



# Report In Brief

U.S. Department of Commerce Office of Inspector General

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## Why We Did This Review

Over the past decade the United States Patent and Trademark Office (USPTO) has faced growing patent pendency rates and increasing backlogs of patent applications awaiting review. In responding to these challenges, USPTO issued its *2010–2015 Strategic Plan* in September 2010.

The plan's first goal is to "Optimize Patent Quality and Timeliness"—by reducing (1) overall patent pendency times to 10 months for a first office action and 20 months total patent pendency (by 2014 and 2015 respectively) and (2) the number of patent applications awaiting examiner action by almost 50 percent.

The objectives of our review were to assess the implementation status of the initiatives under Strategic Goal 1, Optimize Patent Quality and Timeliness, and to assess USPTO's plans to evaluate each of these initiatives.

## Background

USPTO's mission is to foster innovation, competitiveness, and economic growth, domestically and abroad—by delivering high quality and timely examination of patent and trademark applications, guiding domestic and international intellectual property policy, and delivering intellectual property information and education worldwide—with a highly skilled, diverse workforce.

Patent operations, which account for the vast majority of USPTO's staffing and monetary resources, determine whether inventions claimed in patent applications are new, useful, and non-obvious. The timely granting of quality patents provides inventors with exclusive rights to their discoveries and contributes to the strength and vitality of the U.S. economy.

## Status of USPTO Initiatives to Improve Patent Timeliness and Quality (OIG-11-032-I)

### What We Found

This report evaluates the first 5 strategic patent objectives, encompassing 25 initiatives specifically related to critical activities within the patent process. We found that, of these 25 initiatives, USPTO has fully implemented 15 and partially implemented the other 10 initiatives. However, while the agency has made progress in implementing the initiatives, it lacks evaluation plans to assess the effect of these efforts on the overall strategic goals of improving patent quality and timeliness.

- *USPTO Has Taken Steps to Implement Its Strategic Patent Initiatives; However, Timelines to Achieve Strategic Goals Have Required Extensions.* The agency has assigned high-level managers to lead individual initiatives, all of which have an action plan toward implementation. However, the agency has implemented its strategic plan in a fiscal environment different from its original budget requests. USPTO has now placed on hold or scaled back some of the 25 initiatives—and stated it will not meet its pendency and backlog goals. In the process, it has changed the date to reduce first action pendency to 10 months from 2014 to 2015 and moved the date to reduce final pendency to 20 months from 2015 to 2016.
- *USPTO Lacks Plans to Evaluate Initiatives and Their Effects on Patent Quality and Timeliness.* The lack of a formal evaluation process makes it difficult for USPTO to determine whether to attribute outcomes to specific initiatives—or why goals are, or are not, being met. Such information is vital for deciding whether to adopt operational changes to improve the effectiveness of a specific activity and whether or not that activity should receive priority in a constrained budget. Instead, the agency risks attributing goal achievement to the wrong initiatives and subsequently misguiding resources toward less-than-optimal activities. Further, by focusing just on performance measures, it risks deeming each initiative successful—but still not reducing patent pendency and the backlog of patent applications.

Finally, two areas of operation—Board of Patent Appeals and Interferences (BPAI) patent appeals and the method USPTO uses to measure the quality of USPTO contractors' work for reviews completed under the Patent Cooperation Treaty (PCT)—warrant further agency attention as it directs its resources and prioritizes activities.

### What We Recommended

We recommend that the Under Secretary of Commerce for Intellectual Property and Director of USPTO:

- *Revise the agency's strategic plan to ensure the most critical efforts that support attaining the strategic patent goals remain in operation.* Management must make both short- and long-term decisions to prioritize which of the initiatives are critical to USPTO achieving its strategic goals.
- *Direct the relevant operating units to prepare plans for, and conduct, evaluations of the patent initiatives to assess the effectiveness of the initiative and to guide any decisions related to the continuation, expansion, or ending of the individual initiatives.* Evaluation efforts (e.g., measurable objectives, critical success measures linked directly to goals, baseline data, and conditions for full implementation) will assist USPTO in assessing the effects of its patent and other initiatives in achieving its organizational goals.
- *Examine anew the BPAI process (and the rate at which it reverses decisions) as well as the quality of work completed under the PCT contract and the method employed to calculate acceptance measures.* These two areas warrant USPTO's further attention, as they highlight issues with patent examination quality and efficiency.