation of corrective actions have diverted management attention/resources away from other critical functions. To get ahead of the curve, departmental management needs to instill an accountability culture enriched with increased transparency, readily available support, and independent validation.

#### *Ethical Violations and Concerns of Mismanagement*

Loosened internal controls and relaxed oversight can increase the misuse of federal funds and lessen public confidence in the government. The following investigative case examples underscore the need for stronger controls and more vigilant oversight to prevent fraud, waste, and abuse within the Department and among its grant recipients and contractors:

- Former executive directors of a commission that received a NOAA grant misused \$575,000 in grant funds and were indicted—and plead guilty—to charges of theft, bribery, and wire fraud.
- A NIST grantee diverted more than \$100,000 from a \$2 million NIST grant to a related company for non-grant-related expenses.
- Several recipients of Commerce funds committed price fixing, used defective merchandise, conducted money laundering, and made false statements.

<sup>15</sup> Office of Management and Budget, December 21, 2004. *Management's Responsibility for Internal Control*, OMB Circular A-123. Washington, D.C.: OMB.

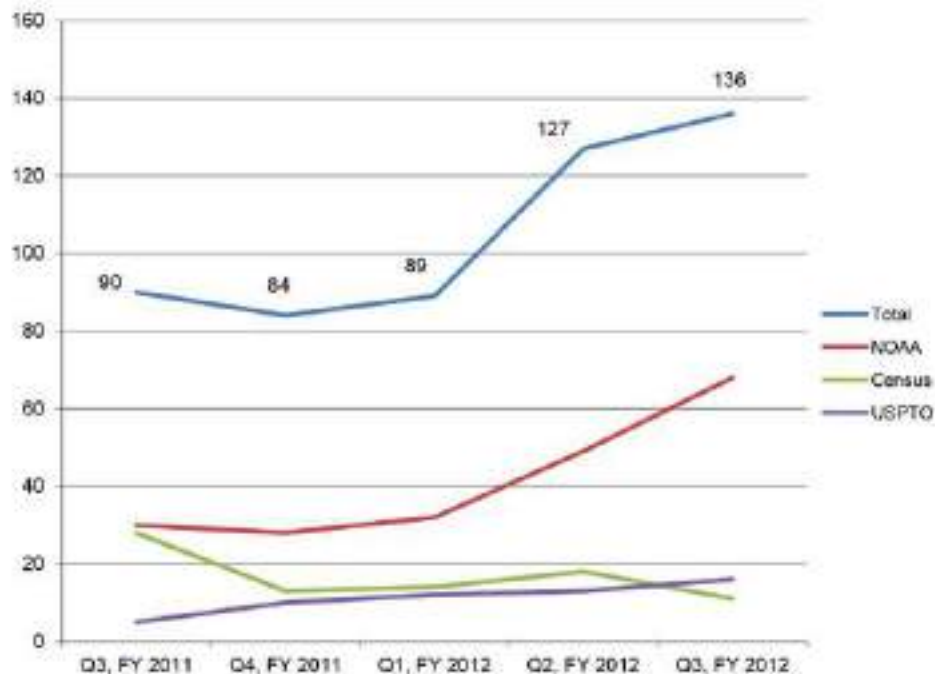


## U.S. DEPARTMENT OF COMMERCE

## OFFICE OF INSPECTOR GENERAL

Over the past several quarters, complaints made to the OIG Hotline have consistently increased, driven largely by growth in complaints related to NOAA (see figure 2). While some complaints may have been caused by misunderstanding or miscommunication, they all need to be reviewed individually. OIG provides complaints related to mismanagement and minor misconduct to the responsible bureaus for proper handling. However, many cases referred to bureaus for inquiries and actions have not been reviewed sufficiently or in a timely manner. To provide effective oversight, the Department must address complaints referred by OIG promptly and work to provide effective internal controls to help prevent issues before they occur. We will continue working with the Department to enhance handling of these complaints.

Figure 2. Complaints Received by Quarter for Agencies with Highest Complaint Volume, from Third Quarter, FY 2011, Through Third Quarter, FY 2012



Source: OIG

#### *Oversight of Use of Federal Funds Awarded to Grantees*

The Department has more than 70 programs authorized to award grants. Between FYs 2009 and 2011, these programs issued almost \$10 billion in American Recovery and Reinvestment Act of 2009 (ARRA) and non-ARRA awards. Ensuring timely resolution of grant audit findings and corrective actions is an essential aspect of grant oversight. In June 2012, we reported to the Department that there were 25 unresolved audits, including 14 that were past due. More than

## U.S. DEPARTMENT OF COMMERCE

## OFFICE OF INSPECTOR GENERAL

half of those that were past due were at NIST, which was experiencing a staffing shortage in its Grants and Agreements Management Division. While we are aware that NIST has begun addressing the backlog, timely grant audit resolutions need to be a priority.

With approximately \$3.8 billion in grant awards, the Broadband Technology Opportunities Program (BTOP), funded by ARRA, represents the most significant investment of federal funds in the Department. As of June 30, 2012, about 50 percent of BTOP funds remain to be disbursed. As these projects near their required 3-year completion dates (between November 2012 and September 30, 2013), the potential for fraud, waste, and abuse associated with such large-dollar-amount awards will increase as recipient spending increases. However, the uncertain funding for BTOP oversight in FY 2013 and beyond raises significant concerns about the Department's ability to adequately oversee the program in the future (e.g., closeout of projects and oversight of projects that received extensions). Management needs to remain committed to monitoring BTOP recipient compliance with grant award terms and achievement of intended benefits.

### *Invest for Efficiencies and Long-Term Benefits*

Smart investment for long-term benefits, when combined with responsible spending, is key to success in today's constrained budget environment. The Department has endorsed several efforts to modernize its mission-support functions; for example, it has made good progress in modernizing/standardizing Human Resources-related operations by adopting a government-wide system solution offered by the Treasury Department. We have identified the following modernization efforts as requiring management attention.

#### *Modernization of Financial Management Systems*

The Department and its bureaus use multiple legacy financial management systems to support day-to-day operations, including a core accounting system developed with aging technology and augmented with in-house software that is increasingly more difficult to maintain. The multiple legacy financial systems cannot provide timely and accurate data for management decision making. In addition, interfaces, reports, and data warehouses are duplicated, leading to high maintenance costs. These limitations impede the Department's ability to oversee Department-wide financial activities.

The Department plans to replace all legacy financial systems—core financial accounting, financial management, grants management, acquisition management, and property management—with commercially available software between FYs 2014 and 2018. While modernizing legacy financial systems has to be a priority for the Department, the planned implementation represents significant challenges to the Department.

- The proposed implementation timetable is very aggressive for modernization projects of such size. However, as pointed out by the project team, this aggressive timetable is in compliance with OMB requirements of not exceeding 24 months when developing/implementing financial systems. To meet this aggressive schedule, the project team plans to significantly limit the amount of software customization. Bureaus are expected to adjust their financial/accounting/business operations based on the functionalities established in



## U.S. DEPARTMENT OF COMMERCE

## OFFICE OF INSPECTOR GENERAL

selected vendor software. With the diverse cultures in the Department, synchronizing bureau financial operations requires strong departmental governance.

- The Census Bureau is scheduled to be converted first by FY 2016. This timely conversion is critical to Census's 2020 decennial readiness. Any schedule slippage could complicate decennial planning and cost-containment efforts. Management needs to keep close oversight of this modernization effort.

#### *Renovation of the Herbert C. Hoover Building*

For the first time in its 79-year history, the Herbert C. Hoover Building (HCHB) was scheduled to undergo a comprehensive renovation between FYs 2008 and 2021. This project is led by the U.S. General Services Administration (GSA) with a projected cost of more than \$900 million, and is to be completed in eight phases. However, this project is now at risk of not being funded beyond phase 3. As a result, the building will remain noncompliant with current fire and safety codes and regulations. If renovation is interrupted at phase 3, 62 percent of the building will still contain hazardous material, 75 percent of HCHB will not have permanent fire suppression systems, 55 percent of HCHB will lack blast window protection, and the majority of HCHB will not meet the American with Disabilities Act requirements. This places building occupants at risk. The Department needs to work with GSA and Congress to secure funding for continued safety improvement in the building.

#### ***Implement Bold Design Changes to Contain 2020 Decennial Costs While Maintaining Enumeration Quality***

The Census Bureau has vowed to contain the costs of the 2020 decennial to an amount close to final costs of the 2010 census. To achieve cost savings, the bureau is exploring new and innovative design alternatives. While it seems that the 2010 decennial has just completed, the Bureau is in the initial stages of 2020 census research and testing and is already encountering challenges. In addition, the recent resignation of the director raises concerns. Because the Bureau operates on long planning cycles for the decennial census, it is difficult to maintain leadership with a consistent vision—and much easier to fall back on old ways and institutional habits. We identified the following issues requiring senior management attention.

#### *Planning Within Constrained Budgets*

Like the rest of the federal government, the Census Bureau is operating in a constrained budget environment. As a result of a reduction in its budget request for FY 2012, the Bureau canceled 20 of 109 studies to measure its performance in the 2010 decennial. Another 25 studies, to be completed in FY 2013, are contingent on funding. Canceling these studies may jeopardize the identification of lessons learned, which is critical to planning the next decennial. The Bureau must be strategic

U.S. Population Estimate from  
U.S. Census Bureau



Source: OIG

## U.S. DEPARTMENT OF COMMERCE

## OFFICE OF INSPECTOR GENERAL

in how it spends its available funding. Also, it must provide the Secretary and Congress reliable and transparent budget requests.

#### *Leadership Continuity and Departmental Oversight*

Leadership continuity is essential to maintain momentum as planning progresses for the 2020 decennial. Absent stable, committed leadership, any organization tends to revert to its embedded culture. A leadership void on the top adds risk to the Bureau's management of critical issues (e.g., budget, operational design, and questionnaire content). Reverting to historical practices and limited design changes experienced in recent decennial censuses will result in unsupportable cost growth for the next census. To coordinate ongoing activities leading to a cost-effective design decision, which must be made by the end of FY 2014, the appointment of a new director must be a priority.

Departmental oversight should play a key role: early in the decennial development process, it can reveal whether the Census Bureau has considered all reasonable project alternatives or if it is assuming too much risk. In this way, the Department can work with the Bureau to address problems before unnecessary costs accumulate. For example, the Department Information Technology Review Board recently examined decennial IT planning efforts. It is critical that departmental management continues close oversight to help ensure decennial cost containment and quality.

#### *Uncertainty Surrounding Funding for the American Community Survey*

The American Community Survey (ACS) infrastructure allows for the creation and testing of enterprise-wide solutions to obstacles that face all survey and decennial operations. In our final 2010 Census report to Congress,<sup>16</sup> we suggested that the Census Bureau use ACS to explore areas such as questionnaire content and design, response options (such as the Internet), use of administrative records, and targeted field data collection procedures and methodologies. Census's preliminary 2020 decennial cost estimates were based on the assumption that the ACS program would continue. With Congress debating the elimination of funding for this survey, management needs to factor into 2020 decennial planning efforts the significant uncertainty this would create.

#### *Ability to Use Administrative Records*

Currently, one of the focal points of the 2020 Census research and testing agenda is to use administrative records to improve the address list and reduce the number of visits to housing units that do not return the questionnaire. The use of these records could potentially save billions of dollars over the life cycle of the next census. However, obtaining access to these records can be difficult because relevant statutes governing other federal agencies do not compel them to provide their records to the Bureau. In addition, as we recently reported,<sup>17</sup>

<sup>16</sup> U.S. Department of Commerce Office of Inspector General, June 27, 2011. *Census 2010: Final Report to Congress*, OIG-11-030-I. Washington, D.C.: Department of Commerce OIG.

<sup>17</sup> U.S. Department of Commerce Office of Inspector General, May 10, 2012. *High-Quality Maps and Accurate Addresses Are Needed to Achieve Census 2020 Cost-Saving Goals*, OIG-12-024-I. Washington, D.C.: Department of Commerce OIG.

## U.S. DEPARTMENT OF COMMERCE

## OFFICE OF INSPECTOR GENERAL

although tribal, state, county, and local governments share address information with Census, Title 13 forbids Census from reciprocating with those partners and federal agencies—with a few, very narrow, exceptions, such as the once-a-decade address-updating program. According to the Bureau, it is trying to identify opportunities that will provide detailed feedback to local governments throughout the decade for address list improvements. However, to facilitate a wide-ranging use of administrative records—key to containing 2020 decennial costs—management needs to seek congressional guidance.



## Challenge 3:

### Strengthen Security and Investments in Information Technology

In FY 2012, the Department planned to invest \$2.4 billion in IT. This is about 25 percent of its annual budget and one of the highest percentages devoted to IT among all civilian agencies. The Department and its constituent bureaus rely on IT to support major mission activities, such as producing the constitutionally mandated decennial census; releasing vital economic statistics (e.g., the gross domestic product and consumer spending); granting patents and trademarks; issuing severe weather alerts; and operating weather satellites. However, we have identified major concerns in the Department's IT security posture and fragmented IT governance. While the Department's Chief Information Officer (CIO) has taken steps to strengthen IT governance, we continue to find significant security vulnerabilities in bureau systems, which could lead, and already have led, to service disruptions and loss of sensitive information. We have identified four areas for management attention:

- Continue improving Commerce's IT security posture by addressing persistent security weaknesses
- Develop resilient incident response and recovery capabilities with increased monitoring of Internet traffic
- Manage Commerce's IT portfolio with enhanced governance structure
- Strengthen oversight of IT investments

### *Continue Improving Commerce's IT Security Posture by Addressing Persistent Security Weaknesses*

Government agencies, Internet commerce, and vital business sectors are all affected by the rapid increase in the number of cyberattacks. The Department is under constant threat because of its reliance on Internet-based technologies, which interconnect its IT systems and facilitate business with the public. In fact, several of the Department's bureaus fell victim to significant cyber intrusions in recent years. For example, in January 2012, as a result of a malware infection, the Economic Development Administration (EDA) disconnected its systems from the Internet, greatly affecting its ability to maintain normal business operations. Also, hackers successfully penetrated two other bureaus' networks during FY 2012, resulting in exfiltration<sup>18</sup> of user account information. Hackers could have gained unauthorized access to the bureaus' sensitive information. These incidents resulted from a persistent lack of basic security controls.

We conducted security assessments on a targeted selection of 18 systems from six bureaus in FY 2010 and 10 systems from three bureaus in FY 2011. We also assessed the security posture

<sup>18</sup> Exfiltration, in the context of this report, refers to the unauthorized transfer of information from an organization to external entities.

## U.S. DEPARTMENT OF COMMERCE

## OFFICE OF INSPECTOR GENERAL



of 15 Web application systems from eight bureaus. In FY 2012, we assessed the effectiveness of four bureaus' information security programs by evaluating key security measures in place to protect mission-critical information that is processed, stored, or transmitted by 17 information systems within these bureaus.

Over the years, we have repeatedly identified significant flaws in basic security measures protecting IT systems and information. We have continually called for greater attention and stronger commitment from the Department's senior management to the basic security practices, which, if properly implemented, can effectively minimize or stop cyberattacks before a serious compromise occurs. In response to our FYs 2010 and 2011 recommendations, the Department has updated its IT security policy for vulnerability scanning, secure configurations, and management of plans of action and milestones. However, the Department needs to enforce these policies because we continue to find similar security weaknesses in department-wide and bureau systems. For example, we reported the following persistent security weaknesses in FYs 2010, 2011, and 2012:<sup>33</sup>

- High-risk vulnerabilities
- Deficient patch management
- Inadequate secure configuration settings
- Ineffective vulnerability scanning
- Security weaknesses not tracked or remediated expeditiously

Last year, we reported that the Department had taken the significant step of including information security measures in the Deputy Secretary's quarterly balanced scorecard review with bureau heads, to help institutionalize good security practices. However, we found that those measures were inconsistently reported across the Department. For example, bureaus chose different security controls as their reporting measures. Such reporting makes it harder to assess overall performance of the Department's IT security program. To correct this inconsistency, the Office of the Chief Information Officer, after collaborating with the bureaus, issued guidance in July 2012 to help bureaus consistently and accurately report their IT security performance in future balanced scorecards. With this renewed focus on using consistent and accurate security measures for balanced scorecard review, the Department should require bureaus to demonstrate progress in correcting persistent security weaknesses.

<sup>33</sup> U.S. Department of Commerce Office of Inspector General, November 2010. *Federal Information Security Management Audit Identified Significant Issues Requiring Management Attention*, OIG-11-012-A. Washington, D.C.: Department of Commerce OIG; U.S. Department of Commerce Office of Inspector General, November 2011. *FY 2011 Federal Information Security Management Act Audit: More Work Needed to Strengthen IT Security Department-Wide*, OIG-12-007-A. Washington, D.C.: Department of Commerce OIG.



### ***Develop Resilient Incident Response and Recovery Capabilities with Increased Monitoring of Internet Traffic***

EDA (at the time of the cyber incident) and several other bureaus located in the main Commerce building rely on the Department's Computer Incident Response Team (DOC CIRT) to provide forensic analysis when a cyber event occurs. However, while investigating EDA's cyber incident, DOC CIRT faced technical challenges and had to depend heavily on several internal and external groups, such as NIST, the Department of Energy, and other federal agencies for assistance. The Department needs to strengthen its incident response capabilities to effectively deal with ever-increasing cyber events.

In addition, this cyber incident exposed a weakness in EDA's continuity of operations planning. For example, due to malware infection on its systems, which may have existed on the systems for several years, EDA could not assure that information stored on its electronic backup media was not contaminated. As a result, EDA had to "clean" the information before using it to reconstitute its systems, which significantly extended the reconstitution time. As a lesson learned from the EDA incident, the Department should ensure that bureaus consider the potential effects of corrupted information from cyberattacks when planning continuity of operations.

*The Department should ensure that bureaus consider the potential effects of corrupted information from cyberattacks when planning continuity of operations.*

The Department has made a concerted effort to implement OMB's Trusted Internet Connection (TIC) initiative, which should better monitor cyber threats from the Internet. All bureaus, except the Census Bureau and NOAA,

will acquire TIC service by December 2012. NOAA is planning to be its own TIC access provider by 2014. However, the Census Bureau raised concern over TIC's inspection process, which could allow third parties, such as the Department of Homeland Security, to access sensitive information that must be protected against disclosure by Title 13 of the United States Code.<sup>20</sup> As a result, the Census Bureau has no definite timeline for TIC implementation but continues to work with the Department of Homeland Security to achieve a mutually acceptable solution. The Department needs to assign a high priority to helping Census resolve the concern about potential violation of Title 13 requirements.

### ***Manage Commerce's IT Portfolio with Enhanced Governance Structure***

We previously attributed the Department's long-standing information security weaknesses to its fragmented CIO governance. In addition to the Department's CIO, there have been 18 CIOs in Commerce's bureaus, including 7 within NOAA. The Department's CIO had little oversight of bureau budget submission and performance evaluation of key bureau IT management. This weak central governance resulted in stovepipes in IT investments and difficulties in fixing persistent security weaknesses.

<sup>20</sup> Title 13 is the law under which the Census Bureau operates. The law guarantees the confidentiality of census information and establishes penalties for disclosing this information.

In June 2012, the Acting Secretary issued the "Department IT Portfolio Management Strategy,"<sup>21</sup> which expanded the role of the Commerce CIO. Previously limited to policymaking and infrastructure maintenance, the Commerce CIO now implements Department-wide IT shared commodity services, approves bureaus' IT investments, and provides at least 25 percent of performance appraisals of individuals responsible for IT commodity services. Under the new strategy, there will be only one CIO per bureau for better accountability.

This new strategy is an important step. However, it is too early to judge its effectiveness for two reasons. First, historically, bureaus have functioned independently on IT matters with little departmental direction. Second, the new strategy focused on increasing the Department CIO's influence on "IT shared commodity services," such as networks, data centers, and e-mails, which account for only about 25 percent of the Department's total IT investments. Senior management should consider further enhancing the IT governance structure to help ensure the Department's success with several major IT investments on the horizon—supporting 2020 Decennial operations, implementing patent reform, modernizing weather-related information in Next Generation Air Traffic Control Systems, and replacing all departmental legacy financial systems. Further, to meet OMB's directive to reduce FY 2014 IT spending by 10 percent (a reduction of \$226 million for the Department), the CIO needs to leverage newly enhanced authority to turn around at-risk projects and to eliminate duplicative IT assets, contracts, and services.

### **Strengthen Oversight of IT Investments**

The Department's IT review board, led by the CIO and Chief Financial Officer (CFO), reviews major IT investments for status updates and requests for additional spending authority<sup>22</sup> and conducts TechStat reviews, which focus on putting troubled investments back on track. In calendar years 2011 and 2012, the IT review board has held 20 major IT investment reviews, seven TechStat reviews, and two special risk reviews on NOAA's satellite programs and the Bureau of Industry and Security's USXPORTS Exporter Support System. Also, as part of the budget process, agencies are required to submit IT capital asset summaries, which specify the cost, schedule, and performance baselines for major IT investments. The Office of the CIO collects this information, as well as monthly updates; evaluates investment risk; and submits this information to the OMB Federal IT dashboard.

The Department's CIO has taken steps to improve the IT investment review process, such as having bureaus submit project information to the CIO's subject matter experts for analysis before the review meeting. Such improvements, in conjunction with TechStat reviews and the increased visibility provided by the federal IT dashboard, have contributed to improving the likelihood of investment success. However, three of six troubled IT investments have remained at high risk for more than 12 months (see table 1), and according to information on the OMB Federal IT dashboard, about 25 percent of Commerce's major IT investments are 30 percent or more behind schedule.

<sup>21</sup> U.S. Department of Commerce, Acting Secretary, June 21, 2012, *Department IT Portfolio Management Strategy*. Washington, D.C.: Department of Commerce.

<sup>22</sup> Departmental officials also conduct reviews of non-IT acquisition projects. See challenge 4: Implement Framework for Acquisition Project Management and Improve Contract Oversight.

Table 1. High-Risk Commerce IT Investments

Bureau	Investment	Total FY 2012 Spending (\$ Million)	Months at High Risk 2010 2012
Census	American Community Survey	39	2
	Decennial 2010 systems design, integration, and evaluation	24	9
	IT infrastructure	130	1
NOAA	Joint Polar Satellite System ground system	154	15
	National Weather Service telecommunication gateway	21	20
	Weather Radio Improvement Project	5	18

The CIO and CFO, in conjunction with bureau heads, need to ensure that program management is more aggressively addressing investments with a history of high risk. For example, bureaus should be required to bring in outside experts to quickly assess root causes and provide remedies for failing investments, as was done for the National Telecommunications and Information Administration's Federal Spectrum Management System. The CIO should terminate IT investments that cannot be turned around and find alternative approaches for acquiring needed services.



## Challenge 4:

### Implement Framework for Acquisition Project Management and Improve Contracts Oversight

In FY 2011, the Department obligated approximately \$2.4 billion on contracts for goods and services, including satellite acquisitions, intellectual property protection, broadband technology opportunities, management of coastal and ocean resources, information technology, and construction and facilities management. Table 2 illustrates the dollar amounts that Commerce's operating units have obligated through contracts in recent years.

To maximize these funds, the Department needs to strengthen its acquisition and contract management practices. While it has made some progress—such as reorganizing the Office of Acquisition Management to more directly address major acquisition initiatives and implementing an Acquisition Center of Excellence, which will consolidate acquisition support for the Department's smaller bureaus, our audits continue to find weaknesses in how the Department plans, administers, and oversees its contracts and acquisition programs. We have identified four areas for management attention:

- Implement the planned framework for acquisition project management
- Oversee high-risk contracts
- Maintain an acquisition workforce that holds bureau officials accountable
- Implement an effective suspension and debarment program

Table 2. Dollar Amounts Obligated by Commerce's Operating Units

Commerce Acquisition Office	FY 2009		FY 2010		FY 2011	
	Contract Actions <sup>21</sup>	Dollars (in millions)	Contract Actions	Dollars (in millions)	Contract actions	Dollars (in millions)
NOAA	16,831	\$1,159	16,087	\$1,624	14,159	\$1,160
Census	3,332	1,308	3,187	1,312	1,849	522
USPTO	1,776	384	1,619	431	2,134	368
NIST	4,768	286	4,992	505	5,224	253
Office of the Secretary	768	63	870	53	1,161	44
Total	27,475	\$3,200	26,755	\$3,925	24,527	\$2,367

Source: Department of Commerce Office of Acquisition Management.

<sup>21</sup> Contract actions include contracts, delivery orders, task orders, and contract modifications.

### Implement the Planned Framework for Acquisition Project Management

Because of challenges the Department encountered in earlier acquisitions, in June 2010, the former secretary mandated a study be conducted on ways to improve the acquisition process. The resulting study identified several problems with the system—including requirements, cost analysis, and oversight of major projects. To address these concerns, the Office of Acquisition Management developed an Acquisition Project Management Framework/Guidebook (see figure 3), which described the minimum standard of processes and major milestone reviews required of high-profile projects—including capital investments such as satellites, information technology,<sup>24</sup> facilities, and ships and aircraft—throughout multiple acquisition phases: conceptual development, project definition, and project development (including procurement/contracting).<sup>25</sup> The framework also highlights the importance of independent reviews and reliable cost estimation, among other things. This is a significant improvement when compared with the previous departmental framework, which focused largely on procurement/contracting-related activities.

*The Office of Acquisition Management developed a framework, which described the minimum standard of processes required of high-profile projects, including capital investments such as satellites, information technology, facilities, and ships and aircraft.*



Note: MS = milestone.

Source: Department of Commerce Office of Acquisition Management.

The new framework, if implemented consistently, should increase the transparency of bureau acquisition programs and help mitigate risks of cost overruns, schedule delays, and performance shortfalls commonly experienced by major acquisitions. Based on dollar thresholds, risks, and specific designation, Departmental management has selected a group of current bureau acquisition programs for review, in accordance with the new framework. Through programs such as NOAA's acquisition of new and improved satellites and Census's preparations for the 2020 decennial census, the Department will have many opportunities to practice the framework.

However, incorporating the framework into the Department's acquisition policy will require management attention. The Department has not used such a detailed process to program, plan,

<sup>24</sup> See also challenge 3: Strengthen Security and Investments in Information Technology.

<sup>25</sup> The Department also drafted an interim policy for applying the framework pending for signature.



and budget for new acquisitions. In addition, bureaus such as NOAA question its need because they use their own detailed acquisition policies. The Department needs to ensure that the departmental policy requiring the use of the acquisition framework is issued and followed by all bureau officials to timely achieve its mission requirements.

Implementing the Acquisition Project Management Framework (when expanded to cover the asset disposal process) could also help the Department ensure timely replacement of aging equipment. For example, aircraft used to conduct hurricane surveillance are all nearing the end of their useful life, and more modern versions are needed. However, planning efforts to replace aged aircraft have not yet started despite the bureau's knowledge of the need.

### **Oversee High-Risk Contracts**

In FY 2011, the Department reported progress in reducing dollar amounts of high-risk contract awards. Despite this progress, overseeing existing high-risk contracts remains a challenge to management. We continue to find weaknesses in the use of cost-plus-award-fee (CPAF) and cost-plus-award-term (CPAT) contracts, which put the Department's contract dollars at risk. CPAF and CPAT contracts can encourage excellence by providing financial incentives based on performance, but they require effective monitoring to ensure contract dollars are spent wisely and award fees and terms are justified. In May 2012, we reported that NOAA did not use

*More than \$40 million was paid in award fees or approved for contract extensions without proper justification.*

measurable evaluation criteria or payment structures to motivate exceptional performance. Ultimately, NOAA consistently gave contractors high ratings and substantial award fees and contract extensions, despite lacking adequate support for their actual performance, as measured by evaluation criteria and required by the Office of

Management and Budget. Based on our audit, we found that more than \$40 million was paid in award fees or approved for contract extensions without proper justification. Effective implementation of NOAA measures will be critical to ensuring it does not pay improper award fees and extend contract terms.

Poor data systems could also undermine the Department's efforts in managing its high-risk contracts. Our audits have found that Commerce acquisition information reported in the Federal Procurement Data System—Next Generation (FPDS-NG) is incomplete and inaccurate. For example, in May 2012, we reported that the complete picture of NOAA's use of CPAF and CPAT contracts was unclear. Data reported in FPDS-NG and records maintained by NOAA on the use of CPAF and CPAT contracts were also inaccurate and incomplete. NOAA is the largest of all of the Department's procurement offices, obligating approximately 49 percent of the funding in FY 2011.

## U.S. DEPARTMENT OF COMMERCE

## OFFICE OF INSPECTOR GENERAL

Management needs to focus on developing reliable information, and data management systems will position the Department to conduct more strategic acquisitions. This focus should begin with the Department implementing our May 2012 recommendation to adhere to Commerce policy to validate data to more accurately reflect the contract types.<sup>26</sup>

### ***Maintain an Acquisition Workforce That Holds Bureau Officials Accountable***

In a March 2009 memorandum, the President acknowledged that the government needs to ensure that it has the workforce needed to carry out robust and thorough oversight of contracts to help program management achieve goals, avoid significant overcharges, and curb wasteful spending.<sup>27</sup> However, the capacity and the capability of Commerce's acquisition workforce to oversee and manage contracts face major challenges due to high turnover and employee retirement, coupled with a significantly reduced budget, gaps in key competency areas, and expanded workload. Like many federal agencies, the Department is faced with the major challenge of replacing existing talent because of a large number of retirements expected over the next several years. Of the approximately 200 contracting officers and specialists that Commerce employs, more than half can retire within 10 years. In addition, 14 percent of them are already eligible for immediate retirement. Replacing these employees represents a significant challenge since many possess unique skills and institutional knowledge that will be difficult to replace.

Additionally, 36 contracting officers and specialists left the Department in FY 2011—an attrition rate of 18 percent compared with the Department's overall attrition rate of 3 percent.<sup>28</sup> While the DOC has taken some actions to improve its ability to recruit qualified candidates, such as increasing the number of entry-level contracting job series from 24 in FY 2010 to 28 in FY 2011, improving recruiting activities will require a long-term commitment and focus. The Department needs to continue its recruitment efforts at the entry levels and focus on retention of that staff to maintain corporate knowledge about the respective bureau processes within the Department. This knowledge will provide a long-term assurance that the Department's future missions can be accomplished.

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

<sup>26</sup> U.S. Department of Commerce Office of Inspector General, May 2012, *NOAA's Cost-Plus-Award-Fee and Award-Term Processes Need to Support Fees and Extensions*, OIG-12-027-A, Washington, D.C.: Department of Commerce OIG.

<sup>27</sup> President's Memorandum, March 4, 2009, *Government Contracting*.

<sup>28</sup> According to Commerce Office of Acquisition Management, the attrition rate of 18 percent was calculated based on 36 positions, NOAA: 16, NIST: 9, OS: 6, Census: 4, USPTO: 1, divided by 200 positions onboard at the end of FY 2011. The 3 percent was calculated based on the total of employees in any series that separated from Commerce in FY 2011 (1,536) divided by the number on board at the end of FY 2011 (47,626).



## U.S. DEPARTMENT OF COMMERCE

## OFFICE OF INSPECTOR GENERAL

- Misuse of government credit cards, including falsification of purchase card records
- Conflicts of interest due to personal relationships between grant awarding officials and grant recipients, to include familial, marital (in-law) and former employer/employee relationships
- Misuse of public position for private gain—for instance, Commerce employees acquiring property or services through the Department's funds under the premise of fulfilling a bureau function but then diverting the property or service for their personal use
- Misuse of items purchased with Commerce funds, such as a NOAA boat that was used recreationally by NOAA officials

Finally, in the light of the known issues concerning GSA's misuse of resources for agency conferences, we have seen an increase in attention related to spending on conferences. The Department has implemented new procedures to review conference spending. Bureau heads should now be more sensitive to the public perception of conference spending and inclined to make better spending decisions related to conferences.

### ***Implement an Effective Suspension and Debarment Program***

We previously reported on the challenges facing the Department in ensuring that it contracts with and provides funding assistance only to responsible parties.<sup>29</sup> Since finalizing its first suspension or debarment action in over 15 years, in April 2011, the Department has made progress toward establishing an efficient and durable suspension and debarment program. OIG has referred nine matters, including five since September 2011, to the Department's Suspending and Debarment Official (SDO). Based on these referrals, the SDO has taken 37 total actions and declined one referral.

The SDO continues efforts toward establishing a strong program, including regular attendance at monthly meetings of the Interagency Suspension and Debarment Committee; designation of a Suspension and Debarment Coordinator, who serves as a focal point for the program; preliminary planning for routine intradepartmental training on suspension and debarment; and establishment of regular meetings with the Office of General Counsel and OIG's Office of Counsel. However, certain issues present ongoing challenges. Although the SDO's office has begun drafting policy documents to institutionalize processes and procedures regarding the referral, review, and issuance of suspension and debarment matters, the adoption process needs to be finalized. Also, even though the SDO's processing efficiency has increased over the past year, there is room for improvement regarding the prompt review of referrals; and the program lacks a clear delineation of roles and responsibilities in such important areas as revising and adapting draft documents prepared by OIG for possible use in suspension and debarment actions and appropriately following up on actions once taken.

<sup>29</sup> U.S. Department of Commerce Office of Inspector General, October 2011, *Top Management Challenges Facing the Department of Commerce*, OIG-12-003. Washington, D.C.: Department of Commerce OIG.



## Challenge 5:

### Reduce Risks of Cost Overruns, Schedule Delays, and Coverage Gaps for NOAA's Satellite Programs

Managing risks in the acquisition and development of the next generation of environmental satellites is a continuing challenge for the Department. The two most prominent programs,<sup>30</sup> the Joint Polar Satellite System (JPSS) and the Geostationary Operational Environmental Satellite-R series (GOES-R), together account for one-third of NOAA's FY 2013 budget request. They are also the largest investments in the Department, comprising nearly 20 percent of the Commerce budget. The satellites will provide data and imagery for weather forecasting—including severe-storm tracking and alerting—and the study of climate change. Operating environmental satellites and weather forecasting are designated as primary mission-essential functions of the Department because they help lead and sustain the nation in the event of a catastrophe. Yet, because of cost overruns, schedule delays, and the aging of NOAA's current constellation of satellites, NOAA is confronting coverage gaps for these critical assets.

Strong program management and close oversight of these programs are needed, to manage risks that inevitably lead to cost overruns, schedule delays, and coverage gaps for the critical capabilities these programs will provide. Based on our work with these programs, we have identified four areas for management attention:

- Communicate with stakeholders to define JPSS capabilities, schedule, and cost baselines
- Ensure adequate leadership and governance structure over JPSS development
- Develop a plan to support NOAA weather forecasting capabilities during coverage gaps
- Reduce program risks associated with GOES-R development

### ***Communicate with Stakeholders to Define JPSS Capabilities, Schedule, and Cost Baselines***

In our September 2011 audit report,<sup>31</sup> we recommended that NOAA develop a mechanism to provide executive and legislative decision makers, on a recurring basis, with complete, objective, and understandable information that illustrates the consequences of limiting satellite observational capabilities. This was driven, in part, from congressional concerns regarding NOAA's limited communication of plans for its satellite programs. Recently, the Senate Committee on Appropriations expressed frustration with NOAA's "inability to control

<sup>30</sup> Other satellite acquisitions include Jason-3, which will measure sea surface height, and Deep Space Climate Observatory, which will provide advance warnings of solar storms affecting earth.

<sup>31</sup> U.S. Department of Commerce, Office of Inspector General, September 30, 2011. *Audit of the Joint Polar Satellite System: Challenges Must Be Met to Minimize Gaps in Polar Environmental Satellite Data* (OIG-11-034-A). Washington, D.C.: Department of Commerce OIG.

## U.S. DEPARTMENT OF COMMERCE

## OFFICE OF INSPECTOR GENERAL

procurement costs or articulate reliable funding profiles.”<sup>32</sup> This resulted in the Senate Committee losing confidence in NOAA’s ability to manage its portfolio of satellite acquisitions. The Committee’s appropriations bill, if enacted, would transition NOAA’s satellite acquisitions entirely to NASA. As such, it’s clear that NOAA must do more to improve communication with stakeholders.

NOAA’s JPSS program uses NASA as its acquisition agent, leveraging that agency’s procurement and system engineering expertise—an arrangement based on previous partnerships between the two agencies. In its FY 2011 budget submission, NOAA reported that the two-satellite JPSS program, running through 2024, would cost \$11.9 billion. Requirements changes and an extended life cycle through 2028 resulted in a revised cost estimate of \$14.7 billion. In its FY 2013 budget submission, however, NOAA committed to capping the cost of the program at \$12.9 billion and submitted a nearly flat-line annual budget estimate of \$900 million, plus the cost of climate sensors previously budgeted under a different NOAA program, from FY 2013 to FY 2017. Although the program has since constructed a cost estimate to support the \$12.9 billion cost cap, its high-level requirements were recently finalized in October 2012. Pending decisions on lower-level requirements, acquisition strategies, and system design—particularly for the ground system and “free-flyer” satellites (which will host search-and-rescue and data collection instruments, separate from the program’s primary satellites)—could have ramifications for launch schedules and cost:

- The ground segment project recently completed its requirements review in August; it was originally scheduled to precede the program-level review in May. Program officials have told us that there is a need to rethink legacy requirements<sup>33</sup> in the light of current needs and technology options.
- There is a significant amount of uncertainty in requirements for free-flyer satellites. For the free flyers, information security requirements had to be analyzed and ground support options determined. This uncertainty in requirements translates to uncertainty in the program’s life-cycle cost estimate.

During FY 2012, NOAA has made progress in prioritizing JPSS requirements to support its commitment to capping the life-cycle costs at \$12.9 billion. While this approach shows serious management commitment, fitting requirements into a previously authorized budget increases the risk that requirements will be dropped or launches delayed in order to remain within the budget. NOAA needs to revisit the life-cycle cost estimates after finalizing JPSS requirements and work with the Department and congressional representatives in adjusting its budget estimates.

<sup>32</sup> Senate Report 112-158 (discussing Committee rationale for transfer to NASA); Commerce, Justice, Science, and Related Agencies Appropriations Act, 2013, S. 2323, 112<sup>th</sup> Cong. (2012).

<sup>33</sup> Requirements were transferred from JPSS’ predecessor system, the tri-agency National Polar-orbiting Operational Environmental Satellite System, which undertook development of next-generation polar satellites from 1995 until early 2010, when the White House Office of Science and Technology Policy restructured it into separate military and civilian (JPSS) programs.



**Ensure Adequate Leadership and Governance Structure over JPSS Development**

More progress defining JPSS capabilities, schedule, and cost may have been possible if not for delays defining the program's governance structure and staffing key program and NOAA positions. NOAA and NASA finally agreed to a management control plan for JPSS in February 2012, nearly 2 years after the program was started. Further, NOAA and its JPSS program have had key staff in acting, rather than permanently filled, capacities for extended periods of time (see table 3). Only the Under Secretary of Commerce for Oceans and Atmosphere and the Assistant Administrator, National Environmental Satellite, Data, and Information Service (NESDIS), positions have been permanently filled since the program's inception.

Table 3. NOAA JPSS Program Authorities

Position	Status at Program Start (Feb 2010)	Current Status
Under Secretary of Commerce for Oceans and Atmosphere/ NOAA Administrator	Filled	Filled
Assistant Secretary for Environmental Observation and Prediction/Deputy Administrator	Vacant	Filled (May 2011)
Deputy Under Secretary for Operations	Filled	Acting (January–June 2012) Filled (July 2012)
Assistant Administrator, NESDIS	Filled	Filled
NESDIS Deputy Assistant Administrator for Systems	Filled	Acting (February 2010–May 2012) Currently vacant
JPSS Director	Acting	Filled (September 2011)

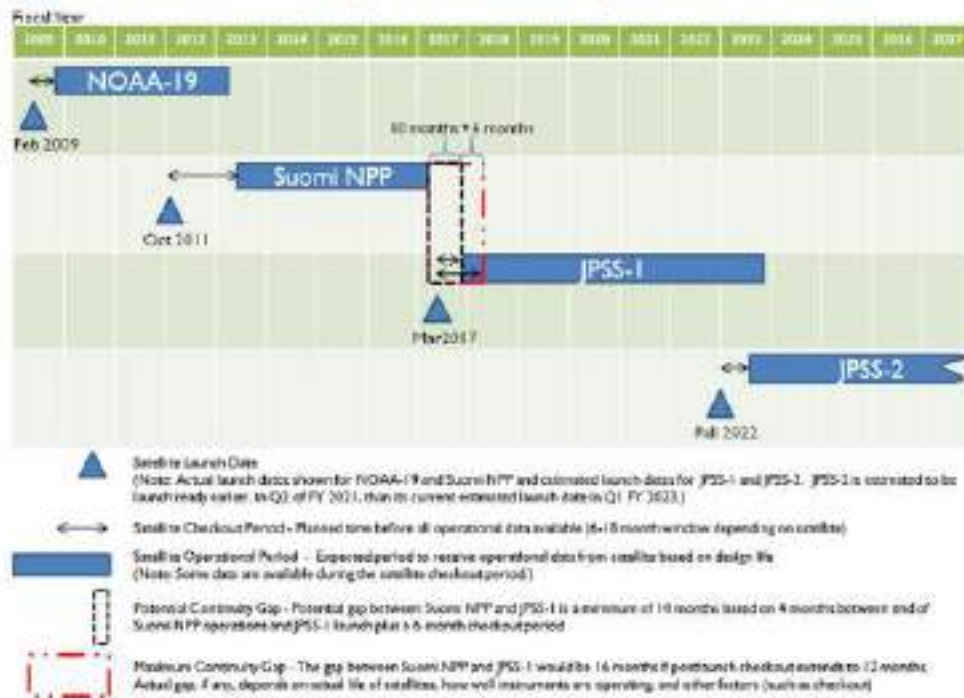
Source: OIG analysis of NOAA information

Qualified officials, who can make timely decisions and take management action, are essential to the success of JPSS development. For example, NOAA's Deputy Under Secretary for Operations is deemed the final authority for the program's high-level requirements, schedule, and budget submissions. The former official retired in January 2012 and was not permanently replaced until July 2012, even though the interim period included the FY 2013 President's Budget submission and other decisions on high-level requirements. Currently, the NESDIS Deputy Assistant Administrator for Systems position, which serves as NOAA's single source of programmatic direction and guidance to NASA for NOAA programs, is vacant. Previously, this position was staffed in an acting capacity. Detailed employees, in acting capacities, occupy several other key positions within NESDIS and the program. NOAA needs to fill open positions overseeing JPSS development and govern the program according to the management plan accepted by NASA.

### Develop a Plan to Support NOAA Weather Forecasting Capabilities During Coverage Gaps

Over the course of the program to date, we have analyzed Suomi National Polar-orbiting Partnership (Suomi NPP, a recently launched, risk-reduction satellite that is flying the first versions of JPSS sensors) and JPSS schedules to assess expected gaps in weather forecast data. Currently, we project a 10–16-month gap between Suomi NPP's end of design life and when JPSS-1 data become available for operational use—a refinement from last year's estimate of 9–21 months (see figure 4). NOAA's medium-range weather forecasting (3–7 days) could still be significantly degraded during the period of time JPSS data are unavailable.

Figure 4. Potential Continuity Gaps for Polar-Satellite Operational Forecast Data



Source: OIG analysis of JPSS program data

In our September 2011 report, we reported on activities within NOAA to use other sources of data to mitigate gaps and recommended NOAA coordinate efforts from across its line offices to minimize the degradation of weather and climate forecasting. In response, NOAA indicated that it was looking at both foreign and commercial sources of data. However, NOAA has not fully developed a strategy for evaluating and selecting foreign data sources. Nor has it completed a comprehensive mitigation plan for polar satellite coverage gaps. Obtaining support from other reliable sources could be time consuming. NOAA needs to develop a timetable to measure its progress towards having a mitigation plan in place before Suomi NPP's end of design life: November 2016.



The risk of a near-term gap between NOAA-19 (NOAA's primary operational polar-orbiting satellite) and Suomi NPP has been largely mitigated. Suomi NPP launched October 28, 2011, and within 7 months, NOAA supercomputers began assimilating data from the Advanced Technology Microwave Sounder (ATMS) in numerical weather prediction models. Other issues will result in delaying the use of data from the Cross-track Infrared Sounder (CrIS), which complements those from ATMS, until December 2013—after NOAA-19's end of design life. However, NOAA forecast models currently use data from NASA's Aqua satellite, which are similar to CrIS data.<sup>14</sup>

### **Reduce Program Risks Associated with GOES-R Development**

GOES-R (see figure 5) is also a NOAA/NASA partnership, with NOAA having overall program responsibility. Unlike JPSS, however, NOAA is solely managing the acquisition and development of the GOES-R ground system while NASA is primarily directing the flight segment (spacecraft, instruments, launch vehicle and services). The GOES-R series of satellites will provide uninterrupted short-range severe weather warning and "now-casting" capabilities through 2036. With four satellites (the GOES-R, -S, -T, and -U), the program is estimated to cost \$10.9 billion over the course of its life cycle.

The GOES-R program recently held a key technical milestone review (critical design) in August 2012. Subsequently, the program downgraded, from green to yellow, its assessment of schedule and technical development because of various issues with the spacecraft and instruments and the need to aggressively manage dependencies with the ground project's development. The ground segment's schedule has become more incremental—which will increase schedule flexibility, as well as better align the delivery schedule for GOES-R spacecraft, instruments, and documentation. Despite progress made, there is less than a 50 percent chance the GOES-R satellite will be launched on schedule, in October 2015, based on the program's own models used to assess GOES-R development. NOAA must implement solid program management and system engineering principles to control costs, keep schedules on track, and maintain required technical performance.



Source: NOAA

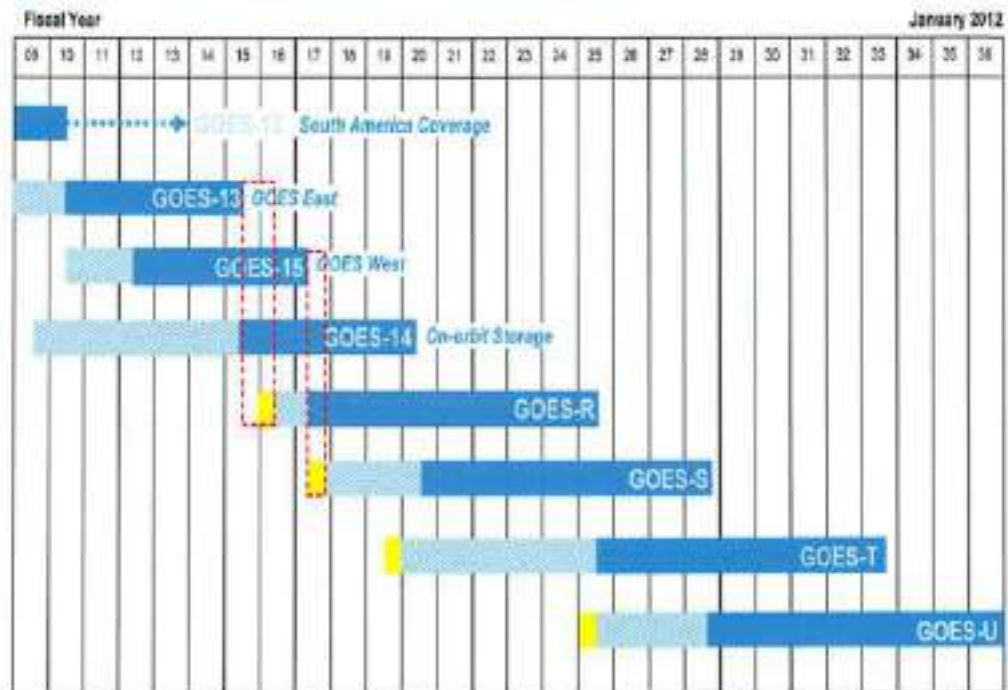
The program's standing review board has also warned that should the program's request in the President's FY 2013 budget submission (an increase of nearly \$200 million, or 30 percent, from FY 2012) not be realized, a launch delay is nearly certain, which could significantly limit NOAA's capability of providing short-range severe weather warning. NOAA's policy for its geostationary satellites is to have three satellites in orbit—two operational satellites with overlapping coverage and one spare for backup (see figure 6). As we reported last year, NOAA may not be able to meet its policy of having an on-orbit spare even without a GOES-R launch delay, because of retirement of current GOES series satellites. A launch delay beyond October 2015 increases the risk that just one geostationary imager will be on orbit, a scenario in which

<sup>14</sup> Aqua is an aging satellite. Launched in 2002, its original mission life was 6 years.



NOAA's capability to visualize and track severe weather events would be severely limited. NOAA needs to adequately communicate to decision makers its justification for the significant funding increase for FY 2013, citing such reasons as to order items that require long manufacturing lead times or to hire qualified engineers, technicians, and so on.

Figure 6. Continuity of Geostationary Operational Satellites



Approved: *May 2, 2012*  
Assistant Administrator for  
Satellite and Information Services

Signed on: *1/25/12*

..... Satellite is operational  
beyond design life  
Potential policy gap  
(2 operational + 1 spare)

Post Launch Test / On-orbit  
storage  
Operational  
Post Launch Test

Source: OIG adapted from NOAA geostationary satellite schedules.

## Acronym List

ACS	American Community Survey
AMTech	Advanced Manufacturing Technology Consortia
ARRA	American Recovery and Reinvestment Act of 2009
ATMS	Advanced Technology Microwave Sounder
BIS	Bureau of Industry and Security
BTOP	Broadband Technology Opportunities Program
CFO	Chief Financial Officer
CIO	Chief Information Officer
CPAF	cost-plus-award-fee
CPAT	cost-plus-award-term
CrIS	Cross-track Infrared Sounder
DOC CIRT	Department's Computer Incident Response Team
EDA	Economic Development Administration
FirstNet	First Responder Network Authority
FPDS-NG	Federal Procurement Data System—Next Generation
FY	fiscal year
GAO	U.S. Government Accountability Office
GOES-R	Geostationary Operational Environmental Satellite-R series
GSA	U.S. General Services Administration
HCHB	Herbert C. Hoover Building
IT	information technology
ITA	International Trade Administration
JPSS	Joint Polar Satellite System
NEI	National Export Initiative
NESDIS	National Environmental Satellite, Data and Information Service
NIST	National Institute of Standards and Technology
NOAA	National Oceanic and Atmospheric Administration
NPP	National Polar-orbiting Partnership
NTIA	National Telecommunications and Information Administration

## U.S. DEPARTMENT OF COMMERCE

## OFFICE OF INSPECTOR GENERAL

NWS	National Weather Service
OIG	Office of Inspector General
OMB	Office of Management and Budget
PSBN	Public Safety Broadband Network
SDO	Suspending and Debarring Official
TIC	Trusted Internet Connection
USPTO	U.S. Patent and Trademark Office

## Appendix A: Related OIG Publications

This list presents OIG's past and current work related to FY 2013's top management challenges. These products can be viewed at [www.oig.doc.gov](http://www.oig.doc.gov). If the product contains information that cannot be released publicly, a redacted version or an abstract will be available on the website.

### Challenge 1: Trade and Export Promotion

- USPTO's Other Backlog: Past Problems and Risks Ahead for the Board of Patent Appeals (OIG-12-032-A, August 10, 2012)
- More Action Needed to Improve Controls in Asset Forfeiture Fund (OIG-12-019-I, February 8, 2012)
- The Patent Hoteling Program Is Succeeding as a Business Strategy (OIG-12-018-A, February 1, 2012)
- Follow-up Review of NOAA Fisheries Enforcement Programs and Operations (OIG-12-017-I, January 31, 2012)
- Letters to Congress re: Status of NOAA's Implementation of OIG's Asset Forfeiture Fund Recommendations (OIG-11-012-M, December 12, 2011)
- Patent End-to-End Planning and Oversight Need to Be Strengthened to Reduce Development Risk (OIG-11-033-A, September 29, 2011)
- Status of USPTO Initiatives to Improve Patent Timeliness and Quality (OIG-11-032-I, September 29, 2011)

### Challenge 2: Oversight of Resources and Investment for Long-Term Benefits

- IG's Testimony on Mismanagement of Funds at the National Weather Service and the Impact on the Future of Weather Forecasting (OIG-12-036-T, September 12, 2012)
- Review of NTIA's Oversight of the Booz Allen Hamilton Contract Supporting the Broadband Technology Opportunities Program (OIG-12-031-M, August 9, 2012)
- IG's Testimony on Planning for the 2020 Census: Senate Homeland Security and Governmental Affairs Committee (OIG-12-030-T, July 18, 2012)
- NTIA Needs Stronger Monitoring of BTOP Grant Recipients' Match (OIG-12-029-A, June 18, 2012)
- IG's Testimony on Broadband Loans and Grants: House Energy and Commerce Committee (OIG-12-026-T, May 16, 2012)

## U.S. DEPARTMENT OF COMMERCE

## OFFICE OF INSPECTOR GENERAL

- High-Quality Maps and Accurate Addresses Are Needed to Achieve Census 2020 Cost-Savings Goals (OIG-12-024-L, May 10, 2012)
- 2020 Census Planning: Delays with 2010 Census Research Studies May Adversely Impact the 2020 Decennial Census (OIG-12-023-L, April 5, 2012)
- OIG-Census Letter to Law Enforcement Professionals Regarding Assaults on Census Workers (March 30, 2012)
- FY 2011 Compliance with Improper Payment Requirements (OIG-12-022-L, March 15, 2012)
- Oversight Activities of NIST's Recovery Act Construction Grant Awards Are Generally Effective but Need Improvements (OIG-12-020-A, February 14, 2012)
- Single Audit Results for the 12-Month Period Ending December 31, 2011 (OIG-12-021-M, February 13, 2012)
- Misrepresentations Regarding Project Readiness, Governance Structure Put at Risk the Success of the San Francisco Bay Area Wireless Enhanced Broadband (BayWEB) Project (OIG-12-016-M, January 10, 2012)
- IG's Testimony on Stimulus Oversight: House Committee on Science, Space, and Technology (OIG-12-012-T, November 30, 2011)
- NTIA Has an Established Foundation to Oversee BTOP Awards, but Better Execution Is Needed (OIG-12-013-A, November 17, 2011)

**Challenge 3: IT Security**

- Improvements Are Needed to Strengthen ITA's Information Technology Security Program (OIG-12-037-A, September 27, 2012)
- Significant IT Security Program Improvements Are Needed to Adequately Secure NTIA's Systems (OIG-12-035-A, September 7, 2012)
- FY 2011 Federal Information Security Management Act Audit: More Work Needed to Strengthen IT Security Department-Wide (OIG-12-007-A, November 10, 2011)
- Improvements Are Needed For Effective Web Security Management (OIG-12-002-A, October 21, 2011)
- Patent End-to-End Planning and Oversight Need to Be Strengthened to Reduce Development Risk (OIG-11-033-A, September 29, 2011)
- Federal Information Management Act Audit Identified Significant Issues Requiring Management Attention (OIG-11-012, November 15, 2010)
- Respondent Data Safeguards in the Decennial Response Integration System (DRIS) (OAE-19888, September 24, 2010)



## U.S. DEPARTMENT OF COMMERCE

## OFFICE OF INSPECTOR GENERAL

- FY 2009 FISMA Assessment of the Environmental Satellite Processing Center (OAE-19730, January 11, 2010)
- FY 2009 FISMA Assessment of the Enterprise UNIX Services System (OAE-19729, November 20, 2009)
- FY 2009 FISMA Assessment of the Field Data Collection Automation System (OAE-19728, November 20, 2009)
- FY 2009 FISMA Assessment of the Patent Cooperation Treaty Search Recordation System (OAE-19731, November 20, 2009)

**Challenge 4: Contracts and Acquisitions**

- Quarterly Conference Reporting Processes Need Improvement (OIG-13-001-I, October 17, 2012)
- Oversight Activities of NIST's Recovery Act Construction Contracts Need Improvement (OIG-12-28-A, June 1, 2012)
- NOAA's Cost-Plus-Award-Fee and Award-Term Processes Need to Support Fees and Extensions (OIG-12-027-A, May 18, 2012)
- Further Actions Needed to Enhance Commerce's Acquisition Human Capital Plan (OIG-12-15-A, December 21, 2011)
- Commerce's Office of Acquisition Management Must Continue to Improve Its Ongoing Oversight of Acquisition Savings Initiatives (OIG-12-001-A, October 6, 2011)

**Challenge 5: Satellites**

- Audit of the Joint Polar Satellite System: Continuing Progress in Establishing Capabilities, Schedules, and Costs Is Needed to Mitigate Data Gaps (OIG-12-038-A, September 27, 2012)
- IG's Testimony on Need for Continued Innovation in Weather Forecasting and Prediction: Senate Committee on Commerce, Science, and Transportation (OIG-12-011-T, November 16, 2011)
- Audit of the Joint Polar Satellite System: Challenges Must Be Met to Minimize Gaps in Polar Environmental Satellite Data (OIG-11-034-A, September 30, 2011)
- Memorandum to the Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator: NOAA's Joint Polar Satellite System Audit Observations (OIG-11-029-M, June 10, 2011)

## Appendix B: Comparison Between FY 2012 and FY 2013 Challenges

FY 2013	FY 2012
<p>Stimulate economic growth in key industries, increase exports, and enhance stewardship of marine fisheries:</p> <ul style="list-style-type: none"> <li>• Growth in manufacturing, intellectual property, and wireless industries</li> <li>• Export promotion and regulation</li> <li>• Protection and promotion of marine fisheries</li> </ul>	<p>Effectively promote exports, stimulate economic growth, and create jobs:</p> <ul style="list-style-type: none"> <li>• Effective interagency partnerships</li> <li>• Enhancement of Commerce unit operations</li> <li>• Trade enforcement</li> <li>• Regulatory review improvement</li> </ul>
<p>Increase oversight of resources entrusted by the public and invest for long-term benefits:</p> <ul style="list-style-type: none"> <li>• Internal controls and oversight</li> <li>• Investment for long-term benefits</li> <li>• Design changes to contain 2020 decennial costs</li> </ul>	<p>Reduce costs and improve operations to optimize resources for a decade of constrained budgets:</p> <ul style="list-style-type: none"> <li>• Operational efficiency</li> <li>• Oversight of improper payments</li> <li>• Reduction of risks of misuse, abuse, or waste of federal grant funds awarded to grantees</li> <li>• Oversight of the Broadband Technology Opportunities Program</li> <li>• Application of lessons learned from 2010 decennial</li> <li>• Headquarters renovation costs and schedule</li> </ul>
<p>Strengthen security and investments in information technology (IT):</p> <ul style="list-style-type: none"> <li>• Addressing persistent IT security weaknesses</li> <li>• Incident response and recovery capabilities</li> <li>• IT governance for portfolio management</li> <li>• Oversight of IT investments</li> </ul>	<p>Strengthen department-wide information security to protect critical information systems and data:</p> <ul style="list-style-type: none"> <li>• Reduce ongoing security weaknesses</li> <li>• Implement security policy</li> </ul>
<p>Implement framework for acquisition project management and improve contract oversight:</p> <ul style="list-style-type: none"> <li>• Planned framework for acquisition management</li> <li>• Oversight of high-risk contracts</li> <li>• Acquisition workforce maintenance</li> <li>• Implementation of suspension and debarment program</li> </ul>	<p>Manage acquisition and contract operations more effectively to obtain quality goods and services in a manner most beneficial to taxpayers</p> <ul style="list-style-type: none"> <li>• Qualified acquisition workforce</li> <li>• Ethical standards in procurement practices</li> <li>• Use of high-risk contracts and maximizing competition</li> <li>• Tracking of contract savings</li> <li>• Delivery of major IT investments</li> </ul>
<p>Reduce risks of cost overruns, schedule delays, and coverage gaps for NOAA's satellite programs:</p> <ul style="list-style-type: none"> <li>• JPSS capabilities, schedule, and costs</li> <li>• Leadership and governance structure over JPSS</li> <li>• Weather forecasting during JPSS coverage gaps</li> <li>• Risks associated with GOES-R development</li> </ul>	<p>Manage the development and acquisition of NOAA's environmental satellite systems to avoid launch delays and coverage gaps:</p> <ul style="list-style-type: none"> <li>• Avoid near-term polar satellite coverage gaps</li> <li>• Manage polar satellites</li> <li>• Manage geostationary satellites</li> </ul>

U.S. DEPARTMENT OF COMMERCE

OFFICE OF INSPECTOR GENERAL

## Appendix C: Management Response to OIG Draft Report



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

November 9, 2012

MEMORANDUM FOR: Todd J. Zinser  
Inspector General

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

SUBJECT: Response to the FY 2013 OIG Report on Top Management Challenges

Thank you for the opportunity to review the Office of Inspector General's report "Top Management Challenges Facing the Department of Commerce." Every day the Department of Commerce's (Department) bureaus work with American businesses, communities, and private citizens to promote innovation, entrepreneurship, competitiveness, and stewardship—and we want to do that in the most effective and efficient way possible.

The Department is integrating key management functions to strengthen the alignment of resources to strategic objectives, mission priorities, risk management, internal controls, and acquisition management. For example, the Acquisition Improvement Framework, which I signed on November 6, 2012, addresses issues associated with Department acquisition management and oversight. The Department has also preserved resources for program delivery and stewardship by reducing administrative expenses. I have also directed a balanced scorecard approach to establish and maintain focus on the Department's top priorities, to develop data-driven metrics of success, and to emphasize that customer service in addition to organizational and workforce excellence are prerequisites to the achievement of the Department's programmatic goals.

We are aware that we have challenges in all of the areas discussed in your report, and we realize that these areas require continued oversight, planning, and work. In this budget-constrained environment, which is likely to continue, it is imperative that we continue improving our oversight processes and internal controls. I am focused on appropriate oversight at both the bureau and Department levels on those programs, projects, and management areas that either had issues brought to light in fiscal year 2012 or are critically vital to the success or failure of our mission goals.

We look forward to working with you to address the challenges mentioned in the report and will report progress made in our Performance and Accountability Report for fiscal year 2013.

FINAL REPORT NO. OIG-13-003

37

165



# Summary of Financial Statement Audit and Management Assurances

*Table 1. – Summary of Financial Statement Audit*

<b>Audit Opinion</b>	<b>Unqualified</b>				
Restatement	No				
<b>Material Weaknesses</b>	<b>Beginning Balance</b>	<b>New</b>	<b>Resolved</b>	<b>Consolidated</b>	<b>Ending Balance</b>
NONE	0	0	0	0	0
Total Material Weaknesses	0	0	0	0	0

*Table 2. – Summary of Management Assurances*

<b>Effectiveness of Internal Control over Financial Reporting (FMFIA § 2)</b>						
Statement of Assurance	Unqualified					
<b>Material Weaknesses</b>	<b>Beginning Balance</b>	<b>New</b>	<b>Resolved</b>	<b>Consolidated</b>	<b>Reassessed</b>	<b>Ending Balance</b>
NONE	0	0	0	0	0	0
Total Material Weaknesses	0	0	0	0	0	0
<b>Effectiveness of Internal Control over Operations (FMFIA § 2)</b>						
Statement of Assurance	Unqualified					
<b>Material Weaknesses</b>	<b>Beginning Balance</b>	<b>New</b>	<b>Resolved</b>	<b>Consolidated</b>	<b>Reassessed</b>	<b>Ending Balance</b>
NONE	0	0	0	0	0	0
Total Material Weaknesses	0	0	0	0	0	0
<b>Conformance with Financial Management System Requirements (FMFIA § 4)</b>						
Statement of Assurance	Systems conform to financial management system requirements					
<b>Non-Conformances</b>	<b>Beginning Balance</b>	<b>New</b>	<b>Resolved</b>	<b>Consolidated</b>	<b>Reassessed</b>	<b>Ending Balance</b>
NONE	0	0	0	0	0	0
Total Material Weaknesses	0	0	0	0	0	0
<b>Compliance with Federal Financial Management Improvement Act (FFMIA)</b>						
	<b>Agency</b>		<b>Auditor</b>			
Overall Substantial Compliance	Yes		Yes			
1. System Requirements	Yes		Yes			
2. Accounting Standards	Yes		Yes			
3. USSGL at Transaction Level	Yes		Yes			



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

The IPIA of 2002, as amended by the Improper Payments Elimination and Recovery Act of 2010, requires agencies to annually estimate and report on improper payments and agency actions to reduce them to the President and Congress. A review of all programs and activities that the USPTO administers is performed annually to assist in identifying and reporting erroneous or improper payments. The USPTO has not identified any significant problems with improper payments. However, the USPTO recognizes the importance of maintaining adequate internal controls to ensure the accuracy and integrity of payments made by the agency, and the USPTO maintains a strong commitment to continuous improvement in the overall disbursement management process. For FY 2013 and beyond, the USPTO will continue its efforts to ensure the integrity of its disbursements.

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

The USPTO completes an annual improper payments risk assessment covering all of its programs/activities as required by OMB Circular A-123, Appendix C. These improper payments risk assessments of the

entity's programs/activities also include assessments of the corporate control and procurement environment. The improper payments program/activity risk assessment has revealed no risk-susceptible programs.

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

During FY 2012, the USPTO did not have any erroneous payments that exceeded the ten million dollar threshold. The USPTO continuously seeks to identify overpayments and erroneous payments by reviewing (1) credit memos and refund checks issued by vendors or customers and (2) undelivered electronic payments returned by financial institutions.

During FY 2008, the USPTO initiated an internal recovery audit program. Under this program, a letter similar to that sent by our recovery audit contractor is sent to vendors on a rotational basis. This program excludes grants, travel payment, purchase card transactions, inter-agency agreements, government bills of lading, and gift and bequest transactions. This program continued through FY 2012. There were no items identified as recoverable.



<b>Improper Payment Reduction Outlook</b> <i>(Dollars in Millions)</i>									
<b>Program</b>	<b>FY 2011</b>			<b>FY 2012</b>			<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>
	Outlays	Improper Payment Percent	Improper Payment Dollars	Outlays	Improper Payment Percent	Improper Payment Dollars	Estimated Outlays	Estimated Outlays	Estimated Outlays
Patent	\$ 1,886	0.00%	\$ —	\$ 2,090	0.05%	\$ 1.10	\$ 2,474	\$ 2,660	\$ 2,738
Trademark	189	0.00%	—	202	0.05%	0.10	240	258	265
Intellectual Property	42	0.00%	—	40	0.05%	0.02	47	51	52
Total	\$ 2,117	0.00%	\$ —	\$ 2,332	0.05%	\$ 1.22	\$ 2,761	\$ 2,969	\$ 3,055

During FY 2012, the USPTO entered into an agreement with the DOC to use an existing contract for recovery audit services. The audit was limited to obligations closed after September 30, 2009 and through April 30, 2012, and greater than \$0.1 million. Further excluded were grants, travel payments, payments to employees, purchase card transactions, inter-agency agreements, government bills of lading, and gift and bequest transactions.

The audit is currently underway. To-date, the audit has not resulted in any invoices that have been identified as potentially recoverable improper payments. No amounts were recovered as of the end of FY 2012.

#### **FY 2012 Summary of Recovery Audit Effort** *(Dollars in Millions)*

<b>Amount subject to review</b>	\$ 578.2
<b># of invoices</b>	9,489

In FY 2012, the USPTO continued its reporting procedures to senior management and to the Department of Commerce on improper payments, identifying the nature and magnitude of any improper payments, along with any necessary control enhancements to prevent further occurrences of the types of improper payments identified.



# The Nature of the Training Provided to USPTO Examiners

**A**chieving organizational excellence demands a high-performance workforce that delivers high quality work products and provides customer service excellence. Training is a critical component in achieving consistently high quality products and services. Patent examiners and trademark examining attorneys received extensive legal, technical, and automation training in FY 2012. The USPTO has a comprehensive training program for new patent examiners and trademark examining attorneys, embedding a well-established curriculum including initial legal training, automation training, and training in examination practice and procedure. Automation training is provided to all examiners as new systems are deployed and existing systems are enhanced. New technology-specific legal and

technical training was conducted throughout the examining operations. This specific training either focuses on practices particular to a technology or was developed to address training needs identified through patent and trademark examination reviews or staff requests.

The USPTO training staff works with the Patent and Trademark organizations to address specific training concerns and serve as consultants to design specific internal programs to fit the education needs of each business unit. Training is reviewed and evaluated on an ongoing basis to ensure it is up-to-date and that coursework reflects developments and changes that have taken place in the industry.

PATENT EXAMINER TRAINING	
<b>U.S. Patent Training Academy</b> – Mandatory training for first year examiners	<p><b>Training in the Academy</b></p> <p>Two new patent examiner training programs: Intellectual Property Experienced Examiner Training and an Entry Level Training, a two-phased program completed in 12 months.</p> <ul style="list-style-type: none"> <li> <p>■ <b>Intellectual Property Experienced Examiner Training Curriculum</b></p> <p>This curriculum includes enhanced instruction in legal, procedural, and automation training, in areas such as: more than a dozen specialized applications used in patent examination, multiple search systems, databases, and commonly used office applications such as: Classification Systems, Searching (classification, text), Claim Interpretation, Advanced Text Searching, Technology Center (TC) Specific tools such as STN and Dialog, Writing an Effective Examiner's Answer, Appeal Procedure, and Practice (Appeal Conference and Pre-Conference; Prevent Administrative Remand).</p> </li> <li> <p>■ <b>Entry Level Two-Phased 12-Month New Examiner Training Curriculum</b></p> <p>The legal and procedural training of this curriculum includes enhanced instruction in areas such as: Classification Systems, Searching (classification, text), Claim Interpretation, Advanced Text Searching, Writing an Effective Examiner's Answer, Appeal Procedure, and Practice (Appeal Conference and Pre-Conference; Prevent Administrative Remand).</p> <p>Technical training includes: Introduction to examining applications in specific areas of technology, the current state of specific technologies, ongoing technology topics, etc.</p> <p>Automation training includes classes in more than a dozen specialized applications used in patent examination, multiple search systems, databases, and commonly-used office applications.</p> <p>Life skills training includes: time management, ethics training, stress management, balancing quality and production, professionalism, benefits and financial planning basics, balancing work and personal life, diversity training, and negotiating conflict.</p> </li> </ul> <p><b>Individual Development Plan</b></p> <p>The Academy training program includes creating an Individual Development Plan (IDP) for each examiner. The IDP is composed of formal training courses, development assignments, and on-the-job training. The IDP is designed to assist the examiner from day one, through the first 12 months of employment. When the examiner graduates from the Academy, and is transferred to a TC, the IDP will continue to enable the examiner to acquire the competencies essential to perform assigned duties and to prepare for further development.</p>

PATENT EXAMINER TRAINING ( <i>Continued</i> )	
Programs for all Examiners	<p><b>Legal Practice and Procedure Training</b></p> <ul style="list-style-type: none"> <li>■ <b>Patent Examiner Refresher Training</b> Courses developed to enhance patent examiners' knowledge and skills in procedural and legal topics pertaining to patent examination. Participants may enroll in one or more courses in consultation with their supervisor.</li> <li>■ <b>Legal Lecture Series</b> Training offered periodically to patent examiners based on major court decisions and office policies.</li> <li>■ <b>In-House Patent Law and Evidence Course</b> Training for Patent examiners on authoritative court decisions on statutory issues under 35 U.S.C. §§ 101, 102, 103, and 112 and the handling of evidence during the examination of applications.</li> <li>■ <b>Negotiating in the Patent Examination Process</b> An interactive lecture and workshop designed to teach the fundamentals of negotiating issues which arise during the patent examination process utilizing effective collaborative communication skills.</li> <li>■ <b>Patent Examiner Technical Training Program</b> This program seeks public assistance in providing technical training to patent examiners within all technology centers. The Patent Examiner Technical Training Program is intended to provide scientists and experts as lecturers to patent examiners in order to update them on technical developments, the state of the art, emerging trends, maturing technologies, and recent innovations in their fields. Such guest lecturers must have relevant technical knowledge, as well as familiarity with prior art and industry practices/standards in areas of technologies where such lectures would be beneficial.</li> <li>■ <b>Site Experience Education Program</b> This program provides examiners the opportunity to visit real-world sites, such as Universities or Industries. They receive direct hands-on education specific to the technology area they work in. This program seeks to put experts such as innovators, experts, scientists, and engineers together with the examiners at the sites where innovation is happening.</li> <li>■ <b>Continuing Education Series</b> Training for patent examiners to enhance their technical and legal knowledge in the examination of patent applications.</li> </ul> <p><b>Courses Offered:</b></p> <ul style="list-style-type: none"> <li>■ Non-Duty Hours Legal Studies Program (Budget Dependent)<sup>1</sup></li> <li>■ Non-Duty Hours Technical Training Program (Budget Dependent)<sup>1</sup></li> <li>■ Technology Center Specific Technological Training (Budget Dependent)<sup>1</sup></li> <li>■ Updated Automation Tools Training (in coordination with Office of Patent Information Management)</li> <li>■ Brown Bag Informational Seminars</li> <li>■ Patent Administrative Professional Training</li> <li>■ Patent Examiner's Initial Training for Non-Examiners</li> <li>■ Legal Secretaries and Administrators Conference</li> </ul>

<sup>1</sup> These programs remained suspended during FY 2012 due to budget constraints.

### TRADEMARK EXAMINING ATTORNEY TRAINING

In FY 2012 the Trademark organization prepared, using data gathered from the results of quality reviews that were analyzed, the content of online e-learning training materials for trademark examining attorneys. Live and web cast Training Sessions and Modules were developed and released covering the following list of topics.

- Trademark Manual of Examining Procedures Eighth Edition – Training
- ID/Class Nice Tenth Edition – Training
- Review of Trademark Counterfeiting Issues
- Review of Recent Federal Court Cases Regarding Trademarks
- Industry training on trademark issues on Watch Services and Policing
- Industry training on trademark issues in the Computer industry sponsored by the International Trademark Association
- Examiner-Led Section 2(e)(4)/Surname Refusals Workshop
- TEALE – New Examining Attorney Training
- UL Deployment Training

Law Office Presentations and Computer-Based Training Modules were developed and released covering the following list of topics.

- Disclaimer Writing
- Searching in X-Search
- 2(d) Excellent Office Actions


Four Exam Guides are expected to publish:

- Examination Guide 1-12 – Additional Considerations for Determining Whether Wording in a Mark Comprises a Unitary Phrase or Slogan for Purposes of Disclaimer).
- Examination Guide – Universal Symbols Issues
- Examination Guide – Web-Based Specimens
- Examination Guide – Swiss Cross/Coat of Arms

Other Guidance covering the following topics was also published and released.

- Section 2(d) Excellent Office Action Writing and Samples
- Revision of Section 2(e) Excellent Office Action Writing and Samples
- Revision of Identification of Goods and Services Writing and Samples
- Revision of Excellent Office Action General Considerations for All Office Actions
- Title of a Single Work Sample
- Revision and standardization of all Excellent Office Action Samples
- Updated International Class Guides



A photograph of the United States Patent and Trademark Office (USPTO) building, featuring a prominent glass pyramid structure in the center and red brick wings on either side.

# Measures that Have Been Either Discontinued or Changed Since the FY 2011 PAR

MEASURES THAT HAVE BEEN EITHER DISCONTINUED OR CHANGED SINCE THE FY 2011 PAR	
<b>Strategic Goal</b>	<b>Optimize patent quality and timeliness</b>
<b>Corresponding Measures</b>	<ul style="list-style-type: none"><li>■ Final Disposition Compliance Rate</li><li>■ Patent In-process Compliance Rate</li></ul>
<b>Change</b>	USPTO replaced these measures with: <ul style="list-style-type: none"><li>■ Patent Quality Composite Rate</li></ul>
<b>Justification</b>	<p>This new composite quality metric is composed of seven total factors that take into account stakeholder comments, including three factors drawn from the USPTO's previous quality measurement procedure, and four new factors that focus upon data never before acquired and/or employed for quality measurement purposes. The factors that have been modified from previous procedure measure: (1) the quality of the action setting forth the final disposition of the application, (2) the quality of the actions taken during the course of the examination, and (3) the perceived quality of the patent process as measured through external quality surveys of applicants and practitioners. The newly added factors measure: (1) the quality of the examiner's initial search, (2) the degree to which the first action on the merits follows best examination practices, (3) the degree to which global USPTO data is indicative of compact, robust prosecution, and (4) the degree to which patent prosecution quality is reflected in the perceptions of the examination corps as measured by internal quality surveys.</p>



# FY 2012 USPTO Workload Tables

<b>Index of Tables</b>	<b>Page</b>
Table 1 Summary of Patent Examining Activities	175
Table 2 Patent Applications Filed	176
Table 3 Patent Applications Pending Prior to Allowance	177
Table 4 Patent Pendency Statistics	177
Table 5 Summary of Total Pending Patent Applications	178
Table 6 Patents Issued	179
Table 7 Patent Applications Filed by Residents of the United States	180
Table 8 Patents Issued to Residents of the United States	181
Table 9 United States Patent Applications Filed by Residents of Foreign Countries	182
Table 10 Patents Issued by the United States to Residents of Foreign Countries	184
Table 11 Utility Patents Issued to Small Entities	185
Table 12 Statutory Invention Registrations Published	186
Table 13 United States Government Agency Patents	186
Table 14A Ex Parte Reexamination	187
Table 14B Inter Partes Reexamination	187
Table 15 Summary of Contested Patent Cases	188
Table 16 Summary of Trademark Examining Activities	189
Table 17 Trademark Applications Filed for Registration and Renewal and Trademark Affidavits Filed	190
Table 18 Summary of Pending Trademark Applications	191
Table 19 Trademarks Registered, Renewed, and Published Under Section 12(C)	192
Table 20 Trademark Applications Filed by Residents of the United States	193
Table 21 Trademarks Registered to Residents of the United States	194
Table 22 Trademark Applications Filed by Residents of Foreign Countries	195
Table 23 Trademarks Registered to Residents of Foreign Countries	197
Table 24 Summary of Contested Trademark Cases	199
Table 25 Actions on Petitions to the Director of the U.S. Patent and Trademark Office	200
Table 26 Cases in Litigation	201
Table 27 Patent Classification Activity	202
Table 28 Scientific and Technical Information Center Activity	202
Table 29 End of Year Personnel	203
Table 30A Top 50 Trademark Applicants	204
Table 30B Top 50 Trademark Registrants	204

TABLE 1

SUMMARY OF PATENT EXAMINING ACTIVITIES  
(FY 2008 - FY 2012)(PRELIMINARY FOR FY 2012)<sup>1</sup>

Patent Examining Activity	2008	2009	2010	2011	2012
<b>Applications filed, total<sup>1,2</sup></b>	<b>496,886</b>	<b>486,499</b>	<b>510,060</b>	<b>537,171</b>	<b>565,566</b>
Utility <sup>3</sup>	466,258	458,901	479,332	504,663	530,915
Reissue	1,080	1,035	1,138	1,158	1,212
Plant	1,331	988	1,013	1,103	1,181
Design	28,217	25,575	28,577	30,247	32,258
<b>Provisional applications filed<sup>2,4</sup></b>	<b>143,034</b>	<b>134,438</b>	<b>140,551</b>	<b>150,187</b>	<b>163,040</b>
<b>First actions</b>					
Design	28,756	27,858	26,051	25,042	26,578
Utility, Plant, and Reissue	422,065	469,946	447,485	505,651	542,081
PCT/Chapter	51,300	20,797	15,574	13,297	18,400
<b>Patent application disposals, total</b>	<b>396,228</b>	<b>487,140</b>	<b>553,549</b>	<b>533,943</b>	<b>574,854</b>
<b>Allowed patent applications, total</b>	<b>187,607</b>	<b>214,523</b>	<b>264,119</b>	<b>266,580</b>	<b>305,840</b>
Design	24,735	25,403	23,681	22,683	24,231
Utility, Plant, and Reissue	162,872	189,120	240,438	243,897	281,609
<b>Abandoned, total</b>	<b>208,610</b>	<b>272,607</b>	<b>289,419</b>	<b>267,353</b>	<b>269,009</b>
Design	2,936	3,840	3,101	2,701	2,567
Utility, Plant, and Reissue	205,674	268,767	286,318	264,652	266,442
<b>Statutory invention registration disposals, total</b>	<b>11</b>	<b>10</b>	<b>11</b>	<b>10</b>	<b>5</b>
<b>PCT/Chapter II examinations completed</b>	<b>2,937</b>	<b>3,468</b>	<b>2,265</b>	<b>3,191</b>	<b>2,671</b>
<b>Applications published<sup>5</sup></b>	<b>309,194</b>	<b>325,988</b>	<b>338,452</b>	<b>321,115</b>	<b>328,620</b>
<b>Patents issued<sup>2,6</sup></b>	<b>182,556</b>	<b>190,122</b>	<b>233,127</b>	<b>244,430</b>	<b>270,258</b>
Utility	154,699	165,213	207,915	221,350	246,464
Reissue	662	398	861	969	921
Plant	1,179	1,096	978	816	920
Design	26,016	23,415	23,373	21,295	21,953
Pendency time of average patent application <sup>7</sup>	32.2	34.6	35.3	33.7	32.4
Reexamination certificates issued	575	698	776	909	893
PCT international applications received by USPTO as receiving office	54,488	47,572	45,701	48,285	52,417
National requirements received by USPTO as designated/elected office	57,345	57,879	61,587	65,463	67,573
Patents renewed under Pub. L. No. 102-204 <sup>8</sup>	353,923	304,096	361,668	378,830	308,812
Patents expired under Pub. L. No. 102-204 <sup>8</sup>	67,127	66,330	79,993	82,146	80,050

<sup>1</sup> FY 2012 filing data are preliminary and will be finalized in the FY 2013 PAR.<sup>2</sup> FY 2011 application data has been updated with final end of year numbers.<sup>3</sup> Utility patents include chemical, electrical and mechanical applications.<sup>4</sup> Provisional applications provided for in Pub. L. No. 103-465.<sup>5</sup> Eighteen-month publication of patent applications provided for the American Inventors Protection Act of 1999, Pub. L. No. 106-113.<sup>6</sup> Excludes withdrawn numbers. Past years' data may have been revised from prior year reports.<sup>7</sup> Average time (in months) between filing and issuance or abandonment of utility, plant, and reissue applications. This average does not include design patents.<sup>8</sup> The provisions of Pub. L. No. 102-204 regarding the renewal of patents superseded Pub. L. No. 96-517 and Pub. L. No. 97-247.

<b>TABLE 2</b> <b>PATENT APPLICATIONS FILED</b> <b>(FY 1992 - FY 2012)</b>					
<i>(PRELIMINARY FOR FY 2012)<sup>1</sup></i>					
Year	Utility	Design	Plant	Reissue	Total
1992	171,623	12,907	335	581	185,446
1993	173,619	13,546	362	572	188,099
1994	185,087	15,431	430	606	201,554
1995	220,141	15,375	516	647	236,679
1996	189,922	15,160	557	637	206,276
1997	219,486	16,272	680	607	237,045
1998	238,850	16,576	658	582	256,666
1999	259,618	17,227	759	664	278,268
2000	291,653	18,563	786	805	311,807
2001	324,211	18,636	914	956	344,717
2002	331,580	19,706	1,134	974	353,394
2003	331,729	21,966	785	938	355,418
2004	353,319	23,457	1,212	996	378,984
2005	381,797	25,304	1,288	1,143	409,532
2006	417,453	25,853	1,204	1,103	445,613
2007	439,578	26,693	1,002	1,057	468,330
2008	466,258	28,217	1,331	1,080	496,886
2009	458,901	25,575	988	1,035	486,499
2010	479,332	28,577	1,013	1,138	510,060
2011 <sup>2</sup>	504,663	30,247	1,103	1,158	537,171
<b>2012<sup>1</sup></b>	<b>530,915</b>	<b>32,258</b>	<b>1,181</b>	<b>1,212</b>	<b>565,566</b>
<sup>1</sup> FY 2012 data are preliminary and will be finalized in the FY 2013 PAR.					
<sup>2</sup> FY 2011 application data has been updated with final end of year numbers.					

**TABLE 3****PATENT APPLICATIONS PENDING PRIOR TO ALLOWANCE<sup>1</sup>  
(FY 1992 - FY 2012)**

<b>Year</b>	<b>Awaiting Action by Examiner</b>	<b>Total Applications Pending<sup>2</sup></b>
1992	112,201	269,596
1993	99,904	244,646
1994	107,824	261,249
1995	124,275	298,522
1996	139,943	303,720
1997	112,430	275,295
1998	224,446	379,484
1999	243,207	414,837
2000	308,056	485,129
2001	355,779	542,007
2002	433,691	636,530
2003	471,382	674,691
2004	528,685	756,604
2005	611,114	885,002
2006	701,147	1,003,884
2007	760,924	1,112,517
2008	771,529	1,208,076
2009	735,961	1,207,794
2010	726,331	1,163,751
2011	690,967	1,168,928
<b>2012</b>	<b>633,812</b>	<b>1,157,147</b>

<sup>1</sup> Includes patent applications pending at end of period indicated, and includes utility, reissue, plant, and design applications. Does not include allowed applications.

<sup>2</sup> Applications under examination, including those in preexamination processing.

**TABLE 4****PATENT PENDENCY STATISTICS  
(FY 2012)**

<b>UPR Pendency Statistics by Technology Center (in months)</b>	<b>Average First Action Pendency</b>	<b>Total Average Pendency</b>
<b>Total UPR Pendency</b>	<b>21.9</b>	<b>32.4</b>
Tech Center 1600 - Biotechnology & Organic Chemistry	17.8	30.0
Tech Center 1700 - Chemical and Materials Engineering	21.2	32.8
Tech Center 2100 - Computer Architecture, Software & Information Security	23.3	37.5
Tech Center 2400 - Networks, Multiplexing, Cable & Security	24.5	41.1
Tech Center 2600 - Communications	24.3	37.2
Tech Center 2800 - Semiconductor, Electrical, Optical Systems & Components	20.5	29.8
Tech Center 3600 - Transportation, Construction, Agriculture & Electronic Commerce	20.1	31.5
Tech Center 3700 - Mechanical Engineering, Manufacturing & Products	24.6	35.7



**TABLE 5****SUMMARY OF TOTAL PENDING PATENT APPLICATIONS  
(FY 2012)**

Stage of Processing	Utility, Plant and Reissue Applications	Design Applications	Total Patent Applications
<b>Pending patent applications, total</b>	<b>1,208,648</b>	<b>37,493</b>	<b>1,246,141</b>
<b>In preexamination processing, total</b>	<b>84,419</b>	<b>4,194</b>	<b>88,613</b>
<b>Under examination, total</b>	<b>1,041,598</b>	<b>26,556</b>	<b>1,068,154</b>
Undocketed	111,454	5,026	116,480
Awaiting first action by examiner	412,410	16,309	428,719
Subtotal applications awaiting first action by examiner <sup>3</sup>	608,283	25,529	633,812
RCE Awaiting First Action	95,200	-	95,200
Rejected, awaiting response by applicant	296,270	4,137	300,407
Amended, awaiting action by examiner	80,850	940	81,790
In interference	83	-	83
On appeal, and other <sup>1</sup>	45,331	144	45,475
<b>In post-examination processing, total</b>	<b>82,631</b>	<b>6,743</b>	<b>89,374</b>
Awaiting issue fee	66,982	5,118	72,100
Awaiting printing <sup>2</sup>	12,370	1,623	13,993
D-10s (secret cases in condition for allowance)	3,279	2	3,281
<sup>1</sup> Includes cases on appeal and undergoing petitions.			
<sup>2</sup> Includes withdrawn cases.			
<sup>3</sup> Subtotal is not included in pending patent applications total.			

**TABLE 6****PATENTS ISSUED  
(FY 1992 - FY 2012)<sup>1</sup>**

<b>Year</b>	<b>Utility<sup>2</sup></b>	<b>Design</b>	<b>Plant</b>	<b>Reissue</b>	<b>Total</b>
1992	99,406	9,612	336	375	109,729
1993	96,675	9,946	408	302	107,331
1994	101,270	11,138	513	346	113,267
1995	101,895	11,662	390	294	114,241
1996	104,900	11,346	338	291	116,875
1997	111,977	10,331	400	267	122,975
1998	139,297	14,419	577	284	154,577
1999	142,852	15,480	436	393	159,161
2000	164,486	16,718	453	561	182,218
2001	169,571	17,179	563	504	187,817
2002	160,839	15,096	912	465	177,312
2003	171,493	16,525	1,178	394	189,590
2004	169,295	16,533	998	343	187,169
2005	151,077	13,395	816	195	165,483
2006	162,509	19,072	1,106	500	183,187
2007	160,306	22,543	979	548	184,376
2008	154,699	26,016	1,179	662	182,556
2009	165,213	23,415	1,096	398	190,122
2010	207,915	23,373	978	861	233,127
2011	221,350	21,295	816	969	244,430
<b>2012</b>	<b>246,464</b>	<b>21,953</b>	<b>920</b>	<b>921</b>	<b>270,258</b>

<sup>1</sup> Past years' data may have been revised from prior year reports.

<sup>2</sup> Includes chemical, electrical, and mechanical applications.

**TABLE 7****PATENT APPLICATIONS FILED BY RESIDENTS OF THE UNITED STATES<sup>1</sup>  
(FY 2008 - FY 2012)**

State/Territory	2008	2009	2010	2011 <sup>2</sup>	2012 <sup>3</sup>	State/Territory	2008	2009	2010	2011 <sup>2</sup>	2012 <sup>3</sup>
<b>Total</b>	<b>257,818</b>	<b>246,777</b>	<b>254,895</b>	<b>266,243</b>	<b>N/A</b>	Nebraska	592	504	600	639	N/A
						Nevada	1,996	1,680	1,785	1,726	N/A
Alabama	996	912	977	986	N/A	New Hampshire	1,564	1,510	1,547	1,690	N/A
Alaska	88	95	85	96	N/A	New Jersey	9,428	9,622	9,861	9,669	N/A
Arizona	4,460	3,927	4,024	4,407	N/A	New Mexico	857	814	863	873	N/A
Arkansas	420	418	456	417	N/A	New York	16,838	15,098	15,279	15,935	N/A
California	66,370	66,132	66,287	70,720	N/A	North Carolina	7,008	5,803	6,053	6,205	N/A
Colorado	4,898	5,019	5,244	5,554	N/A	North Dakota	178	207	168	200	N/A
Connecticut	4,326	4,009	4,229	4,413	N/A	Ohio	7,791	7,528	8,139	8,086	N/A
Delaware	922	904	993	1,006	N/A	Oklahoma	1,048	1,052	1,138	1,107	N/A
District of Columbia	262	261	261	322	N/A	Oregon	4,487	3,911	4,203	4,473	N/A
Florida	8,480	7,839	8,624	8,580	N/A	Pennsylvania	7,951	7,568	8,068	8,085	N/A
Georgia	4,946	5,051	5,214	5,307	N/A	Rhode Island	740	666	739	753	N/A
Hawaii	300	293	267	295	N/A	South Carolina	1,585	1,596	1,669	1,935	N/A
Idaho	1,905	1,544	1,635	1,664	N/A	South Dakota	193	220	224	254	N/A
Illinois	9,340	8,985	9,278	9,770	N/A	Tennessee	2,010	2,034	2,287	2,275	N/A
Indiana	3,345	3,181	3,515	3,726	N/A	Texas	17,339	15,667	16,568	17,310	N/A
Iowa	1,641	1,481	1,581	1,585	N/A	Utah	2,516	2,594	2,782	2,907	N/A
Kansas	1,587	1,671	1,678	1,688	N/A	Vermont	1,309	616	679	804	N/A
Kentucky	1,215	1,132	1,124	1,364	N/A	Virginia	3,532	3,402	3,582	3,806	N/A
Louisiana	709	795	882	835	N/A	Washington	12,602	12,619	12,815	13,764	N/A
Maine	411	344	415	440	N/A	West Virginia	274	300	292	316	N/A
Maryland	3,694	3,503	3,551	3,760	N/A	Wisconsin	4,341	4,054	3,991	4,179	N/A
Massachusetts	11,534	11,417	12,376	12,931	N/A	Wyoming	183	158	198	180	N/A
Michigan	8,447	7,881	7,834	8,243	N/A	Puerto Rico	70	82	67	74	N/A
Minnesota	8,164	7,805	7,852	7,984	N/A	Virgin Islands	10	11	13	5	N/A
Mississippi	320	337	338	336	N/A	U.S. Pacific Islands <sup>4</sup>	-	1	1	3	N/A
Missouri	2,335	2,285	2,314	2,286	N/A	United States <sup>5</sup>	3	-	1	2	N/A
Montana	258	239	249	273	N/A						

- Represents zero.

<sup>1</sup> Data include utility, plant, design, and reissue applications.

<sup>2</sup> Finalized data for FY 2008 to 2011 provided.

<sup>3</sup> FY 2012 preliminary data should be available January 2013 at [www.uspto.gov](http://www.uspto.gov), and finalized in the FY 2013 PAR.

<sup>4</sup> Represents residents of American Samoa, Guam, and miscellaneous U.S. Pacific Islands.

<sup>5</sup> State/Territory information not available.

**TABLE 8****PATENTS ISSUED TO RESIDENTS OF THE UNITED STATES<sup>1</sup>  
(FY 2011 - FY 2012)<sup>4</sup>**

State/Territory	2011 <sup>3</sup>	2012	State/Territory	2011 <sup>3</sup>	2012
<b>Total</b>	<b>120,178</b>	<b>131,651</b>	Montana	134	124
			Nebraska	640	845
Alabama	460	453	Nevada	640	845
Alaska	29	42	New Hampshire	793	824
Arizona	2,193	2,294	New Jersey	4,309	4,529
Arkansas	206	218	New Mexico	414	434
California	30,397	33,886	New York	8,026	8,395
Colorado	2,397	2,598	North Carolina	2,908	3,137
Connecticut	2,112	2,212	North Dakota	80	104
Delaware	399	503	Ohio	3,850	4,129
District of Columbia	103	134	Oklahoma	556	493
Florida	3,730	4,364	Oregon	2,278	2,470
Georgia	2,162	2,471	Pennsylvania	3,702	3,851
Hawaii	147	126	Rhode Island	363	378
Idaho	1,098	1,023	South Carolina	748	938
Illinois	4,452	5,025	South Dakota	108	121
Indiana	1,600	1,931	Tennessee	1,083	1,083
Iowa	832	949	Texas	8,054	8,731
Kansas	752	1,034	Utah	1,117	1,336
Kentucky	530	614	Vermont	599	495
Louisiana	341	433	Virginia	1,731	1,794
Maine	213	211	Washington	5,227	5,839
Maryland	1,674	1,693	West Virginia	104	145
Massachusetts	5,466	5,983	Wisconsin	2,128	2,313
Michigan	4,202	4,950	Wyoming	92	101
Minnesota	4,172	4,229	Puerto Rico	26	43
Mississippi	166	168	Virgin Islands	3	3
Missouri	1,013	1,150	United States <sup>2</sup>	1	-

- Represents zero.

<sup>1</sup> Data include utility, design, plant, and reissue patents.

<sup>2</sup> No State indicated in database.

<sup>3</sup> Finalized data for FY 2011 provided.

<sup>4</sup> Past year's data may have been revised from prior year reports.

**TABLE 9 UNITED STATES PATENT APPLICATIONS FILED BY RESIDENTS OF FOREIGN COUNTRIES<sup>1</sup>**  
**(FY 2008 - FY 2012)**

Residence	2008	2009	2010	2011 <sup>2</sup>	2012 <sup>3</sup>	Residence	2008	2009	2010	2011 <sup>2</sup>	2012 <sup>3</sup>
<b>Total</b>	<b>239,068</b>	<b>239,722</b>	<b>255,165</b>	<b>270,928</b>	<b>N/A</b>	Colombia	35	28	53	68	N/A
Afghanistan	-	1	1	1	N/A	Costa Rica	20	18	28	21	N/A
Albania	-	1	-	-	N/A	Croatia	39	35	31	38	N/A
Algeria	1	-	1	-	N/A	Cuba	38	23	26	19	N/A
Andorra	8	5	4	3	N/A	Curacao <sup>4</sup>	-	-	-	1	N/A
Angola <sup>4</sup>	-	-	-	2	N/A	Cyprus	8	12	18	16	N/A
Anguilla	-	3	-	-	N/A	Czech Republic	180	245	279	277	N/A
Antigua & Barbuda	1	1	2	3	N/A	Denmark	1,654	1,783	1,852	2,162	N/A
Argentina	139	151	141	159	N/A	Dominican Republic	9	5	7	8	N/A
Armenia	9	2	8	8	N/A	Ecuador	5	9	5	18	N/A
Aruba	-	-	-	2	N/A	Egypt	53	33	55	58	N/A
Australia	4,194	4,211	4,111	4,174	N/A	El Salvador	-	1	1	1	N/A
Austria	1,785	1,713	1,872	1,964	N/A	Estonia	35	36	52	62	N/A
Azerbaijan	1	3	5	1	N/A	Ethiopia	-	-	1	-	N/A
Bahamas	20	16	15	8	N/A	Faroe Islands	-	-	1	-	N/A
Bahrain	-	2	5	1	N/A	Fiji	-	1	-	-	N/A
Bangladesh	1	-	2	5	N/A	Finland	2,782	2,793	2,908	2,574	N/A
Barbados	7	6	8	2	N/A	French Polynesia	-	-	-	1	N/A
Belarus	11	7	11	7	N/A	France	9,281	9,726	10,641	11,436	N/A
Belgium	1,748	1,917	2,186	2,344	N/A	Georgia	5	2	5	6	N/A
Belize	4	1	-	-	N/A	Germany	26,331	26,855	28,157	29,543	N/A
Benin	1	-	-	-	N/A	Ghana	1	3	2	4	N/A
Bermuda	8	8	5	11	N/A	Gibraltar	3	7	7	7	N/A
Bolivia	3	4	1	1	N/A	Greece	128	118	138	139	N/A
Bonaire, Saint Eustatius, and Saba <sup>4</sup>	-	-	-	2	N/A	Greenland	4	-	-	-	N/A
Bosnia & Herzegovina	6	-	1	2	N/A	Guatemala	2	2	8	2	N/A
Brazil	499	497	584	684	N/A	Guernsey <sup>4</sup>	-	-	-	1	N/A
British Virgin Islands	10	11	3	3	N/A	Guinea	-	1	-	-	N/A
Brunei Darussalam	-	1	1	-	N/A	Haiti	-	-	1	1	N/A
Bulgaria	83	114	89	70	N/A	Honduras	1	1	1	1	N/A
Burundi	1	-	-	-	N/A	Hungary	203	234	251	245	N/A
Cameroon	1	9	5	2	N/A	Iceland	41	49	52	63	N/A
Canada	11,436	11,250	12,203	12,921	N/A	India	2,869	2,878	3,696	4,482	N/A
Cayman Islands	6	10	25	17	N/A	Indonesia	25	19	27	21	N/A
Chad	-	-	-	1	N/A	Iran	28	29	67	87	N/A
Chile	63	65	68	122	N/A	Iraq	1	1	-	-	N/A
China (Hong Kong)	1,419	1,254	1,267	1,379	N/A	Ireland	740	711	785	901	N/A
China (Macau)	5	5	7	16	N/A	Isle of Man	-	-	2	4	N/A
China (People's Republic)	5,148	5,301	8,358	10,562	N/A	Israel	4,916	4,772	5,119	5,666	N/A
						Italy	4,273	4,460	4,576	4,947	N/A
						Jamaica	12	11	3	7	N/A
						Japan	84,473	86,456	84,842	88,861	N/A
						Jersey	-	-	9	9	N/A
						Jordan	8	14	5	16	N/A
						Kazakhstan	2	3	8	4	N/A



TABLE 9 CONT.

**UNITED STATES PATENT APPLICATIONS FILED BY RESIDENTS OF FOREIGN COUNTRIES<sup>1</sup>**  
**(FY 2008 - FY 2012)**

Residence	2008	2009	2010	2011 <sup>2</sup>	2012 <sup>3</sup>	Residence	2008	2009	2010	2011 <sup>2</sup>	2012 <sup>3</sup>
Kenya	4	4	2	10	N/A	Romania	47	58	64	102	N/A
Korea, Dem. Republic of	2	1	-	-	N/A	Russian Federation	531	498	600	741	N/A
Korea, Republic of	25,507	24,066	26,648	28,474	N/A	Samoa	4	1	2	-	N/A
Kuwait	18	39	49	71	N/A	San Marino	-	3	1	1	N/A
Latvia	6	15	19	10	N/A	Saudi Arabia	90	153	267	337	N/A
Lebanon	11	17	8	28	N/A	Serbia	16	5	27	23	N/A
Libya	-	1	-	-	N/A	Seychelles	1	1	1	4	N/A
Liechtenstein	35	42	40	39	N/A	Singapore	1,376	1,278	1,490	1,655	N/A
Lithuania	13	13	13	16	N/A	Slovakia	36	30	42	36	N/A
Luxembourg	102	94	92	112	N/A	Slovenia	71	69	111	98	N/A
Macedonia	-	2	-	-	N/A	South Africa	319	323	356	361	N/A
Malaysia	326	325	387	426	N/A	Spain	1,294	1,224	1,470	1,597	N/A
Malta	10	11	10	5	N/A	Sri Lanka	16	12	14	9	N/A
Mauritius	1	-	1	1	N/A	Sweden	3,508	3,610	3,906	4,319	N/A
Mexico	269	244	316	351	N/A	Switzerland	3,681	3,714	4,168	4,328	N/A
Moldova	1	1	1	-	N/A	Syria Arab Rep	1	2	-	3	N/A
Monaco	16	21	21	43	N/A	Taiwan	19,733	17,974	21,282	21,678	N/A
Mongolia <sup>4</sup>	-	-	-	4	N/A	Thailand	127	116	111	148	N/A
Morocco	11	6	4	6	N/A	Trinidad & Tobago	6	8	12	8	N/A
Namibia	1	-	-	1	N/A	Tunisia	9	5	5	6	N/A
Nepal	-	2	-	1	N/A	Turkey	103	113	142	189	N/A
Netherlands	4,240	4,510	4,639	4,893	N/A	Turkmenistan	-	1	-	-	N/A
Netherlands Antilles	1	4	1	-	N/A	Turks and Caicos Islands	2	1	2	-	N/A
New Zealand	580	579	658	613	N/A	Ukraine	46	61	67	92	N/A
Niger	-	-	1	-	N/A	United Arab Emirates	30	54	45	58	N/A
Nigeria	1	2	7	5	N/A	United Kingdom	10,795	11,205	11,852	12,149	N/A
Norway	856	871	1,024	1,026	N/A	Uruguay	13	27	16	16	N/A
Oman	5	4	7	5	N/A	Uzbekistan	-	1	-	-	N/A
Pakistan	21	7	20	29	N/A	Vanuatu (New Hebrides)	4	-	2	1	N/A
Panama	12	6	3	6	N/A	Venezuela	27	32	35	26	N/A
Paraguay	1	-	-	2	N/A	Vietnam	13	4	10	9	N/A
Peru	9	5	8	16	N/A	West Bank/Gaza	-	-	1	-	N/A
Philippines	72	61	84	99	N/A	Zimbabwe	2	2	-	4	N/A
Poland	122	150	178	249	N/A						
Portugal	91	87	113	115	N/A						
Qatar	-	4	2	20	N/A						

- Represents zero.

<sup>1</sup> Data include utility, design, plant, and reissue applications. Country listings include possessions and territories of that country unless listed separately in the table. Data are subject to minor revisions.

<sup>2</sup> FY 2011 data are updated and final.

<sup>3</sup> FY 2012 preliminary data should be available in January 2013 at [www.uspto.gov](http://www.uspto.gov), and finalized in the FY 2013 PAR.

<sup>4</sup> Countries/Territories not previously reported.

TABLE 10

**PATENTS ISSUED BY THE UNITED STATES TO RESIDENTS OF FOREIGN COUNTRIES<sup>1,3</sup>**  
**(FY 2008 - FY 2012)<sup>2</sup>**

Residence	2008	2009	2010	2011	2012	Residence	2008	2009	2010	2011	2012
<b>Total</b>	<b>90,713</b>	<b>96,395</b>	<b>117,264</b>	<b>124,252</b>	<b>138,607</b>	Egypt	6	2	14	19	32
Albania	-	-	-	1	-	El Salvador	-	-	1	-	-
Algeria	-	-	1	-	-	Estonia	2	4	11	14	37
Andorra	1	2	8	4	2	Finland	894	974	1,223	1,030	1,111
Angola	-	-	-	-	1	France	3,683	3,836	4,835	5,024	5,616
Anguilla	-	1	-	1	1	French Polynesia	-	1	-	-	-
Antigua and Barbuda	1	-	1	-	6	Georgia	3	1	2	2	2
Argentina	46	47	60	49	58	Germany	9,794	10,279	12,916	13,020	14,569
Armenia	1	1	2	4	5	Ghana	-	-	1	1	3
Australia	1,485	1,717	1,940	2,213	1,777	Gibraltar	3	1	-	3	6
Austria	572	729	850	916	986	Greece	25	26	59	57	80
Azerbaijan	2	-	-	1	2	Greenland	-	3	-	-	-
Bahamas	5	6	9	12	7	Guatemala	4	1	2	-	2
Bahrain	-	-	1	-	1	Guernsey	-	1	1	2	5
Bangladesh	1	-	-	-	1	Haiti	-	-	-	-	1
Barbados	2	3	2	2	-	Honduras	-	-	-	1	-
Belarus	8	6	7	4	6	Hungary	68	53	92	103	107
Belgium	602	677	853	945	996	Iceland	23	26	22	27	26
Belize	-	1	-	-	-	India	650	678	1,076	1,195	1,599
Bermuda	1	-	2	5	4	Indonesia	21	20	5	10	12
Bolivia	1	-	1	1	-	Iran	3	6	7	15	26
Bosnia and Herzegovina	-	2	-	-	2	Iraq	1	-	-	-	-
Brazil	131	146	209	232	261	Ireland	174	180	259	313	329
British Virgin Islands	1	4	-	1	-	Isle of Man	5	11	11	13	17
Brunei Darussalam	-	1	-	1	-	Israel	1,322	1,426	1,828	2,054	2,432
Bulgaria	18	31	57	45	30	Italy	1,890	1,842	2,150	2,322	2,458
Burkina Faso	-	1	-	-	-	Jamaica	2	4	4	2	3
Cameroon	-	1	4	-	2	Japan	35,847	37,879	44,893	47,674	51,609
Canada	4,052	4,361	5,225	5,687	6,197	Jersey	5	-	1	3	5
Cayman Islands	2	1	3	4	7	Jordan	1	1	-	4	5
Chad	1	-	-	-	-	Kazakhstan	-	2	1	-	1
Chile	19	28	23	30	41	Kenya	2	6	4	1	2
China (Hong Kong)	738	576	726	680	715	Korea, Democratic People's Rep of	-	-	-	1	1
China (Macau)	2	1	2	6	2	Korea, Republic of	8,410	9,401	11,811	12,858	13,956
China (Mainland)	1,684	2,195	3,059	3,465	5,044	Kuwait	12	12	17	23	26
Colombia	9	11	10	15	18	Kyrgyzstan	1	-	-	-	-
Costa Rica	17	14	13	14	12	Latvia	2	4	5	3	5
Croatia	14	19	9	18	23	Lebanon	5	4	5	8	21
Cuba	6	5	8	4	5	Liechtenstein	15	20	18	15	16
Cyprus	1	2	5	3	2	Lithuania	13	4	7	10	3
Czech Republic	58	48	79	76	137	Luxembourg	40	55	50	41	51
Denmark	573	512	706	837	941	Macedonia	-	1	-	1	1
Dominican Republic	3	5	3	2	2	Malaysia	179	173	230	175	199
Ecuador	3	3	5	1	4	Malta	2	7	3	4	2
						Mauritius	1	-	-	-	-

TABLE 10 CONT.

**PATENTS ISSUED BY THE UNITED STATES TO RESIDENTS OF FOREIGN COUNTRIES<sup>1,3</sup>**  
**(FY 2008 - FY 2012)<sup>2</sup>**

Residence	2008	2009	2010	2011	2012	Residence	2008	2009	2010	2011	2012
Mexico	78	82	105	116	138	Seychelles	1	-	-	-	1
Monaco	9	8	9	8	9	Singapore	426	496	591	693	800
Morocco	3	4	1	2	3	Slovakia	13	13	15	22	21
Namibia	1	-	-	-	-	Slovenia	17	27	26	30	42
Netherlands	1,670	1,634	1,823	1,959	2,205	South Africa	111	148	143	134	156
Netherlands Antilles	-	-	1	-	-	Spain	386	415	484	528	708
New Zealand	180	179	243	238	295	Sri Lanka	1	6	4	8	3
Nigeria	1	-	-	1	1	Sweden	1,249	1,230	1,509	1,757	2,207
Norway	288	303	414	411	441	Switzerland	1,340	1,428	1,833	1,825	2,016
Oman	2	4	2	3	1	Syrian Arab Rep	-	-	-	1	-
Pakistan	6	5	2	2	11	Taiwan	7,424	7,958	9,202	9,584	11,309
Panama	1	3	4	1	4	Thailand	38	32	58	65	57
Paraguay	-	-	1	-	1	Trinidad & Tobago	-	3	5	1	3
Peru	1	8	1	5	4	Tunisia	2	-	2	2	5
Philippines	22	24	33	37	38	Turkey	35	32	49	45	48
Poland	64	50	48	61	108	Turks and Caicos Islands	1	-	-	-	-
Portugal	30	18	28	34	47	Ukraine	16	21	12	13	42
Qatar	1	1	1	1	3	United Arab Emirates	6	10	7	11	22
Romania	11	7	17	24	47	United Kingdom	3,872	3,892	4,817	4,907	5,607
Russian Federation	186	206	246	311	335	Uruguay	3	5	5	4	7
Saint Kitts & Nevis	1	-	-	-	-	Uzbekistan	-	-	-	-	1
Samoa	-	-	2	-	-	Vanuatu	-	-	-	1	-
Saudi Arabia	28	20	51	56	152	Venezuela	19	11	16	19	22
Senegal	-	-	1	-	-	Vietnam	-	2	2	-	1
Serbia	2	5	4	5	11	Zimbabwe	-	4	-	-	1

- Represents zero.

<sup>1</sup> Data includes utility, design, plant, and reissue patents.

<sup>2</sup> Information that was updated during the year. It is not uncommon for the withdrawal status of patents issued in prior years to change.

<sup>3</sup> Each patent grant is listed under only one country of residence. Country listings include possessions and territories of that country unless separately listed in the table.

<sup>4</sup> Countries/Territories not previously reported.

TABLE 11

**Utility Patents Issued to Small Entities**  
**(FY 2008 - 2012)**

Fiscal Year of Grant	2008	2009	2010	2011	2012
<b>Percentage Small Entity</b>	<b>20.87%</b>	<b>19.76%</b>	<b>19.87%</b>	<b>19.80%</b>	<b>20.32%</b>
US origin <sup>1</sup>	28.76%	27.54%	27.76%	27.87%	28.21%
Foreign origin <sup>1</sup>	13.06%	12.27%	12.22%	12.16%	13.04%
<b>Percentage Large Entity</b>	<b>79.13%</b>	<b>80.24%</b>	<b>80.13%</b>	<b>80.19%</b>	<b>79.68%</b>
US origin <sup>1</sup>	71.24%	72.46%	72.24%	72.13%	71.79%
Foreign origin <sup>1</sup>	86.94%	87.73%	87.78%	87.84%	86.96%

<sup>1</sup> Patent origin is based on residence of the first-named inventor.

**TABLE 12****STATUTORY INVENTION REGISTRATIONS PUBLISHED  
(FY 2008 - 2012)**

Assignee	2008	2009	2010	2011	2012
Air Force	3	2	-	1	-
Navy	6	3	5	7	3
Veterans Affairs	-	-	-	1	-
Other Than U.S. Government	12	4	12	6	4
<b>Total</b>	<b>21</b>	<b>9</b>	<b>17</b>	<b>15</b>	<b>7</b>
- Represents zero.					

**TABLE 13****UNITED STATES GOVERNMENT AGENCY PATENTS<sup>1</sup>  
(FY 2008 - FY 2012)<sup>3</sup>**

Activity	2008	2009	2010	2011	2012	TOTAL
Agriculture	27	24	39	44	52	186
Air Force	36	45	51	40	51	223
Army	134	119	136	141	146	676
Attorney General	-	-	1	1	-	2
Commerce	3	5	10	15	11	44
Energy	20	17	42	25	36	140
Environmental Protection Agency	10	9	9	12	16	56
Health, Education, and Welfare/ Health and Human Services	101	105	128	146	137	617
Interior	1	4	4	1	3	13
National Aeronautics and Space Administration	72	86	89	106	106	459
Navy	241	230	284	300	366	1,421
National Security Agency	16	15	24	11	10	76
National Science Foundation	-	-	1	-	1	2
Postal Service	19	14	37	25	39	134
State Department	-	-	-	-	1	1
Transportation	-	-	1	-	-	1
Tennessee Valley Authority	1	-	1	-	-	2
USA <sup>2</sup>	3	3	5	3	6	20
Veterans Affairs	8	10	9	13	9	49
<b>Total</b>	<b>692</b>	<b>686</b>	<b>871</b>	<b>883</b>	<b>990</b>	<b>4,848</b>

- Represents zero.

<sup>1</sup> Data in this table represent utility patents assigned to agencies at the time of patent issue. Data subject to minor revisions.

<sup>2</sup> United States of America - no agency indicated in database.

<sup>3</sup> Past years' data may have been revised from prior year reports to reflect patent withdrawal information that was updated during the year. It is not uncommon for the withdrawal status of patents issued in prior years to change.

TABLE 14A

EX PARTE REEXAMINATION  
(FY 2008 - FY 2012)

Activity	2008	2009	2010	2011	2012
<b>Requests filed, total</b>	<b>680</b>	<b>658</b>	<b>780</b>	<b>759</b>	<b>747</b>
By patent owner	87	67	63	104	683
By third party	593	591	717	654	64
Commissioner ordered	-	-	-	1	-
<b>Determinations on requests, total</b>	<b>666</b>	<b>614</b>	<b>662</b>	<b>773</b>	<b>548</b>
Requests granted:					
By examiner	626	574	606	685	502
By petition	-	-	1	6	4
Requests denied	40	40	55	82	42
<b>Requests known to have related litigation</b>	<b>316</b>	<b>372</b>	<b>347</b>	<b>349</b>	<b>311</b>
<b>Filings by discipline, total</b>	<b>680</b>	<b>658</b>	<b>780</b>	<b>759</b>	<b>747</b>
Chemical	138	120	137	143	149
Electrical	305	335	414	395	398
Mechanical	237	203	229	221	192
Design	-	-	-	-	8
- Represents zero.					

TABLE 14B

INTER PARTES REEXAMINATION  
(FY 2008 - FY 2012)

Activity	2008	2009	2010	2011	2012
<b>Requests filed, total</b>	<b>168</b>	<b>258</b>	<b>281</b>	<b>374</b>	<b>640</b>
<b>Determinations on requests, total</b>	<b>150</b>	<b>229</b>	<b>231</b>	<b>366</b>	<b>354</b>
Requests granted:	142	218	224	344	325
By examiner	142	217	224	342	320
By petition	-	1	-	2	5
Requests denied	8	11	7	22	29
<b>Requests known to have related litigation</b>	<b>115</b>	<b>220</b>	<b>196</b>	<b>280</b>	<b>311</b>
<b>Filings by discipline, total</b>	<b>168</b>	<b>258</b>	<b>281</b>	<b>374</b>	<b>640</b>
Chemical	38	35	45	57	116
Electrical	67	153	174	216	316
Mechanical	63	70	62	101	204
Design	-	-	-	-	4
- Represents zero.					



**TABLE 15****SUMMARY OF CONTESTED PATENT CASES**  
(Within the USPTO, as of September 30, 2012)

Item	Total
<b>Ex parte cases</b>	
Appeals	
Cases pending as of 9/30/11	24,040
Cases filed during FY 2012	12,710
<b>Disposals during FY 2012, total</b>	
Decided, total	10,180
Affirmed	5,023
Affirmed-in-Part	1,466
Reversed	3,309
Dismissed/Withdrawn	225
Remanded	157
<b>Cases pending as of 9/30/12</b>	<b>26,570</b>
<b>Rehearings</b>	
Cases pending as of 9/30/12	47
<b>Inter partes cases</b>	
Cases pending as of 9/30/11	59
Cases declared or reinstituted during FY 2012	56
<b>Inter partes cases, FY 2012 total</b>	<b>115</b>
Cases terminated during FY 2012	62
<b>Cases pending as of 9/30/12</b>	<b>53</b>

TABLE 16

SUMMARY OF TRADEMARK EXAMINING ACTIVITIES  
(FY 2008 - FY 2012)

Item	2008	2009	2010	2011	2012
<b>Applications for Registration:</b>					
Applications including Additional Classes	401,392	352,051	368,939	398,667	415,026
Applications Filed	302,253	266,939	280,649	301,826	311,627
<b>Disposal of Trademark Applications:</b>					
Registrations including Additional Classes	274,250	241,637	221,090	237,586	243,459
Abandonments including Additional Classes	156,093	189,687	151,027	141,908	139,832
Trademark First Actions including Additional Classes	415,896	372,830	367,027	389,084	420,621
Applications Approved for Publication including Additional Classes	345,067	320,246	307,001	323,072	345,649
<b>Certificates of Registration Issued:<sup>1</sup></b>					
1946 Act Principal Register	120,173	102,607	93,238	103,233	110,000
Principal Register					
Intent-To-Use-Statements of Use Registered	81,387	69,920	64,086	66,796	64,057
1946 Act Supplemental Register	8,344	7,993	7,006	7,632	8,704
Total Certificates of Registration	209,904	180,520	164,330	177,661	182,761
<b>Renewal of Registration: *</b>					
Section 9 Applications Filed	42,388	43,953	48,214	49,000	63,636
Section 8 Applications Filed **	42,395	43,868	48,275	49,037	63,642
Registrations Renewed	42,159	42,282	46,734	44,873	59,871
Affidavits, Sec. 8/15:					
Affidavits Filed	68,470	65,322	61,499	65,771	76,646
Affidavits Disposed	65,222	63,483	58,510	58,341	72,346
Amendments to Allege Use Filed	9,140	8,633	7,629	7,647	7,999
Statements of Use Filed	96,415	90,493	80,927	86,159	86,935
Notice of Allowance Issued	220,333	181,702	169,085	166,035	172,122
<b>Total Active Certificates of Registration</b>	<b>1,497,131</b>	<b>1,547,168</b>	<b>1,614,121</b>	<b>1,719,247</b>	<b>1,838,007</b>
Pendency - Average Months:					
Between Filing and Examiner's First Action	3.0	2.7	3.0	3.1	3.2
Between Filing, Registration (Use Applications)					
Abandonments and NOAs - including suspended and inter partes proceedings	13.9	13.5	13.0	12.6	12.0
Between Filing, Registration (Use Applications)					
Abandonments and NOAs - excluding suspended and inter partes proceedings	11.8	11.2	10.5	10.5	10.2

- Represents zero.

<sup>1</sup> With the exception of Certificates of Registration, Renewal of Registration, Affidavits filed under Section 8/15 and 12(c), the workload count includes extra classes.

"Applications filed" refers simply to the number of individual trademark applications received by the PTO. There are, however, 47 different classes of items in which a trademark may be registered. An application must request registration in at least one class, but may request registration in multiple classes. Each class application must be individually researched for registerability. "Applications filed, including additional classes" reflects this fact, and therefore more accurately reflects the Trademark business workload. With the exception of Certificates of Registration, Renewal of Registration, Affidavits filed under Section 8/15 and 12(c), the workload count includes extra classes.

\* Renewal of registration is required beginning 10 years following registration concurrent with 20 - year renewals coming due.

\*\* Section 8 Affidavit is required for filing a renewal beginning October 30, 1999 (FY 2000) with the implementation of the Trademark Law Treaty.

<b>TABLE 17</b> <b>TRADEMARK APPLICATIONS FILED FOR REGISTRATION AND RENEWAL AND TRADEMARK AFFIDAVITS FILED (FY 1992 - FY 2012)</b>			
<b>Year</b>	<b>For Registration</b>	<b>For Renewal<sup>1</sup></b>	<b>Section 8 Affidavit</b>
1992	125,237	6,355	20,982
1993	139,735	7,173	21,999
1994	155,376	7,004	20,850
1995	175,307	7,346	23,497
1996	200,640	7,543	22,169
1997	224,355	6,720	20,781
1998	232,384	7,413	33,231
1999	295,165	7,944	33,104
2000	375,428	24,435	28,920
2001	296,388	24,174	33,547
2002	258,873	34,325	39,484
2003	267,218	35,210	43,151
2004	298,489	32,352	41,157
2005	323,501	39,354	47,752
2006	354,775	36,939	48,444
2007	394,368	40,786	49,241
2008	401,392	42,388	68,470
2009	352,051	43,953	65,322
2010	368,939	48,214	61,499
2011	398,667	49,000	65,771
<b>2012</b>	<b>415,026</b>	<b>63,636</b>	<b>76,646</b>
<sup>1</sup> Renewal of registration term changed with implementation of the Trademark Law Reform Act (Pub. L. No. 100-667) beginning November 16, 1989 (FY 1990).			

TABLE 18

SUMMARY OF PENDING TRADEMARK APPLICATIONS  
(FY 2012)

Stage of Processing	Application Files	Classes
<b>Pending applications, total</b>	<b>437,850</b>	<b>607,659</b>
<b>In preexamination processing</b>	<b>76,160</b>	<b>95,604</b>
<b>Under examination, total</b>	<b>270,888</b>	<b>387,327</b>
<b>Applications under initial examination</b>	<b>85,947</b>	<b>127,487</b>
Amended, awaiting action by Examiner	82,885	123,541
Awaiting first action by Examiner	3,062	3,946
<b>Intent-To-Use applications pending Use</b>	<b>145,812</b>	<b>202,859</b>
<b>Applications under second examination</b>	<b>8,986</b>	<b>12,320</b>
Administrative processing of Statements of Use	71	82
Undergoing second examination	2,948	3,975
Amended, awaiting action by Examiner	5,967	8,263
<b>Other pending applications<sup>1</sup></b>	<b>30,143</b>	<b>44,661</b>
<b>In post-examination processing</b> (Includes all applications in all phases of publication and issue and registration)	<b>90,802</b>	<b>124,728</b>

<sup>1</sup> Includes applications pending before the Trademark Trial and Appeal Board, and suspended cases.

<b>TABLE 19</b> <b>TRADEMARKS REGISTERED, RENEWED, AND PUBLISHED UNDER SECTION 12(C)<sup>1</sup></b> <b>(FY 1992 - FY 2012)</b>			
<b>Year</b>	<b>Certificates of Regis. Issued</b>	<b>Renewed<sup>2</sup></b>	<b>Registrations (Incl. Classes)</b>
1992	62,067	5,733	-
1993	74,349	6,182	86,122
1994	59,797	6,136	68,853
1995	65,662	6,785	75,372
1996	78,674	7,346	91,339
1997	97,294	7,389	112,509
1998	89,634	6,504	106,279
1999	87,774	6,280	104,324
2000	106,383	8,821	127,794
2001	102,314	31,477	124,502
2002	133,225	29,957	164,457
2003	143,424	34,370	185,182
2004	120,056	34,735	155,991
2005	112,495	32,279	143,396
2006	147,118	37,305	188,899
2007	150,064	47,336	194,327
2008	209,904	42,159	274,250
2009	180,520	42,282	241,637
2010	164,330	46,734	221,090
2011	177,661	44,873	237,586
<b>2012</b>	<b>182,761</b>	<b>59,871</b>	<b>243,459</b>
<sup>-</sup> Represents zero. <sup>1</sup> Includes withdrawn numbers. <sup>2</sup> Includes Renewal of registration term changed with implementation of the Trademark Law Reform Act (Pub. L. No. 100-667) beginning November 16, 1989 (FY 1990).			



**TABLE 20****TRADEMARK APPLICATIONS FILED BY RESIDENTS OF THE UNITED STATES  
(FY 2012)**

State/Territory	2012	State/Territory	2012	State/Territory	2012
<b>Total</b>	<b>325,926</b>	Kentucky	1,831	Oklahoma	1,553
		Louisiana	1,849	Oregon	3,454
Alabama	1,817	Maine	758	Pennsylvania	9,243
Alaska	232	Maryland	5,831	Rhode Island	1,248
Arizona	5,688	Massachusetts	8,888	South Carolina	2,247
Arkansas	1,094	Michigan	6,696	South Dakota	392
California	69,200	Minnesota	6,089	Tennessee	4,323
Colorado	6,616	Mississippi	661	Texas	20,382
Connecticut	4,857	Missouri	4,481	Utah	3,637
Delaware	2,848	Montana	618	Vermont	694
District of Columbia	2,929	Nebraska	1,181	Virginia	7,823
Florida	23,702	Nevada	5,413	Washington	6,486
Georgia	8,486	New Hampshire	1,184	West Virginia	330
Hawaii	1,011	New Jersey	12,842	Wisconsin	4,075
Idaho	1,022	New Mexico	856	Wyoming	386
Illinois	14,020	New York	34,951	Puerto Rico	453
Indiana	3,645	North Carolina	6,107	Virgin Islands	31
Iowa	1,359	North Dakota	301	U.S. Pacific Islands <sup>1</sup>	33
Kansas	1,768	Ohio	8,151	United States <sup>2</sup>	154

<sup>1</sup> Represents residents of American Samoa, Guam, and miscellaneous U.S. Pacific Islands.

<sup>2</sup> No state indicated in database, includes Army Post Office filings.

**TABLE 21****TRADEMARKS REGISTERED TO RESIDENTS OF THE UNITED STATES<sup>1</sup>  
(FY 2012)**

State/Territory	2012	State/Territory	2012	State/Territory	2012
<b>Total</b>	<b>148,758</b>	Kentucky	636	Oklahoma	597
		Louisiana	680	Oregon	1,424
Alabama	490	Maine	294	Pennsylvania	2,821
Alaska	102	Maryland	1,659	Rhode Island	310
Arizona	2,013	Massachusetts	2,059	South Carolina	648
Arkansas	288	Michigan	2,484	South Dakota	213
California	16,314	Minnesota	2,334	Tennessee	1,334
Colorado	2,321	Mississippi	226	Texas	6,245
Connecticut	1,192	Missouri	1,562	Utah	1,266
Delaware	27,651	Montana	193	Vermont	250
District of Columbia	964	Nebraska	515	Virginia	2,230
Florida	7,445	Nevada	3,445	Washington	2,413
Georgia	2,635	New Hampshire	408	West Virginia	133
Hawaii	300	New Jersey	3,461	Wisconsin	1,640
Idaho	312	New Mexico	306	Wyoming	289
Illinois	4,467	New York	8,437	Puerto Rico	157
Indiana	1,451	North Carolina	2,015	Virgin Islands	95
Iowa	732	North Dakota	106	U.S. Pacific Islands <sup>2</sup>	7
Kansas	611	Ohio	2,994	United States <sup>3</sup>	23,584

<sup>1</sup> When a trademark is registered, the trademark database is corrected to indicate the home state of the entity registering the trademark.

<sup>2</sup> Represents residents of American Samoa, Guam, and miscellaneous U.S. Pacific Islands.

<sup>3</sup> No state indicated in database, includes APO filings.

TABLE 22

**TRADEMARK APPLICATIONS FILED BY RESIDENTS OF FOREIGN COUNTRIES  
(FY 2008 - FY 2012)**

Residence	2008	2009	2010	2011	2012	Residence	2008	2009	2010	2011	2012
<b>Total</b>	<b>86,882</b>	<b>77,448</b>	<b>79,664</b>	<b>85,116</b>	<b>89,100</b>	Czech Republic	256	266	164	256	201
Afghanistan	2	9	3	11	4	Denmark	1,197	997	884	827	869
Albania	3	-	-	6	1	Dominica	9	-	2	2	-
Algeria	-	-	-	-	2	Dominican Republic	77	50	79	51	71
Andorra	1	8	7	-	20	Ecuador	24	32	27	47	34
Angola	-	-	11	11	1	Egypt	11	14	27	38	18
Anguilla	7	23	3	17	34	El Salvador	56	34	36	36	25
Antarctica	1	-	-	-	-	Estonia	35	48	64	37	56
Antigua & Barbuda	20	4	18	15	6	Ethiopia	2	1	-	1	4
Argentina	266	223	279	283	268	Faroe Islands	12	1	-	2	-
Armenia	4	10	7	32	16	Fiji	1	-	6	5	15
Aruba	1	3	3	1	3	Finland	526	547	746	675	714
Australia	3,164	3,025	3,004	3,154	3,381	France	6,254	5,620	6,176	5,868	6,375
Austria	1,344	1,181	980	1,212	1,155	French Polynesia	3	2	-	11	-
Azerbaijan	3	-	-	8	3	Gabon	-	-	-	10	-
Bahamas	152	121	99	153	331	Georgia	3	11	8	27	9
Bahrain	11	19	20	31	21	Germany	12,686	11,345	10,300	10,603	10,525
Bangladesh	3	4	1	7	6	Ghana	2	1	-	1	1
Barbados	310	164	274	161	198	Gibraltar	32	52	30	61	63
Belarus	20	10	46	35	43	Greece	244	137	209	166	135
Belgium	869	997	788	760	917	Grenada	-	-	-	1	4
Belize	19	20	20	30	33	Guadeloupe	-	-	3	-	-
Benin	-	-	-	1	1	Guatemala	39	29	27	16	44
Bermuda	296	178	164	182	222	Guinea	1	-	3	-	-
Bolivia	5	8	3	4	5	Guyana	7	1	-	1	5
Bosnia & Herzegovinia	-	1	1	1	-	Haiti	1	-	5	2	8
Botswana	-	3	1	48	6	Honduras	9	17	15	2	4
Brazil	517	477	546	548	608	Hungary	77	155	118	87	102
British Virgin Islands	623	498	558	597	825	Iceland	240	87	67	62	65
Brunei Darussalam	3	8	13	2	4	India	697	461	645	717	606
Bulgaria	101	95	77	72	109	Indonesia	62	64	51	56	91
Burkina Faso	-	-	1	-	-	Iran	39	27	38	28	11
Cambodia	-	2	1	-	-	Iraq	-	4	-	1	-
Cameroon	-	-	-	1	1	Ireland	724	441	567	615	619
Canada	9,614	8,354	8,707	9,257	9,823	Isle of Man	101	36	82	56	48
Cayman Islands	360	390	263	292	400	Israel	764	679	598	677	795
Channel Islands	68	37	73	127	58	Italy	4,395	4,203	3,770	4,284	3,960
Chile	206	185	193	263	178	Jamaica	49	53	14	20	42
China (Hong Kong)	1,211	1,162	1,190	1,492	1,768	Japan	4,764	4,832	4,633	5,054	5,358
China (Macau)	-	-	1	-	8	Jordan	23	21	28	33	30
China (mainland)	2,262	2,096	2,808	3,652	3,735	Kazakhstan	7	-	-	3	-
Colombia	187	183	185	184	300	Kenya	3	2	9	1	12
Cook Islands	-	5	4	-	-	Korea, Dem. Republic of	-	1	6	-	-
Costa Rica	100	66	91	65	59	Kuwait	37	16	20	10	14
Croatia	22	42	33	14	40	Kyrgyzstan	-	-	-	-	3
Cuba	13	6	1	3	5	Latvia	20	30	48	33	40
Curacao	-	-	-	60	65	Lebanon	22	24	28	34	32
Cyprus	101	115	151	210	718	Liberia	2	-	-	1	1

TABLE 22 CONT.

TRADEMARK APPLICATIONS FILED BY RESIDENTS OF FOREIGN COUNTRIES  
(FY 2008 - FY 2012)

Residence	2008	2009	2010	2011	2012	Residence	2008	2009	2010	2011	2012
Liechtenstein	247	240	99	182	152	Saint Vincent/ Grenadines	-	6	17	1	4
Lithuania	25	17	10	30	26	Samoa	11	5	15	11	11
Luxembourg	550	499	888	807	831	San Marino	3	17	10	8	13
Macao	20	12	5	10	-	Sao Tome/Principe	-	-	1	1	0
Macedonia	7	-	8	4	27	Saudi Arabia	61	49	61	66	108
Madagascar	-	7	-	-	1	Scotland	73	18	27	56	57
Malaysia	119	126	122	89	89	Senegal, Republic of	1	-	-	7	-
Malta	48	81	34	63	99	Serbia/Montenegro	11	14	38	47	38
Marshall Island	5	4	4	12	7	Seychelles	27	26	19	38	27
Martinique	-	-	-	1	1	Singapore	479	526	470	695	627
Mauritania	-	1	-	-	-	Slovakia	82	46	56	65	84
Mauritius	32	28	39	64	29	Slovenia	105	152	82	129	89
Mexico	1,484	1,393	1,790	1,792	1,990	South Africa	218	183	232	253	271
Micronesia	7	2	-	1	1	Spain	1,864	1,798	1,789	2,200	2,097
Monaco	113	81	96	168	135	Sri Lanka	33	15	17	19	21
Mongolia	4	7	2	30	3	Suriname	-	-	1	-	2
Montserrat	-	-	-	6	-	Swaziland	-	-	-	1	-
Morocco	60	35	48	23	50	Sweden	1,482	1,222	1,467	1,536	1,709
Myanmar	-	-	1	-	-	Switzerland	4,772	3,883	4,750	4,770	4,901
N. Mariana Island	-	5	9	2	7	Syria	6	7	14	7	-
Namibia	3	2	-	2	4	Taiwan	1,283	1,221	1,359	1,525	1,661
Nepal	1	2	-	5	1	Tanzania	2	-	1	2	-
Netherlands	2,618	2,220	2,387	2,357	1,851	Thailand	206	146	105	174	190
Netherlands Antilles	76	68	113	41	-	Timor-Leste	-	-	-	1	-
New Zealand	534	486	482	520	522	Togo	5	-	-	8	2
Nicaragua	7	5	7	8	16	Trinidad & Tobago	1	23	13	5	13
Nigeria	1	25	8	4	6	Tunisia	2	7	14	17	6
Norway	630	835	556	638	434	Turkey	602	511	363	571	610
Oman	2	11	5	6	-	Turkmenistan	-	-	-	-	6
Pakistan	27	19	17	17	12	Turks and Caicos Islands	13	10	30	18	48
Palau	-	1	-	-	-	Uganda	3	1	-	3	2
Panama	149	114	167	148	126	Ukraine	90	63	102	92	118
Papua New Guinea	3	1	3	-	-	United Arab Emirates	307	212	135	172	224
Paraguay	11	7	4	12	6	United Kingdom	9,463	7,624	7,727	8,451	8,939
Peru	101	49	38	69	62	Uruguay	35	35	47	35	14
Philippines	62	66	54	65	128	Uzbekistan	1	3	-	-	2
Poland	273	300	225	240	330	Vanuatu (New Hebrides)	-	-	-	-	1
Portugal	372	318	335	261	232	Venezuela	120	35	38	62	46
Qatar	16	10	20	43	26	Vietnam	61	101	71	61	99
Republic Moldova	6	9	14	9	7	West Bank/Gaza	-	-	3	1	2
Romania	73	37	78	83	61	Yemen	4	-	1	4	1
Russian Federation	733	676	650	591	1,036	Yugoslavia	4	-	3	-	-
Rwanda	-	1	-	-	-	Zimbabwe	1	1	-	-	4
Saint Christ-Nevis	31	16	6	-	-	Other <sup>1</sup>	16	33	11	8	3
Saint Kitts & Nevis	-	-	-	31	18						
Saint Lucia	17	12	21	12	8						
Saint Marten	-	-	-	2	3						

- Represents zero.

<sup>1</sup> Country of Origin information not available or not indicated in database, includes African Regional Industrial Property Organization filings.

TABLE 23

**TRADEMARKS REGISTERED TO RESIDENTS OF FOREIGN COUNTRIES  
(FY 2008 - FY 2012)**

Residence	2008	2009	2010	2011	2012	Residence	2008	2009	2010	2011	2012
<b>Total</b>	<b>38,800</b>	<b>34,648</b>	<b>31,855</b>	<b>33,752</b>	<b>34,003</b>	Cyprus	41	37	44	78	80
Afghanistan	5	2	3	4	2	Czech Republic	79	69	68	57	94
Albania	6	6	4	-	3	Denmark	424	424	378	372	333
Algeria	3	3	3	2	1	Djibouti	1	-	-	-	1
Andorra	2	1	1	4	3	Dominica	2	1	1	2	1
Angola, Republic of	1	2	-	2	2	Dominican Republic	32	25	26	47	29
Anguilla	8	5	7	7	25	Ecuador	17	17	15	23	19
Antigua & Barbuda	18	13	4	3	4	Egypt	5	6	6	8	16
Argentina	182	131	127	161	150	El Salvador	64	38	36	20	26
Armenia	19	6	8	17	11	Estonia	9	13	16	15	14
Aruba	18	5	-	2	2	Ethiopia	3	1	4	3	-
Australia	1,609	1,383	1,295	1,338	1,331	Faroe Islands	-	1	-	1	1
Austria	397	367	322	337	361	Fiji	1	2	-	1	2
Azerbaijan	-	-	-	1	2	Finland	218	221	196	225	212
Bahamas	61	56	44	60	71	France	2,638	2,278	2,154	2,353	2,160
Bahrain	-	2	3	18	6	French Guiana	1	-	-	-	-
Bangladesh	4	1	3	1	6	French Polynesia	10	2	-	2	-
Barbados	115	92	62	89	67	Gabon	-	-	-	-	1
Belarus	10	10	6	13	17	Georgia	-	-	3	4	14
Belgium	399	337	309	287	302	Germany	4,674	4,409	3,759	3,730	3,660
Belize	14	5	20	12	29	Ghana	5	2	3	2	5
Benelux Convention	9	13	9	18	8	Gibraltar	32	30	10	29	38
Benin	2	1	1	-	-	Greece	68	53	52	42	67
Bermuda	164	197	161	105	95	Greenland	-	-	1	-	-
Bhutan	1	-	-	-	1	Guatemala	-	-	24	-	-
Bolivia	4	5	7	1	3	Guinea	-	-	-	-	1
Bosnia & Herzegovina	1	1	-	1	2	Guinea (Equatorial)	-	-	-	1	1
Botswana	-	-	-	-	2	Guinea-Bissau	-	-	-	1	3
Brazil	235	227	188	180	209	Guyana	4	5	-	4	3
British Virgin Islands	381	323	302	315	258	Haiti	6	2	5	2	4
Brunei Darussalam	8	-	1	-	-	Honduras	12	8	17	4	7
Bulgaria	47	26	24	21	28	Hungary	45	36	64	36	34
Burkina Faso	-	-	-	1	-	Iceland	62	66	48	17	29
Burundi	1	-	-	-	-	India	186	213	202	252	259
Cambodia	1	-	1	1	1	Indonesia	36	29	36	23	40
Cameroon	-	2	2	3	2	Iran	16	13	9	4	17
Canada	4,396	4,084	3,714	4,069	3,888	Iraq	-	-	1	2	-
Cape Verde	-	3	-	-	-	Ireland	264	260	211	212	227
Cayman Islands	146	170	151	133	124	Isle of Man	10	7	-	24	13
Channel Islands	5	2	15	25	29	Israel	392	319	348	341	412
Chile	145	84	97	100	122	Italy	2,281	1,819	1,556	1,733	1,657
China (Hong Kong)	633	521	502	562	601	Jamaica	41	23	24	21	28
China (Macau)	-	2	5	2	1	Japan	2,941	2,453	2,344	2,272	2,198
China (mainland)	1,601	1,459	1,356	1,705	2,024	Jordan	4	13	7	16	20
Colombia	114	115	105	94	134	Kazakhstan	1	1	-	1	1
Congo	-	-	1	-	-	Kenya	2	4	5	3	1
Cook Islands	3	1	1	-	1	Korea, Dem. Republic of	1	7	4	2	9
Costa Rica	24	27	36	21	25	Korea, Republic of	849	760	773	904	1,043
Cote D'Ivoire	-	1	-	1	4	Kuwait	3	6	6	3	7
Croatia	22	8	10	14	7	Kyrgyzstan	-	-	1	-	1
Cuba	16	6	7	7	4	Laos	-	-	-	1	-
Curacao	-	-	-	1	9	Latvia	17	6	8	14	10



TABLE 23 CONT.

TRADEMARKS REGISTERED TO RESIDENTS OF FOREIGN COUNTRIES  
(FY 2008 - FY 2012)

Residence	2008	2009	2010	2011	2012	Residence	2008	2009	2010	2011	2012
Lebanon	7	6	12	15	15	Saint Martin	-	-	-	-	3
Liberia	8	22	12	8	6	Saint Vincent/ Grenadines	1	2	1	2	2
Liechtenstein	85	75	48	37	45	San Marino	4	2	7	-	1
Lithuania	7	8	7	11	16	Saudi Arabia	19	13	14	10	38
Luxembourg	168	184	177	246	270	Scotland	30	50	15	17	12
Macedonia	6	1	-	3	2	Senegal	-	-	3	2	1
Malawi	-	-	-	1	-	Serbia	-	-	4	6	9
Malaysia	58	57	63	78	76	Seychelles	11	8	12	14	18
Mali	-	-	1	-	-	Sierra Leone	-	-	-	2	1
Malta	12	5	11	20	24	Singapore	199	174	220	230	239
Marshall Islands	3	3	6	3	5	Slovakia	9	26	12	17	17
Martinique	-	-	-	1	-	Slovenia	27	33	15	29	31
Mauritius	33	25	13	15	28	South Africa	125	104	140	119	93
Mexico	952	830	736	954	897	Spain	1,000	821	780	797	885
Micronesia	4	1	3	2	-	Sri Lanka	7	21	13	16	12
Monaco	32	24	19	25	19	Swaziland	1	4	-	-	3
Mongolia	1	1	-	3	1	Sweden	644	603	566	524	655
Montenegro	-	-	1	-	1	Switzerland	1,953	1,672	1,338	1,566	1,560
Montserrat	-	-	-	-	1	Syria	2	2	-	5	3
Morocco	3	7	8	9	8	Taiwan	1,096	845	782	843	820
Mozambique	2	-	-	-	-	Tajikistan	1	-	-	-	-
Myanmar	-	-	-	1	-	Tanzania	-	-	-	1	1
N. Mariana Island	2	-	3	5	1	Thailand	82	71	53	49	67
Namibia	-	-	-	-	1	Timor-Leste	-	-	-	-	1
Nauru	2	-	-	-	-	Togo	-	1	-	-	2
Nepal	-	1	-	2	2	Trinidad & Tobago	13	7	14	5	6
Netherlands	1,001	931	883	831	897	Tunisia	3	3	3	5	3
Netherlands Antilles	47	32	39	30	21	Turkey	206	169	167	167	194
New Zealand	333	265	267	285	223	Turks and Caicos Islands	5	2	-	12	8
Nicaragua	7	5	2	6	10	Uganda	1	3	1	1	2
Nigeria	16	10	4	6	12	Ukraine	33	18	30	41	33
Norway	192	175	212	197	195	United Arab Emirates	27	36	56	52	62
Oman	-	-	1	6	2	United Kingdom	3,136	3,098	3,010	2,989	2,905
Pakistan	19	11	15	20	11	Uruguay	21	20	23	24	19
Palistinian Authority	-	-	-	3	-	Uzbekistan	-	2	-	1	-
Panama	98	58	68	88	53	Vanuatu (New Hebrides)	4	1	-	-	-
Papua New Guinea	1	1	-	-	-	Vatican City	1	-	-	1	1
Paraguay	6	4	5	7	2	Venezuela	49	45	42	41	49
Peru	49	57	26	31	33	Vietnam	42	34	39	37	43
Philippines	42	50	41	38	34	Western Samoa/ Samoa	-	-	8	9	4
Poland	104	103	74	87	98	Yemen	2	1	1	-	4
Portugal	147	136	123	130	91	Yugoslavia	2	3	1	1	2
Qatar	9	6	9	5	1	Zambia	-	-	-	1	-
Republic Moldova	8	3	2	4	1	Zimbabwe	2	2	-	4	2
Romania	23	20	11	17	15	Other <sup>1</sup>	40	55	19	14	16
Rwanda	-	-	-	1	-						
Russian Federation	168	162	154	206	252						
Saint Christ & Nevis	16	26	26	10	31						
Saint Lucia	4	8	2	6	1						

- Represents zero.

<sup>1</sup> Country of Origin information not available.

TABLE 24

**SUMMARY OF CONTESTED TRADEMARK CASES**  
 (Within the USPTO, as of September 30, 2012)

Activity	Ex Parte	Cancellations	Concurrent Use	Interference	Opposition	Total
<b>Cases pending as of 9/30/11, total</b>	<b>1,213</b>	<b>1,520</b>	<b>76</b>	-	<b>5,466</b>	<b>8,275</b>
<b>Cases filed during FY 2012</b>	<b>2,634</b>	<b>1,463</b>	<b>18</b>	-	<b>5,160</b>	<b>9,275</b>
<b>Disposals during FY 2012, total</b>	<b>2,656</b>	<b>1,450</b>	<b>38</b>	-	<b>5,130</b>	<b>9,274</b>
Before hearing	2,257	1,423	38	-	5,022	8,740
After hearing	399	27	-	-	108	534
<b>Cases pending as of 9/30/12, total</b>	<b>1,191</b>	<b>1,533</b>	<b>56</b>	-	<b>5,496</b>	<b>8,276</b>
Awaiting decision	192	17	1	-	46	256
In process before hearing <sup>1</sup>	999	1,516	55	-	5,450	8,020
<b>Requests for extension of time to oppose FY 2012</b>	<b>16,946</b>	-	-	-	-	<b>16,946</b>

- Represents zero.

<sup>1</sup> Includes suspended cases.

**TABLE 25 ACTIONS ON PETITIONS TO THE DIRECTOR OF THE U.S. PATENT AND TRADEMARK OFFICE (FY 2008 - FY 2012)**

Nature of Petition	2008	2009	2010	2011	2012
<b>Patent matters</b>					
<b>Actions on patent petitions, total</b>	<b>51,774</b>	<b>51,482</b>	<b>51,649</b>	<b>53,755</b>	<b>51,323</b>
Acceptance of:					
Late assignments	621	628	773	892	739
Late issue fees	1,819	1,792	1,720	1,920	1,529
Late priority papers	10	13	5	4	6
Access	12	42	14	9	4
Certificates of correction	26,878	25,527	27,611	26,033	25,441
Deferment of issue	21	20	9	8	9
Entity Status Change	1,263	1,246	2,567	2,842	3,016
Filing date	975	723	539	531	413
Maintenance fees	2,774	1,949	2,173	2,457	1,984
Revivals	10,339	11,478	9,326	9,949	8,202
Rule 47 (37 CFR 1.47)	1,837	2,583	2,259	3,077	2,748
Supervisory authority	183	347	411	470	439
Suspend rules	228	301	237	275	162
Withdrawal from issue	1,642	1,423	1,912	1,948	2,196
Withdrawals of holding of aband.	3,172	3,410	2,093	3,340	4,435
Late Claim for Priority	986	1,121	1,094	1,389	1,298
Withdraw as Attorney	6,164	6,133	5,237	5,798	3,922
Matters Not Provided For (37 CFR 1.182)	1,009	1,334	1,236	1,603	1,775
To Make Special	4,653	4,797	4,264	10,573	12,832
Patent Term Adjustment/Extension	476	1,613	28,775	2,117	1,298
<b>Trademark matters</b>					
<b>Actions on trademark petitions, total</b>	<b>29,703</b>	<b>24,747</b>	<b>21,852</b>	<b>23,133</b>	<b>21,036</b>
Filing date restorations <sup>1</sup>	28	20	13	6	19
Inadvertently issued registrations	178	134	116	78	81
Letters of Protest	876	1,011	1,003	1,213	1,490
Madrid Petitions	13	21	28	46	43
Make special	121	94	225	170	302
Reinstatements <sup>2</sup>	1,249	851	563	547	354
Revive (reviewed on paper)	6,524	2,526	1,096	1,276	698
Revive (granted electronically) <sup>3</sup>	19,654	18,967	17,686	18,802	16,913
Waive fees/refunds	30	18	18	5	18
Miscellaneous Petitions to the Director	940	1,008	971	840	967
Board Matters	9	11	16	9	15
Post Registration Matters	81	86	117	141	136
<b>Petitions awaiting action as of 9/30</b>					
Trademark petitions awaiting response	56	72	51	60	26
Trademark petitions awaiting action	95	3	5	2	5
Trademark pending filing date issues	-	-	-	-	-

- Represents zero.

<sup>1</sup> Trademark Applications entitled to a particular filing date; based on clear evidence of Trademark organization error.

<sup>2</sup> Trademark Applications restored to pendency; inadvertently abandoned by the Trademark organization.

<sup>3</sup> The petition to revive numbers were not separated into two categories (paper versus electronic) in previous years.

TABLE 26

**CASES IN LITIGATION**  
(Selected Courts of the United States, as of September 30, 2012)

	Patents	Trademarks	OED	Total
<b>United States District Courts</b>				
Civil actions pending as of 9/30/11, total	114	1	2	117
Filed during FY 2012	35	1	-	36
Disposals, total	<b>37</b>	<b>-</b>	<b>2</b>	<b>39</b>
Reversed	1	-	-	1
Remanded	2	-	-	2
Dismissed	28	-	1	29
Summary Judgement (SJ) Granted - USPTO	1	-	1	2
SJ Granted - Opposing Party	-	-	-	-
Transfer	5	-	-	5
<b>Civil actions pending as of 9/30/12, total</b>	<b>112</b>	<b>2</b>	<b>-</b>	<b>114</b>
<b>United States Courts of Appeals<sup>1</sup></b>				
<b>Ex parte cases</b>				
Cases pending as of 9/30/11	93	6	-	99
Cases filed during FY 2012	91	7	2	100
Disposals, total	<b>114</b>	<b>7</b>	<b>2</b>	<b>123</b>
USPTO Affirmed	69	3	1	73
District Court Affirmed	-	-	-	-
Reversed	1	-	-	1
Remanded	14	1	-	15
Dismissed	30	3	-	33
Vacated	-	-	-	-
Transfer	-	-	1	1
Mandamus Denied	-	-	-	-
Mandamus Granted	-	-	-	-
<b>Total ex parte cases pending as of 9/30/12</b>	<b>70</b>	<b>6</b>	<b>-</b>	<b>76</b>
<b>Inter partes cases</b>				
Cases pending as of 9/30/11	8	12	-	20
Cases filed during FY 2012	6	13	-	19
Disposals, total	<b>8</b>	<b>20</b>	<b>-</b>	<b>28</b>
Affirmed	6	7	-	13
Reversed	-	1	-	1
Remanded	2	4	-	6
Dismissed	-	8	-	8
Transferred	-	-	-	-
<b>Total inter partes cases pending as of 9/30/12</b>	<b>6</b>	<b>5</b>	<b>-</b>	<b>11</b>
<b>Total United States Courts of Appeals cases pending as of 9/30/12</b>	<b>76</b>	<b>11</b>	<b>-</b>	<b>87</b>
<b>Supreme Court</b>				
<b>Ex parte cases</b>				
Cases pending as of 9/30/11	1	-	-	1
Cases filed during FY 2012	5	-	-	5
Disposals, total	3	-	-	3
<b>Cases pending as of 9/30/12, total</b>	<b>3</b>	<b>-</b>	<b>-</b>	<b>3</b>
<b>Notices of Suit filed in FY 2012</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

- Represents zero.

<sup>1</sup> Includes Federal Circuit and Other Appellate Courts

TABLE 27

PATENT CLASSIFICATION ACTIVITY  
(FY 2008 - FY 2012)

Activity	2008	2009	2010	2011	2012
Original patents professionally reclassified - completed projects	13,727	9,955	90,869	25,540	6,175
Subclasses established	1,037	631	1,429	753	311
<b>Reclassified patents clerically processed, total</b>	<b>111,507</b>	<b>60,778</b>	<b>156,590</b>	<b>165,019</b>	<b>31,232</b>
Original U.S. patents	25,903	18,765	52,036	55,090	10,969
Cross-reference U.S. patents	85,604	42,013	104,554	109,929	20,263

TABLE 28

SCIENTIFIC AND TECHNICAL INFORMATION CENTER ACTIVITY  
(FY 2012)

Activity	Quantity
<b>Prior Art Search Services Provided:</b>	
Commercial Database Searches Completed	27,720
Genetic Sequence Searches Completed	7,508
Number of Genetic Sequences Searched	31,258
CRF Submissions Processed	18,467
PLUS Searches Completed	71,353
Foreign Patent Searches Completed	5,749
<b>Document Delivery Services Provided:</b>	
Document Delivery/Interlibrary Loan Requests Processed	19,493
Copies of Foreign Patents Provided	11,365
<b>Information Assistance and Automation Services:</b>	
One-on-One Examiner Information Assistance	20,877
One-on-One Examiner Automation Assistance	35,029
Patents Employee Attendance at Automation Classes	52,792
Foreign Patents Assistance for Examiners and Public	8,136
Examiner Briefings on Scientific & Technical Information Center Information Sources and Services	30,964
<b>Translation Services Provided for Examiners:</b>	
Written Translations of Documents	4,037
Number of Words Translated (Written)	13,551,306
Documents Orally Translated <sup>1</sup>	3,628
<b>Total Number of Examiner Service Contacts</b>	<b>348,376</b>
<b>Collection Usage and Growth:</b>	
Print/Electronic Non-Patent Literature Collection Usage	1,556,019
Print Books/Subscriptions Purchased	77,824
Full Text Electronic Journal Titles Available	69,484
Full Text Electronic Book Titles Available	187,815
NPL Databases Available for Searching (est.)	1,581

<sup>1</sup> includes orally translated requests for Trademarks.



**TABLE 29****END OF YEAR PERSONNEL<sup>1</sup>**  
**(FY 2008 - FY 2012)**

<b>Activity</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
<b>Business</b>					
Patent Business Line	8,582	8,786	8,645	9,234	10,632
Trademark Business Line	936	930	862	976	899
<b>Total USPTO</b>	<b>9,518</b>	<b>9,716</b>	<b>9,507</b>	<b>10,210</b>	<b>11,531</b>
<b>Examination Staff</b>					
Patent Examiners					
Utility, Plant, and Reissue Examiners	5,955	6,145	6,128	6,685	7,831
Design Examiners	100	98	97	95	104
Total UPR and Design Examiners	6,055	6,243	6,225	6,780	7,935
Patent Examiner Attrition Rate Less Transfers and Retirees	7.83%	5.51%	3.75%	2.96%	3.07%
Trademark Examining Attorneys	398	388	378	378	386
Trademark Examining Attorneys Attrition Rate	7.87%	3.24%	3.08%	2.83%	3.98%

<sup>1</sup> Number of people on-board.

<b>TABLE 30A TOP 50 TRADEMARK APPLICANTS (FY 2012)</b>	
<b>Name of Applicant</b>	<b>Classes<sup>1</sup></b>
MATTEL, INC.	720
OUT FIT 7 LIMITED	443
NOVARTIS AG	356
JOHNSON & JOHNSON	352
Disney Enterprises, Inc.	339
Monster, Inc.	305
Advance Magazine Publishers Inc.	304
Societe des Produits Nestle S.A.	294
Archetypes, Inc.	265
The Procter & Gamble Company	260
A&E Television Networks, LLC	245
LG Electronics Inc.	240
Bristol-Myers Squibb Company	225
Walgreen Co.	225
Samsung Electronics Co., Ltd.	219
Bally Gaming, Inc.	212
Target Brands, Inc.	206
Baha Mar Ltd.	191
Glaxo Group Limited	189
Hewlett-Packard Development Company, L.P	186
Eli Lilly and Company	184
Theranos, Inc.	180
Twentieth Century Fox Film Corporation	180
Whole Foods Market LP, L.P.	174
S. C. Johnson & Son, Inc.	173
Sears Brands, LLC	172
Discovery Communications, LLC	165
Boehringer Ingelheim International GmbH	161
Microsoft Corporation	157
UnitedHealth Group Incorporated	154
L'Oreal USA Creative, Inc.	149
L'OREAL	145
DreamWorks Animation L.L.C.	136
Google Inc.	135
Topco Holdings, Inc.	133
Columbia Insurance Company	131
Conopco, Inc.	131
Victoria's Secret Stores Brand Managemen	129
DAIMLER AG	125
Conair Corporation	124
Callaway Golf Company	119
The Wine Group LLC	118
IGT	117
Frito-Lay North America, Inc.	115
HASBRO, INC.	110
Born This Way Foundation	108
IDT Telecom, Inc.	108
Reckitt Benckiser LLC	108
DIE ERSTE; österreichische Spar-Casse; P	106
BRIDGESTONE CORPORATION	104
<sup>1</sup> Applications with Additional Classes.	

<b>TABLE 30B TOP 50 TRADEMARK REGISTRANTS (FY 2012)</b>	
<b>Name of Registrant</b>	<b>Registrations</b>
MATTEL, INC.	358
Johnson & Johnson	246
LG Electronics Inc.	191
Disney Enterprises, Inc.	163
Bally Gaming, inc.	143
DA LIAN YA TU TOU ZI ZI XUN YOU XIAN GON	143
The Procter & Gamble Company	131
Summit Entertainment, LLC	123
IGT	112
Novartis AG	109
Sears Brands, LLC	107
Aristocrat Technologies Australia Pty Lt	89
NINTENDO OF AMERICA INC.	85
American Express Marketing & Development	77
Columbia Insurance Company	76
Target Brands, Inc.	71
Advance Magazine Publishers Inc.	66
Hershey Chocolate & Confectionery Corpor	65
Konami Gaming, Inc.	65
T-Mobile USA, Inc.	63
Conair Corporation	62
Twentieth Century Fox Film Corporation	62
L'Oreal USA Creative, Inc.	59
Siemens Aktiengesellschaft	58
Warner Bros. Entertainment Inc.	58
Koninklijke Philips Electronics N.V.	57
Societe des Produits Nestle S.A.	57
Walgreen Co.	55
Australian Gold, LLC	53
Discovery Communications, LLC	53
Boehringer Ingelheim International GmbH	52
S. C. Johnson & Son, Inc.	52
Samsung Electronics Co., Ltd.	52
Bayer Aktiengesellschaft	51
Home Box Office, Inc.	51
U.S. Marine Corps, a component of the U.	51
Formula One Licensing BV	50
Amorepacific Corporation	49
Merck KGaA	49
SANOFI	49
WMS GAMING INC.	49
Bayerische Motoren Werke Aktiengesellsch	46
Kraft Foods Global Brands LLC	46
Televisa, S.A. de C.V.	46
HEB GROCERY COMPANY, LP	45
Kohler Co.	45
Mars, Incorporated	45
Horvath, David	44
Karsten Manufacturing Corporation	44
Kim, Sun-Min	44

# **Glossary of Acronyms and Abbreviation List**





# Glossary of Acronyms and Abbreviation List

<b>ABC</b>	Activity Based Costing	<b>D&amp;ISP</b>	Diversity and Inclusion Strategic Plan
<b>ACR</b>	Accelerated Case Resolution	<b>DOC</b>	Department of Commerce
<b>AFCP</b>	After Final Consideration Pilot	<b>DOL</b>	Department of Labor
<b>AIA</b>	America Invents Act	<b>EFT</b>	Electronic Funds Transfer
<b>AIPA</b>	American Inventors Protection Act	<b>EPA</b>	Environmental Protection Agency
<b>APJ</b>	Administrative Patent Judge	<b>EPO</b>	European Patent Office
<b>BPAI</b>	Board of Patent Appeals and Interferences	<b>EVS</b>	Employee Viewpoint Survey
<b>CAFC</b>	U.S. Court of Appeals for the Federal Circuit	<b>FECA</b>	Federal Employees' Compensation Act
<b>CFR</b>	Code of Federal Regulations	<b>FEGLI</b>	Federal Employees Group Life Insurance
<b>CFS</b>	Consolidated Financial System	<b>FEHB</b>	Federal Employees Health Benefit Program
<b>COOP</b>	Continuity of Operations Plan	<b>FERS</b>	Federal Employees Retirement System
<b>COPA</b>	Clearing the Oldest Patent Applications (Initiative)	<b>FFMIA</b>	Federal Financial Management Improvement Act
<b>COTS</b>	Commercial-off-the-shelf (software)	<b>FICA</b>	Federal Insurance Contributions Act
<b>CPC</b>	Cooperative Patent Classification	<b>FISMA</b>	Federal Information Security Management Act
<b>CRF</b>	Computer Readable Form	<b>FMFIA</b>	Federal Managers' Financial Integrity Act
<b>CSRS</b>	Civil Service Retirement System	<b>FMS</b>	Financial Management Services

<b>FPNG</b>	Fee Processing Next Generation	<b>NASA</b>	National Aeronautics and Space Administration
<b>FY</b>	Fiscal Year	<b>NOA</b>	Notice of Allowance (Table 16)
<b>GAAP</b>	Generally Accepted Accounting Principles	<b>NPL</b>	Non-Patent Literature
<b>GAO</b>	Government Accountability Office	<b>NPRM</b>	Notice of Proposed Rulemaking
<b>GIPA</b>	Global Intellectual Property Academy	<b>NSA</b>	National Security Agency
<b>GOTS</b>	Government-off-the-shelf	<b>NSF</b>	National Science Foundation
<b>GPO</b>	U.S. Government Printing Office	<b>OBRA</b>	Omnibus Budget Reconciliation Act
<b>GSA</b>	U.S. General Services Administration	<b>OCAO</b>	Office of the Chief Administration Officer
<b>HEW</b>	Department of Health, Education and Welfare (predecessor to HHS)	<b>OCFO</b>	Office of Chief Financial Officer
<b>HHS</b>	U.S. Department of Health and Human Services	<b>OCIO</b>	Office of Chief Information Officer
<b>IDP</b>	Individual Development Plan	<b>OEEO</b>	Office of Equal Employment Opportunity and Diversity
<b>IDS</b>	Information Disclosure Statement	<b>OGC</b>	Office of General Counsel
<b>IG</b>	Inspector General	<b>OGL</b>	Office of General Law
<b>IP</b>	Intellectual Property	<b>OHIM</b>	Office for Harmonization in the Internal Market
<b>IP5</b>	The Five Largest Patent Offices in the World	<b>OHR</b>	Office of Human Resources
<b>IPIA</b>	Improper Payments Information Act	<b>OID</b>	Office of Innovation Development
<b>IPR</b>	Intellectual Property Rights	<b>OIG</b>	Office of the Inspector General
<b>ISO</b>	International Organization for Standardization	<b>OMB</b>	Office of Management and Budget
<b>ISP</b>	Internet Service Provider	<b>OPEA</b>	Office of Policy and External Affairs
<b>IT</b>	Information Technology	<b>OPM</b>	Office of Personnel Management
<b>JPO</b>	Japan Patent Office	<b>OPQA</b>	Office of Patent Quality Assurance
<b>KIPO</b>	Korean Intellectual Property Office	<b>OPT</b>	Office of Patent Training
<b>LDP</b>	Leadership Development Program	<b>PAR</b>	Performance and Accountability Report
<b>MTS</b>	Metric Tracking System	<b>PATI</b>	Patent Application Text Initiative
<b>N/A</b>	Not Available	<b>PCT</b>	Patent Cooperation Treaty



<b>PE2E</b>	Patent End-to-End	<b>TC</b>	Technology Center
<b>PETTP</b>	Patent Examiner Technical Training Program	<b>TEAPP</b>	Telework Enhancement Act Pilot Program
<b>PHP</b>	Patent Hoteling Program	<b>TEAS</b>	Trademark Electronic Application System
<b>PLUS</b>	Patent Linguistics Utility System	<b>TPAC</b>	Trademark Public Advisory Committee
<b>POA&amp;M</b>	Plan of Actions and Milestones	<b>TPP</b>	Trans-Pacific Partnership
<b>PPAC</b>	Patent Public Advisory Committee	<b>TSDR</b>	Trademark Status and Data Retrieval
<b>PPH</b>	Patent Prosecution Highway	<b>TTAB</b>	Trademark Trial and Appeal Board
<b>PRPS</b>	Patent Review Processing System	<b>TVA</b>	Tennessee Valley Authority
<b>PTAB</b>	Patent Trial and Appeal Board	<b>UL</b>	Universal Laptop
<b>Pub. L. No.</b>	Public Law	<b>UPRD</b>	Utility, Plant, Reissue, Design
<b>QPIDS</b>	Final Practice and Quick Path IDS	<b>U.S.</b>	United States
<b>RAM</b>	Revenue Accounting and Management	<b>U.S.C.</b>	United States Code
<b>RCE</b>	Request for Continued Examination	<b>USG</b>	United States Government
<b>SAIC</b>	State Administration for Industry and Commerce of China	<b>USPTO</b>	United States Patent and Trademark Office
<b>SEE</b>	Site Examiner Education Program	<b>USTR</b>	United States Trade Representative
<b>SES</b>	Senior Executive Service	<b>VA</b>	U.S. Department of Veterans Affairs
<b>SFFAS</b>	Statements of Federal Financial Accounting Standards	<b>WIPO</b>	World Intellectual Property Organization
<b>SJ</b>	Summary Judgement	<b>WTO</b>	World Trade Organization
<b>SME</b>	Small to Medium-Sized Enterprise	<b>XML</b>	Extensible Markup Language
<b>TBMP</b>	Trademark Board Manual of Procedure		

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