

U.S. DEPARTMENT OF COMMERCE
Office of Inspector General



**UNITED STATES PATENT AND
TRADEMARK OFFICE (USPTO)**

*Minor Improvements Needed in Reporting
Performance Results*

Final Audit Report No. FSD-14429 /March 2002

PUBLIC RELEASE

Office of Audits, Financial Statements Audits Division





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

MAR 21 2002

MEMORANDUM FOR: James E. Rogan
Under Secretary for Commerce for Intellectual
Property and Director of the USPTO

FROM:

Johnnie E. Frazier

SUBJECT:

Minor Improvements Needed in Reporting
Performance Results
Final Audit Report No. FSD-14429

This is our final report on the performance measures at the United States Patent and Trademark Office (USPTO). During the audit, we noted a strong commitment on the part of the bureau to report accurate performance data. However, there are some additional steps that can be taken by the bureau to enhance the credibility of the data reported by the Department of Commerce and the bureau. Specifically, we found that the criteria for measuring technical assistance activities should be updated and that the discussion of verification and validation procedures included in reports submitted by the Department and bureau should more accurately describe the level of review performed.

We recommend that corrective action be taken to ensure that (1) criteria for technical assistance activities to developing countries and countries moving to a market economy be updated, and (2) the description of verification procedures for patent and trademark performance measures reported in the Department's Annual Performance Plan and Annual Program Performance Report be revised to more accurately and completely describe the procedures performed.

In responding to the draft report, the Comptroller and Deputy Chief Financial Officer stated that USPTO agrees with both recommendations and that corrective actions have already been taken. We have incorporated the USPTO comments into the final report and the complete USPTO response is attached.

Please provide your action plan addressing the recommendations for our concurrence within 60 days of this memorandum, in accordance with Department Administrative Order (DAO) 213-5. The plan should be in the format of exhibit 7 of the DAO. Should you have any questions regarding preparation of the action plans, please contact me at (202) 482-1934, or Thomas McCaughey, Director, Financial

Statements Audits Division, at (202) 482-6044, within 10 days of the date of this report. We appreciate the cooperation and courtesies extended to us by USPTO staff during the review.

INTRODUCTION

This final report presents the results of the OIG's audit of the United States Patent and Trademark Office's collection and reporting of performance measurement data. In its efforts to meet the requirements of the Government Performance and Results Act (GPRA) of 1993 and the Chief Financial Officers Act of 1990, as amended by the Government Management Reform Act (GMRA) of 1994, and the Reports Consolidation Act of 2000, the Department of Commerce reports USPTO's performance results. To be useful to Congress, the Office of Management and Budget, and the public, the performance data must be credible. We performed our review to examine USPTO's efforts to ensure that reported performance results could be relied upon.

GPRA was enacted in 1993 to improve the effectiveness, efficiency, and accountability of federal programs by requiring federal agencies to set goals for program performance and to report on annual performance compared with the goals. In FY 2001, the Department chose to combine the FY 2000 Annual Program Performance Report (APPR) and the FY 2002 Annual Performance Plan (APP), into one document. The FY 2000 APPR was the Department's second effort to report and comment on performance results while the FY 2002 APP was its fourth effort to identify target performance results. USPTO performance data was also presented in the Department's FY 2000 Accountability Report and in the bureau's financial statements.¹

USPTO's mission is to promote industrial and technological progress in the United States and strengthen the economy by administering the laws relating to patents and trademarks and advising the Secretary of Commerce, the President of the United States, and the administration on all domestic and global aspects of intellectual property.² In support of its mission, USPTO reported on six performance measures in the Department's combined FY 2000 Annual Program Performance Report and the FY 2002 Annual Performance Plan. (See Table 1.) The bureau included seven performance measures in its FY 2001 Annual Performance Plan. Also, the Department reported two of these measures (average pendency time to issue/abandonment for patents and the average time to examiner's first action for trademarks) in its FY 2000 Accountability Report. USPTO's performance measures and the documents they were presented in, are summarized in the following chart:

¹ The Reports Consolidation Act of 2000 authorizes the streamlining and consolidation of certain statutory financial management and performance results into a single accountability document.

² USPTO Performance and Accountability Report: Fiscal Year 2000

TABLE 1

USPTO Performance Measure	FY 2000 Accountability Report	FY 2000 Annual Program Performance Report	FY 2001 Annual Performance Plan	FY 2002 Annual Performance Plan
Increase technical assistance to developing countries and countries moving to a market economy: Number of technical assistance activities completed		✓	✓	✓
Percent of customers satisfied overall (P)		✓	✓	✓
Average pendency to issue/abandonment (months) (P)	✓	✓		✓
Percent of customers satisfied overall (T)		✓	✓	✓
Average time to examiner's first action (months) (T)	✓	✓	✓	✓
Average time to disposal or registration (months) (T)		✓		✓
Cycle time of inventions processed			✓	
Percent key products and services meeting schedules or cycle time of standards			✓	
Customer satisfaction with key products and services			✓	
(P) = Patent (T) = Trademark (months) = unit of measure				

To be useful in reporting on the fulfillment of GPRA requirements and in improving program results, performance data must be reliable. To ensure that users such as the Congress and OMB can have confidence in the reported performance information, GPRA requires data verification and validation, as quality control mechanisms. According to the General Accounting Office, verification is the assessment

of data completeness, accuracy, consistency, and related quality control practices, while validation is the assessment of whether the data are appropriate for the performance measure.³

In their comments on government-wide implementation of GPRA, both Congress and the General Accounting Office have articulated the importance of performance data being credible. Management of the reporting entity is responsible for establishing policies and procedures to ensure that data can be relied upon.

USPTO uses a number of internal controls to ensure that the data it reports is reliable. For example, USPTO demonstrates its commitment to data quality through the assignment of clear responsibilities for data and the inclusion of a quality control element in employee performance plans. Furthermore, to ensure data quality, the bureau employs edit and validation checks within systems that process patent and trademark data. Also, patent examiners and trademark attorneys responsible for the input of data receive extensive legal, technical, and automation training.

OBJECTIVES, SCOPE, AND METHODOLOGY

The audit objectives were to (1) assess collection and reporting of USPTO performance information in documents submitted to meet GPRA reporting requirements (i.e., the FY 2000 Annual Program Performance Report and the FY 2002 Annual Performance Plan) and (2) determine whether internal controls are sufficient to ensure performance data are accurate, consistent, and reliable. We did not seek to determine whether USPTO performance measures are the most appropriate for the bureau. We focused on performance measures included in the Department's efforts to satisfy GPRA requirements and on efforts to ensure data quality and reliability.

We performed our review from July 2001 to September 2001, by interviewing USPTO officials and contractors responsible for generating, maintaining, and reporting the performance data; identifying and testing internal controls surrounding the performance measures; assessing USPTO's commitment to data reliability; and performing procedures to validate and verify performance data. We did not rely on computer-processed data to achieve the audit objectives. Our fieldwork was conducted at the USPTO headquarters in Arlington, Virginia.

³ Performance Plans: Selected Approaches for Verification and Validation of Agency Performance Information (GAO/GGD-99-139, July 30, 1999).

More specifically, in conducting our work, we also did the following:

- For the performance measure on the number of completed technical assistance activities on behalf of developing countries and countries moving to a market economy, we reviewed 65 out of a universe of 106 activities reported for FY 2000.
- For the performance measures on the percentage of customers satisfied overall, we visited and interviewed the independent contractor responsible for conducting the USPTO FY 2000 customer satisfaction surveys. We also sampled 251 of 2,344 survey questionnaires for patents and 264 of 362 survey questionnaires for trademarks.
- For the performance measures on average pendency to issue/abandonment, average time to examiner's first action, and average time to disposal or registration, we obtained an understanding and reviewed general internal controls over the systems generating the performance data, and interviewed USPTO officials responsible for generating, maintaining, and reporting the performance data.

This audit was conducted in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States, and was performed under the authority of the Inspector General Act of 1978, as amended, and Department Organizational Order 10-13, dated May 22, 1980, as amended.

FINDINGS AND RECOMMENDATIONS

I. Criteria for Measuring Technical Assistance Activities Needs Updating

USPTO needs to update the criteria it uses in reporting on the performance measure that focuses on the increase in technical assistance to developing countries and countries moving to a market economy. We found that the criteria USPTO used to collect the data related to this measure did not specify how to determine which countries were "developing." In addition, we found that the criteria provided to us, dated August 1997, still listed two countries that were no longer considered "developing" by USPTO. Although technical assistance provided to these two countries was not included in FY 2000 reported results, USPTO should ensure that the criteria it uses reflects the current list of developing countries.

Effective management control requires that written procedures used by management be current and properly documented.

To meet the provisions of the agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), the USPTO, through its Office of Legislative and International Affairs (OLIA), provides seminars and technical training to officials in developing countries on reforming their intellectual property structures. TRIPs requires all members of World Trade Organizations to provide certain standards of protection for patents, copyrights, trademarks, and other intellectual property rights. Training or technical assistance activities to be reported for the measure include (1) sessions performed at the USPTO, (2) on-site lectures in developing countries, (3) radio or televised broadcasts to developing countries, and (4) legal advice on review of laws.

Criteria provided by the bureau does not specify how to identify developing countries to be used for measuring performance during a given year. A USPTO official informed us that the list of developing countries can come from different sources, such as the United Nations, the World Bank, and the U. S. Department of State, and varies year to year depending on the source. Two technical assistance activities (for the Czech Republic and Israel) were properly excluded from the FY 2000 results because USPTO did not consider those countries to be "developing," even though they were listed as developing countries on the USPTO's criteria list, dated August 1997, that was provided to us. Although such a result did not occur in this case, the use of the incorrect criteria could potentially result in inaccurate information being presented to the public.

OMB Circular A-123, *Management Accountability and Control*, identifies internal controls as the organization, policies, and procedures used by agencies to reasonably ensure that reliable and timely information is obtained, maintained, reported, and used for decision making.

Without clear and current criteria to determine which technical assistance activities should be included in reported results, the potential exists for the reporting of inaccurate or inconsistent data, thus reducing the credibility of the reported information. As a result, the bureau should take steps to ensure that its criteria are documented and updated on a regular basis.

Recommendation

We recommend that the Under Secretary of Commerce for Intellectual Property and Director of the USPTO ensure that criteria for technical assistance activities to developing countries and countries moving to a market economy be clearly documented and updated on a regular basis.

Comptroller and Deputy Chief Financial Officer Response and OIG Comments

In her written response to the draft report, the Comptroller and Deputy Chief Financial Officer for USPTO agreed with the recommendation and noted that corrective action has been taken. The response stated that the Office of Legislative and International Affairs is updating the list identifying developing countries on a regular basis and is documenting any additions or deletions to the list as needed. We commend USPTO for its prompt response in addressing this recommendation.

II. Improvements in Reporting of Performance Information is Needed

USPTO's discussion of its procedures to ensure the reliability of the GPRA data it provides the Department needs to be revised. Specifically, we found that the discussion of verification and validation within the Department's FY 2000 Annual Program Performance Report and FY 2002 Annual Program Performance Plan did not appropriately articulate the level of review provided for reported performance measures related to patents and trademarks.

The combined APPR/APP incorrectly stated that the annual financial statement audit serves as a "verification method" for providing assurances on the internal controls over the reported performance measures. For the performance measures relating to the percent of customers satisfied overall (patent and trademark), average pendency to issue/abandonment (patent), average time to examiner's first action (trademark), and average time to disposal or registration (trademark), USPTO reported that completeness and existence of supporting data is verified during the annual financial statement audit. USPTO was unaware that the financial statement audit did not verify the performance measures

In fact, the procedures performed on the performance measures during the financial statement audit were limited and did not verify the accuracy of the performance data. The Independent Auditor's Report on Internal Control, dated December 29, 2000, stated, "Our procedures were not designed to provide assurance on internal control over reported performance measures, and, accordingly, we do not provide an opinion on such controls."

We also found that USPTO's "tests for reasonableness" on reported data performed internally are left undefined. The Department's FY 2000 APPR and FY 2002 APP notes that for each performance measure reported, a final test for reasonableness is performed internally. However, there is no discussion of who completes the tests for reasonableness and what constitutes a test for reasonableness. Without a complete discussion of verification procedures, it is difficult to assess the extent to which data was reviewed.

The overall effect of the bureau's discussion of verification procedures is that readers of the Department's APPR and APP were left with an incomplete and misleading discussion of the level of review that had been performed of the performance measures.

Reporting verification procedures helps to ensure that data will be credible to potential users. For verification and validation of performance data, the Office of Management and Budget (OMB) Circular A-11, Section 220.12, states "The means used should be sufficiently credible and specific to support the general accuracy and reliability of the performance information."

Recommendation

We recommend that the Under Secretary of Commerce for Intellectual Property and Director of the USPTO require that the description of verification procedures for patent and trademark performance measures reported in the Department's Annual Performance Plan and Annual Program Performance Report be revised to more accurately and completely describe the procedures performed.

Comptroller and Deputy Chief Financial Officer Response and OIG Comments

In her written response to the draft report, the Comptroller and Deputy Chief Financial Officer agreed with the recommendation and noted that corrective action has already been taken. The response states that the Office of Corporate Planning has drafted new language describing the verification procedures for patent and trademark performance measures. The new procedures are identified in the Department of Commerce FY 2003 Annual Performance Plan/2001 Annual Performance Report and in USPTO's FY 2001 Performance and Accountability Report. We commend USPTO for its prompt response in addressing this recommendation.

MAR - 1 2002

MEMORANDUM FOR: Larry B. Gross
Acting Inspector General for Auditing

FROM: Sandra L. Weisman
Comptroller and Deputy Chief Financial Officer

SUBJECT: Comments on OIG Draft Report: "Minor Improvements
Needed in Reporting Performance Results,"
No. FSD-14429

Thank you for the opportunity to review and comment on the subject draft report. Both management and employees at the USPTO are strongly committed in assuring the accuracy and reliability of our performance data and we appreciate the OIG's recognition of this fact as mentioned in your report.

USPTO agrees with both of your recommendations and corrective actions have already been taken. The Office of Corporate Planning has drafted new language describing the verification procedures for patent and trademark performance measures. The new verification procedures are identified in the Department of Commerce FY 2003 Annual Performance Plan/2001 Annual Performance Report and in the USPTO's FY 2001 Performance and Accountability Report. With regard to the recommendation on ensuring the list identifying developing countries is current, the Office of Legislative and International Affairs is updating the list on a regular basis and is documenting any additions or deletions to the list as needed.

We appreciate the cooperation and respect for USPTO's work demonstrated by your staff. If you have any further comments, please call my office on 703-305-9200.

