

Trademark Business

The mission of the Trademarks Business is to apply the provisions of the Trademark Act of 1946 in the examination and registration of trademarks. Federal registration of a trademark on the principal register is *prima facie* evidence of the validity of the registration, ownership of the mark by the registrant, and the registrant's exclusive right to use the registered mark in commerce in connection with the goods or services listed in the registration. Federal registration is not required in order to use a mark in the United States. However, Federal registration of a mark permits enforcement of intellectual property rights in Federal courts for claims involving infringement, unfair competition, and counterfeiting, and also provides a basis for obtaining protection for the mark in other countries under various treaties. This valuable intellectual property right provides protection for the owner's business investment in goods and services sold under the registered mark.

The Trademark Business is comprised of the organizations reporting to the Commissioner for Trademarks, including Trademark Operations (i.e., the Law Offices and Trademark Services) and Trademark Examination Policy. The Trademark Business also includes other entities that directly or indirectly support the Trademark mission and are, therefore, determined by Activity-Based Costing (ABC) to be trademark fee-funded. These entities include the Trademark Trial and Appeal Board, Office of Trademark Quality Review, Trademark Public Advisory Committee, and Chief Information Officer (for trademark systems development and operation). Other USPTO organizations, such as the Chief Financial/Administrative Officer, External Affairs, General Counsel, Quality Management and Training, and Chief Information Officer also support Trademarks indirectly and a proportionate share of their annual costs is funded by trademark fees.

The core process of the Trademark Business is the examination of an application for trademark registration and ultimate issuance of certificates. In the course of examining an application, a Trademark attorney makes a determination on the registrability of a trademark, prepares actions on objectionable applications, approves a mark for publication in the *Official Gazette*, and in Intent-to-Use (ITU) cases approves the applicant's Statement of Use for registration following a second examination.

Trademark Business Environment

Demand for Trademark products and services experienced significant growth during the last decade. Given the continued strength of the economy and focus on e-business, we expect that trademark application filings will increase by 20 percent in fiscal year 2002 over the fiscal year 2001 budget estimate. Trademark applications began their current growth surge in 1993 and have averaged slightly more than 12 percent growth over the past decade. In 1999 and 2000, however, trademark application filings rose 27 percent annually, more than doubling the trend rate. The USPTO is seeing the effects of the recent economic downturn, particularly on a temporary reduction in the

number of incoming trademark applications. However, it is still too early to determine if this downturn is an aberration or indicative of longer term expectations which would also impact our fee collection projections.

Workload Indicators

Following are the key Trademark workload indicators from fiscal years 1996 through 2002:

Trademark Key Workload Indicators

Workload Indicator	FY1996 Actual	FY1997 Actual	FY1998 Actual	FY1999 Actual	FY2000 Actual	FY2001 Estimate	FY 2002 Request
Applications Received - classes	200,640	224,355	232,384	295,165	375,428	450,000	540,000
Percentage Increase of Applications Received	14	12	4	27	27	20	20
Statements of Use Filed	25,388	31,784	37,060	34,367	36,119	62,500	73,900
Registrations Issued - certificates	78,674	97,294	89,634	87,774	106,383	106,000	106,000
Registrations Issued - classes	91,339	112,509	106,279	104,324	127,794	127,000	127,000
First Action Pendency - months	5.9	6.4	7.2	4.6	5.7	6.6	8.0
Registration/Disposal Pendency - months	16.5	16.9	17.8	18.9	17.3	19.0	20.0

Fiscal Year 2002 Budget Request

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

Fiscal Year 2002 Trademark 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 ⁶	Dollars
Trademark Process	982	73,281	795	74,080	795	80,280	-187	6,999
Corporate Support - Resource Management	49	26,031	49	27,578	49	27,578	0	1,547
Corporate Support - Information Technology	98	33,218	98	33,720	98	33,720	0	502
Total	1,129	132,530	942	135,378	942	141,578	-187	9,048

The Trademark business requires a budget of \$141,578,000 and 942 FTE. This represents an increase of \$9,048,000 and a decrease of 187 FTE compared to the fiscal year 2001 estimated actual. This additional funding includes inflation for fixed operational costs. It also includes funds to support the production incentive as described below.

⁶ The USPTO is adjusting its Full-Time Equivalent's (FTE's) and Full-Time Positions (FTP's) in an effort to realign FTE to FTP in fiscal years 2001, 2002, and 2003 to actual needs. The adjustments are for unfilled positions that the USPTO does not now plan to hire and for which no funds have been directed to cover personnel compensation and benefits. It does not impact on any personnel currently employed in the USPTO. This adjustment represents our FTE's more accurately in relation to our planned and actual FTP's.

Business Goals and Objectives

The Commissioner for Trademarks has established the following five goals:⁷ Fiscal year 2002 resources and requested funds are committed to activities and initiatives that support these goals:

- Enhance the Quality of Our Products
- Enhance the Quality of Our Services
- Minimize Processing Time
- Enhance Employee Satisfaction
- Integrate Electronic Government into Our Business Practices

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:

² 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 Minimize processing time. These three goals have been endorsed by the legislatively-mandated Trademark Public Advisory Committee.

Enhance the Quality of Products and Services

Performance Results at the Requested Level of Funding

Performance Measure	FY 2000 Actual	FY 2001 Target	FY 2002 Request
Percent error rate for errors that could affect the registrability of a mark.	3.4	3.0	3.5
Percentage of customers reporting satisfaction with: <ul style="list-style-type: none"> • Clear written communication • Correct information in the OG. 	77 76	77 77	77 77
Percentage of customers satisfied overall.	65	65	60
Percentage of customers satisfied with the Office returning phone calls in one day.	65	65	65
Percentage of customers satisfied with the delivery of filing receipts. Correct filing receipts mailed in:			
1 day - electronic filings	100	100	100
14 days - paper filings	27	85	65
Rank in survey results of employee satisfaction as measured against other government agencies.	N/A	Top 20%	Top 20%

Transition to E-Government

Performance Results at the Requested Level of Funding

Performance Measure	FY 2000 Actual	FY 2001 Target	FY 2002 Request
Percent of trademark applications filed electronically	14.9	30	30
Percent customers communicating electronically in all aspects of correspondence	N/A	30	30

Minimize Processing Time

Performance Results at the Requested Level of Funding

Performance Measure	FY 2000 Actual	FY 2001 Target	FY 2002 Request
Average time to examiner's first action (months)	5.7	6.6	8.0
Average time to disposal or registrations (months)	17.3	19.0	20.0

For fiscal year 2002, the USPTO is requesting \$6,200,000 for an Examiner Incentive Award. This performance incentive award is included in the agreement between the National Treasury Employees Union (NTEU) chapter 245 and the USPTO that was ratified in December 2000.

The addition of this productivity award program provides Trademark Examiners with the ability to increase their take-home pay while the USPTO reaps benefits in productivity and quality. With the productivity award, Trademark Examiners have the opportunity to earn up to \$20,000 in performance awards for taking 3,300 actions on trademark applications. Awards will be determined and paid twice yearly based on a scale that assigns award amounts of up to \$10,000 for examiners who produce up to 1,650 actions in a six-month period. Examiners must be rated outstanding in production and at least fully successful overall to be eligible for the award. Awards based on quality will continue to be paid on an annual performance appraisal cycle.