Report In Brief

U.S. Department of Commerce, Office of Inspector General

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United States Patent and Trademark Office

Stronger Management Controls Needed over USPTO's Projection of Patent Fee Collections (OIG-11-014-A)

Why We Did This Review

The U.S. Patent and Trademark Office (USPTO) is a fully fee-funded agency. As such, its fees must fund its operations. In such an environment, it is especially important that USPTO assures its stakeholders that the best available fee collection projections are developed and used. Without such assurances, the agency risks having to adjust spending in ways that could disrupt key operations and initiatives to improve patent quality and timeliness.

Our objective was to determine whether USPTO has an effective process for projecting patent revenue and that enables it to meet its mission and strategic goals for patents.

Background

USPTO is the sole federal agency responsible for granting patents and registering trademarks, part of the nation's intellectual property system. Patents--which account for most of the agency's work--give inventors exclusive rights to their discoveries and contribute to the U.S. economy's vitality and strength. Fiscal year (FY) 2009 patent fees of $1.7 billion accounted for about 90 percent of USPTO's total annual fee collection.

What We Found

For fiscal years 2006 through 2009, USPTO experienced significant disparities between projected and actual patent fee collections; these ranged from shortfalls of about $56.6 million in FY 2006 to $171 million in FY 2009 (not a typical year for the economy).

USPTO does not have clear guidance or a disciplined, documented process for forecasting patent fee collections. According to officials, keeping the overall process of developing projections "fluid" is the reason that a deliberate decision was made not to have mandated guidance or documentation. The patent production model, which generates data used to project fee collections, also lacks management controls such as written policies and procedures. Without these, it is difficult for USPTO to learn from the variances between forecasts and actual collections, and how to reduce them. As a result, in this operational environment, stakeholders may not have clear expectations of what the agency will be able to fund because the differences between the estimated and actual patent fee collections have fluctuated considerably. Stronger management controls would, therefore, enhance transparency and accountability.

While the aggregate differences between projections and collections appear to be within a generally acceptable margin of forecasting error, such data actually mask much greater differences for individual fees (of which there are almost 250). USPTO has repeatedly over- and underestimated the amount of specific patent fees that it will collect in a given year, sometimes by as much as 20 to 50 percent. These differences mask discrepancies of tens of millions of dollars annually for certain fees.

During the time of our review, the patent application backlog grew from 701,000 to nearly 736,000. Similarly, the amount of time it took to reach a decision on a patent application grew between FY 2006 and FY 2009 from about 31 months to about 35 months. While not demonstrably connected to forecast accuracy and transparency, a better forecasting process would give stakeholders more comprehensive data with which to develop expectations. As USPTO implements a new strategic plan, a framework recognizing the importance of risks associated with variances in fee-collection forecasts will be increasingly important.

What We Recommend

In order to strengthen USPTO operations over patent fee forecasting, we are making three detailed recommendations to the Under Secretary of Commerce for Intellectual Property/USPTO Director. These entail (1) directing the agency's Chief Financial Officer (CFO) to establish and implement written policies and procedures for developing fee-collection forecasts; (2) requiring the CFO to annually report on the variances between projected and actual patent fee collections, including their causes and any noted trends; and (3) directing the Commissioner for Patents to establish and implement written policies and procedures for the patent production model.