

STATEMENT OF  
**THE HONORABLE JON W. DUDAS**  
**UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY**  
**AND**  
**DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
  
BEFORE THE  
**SUBCOMMITTEE ON COURTS, THE INTERNET, AND INTELLECTUAL PROPERTY**  
**COMMITTEE ON THE JUDICIARY**  
**United States House of Representatives**  
  
**“USPTO Oversight Hearing”**  
  
**SEPTEMBER 8, 2005**

**Introduction**

Chairman Smith, Ranking Member Berman, and Members of the Subcommittee:

Thank you very much for inviting me to testify today. I commend you for your continued, vigorous oversight of the agency and for holding today’s hearing.

The benefits of our patent system have long been obvious to Americans. The patent system is deeply rooted in our history. Article I, Section 8, Clause 8 of the U.S. Constitution grants Congress the power “to promote the progress of science and the useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.” The need for a statutory system to examine and grant patents was just as obvious. President Washington signed that first patent statute 215 years ago. History has repeatedly affirmed the wisdom of this decision of our Nation’s founders. The tremendous ingenuity of American inventors, coupled with an intellectual property (IP) system that encourages and rewards innovation, has helped propel the growth of our nation from a small agrarian society to the world’s preeminent technological and economic superpower.

The flexibility and strength of our intellectual property system have helped entire industries to flourish. Everyone has benefited from the innovative products encouraged by that system. Today, I would like to discuss a range of issues, including some of the challenges that the USPTO faces on an operational level, as well as our many workforce and human capital successes.

## **USPTO and Enhancing the Patent System**

In recent years, numerous voices have called for patent reform on a number of levels -- USPTO operations and revising our laws and practices. For some time now at the USPTO, we have been considering a variety of internal reforms that will continue to enhance patent quality and address our increasing pendency challenges. It is our responsibility to do everything we can to improve the patent system in the United States - - something you too are doing by holding this hearing - and we must actively educate the world that it is fundamentally the best system.

Having the fundamentally best system is not enough. I am the first to acknowledge that even the best system in the world can and should progress. Today, we are implementing a range of improvements and are building on existing initiatives. The future requires that we work both domestically and with our international counterparts to develop the best patent system – in terms of patent quality and performance - for inventors both here at home and abroad.

Making commitments and keeping them has led to successes throughout the USPTO organization, including the implementation of the President’s Management Agenda and the 21<sup>st</sup> Century Strategic Plan. The USPTO is now better equipped to handle the many important challenges that face our nation and our IP system at home and abroad.

While we have much to be proud about in our system, there is currently talk about whether our patent system should be reformed. In my capacity as the Under Secretary of Commerce for Intellectual Property and the Director of the Office that must examine these applications, I am pleased to work with you on USPTO operational reform and general patent law reform on behalf of the Administration. The support and enactment of the modernized patent and trademark fee schedule last December will help fund our Strategic Plan initiatives.

For the sake of certainty and the ability to undertake much-needed long-term planning, we would ask that Congress permanently extend the patent and trademark fee schedule that was only enacted for FY 2005 and 2006. We hope the reforms we have already undertaken – and the initiatives we are planning – give you confidence to trust us as responsible stewards of the U.S. patent and trademark systems.

### **USPTO – FY05 Reforms**

Earlier this year, the USPTO announced additional initiatives to improve patent quality and efficiency, namely:

- **Increasing transparency;**
- **Improving *ex parte* reexamination; and**
- **Revamping our appeal-brief process to save applicants tens of millions of dollars**

## **A. Improved Transparency**

As a measure to enhance patent quality and public confidence in our office, I have committed the USPTO to provide improved transparency in our operations. The USPTO will continue to report to the public more information, better information, and more meaningful information about our office and its performance. You will see us measure ourselves more often, more intensely, and with more useful data - data that will not only report quality and pendency statistics at the USPTO, but will present a real basis for measuring improvement.

Public PAIR - While implementing electronic tools to assist employees of the USPTO in doing their jobs, the USPTO has also provided Public PAIR - the Patent Application Information Retrieval system - to assist and benefit the public. Public PAIR allows anyone access to the entire file history of an application, including access to images of every paper of record for every published application in our database. With the click of a mouse, Public PAIR provides innovators information that is critical to understanding how a technology is evolving. This will help American industry better target its research and development investments, and be more responsive to the demands of the national and global marketplaces. Its counterpart for unpublished applications - Private PAIR - lets applicants access the entire file history of their applications in our Image File Wrapper (“IFW”) database, saving time for applicants. These systems are truly milestones of achievement for the agency.

Meaningful Metrics - In the past, our pre-grant sampling of allowed patent applications showed an error rate that fluctuated between 3 percent and 7 percent. Our metrics were not as effective as they could have been in helping us evaluate and train our examiners about what went wrong and how to avoid that type of error in the future. Starting with the 21<sup>st</sup> Century Strategic Plan, we re-assessed ourselves; and today, we conduct more general reviews and in-process reviews. We now have more meaningful data from which to calculate quality baselines. We now use that information to identify points of error, and thereby to adjust training and interactions with examiners to improve our processes and our examination.

Until recently, our pendency measures were also not meaningful enough from the perspective of managing an office. Old ways of measuring pendency did not tell much and could be misleading. I have directed that those statistics be supplemented by additional measures to more fully reflect the current state of affairs in the USPTO and to show us specifically how we can improve. Our users will now know more of what we know. Thus, they will know better what they can expect from us, and they will be able to more informatively comment on our system.

Enhanced Review - We now review more work, and we review it in a smarter way. In some areas, we have tripled our number of reviews. We are looking at our error rates more deeply, and dissecting the issues causing errors. We can and are developing specialized training for examiners based on results from in-process reviews of our

examiners' work. And as an enhanced quality measure, we have expanded the “second-pair-of-eyes” review in certain technology areas.

## **B. Improved Reexamination Process**

Many of the issues raised and debated today about patent quality are pertinent to our reexamination system. Without entering the debate on the limitations of *inter partes* reexamination, legislative improvements thereto, or even post-grant review, there is no question that the USPTO can do much to improve the existing reexamination process.

The Problem - As background, we are focused on improving the reexamination process because it is the public's opportunity to say, “The Office got it wrong,” without resorting to costly litigation. An *ex parte* reexamination proceeding is conducted within the USPTO when any person submits evidence of a substantial new question as to the patentability of the subject matter of an issued patent. The statute authorizing reexamination proceedings requires the USPTO to conduct this process with “special dispatch.” Frequently, these proceedings require more than 100 hours of examiner time to complete. Today, a large number of reexamination proceedings have been pending before the USPTO for more than four years without resolution. We are just as dissatisfied with these results as are the stakeholders in the system.

Reexamination proceedings are important to patent owners and to the public as a means of resolving the issue of patentability without resorting to the high-cost option of litigation. In these proceedings, both timeliness and correctness of the decision are important to all parties to provide certainty. Therefore, we have an especially important duty to get it right here with special dispatch. However, many reexaminations are complex and time-consuming.

Our Solution - To address issues of timeliness and correctness of a patentability decision, the USPTO **this year** implemented a new process for handling reexamination proceedings. We are nearing the goal, set earlier this year, of eliminating all instances of *ex parte* reexamination proceedings that have been pending with an examiner for more than two years. Specifically, this initiative is on track to eliminate 420 proceedings pending over two years - of the current 1,200 pending *ex parte* reexamination proceedings.

If we had not undertaken this challenge, the total number pending over two years would have been 600 by the end of this year. Our commitment is that, by the end of FY 2005, the USPTO will set a defined time period for all future *ex parte* reexamination proceedings to be completed before the examiner, and the period will be less than the two years achieved in fiscal year 2005.

A similar clean-up effort is being conducted for all *inter partes* reexamination proceedings now pending before the USPTO. To address the issue of the correctness of the decision, the USPTO will require an expanded review of all USPTO decisions in any reexamination proceeding. It is expected that this process will employ a panel of least

three supervisors and senior patent examiners. Further, by the end of this fiscal year, the USPTO will establish firm processing time periods for all reexamination proceedings ordered (after the Office order for reexamination) on or after October 1, 2005, for both *ex parte* and *inter partes* reexamination proceedings.

### **C. Making Pre-Appeal Brief Conferences More Citizen-Centered**

Pre-Appeal Brief Conferences are another area where we are implementing the President's Management Agenda mandate that government be citizen-centered (not bureaucracy-centered) and results-oriented, by eliminating certain patent processing costs for citizens and expediting the appeal portion of this process.

The Problem - Before this year, when an applicant wanted to appeal a patent rejection with the Board of Patent Appeals and Interferences (BPAI), the applicant had to file a Notice of Appeal and an Appeal Brief outlining why the examiner's position is in error. The next step was an Appeal Conference with the examiner who decided the claims were not patentable joined by the examiner's supervisor and another experienced examiner or supervisor. Only after this conference, would the examiner prepare an Examiner's Answer explaining why the application was not allowable.

Our analysis revealed that, after the Appeal Conference, approximately 60 percent of cases were not forwarded to the BPAI for a decision. A conservative estimate of costs to applicants for preparing and filing the 60 percent of the Appeal Briefs that were never forwarded to the BPAI was \$30,000,000.

Our Solution - To save applicants at least \$30,000,000 annually, the USPTO implemented a program in the fourth quarter of FY 2005 that allows applicants to request a Pre-Appeal Brief Conference before preparing an Appeal Brief.

For a Pre-Appeal Brief Conference, it is not necessary for the members of the Pre-Appeal Brief Conference to review the full Appeal Brief to determine whether the examiner's action on that particular application was proper and should proceed to appeal. If the Pre-Appeal Brief Conference determines that the examiner's decision was not proper, the applicant will be notified that an appeal to the BPAI is not necessary at this time, thereby saving the applicant the cost of preparing and filing an Appeal Brief. If the Pre-Appeal Brief Conference determines that the examiner's decision was proper, the applicant will be notified to file an Appeal Brief in order for the application to go forward to the BPAI for a judicial decision. To assist in this evaluation, earlier this year the USPTO initiated a pilot program to create a corps of appeal conference specialists, who are trained in the way that the BPAI judges would review an appeal once it reaches the Board.

### **Growing Workload**

In the last several years, IP assets have become an increasingly essential ingredient of economic vitality. Where once raw materials and other tangible goods were the main drivers of the economy, today economic success depends more and more on intangible,

information-based assets, such as the creativity of employees and the knowledge gained from research. As a result, IP-based industries, such as biotechnology and motion pictures, now represent the largest single sector of the U.S. economy. In 2002, the U.S. copyright industries achieved estimated foreign sales and exports of \$89 billion, leading all major industry sectors, including motor vehicles (equipment and parts), aircraft and aircraft parts, and the agricultural sector.

The growing importance of IP in recent years has had a direct impact on the USPTO. Patent applications have more than doubled since 1992. In the last five years alone, biotechnology-related patent filings increased 46 percent and pharmaceutical and chemical-related filings climbed 42 percent. Worldwide at our offices and our counterparts in Europe, Japan and other national IP offices 12 million patent applications are pending in the examination pipeline.

In addition to the sheer volume of these applications, the technical complexity of patent applications is rapidly increasing. One hundred years ago, more than one-third of our patent filings were bicycle-related. Today, we routinely examine patent applications in areas such as nanotechnology, bio-informatics, and combinatorial chemistry. Some of these patent applications come in on CD-ROMS that are literally the equivalent of millions of pages of paper.

The USPTO serves as an important catalyst for U.S. economic growth. Through the granting of patents and the registration of trademarks, the USPTO promotes the vitality of businesses and entrepreneurs, paving the way for investment capital and research and development. We are proud of our 215 year-old legacy of helping America become a technological and economic giant. To remain the best patent examination system in the world, we are focused on improving our quality and our productivity. Productivity improvements are critical as a mechanism to address our ever-increasing backlog.

### **The Patent Application Backlog – What Is It and Why Is It A Challenge?**

We are encouraged by the fact that so many innovators are eager to take advantage of the patent system. However, as noted above, the volume and technical complexity of patent applications have increased beyond our ability to examine patent applications as they are filed, resulting in a backlog of patent applications awaiting examination.

One might think, as I did initially, that quality is not at all linked to the patent backlog. However, to examine applications in some complex art areas can take longer than examining more basic technologies. Further, over the past twenty years, the number of complex applications as a percentage of the USPTO's overall patent workload has increased, from 21% in 1985 to 52% in 2005. The rise in the number of complex applications as a percentage of overall applications – and the problems created by this rise in complex cases - is sometimes referred to as “technology creep.”

Patent pendency (the amount of time a patent application is pending before a patent is issued) now averages more than two years. In some complex arts, such as data

processing technologies, average pendency stands at more than three years. Without fundamental changes in the way USPTO operates, average pendency in these areas could reach six to eight years by 2008. Moreover, without any change to the system, the backlog of applications awaiting a first review by an examiner is expected to grow from the current level of approximately 600,000 to over 1,000,000 by 2010.

Our delays negatively impact the public, our economy and/or other patent offices by failing to timely provide patent protection where due. Small and developing businesses often times rely solely on patent protection to attract venture capital, making timely processing of patent applications critical to their success. Our challenge is to ensure that every one of the patent applications we receive is processed in a timely manner. The significant backlog before the office obviously affects our ability to timely process patent applications.

To put this backlog into some perspective, imagine if the USPTO closed its doors today. It would take our current examining corps approximately two years to examine all of the cases currently before the Office. When we opened our doors two years later, our patent examiners would be faced with a collective workload of new applications totaling approximately 800,000.

To ensure a fair and timely patent system for all, the United States must take seriously the issue of a patent backlog. Our patent system continues to prove its strength through the new inventions described in patent applications we see every day, the growth of investment, and the fact that the Office receives record numbers of applications each year (i.e., 375,000 new patent applications last year alone). But, especially for independent inventors and small businesses, delay can mean disaster. The entrepreneur needs to know as soon as possible whether he or she will have exclusive rights in a particular innovative technology. The longer the wait to obtain a decision from the USPTO, the longer the period of uncertainty – sometimes with very real financial consequences.

Principles of good government, as well as the nature of technology and the nature of the marketplace make these processing delays unacceptable -- and unsustainable. If IP protection is to continue to serve as a catalyst for technological innovation and economic growth, the USPTO must fundamentally break with the status quo. If we are to issue quality patents in a timely manner, we must fundamentally reform the way we do business. We must be prudent in developing the processes that will make the patent system more effectively serve its purposes.

### **How Can the USPTO Reduce the Patent Backlog?**

One important approach to addressing the patent backlog can be summarized as “Hire More, Train Better, Retain Better, and Telecommute.”

#### **Expanding our Workforce**

One of the key elements to address productivity as part of the 21<sup>st</sup> Century Strategic Plan was the hiring of additional examiners. The USPTO is a team of 7,000 people, including

more than 4,000 scientists, engineers, and PhDs. We have an incredibly dedicated corps of patent examiners and technical support staff. I have met with hundreds of examiners individually, collectively, in tech center meetings, at union meetings, at retirement parties, and just walking the halls. Those who make a career at the USPTO have unique and extensive skill sets and are dedicated, engaged, and knowledgeable. They not only know their art, but also are keenly aware of the outside pressures on our office. We want to make sure that, as we hire, we find new people who have that same energy, drive, commitment and aptitude to succeed as patent examiners.

Earlier this year, I challenged all of USPTO's senior managers – not only our patent managers – to find a way to hire more patent examiners, train them better, retain them better, and encourage telecommuting. In FY05, which ends in just a few weeks, we will have hired approximately 940 patent examiners, which represents about a 25% increase in our examining staff. We plan then to hire an additional 1,000 patent examiners each fiscal year, through fiscal year 2011.

### **Training Better and Retaining More**

Hiring at this rate – which we must do to address the growing number of new applications, as well as to handle our existing backlog – raises several challenges. How will we train all of these new employees, ensuring that they can examine properly? Where will they be located? And, how can we make sure their experience at the USPTO is a good one?

Effective January 2006, the USPTO plans to unveil a completely new approach to training new patent examiners. The USPTO will teach new examiners in a collegial and collaborative environment, providing up to eight months of intensive coursework on examination and relevant legal issues. This represents a very significant increase in initial training. The goal is to provide our Technology Centers with examiners who know how to draft complete and high quality office actions when they “graduate” to examination art units. The combination of more comprehensive initial training for a longer period of time will, we hope, provide our newest patent examiners with the confidence, skills, and support network they need to be successful.

### **Expanding Telecommuting**

We are working aggressively to expand telecommuting opportunities for patent employees. We are currently piloting a telecommuting program where approximately 200 patent volunteers are testing and trouble-shooting hardware, software, and new business process configurations to help USPTO fine-tune the equipment and software we will use for a more comprehensive telecommuting program. Our goal is to have 820 patent telecommuting participants in FY06, with a five-year plan of approximately 3,000 patent telecommuting participants by FY11.

More focused initial training is integral to our ability to have so many patent examiners participate in telecommuting. The more skilled our overall patent examination workforce becomes, the more the USPTO can permit senior patent mentors – and their junior



counterparts – to work at home and still interact with colleagues and maintain the highest levels of patent examination quality.

### **Reducing the Patent Backlog and Enhancing Quality – A Shared Responsibility**

Hiring more – and its corollaries: training better; retaining employees; and encouraging telecommuting – helps attack the growing backlog of unexamined patent cases. However, under current and foreseeable circumstances, it cannot be the only answer.

I have definitely found areas where the USPTO can improve, and I am concentrating all my efforts on implementing necessary improvements. Some of these improvements have been identified over the past few years as a result of talking to our patent examiners. One message that I have repeatedly heard from examiners is that the number one challenge facing them is the problem of application quality. Applicants file applications as direct translations, in incomplete form, or with claims that do not conform with practice, among other inaccuracies, which result in unfocused examinations and lead to extending prosecution and pendency, while increasing applicants' costs.

Processing applications faster – without sacrificing quality – is possible. Like any production environment, if systems can move more quickly, or inputs (applicants' submissions) can be pre-fabricated, it is possible to produce a great product, possibly an even better product.

As our examiners have noted, the most important input we receive is the patent application itself. If the application is “pre-fabricated,” that is, if it is complete, clear, well-drafted, with well-identified, pertinent references, it takes less time to properly examine, permitting a focused examination on the most important aspect of innovation. Thus, a better input contributes directly both to speed of processing and to quality.

Patent examination that concentrates on evaluating the most pertinent information relevant to patentability increases the opportunity for the system to “get it right” the first time. For applicants, this allows the proper assessment of any amendments or changes to the patent application and claims that may be required to result in a properly granted patent. For examiners, this means that their examination should be focused on the prior art most relevant to determining whether the claimed invention is patentable. Ensuring such a focused examination is a joint responsibility of the examiner and the applicant. By working to improve the ways that this information comes before the examiner, we will best achieve the goal we all share of high quality patent grants that have the respect and trust of the entire patent community.

Viewing the issues of quality and the backlog in a practical light, it becomes clear that one prudent approach is to make sure that examination is focused to be effective. Two of the more common practices that impair focused examinations are identified below.

### **Rework and “Continuations”**

The current patent system allows for reworking of applications through what is known descriptively as “the continuation process.” While there may have been a time where the system could afford unlimited duplication and redundancy, that time is not now.

In FY04, more than 26% (or 100,000) of the USPTO’s new applications were some form of application that had previously been before an examiner in the examination process. That is, almost a third of the applications that examiners had to review were ones they had rejected in some fashion, that the applicant had then tweaked in the hope that they would be acceptable. Had the applicant revised the application earlier in the process, such rework might not be necessary. Given the volume of “continuations” – which include a large variety of technical variations, such as divisional applications, continuations-in-part, and “RCEs” (Request for Continued Examination) – it becomes clear that the patent system as it currently operates presents a significant obstacle to the ability of our examiners to reach new applications that have not been examined in any form.

Some reform that would inject more discipline into the general “continuation” practice would, obviously, increase our ability to focus on truly new applications and innovations. USPTO is presently evaluating ways to bring more discipline to this area of practice.

### **Patent Applications and Extraordinary Numbers of Claims**

A critical portion of the patent application is “the claim” or “claims.” The claims define what is being patented.

Every year, a small number of applications are filed with an extraordinary number of claims. These filings present our examiners with enormous challenges in ascertaining the nuances and incremental differences among the claims presented. These challenges directly affect the ability of our examiners to conduct the high quality examination process that all of us expect from our patent system. Accordingly, the burden that such applications pose can impede our ability to promptly examine applications relating to other inventions. At the same time we must recognize the legitimate need for applicants to present these claims in some applications. We are exploring initiatives that will help to find the right balance – to look for ways in which inventors can submit such applications when needed while making it feasible for examiners to effectively examine such a plethora of claims.

### **International Intellectual Property-Related Efforts**

While focusing the bulk of this testimony on issues relating to my position as Director of the United States Patent and Trademark Office, I would be remiss if I did not also focus on efforts and initiatives pursued as the Under Secretary of Commerce for Intellectual Property.

The Administration, the Department of Commerce, and the USPTO are keenly aware of the increasing significance of IP protection to American businesses and innovators. It is

no secret that this Administration has made combating piracy and counterfeiting top priorities.

USPTO's international IP-focused efforts have increased substantially at the direction of both the Administration and the Congress. Passage of the American Inventors Protection Act of 1999 ("AIPA") (P.L. 106-113) set the stage for the USPTO to advise the President, through the Secretary of Commerce, and all Federal agencies, on national and international IP policy issues, including IP protection in other countries. USPTO is also authorized by the AIPA to provide guidance, conduct programs and studies, and otherwise to interact with foreign IP offices and international organizations on matters involving IP protection.

USPTO's Offices of International Relations and Enforcement actively carry out the functions authorized by the AIPA, which include:

1. Working with Congress to implement international IP treaties;
2. Providing technical assistance to foreign governments that are looking to develop or improve their IP laws and systems;
3. Training foreign IP officials on IP administration and enforcement;
4. Advising the Department of State and the Office of the United States Trade Representative (USTR) on drafting/reviewing IP sections in bilateral and multilateral investment treaties and trade agreements;
5. Advising USTR and the Department of State on IP issues in the World Trade Organization (WTO); and
6. Working with USTR, the Department of State, and American industry on the annual review of IP protection and enforcement under the Special 301 provisions of the Trade Act of 1974.

USPTO also joins the Department of State in representing the United States in United Nations bodies, such as the World Intellectual Property Organization (WIPO), to help set international standards for IP protection and enforcement.

USPTO is actively involved in the Administration's STOP! (Strategy Targeting Organized Piracy) initiative. STOP! is the most comprehensive intergovernmental agency initiative ever advanced to smash the criminal networks that traffic in fakes, stop trade in pirated and counterfeit goods at America's borders, block bogus goods around the world, and help America's small businesses secure and enforce their IP rights in overseas markets. The STOP! initiative will raise the stakes for international IP thieves by more aggressively pursuing perpetrators of IP crimes and dismantling criminal enterprises.

Attorneys from the USPTO manage a STOP! Hotline, 1-866-999-HALT, established by the Department of Commerce to help American businesses protect their IP at home and overseas. The goal of the hotline is to empower U.S. businesses to secure and enforce their IP rights by providing them the information they need to secure their patents, copyrights, and trademarks, and to enforce these rights – both here in the U.S. and

abroad. Businesses and innovators have access to a place to learn more about the risks of global piracy and counterfeiting and how to protect their IP rights in both individual and multiple countries.

To better serve the public, along with other agencies participating in the STOP! initiative, we have established a link from our USPTO website to [www.StopFakes.gov](http://www.StopFakes.gov) on the Department of Commerce's website. The [www.StopFakes.gov](http://www.StopFakes.gov) website provides in-depth information on the STOP! initiative and offers guidance on IP registration, border enforcement, protecting and enforcing IP rights overseas as well as information on U.S. criminal IP enforcement efforts.

The Department of Commerce is in charge of another important component of the STOP! initiative, the "No-Trade-In-Fakes" program, which is being developed in cooperation with the private sector. No-Trade-In-Fakes is a voluntary, industry-driven set of best practices and guidelines that participating companies will use to ensure their supply chains and retail networks are free of counterfeit or pirated goods.

The Departments of Commerce and State collaborated to create the China IPR Toolkit, which is available along with other country-specific Toolkits, at [www.StopFakes.gov](http://www.StopFakes.gov). The toolkit provides detailed information on China's IP rights regime and resources for protection. Additional country-specific toolkits are under development.

The USPTO has recently undertaken a public-outreach campaign designed to heighten awareness in America's small business community of the importance of obtaining IP protection and ways in which IP rights can be protected and enforced overseas. The USPTO launched this effort in Salt Lake City, Utah, in May 2005, by holding the first in a series of free seminars on IP, piracy and counterfeiting. A second seminar was held in June in Phoenix, Arizona, and additional seminars are scheduled for Austin, Texas (September 12 – 13), and Miami, Florida (September 26 – 27). At these seminars, lawyers and other professionals from the USPTO provide individual inventors, small- and medium-size businesses, and artistic creators with specific details and useful tips about how to protect their IP rights in the United States and overseas, and how to enforce them both domestically and internationally.

### **Human Capital Achievements**

While I know you are most interested today in reviewing our patent operations, we are also proud of the progress we have made in a number of our human capital programs that have a direct impact on the quality of life of our workforce, for example expanding work@home programs to our employees. In fact, we are considered a leader in work@home among Federal agencies in the Washington, D.C. metropolitan area.

The USPTO's telecommuting efforts have been recognized and benchmarked by the General Services Administration and the Partnership for Public Service. We have an award-winning telecommuting program in Trademarks. Currently, more than 64% of our Trademark examination workforce - or 180 examiners - telecommute. We plan to expand

the program to more than 200 examiners by the end of 2005. As noted above, 200 patent employees are currently involved in a telecommuting pilot, with expansion of the program planned to involve over 800 patent employees by the end of FY06.

I am also pleased to report that we successfully transitioned to our new consolidated headquarters in Alexandria, in what is one of the largest federal moves in history. The five linked buildings that make up USPTO's new facility contain approximately two million square feet of office and related space. The Government Accountability Office has concluded that the consolidation will likely save us more than \$98 million in present value dollars over the initial 20-year lease term.

### **Trademark Operations**

Our e-government initiatives for Trademarks have met with substantial success. The total number of requests for trademark registration increased by 6.9% over the same period a year ago. More than 190,444 applications – containing 236,488 classes<sup>1</sup> – were filed in FY05 through June 2005. During this time, more than 86% of the application classes received for registration of a mark or a request for extension of protection under the Madrid Protocol have been filed electronically. More than 92% of the applications filed in June 2005 were received electronically.

Lower Fees For Electronic Filing and Processing - On July 18, 2005, the USPTO introduced a new form within the Trademark Electronic Application System (TEAS) that allows all citizens to file applications for trademarks and service marks directly over the Internet at a **lower** fee than previously required for similar applications. This new form, known as “TEAS Plus,” supplements the existing TEAS initial application form, which has existed since October 1, 1998. The TEAS Plus form offers not only the advantage of having a fee that is \$50 **less** than the regular filing fee, but also automatically improves USPTO’s trademark processing quality by using enhanced form edits and validation functions to help applicants submit the most complete application possible.

On the first full day of TEAS Plus production, 17% of all electronically filed new applications were submitted using this new option. By the end of the fifth week after deployment, TEAS Plus usage had risen dramatically, accounting for 38% of all trademark electronic filings.

### **Conclusion**

The USPTO’s successes are successes for America and American enterprise. These successes range from the implementation of the full electronic processing of patent applications with the Image File Wrapper (IFW) to the many family-friendly programs

<sup>1</sup> “Classes” = the different types of goods or services for which an applicant seeks trademark registration. For example, an applicant may request registration of the mark “XYZ” for shoes – which are in one class – and watches, which are in another class. Classification makes it easier for the public to find potentially conflicting marks. Since a mark must undergo legal analysis for each class of goods or services identified, the USPTO counts its trademark workload by classes filed per application.

that benefit our workforce. We are committed to ensuring that our practices and policies promote the innovation and dissemination of new technologies. And, while we work to improve our system by internal reform of USPTO operations, we realize that additional measures within the domain of Congress will make invaluable contributions.

The overwhelming evidence of the history of the U.S. patent system suggests that strong IP protection supports, rather than impedes, innovation. Indeed, for more than 200 years, our patent system has helped American industry flourish, creating countless jobs for our citizens. Advanced technologies have been -- and continue to be -- nurtured and developed in our nation to a degree that is unmatched in the rest of the world. In many instances, the availability of patent protection has been integral to these advancements.

The USPTO and the Administration look forward to continuing to work with you and the Members of the Subcommittee to ensure that the U.S. patent system remains the envy of the world.

Thank you, Mr. Chairman.