



Highlights of [GAO-08-527T](#), testimony before the Subcommittee on Courts, the Internet, and Intellectual Property, Committee on the Judiciary, House of Representatives

## Why GAO Did This Study

The U.S. Patent and Trademark Office (USPTO) helps protect U.S. competitiveness by granting patents for new ideas and innovations. Increases in the volume and complexity of patent applications have extended the time for processing them. Concerns continue about the agency's efforts to attract and retain qualified patent examiners who can meet the demand for patents and help reduce the growing backlog of unexamined patent applications.

In 2007, GAO reported on (1) USPTO's process for making its annual hiring estimates and the relationship of these estimates to the patent application backlog; (2) the extent to which patent examiner hiring has been offset by attrition, and the factors that may contribute to this attrition; and (3) the extent to which USPTO's retention efforts align with examiners' reasons for staying with the agency. GAO recommended that USPTO comprehensively evaluate the assumptions it uses to establish its production goals. USPTO agreed to implement this recommendation once it determines the effect of recent initiatives designed to increase the productivity of the agency through a more efficient and focused patent examination process.

This testimony is based on GAO's 2007 report, which was based in part on a survey of 1,420 patent examiners. See, GAO, *U.S. Patent and Trademark Office: Hiring Efforts Are Not Sufficient to Reduce the Patent Application Backlog*, [GAO-07-1102](#).

To view the full product, including the scope and methodology, click on [GAO-08-527T](#). For more information, contact Robin M. Nazzaro at (202) 512-3841 or [nazzaror@gao.gov](mailto:nazzaror@gao.gov).

## U.S. PATENT AND TRADEMARK OFFICE

### Hiring Efforts Are Not Sufficient to Reduce the Patent Application Backlog

#### What GAO Found

USPTO primarily determined its annual hiring estimates on the basis of available funding levels and institutional capacity to train and supervise new patent examiners, and not on the basis of the number of patent examiners needed to reduce the existing backlog of patent applications or review new patent applications. USPTO's process for identifying its annual hiring estimates is generally consistent with accepted workforce planning strategies. However, because this approach does not consider how many examiners are needed to reduce the existing backlog or address the inflow of new applications, it is unlikely that the agency will be able to reduce the growing backlog simply through its hiring efforts.

Although USPTO is hiring as many new patent examiners as its budget and institutional capacity will support, attrition is significantly offsetting the agency's hiring efforts, and agency management and patent examiners disagree about the causes of attrition. Specifically, from 2002 through 2006, one patent examiner left USPTO for nearly every two hired—70 percent of those who left had been at the agency for less than 5 years. This represents a significant loss to the agency because new patent examiners are primarily responsible for the actions that remove applications from the backlog. According to USPTO management, patent examiners primarily leave the agency because of personal reasons, such as finding that the job is not a good fit. In contrast, 67 percent of patent examiners identified the agency's production goals among the primary reasons they would consider leaving the agency. These goals are based on the number of applications patent examiners must complete during a 2-week period. However, the assumptions underlying these goals were established over 30 years ago and have not since been adjusted to reflect changes in the complexity of patent applications. Moreover, 70 percent of patent examiners reported working unpaid overtime during the past year in order to meet their production goals. The large percentage of examiners working overtime to meet production goals and who would choose to leave the agency because of these goals may indicate that these goals do not accurately reflect the time needed to review applications and are undermining USPTO's hiring efforts.

The retention incentives and flexibilities USPTO has provided over the last 5 years generally align with the primary reasons patent examiners identified for staying with the agency. Between 2002 and 2006, USPTO used a variety of retention flexibilities, such as a special pay rate, performance bonuses, and a flexible work place to encourage patent examiners to stay with the agency. According to USPTO management, their most effective retention efforts were those related to compensation and an enhanced work environment. GAO's survey of patent examiners indicates that most patent examiners generally approved of USPTO's retention efforts, and ranked the agency's salary and other pay incentives as well as the flexible work schedule among the primary reasons for staying with the agency.