

## Policy

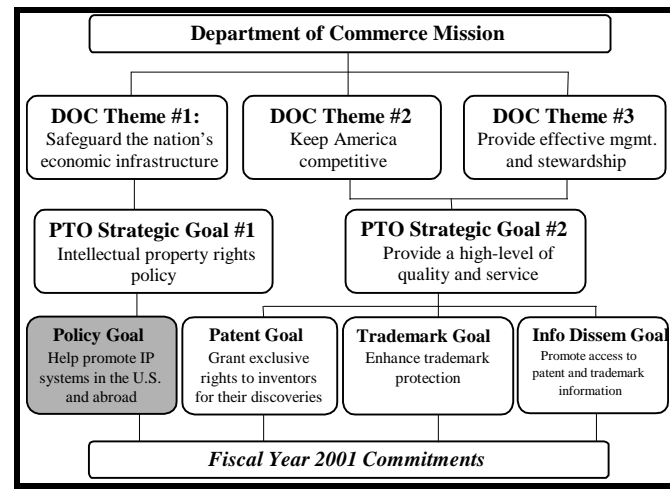
The Policy function provides leadership and direction to the three businesses and corporate support organizations of the PTO. We also promote and provide expertise in the area of intellectual property rights -- patents, trademarks, and copyrights. Intellectual property rights play an important role in promoting innovation in science and technology, and in ensuring that resulting products and services reach desired markets around the world. If American businesses are to remain competitive, the effective protection of intellectual property rights must be guaranteed throughout the world. The PTO plays a leadership role in intellectual property rights' policy development and in promoting the use of intellectual property rights as a means of economic prosperity and competitiveness. This directly contributes to the Department's strategic goal to build for the future and promote U.S. competitiveness in the global marketplace.

### *The Policy Agenda*

The Policy function provides overall direction and leadership to the business areas of the organization in the areas of quality management, enhanced internal communication, liaison with independent inventors, legal counsel, enrollment of patent practitioners to practice before the PTO, and international and legislative activities. These functions are carried out by the following organizations: the Office of the Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, the Office of the Deputy Assistant Secretary of Commerce and Deputy Commissioner of Patents and Trademarks, the Solicitor, the Office of Legislative and International Affairs, and the Office of Enrollment and Discipline.<sup>1</sup>

One of the PTO's highest priorities is to achieve performance excellence. To achieve this envisioned state; the Commissioner has established a small, but elite, group of employees to establish a quality management system throughout the organization. This group, working in collaboration with a Quality Council comprised of representatives from throughout the PTO, is providing leadership and direction to help business units identify opportunities for improvement that lead to performance excellence. Many of these opportunities are included in the respective business sections under Quality and Customer Satisfaction.

Independent inventors represent approximately 20 percent of the applicants seeking patent protection. The Commissioner of Patents and Trademarks has identified this customer group as a target for special emphasis in order to improve quality and enhance customer satisfaction. This is a continuation of the effort whereby PTO launched annual conferences designed to meet the needs of these key members of the intellectual property community.



<sup>1</sup> This change occurred in fiscal year 2000. In prior years, the Policy function only included the Office of Legislative and International Affairs, and the Office of Enrollment and Discipline.

Managing a complex organization requires a continued enhancement in legal services. The growth of intellectual property protection has led to an increased number of attorneys and practitioners who wish to do business before the Office. Increased application and related filings and the subsequent decisions by the Patent and Trademark businesses sometimes can require legal action by the Solicitor. PTO is committed to the prompt registration of those wishing to practice before the Office and to meeting court imposed deadlines in civil actions and appeals.

The role of intellectual property systems in stimulating the American economy has become increasingly important. International negotiations, consultations, and information-sharing efforts led by PTO leaders and international specialists are geared to secure, improve and expand protection of U.S. intellectual property rights throughout the world. We are committed to accomplishing President Clinton's Framework for Global Electronic Commerce by continuing to work closely with other U.S. government agencies and foreign counterparts to create a consistent environment that is mutually beneficial to all parties and fosters economic development on a global scale. More specifically, our policy agenda is to update and make more efficient our system for protecting patentable innovations to meet the needs of the fast-moving electronic age and to seek agreements with other governments to protect patentable innovations worldwide.

The Office of Legislative and International Affairs (OLIA) functions as the principal adviser to the Assistant Secretary and the Deputy Assistant Secretary on public policy matters related to IP protection including drafting legislative and policy proposals concerning intellectual property matters, preparing supporting documentation to carry out the legislative programs and policies of the Commissioner, and reviewing and analyzing other legislative proposals concerning intellectual property matters. Policy specialists also engage in multilateral and bilateral negotiations to strengthen intellectual property protection worldwide. On-going efforts include the development and maintenance of multilateral systems for the protection of intellectual property rights; assistance in the establishment of bilateral agreements with other intellectual property offices; participation in the intellectual property aspects of trade consultations; patronage in the establishment of adequate systems in developing countries for the protection of intellectual property rights; and development of international standards and procedures to make it easier for U.S. nationals to obtain rights in other countries and to facilitate access to the information contained in patent and trademark documents.

**Table 14**

**Operational Budget**  
(Dollar amounts in thousands)

	Fiscal Year 1999 Actual		Fiscal Year 2000 Currently Available		Fiscal Year 2001 Request	
	FTE	Dollars	FTE	Dollars	FTE	Dollars
<b>Policy Function</b>	<b>72</b>	<b>\$11,312</b>	<b>88</b>	<b>\$13,325</b>	<b>101</b>	<b>\$16,084</b>
<b>Information Technology<sup>2</sup></b>	<b>9</b>	<b>\$4,200</b>	<b>9</b>	<b>\$4,854</b>	<b>9</b>	<b>\$5,786</b>
Development		163		97		89
Operations		4,037		4,757		5,697
<b>Resource Management<sup>3</sup></b>	<b>4</b>	<b>\$619</b>	<b>4</b>	<b>\$653</b>	<b>4</b>	<b>\$823</b>
<b>Policy Total</b>	<b>85</b>	<b>\$16,131</b>	<b>101</b>	<b>\$18,832</b>	<b>114</b>	<b>\$22,693</b>

For fiscal year 2001, we propose a budget of 114 FTE and \$22,693,000. This represents an increase of 13 FTE and \$3,861,000 over the fiscal year 2000 operating budget, or an increase of 13 FTE and \$3,253,000 over base. Cost estimates also include our share of resource management and information technology infrastructure costs, computed in accordance with our activity-based cost accounting model.

***Establish an Integrated Quality Management System***

*Quality Management.* An increase of 5 FTE and \$868,000 is requested for the quality management function to lead efforts to implement and manage an integrated quality management system at the PTO. This includes leadership for and oversight of the PTO Quality Council, which establishes policy in such areas as survey methodology, in-house assessments, and performance measurement. The integrated quality management system will result in periodic self-assessments, integration of performance measures, sharing of best-practices, fostering performance excellence, assisting business units with the implementation of opportunities for improvement, establishment of a performance excellence library, liaison with regard to quality awards, and facilitating knowledge management.

<sup>2</sup> Cost estimates for development and operations are burdened with the Policy Function’s share of enterprise information technology infrastructure, and distributed in accordance with our activity-based cost accounting model.

<sup>3</sup> Cost estimates include information technology development and operations as burdened and distributed in accordance with our activity-based cost accounting model.

The annual self-assessment uses the Baldrige criteria to project key requirements for delivering ever-improving value to customers while at the same time maximizing the overall effectiveness and productivity of the delivering organization. The self-assessment is a comprehensive, systematic review of an organization's processes and results referenced against the nationally and internationally accepted Criteria for Performance Excellence. The objectives of the self-assessment are to:

- Provide a comprehensive framework for evaluating performance and performance plans (GPRA requirement).
- Determine how well PTO currently is performing against criteria for high performing organizations.
- Identify and prioritize action plans needed to enhance performance.
- Drive continuous improvement and learning throughout the organization.
- Determine how well all parts of the organization are working together to achieve strategic objectives.
- Help to align the many initiatives and processes to improve overall organizational performance and customer satisfaction.
- Facilitate communication and sharing of best practice information among organizations of all types.
- Serve as a working tool for understanding and managing performance, planning and continuous learning.

*Independent Inventors.* An increase of 1 FTE and \$746,000 is requested for the independent inventor program, a high profile function reporting directly to the Office of the Commissioner. Funds will be used to establish new mechanisms to better disseminate information about the patent and trademark processes and foster two-way communication between the PTO and independent inventors. Roundtable discussions devoted to issues important to independent inventors will be held, and a section of the PTO's Web site will be devoted to independent inventors and links will be established to other Web sites relevant to this group. We will offer educational and outreach programs for independent inventors, covering all aspects of the patent and trademark processes, including how to file applications. Training programs will be provided via the Internet and other electronic media. We also will develop new materials, brochures, flyers, and handbooks on how to select an attorney and what to expect from them. We also will work to educate independent inventors about invention firms and publish public complaints regarding such firms, as required by the American Inventors Protection Act of 1999.

### ***Maintain and Grow our Leadership Roles in the Domestic and International Policy Arena***

In recent years, many government agencies have become involved in addressing intellectual property issues. The conference report on H.R. 2490, Treasury and General Government Appropriations Act for FY 2000, was signed into law (P.L. 106-58) on September 29, 1999. Section 653 of this law established the National Intellectual Property Law Enforcement Council. The PTO and the Department of Justice will jointly chair the Council. Statutory functions of the Council include coordinating "domestic and intellectual property law enforcement among federal and foreign entities, reporting annually on its coordination activities to the President, and to the Committees on Appropriations and on the Judiciary of the Senate and the House of Representatives, and consulting with the register of Copyrights on law enforcement matters relating to copyrights". Other functions of the Council may include: improving coordination of the USG on enforcement efforts including related and law enforcement of IP activities, improving cooperation with other governments and with industry, evaluating the impact of USG IP technical assistance to foreign countries, and working with IP owners to combat IP enforcement problems both domestically and internationally. The Office of Legislative and International Affairs will take the lead in forming the interagency council to develop training programs in order to establish a cohesive

Administration-wide focus towards the protection of intellectual property. The end result should be an increase in the quality and quantity of technical assistance that is provided to developing countries with the long-term goal of providing a higher level of intellectual property protection for American business interests.

To implement this activity, we will partner with other government agencies to provide seminars and technical training in the United States and in developing countries. Seminar topics will include mechanisms to combat piracy and counterfeiting, the benefits of all forms of intellectual property protection, developments in information technology that improve the administration of industrial property offices, and managing for growth.

Through partnering with other agencies, such as the Commercial Law Development Program, the Agency for International Development, the Department of Justice, and the Department of State, we will be able to provide an increased amount of training to developing countries.

On September 18, 1999, Commerce Secretary Daley deposited the U.S. Instrument of Ratification for the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty with the Director General of WIPO. Thirty countries must ratify these treaties so they will come into force. OLIA is committed to working with the Administration and their international counterparts to enable full treaty implementation before the end of the current Administration.

The PTO, along with other U.S. Government agencies, continues to work with the motion picture industry and the performers' unions to garner stronger support for the U.S. position to improve international protection for audiovisual performers' rights. The Office will attend a technical meeting on audiovisual performers' rights in March of 2000 with the possibility of convening a Diplomatic Conference in December 2000.

### ***On-Going International and Legislative Activities***

Performance-Based Organization and Patent Law Reform: H.R. 1907, the "American Inventors Protection Act of 1999", was signed into law (P.L. 106-113) on November 29, 1999, as part of the conference report (H. Rept. 106-479) on H.R.3194, Consolidated Appropriations Act, Fiscal Year 2000. This law offers protection against unscrupulous invention promoters; provides a limited "first to invent" defense against patent infringement; extends patent term to compensate for certain processing delays; provides for early publication of patent applications also filed abroad; improves reexamination procedures; and provides the PTO with operational and procurement flexibilities.

Drug Patent Term Extensions: H.R. 1598 would establish within the PTO a public process to review claims for patent term restoration for certain drugs to compensate for extended regulatory review. The House Judiciary Subcommittee on Courts and Intellectual Property held a hearing on the bill on July 1, 1999. A companion bill, S. 1172, was the subject of a Senate Judiciary hearing on August 4, 1999. The 106th Congress took no further action.

Trademark Dilution: The "Trademark Amendments Act of 1999" (H.R. 1565) was signed into law on August 5, 1999, as Public Law 106-43. This bill provides owners of famous marks the right to oppose or seek cancellation of a mark on dilution grounds in Trademark Trial and Appeal

Board (TTAB) proceedings; allows private citizens and corporate entities to sue the Federal Government for trademark infringement; and provides that the party asserting trade dress protection in an action for infringement, where the matter sought to be protected is not registered with the PTO, has the burden of proving that the trade dress is not functional.

Madrid Protocol: H.R. 769, the “Madrid Protocol Implementation Act”, would implement the protocol related to the Madrid Agreement on the International Registration of Marks (the bill was passed by the House of Representatives on April 13, 1999). The Protocol would permit U.S. trademark owners to file for registration in any number of member countries by filing a single standardized application, in English, with a single set of fees, with the PTO. The Treaty has not been forwarded to the Senate for ratification because of concerns over EU voting rights under the agreement.

Recordation of Intellectual Property Security Interests: On June 24, 1999, the House Judiciary Subcommittee on Courts and Intellectual Property held a hearing on a draft bill regarding the recordation of Intellectual Property Security Interests. The PTO submitted a written statement for the record indicating several concerns with the draft and suggesting that consideration be given to the “Franklin Pierce” study due in early 2000.

### ***Fiscal Year 2001 Performance Goals and Measures***

In fiscal year 2001, our policy specialists will be instrumental in carrying out the PTO’s strategic goal of playing a leadership role in intellectual property rights policy, particularly the macro performance goal to help protect, promote, and expand intellectual property rights systems throughout the United States and abroad. The desired results of our policy activities are to have a competitive America in the global market place, a strong and unimpeded economic infrastructure; and effective management and stewardship of intellectual property rights which contribute to sustainable economic opportunities.

**Table 15**

#### **Performance Measures**

<b>Performance Goal:</b> Help protect, promote, and expand intellectual property rights systems throughout the United States and abroad.	<b>Baseline</b>	<b>FY 1998 Performance</b>	<b>FY 1999 Performance</b>	<b>FY 2000 Target</b>	<b>FY 2001 Target</b>
Increase in technical assistance to developing countries and countries moving to a market economy:					
• Number of countries provided technical assistance	47	73	93	96	98
• Number of technical assistance activities completed	59	90	99	102	104