

CRITICAL AREAS FOR FINANCIAL AND MANAGEMENT IMPROVEMENT

In 1994, the PTO continued to address the following critical areas for financial and management improvement: a resolution of the bureau's long-term space needs; restrictions in the number of personnel ceilings allotted to the bureau; and continued diversion by the Congress of patent fee surcharges to the programs of other agencies. In addition, Secretary of Commerce Ronald H. Brown signed an agreement with Japan to institute a pre-grant patent publication (PGPub) system at the PTO by January 1, 1996. Planning for the PGPub system began in 1994. The new system will affect patent examination practice, result in new expenditures and fees, and alter the deployment schedule of the Patent Application Management (PAM) system.

Space

Leases held by the PTO in Crystal City will begin to expire in fiscal years 1996 and 1997. During 1994, the PTO and the General Services Administration (GSA) agreed to a threefold space acquisition strategy: (1) that the PTO receives the most beneficial space cost available; (2) that adequate space for continued PTO growth is considered; and (3) any possible future location is conducive to PTO's functions and is easily accessible by PTO employees. The PTO and the GSA provided the Office of Management and Budget with a space prospectus late last summer. The prospectus assumed the solicitation of bids in early calendar year 1995.

Personnel Ceilings

The Federal Workforce Restructuring Act of 1994 (Public Law 103-226) directed a Government-wide reduction of 272,900 federal employees by 1999. The PTO is affected by this law. While the number of PTO employees will continue to grow through fiscal year 1996, this growth is limited and will not meet expected workload increases, particularly in the patent and trademark areas. In 1995 and 1996, the PTO proposes to reduce administrative positions and redirect examination support staff back to examination duties. These measures still do not address the underlying problem—by fiscal year 1999 the PTO will be short almost 1,400 positions *assuming continued growth in patent and trademark application filings and maintenance of current methods of doing business*.

In response to this long-term outlook, PTO management and employees are undertaking an aggressive agenda to reengineer and automate our current processes. In 1994, reengineering reviews began for the Trademark Trial and Appeal Board, the entire trademark examination process, patent pre-grant publication (PGPub) initiatives, and the PTO budget formulation and cost management process. Efforts are currently underway to reengineer the patent examination process.

Redirection of PTO Funds

With the enactment of the Omnibus Budget Reconciliation Act of 1990 (OBRA, Public Law 101-508), the PTO became totally funded through the sales of our products and services. This was accomplished through imposing a 69 percent increase in patent fees. Initial legislation required that fee surcharges be deposited into a special fund, from which the Congress is to appropriate funds equal to those deposits. Subsequent pieces of legislation removed the reference to a specific surcharge of 69 percent, requiring the PTO to deposit exact amounts of surcharges, and extending the surcharge through the end of fiscal year 1998.

Due to declining funds allotted to the PTO's appropriations subcommittees of the House and the Senate, the subcommittees have failed to appropriate back to the PTO like amounts deposited into the fee fund. In fiscal year 1994, \$14.7 million was withheld from the PTO. In 1995, \$24.7 million will also be withheld. Total withholdings from fiscal years 1992 to 1995 will amount to \$59.8 million, or over 11% of the amount deposited, as shown in the following table:

(dollar amounts in thousands)

<i>Fiscal Year</i>	<i>Surcharge Deposit</i>	<i>Surcharge Appn.</i>	<i>Surcharge Withheld</i>	<i>Cum. Variance</i>	<i>Annual Var. (%)</i>	<i>Cum. Var. (%)</i>
1991	\$99,307	\$99,307	\$0	\$0	0.00	0.00
1992	95,000	86,894	8,106	8,106	8.53	4.17
1993	99,000	86,672	12,328	20,434	12.45	6.97
1994	103,000	88,329	14,671	35,105	14.24	8.86
1995	107,000	\$82,324	\$24,676 ¹	\$59,781	23.06	11.88
<i>1996</i>	<i>111,000</i>					
<i>1997</i>	<i>115,000</i>					
<i>1998</i>	<i>\$119,000</i>					

(Note: Numbers in italics indicate deposits required by Public Law 102-204 for the fiscal years 1996-1998 period.)

Proposals to resolve this problem in fiscal year 1994 and fiscal year 1995 were not successful. Our fiscal year 1995 appropriation was further reduced when Congress directed that \$6 million of the \$82.3 million in fee surcharges is available only for the acquisition of a high performance computing capability. If the PTO continues to experience this trend in appropriation reductions, the PTO can expect to see reductions of approximately \$32 million, \$40 million, and \$48 million in fiscal years 1996, 1997, and 1998, respectively. These reductions will hinder the PTO from providing the quality of service our customers deserve, will force our customers to pay for other agencies' programs, and will penalize a constituency that plays a vital role in building our nation's strong economic base.

Patent Pre-Grant Publication

On August 16, 1994, Secretary of Commerce Ronald H. Brown and Japanese Ambassador Takakazu Kuriyama signed Letters of Agreement that insured American inventors faster patent applications processing in Japan and overall improved protection for U.S. intellectual property rights owners. Under the terms of this agreement, the Japanese Patent Office will: (1) By April 1, 1995, end the practice of allowing third parties to oppose a competitor's patent before it is granted. (2) By January 1996, establish an accelerated patent examination procedure that will enable applicants to obtain disposition of their patent applications within 36 months upon request. (3) By July 1, 1995, end the practice of awarding dependent patent compulsory licenses, which can force patent holders to license the use of their technology to competitors, limiting their exclusive rights to their inventions.

In return, the PTO agreed to publish patent applications 18 months after the first effective filing date beginning January 1, 1996, and agreed to expand the reexamination proceedings to allow for greater participation by third parties. To prepare for the pre-grant publication (PGPub), the PTO is currently applying business process reengineering techniques to create a pre-grant publication system. Groups of PTO employees worked throughout the summer and fall of 1994, to lay out strategies for implementation and operations. Additional expenditures incurred for PGPub will be offset entirely by fees. The PTO will implement the PGPub system by January 1, 1996.

As a result of these activities, the PTO decided to postpone implementation of the Patent Application Management (PAM) system until after implementation of PGPub. The PAM system proposes the electronic processing of patent applications from receipt through examination to publication. The reasons for this decision were twofold. First, the agency will not have sufficient resources in 1995 to implement both systems, and second, the experience gained by the implementation of PGPub will serve as a learning tool and benchmark for PAM.

¹ Within the \$24,676,000 of funds withheld, \$676,000 represents the PTO share of administrative savings imposed upon the Department of Commerce.