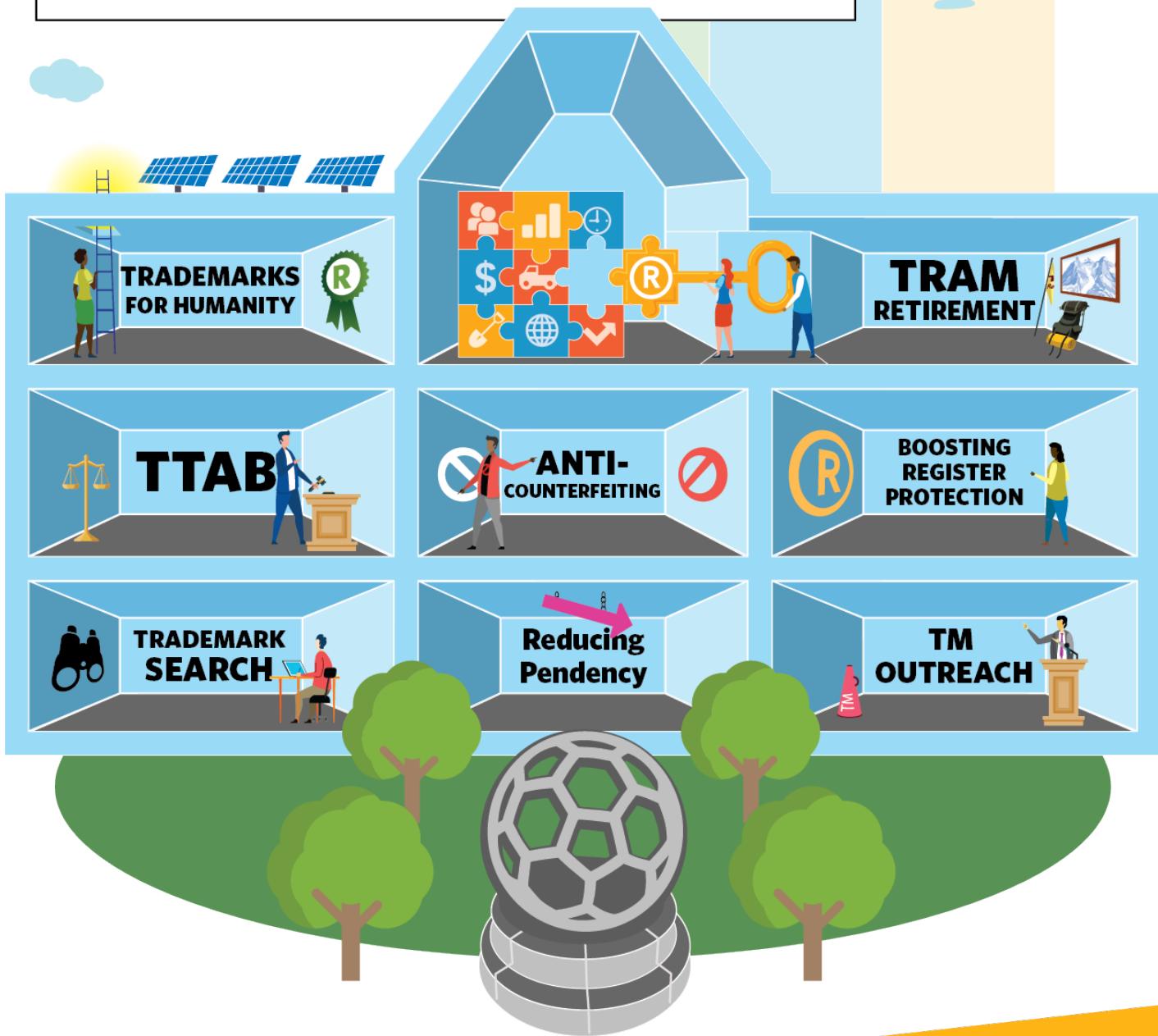


Trademark Public  
Advisory Committee

# TPAC Annual Report 2023



# TPAC

# Annual

# Report

# 2023

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## TRADEMARK PUBLIC ADVISORY COMMITTEE OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

November 1, 2023

The President of The United States  
The White House  
Washington, D.C. 20500

Dear Mr. President:

On behalf of the Trademark Public Advisory Committee (TPAC) of the United States Patent and Trademark Office (USPTO), I am honored to present TPAC's Annual Report for Fiscal Year 2023. TPAC is the statutorily authorized committee representing the interests of diverse users of the USPTO with respect to trademarks. Its duties are to review the policies, goals, performance, budget, and user fees of the USPTO with respect to trademarks, and to advise the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on these matters.

We appreciate the opportunity to serve the USPTO over the past fiscal year.

Very truly yours,

David J. Cho, Chair  
Trademark Public Advisory Committee

cc: The Honorable Gina Raimondo, U.S. Secretary of Commerce

The Honorable Kathi Vidal, Under Secretary of Commerce for Intellectual Property  
and Director of the U.S. Patent and Trademark Office  
Committee on the Judiciary of the Senate  
Committee on the Judiciary of the House of Representatives

Enclosure: TPAC Annual Report for Fiscal Year 2023

## I. Introduction

### A. Trademarks, innovation, and economic value

Trademarks play a starring role in the intellectual property (IP) ecosystem. They provide businesses and consumers with important information about the source of products and services. They symbolize the priorities and values trademark owners cultivate with their consumer communities. And, they are used to promote projects and policies that advance humanitarian goals.

As the most common form of IP, trademarks profoundly impact economic growth, innovation, and culture. The most recent United States Patent and Trademark Office (USPTO) research, [Intellectual property and the U.S. economy: Third edition](#), showcases how much trademarks support the U.S. economy compared to other IP-intensive industries.

Trademark-intensive industries:

- Contribute nearly \$7 trillion to annual gross domestic product (GDP), far exceeding other IP-intensive industries.
- Support more than 56 million jobs.
- Contribute to 88% of all IP-intensive employment.
- Pay workers 60% more than workers in non-IP-intensive industries.

The USPTO provides individuals, entrepreneurs, and businesses large and small, with the platform and resources to register their trademarks and gain nationwide protection. Federal trademark registration is an important step in optimizing trademark protection for businesses, nonprofits, and individuals. Registration helps organizations better protect their IP interests from those who sell and import counterfeits or inferior infringing products.

In fiscal year (FY) 2023, the USPTO improved many of its platforms and educational resources to be more user-friendly and inclusive. USPTO educational outreach projects ensure greater access to America's IP system. Efforts targeting underrepresented groups were expanded in FY 2023 to make sure that the USPTO's resources are accessible and helpful to everyone.

Also in FY 2023, certain USPTO initiatives succeeded in removing deadwood from the register. Other initiatives helped reduce or prevent registrations based on fraudulent filings. These efforts are increasing the accuracy and integrity of the Trademark Register.

The USPTO honors the entrepreneurial spirit of America and supports its growth through its many programs designed to celebrate, protect, and maintain trademarks as meaningful and economically valuable IP assets.

### B. About this report

The Trademark Public Advisory Committee (TPAC) Annual Report reviews the USPTO's performance in FY 2023 on trademark priorities set forth in the USPTO's strategic plan. In creating this report, we considered USPTO policies, goals, performance, budget, and user fees, as required by the American Inventors Protection Act of 1999 (AIPA). We are honored to send this report to the President of the United States, the Secretary of Commerce, the Judiciary Committees of the U.S. Senate and House of Representatives, and the USPTO's Official Gazette where it will be available to the public.

### **C. Overview of FY 2023**

This past year marked several achievements and challenges for the USPTO. In FY 2023, the USPTO made substantial progress towards migrating its data from the Trademark Reporting and Monitoring (TRAM) mainframe system to cloud servers. The USPTO worked to stabilize pendency timelines, deployed several digital enhancements including new search and filing systems, and introduced the first USPTO trademark award – Trademarks for Humanity. The Trademark Trial and Appeal Board (TTAB) successfully launched its pilot program for final pretrial conferences. To support and encourage more women entrepreneurs, the USPTO kicked off the Women Entrepreneurship (WE) initiative and worked to diversify access to the intellectual property ecosystem through the Council for Inclusive Innovation. Along with the National Crime Prevention Council, the USPTO fought against counterfeit products through the Go For Real campaign.

The USPTO also faced some unexpected challenges. Lower trademark application and maintenance filings resulted in lower revenue and greater reliance on the operating reserve than expected.

Although the decrease in new filings helped to stabilize pendency timelines, the USPTO still faces significant challenges in managing the filing surge of prior years. Given the lower revenues and future budgetary projections, the USPTO made the difficult but prudent decision to propose increases for many trademark fees, expected to take effect in November 2024.

We commend the USPTO for its many accomplishments this past year and applaud the USPTO for its resiliency. Given that the USPTO operates in a space that is largely driven by macroeconomic factors beyond its control, we expect and understand that challenges will continue to arise. We look forward to supporting the USPTO as it progresses toward its goals in FY 2024 and beyond.

## **II. About TPAC**

### **A. Background**

In the AIPA, Congress directed the Secretary of Commerce to appoint TPAC, a nine-member committee that advises the Director of the USPTO on trademark policies, goals, performance, budget, and user fees. The AIPA also requires TPAC issue an annual report summarizing the past year's progress on these matters.

### **B. TPAC members**

The nine voting members of TPAC are:

Name	Title and employer	Location	Term ends
David J. Cho (Chair)	Assistant Vice President Senior Legal Counsel – Trademark and Copyrights AT&T Services, Inc.	Dallas, Texas	December 1, 2023

Adraea M. Brown (Vice-chair)	Assistant General Counsel – Trademarks Harley-Davidson Motor Company, Inc.	Milwaukee, Wisconsin	December 1, 2024
Tracy L. Deutmeyer	Shareholder Fredrikson & Byron, P.A.	Des Moines, Iowa	December 1, 2023
Jomarie Fredericks	Deputy General Counsel and Chief Intellectual Property Brand Counsel Rotary International and the Rotary Foundation	Evanston, Illinois	December 1, 2023
Rodrick J. Enns	Partner Enns & Archer LLP	Winston-Salem, North Carolina	December 1, 2024
Dana Brown Northcott	Vice President and Associate General Counsel, IP Amazon.com	Seattle, Washington	December 1, 2024
Deborah R. Gerhardt	Professor of Law University of North Carolina Of Counsel, Michael Best & Friedrich, LLP	Chapel Hill, North Carolina	December 1, 2025
Donna Griffiths	Senior Trademark Paralegal Schneider Electric	Andover, Massachusetts	December 1, 2025
Amy Hsiao	Partner Eligon IP	Atlanta, Georgia	December 1, 2025

In addition to the nine voting members, TPAC has three non-voting members who represent the USPTO's unions:

- Harold Ross of the National Treasury Employees Union (NTEU) Chapter 243
- Jay Besch, President of NTEU Chapter 245
- Pedro C. Fernandez of the Patent Office Professional Association

The [Trademark Public Advisory Committee Members Biographical Information page](#) has more information about TPAC's voting members.

### **C. Subcommittees and working groups**

To better manage our work, we modified our subcommittees, working groups, and task forces for 2023. We merged two prior subcommittees to form the Operations and TM Systems Subcommittee and created the Innovative Inclusion Subcommittee, a new subcommittee to address diversity, equity, inclusion, and accessibility issues among USPTO customers and employees.

Subcommittee (unless specified as a working group)	Chair	Members
Operations and TM Systems	David J. Cho	Adraea Brown Amy Hsiao (TM Systems) Jay Besch (TM Systems)
Office of Policy and International Affairs	Jomarie Fredericks	Adraea Brown Dana Brown Northcott Amy Hsiao
Budget and Finance	Rodrick J. Enns	Adraea Brown David J. Cho Donna Griffiths
Trademark Trial and Appeal Board	Tracy L. Deutmeyer	Adraea Brown David J. Cho Rodrick J. Enns
Innovative Inclusion	Dana Brown Northcott	Adraea Brown David J. Cho Deborah R. Gerhardt
Anti-Counterfeiting Working Group	Adraea Brown	Dana Brown Northcott Amy Hsiao Deborah R. Gerhardt
Annual Report Working Group	Tracy L. Deutmeyer	Adraea Brown David J. Cho Deborah R. Gerhardt

### **D. Public meetings**

In 2023, TPAC held public meetings on April 28, June 5, August 11, and November 3. The June meeting was a special public session on the USPTO's proposal to adjust its trademark fees. We're grateful for the tremendous amount of time and energy the USPTO invested to inform our members and the public at these meetings.

## **III. Trademarks for Humanity award**

In 2022, TPAC recommended that the USPTO create a trademark award program to highlight how trademarks can advance humanitarian issues. In 2023, the USPTO launched its first trademark-specific recognition, the [Trademarks for Humanity award](#).

The award celebrates brand owners who use their trademarks to help solve humanitarian challenges.

The application period closed on September 15, 2023. Owners who owned a federal trademark registration and were using their mark in connection with products, services, or business practices that improve the environment were eligible. Winners will be announced at a public ceremony in 2024 and will be featured on the USPTO's website.

As Secretary of Commerce Gina Raimondo noted, "The new Trademarks for Humanity awards competition will shine a light on the brand owners who are responding to this generational challenge by making meaningful contributions toward a cleaner and healthier environment." The award also advances the USPTO's strategic plan by promoting best practices in using trademarks for the public good.

## IV. Pendency

Trademark application pendency has continued to be one of the USPTO's greatest challenges. While the volume of filings fell in FY 2023, the unprecedented filing surge of FY 2020 and FY 2021 continued to challenge the application examination system. To work through this unprecedented inventory volume, the USPTO implemented new initiatives, introduced technological enhancements, and hired additional examining attorneys. The full impact of these measures will be realized in coming years, but average pendency has begun to stabilize, providing users with more predictable processing times. Thanks to its proactive management, we believe the USPTO is poised to begin decreasing pendency times in FY 2024.

### A. Trademark application filings

Trademark applications may be filed for goods or services in one or more classes. Applicants pay a separate fee for each class, and each class must be examined separately by a trademark examining attorney. Therefore, the USPTO measures trademark application filing volume by the number of classes, not applications. This is because classes is a more accurate measurement of workload.

In FY 2023, USPTO customers filed fewer new trademark application classes than in the prior two years. In FY 2023, applicants filed to register trademarks in 737,018 classes, which is lower than the 823,000 classes projected early in the year. In FY 2022, applicants filed 787,795 classes. The lower-than-expected new filings this fiscal year helped stabilize the average first-action pendency.

The chart below shows the number of trademark classes filed in each of the last four fiscal years, followed by the percentage change from the previous year.

New trademark application classes per year

Fiscal year	Total number of application classes filed	Percentage change from previous year
2023	737,018	Down 6.5%
2022	787,795	Down 17%
2021	943,928	Up 27.5%
2020	738,000	Up 9.5%

## **B. First-action pendency**

First-action pendency is the time between filing a trademark application and the USPTO issuing its first examination action. Typically, this review results in either an office action or approval for publication in the Trademark Official Gazette.

In setting goals for the fiscal year, the USPTO considered workload, across-the-board projections, macro-economic forecasts and hurdles such as transitioning to the new examination system, TM Exam. The USPTO's FY 2023 first-action pendency goal was 8.5 months, one month longer than in FY 2022.

Trademarks met its first-action pendency targets from FY 2007 to FY 2020. An unexpected and unprecedented increase in the number of applications filed in FY 2021 resulted in Trademarks not meeting the target range in FY 2021 or in FY 2022. By year end FY 2023, average first-action pendency stabilized at 8.5 months.

**First-action pendency at end of fiscal year**

Fiscal year	Target pendency	End-of-year pendency
2023	8.5 months or less	8.5 months
2022	2.5-7.5 months	8.29 months
2021	2.5-4.5 months	6.3 months

To inform applicants of how long they should expect to wait for review of their trademark applications, the USPTO maintains a [Trademark processing wait times](#) webpage. This webpage is updated monthly with average first-action pendency, as well as wait times for each step of the trademark application and registration maintenance process. In addition, for the first time, Trademarks began publicly posting the filing dates of the new applications currently being examined. The filing dates are posted on 15 key webpages and updated biweekly.

## **C. Disposal pendency**

Disposal pendency is the time between filing a trademark application and its final disposition by the USPTO.

Disposal pendency may be unusually long if the USPTO suspends the application. The USPTO may suspend examination of an application while awaiting the outcome of another matter, such as when a previously filed application is referenced as a possible bar to registration. In such cases, examination of the newer application may be suspended until the other application is abandoned or proceeds to registration. An application may also be suspended if the outcome of an inter partes TTAB proceeding or court proceeding is relevant to the examination of the application.

The USPTO ended FY 2023 with an overall disposal pendency of 15.5 months, falling short of the 14.5-month goal. However, the applications that were not suspended or subject to an inter partes dispute had an average disposal pendency of 14.6 months, just shy of the target.

## **D. USPTO actions to reduce first-action pendency**

In FY 2023, the USPTO took the following actions to shorten the average time applicants must wait before the USPTO substantively reviews their trademark applications:

- Onboarded 87 new examining attorneys, ending FY 2023 with 764 examining attorneys (compared to 718 at the end of FY 2022).
- Set a goal of hiring 50 to 60 more examining attorneys in FY 2024.
- Streamlined and standardized training for new examining attorneys through a dedicated Trademark Academy, now in its second year of operation.
- In connection with the proposed fee setting (see below) included surcharges fees:
  - Submitting incomplete applications.
  - Customizing identifications of goods and services field instead of using pre-approved identifications from the ID Manual.
  - Submitting excessively long identifications of goods or services.
- Expanded and strengthened its administrative sanctions program, which diverts applications from general examination when they involve potential violations of the Rules of Practice in Trademark Cases or the terms of use for the USPTO website, filing systems, or USPTO.gov accounts.
- Began shifting anti-scam and bad faith review from examining attorneys to the new Register Protection Office.
- Studied how to optimize efficiency in examination through additional IT tools and other initiatives.
- Worked with the unions to collect data and lay the groundwork for meaningful, sustainable change that will reduce pendency while improving the experience of examining attorneys and all Trademarks personnel.
- Studied whether assistance from additional trademark professionals may contribute to pre-registration review.<sup>1</sup>

TPAC supports the USPTO's many efforts to reduce pendency and improve examination efficiency. We also support efforts to create professional development opportunities for all USPTO personnel. These opportunities fulfill the USPTO's strategic plan goals of creating inclusive and impactful employee experiences while also increasing efficiency.

## **E. Challenges to pendency progress**

Despite the USPTO's many efforts and initiatives to reduce pendency, it faced several challenges to its productivity:

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<sup>1</sup> TPAC uses the term "trademark professional" to refer to USPTO Trademarks employees, whether or not they have a degree in law.

- **Fraud monitoring:** The USPTO works diligently to protect the integrity of the Trademark Register. An increase in potentially fraudulent filings adds time to substantive examination.
- **Lengthy and custom identifications:** It takes longer to examine applications with long identifications of goods and services, which may list a great number of discrete goods and services. Also, when applicants draft their own identifications instead of using those in the ID Manual, examining attorneys must take more time to ensure the identification is acceptable and does not raise other examination issues.
- **New IT systems:** This year, the USPTO launched a new examination platform and internal search system. While these new platforms are designed to increase efficiency long term, training employees to use them requires time and resources and do decrease productivity in the short term.
- **Influx of office action responses:** From March 3 through June 2, 2023, the USPTO received more pre-registration office action responses than normal due to implementing the new three-month response period, which is discussed in the next section.

#### F. Flexible response periods

In December 2022, the USPTO partially implemented flexible office action response periods, as authorized by the Trademark Modernization Act of 2020 (TMA). Except for Section 66(a) applicants, applicants now must respond within three months to pre-registration office actions, with the option to request a single three-month extension for a fee. Previously, applicants had a non-extendible six-month period to respond to office actions.

Because of this transition, the USPTO received more responses between March 3 and June 2, 2023 than it otherwise would have received, temporarily affecting pendency as described above.

Now that the transition is complete, the shorter response time is expected to decrease the time between filing an application and its final disposition. The option to request an extension gives applicants flexibility if they need more time to gather evidence or respond to complex office actions but incentivizes quicker responses in simpler cases.

The USPTO planned to implement the same three-month extendible response period for post-registration office actions on October 7, 2023. However, implementation was delayed until late FY 2024 because the new internal examination system, TM Exam, must first be deployed for the Post-Registration Unit.

TPAC commends the USPTO for its smooth implementation of shorter response periods for pre-registration office actions, which bolsters its strategic plan goal of promoting the efficient delivery of reliable intellectual property rights.

#### G. Post-registration pendency

Post-registration pendency is the time between filing and examination of post-registration maintenance filings and requests to amend or correct registrations.

In FY 2023, the USPTO fell short of its post-registration pendency goals.

## FY 2023 post-registration pendency

Type of filing	FY 2023 goal	FY 2023 actual
Affidavits of Use/Incontestability	90 days	145 days
Renewals	90 days	158 days
Amendments/Corrections	90 days	183 days

In the second quarter of FY 2023, the USPTO hired 10 new post-registration specialists to address the backlog of post-registration maintenance filings. These hires resulted in a FY 2023 net gain of eight post-registration specialists from FY 2022. TPAC will monitor whether these new specialists succeed in shortening post-registration pendency.

### H. TTAB pendency

TTAB pendency is the time between when an appeal, contested motion, or trial record is ready for decision and when the decision issues.

The TTAB set the same pendency goals in FY 2023 as in FY 2021 and FY 2022. The TTAB met its annual pendency goals in each of the previous two fiscal years. However, they did not fully meet their goals in FY 2023 for two primary reasons. First, the trademark application filing surge resulted in more appeals being filed. Second, more trial cases became ready for decision (RFD). By year-end, 227 trial cases became RFD, only three shy of the high figure that became RFD in FY 2019.

## FY 2023 TTAB average pendency

Type of decision	FY 2023 goal	FY 2023 actual
Final decisions - Appeals	12 weeks or less	14.7 weeks
Contested motions - Trials	12 weeks or less	8.6 weeks
Final decisions - Trials	15 weeks or less	16 weeks

“Average pendency” figures exclude cases in which:

- The TTAB issued a precedential order or decision.
- The TTAB considered but ultimately did not issue a precedential order or decision.
- The docket contained anomalous prosecution history such as lengthy suspensions or remands.

Factors affecting pendency in FY 2023 included:

- **More trial cases:** At the beginning of FY 2023, 150 cases, including appeals and trials, were RFD, a 61.3 percent increase over the start of the prior year. Of these cases, 38.7% were trial cases. Of all cases becoming RFD during FY 2023, more than 40% were trial cases, ending the year at an historical high of 41.4%. A surge of 227 trial cases became RFD in 2023, and the balance of RFD trial cases persisted despite the TTAB's laudable efforts. They decided 209 trial cases during the year, the highest number in many years, and a 22.9% increase over FY 2022. Trial cases with fully developed records take longer to decide than appeals or motions, and the time spent on them has an adverse spillover effect on average time to issuance of appeal decisions.
- **Precedential decisions:** In FY 2023, the TTAB issued 39 precedential decisions. Crafting these opinions takes time and attention because they provide guidance on substantive and procedural issues that are important to stakeholders. While precedential decisions are not counted in average pendency data, they impact pendency by diverting TTAB resources. The number of precedential decisions varies every year because the TTAB examines the merits of each case to determine whether the decision will be precedential. TPAC applauds the TTAB's focus on cases that are significant to the trademark community.
- **Adding judges:** The TTAB hired three administrative trademark judges, who started in May 2023. The selection and onboarding process took longer than expected, and the new appointees also took time to complete training. The TTAB plans to hire more judges in FY 2024 to help realize its goal of bringing down the balance of RFD cases.
- **Adding interlocutory attorneys:** Two of the new judges were interlocutory attorneys, creating vacancies in that role. The TTAB hired three new interlocutory attorneys late in FY 2022, who also required training time in FY 2023. The TTAB plans to hire more interlocutory attorneys in FY 2024.

For more data, see the TTAB [incoming filings and performance measures](#) on USPTO.gov.

## V. Examination quality

In addition to tracking pendency, the USPTO tracks the quality of trademark examination through three performance measures:

- **First action compliance:** This measures whether the USPTO made the right decision when initially examining the trademark application.
- **Final action compliance:** This measures whether the USPTO made the right decision at the examining attorney's final action.
- **Exceptional office action:** This measures whether the first office action met the USPTO's quality standards for the likelihood of confusion search, supporting evidence, written clarity, and substantive decision-making.

## Trademarks quality performance measures in FY 2023

Performance measure	FY 2023 target	FY 2023 actual
First action compliance	95.5%	96.8%
Final action compliance	97%	98.7%
Exceptional office action	50%	58.5%

We commend the USPTO for setting high examination quality standards and exceeding all of them.

## VI. Final Pretrial Conference Pilot

On April 1, 2023, the TTAB launched a [pilot program for holding a final pretrial conference](#) in certain inter partes (trial) cases.

The TTAB intends to require final pretrial conferences only in selected cases that would benefit from judicial guidance prior to the trial phase. The goals of the pilot are to:

- Save time and resources of parties and the TTAB.
- Foster the effective and efficient presentation of evidence.

Administrative trademark judges and interlocutory attorneys may recommend cases for inclusion in the pilot. A pilot planning team reviews each recommendation. The team assesses the bases for the recommendation and whether participating in the pilot is likely to be effective.

Currently parties are not able to request a final pretrial conference for their case(s). Parties may, however, request assistance from the TTAB at any time by calling the Interlocutory Attorney assigned to a case. An Administrative Trademark Judge or Interlocutory Attorney may participate in a discovery conference upon request. In FY 2023, the TTAB pulled three cases into the pilot. These final pretrial conferences promote the USPTO's strategic plan goal of increasing efficiency by helping the TTAB resolve pretrial issues expeditiously and streamlining proceedings.

## VII. IT platform updates

### A. External search change from TESS to the new trademark search system

For 23 years, the public has used the Trademark Electronic Search System (TESS) to search USPTO application and registration records. On September 18, 2023, the USPTO launched a new search system to replace TESS. The new system provides an updated interface, with features and filters similar to private sector internet search engines and retail sites. In FY 2023, TPAC members beta tested the new search system and provided feedback. The USPTO also conducted public user testing. On September 15, 2023, the USPTO began offering public demonstrations of the new search system. By the end of FY 2023, TESS and the new public search system were running concurrently. The USPTO plans to retire TESS in November 2023.

We appreciate the new search system's simpler and customizable interface. We encourage the USPTO to provide beginner and advanced user training on the new system throughout FY 2024 and

beyond to educate users about its features so users can conduct reliable searches. We expect the new search system will substantially advance the USPTO's strategic plan goal of generating impactful and efficient customer experiences.

### **B. Trademark Center platform**

Throughout FY 2023, the USPTO continued to develop Trademark Center, a cloud-based platform for filing and managing trademark applications through a modernized interface. The USPTO gave a demonstration of the Trademark Center application system at the TPAC public meeting on August 11, 2023.

Trademark Center's application filing system will launch during FY 2024. Eventually, Trademark Center will replace the existing filing system, TEAS. The USPTO has set a goal of FY 2025 when Trademark Center can accept all trademark filings. Until then, Trademark Center and TEAS will exist concurrently.

### **C. TRAM retirement**

The USPTO set a goal of retiring its aging TRAM system, which is based on mainframe technology, by September 30, 2023. Although it fell short of full transition, in FY2023, the USPTO migrated all the data and 85% of the services and functions to a new cloud-enabled platform.

The USPTO anticipates retiring the remaining 15% of TRAM by April 2024. We commend the USPTO for the substantial progress made in FY 2023, and for its careful approach to ensuring the security of its trademark data.

### **D. New internal examination and search systems**

On December 1, 2022, the USPTO launched TM Exam, a new internal examination platform for trademark examining attorneys. TM Exam replaced the long-standing FAST 1 platform.

In FY 2023, the USPTO released an updated version of XSearch, the USPTO's internal search system, which was fully adopted by October 1, 2023.

Launching a new examination platform and internal search system in the same year may have temporarily slowed examination productivity, but we expect that, over time, these new systems will powerfully advance the USPTO's strategic plan goal of promoting the efficient delivery of IP rights.

### **E. TTAB Center**

In FY 2023, the USPTO continued to develop the TTAB's next generation platform, TTAB Center. TTAB Center will include a new electronic filing system for TTAB proceedings that will eventually replace ESTTA, the existing filing system. Initially, both systems will run concurrently.

In TTAB Center, the USPTO plans to first deploy a new Notice of Opposition form. In FY 2023, TPAC members tested the new form and offered suggestions to make it easier to use. The USPTO plans to launch the form for users early in FY 2024.

Unlike with ESTTA, users will need a USPTO.gov account to file in TTAB Center, so the USPTO can protect the file with two-factor authentication, decreasing the risk of mistaken or fraudulent filings. TTAB Center will also limit the user who can file a Notice of Opposition to the same e-mail

address associated with any extension of time to oppose granted to the party filing the opposition. These requirements will help secure parties' dockets.

We support TTAB Center's new security measures, all of which will advance the USPTO's strategic plan goal of promoting the protection of IP against new and persistent threats.

## VIII. Budget and financial performance

### A. Framework

Like most federal agencies, the USPTO operates on an annual budget and may only spend funds appropriated by Congress through the budgeting process. Unlike many federal agencies, however, it is entirely funded by user fees and receives no general federal revenues.

Therefore, the USPTO functions in an unusual environment because it depends on revenues generated by its operations but must submit its budget at least 18 months before the beginning of each fiscal year for congressional appropriation. Because of this long timeline, actual performance can vary from even the best forecasts, especially given that trademark filings tend to fluctuate with various, and often unpredictable, global trends and economic conditions.

The USPTO manages this variability by maintaining an operating reserve of unspent funds appropriated and collected in prior years. This gives the USPTO a longer planning horizon, allowing it to draw on reserve funds to maintain operations at optimal levels despite unexpected revenue shortfalls or increased expenditures.

### B. FY 2023 performance

The appropriation authorizing the USPTO to spend trademark fees for FY 2023 operations was approximately \$542 million. Actual performance differed significantly from that budget, as summarized in this chart.

\$ in Millions	Trademarks	USPTO
<b>USPTO FY 2023 appropriation level</b>	\$ 542.1	\$ 4,253.4
Update to fee revenue estimate	(85.5)	(213.2)
<b>End-of-year aggregate fee revenue</b>	456.6	4040.2
Operating reserve and other revenue <sup>2</sup>	218.5	1041.8
PTFRF reprogramming	8.2	31.6
<b>Total FY 2023 funds available</b>	683.2	5113.6

<sup>2</sup> This line of the chart reflects the beginning-of-year operating reserve balance plus estimated other revenue and deducts the OIG Transfer of \$2.45 million per the USPTO appropriation. Other revenue includes recoveries, parking fees, reimbursements and expenditure refunds.

\$ in Millions	Trademarks	USPTO
Total end-of-year spending	(480.2)	(3,968.1)
<b>End-of-year operating reserve</b>	<b>\$ 203.0</b>	<b>\$ 1,145.5</b>

Fee revenues were about 16% below the amount appropriated. Two primary factors contributed to this decrease:

- Total filings were below projections, as actual demand for trademark applications was lower than previously forecasted.
- Post-registration filings were a smaller portion of total filings than in prior years. This impacts overall revenue because fees for maintenance filings are set at higher levels to help subsidize application fees.

As the chart shows, spending was greater than fee revenue. This result was not surprising, because Trademarks operations expenditures were impacted by rising costs, including a higher than anticipated government-wide pay increase for federal employees. Trademarks also continued to invest in multiple IT infrastructure upgrades to meet critical long-term needs.

These factors produced a net revenue shortfall of approximately \$24 million for FY 2023, which was funded by drawing from the operating reserve.

### C. Implications

The FY 2023 revenue shortfall by itself is not concerning. The operating reserve exists to enable Trademarks management to handle short-term downturns without compromising operations. At the end of FY 2023, the operating reserve stood at \$203 million. Although the reserve is less than it was at the beginning of FY 2023, it remains well above the targeted minimum of \$120 million.

Over the longer term, the most recent projections forecast that the operating reserve will continue to decrease.

### FY 2024 President's Budget Trademark Operating Reserve Forecast

Fiscal year	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Optimal Level	228	294	324	333	347	367	387
Minimum Level	120	120	100	100	100	100	100
Forecasted OR	209	197	150	116	92	68	44

If current trends continue, the operating reserve would likely drop below \$120 million sometime in FY 2025.

For that reason, Trademarks management is taking prudent steps to manage costs and adjust fees. The fee-setting process and TPAC's role in that process is described in the next section.

We commend the Office of the Chief Financial Officer and Trademarks management for their proactive long-term planning and responsible financial stewardship in serving the USPTO's strategic plan goals of protecting IP rights while maximizing agency efficiency.

## IX. Fee setting

In 2023, the USPTO conducted a comprehensive review of its fees, as authorized and required by the Leahy-Smith America Invents Act. On May 8, 2023, USPTO Director Kathi Vidal provided TPAC with a schedule of proposed trademark fee adjustments. The USPTO also delivered a breakdown of current and historical costs and detailed reasons for each proposed change.

- **Hearing:** TPAC conducted a hearing on June 5, 2023, for members of the public to comment on the fee proposal. We also received written public comments from more than 100 individuals and organizations.
- **Review:** TPAC independently reviewed the fee proposal, considered the public comments, analyzed the information relevant to each individual adjustment, and assessed the policy implications. We summarized our conclusions and recommendations in the [TPAC Report on Fee Proposal](#) delivered to the USPTO on August 14, 2023.
- **Report:** Overall, we found that the fee proposal was appropriate and well-supported. The USPTO is required by statute to set overall fees at levels that will recover anticipated aggregate costs. Because of reduced projected demand and the impact of inflation on expected operating costs, an increase in fees is necessary to meet that obligation.

Subject to that overarching requirement, the USPTO may increase or decrease individual fees to serve other policy goals. A number of fee adjustments are designed to encourage more efficient filing behaviors while others help ensure continued access to the registration system especially for under-resourced filers.

Our report suggested changes to some proposed fees. For others, we suggested clarifying how a proposed adjustment would be implemented and providing additional explanations to the public.

- **Next steps:** The USPTO is evaluating our report, the public comments, and all other input it has received. It expects to publish a notice of proposed rulemaking in early 2024, which will be followed by another public comment period and preparation of a final rule. New fees are expected to take effect in November 2024.

## X. Fighting fraud

### A. New Register Protection Office

In FY 2023, the USPTO established the Register Protection Office to protect the integrity of the U.S. Trademark Register from scams and fraudulent activities. The USPTO selected Montia Pressey as the USPTO's first Director for Trademark Register Protection. Ms. Pressey oversees the three units within the office.



### 1. Post-Registration Audit unit

The Post-Registration Audit unit audits registrations to help preserve the accuracy and integrity of the Trademark Register as a reliable source of trademarks in use in commerce. Since 2017, the USPTO has audited over 5,000 trademark registrations annually. In FY 2023, the USPTO audited 5805 registrations.

The USPTO randomly selects trademark registrations to audit from a pool of registrations that share the following two features:

- A Section 8 or Section 71 post-registration declaration of use was timely filed.
- The registration includes at least one class with four or more goods or services or two classes with two or more goods or services.

The post-registration audit program advances the USPTO strategic plan goal of promoting the efficient delivery of reliable IP rights by assessing and promoting the accuracy and integrity of the Trademark Register.

### 2. TMA ex parte nonuse cancellation proceedings unit

On December 27, 2021, the USPTO began accepting petitions requesting reexamination or expungement of trademark registrations to help declutter the Trademark Register and further the USPTO's strategic plan goal to promote the efficient delivery of reliable IP rights.

Members of the public or the USPTO Director can initiate both types of proceedings.

- **Expungement proceeding:** A petitioner or the USPTO Director can initiate a proceeding to cancel some or all the goods and services identified in a trademark registration on the basis that the registrant never used the trademark in commerce with those goods or services.
- **Reexamination proceeding:** A petitioner or the USPTO Director can initiate a proceeding to cancel some or all the goods and services identified in a use-based registration on the basis that the trademark was not in use in commerce with those goods or services on or before a particular date.

The number of petitions filed by the public is shown in the chart below. Other columns in the charts are explained here.

- **Instituted proceedings and Non-institutions:** Once an expungement or reexamination petition is filed by a member of the public, a proceeding is instituted only if the Director determines that a prima facie case has been established in the petition. The number of proceedings that the Director determined to institute are shown in “Instituted Proceedings” and the number of proceedings that the Director determined not to institute are reflected in the “Non-institutions” column. A filed petition will not be reflected in either column if it is being examined or is awaiting examination.
- **Terminated proceedings:** “Terminated proceedings” in the chart below means that the proceeding was terminated. It does not mean that the registration was expunged or cancelled.
- **No cancellation:** The “No cancellation” field means that no goods or services were cancelled from a registration at the end of the proceeding.
- **Cancellation:** Once a proceeding is instituted, the USPTO notifies a registrant and gives the registrant an extendable period to provide appropriate evidence of use and/or delete from the registration some or all the goods and/or services at issue. If the registrant does not timely respond, the USPTO will cancel the registration if the entire registration was challenged or in part if only some goods and/or services were challenged. “Cancellation” means that the registration was cancelled in full or in part.
- **Goods or services cancelled:** The “Number of goods or services cancelled” column compares the number of challenged goods and services set forth in the Notice of Institution to the goods and/or services cancelled once the proceeding is terminated.

#### Reexamination and expungement proceedings initiated by the public

December 27, 2021 through September 29, 2023

Petitions filed	Instituted proceedings	Non-institutions	Terminated proceedings	No cancellation	Cancellation	Number of goods/services cancelled out of those challenged
382	207	145	129	12	114	2932 out of 2955

#### Reexamination and expungement proceedings initiated by the USPTO

December 27, 2021 through September 29, 2023

Instituted proceedings	Terminated proceedings	No cancellation	Cancellation	Number of goods/services cancelled out of those challenged
423	86	0	80	2908 out of 2908

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### 3. Anti-scam unit

The Anti-scam unit, known publicly as the Special Task Force for Improper Activities (STIA), provides extensive scam awareness tools and educational resources as well as operating the Administrative Sanctions Program (see below).

In FY 2023, USPTO customers reported four main types of scams.

#### **Scams reported to the USPTO in FY 2023**

- Scammers mislead customers to pay inflated fees for fake or unnecessary services.
- Scammers impersonate the USPTO.
- Scammers hijack applications and registrations.
- Scammers hijack or rent attorney credentials.

[STIA](#) continues to work toward maximizing its operations and expanding scam awareness tools to advance the USPTO's strategic plan goals of promoting the protection of IP against new and persistent threats and generating impactful customer experiences.

### B. Attorney recognition

In late FY 2023, the USPTO sought feedback from stakeholders on possible changes to the trademark rules regarding the duration of attorney recognition. The USPTO also hosted on September 26, 2023, a listening session during which the public also could comment.

Under current Rules of Practice, attorney recognition by the USPTO on a pending application ends when the mark registers, ownership changes, or the application is abandoned. For registrations, recognition ends under current rules if the registration is cancelled, expires, or ownership changes, or upon acceptance or final rejection of a post-registration maintenance filing.

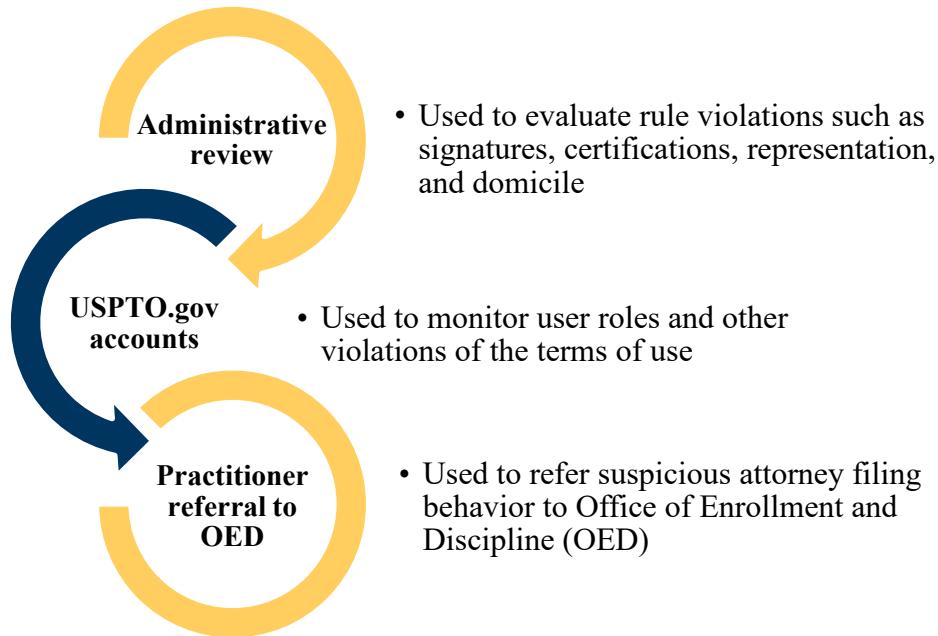
However, in response to practitioner requests, the USPTO sends a courtesy email reminder of the due date for a post-registration maintenance document to both the owner and the last attorney of record (who is no longer recognized under the current rule). This practice has caused confusion among practitioners and created some uncertainty for the USPTO in implementing its regulations. Some attorneys intend to continue representation and advise their clients to disregard anything sent by others directly to the client concerning the client's application or registration because of potential fraud. Other attorneys prefer not to receive any correspondence once recognition by the USPTO ends. Those attorneys are concerned about their ethical obligations when they receive correspondence for their former clients.

Therefore, the USPTO sought public comments on whether the attorney recognition rules should be changed. The comment period has closed and the USPTO now is reviewing the comments received.

### C. Administrative sanctions program

In FY 2023, the USPTO continued its administrative sanctions program. The USPTO has authority to sanction parties who violate the USPTO Rules of Practice or the terms of use for USPTO websites, filing systems, or USPTO.gov accounts.

## Administrative sanctions program



When investigating alleged violations, the USPTO evaluates evidence of a rule violation and whether other applications or registrations are affected. An application may be suspended during the investigation.

The USPTO may issue a show cause order or allow the filing to proceed through examination. Depending on the response to the show cause order, the USPTO may issue an order for sanctions, require additional information or explanations, or allow the application to resume examination.

As a sanction, the USPTO may:

- Not consider or give any weight to the affected submission.
- Terminate the proceeding, which can include terminating an application. Currently the USPTO doesn't terminate a registration as a sanction but may update the electronic record to show that the registration is subject to a sanctions order.
- Preclude a person from submitting any documents in trademark matters before the USPTO.
- Deactivate affected USPTO.gov accounts.
- Refer individuals to the Office of Enrollment and Discipline (OED) for discipline.

The sanctions program has resulted in over 300 orders for sanctions terminating over 19,000 invalidly filed applications and sanctioning over 3,200 invalid registrations.

### Sanctions program numbers

Calendar year	Number of show cause orders (SCO)	Number of final orders (OFS)	Terminated applications in OFS	Sanctioned registrations in OFS	USPTO.gov accounts suspended (ID verification 8/6/22)	Individuals referred to OED
2019	68	1	2	0	n/a	10
2020	534	0	0	0	n/a	5
2021	3	3	12,576	3,227	345	15
2022	5	35	5,885	70	18	18
2023	3	281	592	0	49	14
<b>Total</b>	<b>613</b>	<b>320</b>	<b>19,055</b>	<b>3,297</b>	<b>512</b>	<b>62</b>

## XI. Anticounterfeiting

### A. Go For Real campaign

In 2020, the USPTO, in collaboration with the National Crime Prevention Council, launched the Go For Real campaign to educate young people about counterfeit products and encourage the public to purchase genuine goods and services. In FY 2023, the USPTO continued to promote the Go For Real campaign. Highlights of these efforts include:

- In spring 2023, the “Go For Real” YouTube series was awarded first place in the “K-12 Educational Program” category in the National Association of Government Communicators’ Blue Pencil & Gold Screen Awards.
- The campaign’s two PSAs, “You’re Smart, Buy Smart” and “The Real McGruff,” continue to be widely aired. They have been viewed approximately 1.5 billion times, with approximately 1,000 new airings weekly and an estimated ad value of over \$30 million.
- The USPTO’s third PSA debuted in September 2023, and was accompanied by extensive promotion, including an interactive, virtual “walk-through” of real and counterfeit factories.
- The “Go For Real” campaign continues to have strong traction online, with nearly 528,000 page views of the Go For Real website and more than 3 million social media impressions.
- In October 2023, the “Go For Real” campaign won a platinum award in the MarCom television category and a gold award in the MarCom web video category.

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## B. Public roundtable

As part of its effort to combat dangers from counterfeit goods, the USPTO is actively seeking input from the public on current industry challenges caused by counterfeit goods. On May 25, 2023, the USPTO published a [Federal Register Notice](#) seeking input on future anticounterfeiting and antipiracy strategies. The notice announced plans to hold a public roundtable and requested online comments, which TPAC provided. The USPTO held the roundtable on October 3, 2023. As the USPTO gathers and organizes the public comments, we will continue to work with the USPTO to learn more about planned strategies to combat piracy and anti-counterfeiting.

## XII. Innovative inclusion

To facilitate discussion and accountability on the DEIA goals in the USPTO's strategic plan, TPAC created a new Innovative Inclusion Subcommittee. The subcommittee and USPTO administrators worked together to identify how the USPTO might incorporate private-sector diversity, equity, and inclusion practices. The USPTO made substantial progress toward its DEIA goals in 2022–2023, including:

- **Surveys**: The USPTO circulated multiple employee surveys to get feedback on diversity, equity, and inclusion issues. Survey results are featured in an internal agency publication and available to employees on the USPTO's internal website. The USPTO uses survey results to implement policy initiatives on equity and inclusion.
- **Collaborative communication**: The USPTO administration implemented inclusive and collaborative communication practices to identify and achieve common goals with its employees represented by unions.
- **Paid internships**: The USPTO recognizes that unpaid internships are not inclusive opportunities for students from all economic circumstances. Therefore, the USPTO has recommitted to funding intern positions.
- **Inclusive forms**: The USPTO requested the review of new employment and security forms to assure that gender and racial identification is requested in an inclusive manner.
- **Diversity, Equity, Inclusion, and Accessibility Council**: The USPTO created this council to advance equity and inclusion in the Trademark Academy and affinity groups.
- **Mentoring**: The USPTO is exploring ways to nominate and mentor a diverse cohort of employees interested in professional advancement.
- **Recruitment**: The USPTO uses multiple methods to recruit a diverse workforce, including outreach to professional race and gender affinity groups.

We applaud the USPTO's demonstrated commitment to advancing its DEIA strategic goals and encourage the USPTO to continue its efforts to recruit a diverse workforce and leadership team. We support compensating employees for attending substantive DEIA events by counting these sessions as productive work hours.

## XIII. Outreach

### A. Education

The USPTO offers a wide variety of resources and programs to promote intellectual property education. While some initiatives serve the general public, others are tailored to specific audiences,

such as K-12 students, entrepreneurs, or trademark professionals. The USPTO’s educational highlights in FY 2023 relating to trademarks include:

- **Empowering Women’s Entrepreneurship (WE):** In 2023, the USPTO launched “WE,” an initiative to empower women entrepreneurs by facilitating access to the IP ecosystem. With its new [WE page](#), developers can access videos and other online tools to understand what types of IP they might have, find funding, and connect with mentors.
- **World Intellectual Property Day:** On April 26, 2023, TPAC participated in the USPTO’s World Intellectual Property Day celebration at the U.S. Capitol. The event featured exhibits and speakers on the theme of “Women in IP: Accelerating Innovation and Creativity.” The inspiring stories showed how women overcome barriers to entering the IP ecosystem and protect their innovations.
- **Programs for students:** The USPTO’s headquarters in Alexandria, Virginia, hosts the National Inventors Hall of Fame Museum, a popular destination for K-12 field trips. The USPTO partners with the museum to provide educational programming to thousands of students every year through Camp Invention and the Collegiate Inventors Competition. TPAC toured the museum in August 2023 and proposed updating the museum’s trademark exhibits and integrating patent and trademark information.
- **Law School Clinic Certification Program:** The USPTO continues to certify law school clinics to practice before the USPTO and provide low-cost or free legal assistance to qualifying applicants. The program currently includes more than 60 law school clinics. By advocating to expand the number of law school clinics serving under resourced entrepreneurs, the USPTO is supporting the education of future IP lawyers who also provide much needed legal services to those who can’t afford them.

## B. Welcome Letters

Research shows that applicants who file trademark applications without the assistance of experienced trademark professionals are less likely to succeed in registering their trademarks.<sup>3</sup> To help narrow the gap, the USPTO incorporated a letter into its application filing receipt that helps new applicants navigate the IP ecosystem. The “[welcome letters](#)” feature multiple links to information about the trademark application process and other helpful resources.

## C. National Advisory Council on Innovation and Entrepreneurship

Director Vidal continues to co-chair the National Advisory Council on Innovation and Entrepreneurship (NACIE). NACIE is a federal advisory committee managed by the U.S. Economic Development Administration’s Office of Innovation and Entrepreneurship. In that role, Director Vidal continues to work to assure IP protection is a key part of the National Entrepreneurship Strategy that NACIE is developing. For more information, visit the [NACIE page](#).

# XIV. Looking ahead to FY 2024 and beyond

In FY 2024, the USPTO will continue pursuing the monumental task of concurrently transitioning to multiple new electronic platforms, including:

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<sup>3</sup> Gerhardt and Lee, A Tale of Four Decades: Lessons from USPTO Trademark Prosecution Data, 112 Trademark Reporter 6 (November–December 2022).

- **New trademark search system:** On September 18, 2023, the USPTO launched a new search system to replace TESS. The USPTO plans to retire TESS in November 2023.
- **Trademark Center:** The new trademark application filing platform will replace the current TEAS application filing interface.
- **TRAM retirement:** While the USPTO retired 85% of TRAM-dependent processes in FY 2023, the remaining 15% of TRAM will be retired in FY 2024.

We expect that the public will welcome the new user-friendly public search system and Trademark Center platform. It may take time for the public and USPTO personnel to learn how to use the new systems. As USPTO employees gain proficiency, we hope to see application pendency trend downward.

The proposed fee increases will not take effect before November 2024. Therefore, the USPTO may have another revenue gap in FY 2024, especially if the federal government increases employee salaries. Thanks to prudent planning, the USPTO reserve has sufficient funds to keep the USPTO self-sustaining until the new fees take effect.

Under Director Vidal's leadership, the USPTO has been especially effective in its outreach and educational programming. The WE program has increased awareness that women are underrepresented in the IP ecosystem. We look forward to seeing how the USPTO expands outreach and education to ensure its services are available to everyone.

Finally, we look forward to honoring the inaugural Trademarks for Humanity award winner in FY 2024. We applaud the USPTO for highlighting how brands can be a powerful force in achieving humanitarian goals.