

Fiscal Year 2006 Performance Plan¹

MISSION STATEMENT

To ensure that the Intellectual Property system contributes to a strong global economy, encourages investment in innovation, and fosters entrepreneurial spirit.

The USPTO is committed

- To promote the progress of science and the useful arts by securing, for limited times to inventors, the exclusive rights to their respective discoveries (Article 1, Section 8 of the United States Constitution).
- To provide businesses protection of ownership of goods and services and to safeguard consumers against confusion and deception in the marketplace (Commerce Clause of the United States Constitution).

The USPTO has three performance goals, tracked through 13 measures that focus on results achieved or degree of progress made from one fiscal year to the next. Additionally, the USPTO measures the efficiency and labor productivity of its two business lines, Patents and Trademarks.

All three USPTO goals support

DEPARTMENT OF COMMERCE STRATEGIC GOAL 2

To foster Science and technological leadership by protecting intellectual property, enhancing technical standards, and advancing measurement science.

¹ The Government Performance and Results Act (GPRA) of 1993 requires agencies to prepare annual performance plans (APP). The USPTO's planning and budget formulation process is performance-driven. Although the budget request itself contains the APP elements, this document serves to summarize all of our established performance metrics under each of our three performance goals.

USPTO Performance Goal 1: Improve the quality of patent products and services and optimize patent processing time.

Measure 1 - 1: Patent Allowance Error Rate

This measure assesses product quality as measured by the internal quality review processes. The quality of patent examination decisions will be measured by the reopening rate or similar internal quality measures.

PATENTS	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Target	5.5%	5.0%	4.0%	4.0%	4.0%	3.75%
Actual	5.4%	4.2%	4.4%	5.3%		

Measure 1 - 2: Patent In-process Examination Compliance Rate

This measure assesses patent examination process quality by the internal quality review of office actions from first action on the merits to issue or abandonment. The quality of patent examination decisions will be measured by the ratio of office actions that do not include a deficiency that has a significant impact on the ability of the applicant to advance the prosecution on the merits of the application, to the total number of office actions reviewed. The results of these reviews will be used as part of a continuous quality improvement program to identify problem areas and determine appropriate training needs and other corrective actions.

Fiscal year 2004 data was used to establish the baseline and develop the long-term target and annual goals.

PATENTS	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Target	N/A	N/A	N/A	Baseline	84%	85%
Actual	N/A	N/A	N/A	82%		

Measure 1 - 3: Average First Action Pendency

This measure determines the timeliness of first Office Actions on patent applications. It measures the time from the application filing date to the date of mailing the first Office Actions.

PATENTS	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
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* At the time this target was set, USPTO projected receipt of 371,130 UPR application filings in fiscal year 2005. Based on fiscal year 2004 actuals, the USPTO is now projecting to receive 375,100 UPR applications in fiscal year 2005. Additionally, fiscal year 2004 examiner attrition was higher than expected; therefore, production outputs in fiscal year 2005 have been revised to align with actual production achieved in fiscal year 2004. Since both filings (inputs) and production outputs are key variables in this performance target, the fiscal year 2005 first action pendency target will not be met. Assuming current input and output estimates prove true, the agency should achieve first action pendency of 21.3 months by end of fiscal year 2005.

Target (months)	13.9	14.7	18.4	20.2	20.7*	21.4
Actual (months)	14.4	16.7	18.3	20.2		

Measure 1 - 4: Average Total Pendency

This measure identifies the timeliness related to issuance of the patent or abandonment of the application. It measures the average time from the application filing date to the date of issue or abandonment.

PATENTS	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Target (months)	26.2	26.5	27.7	29.8	31.0	31.3
Actual (months)	24.7	24.0	26.7	27.6		

USPTO Performance Goal 2: Improve the quality of trademark products and services and optimize patent processing time.

Measure 2 - 1: Trademark Final Action Deficiency Rate

This measure assesses examination quality as measured by the internal quality review of final Office Actions. The quality of trademark examination decisions will be measured by the deficiency rate captured by the inappropriate statutory bases for which the examiner refuses marks for registration in the final Office Action. Prior to fiscal year 2003, the reported deficiency error rate did not include inappropriate refusals made on the basis of 15 USC § 1052(d)— Likelihood of Confusion. Fiscal year 2003 actual and targets for fiscal years 2004 and 2005 have incorporated this type of error to ensure that all statutory bases are covered.

TRADEMARKS	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Target	6.0%	5.0%	Baseline	5.0%	5.0%	4.8%
Actual	3.1%	4.3%	5.3%	5.8%		

Measure 2 - 2: Trademark In-Process Review Deficiency Rate

This is a new measure that will assess product quality measured by the in-process quality review of first Office Actions. The quality of trademark examination decisions will be measured by the deficiency rate of examiner work product as determined by inappropriate statutory bases for which the examiner refuses marks for registration in the first Office Action. The results of these reviews will be used as part of a continuous quality improvement program to identify inappropriate statutory bases and determine training needs and other corrective actions. Fiscal year 2004 data will be used to establish the baseline and develop long-term target and annual goals.

TRADEMARKS	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Target	N/A	N/A	N/A	8.3%	8.3%	8.0%
Actual	N/A	N/A	N/A	7.9%		

Measure 2 - 3: Average First Action Pendency

This measure determines the timeliness of Trademark first Office Actions. It measures the time from the application filing date to the date of mailing the first office actions. Although the Trademark organization met its production targets, it did not meet its first action pendency target. New application filings were more than 8.5 percent above the prior year and 6.0 percent above plan. Process changes adopted in the fourth quarter that will make the operation more efficient in the long run created a short-term negative impact by increasing first action pendency.

TRADEMARKS	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Target (months)	6.6	3.0	3.0	5.4	5.6*	5.3
Actual (months)	2.7	4.3	5.4	6.6		

Measure 2 - 4: Average Total Pendency

This measure identifies the timeliness related to office disposals. It measures the average time from the application filing date to the date of registration, notice of allowance, or abandonment. Trademarks will meet its 2004 target based on above plan production and office disposals.

TRADEMARKS	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Target (months)	18.0	15.5	15.5	21.6	20.3	18.7
Actual (months)	17.8	19.9	19.8	19.5		

* At the time this target was set, trademark application filings in fiscal year 2004 were projected to be 272,000 and filings in 2005 were projected to be 308,000. The USPTO received 298,489 applications in 2004 and is now projecting to receive 322,000 trademark applications in fiscal year 2005. Since filings are a key variable in this performance target, this end-of-year fiscal year 2005 first action pendency will not be met. Assuming current filing projections prove true, the agency should achieve first action pendency of 6.4 months by the end of fiscal year 2005.

USPTO Performance Goal 3: Create a more flexible organization through transitioning Patent and Trademark operations to an e-government environment and IP development worldwide.

Measure 3 - 1: Patent Applications Filed Electronically

This measure indicates USPTO’s support of, and applicants’ willingness to operate in, an e-government environment and will identify the percent of basic applications filed electronically. USPTO did not meet this target in fiscal year 2004. There is some reluctance on the part of the patent applicants to file electronically, because: 1) applicants are familiar with the paper-based systems already in place; 2) they have not invested the time and resources necessary to upgrade their internal processes to enable them to file electronically; and 3) they would like to receive some incentive (in the form of a fee reduction) for filing electronically. The USPTO is instituting an aggressive outreach program to hopefully see significant growth in the number of patent applications filed electronically over the next few years.

PATENTS	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Target	N/A	N/A	2.0%	2.0%	4.0%	10.0%
Actual	N/A	N/A	1.3%	1.5%		

Measure 3 - 2: Patent Applications Managed Electronically

This measure will indicate the USPTO’s progress in moving toward operating in a fully electronic environment. The USPTO implemented a Patent IFW system that enhanced EPO’s system in June 2003 and will deliver an operational end-to-end electronic processing pipeline for all examined applications in image format by the end of fiscal year 2004, including electronic capture of all incoming and outgoing paper documents. The electronic pipeline capability will be delivered in phases with the goal of total integration with legacy systems and full text-based processing of all patent applications.

USPTO successfully deployed the Patent IFW system by October 1, 2004, enabling it to exceed the fiscal year 2004 target to electronically manage 70 percent of patent applications. All incoming and outgoing paper documents are captured electronically in the system and the remaining pending paper applications were scanned into the system by the end of the first quarter of fiscal year 2005, with the electronic version of an application now considered the official file.

PATENTS	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Target	N/A	N/A	N/A	70.0%	90.0%	100.0%
Actual	N/A	N/A	N/A	88%		

Measure 3 - 3: Trademark Applications Filed Electronically

This measure indicates the USPTO's support of and applicants' willingness to operate in an e-government environment and will be measured by the percent of initial applications for the registration of trademarks that are filed electronically. In fiscal year 2004, more than 70 percent of the initial applications for registration of a trademark were filed electronically, an increase of more than 20 percent over fiscal year 2003 results. Enhancements were made and the number of forms available increased to make electronic filing more attractive to encourage greater use and acceptance among those who had not yet adopted electronic communications as their preferred way to transact business with the Office.

TRADEMARKS	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Target	30%	50.0%	80.0%	65.0%	75.0%	80.0%
Actual	24%	38.0%	57.5%	73%		

Measure 3 - 4: Trademark Applications Managed Electronically

This measure will indicate the USPTO's progress in moving toward operating in a fully electronic environment. In fiscal year 2005, the USPTO will complete its transition from a paper-based Trademark operation to a fully electronic processing operation with the implementation of an electronic file management system, Trademark Information System (TIS).

Trademarks met its target by electronically capturing 100 percent of the pending application inventory. Trademarks now has a complete text and image file record that includes the initial application, applicant and office correspondence for more than 500,000 pending applications. Examining attorneys have been using the electronic record of the initial application to conduct their first office action since July 2003. In July 2004 second and subsequent actions were added eliminating the need to use paper files to process and examine applications.

TRADEMARKS	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Target	N/A	N/A	N/A	80%	100%	100%
Actual	N/A	N/A	N/A	98%		

Measure 3 - 5: Technical Assistance Activities Completed

This is a new measure and is intended to track the intellectual property technical assistance provided to countries throughout the world by the USPTO, primarily through the Offices of International Relations and Enforcement. The USPTO's technical assistance promotes national and international development of intellectual property systems and advocates improvements in and more cost-effective means of protecting intellectual property rights in the United States and throughout the world. The

measure is expressed in terms of the number of activities conducted and the number of countries receiving technical assistance.

TRADEMARKS	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Target	N/A	N/A	N/A	Baseline	80/75	82/77
Actual	N/A	N/A	N/A	64/63		

USPTO BUSINESS LINE PERFORMANCE MEASURE

Measure: Efficiency

This measure is a relative indicator of the efficiency of the Patent and Trademark Businesses. The measure is calculated by dividing total USPTO expenses associated with the examination and processing of patents and trademarks, respectively (including associated overhead and support expenses) by outputs (production units or disposals, respectively). It should be noted that this measure does not represent the average life cycle cost of a patent since production units are only one measure of USPTO products and services.

For the prior years, actuals will be reported using the actual expenses reported in the Statements of Net Cost and all actual production. For the current and budget years, targets are estimated using the budgetary request in place of actual expenses, and all projected production units. It should be noted that outyear calculations are subject to change, depending upon the level of funding actually authorized and spent. Actual results may fluctuate based upon management decisions to redirect resources.

PATENTS	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Target	N/A	N/A	\$3,444	\$3,502	\$4,706	\$4,824
Actual	\$3,210	\$3,376	\$3,329	\$3,556		

TRADEMARKS	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Target	N/A	N/A	\$683	\$583	\$591	\$564
Actual	\$501	\$487	\$433	\$539		

Measure: Labor Productivity

The labor productivity measure, baselined in fiscal year 2004, is generally defined as production output divided by labor input. It measures the overall effectiveness of labor deployment at the USPTO in terms of patent and trademark production. The measure is in the form of a ratio so that production output relative to labor input can be tracked and analyzed. It is designed to incorporate the widest possible labor input from USPTO employees in all work areas, both directly and indirectly supporting the Patent and Trademark organizations, and from contractor staff on the same basis.

Indirect labor is assigned to either patent and trademark support on the basis of cost accounting distributions. All labor hours include actual work hours, excluding annual leave, sick leave, and holidays. In addition, contractor labor for significant one-time projects, such as space acquisition, are excluded. For the Patent organization, production is measured in terms of production units; for Trademarks, production is measured by disposals. The productivity measure viewed over time serves to provide a helpful insight into changes in the effectiveness of labor deployment throughout the USPTO.

PATENTS	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Target	N/A	N/A	N/A	Baseline	TBD	
Actual	N/A	N/A	N/A			

TRADEMARKS	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Target	N/A	N/A	N/A	Baseline	TBD	
Actual	N/A	N/A	N/A			

PROGRAM ASSESSMENT RATING TOOL (PART)

OMB's PART review, conducted in fiscal year 2003, was limited to Patent and Trademark operations. The assessment found that (a) the Patent program is adequate, but it has improved relative to the prior assessment, and (b) the Trademark program is moderately effective, however performance has declined slightly relative to the prior assessment. In response to the findings in this assessment, the USPTO will (a) continue implementing its strategic plan initiatives to improve pendency, quality, and implementation of e-government, (b) implement the revised trademark model and projections of staffing requirements, and (c) incorporate cost-efficiency targets into performance plans.



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