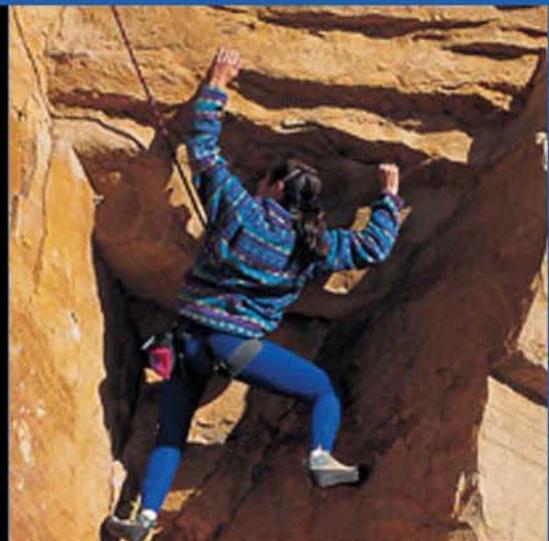




# United States Patent and Trademark Office



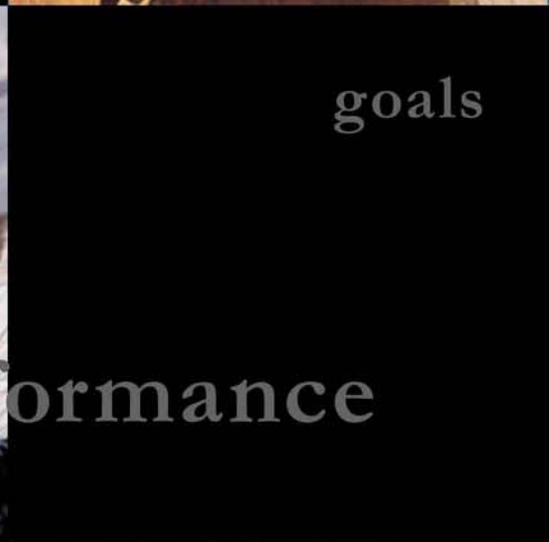
quality



transparency



performance



goals



timeliness



# UNITED STATES PATENT AND TRADEMARK OFFICE



## FISCAL YEAR 2009 PRESIDENT'S BUDGET

February 2008

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# Section I – Executive Summary

## USPTO BUDGET-AT-A-GLANCE

Department of Commerce Goal: “Promote U.S. innovation and industrial competitiveness”

	Actuals	Enacted	President's	Outyear Estimates			
Dollars in thousands	FY 2007*	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
<b>USPTO GOAL 1: OPTIMIZE PATENT QUALITY AND TIMELINESS</b>							
Amount	\$1,502,950	\$1,641,669	\$1,783,730	\$1,905,862	\$2,060,569	\$2,299,628	\$2,539,806
Allowance Compliance Rate	96.5%	96.0%	96.0%	96.0%	96.0%	96.0%	96.0%
In-Process Examination Compliance Rate	92.2%	92.0%	93.0%	94.0%	94.0%	94.0%	94.0%
Average First Action Pendency/Utility, Plant and Reissue (UPR) (Months)	25.3	26.9	27.5	27.6	27.6	27.8	27.7
UPR Units of Production	350,886	383,500	422,700	465,900	503,700	539,800	572,900
Average Total Pendency/UPR (Months)	31.9	34.7	37.9	38.5	38.6	38.6	38.8
<b>USPTO GOAL 2: OPTIMIZE TRADEMARK QUALITY AND TIMELINESS</b>							
Amount	\$193,591	\$221,124	\$236,500	\$244,209	\$263,074	\$283,429	\$301,371
First Action Compliance Rate	95.9%	95.5%	95.5%	95.5%	95.5%	95.5%	95.5%
Final Action Compliance Rate	97.4%	96.0%	96.0%	96.0%	96.0%	96.0%	96.0%
Average First Action Pendency (Months)	2.9	2.5 to 3.5					
First Actions	455,802	422,100	439,500	475,700	518,000	565,900	615,900
Office Disposals	323,527	335,700	345,200	366,100	395,800	431,000	470,600
Average Total Pendency (Months) Including Suspended and Inter Partes Proceedings	15.1	16.3	16.0	16.0	16.0	16.0	16.0
<b>USPTO GOAL 3: IMPROVE INTELLECTUAL PROPERTY PROTECTION AND ENFORCEMENT DOMESTICALLY AND ABROAD</b>							
Amount	\$46,423	\$52,707	\$54,543	\$54,521	\$55,983	\$57,493	\$59,054
Number of Instances in which USPTO Experts Review IP Policies/Standards	461	275	275	275	275	275	275
Improving World-Wide IP Expertise for U.S. Government Interests	17	12	12	12	12	12	12
Plans of Action, Mechanisms and Support Programs Initiated or Implemented in Developing Countries	15	10	10	10	10	10	10
<b>USPTO Appropriation</b>	<b>\$1,742,964</b>	<b>\$1,915,500</b>	<b>\$2,074,773</b>	<b>\$2,204,592</b>	<b>\$2,379,626</b>	<b>\$2,640,550</b>	<b>\$2,900,231</b>

\* FY 2007 reflects appropriation of \$1,771,000 less unobligated balance of \$28,036.

## STRATEGIC PLAN AND GUIDING PRINCIPLES

The USPTO's fiscal year (FY) 2009 performance budget request is \$2,075 million, which represents a \$159 million (8 percent) increase over the enacted spending authority for FY 2008. This request would provide \$1,828 million under the Patent business for completing 445,200 first actions on patentability determinations and 400,200 patent application disposals (equaling 422,700 units of production); and \$247 million under the Trademark business for completing 439,500 first actions on trademark applications and 345,200 office disposals.

The corresponding fee collection estimates for FY 2009 of \$1,828 million for Patents and \$247 million for Trademarks assumes the fee structure based on the provisions of Title VIII in the Consolidated Appropriations Act, 2005 (Pub. L. No. 108-447) will be in place through 2013.

The FY 2009 budget request aligns with the Department of Commerce goal to promote U.S. innovation and industrial competitiveness and the related objective to protect intellectual property (IP) and improve the patent and trademark systems. The request also supports the USPTO mission, which is to foster innovation and competitiveness by:

- Providing high quality and timely examination of patent and trademark applications,
- Guiding domestic and international IP policy, and
- Promoting better IP protections worldwide by delivering information and education.

This mission is carried out through the USPTO's two distinct business lines – Patents and Trademarks – whereby the USPTO administers the patent and trademark laws [15 U.S.C. §113 and 35 U.S.C. §41 and 376], which provide protection to inventors and businesses for their inventions and corporate and product identifications. The USPTO also encourages innovation and scientific and technical advancement of American industry through the preservation, classification, and dissemination of patent and trademark information. In addition, the USPTO provides technical advice and information to Executive Branch agencies on IP matters and the trade related aspects of IP rights, and assists governments of other countries to establish regulatory and enforcement mechanisms that meet their international obligations to protect IP.

### Strategic Plan

The USPTO released its *2007-2012 Strategic Plan* in March 2007. This plan, coupled with the previous *21<sup>st</sup> Century Strategic Plan*, has enabled the Agency to:

- Promote the IP systems of the future to keep American innovators competitive in the global economy, and
- Transform the Agency into a quality-focused, highly productive and responsive organization.

The *2007-2012 Strategic Plan* established three strategic goals and a management goal as follows:

- Goal #1: Optimize patent quality and timeliness.
- Goal #2: Optimize trademark quality and timeliness.
- Goal #3: Improve intellectual property protection and enforcement domestically and abroad.
- Management Goal: Achieve organizational excellence.

These strategic goals and corresponding initiatives are the management priorities that are enabling the Agency to achieve the vision of leading the world in IP policy. Guided by the *2007-2012 Strategic Plan* and supported with resources identified in annual budget requests, the USPTO has:

- Made quality the number one priority.

- Moved toward full patent and trademark electronic processing.
- Protected the U.S. IP system and American interests internationally.
- Obtained full access to fee collections and received Congressional approval for a new fee structure for the past four years.

In FY 2009 and beyond, the USPTO plans to:

- Seek regulatory authority to adjust fee rates and ensure sound financial management.
- Continue with a resolute emphasis on quality and productivity.
- Improve timeliness by addressing the challenges of rising workloads and the shift of applications from traditional arts to more complex technologies.
- Continue hiring 1,200 patent examiners per year.
- Improve electronic communications, encouraging more applicants to do business electronically with the delivery of web-based text and image systems. Move closer to becoming a nationwide workforce by refining electronic processing and e-filing of applications and related documents.
- Educate public audiences about the importance of strong domestic and international IP protections.
- Continue working with IP partners and other IP offices to improve the efficiency of processing systems and streamline the global IP system.

### Guiding Principles

This budget request identifies critical patent and trademark initiatives and resource requirements for successful multi-year implementation of the *2007-2012 Strategic Plan*. All of the business line requirements center on four guiding principles that will guide the Agency in fulfilling its mission and achieving its vision.

- Quality means accurate and consistent results in examination. It presumes improved inputs, better-focused examination, improved review processes, and consistent examination results.
- Timeliness means that processing, including review of applications, is completed without delay. It presumes that applicable laws, regulations, and policies work synergistically to eliminate friction or uncertainties that lead to delays.
- Cost-effectiveness implies efficiency, accountability, and a focus on results. It requires leadership and commitment to ensure that activities and processes result in value. This means using resources in the most effective manner to deliver quality and timely USPTO services. It also means being responsible stewards of the public trust.
- Transparency demands impartiality, fairness, accessibility, availability, and a public-service mentality. This includes continuing the commitment to opening the USPTO to the public by providing electronic filing, patent and trademark file contents, and as much training and research material as possible via the Web site. It requires discipline on the part of citizens to use public means to influence change in USPTO practices and activities.

## THE ECONOMY AND USPTO APPLICATION FILINGS

The U.S. economic expansion remains intact, but future growth is expected to continue at a slower pace. Although the outlook is positive, there are risks to U.S. economic growth, such as a slowing housing market and losses in the subprime mortgage market. From a broader perspective, the global economy is robust and the outlook remains strong, with Asia and South America continuing to boom. Overall, economic activity in the United States and abroad are expected to continue to trend upwards and this is a positive indication for future USPTO workloads.

The USPTO considers a number of economic factors and relevant indicators when forecasting its workloads. Major factors include the overall condition of the U.S. and global economies, spending on technological innovation activities, and investments leading to the commercialization of new products and services. The three relevant indicators used by the USPTO are the Gross Domestic Product (GDP), Research and Development (R&D) expenditures and Venture Capital (VC) investments. These indicators are correlated with USPTO patent and/or trademark application filings, which are key drivers of patent and trademark workloads<sup>1</sup>. In addition to economic factors, the USPTO considers overseas patenting activity and customer filing intentions when preparing its official forecasts. Both quantitative and qualitative methods, including forecasting models, a national survey, and judgment are utilized by the USPTO to account for all factors.

### Economic Indicators

#### Gross Domestic Product

The U.S. economy is still expanding, but it continues to lose some of its momentum and its growth will likely decelerate further. Two contributing factors are the slowing housing market and continued losses in the subprime mortgage market. As compared to this time last year, forecasts of the U.S. economy from the Congressional Budget Office (CBO) have been revised downward slightly for GDP growth.<sup>2</sup> The CBO is expecting growth to slow down in 2007 and then strengthen through 2010. Starting with 2011, the CBO is projecting growth moderating through at least 2013.

In calendar year 2006 and 2007 U.S. GDP increased. By 2008, growth is anticipated to accelerate further and reach a peak in 2010. The expectation for the long-term is that GDP will increase by a 2.7 percent average annual rate from 2011 through 2013. Based on these economic assumptions, patent and trademark application filings received by the USPTO should continue to increase through FY 2013.

#### Research and Development

R&D is a useful leading indicator of USPTO patent application filings. With technological innovation as the key ingredient in all patents, R&D provides a supply estimate of innovations and a leading indication of the demand for future patents. The USPTO has found R&D to be a leading indicator of patent application filings by approximately one year.

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<sup>1</sup> These indicators are an important consideration when developing workload forecasts. Some of the indicators are more highly correlated with patent application filings and others are more correlated with trademark application filings. R&D is more highly correlated with patent application filings and VC is more highly correlated with trademark application filings. The correlations provide an indication about the general trend of workloads.

<sup>2</sup> CBO develops a domestic forecast twice a year and presents it formally in testimony before Congress, making it both timely and authoritative. The current forecast is as of August 23, 2007. In particular, it can be viewed as an official update of the forecasts appearing in the Economic Report of the President.

The figures available from the National Science Foundation show that total U.S. R&D has continued to increase. About two-thirds of this total was funded by private industry and 14 percent from universities and colleges, with the remaining share funded by the Federal government and nonprofit institutions.

According to the Battelle-R&D Magazine annual funding forecast, U.S. R&D was expected to have increased each year. Based on available R&D 2008 and 2009 estimates the outlook for patent application filings remains positive, although slowing.

### **Venture Capital**

In the United States, VC is an important source of funding for start-up businesses. These young and rapidly growing businesses take higher risks in developing new products and services, which can have big payoffs for investors and contribute significantly to the economy. At the USPTO, VC was found to help explain much of the volatility experienced by trademark application filings in the past, especially during the dotcom bubble, and is a useful indicator to monitor.

According to the MoneyTree Report by PricewaterhouseCoopers and the National Venture Capital Association, VC continues to steadily increase. From a historical perspective the projected growth is a healthy increase and a positive indication for trademark application filings.

### **Global Economy**

IP protection is a worldwide concern and the global economy is an important component of the USPTO's workload outlook. Approximately 47.0 percent of patent application filings and about 20.0 percent of trademark application filings originate in foreign countries.

Global economic growth has been strong in recent years and expectations remain high for the outlook. Both Asian and South American economies will continue to perform well, with growing consumer strength and firm demand for their goods helping the global economy. The outlook remains positive for 2008 and 2009, with only a slight decrease in growth. The International Monetary Fund is also expecting world output to increase in 2008 and 2009. Continued global economic growth would suggest that patent and trademark application filings from overseas are also likely to continue to increase in the future.

## **Forecasting Approach**

The USPTO uses both quantitative and qualitative methods to develop forecasts of patent and trademark application filings, which are key drivers of its workloads. Experience has shown that forecasting methods have their strengths and weaknesses and therefore the USPTO considers forecasts from multiple methods. The methods used by the USPTO include forecasting models a national survey of patent applicants and judgment.

### **Quantitative Methods**

Two types of quantitative forecasting methods are used by the USPTO: univariate and multivariate models. The univariate models use application filings data to identify key historical patterns, such as long-term trends, which can be extrapolated into the future. Multivariate models utilize application filings data and one or more other relevant factors, such as R&D data. When developing these models, the focus is on identifying leading indicators, which tend to influence the future direction of applications filings. The USPTO has found that GDP and VC investments are useful for forecasting trademark application filings and R&D expenditures are useful for forecasting patent application filings.

## Qualitative Methodology

In addition to the two types of quantitative methods, a survey of domestic applicants is used to help forecast patent application filings. During the first quarter of calendar year 2007, the USPTO distributed questionnaires to 2,555 patent applicants, including U.S. large corporations, small businesses, universities and independent inventors identified by the USPTO and its contractor. The questionnaires were designed to obtain an indication of the applicants' future filing intentions. Survey forecasts have been found to be useful for intermediate-term forecasting or forecasts of application filings about 1.5 to 2.5 years in the future. The forecasts of domestic application filings from the survey are combined with a univariate model forecast of foreign application filings to obtain a forecast for total application filings. Based on the latest results, the average annual growth rate forecast is 5.0 percent through fiscal year 2009.

## Forecasts

To develop forecasts for patent and trademark application filings through FY 2013, the USPTO considered forecasts from the models and the survey. In addition to the economic indicators previously discussed, patent applications filed at other IP offices are also considered. For access to the most timely overseas patent application filings data, the USPTO relies on its Trilateral Partners, the European Patent Office (EPO) and the Japan Patent Office (JPO). Annual patent application filings activities at these offices in calendar year 2006 were mixed; with EPO patent application filings increasing, but JPO patent application filings decreasing.

## USPTO Application Filings Forecast

Taking into account the forecasts from the different models and methods, filing trends overseas, and the economic outlook, the following official forecasts presented in the table below for patent and trademark application filings have been established.

	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
<b>Patent Application Filings</b>	5.2%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%
<b>Trademark Application Filings</b>	11.2%	6.2%	6.7%	8.1%	9.1%	9.3%	8.7%

Patent application filings growth may be affected by the Agency's rule governing continuation practice.

## Section II – FY 2009 Budget Request by Business Line

The USPTO operates as a performance-based organization based on two mission-driven business operations — Patents and Trademarks. The business line presentation accounts for full program costs in relation to patent and trademark fee collections.

In preparing the FY 2009 budget request, the USPTO followed the Secretary of Commerce's guidance to incorporate offsets to existing programs and activities and identify reductions in costs that would allow the USPTO to optimize service delivery of current programs and activities. The budget formulation process also adhered to the Administration's emphasis on linking budget decisions to program performance. The USPTO conducted a comprehensive review of existing programs and made budget decisions at the executive level that are consistent with the *2007-2012 Strategic Plan*.

### PATENT BUSINESS

#### Mission and Business Activities

The core mission of the Patent business is to examine applications and grant valid patents in accordance with the law. This is accomplished by comparing the claimed subject matter of an inventor's application for a patent to a large body of existing technological information to determine whether or not the claimed invention is new, useful, and non-obvious to someone knowledgeable in that subject matter. In the course of examining patent applications, examiners make determinations on patentability, prepare answers to briefs in appeals contesting actions rejecting an application, make holdings of abandonments, recommend institution of interference proceedings to determine priority of invention, and act on other post-examination issues in accordance with the provisions of 35 U.S.C. and 37 C.F.R. The examination of patent applications consists of distinct, but interrelated activities, as follows:

Initial Examination — This is the administrative review of all applications, including those filed under the Patent Cooperation Treaty (PCT), before delivery to the Patent Examining Corps for examination. In this phase, the review is for compliance with requirements of form and content; determination of the adequacy and acceptability of statutory fees; conversion to the Image File Wrapper (IFW), except if filed electronically, for electronic processing of all documents and orders; assignment of the official filing date and application tracking number; and inputting of patent bibliographic data in the Patent Application Location Monitoring (PALM) system.

Examination — Examiners compare the application's subject matter to a large body of technological information to determine the patentability of a claimed invention, whether or not the invention is new, useful, non-obvious, adequately described or enabled, and claimed in clear and definite terms to individuals knowledgeable in that subject matter.

Scientific, Technical, and Classification Services — The patent scientific, technical and classification services are an integral part of the patent examination process. These functions are required to maintain a patent classification system by subject matter and to provide electronic access to all U.S. and foreign patents and related technical literature used for searching. The current examiner search files contain more than 9.3 million U.S. patent documents and 28.0 million foreign patent documents.

Examiners also have access to over one thousand commercial databases containing non-patent technical literature documents.

Pre-Grant Publication and Patent Issuance (Post-Examination) — Pre-grant publication is the process of publishing those applications that are subject to publication 18 months after the earliest effective filing date. Patent issuance occurs after examiners have allowed applications and includes tasks associated with the preparation for issue and printing of patents and publication of a weekly edition of the electronic *Official Gazette* for dissemination to the public. Also included in the cost of this phase is the printing of reexamination certificates, Statutory Invention Registrations, and the cost for the searchable database for non-published applications.

Patent Appeals and Interferences — Administrative Patent Judges conduct post-examination hearings and decide appeals from examiner adverse decisions concerning patent applications, and conduct interference proceedings to make final determinations as to questions of priority of invention.

Management, Policy, Executive Leadership and Patent Office Automation Support — In addition to the above patent examination process components, direct support of patent operations includes costs related to patent executive and policy leadership, quality review and training functions; and the costs of maintaining all automated information systems that directly support the patent process. Patent automation personnel serve as business process experts by working with the Office of Chief Information Officer (OCIO) organization to implement information technology (IT) systems and to procure and deploy related hardware and software in support of the Patent Business.

Other Contributing Resources — The patent share of Agency-wide activities such as the share of IT security, rent, utilities, program administration, internal operations, and infrastructure that support the entire Agency comprise other contributing resources.

The USPTO utilizes an activity-based costing methodology to reasonably allocate indirect costs to program and activities on a prorated basis. Using a cost allocation methodology provides greater transparency to the program's operational performance by identifying various factors that drive program costs. The USPTO's activity-based costing methodology is the basis for determining the indirect costs related to the examination and processing of patent and trademark applications.

## **Initiatives and Performance**

The initiatives that support the Patent business and the resulting performance are discussed under Strategic Goal 1 — Optimize Patent Quality and Timeliness.

## TRADEMARK BUSINESS

### Mission and Business Activities

The core mission of the Trademark business is to register marks that meet the requirements of the Trademark Act of 1946, as amended, and provide notice to the public and businesses of the trademark rights claimed in the pending applications and existing registrations of others. With such notice, readily available at <http://www.uspto.gov>, a business can make an informed decision when it wishes to adopt a new mark or expand the goods or services marketed under an existing mark. Federal registration provides enhanced protection for the owner's investment in the mark and in the goods and services sold under the registered mark.

The core process within the Trademark business 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, including 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 Act.

The examination of trademark applications consists of the following distinct activities:

Initial Processing — Applications are classified and data is transferred into trademark automated systems, which are the source for application data that is used in the processing and examination of trademarks. The automated system also provides notice of marks in use, which is available to the public through the USPTO Web site. Initial examination also encompasses the processing of applications filed under the Madrid Protocol.

Examination — Trademark examining attorneys determine if the mark in an application is entitled to registration under the provisions of the Trademark Act. As part of the process, examining attorneys evaluate many types of marks, such as trademarks, service marks, certification marks, and collective membership marks. Examining attorneys search a database of about 1,300,000 registered marks and more than 500,000 pending marks in order to determine if a mark in the subject application is confusingly similar to an existing mark.

Publication and Registration — Approved applications are published prior to registration to provide notice allowing interested parties time to address any challenges or file for opposition. Marks demonstrating use that are unopposed are registered, marks filed based on intent to use receive a notice of allowance with registration occurring following acceptance of a Statement of Use.

Post Registration — Between the fifth and the sixth year after registration and at ten-year intervals after registration or renewal, a registrant must file an affidavit and proof that the mark shown in the registration is still being used in commerce, or that grounds for excusable non-use exists. Failure to file the required affidavit and proof of use results in cancellation of the registration. These requirements serve to remove trademarks from the register when the mark is no longer in use.

Appeals and Inter Partes Proceedings — This comprises reviews at applicant request, of adverse registrability determinations, opposition hearings where an existing trademark holder believes that an allowed application may be confusingly similar, and other proceedings involving registrations where a third party wishes to challenge the validity of a registration.

Management, Policy, Administrative and Automation Support — In addition to the trademark process components, direct support of trademark operations includes costs related to trademark executive and policy leadership, customer assistance, quality review and training; and maintaining automated

information systems that directly support the trademark process. Dedicated trademark support personnel serve as business process experts by working with the OCIO organization to implement IT systems and to procure and deploy related hardware and software in support of trademark operations.

Other Contributing Resources — These costs represent the trademark share of Agency-wide activities such as the share of IT security and costs such as rent, utilities, program administration, internal operations and infrastructure that support the entire Agency.

The USPTO utilizes an activity-based costing methodology to reasonably allocate indirect costs to program and activities on a prorated basis. Using a cost allocation methodology provides greater transparency to the program's operational performance in identifying various factors that drive program costs. The USPTO's activity-based costing methodology is the basis for determining the indirect costs related to the examination and processing of patent and trademark applications.

### **Initiatives and Performance**

The initiatives that support the Trademark business and the resulting performance are discussed under Goal 2 – Optimize Trademark Quality and Timeliness.

<b>FY 2009 Patent and Trademark Business Table</b>						
(Dollars in thousands)						
	Patent		Trademark		Total USPTO	
	\$	FTE	\$	FTE	\$	FTE
FY 2007 Actuals*	1,540,683	7,367	202,281	924	1,742,964	8,291
FY 2008 Enacted**	1,680,998	8,480	234,502	1,069	1,915,500	9,549
FY 2008 Program Level	1,680,998	8,480	234,502	1,069	1,915,500	9,549
Annualization of Positions	60,800	715	2,235	22	63,035	737
Patents	60,800	715			60,800	715
Trademarks			2,235	22	2,235	22
Pay Inflation Adjustments	31,581		5,082		36,663	
Pay Raise	19,143		2,436		21,579	
Pay Annualization	5,974		760		6,734	
All Other Pay	6,464		1,886		8,350	
Non Pay Inflation Adjustments	13,147		2,388		15,535	
Total ATBs	105,528		9,705		115,233	
Management Decisions**	(23,220)		(1,202)		(24,422)	
FY 2009 Current Services Level	1,763,306	9,195	243,005	1,091	2,006,311	10,286
Program Increases	64,490	412	3,972	25	68,462	437
Workload Adjustments	30,933	412	2,382	25	33,315	437
Patent New Examiner Hires	30,933	412			30,933	412
Increase Trademark Application Filings			1,744	18	1,744	18
Increase in Workload for Applications Filed Under Madrid Protocol			54	1	54	1
Increase Trademark Law Library Search Workload			72	1	72	1
Increase in Staff Workload in Trademark Assistance Center			512	5	512	5
Program Changes	33,557		1,590		35,147	
Trademark State-of-the-Art Training and Meeting Initiative			78		78	
Restore Base Funding for OPM Transfer	22,665		500		23,165	
South Tower Move, Lease and Buildout	10,892		1,012		11,904	
FY 2009 USPTO Budget Request (Program Level)	1,827,796	9,607	246,977	1,116	2,074,773	10,723
<b>FY 2009 Offsetting Collections</b>	<b>(1,827,796)</b>	-	<b>(246,977)</b>	-	<b>(2,074,773)</b>	-

\* FY 2007 reflects appropriation of \$1,771,000 less unobligated balance of \$28,036.

\*\* During the FY 2009 budget formulation process, the USPTO conducted a comprehensive review of existing programs and made budget decisions at the executive level that are consistent with the 2007-2012 Strategic Plan. Over \$24 million in offsets and cost reductions were identified throughout the Agency, which include absorption of salary changes, reduction to travel, freezing vacant positions, reducing contract and earmark costs, etc.

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## Section III – FY 2009 Budget by Performance Goal

Section III fulfills the requirements for a performance budget by documenting the relationship between performance goals and the costs for achieving a target level of performance. This performance budget links strategic goals, objectives, initiatives, and performance measures contained in the USPTO's *2007-2012 Strategic Plan* with annual performance targets that contribute to the achievement of those goals. A USPTO resource summary is included in the Exhibit section.

### GOAL 1—OPTIMIZE PATENT QUALITY AND TIMELINESS

#### Budget and Performance

##### Introduction

Goal 1 focuses on the quality and timely examination of an inventor's application for a patent by comparing the claimed subject matter against a large body of technological information to determine if the claimed invention is new, useful, and non-obvious to someone knowledgeable in that subject matter. A quality review of examination requirements and practices includes checking a random sample of in-process and allowed applications for quality. The patent examination process also includes deciding appeals regarding issues of patentability and conducting interference proceedings. Quality and timeliness are recognized as two of the most significant outcomes for the patent user community and other stakeholders.

A higher percentage of patent applications are being filed in very high complexity art areas such as data processing, telecommunications and biotechnology. These applications require more hours to examine than applications in the relatively less complex areas such as general mechanical and traditional chemical technologies. The time spent by an examiner on complex technology applications is almost double that spent on traditional applications. In FY 2009, the USPTO will continue addressing pendency by hiring additional examiners, continuing competitive sourcing where appropriate, pursuing work sharing opportunities, and exploring other potential options with applicants and stakeholders.

Under the *2007-2012 Strategic Plan*, the USPTO continued implementing several quality initiatives, including an enhanced Quality Assurance Program that includes end-product reviews, in-process reviews, and enhanced "second pair of eyes" reviews. The feedback from these reviews is used to identify and develop training modules and other quality enhancements. In FY 2009, the USPTO will continue the quality efforts currently implemented and assess and improve the quality measurement system.

##### Accomplishments

- Hired 1,215 patent examiners in FY 2007 to address the increasing backlog of unexamined applications and address growing pendency.
- In FY 2006, Patents achieved its highest examination compliance rate in a quarter of a century, at 96.5 percent. In FY 2007, Patents again reached a 96.5 percent compliance rate.

- Expanded the Patent Training Academy (PTA) to train all newly hired examiners, and trained all examiners on developments in patent law, including the Supreme Court's recent decision in *KSR International Co. v. Teleflex Inc.*, 127 U.S. 1727 (2007).
- Secured a seven percent across-the-board increase to the special pay rate for all patent professionals covered by the General Schedule (GS) – 1220 series to attract and retain well-qualified patent examiners.
- Continued enhanced reviews of allowed applications in selected technologies, including second pair of eyes and allowability conferences where beneficial.
- Competitively sourced over 15,000 PCT Chapter I applications, and in June 2007, began competitively sourcing for Pre-Grant Publication classification in order to reduce time spent by examiners in classification and routing of applications. These actions have enabled examiners to focus on their core functions of examining applications and training other examiners, which directly impacts quality and timeliness.
- Expanded pre-appeal conferences and improved the quality of appeal briefs.
- Expanded partnerships with industry by working with the nanotechnology, biotechnology, and business methods taxation areas to keep examiners' knowledge current.
- Increased the number of examiners able to work remotely to over 1,000 while providing them better electronic tools to do their job, under the Patent Hoteling program (PHP).
- Moved closer to an end-to-end electronic system. Electronic filing more than tripled from 14.2 percent of filings in 2006 to 49.5 percent in FY 2007. Began electronic delivery of office actions to patent applicants on a voluntary basis, and will continue to explore options that will move the USPTO toward conducting more of its interaction with patent applicants electronically.
- Improved collaboration tools available to all patent examiners, and piloted a program that allows examiners to submit their work and have it reviewed and credited electronically.
  - Continued development of a text-based Patent File Wrapper (PFW) system, with a goal of replacing the current image based system.
- Piloted a Virtual Art Unit to evaluate remote management and training needs, and piloted a hoteling work at home program for technical support staff.
- Published rule changes regarding the examination of claims in patent applications, continuation applications, and information disclosure statements. A final rule adopting changes to practice for examination of claims and continuation applications was published on August 21, 2007, with an effective date of November 1<sup>st</sup>; however, the rule change has been blocked from being implemented as a result of a court injunction. At this point, it is uncertain as to when the legal issues surrounding the case will be resolved; consequently, we are still operating under the previous rules. Patents expects to publish rules requiring applicants to provide similar support information when they submit many prior art references in an application. The purpose of these changes is to produce more focused, higher-quality, and efficient examination and to ensure that patent examiners receive the most relevant information as early in the examination process as possible.
- Received over 600 patent applications filed in accordance with the Accelerated Examination procedure that was initiated in August 2006, whereby applicants perform a search and relate the closest prior art to their claims. Applicants must file their application electronically, file a limited number of claims, and agree to a pre-first action interview to resolve issues arising as a result of the examiner's review of the application. In return, the USPTO is completing prosecution on these

applications within one year from filing. The USPTO granted 24 patents in FY 2007 under this program.

- Piloted a flat goal production system for patent examiners that sets a quarterly target for applications to be examined and pays a per-application bonus to examiners who exceed this level.
- Implemented a Peer Review Pilot that gives public technical experts in computer technologies the opportunity to submit annotated technical references relevant to the claims of a published patent application before an examiner reviews it. The pilot is a joint initiative with the Community Patent Review Project (CPRP), organized by the New York Law School's Institute for Information and Policy. The pilot began on June 15, 2007 and will run for one year. Technical experts in the computer arts registering with the CPRP website can review and submit to the USPTO up to 10 pieces of prior art for up to 250 published patent applications that volunteer for this pilot. The ultimate goal is the identification of the best art for consideration before the examiner during examination.
- Continued reaching out to the user community through the Patent Public Advisory Committee to determine what types of examination options should be provided as alternatives to the current system.

## **Challenges**

Although the goal of optimizing patent quality and timeliness seems concise and focused, it gives rise to a broad spectrum of challenges for its successful achievement. Attracting, hiring, training, and retaining the high performing examiners who are critical to meeting this goal is a multi-faceted effort that includes competition for some of the most talented and recruited individuals in tomorrow's work force. Quality of the examination process requires a shared understanding (between applicants and USPTO) of what defines quality and the level of finite resources that should be devoted to the process.

In order for Americans to reap the benefits of their innovations, they often rely on the legal rights associated with a granted patent. This means the longer it takes for the USPTO to review a patent application, the longer it will take for an applicant to receive the patent rights to which they are entitled. Congress and the public have recognized this issue – referred to as “pendency,” or the time an application remains with the USPTO until a final decision is made – as having a direct impact on American competitiveness. Congress and the public realize that one means of ensuring timely, high-quality review of patent applications is for the USPTO to hire and retain more patent examiners. Unfortunately, the call for more patent examiners comes at a time when American engineers and scientists are in higher demand than ever.

### **Hiring Patent Examiners**

The USPTO's challenges are further exacerbated by the growing patent workload and the resulting need to attract and hire even larger numbers of new patent examiners. The USPTO plans to hire 1,200 UPR patent professionals each year through 2013, for a total of at least 8,400 patent examiner hires in seven years (2007-2013). Notwithstanding these massive hiring efforts, in the absence of other changes to the current examination system, the overall impact on patent pendency from hiring alone will be minimal. In fact, until these new hires are effectively absorbed into the examination system, the current examination system will only limit, not lower, the average patent pendency.

### **Training Patent Examiners**

Inextricably intertwined with the need to hire more examiners is the need to hire the individuals who will be able and motivated to produce high quality examination results and to train and retain these individuals to improve the quality of the examination process. With properly implemented hiring and

training of new examiners, and training for the current examiner corps, substantially improving patent examination quality will be linked to reductions in patent application pendency. Examiners need to be able to make the right decisions, in most instances, the first time they perform the work, have the necessary job skills for that purpose, and have the proper incentives to promote that outcome.

### **Explore Need for an Alternative Examination System**

A critical challenge for the USPTO in achieving the most important objectives of patent examination quality and application pendency lies in addressing the constraints imposed by the very nature of the examination process. The current patent examination system in the United States is basically a one-size fits all process that culminates in the grant of letters patent (with a statutory presumption of validity for all such granted patents 35 U.S.C. §282) or the abandonment of the application. Although an estimated 486,900 UPR applications will be filed in FY 2009, not all will mature into patents that are ultimately brought into the market place, be licensed for use by others, or have ownership transferred to others for possible future exploitation. The current examination process imposes high demands for resources on the part of both the applicant and the USPTO. Further, the high demand for examination under this traditional process has exceeded the current abilities of the USPTO to examine applications as they are filed, resulting in an increasing backlog of unexamined applications. With the limited options for determining when examination is desired or advancing applicants' positions in the examination queue, some applicants are forced to pursue the examination process before they are ready to capitalize upon a successful result from the process, while others in need of a rapid determination of their rights languish in the queue. As a result, the USPTO intends to explore the development of alternative approaches to examination in collaboration with stakeholders.

### **Quality of the Examination Process**

While patent quality is universally acknowledged as an expected and required outcome from the examination process, its definition and current level have achieved far less consensus. The definition and current perception of quality have as many facets as the perspectives of those who characterize this desired result. Frequently characterized as an after-the-fact outcome following extensive and tortuous litigation and review of the patent grant, both in the courts of law and public opinion, it seems to have little relationship to the examination process and its finite scope. Thus, increasing public confidence that patent grants are of the highest possible quality has been a most elusive target for the last several decades.

### **Awareness of IP Rights**

IP rights and their utilization in the global economy impact every American on a daily basis but are all too frequently not well understood by the general public. Increasing public awareness of various IP issues and interests, educating the public about the examination processes of the USPTO, communicating with and informing the public about the intersection of IP issues and the news stories they read everyday, and promoting an understanding that the violation of IP rights affects everyone is beneficial to improving the effectiveness of the system as a whole.

The USPTO also has a specific role in providing assistance to the patent community that regularly uses its services. Outreach to individual inventors and inventor groups through regular regional programs to assist in the filing and prosecution of patent applications is critical to that effort.

### **Information Technology**

USPTO has been successful in employing IT to assist in the examination process. However, the USPTO faces several challenges and problems connected with the IFW application processing, the lifecycle of various documents, and the system interfaces with other USPTO IT systems. IFW messaging was not designed to manage workflow. It also does not provide support identifying and

eliminating bottlenecks and dead-ends in the examination process, provide accountability of message processing by various personnel, or support overall data quality of the application files.

The transition to the PFW, an intelligent text based patent application processing system offers potential benefits and challenges in determining the best implementation to leverage the functionality of this new resource. Providing full workflow management functionality for better control of documents to improve product quality and ensure proper processing, escalation of delayed and late tasks and audit reporting, and historical tracking of the examination process could be achieved in this implementation. Further, potential gains could be made in reducing the remaining labor intensive paper-based processing, supporting the hoteling initiative, collaborating and partnering with other international IP Offices, and instituting an efficient interface to existing USPTO systems. The collective effect of these improvements would provide an efficient examination process and the examination support to allow the USPTO's workforce to meet the demands of working in a global IP system.

In addition to the potential benefits that could be achieved with respect to the workflow and document management aspects of processing patent applications, the new PFW implementation could provide other advantages for both the USPTO and patent applicants and their representatives. These include possibilities for "real-time" changes to the patent application without the need for intervening USPTO processing time, support for push-button publication and continuous access to the current content of the application, more flexible filing options for all applicant submissions, some pre-examination and examination processing of the application as filed, and the capability of a single docketing system for both the USPTO and applicants wherein both parties to the patent examination process work from the same information and use the same access tools and interfaces.

## GOAL 1: OPTIMIZE PATENT QUALITY AND TIMELINESS

### Resource Requirements Summary

<i>Dollars in Thousands</i>	FY 2007 Actuals	FY 2008 Enacted	FY 2009 Base	FY 2009 Management Decisions	FY 2009 Revised Base	Increase/ (Decrease)	FY 2009 President's Budget	FY 2010 Estimate	FY 2011 Estimate	FY 2012 Estimate	FY 2013 Estimate
Total Funding	\$1,523,179	\$1,677,097	\$1,757,556	(\$22,292)	\$1,735,264	\$59,673	\$1,794,937	\$1,917,069	\$2,072,641	\$2,311,700	\$2,551,878
↳ Direct Obligations	\$1,502,950	\$1,641,669	\$1,746,349	(\$22,292)	\$1,724,057	\$59,673	\$1,783,730	\$1,905,862	\$2,060,569	\$2,299,628	\$2,539,806
↳ Reimbursable/ Recoveries	\$20,229	\$35,428	\$11,207	\$0	\$11,207	\$0	\$11,207	\$11,207	\$12,072	\$12,072	\$12,072
IT Funding (included above)	\$225,852	\$214,981	\$247,043	(\$29,070)	\$217,973	(\$37,211)	\$180,762	\$181,831	\$180,958	\$185,983	\$190,673
Full-Time Equivalent (FTE) Totals	7,280	8,375	9,090	0	9,090	412	9,502	10,004	10,461	10,877	11,252

## Performance Measures/Targets

	FY 2007 Actuals	FY 2008 Enacted	FY 2009 President's Budget	FY 2010 Estimate	FY 2011 Estimate	FY 2012 Estimate	FY 2013 Estimate
Allowance Compliance Rate	96.5%	96.0%	96.0%	96.0%	96.0%	96.0%	96.0%
In-Process Examination Compliance Rate	92.2%	92.0%	93.0%	94.0%	94.0%	94.0%	94.0%
Average First Action Pendency/UPR (Months)	25.3	26.9	27.5	27.6	27.6	27.8	27.7
Average Total Pendency/UPR (Months)	31.9	34.7	37.9	38.5	38.6	38.6	38.8
Efficiency	\$3,961	\$3,982	\$3,927	\$3,823	\$3,841	\$4,010	\$4,183
Applications Filed Electronically	49.5%	65.0%	70.0%	75.0%	80.0%	80.0%	80.0%
Applications Managed Electronically	99.9%	99.9%	99.9%	99.9%	99.9%	99.9%	99.9%
UPR Units of Production	350,886	383,500	422,700	465,900	503,700	539,800	572,900
UPR Applications Filed	441,637	463,700	486,900	511,300	536,800	563,700	591,800
UPR Applications Filed Percent Change Over Previous FY	5.2%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%
UPR Disposals	338,353	371,900	400,200	450,800	485,900	526,300	557,600
UPR Issues	161,834	168,300	182,500	203,500	221,500	239,600	255,100
UPR First Actions	367,953	395,100	445,200	481,000	521,600	553,300	588,200
UPR Examiners On-Board at End-of-Year	5,376	5,960	6,478	6,945	7,372	7,758	8,103

## Goal 1 Initiatives

The following initiative is a program increase.

### New Examiner Hires

The USPTO plans to hire 1,200 UPR patent professionals in 2009, for a total of at least 8,400 patent examiner hires between 2007 and 2013. Notwithstanding these hiring efforts, in the absence of other changes to the current examination system, the overall impact on patent pendency from hiring alone will only help contain the demands on examination staff. In fact, until these new hires are effectively absorbed, the current examination system will only limit the increase of, not lower, average patent pendency.

Dollars in thousands	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Incremental Funding	\$30,933	\$39,210	\$40,543	\$41,922	\$43,347
Full Funding (Cumulative)	\$30,933	\$180,819	\$303,233	\$437,399	\$587,248

## Goal 1 Initiatives Funded from Base Resources

### Enhanced Recruitment/Retention Program

In order to hire the volume of patent examiners necessary, the Agency has initiated an enhanced recruitment program that includes the following components:

- The Agency would pay recruitment bonuses to attract the most desirable applicants, with emphasis on technology areas that are experiencing the greatest need for additional examiners. Examiners in the hard to fill areas would be eligible for a market-driven recruitment bonus for up to four years that would be paid at the beginning of each year in conjunction with a four-year condition of employment agreement.
- Teams of technology center hiring coordinators and contractors with specialized human resources and recruiting skills would be formed to attract candidates for hard to fill examining positions. Their efforts would include attendance at job fairs where companies are downsizing engineering positions, as well as recruitment activities at universities and other locations.
- Recognizing that attracting the most qualified candidates for patent examiner positions is most effective through personal interaction with the potential examiners, highly skilled USPTO recruiters would educate candidates regarding IP while participating in college and regional job fairs and career fairs.

Dollars in thousands	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Amount	\$17,072	\$19,014	\$19,247	\$19,489	\$20,046

### Separate Quality Awards for Examiners

The USPTO proposes the creation of a quality award that is independent of any productivity requirements above the fully successful level as defined in the examiner performance appraisal plan (PAP) and that is of equivalent value to the productivity award offered to examiners. To be eligible, the examiner's performance must meet the outstanding level for all quality elements and at least the fully successful level for all other elements of the examiner's PAP. Additional qualification requirements, for example, are the performance and recordation of complete searches that result in the most relevant prior art being placed on record, thorough and concise explanations of all rejections, objection plus guidance to the applicant on how to proceed in the next response, and strict adherence to proper final rejection practice. Awards would be available to examiners at the GS-12 level and above. This initiative requires bargaining unit negotiation.

Dollars in thousands	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Amount	\$2,810	\$3,300	\$3,774	\$4,288	\$4,417

### Patent File Wrapper

PFW is the modernization and next generation of the IFW that currently requires manually intensive, paper based method of processing patent applications. The PFW modernization effort will allow for full automation of patent application processing. It will be a fully-scalable, enterprise-wide, text-based, integrated system that will support improvements in filings, public access, and examination technologies. PFW will target enhancements to the following business processes:

- Operational Efficiencies - Major benefits include minimization of indexing tasks, avoidance of double data entry, and avoidance of manual correspondence tasks with applicants.
- Productivity, Workflow Process and Control - The PFW workflow functionality will eliminate inconsistencies with messaging and critical task prioritization and execution.
- Remote Access User Needs – PHP - PFW will integrate PHP support systems and replace remaining manual activities with a fully electronic process.
- Patent Application Processing - PFW will convert patent application operations, allowing the storage of text documents and upfront text capture that produces an associated reduction in processing time and costs for later publication.

PFW is currently planned for a five-phase rollout: Phase 0 (Planning) was completed in 2006, Phase 1 (Architectural Design) received approval and funding and was completed in 2007, Phase 2 (PFW Stand-up) started in August 2007, and Phases 3 to 5 will begin in 2008.

Phases 2 to 5 will include the implementation of PFW at the USPTO as well as integration with current Patent Automated Information Systems. The USPTO will eventually achieve implementation of an integrated e-government strategy that includes electronic receipt, processing, reporting and publication through the entire application process lifecycle. The resources will be applied towards systems development, integration, and enhancement as well as the scanning of incoming, outgoing paper documents and new applications filed.

Dollars in thousands	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Amount	\$17,887	18,133	\$18,568	\$19,014	\$19,471

### Initial and Pre-Grant Publication Classification of Newly Received Applications

Newly received patent applications are routed to the correct technology center and examining unit for classification and those applications that are published at 18 months from filing are subject to Pre-Grant classification. Currently, classifiers in pre-examination, patent examiners, and Supervisory Patent Examiners (SPEs) perform these functions. The USPTO expects to begin the process of relying on commercial entities for these classification functions during 2008, and will gradually expand to full implementation. This initiative will redirect the time patent examiners now spend on classification to core examination activities. Similarly, SPEs' time will be redirected to focusing on the quality of examiner work products and on training and mentoring examiners.

Dollars in thousands	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Amount	\$14,500	\$15,300	\$16,100	\$17,388	\$17,910

### Support for PCT Competitive Sourcing Activity

The USPTO receives international applications that require the performance of an international search to discover relevant prior art in Chapter I applications. As an International Searching Authority under

the PCT, the USPTO is obligated to perform this search function. The USPTO is currently competitively sourcing this search function, which allows the USPTO to redirect patent examiner resources back to the examination of U.S. applications. Two contracts were awarded during the fourth quarter of fiscal year 2006 to initiate this program. Also, in 2007 the USPTO entered into a Memorandum of Understanding with IP Australia to perform search and examination work on PCT applications. Future options may include enlisting support from other IP offices to enhance capacity for completing PCT search functions. The funding identified below will be used for system modifications, exploring alternative options with other IP offices, and to competitively source the PCT Chapter I search activity.

Dollars in thousands	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Amount	\$15,000	\$44,000	\$45,320	\$46,680	\$48,080

**Competitive Sourcing of Reclassification Functions and Transition to International Patent Classification System**

Over time, the file of issued patents and non-patent literature that patent examiners must search expands significantly. As the numbers of patent documents in each class and sub-class increases, and as new technologies come to the forefront, the classification mechanisms become less focused and new classification schemes must be established. Currently, Federal staff is devoted to carrying out these activities. Reclassification of existing classification schemes serve to improve quality of examination by updating the existing schedules to reflect emerging technology and growth, and harmonize with the international system. The identified resources below are intended to continue the process of competitive sourcing of reclassification functions and explore alternative options with other IP offices.

Dollars in thousands	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Amount	\$1,000	\$5,000	\$5,500	\$6,000	\$6,500

## GOAL 2 — OPTIMIZE TRADEMARK QUALITY AND TIMELINESS

### Budget and Performance

#### Introduction

The fundamental process involved in reaching this goal is the examination of trademark applications. Trademark examining attorneys determine registrability under the provisions of the Trademark Act of 1946, as amended. The examination of trademark applications comprises many elements, including the utilization of electronic databases to determine whether the mark in an application is confusingly similar to any pending or registered mark, the preparation of an office action to inform applicants of the attorney's findings, the approval of applications to be published pending or barring opposition, and the examination of Statements of Use filed under the Intent to Use provisions of the Trademark Act. At the requested application filing and funding level in FY 2009, Trademarks will be able to achieve a trademark first action pendency of between 2.5 and 3.5 months and a total pendency including suspended and inter partes proceedings of 16.0 months.

The Trademark organization is optimizing its examination process by taking greater advantage of its success in implementing electronic filing and systems. Applications and forms that are filed electronically reduce processing time and improve the quality of the information that is captured. The Trademark Electronic Application System plus electronic application (TEAS-Plus) offers a reduced fee to applicants that agree to submit a more complete application. Electronic processing has demonstrated results by eliminating manual processing and directly routing applications within the core examination function. Electronic processing and file management will be used more extensively in the future to completely automate all transactions from pre-examination through post registration. Electronic processing reduces the time and costs associated with the examination and registration of marks, provides greater accessibility to trademark information, and the ability to perform work from remote locations.

USPTO systems and programs have been recognized for their success; TEAS-Plus has been recognized with several awards over the nine years it has been in use, most recently in 2005 as one of five winners at the Excellence.Gov Awards ceremony in Washington, D.C. as an example of best practices in Federal e-Government implementation.

The Trademark Work at Home (TWAH) program received another in a list of several awards recognizing its Telework Program. The TWAH program was recognized by the Alliance for Work-Life Progress with the 2007 Work-Life Innovative Excellence Award. The award was created to showcase programs and policies that demonstrate excellence in enhancing and promoting work-life effectiveness while achieving organizational goals. Past recipients have exemplified forward-thinking organizations that look beyond their own cultural, demographic, and organizational boundaries to continue their work-life efforts.

#### Accomplishments

- Demonstrated significant production and pendency improvements in 2007, exceeding targets set for both measures. First action pendency has been reduced to below the Agency goal one year ahead of schedule.
- Improved disposal pendency as first action pendency has declined and incremental process improvements are demonstrating results. Beginning in 2004 major changes in how work is assigned and monitored were implemented with the introduction of the First Action System for

Trademarks (FAST) (electronic docketing) for examiners, again in 2005 with the elimination of paper files (central docketing) and most recently in 2007 with the implementation of FAST for Law Office support staff. Process changes have more recently been made in the publication and issue cycle that have reduced processing time (post publication amendments). Examination is also becoming more efficient (more first action approvals) due in part to better quality, more complete applications, with the increased use of electronic forms and in particular, TEAS-Plus.

- Launched two new examination support units, realigning support functions by redefining roles and responsibilities with a focus on managing workload and quality. The new structure is the result of a comprehensive organizational assessment that is underway to address the impact of process change for how work is performed. The realignment is recognition of the significant changes that have been made over the past several years through the implementation of IT. Changes have been made in performance plans, production measures, and workflow to maximize the efficiency of the process, which now mostly relies on electronic processing and file records to support core examination activities.
- Achieved a milestone in November 2006: one million trademark applications have been filed since TEAS was first piloted nine years ago.
- Celebrated the ten-year anniversary of the Trademark telework program at a ceremony on June 4, 2007. The Agency has benefited from saving space to employee retention to improved work/life balance for employees. The TWAH started out in 1997 as a small pilot and, today, more than 3,000 of the USPTO's employees are spending at least one day a week working from home on a regular basis. In the Trademarks area alone, 85.0 percent of all eligible employees participate in some form of telework.

## **Challenges**

The lack of certainty for predicting, and the volatility of trademark application filings, make it difficult to ensure consistent pendency under the present model for staffing and distributing work. The USPTO cannot assure reductions to first action without changes in how the Agency manages work. The USPTO plans to explore ways to change how work is performed and assigned to provide a better balance between available resources given external uncertainties.

### **Pendency Reduction**

Options for managing and assigning work will be considered, evaluated, and piloted to ensure that first action pendency targets can be maintained if filings fluctuate significantly in the short term. Maintaining low and consistent first action pendency is critical for providing businesses the opportunity to make business decisions and investments based on an indication that the mark will eventually register. By managing total inventory relative to production capacity, fluctuations in disposal pendency could ensure that staffing does not outpace the level of filings.

The reduction of disposal pendency can be achieved in a number of ways. One way is through the consolidation or elimination of redundant reviews of applications approved for publication. The review process after approval for publication will be redesigned so that the approved file is reviewed immediately following approval by the examining attorney, the review is completed quickly, and when corrections are needed, the file is routed, corrected and returned to the publication queue as quickly as possible. For qualifying applicants, Notice of Allowances will be generated electronically and sent by electronic mail within two weeks from the end of the opposition period. The increased use of electronic filing by applicants will result in the reduction of disposal pendency by reducing time for post examination processing and issuances of Notices of Allowance.

### **Quality of Examination Process**

The USPTO fully intends to maintain quality as the highest priority and demonstrate quality examination through the continued identification of what constitutes quality with improved metrics. The criteria for assessing the quality of final actions will be expanded to permit a more comprehensive review of examiner decisions. USPTO will further expand focus on quality in 2009 by establishing a staff that will examine work performed by non-attorney positions, similar to the quality review function that exists to review and incorporate findings in training and examination guides for attorney examiners.

The USPTO will ensure the quality and consistency of searching and examination by identifying and addressing errors in real time. This, in turn, will result in improved work products because of the virtually immediate correction of errors identified through the review findings that are delivered to the pertinent business units. In addition, quality will improve through targeted and specific training initiatives, even for individual employees where relevant, identified through analysis of real-time data reports based on reviews. Consistency will improve through the immediate identification of errors across the spectrum of business units and again, through manager access to comparative data and reports. The best way to accomplish this is to develop and implement an electronic system, which is compatible with existing trademark systems, allowing for almost immediate review of completed work, issuance of review findings, in process corrective action based on review findings, real-time compilation of data based on reviews, and access to data on various management levels for use in promoting consistency within and among various business units.

### **Awareness of IP Rights**

The strength of the IP system relies to a great extent on the availability and accuracy of trademark information to provide notice as well as awareness of marks in use. This requires accessibility to robust trademark electronic workplace systems, which are adaptable to continuous improvement as well as the integration of Trademark and Trademark Trial and Appeal Board (TTAB) systems to provide a seamless interface for applicants and ensure the reliability of trademark operations.

The TTAB is experiencing an increase in pendency for requests for reconsideration that are filed contemporaneously with the notices of appeal. To address this increase in pendency, the TTAB is considering a rule change that will allow the Office to act on more requests for reconsideration and avoid the filing of some appeals. The TTAB will also provide greater guidance to the examination process and greater input into the development of trademark law through issuance of more precedential decisions. Publishing more TTAB precedential decisions is in response to requests from both the Trademark bar and the trademark examining corps and has as its aim providing binding decisional guidance that will help improve the quality of trademark examination and provide trademark owners and their legal counsel with a sounder basis for making decisions about the adoption of trademarks and the enforcement of their trademark rights.

## GOAL 2: OPTIMIZE TRADEMARK QUALITY AND TIMELINESS

### Resource Requirements Summary

<i>Dollars in Thousands</i>	FY 2007 Actuals	FY 2008 Enacted	FY 2009 Base	FY 2009 Management Decisions	FY 2009 Revised Base	Increase/ (Decrease)	FY 2009 President's Budget	FY 2010 Estimate	FY 2011 Estimate	FY 2012 Estimate	FY 2013 Estimate
Total Funding	\$196,197	\$225,688	\$231,941	(\$1,072)	\$230,869	\$7,075	\$237,944	\$245,653	\$264,629	\$284,984	\$302,926
↳ Direct Obligations	\$193,591	\$221,124	\$230,497	(\$1,072)	\$229,425	\$7,075	\$236,500	\$244,209	\$263,074	\$283,429	\$301,371
↳ Reimbursable/ Recoveries	\$2,606	\$4,564	\$1,444	\$0	\$1,444	\$0	\$1,444	\$1,444	\$1,555	\$1,555	\$1,555
IT Funding (included above)	\$62,500	\$32,810	\$43,522	(\$9,640)	\$33,882	\$29,187	\$63,069	\$63,524	\$63,834	\$65,453	\$67,023
Full-Time Equivalent (FTE) Totals	913	1,034	1,055	0	1,055	25	1,080	1,111	1,136	1,167	1,206

## Performance Measures/Targets

	FY 2007 Actuals	FY 2008 Enacted	FY 2009 President's Budget	FY 2010 Estimate	FY 2011 Estimate	FY 2012 Estimate	FY 2013 Estimate
First Action Compliance Rate	95.9%	95.5%	95.5%	95.5%	95.5%	95.5%	95.5%
Final Action Compliance Rate	97.4%	96.0%	96.0%	96.0%	96.0%	96.0%	96.0%
Average First Action Pendency (Months)	2.9	2.5 to 3.5	2.5 to 3.5	2.5 to 3.5	2.5 to 3.5	2.5 to 3.5	2.5 to 3.5
Average Total Pendency (Months) Including Suspended and Inter Partes Proceedings	15.1	16.3	16.0	16.0	16.0	16.0	16.0
Efficiency	\$660	\$697	\$715	\$705	\$701	\$692	\$673
Applications Filed Electronically	95.4%	95.0%	95.0%	95.0%	95.0%	95.0%	95.0%
Applications Managed Electronically	99.9%	99.0%	99.0%	99.0%	99.0%	99.0%	99.0%
Total Balanced Disposals	900,808	835,800	862,200	927,200	1,008,200	1,100,600	1,199,500
Applications Received – (Includes Additional Classes)	394,368	419,000	447,000	483,000	527,000	576,000	626,000
Applications Filed Percent Change Over Previous FY	11.2%	6.2%	6.7%	8.1%	9.1%	9.3%	8.7%
Total Office Disposals	323,527	335,700	345,200	366,100	395,800	431,000	470,600
Total Registrations	194,327	207,000	227,400	240,600	259,600	282,400	308,300
Total First Actions	455,802	422,100	439,500	475,700	518,000	565,900	615,900
Examining Attorneys On-Board at End-of-Year	404	403	425	456	498	545	594

## Goal 2 Initiatives

The following initiatives are program increases.

### Increase in Trademark Application Filings

The USPTO expects to receive 447,000 trademark applications (extra classes) in FY 2009 or an increase of 6.7 percent over the revised FY 2008 estimated filings. Funds are requested to hire 30 (net increase of 20) trademark examining attorneys and four legal instrument examiners to process the additional workload. This request supports the Trademark organization's objective to achieve 2.5 to 3.5 month first action pendency and reduce disposal pendency.

Dollars in thousands	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Amount	\$1,744	\$4,042	\$6,550	\$9,522	\$13,476

### Increase in Workload for Applications Filed Under the Madrid Protocol

Funding is requested to process international applications and subsequent designations under the provisions of the Madrid Protocol (Treaty). Requests to certify the content of an application that is filed based on a current U.S. registration or pending application and subsequent designations, which are required by Treaty, are the source of incoming work. The functions provided by the Trademark organization are time sensitive under the terms of the Treaty.

Dollars in thousands	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Amount	\$54	\$118	\$124	\$135	\$156

### Increase in Trademark Law Library Requests

Specialized database searching in support of the trademark examining attorneys is an essential function of the examination of trademark applications. Funding provides for reference and research assistance to the attorneys for the examination of applications for the registration of trademarks, service marks, certification marks and collective marks to ascertain if the applicants are entitled to registration under the law.

Dollars in thousands	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Amount	\$72	\$89	\$109	\$112	\$113

### Increase in Staff Workload in the Trademark Assistance Center (TAC)

Funding provides for the processing of calls, e-mails, problem resolutions and status letters. TAC plans to phase out the tier-one support it receives from the USPTO Call Center and answer TEAS-Plus technical questions that are currently handled in the Electronic Business Support in FY 2009. This will result in an increase in call volume and requires additional personnel. The TAC's performance targets are to answer 80.0 percent of calls within 20 seconds of receipt and to achieve a 92.0 percent call handle rate. Without additional personnel, accuracy of information disseminated to customers, customer transfer rates, waiting time for callers, and service levels will all be affected.

Dollars in thousands	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Amount	\$512	\$649	\$692	\$714	\$723

**Remote Training and Meeting Initiative**

Funding is requested to create remote meeting and training capabilities using collaboration and training software for all examination positions to support future hiring, training and telework programs. This request supports the Trademark organization's objective to achieve 2.5 to 3.5 month first action pendency and reduce disposal pendency.

Dollars in thousands	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Amount	\$78	\$78	\$78	\$78	\$78

**Goal 2 Initiatives Funded from Base Resources****First Action System for Trademarks (FAST)**

The USPTO initiated the FAST program to enable the Trademark organization to migrate to a more efficient operating environment that supports the strategic goal of optimizing trademark quality and timeliness. FAST supports the expansion of electronic government by providing a single point of access for trademark application information. The FAST program enhances the trademark application processes with electronic processing and improves the maintenance of all the records associated with trademark applications. Implementing the FAST program gives the USPTO the opportunity to reduce operations costs, improve efficiency and quality through workload and process management, reduce pendency, increase visibility and control through improved management reporting capabilities, and support the expansion of the TWAH program. FAST enables improved access to USPTO information by internal users and processing of trademark applications. FAST includes electronic workflow capabilities to distribute work items through well-defined processes and provides prompt and efficient communication with internal and external customers.

Dollars in thousands	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Amount	\$1,891	\$1,915	\$1,962	\$2,009	\$2,058

## **GOAL 3 — IMPROVE INTELLECTUAL PROPERTY PROTECTION AND ENFORCEMENT DOMESTICALLY AND ABROAD**

### **Budget and Performance**

#### **Introduction**

The USPTO is an important component in the Administration's strategy to encourage American innovation and strengthen the nation's ability to compete in the global economy. America's economic strength and global leadership depend on continued innovation. It is the responsibility of the USPTO to ensure that U.S. IP systems are continually strengthened to meet the needs resulting from technological advancements, promote the IP system of the United States, ensure that foreign IP offices are similarly focused, and assist in protecting the IP rights of United States' interests abroad.

To keep competitive in an increasingly globalized business environment, U.S. businesses need as much certainty as possible in the creation and protection of their IP, both here and abroad. Losses due to counterfeiting and piracy seriously undermine businesses' ability to trade globally. Additionally, the costs and difficulties in obtaining IP protection globally and preserving and enforcing these rights is an impediment for many businesses.

The USPTO believes that the attributes of quality, timeliness, cost-effectiveness, and transparency are universally applicable to legal systems, examination systems, and any international framework dedicated to the protection and promotion of IP rights. The USPTO will continue to work diligently to ensure that America has the best IP system and to improve IP practices worldwide.

In its role as policy advisor on IP matters, the USPTO will continue to promote policies that enhance competitiveness for U.S. businesses abroad. The USPTO will continue to advocate policies to streamline obtaining IP protection in various countries and negotiate agreements to strengthen the protection of U.S. interests abroad. The USPTO furthermore will expand its assistance to innovators and businesses on how to obtain, protect and enforce IP rights in other countries and assist with dispute resolution when problems occur.

#### **Accomplishments**

- Initiated the first-ever meeting among the Heads of the five largest IP Offices to discuss ways the offices can cooperate in improving efficiency and quality to keep pace with the rising volume of global patent filings. In May 2007, the USPTO met with leaders from the EPO, the JPO, the Korean Intellectual Property Office, and the State Intellectual Property Office of the People's Republic of China to cooperate in streamlining the patent processing and examination process. Together these offices represent almost three-quarters of the world's patent filings.
- Provided the lead negotiator to assist the Office of the U.S. Trade Representative (USTR) in negotiating the IP Rights chapter of the U.S.-Korea Free Trade Agreement which provides for very strong protection of IP rights.
- Completed construction of the Global Intellectual Property Rights Academy (GIPA), a state of the art training facility for foreign government officials in the protection and enforcement of IP rights. The GIPA conducted 77 training programs in FY 2007.
- Posted additional IP Attachés in Moscow, Russia and Guanzghou, China in partnership with the Department of Commerce's U.S. and Foreign Commercial Service to advocate improved IP protection and enforcement, assist U.S. businesses doing business in those countries, conducting

training and technical assistance and coordinating U.S. Government efforts to improve IP protection and enforcement.

## **Challenges**

There is a lack of simplified and harmonized international IP systems, which is making it difficult, slow and expensive for innovators and businesses to obtain protection in global markets. Funding for FY 2009 will enable the USPTO to address the following challenges in the international arena and to promote the importance of IP through community outreach and public awareness:

- Striking a balance between rights of IP holders and cultural and socio-economic concerns continue to be a challenge for all countries.
- Achieving consensus among countries advocating effective IP protection is critical for counteracting countries concerned about efforts to enhance IP standards.
- Continuing to address counterfeiting, piracy and failure to respect IP rights here and abroad.
- Continuing to craft and deliver an effective educational program about the benefits and effective use of IP, scam awareness, and careers in IP fields; and expand access to IP information.

## GOAL 3: IMPROVE INTELLECTUAL PROPERTY PROTECTION AND ENFORCEMENT DOMESTICALLY AND ABROAD

### Resource Requirements Summary

<i>Dollars in Thousands</i>	FY 2007 Actuals	FY 2008 Enacted	FY 2009 Base	FY 2009 Management Decisions	FY 2009 Revised Base	Increase/ (Decrease)	FY 2009 President's Budget	FY 2010 Estimate	FY 2011 Estimate	FY 2012 Estimate	FY 2013 Estimate
Total Funding	\$47,048	\$53,800	\$54,233	(\$1,058)	\$53,175	\$1,714	\$54,889	\$54,867	\$56,356	\$57,866	\$59,427
↳ Direct Obligations	\$46,423	\$52,707	\$53,887	(\$1,058)	\$52,829	\$1,714	\$54,543	\$54,521	\$55,983	\$57,493	\$59,054
↳ Reimbursable/ Recoveries	\$625	\$1,093	\$346	\$0	\$346	\$0	\$346	\$346	\$373	\$373	\$373
IT Funding (included above)	\$5,841	\$6,351	\$7,301	(\$863)	\$6,438	(\$546)	\$5,892	\$5,893	\$5,707	\$5,881	\$6,034
Full-Time Equivalent (FTE) Totals	98	140	141	0	141	0	141	141	141	141	141

## Performance Measures/Targets

	FY 2007 Actuals	FY 2008 Enacted	FY 2009 President's Budget	FY 2010 Estimate	FY 2011 Estimate	FY 2012 Estimate	FY 2013 Estimate
Number of Instances in which USPTO Experts Review IP Policies/Standards	461	275	275	275	275	275	275
Improving World-Wide IP Expertise for U.S. Government Interests	17	12	12	12	12	12	12
Plans of Action, Mechanisms and Support Programs Initiated or Implemented in Developing Countries	15	10	10	10	10	10	10

### Goal 3 Initiatives Funded from Base Resources

#### Introduction

With increased demand for countries to implement effective systems for IP rights enforcement to achieve their World Trade Organization (WTO) and Trade Related Aspects of Intellectual Property (TRIPs) obligations, and comply with existing and new bilateral/multilateral trade agreement commitments, the USPTO will focus on providing technical training and capacity-building programs for IP rights enforcement, judicial and prosecutorial education, public education and awareness efforts, and capacity-building to support the needs of developing countries. While the USPTO has long provided IP rights assistance and training, the USPTO has developed a flexible team approach to meet the challenges of IP rights enforcement in today's global environment. This effort is accomplished by fulfilling existing obligations to assist nations in implementing accessible and effective IP rights enforcement systems; partnering to provide useful programs and training; and working to increase the accessibility, efficiency, and effectiveness of civil, administrative, and criminal enforcement mechanisms in global trade, foreign markets, and electronic commerce.

#### Posting of IP Experts Overseas to Advocate IP Policy and Coordinate Training

In partnership with the Department of Commerce's U.S. and Foreign Commercial Service and the Department of State, the USPTO is working to post additional IP experts in selected, high profile countries where U.S. IP challenges are greatest. The USPTO has posted experts in the countries of Brazil, India, Thailand, China (two experts), Egypt and Russia. The experts advocate U.S. IP policy and interests, conduct training on IP rights matters, assist U.S. businesses and otherwise support the Embassy or Consulate action plan on IP rights. In FY 2008, the USPTO is planning to station IP experts in Brussels, Geneva, Eastern Europe, Central America and the Andean Region. By the end of 2008, there will be one IP expert stationed in every geographic region. This will enable the U.S. to increase region-specific training, and increase region-specific consultation on IP policy.

Dollars in thousands	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Amount	\$4,550	\$4,641	\$4,734	\$4,829	\$5,070

#### Formation of the Global Intellectual Property Academy

The USPTO established GIPA, which consolidates and greatly expands USPTO's curriculum of training and capacity building programs on IP rights protection and enforcement. Through GIPA, USPTO brings foreign government officials including judges, prosecutors, police, Customs officers, patent, trademark and copyright officials, and policy makers to the United States to learn, discuss and strategize about global IP rights protection and enforcement. GIPA programs cover the gamut of IP rights enforcement issues facing the global economy, and are offered by USPTO acting in close cooperation with other U.S. federal government agencies.

With the establishment of the Academy, the USPTO also implemented a Foreign Examiners-in-Residence training program – the first of its kind in international cooperation and training at the USPTO. Selected examiners from the patent offices in China, India, Brazil, Egypt, Mexico, and the Philippines are participating in the 8-month training program.

Dollars in thousands	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Amount	\$4,143	\$4,340	\$4,537	\$4,735	\$4,972

### Training and Capacity Building Activities Expansion

The USPTO plans to increase efforts to curb IP theft and strengthen domestic and international protection. Project activities under this initiative will include the development and implementation of a series of enforcement programs including a world-wide program, regional programs, programs designed for single country participation and topic specific programs; increase the level of partnering and resource matching with other government agencies, intergovernmental organizations, international organizations, and foreign international IP offices. An increase in bilateral activities between the USPTO and other foreign governments including consultations on the implementation and effectiveness of enforcement provisions is anticipated.

Dollars in thousands	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Amount	\$469	\$481	\$493	\$506	\$531

### Effective Support of Negotiations and Implementation of Free Trade Agreements (FTAs)

The negotiation of FTAs with trading partners is an essential mechanism for strengthening protection of U.S. interests abroad. The USPTO actively works with the USTR to develop standardized text for the IP section of FTAs, as well as advises the USTR during negotiation and implementation efforts. Additionally, technical assistance for FTA implementation would be provided. In FY 2007, the USPTO led the negotiations for the IP Chapter of the U.S.-Korea FTA, which is arguably the strongest IP chapter in any FTA and the most commercially significant FTA agreement in over 15 years. The USPTO also participated in negotiations on the IP chapter of the U.S.-Malaysia FTA, and negotiations and implementation of the U.S.-Central American FTA with the Dominican Republic.

Dollars in thousands	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Amount	\$1,408	\$1,548	\$1,704	\$1,874	\$1,972

### Comprehensive IP Public Awareness Program

The USPTO holds conferences for small- and medium-sized businesses where participants learn about the importance of IP rights and how to protect and enforce these rights. In FY 2007, the USPTO formed a partnership with the U.S. Chamber of Commerce enabling the USPTO to share duties of agenda-building, funding, and outreach. Events were held in Raleigh, Detroit, Burlington (Vermont), San Antonio, Portland (Oregon), Seattle, Denver, and Los Angeles. The USPTO also organized two China specific events that took place in Philadelphia and Kansas City (Missouri).

Large companies presented “lessons learned” and “best practices” to small-business attendees and small-businesses discussed the importance of their IP protection. More than 1,300 small- and medium-sized businesses attended. As a new outreach and educational tool, the USPTO distributed more than 1,500 CDs on IP protection. The USPTO will continue to hold small-business outreach seminars.

Also in FY 2007, the USPTO began a partnership with the Ad Council to reach young Americans through a national ad campaign called *Inspiring Invention*, which seeks to make inventing and developing new ideas part of children’s lives. Radio and television commercials are now playing throughout the country with the message, “Anything’s possible. Keep thinking.”

Dollars in thousands	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Amount	\$492	\$504	\$517	\$530	\$556

## **Management Goal: Achieve Organizational Excellence**

### **Introduction**

Fulfillment of the USPTO's mission requires strong leadership and collaborative management. While the three strategic goals focus on the core mission, this management goal focuses on the organizational excellence that is a prerequisite for achieving those goals and objectives.

Organizational excellence is a shared responsibility and is focused on sound resource management, solid workforce planning, and effective use of IT.

### **Management Accomplishments**

- Published the *2007-2012 Strategic Plan* in March 2007.
- Developed an enterprise-wide Strategic Human Capital Plan to address the human capital challenges identified in the *2007-2012 Strategic Plan*. The Strategic Human Capital Plan is helping the USPTO identify, develop, and implement activities that make the USPTO an "employer of choice with a culture of high performance."
- Began to lay the foundation for the "Nationwide Workforce" where many employees will have an opportunity to work from anywhere, at any time, and any place. This was done through the continuation of the TWAH program and expansion of the PHP.
- Received the Association of Government Accountants' Certificate of Excellence in Accountability Reporting (CEAR) Award for the fifth consecutive year, for the FY 2006 Performance and Accountability Report.
- Received an unqualified opinion on our FY 2007 financial statements for the 15<sup>th</sup> consecutive year.
- Helped Patents and Trademarks achieve record numbers of electronic filings of applications and related documents.

### **Management Challenges**

- Strengthen performance management – A priority in FY 2007 has been to improve processes in collecting financial management data to provide managers with timely, accurate, and relevant financial information for decision making. In the future, the Chief Financial Officer plans to increase visibility into critical information to allow managers to monitor the health of the USPTO by aligning strategic, financial, performance, and operational information.

### **Management Initiatives**

There are two initiatives for FY 2009 that support the entire USPTO. These initiatives are described in this section while the funding is allocated to the two business lines – Patents and Trademarks – and three strategic goals. The USPTO utilizes an activity-based costing methodology to reasonably allocate indirect costs to program and activities on a prorated basis. Using a consistent cost allocation methodology provides greater transparency to the program's operational performance by identifying various factors that drive program costs.

### **Post-Retirement Benefits Fund – Restoration of Base Funding**

The USPTO is required to fully fund the present costs of post-retirement benefits for the Federal Employees Health Program (FEHB), Federal Employees Group Life Insurance and the Civil Service Retirement System (CSRS) and Federal Employees Retirement System pension liabilities.

In FYs 2007 and 2008, the funds to be transferred to the Office of Personnel Management for these costs reflected reduced CSRS contributions as offsetting increased FEHB premiums. However, a

revalidation of these costs demonstrated that this was not the case, because the largest driver in the amount to be transferred is the number of FEHB participants, which have been increasing due to the large numbers of annual hires coupled with rising costs of medical inflation. An increase of \$23,165,000 is requested in FY 2009 to properly fund the post-retirement benefits.

### **South Tower: Move, Lease and Buildout**

The USPTO's South Tower (Crystal City) lease expires in March 2009. This facility houses Patents pre- and post-examination operations, the Office of Public Records, and the USPTO Mail Center. A Program of Requirements for suitable replacement space has been completed and the procurement to secure replacement space got underway in May 2007, with the issue of a formal advertisement.

This initiative identifies one-time costs of \$11,904,000 to fund needed tenant renovations, the provisions of voice and data infrastructure services, security systems, etc. and to ensure a smooth transition into the new facility.

### **Information Technology**

The USPTO has the following four major IT systems and one program that are funded through baseline resources. These systems will deliver significant benefits to the operations of the USPTO. The PFW system is discussed under Goal 1 and FAST for Trademarks is discussed under Goal 2.

### **Business Continuity and Disaster Recovery Program**

The USPTO has modified its Business Continuity and Disaster Recovery program and strategy to align it more closely with business modernization efforts as reflected in the *2007-2012 Strategic Plan*. This realignment of the program will allow for an agile solution that delivers a significant risk reduction to the Agency's mission and benefits to the U.S. citizens. The new business continuity plan has been re-baselined and is expected to be completed in FY 2008. Under the Business Continuity Program the USPTO will establish data redundancy to guarantee the availability of patent and trademark data in the event of a disaster resulting in the complete or partial destruction of the USPTO's single data center. Once data replication technology is implemented and related processes are in operation, the USPTO will select a site and begin the planning processes for a second USPTO production data center. Once operational, the second production data center will assist in the day-to-day production workload, support USPTO's geographically distributed production applications, and serve as the organization's business continuity / disaster recovery site for the primary data center.

The events of September 11th have caused the USPTO to not only reassess IT security in general, but to pay particular attention to its automated information systems and supporting infrastructure to identify and put in place plans to address vulnerabilities that if exploited would seriously prevent the USPTO from delivering timely and high quality IT products and services to internal and external customers. The USPTO Business Continuity Program will assist in reducing an agency performance gap by establishing alternate computing resources in accordance with the requirements of the Federal Preparedness Circular 65, Federal Executive Branch Continuity of Operations and National Institute of Standards and Technology Special Publication 800-34 as outlined in the Department of Commerce/Office of the Inspector General Financial Audit report of October 21, 2005. It will allow USPTO to protect patent and trademark data by ensuring that critical IT operations are sustained in the event of the catastrophic disaster to the organization's primary data center. It also will increase the Agency's ability to deliver timely and high quality IT products and services to our internal and external customers.

Dollars in thousands	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Amount	\$6,421	\$6,379	\$6,410	\$6,442	\$6,475

**Consolidated Financial System (CFS)**

This investment maintains and enhances the USPTO's CFS, which is largely responsible for the USPTO's outstanding track record in financial management. In FY 2007, the USPTO received its 15th unqualified financial statement audit opinion and marked its 11th year with no material weaknesses identified in the internal control structure. With the Federal Government emphasis in the past few years on financial management and electronic processes, financial management systems have been closely scrutinized and expectations have been increased. The USPTO CFS has been up to the challenge and the USPTO has been able to meet the multitude of Financial Systems Integration Office, Treasury, Government Accountability Office, General Services Administration, and OMB regulations focusing on financial management and E-government. This investment provides for the USPTO's core financial system, acquisition system, travel management system, activity based information system, transportation subsidy system, corporate planning system, and data warehouse. The financial and acquisition system is Momentum Financials, which provides all major facets of Federal financial accounting and acquisition management. Thus, the CFS is in a position to support all requirements of the Financial Management processes from strategic planning, fiscal year planning, acquisitions, expenditures, and cost accounting.

Dollars in thousands	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Amount	\$24,987	\$26,627	\$17,901	\$19,033	\$19,700

**Revenue Accounting and Management (RAM) System**

The USPTO collects and processes fees for approximately 300 products and services pertaining to the protection of citizen or business IP. RAM is the application used for fee processing and supports various payment transmission methods such as the Internet, by mail or in person. RAM enables the USPTO to collect fees paid by various payment methods including credit cards, checks, electronic funds transfer, and USPTO deposit account. RAM also facilitates the processing of fee-related refunds. The Office of Finance Imaging System is a subsidiary system that provides the Office of Finance with rapid and systematic storage of and retrieval capabilities for financial documents to include receipts and customer refund requests. The continued growth in USPTO workload can only be effectively managed in an environment that provides for the electronic receipt, processing and reporting of the fee collection process that supports the provision of USPTO services and products. This electronic processing will enable the USPTO to migrate to a more efficient operating environment that supports our business goal of providing quality services and products in a timely manner to our customers and stakeholders.

Dollars in thousands	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Amount	\$7,361	\$7,482	\$7,409	\$7,601	\$7,799

# Section IV – Budget Exhibits

## U.S. PATENT AND TRADEMARK OFFICE

### Exhibit 3a – USPTO Total Resource Requirements

<i>Dollars in Thousands</i>	FY 2007 Actuals	FY 2008 Enacted*	FY 2009 Base	FY 2009 Management Decisions	FY 2009 Revised Base	Increase/ (Decrease)	FY 2009 President's Budget	FY 2010 Estimate	FY 2011 Estimate	FY 2012 Estimate	FY 2013 Estimate
<b>Total Funding</b>	\$1,766,424	\$1,956,585	\$2,043,730	(\$24,422)	\$2,019,308	\$68,462	\$2,087,770	\$2,217,589	\$2,393,626	\$2,654,550	\$2,914,231
↳ Direct Obligations	\$1,742,964	\$1,915,500	\$2,030,733	(\$24,422)	\$2,006,311	\$68,462	\$2,074,773	\$2,204,592	2,379,626	\$2,640,550	\$2,900,231
↳ Reimbursable/ Recoveries	\$23,460	\$41,085	\$12,997	\$0	\$12,997	\$0	\$12,997	\$12,997	\$14,000	\$14,000	\$14,000
IT Funding (included above)	\$294,193	\$254,142	\$297,866	(\$39,573)	\$258,293	(\$8,570)	\$249,723	\$251,248	\$250,499	\$257,317	\$263,730
<b>Full-Time Equivalent (FTE) Totals</b>	8,291	9,549	10,286	0	10,286	437	10,723	11,256	11,738	12,185	12,599

\*Per USPTO's FY 2008 Appropriation, "\$1,000,000 may be transferred to "Departmental Management", "Salaries and Expenses" for activities associated with the National Intellectual Property Law Enforcement Coordination Council".

## EXHIBIT 5 — SUMMARY OF RESOURCE REQUIREMENTS

**Department of Commerce**  
 United States Patent and Trademark Office  
 Salaries and Expenses  
*(Dollars in Thousands)*

	Full-Time Permanent Positions	FTE	Direct Obligations
<b>FY 2008 Enacted</b>			
FY 2008 Enacted Direct Obligations	10,084	9,549	1,915,500
Plus: 2009 Adjustments to Base	0	737	115,233
Less: Management Decisions	0	0	(24,422)
FY 2009 Revised Base	10,084	10,286	2,006,311
Less or Plus: 2009 Program Changes	1,234	437	68,462
<b>FY 2009 President's Budget</b>	<b>11,318</b>	<b>10,723</b>	<b>\$2,074,773</b>

**EXHIBIT 5 — SUMMARY OF RESOURCE REQUIREMENTS (CONTINUED)\***

**Department of Commerce**  
 United States Patent and Trademark Office  
 Salaries and Expenses  
 (Dollars in Thousands)

Business Areas:		FY 2007 Actual		FY 2008 Enacted		FY 2009 Base		FY 2009 Management Decisions		FY 2009 Revised Base		FY 2009 President's Budget		Increase/ (Decrease) From FY2009 Base	
		Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount
Patents	Pos./BA	7,971	\$1,562,003	8,979	\$1,680,998	8,979	\$1,786,526	0	(\$23,220)	8,979	\$1,763,306	10,179	\$1,827,796	1,200	\$64,490
	FTE/Obl.	7,367	1,540,682	8,480	0	9,195	0	0	0	9,195	0	9,607	0	412	0
Trademarks	Pos./BA	942	208,997	1,105	234,502	1,105	244,207	0	(1,202)	1,105	243,005	1,139	246,977	34	3,972
	FTE/Obl.	924	202,282	1,069	0	1,091	0	0	0	1,091	0	1,116	0	25	0
Total United States Patent and Trademark Office*	Pos./BA	8,913	\$1,771,000	10,084	\$1,915,500	10,084	\$2,030,733	0	(\$24,422)	10,084	\$2,006,311	11,318	\$2,074,773	1,234	\$68,462
	FTE/Obl.	8,291	1,742,964	9,549	0	10,286	0	0	0	10,286	0	10,723	0	437	0
Less: Financing from Offsetting Collections	BA	0	(1,783,189)	0	(1,915,500)	0	0	0	0	0	0	0	0	0	0
	Obl.	0	(1,742,964)	0	0	0	0	0	0	0	0	0	0	0	0
Less: Other Estimated Reimbursable Income	BA	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Obl.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Less: Rescission of Unobligated Balances	BA	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Obl.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Less: Portion not Available for Obligation CY (limitation on obligations)	BA	0	12,189	0	0	0	0	0	0	0	0	0	0	0	0
	Obl.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Less: Prior Year Unobligated Balance Brought Forward	BA	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Obl.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Less: Current Year Unobligated Balance EOY	BA	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Obl.	0	28,036	0	0	0	0	0	0	0	0	0	0	0	0
Less: Estimated Recoveries of Prior Year Obligations	BA	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Obl.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Financing from Direct Appropriated Funds	BA	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Obl.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Plus: Prior Year Offsetting Collections	BA	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Obl.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Appropriation	BA	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Obl.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Plus/Less: Change in Offsetting Collections (unavailable balances)	BA	0	(12,189)	0	0	0	0	0	0	0	0	0	0	0	0
	Obl.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Budget Authority	BA	0	(12,189)	0	0	0	0	0	0	0	0	0	0	0	0
	Obl.	0	0	0	0	0	0	0	0	0	0	0	0	0	0

\*This table reflects Direct Obligations only.

## EXHIBIT 6 — SUMMARY OF REIMBURSABLE OBLIGATIONS

**Department of Commerce**  
 United States Patent and Trademark Office  
 Salaries and Expenses  
*(Dollars in Thousands)*

Business Areas:		FY 2007 Actual		FY 2008 Enacted		FY 2009 Base		FY 2009 Management Decisions		FY 2009 Revised Base		FY 2009 President's Budget		Increase/ (Decrease) From FY 2009 Base	
		FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
Patents	BA	0	\$6,975	0	\$7,983	0	\$7,935	0	0	0	\$7,935	0	\$7,935	0	0
	Obl.	0	\$6,975	0	0	0	0	0	0	0	0	0	0	0	0
Trademarks	BA	0	\$930	0	\$1,068	0	\$1,062	0	0	0	\$1,062	0	\$1,062	0	0
	Obl.	0	\$930	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total USPTO</b>	<b>BA</b>	<b>0</b>	<b>\$7,905</b>	<b>0</b>	<b>\$9,049</b>	<b>0</b>	<b>\$8,997</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$8,997</b>	<b>0</b>	<b>\$8,997</b>	<b>0</b>	<b>0</b>
	<b>Obl.</b>	<b>0</b>	<b>\$7,905</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

# Section IV – Budget Exhibits

## U.S. PATENT AND TRADEMARK OFFICE

### Exhibit 3a – USPTO Total Resource Requirements

<i>Dollars in Thousands</i>	FY 2007 Actuals	FY 2008 Enacted*	FY 2009 Base	FY 2009 Management Decisions	FY 2009 Revised Base	Increase/ (Decrease)	FY 2009 President's Budget	FY 2010 Estimate	FY 2011 Estimate	FY 2012 Estimate	FY 2013 Estimate
<b>Total Funding</b>	\$1,766,424	\$1,956,585	\$2,043,730	(\$24,422)	\$2,019,308	\$68,462	\$2,087,770	\$2,217,589	\$2,393,626	\$2,654,550	\$2,914,231
↳ Direct Obligations	\$1,742,964	\$1,915,500	\$2,030,733	(\$24,422)	\$2,006,311	\$68,462	\$2,074,773	\$2,204,592	2,379,626	\$2,640,550	\$2,900,231
↳ Reimbursable/ Recoveries	\$23,460	\$41,085	\$12,997	\$0	\$12,997	\$0	\$12,997	\$12,997	\$14,000	\$14,000	\$14,000
IT Funding (included above)	\$294,193	\$254,142	\$297,866	(\$39,573)	\$258,293	(\$8,570)	\$249,723	\$251,248	\$250,499	\$257,317	\$263,730
<b>Full-Time Equivalent (FTE) Totals</b>	8,291	9,549	10,286	0	10,286	437	10,723	11,256	11,738	12,185	12,599

\*Per USPTO's FY 2008 Appropriation, "\$1,000,000 may be transferred to "Departmental Management", "Salaries and Expenses" for activities associated with the National Intellectual Property Law Enforcement Coordination Council".

## EXHIBIT 5 — SUMMARY OF RESOURCE REQUIREMENTS

**Department of Commerce**  
 United States Patent and Trademark Office  
 Salaries and Expenses  
*(Dollars in Thousands)*

	Full-Time Permanent Positions	FTE	Direct Obligations
<b>FY 2008 Enacted</b>			
FY 2008 Enacted Direct Obligations	10,084	9,549	1,915,500
Plus: 2009 Adjustments to Base	0	737	115,233
Less: Management Decisions	0	0	(24,422)
FY 2009 Revised Base	10,084	10,286	2,006,311
Less or Plus: 2009 Program Changes	1,234	437	68,462
<b>FY 2009 President's Budget</b>	<b>11,318</b>	<b>10,723</b>	<b>\$2,074,773</b>

**EXHIBIT 5 — SUMMARY OF RESOURCE REQUIREMENTS (CONTINUED)\***

**Department of Commerce**  
 United States Patent and Trademark Office  
 Salaries and Expenses  
*(Dollars in Thousands)*

Business Areas:		FY 2007 Actual		FY 2008 Enacted		FY 2009 Base		FY 2009 Management Decisions		FY 2009 Revised Base		FY 2009 President's Budget		Increase/ (Decrease) From FY2009 Base	
		Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount	Personnel	Amount
Patents	Pos./BA	7,971	\$1,562,003	8,979	\$1,680,998	8,979	\$1,786,526	0	(\$23,220)	8,979	\$1,763,306	10,179	\$1,827,796	1,200	\$64,490
	FTE/Obl.	7,367	1,540,682	8,480	0	9,195	0	0	0	9,195	0	9,607	0	412	0
Trademarks	Pos./BA	942	208,997	1,105	234,502	1,105	244,207	0	(1,202)	1,105	243,005	1,139	246,977	34	3,972
	FTE/Obl.	924	202,282	1,069	0	1,091	0	0	0	1,091	0	1,116	0	25	0
Total United States Patent and Trademark Office*	Pos./BA	8,913	\$1,771,000	10,084	\$1,915,500	10,084	\$2,030,733	0	(\$24,422)	10,084	\$2,006,311	11,318	\$2,074,773	1,234	\$68,462
	FTE/Obl.	8,291	1,742,964	9,549	0	10,286	0	0	0	10,286	0	10,723	0	437	0
Less: Financing from Offsetting Collections	BA	0	(1,783,189)	0	(1,915,500)	0	0	0	0	0	0	0	0	0	0
	Obl.	0	(1,742,964)	0	0	0	0	0	0	0	0	0	0	0	0
Less: Other Estimated Reimbursable Income	BA	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Obl.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Less: Rescission of Unobligated Balances	BA	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Obl.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Less: Portion not Available for Obligation CY (limitation on obligations)	BA	0	12,189	0	0	0	0	0	0	0	0	0	0	0	0
	Obl.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Less: Prior Year Unobligated Balance Brought Forward	BA	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Obl.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Less: Current Year Unobligated Balance EOY	BA	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Obl.	0	28,036	0	0	0	0	0	0	0	0	0	0	0	0
Less: Estimated Recoveries of Prior Year Obligations	BA	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Obl.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Financing from Direct Appropriated Funds	BA	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Obl.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Plus: Prior Year Offsetting Collections	BA	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Obl.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Appropriation	BA	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Obl.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Plus/Less: Change in Offsetting Collections (unavailable balances)	BA	0	(12,189)	0	0	0	0	0	0	0	0	0	0	0	0
	Obl.	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Budget Authority	BA	0	(12,189)	0	0	0	0	0	0	0	0	0	0	0	0
	Obl.	0	0	0	0	0	0	0	0	0	0	0	0	0	0

\*This table reflects Direct Obligations only.

## EXHIBIT 7 — SUMMARY OF FINANCING

**Department of Commerce**  
 United States Patent and Trademark Office  
 Salaries and Expenses  
*(Dollars in Thousands)*

	FY 2007 Actual	FY 2008 Enacted	FY 2009 Base	FY 2009 Management Decisions	FY 2009 Revised Base	FY 2009 President's Budget	Increase/ (Decrease) From FY 2009 Base
<b>Obligations:</b>							
Total direct obligations	\$1,742,964	\$1,915,500	\$2,030,733	(\$24,422)	\$2,006,311	\$2,074,773	\$68,462
Total reimbursable/ recovery obligations	23,460	41,085	12,997	0	12,997	12,997	0
<b>Total obligations</b>	<b>\$1,766,424</b>	<b>\$1,956,585</b>	<b>\$2,043,730</b>	<b>(\$24,422)</b>	<b>\$2,019,308</b>	<b>\$2,087,770</b>	<b>\$68,462</b>
<b>Financing:</b>							
Offsetting collections from:							
Reimbursable obligations (Federal Reimbursable)	(7,905)	(9,049)	(8,997)	0	(8,997)	(8,997)	0
Non-Federal sources/User fee collections	(1,771,000)	(1,915,500)	(2,030,733)	24,422	(2,006,311)	(2,074,773)	(68,462)
<b>Subtotal</b>	<b>(\$1,778,905)</b>	<b>(\$1,924,549)</b>	<b>(\$2,039,730)</b>	<b>\$24,422</b>	<b>(\$2,015,308)</b>	<b>(\$2,083,770)</b>	<b>(\$68,462)</b>
<b>Recoveries:</b>							
Recoveries of prior year obligations	(9,839)	(4,000)	(4,000)	0	(4,000)	(4,000)	0
Unobligated balance, start of year	(5,716)	(28,036)	0	0	0	0	0
Unobligated balance, end of year	28,036	0	0	0	0	0	0
<b>Net change</b>	<b>(\$12,481)</b>	<b>(\$32,036)</b>	<b>(\$4,000)</b>	<b>\$0</b>	<b>(\$4,000)</b>	<b>(\$4,000)</b>	<b>\$0</b>
Financing from direct appropriated funds	0	0	0	0	0	0	0
<b>Total net appropriation</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Change in Offsetting Collections (unavailable balance)	(12,189)	0	0	0	0	0	0
<b>Total Budget Authority</b>	<b>(\$12,189)</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## EXHIBIT 8 — ADJUSTMENTS TO BASE

**Department of Commerce**  
 United States Patent and Trademark Office  
 Salaries and Expenses  
*(Dollars in Thousands)*

	<b>FTE</b>	<b>Amount</b>
Other Cost Changes		
2008 Pay Raise		6,734
2009 Pay Raise		21,580
Full-Year Cost in 2009 for Positions Financed for Part-Year in 2008	737	63,035
Within-grade step increases		9,556
Changes in Compensable Day		(3,907)
Civil Service Retirement System (CSRS)		(1,211)
Federal Employees Retirement System (FERS)		1,937
Thrift Savings Plan		346
Federal Insurance Contribution Act (FICA) - OASDI		446
Health Insurance		1,182
Travel		1
Rental Payments to GSA		2,264
Printing and Reproduction		1,128
General Pricing Level Adjustment		12,142
<b>TOTAL Adjustments to Base</b>	<b>737</b>	<b>\$115,233</b>

## EXHIBIT 9 — JUSTIFICATION OF ADJUSTMENTS TO BASE

**Department of Commerce**  
United States Patent and Trademark Office  
Salaries and Expenses  
*(Dollars in Thousands)*

	<b>FTE</b>	<b>Amount</b>
<b>2008 Pay Raise</b>		\$6,734
<hr/>		
<i>Full Year of 2008 pay increase and related costs</i>		
<i>A pay raise of 3.0% is to be effective January 1, 2008.</i>		
Total Cost of 2008 Pay Increase	26,935,000	
Less Amount Funded in 2008	(20,201,000)	
Less Amount Absorbed	0	
Amount Requested in 2009 to Provide Full-Year Cost of 2008 Pay Increase	6,734,000	
Total Cost of Working Capital Find Increase	0	
Less Amount Funded in 2008	0	
Total Adjustment for 2008 Pay Increase	6,734,000	
 <b>2009 Pay Raise</b>		 \$21,580
<hr/>		
<i>A general pay raise of 2.9% is assumed to be effective January 1, 2009.</i>		
Total Cost in 2009 of Pay Increase	21,579,586	
Less Amount Absorbed in FY 2008	0	
Amount Requested for 2009 Pay Increase	21,579,586	
Payment to Working Capital Fund	0	
Total Adjustment for 2009 Pay Increase	21,579,586	

## EXHIBIT 9 — JUSTIFICATION OF ADJUSTMENTS TO BASE (CONTINUED)

**Department of Commerce**  
 United States Patent and Trademark Office  
 Salaries and Expenses  
*(Dollars in Thousands)*

	<b>FTE</b>	<b>Amount</b>
<b>Full-year cost in 2009 of positions financed for part-year in 2008</b>	737	\$63,035

An increase of \$63,034,606 is required to fund the full-year cost in 2009 of positions financed for part-year in 2008. The computation follows:

Annual salary of new positions in 2008	1,287	82,065,981
2008 Pay Raise	0	2,461,979
Less 5 Percent Lapse	(64)	(4,226,397)
Full-Year Cost of Personnel Compensation	1,223	80,301,563
Less Personnel Compensation in 2008	(486)	(31,842,627)
Cost of Personnel Compensation in 2009	737	48,458,936
Adjustment for 2009 Pay Raise (3.0% x .75 x \$48,458,936)	0	1,053,982
Amount Required for Personnel Compensation	0	49,512,918
Benefits	0	13,521,688
Total Adjustment-to-Base	737	63,034,606

## EXHIBIT 9 — JUSTIFICATION OF ADJUSTMENTS TO BASE (CONTINUED)

**Department of Commerce**  
United States Patent and Trademark Office  
Salaries and Expenses  
*(Dollars in Thousands)*

	<b>FTE</b>	<b>Amount</b>
<b>Within-grade step increases</b>		\$9,556
<hr/>		
<i>An increase of \$9,556,212 is required to cover the cost of within-grade step increases. This estimate reflects the net cost of step increases including merit pay increases which will be earned in 2009.</i>		
Estimated number of within-grade step increases	4,139	
Step increases not earned due to turnover (9.2% x 4,139)	381	
Average step above step 1 per separation	3	
Average cost per within-grade step increase	2,656	
Gross cost of scheduled step increase (4,139 x \$2,656)	10,995,088	
Less savings due to separations (\$2,656 x 381 x 3)	(3,033,963)	
Subtotal, personnel compensation	7,961,125	
Benefits	1,595,087	
Total Adjustment-to-Base	9,556,212	
<b>Change in compensable days</b>		(\$3,907)
<hr/>		
<i>The decreased cost of one compensable day in 2009 compared to 2008 is calculated by dividing the 2008 estimated personnel (\$856,606,000) and application benefits (\$163,227,000) by 261 compensable days. The cost decrease of one compensable day is (\$3,907,406).</i>		

## EXHIBIT 9 — JUSTIFICATION OF ADJUSTMENTS TO BASE (CONTINUED)

**Department of Commerce**  
 United States Patent and Trademark Office  
 Salaries and Expenses  
*(Dollars in Thousands)*

	FTE	Amount
<b>Civil Service Retirement System (CSRS)</b>		(\$1,211)

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*The number of employees covered by the Civil Service Retirement System (CSRS) continues to drop as positions become vacant and are filled by employees who are covered by the Federal Employees Retirement System (FERS). The estimated percentage of payroll for employees covered by CSRS will drop from 7.5% in 2008 to 5.4% in 2009 for regular employees. The contribution rate of 7.0% will remain the same from 2008 to 2009 for regular employees.*

Regular:		
2009	\$823,485,000 x .054 x .070	3,112,773
2008	\$823,485,000 x .750 x .070	(4,323,296)
	Total Adjustment-to-Base	(1,210,523)

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<b>Federal Employees Retirement System (FERS)</b>		\$1,937
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*The number of employees covered by FERS continues to rise as employees covered by CSRS leave and are replaced by employees covered by FERS. The estimated percentage of payroll for employees covered by FERS will rise from 92.50% in 2008 to 94.60% in 2009 for regular employees. The contribution rate of 11.20% will remain the same from 2008 to 2009 for regular employees.*

Regular:		
2009	\$823,485,000 x .946 x .112	87,249,883
2008	\$823,485,000 x .925 x .112	(85,313,046)
	Total Adjustment-to-Base	1,936,837

## EXHIBIT 9 — JUSTIFICATION OF ADJUSTMENTS TO BASE (CONTINUED)

**Department of Commerce**  
 United States Patent and Trademark Office  
 Salaries and Expenses  
*(Dollars in Thousands)*

	<b>FTE</b>	<b>Amount</b>
<b>Thrift Savings Plan (TSP)</b>		\$346
<hr/>		
<i>The cost of agency contributions to the Thrift Savings Plan will also rise as FERS participation increases. The contribution rate is expected to remain at 2.0% from 2008 to 2009.</i>		
		Regular:
2009 \$823,485,000 x .946 x .02		15,580,336
2008 \$823,485,000 x .925 x .02		(15,234,473)
Total Adjustment-to-Base		345,863

## EXHIBIT 9 — JUSTIFICATION OF ADJUSTMENTS TO BASE (CONTINUED)

**Department of Commerce**  
 United States Patent and Trademark Office  
 Salaries and Expenses  
*(Dollars in Thousands)*

	FTE	Amount
<b>Federal Insurance Contribution Act (FICA)</b>		\$446
<hr/>		
<i>As the percentage of payroll covered by FERS rises, the cost of OASDI contributions will increase. In addition, the maximum salary subject to OASDI will be raised from \$102,300 in 2008 to \$106,425 in 2009. The OASDI tax rate will remain 6.2% in 2009.</i>		
Regular:		
2009	$\$823,485,000 \times .946 \times .943 \times .062$	45,560,094
2008	$\$823,485,000 \times .925 \times .956 \times .062$	(45,148,883)
	Subtotal	411,211
Other:		
2009	$\$70,394,940 \times .946 \times .943 \times .062$	3,894,667
2008	$\$70,394,940 \times .925 \times .956 \times .062$	(3,859,515)
	Subtotal	35,152
	Total Adjustment-to-Base	446,363
<b>Health Insurance</b>		\$1,182
<hr/>		
<i>Effective January 2007, PTO's contribution to Federal employees' health insurance premiums increased by 2.35%. Applied against the 2008 estimate of \$50,245,000 the amount of increase is \$1,182,349.</i>		

## EXHIBIT 9 — JUSTIFICATION OF ADJUSTMENTS TO BASE (CONTINUED)

**Department of Commerce**  
United States Patent and Trademark Office  
Salaries and Expenses  
*(Dollars in Thousands)*

	<b>FTE</b>	<b>Amount</b>
<b>Travel</b>		\$1
<hr/>		
<i>Effective February 1, 2007, changes to the federal travel regulations increased the reimbursement rate for privately owned vehicles from 44.5 cents to 48.5 cents. This percentage increase of 9.00% was applied to the 2008 estimate of \$10,000 to arrive at an increase of \$900</i>		
<b>Rental Payments to GSA</b>		\$2,264
<hr/>		
<i>GSA rates are projected to increase 2.4% in 2009. This percentage was applied to the 2008 estimate of \$94,314,000 to arrive at an increase of \$2,263,536.</i>		
<b>GPO Printing</b>		\$1,128
<hr/>		
<i>GPO has provided an estimated rate increase of 2.0%. This percentage was applied as follows.</i>		
<b>Other GPO Printing:</b> The percentage was applied to the 2008 estimate of \$840,000 to arrive at an increase of \$16,800	16,800	
<b>Trademark GPO Printing:</b> The percentage was applied to the 2008 estimate of \$1,213,000 to arrive at an increase of \$24,260	24,260	
<b>Patent GPO Printing:</b> The percentage was applied to the 2008 estimate of \$54,322,000 to arrive at an increase of \$1,086,440	1,086,440	
<b>Total Adjustment-to-Base</b>		1,127,500

## EXHIBIT 9 — JUSTIFICATION OF ADJUSTMENTS TO BASE (CONTINUED)

**Department of Commerce**  
 United States Patent and Trademark Office  
 Salaries and Expenses  
*(Dollars in Thousands)*

	<b>FTE</b>	<b>Amount</b>
<b>General Pricing Level Adjustment</b>		\$12,142
<p><i>This request applies OMB economic assumptions for 2009 to sub-object classes where the prices that the Government pays are established through the market system. Factors are applied to transportation of things (\$21,060); rental payments to others (\$435,400); communications, utilities, miscellaneous charges (excluding postage) (\$304,787); consulting services (\$286,720); other services (\$8,899,200); purchased goods (excluding NARA) (\$67,680); supplies and materials (\$294,340); and equipment (\$1,833,680).</i></p>		
Total Adjustment-to-Base	737	\$115,233

## EXHIBIT 16 — SUMMARY OF REQUIREMENTS BY OBJECT CLASS

**Department of Commerce**  
 United States Patent and Trademark Office  
 Salaries and Expenses  
*(Dollars in Thousands)*

Object Class Title:	FY 2007 Actuals	FY 2008 Enacted	FY 2009 Base	FY 2009 Management Decisions	FY 2009 Revised Base	FY 2009 Program Changes	FY 2009 President's Budget	Increase/ (Decrease) From FY 2009 Base
<b>Full-Time Equivalent Employment:</b>								
Full-Time Permanent	8,181	9,445	10,183	0	10,183	437	10,620	437
Other Than Full-Time Permanent	110	104	103	0	103	0	103	0
<b>Total Full-Time Equivalent Employment</b>	<b>8,291</b>	<b>9,549</b>	<b>10,286</b>	<b>0</b>	<b>10,286</b>	<b>437</b>	<b>10,723</b>	<b>437</b>
<b>Authorized Positions:</b>								
Full-Time Permanent	8,745	9,924	9,924	0	9,924	1,234	11,158	1,234
Other Than Full-Time Permanent	168	160	160	0	160	0	160	0
<b>Total Authorized Positions</b>	<b>8,913</b>	<b>10,084</b>	<b>10,084</b>	<b>0</b>	<b>10,084</b>	<b>1,234</b>	<b>11,318</b>	<b>1,234</b>

## EXHIBIT 16 — SUMMARY OF REQUIREMENTS BY OBJECT CLASS (CONTINUED)

Department of Commerce  
 United States Patent and Trademark Office  
 Salaries and Expenses  
*(Dollars in Thousands)*

Object Class	Object Class Title	FY 2007 Actual	FY 2008 Enacted	FY 2009 Base	FY 2009 Management Decisions	FY 2009 Revised Base	FY 2009 Program Changes	FY 2009 President's Budget	Increase/ (Decrease) From FY 2009 Base
11.1	Full-Time Permanent Compensation	721,540	827,440	912,010	(4,732)	907,277	25,736	933,013	25,736
11.3	Other Than Full-Time Permanent Compensation	5,733	0	0	0	0	0	0	0
11.5	Other Personnel Compensation	61,265	66,811	67,344	(204)	67,140	103	67,243	103
	<b>Total Personnel Compensation</b>	<b>788,538</b>	<b>894,251</b>	<b>979,354</b>	<b>(4,937)</b>	<b>974,417</b>	<b>25,839</b>	<b>1,000,256</b>	<b>25,839</b>
12.0	Personnel Benefits	257,220	254,474	277,649	(5,433)	272,216	30,298	302,514	30,298
13.0	Benefits for Former Personnel	120	0	2,135	0	2,135	0	2,135	0
21.0	Travel and Transportation of Persons	8,029	9,591	7,768	(227)	7,541	0	7,541	0
22.0	Transportation of Things	269	1,053	1,065	0	1,065	0	1,065	0
23.1	Rental Payments to GSA	99,703	94,314	97,257	0	97,257	0	97,257	0
23.2	Rental Payments to Others	6,196	15,816	8,096	(6)	8,090	0	8,090	0
23.3	Communications, Utilities, and Misc. Charges	19,733	22,425	20,984	0	20,984	0	20,984	0
24.0	Printing and Reproduction	76,347	56,375	57,416	(5)	57,411	0	57,411	0
25.1	Advisory and Assistance Services	33,091	14,336	53,802	41	53,843	0	53,843	0
25.2	Other Services	344,905	438,171	409,385	(6,287)	403,098	3,117	406,215	3,117
25.3	Purchase of Goods and Services from Gov't Accounts	23,295	8,283	9,070	0	9,070	7,510	16,580	7,510
26.0	Supplies and Materials	11,190	14,717	16,394	(3,741)	12,653	13	12,666	13
31.0	Equipment	74,132	91,694	90,358	(3,827)	86,531	1,685	88,216	1,685
32.0	Lands and Structures	0	0	0	0	0	0	0	0
42.0	Insurance Claims and Indemnities	177	0	0	0	0	0	0	0
43.0	Interest and Dividends	19	0	0	0	0	0	0	0
	<b>Total Direct Obligations</b>	<b>1,742,964</b>	<b>1,915,500</b>	<b>2,030,733</b>	<b>(24,422)</b>	<b>2,006,311</b>	<b>68,462</b>	<b>2,074,773</b>	<b>68,462</b>
	<b>Total Indirect Obligations</b>	<b>23,460</b>	<b>41,085</b>	<b>12,997</b>	<b>0</b>	<b>12,997</b>	<b>0</b>	<b>12,997</b>	<b>0</b>
	<b>Total Obligations</b>	<b>1,766,424</b>	<b>1,956,585</b>	<b>2,043,730</b>	<b>(24,422)</b>	<b>2,019,308</b>	<b>68,462</b>	<b>2,087,770</b>	<b>68,462</b>
	Less: Financing from Offsetting Collections	(1,771,000)	(1,915,500)	(2,030,733)	24,422	(2,006,311)	(68,462)	(2,074,773)	(68,462)
	Less: Other Estimated Reimbursable Income	(7,905)	(9,049)	(8,997)	0	(8,997)	0	(8,997)	0
	Less: Portion not Available for Obligation (limitation on obligations)	0	0	0	0	0	0	0	0
	Less: Unobligated Balance, EOY	28,036	0	0	0	0	0	0	0
	Less: Prior Year Unobligated Balance Brought Forward	(5,716)	(28,036)	0	0	0	0	0	0
	Less: Recoveries of Prior Year Obligations	(9,839)	(4,000)	(4,000)	0	(4,000)	0	(4,000)	0
	<b>Total Appropriation</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	Plus/Less: Change in Offsetting Collections (unavailable balances)	(12,189)	0	0	0	0	0	0	0
	<b>Total Budget Authority</b>	<b>(12,189)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

# Appendix

## PRESIDENT'S MANAGEMENT AGENDA (PMA)

The USPTO is committed to the objectives of the PMA, which is the strategy implemented by President's Bush's Administration to improve the management and performance of the Federal Government. Departmental agencies are scored green, yellow or red on their status in achieving overall goals or long-term criteria, as well as their progress in implementing improvement plans.

### Strategic Management of Human Capital

The USPTO plays a vital role in enabling discoveries, inventions and creative ideas to be brought to the marketplace. To support this effort, it is essential to have a strong human capital management program that continues to attract, hire, train and maintain employees with technical knowledge and skills that increase in both range and depth.

#### Progress:

- Released the *Strategic Human Capital Plan* on September 17, 2007
- Recruited and hired 1,215 patent examiners in FY 2007.
- Partnered with the Office of Personnel Management (OPM) to produce a Patent television recruitment ad featuring a USPTO patent examiner. To date, the ad has run in several cities in conjunction with job fairs hosted by the Agency. As a result of the ads, job fair attendance, by highly qualified candidates was high.
- Supported Telework – Of the USPTO's 8,913 employees, 89.0 percent are eligible to work at home. Of those eligible, 45.7 percent actually did work at home.

#### Upcoming Events:

- Development of business area plans by January 2008 for achieving the objectives of the *Strategic Human Capital Plan*.
- Develop plans to hire an additional 1,200 patent examiners by holding recruitment events at colleges and universities, and bringing college and university representatives to USPTO for on-site briefings.
- Train recruiters and hiring coordinators on issues such as reviewing resumes and transcripts, conducting interviews, and ensuring adherence to merit system principles.

### Competitive Sourcing

The USPTO is committed to achieving performance enhancements and cost-savings through competitive sourcing.

#### Progress:

- Established a Competitive Sourcing Steering Committee (CSSC)
- Directed the CSSC to conduct feasibility studies on all Federal Activities Inventory Reform (FAIR) Act activities containing 20 or more commercial jobs. The feasibility studies will determine if sufficient "return" exists to justify the "investment" associated with conducting a competition.

### **Upcoming Events:**

- Once the feasibility studies are complete, for any study that establishes a favorable return on investment, the CSSC will authorize a full assessment on the scope of the study, applicable mission impacts, risks, estimated savings, and timeline. After the full assessment, the CSSC will determine specific functions to be completed among public and private sources.

### **Improved Financial Performance:**

The USPTO is in compliance with all Federal accounting principles and standards and has encountered no instances of material weaknesses in internal controls or non-compliance with Federal accounting regulations. The USPTO will continue to maintain and strengthen internal controls and improve the timeliness and usefulness of financial management information.

### **Progress:**

- Met all quarterly financial reporting requirements instituted by the OMB.
- Sustained the Agency's clean audit opinion, with FY 2007 marking the 15<sup>th</sup> consecutive unqualified audit opinion and the 11<sup>th</sup> consecutive year with no material weaknesses.
- Maintained a certified and accredited, fully integrated financial management system and uses a data warehouse to accommodate both financial and operational data. The data warehouse is used by managers for analyzing financial results and performance and by supervisory patent examiners for managing patent processing timeframes.
- Operated a mature activity based costing system (ABC) that captures costs of core mission activities and both direct and indirect costs for the Agency. Managers use data from the ABC system to analyze the cost of operations when making decisions regarding improving processes, setting fees, or developing budget requirements.

### **Upcoming Events:**

- The USPTO will continue its efforts to meet all reporting requirements, comply with all financial reporting rules, and earn an unqualified audit opinion with no material weaknesses. Financial Systems will continue to be maintained at the highest standards and integrated into the daily operations.

### **Expanded E-Government:**

#### **Progress:**

- Continued support of the Patent Electronic Filing System (EFS)-Web (the electronic patent document filing system launched in 2006) which provides users a simple, fast, and secure method for submitting initial and follow-on patent applications over the Internet.
- Continued development of the new PFW system to pro-actively support the Patent organization as it faces the issues of increased filings, the need for remote access, and significant, fast paced changes in the examined technologies.
- Continued to provide customers the ability to submit trademark applications and other trademark forms electronically over the Internet through TEAS.
- Continued to expand the Board of Patent Appeals and Interferences (BPAI) and TTAB electronic processing systems.
- Continued to enhance the electronic business center (available at the USPTO Web site <http://www.uspto.gov>) which provides citizens with online services such as ability to pay fees, obtain historical patent and trademark information, file applications and correspondence for

pending applications, maintain patents and registered marks, view patent and trademark documents, and locate registered patent attorneys or agents.

### Upcoming Events:

- The USPTO will select a service provider to begin the roll out of the Human Resource Line of Business, which will improve online human resource services and capabilities.
- The USPTO will continue planning for the Financial Line of Business.
- The USPTO will continue to: improve the security, availability, and quality of IT systems and services, while reducing their complexity and cost; support business area needs; provide internal on-line tools (re: consistency and quality of searching and exam); provide electronic file management and workflow; develop interactive on-line electronic filing capabilities; upgrade e-tools; help move to fully electronic records and eliminate the need to collect and store paper records; and continue to improve overall data quality.

### **Budget and Performance Integration**

Since 1999, the USPTO has developed an annual corporate plan that links the annual performance plan and budget request so that resource requirements for continuing programs and new initiatives are aligned with outputs and performance goals.

### Progress:

- Introduced the *2007-2012 Strategic Plan* in concert with the FY 2008 budget request. This is a multi-year plan that provides USPTO employees, stakeholders and the public with a long-term vision of Agency goals, and planned outcomes.
- Ensured that the annual performance plan is linked to the Agency's FY 2009 budget request and reflects the priorities and goals found in the *2007-2012 Strategic Plan*. The annual budget request is a consequence of USPTO managers integrating their funding requirements to the *2007-2012 Strategic Plan*, and establishing measurable objectives and milestones for each goal. The annual integrated budget/performance plan is the most effective and efficient way of establishing accountability by making sure that performance measures are consistent with the views of the Administration and Congress.
- Refined the Agency's performance goals for better integration of budgetary resources with both enterprise-wide strategic goals and individual unit performance targets.
- Utilized the Program Assessment and Rating Tool (PART), and other assessment evaluations and modeling techniques to effectively enhance delivery of services and achieve improved program results. The Agency routinely monitors program performance targets to ensure achievement of actual results vis-a-vis performance goals. Organizational goals and crosscutting performance measures are also included in senior executive members' performance appraisal plans to ensure alignment with Agency mission, strategic goals and objectives.

### Upcoming Events:

- Improve efficiency measures and their targets to provide more meaningful information for decision making.

## GLOSSARY OF ACRONYMS

ABC	Activity Based Cost
BPAI	Board of Patent Appeals and Interferences
CBO	Congressional Budget Office
CEAR	Certificate of Excellence in Accountability Reporting
CFS	Core Financial System
CPRP	Community Patent Review Project
CSRS	Civil Service Retirement System
CSSC	Competitive Sourcing Steering Committee
EPO	European Patent Office
FEHB	Federal Employees Health Benefit Program
FAIR	Federal Activities Inventory Reform
FAST	First Action System for Trademarks
FTA	Free Trade Agreement
FY	Fiscal Year
GDP	Gross Domestic Product
GS	General Schedule
GIPA	Global Intellectual Property Rights Academy
IFW	Image File Wrapper
IP	Intellectual Property
IT	Information Technology
JPO	Japan Patent Office
OCIO	Office of Chief Information Officer
OMB	Office of Management and Budget
OPM	Office of Personnel Management
PALM	Patent Application Location Monitoring system
PAP	Performance Appraisal Plan
PART	Program Assessment Rating Tool
PCT	Patent Cooperation Treaty
PFW	Patent File Wrapper
PHP	Patent Hoteling Program
PTA	Patent Training Academy
R&D	Research and Development
RAM	Revenue Accounting and Management
SPEs	Supervisory Patent Examiners
TAC	Trademark Assistance Center
TEAS-Plus	Trademark Electronic Application System-Plus
TRIPs	Trade-Related Aspects of Intellectual Property Rights
TTAB	Trademark Trial and Appeal Board
TWAH	Trademark Work at Home
UPR	Utility, Plant and Reissue
USPTO	United States Patent and Trademark Office
USTR	U.S. Trade Representative
VC	Venture Capital