Patent Public Advisory Committee
Quarterly Meeting

USPTO Budget Update

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Acting Chief Financial Officer

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Agenda

• Budget Background
• FY 2017 Status
• FY 2018 Budget
• FY 2019 Budget
• Fee Review/Fee Rulemaking
Budget Background
Demand-Driven

• The size of USPTO’s budget and workforce is ultimately determined by customer demand for our products and services.

• Demand is influenced by a number of factors
  – Global and domestic economic activity
  – Policies and legislation
  – Litigation outcomes
  – Process efficiencies
  – Fee rates charged by the USPTO.

Annual workloads have grown significantly over the last 30 years. Both patent and trademark filings have tripled in just 20 years. USPTO staffing levels have generally mirrored workload trends.
The American Inventors Protection Act of 1999 mandated that the USPTO adopt several key tenets of a performance-based organization. The Act requires that the USPTO operate within a performance-based process that includes quantitative and qualitative measures and standards for evaluating cost-effectiveness.

### Frequently Referenced Performance Measures

<table>
<thead>
<tr>
<th>Measure</th>
<th>Description</th>
<th>Goal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Patent Pendency</td>
<td>Time from filing to action. Patents track both pendency to 1st action and total pendency</td>
<td>10 months to 1st action; 20 months total</td>
</tr>
<tr>
<td>Patent Inventory</td>
<td>The number of applications awaiting examiner action</td>
<td>10 months inventory</td>
</tr>
</tbody>
</table>
Budget Background

Production-Oriented

Production-Based Performance

Most USPTO employees work under strict **production-based performance management systems**.

- Performance measurement compares the amount/quality of work produced in a given period to the amount of work expected to have been produced.

- Employees under production systems include patent examiners, trademark attorneys, legal instrument examiners within the patent and trademark business units, and appeal board judges and paralegals.

Changes in performance standards and other model assumptions can impact the USPTO’s ability to meet its performance targets.

Production Models

Employee performance requirements feed into complex **production models**

- Production models are used to determine the level of required budgetary resources needed for production staff compensation, workload driven contracts, examination support and related activities.

- Elements include assumptions about incoming workload, productivity of on-board staff and new hires, attrition rates, training requirements, and process changes/efficiencies.
USPTO’s funding is derived from patent and trademark user fee collections.

Fees are set such that costs are recovered at the aggregate level for Patents and Trademarks.

Patent fees cannot be used to support the trademark process, and vice versa.
Budget Background
Funding Model Overview

USPTO is a business-like organization...

• 100% user fee funded; $0 taxpayer support; $0 contribution to the federal deficit
• Demand for goods and services drives both revenue and workload
• Multi-year, performance-based budgets
• Ability to set fees to recover costs of operations*
• Use of private sector business tools, such as operating reserve

...operating in the Government environment.

• Require congressional authorization to spend fees collected.
• Subject to certain government-wide spending policies and restrictions
• Fee structure incorporates public policy considerations (e.g., access, equity)

* USPTO’s statutory authority to set its own fee rates expires in September 2018.
## Budget Background
### Operating Reserve vs PTFRF

<table>
<thead>
<tr>
<th>Operating Reserve (OR)</th>
<th>PTFRF</th>
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<tbody>
<tr>
<td><strong>Definition</strong></td>
<td></td>
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<tr>
<td>The portion of fee collections that have been appropriated (no-year) but not spent and are carried over from the prior year.</td>
<td>A separate Treasury account created by the American Invents Act, into which all fees collected in excess of USPTO’s appropriated spending authority are deposited.</td>
</tr>
<tr>
<td><strong>Availability</strong></td>
<td></td>
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<tr>
<td>Fees in the ORs were appropriated in prior years, and remain available until spent. The ORs are designated as available for use to sustain operations in the unanticipated event of significant variances of fee collections from forecasted estimates and/or increases in operating expenses.</td>
<td>USPTO can access funds deposited into the Fee Reserve Fund via a reprogramming action. Requires inclusion of language allowing reprogramming of PTFRF deposits in Appropriations Act. Does not require an act of Congress; only requires approval of the Committees.</td>
</tr>
<tr>
<td><strong>Targets</strong></td>
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</table>
| Current Patent OR Targets:  
  • Minimum: $300M (Minimum)  
  • Optimal: 3 months operating costs | Not Applicable |
Budget Background

PPAC and USPTO Budget Formulation

• The PPAC plays an important role in USPTO budget planning.

• USPTO receives PPAC’s feedback on stakeholder concerns and program priorities through various channels throughout the year, including:
  – PPAC Annual Report
  – Quarterly public/subcommittee meetings
  – Fee setting hearings and reports
  – Comments on draft Strategic Plans.

• These data points help inform:
  – Internal business unit (BU) discussions as they formulate business cases and budget proposals;
  – Deliberations of the USPTO Financial Advisory Board, which reviews BU proposals and the overall financial outlook, and makes recommendations to the Under Secretary; and
  – Final decisions by the Under Secretary
FY 2017 Status

• FY 2017 Appropriation Status
• The federal hiring freeze ended on April 12, 2017
  – USPTO is evaluating hiring needs in conjunction with our long term strategic plans
FY 2017 Status (continued)

• As of March 31, 2017
  – Planned fee collections: $1,543.4M
    • Patents: $1,394.8M Trademarks: $148.6M
  – Year to date fee collections: $1,537.5M
    • Patents: $1,391.7M, Trademarks: $145.7M
  – Year to date spending: $1,801.5M
    • Patents: $1,622.4M, Trademarks: $179.1M
FY 2017 Status (continued)

- As of March 31, 2017
  - End of year projected fee collections of $3,164.4M
    - Patents: $2,858.2M, Trademarks: $306.2M
  - End of year projected spending of $3,264.3M
    - Patents: $2,951.9M, Trademarks: $312.4M
  - End of year projected operating reserve of $390.6M
    - Patents: $284.3M, Trademarks: $106.2M
FY 2018 Budget

- PPAC, DoC, and OMB received the budget for final review in April
- USPTO anticipates the FY 2018 President’s budget will be released in mid to late May 2017
FY 2019 Budget

• USPTO expects to receive guidance on formulating the FY 2019 OMB in the May/June timeframe
  – The current plan is to submit the FY 2019 Budget to OMB for initial review in September 2017
    • PPAC will be provided a summary of this information to review
Fee Review/Fee Rulemaking

• USPTO is in the process of finalizing its rulemaking package for the fee setting process that was initiated in FY 2016
• USPTO continues to work on the FY 2017 biennial fee review as required by Chief Financial Officers (CFO) Act of 1990 (Public Law 101 576)
• Absent Congressional action, the USPTO’s fee setting authority under section 10 of the AIA will expire on September 16, 2018
Questions and Comments

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