

## **Patent Business**

The mission of the Patents Business is to help customers get patents. We accomplish this mission 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. In the course of examining patent applications, examiners make determinations on patentability, prepare answers to briefs on applications appealed, make holdings of abandonments, recommend institution of interference proceedings to determine priority of inventorship, and act on other post-interference issues in accordance with the provisions of 35 U.S.C. and 37 C.F.R.

The Patent Business is comprised of the organizations reporting to the Commissioner for Patents, including Patent Operations (the Technology Centers), Patent Examination Policy, and Patent Resources and Planning. The Patent Business also includes other entities that directly or indirectly support the patent mission and are, therefore, determined by Activity-Based Costing (ABC) to be patent fee-funded. These entities include the Board of Patent Appeals and Interferences, Office of Patent Quality Review, Office of Enrollment and Discipline, Office of Independent Inventor Programs, Patent Public Advisory Committee, and the Chief Information Officer (for patent systems development and operation, and dissemination of patent information). Other USPTO organizations, such as the Chief Financial/Administrative Officer, External Affairs, General Counsel, Quality Management and Training, and Chief Information Officer also support the Patents Business indirectly and a proportionate share of their annual costs is funded by patent fees.

A United States patent confers on the owner of innovative technology the right to exclude others from importing, making, using, offering for sale or selling the patented invention in the United States in exchange for a full and complete disclosure of the invention. A patent represents a valuable asset and, as such, it attracts the necessary capital to establish, expand, and maintain U.S. industries and increase employment not only in the United States, but also around the world.

### **Patent Business Environment**

Demand for Products and Services -- We have experienced a rapid growth in application filings in the last decade of the twentieth century. The first seven years of the past decade exhibited a moderate growth in patent application filings, a growth rate reasonably consistent with the real growth of the economy. However, the last three years have produced very much higher growth rates. The volume of patent applications took the first seven years to grow by a third, but only needed the most recent three years to expand by a third again. This budget request assumes that patent application filings will increase by 12 percent in fiscal year 2002 over our fiscal year 2001 budget estimate (excluding estimated refilings).

There are a number of factors influencing this growth rate. Many high-tech businesses, such as computer storage, telecommunications, software, e-business, pharmaceutical and biotechnology companies rely heavily on intellectual property for protection of their inventions, to remain competitive in a free market economy. Intellectual property systems have been strengthened worldwide and the knowledge-based frontiers seeking patent protection have expanded to new arenas including biogenetics, computer software, and business methods. Our rate of growth beyond fiscal year 2002 will still be at such a rate that it outstrips our ability to merely increase staff to meet the workload demands. To succeed will require Office investments in technology and systems, redesign of our business processes and practices, and increased emphasis and reliance on E-Government.

The American Inventor's Protection Act (AIPA) of 1999 - This is the most significant change to the patent system since the 1952 Patent Act. The AIPA changed the procedures available for reexamination of patents. It retained the existing ex parte reexamination procedure. In addition, it provided for an optional inter partes reexamination procedure that expanded third party participation rights by permitting the third party requester to comment on each patent owner response to an Office Action on the merits, as well as to appeal to the Board of Patent Appeals and Interferences, while prescribing specific estoppel provisions applicable to the third party requester.

A new concept also introduced by the AIPA was the "14-4-4-36" timeliness standard. This provided that issuance of a first Office Action on the merits of the claimed invention more than 14 months from the filing date, or issuance of a patent more than 36 months from the filing date, will result in a commensurate adjustment of patent term to the diligent applicant. Patent term also will be adjusted when a response to an applicant's reply to a rejection or appeal is not mailed within four months of receipt by the Office, when action is not taken on an application within four months of a decision of the Board of Patent Appeals and Interferences or the Federal Courts, or when a patent issues more than four months from the payment of the issue fee.

Finally, the AIPA provides for the publication of patent applications 18 months after filing unless the applicant requests otherwise upon filing and certifies that the invention has not and will not be the subject of an application filed in a foreign country. Early publication of patent applications is of great benefit to the public since it provides advance notice of upcoming technological trends. In addition, provisional rights are available to the patent applicants to obtain reasonable royalties if others make, use, sell or import the invention during the period between early publication and grant of patent rights.

The impact of the AIPA on the Patent Business is profound. It puts demands on the Patent organization to process incoming work in a quality manner while guaranteeing even more stringent processing times and turnarounds. Under the "14-4-4-36" provisions, Patents must provide an adequate term of patent protection for inventors without punishing them for processing delays within the Office. The timely processing of patent applications has significant economic impacts. For example, for each additional month above the AIPA mandated standards that it takes to grant a patent on a pharmaceutical product, that manufacturer is able to obtain a commensurate adjustment of patent protection. There may be an additional burden on the public resulting from patent term extending beyond 20 years.

Further, the new early publication requirements create significant financial burdens on the Office because of the time lag between when the publication costs are incurred and when the publication fees are actually collected (i.e., at the time the application is allowed).

### **Workload Indicators**

The following table shows key Patent workload indicators from fiscal years 1996 through 2002:

**Patent Key Workload Indicators**

<b>Workload Indicator</b>	<b>FY 1996 Actual</b>	<b>FY 1997 Actual</b>	<b>FY 1998 Actual</b>	<b>FY 1999 Actual</b>	<b>FY 2000 Actual</b>	<b>FY 2001 Estimate</b>	<b>FY 2002 Request</b>
<b>Utility, Plant and Reissue (UPR) Patent Applications Filed</b>	191,116	220,773	240,090	261,041	293,244	328,400 <sup>1</sup>	367,800
<b>Percentage Increase of Applications Filed</b>	...	16	9	9	12	12	12
<b>PCT Chapter I Applications Filed</b>	20,106	22,767	27,138	30,305	35,000	40,300	45,200
<b>PCT Chapter II Applications Filed</b>	9,194	11,577	13,570	14,151	16,800	19,900	22,000
<b>UPR Disposals</b>	180,196	196,688	203,227	219,556	234,344	226,700	223,500
<b>Patents Granted</b>	105,529	112,646	140,159	143,686	165,504	166,100	166,500
<b>Average Pendency to First Office Action (months)</b>	10.5	11.0	12.6	13.8	13.6	14.1	17.4
<b>Average Pendency to Issue/Abandonment (months)</b>	20.8	22.2	23.8	25.0	25.0	26.2	26.7
<b>EOY pending applications awaiting examiner action</b>	104,081	158,776	208,313	220,700	256,520	367,900	511,500

<sup>1</sup> An additional estimate of 6,600 refilings may occur in fiscal year 2001 due to the passage of the AIPA, resulting in 335,00 applications filed.

**Fiscal Year 2002 Budget Request**

The following chart identifies the distribution of Patent fee income to the patent processing operations and other USPTO organizations that directly or indirectly support the Patent Business, computed in accordance with our activity-based cost accounting model:

**Fiscal Year 2002 Patent Budget**  
(\$ in Thousands)

Major Function	FY 2001 Estimated Actual		FY 2002 Base		FY 2002 Request		FY 2002 Change Compared to FY 2001 Estimated Actual	
	FTE	Dollars	FTE	Dollars	FTE	Dollars	FTE	Dollars
Patent Process	5,480	581,298	4,964	599,010	4,964	649,259	-516	67,961
Corporate Support - Resource Management	227	137,790	228	147,396	228	147,396	1	9,606
Corporate Support - Information Technology	437	163,605	437	163,510	437	163,510	0	-95
<b>Total</b>	<b>6,144</b>	<b>882,693</b>	<b>5,629</b>	<b>909,916</b>	<b>5,629</b>	<b>960,165</b>	<b>-515</b>	<b>77,472</b>

The Patent business requires a budget of \$960,165,000 and 5,629 FTE. This represents an increase of \$77,472,000 and a decrease of 515 FTE compared to the fiscal year 2001 estimated actual. This additional funding includes inflation for fixed operational costs. It also includes funds for a quality initiative to stem turnover and retain highly trained and skilled patent examiners and to implement AIPA, as described below.

**Business Goals and Objectives**

The Commissioner for Patents has established the following five goals.<sup>2</sup> Fiscal year 2002 resources and requested funds are committed to activities and initiatives that support these goals:

- Enhance the Quality of Our Products
- Improve the Quality of Our Services

<sup>2</sup> For budget presentation purposes, these five goals have been consolidated into three: Enhance the quality of our products and services, Transition to E-government, and Optimize processing time. These three goals have been endorsed by the legislatively-mandated Patent Public Advisory Committee.

- Optimize Our Processing Time
- Enhance Our Employees' Well-Being
- Integrate Our Business Practices into Electronic Government

Consistent with the USPTO Strategic Plan, following are the performance measures and outcomes upon which the budget request is based and which the USPTO will deliver in fiscal year 2002:

**Enhance the Quality of Products and Services**

**Performance Results at the Fiscal Year 2002 Requested Level of Funding**

Performance Measure	FY 2000 Actual	FY 2001 Target	FY 2002 Request
Percent of allowed applications with a material or significant defect	6.6	5.5	5.5
Percent of allowed applications where a significant question relating to quality of the examination process was raised	7.7	7.0	7.0
Percent customers satisfied overall	64	67	64
Rank in survey results of employee satisfaction in government	N/A	Top 40%	Top 40%

For fiscal year 2002, the USPTO is requesting \$32,534,000 for the full-year cost of a special pay program for patent professionals. In 2001, in response to recruitment and retention issues, the USPTO submitted a request to the Office of Personnel Management to increase the special salary rates for patent professional employees. While money alone will not necessarily cure all recruitment and retention issues, such salary adjustments allow the agency to be competitive in an era when competition for limited resources is particularly acute. From the USPTO's experience with establishing special salary rates for our complex biotechnology patent examiners, our ability to attract and retain scientists and engineers in this highly complex field of study is enhanced. As a result of implementing special salary pay rates, the USPTO has been able to attract and retain top quality talent without the loss of expertise in highly complex fields. Moreover, the quality of patent examination will improve by having a stable and more experienced workforce and the net result is a reduction in overall recruitment and retention costs. The special salary rate program allows the agency to at least compete with our civilian counterparts for the very limited pool of candidates seeking to work in the Federal Government.

Further, under a pending agreement with the patent examiners' union, in return for increased salary rates, U. S. paper search files will be reduced by 75 percent over three years.

For fiscal year 2002, the USPTO is requesting \$17,715,000 to implement the American Inventors Protection Act of 1999 (AIPA). These funds will be used to publish patent applications 18 months after filing unless the applicant requests otherwise upon filing and certifies that the invention has not and will not be subject of an application filed in a foreign country.

**Transition to E-Government**

**Performance Results at the Fiscal Year 2002 Requested Level of Funding**

<b>Performance Measure</b>	<b>FY 2000 Actual</b>	<b>FY 2001 Target</b>	<b>FY 2002 Request</b>
Percent annual business return on e-government initiatives	N/A	10	10
Percent of patent applications filed electronically	N/A	2	2
Percent of annual growth of external customers using USPTO e-government systems	N/A	10	5
Percent of employees relying on USPTO e-government environment to perform their work	N/A	10	10

Optimize Processing Time

**Performance Results at the Fiscal Year 2002 Requested Level of Funding**

<b>Performance Measure</b>	<b>FY 2000 Actual</b>	<b>FY 2001 Target</b>	<b>FY 2002 Request</b>
Percent applications receiving first office actions within 14 months of filing while factoring in term reductions	81.2	78	70
Percent applications receiving actions after an applicant's amendment within 4 months	98.3	98	98
Percent applications receiving actions after a Board decision within 4 months	76.9	84	84
Percent applications granted within 4 months after issue fee payment	89.1	87	87
Percent patents granted that do not qualify for term extension for exceeding 36 months	N/A	86	81