PATENT AND TRADEMARK OFFICE, U.S. DEPARTMENT OF COMMERCE

HEARING

BEFORE THE

SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES, AND THE ADMINISTRATION OF JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

PATENT AND TRADEMARK OFFICE, U.S. DEPARTMENT OF COMMERCE

APRIL 20, 1983

Serial No. 74



Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

23-039 O WASHINGTON : 1984

R2610

F/W PL 98-417

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PATENT AND TRADEMARK OFFICE, U.S. DEPARTMENT OF COMMERCE

WEDNESDAY, APRIL 20, 1983

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,
AND THE ADMINISTRATION OF JUSTICE
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:40 a.m., in room 2141, Rayburn House Office Building, Hon. Robert W. Kastenmeier (chairman of the subcommittee) presiding.

Present: Representatives Kastenmeier, Synar, Berman, Moorhead, Hyde, Sawyer, and DeWine.

Staff present: Michael Remington, chief counsel; David W. Beier III, assistant counsel; Thomas E. Mooney, associate counsel; and Audrey Marcus, clerk.

Mr. KASTENMEIER. The committee will come to order.

This morning we are holding an agency oversight hearing on the U.S. Patent and Trademark Office in the Department of Commerce. We are very pleased to hear from the Honorable Gerald J. Mossinghoff, who is Commissioner of Patents and Trademarks.

Commissioner Mossinghoff is also Assistant Secretary for Intellectual Property within the Department of Commerce, a status recently conferred upon him by a relatively new public law, Public Law 97-366, which was processed in the last Congress by this subcommittee.

Commissioner Mossinghoff is a career public servant. He began his 24-year Government service in 1957 with a tour of duty as a patent examiner. During the mid-sixties he returned to the Patent Office as Director of Legislative Planning, and the remainder of his Government career was actually at NASA, where he served in a number of positions, including Director of Congressional Liaison and Deputy General Counsel. Commissioner Mossinghoff, you are not a stranger to this committee and you are, of course, always welcome.

I notice you have a rather long text. You are free to either summarize it or give it in its entirety, as you wish. We would be very pleased to hear from you.

TESTIMONY OF HON. GERALD J. MOSSINGHOFF, COMMISSIONER, PATENT AND TRADEMARK OFFICE, DEPARTMENT OF COMMERCE

Commissioner MOSSINGHOFF. Thank you, Mr. Chairman. I again welcome this opportunity to appear before your subcommittee this morning.

In my prepared statement I cover three areas: First, a brief discussion of the status of our programs to upgrade the Patent and Trademark Office; second, a summary of our involvement in international activities; and finally, an outline of our legislative program for this year. I will skip parts of my prepared statement as I come to them, Mr. Chairman.

Last year I reported to you that the Patent and Trademark Office was not serving the needs of inventors and industry adequately. Huge backlogs clogged our operations, decreasing efficiency and delaying the granting of patents and registering of trademarks.

I detailed the administration's commitment to turn things around at the Patent and Trademark Office through an aggressive three-point program:

First, to end the 20,000-case-per-year growth in the huge backlog of pending patent applications by 1984, and then to reduce the time it takes to get a patent—now well over 2 years—to 18 months by fiscal year 1987. We call that plan 18/87.

Second, to register trademarks in 13 months, with an opinion on registrability being given by the Office within 3 months of filing of the trademark registration application.

Finally, and perhaps the most challenging of all, is to take steps aggressively toward complete automation of the Office by 1990.

The key to achieving these goals without increased expenditures was to increase user fees, as you know. Working with the subcommittee last year, we were able to do that through your enactment of Public Law 97-247. This legislation not only raised the fees, but it authorized the Office to use the fees it receives to improve service to inventors and industry.

Public Law 97-247 also set the current levels of maintenance fees, which are payable three times during the 17-year life of the patent. The fees now in effect—and this is significant—can be adjusted administratively every 3 years, but only to take into account any inflation that might have occurred during the 3-year period.

The 1984 program level request for the Patent and Trademark Office is $171 million. That is an increase of $18 million over the continuing resolution program level for 1983. With projected offsetting fee receipts, however, of $88,526,000, the 1984 appropriation request is less than 50 percent of our operating costs, or $82,500,000.

Today I am pleased to report to the subcommittee that we are on schedule in our efforts to achieve each part of the three-point plan. Our annual report for fiscal year 1982 details our actions on the three-point plan. Mr. Chairman, I believe we have provided copies of that to the subcommittee and, with your permission, I would suggest that that annual report, which is fairly brief, be included in the record of these oversight hearings.

Mr. KASTENMEIER. Yes; without objection, that can be received and made a part of the record. [See appendix at p. 34.]

Commissioner MOSSINGHOFF. With respect to plan 18/87, the backlog of pending patent applications now stands at 246,000 cases. To halt growth in that backlog and reduce it to a more manageable 180,000 cases by 1987, we have hired over 300 patent examiners during the past 2 years. In the next 3 years we will hire an additional 600 patent examiners, bringing our professional examining staff to over 1,500. We are extremely pleased with our hiring program. We have been very successful in attracting real talent to the Office. Last year we hired 235 examiners, and their average grade point average—these are graduate engineers—on a scale of 4.0 was about 2.91. So we are really getting first-class people out of our engineering schools. This year so far we have hired about 60 new examiners, and their average grade point average was over 3.0. That is over a "B" average, about 3.1, coming out of engineering schools.

To assimilate the new examiners into the Office, we have acquired over 32,000 square feet of new space. We have established 30 new organizational units, which we call "Art Units," and we have greatly expanded our examiner academy and training program.

To support the examiners, we have installed word processing systems in each of the examining groups, eliminating altogether the handwritten examiner opinions which had become an object of well-deserved ridicule of the Office throughout the world. During 1983 we plan to expand the Board of Appeals and to strengthen all areas of clerical and logistic support, including a greater reclassification effort to update the examiners' search files.

In trademarks, our commitment is to reduce the backlog, which now stands at a record 125,000 cases, so that by 1985 we will give first opinions on registrability in 3 months, as I mentioned, and finally dispose of cases in a little over a year.

We now have a record high 105 lawyers examining our trademark applications. They are working in eight newly organized law offices or divisions. Even though our trademark applications reached a new high in fiscal year 1982—over 73,000 registrations were received—we are reducing the time it takes to register a mark, and we are confident that we will reach the goal of 13 months by 1985.

As I mentioned, the most significant challenge the Office has is to automate our operations. More than 370,000 pending patent and trademark applications now flow through our Office over in Crystal City. Each day we receive 20,000 papers which must be incorporated in those 370,000 applications flowing through the Office. Our patent examiners look through more than 25 million paper documents to decide whether to issue a patent application. Our surveys indicate that at any one time over 7 percent of those documents are either missing or misfiled. That is a lot of documents. We are missing more documents than most Federal agencies have.

In response to the directive of Public Law 96-517, we completed a comprehensive plan to achieve a fully automated Patent and Trademark Office by 1990. We presented the details of that plan to the subcommittee on December 13 of last year. Again with your permission, Mr. Chairman, it may be appropriate to include the executive summary of that automation plan in these oversight hearings.

The automation plan describes a three-phase program. During the first phase, which extends through calendar year 1984, all trademark functions and one of our 15 examining groups will be automated. In the second phase, which runs the following 3 years through 1987, all patent groups will be automated and an essentially paperless operation will be achieved. The third and final stage will provide worldwide electronic access and expanded dissemination capabilities.

The Office has entered into a contract with the MITRE Corp., which has a lot of skill in the area of systems engineering. It is a $2 million contract for the first year of a multiyear contract for systems engineering and other work to help us put this plan into operation.

We are firmly convinced that the long-term stability of the Patent and Trademark Office depends upon the successful automation of our activities. The administration is committed to do that through the automation plan that we submitted to Congress last December.

An important part of our mission in the Office is to promote greater dissemination and use of patent data and information. One way we do that is through a network of patent depository libraries. These are locally supported by cities, by universities. The patent depository libraries agree to keep in their library, accessible to the public, certain minimum patent documentation, including at least the last 20 years of issued patents. We now have 38 such libraries across the United States and they provide access to almost 50 percent of the population. I have entered into an agreement with Secretary Baldrige that over the next several years we will work to increase the number of patent depository libraries in the United States by at least three each year. We think we are going to make that this fiscal year.

One of our most promising programs for disseminating information is the development of a classification data base. This data base lets people know where the patents are. For example, if you invented something in the area of a carburetor, you could use this system on line to find out where all the carburetor patents are collected and you could find a list of all the patents that are collected in the subclass having to do with carburetors.

We put that system on line last year to our patent depository libraries, and the result has been very impressive. We receive over 16,000 inquiries each month from our patent depository libraries using our on-line inquiry system. In addition, there are about 40,000 inquiries in the public search room using that same system.

In the international arena, we have been involved in a number of activities affecting the protection of patents and trademarks internationally. By its very nature, intellectual property is now an international business. Simply protecting it in the United States, given the world markets and the need to foster exports, is not enough. There has to be in its place a good, effective world system of protection.

I was honored this past fall to head what I believe was a very strong delegation to the Third Session of the Diplomatic Conference to Revise the Paris Convention. Not only did we have outstanding industry advisers on the delegation, we were also fortu-

nate enough to have congressional advisers, including former Congressman Railsback, former Chief Counsel Bruce Lehman, and Minority Counsel Tom Mooney, join our delegation in Geneva. The delegation also included key staff members of the Senate Committee on the Judiciary.

At the Second Session of the Diplomatic Conference held in Nairobi in 1981, all countries except the United States gave tentative approval to a provision which would have authorized compulsory exclusive licenses in situations where the national authorities of the country found there had been abuse of patent rights and that nonworking was an element of that abuse. Tentative approval was also given to a provision authorizing forfeiture of patent rights 5 years from the grant of a patent without a precondition that a compulsory license be issued.

The U.S. delegation approached the Third Session of the Conference last year with two goals. The first goal was to avoid formal adoption of the Nairobi text—we indicated the United States could not be a party to that, and indicated also that we thought adopting that text was a very unwise thing for developing countries to do. Watering down protection in their countries, in our opinion, was not self-serving on their part.

Second, we worked very hard to formulate a compromise that all nations, including the United States, could adopt. Following several informal meetings, we were able to assist in the formulation of a compromise text proposal which would undo the worst features of the Nairobi text. The compromise would require that all compulsory licenses be nonexclusive, so that the patentee would not be shut out of a country because the patentee had acquired a license or a patent in that country. It would permit developing countries to revoke a patent after 5 years, but only if the compulsory license had been issued and the invention has not been worked, or if no applicant for a compulsory license were available. The compromise would have given developing countries the option of not applying another article of the Paris convention, referred to as article 5*quater,* dealing with process patent protection.

The compromise text was formulated late in the Third Session, in October, and there was not adequate time to consider the proposal fully. Thus, prior to adjourning the Third Session, we agreed with the Director of the World Intellectual Property Association, Dr. Arpad Bogsch, that we would come back 3 weeks later in November to attempt to reach agreement. The November meeting, which occurred during Thanksgiving week, resulted in almost around-the-clock negotiations. Those proposals did not succeed, but they proceeded far enough so that the Chairman of Main Committee, Ambassador Jimenez Davila of Argentina, did place the compromise text in the record of the Diplomatic Conference. We think that is very significant and hope that when the Conference reconvenes next February, the compromise text that we worked so hard on becomes the point of departure.

Again, Mr. Chairman, I have the report of the Chairman of Main Committee 1 of that Diplomatic Conference with me, and it may be appropriate to include that report in the record of these oversight hearings, because it does include the text of the compromise that we worked so hard on in November. [See p. 12, *infra.*]

Last June we negotiated a cooperative agreement with the European Patent Office on advanced documentation and automation. Under that agreement, each office will cooperate in efforts to introduce automation by exchanging information about plans, standards and equipment, software, systems and study results; by exchanging patent data in magnetic tape or microfilm form; by initiating efforts to harmonize existing documentation systems; and by establishing joint projects and providing technical experts to implement new systems.

In January of this year, we negotiated a cooperative agreement with the Japanese Patent Office, which agreement was even more extensive than the one negotiated with the European Patent Office. In addition to the items to be exchanged under the agreement, the Japanese Patent Office will provide us with magnetic tapes containing Japanese patent bibliographic data and English language abstracts in magnetic tape form. For the first time we will have for our examiners, when our automated systems come up, English abstracts of Japanese patents in magnetic tape form.

In October of this year, we will host at the State Department a trilateral meeting of the three patent offices—the European Office, the Japanese Office, and the U.S. Office—which will solidify further our cooperative efforts to introduce automation in these three offices in a way that is compatible. These are the three major patent offices of the world and it simply makes eminent sense for us to proceed with these cooperative efforts. We all have the same problems with documentation and we all have a tremendous amount of paper flowing through our offices, and it just makes sense for us to work together to try to solve these joint problems.

The establishment and maintenance of strong and certain patent and trademark protection throughout the world continues to be important for U.S. interests. We continue to work very hard at that. Assistant Commissioner Michael Kirk, with whom you are very familiar, recently visited Korea and Taiwan, where he led discussions of a government-industry delegation on patent, trademark and related issues.

Finally, I was informed earlier this year in China that they now have decided to institute the Chinese patent system. We believe that is a very significant and beneficial development. We have worked very closely with the Chinese officials in their plans to establish a patent system. Indeed, for about 3 weeks, Bill Lawson, the Director of Documentation at our Office, worked literally around the clock with the Chinese officials establishing regional patent documentation centers throughout China.

Mr. KASTENMEIER. Historically, have they ever had any patent system in China?

Commissioner MOSSINGHOFF. No; this will be the establishment for the first time of a patent system in China, and, significantly, it will be a system patterned after the Western model as opposed to an inventor certificate system which is prevalent in some of the other socialist countries. So we regard it as a very beneficial and forward-looking step on their part to introduce new technology into China.

With respect to legislative activities, on March 11 Secretary Baldrige signed a letter to the Speaker of the House transmitting a

copy of proposed legislation that we are recommending for the 98th Congress. Copies of that have been made available to the subcommittee, and I understand there are plans to introduce that legislation shortly, if it hasn't already been introduced.

Mr. KASTENMEIER. For the record, the bill was introduced yesterday by myself and Mr. Moorhead as H.R. 2610.

Commissioner MOSSINGHOFF. Very good. We appreciate your doing that.

One of the main elements of our package is the provision which would establish a "defensive patent." We believe that this, as an option to the current enforceable patent, will benefit both private industry and Government agencies.

At present, there is no simple, practical method by which an inventor may safeguard his or her right to work an invention without obtaining a patent. Section 2 of the proposed legislation would establish a new procedure by which an inventor could acquire a patent which would be valid for defensive purposes only. This defensive patent would be faster and less expensive to obtain than a traditional patent. It would not permit an inventor to exclude others from working the invention, but it would serve as a reference or as documentation of the inventor's work and could be used against future applications to protect the inventor from having a patent issued on the same invention to someone else.

Previous attempts to accomplish this through regulations have not been successful. With a statutory basis, the defensive patent, with one important exception, would serve the inventor just like a regular patent. The one important exception is that the defensive patent could not be used or enforced against anyone else. In exchange for a waiver of enforceability, the fees charged would be reduced. Since there would be no substantive examination, the Patent and Trademark Office could handle defensive patents without charging either the full processing fees or the maintenance fees.

Our proposed legislation includes a number of other amendments which are detailed in the sectional analysis and really can be characterized, I think, as housekeeping amendments. In one area, for example, we have several amendments regarding our implementation of the Patent Cooperation treaty which went into force about 5 years ago. Those amendments, for the most part, merely accommodate new interpretations of the treaty which were not available when we first wrote the legislation.

We anticipate that there may be other legislative items considered by the subcommittee, in which our office and the Department of Commerce will have a strong interest. For example, we continue to support strongly the concept of patent term restoration. When the present systems of necessary regulatory screening—the Food and Drug Administration and the Environmental Protection Agency—are overlaid with a fixed 17-year patent term, the results clearly discriminate against very important high-technology segments of our industry—the drug industry and the agricultural chemical industry, for example. To redress this inequity, we would be pleased to work with the subcommittee in any way possible toward your consideration of patent term restoration legislation.

In addition, we are very interested in the Trademark Counterfeiting Act of 1983, H.R. 2447, which was introduced by Chairman Rodino. Again, we offer to assist this subcommittee in any way we can with respect to these and other measures likely to be considered.

Mr. Chairman, during the past 2 years we have developed an extremely close working relationship with this subcommittee. That cooperation, in my view, has been indispensable to our being able to achieve some of the progress that we have realized over these past 2 years.

For our part, we look forward to that same pattern of cooperation during this Congress and well beyond.

Mr. Chairman, this concludes my prepared statement, and I would be very pleased to answer any questions you or the subcommittee may have.

[The statement of Gerald J. Mossinghoff follows:]

PREPARED STATEMENT OF GERALD J. MOSSINGHOFF, ASSISTANT SECRETARY AND COMMISSIONER OF PATENTS AND TRADEMARKS

Mr. Chairman and Members of the Subcommittee, I welcome this opportunity to appear before your Subcommittee today. My prepared statement covers three areas: (1) a brief discussion of the status of our programs to upgrade the U.S. Patent and Trademark Office to improve its service to industry and inventors, (2) a summary of our involvement in activities affecting the protection of patents and trademarks internationally, and (3) an outline of our legislative program for this year.

Last year I reported to you that the Patent and Trademark Office was not serving the needs of inventors and industry adequately. Huge backlogs clogged our operations, decreased efficient processing and delayed the granting of patents and registering of trademarks. The backlogs, hitting record highs and continuously growing, inhibited the introduction of new technology into commerce.

I detailed the Administration's commitment to turn things around at the Patent and Trademark Office through an aggressive three-point plan: To end the 20,000 case-per-year growth in the huge backlog of pending patent applications by 1984 and then to reduce the time it takes to get a patent—now well over two years—to 18 months by 1987 (Plan 18/87); To register trademarks in 13 months, with an opinion on registrability being given an applicant in three months by 1985 (Plan 3/13); and To take aggressive steps toward complete automation of the Office by 1990.

The key to achieving these goals without increasing Federal expenditures was to increase user fees to realistic levels. With the Subcommittee's support, we were able to do this with the enactment last August of Pub. L. 97-247. This legislation not only raised the fees, but it authorized the Office to use the fees it receives to improve service to industry and inventors.

Pub. L. 97-247 also set the current levels of maintenance fees, payable three times during the life of a U.S. patent, to be received beginning in 1986. Those fees, together with filing and issue fees, will provide an increasing source of revenue over the next decade. Further, the fees now in effect can be adjusted administratively every three years to take into account any inflation that may have occurred. Thus the Patent and Trademark Office is now on a sound financial basis to achieve the Administration's three-point plan.

The 1984 program level request for the Patent and Trademark Office is $171,026,000, an increase of $18,072,000 over the continuing resolution program level for 1983. With projected offsetting fee receipts authorized by Public Law 97-247 of $88,526,000, the 1984 appropriation request is less than 50 percent of our operating costs, or $82,500,000. This is a net increase of $8,645,000 when compared to the 1983 continuing resolution level of $73,855,000.

Today I am pleased to report to you that we are on schedule in our efforts in each part of the three-point plan. Our annual report for fiscal year 1982 details our actions on the three-point plan. With your permission, Mr. Chairman, I would like to submit a copy for the record. I will now outline for you our progress toward each of the three goals.

PLAN 18/87 IN PATENTS

We are committed to end the growth in the backlog of pending patent applications in 1984 and to reduce the time it takes to get a patent to 18 months by 1987.

The backlog of pending patent applications now stands at 246,000 cases. To halt the growth in that backlog and then to reduce it to a more manageable 180,000 by 1987, we have hired over 300 patent examiners during the past two years. In the next three years, we will hire an additional 600 examiners, bringing our professional examining staff to over 1,500. We are extremely pleased with our hiring program. More than half of the examiners we hired this past year are honors engineering graduates.

To assimilate the new examiners into the Office, we have acquired over 32,000 square feet of new space. We have established 30 new organization units, called "Art Units." And we greatly expanded our examiner training program.

To support the examiners, we have installed word processing systems in each of the examining groups, eliminating altogether the handwritten examiner opinions which had become an object of well-deserved ridicule throughout the world. During fiscal year 1983, 23 plan to expand the Board of Appeals and to strengthen all areas of clerical and logistic support, including a greater reclassification effort to update the examiners' files.

Although we are on target to meet this goal, much remains to be done. Before we can reduce the time it takes to get a patent, we must first "turn the corner," that is, begin to dispose of more applications than we receive. We now expect to turn the corner in patents in fiscal year 1984, when average pendency time will peak at about 27 months.

PLAN 3/13 IN TRADEMARKS

Our second commitment is to reduce the backlog in trademarks—a record 125,000 cases—so that by 1985 we will give first opinions on registrability in three months and finally dispose of cases in 13 months.

We now have a record high 105 lawyers examining our trademark applications. They are working in eight newly established divisions or "law offices." Even though trademark applications reached a new high in fiscal year 1982—over 73,000 were filed during that year—we are reducing the time it takes to register a trademark by two months each year. We confidently predict we will reach the goal of 13 months, at least by 1985.

AUTOMATING THE PATENT AND TRADEMARK OFFICE

The Patent and Trademark Office has more than 370,000 pending patent and trademark cases. More than 20,000 papers which must be incorporated into those files are received each day. Our patent examiners review 25 million documents classified into 112,000 subclasses of technology before deciding whether inventions are patentable. An estimated 7 percent of those 25 million documents are missing or misfiled at any given time. The all-paper hand-file-and-retrieve system reduces our productivity and our ability to respond to the needs of the public. Increasingly, decisions to grant patents and register trademarks are based on incomplete information.

In response to the directive of Public Law 96-517, we completed a comprehensive plan to achieve a fully automated Patent and Trademark Office by 1990. We presented the details of that plan to Congress on December 13. With your permission, I would like to submit a copy of the executive summary of that report for the record.

The automation plan describes a three-phase program. During the first phase, which extends through calendar year 1984, all trademark functions and one of our 15 patent groups, Group 220, will be automated. In the second phase, which runs through 1987, all patent groups will be automated and an essentially paperless operation achieved. The third and final stage will provide worldwide electronic access and expanded dissemination capabilities.

The Patent and Trademark Office has entered into a $2 million agreement with the MITRE Corporation for the first year of a multi-year contract for systems engineering and other work to help us put the plan into operation.

I believe the long-term stability of the patent and trademark systems hinges on the successful implementation of this automation program. The Administration is committed to a first-class Patent and Trademark Office. Implementing the automation master plan will be a significant step in that direction.

INFORMATION DISSEMINATION

An important part of our mission at the Patent and Trademark Office is to promote the greater dissemination and use of patent data and information. One way we do this is through our Patent Depository Library Program. A Patent Depository Library, or PDL, is an established library which has agreed to acquire a collection of U.S. patents. We now have 38 such libraries across the United States, providing remote access to the same U.S. patent information available in the Public Search Room of the Patent and Trademark Office in Arlington, Virginia.

The impact of these libraries is enormous. Through these technology centers, millions of U.S. residents now have access to needed patent information that was previously difficult to obtain. About 47 percent of the population is now within commuting distance of a patent collection, and we have an aggressive expansion plan for the PDL program to increase that percentage. Approximately 15,000 members of the public obtain patent information at the PDL's each month, and this number is increasing.

One of our most promising programs for disseminating patent information is the development of the Classification And Search Support Information System, known as CASSIS. This is an automated system that provides the public with direct, on-line access to patent information. The data base is available in the PSL's and in our Public Search Room. Computerized inquiries on this data have been running at about 16,000 each month at the PDL's, with an additional 40,000 queries in the Public Search Room.

INTERNATIONAL ACTIVITIES

We have been involved in a number of activities affecting the protection of patents and trademarks internationally. First and foremost has been the nine-year effort to revise the Paris Convention for the Protection of Industrial Property. I headed what I believe was very strong delegation to the Third Session of the Diplomatic Conference, which was held in Geneva, Switzerland, late last year. Not only did we have outstanding industry advisors with the delegation at all times, we were also fortunate enough to have congressional advisors from this Committee such as former Congressman Railsback, the former Chief Counsel of this Subcommittee Bruce Lehman, and the Monority Counsel of this Subcommittee Tom Mooney. The delegation also included key staff members of the Senate Committee on the Judiciary.

At the Second Session of the Diplomatic Conference held in Nairobi in 1981, all countries except the United States gave tentative approval to a provision which would have authorized compulsory exclusive licenses in situations where the national authorities of the country have found an abuse of patent rights, and non-working was an element of that abuse. Tentative approval was also given to a provision authorizing forfeiture of patent rights five years from grant without the precondition that a compulsory license issue which did not result in working.

The United States delegation approached the Third Session of the Conference with the goals, first, of avoiding formal adoption of the Nairobi text and, second, of trying to formulate a compromise that all nations could adopt. Following several informal meetings, we were able to assist in the formulation of a compromise proposal which would undo the worst features of the Nairobi text. The compromise would require all compulsory licenses to be non-exclusive. It would permit developing countries to revoke a patent after five years from grant for failure to work but only if a compulsory license has been issued and has not resulted in working or no applicant for a compulsory license was available. The compromise would have given developing countries the option of not applying Article 5*quater* dealing with process patent protection.

The compromise text was formulated late in the Third Session, and there was not adequate time to consider fully the proposal on its merits. Accordingly, prior to adjourning the Third Session, the participants agreed to a one-week continuation in November. Despite nearly round-the-clock negotiating efforts during that week, the Conference was unable to agree upon the compromise proposal. Importantly, however, the compromise text was made an official document of the Conference and will in our view serve as the point of departure in future deliberations.

An extraordinary session of the Paris Union Assembly was convened seven weeks ago to consider the continuation of the Diplomatic Conference on the Revision of the Paris Convention. The Assembly decided to hold a Fourth Session of the Diplomatic Conference in Geneva from February 27 to March 24, 1984. Preparations for the Fourth Session have already begun, and I hope that we can continue the positive results that were achieved last year in Geneva. I also hope that we will again be

privileged to have a strong Congressional delegation with us during the Fourth Session.

Last June, we negotiated a cooperative agreement with the European Patent Office (EPO) on advanced documentation and automation. Under that agreement, each Office will cooperate in efforts to introduce automation by exchanging information about plans, standards, equipment, software, systems and study results; exchanging patent data in magnetic tape or microfilm form; initiating efforts to harmonize existing documentation systems; and establishing joint projects and providing technical experts to implement new systems.

In January of this year, we negotiated a cooperative agreement with the Japanese Patent Office (JPO) which was even more extensive than the one negotiated with the EPO. In addition to the items to be exchanged under the agreement between us and the EPO, the JPO will provide us with magnetic tapes containing Japanese patent bibliographic data and English language "Patent Abstracts of Japan" (both the file of existing abstracts as well as future updates). Further, the JPO will study the possibility of preparing English language texts of the first claims in Japanese patent specifications and is in the process of providing a study sample of some 200 such claims.

This fall, we will host a trilateral meeting of the three patent offices involved, at which time we hope to solidify further the cooperative efforts to introduce automation in the three offices. I am convinced that we will be able to achieve more through direct and expeditious bilateral or trilateral systems of cooperation than we could on our own, and I am quite excited about the prospects for the future.

Before leaving the subject of the European Patent Office, I would like to comment on the cooperation between us and the EPO in connection with the Patent Cooperation Treaty. The United States is one of the 33 member countries of the Patent Cooperation Treaty, the international agreement which facilitates the filing of patent applications abroad. Under the treaty, a U.S. national or resident can file an international application in the Patent and Trademark Office designating those member countries in which patent protection is desired. The applicant then receives an international search report before having to commit the resources necessary to pursue multinational protection. Under an agreement reached last spring between us and the EPO, applicants are now given the option of having the international search of their PCT applications performed either by us or the EPO. Beginning with two applications in the month of October, the number has increased steadily to the point that the EPO received 50 international applications from U.S. residents and nationals for international searches in the month of February. The EPO now estimates that it will receive 600 to 700 international applications from U.S. nationals and residents in 1983 for international searches under this new arrangement.

The establishment and maintenance of strong and certain patent and trademark protection throughout the world continues to be important for United States interests. Assistant Commissioner Michael K. Kirk recently visited Korea and Taiwan, where he led discussions of a government/industry delegation on patent, trademark and related issues.

Finally, I was informed earlier this year in China that they plan to enact a patent law in the near future, probably before the end of the year. That is a very significant and beneficial development.

We have worked very closely with officials of China in their planning. For example, our Administrator for Documentation, Mr. William Lawson, was in China helping them establish regional patent documentation centers, and some Chinese officials visited our Office last month.

LEGISLATIVE ACTIVITIES

On March 11, 1983, Secretary Baldrige signed a letter to the Speaker of the House transmitting a copy of proposed legislation together with a sectional analysis. Copies have been made available to the Subcommittee. The most significant aspect of this proposed legislation is the provision which would establish a "defensive patent." We believe that this will benefit both private industry and government agencies. In addition, the proposal contains a number of perfecting amendments to the patent laws.

At present, there is no simple, practical method by which an inventor may safeguard his right to work an invention without obtaining a patent. Section 2 of our proposed legislation would establish a new procedure by which an inventor could acquire a patent which would be valid for defensive purposes only. This defensive patent would be faster and less expensive to obtain than a traditional patent. It would not permit an inventor to exclude others from working the invention, but it

would serve as a reference against future applications and protect the inventor from having a patent on the same invention later issued to someone else.

Previous attempts to accomplish this through regulations have not been successful. With a statutory basis, the defensive patent, with one important exception, would serve the inventor just like a patent which issued through the usual procedures. The one important exception is that a defensive patent could not be enforced against others or serve as the basis for a claim for compensation. In exchange for a waiver of enforceability, the fees charged for a defensive patent would be reduced. Since there would be no substantive examination, the PTO could charge smaller processing fees than are necessary for examined patents. In addition, no maintenance fees would be charged.

The defensive patent would be available to any applicant. Its use would be strictly optional. An applicant would be free to change from a defensive to a regular patent prior to its issuance. This patent would not be useful to every applicant since it lacks the exclusivity normally associated with a patent. However, it would provide inventors with one more option for the protection of their industrial property.

Our proposed legislation includes a number of other amendments which are detailed in the sectional analysis.

We anticipate that there may well be other legislative items considered by this Subcommittee, in which we will have an interest. For example, we continue to support strongly the concept of patent term restoration. When the present systems of necessary regulatory screening are overlaid with the fixed 17-year patent term, the results discriminate against very important segments of our industry. To redress this inequity, we would be pleased to work with this Subcommittee in any way possible. In addition, we are very interested in the "Trademark Counterfeiting Act of 1983," H.R. 2447, introduced by Congressman Rodino for himself, Mr. Edwards, and Mr. Frank. Again, we offer to assist this Subcommittee in any way we can with respect to these and other measures likely to be considered during the 98th Congress.

Mr. Chairman, during the past two years we have developed very close working relationships with you, other members of the Committee on the Judiciary, and the staff. That cooperation has been indispensable to the progress we have been able to achieve. For our part, we look forward to that same pattern of cooperation during this Congress and beyond.

Mr. Chairman, this concludes my prepared statement. I will be pleased to respond to any questions which you or the Subcommittee may have.

Mr. KASTENMEIER. I want to compliment you on your statement. It was an excellent statement. Of course, we are pleased to hear of the progress you are making toward the goals you set for your own Office and the efficient conduct of business in your Office. We will continue to want to work with you on that and hopefully we will get periodic reports of progress.

Indeed, you did offer earlier the text of the U.S. proposal with respect to the Fourth Session of the Patent Conference in Paris. Without objection, we will receive that and make that a part of the record.

[The information follows:]

WORLD INTELLECTUAL PROPERTY ORGANIZATION, GENEVA, INTERNATIONAL UNION FOR THE PROTECTION OF INDUSTRIAL PROPERTY (PARIS UNION), DIPLOMATIC CONFERENCE ON THE REVISION OF THE PARIS CONVENTION, THIRD SESSION, SECOND PART; REPORT OF THE CHAIRMAN OF MAIN COMMITTEE I, AMBASSADOR F. JIMÉNEZ DÁVILA (ARGENTINA), TO THE DIPLOMATIC CONFERENCE, MEETING IN PLENARY

Mr. President, Main Committee I, which I have the honor to chair, held, during this third session of the Diplomatic Conference, 11 meetings, namely on October 11, 13, 14, 19, 20, 22, 25, 26, 27 and November 27, 1982. Main Committee I dealt with Articles 6*ter* and 10*quater*. As agreed in the first session of the Diplomatic Conference, those meetings were chaired by Dr. Claës Uggla (Sweden). Those parts of this report which deal with the said two articles were prepared by him and are presented jointly by him and me.

The basic proposals concerning Articles 6*ter* and 10*quater* are contained in document PR/DC/4. In addition to the basic proposals, various proposals concerning Articles 6*ter* and 10*quater* were presented during the third session of the Diplomatic

Conference, which have been reproduced and distributed in documents PR/DC/42, 44, 44 Rev., 46 and 48 and which contain amendments to the basic proposals.

As regards Article 6*ter*, after a full discussion, agreement was reached on October 22, 1982, on the text which is reproduced in Annex I to this report and which extends the protection under Article 6*ter* to official names of States. Main Committee I unanimously adopted this text and transmitted it to the Drafting Committee.

As regards Article, 10*quater*, a Working Group was established by Main Committee I on October 22, which was composed of the Delegations of Argentina, Austria, Brazil, Bulgaria, Canada, Czechoslovakia, Egypt, France, Germany (Federal Republic of), the German Democratic Republic, Hungary, Poland, Portugal, the Soviet Union, Switzerland, the Syrian Arab Republic, Tanzania, the Ukrainian SSR, the United States of America, Uruguay and Yugoslavia, and chaired by Dr. Claës Uggla (Sweden), the Chairman of Main Committee I for questions concerning Articles 6*ter* and 10*quater*.

The Chairman of the Working Group on Article 10*quater* reported to Main Committee I on the discussions which had taken place in the Working Group. Main Committee I noted his report, which is reproduced in Annex II to this report.

In the course of this third session of the Conference, I started consultations with various delegations with a view to searching for a formula that would make it possible to arrive at a consensus on Article 5A in the form in which it emerged from the Nairobi session. After a first round of informal consultations, unofficial consultations, I was able to work out a text that I personally thought could lead to a convergence of views; this text will be reproduced as an Annex[1] to my report on the work of the Main Committee. I circulated it on my responsibility as a suggestion to the various delegations. The said text was considered at informal consultations that I arranged with a certain group of delegations representing all the regional groups, yet unfortunately, Mr. President, those consultations did not lead to the consensus which I had tried to achieve.

Thank you, Mr. President.

[The Annexes follow:]

[Annex I]

ARTICLE 6*ter* OF THE PARIS CONVENTION FOR INDUSTRIAL PROPERTY, AS ADOPTED ON OCTOBER 22, 1982, BY MAIN COMMITTEE I AND TRANSMITTED TO THE DRAFTING COMMITTEE

*Article 6*ter

[Marks: Prohibitions concerning Names of States, State Emblems, Official Hallmarks, and Emblems of Intergovernmental Organizations]

(1)(a) The countries of the Union agree to refuse or to invalidate the registration, and to prohibit by appropriate measures the use, without authorization by the competent authorities, either as trademarks or as elements of trademarks, of armorial bearings, flags, and other State emblems, as well as the official names, of the countries of the Union, official signs and hallmarks indicating control and warranty adopted by them, and any imitation from a heraldic point of view.

(b) The provisions of subparagraph (a), above, shall apply equally to armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations of which one or more countries of the Union are members, with the exception of armorial bearings, flags, other emblems, abbreviations, and names, that are already the subject of international agreements in force, intended to ensure their protection.

(c) No country of the Union shall be required to apply the provisions of subparagraph (b), above, to the prejudice of the owners of rights acquired in good faith before the entry into force, in that country, of this Convention. The countries of the Union shall not be required to apply the said provisions when the use or registration referred to in subparagraph (a), above, is not of such a nature as to suggest to the public that a connection exists between the organization concerned and the armorial bearings, flags, emblems, abbreviations, and names, or if such use or registration is probably not of such a nature as to mislead the public as to the existence of a connection between the user and the organization.

(2) Prohibitions of the use of official signs and hallmarks indicating control and warranty shall apply solely in cases where the marks in which they are incorporated are intended to be used on goods of the same or a similar kind.

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[1] See Annex III of this document.

(3)(a) For the application of these provisions, the countries of the Union agree to communicate reciprocally, through the intermediary of the International Bureau, their official names and the list of State emblems, and official signs and hallmarks indicating control and warranty, which they desire, or may hereafter desire, to place wholly or within certain limits under the protection of this Article, and all subsequent modifications of such list. Each country of the Union shall in due course make available to the public the lists so communicated.

Nevertheless such communication is not obligatory in respect of flags of States.

(b) The provisions of subparagraph (b) of paragraph (1) of this Article shall apply only to such armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations as the letter have communicated to the countries of the Union through the intermediary of the International Bureau.

(4) Any country of the Union may, within a period of twelve months from the receipt of the notification, transmit its objections, if any, through the intermediary of the International Bureau, to the country or international intergovernmental organization concerned.

(5) In the case of State flags, the measures precribed by paragraph (1), above, shall apply solely to marks registered after November 6, 1925.

(6) In case of official names of States, State emblems other than flags, and official signs and hallmarks of the countries of the Union, and in the case of armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations, these provisions shall apply only to marks registered more than two months after receipt of the communication provided for in paragraph (3), above.

(7) In cases of bad faith, the countries shall have the right to cancel even those marks incorporating official names of States, State emblems, signs, and hallmarks, which were registered before November 6, 1925.

(8) Nationals of any country who are authorized to make use of the official name, State emblems, signs, and hallmarks, of their country may use them even if they are similar to those of another country.

(9) The countries of the Union undertake to prohibit the unauthorized use in trade of the official names and State armorial bearings of the other countries of the Union, when the use is of such a nature as to be misleading as to the origin of the goods.

(10) The above provisions shall not prevent the countries from exercising the right given in paragraph (3) of Article 6*quinquies*, Section B, to refuse or to invalidate the registration of marks incorporating, without authorization, the official name of a country of the Union, armorial bearings, flags, other State emblems, or official signs and hallmarks adopted by a country of the Union, as well as the distinctive signs of international intergovernmental organizations referred to in paragraph (1), above.

[End of Annex I; Annex II follows:]

[Annex II]

WORLD INTELLECTUAL PROPERTY ORGANIZATION, GENEVA, INTERNATIONAL UNION FOR THE PROTECTION OF INDUSTRIAL PROPERTY (PARIS UNION), DIPLOMATIC CONFERENCE ON THE REVISION OF THE PARIS CONVENTION, THIRD SESSION, SECOND PART: REPORT OF THE CHAIRMAN OF THE WORKING GROUP OF MAIN COMMITTEE I ESTABLISHED TO CONSIDER ARTICLE 10QUATER, DR. CLAËS UGGLA (SWEDEN), TO MAIN COMMITTEE I

Mr. Chairman, the Working Group on Article 10*quater* (hereinafter referred to as "the Working Group"), which was set up by Main Committee I on October 22, 1982, whose composition was decided upon on October 25, 1982, and which I had the honor to chair, held four meetings, namely on October 25, 26, 27 and 28, 1982. The Delegations of the following States are members of the Working Group: Argentina, Austria, Brazil, Bulgaria, Canada, Czechoslovakia, Egypt, France, Germany (Federal Republic of), the German Democratic Republic, Hungary, Poland, Portugal, the Soviet Union, Switzerland, the Syrian Arab Republic, Tanzania, the Ukrainian SSR, the United States of America, Uruguay and Yugoslavia. All delegations were admitted to follow the discussions of the Working Group.

The Working Group discussed paragraphs (1), (2), (5) and (6) of Article 10*quater*. It recommended to the Main Committee that paragraphs (1), (2) and (5) should be worded as follows:

PARAGRAPH (1)

(a) Each country of the Union undertakes, either ex officio if its legislation so permits or at the request of an interested party as defined in Article 10(2) or a federa-

tion, association or any other organization having legal capacity to represent the interests of the producers, manufacturers or merchants concerned, insofar as the law of the country in which protection is claimed allows such request by federations, associations or any other organizations of that country,

(i) to refuse or to invalidate registration of a trademark which contains or consists of a geographical or other indication denominating or suggesting a country of the Union, a region or a locality in that country with respect to goods not originating in that country if the use of the indication for such goods is of a nature as to mislead the public as to the true country of origin, and

(ii) to prohibit the use of such an indication if that use for such goods misleads the public as to the true country of origin.

(b) The provisions of subparagraph (a) shall apply in particular to names commonly used to indicate the States of the Union, as well as to translations and to modified, adjectival abbreviated forms of these names, it being understood that these provisions are without prejudice to the provisions of Article 6*ter*.

PARAGRAPH (2)

The preceding paragraph shall also apply to a geographical indication which, although literally true as to the country, region or locality in which the goods originate, falsely represents to the public that the goods originate in another country.

PARAGRAPH (5)

Under the preceding paragraphs, all factual circumstances must be considered, particularly the meaning of the trademark and of the geographical or other indication in the country in which the challenge is made, taking into account the extent to which the place denominated or suggested is known, the reputation of the indication, the length of time the trademark has been in use, and any distinctive character the trademark may have acquired through use.

As regards paragraph (6), the Working Group examined in detail various possibilities and agreed, subject to possible improvements in the drafting, with the following text, it being understood that the exact place of the paragraph in question should be determined once Article 10*quater* has been considered as a whole. "The provisions of the preceding paragraphs shall not prevent countries of the Union from concluding, [pursuant to] [1] [under] [1] Article 19, bilateral or multilateral agreements concerning the rights under those paragraphs, with a view to increasing the protection for specific geographical or other indications." (Original: English)

In addition, it was noted that, since Article 10*quater* constituted a whole and since several paragraphs had not yet been considered, final action on the above mentioned paragraphs would have to wait until the totality of the said article has been considered.

Let me conclude by saying that the discussions of the Working Group were guided by a most constructive spirit on all sides. I thank all the Delegations who participated in the Working Group.

[End of Annex II; Annex III follows:]

Annex III

DRAFT TEST OF THE CHAIRMAN OF MAIN COMMITTEE I

I. ARTICLE 5A

(8) Notwithstanding anything contained in paragraphs (3) and (4), developing countries have the right to apply the following provisions:

(a) [Same as in document PR/DC/37, Annex II, as amended in the meetings of Main Committee I of October 23, 1981 (see document PR/SM/5, pages 88 to 94)] [2]

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[1] One of these alternatives will have to be chosen.

[2] "Any developing country has the right to grant non-voluntary licenses where the patented invention is not worked, or is not sufficiently worked, by the owner of the patent or under his authorization in the territory of that country within 30 months from the grant of the patent in that country, unless the owner of the patent proves circumstances which in the judgment of the national authorities competent to grant non-voluntary licenses justify the non-working or insufficient working of the patented invention. Where the national law provides for deferred examination for patentability and the procedure for such examination has not been initiated within three years from the filing of the patent application, the time limit referred to in the preceding sentence shall be four years from the filing of the said application."

(b) Any developing country has the right to provide in its national law that the patent may be forfeited or may be revoked where the patented invention is not worked, or is not sufficiently worked, in the country before the expiration of five years from the grant of the patent in that country, provided that the national law of the country provides for a system of non-voluntary licenses applicable to that patent and that, in the opinion of the national authorities competent for forfeiture or revocation, at the time of the decision concerning forfeiture or revocation, the grant of a non-voluntary license would not be possible because there is no applicant for a non-voluntary license who could ensure sufficient working, or that the beneficiary of a non-voluntary license, if one was granted before the decision concerning forfeiture or revocation, did not, in fact, ensure sufficient working, unless the owner of the patent proves circumstances which in the judgement of the national authorities competent for forfeiture or revocation justify the non-working or insufficient working of the patented invention.

II. ARTICLE 5*quater*

(1) [Same as present text of Article 5*quater*] [3]
(2) Any developing country has the right not to apply the provisions of paragraph (1).
[End of Annex III and of document.]

Mr. KASTENMEIER. The bill that Mr. Moorhead and I introduced yesterday that you referred to at the end of your text, H.R. 2610 [See appendix at p.—.], I assume will want to be looked at in some detail and, indeed, have hearings be held. At that time we can, I think, deal with it in greater depth and devote the entire hearing to the implications of the legislation that we have introduced.

I have several questions. First of all, I would like to inquire in the trademark area, what the status is of any legislation to implement the Trademark Registration Treaty. Is there any legislation to achieve that?

Commissioner MOSSINGHOFF. No, Mr. Chairman. We have had that under consideration for some time. The Office played a key role in the negotiation of the Trademark Registration Treaty. When I came to the Office 2 years ago, the trademark operation at that time was described in the Wall Street Journal as a national disgrace. We were simply being clogged with backlogs and lack of automation. So Margaret Laurence, the Assistant Commissioner for Trademarks, and I agreed that while the Trademark Registration Treaty has obvious merit, that we really think we had better get our own house in order before we consider sending it to the Senate for advice and consent and recommending implementing legislation.

One of the features of the Trademark Registration Treaty is that it would allow registrations based on an intent to use the mark in interstate commerce, which is quite a departure from the traditional U.S. position that trademarks are only registered after they have been used in interstate commerce and not based on an intent to use. So what we have done is, in effect, put that on the shelf for at least the next year or two. When we get to March 13, when we achieve our plans for trademarks—and I am convinced we will do that, probably by the end of next calendar year—then we will want

[3] "When a product is imported into a country of the Union where there exists a patent protecting a process of manufacture of the said product, the patentee shall have all the rights, with regard to the imported product, that are accorded to him by the legislation of the country of importation, on the basis of the process patent, with respect to products manufactured in that country."

to revisit the Trademark Registration Treaty to see if it doesn't make sense to recommend it to the Congress.

Mr. KASTENMEIER. One decision that was given some notoriety recently in the trademark area, when I guess the Supreme Court denied certiorari, is the ninth circuit's decision involving the game "Monopoly" and the use of the word "anti-monopoly." Is that an acceptable decision? Does that leave the state of trademark law in any sort of chaotic condition? Can we live with that? Is that going to prove to be a problem?

Commissioner MOSSINGHOFF. I am not certain—I know that the Supreme Court denied certiorari the first time around, and I think there may be a petition for reconsideration of that denial now pending. I am not sure whether that is the status or not. I think it would be inappropriate for me to comment while the case may be pending before the Supreme Court.

The Patent and Trademark Office, has gone on record in a brief that we filed with the Court of Customs—now the Court of Appeals of the Federal Circuit—without getting into any comment on the merits of the holding of the case, on whether the term "monopoly" was or was not generic. I don't think it would be appropriate for us to make that decision.

We are somewhat troubled by the reasoning of the case because it seems to base the decision on what is called the motivational factor. That is, if your motivation in buying something is to get the same product that you got before when you bought it, that may not be as important as your motivation in buying it because you know it came from manufacturer X. There are many strong and valid trademarks that you probably buy. Estimates are that if you go to a drug store or a supermarket and spend a day in the United States, you will come across 1,500 trademarks in 1 day's activities.

Many times you know the product and you know its trademark, and you want the same results by buying it again. But you don't have any idea of who the manufacturer or the source of the product is. To the extent that the *Monopoly* decision ties your motivation to knowing and trying to get products from a given source, I think it could be troublesome.

Mr. KASTENMEIER. That's interesting.

I have some other questions but I would like to yield to my colleagues first. I would like to yield, going down the line, to the gentleman from Michigan, Mr. Sawyer.

Mr. SAWYER. I don't really have any very relevant questions, but there is something that has always puzzled me, not being a patent lawyer. What does "patent pending" do for a product? Does that give you any protection.

Commissioner MOSSINGHOFF. You don't get any legal protection. Most people that put it on their products put it on as a kind of alert or warning to their competitors that there is a patent application pending and at some time that patent application may issue and may provide real legal protection for the invention. Legal protection does not start until we issue the patent from the U.S. Patent and Trademark Office. But it does alert competitors that you may have a patent coming out.

Mr. SAWYER. If the patent then is subsequently approved, does that provide any retroactive rights to the person who had it pending?

Commissioner MOSSINGHOFF. No.

Mr. SAWYER. It can only then be enforced as a protection from the day on which it is issued?

Commissioner MOSSINGHOFF. That's right, and for 17 years thereafter.

Mr. SAWYER. That was really all I had to say, although it was somewhat irrelevant to what you were saying. But as long as I have an expert here, I thought I would find the answer.

You know, here in the last Congress and the one before, I finally asked a question that has always been bothering me, too, and it wasn't of you but another. How did we come to have such an odd period of 17 years? The answer I was given was that 7 years was the standard apprenticeship, and that the argument developed in Congress, where apparently apprentices were the ones that would normally take the skill they had learned there, or the technique or whatever, invention, and after the end of their apprenticeship they would go into business and make it themselves. The debate raged between whether it should be three apprenticeships or two, and in its usual wisdom Congress compromised halfway in between with 17 years. That always puzzled me.

Is that story correct?

Commissioner MOSSINGHOFF. Yes; it is, at least the historians have indicated that story is correct. The issue was whether patents should be issued for 14 years and then renewed for another 7 years, or whether there should be a fixed term and what that fixed term should be. So there was a mathematical compromise between the 14 years and the 21 years, which was tied, I think, to the 7-year apprenticeship period that was effective at that time.

It is a pretty good international standard now, though. Many international offices of the developed countries have 20 years. It is 20 years from the time of filing rather than from the time of grant, and if their processing time takes 2 or 3 years, they end up with roughly a 17-year period also. So it is a fairly good international standard.

Mr. SAWYER. Now that I have gotten that, plus learned about "patent pending," sooner or later I will be a qualified patent lawyer.

Thank you, Mr. Chairman. I yield back.

Mr. KASTENMEIER. The gentleman from Illinois, Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman.

During the last Congress, as I recall, Chairman Rodino had legislation responding to the problem of counterfeit trademarks or counterfeit trademarked goods. I would like to ask Mr. Mossinghoff if that is a serious problem and if we could get an analysis of that legislation with a view toward whether we need it and maybe get it reintroduced and moved forward.

Commissioner MOSSINGHOFF. Yes; we think it is a very serious problem. I really haven't heard any good estimates, except all the numbers you hear are very large. But there are estimates, for example, that counterfeiting in the fashion industry results in lost profits of up to $500 million. Counterfeiting of both the copyright

and the trademark in the record and tape industry is estimated to be a $6 billion industry.

One of the problems that we have documented is that when people think about counterfeiting they sometimes think of Cartier watches or designer jeans, but the problem is a lot more serious than that. For example, the Chevron people had one of their herbicides counterfeited and applied to the coffee crop in Kenya. This counterfeit agricultural chemical bearing the full Chevron trademark reportedly killed one-third of the coffee crop of Kenya. You can imagine what that does to the good will that Chevron had spent years and years to build up. Also, we have cases where counterfeit engine bolts for aircraft or helicopter parts are being sold. That goes well beyond the Cross pen and Cartier watches to areas of absolute public safety.

In early February Secretary Baldrige asked me to make a presentation before the Cabinet Council on Commerce and Trade, which he chairs, on the counterfeiting problem, and I did. As a result of that meeting, the Cabinet Council took a very strong position to, one, endorse—the administration does endorse through the Cabinet Council legislation such as that which you mentioned—the legislation introduced last year by the chairman and which I believe has been reintroduced again this year. It is not a position on the details of that legislation—the Cabinet Council takes a broader look at things—but a strong Cabinet Council position that we need strong criminal sanctions for deliberate—with intent to deceive—counterfeiting.

The Cabinet Council also recommended that we continue our efforts internationally through the U.S. Trade Representative, Ambassador Brock's office. There is an anticounterfeiting code which has been drafted through the GATT apparatus, and the Cabinet Council endorsed strong efforts by Commerce, the USTR, and the State Department to push that anticounterfeiting code internationally, hopefully to get agreement by all countries to the code by the end of this calendar year.

Mr. HYDE. I think that is significant and important, and I wonder if the staff could tell us whether that bill has been reintroduced.

Mr. KASTENMEIER. I can tell the gentleman that it has been reintroduced as H.R. 2447 by Mr. Rodino, Mr. Edwards, and Mr. Frank.

Mr. HYDE. Well, have you looked at that legislation? Has your office looked at it?

Commissioner MOSSINGHOFF. Yes, we have.

Mr. HYDE. And would you send us up an analysis of it, if you haven't already?

Commissioner MOSSINGHOFF. We would be pleased to.

Mr. HYDE. In other words, I think we ought to move forward on that. It sounds important and significant.

Also, of course, many of the violators are in Hong Kong and places like Taiwan. We need that international enforcement mechanism as well. But this is an area that cries out for some relief. We're talking about a lot of money. We're talking about jobs. We're talking about exports, imports. I am very pleased that the legisla-

tion has been reintroduced and would like the opportunity to be a cosponsor on it and be helpful in pushing it.

Thank you very much.

Mr. KASTENMEIER. The gentleman from Ohio, Mr. DeWine.

Mr. DEWINE. I have no questions, Mr. Chairman.

Mr. KASTENMEIER. The gentleman from California, Mr. Moorhead.

Mr. MOORHEAD. Thank you, Mr. Chairman.

Mr. Mossinghoff, we want to welcome you here, and thank you for your excellent statement.

Along the same line of the questioning of Congressman Hyde, I was given a memorandum concerning an action that was filed by Allied Corp. before the U.S. International Trade Commission which involved a case in which they had a patent and they applied for one in Japan and apparently the product has been produced over there and they haven't been able to really get it off the ground here.

How much of that usurpation of patents or patent materials do we find when we apply in foreign countries for a similar patent? Do we have that going on frequently?

Commissioner MOSSINGHOFF. I think there is concern. Patents, by their very nature, only apply in the country that issued them. One of Secretary Baldrige's major goals that we are working on is to increase the ability of U.S. industry to obtain patents internationally, to protect their intellectual property internationally.

There are, I think, a lot of situations where patents are not effective, situations in which it may be cheaper to make a product outside the United States, and then export it back into the United States. One of the provisions that is in a bill that has not been introduced yet but is in the discussion stage with the Assistant Attorney General for Antitrust, Bill Baxter, is one that we totally support and recommend. That is if something is made by a process abroad, introducing the product into U.S. commerce will infringe the process patent, so the patent would cover the process in this country but not abroad. We think that is needed. We expect that the bill that Bill Baxter is having informal discussions with various people on will be introduced, and we will strongly support that.

In terms of the International Trade Commission, one of the tests that needs to be satisfied there is that, in order to stop a product at the border, not only does the product infringe, but it must otherwise have a deleterious effect on a well-managed U.S. industry. That is a second hurdle that one has to go through. I think we would support the view that perhaps at least in a product made by a patented process the person should not have to go through that separate hurdle but merely show that the product was being introduced in the United States.

Mr. MOORHEAD. In most of the foreign countries, are the applications for patents available for the general public to see, or people in major corporations to see, so that they could get the processes that are used in the patent prior to the time that the patent is issued and be able to use it?

Commissioner MOSSINGHOFF. Yes; a few countries have given dates for when they must publish the technology.

One of the problems that we see is that, for example, patent applications published in Japan are in the Japanese language. There simply aren't many people in the United States that can speak Japanese and translate publications on that new technology. That is why one of the things we were successful in doing in our cooperative agreement with the Japanese office was to get them to send us magnetic tape of abstracts of their patents in English so that we can put them directly into our machine and not have to go through translators.

Clearly, I think more needs to be done in fostering U.S. industry to use this resource. We still harken back to the situation of a few decades ago, where the United States was the producer of well over 75 percent of the new technology in the world. Well, we don't do that any more. A gross estimate is that we produce half of the technology. It is pretty clear, with the competition we have, that in the next 10 years that half is probably going to become one-third.

As we move from this majority position to a minority position, we certainly have to gear ourselves up, the industry has to gear itself up, to use this resource that you suggest.

Mr. MOORHEAD. When your office issues a patent, what percent of those patents are eventually challenged in the courts?

Commissioner MOSSINGHOFF. A very small percentage. We issue roughly 65,000 patents a year. The best estimate that I can give is that maybe 1,000 of those actually end up in a law suit in any one year. Between 1 and 2 percent ever get to court. Then each year maybe 100 patent judgments finally decide a patent. So what you are talking about is 100 decisions based on 65,000 patents that are issued.

Mr. MOORHEAD. What kind of a record is there for those patents that are challenged? Are they upheld in most instances?

Commissioner MOSSINGHOFF. Let me get a plug in here for something the committee did last year. I think one of the wisest things that was done was the institution of the court of appeals for the Federal circuit to handle patent cases, because the result was mixed, in response to your question.

Over a long period of time, for example, the Eighth Circuit Court of Appeals in St. Louis held 80 percent of the patents coming before it invalid, whereas the Fifth Circuit Court of Appeals during that same period held about 30 percent. You can average those and come out with an arithmetic mean of, say, 50 percent. But that really doesn't tell the story to a businessman, because if he ends up in a circuit where it is 80 percent, that average doesn't help him very much.

We think that with the new court of appeals, where you have the same court telling us what to issue—they set the legal standard for what we issue—and they will also setting the legal standard for the district courts when patents are challenged, we will end up with a lot better statistics.

Mr. MOORHEAD. What are the criteria that causes a patent to fall most often?

Commissioner MOSSINGHOFF. I would say most often it is the fact that, in our limited capability—as I indicated, we have 25 million references at the Patent and Trademark Office, divided into 112,000 subclasses—we simply can't find all the technical literature

of the world. It is impossible in the amount of time we have to devote to a given case.

As an example, I know you are interested in the NASA program, coming from Pasadena. There was a very important invention that NASA received a patent on, Dr. Whitcomb's supercritical wing, which is used on virtually every new subsonic jet that is made in the United States. Perhaps the most relevant reference which the Patent and Trading Office didn't find—I think the patent is still valid over this reference—but the most relevant reference that we didn't find at the time the case was pending was a 1938 Luftwaffe publication that had been put in some technical library in London. We simply don't have the resources to be able to uncover those kinds of references. With automation, and an exchange of patent information, I think in the years to come we're going to do a better job of uncovering prior art than we have up to until now. However, we still do a pretty good job. U.S. patents are viewed worldwide as very strong, very well researched documents.

Mr. MOORHEAD. Just to follow through on one more question concerning the subject matter of Mr. Sawyer's interrogation, obviously putting "patent pending" on an article doesn't give us any great protection when a patent may take 26 months or longer to be issued.

Is there any kind of protection that we can give those people that we are not giving them now to protect their invention during that period of time?

Commissioner MOSSINGHOFF. I don't think we can give them protection of a different nature. I wouldn't recommend that because a patent is a very special kind of protection that everyone is used to using, and it is an internationally recognized and adopted objective kind of monopoly that we provide.

We do have special provisions, for example, in energy related areas, that if someone has an invention relating to a way of either generating or conserving energy, we will make the case special. So the 26 months, depending upon how much time the applicant takes, can become a lot less than that.

We just had a proposal made by one of the real students of the patent bar. He has recommended that for a fee—and it would cost us money—but for a fee, that someone be able to, in effect, get their case "walked through" the Office as a special measure if they've got some reason to do so. In addition to that, we make cases special if someone is aging—I think it is if an inventor is over age 65 we automatically make their case special. And if an invention is being infringed, upon a showing of that we will give the case special procedures.

Mr. MOORHEAD. Is there any real prospect of speeding it up for everyone?

Commissioner MOSSINGHOFF. The administration made the promise last year, when we convinced Congress to increase the patent fee substantially, to reduce the time for everyone to an average of 18 months, down from 27, which is where it will be when it peaks.

Mr. MOORHEAD. Thank you very much.

Mr. KASTENMEIER. I have a couple of questions remaining, mostly on patents.

I wanted to know whether I understood you correctly in a response to Mr. Moorhead. You appeared to state that we would have better results in terms of the Federal judicial forum, that we could expect better than a 30- or 50-percent validity finding upholding the patent in some other forum, and that is a good thing. The implication was that if we could find a judicial forum that would find our patents valid, we would be better off somehow; is that correct?

Commissioner MOSSINGHOFF. The answer to the question of how many patents are held valid or invalid, is really that up until now it depended on what circuit court had the ultimate decision. Our view was that's not the kind of certainty that business executives need when they commit resources to research and development.

Mr. KASTENMEIER. But what you are saying is that the circuits varied between finding patents 30 to 60 percent invalid. Even if the Federal circuit found 60 percent of all patents invalid, if they were consistent would that be preferable?

Commissioner MOSSINGHOFF. That's right. I think, Mr. Chairman, most of the grounds of invalidity are such that when someone is challenged, and it's a multimillion dollar issue, they will spend a lot more resources than we could possibly spend on each case to try to ferret out these obscure pieces of prior art or public use or sale. As long as there is an evenhanded judicial review of those new developments, I think businessmen are willing to invest on that basis.

Mr. KASTENMEIER. In the September 1982 issue of the Journal of Patent Office Society, there is an article entitled "The Rulemaking Power of the Commissioner of Patents and Trademarks." I am sure you are familiar with the articles. On page 492, there is a statement that you could, by rule, establish a procedure similar to the one proposed in the patent term restoration bill. The author argues that you could not extend the term of the patent after issuance, but for a patent ready to issue, after a rule was promulgated, you could defer the starting date of the 17-year period until the applicant obtained regulatory approval.

Do you agree with that author's contention?

Commissioner MOSSINGHOFF. The article you speak of is an extremely well-researched article. It was written by Mr. Herbert Wamsley, I believe, the article you're referring to. Mr. Wamsley is now, incidentally, the executive director of the Intellectual Property Owners, which has testified several times before this subcommittee.

We haven't reached a conclusion on whether that would or would not be possible, although I tend to be persuaded by his arguments concerning the breadth of the Commissioner's power. We do have rules in place right now where, for several reasons, we will suspend prosecution of a case. For example, if we know when an earlier case is going to issue that would, in turn, knock out a later filed case, we will suspend prosecution in the second case and wait for the first to go through to issuance. We would be glad to look at that again.

I think, if there is a possibility here, whatever the process, it should be designed so that you don't delay the disclosure of new technology. If by delaying the issuance of a patent you were to delay the disclosure of new technology, my general reaction would not be favorable. If there can be some way to make sure that the

new technology is published and available to other people working in the field, maybe there is an area we can look at.

Mr. KASTENMEIER. Of course, even if theoretically you were correct, wouldn't you agree that a change in policy of this magnitude ought to be a statutory change and not made merely by virtue of rulemaking? I think the public debate on the question is sufficiently substantial and heated.

Commissioner MOSSINGHOFF. We certainly have to take that into account.

Mr. KASTENMEIER. In terms not only of this subcommittee's oversight of your office, but also the interest of the subcommittee, I would hope that interested Members and staffers on the subcommittee could get a tour of your facilities sometime. You have indicated you have grown in terms of square footage. I think, as far as oversight, that a tour would be helpful to us.

Commissioner MOSSINGHOFF. We would be delighted to arrange that.

Mr. KASTENMEIER. We may want to do that at some point in the near future and will contact your office.

One last area, and that involves a Presidential memo. On February 18 of this year, the President issued a memorandum to the heads of executive departments—I am sure you're familiar with it—on Government patent policy. Without objection, I would like to include the President's memorandum in the record.

[The information follows:]

THE WHITE HOUSE,
OFFICE OF THE PRESS SECRETARY,
February 18, 1983.

To: The heads of executive departments and agencies.
Subject: Government patent policy.

To the extent permitted by law, agency policy with respect to the disposition of any invention made in the performance of a federally-funded research and development contract, grant or cooperative agreement award shall be the same or substantially the same as applied to small business firms and nonprofit organizations under Chapter 38 of Title 35 of the United States Code.

In awards not subject to Chapter 38 of Title 35 of the United States Code, any of the rights of the Government or obligations of the performer described in 35 U.S.C. 202-204 may be waived or omitted if the agency determines (1) that the interest of the United States and the general public will be better served thereby as, for example, where this is necessary to obtain a uniquely or highly qualified performer; or (2) that the award involves co-sponsored, cost sharing, or joint venture research and development, and the performer, co-sponsor or joint venturer is making substantial contribution of funds, facilities or equipment to the work performed under the award.

In addition, agencies should protect the confidentiality of invention disclosure, patent applications and utilization reports required in performance or in consequence of awards to the extent permitted by 35 U.S.C. 205 or other applicable laws.

RONALD REAGAN.

FACT SHEET

President Reagan has today signed a Memorandum to the heads of executive departments and agencies directing, to the extent permitted by law, a revision of the current policy with respect to rights in inventions made during performance of Government research and development contracts, grants or cooperative agreements. This Memorandum directs the agencies to adopt and implement the same or substantially the same policies for all R&D contractors as those set forth in Public Law 96-517 (Chapter 38 of Title 35 of the United States Code) for small businesses and nonprofit organizations. It is intended to achieve more uniform and effective Government-wide policies.

Inventions developed under Government support constitute a valuable national resource. With appropriate incentives, many of these inventions will be further developed commercially by the private sector. The new products and processes that result will improve the productivity of the U.S. economy, create new jobs, and improve the position of the U.S. in world trade. The policy established by the Memorandum is designed to provide such incentives.

Experience has shown that, in most instances, allowing inventing organizations to retain title to inventions made with Federal support is the best incentive to obtain the risk capital necessary to develop technological innovations. The new policy provides that, with limited exceptions, the inventing organizations may retain title to the invention, subject to license rights in the Government which will enable the Government to use the invention in its own programs. The Government will also normally retain the right to "march-in" and require licensing when the inventing organization fails to pursue development of the invention. In addition, the Department of Justice will develop an appropriate safeguard against anticompetitive retentions of title by organizations not subject to Public Law 96-517.

To the extent permitted by law, this Memorandum is applicable to all statutory programs including those that provide that inventions be made available to the public. Those agencies. such as National Aeronautics and Space Administration and the Department of Energy, which continue to operate under statutes which are inconsistent in respects with the Memorandum, are expected to make maximum use of the flexibility available to them to comply with the provisions and spirit of the Memorandum.

In order to promote uniformity, President Reagan has also asked the Director of the Office of Science and Technology Policy through the Federal Coordinating Council for Science, Engineering and Technology to evaluate the effectiveness of the implementation of the Memorandum and make recommendations for revision or modification of the Memorandum, OMB Circular A-124, the Federal Acquisition Regulation, or agency regulations, policies, or practices. The agencies will also provide the Council with data on the disposition and utilization of inventions resulting from their programs and on their use of patent rights clauses, exceptions and waiver authorities.

Mr. KASTENMEIER. The President's memorandum announces that, to the extent permitted by law—he uses that term—that agency policies shall be the same, or substantially the same, as applied to small business firms and nonprofit organizations. The President's memo refers to universities and small businesses in chapter 38 of title 35 of the United States Code. Presumably for all enterprises, that is, all other corporations, uniform government patent policy would apply.

I am just wondering what the President is attempting to achieve here. Could you help this committee understand the implications of that Presidential statement with respect to the legal basis and where that leaves us. Obviously, the Congress 3 or 4 years ago took the trouble to create a preference, as far as patent policy is concerned, for small business and nonprofit organizations. This new Presidential policy, apparently, on the surface, tends to negate that preference totally by extending it to everybody——

Commissioner MOSSINGHOFF. Not necessarily. The first Presidential Memorandum on Government Patent Policy was issued in 1963 by President Kennedy. That was the first time that, coming from the White House, there was direction to the Government agencies on how to allocate rights to inventions. The major effect of that was to, say, control the Department of Defense, for which up to that time there was no guidance. The Department of Defense had, through its procurement regulations, in effect, formulated the policy it would follow. So the Department of Defense in 1963 implemented the President Kennedy memorandum. Then President Nixon amended President Kennedy's policy, really a fine-tuning of President Kennedy's policy.

What the President did this past February was, instead of adopting the criteria that had been established in 1963 and amended by President Nixon, he changed that and said, where you have statutory authority to do so, you should apply the criteria that Congress established for small business and nonprofit institutions.

As I have testified a couple of times before the subcommittee, I am totally convinced that the best policy, if we're interested in getting new technology used and into the marketplace (outside of its Government use) is to stimulate industry through exclusive commercial rights. Then industry will be willing to invest money, say, in the NASA area, "to un-goldplate" the device and get it to a form where it might be economically viable. Indeed, NASA statistics, which I gathered when I was NASA Deputy General Counsel, were fairly conclusive, that 20 percent of the inventions where we waived commercial rights to the contractor were being used in commerce. That is a very high percentage—one out of five. Whereas, when NASA took title and tried to license an invention, the results were extremely negative——

Mr. KASTENMEIER. I am familiar with some of these arguments. That debate was very substantial with respect to patent policy during the 96th Congress, when we passed the legislation. As a matter of fact, this subcommittee decided to favor General Electric and all the rest of them by granting them certain fields of use. We specifically did not give them the same latitude that the agencies could give in conferring patent rights upon small business and nonprofit organizations, mostly universities.

As a matter of fact, the Senate declined to accept our somewhat, we thought, more generous patent policy with respect to large corporations. They eliminated that provision. But this new policy would in fact, override the obvious congressional decisions made in the 96th Congress on this issue.

In addition, this new policy would enable agencies to treat General Electric differently than if would have under present law. I don't mean to select General Electric, for any other reason than it happens to be one of the largest patentholders, probably in terms of sheer numbers, in the country. I could have selected any other large corporation.

Commissioner MOSSINGHOFF. Mr. Chairman, I don't think this overrides anything Congress has done. The memorandum doesn't have the power to do that. What it does is change, for those agencies where there is no statutory guidance at all—for example, the Department of Defense—it changes the policy that they will apply to this allocation of rights from the policy that was first enunciated by President Kennedy in 1963 and then amended by President Nixon. The President's memorandum is now a new amendment to that policy. It is based on the merits, obviously, and the kind of statistics we've gathered. For example, where the Department of Energy has specific statutory guidance on how they allocate rights, they will implement this memorandum to the extent that their legislation permits them to do it. So it in no way can override what Congress has done. It merely changes a Presidential directive.

For example, DOD has acted from the very beginning without statutory guidance. Now a third President has spoken in this area

and said when you allocate rights, these are the kinds of policies you should follow.

Mr. KASTENMEIER. Well, I appreciate that, except you're not saying that the Small Business/University Patent Policy Act of 1980 does not apply to the Department of Defense?

Commissioner MOSSINGHOFF. No; it does. That is the only statutory guidance that applies across to all the 26 agencies that do research and development. So that will remain in place. There is an OMB Circular A-124 which implemented it. That will remain exactly as it was written.

What this says is, where you don't have guidance from the Congress—for example, DOD dealing with the General Electric Co. this is the new Presidential policy which replaces President Nixon's statement.

Mr. KASTENMEIER. Well, I appreciate your reassurance on that matter. We will be in further contact with you, because obviously it not only concerns this committee but the Small Business Committee would be up in arms if it discovered tomorrow that the largest American corporations were now given everything that the committee thought small businesses themselves were getting.

Commissioner MOSSINGHOFF. It does not change what small business will get under Public Law 96-517.

Mr. KASTENMEIER. But to the extent that you accord other corporations the same policy treatment, you have diminished small business, competitively. Small businessmen understand that very well, Mr. Mossinghoff.

Thank you very much for your appearance here today. We will expect to see you a number of times this year on some of these areas of legislation that we are mutually interested in, and perhaps the subcommittee will have a chance to participate in some of the international events.

Commissioner MOSSINGHOFF. I hope you will, sir. I hope we can continue the good cooperation that we have built up over the last several years. Thank you for this opportunity.

Mr. KASTENMEIER. This concludes this morning's hearing with respect to the Patent and Trademark Office. We are very indebted to the Commissioner for being here.

[Whereupon, at 10:42 a.m., the subcommittee was adjourned.]

APPENDIX

98TH CONGRESS
1ST SESSION

H. R. 2610

To amend the patent laws of the United States.

IN THE HOUSE OF REPRESENTATIVES

APRIL 19, 1983

Mr. KASTENMEIER (for himself and Mr. MOORHEAD) (by request) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the patent laws of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Patent Law Amendments of 1983".

SEC. 2. (a) Chapter 14 of title 35, United States Code, is amended by adding at the end thereof the following new section:

"§ 156. Issuance of patents without examination

"Notwithstanding any other provisions of this title, the Commissioner is authorized to issue a patent on an invention without the examination required by sections 131 and 132 of this title, except as may be required to conduct an interfer-

ence proceeding, to determine compliance with section 112 of this title, or to review for formalities required for printing, if the applicant—

"(1) waives all remedies with respect to the patent and any reissue thereof, arising under sections 183 and 271 through 289 of this title and under any section of any other title of the United States Code, within such time as the Commissioner specifies; and

"(2) pays fees established by the Commissioner for the filing and issuance of such a patent, which fees may be less than those specified in section 41 of this title.

The waiver under this section shall take effect upon issuance of the patent. No maintenance fees shall be required with respect to patents issued under this section."

(b) The analysis for chapter 14 of title 35, United States Code, is amended by adding at the end thereof the following:

"156. Issuance of patents without examination.".

SEC. 3. Section 134 of title 35, United States Code, is amended by striking out "primary".

SEC. 4. Section 151 of title 35, United States Code, is amended—

(1) by striking out the second sentence in the first paragraph and inserting in lieu thereof the following: "The notice shall specify the issue fee which shall be paid within three months thereafter, or within such

shorter time, not less than one month, as fixed by the Commissioner in such notice."; and

(2) by striking out the third paragraph.

SEC. 5. The first sentence of section 361(d) of title 35, United States Code, is amended by inserting "or within one month thereafter" immediately after "application".

SEC. 6. Section 366 of title 35, United States Code, is amended—

(1) by inserting "after the date of withdrawal," immediately after "effect" in the first sentence;

(2) by inserting ", unless a claim for the benefit of a prior filing date under section 365(c) of this part was made in a national application, or an international application designating the United States, filed before the date of such withdrawal" before the period at the end of the first sentence; and

(3) by inserting "withdrawn" immediately after "such" in the second sentence.

SEC. 7. (a) Section 371(a) of title 35, United States Code, is amended by striking out "is" and inserting in lieu thereof "may be" and by striking out ", except those filed in the Patent Office".

(b) Section 371(b) of title 35, United States Code, is amended to read as follows:

"(b) Subject to subsection (f) of this section, the national stage shall commence with the expiration of the applicable time limit under article 22(1) or (2) of the treaty."

(c) Section 371(c)(2) of title 35, United States Code, is amended—

(1) by striking out "received from" and inserting in lieu thereof "communicated by" and

(2) by striking out the word "verified" immediately before "translation".

(d) Section 371(d) of title 35, United States Code, is amended to read as follows:

"(d) The requirements with respect to the national fee referred to in subsection (c)(1), the translation referred to in subsection (c)(2), and the oath or declaration referred to in subsection (c)(4) of this section shall be complied with by the commencement of the national stage or by such later times as may be fixed by the Commissioner. The copy of the international application referred to in subsection (c)(2) shall be submitted by the commencement of the national stage. Failure to comply with these requirements shall be regarded as abandonment of the application by the parties thereof, unless it be shown to the satisfaction of the Commissioner that such failure to comply was unavoidable. The payment of a surcharge may be required as a condition for accepting the national fee referred to in subsection (c)(1) or the oath or declaration re-

ferred to in subsection (c)(4) of this section if these requirements are not met by the commencement of the national stage. The requirements of subsection (c)(3) of this section shall be complied with by the commencement of the national stage, and failure to do so shall be regarded as a cancellation of the amendments to the claims in the international application made under article 19 of the treaty.".

SEC. 8. (a) Section 372(b) of title 35, United States Code, is amended by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and" and by inserting at the end thereof the following new paragraph:

"(3) the Commissioner may require a verification of the translation of the international application or any other document pertaining thereto if the application or other document was filed in a language other than English.".

(b) Section 372 of title 35, United States Code, is amended by deleting subsection (c).

SEC. 9. Section 376(a) of title 35, United States Code, is amended by (1) deleting paragraph (5); and (2) redesignating paragraph (6) as paragraph (5).

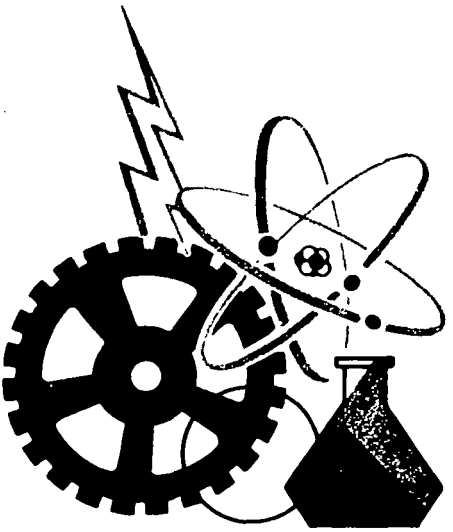
SEC. 10. Title 35, United States Code, is amended by deleting "Patent Office" wherever it appears and inserting in its place "Patent and Trademark Office".

SEC. 11. Notwithstanding section 2 of Public Law 96–517, no fee shall be collected for maintaining a plant patent in force.

SEC. 12. (a) Sections 10 and 11 of this Act shall take effect upon enactment.

(b) Sections 1–9 of this Act shall take effect six months after enactment.

Commissioner of Patents and Trademarks



ANNUAL REPORT
FISCAL YEAR '82

U.S. DEPARTMENT OF COMMERCE/PATENT AND TRADEMARK OFFICE



U.S. DEPARTMENT OF COMMERCE
Malcolm Baldrige, Secretary

U.S. PATENT AND TRADEMARK OFFICE
Gerald J. Mossinghoff, Commissioner
Donald J. Quigg, Deputy Commissioner
Rene D. Tegtmeyer, Assistant Commissioner for Patents
Margaret M. Laurence, Assistant Commissioner for Trademarks
Bradford R. Huther, Assistant Commissioner for Finance and Planning
Michael K. Kirk, Assistant Commissioner for External Affairs
Theresa A. Brelsford, Assistant Commissioner for Administration

March 1983

Vigorous and effective patent and trademark systems are indispensable to our economic growth and national well-being. This report describes the operations of the Patent and Trademark Office during FY 1982 and the status of the Office at the close of that year. It reviews the important steps that have been taken to upgrade operations at the office and thus bring about lasting and substantial improvements in our service to inventors and industry.



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Annual Report of the Commissioner of Patents and Trademarks Fiscal Year 1982

MISSION

The Patent and Trademark Office (PTO) promotes the national economy by administering both the patent and trademark laws of the United States.

Patent laws encourage technological advancement by providing incentives to invent, invest, and disclose new technology. The Patent and Trademark Office's primary role in administering these laws is to examine patent applications and grant patent protection for qualified inventions. The PTO is also responsible for collecting, assembling, and disseminating the technological information disclosed in patent grants.

Federal trademark laws promote an ordered and healthy economy by enabling Federal registration of trademarks. Trademarks help prevent product confusion among consumers and foster public awareness of the source of goods and services in the marketplace. The PTO examines applications to register trademarks and grants Federal registration to the owners of qualified marks. The PTO also maintains a forum for resolving disputes on trademark rights.

The PTO is an agency of the U.S. Department of Commerce and is located in the Crystal City office complex in Arlington, Va.

PROGRESS ON STEPS TO IMPROVE THE PATENT AND TRADEMARK OFFICE

In fiscal year 1982 the PTO made significant initial progress in meeting all of its major goals. The first signs of progress became evident in the program to reduce the increasing backlogs and pendency times that have plagued the PTO in recent years. Steps toward full automation were another sign of progress, as were several legislative accomplishments.

On August 27, 1982, President Reagan signed P.L. 97-247, which made basic changes in the PTO fee structure and in the agency's operations. The law provides for increased "user fees" which will assure the PTO of adequate resources over the next decade without the need for increases in appropriations. P.L. 97-247 also made a number of changes which clarify and liberalize current requirements. (See Chapter 2 on Legislation.)

Another important piece of legislation was the Federal Courts Improvement Act, P.L. 97-164, which established a U.S. Court of Appeals for the Federal Circuit (CAFC). Other legislation included P.L. 97-366, which designates the Commissioner of Patents and Trademarks as Assistant Secretary and Commissioner of Patents and Trademarks.

Planning continued toward the goal of a fully-automated PTO by 1990. The Office centralized all automation activities under a newly-hired Admin-

istrator for Automation, who completed the master plan for PTO automation required by P.L. 96-517. According to the plan, delivered to Congress in December 1982, all trademark operations and one of the fifteen patent examining groups (Group 220) will be fully automated by the end of 1984. Pre-examination, post-examination, classification and management information will be automated as well. Planning began in 1982 to achieve these long-range automation goals, and the Office took a number of immediate steps to improve operations through automation. (See Chapter 4 on Automation.)

Before the new fee schedule went into effect October 1, 1982, filings rose to an all-time high. A total of 17,225 patent applications and 16,656 trademark applications were filed in September, about twice the customary monthly number for patents and three times the average monthly total for trademarks. These brought the yearly total to 124,800 applications for patents and 73,621 for trademarks.

A total of 65,152 patents were issued in FY 1982, with an average pendency time of 24.2 months between filing and disposal. In the trademark area, 43,630 marks were registered, with an average pendency time of 21.3 months.

In 1981 the Administration made the commitment to reduce the backlog of applications through Plan 18/87 for patents—disposing of patent applications within 18 months of filing by 1987—and Plan 3/13 for trademarks—issuing a first action within three months and final disposition within 13 months by 1985. To meet the 1982 portion of these plans, the PTO hired 235 new patent examiners and 20 new trademark examiners. Both plans remain on schedule.

The PTO began a new program for patent examiners' visits to industrial facilities where the technology in which they specialize is developed and used. U.S. industry has made the program possible by making facilities available and by contributing to an examiner education fund. A total of 55 examiners took part in the program during the year. Trademark examiners continued to attend trade shows and exhibitions relating to the technologies in which they examine.

In August, the Commissioner announced a five-point plan to improve PTO operations. It is directed toward:

(1) upgrading the physical environment in the PTO;
(2) improving internal communications;
(3) ensuring proper dress and demeanor by employees;
(4) improving communications with the public; and
(5) establishing a focal point for public inquiries and complaints.

As the year ended, progress was being made in all these areas, as well as others described in the following pages.

chapter one
FINANCIAL AFFAIRS

Operating Costs

Total operating costs for the PTO in FY 1982 (as determined by accrual accounting methods) were $125,836,000, an 11 percent increase over FY 1981 (without adjustment for inflation). Compensation and benefits totalling $90,265,000 comprised 72 percent of operating costs. Printing of patents and trademarks and other reproduction costs were $15,882,000, or 13 percent of operating costs. Other costs of $19,689,000 were 15 percent of the PTO's total operating costs. Figure 1 shows that patent processing in FY 1982 was about 71 percent of PTO operating costs, trademark processing 8 percent, and dissemination of patent and trademark information 21 percent. Table 1 gives the historical data on PTO operating costs*.

Appropriations

Total FY 1982 Congressional appropriations for the PTO rose to $125,335,000, an increase of $9,185,000 above the FY 1981 appropriations (see Table 2).

The actual obligations against this total budget authority were $124,230,000, an increase of $8,236,000 above the FY 1981 level of $115,994,000. The difference between the funds available and funds expended ($1,105,000) in 1982 represents fourth quarter obligations for contracts that were delayed until 1983.

The initial FY 1982 Congressional appropriation of $118,961,000 provided increased funding for trademark examination to begin to reduce pendency time to first action; trademark printing for publication of oppositions and printing of registrations; and automatic data processing to provide support for existing program systems and hardware.

This initial appropriation was increased by two supplemental appropriations totaling $6,374,000. The first supplemental of $3,874,000 provided for the Federal pay raise of October 1, 1981. The second supplemental appropriation of $2,500,000 was granted to provide for the hiring of 235 new patent examiners to help curb the growth in the patent backlog and to start decreasing the amount of time necessary to grant a patent to 18 months by 1987.

*All figures are included in the text. All tables are in the appendix at the end of the report.

FIGURE 1

PATENT AND TRADEMARK OFFICE
FY 1982 OPERATING COSTS
($125,836,000)

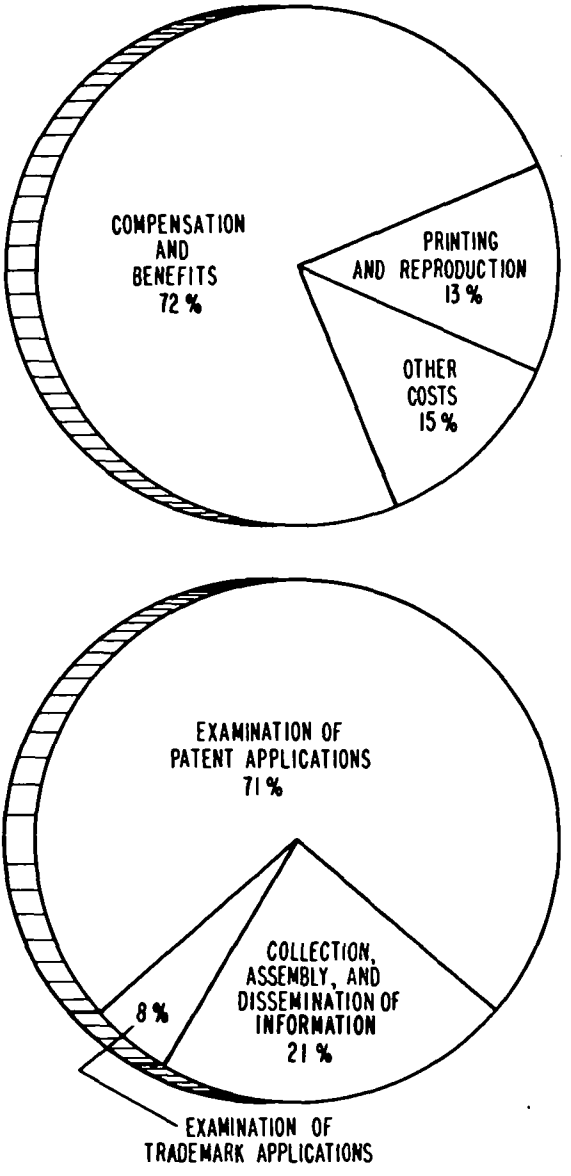


FIGURE 2

PATENT AND TRADEMARK OFFICE
FY 1982 INCOME FROM FEES
($28,535,000)

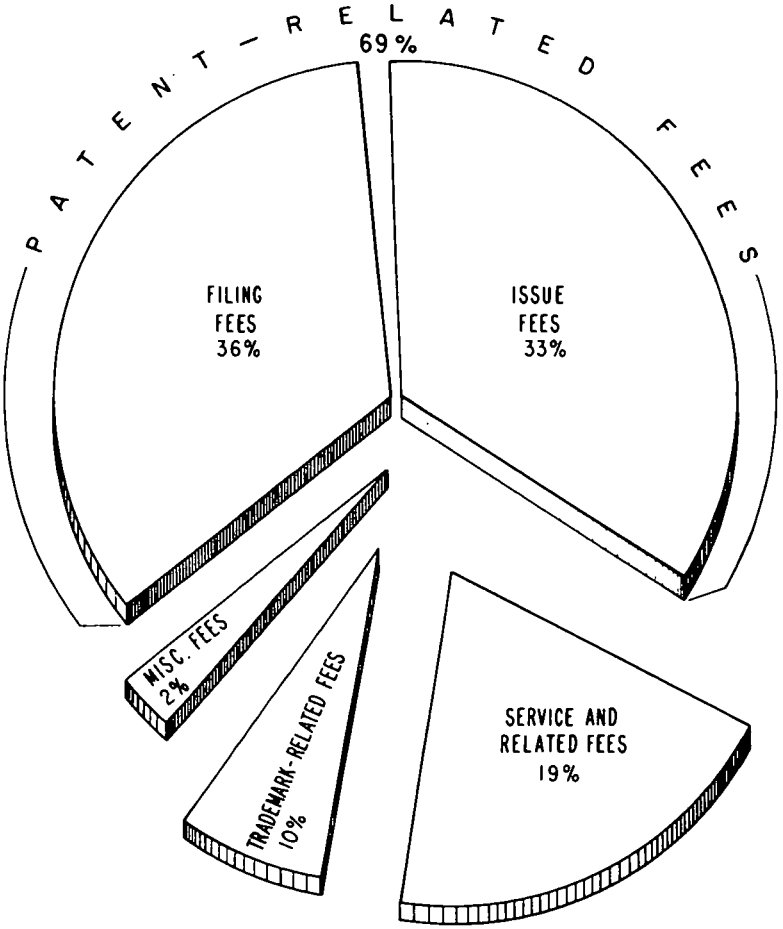
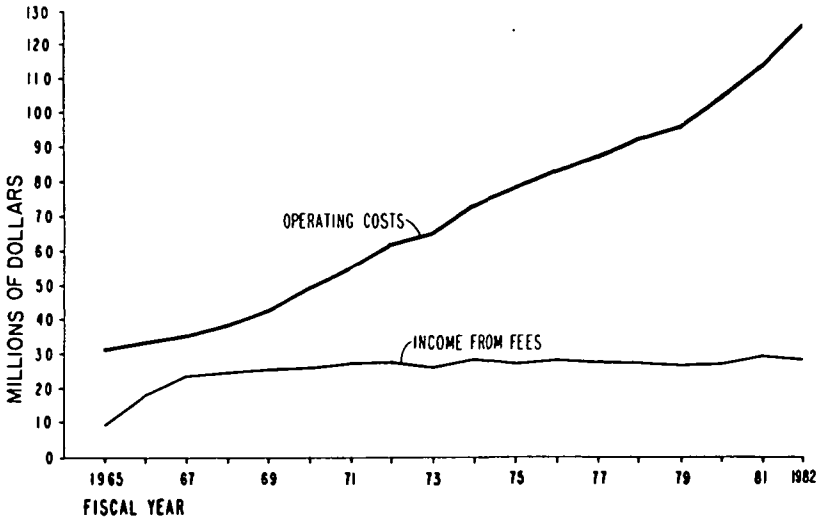


FIGURE 3

INCOME AND OPERATING COSTS (1965-1982)



Authorized personnel staffing in the PTO increased in FY 1982. Total permanent positions numbered 3,036, an increase of 202 positions over the FY 1981 level of 2,834 positions (see Table 3 for end-of-year employment data).

Fee Income

During FY 1982, fees collected from users of PTO services were deposited into the general fund of the U.S. Treasury, and did not directly benefit the PTO. The fees received in FY 1982 totaled $28,535,000, or approximately 23 percent of the PTO operating costs. Table 4 contains details on PTO fees. Figure 2 shows that, in 1982, patent-related fees comprised 69 percent of total fees received, trademark-related fees 10 percent, service and related fees 19 percent, and miscellaneous fees 2 percent. Figure 3 illustrates PTO operating costs versus fees charged from 1965.

P.L. 96-517, enacted early in FY 1981, and amended by P.L. 97-247, signed into law on August 27, 1982, changed the fee structure which had been in effect since 1965. The increased fees under this law went into effect on October 1, 1982. Under this legislation fee income will be retained by the PTO, rather than being deposited in the general fund of the U.S. Treasury. (See Chapter 2 on Legislation.)

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chapter two
LEGISLATION

The Patent and Trademark Office supports efforts to strengthen the patent and trademark systems through legislation. The Congress considered a number of significant legislative proposals this year.

P.L. 97-247

P.L. 97-247, enacted on August 27, 1982, made several changes to the patent and trademark laws. Most important, it provides for increased "user fees", which will assure the PTO of adequate resources over the next decade without the need for increases in appropriations. At the same time, it provides a 50 percent reduction in the new fees associated with patent applications filed by independent inventors, small businesses, and nonprofit organizations to ensure continued accessibility of the patent system to these entities. (See the Patent Fee Revision section in Chapter 5.)

This new law also makes a number of changes which clarify and liberalize current requirements. Provisions are made for automatic extensions of time, revival of applications which are unintentionally abandoned, and awarding a filing date to applications submitted without the required fee or oath. The law liberalizes the ability to correct inventorship in an application or patent and authorizes the Commissioner to make rules under which any paper will be considered filed in the PTO when it is deposited in the U.S. mail. Changes are made in trademark practice, deleting some requirements and clarifying others. Other changes were made to conform U.S. law to the Hague Convention by changing the requirement for legalization of certain foreign public documents.

Another significant aspect of this law is its provision, for the first time, for judicial enforcement of voluntary arbitration of patent validity and infringement disputes. This is expected to reduce the cost of resolving such disputes in the future, benefiting both the parties to the dispute and the public.

Federal Courts Improvement Act

The Federal Courts Improvement Act, P.L. 97-164, was enacted on April 2, 1982. This law established a U.S. Court of Appeals for the Federal Circuit (CAFC). The CAFC combines in a single court the Court of Claims and the Court of Customs and Patent Appeals. The new Court will decide appeals from the PTO which previously were heard by the Court of Customs and Patent Appeals and also will hear patent-related appeals from

all of the U.S. district courts. The PTO actively supported this legislation in the 97th Congress, arguing that creating a single authoritative tribunal to handle patent cases nationwide would contribute to a uniform standard of patentability.

Patent Term Restoration Act

Legislation was introduced in Congress to amend the patent law to provide an extension of the patent term for patented products, or methods, that are subject to Federal regulatory review before they are permitted to be introduced for commercial use. The extension would equal the regulatory review period up to a maximum of seven years. Although S. 255 was passed by the Senate on July 9, 1981, its counterpart, H.R. 1937, was the subject of prolonged hearings before several House subcommittees. The PTO strongly supported this legislation, testifying on behalf of the Administration that the legislation would restore full patent incentives to patent owners whose products and processes have been held back from the marketplace by Federal regulatory procedures. Extensively amended, the bill was reintroduced as H.R. 6444 on May 20, 1982. Despite several efforts to secure its passage, the bill died with the end of the 97th Congress. However, a provision extending the term of patents in certain situations was passed by Congress as part of H.R. 5238, the "Orphan Drug Act." The provision is contained in a new section 155 which was added to title 35, United States Code.

Federal Patent Policy

During 1982, Congress continued its consideration of legislation that would further change Federal patent policy. This legislation (S. 1657 and H.R. 4564) would permit any contractor to elect to retain title to inventions developed with Federal sponsorship. The Commissioner testified in support of this legislation, stating that the legislation will create a truly uniform patent policy, encourage businesses to invest in inventions resulting from Federal sponsorship, and relieve the Federal Government from the responsibility, burdens, and costs of seeking commercial uses for inventions made under Federal sponsorship. Neither of these bills was passed prior to the adjournment of the 97th Congress.

P.L. 97-296

H.R. 5154, a bill which would amend the Lanham Trademark Act to prohibit State regulations from requiring alteration of Federally registered trademarks, was introduced on December 9, 1981. The PTO testified in favor of the bill before the House Judiciary Committee. The bill was passed by Congress in September and became P.L. 97-296 with signature by the President on October 12, 1982.

P.L. 97-366

On October 25, 1982, the President signed into law H.R. 4441, which amends section 3 of title 35, United States Code, by designating the Commissioner of Patents and Trademarks as an Assistant Secretary of Commerce.

Employed Inventors' Rights

With the increasing adoption of state laws regarding the disposal of rights in inventions made by employed inventors, as well as the concerns regarding lagging innovation in the country, two bills were introduced during the 97th Congress to establish a uniform Federal policy on employed inventors' rights. Hearings were held on these measures, H.R. 4732 and H.R. 6635, by a subcommittee of the House Committee on the Judiciary, but no action was taken on either measure.

P.L. 97-256

P.L. 97-256, enacted on September 8, 1982, made technical and conforming changes in the patent and trademark laws. These changes were needed because of the passage of P.L. 96-517, but made no substantive changes in the patent and trademark laws.

chapter three
INTERNATIONAL COOPERATION

The Patent and Trademark Office pursues its responsibility to promote U.S. business interests in the international and the domestic arenas by working for effective patent and trademark protection throughout the world. Efforts in this area are directed toward the development of simpler, less expensive, and more effective means for U.S. nationals to secure and protect their industrial property rights.

Revision of the Paris Convention

Patents and trademarks are generally effective only within the borders of countries which issue the grant or the registration. To make it easier to obtain protection across international borders, 13 countries agreed almost a century ago to establish the Paris Convention for the Protection of Industrial Property, to which the United States has been a party since 1887. The original Paris Convention has been revised several times, and further revisions are being considered.

The PTO participated in the Third Session of the Diplomatic Conference for the Revision of the Paris Convention, which was held in Geneva, Switzerland, in two parts from October 4-30, and from November 23-27, 1982. The United States had previously reemphasized that it would not be party to any revised convention expressly authorizing compulsory exclusive licenses such as provided for in the text of Article 5A tentatively approved by the Conference at its Second Session in Nairobi, Kenya, held in September and October 1981. Through consultations prior to the Third Session, an informal agreement was reached that Article 5A would not be discussed officially, at least not at the beginning of the Third Session.

The major portion of the October session, therefore, was spent discussing trademark issues. The most contentious of these was the text of a proposed new Article 10*quater* dealing with geographic indications. While the United States basically opposed any amendment of the Paris Convention to strengthen the protection for geographical indications, it had indicated a willingness to join in such a proposal provided that it was prospective and that adequate safeguards were included. Although a great amount of time was spent discussing these issues, the participants were unable to reach agreement on all points regarding the proposed Article 10*quater*. The participants did, however, agree on an amendment to Article 6*ter* affording protection to official names of member countries.

At the same time that discussions were proceeding on trademark issues, the United States Delegation, headed by Ambassador Gerald J.

Mossinghoff, Commissioner of Patents and Trademarks, was making a concerted effort with key developing countries to find an acceptable alternative to the Nairobi version of Article 5A. By the fourth week of the Conference, a small informal group of developed and developing countries was convened to consider possible alternatives for the Nairobi text. A compromise proposal emerged from these deliberations, although no agreement could be reached due to the lack of time. In view of the importance of reaching agreement on this issue, the Plenary of the Conference decided to recess on October 29, and resume for the period of November 23-27, 1982.

Despite intense negotiations at the resumed session, the participants could not agree to adopt a compromise text of Article 5A. Nevertheless, hopes for a successful resolution of that issue remain high. A Fourth Session of the Diplomatic Conference has been called for in late 1983 or early 1984.

International Code of Conduct on the Transfer of Technology

The International Code of Conduct on the Transfer of Technology is an instrument being negotiated under the auspices of the United Nations Conference on Trade and Development (UNCTAD). The Code is intended to facilitate technology transfer agreements between countries by various means, such as discouraging certain restrictive business practices and enumerating responsibilities and obligations of the parties to transactions involving transfer of technology. During 1982, an Interim Committee established by the General Assembly of the United Nations met on three occasions to seek solutions to the problems which have stood in the way of a successful conclusion of the Code. The Patent and Trademark Office actively participated in these deliberations. Regrettably, no progress could be made in resolving the difficulties which have plagued negotiations of this Code all along and which had come to a head at the fourth session of the U.N. Conference in 1981. Accordingly, the U.N. Conference will have to attempt to resolve the disagreements at a fifth session, to be held in the fall of 1983.

Training Programs for Developing Countries

The PTO continued to provide training in the industrial property field to nationals from a number of developing countries. Two representatives of the People's Republic of China spent two months studying the U.S. trademark system. A national of the Republic of Korea participated in a four month training course, which included the instruction the PTO offers to its new patent examiners. Training was also provided in the area of trademarks for a Jamaican national for a six week period. Shorter periods of training were provided for other nationals from Thailand and Korea.

Protection of Intellectual Property in Asia

The Patent and Trademark Office, in cooperation with the Departments of Commerce and State, is actively encouraging Asian countries to pro-

vide greater protection for intellectual property. These efforts have been directed particularly toward the strengthening of industrial property protection in Korea and the development of a new patent law by the People's Republic of China. Meetings have been held to focus attention of Korean officials on problems of U.S. industry in the areas of chemical patent protection, confidentiality under the pesticide regulations, and trademarks. In conjunction with the World Intellectual Property Organization (WIPO), the PTO has provided assistance to the People's Republic of China through training provided for their nationals, as well as through lectures on trademarks by the Commissioner at a WIPO-sponsored seminar in Beijing.

Other International Activities

The Patent and Trademark Office, in cooperation with the Department of State and other components of the Department of Commerce:

- continued participation in implementation of the Nice Agreement on International Trademark Classification;
- continued assisting in a review of the U.N. Convention on the Law of the Sea;
- adhered to the International Convention for the Protection of New Varieties of Plants (UPOV Convention), effective November 8, 1981; and
- continued participation in the WIPO Permanent Committee on Patent Information.

chapter four
AUTOMATION

Automation

Two events significantly influenced the Patent and Trademark Office's automation planning in FY 1982: Section 9 of P.L. 96-517 required the development of a complete plan for automating the PTO, and management established the improvement of PTO operations through aggressive use of automation as one of its key objectives.

Consequently, actions directed at developing an automation master plan and improving existing automated systems dominated much of the attention during this year.

Automation Master Plan

A preliminary plan was drafted in the fall of 1981 and an assessment of the technology that would affect the PTO automation plan was completed in the spring of 1982. Commissioner Mossinghoff appointed a special advisory committee, comprised of automation experts from other government agencies, to review and evaluate the early findings.

Over 600 copies of the draft plan were circulated to individuals, commercial organizations, and interested professional associations, and a public hearing was held to provide a forum for comment and reaction to the plan. The participation and recommendations of these groups and individuals contributed to subsequent planning activities.

The plan, consisting of three volumes, was completed in September 1982, concurrent with its presentation to and review by the Department of Commerce, the General Services Administration, and the Office of Management and Budget.

The master plan describes the PTO goal to automate operations by 1990. A key concept inherent in this goal is the elimination of paper search files and related paper handling. Applicants will continue to communicate with the PTO in the medium of their choice, but submission of applications in computer-processible media, ultimately to include computer-to-computer connection, will be encouraged. Incoming information will be converted to computer-processible form upon receipt in the PTO and, thereafter, it will be handled electronically. Data bases of patents and trademarks will be created to enable full text search and/or retrieval on the basis of the U.S. classification and other indexing systems. PTO actions will be prepared on the same electronic workstations used for application review and searching. Patent and trademark information will be extracted

from the data bases and formatted for processing and photocomposition equipment in preparation for printing.

Automation will be accomplished in three stages. During the first stage, one patent group (Group 220, which deals with all areas of technology) will be automated to provide a testbed for evaluating the initial system architecture and methods of operation. Data bases will be created, and initial pre-examination, examination, and post-examination functions will be started on the system. Support will be provided for patent classification activities. All trademark functions will be automated, including public search. In the second stage, the other patent groups and office functions will be automated. This will complete the conversion to paperless operations, gain the advantages of full file integrity, and obtain the benefits of less costly printing. The final stage will expand dissemination and access capabilities and make possible direct, world-wide access to patent and trademark information.

To carry out automation activities, in FY 1982 the PTO centralized management of the automation program and recruited an Administrator for Automation. A coordinating committee, chaired by the Commissioner, was formed to assure continuing top management involvement and guidance as the master plan is implemented. The PTO contracted with the MITRE Corporation to provide systems engineering services needed to complete system specifications and to integrate the components of the system.

The master plan integrates the activities leading to implementation of the full automation concept with the current automated information system development, computer operations, and other supporting activities. It provides for a transition from the current to the future system operations, building on systems work already accomplished and under development.

PALM 3

Implementation of the final phases of the PALM 3 (Patent Application Locator and Monitoring) System continued in FY 1982. PALM 3 was expanded to automate a clerical backlog report for patent examining operations and a similar report for pre-examination activities. New on-line transactions were created to assist with the implementation of the revised and expanded fee schedule contained in P.L. 97-247. These transactions also help to track claims to small entity status and print notices of allowance.

TRAM 2

User requirements were completed for most of the TRAM 2 (Trademark Applications Monitoring) System. The initial phase of TRAM 2 is designed to consolidate a number of independent manual and automated systems and to parallel the PALM 3 system in providing the trademark operation with the ability to obtain information needed for application processing and management control. The information will be contained in a single data base which can be queried and updated on-line.

Office Automation

A significant accomplishment in office automation was completed in FY 1982 with the implementation of a word processing network throughout the fifteen patent examining groups. This action satisfied the management objective of eliminating hand-written examiner opinions. Through the use of 75 workstations and over 350 detailed legal and technical form paragraphs, more than 200,000 letters are produced annually.

Computer Systems Support

The PTO Burroughs B6700 computer system was upgraded to increase capacity and enhance performance. The system is now configured with three main processors, two input-output processors, two data communications processors, main memory capacity of over six million characters, disk storage capacity of over five billion characters, eight tape drives, and three printers. The additional equipment significantly reduced system response time, as illustrated in Figure 4. Prior to installation, system response time averaged 6-10 seconds per transaction. Since installation, system response time averages 3-4 seconds per transaction. Response improvements were achieved despite a substantial transaction volume increase of almost 40 percent. Availability of the system remained about the same, as shown in Figure 4, except for a period of instability following the new equipment installation.

Search Experiments

Studies were undertaken during FY 1982 to evaluate alternative methods of conducting automated patent searches by using different commercial data bases and systems. Over 300 patent examiners were given on-line access to these systems and about two dozen standard, special purpose and graphic terminals were placed throughout the Office. The systems included Derwent, IFI/Plenum, Pergamon, Chemical Abstract Services, DARC and Mead Data Central EXPAT. The studies focused on the questions: Is the full text necessary for search or can a surrogate, such as an abstract, be used with the same effect? Would a thesaurus be necessary or useful? What system features are most useful to examiners? The results from these studies will be used in the preparation of specifications for the long-range automated PTO system.

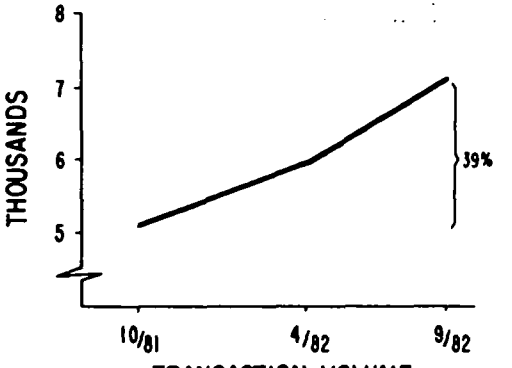
Technology Assessment

The Office of Technology Assessment and Forecast assesses technology by using patent information which is available in computer data bases. During FY 1982 three major reports and 269 custom technology reports were prepared for public and private organizations, an increase of 42 percent over the previous year. These computer-generated reports are provided to the public on a cost-reimbursable basis through the National Technical Information Service (NTIS). The major reports were:

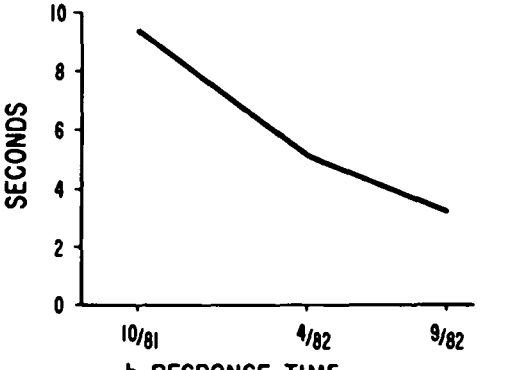
Biotechnology, which focused on six areas related to enzymes and microorganisms and their use in the synthesis of certain products, their preparation, and their modification;

FIGURE 4

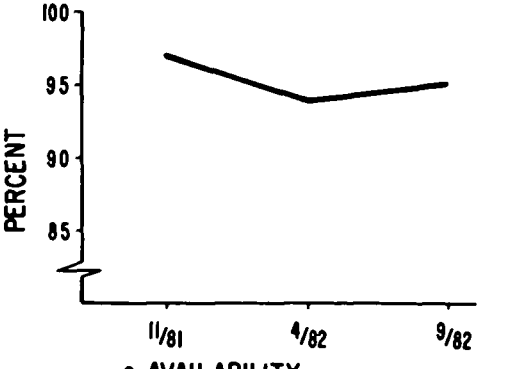
PERFORMANCE IMPROVEMENTS ACHIEVED IN PTO CENTRAL COMPUTER OPERATION



a. TRANSACTION VOLUME



b. RESPONSE TIME



c. AVAILABILITY

The *OTAF Tenth Report*, which reviewed the U.S. patent activity of some of the largest European and Japanese multinational corporations, analyzed changing standards for computer software patentability, and demonstrated how the patent files would be used in research and historical review, and;

Industrial Robots; A Survey of Foreign and Domestic U.S. Patents, which analyzed 212 U.S. patents pertaining to robotics.

chapter five
PATENTS

Patent Applications

The number of patent applications filed in FY 1982 set an all-time record of 124,800 filings (excluding international filings in the U.S. Patent and Trademark Office as a receiving authority under the Patent Cooperation Treaty). This number represents an increase of 10,090 applications or 8.8 percent over FY 1981, which itself was a record year. Utility, plant, and reissue applications accounted for 116,731 of these filings. The other 8,069 applications filed were for design patents, which showed a 12 percent increase in filings from FY 1981. Figure 5 illustrates historical trends in patent applications and patents issued. Figure 6 shows that the percentage of applications submitted by residents of foreign countries continues to increase and is now over 41 percent of all U.S. filings, up from 40 percent in FY 1981.

Patents Issued

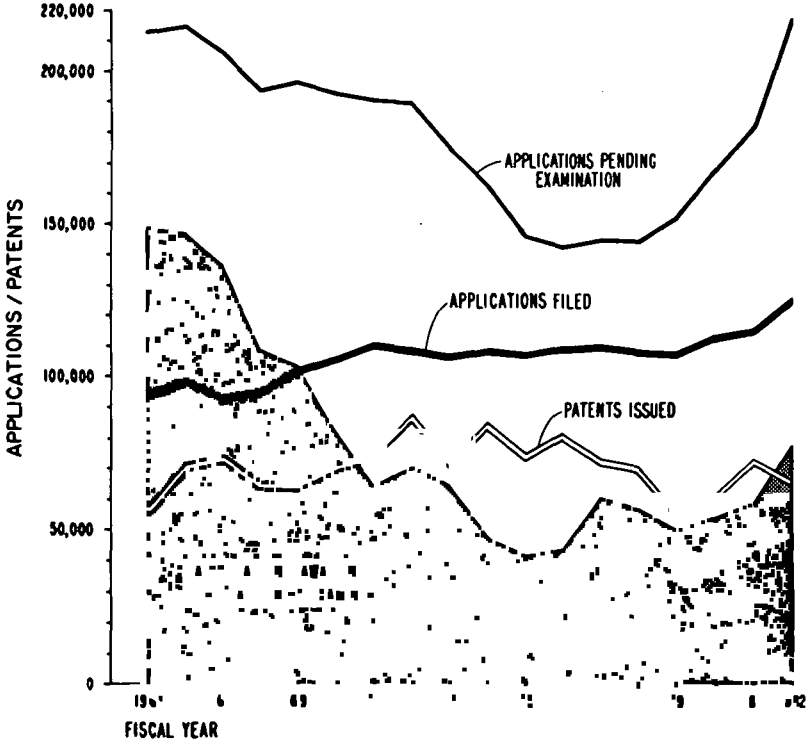
The PTO issued 65,152 patents in FY 1982, an 8 percent decrease from the previous year. Utility, plant and reissue patents accounted for 59,853 of this total, with 5,299 design patents being issued. The number of patents issued to residents of foreign countries, as shown in Figure 6, continued to increase and was 40 percent of all patents issued, compared with 39 percent of the patents issued in FY 1981.

Patent Pendency

The time to process a patent application from filing to issue or abandonment is called the "patent pendency time." The average patent pendency time rose during FY 1982 to 24.2 months for utility, plant and reissue patents (from 22.4 months of the previous year). The average pendency time for design patents was 27.5 months.

The inventory of applications in the examining corps increased by 25,983 for nondesign applications. The total Office inventory at the end of FY 1982 was 247,984 applications, up from 221,538 in FY 1981. The average time that it took for an applicant to get a first response from the PTO on the merits of an application went from 11.6 months to 13.9 months. Figure 7 is a flow chart showing the stages, and the FY 1982 pendency time for each stage, in the patent examining process. Figure 8 illustrates the trends in pendency time over the past several years. (Also see Tables 5 through 9.)

FIGURE 5
PATENT APPLICATIONS FILED, PENDING AND ISSUED (1965-1982)



Under Plan 18/87 it is expected that the PTO will dispose of more cases than it receives in FY 1984, and that pendency time will start to diminish in FY 1985.

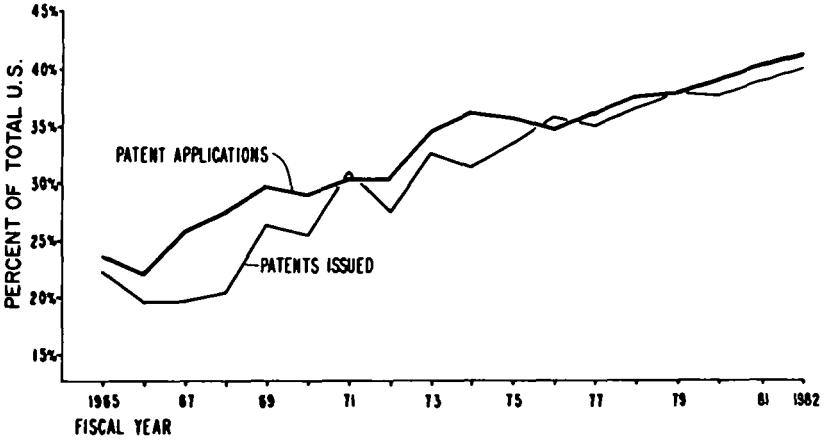
Patent Examiners

In support of the PTO's goal of reducing pendency to 18 months by FY 1987, 235 patent examiners were hired during FY 1982. With 51 attritions from the patent examining corps, the number of examining professionals (excluding supervisors) totaled 1,072 at the end of FY 1982.

This recruitment effort involved visiting 191 colleges; conducting about 1,500 interviews; placing advertisements in a number of magazines, college placement manuals, and college newspapers; and conducting an open house to attract qualified candidates. Of the 235 examiners hired, 201 were engineers with an overall college grade-point average of 2.93, on a scale

FIGURE 6

U.S. PATENT APPLICATIONS FROM, AND PATENTS ISSUED TO, RESIDENTS OF FOREIGN COUNTRIES (1965-1982)



of 4.0. Minorities, women and handicapped represented almost 35 percent of the total new hires. Overall, the average entry grade was a GS-7.

It is expected that patent examiners will produce higher quality patents for inventors and the industries they serve as the result of a new program providing for examiners' visits to industrial facilities where the technology in which they specialize is developed and used.

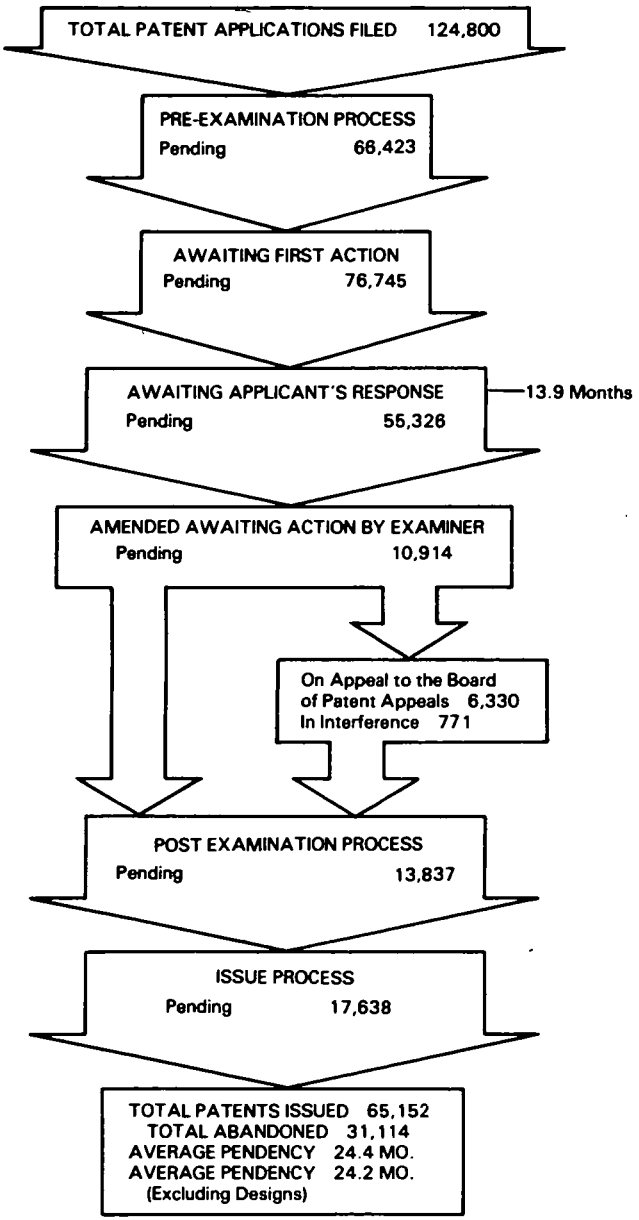
Under the program, U.S. industry is making facilities available and contributing to an examiner education fund. A total of 55 examiners took part in the program during FY 1982. Plans call for each examiner to make at least one corporate tour over a three-year period to both large and small technical facilities in the same geographical area. To avoid the possibility that contributors might influence PTO decisions on specific applications, supervisors assigning examiners to visit specific facilities and the examiners making the site visits do not know the identities of companies that have made contributions.

Reexamination

P.L. 96-517, enacted early in FY 1981, allows a patent owner, or his/her competitor, to request the PTO to "reexamine" an issued U.S. patent and rule on whether it should be amended or canceled because of evidence of earlier patents or printed publications cited as the basis for reexamination. This procedure is faster and considerably less expensive than resolution of patent validity issues in litigation. The procedure also permits a review of the patent and the cited art by a patent examiner who is familiar with the

FIGURE 7

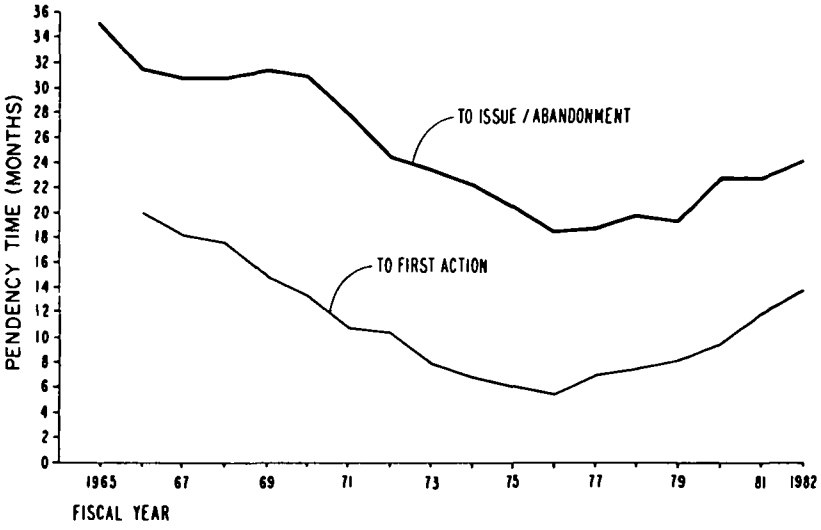
PATENT EXAMINING ACTIVITIES



* This figure presents a simplified patent work-flow diagram with statistics on cases at various stages of processing at the end of FY 1982.

FIGURE 8

PENDENCY TIME OF PATENT APPLICATIONS (1965-1982)



technology in question. This should benefit the courts in their handling of patent cases.

During FY 1982, the PTO received 187 reexamination requests, of which 68 were filed by patent owners. Of the 187 cases, 37 were in litigation and 3 of the requests had been court ordered. A substantial new question of patentability has been found, and reexamination ordered in 163 cases. The PTO denied reexamination in 39 cases. (See Table 10.)

Board of Appeals

The Board of Appeals hears appeals from adverse decisions of examiners on patent applications (see Table 11). The Board received 3,506 appeals during the year and disposed of 3,693 appeals, so that the number of appeals pending decreased by 187 to 4,781. At the end of FY 1982 the pendency time for an appeal at the Board of Appeals averaged about 16 months starting from the time the Board obtained jurisdiction over the appeal. The Board of Appeals obtains jurisdiction of an appealed application when it is forwarded to the Board by the examining group. This occurs approximately six months after the filing of the notice of appeal because of the time periods involved in filing the brief and the examiner's answer.

Board of Patent Interferences

A patent "interference" is a proceeding in the PTO to determine priority of inventorship between two or more applicants, or an applicant and

23-039 O - 84 - 5

a patentee, who are claiming the same invention. The determination of priority is made by the PTO's Board of Patent Interferences, after a final hearing, on the basis of evidence submitted by the parties. Many interferences are terminated before reaching the final hearing stage, either because they are voluntarily settled or for other reasons. At the end of FY 1982, 76 cases had reached the final stage and were awaiting a decision by the Board. In FY 1982 the Board rendered decisions on priority after final hearing in 83 cases, compared to 67 in FY 1981.

During FY 1982 the Board reduced the delay between the final hearing and the decision by initiating the practice of setting an interference for final hearing only when it is about to be taken up for decision. As a result of this new procedure and the increased number of decisions in FY 1982, a decision is now issued within 90 days (and often within 60 days) after the final hearing in a case, and the average time from the filing of the reply brief to the issuance of the decision is slightly more than 16 months.

Reissue and Protested Applications

During FY 1982, 486 reissue applications were filed, which represents a 9.7 percent decrease from the filings of the previous year.

Protests were filed against 47 pending patent applications. Protests filed in reissue applications made up 72 percent of the total protests.

Effective July 1, 1982, the rules of practice relating to reissue and protested applications were amended (1) to eliminate consideration of the so-called "no defect" reissue applications, (2) to limit the participation by protestors during the examination of patent applications, and (3) to clarify the interface between patent application examination and patent reexamination in certain areas. The changes were intended to reduce applicants' prosecution costs and to redirect PTO resources, previously devoted to consideration of the so-called "no defect" reissue applications and extensive protestor participation during application examination, toward reduction of the backlog of pending patent applications.

Duty of Disclosure

During FY 1982, 141 applications were referred to the Office of the Assistant Commissioner for Patents for investigation of possible violations of the duty of applicants to disclose material information to the PTO. During the year, 147 such applications were disposed of, with three stricken from the files. Forty-one applications were not stricken and 103 were abandoned by the applicant before the duty-of-disclosure question had been resolved.

Effective July 1, 1982, the rule relating to duty of disclosure was amended to provide that the claims in an application be rejected, rather than striking the application, if upon examination it is found that the applicant is not "entitled to a patent under the law" because of fraud or a violation of the duty of disclosure. Under the amended rule, applicants are afforded an opportunity to appeal the rejection to the Board of Appeals, an avenue which was not open when such applications were stricken from the files.

Accelerated Examination

Patent applications for inventions that enhance the quality of the environment or contribute to energy conservation or development may be accorded a "special" status which accelerates the examination process. The PTO accorded "special" status to 25 environment-related and 126 energy-related applications in the past fiscal year.

Quality Review

Since March 26, 1982, the Office of Quality Review has reported directly to the Deputy Commissioner of Patents and Trademarks.

The quality review program, which has been in effect since 1974, was revised effective July 1. The expanded program's guidelines apply to all applications sampled after June 30, as well as to all applications sampled prior to July 1, but not officially reviewed prior to that date.

The new program provides for the return, by one reviewer, to the examining group of any sampled application in which a question of patentability is raised; it is no longer limited to a return, by two reviewers, to consider whether claims are clearly unpatentable.

The classification groups are no longer involved in the review process; questions concerning the desirability of further searching can now be raised initially by the patentability reviewer.

Ad hoc members of the Board of Appeals are no longer involved in the review process; final decisions concerning questions of patentability are now the responsibility of the group directors.

The expanded program is responsible for conducting patentability reviews on a 4 percent sample of all allowed utility applications; for screening all reissue applications for conformance with current practices; for conducting patentability reviews on a 15 percent sample of all allowed reissue applications; and for conducting patentability reviews on a 15 percent sample of those patents in which a reexamination certificate is to be issued.

The objectives of the program are to:

- prevent the allowance of unpatentable applications;
- improve public confidence in the certainty and reliability of issued patents;
- detect trends away from normal examining practice;
- feed back information to the patent examining corps;
- emphasize to the patent examining corps the importance of quality;
- compile data on the "quality" of the patent examination process.

A statistical overview of the results of the findings under the 1974 program to its termination on June 30, 1982, shows that 18,639 applications were subjected to patentability reviews. Of these, 808 (4.3 percent) were returned to the examining groups as having one or more clearly unpatentable claims. Prosecution was reopened in 718 (89 percent) of the 808 applications returned to the examiners. In addition, 1,380 of the applications reviewed (7.4 percent) were returned to the examining groups

for additional searching. Prosecution was reopened in 88 (6.4 percent) of the applications returned for additional searching. Thus, prosecution was reopened in a total of 806 applications in the old program from its implementation in April of 1974 through its termination in June of 1982.

During the first four months of operation of the expanded Quality Review program, 872 applications were reviewed. Forty-seven (5 percent) of these applications were returned to the examiners with questions of patentability. Prosecution was reopened in 38 (81 percent) of the 47 applications returned with questions of patentability.

Quality Review statistical findings continue to indicate that the quality of the patents allowed by examiners has been improving since the 1970's. In fact, the percentage of clearly unpatentable cases dropped from 7 percent in FY 1975 to 6 percent in FY 1976, leveled to 4 percent in FY 1977 through FY 1980, dropped to 3 percent in FY 1981, but returned to the 4 percent level and remained there through the end of the 1974 program (June 30, 1982). The statistics of the Quality Review program provide useful feedback to management on the reliability of patents issued and thus supplement the normal quality review performed by the immediate supervisors of patent examiners. These supervisors, of course, play a key role in monitoring patent quality.

Patent Cooperation Treaty Functions

The Office entered its fifth year as a receiving office under the Patent Cooperation Treaty (PCT). The PCT is an international agreement between 32 member countries which permits an inventor or a business to file an international application in the PTO as a receiving office with the same effect as an application in as many member countries of the PCT as are designated. In FY 1982 the PTO received 1,867 international applications, an increase of 3.8 percent over the previous year. Under the PCT, the PTO also serves as an "International Searching Authority" for international applications filed in the United States and Brazil. In this capacity the PTO completed 1,705 international search reports during FY 1982. The PTO also received notification that it had been "designated" in 2,644 international applications filed in other PCT receiving offices around the world. An extensive computer monitoring system was established to track the various action dates for the receiving office, International Searching Authority and designated office functions.

Patent Fee Revision

During FY 1982, a major revamping of the rules was accomplished to establish procedures and fees to comply with new statutory requirements relating to "user fees" (see Chapter 2 on Legislation). P.L. 96-517 provided that, by October 1, 1982, fees for processing patent applications be set to recover a certain percentage of the estimated average cost to the Office of such processing. This law also required that fees be set for maintaining all patents in force which are filed on or after December 12, 1980,

other than design patents. The maintenance fees also are set to recover a certain percentage of the estimated cost to the Office of processing patent applications other than design applications.

P.L. 97-247 established a number of statutory fees which the Commissioner is required to charge. Among the more significant of these are fees for filing, issuing and maintaining a patent in force. In addition, the law continued the Commissioner's present authority to establish fees for all other processing, services or materials related to patents which are not statutory fees. Under the law, there is a reduction by 50 percent of the statutory fees paid by independent inventors, small business concerns, and nonprofit organizations, who meet the established criteria.

P.L. 97-247 and its implementing rules now provide for charging fees for various types of petitions previously not requiring fees. Among these are extensions of time. Additionally, there are two different fees for filing petitions with different standards to revive abandoned patent applications. The same two fees also apply to petitions to accept the delayed payment of the fee for issuing a patent. One standard relates to the situation where the delay resulting in the abandonment, or the delay in payment of the issue fee, was unavoidable. The other occurs where the abandonment or the failure to pay the issue fee was unintentional.

Patent Search File Integrity

The completeness of the patent search file is critical to the reliability of an issued patent. Between 1978 and 1981, under the file integrity program, more than three million U.S. patents in the most active subclasses were reviewed and the accuracy of the associated computer record improved. During FY 1982, the PTO reviewed 865,000 search file documents, including U.S. and foreign patents and nonpatent literature. Approximately 33,000 patent copies were added to the file in FY 1982 to replace missing or mutilated documents.

The PTO initiated the model search room program as another way to review search file integrity. Under this program, all the references in six examiner search rooms will be reviewed for completeness, and the accuracy of the computer record will be improved. In FY 1982 three search rooms were reviewed completely. To date four search rooms have been reviewed; two remain to be completed. The search rooms chosen were two each from the electrical, chemical and mechanical art groups. When the model search room reviews are completed, those rooms will be used for further detailed studies relating to file content, use, and maintenance. In some of the search rooms, controls will be imposed to limit degradation of the integrity of the files, and the effectiveness of those controls will be evaluated.

Reclassification

Selected portions of the patent search file are reviewed periodically to determine the need for new classifications which better correspond to the state of technology. These ongoing reclassification programs constitute an

analysis of all patents in a given technology. The PTO then restructures the classification system for the new technology to increase the access to and the reliability of the patent search file. In FY 1982 an additional program was initiated to reduce substantially the number of undefined subject matter breakdowns existing in the classification system. This program will improve the quality of document placement in these subclasses, make them available to the public via the Public Search Room, and provide for a smoother transition to an automated search file.

The FY 1982 reclassification programs established 4,667 new subclasses and involved approximately 520,500 U.S. and foreign patents. See Table 16 for details. While the total number of patents reclassified during FY 1982 was approximately 5.5 percent more than the previous year, the total number of original patents classified decreased by approximately 5 percent during the same period. The number of original patents classified is the traditional measure of reclassification activity; therefore, the FY 1982 figures indicate a lower level of reclassification effort when compared to the previous year. This lower level of activity is primarily due to support-cost increases and funding and staffing decisions.

Patent Depository Library Program

The Medical University of South Carolina Library in Charleston began acquisition of a collection of U.S. patents in numerical order and was designated the 38th Patent Depository Library.

Since 1977, 16 libraries have joined the program. Figure 9 lists the 38 Patent Depository Libraries which bring collections of U.S. patents to within one hour of commuting time to 42 percent of the total population of the United States.

A list giving the location of these libraries and a point of contact for each is published as a continuing notice in the *Official Gazette* to promote public awareness of the Patent Depository Libraries.

In April 1982, the system known as CASSIS (Classification and Search Support Information System) became operational with 36 Patent Depository Libraries participating, extending to users of patent collections in 26 states the information resources previously available only in the PTO Public Search Room. Through CASSIS the PTO is providing to the participating libraries free and unlimited direct on-line access to its various classification data bases. CASSIS permits users to obtain lists of patents assigned given classifications, obtain original and cross-reference classifications of given patents, view the structured titles of classifications, and search for key words in those classifications.

Official training on the use of CASSIS was provided to the 44 librarians attending the Fifth Patent Depository Library Conference held by the PTO at the end of March 1982.

In the 25 weeks of the availability of the system, from mid-April through September 1982, even in view of learning time required, usage of CASSIS was high and steadily increasing. During this initial period of operation,

FIGURE 9

PUBLIC PATENT DEPOSITORY LIBRARIES

ALABAMA
Birmingham Public Library

ARIZONA
Tempe—Science Library
(Arizona State University)

CALIFORNIA
Los Angeles Public Library
Sacramento—California State Library
Sunnyvale—Patent Information
Clearinghouse

COLORADO
Denver Public Library

DELAWARE
Newark—University of Delaware
Library

GEORGIA
Atlanta—Price Gilbert Memorial
Library (Georgia Institute
of Technology)

ILLINOIS
Chicago Public Library

LOUISIANA
Baton Rouge—Troy H. Middleton
Library (Louisiana State Univ.)

MASSACHUSETTS
Boston Public Library

MICHIGAN
Detroit Public Library

MINNESOTA
Minneapolis Public Library and
Information Center

MISSOURI
Kansas City—Linda Hall Library
St. Louis Public Library

NEBRASKA
Lincoln—Engineering Library
(University of Nebraska—Lincoln)

NEW HAMPSHIRE
Durham—University of New Hampshire Library

NEW JERSEY
Newark Public Library

NEW YORK
Albany—N.Y. State Library
Buffalo & Erie County Public Library
New York Public Library
(The Research Libraries)

NORTH CAROLINA
Raleigh—D.H. Hill Library
(N.C. State University)

OHIO
Cincinnati & Hamilton County
Public Library
Cleveland Public Library
Columbus—Ohio State University
Libraries
Toledo/Lucas County Public Library

OKLAHOMA
Stillwater—Oklahoma State
University Library

PENNSYLVANIA
Philadelphia—Franklin Institute
Library
Pittsburgh—Carnegie Library
University Park—Pattee Library
(Pennsylvania State University)

RHODE ISLAND
Providence Public Library

*SOUTH CAROLINA
Charleston-Medical University
of South Carolina Library

TENNESSEE
Memphis & Shelby County Public Library

TEXAS
Dallas Public Library
Houston—The Fondren Library
(Rice University)

WASHINGTON
Seattle—Engineering Library
(University of Washington)

WISCONSIN
Madison—Kurt F. Wendt Engineering
Library (University of Wisconsin)
Milwaukee Public Library

* New patent depository libraries added in FY 1982.

46,866 inquiries were addressed to the system, averaging 1,874 queries per week.

Distribution of Computer Patent Data Bases

The PTO supports distribution of computer-readable patent data bases to the public through an agreement with the National Technical Information Service (NTIS). The data bases have been expanded and now include:

- Current patent full-text files produced weekly;
- Current patent bibliographic files produced weekly;
- Retrospective patent full-text and bibliographic files for patents issued from August 1970 through December 1980;
- Patent classification file containing patent number, class and subclass information on all U.S. patents;
- Patent technology assessment and forecast file for patents issued from January 1963;
- Company name file for patents issued from January 1969;
- Manual of Classification file for all classes and subclasses in the U.S. classification system;
- Index to the Manual of Classification;
- U.S. Classification/SIC Concordance;
- U.S. Classification/IPC Concordance;
- Inventor name file for patents issued from January 1975;
- Patent title file for patents issued from January 1969;
- Roster of attorneys and agents registered to practice before the U.S. Patent and Trademark Office;
- Foreign patent classification file for foreign patents added to the search file from January 1979;
- Index term files for Class 364, Subclasses 200 and 900.

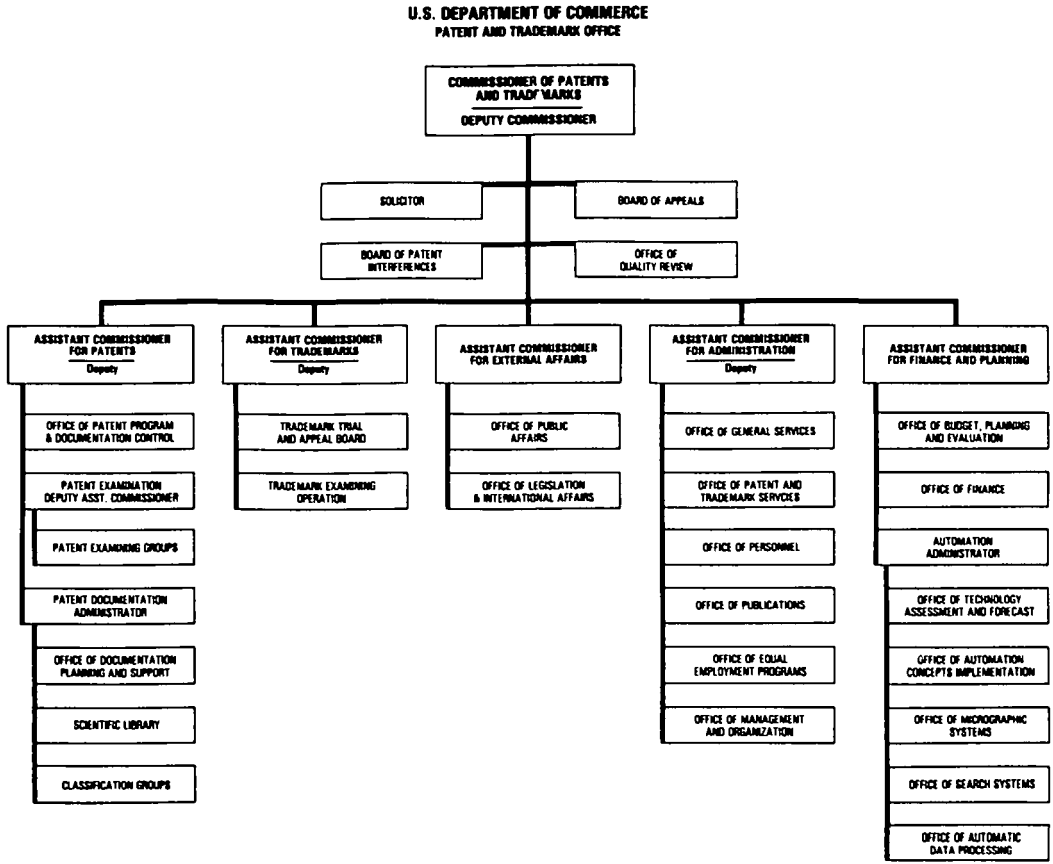
The public may acquire copies of these files directly from NTIS. The address is:

National Technical Information Service
5285 Port Royal Road
Springfield, VA 22151

Scientific Library Activities

The Scientific Library provides scientific and technical information and documents to the examining corps and other PTO personnel; selects and acquires literature to maintain and enhance the value of the 120,000 volume collection; performs on-line searches among numerous commercially available data bases; and translates foreign language patents, technical articles and other documents. The library maintains an extensive foreign patent collection and provides copies of these patents to Office staff and public users on demand.

In FY 1982 the library purchased approximately 3,000 books and 1,600 journal subscriptions. Thirty thousand journal issues were received, 18,000 of


U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
COMMISSIONER OF PATENTS AND TRADEMARKS
DEPUTY COMMISSIONER
SOLICITOR
BOARD OF APPEALS
BOARD OF PATENT INTERFERENCES
OFFICE OF QUALITY REVIEW
ASSISTANT COMMISSIONER FOR PATENTS
Deputy
OFFICE OF PATENT PROGRAM & DOCUMENTATION CONTROL
PATENT EXAMINATION DEPUTY ASST. COMMISSIONER
PATENT EXAMINING GROUPS
PATENT DOCUMENTATION ADMINISTRATOR
OFFICE OF DOCUMENTATION PLANNING AND SUPPORT
SCIENTIFIC LIBRARY
CLASSIFICATION GROUPS
ASSISTANT COMMISSIONER FOR TRADEMARKS
Deputy
TRADEMARK TRIAL AND APPEAL BOARD
TRADEMARK EXAMINING OPERATION
ASSISTANT COMMISSIONER FOR EXTERNAL AFFAIRS
OFFICE OF PUBLIC AFFAIRS
OFFICE OF LEGISLATION & INTERNATIONAL AFFAIRS
ASSISTANT COMMISSIONER FOR ADMINISTRATION
Deputy
OFFICE OF GENERAL SERVICES
OFFICE OF PATENT AND TRADEMARK SERVICES
OFFICE OF PERSONNEL
OFFICE OF PUBLICATIONS
OFFICE OF EQUAL EMPLOYMENT PROGRAMS
OFFICE OF MANAGEMENT AND ORGANIZATION
ASSISTANT COMMISSIONER FOR FINANCE AND PLANNING
OFFICE OF BUDGET, PLANNING AND EVALUATION
OFFICE OF FINANCE
AUTOMATION ADMINISTRATOR
OFFICE OF TECHNOLOGY ASSESSMENT AND FORECAST
OFFICE OF AUTOMATION CONCEPTS & IMPLEMENTATION
OFFICE OF MICROGRAPHIC SYSTEMS
OFFICE OF SEARCH SYSTEMS
OFFICE OF AUTOMATIC DATA PROCESSING

which were routed among the various Office locations. Four thousand pages of foreign material were translated.

In the foreign patent area 900,000 documents and 4,500 reels of microfilm were received and added to the total library collection of 10,000,000 foreign patent documents. From this collection 21,000 copies of foreign patent documents were made upon request.

The Reference Section circulated approximately 5,000 documents, either from the library's collections or from other libraries in an inter-library loan agreement and loaned 1,500 documents from the PTO collections to other libraries.

National Inventors Day

The PTO celebrated the Tenth Annual National Inventors Day with the induction of five individuals into the National Inventors Hall of Fame on February 8. They were:

- Henry Ford, born in Wayne County, Mich., honored posthumously for his invention "Transmission Mechanism," Patent No. 1,005,186;
- Jack S. Kilby, born in Jefferson City, Mo., honored for his invention "Miniaturized Electronic Circuits," Patent No. 3,138,743;
- Ernest O. Lawrence, born in Canton, S.D., honored posthumously for his invention "Method and Apparatus for the Acceleration of Ions," Patent No. 1,948,384;
- Ottmar Mergenthaler, born in Hachtel, Germany, honored posthumously for his inventions "Machine for Producing Printing Bars," Patent No. 317,828, and "Machine for Producing Linotypes, Type-Matrices, etc.," Patent No. 436,532;
- Max Tishler, born in Boston, Mass., honored for his invention involving synthesizing Riboflavin, Patent No. 2,261,608, and "2-Sulphanilamido-Quinoxaline," Patent No. 2,404,199.

The National Inventors Hall of Fame, located at the PTO offices in Crystal City, is cosponsored by the PTO and the National Council of Patent Law Associations.

chapter six
TRADEMARKS

Trademark Applications

Applications to register trademarks soared to a record 73,621 filings in FY 1982. This was a 33 percent increase over the 1981 total. Part of the increase was a one-time surge in filings caused by applicants rushing to file before the new trademark fees took effect on October 1, 1982. A substantial portion of the increase, however, was a continuation of the general upward trend of trademark filings that began in 1975. Even during the earlier part of 1982, before it became apparent that fees would be increased, the filings ran 10 percent or more above 1981 filings. The total 1982 filings were more than double the 1975 filings. Foreign filings rose to 9,456, comprising about 13 percent of total trademark applications. This shows a continuing and perhaps increasing interest on the part of foreign businesses in extending protection for their brand names to the U.S. market, although foreign filings are still a much smaller percentage of total filings than in the case of patents. Figures 10 and 11 show historical trends in trademark applications and registrations.

Trademark Registration

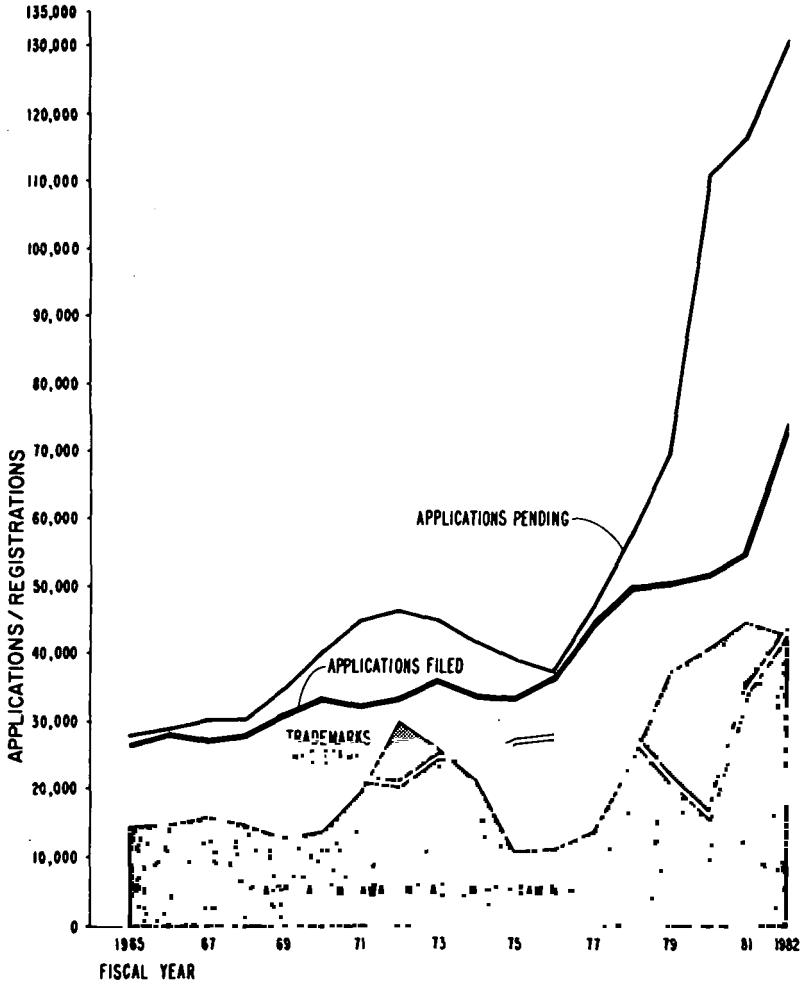
Trademarks registered were up to a record 43,630 in FY 1982. The increase resulted from higher output by the trademark examining staff. The process of printing trademark registrations and the trademark section of the weekly *Official Gazette* returned to normal in 1982, following the difficult 1980-81 period during which the Office's trademark printing contractor defaulted, and the resulting printing backlog had to be worked off by a new contractor. Trademark examining attorneys disposed of a record 64,319 applications and also took first actions on a record number of applications—64,840. The large number of first actions makes it likely that the number of registrations will be high again in 1983.

Trademark Pendency Time

The average trademark pendency time (between filing of the application and its registration or abandonment) was 21.3 months at the end of FY 1982. The time between the filing of an application in the PTO and the trademark examiner's first action on the application was 8.4 months at the end of the fiscal year. These pendency times were down from those of FY 1981 (24 months for total and 11 months to first action). This downward trend in pendency marked the beginning of progress toward the PTO's goal of

FIGURE 10

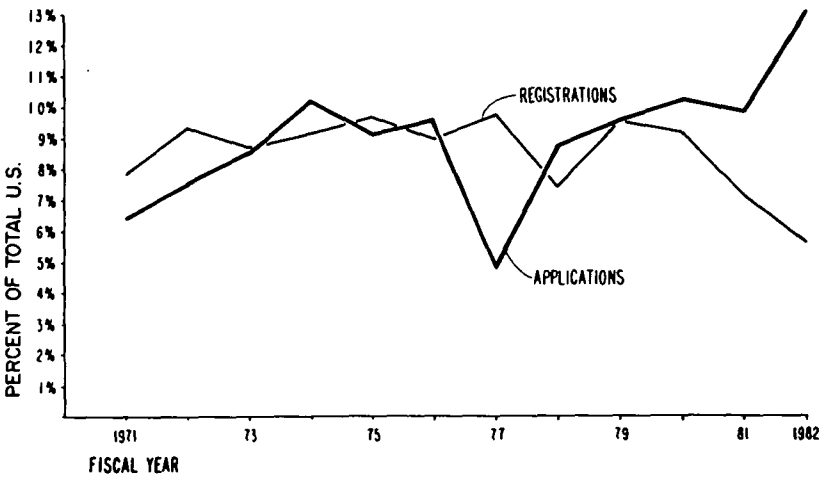
TRADEMARK APPLICATIONS FILED AND PENDING; AND TRADEMARKS REGISTERED (1965-1982)



reducing total pendency time to 13 months and reducing time to first action to 3 months by FY 1985. The total number of trademark applications pending in the PTO rose to a record 130,529, up from 116,598 a year earlier, because of the influx of filings. Figure 12 illustrates the stages in the trademark examining process, and the pendency times associated with each. Figure 13 shows historical trends in trademark pendency times.

FIGURE 11

U.S. TRADEMARK APPLICATIONS AND REGISTRATIONS FROM ABROAD (1971-1982)



Trademark Examining Staff

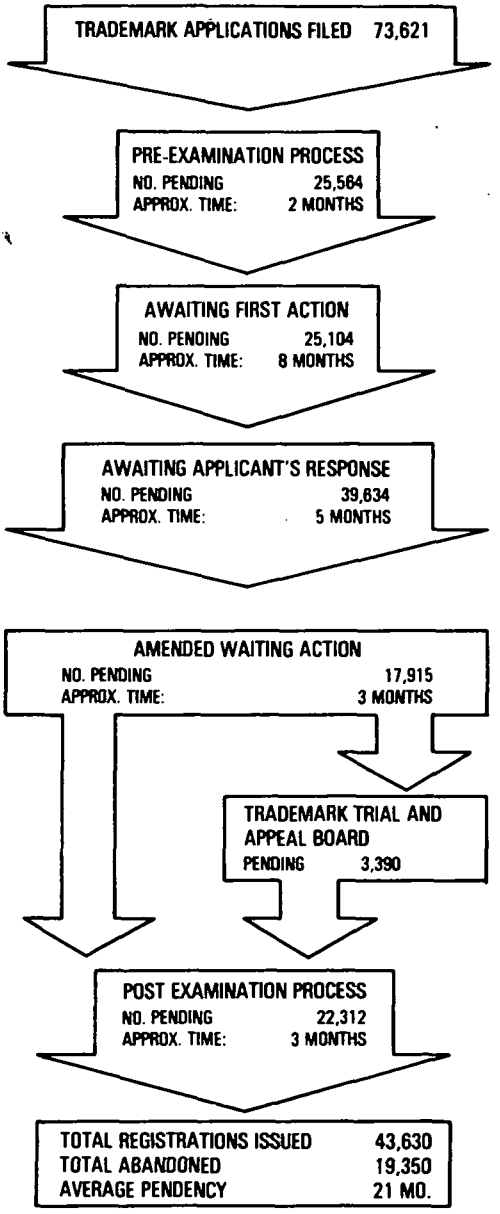
In 1982 the PTO increased the size of its trademark examining attorney staff in order to reduce the pendency time of trademark applications. The staff increased to a record high average of 94 examiners, compared to an average of 80 in 1981 and 47 in 1979. At the end of the fiscal year the number of examining divisions was increased from six to eight. The PTO hired 20 new examiners in 1982, including hires to replace those who left the PTO. The attrition rate for examiners dropped in 1982.

Reorganization of Examining Operation

The examining operation was reorganized to give better service to the public and better clerical support to the examining divisions. The clerical force was decentralized to give each examining division a clerical staff of about five employees directly responsible to it. The telephone system was decentralized to give each division its own telephone receptionist. The docket system for storing pending trademark application files was decentralized, to make it easier for examiners, clerical support and members of the public to retrieve pending files. The reorganized divisions are called "law offices," reflecting that each unit is a self-contained organization of attorneys and support staff somewhat similar to a private law office. Each law office is headed by a Managing Attorney and has 13 or 14 examining attorneys.

FIGURE 12

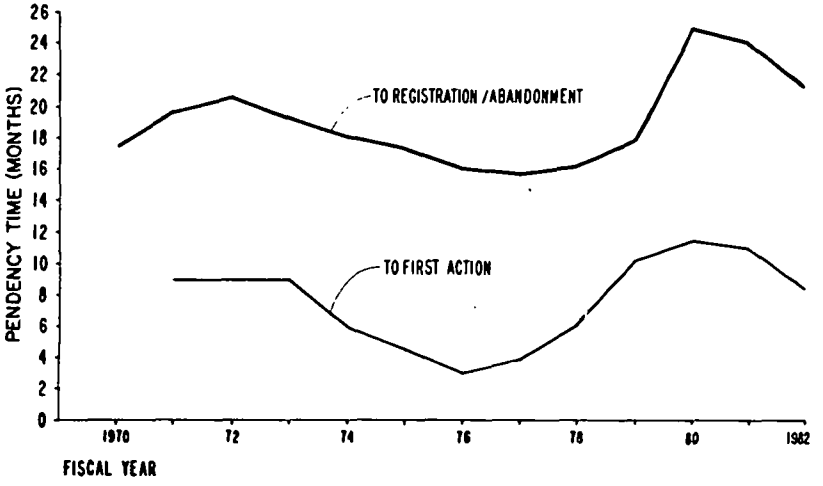
TRADEMARK EXAMINATION ACTIVITIES*



* This figure presents a simplified trademark work-flow diagram with statistics on cases at various stages of processing at the end of FY 1982.

FIGURE 13

PENDENCY TIME OF TRADEMARK APPLICATIONS (1970-1982)



Examination Quality and Productivity

Steps were taken to maintain and improve the quality of the Office's trademark examining work. Managers began reviewing more samples of examined applications before making decisions on promotions for examiners. The *Official Gazette* was reviewed each week to locate instances where examiners made clear errors in determining whether marks were merely descriptive of the goods or services. Merely descriptive marks were withdrawn from publication and the examination was reopened.

The Office continued its program for sending examiners to trade shows and exhibitions relating to the industries covered by the classes in which they examine. The trademark law library was further expanded. Efforts were expanded to recruit the best qualified attorneys obtainable. Trademark examining attorney vacancies were advertised widely; ten applicants were considered for every position filled.

Emphasis was placed on having the examiners do complete first actions, so that the prosecution could be concluded in the fewest actions possible consistent with giving the applicant a fair opportunity to respond and making a complete record. Also, examiners were required to act on amended cases no more than three months after receipt of the applicant's response. Consequently, the oldest amended cases in the law offices at the end of the year were awaiting action an average of three months, down from about 10 months at the beginning of the year.

A revised system of examiner productivity goals was instituted as part of a new system required by the Civil Service Reform Act of 1978 for meas-

uring the performance of Federal employees. The new productivity goals placed more emphasis on disposing of applications instead of merely writing large numbers of actions. The goals for new examiners were increased; the goals for the most senior examiners were reduced slightly. Examiner productivity increased to 0.47 disposals per hour from 0.40 disposals per hour in 1981.

In 1982 the percentage of applications disposed that were registered was lower than the traditional 75 percent. It was 69 percent in 1982. As explained below, the number of ex parte appeals to the Trademark Trial and Appeal Board rose substantially. The main reason for this increase is believed to be the disproportionate number of old amended cases acted on by the examiners during the year.

Trademark Services

Delays were reduced in some clerical processing functions—the time was shortened for providing certified copies of trademark registrations and for mailing out filing receipts to applicants after applications were filed.

The floor space in the trademark search library, used both by examiners and the public, was expanded by 500 square feet. In addition, additional space was made available in the search library by microfilming 554,000 older and infrequently used trademark records. Approximately 66,000 drawings of marks that had become registered or abandoned were purged from the file of pending marks in the search library. Plans were completed for a substantial expansion of the office space occupied by the clerical force and examiners. A new telephone number with a recorded message of general information about trademarks for the public was established. A recorded message service was also made available in the trademark search library to give the public the opportunity to leave telephone requests for information about the status of trademark registrations.

Clerical processing procedures were changed at the end of the fiscal year so that defective trademark applications not entitled to a filing date were mailed back to the applicant instead of being held for correction. A special training course was conducted for all clerical and secretarial employees in the examining operation to give them a broader understanding of the various trademark paper processing and trademark public service functions of the PTO.

Trademark Trial and Appeal Board

The Trademark Trial and Appeal Board is the PTO's administrative tribunal for deciding appeals from refusals to register trademarks by the Examining Operation and for determining certain inter partes trademark proceedings, most of which involve actions to oppose or cancel the registrations of trademarks thought to be confusingly similar to existing marks or otherwise not legally entitled to registration.

In 1982, 2,809 new cases were filed with the Board, a record figure and 25 percent higher than in 1981. The Board disposed of 2,362 cases,

2,009 of these before hearing (typically through settlement, default or motions for judgment) and 353 cases by final Board decisions after hearing. The latter involved 225 inter partes actions and 128 ex parte appeals. (See Table 20 for details).

By year end, the number of cases pending before the Board had increased 15 percent to 3,390 and there were some 108 Federal court appeals pending from TTAB decisions, two-thirds of these lodged with the new United States Court of Appeals for the Federal Circuit (into which the Court of Customs and Patent Appeals was merged as of October 1, 1982). Also, the year witnessed a sharp increase in the number and proportion of ex parte appeals received and disposed of. New filings of ex parte appeals jumped from 220 in 1981 to 626 in 1982 and disposals increased accordingly (from 174 in 1981 to 528 in 1982).

During 1982, Board professional resources were increased by the appointment of one additional member and one additional interlocutory attorney. The Board, which adjudicates cases in panels of three, had six members and four interlocutory attorneys at year end.

Trademark Fees

Pursuant to P.L. 97-247, trademark fees were increased effective October 1, 1982. The fee schedule adopted was designed to recover 100 percent of the cost of operating the trademark operations through 1985.

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chapter seven
OTHER ACTIVITIES

Equal Employment Programs

The PTO's Office of Equal Employment Programs (OEEP) developed an update for the agency's affirmative action program plan, a Federal equal opportunity recruitment plan, an affirmative action program plan for handicapped and disabled veterans, and an implementation plan for the agency's upward mobility program.

Among other activities, the OEEP held 55 informal complaint counseling sessions, consulted with women's advisory groups about the special concerns of women, developed and implemented training programs, and analyzed statistical data and other information on the employment of women and minorities.

Contracting Out Work Previously Performed "In-House"

Under the guidelines of OMB Circular A-76, a contract was awarded to a private firm for the reproduction of copies of patent and trademark registrations, reducing the staffing level by 78 positions.

Service to the Public

During the fiscal year, the delay between receipt of a new patent application and the mailing of the filing receipt was reduced from a high of 100 days in February to fewer than 50 days. Further reductions are expected in FY 1983.

A cooperative agreement between the Patent and Trademark Office and the Intellectual Property Owners, Inc. resulted in the Office making available to users of the Patent Public Search Room access to several online patent data bases upon payment of a fee. During the coming year, additional data bases will be added.

A special service has been made available to out-of-town requesters who wish to inspect patented files or abandoned or registered trademark files upon arrival in the area. Those who have to travel a considerable distance to inspect files may place their requests by telephone five days in advance of arrival.

A user survey was conducted to gather data on the public perception of the adequacy of services provided by the PTO and to identify principal areas of concern. There were 325 respondents, 89 of which are local bar association members, 88 out-of-town patent law association members, and 148 Patent Public Search Room users. A specific action plan was devel-

oped to improve services perceived as poor or fair by the majority of respondents. Most of the actions will take place in FY 1983.

Space

To provide additional space for projected staffing increases and to improve the overall distribution and utilization of existing space, the PTO acquired approximately 50,000 square feet of office and special space and about 44,000 square feet of warehouse space during FY 1982.

The additional office space allows for some presently separated organizations to be consolidated into one location, enabling a more effective and efficient utilization of space and staff. The special space acquired is a computer site, including extensive support equipment. This will enable the Office to install its new mainframe computer system at less cost and on a more timely basis than would otherwise have been possible.

The acquisition of the additional warehouse space has enabled the Office to transfer thousands of patented files to an off-site file repository. Materials formerly stored in four separate locations were consolidated in a new supply center/warehouse, and a computerized system that tracks supply requests, reports on inventory levels, and indicates time for reordering stock was implemented.

appendix
STATISTICAL TABLES

Table 1.—OPERATING COSTS

(In Thousands of Dollars)

	[1]1980	1981	1982
OPERATING UNITS			
Patent Process	$75,147	$80,819	$89,946
Trademark Process	6,643	7,992	9,762
Information Dissemination	21,958	24,311	26,128
Total Operating Units Costs	103,748	113,122	125,836
SALARIES AND EXPENSES			
Personnel Compensation	70,238	76,201	82,583
Personnel Benefits	6,259	6,836	7,682
Printing and Reproduction	11,619	15,748	15,882
Other Costs	15,632	14,337	19,689
Total Salaries and Expenses	$103,748	$113,122	$125,836

[1] Several changes were made in reporting costs for FY 1980. Most significant was a shift of $11,619,000 in printing costs from Information Dissemination to the Patent Process and Trademark Process.

Table 2.—TOTAL CONGRESSIONAL APPROPRIATIONS[1]

(1973-1982)

Fiscal Year	Total Actual Appropriations (Including Supplemental Appropriations[2])	Appropriation Changes[3]
1973	$67,280	$1,247
1974	71,982	921
1975	77,566	-446
1976[4]	85,350	1,624
1977[4]	89,400	-1,497
1978	94,321	1,458
1979	96,654	-1,692
1980	104,833	32
1981	116,150	3,809
1982	125,335	3,374

[1] In thousands of dollars.

[2] "Supplemental Appropriations" are the funding approved by the Congress to be added to the PTO's regular appropriation to cover certain changed circumstances—most commonly pay increases.

[3] "Appropriation Changes" represent the changes in funding level from the previous fiscal year, after pay increases and other uncontrollable cost increases have been taken into account.

[4] The Transition Quarter, July 1, 1976, to September 30, 1976, has been omitted.

Table 3.—END OF YEAR EMPLOYMENT[1]

(1976–1982)[2]

	[2]1976	[2]1977	1978	1979	1980	1981	1982
OPERATING UNITS:[3]							
Information Dissemination	953	867	823	788	697	732	628
Patent Process	1,829	1,788	1,795	1,719	1,671	1,776	1,950
Trademark Process	173	167	173	196	215	247	272
Total Operating Units Employment	2,955	2,822	2,791	2,703	2,583	2,755	2,850
PERSONNEL STAFFING:							
Patent Professional	1,047	1,063	1,064	995	949	985	1,175
Trademark Professional	71	72	68	79	88	98	106
All Others	1,837	1,687	1,659	1,629	1,546	1,672	1,569
Total Personnel Staffing	2,955	2,822	2,791	2,703	2,583	2,755	2,850

[1] Total paid employment, including full time permanent and others.
[2] The Transition Quarter, July 1, 1976, to September 30, 1976, has been omitted.
[3] The names of the PTO activities were changed in FY 1981, but the activities remained essentially the same.

Table 4.—INCOME FROM FEES

(In Thousands of Dollars)

Source of Income	1979	1980	1981	1982
PATENT-RELATED FEES				
Filing Fees				
Patent Applications	$8,861	$9,400	$10,004	$10,133
Design Applications	149	152	159	166
Patent Reissue Applications	56	52	44	34
Disclosure Documents	98	98	90	83
Issue Fees				
Patent	9,166	8,905	10,030	8,980
Design	103	122	149	147
PCT Application and Search Fees	178	297	346	249
Disclaimers	27	24	24	24
Attorney Registration and Certificates	43	36	34	40
Total Patent-Related Fees	18,681	19,086	20,880	19,856
TRADEMARK-RELATED FEES				
Applications	1,738	1,829	2,000	2,373
Oppositions and Cancellations	47	40	50	63
Renewals	158	166	145	145
Use/Non-Use Affidavits	154	164	172	175
Total Trademark-Related Fees	2,097	2,199	2,367	2,756
SERVICE AND RELATED FEES				
Appeals, including briefs	715	729	707	686
Certificates of Correction	43	38	45	50
Certification of Records	105	101	106	114
Making, Mounting, Correcting and Comparing Drawings	237	236	214	119
Petitions	40	38	36	35
Printed Copies	1,707	1,597	1,826	1,508
Recording Assignments	1,556	1,653	1,836	1,879
Reproduction of Records	887	753	814	819
Special Services on Orders	160	187	213	221
Subscription Service for Copies	21	19	21	23
Total Services and Related Fees	5,471	5,351	5,818	5,454
MISCELLANEOUS OTHER FEES[1]	862	556	428	469
TOTAL INCOME FROM FEES	$27,111	$27,192	$29,493	$28,535

[1] Approximately 35 types of fees.

Table 5.—SUMMARY OF PATENT EXAMINING ACTIVITIES

(As of September 30, 1982)

Patent Examining Activity	1980	1981	1982	Average 1973-82
PATENT APPLICATIONS FILED				
Utility[1]	104,219	106,828	116,052	103,638
Reissue	641	538	486	522
Plant	186	147	193	159
Design	7,269	7,197	8,069	6,731
Total Patent Appls. Filed	112,315	114,710	124,800	111,050
FIRST ACTIONS				
Design	7,278	7,182	6,066	6,191
All Others[2]	88,218	83,497	89,777	100,222
PATENT APPLICATIONS ALLOWED[2]				
Design	4,639	5,311	4,458	4,364
All Others[3]	60,611	58,187	54,484	67,480
Total Patent Appls. Allowed	65,250	63,498	58,942	71,844
PATENT APPLICATIONS ABANDONED				
Design	2,128	2,525	2,015	1,926
All Others[3]	29,106	30,058	29,099	34,099
Total Patent Appls. Aband.	31,234	32,583	31,114	36,025
TOTAL PATENT APPLICATION DISPOSALS[4]	96,484	96,081	90,056	107,869
PATENTS ISSUED[5]				
Utility	56,618	66,617	59,449	66,048
Reissue	305	343	284	351
Plant	137	168	120	164
Design	4,167	3,882	5,299	4,096
Total Patents Issued	61,227	71,010	65,152	70,659
PATENTS WITHHELD FROM ISSUANCE[6]	1,712	2,004	2,130	2,064
PENDENY TIME OF AVERAGE PATENT APPLICATION[7]	22.6	22.4	24.2	—
REEXAMINATIONS REQUESTED[8]	—	78	187	—
REEXAMINATION CERTIFICATES ISSUED	—	0	21	—
PCT SEARCH REPORTS PREPARED[9]	1,442	2,045	1,705	—
PCT INTERNATIONAL APPLICATIONS RECEIVED	1,647	1,797	1,867	—

[1] Chemical, electrical, and mechnical applications.

[2] "Allowed Patent Applications" are applications awaiting issuance (i.e., publication) as patents.

[3] Utility, plant, and reissue applications.

[4] Disposals by examiners—i.e., the sum of applications allowed and applications abandoned. Final disposals can be obtained by adding patents issued and applications abandoned. The Office measures the productivity of examiners in "production units", formerly called "balanced disposals." Production units are obtained by averaging first actions and examiners disposals.

[5] Excludes withdrawn numbers.

[6] For nonpayment of final issue fee (35 U.S.C. 151).

[7] Average time (months) between filing and issuance/abandonment of utility, plant, and reissue applications (excluding designs).

[8] Reexamination was instituted on July 1, 1981, in accordance with provisions of Patent Law 96-517.

[9] PCT entered into force on January 24, 1978, and applications were accepted for filing beginning June 1, 1978.

Table 6.—PATENT APPLICATIONS FILED

(1963–1982)

Year	Utility[1]	Design	Plant	Reissue	Total
1963	84,620	4,841	149	277	89,887
1964	87,482	5,067	147	207	92,903
1965	88,908	5,319	89	237	94,553
1966	93,022	5,187	103	266	98,578
1967	88,167	4,774	100	241	93,282
1968	90,252	4,889	107	304	95,552
1969	96,342	5,432	103	376	102,253
1970	100,116	5,722	113	344	106,295
1971	103,733	6,057	161	266	110,217
1972	102,663	6,358	166	293	109,480
1973	100,900	5,541	109	382	106,932
1974	103,479	4,948	109	391	108,927
1975	101,283	5,751	163	465	107,662
1976[2]	101,807	6,838	144	438	109,227
1977[2]	101,821	7,186	202	564	109,773
1978	100,473	7,440	171	660	108,744
1979	99,516	7,070	166	657	107,409
1980	104,219	7,269	186	641	112,315
1981	106,828	7,197	147	538	114,710
1982	116,052	8,069	193	486	124,800

[1] Chemical, electrical, and mechanical applications.
[2] The Transition Quarter, July 1, 1976, to September 30, 1976, has been omitted.

Table 7.—SUMMARY OF PENDING PATENT APPLICATIONS

(As of September 30, 1982)

Stage of Processing	Utility, Plant and Reissue Applns.	Design Applns.	All Pat. Applns.
IN PREEXAMINING PROCESSING	65,364	1,059	66,423
UNDER EXAMINATION			
Amended, Awaiting Action by Examiner	10,332	582	10,914
Awaiting First Action by Examiner	66,224	10,521	76,745
Awaiting Response by Applicant	53,675	1,651	55,326
In Interference	770	1	771
On Appeal	6,229	101	6,330
Total Under Examination	137,230	12,856	150,086
IN POSTEXAMINATION PROCESSING			
Awaiting Payment of Issue Fee	10,763	428	11,191
D-10's (Secret Cases in Condition for Allowance)	2,646	0	2,646
Total in Postexamination Processing	13,409	428	13,837
IN ISSUE PROCESSING			
Awaiting Printing Preprocessing[1]	6,808	1,137	7,945
Awaiting Printing	9,013	680	9,693
Total in Issue Processing	15,821	1,817	17,638
TOTAL IN PATENT AND TRADEMARK OFFICE	231,824	16,160	247,984

[1] In the Patent and Trademark Office, with the issue fee paid.

Table 8.—PATENTS PENDING PRIOR TO ALLOWANCE[1]

(1963-1982)

Year	Awaiting Action by Examiner[2]	Total Applns. Pending[3]	Year	Awaiting Action by Examiner[2]	Total Applns. Pending[3]
1963	119,946	215,577	1973	64,940	175,281
1964	129,151	226,066	1974	47,411	162,447
1965	149,284	212,416	1975	41,916	146,464
1966	147,664	214,664	1976[4]	43,776	142,379
1967	136,672	205,768	1977[4]	60,706	144,542
1968	109,509	194,087	1978	57,031	144,056
1969	103,704	[5]196,338	1979	50,085	151,702
1970	81,548	192,575	1980	64,289	167,533
1971	64,890	190,103	1981	71,033	181,727
1972	70,477	189,177	1982	87,659	216,509

[1] Pending at end of period indicated including utility, reissue, plant, and design applications. Does not include allowed applications.
[2] Through 1965, includes applications having suspended actions.
[3] Applications awaiting examination, including those in preexamination processing.
[4] The Transition Quarter, July 1, 1976, to September 30, 1976, has been omitted.
[5] Revised

Table 9.—PATENTS ISSUED[1]

(1963-1982)

Year	Utility[2]	Design	Plant	Reissue	Total
1963	53,958	2,411	114	215	56,698
1964	44,050	3,019	147	203	47,419
1965	52,914	2,979	127	204	56,224
1966	66,243	3,638	105	238	70,224
1967	70,028	2,840	102	180	73,150
1968	61,599	3,539	67	185	65,390
1969	61,957	2,991	80	201	65,229
1970	66,339	3,401	80	311	70,131
1971	[3]70,387	3,097	77	222	[3]73,783
1972	83,221	3,032	170	264	86,687
1973	[4]67,490	3,441	146	274	[4]71,351
1974	79,300	4,439	211	367	84,317
1975	[5]70,179	3,632	155	398	[5]74,364
1976[6]	[5]75,325	4,781	195	434	[5]80,735
1977[6]	67,972	4,261	164	435	72,832
1978	65,963	3,797	194	366	70,320
1979	51,686	3,269	151	312	55,418
1980	56,618	4,167	137	305	61,227
1981	66,617	3,882	168	343	71,010
1982	59,449	5,299	120	284	65,152

[1] Excludes withdrawn numbers beginning with FY 1978.
[2] Chemical, electrical, and mechanical applications.
[3] Does not include 1,300 voided numbers.
[4] Does not include 1,418 voided numbers.
[5] In 1975, under the trial voluntary protest program (now abolished), an additional 667 applications were published but not issued; in 1976, there were 1,303 published but not issued.
[6] The Transition Quarter, July 1, 1976, to September 30, 1976, has been omitted.

Table 10.—REEXAMINATION

	July 1, 1982—September 30, 1981[1]	1982
REQUESTS FILED		
By patent owner	18	68
By third party	60	116
Commissioner ordered	0	3
Total	78	187
DETERMINATIONS ON REQUESTS		
Requests granted		
By examiner	30	156
By petition	2	7
Requests denied	2	39
Total	34	202
REQUESTS HAVING RELATED LITIGATION	30	37
COURT ORDERED REEXAMINATIONS	4	3
AVERAGE AGE OF PATENTS (years)	6.99	5.17
AGE RANGE OF PATENTS (years)	0.47-18.25	0.25-21.08
AVERAGE CLAIMS PER REQUEST	13.20	14.56
AVERAGE REFERENCES PER REQUEST	9.36	8.22
FILINGS BY DISCIPLINE		
Chemical	23	57
Electrical	25	59
Mechanical	30	71
Total	78	187

[1] Reexamination was instituted on July 1, 1981, in accordance with provisions of P.L. 96-517.

Table 11.—SUMMARY OF CONTESTED PATENT CASES

(Within the Patent and Trademark Office)

Patent and Trademark Office Tribunal	Totals
BOARD OF PATENT APPEALS	
Cases Pending as of 9/30/81:	
Appeals	4,968
Reconsideration	66
Cases Filed During FY 82:	
Appeals	3,506
Reconsideration	419
Total	8,856
Disposals	
Affirmed	2,378
Affirmed-In-Part	256
Dismissed	7
Reversed	854
Suspended	0
Withdrawn	198
Total Disposals[1]	4,067
Total Cases Pending as of 9/30/82[2]	4,892
BOARD OF PATENT INTERFERENCES	
Interferences Pending as of 9/30/81	531
Interferences Declared During FY 82	193
Total	724
Disposals:	
Interferences Terminated	242
Total Interferences Awaiting Final Board Disposition as of 9/30/82:	
Awaiting a Final Decision	51
Awaiting the Setting of a Final Hearing	11
Set for Final Hearing	14
Total Interferences Awaiting Final Board Disposition	76
Total Interferences Pending as of 9/30/82	482

[1] Reconsideration included: 374
[2] Reconsideration included: 111

Table 12.—U.S. GOVERNMENT AGENCY PATENTS[1]

(1972–1982)

Agency	1972	1973	1974	1975	[2]1976	[2]1977	1978	1979	1980	1981	1982	Total (1972–1982)
Agriculture	119	97	127	130	159	104	70	39	54	53	46	998
Air Force	195	171	160	139	164	183	137	115	159	123	89	1,635
Army	397	384	446	301	374	376	262	214	233	229	196	3,412
AEC[3]	309	220	276	111	0	0	0	0	0	0	0	916
Commerce	8	3	3	5	14	7	5	9	6	5	7	72
Energy	0	0	0	131	273	224	198	166	159	233	210	1,595
State	0	0	2	0	3	1	1	0	0	0	0	7
Transportation	0	0	7	7	11	0	0	4	3	3	1	38
NSA	0	0	0	0	0	0	0	2	1	1	2	6
EPA	0	2	6	6	9	4	3	4	3	10	1	48
FAA	7	2	1	0	0	0	0	3	0	0	0	13
FBI	0	0	1	0	0	0	0	0	0	0	0	1
HEW/HHS	24	22	39	34	40	17	31	20	23	27	19	296
Interior	76	48	57	56	67	68	59	20	35	43	27	556
Library of Congress	0	0	0	0	1	1	0	0	0	0	0	2
NASA	313	187	285	149	139	93	116	80	74	70	73	1,581
NSF	2	0	0	0	1	0	0	0	0	0	0	3
Navy	651	639	626	522	731	535	363	299	390	326	319	5,401
Postal Service	1	0	0	0	1	4	0	0	0	0	0	9
TVA	2	7	4	4	8	5	2	0	0	0	0	32
Treasury	0	1	0	0	0	0	1	0	0	2	1	5
VA	0	0	2	3	1	1	2	1	2	0	2	14
USA[4]	7	17	8	15	33	45	30	13	14	11	12	206
Justice	0	0	0	0	0	0	0	2	0	0	0	2
FCC	0	0	0	0	0	5	1	0	0	2	2	10
Total	2,111	1,800	2,050	1,613	2,029	1,673	1,283	992	1,156	1,144	1,007	16,858

[1] Data in this table represent patents assigned to agencies at the time of patent issue.

[2] The Transition Quarter, July 1, 1976, to September 30, 1976, has been omitted.

[3] AEC absorbed into DOE in 1976.

[4] United States of America—no agency indicated in data base.

Table 13.—PATENTS ISSUED TO RESIDENTS OF THE UNITED STATES

(1975–1982)[1]

State/Territory	1975	[2]1976	[2]1977	1978	1979	1980	1981	1982
Alabama	221	265	208	205	163	201	196	218
Alaska	30	34	26	29	18	31	12	20
American Samoa	13	13	5	4	3	8	0	0
Arizona	436	511	481	464	382	446	555	460
Arkansas	91	102	102	108	65	73	102	66
California	6,510	7,101	6,923	6,211	4,839	5,335	6,038	5,481
Canal Zone	8	5	2	4	4	2	1	0
Colorado	595	649	617	561	471	528	593	534
Connecticut	1,612	1,752	1,552	1,385	1,086	1,210	1,273	1,202
Delaware	461	513	413	384	264	271	326	298
District of Columbia	88	83	70	62	58	58	76	47
Florida	1,059	1,085	1,096	1,051	798	1,024	1,258	1,062
Georgia	353	383	337	346	311	337	424	410
Guam	3	4	1	3	2	1	0	0
Hawaii	61	51	43	41	32	32	49	31
Idaho	99	94	80	73	60	80	88	86
Illinois	3,959	4,173	3,751	3,390	2,581	2,868	2,882	2,702
Indiana	1,172	1,177	1,069	998	813	865	1,016	1,013
Iowa	386	446	451	366	261	331	379	324
Kansas	362	351	302	307	256	255	251	202
Kentucky	343	323	281	288	227	262	282	287
Louisiana	357	404	352	319	266	282	327	289
Maine	76	61	52	71	53	61	86	84
Maryland	913	1,072	861	829	665	702	770	749
Massachusetts	2,062	2,192	1,860	1,758	1,475	1,555	1,754	1,602
Michigan	2,832	2,691	2,474	2,373	1,875	2,130	2,457	1,912
Minnesota	1,029	1,082	968	905	786	851	975	871
Mississippi	103	100	74	76	68	68	81	68
Missouri	712	728	651	687	474	613	729	583
Montana	60	48	45	65	35	55	71	45
Nebraska	147	140	130	119	108	109	129	125
Nevada	92	85	111	105	84	88	103	100
New Hampshire	165	171	176	170	137	160	174	203
New Jersey	3,723	4,188	3,687	3,594	2,719	2,913	3,279	3,022
New Mexico	81	145	116	104	68	105	119	104
New York	5,015	5,109	4,737	4,259	3,168	3,406	3,812	3,574
North Carolina	535	576	540	529	409	491	600	509
North Dakota	46	45	44	58	30	35	30	42
Ohio	3,215	3,223	2,898	2,761	2,026	2,165	2,624	2,299
Oklahoma	747	725	618	655	519	592	709	628
Oregon	348	357	328	349	281	314	357	310
Pennsylvania	3,578	3,583	3,223	3,029	2,277	2,410	2,797	2,449
Puerto Rico	25	14	25	25	15	9	27	18
Rhode Island	215	217	209	164	128	143	137	132
South Carolina	259	274	233	281	183	232	260	264
South Dakota	45	48	43	40	27	17	38	33
Tennessee	399	416	374	372	311	376	451	378
Texas	2,153	2,235	2,063	2,037	1,606	1,789	2,030	1,997
Utah	230	242	225	191	169	213	217	198
Vermont	76	70	75	79	61	56	85	80

Table 13.—PATENTS ISSUED TO RESIDENTS OF THE UNITED STATES—Continued

(1975–1982)[1]

State/Territory	1975	[2]1976	[2]1977	1978	1979	1980	1981	1982
Virgin Islands	19	7	9	4	7	7	3	2
Virginia	644	696	637	600	426	511	618	564
Washington	530	595	561	540	449	518	534	505
West Virginia	126	162	162	172	134	144	161	150
Wisconsin	1,041	948	882	846	618	760	806	748
Wyoming	34	43	38	31	32	35	43	19
U.S. Air Force[3]	0	1	1	0	0	1	0	0
U.S. Navy[3]	0	0	0	1	0	0	0	0
TOTAL	49,494	51,808	47,292	44,482	34,383	38,134	43,194	39,099

[1] Data includes design, plant, and reissue patents.
[2] The Transition Quarter, July 1, 1976, to September 30, 1976, has been omitted.
[3] Represents residents of the United States with military addresses.

Table 14.—UNITED STATES PATENT APPLICATIONS FILED BY RESIDENTS OF FOREIGN COUNTRIES

(1979–1982)

Country	1979	1980	1981	1982
Antigua	0	0	1	0
Argentina	72	54	62	40
Australia	630	685	718	756
Austria	463	399	517	458
Bahamas	13	5	8	5
Bahrain	1	1	0	0
Barbados	1	0	0	0
Belgium	408	389	403	456
Bermuda	5	2	1	1
Bolivia	4	0	2	1
Brazil	73	61	68	66
British Virgin Islands	0	0	2	1
Brunei	0	0	1	0
Bulgaria	36	39	36	34
Canada	2,230	2,289	2,413	2,538
Cayman Islands	0	0	0	1
Chile	8	9	12	11
China, People's Republic of	12	12	5	16
Colombia	9	5	5	19
Congo	1	1	0	0
Costa Rica	8	10	0	1
Cuba	4	2	1	1
Cyprus	1	1	1	1
Czechoslovakia	79	88	82	79
Denmark	273	213	275	322
Dominican Republic	0	3	1	1
Ecuador	1	1	2	0
Egypt	8	3	2	3
El Salvador	0	0	1	0
EPO	0	0	0	1

Table 14.—UNITED STATES PATENT APPLICATIONS FILED BY RESIDENTS OF FOREIGN COUNTRIES—Continued

(1979-1982)

Country	1979	1980	1981	1982
Finland	261	294	275	342
France	3,152	3,533	3,519	3,732
Gabon	0	0	1	1
Germany, Dem. Republic of	126	109	88	119
Germany, Fed. Republic of	9,091	9,872	10,133	10,979
Gilbert Islands	0	2	0	0
Greece	20	15	31	65
Greenland	0	1	0	0
Guatemala	5	2	2	6
Guina	0	0	1	1
Haiti	2	0	2	2
Honduras	0	0	1	2
Hong Kong	112	118	103	157
Hungary	182	201	207	253
Iceland	4	2	5	3
India	29	22	18	25
Indonesia	0	9	2	6
Iran	3	2	3	0
Iraq	0	0	1	1
Ireland	44	45	54	68
Israel	248	272	290	359
Italy	1,527	1,520	1,544	1,769
Ivory Coast	0	0	1	1
Jamaica	3	1	0	2
Japan	11,053	13,079	14,375	17,349
Jordan	0	1	1	0
Kenya	1	1	0	0
Korea, Dem. Republic of	2	8	3	2
Korea, Republic of	37	39	55	87
Kuwait	1	12	8	3
Lebanon	4	1	3	1
Liberia	1	0	0	0
Libya	3	0	0	0
Liechtenstein	23	21	28	15
Luxembourg	35	31	44	55
Madagascar	1	0	0	0
Malawi	1	0	0	0
Malaysia	1	4	8	7
Malta	0	1	0	1
Martinique	1	0	0	0
Mauritania	2	0	0	0
Mauritius	0	1	0	0
Mexico	91	83	104	77
Midway Islands	0	0	1	0
Monaco	13	8	6	11
Morocco	0	2	2	1
Nauru	0	1	0	0
Netherlands	1,035	1,035	1,109	1,191
New Zealand	113	132	126	119
Nicaragua	4	0	0	0

Table 14.—UNITED STATES PATENT APPLICATIONS FILED BY RESIDENTS OF FOREIGN COUNTRIES—Continued

(1979-1982)

Country	1979	1980	1981	1982
Nigeria	3	4	1	0
Niue	0	1	0	0
Norway	168	127	160	156
Pakistan	0	2	2	2
Panama	3	2	1	0
Paraguay	0	1	2	0
Peru	0	3	2	3
Philippines	9	17	12	28
Poland	87	71	50	30
Portugal	6	7	3	9
Romania	21	8	13	12
San Marino	1	3	0	0
Saudi Arabia	0	2	3	13
Senegal	2	0	0	1
Singapore	11	7	5	9
South Africa	217	188	219	250
Soviet Union	550	341	472	376
Spain	177	168	190	175
St. Helena	0	1	0	0
Sudan	1	0	0	0
Swaziland	2	0	0	1
Sweden	1,301	1,256	1,447	1,347
Switzerland	1,967	1,994	1,946	1,973
Syria	0	0	0	1
Taiwan	254	369	423	583
Tanzania	0	0	1	0
Thailand	6	5	4	5
Trinidad & Tobago	6	0	1	2
Tunisia	3	2	4	1
Turkey	4	5	2	3
United Arab Emirates	0	0	2	0
United Kingdom	4,423	4,470	4,474	4,807
Upper Volta	1	0	0	0
Uruguay	9	27	11	17
Vanuatu	0	3	0	0
Venezuela	22	18	30	25
Vietnam, Republic of	0	1	0	0
Yugoslavia	29	24	31	28
Zambia	0	0	0	2
Zimbabwe	1	3	1	0
Total	40,854	43,882	46,283	51,483

Table 15.—PATENTS ISSUED BY THE UNITED STATES TO RESIDENTS OF FOREIGN COUNTRIES

(1975–1982)[1]

Country	1975	[2]1976	[2]1977	1978	1979	1980	1981	1982
Algeria	0	1	0	1	0	0	0	0
Argentina	32	22	24	46	90	42	24	15
Australia	253	299	272	297	252	269	360	330
Austria	275	339	297	287	221	253	299	227
Bahamas	17	9	5	8	7	4	6	4
Bahrain	0	0	0	0	0	0	1	0
Belgium	302	337	306	280	213	235	296	220
Bermuda	3	2	4	1	1	2	5	1
Bolivia	9	6	0	3	0	7	1	0
Brazil	22	20	25	30	12	24	29	26
Bulgaria	15	27	36	32	18	19	33	16
Burma	0	0	0	1	1	1	0	0
Canada	1,324	1,411	1,388	1,338	1,105	1,118	1,330	1,145
Cayman Islands	0	0	0	0	0	0	0	1
Chile	5	7	2	4	3	2	3	2
China, People's Republic of	0	0	2	0	1	2	4	1
Colombia	6	4	6	12	5	7	6	4
Congo	4	12	11	1	0	1	1	0
Costa Rica	2	8	0	1	11	2	7	4
Cuba	1	1	1	3	1	3	3	0
Cyprus	2	1	2	1	0	2	0	1
Czechoslovakia	121	110	109	93	52	56	48	55
Dahomey	1	1	0	0	0	0	0	0
Denmark	176	210	172	183	133	147	160	139
Dominican Republic	1	0	1	1	0	0	1	0
Ecuador	6	7	1	0	1	0	0	0
Egypt	1	4	1	0	1	1	3	2
El Salvador	1	5	3	2	5	1	0	0
Ethiopia	0	0	2	2	0	0	0	0
Finland	102	112	99	141	85	124	147	143
France	2,399	2,666	2,255	2,225	1,728	2,015	2,258	2,123
Germany, Dem. Republic of	0	0	1	3	0	22	42	58
Germany, Fed. Republic of	5,780	6,800	5,902	5,883	4,935	5,354	6,436	5,697
Greece	3	17	11	11	7	5	7	11
Greenland	0	0	0	0	0	0	0	1
Guatemala	3	5	3	4	0	1	1	0
Guinea	0	0	1	1	0	0	0	0
Haiti	4	4	1	0	2	2	1	2
Honduras	0	1	1	1	1	0	0	0
Hong Kong	19	46	32	33	30	48	60	71
Hungary	64	66	69	82	57	77	98	102
Iceland	5	6	3	13	35	11	1	0
India	17	14	16	20	15	10	13	2
Indonesia	6	5	0	4	5	3	2	5
Iran	4	5	3	5	8	7	2	0
Ireland	26	34	21	32	21	22	23	26
Israel	95	119	97	107	92	105	134	123
Italy	762	866	810	761	638	742	933	834
Ivory Coast	0	0	1	0	0	0	0	1
Jamaica	1	0	3	3	1	4	0	0

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Table 15.—PATENTS ISSUED BY THE UNITED STATES TO RESIDENTS OF FOREIGN COUNTRIES—Continued

(1975–1982)[1]

Country	1975	[2]1976	[2]1977	1978	1979	1980	1981	1982
Japan	5,899	7,383	6,462	7,099	5,827	6,626	8,459	8,789
Jordan	0	0	0	1	1	0	0	0
Kenya	0	2	1	0	0	4	0	1
Kiribati	0	0	0	0	0	0	1	0
Korea, Dem. Republic of	0	0	0	0	0	0	0	1
Korea, Republic of	8	9	5	14	9	9	20	18
Kuwait	1	0	0	1	2	0	0	0
Lebanon	7	4	0	3	0	0	2	1
Liberia	0	0	0	1	0	0	1	0
Libya	1	0	1	2	0	1	0	0
Liechtenstein	10	14	10	12	10	14	17	16
Luxembourg	13	20	14	21	19	17	26	34
Madagascar	0	0	0	1	1	0	0	0
Malawi	0	0	0	0	0	0	1	0
Malaysia	0	3	2	5	2	1	1	2
Mali	0	0	0	2	0	1	0	0
Mauritania	1	0	0	0	0	0	1	0
Mauritius	0	0	0	0	0	0	1	0
Mexico	71	78	65	42	39	43	40	43
Monaco	9	8	5	9	1	6	7	6
Morocco	1	0	4	1	1	1	0	0
Namibia	0	0	0	0	0	1	0	0
Netherlands	665	709	770	680	579	585	700	630
New Zealand	24	37	32	46	28	51	62	54
Nicaragua	1	3	2	3	0	0	1	0
Nigeria	1	1	1	3	1	1	2	1
Norway	106	110	113	103	89	80	89	87
Pakistan	0	2	1	0	0	1	0	1
Panama	5	4	3	0	1	2	0	1
Paraguay	0	0	1	1	0	2	0	1
Peru	5	8	6	1	3	1	0	4
Philippines	7	8	10	8	6	3	6	8
Poland	32	35	26	29	30	30	34	37
Portugal	7	5	3	5	1	1	3	12
Romania	21	15	20	11	7	16	13	3
Saudi Arabia	2	0	3	0	1	2	0	1
Senegal	0	0	0	0	1	0	2	0
Singapore	6	4	3	5	2	5	4	2
South Africa	74	89	81	86	67	80	106	79
Soviet Union	454	435	399	386	398	403	427	242
Spain	87	105	114	95	63	65	71	54
Sri Lanka	0	0	2	0	0	1	0	0
Sudan	2	0	1	0	0	0	0	0
Swaziland	0	0	0	0	0	1	0	0
Sweden	939	1,118	1,005	918	680	778	889	814
Switzerland	1,354	1,603	1,438	1,374	1,107	1,133	1,313	1,216
Syria	0	1	0	0	0	0	0	0
Taiwan	28	29	49	40	35	58	90	89
Tanzania	0	0	1	0	0	0	0	0
Thailand	2	1	3	0	1	3	1	1

Table 15.—PATENTS ISSUED BY THE UNITED STATES TO RESIDENTS OF FOREIGN COUNTRIES—Continued

(1975-1982)[1]

Country	1975	[2]1976	[2]1977	1978	1979	1980	1981	1982
Trinidad & Tobago	3	1	3	4	4	2	1	1
Tunisia	0	0	1	0	0	3	0	2
Turkey	0	0	2	1	1	4	1	1
Uganda	1	1	0	0	0	0	0	0
United Kingdom	3,071	3,443	2,831	2,850	2,203	2,281	2,616	2,357
Upper Volta	0	0	0	0	0	0	1	0
Uruguay	1	2	0	0	0	0	4	26
Vanuatu	0	0	0	0	0	0	1	0
Venezuela	9	2	9	8	13	11	12	12
Vietnam, Republic of	2	1	1	1	0	1	0	0
Yemen	0	0	0	0	1	0	0	0
Yugoslavia	10	5	7	9	7	13	10	14
Zambia	0	1	0	0	0	0	0	0
Zimbabwe	2	1	4	1	0	1	1	0
TOTALS	24,821	28,909	25,513	25,838	21,035	23,093	27,816	26,053

[1] Data includes design, plant, and reissue patents.
[2] The Transition Quarter, July 1, 1976, to September 30, 1976, has been omitted.

Table 16.—PATENT CLASSIFICATION ACTIVITY

(1979-1982)

Classification Activity	1979	1980	1981	1982
PATENTS RECLASSIFIED AND PROCESSED[1]				
Cross-Reference U.S. Patents	314,723	219,203	200,652	244,105
Foreign Patents	239,000	232,000	180,000	170,000
Original U.S. Patents	149,151	145,206	112,420	106,416
Total Patents Reclassified	702,874	596,409	493,072	520,521
ORIGINAL PATENTS PROFESSIONALLY RECLASSIFIED[2]				
Completed Projects			113,284	82,694
Pro Rata Count of Projects[3]			134,902	105,332
SUBCLASSES ESTABLISHED	6,883	5,261	5,287	4,667

[1] All professional and clerical processing has been completed. Users may now access these documents via their new classifications.
[2] Measured in terms of original patents, data available for 1981 only. Professionals includes classifiers, technicians, and patent examiner detailees. Data does not include clerical processing.
[3] Original patents reclassified during the fiscal year irrespective of project completion status.

Table 17.—SUMMARY OF TRADEMARK EXAMINING ACTIVITIES

(1976–1982)[1]

Item	1976	1977	1978	1979	1980	1981	1982
Applications for Registration Filed	37,074	44,539	50,106	50,672	52,149	55,152	73,621
Disposal of Trademark Applications:							
Applications Maturing to Registration	31,266	27,431	31,623	24,961	16,366	34,748	43,630
Applications Abandoned	7,986	9,055	8,267	10,061	8,023	14,589	19,350
Applications Approved for Publication	31,266	27,431	31,623	24,961	28,974	34,759	45,621
Certificates of Registration Issued:[2]							
1946 Act Principal Register	27,286	24,256	28,236	21,496	14,149	30,223	37,506
1946 Act Supplemental Register	816	770	685	714	465	1,083	1,519
Total	28,102	25,026	28,921	22,210	14,614	31,306	39,025
Renewal of Registration:							
Applications Filed	6,833	5,854	5,567	5,623	5,892	5,693	5,760
Applications Abandoned	121	18	52	32	35	62	23
Registrations Renewed	6,914	6,215	5,254	5,404	5,862	5,884	6,070
Affidavits, Sec 8:							
Affidavits Filed	15,665	13,463	13,351	13,864	13,633	17,071	15,068
Affidavits Disposed	12,376	12,796	9,681	7,560	11,332	14,936	16,970
Affidavits for Benefits Under Sec. 12(c):							
Affidavits Filed	24	30	77	10	85	40	55
Affidavits Abandoned	0	3	0	3	0	0	0
Published Under Sec. 12(c)	56	21	84	34	54	77	71
Pendency Time of Average Trademark Application:							
Between Filing and Examiner's First Action[3]	3.0	3.0	6.0	10.2	11.5	11.0	8.4
Between Filing and Registration/ Abandonment[3]	16.0	14.8	16.2	17.9	24.9	24.0	21.3

[1] The Transition Quarter, July 1, 1976, to September 30, 1976, has been omitted.

[2] A single certificate of registration is issued for an application covering more than one class, but elsewhere in this table, applications are counted extra times for extra classes.

[3] Average pendency time in months.

Table 18.—TRADEMARK APPLICATIONS FILED FOR REGISTRATION AND RENEWAL AND TRADEMARK AFFIDAVITS FILED

(1963-1982)

Year	For Regis.	For Renewal	Section 8 Affidavit	Sec. 12(c) Affidavit
1963	24,224	2,604	12,752	311
1964	25,574	2,824	12,055	261
1965	26,657	3,049	13,923	308
1966	28,438	3,695	13,705	518
1967	27,628	3,844	11,156	341
1968	28,292	4,089	12,116	231
1969	31,268	6,267	13,890	90
1970	33,807	6,329	14,283	59
1971	32,803	6,189	12,263	76
1972	33,741	5,980	13,256	46
1973	[1]36,204	5,614	13,605	74
1974	34,193	5,633	13,259	55
1975	33,898	5,687	14,644	29
1976[2]	37,074	6,833	15,665	24
1977[2]	44,539	5,854	13,463	30
1978	50,106	5,567	13,351	77
1979	50,672	5,623	13,864	10
1980	52,149	5,892	13,633	85
1981	55,152	5,693	17,071	40
1982	73,621	5,760	15,068	55

[1] Revised.
[2] The Transition Quarter, July 1, 1976, to September 30, 1976, has been omitted.

Table 19.—SUMMARY OF PENDING TRADEMARK APPLICATIONS AND TRADEMARK AFFIDAVITS

(As of September 30, 1982)

Stage of Processing	Applications		Affidavits	
	For Regis.	For Renewal	Under Sect. 8	Sect. 12(c)
IN PREEXAMINATION PROCESSING	25,564	—	—	—
UNDER EXAMINATION				
Amended, awaiting action by examiner	17,915	0	0	0
Awaiting first action by examiner	25,104	279	115	2
Awaiting subsequent action (by applicant, on appeal, in adversary proceedings, in clerical processing)	39,634	770	2,075	2
Total Under Examination	82,653	1,049	2,190	4
Total	108,217	1,049	2,190	4
IN POSTEXAMINATION PROCESSING (Includes all applications in all phases of publication and issue)	22,312	61	0	15
TOTAL IN PATENT AND TRADEMARK OFFICE	130,529	1,110	2,190	19

Table 20.—SUMMARY OF CONTESTED TRADEMARK CASES

(Within the Patent and Trademark Office)

Trademark Trial and Appeal Board	Ex Parte	Cancel	Conc. Use	Inter.	Oppos.	Total
Receipts						
Cases Pending as of 9/30/81	256	536	30	1	2,120	2,943
Cases Filed During FY 1982	706	456	23	0	1,624	2,809
Total Receipts	962	992	53	1	3,744	5,752
Disposals	528	354	9	1	1,470	2,362
Total Cases Pending as of 9/30/82	434	638	44	0	2,274	3,390

Table 21.—TRADEMARKS REGISTERED, RENEWED, AND PUBLISHED UNDER SECTION 12(c)[1]

(1963-1982)

Year	Registered[2]	Renewed	Published Under 12(c)
1963	18,266	2,450	322
1964	20,689	2,834	329
1965	19,452	2,870	336
1966	18,671	3,441	497
1967	20,604	3,820	403
1968	20,385	3,726	290
1969	20,306	5,442	182
1970	21,974	6,370	103
1971	21,686	6,380	112
1972	21,062	5,836	56
1973	25,432	5,398	69
1974	24,838	5,984	54
1975	27,324	5,474	25
1976[3]	28,102	6,914	56
1977[3]	25,026	6,251	21
1978	28,921	5,254	84
1979	22,210	5,404	34
1980	14,614	5,862	54
1981	31,306	5,884	77
1982	39,025	6,070	71

[1] Includes withdrawn numbers.
[2] Certificates of registration issued.
[3] The Transition Quarter, July 1, 1976,to September 30, 1976, has been omitted.

Table 22.—UNITED STATES TRADEMARK APPLICATIONS FILED BY RESIDENTS OF FOREIGN COUNTRIES

(1979–1982)

Country	1979	1980	1981	1982
Algeria	1	0	1	0
Andorra	1	0	0	0
Argentina	20	43	13	21
Australia	130	109	136	176
Austria	36	50	35	120
Bahamas	3	0	4	20
Bahrain	0	0	0	1
Barbados	0	0	3	1
Belgium	37	19	49	93
Benelux Conv.	0	0	0	1
Bermuda	4	19	17	7
Brazil	43	23	42	66
British Virgin Islands	0	4	0	0
Canada	797	702	859	1,342
Cayman Islands	0	4	0	14
Chile	4	0	12	9
China, People's Republic of	0	19	33	73
Colombia	6	12	7	22
Costa Rica	2	0	3	1
Cuba	1	0	0	0
Czechoslovakia	7	0	3	2
Denmark	57	85	54	87
Dominican Republic	3	0	6	2
Ecuador	0	0	1	2
Egypt	0	0	3	0
El Salvador	1	0	2	1
Fiji	0	0	1	0
Finland	27	19	37	64
France	568	807	689	1,293
Germany, Dem. Republic of	0	0	3	5
Germany, Fed. Reputic of	671	833	696	1,196
Ghana	0	0	0	2
Greece	5	0	4	6
Guatemala	0	4	3	5
Guyana	5	0	0	1
Haiti	0	0	0	1
Honduras	2	0	0	0
Hong Kong	71	105	90	169
Hungary	0	12	3	14
Iceland	0	0	4	14
India	7	12	4	2
Indonesia	1	0	0	2
Iran	8	0	6	1
Ireland	18	8	19	10
Israel	37	27	22	46
Italy	333	365	367	1,020
Jamaica	5	0	0	5
Japan	445	469	613	911
Kenya	2	0	0	1
Kiribati	0	0	1	0

Table 22.—UNITED STATES TRADEMARK APPLICATIONS FILED BY RESIDENTS OF FOREIGN COUNTRIES—Continued

(1979–1982)

Country	1979	1980	1981	1982
Korea, Dem. Republic of	0	0	0	1
Korea, Republic of	9	0	14	21
Kuwait	1	0	0	0
Lebanon	1	0	5	0
Liberia	3	0	2	1
Liechtenstein	21	31	20	20
Luxembourg	6	0	1	9
Macau	0	0	3	1
Madagascar	2	4	9	1
Malaysia	1	0	1	0
Mexico	46	62	58	90
Monaco	5	0	3	17
Morocco	0	0	0	1
Nauru	0	0	6	1
Netherlands	89	113	120	276
New Zealand	38	50	26	71
Nicaragua	0	12	1	0
Niger	3	4	0	0
Norway	23	16	19	28
Panama	13	8	10	21
Paraguay	0	16	0	0
Peru	6	0	2	1
Philippines	6	4	15	4
Poland	2	8	3	4
Portugal	15	16	59	98
Qatar	0	0	1	0
Romania	4	0	2	4
Rwanda	1	0	0	0
San Marino	0	0	1	0
Saudi Arabia	1	0	2	1
Sierra Leone	1	0	0	0
Singapore	13	0	10	12
South Africa	29	0	21	48
Soviet Union	5	35	9	16
Spain	100	159	107	160
Sri Lanka	0	0	1	0
Surinam	0	0	2	0
Swaziland	3	0	0	0
Sweden	129	167	124	236
Switzerland	243	268	250	380
Syria	0	0	1	0
Taiwan	40	31	38	82
Thailand	1	12	2	1
Trinidad & Tobago	1	12	1	4
Uganda	1	0	0	0
United Kingdom	582	547	597	945
Venezuela	2	4	5	22
Vietnam, Republic of	0	0	2	1
Yugoslavia	1	0	4	48
Zimbabwe	1	0	0	1
Total	4,806	5,329	5,402	9,456

Table 23.—TRADEMARKS REGISTERED BY THE UNITED STATES TO RESIDENTS OF FOREIGN COUNTRIES

(1979-1982)

Country	1979	1980	1981	1982
Argentina	6	4	14	6
Australia	38	29	52	40
Austria	28	20	32	16
Belgium	22	11	30	16
Brazil	17	9	22	21
Canada	257	180	288	378
Chile	0	1	1	0
China, Peoples Republic of	3	3	6	27
Colombia	3	1	2	0
Cuba	0	0	1	0
Czechoslovakia	3	3	4	1
Denmark	32	14	27	15
El Salvador	2	0	0	1
Finland	13	15	8	12
France	248	174	266	355
Germany, Federal Republic of	345	223	358	408
Greece	1	1	6	2
Hong Kong	31	19	52	33
Hungary	1	0	0	1
Iceland	2	0	2	0
India	1	0	0	2
Ireland	10	2	6	7
Israel	6	3	6	14
Italy	137	98	155	194
Jamaica	1	0	0	0
Japan	231	137	271	335
Korea, Republic of	11	3	9	2
Kuwait	0	1	1	0
Lebanon	0	1	0	0
Liberia	0	0	1	0
Liechstenstein	5	3	3	9
Luxembourg	0	1	0	1
Mexico	35	20	18	20
Monaco	0	1	1	0
Netherlands	70	21	51	36
New Zealand	6	8	19	14
Norway	5	5	2	7
Panama	1	1	4	6
Peru	2	0	2	0
Philippines	1	0	0	1
Portugal	8	2	2	4
Romania	1	0	3	1
Saudi Arabia	0	2	0	0
Singapore	0	1	0	0
South Africa	20	7	20	9
Soviet Union	7	1	5	1
Spain	58	46	54	76
Sweden	55	40	52	91
Switzerland	109	66	123	144
Taiwan	1	2	3	4

Table 23.—TRADEMARKS REGISTERED BY THE UNITED STATES TO RESIDENTS OF FOREIGN COUNTRIES—Continued

(1978-1981)

Country	1979	1980	1981	1982
Thailand	1	0	0	0
Turkey	1	0	0	0
United Kingdom	263	144	225	183
Venezuela	4	0	1	5
Yugoslavia	1	0	0	0
Total	2,103	1,323	2,208	2,498

Table 24.—SUMMARY OF SERVICES FURNISHED TO THE PUBLIC AND GOVERNMENT AGENCIES

(For a Fee or Without Charge)

Item Service Furnished	Totals
ASSIGNMENTS[1]:	
Abstracts of Title	927
Certified Copies of Documents	11,860
Documents Recorded	89,521
Photo Copies Prepared	20,327
Title Reports	22,132
Transfers of Records from Pending to Public Files[2]	47,006
CERTIFIED DOCUMENTS[3]	91,256
DRAFTING:	
Accomplishments by P.T.O. Draftsmen:	
Drawing Sheets Inspected	427,992
Total Drawings Sheets Corrected[4]	10,574
Lost Drawings Replaced	409
Drawings and Corrections	6,637
Accomplishments by Bonded Draftsmen:	
Corrections Requested	4,152
Corrections Completed	2,508
Ending Inventory	1,644
PATENT AND TRADEMARK COPIES SUPPLIED:	
National Archives[2]	178,572
Foreign Exchange Programs[2]	2,279,628
Depository Library Subscriptions	1,071,432
Orders Received from the Public	2,684,390
Total Copies Supplied	6,214,022
PATENT AND TRADEMARK PAGES REPRODUCED[5]	20,975,781

[1] Briefs of all legal documents recorded against a specific patent or trademark property.
[2] Without charge.
[3] Copies of patent and trademark official file wrapper copies.
[4] Corrections to patent and trademark application drawings.
[5] To fill orders for copies of patents and trademarks.

Table 25.—ACTIONS ON PETITIONS TO THE COMMISSIONER OF PATENTS AND TRADEMARKS

(During Fiscal Year 1982)

Nature of the Petition	Totals
PATENT MATTERS	
Acceptance of:	
Amendments Filed After Payment of Issue Fee	107
Late Assignments	39
Late Issue Fees	681
Late Priority Papers	92
Access	77
Certificates of Correction	7,379
Deferment of Issue	86
Filing Date	253
Interference	76
Make Special:	
Infringement	155
Manufacture	16
Other	629
New Notice of Allowance	122
Public Use	2
Reexamination Proceedings	60
Reissue in Divisions	9
Restriction	75
Revivals	1,489
Rule 47 (37 CFR 1.47)	784
Second Extensions of Time	8,698
Supervisory Authority	409
Withdrawal of Attorney	1,781
Withdrawal from Issue	148
Change of Inventorship	9
Withdrawals of Holding of Aband/Pat. Lapse	701
Total Actions on Patent Petitions	23,877
OTHER RELATED PATENT MATTERS	
Applications Involving the Duty of Disclosure:	
Receipts	141
Disposals:	
Abandoned	103
Not Stricken	26
Not Rejected Under 37 CFR 1.56(d)	15
Stricken	3
Applications Withdrawn	0
Total Disposals	147
Protests Filed in:	
Original Applications	13
Reissue Applications	34
Total Protests Filed	47
TRADEMARK MATTERS	
Acceptance of Late Filed:	
Fees (Excluding Section 8)	3
Papers (Excluding Section 8)	21
Decision by Examiner	5
Extensions of Time	12
Interferences	3
Make Special and Revive	1
Requesting Recordation in Assignment Division	18
Restore Jurisdiction to Examiner	1
Sections 8 or 15	19

Table 25.—ACTIONS ON PETITIONS TO THE COMMISSIONER OF PATENTS AND TRADEMARKS—Continued

(During Fiscal Year 1982)

Nature of the Petition	Totals
Supervisory Authority (2.146(a)(3))	23
Miscellaneous	16
Total Actions on Trademark Petitions	122
PETITIONS AWAITING ACTION AS OF 9/30/82:	
Patent Matters	758
Trademark Matters	32

Table 26.—CASES IN LITIGATION

(Selected Courts of the United States)

Courts of the United States	Adminis. Review	Pat	TM	Total
SUPREME COURT				
Petitions for Writ of Certiorari				
Cases Pending as of 9/30/81	0	0	0	0
Cases Filed During FY 82	1	0	0	1
Total	1	0	0	1
Disposals:				
Denied	0	0	0	0
Dismissed	0	0	0	0
Granted	0	0	0	0
Affirmed	0	0	0	0
Total Disposals	0	0	0	0
Total Cases Pending as of 9/30/82	1	0	0	1
COURTS OF APPEALS FOR THE DISTRICT OF COLUMBIA				
Cases Pending as of 9/30/81	3	2	0	5
Cases Filed During FY 82	3	1	0	4
Total	6	3	0	9
Disposals:				
Affirmed	1	0	0	1
Dismissed	3	1	0	4
Reversed	1	0	0	1
Remanded	0	1	0	1
Total Disposals	5	2	0	7
Total Cases Pending as of 9/30/82	1	1	0	2
DISTRICT COURTS FOR THE DISTRICT OF COLUMBIA				
Cases Pending as of 9/30/81	2	10	0	12
Cases Filed During FY 82	6	6	0	12
Total	8	16	0	24
Disposals:				
Affirmed	0	0	0	0
Dismissed	6	2	0	8
Reversed	0	1	0	1
Affirmed-in-Part	0	0	0	0
Remanded	0	2	0	2
Total Disposals	6	5	0	11
Total Cases Pending as of 9/30/82	2	11	0	13

Table 26.—CASES IN LITIGATION—Continued

(Selected Courts of the United States)

Courts of the United States	Ex Parte		Inter Partes		Total
	Pat	TM	Pat	TM	
COURT OF CUSTOMS AND PATENT APPEALS					
Cases Pending as of 9/30/81	57	3	15	12	87
Cases Filed During FY 82	72	6	15	21	114
Total Receipts	129	9	30	33	201
Disposals:					
Affirmed	48	2	13	9	72
Affirmed-in-Part	5	0	0	0	5
Dismissed:					
Appellant's Motion	15	0	2	3	20
Appellee's Motion	0	0	0	0	0
Joint Motion	8	1	0	3	12
Want of Prosecution	0	0	0	0	0
Remanded	7	1	0	2	10
Reversed	14	2	4	1	21
Writs of Mandamus:					
Denied	2	0	0	0	2
Granted	0	0	0	0	0
Dismissed	0	0	0	0	0
Total Disposals	99	6	19	18	142
Total Cases Pending as of 9/30/82	30	3	11	15	59

Notices of Appeals to Court of Customs and Patent Appeals received 10/1/81-9/30/82:
- Ex parte patents and trademarks ..... 95 (16) not perfected
- Inter partes patents ..... 17 (1) not perfected
- Inter partes trademarks ..... 32 (3) not perfected

Table 27.—CASES IN LITIGATION

(Other Jurisdictions-Reported Cases)

Month	Patent Suits				Trademark Suits			
	Filed	Pat's involved	Decs.	Pat's involved	Filed	TM's involved	Decs.	TM's involved
October 1981	38	63	14	16	59	194	12	35
November	45	61	12	13	37	104	18	42
December	51	79	13	17	57	148	24	57
January	33	74	15	18	49	179	21	46
February	39	79	15	16	39	134	13	31
March	42	67	23	46	66	238	37	116
April	57	67	18	22	59	183	25	77
May	42	76	16	25	73	247	40	107
June	43	65	27	42	60	253	20	51
July	46	66	11	13	78	323	27	81
August	41	71	18	34	48	187	29	134
September 1982	56	82	17	29	48	148	17	50
Totals	533	850	199	291	673	2,338	283	827

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