

FY 2020

United States Patent and Trademark Office

SUMMARY OF PERFORMANCE & FINANCIAL INFORMATION



Expanding American Innovation

UNITED STATES
PATENT AND TRADEMARK OFFICE



FINANCIAL AND RELATED HIGHLIGHTS			
(Dollars in Thousands)	% Change 2020 over 2019	For the Year Ended September 30, 2020	For the Year Ended September 30, 2019
Fund Balance with Treasury	11.9%	\$ 2,739,700	\$ 2,448,264
Property, Plant, and Equipment, Net	(26.4%)	337,983	459,341
Other Assets	65.6%	58,089	35,075
Total Assets	6.6%	<u>\$ 3,135,772</u>	<u>\$ 2,942,680</u>
Deferred Revenue	4.9%	\$ 1,033,073	\$ 984,971
Accounts Payable	(1.3%)	105,256	106,665
Accrued Payroll, Benefits, and Leave	21.0%	340,524	281,532
Other Liabilities	18.6%	172,398	145,321
Total Liabilities	8.7%	\$ 1,651,251	\$ 1,518,489
Net Position	4.2%	1,484,521	1,424,191
Total Liabilities and Net Position	6.6%	<u>\$ 3,135,772</u>	<u>\$ 2,942,680</u>
Total Earned Revenue	7.9%	\$ 3,657,051	\$ 3,388,671
Total Program Cost	4.2%	(3,622,969)	(3,478,168)
Net Income/(Cost) from Operations	138.1%	\$ 34,082	\$ (89,497)
Budgetary Resources Available for Spending	9.7%	\$ 4,257,572	\$ 3,880,416
Total Collections, Net	235.0%	\$ (265,205)	\$ (79,169)
Federal Personnel	2.2%	12,928	12,652
On-Time Payments to Vendors	-%	99%	99%

PERFORMANCE HIGHLIGHTS			
Performance Measures	FY 2020 Target	FY 2020 Actual	Performance Results*
Patent Average First Action Pendency (months)	15.0**	14.8	Met
Patent Average Total Pendency (months)	23.7	23.3	Met
Trademark Average First Action Pendency (months)	2.5-3.5	3.0	Met
Trademark Average Total Pendency (months)	12	9.5	Met
Trademark First Action Compliance Rate	95.5%	95.7%	Met
Trademark Final Compliance Rate	97.0%	98.1%	Met
Exceptional Office Action	50.0%	51.0%	Met
Trademark Applications Processed Electronically	88.0%	88.7%	Met
“Percentage of prioritized countries for which intellectual property (IP) country teams have made progress on at least 3 of the 4 performance criteria: a. Institutional improvements of IP office administration for advancing IP rights; b. Institutional improvements of IP enforcement entities; c. Improvements in IP laws and regulations; d. Establishment of government-to-government cooperative mechanisms”	66%	100%	Met
“Number of people, including Foreign Government Officials and U.S. Stakeholders, trained on best practices to protect and enforce IP”	5,000	10,688	Met

* The performance result of a given measure is either met (100% or greater of target), or not met (below 95% of target). Time based goals are met when the results are less than the target.

**The USPTO continued striving toward a more aggressive target of less than 15 months versus the FY 2021 President’s Budget target of 16.1 months.

MESSAGE FROM THE UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE U.S. PATENT AND TRADEMARK OFFICE



Andrei Iancu

Dr. Martin Luther King Jr. once said, “The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge.” The past year has presented its share of challenges for all of us, as a nation and as an agency. I am

proud to say that, through it all, our diverse and talented nationwide workforce has stood strong—determined to carry on our historic mission, which examiners have performed since 1790—without pause and without fail.

Our thoughts are with all those affected by the global COVID-19 pandemic. While continuity of operations remained a key priority for the agency in 2020, there was no greater priority than the health and safety of our employees and the public who interacts with us. On March 23, in response to the pandemic, the USPTO quickly and seamlessly transitioned to

mandatory telework. Even now, the vast majority of our employees continue to work from home. At the same time, we set up several new programs and initiatives, including temporary relief for Patent and Trademark applicants affected by the pandemic, and actually improved the quality and efficiency of our Patent and Trademark examination, thanks, in large part, to the incredible dedication of our nearly 13,000 employees.

In advance of the shift to telework, the USPTO mandated telework training for all employees who were not previously telework-ready to make sure everyone could telework full time. This included employees who had been with the agency for decades but who had until now worked in the office full-time as well as employees still in training, and even externs. The USPTO also made sure everyone had the equipment and support they needed to telework efficiently: The agency deployed some 1,000 SOHO (small office and home office) routers, 2,000 monitors, and 3,000 printers to its employees. Additionally, to accommodate the more than two-fold increase in the number of virtual meetings, staff in the Office of the Chief Information Officer (OCIO) dramatically increased the capacity of USPTO teleworking and virtual-meeting software and bandwidth. This excellent work allowed the USPTO to

MISSION-FOCUSED STRATEGIC GOALS

GOAL I: Optimize Patent Quality and Timeliness

GOAL II: Optimize Trademark Quality and Timeliness

GOAL III: Provide Domestic and Global Leadership to Improve Intellectual Property Policy, Enforcement, and Protection Worldwide

MISSION SUPPORT GOAL: Deliver Organizational Excellence

continue operations with essentially no decrease in productivity because of COVID-19. Applicants might not have even noticed the shift to telework. The two USPTO Boards—the Patent Trial and Appeal Board (PTAB) and the Trademark Trial and Appeal Board (TTAB)—were also forced to move to remote hearings, and they have done so with remarkable efficiency. Since the agency’s shift to mandatory telework, the Boards have conducted more than 300 remote hearings.

At the same time, the USPTO—along with its international counterparts—worked to mitigate COVID-19’s effect on the innovation community. The USPTO and European Patent Office pledged that “at a time when the dissemination of knowledge is crucial, we will persevere in developing the tools that can help scientists all over the world.” Through various programs, the USPTO has done precisely that. With the authority provided by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), the USPTO temporarily extended deadlines for filing many Patent and Trademark documents and paying certain fees. The USPTO also instituted a number of initiatives to promote research related to COVID-19. The COVID-19 Prioritized Examination Program lets small and micro entities accelerate prosecution, at no charge, for inventions that are subject to FDA approval for use in treating COVID-19. For applications in this program, the USPTO hopes to issue final decisions within six months of filing so long as applicants are prompt in responding to office actions. To support research related to COVID-19, the

USPTO also launched the Patents 4 Partnerships website, which provides a repository of patents and applications related to COVID-19 and creates a platform for connecting patentees and potential licensees. We hope these programs will help the world develop a vaccine or find a cure more quickly.

During the year, the USPTO also launched one of its most important initiatives, aimed at expanding invention and entrepreneurship in the United States: the National Council for Expanding American Innovation (NCEAI). The NCEAI is composed of high-level leaders from the federal government, industry, academia, and professional and nonprofit organizations, as well as venture capitalists and independent inventors, who are committed to increasing the opportunities for all Americans to participate in innovation. A top priority of the NCEAI is to help the USPTO develop a long-term, comprehensive national strategy to build a more diverse and inclusive innovation ecosystem by increasing participation demographically, geographically, and economically.

Since the founding of this great nation, innovation has been the driving force of our economy and our most defining trait as a people. America’s continued economic prosperity and technological leadership depend on a strong and inclusive innovation ecosystem. The USPTO is committed to ensuring that all Americans have the opportunity to innovate, start new companies, succeed in established companies, and ultimately achieve the American Dream.

THE USPTO MISSION

Fostering innovation, competitiveness, and job growth in the United States by conducting high quality and timely Patent and Trademark examination and review proceedings in order to produce reliable and predictable intellectual property rights, guiding intellectual property policy and improving intellectual property rights protection, and delivering intellectual property information and education worldwide.

Patents

Patents continued our focus on improving the quality of patent examination, and reduced its time for patent examination. Under the leadership of Andrew Hirshfeld, who was reappointed as Commissioner for Patents in July 2020, the USPTO is now issuing final decisions—either allowing a patent or issuing a final rejection—on average within 23.3 months—faster than last year’s 23.8 months and significantly faster than in recent years. While some of this increase in productivity is due to USPTO employees taking less vacation as a result of COVID-19, our examiners’ exceptional resilience and diligence have been the most critical factors.

To enhance patent quality, Patents has started introducing a new patent search system that provides examiners with increased access to prior art. The search system can also integrate with an artificial intelligence-based tool to help examiners find more relevant prior art. Patents took additional steps to support the quality of patent examination through a number of programs that help train examiners. Patents is preparing to implement an updated performance appraisal plan for examiners that provides a roadmap for enhanced patent quality, including an increased focus on search and the clarity of the written prosecution record. FY 2020 marked the beginning of updates that more closely align the time allotted for the examination of patent applications with the technology described in the application and its specific attributes. The implementation of these updates will be finalized in FY 2021, along with a new process for assigning applications to examiners that better matches their expertise with the technologies disclosed in the patent application.

Finally, the USPTO is collaborating with dozens of intellectual property (IP) offices around the world to accelerate the prosecution of patent applications that are cross-filed in multiple countries.

Trademarks

Under the leadership of the new Commissioner for Trademarks, David Gooder, who joined the agency in February 2020, the Trademarks organization also had an impressive year with several new milestones, despite the challenges of a global pandemic. Entirely electronic processing of trademark applications rose to 88.7%, and is leading to more efficient processing, fewer errors, and more cost-effective transactions for USPTO customers. The gains made in efficiency throughout the application cycle enabled Trademarks to successfully exceed pendency and quality targets for the 15th consecutive year—this as trademark applications increased by 9.6% and as COVID-19 forced a dramatic shift in agency operations.

Trademarks also advanced a number of initiatives to mitigate suspicious filings, fraudulent filings and specimens, and counterfeit products. The Trademark organization launched a joint anti-counterfeiting campaign with the National Crime Prevention Council (NCPC) focused on educating consumers and stakeholders throughout the IP community about the threats of non-genuine products; it continued efforts to improve the integrity of the register through post-registration audits to validate marks in use and it implemented a new U.S. counsel rule that requires U.S.-based representation for applicants, registrants, or parties to a trademark proceeding before the USPTO. The rule took effect in August 2019, and analysis this fiscal year shows that it has already positively impacted the filing behavior of foreign applicants, registrants, and parties before the Trademark Trial and Appeal Board (TTAB).

Patent Trial and Appeal Board

While adapting to the pandemic, the PTAB not only continued to meet all statutory due-date requirements of the America Invents Act (AIA), it also reduced the pendency of ex parte appeals so that they are now decided, on average, within 13.4 months of docketing. Only five years ago, such appeals took about 36 months to decide.

The PTAB is taking many steps to strengthen its information technology (IT) infrastructure by moving to a single integrated IT system, known as PTAB Center. This will provide employees with a single unified interface for managing cases and decisions across all of the PTAB's jurisdictions, and it will provide external customers with a simple user interface to file petitions and papers. The PTAB is also in the process of increasing the accessibility of its hearings that are held in the USPTO's Regional Offices.

During FY 2020, the PTAB also implemented a number of processes to improve the transparency and predictability of its proceedings. These included a new pilot program for addressing motions to amend in AIA trials. It proposed rulemaking to ensure a more consistent approach to questions relating to the institution of AIA trials and proposed rulemaking to allocate the burdens of persuasion for motions to amend. It initiated a Fast-Track Appeals Pilot Program that allows applicants to expedite ex parte appeals for a minimal fee. It launched the Legal Experience and Advancement Program (LEAP), which fosters development of the next generation of IP practitioners by incentivizing law firms and the companies they represent to give new attorneys argument time. And the PTAB continues to assess and develop plans to address the impact of the *Arthrex, Inc. v. Smith & Nephew, Inc.* decision, which is now before the Supreme Court.

Trademark Trial and Appeal Board

The TTAB began the fiscal year with a large inventory of resource-intensive trial cases that were awaiting decision. Despite the complications created by mandatory/ maximum telework, the TTAB reduced the average time to issuance of decisions in appeals and trial cases, and it has halved the number of trial cases awaiting decisions.

The TTAB remains committed to the USPTO strategic plan's goal of streamlining processes and procedures where appropriate and developing with stakeholders more efficient trial processes that will avoid over-litigation of issues and ensure the integrity of the trademark register. In FY 2020, it concluded a two-year expedited cancellation proceeding pilot program, which focused on encouraging more efficient approaches for resolving cancellation cases asserting claims that registered marks were never used or had been abandoned. To encourage early settlement discussions and use of the Board's Accelerated Case Resolution (ACR) processes, the TTAB attorneys and judges engaged in active case management and conferencing with parties involved in such cancellation cases. The TTAB successfully identified 205 cancellation cases as eligible for the pilot. Of these, 134 were resolved without need of a final decision on the merits. In addition, the TTAB began developing a new pre-trial conference pilot program for both opposition and cancellation cases that will focus on encouraging parties to engage in more efficient trial processes, in particular the broader use of stipulations, more extensive pre-trial disclosures, and narrowing issues for trial.

The TTAB also continued its long-running commitment to issuance of precedential decisions, which provide guidance to the trademark bar. In FY 2020, it issued 43 decisions on procedural and substantive matters and completed its annual update of the TTAB Manual of Procedure in a timely fashion.

Policy and International Affairs

The Office of Policy and International Affairs (OPIA) continued to streamline and enhance the efficiency of the global patent system. Worksharing arrangements with foreign IP offices continued to be an effective tool for this system. The USPTO and Mexico's IP office extended their bilateral Patent Prosecution Highway (PPH) agreement and, in January 2020, they signed a memorandum of understanding laying the groundwork for a next-generation worksharing framework and furthering commitments made in the United States-Mexico-Canada Agreement (USMCA). Based on the success of a bilateral PPH with the USPTO, the Chilean IP office became the third Latin American office to join the Global PPH in July 2020.

The USPTO also continued to develop and provide domestic and international in-person and virtual programs to improve IP systems in countries around the world. Participants included U.S. and foreign officials with IP-related responsibilities, including judges, prosecutors, Patent and Trademark examiners, and IP office administrators, as well as U.S. stakeholders. In all, the USPTO worked with over 4,800 foreign government officials representing 121 countries and intergovernmental organizations. The USPTO worked throughout FY 2020 to improve IP protection and enforcement for U.S. stakeholders globally through our network of overseas IP attachés and U.S.-based IP specialists. These efforts included many outreach programs throughout the year.

Through the Office of Governmental Affairs, the USPTO also continued briefing and providing assistance to members of Congress and their staffs. In FY 2020, Commissioner for Patents Andrew Hirshfeld testified at a Senate Judiciary IP Subcommittee hearing on patent eligibility and quality. In addition, former Commissioner for Trademarks Mary Boney Denison submitted written testimony on the agency's efforts to combat fraudulent trademark filings at a subsequent hearing convened by the same subcommittee.

Information Technology

While the OCIO was ensuring that USPTO employees could quickly and efficiently switch to mandatory telework, it also made the agency's IT systems more robust. The USPTO's alternate data center site in Boyers, Pennsylvania, now functions as a failover site for the USPTO's two most critical applications: Docket and Application Viewer (DAV) and Official Correspondence (OC). The alternative data center can run remotely even if the Alexandria data center goes dark. Specifically, the OCIO improved disaster recovery capabilities by configuring and replicating Tier-1 databases between the Alexandria and Boyers data centers, replacing failed power distribution units and successfully completing the Hot Aisle Containment project in the Production Alexandria Data Center. The agency performed a successful failover and failback test of two applications (DAV and OC) in July 2020. The test proves that the USPTO now has the capability to switch the operation of these two key patent applications between the alternate site in Boyers and the main data center in Alexandria. The switch over and switch back demonstrate the agency's enhanced business continuity and disaster recovery capability.

The OCIO also took major strides in incorporating artificial intelligence (AI) and machine learning (ML) into patent search and classification. The USPTO launched a new prototype patent search system that allows examiners to automatically retrieve prior art documents, review those documents efficiently, leverage suggested search areas to ensure complete search, and use "explainable AI" to help examiners understand results. The prototype also captures feedback automatically from examiners as they search to improve the ML models, and it is scalable to keep pace with exponentially growing collections of prior art. The prototype was released to a subset of almost 600 examiners across all technology areas for assessment and refinement, with a series of planned expansions to the entire patent examination corps. USPTO subject matter experts developed an auto-classification system that uses ML and AI to assign Cooperative Patent Classification (CPC)

symbols on patent documents and identifies whether CPC symbols are associated with specific claimed subject matter. This will help ensure consistency of classification practices.

Financial Management

The COVID-19 pandemic brought significant uncertainty to both the USPTO and its stakeholders. To help ease the strains that many individuals and companies were experiencing in the spring and summer of 2020, the USPTO used its authority under the CARES Act to allow applicants to delay certain Patent and Trademark filings and to delay paying certain fees. Beyond the CARES Act, the USPTO listened to feedback from stakeholder groups regarding the timing of proposed fee adjustments that had been under development since before the pandemic. Based on this feedback, the agency deliberately delayed adjusting fees until early signs of an economic recovery emerged.

In the early weeks of the pandemic, the USPTO also took proactive steps to manage the significant uncertainty that emerged in its demand and revenue forecasts. For example, the USPTO slowed down hiring to better align capacity with the expected work, and it deferred spending on certain IT upgrades. Teams across the agency also developed budget-contingency plans with additional cost-saving measures that could be implemented later in the year if the financial forecast continued to deteriorate. These actions allowed the USPTO to close FY 2020 with sufficient operating reserves to mitigate financial uncertainty and risk heading into FY 2021.

We are confident that the USPTO's financial and performance data are complete, reliable, accurate, and consistent. The USPTO, for the 28th consecutive year, earned an unmodified audit opinion on its annual financial statements. The independent auditors did not identify any material weaknesses or instances of noncompliance with the laws and regulations for the FY 2020 financial reporting period.

Conclusion

In 2020, the world had to confront the worst pandemic in 100 years. As the world continues to grapple with this pandemic, technology will be at the center of any solution. Researchers are racing to develop vaccines, doctors and pharmaceutical companies are experimenting with drug treatments, and technology companies are figuring out how to repurpose existing factories and supply chains to build ventilators, masks, testing equipment, and other lifesaving necessities. In the meantime, many companies and agencies, including the USPTO, have had to lean heavily on technology to do remotely what they used to do in person. None of this technology would be possible without the indelible spirit and perseverance of American inventors and entrepreneurs. They, and the public whose quality of life they improve through their countless innovations, are who our agency has served for over two centuries and will continue to serve, with great pride and passion, for years to come—no matter what challenges or obstacles the future may bring.



Andrei Iancu

Under Secretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office

November 6, 2020

This summary report presents the highlights of the USPTO's Fiscal Year 2020 Performance and Accountability Report (www.uspto.gov/about-us/performanceand-planning/uspto-annual-reports) and includes the most relevant performance and financial information in a brief user-friendly format.

TABLE 1: 2018–2022 STRATEGIC PLAN

Strategic Goals with Resources Invested	Objectives
<p>Goal I: Optimize Patent Quality and Timeliness Obligations: \$3,105.0 million Total Program Cost: \$3,199.4 million</p>	<p>Optimize Patent Application Pendency</p> <p>Issue Highly Reliable Patents</p> <p>Foster Innovation Through Business Effectiveness</p> <p>Enhance Operations of the PTAB</p>
<p>Goal II: Optimize Trademark Quality and Timeliness Obligations: \$344.3 million Total Program Cost: \$360.5 million</p>	<p>Optimize Trademark Application Pendency</p> <p>Issue High-Quality Trademarks</p> <p>Foster Business Effectiveness</p> <p>Enhance Operations of the TTAB</p>
<p>Goal III: Provide Domestic and Global Leadership to Improve Intellectual Property Policy, Enforcement, and Protection Worldwide Obligations: \$66.2 million Total Program Cost: \$63.1 million</p>	<p>Provide Leadership and Education on Domestic Intellectual Property Policy and Awareness</p> <p>Provide Leadership and Education on International Intellectual Property Policy and Awareness</p>
<p>MISSION SUPPORT GOAL: Achieve Organizational Excellence*</p>	<p>Enhance Human Capital Management and Foster Employee Engagement</p> <p>Optimize Speed, Quality, and Cost-Effectiveness of IT Delivery to Achieve Business Value</p> <p>Ensure Financial Sustainability to Facilitate Effective USPTO Operations</p> <p>Enhance the USPTO’s Interaction with Internal and External Stakeholders and the Public at Large</p>

*The cost associated with Mission Support Goal activities is distributed among the agency’s primary Strategic Goals I, II, and III.

PATENTS:

STRATEGIC GOAL I:

Optimize Patent Quality and Timeliness

The USPTO is dedicated to its mission to deliver “high-quality and timely examination of patent applications” per laws, regulations, and practices and consistent with the goals and objectives in the USPTO 2018–2022 Strategic Plan. This goal and its key performance measures directly support the Department of Commerce’s *Strategic Objective 1.3: Strengthen Intellectual Property Protection*. For more information, please visit the [Commerce Performance Data Pro](#) website.

Economic growth in the United States is driven by creating new and better ways of producing goods and services, leading to new and productive investments. American innovators and businesses rely on the legal rights associated with patents to reap the benefits of those innovations. Processing patent applications in a high-quality and timely manner advances economic prosperity by using IP as a tool to create a business environment that cultivates and protects new ideas, technologies, services, and products.

The USPTO established a pendency goal in FY 2020 that 90% of both total performance (i.e., mailed actions) and total inventory (i.e., remaining inventory) would be within statutory timeframes set by 35 U.S.C.

§ 154(b)—also referred to as Patent Term Adjustment (PTA) compliance—by the end of FY 2025. The statutory timeframes are 14 months from the filing date of an application to the mailing date of a first office action; 4 months to respond to an amendment, which includes an RCE; 4 months to act on a decision from the PTAB; 4 months to issue a patent after payment of the issue fee; and 36 months from the filing date of an application to the issue date of a patent. Concurrently, while maintaining this level of PTA compliance, the previously attained patent average first action pendency of less than 15 months, and less than 24 months for average total pendency, remained a priority. In tandem, our efforts toward the short term average pendency goals and long term PTA compliance goals are significant in the success of optimizing patent application pendency and increasing the predictability of the patent application process for our stakeholders.

For FY 2020, total PTA compliance for all mailed actions was 83.2%, and total PTA compliance for all remaining inventory was 87.8%. FY 2020 PTA compliance for each PTA category is represented in Table 2.

TABLE 2: **PATENT TERM ADJUSTMENT (PTA) PERFORMANCE DATA**

PTA Category	PTA Compliance Mailed Actions	PTA Compliance Remaining Inventory
Issue an office action within 14 months after application filing	43.4%	73.5%
Respond to an amendment within four months	96.9%	97.4%
Respond to an RCE filing within four months	84.4%	84.6%
Act on the application within four months after a decision from the PTAB	96.5%	99.8%
Patent granted within four months after payment of the issue fee	98.7%	98.7%
Issue a patent within 36 months of the filing date	85.1%	94.2%
Total PTA Compliance	83.2%	87.8%

Patent average first action pendency was 14.8 months at the end of FY 2020, and average total pendency was 23.3 months. Average first action pendency measures the time from when an application is filed until it receives an initial determination of patentability

by the patent examiner. Average total pendency measures the time from filing until an application is either issued as a patent or abandoned. This data for first action and total pendency is noted in Tables 3 and 4, respectively.

TABLE 3: PATENT AVERAGE FIRST ACTION PENDENCY (MONTHS)

Fiscal Year	Target	Actual
2015	16.4	17.3
2016	14.8	16.2
2017	14.8	16.3
2018	15.4	15.8
2019	14.9	14.7
2020	15.0*	14.8*

Target met.

*The USPTO continued striving toward a more aggressive target of less than 15 months versus the FY 2021 President’s Budget target of 16.1 months.

Trend: The trend line indicates that the performance trend is positive, with some variability of the direction of the trend line in predicting future results. Additional discussion for this measure can be found on page 8.

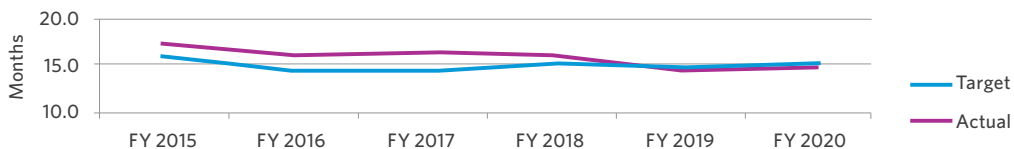
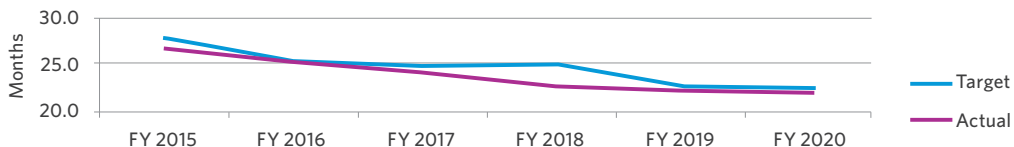


TABLE 4: PATENT AVERAGE TOTAL PENDENCY (MONTHS)

Fiscal Year	Target	Actual
2015	27.7	26.6
2016	25.4	25.3
2017	24.8	24.2
2018	25.0	23.8
2019	23.9	23.8
2020	23.7	23.3

Target met.

Trend: The trend line indicates that the performance trend is positive, with little variability of the direction of the trend line in predicting future results. Additional discussion for this measure can be found on page 8.



OBJECTIVE 1:

Optimize Patent Application Pendency

During this unprecedented and challenging fiscal year, the USPTO continued to press forward, doing our part to support each other, to serve the public, and to promote U.S. commerce. The efforts of our employees offered reassurance to our stakeholders and the public and enabled innovators and inventors to make progress with their work. Like many other government agencies and private businesses, the USPTO transitioned to an almost entirely virtual operating model on March 23, 2020, with the vast majority of employees and contractors working full-time from home. Patent examiner production remained relatively steady, and in some areas, production increased during mandatory/maximum teleworking. The USPTO remained open for business, albeit virtually, supporting our stakeholders and the public more broadly.

Optimize Pendency and Examination Timeframes

The USPTO continued to focus on meeting the Department of Commerce's Strategic Objective 1.2: *Advance Innovation by accelerating and improving the reliability of patent processing*. The USPTO achieved 14.8 months for average first action pendency and 23.3 months for average total pendency. The focus on PTA compliance in FY 2020 improved the predictability of patent application processing for our stakeholders, ensuring that 83.2% of all mailed actions and 87.8% of the remaining application inventory were within PTA compliance.

Our success is the direct result of the efforts of our employees, at all levels, to drastically improve analyses, streamline processes, and clarify approaches that benefit currently filed patent applications, as well as future patent applications. These efforts continued to emphasize a first-in-first-out management of examiner dockets at the patent examining level, which required complex data analysis to better prioritize applications without sacrificing quality, while increasing efficiencies to accelerate the overall patent examination process at the application-processing level.

Align Production Capacity with Incoming Workload

The Patent organization reviewed pendency to align production capacity with incoming workload. Every year, analysis is performed to determine the areas of high pendency, and new patent examiner hires are placed in these areas. In addition, work from areas of high pendency is routinely redistributed to areas of low pendency where there are overlaps in technology expertise. In FY 2020, the Patent organization configured a system to support the new application assignment process that will be implemented next fiscal year. This new application assignment process will further assist in normalizing pendency throughout the examining corps, as discussed in the "Refine Production Standards to Achieve Patent Quality Expectations and Goals" portion of this report.

Table 5 shows how the USPTO evaluates the efficiency of the patent examination process, as measured by the relative cost-effectiveness of the entire patent examination process over time, or the efficiency with which the organization applies its resources to production. Actual results are based on total patent-related expenses USPTO-wide compared with patent production.

TABLE 5: **MEASURE: TOTAL COST PER PATENT PRODUCTION UNIT**

Fiscal Year	Target	Actual
2015	\$4,646	\$4,086
2016	\$4,687	\$4,198
2017	\$4,607	\$4,312
2018	\$4,786	\$4,593
2019	\$5,142	\$4,633
2020	\$5,253	\$5,003
2021	\$5,798	

Target met.

OBJECTIVE 2: Issue Highly Reliable Patents

Refine Production Standards to Achieve Patent Quality Expectations and Goals

At the beginning of FY 2020, the USPTO implemented the first phase of updates that improved the examination process and better aligned it with the USPTO's goals of providing predictable and reliable patents rights to stakeholders. The first phase of updates offered an increase to the base or minimum time patent examiners are allotted to examine each application, as well as additional time for applications that contain particular attributes above a specified threshold, including the overall number of claims, the length of the specification, and the number of pages in any filed Information Disclosure Statements.

Provide Clear and Effective Patent Examination Guidance: Subject Matter Eligibility

In October 2019, the USPTO issued an update to its "[2019 Revised Patent Subject Matter](#)." This was due to the USPTO's continuing effort to increase the certainty and predictability of the patent eligibility analysis and to clarify the analysis to guide patent examiners and the public in finding the appropriate lines to draw with respect to patent eligible subject matter. This update responded to public feedback received on the 2019 guidance. This update also responded to stakeholder questions about how the

USPTO's subject matter eligibility guidance is supported by judicial precedent, for instance by discussing which judicial decisions support each of the three types of enumerated abstract ideas set forth in the 2019 guidance.

In October 2019, the USPTO also issued four examples in the data processing and life sciences, demonstrating how USPTO personnel would apply the 2019 guidance to specific fact patterns, and a number of other helpful tools to be used in conjunction with the guidance. Technology Centers (TCs) utilize these examples as the basis for training their patent examiners on how to perform the eligibility analysis.

For more information about these updates, please visit the USPTO's [Subject Matter Eligibility](#).

OBJECTIVE 3: Foster Innovation Through Business Effectiveness

Increase Our Focus on the Patents Customer

The USPTO is committed to being a customer-oriented agency that applies customer and user feedback to continuously improve its processes, products, tools, and communications in order to deliver outstanding experiences. We aspire to deliver consistent, clear, and intuitive customer experiences that contribute to the achievement of the USPTO's mission of fostering innovation.

The USPTO's prior and ongoing efforts in this area improve the consistency of the application of patent regulations, increase the efficiency and effectiveness of the search for patent examination, provide a supportive patent pathway to independent inventors and small business owners, and encourage a greater exchange of ideas and partnership with industry.

Use Patent Quality Data to Identify Areas for Improvement

The USPTO continued to evaluate patent quality by measuring and assessing its work products. Review quality assurance specialists from the Office of Patent Quality Assurance (OPQA) reviewed a random sample of employee work products for

compliance with title 35 of the U.S.C. and the relevant case law at the time of the patentability determination. The feedback and data obtained from these reviews allow the USPTO to identify quality trends earlier in the examination process and address any corrective measures, such as training. The review form used by the review quality assurance specialists was updated in FY 2020, facilitating more granular data collection of quality issues to better assist in conducting root cause analyses.

In FY 2020, OPQA completed 12,000 reviews. Table 6 shows the results in the correctness of office actions that the USPTO achieved during FY 2020. An office action is a written notification to the applicant, and a few examples are non-final rejections, final rejections, and notices of allowability.

TABLE 6: MEASURES: PATENT CORRECTNESS INDICATORS

Statute	Goal	Actual
35 U.S.C. § 101 (including utility and eligibility) - Ensures the patent application contains a new and useful invention.	>97%	97.7%
35 U.S.C. § 102 (prior art compliance) - Ensures the patent application is a novel invention in view of the appropriate prior art.	>95%	94.3%
35 U.S.C. § 103 (prior art compliance) - Ensures the patent application is not an obvious invention in view of the appropriate prior art.	>93%	88.9%
35 U.S.C § 112 (35 U.S.C. § 112(a), (b), including (a)/(b) rejections related to 35 U.S.C. § 112(f)) - Ensures the patent application adequately satisfies multiple invention disclosure requirements.	>93%	90.6%

OBJECTIVE 4: Enhance Operations of the Patent Trial and Appeal Board

Enhance the Consistency, Transparency, and Certainty of Patent Trial and Appeal Board Proceedings

During this unprecedented and challenging time, the PTAB continued its mission without interruption and made several improvements to its processes and proceedings to enhance consistency, transparency, and certainty for ex parte appeals and AIA trials.

The PTAB has continued to implement changes to its practice in response to stakeholder feedback. Such changes have included:

- A new pilot program (established March 15, 2019) and notice of proposed rulemaking (published October 21, 2019) concerning motions to amend;
- Updates to the Trial Practice Guide (consolidated in November 2019 and republished in full);
- Notice of proposed rulemaking relating to the institution of AIA trials (published May 27, 2020); and
- Designating numerous PTAB decisions as precedential and informative, including decisions relating to factors considered at the institution of AIA trials.

The PTAB transitioned from in-person hearings to entirely remote hearings in light of mandatory/maximum telework due to the COVID-19 response. The PTAB continued to meet all statutory due date requirements for AIA trials while reducing the average pendency of ex parte appeals to its lowest level in years. From March 16 to September 30, 2020, the PTAB conducted 430 ex parte appeal hearings, 256 AIA trial hearings, and 15 reexamination hearings. During this same time period, the PTAB granted and facilitated public access to 148 hearings, upon request. Additionally, pursuant to the CARES Act, the PTAB processed 107 extensions of time for parties to take various actions in both ex parte appeals and AIA trial proceedings.

As previously mentioned, the PTAB successfully met all statutory deadlines for AIA trials. The PTAB also continued to work through its oldest appeals to reduce its average appeal pendency from approximately 30 months in 2015 to the current 13.4 months. The PTAB had a goal at the end of fiscal year 2020 of 14.5 months, which was met, and has a long-term pendency goal of 12 months.

Under its new standard operating procedure (SOP 2), in FY 2020, the PTAB designated eight precedential decisions and 16 informative decisions on various topics, ranging from discretionary denial of an institution, to live testimony at oral hearings, to submission of new evidence at the rehearing stage.

TRADEMARKS:

STRATEGIC GOAL II:

Optimize Trademark Quality and Timeliness

In February, U.S. Secretary of Commerce Wilbur Ross named David S. Gooder to be the new Commissioner for Trademarks. He joined the USPTO with more than 25 years of prior experience in IP, brand protection, rights clearance, and licensing for global brands. He has been an officer and served two terms on the

Board of Directors for the International Trademark Association (INTA) and served as Chairman of the INTA Foundation. Gooder received his Juris Doctor from the University of Arizona James E. Rogers College of Law and is admitted to the State Bar of California.



David Gooder is sworn in as Commissioner for Trademarks at the USPTO by Andrei Iancu, Under Secretary of Commerce for Intellectual Property and Director of the USPTO. Dillon Gooder holds the Bible for his father during the oath of office. (Photo by Jay Premack/USPTO)

OBJECTIVE 1:

Optimize Trademark Application Pendency

Trademark operations are guided by the strategic goal to optimize trademark quality and timeliness. The USPTO implements U.S. trademark laws and regulations for the mutual benefit of consumers and businesses, in accordance with the USPTO's 2018-2022 Strategic Plan.

The USPTO works closely with stakeholders to develop trademark pendency goals that maintain an

optimal balance of pendency and examination efficiency that meets the expectations of the global IP community. The organization balances examination capacity with incoming applications and inventory by using production incentives, overtime, career development details, and additional staffing.

On newly filed applications, first actions have been rendered in fewer than 3.5 months dating back to 2007, and trademarks have been registered in less than 12 months, on average. These pendency rates are optimal for stakeholders and the USPTO. Again the USPTO met trademark pendency goals, even as the USPTO received 738,112 trademark application classes this year, eclipsing last year's record total.

Achieve Optimal Pendencies for Applications

First action pendency measures the time between when USPTO receives a trademark application and when it makes a decision on that filing. First action pendency was 3.0 months in FY 2020, within the optimum target range of 2.5-3.5 months.

The USPTO averaged 9.5 months for total trademark pendency, the average number of months from the date of filing to a notice of abandonment, a notice of allowance, or registration. The USPTO has an extended history of sustained optimal trademark pendency (see Tables 7 and 8), an essential indicator for stakeholders, as these milestones often impact business decisions.

TABLE 7: TRADEMARK AVERAGE FIRST ACTION PENDANCY (MONTHS)

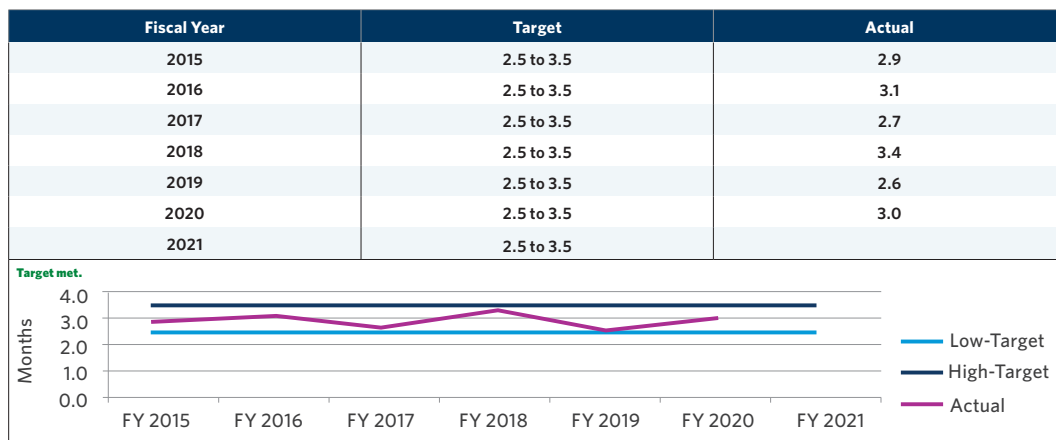
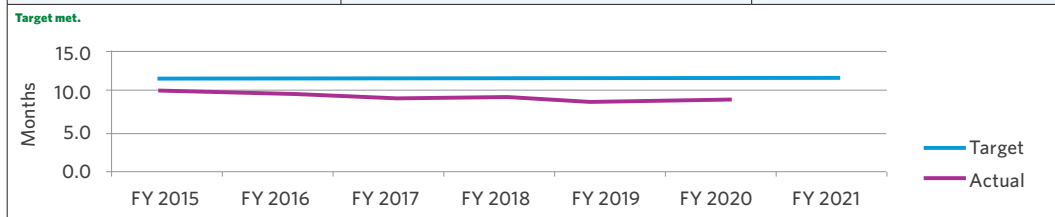


TABLE 8: **TRADEMARK AVERAGE TOTAL PENDANCY (MONTHS)**

Fiscal Year	Target	Actual
2015	12.0	10.1
2016	12.0	9.8
2017	12.0	9.5
2018	12.0	9.6
2019	12.0	9.3
2020	12.0	9.5
2021	12.0	



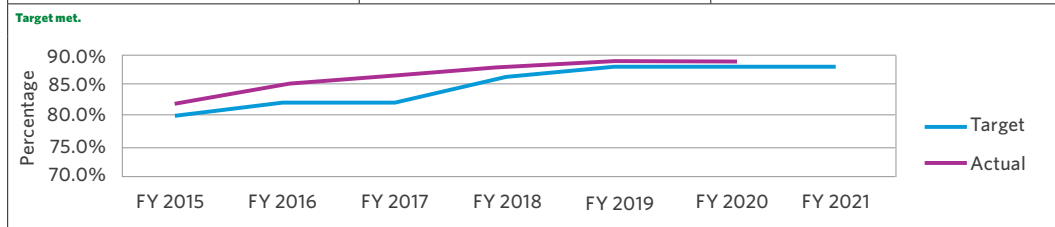
Improve Economy and Efficiency of Electronic Processing

As shown in Table 9, the USPTO increased electronic processing of trademark applications throughout the entire prosecution cycle to 88.7% in FY 2020.

Complete end-to-end electronic processing of applications improved administrative efficiency through electronic file management, reduced processing errors, and optimized workflows.

TABLE 9: **MEASURE: TRADEMARK APPLICATION PROCESSED ELECTRONICALLY**

Fiscal Year	Target	Actual
2015	80.0%	82.2%
2016	82.0%	84.8%
2017	82.0%	86.5%
2018	86.0%	87.9%
2019	88.0%	88.4%
2020	88.0%	88.7%
2021	88.0%	



OBJECTIVE 2: Issue High-quality Trademarks

Trademark examination quality is predicated on first and final Office actions meeting certain standards both legally and procedurally. Quality reviews are completed on first Office actions and the examining attorney's final action approval or denial of

registration of a given mark (see Tables 10 and 11). The first action compliance rate is the total number of first actions without substantive decision-making errors made, substantive decision-making errors missed, and/or substandard refusals under section 2 of the Trademark Act divided by the total number of first actions reviewed. The final compliance rate is the total number of cases without substantive decision-making errors divided by the total number of reviewed final actions and cases approved for publication. First and final action compliance rates, which measure trademark quality, were 95.7% and 98.1%, respectively, for the year.

TABLE 10: **MEASURE: TRADEMARK FIRST ACTION COMPLIANCE RATE**

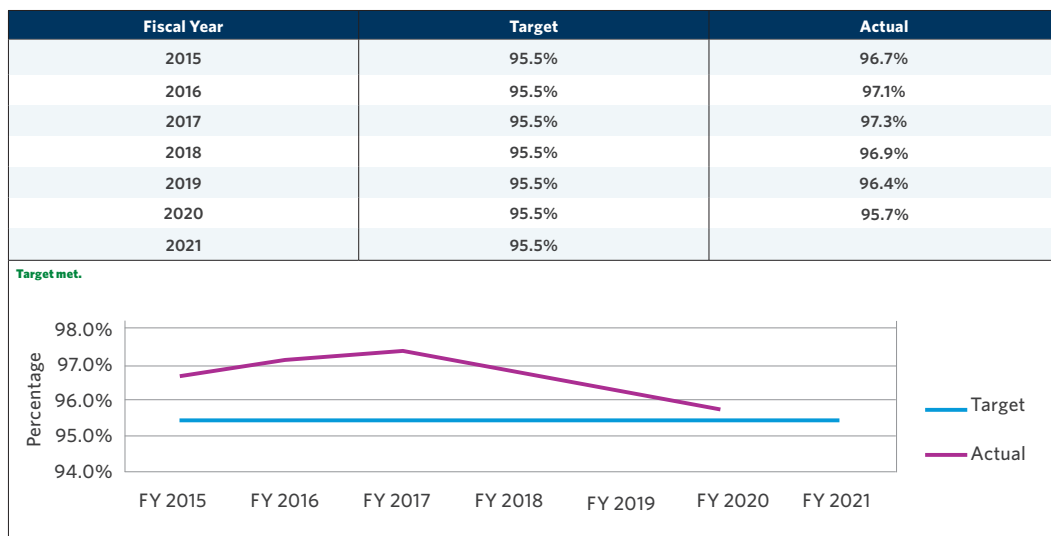
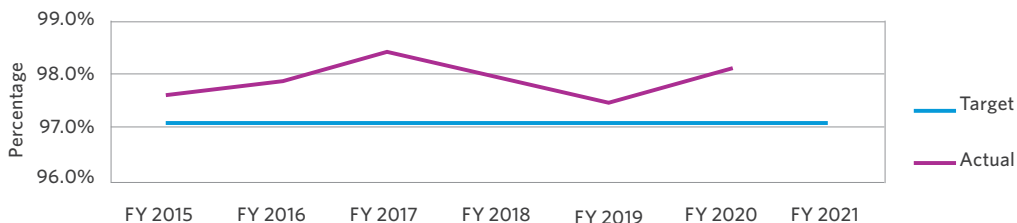


TABLE 11: MEASURE: TRADEMARK FINAL COMPLIANCE RATE

Fiscal Year	Target	Actual
2015	97.0%	97.6%
2016	97.0%	97.8%
2017	97.0%	98.3%
2018	97.0%	97.9%
2019	97.0%	97.4%
2020	97.0%	98.1%
2021	97.0%	

Target met.



The three trademark quality targets were all met again in FY 2020, validating the effectiveness of the organization’s specialized training, online tools, and enhanced communication.

Exceptional Office Actions, our most comprehensive quality measure, exceeded the annual target of 50% (see Table 12). The table below illustrates the USPTO’s Exceptional Office Action rates, which is reflective of its commitment to ongoing excellence in searching, developing supporting evidence, writing office actions, and communicating decisions. This success rate further demonstrates the USPTO’s

holistic approach to quality and is calculated by the number of cases in which (a) there are no decision-making errors, (b) the search is sufficient, and (c) the writing and evidence for every issue raised is rated as excellent, divided by the total number of first actions reviewed. The USPTO continues to concentrate on trademark quality by developing guidelines specific to quality review findings. The target is reviewed annually and is periodically adjusted to reflect application volume, changes in the law, the effect of hiring additional examining attorneys, and implementing new procedures or processes.

TABLE 12: **MEASURE: EXCEPTIONAL OFFICE ACTION**

Fiscal Year	Target	Actual
2015	36.0%	48.3%
2016	40.0%	45.4%
2017	40.0%	45.0%
2018	45.0%	48.0%
2019	46.0%	54.5%
2020	50.0%	51.0%
2021	40.0%	

Target met.

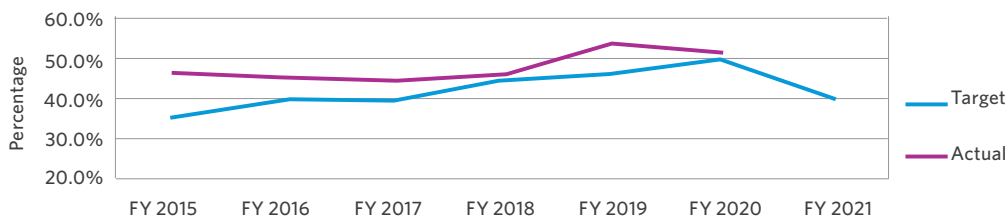


Table 13 shows how the USPTO evaluates the efficiency of the trademark examination process, as measured by the average cost of a trademark disposal compared with trademark direct and indirect costs. This efficiency measure is calculated by dividing total expenses associated with the examination and processing of trademarks (including

associated overhead and allocated expenses), as well as multiyear investments in IT by outputs or office disposals. Actual results are based on total trademark-related expenses office-wide, compared with office disposals (e.g., abandoned and registered applications, etc.).

TABLE 13: **MEASURE: TOTAL COST PER TRADEMARK OFFICE DISPOSAL**

Fiscal Year	Target	Actual
2015	\$673	\$667
2016	\$590	\$600
2017	\$561	\$586
2018	\$540	\$576
2019	\$539	\$600
2020	\$691	\$586
2021	\$729	

OBJECTIVE 3:

Foster Business Effectiveness

Deliver Information Technology Solutions to Enhance Operations

The USPTO experienced uncertain revenues resulting from the pandemic-related economic downturn in FY 2020. Consequently, the agency deferred some planned spending to address the revenue uncertainty and preserve the operating reserve, including deferring planned investments to deliver a full suite of IT applications to the Trademark organization. The USPTO funded the operation and maintenance of legacy Trademark IT systems to sustain business operations. The USPTO only dedicated minimal resources toward modernization and enhancements, which deferred progress of AI and ML development and integration this year.

Despite the implementation of these necessary financial contingencies, the USPTO still managed to enhance business operations, improve the effectiveness of our Trademark IT development process, successfully establish a primary and secondary deployment environment that has reduced system downtime during deployments, and achieve other significant milestones in FY 2020. One such milestone was making IT system changes to accommodate the relief offered to trademark applicants and registrants as provided for in the CARES Act of 2020.

Further, the USPTO updated trademark IT systems to support the transition to MEF of trademark applications, implemented in February 2020. This furthered the USPTO's goal of complete (end-to-end) electronic processing of trademark applications and registrations while also achieving more cost-effective operations overall. MEF—as part of a broader collection of actions taken the last few years to

reduce suspicious filings and streamline operations—was implemented through two major milestones. First, trademark filers are now required to establish a user name and password through MyUSPTO, the personalized homepage and gateway for customers to conduct their USPTO business. The USPTO also updated system components and forms to accommodate the MEF requirement.

The USPTO continues to assess its financial outlook for FY 2021 and beyond, to mitigate any remaining revenue risk. The agency will make careful decisions on when and how to resume certain Trademark IT initiatives given available funding, including those using AI and ML.

Protect the Integrity of the Register

To help strengthen the integrity of the Trademark Register, in FY 2020, the USPTO prioritized and continued to make progress in mitigating potentially fraudulent and bad faith trademark application filings. Fraudulent/bad faith trademark application and registration maintenance filings contribute to trademark cluttering (i.e., trademarks on the register that are not in use).

Improve the Customer Experience

The Trademarks business unit continued to execute a trademark customer experience initiative to provide consistent, clear, and intuitive services to trademark customers. In FY 2020, Trademarks redesigned the Trademarks landing page within the USPTO's website based on customer survey research, customer profiles, and “top task” data analytics. The USPTO also built a representative customer volunteer list to enable the co-creation of content and services. This allowed the Office to conduct moderated usability testing with a representative sampling of trademark customers to evaluate how well the landing page performed. These results are directly informing future website enhancements, including an improved search engine, design/layout improvements, and quality information.

OBJECTIVE 4:

Enhance Operations of the Trademark Trial and Appeal Board

In FY 2020, the TTAB continued to evaluate and monitor its programs, filing levels, overall pendency, and human capital to enhance its operations.

One focal point for the TTAB is its commitment to streamlining processes where appropriate. In FY 2020, the TTAB completed its two-year expedited cancellation proceeding pilot. The pilot program began in 2018 and involved early identification of Petitions to Cancel registrations based on abandonment and non-use claims for potential participation in this program. Once identified, these cases became the subject of review by TTAB judges and attorneys to determine whether they could be expedited through the TTAB's ACR processes.

The program successfully identified 205 cases eligible for the program, and 114 conferences were held with the parties to the cases. The parties in more than 20 cases agreed early on to use ACR, while many others decided to consider the use of ACR later

in the cancellation proceeding. Of the 205 eligible cases, 134 concluded before final decision readiness, generally because the parties settled the matter. The TTAB is assessing the data received from the pilot and expects to make recommendations in FY 2021. Recommendations from the pilot could support any future deployment by the USPTO of a permanent option for an expedited cancellation proceeding or an expungement proceeding, both of which would focus on registrations for marks believed no longer to be in use.

In FY 2020, the TTAB completed an 18-month realignment and cross-training pilot of its organizational structure. The pilot's purpose was to support enhancements of operations in the TTAB by promoting cross-training of staff, effective use of resources, and succession planning, and to provide back-up support for many tasks that previously were the exclusive responsibility of particular individuals. The TTAB has experienced positive change under this new structure, including increased knowledge sharing, streamlined work processes, and both intra-team and inter-team collaboration; enhanced and transparent communication, internally and externally; increased focus on implementing strategy and IT improvement initiatives that enhance quality and optimize performance; and more nimble adaptation to changing needs within the USPTO.

INTELLECTUAL PROPERTY:

STRATEGIC GOAL III:

Provide Domestic and Global Leadership to Improve Intellectual Property Policy, Enforcement, and Protection Worldwide

The USPTO advises the President—through the Secretary of Commerce—and federal agencies on national and international IP policy issues, including IP protection and enforcement in other countries.

The USPTO's strategic plan highlights these activities in Strategic Goal III: Provide Domestic and Global Leadership to Improve Intellectual Property Policy, Enforcement, and Protection Worldwide.

OBJECTIVE 1: **Provide Leadership and Education on Domestic Intellectual Property Policy and Awareness**

The USPTO works to meet Objective 1 by playing a leadership role in domestic and international IP initiatives and policy development for the administration and by engaging with Congress and federal agencies on legislative efforts to improve the IP system. In addition to providing policy formulation, the USPTO conducts various educational and training programs on IP, encourages and undertakes empirical studies on IP and innovation's economic impact, and improves access to IP-related data.

Provide Domestic Policy Formulation and Guidance on Key Issues in All Fields of Intellectual Property Enforcement and Protection

Throughout FY 2020, USPTO officials provided policy formulation and guidance by organizing numerous briefings for congressional staff and by conducting public meetings to solicit stakeholder views on a range of IP policy matters, including patent-eligible subject matter, trade secrets protection, and steps to address fraudulent trademark applications. Significant initiatives are detailed below.

COVID-19 Response Resource Center

The USPTO launched the online COVID-19 Response Resource Center to provide stakeholders and other interested parties with improved access to USPTO initiatives, programs, and other helpful IP-related information regarding the COVID-19 outbreak. The resource center is a centralized destination for accessing information and assistance. It allows users to easily learn about various USPTO initiatives to aid the public throughout the ongoing crisis, including the "Patents 4 Partnerships" marketplace platform and the Prioritized Examination Pilot Program to

accelerate the evaluation of Patent and Trademark applications directed to technologies related to COVID-19. The resource center also includes information on the USPTO's Pro Bono Program, voluntary early patent application publication, resources for inventors and small businesses, trademark counterfeiting and consumer fraud, and international COVID-19 developments.

Release SUCCESS Act Report

On October 31, 2019, the USPTO transmitted a report on patent activity by women, minorities, and veterans to Congress. Written in cooperation with the U.S. Small Business Administration in response to the SUCCESS Act of 2018 (Pub. L. No. 115-273), it reported on the results of three public hearings held in 2019 and an extensive data and literature review. The report found that there was a need for additional information to determine the participation rates of these underrepresented groups in the patent system, and provided a series of recommendations for new legislation and several new USPTO initiatives to improve the availability of such data.

OBJECTIVE 2: **Provide Leadership and Education on International Intellectual Property Policy and Awareness**

Provide International Policy Formulation and Guidance on Key Issues in All Fields of Intellectual Property Enforcement and Protection

Throughout FY 2020, the USPTO provided policy advice and technical expertise on domestic and international IP matters to multiple federal agencies, including the Office of the United States Trade Representative (USTR), the Office of the U.S. Intellectual Property Enforcement Coordinator (IPEC), the Department of State, and other bureaus of the Department of Commerce.

In FY 2020, the USPTO provided technical advice to the USTR on its Section 301 investigation, “China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation”; helped with a case that the United States filed against China at the World Trade Organization on “Certain Measures Concerning the Protection of Intellectual Property Rights”; and provided assistance in the preparation of sections of the USTR’s National Trade Estimate Report relating to IP. The USPTO also provided advice to the State Department with regard to the negotiation of revisions needed to renew the U.S.-China Science and Technology Agreement.

Engage with Other Governments to Improve Their Intellectual Property Enforcement and Protection, Including by Providing Education and Capacity Building

In FY 2020, the USPTO continued to provide capacity-building programs through GIPA to help improve IP systems in key countries and regions, including through expanded virtual training. Some programs were developed in collaboration with other U.S. government agencies, including the Department of Commerce’s Commercial Law Development

Program, the Department of Justice, and the Department of Homeland Security.

The programs addressed a full range of IP matters, including enforcement of IP rights at national borders, internet piracy, health and safety threats from counterfeit goods, trade secrets protection and enforcement, copyright policy, and Patent and Trademark examination. Participants included officials with IP-related responsibilities, such as judges, prosecutors, health officials, customs officers, Patent and Trademark examiners, and IP office administrators.

In FY 2020, the USPTO trained over 10,675 participants, including over 4,800 foreign government officials representing 121 countries and intergovernmental organizations (see Figure 8). A complete list of all countries represented at GIPA trainings in FY 2020 is available online at the [USPTO Data Visualization Center](#).

Table 14 shows the total number of people, including foreign government officials and U.S. stakeholders, trained through GIPA in FY 2020. This is the seventh year in which this measure has directly aligned with the USPTO’s performance progress under Strategic Goal III.

TABLE 14: NUMBER OF PEOPLE, INCLUDING FOREIGN GOVERNMENT OFFICIALS AND U.S. STAKEHOLDERS, TRAINED ON BEST PRACTICES TO PROTECT AND ENFORCE INTELLECTUAL PROPERTY

Fiscal Year	Target	Actual
2015	6,300	5,283
2016	5,000	4,975
2017	5,000	4,134
2018	5,000	7,242
2019	4,500	9,854
2020	5,000	10,688
2021	5,000	

Target met.

Note: Measure updated in FY 2018 to include U.S. stakeholder education, to reflect administration priorities.

Work with the Administration to Improve Intellectual Property Enforcement and Protection in Countries of Interest, Including Through the Intellectual Property Attaché Program

The USPTO worked throughout FY 2020 to improve IP protection and enforcement for U.S. stakeholders

in countries of interest. The USPTO utilizes its experts to work with the IP attachés in their respective regions to advance U.S. stakeholder interests and to enhance knowledge of local conditions that can inform U.S. IP policy consideration.

Enhance IP Attaché Program

The USPTO's IP Attaché Program operates in foreign markets to help U.S. businesses, independent inventors, small businesses, multinational organizations, and other U.S. stakeholders navigate issues related to IP protection, use, ownership, and enforcement, such as preventing online piracy, licensing issues, and combatting counterfeit trade.

The program works to improve IP systems internationally and consists of 13 IP attachés (with additional support from IP specialists and staff) posted to U.S. embassies, consulates, and missions throughout the world. The IP attachés serve as diplomats who advocate to improve IP policies, laws, and regulations abroad to benefit U.S. businesses, entrepreneurs, and other stakeholders. The IP attachés also train foreign officials on effective IP enforcement; monitor economic, legal, and legislative developments in their regions that might affect U.S. companies' IP interests; and conduct public awareness programs to educate the public on IP and its value.

In FY 2020, the USPTO worked to enhance interactions between the attachés and U.S. stakeholders through meetings with various rights holder groups, including the American Intellectual Property Law Association, the International Anti-Counterfeiting Coalition, and the International Trademark Association. The IP Attaché Program assisted 4,234 U.S. stakeholders, conducted 2,077 meetings with foreign government officials, conducted 64 training programs for 2,877 participants, conducted 68 public awareness programs for 6,768 participants, submitted 519 weekly activity reports, and reported 46 identifiable successes. (These figures overlap with metrics reported by GIPA on page 24.) The attachés also continued to lead the USPTO's successful implementation of action plans in prioritized countries, as shown in Table 15. During the COVID-19 outbreak, IP attachés continued to work in their home offices, helping U.S. stakeholders with IP interests around the world.

Also in FY 2020, the USPTO continued its work to enhance the effectiveness of the IP attachés, including deployment of attachés to Guangzhou, Shanghai, New Delhi, Mexico City, and Kyiv, and by selecting new attachés for deployment to Brussels, Rio de Janeiro, and Lima. Recruitment was started for a new IP attaché position in Johannesburg, South Africa, the first such posting in Sub-Saharan Africa.

Engage with Chinese Officials

In FY 2020, the USPTO met virtually with officials from China's National Intellectual Property Administration (CNIPA) to discuss the work plan between the two agencies, including programs to facilitate implementation of the commitments China made under the Phase One U.S.-China trade agreement. The USPTO also held technical discussions with Chinese government officials with IP responsibilities. These included officials from CNIPA, the State Administration for Market Regulation, the Ministry of Public Security, the Ministry of Commerce, the Ministry of Finance, the Supreme People's Court, the Supreme People's Procuratorate, the Guangdong IP office, the Department of Science and Technology of Ningxia Hui Autonomous Region, and the Shanghai Free Trade Zone Administration.

The USPTO continued to monitor changes to Chinese IP-related laws and regulations and provided comments on regulations on standardizing trademark applications, administrative enforcement of patents, and new plant varieties to ensure they provided effective protection to U.S. rights holders. In FY 2020, at the completion of the Phase One U.S.-China Economic and Trade Agreement, the USPTO worked with the USTR and other U.S. government agencies to provide comments on numerous Chinese draft laws, regulations, and guidance documents regarding trade secret protection, the enforcement of IP on e-commerce platforms, and examination of pharmaceutical patents.

The USPTO has three IP attachés posted to China. They work closely with U.S. law enforcement attachés and are in contact with Chinese government agencies to discuss IP enforcement challenges.

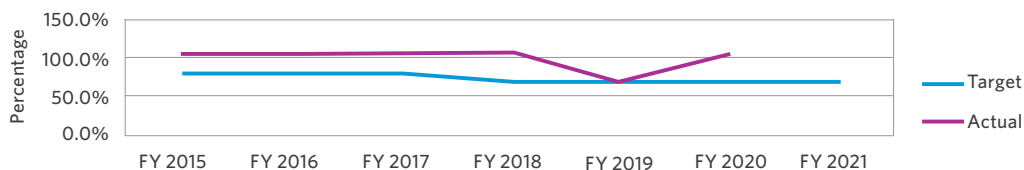
TABLE 15: PERCENTAGE OF PRIORITIZED COUNTRIES FOR WHICH INTELLECTUAL PROPERTY COUNTRY TEAMS HAVE MADE PROGRESS ON AT LEAST THREE OF THE FOUR PERFORMANCE CRITERIA

1. Institutional improvement of IP office administration for advancing IP rights
2. Institutional improvement of IP enforcement entities
3. Improvement in IP laws and regulations
4. Establishment of government-to-government cooperative mechanisms

Fiscal Year	Target	Actual
2015	75.0%	100.0%
2016	75.0%	100.0%
2017	75.0%	100.0%
2018	66.0%	100.0%
2019	66.0%	66.0%
2020	66.0%	100.0%
2021	66.0%	66.0%

Target met

Measure: Target updated in FY 2018 to reflect a decrease in the number of prioritized countries from four to three.



MISSION SUPPORT GOAL: Deliver Organizational Excellence

OBJECTIVE 1: Enhance Human Capital Management and Foster Employee Engagement

Optimize the Performance Culture

The USPTO continues to strengthen its performance culture by fostering a results-oriented and feedback-driven workforce through its performance management system. The effectiveness of the performance management system is measured and achieved through the continued promotion of a performance system that: (1) draws distinctions

between high- and low- level performer; (2) uses clearly defined standards and expectations at all organizational and individual levels; (3) acknowledges achievements through the use of a transparent and robust reward and recognition system for high-level performers; and (4) links individual performance plans to organizational goals. In addition, supervisors are encouraged to support opportunities for two-way discussions with employees, providing feedback on areas of strength or needs for improvement.

During FY 2020, the USPTO placed heavy emphasis on the mid-year review discussion for improved communication and better collaboration. A Mid-Year Toolkit was created to assist and enhance the mid-year conversation experience for both supervisors and employees. The supervisory toolkit included a conversation guide, competency dictionary, mid-year checklist, and sample discussion prompts.

Continue to Strengthen the USPTO Telework Environment

We continue to demonstrate our strong commitment to telework, with over 11,177 employees from all business units and the Regional Offices now participating to some extent in the overall USPTO telework program. This objective highlights our commitment to continuous improvement in the telework program, makes management opportunities attractive to our teleworkers, and helps develop our managers' skills that will enhance their effectiveness managing in a telework environment.

Effective March 23, 2020, the USPTO began operating under mandatory/maximum telework. During the mandatory/maximum telework period, the USPTO's top priority was the health and safety of its employees, contractors, and the American public while maintaining services at the highest level for its stakeholders. This transition was seamless since over 90% of employees were already participating in some telework programs.

The USPTO telework and flexible work options are among the best in the federal government, and the agency was well-prepared to provide these flexibilities while continuing to serve the needs of its stakeholders during the pandemic.

OBJECTIVE 2: Optimize Speed, Quality, and Cost-effectiveness of Information Technology Delivery to Achieve Business Value

Resiliency

The OCIO improved disaster recovery capabilities by configuring and replicating Tier-1 databases between two geographically separate data centers—the main data center in Alexandria, Virginia, and an alternate site in Boyers, Pennsylvania. The improvement effort replaced failed power distribution units and

successfully completed the Hot Aisle Containment project in the Alexandria data center. A successful failover and failback test was performed in July 2020 of two applications (Docket and Application Viewer and Official Correspondence). The test proved we have the capability to switch the operation of these two key patent applications between the two sites in Alexandria and Boyers. The switch over and switch back demonstrated the enhanced business continuity and disaster recovery capability.

OBJECTIVE 3: Ensure Financial Stability to Facilitate Effective USPTO Operations

The USPTO operates like a private-sector business in that it provides IP products and services that are paid for by fees from customers of those products and services. The agency does not receive taxpayer funding and instead operates based upon fee revenue collections. In many instances, the payments for products and services are received in one fiscal year and delivered in a subsequent year. To address this complexity, the USPTO uses sophisticated multi-year planning and budgeting models to determine funding requirements over a five-year planning horizon. In addition, the agency maintains separate operating reserves for Patent and Trademark. These operating reserves ensure that the agency has a predictable funding stream even as day-to-day revenues fluctuate and also provide for continuity of operations when major economic changes impact the agency's funding stream. These operating reserves were critical in FY 2020, enabling the USPTO to operate with minimal disruption despite revenue volatility brought about by the COVID-19 related economic downturn and recovery (see Financial Discussion & Analysis for more information on how COVID-19 affected USPTO's finances).

Like any entity, costs change over time due to inflation, technology advancements, and overhead,

among a long list of factors. To ensure that the agency is recovering the full cost of operations without taxpayer support, the USPTO periodically adjusts its fees to reflect the underlying changes to the overall costs of delivering USPTO products and services. During FY 2020, the USPTO continued work on two fee rulemakings to separately adjust fees for Patent and Trademark services.

The USPTO completed a notice of proposed rulemaking (NPRM) to adjust patent fees, premised on input from the Patent Public Advisory Committee, and published a final rule on August 03, 2020. The revised patent fees were effective October 2, 2020. Also during FY 2020, the USPTO published a NPRM to adjust trademark fees, premised on input from the Trademark Public Advisory Committee. The agency was in the process of developing a final rule to adjust trademark fees at the time of this report's publication. Both fee rules are being implemented later than the summer 2020 implementation described in the FY 2021 Congressional Budget Justification.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law on March 27, 2020. This \$2 trillion relief package included provisions for the USPTO Director to temporarily extend deadlines for filing many patent and trademark documents and for paying certain fees, but did not provide the agency additional funding to implement the provisions. The USPTO evaluated a range of options to implement the CARES Act relief provisions for the agency's customers, assessed the financial impacts, and financed the resulting costs within existing resources levels. The agency used its operating reserves and made a number of spending adjustments to extend and target relief throughout the remainder of FY 2020.

The USPTO also continued to improve the return on agency spending. One area where we are working to improve our return on spending is how the USPTO manages resources through acquisition services. In FY 2020, we conducted a customer experience

assessment that provided us with information about the moments that matter in the acquisition journey. We are also improving the foundation of our procurement operations through enhanced acquisition forecasting and workload planning. The USPTO devised enhancements to its forecasting practices in FY 2020 that are being implemented for FY 2021. These changes will enable the USPTO to identify and leverage innovative and effective buying strategies and provide sufficient lead-time to refine requirements and evaluation plans for individual acquisitions to achieve better contract value and improved contractor performance management.

OBJECTIVE 4: **Enhance the USPTO's Interactions with Internal and External Stakeholders and the Public at Large**

Launch National Council for Expanding American Innovation

In FY 2020, the USPTO launched a major initiative aimed at expanding invention, innovation, and entrepreneurship in the United States. The USPTO formed the National Council for Expanding American Innovation (NCEAI). The NCEAI is composed of high-level leaders from the federal government, industry, academia, and professional and nonprofit organizations, as well as venture capitalists and independent inventors, who are committed to increasing the opportunities for all Americans to participate in innovation. Secretary Ross serves as the Chairman of the NCEAI and is joined in his efforts by Vice-Chair Andrei Iancu, Under Secretary of Commerce for Intellectual Property and Director of the USPTO.

Create Strategic Partnership and Collaboration with Regional Offices

The USPTO continued to provide information and education through initiatives that helped make the patent system more transparent to all. The USPTO worked toward advancing innovation and broadening the IP ecosystem demographically, geographically, and economically. The USPTO also provided virtual educational tools for understanding the patent system and leveraging IP.

The USPTO Regional Offices support, facilitate, coordinate and lead high-level engagements with

community IP stakeholder leaders, and government officials at the local, state, and federal levels on the ground across the country. They are responsible for assisting the USPTO in communicating and carrying out its mission, strategic plan, and goals by providing resources, information, programs, and services that benefit and encourage the growth of our innovation-based economy. In FY 2020, the USPTO expanded its regional outreach capabilities by establishing the Eastern Regional Outreach Office to enhance the delivery of high-quality information, programs, and services across the United States' East Coast. In June of FY 2020, the USPTO also welcomed a new Regional Director to the Silicon Valley Regional Office.

MANAGEMENT CHALLENGES AND WHAT'S AHEAD

Stable and Sustainable Funding

The USPTO's fees are set at rates expected to recover the aggregate cost of services provided, based on point-in-time estimates of future demand and budgetary requirements. If the USPTO's actual experience varies from the assumptions it makes when setting fee rates—e.g., budgetary requirements increase due to unanticipated needs or implementation of unplanned mandates, or if changes in the economic, legal, or business environments alter customer practices or demand for specific USPTO services—then the agency's operating costs and revenues can become misaligned.

The USPTO maintains operating reserves that are minimally sufficient to manage revenue volatility or temporary funding. Over the longer term, the USPTO must regularly assess and update its fee structure as a regular part of its business operations to ensure that the fees it collects support sound public policy and generate sufficient income to finance effective and efficient agency operations.

Reliance on Information Technology

The USPTO continues its multi-year efforts to modernize its business systems and supporting IT infrastructure to keep pace with emerging business needs, security, and technology standards that will ultimately allow us to retire aging legacy solutions. Modern IT solutions will enable more frequent, successful, and reliable IT deployments and enhance the understanding of the interactions between IT and business functions.

The USPTO will continue to enhance its IT capabilities for both Patent and Trademark business areas and maintain legacy systems until they can be retired. Recent enhancements include implementing core electronic examination tools for document management and searching; improving interactions for filing, searching, payment, and communication; and making it easier and more secure to conduct business with the USPTO.

Legal Challenges

The USPTO faced legal challenges during FY 2020 that will continue to affect its operations in the next fiscal year and that may raise similar difficulties in the trademark realm. In *Arthrex*, the Federal Circuit held that the PTAB's APJs were performing the duties of "principal officers" but had not been appointed by the President with the Senate's advice and consent under the Appointments Clause of article II of the U.S. Constitution. To cure this alleged defect in the APJs' appointments, the Federal Circuit stripped the APJs' "for-cause" removal protections from the USPTO's governing statute, and thus rendered the APJs appropriately appointed "inferior officers" as of the date the *Arthrex* decision issued. Under the *Arthrex* holding, all appeals from PTAB decisions issuing before the *Arthrex* decision where the patentee raised an Appointments Clause challenge would be vacated and remanded for a new hearing by a different panel of APJs. The Federal Circuit also extended the relief of vacatur and remand before a different panel of APJs in ex parte appeals where the applicant raised an Appointments Clause challenge in its opening brief to the Federal Circuit. See *In re Boloro Global Ltd.*

Related to *Arthrex*, the USPTO is also facing challenges to the appointments of the ATJs at the USPTO's TTAB. Like APJs at the PTAB, the ATJs oversee appeals from examiner decisions and adversarial proceedings—e.g., oppositions and cancellation proceedings—that are subject to appeal before an article III court. See, e.g., *Piano Factory Group, Inc. v. Schiedmayer Celesta GmbH*; *Solar-Somohano v. Coca-Cola Company*. Consequently, the USPTO has sought Supreme Court review of the Federal Circuit's decision in *Arthrex*—as well as in dozens of cases remanded pursuant to *Arthrex*—and asserted its position that the PTAB's APJs have always been inferior officers whose appointment Congress permissibly vested in the Secretary of Commerce.

Performance Audits and Evaluations

The Office of Inspector General (OIG) and the Government Accountability Office (GAO) completed and issued three final audit reports in FY 2020 for the USPTO. The OIG issued nine recommendations and the GAO issued one recommendation in these reports for USPTO corrective actions to mitigate the audit findings. The USPTO concurred with all recommendations and began to take or has taken steps to address the recommendations.

OTHER INFORMATION

Certificate of Excellence in Accountability Reporting

The Association of Government Accountants (AGA) awarded the USPTO the Certificate of Excellence in Accountability Reporting (CEAR)[®] for its FY 2019 PAR. The USPTO also earned the first Best in Class award for Proactive Financial Management Support for Mission Continuity and Accountability. This award recognized the USPTO's achievements in the following areas:

- Spearheaded key initiatives that enabled/improved mission delivery and accountability
- Proactively provided strategic, professional, financial management leadership
- Enabled uninterrupted customer service despite a historic 35-day government-wide appropriation funding lapse
- Proactively guided effective financial strategies and resources stewardship to support service continuity

- Strategically and proactively managed/conserved operating reserves and spending
- Deferred spending and incrementally funded key requirements
- Directed best value and right-sizing strategies for information technology investments for optimal mission delivery and accountability
- Delivered consistent, timely, high-quality agency financial and performance reporting excellence for improved accountability (CEAR Awards 2002-2019)

- Issued Performance and Accountability Reports (PARs) for optimal financial and performance accountability and citizen/taxpayer insight

The CEAR® program was established in collaboration with the Chief Financial Officers Council and the U.S. Office of Management and Budget to improve accountability by streamlining reporting and improving the effectiveness of such reports so they clearly show what an agency accomplished with taxpayer dollars and the challenges that remain.



The USPTO's 2019 PAR cover and AGA's Certificates of Excellence in Accountability Reporting

Financial Highlights

The USPTO received an unmodified (clean) audit opinion from the independent public accounting firm of KPMG LLP on its FY 2020 financial statements, provided in the Financial Section of this report. This is the 28th consecutive year that the USPTO has received a clean opinion. Our unmodified audit opinion provides independent assurance to the public that the information in the USPTO financial statements is fairly presented, in all material

respects, in conformity with accounting principles generally accepted in the United States of America. In addition, KPMG LLP reported no material weaknesses in the USPTO's internal controls, and no instances of non-compliance with laws and regulations affecting the financial statements. KPMG LLP continues to report a significant deficiency related to IT security. A copy of the audit can be found in the Other Information section for the Summary of Financial Statement Audit and Management Assurances.

The summary of financial highlights presented in this section provides an analysis of the information that

appears in the USPTO's FY 2020 financial statements (amounts may vary slightly due to rounding). The USPTO financial management process ensures that management financial decision-making information is dependable, internal controls over financial reporting are effective, and compliance with laws and regulations is maintained. These highlights and the issuance of these financial statements is a component of the USPTO's objective to continually improve the accuracy and usefulness of its financial management information.

Statement of Budgetary Resources

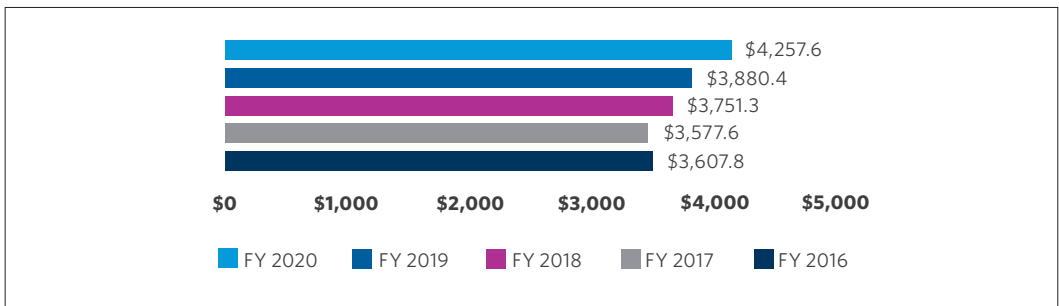
During FY 2020, total budgetary resources available for spending was 9.7% greater than the amount available in the preceding year, with an 18.0% increase over the past four fiscal years. The change in budgetary resources available for use is depicted by the graph below. The amount of budgetary resources in any given year is directly related to the demand for the USPTO's services.

The USPTO was provided appropriation authority to spend anticipated fee collections in FY 2020 for an amount up to \$3,450.7 million. In FY 2020, the USPTO collected fees in excess of the anticipated fee collections appropriated; Patent and Trademark fee

collections amounted to \$3,682.6 million (see Sources of Funds chart that follows). Prior to 2012, when the USPTO was not appropriated the authority to spend all fees collected, the excess was recognized as temporarily unavailable fee collections. The AIA established a statutory provision allowing the USPTO to deposit in the Patent and Trademark Fee Reserve Fund (PTFRF) fees collected in excess of the appropriated levels for each fiscal year. The USPTO deposited \$215.5 million in patent fee collections and \$16.4 million in trademark fee collections in the PTFRF at the end of FY 2020. The FY 2020 appropriation provided the authorization for the USPTO to spend those fees without further appropriation, subject to reprogramming requirements, and those fees are available without fiscal limitation until expended, as manifested in the number of applications filed and IP rights renewed and the availability of agency operating reserves. The operating reserves allow the USPTO to plan for long-term financial stability and temporary changes in our cash flow. In FY 2020, budgetary resources increased largely due to increases in trademark application filings and patent maintenance fee collections.

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ANNUAL GROWTH IN AVAILABLE BUDGETARY RESOURCES *(dollars in millions)*



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Statement of Net Cost

The Statement of Net Cost presents the USPTO's results of operations by the following responsibility segments—Patent; Trademark; and Intellectual Property Policy, Protection, and Enforcement Worldwide (IP PP&E). The following table presents the USPTO's total results of operations for the past five fiscal years. In FY 2020, the USPTO generated a net income of \$34.1 million. The net income increased due to an increase in earned fee collections, offset by a smaller increase in personnel services and benefits.

Net Income/(Cost) (dollars in millions)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Earned Revenue	\$ 3,133.4	\$ 3,105.3	\$ 3,309.4	\$ 3,388.7	\$ 3,657.1
Program Cost	(3,119.6)	(3,193.4)	(3,321.5)	(3,478.2)	(3,623.0)
Net Income/(Cost)	\$ 13.8	\$ (88.1)	\$ (12.1)	\$ (89.5)	\$ 34.1

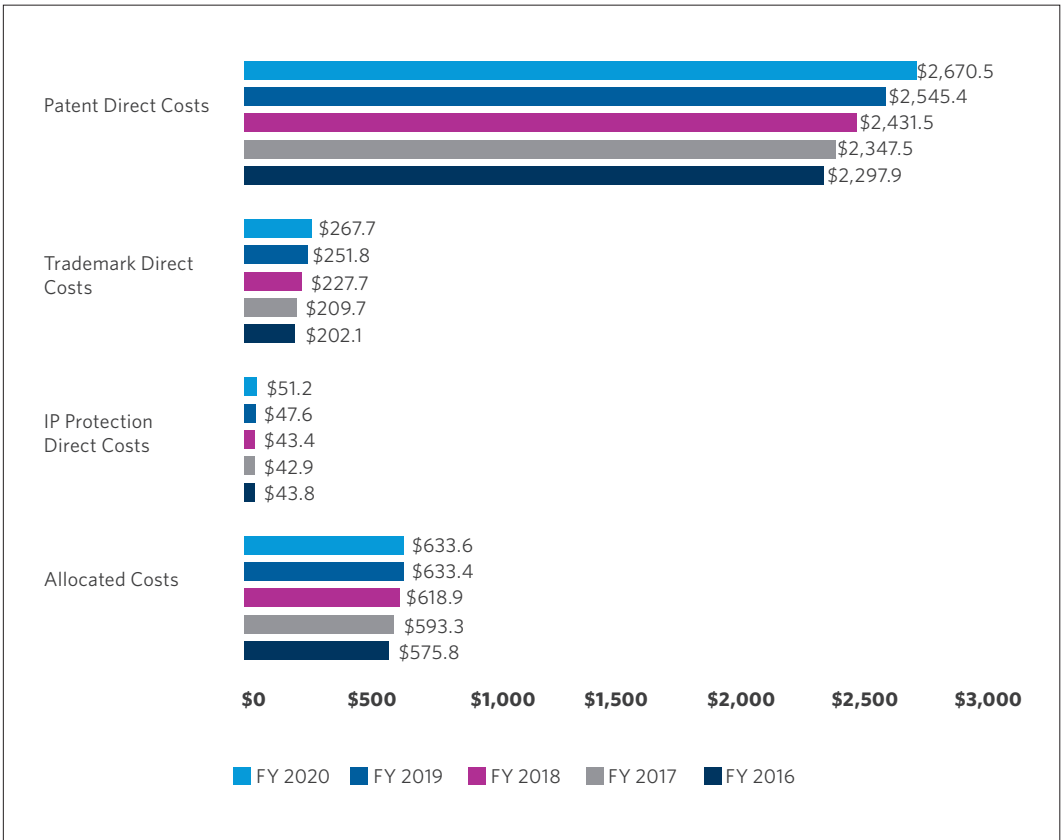
Program Costs

Program costs totaled \$3,623.0 million for the year ended September 30, 2020, an increase of \$144.8 million, or 4.2%, over FY 2019 program costs of \$3,478.2 million. The USPTO's most significant program cost is personnel services and benefits, which comprise approximately 67.9% of the USPTO's total program costs. Any significant change or fluctuation in staffing or pay rate directly impacts the change in total program costs from year to year. Total direct and allocated personnel services and benefits costs for the year ended September 30, 2020, were \$2,461.0 million, an increase of \$136.8 million, or 5.9%, over FY 2019 personnel services and benefits

costs of \$2,324.2 million. This change primarily reflects an increase in payroll compensation and benefit costs resulting from salary increases (e.g., congressionally mandated pay raise), as well as an increase in personnel, from 12,652 at the end of FY 2019 to 12,928 at the end of FY 2020.

In setting its annual spending plans, the USPTO maximizes resources directed to its mission areas. For FY 2020, costs directly attributable to the Patent, Trademark, and IP protection business areas represent 82.5% of total USPTO costs. The remaining costs, representing support costs, are allocated to the business areas using activity-based cost accounting.

USPTO PROGRAM COSTS (dollars in millions)



OTHER FINANCIAL INFORMATION

A statement from the Chief Financial Officer, a complete set of financial statements, and a discussion and analysis of these statements can be found in the USPTO’s FY 2020 PAR, which is available on the USPTO website at www.uspto.gov/annualreport.



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For an electronic version of the 2020 USPTO PAR, scan the barcode.