U.S. DEPARTMENT OF COMMERCE
Office of Inspector General

United States Patent and Trademark Office

USPTO's Move to Alexandria, Virginia, is Ahead of Schedule, But Some Key Issues Need to Be Resolved

Final Inspection Report No. IPE-16268/September 2004

PUBLIC RELEASE

Office of Inspections and Program Evaluations

UNITED STATES DEPARTMENT OF COMMERCE
The Inspector General
Washington, D.C. 20230

SEP 30 2004

MEMORANDUM FOR: Jon W. Dudas
Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office

FROM: for Johnnie E. Frazier

SUBJECT: Final Report
United States Patent and Trademark Office: *USPTO's Move to Alexandria, Virginia, is Ahead of Schedule, But Some Key Issues Need to be Resolved* (IPE-16268)

As a follow-up to our September 24, 2004, draft report, attached is the final report on our review of the status of PTO's move to its complex of five new buildings in Alexandria, Virginia. A copy of your response to our draft report is included in its entirety as Appendix 2 of the report.

We found that PTO and the General Services Administration (GSA) are providing adequate project management and financial oversight of the Carlyle construction project. While the project's overall costs have increased from the 1995 budget of $223 million to $251.5 million, we note that most of this increase was due to project delays related to matters beyond PTO's control and new requirements, such as information technology changes, building redesign to comply with the City of Alexandria's requirements, and security upgrades.

Moreover, PTO has successfully planned and executed its recent move of 2,093 employees to the two completed buildings (Remsen and Jefferson), but needs to (1) sign an occupancy agreement with GSA that documents PTO's financial terms and conditions for occupying GSA-controlled space, (2) arrange for additional space to accommodate 100 workers in fiscal year 2005, and (3) plan for space to house the projected 650 workers it hopes to hire in fiscal year 2006. In addition, it is our understanding that PTO has agreed to reimburse GSA for $3.3 million in lost rent because the Alexandria buildings are being completed and accepted earlier than expected.

We are pleased to note that PTO has concurred with our two recommendations. Specifically, PTO will proceed to finalize the occupancy agreement with GSA and to develop the applicable Program(s) of Requirements to accommodate PTO's expected future staff growth. Please provide us with an action plan within 60 days that outlines the actions you have taken or plan to take to address our recommendations.

We thank PTO personnel for the assistance and courtesies they extended to us during our review. If you have any questions or comments about our report, please feel free to contact me on (202) 482-4661, or Jill Gross, Assistant Inspector General for Inspections and Program Evaluations, at (202) 482-2754.

Attachment

OFFICE OF INSPECTOR GENERAL
OIG
U.S. DEPARTMENT OF COMMERCE

TABLE OF CONTENTS

EXECUTIVE SUMMARY i

BACKGROUND 1

OBJECTIVES, SCOPE, AND METHODOLOGY 3

OBSERVATIONS AND CONCLUSIONS 4

I. PTO Has Provided Adequate Project Management and Financial Oversight of the Carlyle Construction Project, But Additional Costs Have Occurred 4

II. PTO Recently Completed Plans for Its Final Moves to Alexandria, But Space Planning for Future Growth Is Incomplete 10

RECOMMENDATIONS 14

APPENDICES 15

- APPENDIX 1. Key Milestones for PTO's Move from Crystal City to Alexandria 15
- APPENDIX 2. Agency Response to Draft Report 16

EXECUTIVE SUMMARY

On December 1, 2003, the United States Patent and Trademark Office (PTO) began its planned move of personnel and equipment from 18 buildings in Crystal City, Virginia, to 5 newly constructed buildings in Alexandria, Virginia. When the move is completed in 2005, PTO will have relocated approximately 7,350 employees and contractors to the new site—the culmination of a long and rigorous process to replace the 33 leases the General Services Administration (GSA) carries for it on the Crystal City facilities, with a single comprehensive lease agreement and a modern, consolidated campus to enhance operational efficiency. PTO expects the consolidation will save approximately $72.4 million over 20 years compared to the costs of its current buildings; improve work processes, security, and employee amenities; and maximize energy conservation. The complex is being built under a GSA contract with a private developer—LCOR Alexandria, L.L.C.—and PTO will occupy the space under a 20-year operating lease GSA signed with LCOR. The Office of Inspector General evaluated PTO efforts thus far to monitor the construction project and prepare for the transition to the complex. Our specific findings are as follows:

PTO Has Provided Adequate Project Management and Financial Oversight of the Carlyle Construction Project, But Additional Costs Have Occurred. PTO and GSA are providing adequate project management and financial oversight of the Carlyle lease/construction project. While the project's overall costs have increased from the 1995 budget of $223 million[1] to $251.5 million,[2] we note that most of this increase was due to project delays related to matters beyond PTO's control and new requirements, such as information technology changes, building redesign to comply with the City of Alexandria's requirements, and security upgrades. To help finance the cost increases, the agency obtained an additional $9.93 million in its above standard build-out allowance from GSA in August 2004, which will be amortized over 20 years.

On September 20, 2004, PTO also reached an agreement with GSA to pay it $3.3 million to settle a controversy between the two agencies regarding their financial obligations for project rent. This amount is based on the lost Crystal City rent that GSA had expected to collect from PTO had the Alexandria buildings been delivered on schedule instead of being completed and accepted ahead of schedule. In addition, as of September 30, 2004, the standard occupancy agreement between GSA and PTO, documenting the financial and other terms and conditions for occupying the Carlyle space, has not been completed. We are recommending that PTO reach an agreement with GSA and sign an occupancy agreement as soon as possible. (See page 4.)

PTO Recently Completed Plans for Its Final Moves to Alexandria, But Space Planning for Future Growth Is Incomplete. PTO recently moved 2,093 employees to the first two completed buildings. The agency anticipates moving 5,257 workers into the remaining three buildings, and the townhouse offices leased by PTO that front the parking garages, in late 2004

---

[1] The original project budget of $223 million, created in 1995, includes $88 million in standard building costs amortized in PTO's rent plus $135 million of PTO costs.
[2] Current estimated project costs of $251.5 million includes $98 million in standard building costs amortized in PTO's rent plus $153.5 million of PTO costs.

and early 2005. At that time, PTO will occupy all the leased space at the Carlyle site. Therefore, PTO must find space for 100 current employees whose leases in Crystal City will expire in fiscal year 2005 and 650 new employees it anticipates hiring in fiscal year 2006, assuming its 2003 Fee Modernization Bill is passed by Congress. We are recommending that PTO determine its needs and develop the appropriate Program(s) of Requirements for additional space requirements for employees and contractors that will not be accommodated at the space already leased at the Carlyle site. (See page 10.)

PTO concurred with our two recommendations, agreeing to proceed to finalize an occupancy agreement with GSA and to complete the Program(s) of Requirements to accommodate PTO's expected future staff growth.

BACKGROUND

On December 1, 2003, the Patent and Trademark Office began its planned move of personnel and equipment from 18 buildings in Crystal City, Virginia, to 5 buildings in Alexandria, Virginia (see figure 1). When the move is completed in 2005, PTO will have relocated approximately 7,350 employees and contractors to its new site—the culmination of a long and rigorous process to replace the 33 leases the General Services Administration (GSA) carries for the agency on the Crystal City facilities with a single comprehensive lease and a modern, consolidated campus with enhanced office arrangements. PTO expects the consolidation will save approximately $72.4 million over 20 years, compared to the costs of its current buildings; improve work processes, security, and employee amenities; and maximize energy conservation.

Figure 1: Artist's rendering of completed PTO site

PTO's five-building complex in Alexandria, Virginia, clockwise from left part of picture: Remsen, Jefferson, Madison, Knox, and Randolph.[3] *Source*: PTO

PTO has leased space in Crystal City since the 1960s, but began exploring relocation options with GSA in 1989 in anticipation of growing staff and space requirements (see appendix for the chronology of events on PTO's relocation). Between 1991 and 1995, PTO, the Department of Commerce, GSA, and the Office of Management and Budget (OMB) evaluated three options to replace PTO's existing leases: direct construction by GSA for PTO, a capital lease,[4] or an operating lease.[5] OMB ultimately approved the operating lease option, and in May 1995,

[3] **Remsen**—named for Henry Remsen, Jr., Chief Clerk of the first Patent Board; **Jefferson**—named for Thomas Jefferson, third President and one of the three original members of the first Patent Board; **Madison**—named for James Madison, the fourth President; **Randolph**—named for Edmond Randolph, Attorney General under George Washington, and a member of the first Patent Board; and **Knox**—named for Henry Knox, Secretary of War under George Washington, and a member of the first Patent Board.

[4] A capital lease has one or more of the following features: (1) the lessee has the option to purchase the property for less than fair market value, (2) ownership of the property is transferred to the lessee at the end of the lease term, (3) the net present value of the lease payments exceeds 90 percent of the fair market value of the property, and/or (4) the lease term is greater than 75 percent of the property's estimated economic life.

[5] An operating lease allows the lessee to only use property or equipment for a specified period of time and amount of rent.

authorized GSA to transmit a prospectus[6] for an operating lease to the House and Senate Environment and Public Works Committees.

The committees approved a competitively procured 20-year operating lease in October and November 1995 for approximately 2 million square feet of space. In June 1999, via a competitive process, GSA selected the Carlyle[7] site in Alexandria as the location for PTO's new facilities and awarded a lease contract to LCOR Alexandria, L.L.C. However, from 1997-2000, PTO's current landlord filed protests with the General Accounting Office (GAO),[8] the District Court of Virginia, the District Court of the District of Columbia, and the U.S. Court of Appeals for both the 4th and District of Columbia Circuits, which delayed PTO's plans to build the new facility. Those appeals were denied, and in June 2000, GSA signed a 20-year operating lease with LCOR. Table 1 compares PTO leased space in Crystal City with its new space in Alexandria.

Table 1: PTO Leased Space in Crystal City vs. Alexandria

	Crystal City	**Carlyle**	**Footage Increase**	**% Increase**
Occupiable Square Feet*	1,949,902	2,165,255**	215,353	11%

* Occupiable square feet comprises rentable square footage available for offices, equipment, and furnishings.
** Includes 67,293 occupiable square feet that PTO leased in the townhouse offices that the City of Alexandria required the developer to construct in order to shield the parking garages from view.

Source: U.S. Government Lease for Real Property, GS-11B-LVA80671, June 1, 2000, and PTO personnel.

PTO has assisted GSA with project oversight

PTO took steps to keep the project on track, establishing in 1998, the Office of Space Acquisition (OSA) to provide financial and technical assistance to GSA in the management of the project. GSA has overall responsibility for PTO's space consolidation project: prospectus and lease preparation, financial oversight, property management, security, and indemnification against vacancy and other project risks. However, PTO's OSA played a significant role in keeping the project close to budgetary guidelines. OSA has 22 employees and contractors who manage PTO's construction budget, review all change orders, and work with other PTO personnel to accomplish the move. OSA has prepared various documents for the move to Carlyle, such as the *USPTO Consolidation Transition and Relocation Plan* in November 2002, which outlines policies to be implemented while the agency operates in dual locations.

[6] A prospectus is a written justification for a proposed project and includes information on size, cost, location, and other project features.

[7] PTO's new facility is near the Carlyle House, which was built by John Carlyle as one of the original trustees of Alexandria, Virginia.

[8] GAO was recently renamed the Government Accountability office.

OBJECTIVES, SCOPE, AND METHODOLOGY

The Office of Inspector General conducted this program evaluation in accordance with the *Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency, and under authority of the Inspector General Act of 1978, as amended, and Department Organization Order 10-13, dated May 22, 1980, as amended. We sought to determine how well PTO's Office of Space Acquisition has monitored building construction to date and is preparing for the transition to the new buildings at the Carlyle site. It was not our purpose—nor did we attempt—to determine the validity of the change orders reviewed and approved by GSA and PTO. Our methodology included the following:

- **Analysis**. We evaluated (1) OSA's budget and cost control measures for the construction, (2) the PTO/GSA team review process for change orders, and (3) OSA's transition plans for moving PTO personnel and contractors.
- **Interviews.** We interviewed personnel from PTO, OSA, GSA, and the Department of Commerce including the following: (1) PTO's Chief Financial Officer/Chief Administrative Officer (CFO/CAO) and other management officials; (2) OSA's director, the manager responsible for the move, the overall move coordinator, and move coordinators for individual PTO offices; (3) GSA's contracting officer, project manager, and project personnel; and (4) Commerce staff responsible for overseeing building construction.
- **Literature review**. We evaluated reports by PTO, GAO, GSA, and prior Commerce Office of Inspector General reports to identify concerns and issues raised during the project's planning and construction phases.

We conducted our fieldwork at PTO headquarters in Crystal City, Virginia, from October 1, 2003, to December 31, 2003, and obtained various project management and financial updates from PTO through June 2004. We also walked through the new construction at the Carlyle site during different stages of construction. At the conclusion of our review, we discussed our final observations and recommendations with PTO's CFO/CAO, and OSA personnel.

OBSERVATIONS AND CONCLUSIONS

I. PTO Has Provided Adequate Project Management and Financial Oversight of the Carlyle Construction Project, But Additional Costs Have Occurred

PTO and GSA have provided adequate project management and continuous financial oversight of the Carlyle lease/construction project. While the project's overall costs have increased from the 1995 budget of $223 million[9] to $251.5 million,[10] we note that most of this increase was due to project delays related to matters beyond PTO's control and new requirements, such as information technology changes, building redesign to comply with the City of Alexandria's requirements, and security upgrades (see table 2 on page 5). The project delays were primarily due to protests and lawsuits filed by PTO's current landlord that delayed efforts to build PTO's new facility (see appendix). To help finance the cost increases, the agency obtained an additional $9.93 million in its above standard build-out allowance from GSA in August 2004, which will be amortized over 20 years.

Given that PTO prepared its budget 9 years ago, such an increase in costs for a large construction project is not unexpected and does not appear unreasonable. In addition, PTO may incur additional costs, because GSA informed PTO that with the buildings being completed and accepted earlier than expected, PTO should have to pay an additional $3.3 million in rent for fiscal years 2004 and 2005.

PTO and GSA have closely reviewed project costs

The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office agreed in a September 1998 memorandum of understanding (MOU) that PTO would assist GSA in providing financial oversight of the project. OSA reviewed all drawings and specifications for the buildings; suggested cost-cutting measures, such as standardized floor plans and mass material buys; and—with GSA—reviewed all change orders and budget items (GSA's contracting officer ultimately approves all change orders). In addition, PTO's Offices of Corporate Planning and Finance have captured and tracked all project costs, providing another layer of review.

PTO's planning and involvement in the oversight of the project began well before the signing of the 1998 MOU. In 1995, PTO prepared and began managing its budget for building, transition, and moving costs, and in 1998, began providing required quarterly reports to Congress via the Senate Committee on Environment and Public Works.[11] However, as project delays and other unforeseen events occurred, PTO has had to adjust the initial budget of $223 million twice: (1) in fiscal year 2002, the agency estimated that it would need an additional $37 million, for a total of

[9] The original project budget of $223 million, created in 1995, includes $88 million in standard building costs amortized in PTO's rent plus $135 million of PTO costs.
[10] Current estimated project costs of $251.5 million includes $98 million in standard building costs amortized in PTO's rent plus $153.5 million of PTO costs.
[11] Senate Report 105-235, June 26, 1998.

$260 million, and (2) in fiscal year 2003, PTO revised its budget downward to approximately $251 million (see table 2).

Table 2: PTO Budget for Construction and Transition of Operations (Fiscal Years 2001-2006)

PTO Costs (In Millions)	Original Budget	Added Inflation Costs	Added Other Costs	Revised Budget
1995 BUDGET COSTS				
Building Costs				
Standard Building Costs Amortized Over 20 Years	$88.000		$9.930	$97.930
Above-Standard Costs Paid by PTO	29.000	4.000	2.000	35.000
Move Costs	5.371		1.008	6.379
Transition Costs				
Information Technology	15.309		26.927	42.236
Signage	1.645			1.645
Dual Rent	7.759	2.676		10.435
Dual Operations	1.586		2.768	4.354
Security	5.031			5.031
Program Management	6.874	3.743		10.617
Furniture	61.924		-42.157	19.767
Inventory of Furniture	500			500
Subtotal	$222.999	$10.419	$476	$233.894
NEW BUDGET COSTS				
New Initiatives	0	0	14.212	14.212
Townhouse Fit Out	0	0	2.488	2.488
GSA Fee	0	0	960	960
Subtotal	0	0	17.660	17.660
Total Costs	$222.999	$10.419	$18.136	$251.554

Source: PTO Office of Space Acquisition

The specific costs that comprised the additional $28.5 million in project costs were as follows:

- GSA gave PTO authority to amortize $9,930,000 in costs from the developer in August 2004 for above standard building costs (i.e., security upgrades, improved lighting and electrical systems, office doors and windows, upgraded carpeting, plastic and wood finishes and moldings, and special finishes). LCOR provided the $9.93 million that will be amortized over 20 years, along with the standard building costs of $88 million. GSA allows federal agencies to obtain funds when an agency cannot fund construction or lease costs in its yearly budget via a later lump sum payment or through amortization in GSA's rent.
- PTO will spend an additional $4 million for inflation costs due to project delays and $2 million for additional electrical outlets to accommodate higher than originally planned numbers of employees and contractors at the Carlyle site.
- PTO will spend an additional $1,008,000 to move existing furniture.

- PTO will spend $27 million for additional information technology costs in fiscal years 2001 through 2006: new telecommunications switches, new data switches and relocation of existing switches, relocation of a data center and IT lab equipment, and unplanned IT construction changes to all five Carlyle buildings.
- PTO will spend $2,676,000 for additional rent at Crystal City due to project delays and higher than anticipated annual Crystal City rent increases.
- PTO will spend $2,768,000 for additional guard and shuttle services.
- PTO will spend $3,743,000 for additional project management due to project delays.
- PTO has saved $42,157,000 from reduced furniture purchases.
- PTO will spend $14,212,000 for new initiatives including space use changes, such as converting file space to office space; upgraded telecommunications and electrical improvements; security; computer workstations for the Public Search Facility; and pantry equipment.
- PTO will spend $2,488,000 to outfit the 67,293 occupiable square feet of townhouse office space leased at the Carlyle site.
- PTO spent $960,000 in fiscal year 2003 for fees to GSA.

PTO did not check with the appropriate Congressional committee before ceasing to submit quarterly reports

Congress has been concerned about PTO's move to Carlyle from the onset of the project. In June 1998, the Senate Committee on Environment and Public Works wanted assurances that costs would be controlled. Thus, Senate Bill 2260 set spending caps[12] of $88 million for standard building costs and $29 million for above-standard build-out costs[13] (see table 2 on page 5). The committee expected PTO to establish cost control mechanisms to monitor every aspect of the project and report to Congress quarterly on the project's status. Despite the specificity of the Senate bill, the final conference report did *not* establish any cost controls for PTO's project, deferring such caps until PTO requested project funding, at which time the need for caps could be analyzed. However, Congress did not take these steps when funding was requested, and no caps were established for PTO's move to Carlyle. In addition, the agency informed us that it had stopped sending quarterly status reports to the Senate Public Works Committee as of April 2001, believing that the committee no longer had an interest in them.

According to PTO officials, they have informed the Senate and House Appropriations Committees of additional project costs. Specifically, PTO officials told us that they had informed Senate and

[12] Senate Bill 2260, Fiscal Year 1999 Commerce Justice State (CJS) Appropriations Bill, June 26, 1998.

[13] The $88 million represents costs amortized costs over 20 years for a base building or "cold, dark shell;" the $29 million represents costs expensed by PTO for improved lighting and electrical systems, office doors and windows, upgraded carpeting, plastic and wood finishes and moldings, and special finishes.

House Appropriations Committee personnel that PTO's budget had changed for various reasons, including (1) project delays from litigation that resulted in inflation of construction costs; (2) the need to redesign aspects of the facility to accommodate the City of Alexandria's requirements; (3) enhanced security following September 11, 2001; (4) decreased furniture expenditures; (5) changes in information technology costs; (6) the acquisition of the townhouse office space; and (7) new initiatives including space use changes, such as the recapture of space originally planned to house paper files, which allowed increased staff to be housed at the site. As shown in table 2, both standard and above-standard costs have been expanded by $9.9 million and $6.0 million, respectively. However, neither PTO nor GSA believed the $15.9 million increase was excessive, given that PTO's initial budget was prepared in 1995.

PTO and GSA need to finalize an occupancy agreement

For some time, PTO and GSA were unable to reach an agreement regarding Carlyle rental payments for fiscal years 2004 and 2005. GSA officials stated that PTO owed an additional $6.0 million in rent for the two years because the Remsen and Randolph buildings were accepted ahead of schedule, and the Madison and Knox buildings will likely be as well (see table 3). According to GSA officials, PTO owed additional rent in fiscal years 2004 and 2005, based on the September 1998 MOU with PTO, while PTO disagreed and said that it did not owe additional rent, based on language in the June 2000 lease agreement between GSA and LCOR.

Table 3: Comparison of Lease and Actual Building Acceptance Dates (As of 9/8/04)

	Lease Acceptance Dates	Actual Acceptance Dates
Remsen Building	12/03/03	10/17/03
Jefferson Building	12/08/03	12/15/03
Randolph Building	11/05/04	09/07/04
Madison Building	11/24/04	09/24/04*
Knox Building	04/01/05	01/20/05*

***Planned acceptance dates**

Source: OSA personnel

GSA stated that its September 1998 MOU with PTO clearly states that PTO becomes liable for rent when GSA accepts each building, and GSA contends that PTO knew about the early acceptance dates for Randolph, Madison, and Knox two years in advance. While PTO stated that it did not know that the Carlyle buildings would be delivered early two years in advance, it stated that it has known for some time that the Carlyle complex was delivering ahead of schedule.

On September 20, 2004, PTO reached an agreement with GSA to pay it $3.3 million to settle the controversy between the two agencies regarding their respective financial obligations for project rent. This amount is based on the lost Crystal City rent that GSA had expected to collect from PTO had the Carlyle buildings been delivered on schedule.

While GSA and PTO have been working to resolve the rent issue, as of September 30, 2004, the standard occupancy agreement between GSA and PTO has not been completed. The Federal Management Regulation requires occupancy agreements for all GSA customer space assignments.[14] The agreement is a complete, concise statement of the customer agency's financial terms and conditions for occupying GSA-controlled space, and is signed by both parties. The agreement (1) minimizes exposure to future unknown costs for both GSA and customer agencies and (2) stabilizes payments to the extent possible. The agreement specifically describes the following:

- Base rent and lease term.
- Estimated lump sum payments.
- Operating expenses and escalations.
- Estimated cost and scope of additional or reduced GSA services, if applicable.
- Amortization rates for initial space alterations.
- Exact cancellation/termination procedures.
- Exact square footage.
- Any additional rights and liabilities of both parties.

We found that the September 1998 MOU between PTO and GSA outlined the general terms and conditions for acquiring and occupying the leased space in Carlyle, and stipulated that these requirements would transfer to an occupancy agreement that the two agencies were to sign prior to the lease award to LCOR in June 2000. The terms, conditions, and basis for determining rent obligations would be specified, as would PTO's and GSA's obligations for management and operation of the new buildings.

Neither agency's representatives could explain why the occupancy agreement had not been signed during the required timeframe, but cited their continuing differences over PTO's rent obligations as the reason why they cannot sign it at present. We recommend that PTO reach an agreement with GSA by preparing and signing an occupancy agreement documenting the financial and other terms and conditions for occupying the Carlyle space and PTO's and GSA's obligations and responsibilities as soon as possible.

In its reply to our draft report, PTO provided additional information concerning the settlement of the rent dispute with GSA, which has been incorporated into the report. According to PTO, because the firm fixed rent start date that GSA established in the lease with LCOR was based on the mid-point of the lease delivery dates, GSA incurs no additional rental liability as a result of the early delivery of Carlyle space. However, PTO did agree that the early delivery, and its consequential acceleration of the relocation, does mean that GSA would collect less rent from PTO

[14] Federal Management Regulation 102-85.45.

in Crystal City than had been projected. Because PTO believes doing so complies with the spirit of the 1998 MOU, it stated that it agreed to reimburse GSA for $3.3 million in lost Crystal City rent that GSA had expected to collect if the Alexandria buildings had been delivered on schedule.

In its response, PTO also indicated that it will proceed to enter into an occupancy agreement with GSA as expeditiously as possible. However, PTO stated that GSA has not yet provided PTO with a revised draft occupancy agreement as of September 30, 2004.

II. PTO Recently Completed Plans for Its Final Moves to Alexandria, But Space Planning for Future Growth Is Incomplete

PTO sufficiently planned and accomplished its move of 2,093 employees to the Remsen and Jefferson buildings. It also recently identified what employees will be housed at the rest of its new Carlyle site in Alexandria, provided GSA with 120-day notice of leases in Crystal City that it needs to terminate prior to its next moves to Carlyle, and has begun meetings between its move coordinators and employees. However, even with the upcoming moves to the Madison, Randolph, and Knox buildings, and the east and west townhouses (see table 3 on page 7), the Carlyle site can only accommodate 8,000 of PTO's 8,800 employees and contractors.[15] As a result, PTO has to obtain additional space in fiscal years 2005 and 2006 through a prospectus with GSA or other means to handle current staff overflow and accommodate future needs.

Planning for Remsen and Jefferson moves was comprehensive

We found that the move by OSA of 2,093 employees to the Remsen and Jefferson buildings was well planned and organized, with the help of many PTO employees, whose experience moving among facilities in Crystal City helped OSA execute a smooth relocation to Carlyle. In preparing for these first moves,[16] OSA (1) designated an overall move coordinator to oversee the relocation and several subordinate coordinators to work with personnel of the units moving to the new facility; (2) hired moving companies early (in fiscal year 2003 to ensure funding availability); (3) analyzed its Crystal City leases to determine—based on lease expiration dates—which offices would be most cost-effective to move first; (4) prepared stacking plans of employees assigned to specific buildings; and (5) established a help desk and kiosks to answer employees' questions.

Plans for moves to next three buildings have been completed

PTO has achieved key milestones by identifying what additional employees will be moving to Carlyle, providing 120-day notice to GSA of leases it intends to terminate, and beginning coordination meetings between move coordinators and employees. In late April 2004, PTO management approved the stacking plan that outlines which employees will move to the remaining three buildings and the townhouses. In early May 2004, the agency gave GSA the 120-day notice of the leases it wants to terminate in Crystal City. Table 4 outlines PTO's leases, with PTO having already terminated approximately 700,000 square feet of space in Crystal City as of September 2004. If GSA accepts the Knox building on January 20, 2005, all of PTO's leases, except for the South and North Tower buildings in Crystal City, will be terminated.

The Randolph building is ready for occupancy as of September 7, 2004, and the Madison building is scheduled for initial occupancy in late September 2004. As previously noted, the anticipated

[15] When the project budget was established in 1995, the facility planned to house 7,108 employees and contractors.
[16] First move—Remsen and Jefferson in December 2003 and January 2004, respectively; second move— Madison and Randolph in September and October 2004, respectively; third move—Knox in January 2005.

Table 4: PTO Leases at Crystal City

Crystal City Buildings	Original Expiration Date	Original Rentable Square Feet	Revised Expiration Date	Current Rentable Square Feet
Crystal Plaza 4 – Plaza Shops	12/18/01	1,260	12/18/06	1,260
Crystal Park 2	01/12/03	66,258	01/12/06	66,258
Crystal Square 5	06/30/03	7,280	06/30/05	7,280
Crystal Plaza 1	03/31/04	4,683	03/31/05	4,683
Crystal Park 3	04/24/04	24,076	04/26/05	24,076
Crystal Park 2	05/14/04	77,390	05/14/05	77,390
Crystal Gateway 2	08/31/04	38,401	08/31/04	38,401
Crystal Plaza 2, 3, 4, ¾	09/30/04	677,177	09/30/04	227,204
Crystal Square 2	10/06/04	2,411	10/06/04	2,411
Crystal Gateway 4	10/31/04	33,620	04/30/05	33,620
Crystal Park 5	11/02/04	194,194	05/31/05	194,194
Crystal Park 3	11/22/04	67,261	11/22/04	67,261
Crystal Mall 1	11/26/04	179,970	Space Released	0
Crystal Plaza 6	11/30/04	31,225	11/30/04	31,225
Crystal Plaza 6	12/07/04	2,835	12/07/04	2,835
Crystal Park 1	12/15/04	12,796	12/15/04	12,796
Crystal Square 4	12/18/04	28,167	12/18/04	28,167
Crystal Park 2	12/19/04	38,506	12/19/04	38,506
Crystal Park 1	02/07/05	82,063	02/07/05	82,063
Crystal Park 2	02/11/05	65,140	02/11/05	65,140
Crystal Park 1	03/16/05	14,028	03/16/05	14,028
Crystal Park 1	05/31/05	82,176	05/31/05	63,666
North Tower	06/17/05	47,419	06/17/05	13,568
Crystal Park 2	09/30/05	127,309	09/30/05	127,309
Crystal Park 1	11/03/05	8,692	11/03/05	8,692
Crystal Park 1	10/05/05	8,750	10/05/05	8,750
Crystal Park 1	12/14/05	22,402	12/14/05	22,402
Crystal Park 1	12/21/05	11,658	12/21/05	11,658
Crystal Park 3	02/19/06	8,601	02/19/06	8,601
Crystal Park 3	02/19/06	7,578	02/19/06	7,578
Crystal Park 2	06/06/06	23,165	06/06/06	23,165
South Tower	03/04/07	156,943	03/04/07	156,943
North Tower	04/19/07	19,787	04/19/07	915
(Changes shown in yellow)		2,173,221		1,472,045

Source: Office of Space Acquisition

September completion dates for Randolph and Madison are ahead of schedule. However, PTO does not plan to occupy the Randolph building before October 1, 2004. September is the busiest month of the fiscal year for examiners as they attempt to meet production goals and attain awards. PTO was concerned that a move before the end of the fiscal year could seriously affect examiner production. PTO will move examiners in early October to ensure all work has been completed for the fiscal year.

PTO must find additional space for current and future employees

PTO plans to move 5,257 employees and contractors to the Randolph, Madison, and Knox buildings and the townhouses between September 2004 and March 2005. By March 2005, PTO will have approximately 7,350 employees and contractors at its new site, which can accommodate 8,000 employees and contractors. PTO plans to save space for approximately 650 new employees in fiscal year 2005, assuming its 2003 Fee Modernization Bill will be passed by Congress.[17] Currently, PTO has approximately 8,800 employees and contractors. For its remaining 1,450 employees and contractors (8,800 – 7,350), PTO will house 1,350 employees and contractors in the South and North Tower buildings in Crystal City, but will need space in February 2005 for approximately 100 employees from PTO's Office of Finance. The leases for these 100 employees expire in February and May 2005.

PTO's strategy for obtaining more space to meet its current and future needs is two-fold. First, PTO is searching for space for its Office of Finance by February 2005. PTO planned to find additional space through GSA's Advanced Acquisition Program, which awards leases by matching agency requirements with GSA's inventory of leases previously negotiated between GSA and leasing companies. On May 28, 2004, PTO requested that GSA find additional space within 500 feet of the Carlyle site for its Office of Finance. PTO provided a preliminary Program of Requirements (POR), which is a detailed space plan and a build-out specification for future space, in its letter to GSA, and planned to submit a final POR to GSA. GSA recently stated that it did not have any space in its inventory to meet PTO's specific requirements. As a result, GSA began procuring additional space for PTO in July 2004, leaving only eight months to complete a typical 12-month procurement. GSA could be forced to extend at least one lease used by PTO's Office of Finance in Crystal City if the procurement is not completed by February 2005.

Second, PTO stated that it would need additional space in fiscal year 2006 when it plans to hire another 650 employees, assuming Congress passes PTO's fee bill.[18] Most likely, GSA will have to submit a new prospectus to Congress, because PTO's additional space would exceed GSA's threshold of $2.3 million in annual rent. We recommend that PTO complete its POR for its future space requirements as soon as possible and submit them to GSA to begin the space acquisition process, including prospectus, if necessary.

[17] H.R. 1561, April 2, 2003.

[18] For fiscal years 2005 and 2006, PTO plans to hire 1,600 examiners but net only 1,300 examiners due to attrition.

In its response to our draft report, PTO agreed that it is important to develop strategies for meeting its increased future space requirements. In that regard, PTO stated that it has already begun work on the applicable Program(s) of Requirements.

RECOMMENDATIONS

We recommend that the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office take the following actions:

1. Reach an agreement with the General Services Administration by preparing and signing an occupancy agreement documenting the financial and other terms and conditions for occupying the Carlyle space and PTO's and GSA's obligations and responsibilities as soon as possible (see page 4).

2. Complete the Program of Requirement for its future space requirements as soon as possible and submit them to the General Services Administration to begin the space acquisition process, including prospectus, if necessary (see page 10).

APPENDICES

APPENDIX 1. Key Milestones for PTO's Move from Crystal City to Alexandria

Milestones	Date
❑ GSA and PTO begin work on the Carlyle prospectus	November 1989
❑ GSA and PTO submit prospectus to OMB	Fall 1991
❑ OMB approves prospectus	May 1995
❑ Senate approves prospectus	October 1995
❑ House approves prospectus	November 1995
❑ PTO issues Solicitation for Offers	June 1996
❑ PTO receives Phase 1 proposals	December 1996
❑ PTO landlord files bid protest with GAO	June 1997
❑ GAO rejects bid protest from PTO landlord	September 1997
❑ GSA and PTO sign Memorandum of Understanding	September 1998
❑ PTO landlord files protest with District Court of Virginia	December 1998
❑ PTO landlord files protest with the District Court of D.C.	March 1999
❑ GSA selects LCOR and Carlyle site	June 1999
❑ District Court of Virginia dismisses protest filed by PTO landlord	July 1999
❑ Alexandria Planning Commission approves plans for Carlyle complex	March 2000
❑ District Court of D.C. dismisses lawsuit filed by PTO landlord	June 2000
❑ U.S. Court of Appeals for the 4th Circuit affirms ruling by District Court of Va.	June 2000
❑ District Court of D.C. denies motion for reconsideration from PTO landlord	June 2000
❑ GSA signs lease for new PTO facility	June 2000
❑ U.S. Court of Appeals for D.C. affirms June ruling by District Court of D.C.	December 2000
❑ PTO holds official groundbreaking	January 2001
❑ City of Alexandria approves building design	July 2001
❑ LCOR breaks ground at Carlyle site	November 2001
❑ PTO opens Remsen building	December 2003
❑ PTO opens Jefferson building	January 2004
❑ PTO plans to open Randolph building	September 2004
❑ PTO plans to open Madison building	September 2004
❑ PTO plans to open Knox building	January 2005

Source: Chronology of PTO Space Consolidation, October 19, 2001, and PTO Personnel

APPENDIX 2. Agency Response to Draft Report

UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

SEP 30 2004

MEMORANDUM FOR Jill Gross
Assistant Inspector General for
Inspections and Program Evaluations

FROM Jon W. Dudas SP for JD
Under Secretary and Director

SUBJECT Response to Draft Report No. IPE-16268
"*USPTO's Move to Alexandria, Virginia, is Ahead of Schedule, But Some Key Issues Need to Be Resolved*"

We appreciate the effort your staff has made in reviewing the progress and effectiveness of our relocation to the new United States Patent and Trademark Office (USPTO) headquarters in Alexandria, Virginia (also referred to as Carlyle). We were pleased to learn that you have concluded that our project management and financial oversight of the consolidation have been adequate and that we have successfully planned and executed the move of the 2,093 employees that relocated to the first two buildings.

We have carefully reviewed the observations and recommendations made in the subject draft report. We concur with the two recommendations and will proceed to finalize an occupancy agreement with the General Services Administration (GSA) and to work with them to identify the best way to accommodate our expected future staff growth.

I would like to clarify, however, the reasons for the USPTO's agreement, referred to on page 8 of the report, to pay GSA $3.3 million to resolve the long-standing controversy between the two agencies regarding our respective financial obligations for project rent. Specifically, our position has always been that each party is entitled to the benefit of the bargain that the two agencies struck in planning the project. In 1998, when GSA and USPTO signed a Memorandum of Understanding (MOU), both agencies contemplated that the various buildings at the consolidated campus would be delivered according to a schedule that would subsequently be set forth in the lease. Since multiple sites were competing for our requirement, we recognized that each developer would have a different delivery schedule. Once GSA signed the lease with LCOR and established the required delivery dates for the five Alexandria buildings, we were able to finalize our projected rent budget – that is, the amount of rent that we would have to pay in Crystal City until we relocated and the dates we would move into the Alexandria buildings (the lease delivery dates) and begin to pay rent there. We also began the complex process of working with GSA to determine how best to plan the relocation so as to minimize each agency's rental obligations.

P.O. Box 1450, Alexandria, Virginia 22313–1450 - WWW.USPTO.GOV

The USPTO did not know that the Alexandria buildings would be delivered early two years in advance (page 7 of the report). In fact, as of September 24, 2004, GSA could not assure us, with complete certainty, that the occupancy permit for the Madison Building would be issued in time for us to open the Public Search Room on September 27, as scheduled. However, the permit was issued and we have now commenced the scheduled occupancy of that building.

What we *have* known for some time is that the complex as a whole is delivering ahead of schedule. GSA, therefore, contended that per the 1998 MOU, they were entitled to rent (which, at various times, they have estimated between $7-9 million) at Carlyle for this early delivery period. Our position has consistently been that the MOU established a framework the two agencies could use to request budgetary authority for a multi-year project. It is essential to recognize that, because the firm fixed rent start date that GSA established in the lease with LCOR was based on the mid-point of the lease delivery dates, *GSA incurs no additional rental liability as a consequence of early Carlyle space delivery.* Early Carlyle space delivery, and our consequential acceleration of the relocation, does, however, mean that GSA would collect less rent from us in Crystal City than they had projected. We estimate this sum to be about $3.3 million, considerably less than GSA had been demanding. Because we believe doing so complies with the spirit of the 1998 MOU, we have agreed to reimburse GSA for this $3.3 million in lost Crystal City rent that they had expected to collect from us had the Alexandria buildings delivered on schedule. Since both agencies formulated their budgets based on the lease delivery dates, this is in accord with both agency's budget formulation and execution plans.

We note that with respect to increased project costs resulting from changes, the report does not reflect the savings we will reap over the term of the lease from more efficient occupancy of the Alexandria campus. As you note, the original project was planned to house 7,108 staff and the facility as constructed will house 8,000. Expenses such as costs for increased electrical outlets and recapture of space originally planned to accommodate paper will be more than offset by rent savings over time.

On page 7, the report lists items that USPTO reported to Congressional staff regarding changed project costs. We note that you omit the three largest cost changes cited on the previous page: decreased furniture expenditures, new initiatives and changes in information technology costs. These, of course, were also discussed with Congressional staff.

Our comments on the specific report recommendations follow:

IG Recommendation (1): Reach an agreement with The General Services Administration by preparing and signing an occupancy agreement detailing the financial and other terms and conditions for occupying the Carlyle space and GSA's obligations and responsibilities as soon as possible.

2

USPTO Response:

Now that GSA and USPTO have resolved their disagreement regarding the appropriate rent to which GSA is entitled as a consequence of early Carlyle space delivery, we will proceed to enter into an occupancy agreement as expeditiously as possible. Two weeks ago, when we reached an oral agreement with GSA, they promised that a revised draft occupancy agreement would be forthcoming. As of this date, we have not received it.

IG Recommendation (2): Complete the Program of Requirement[s] for [the USPTO's] future space requirements as soon as possible and submit them to the General Services Administration to begin the space acquisition process, including prospectus, if necessary.

USPTO Response:

We agree that it is important that we develop strategies for meeting our increased future space requirements. In that regard, we have already begun work on the applicable Program(s) of Requirements.

3

U.S. DEPARTMENT OF COMMERCE
Office of Inspector General
Room 7898C, HCHB
14th Street & Constitution Avenue, NW
Washington, DC 20230

Internet Web site:

www.oig.doc.gov