



The 21st Century Strategic Plan

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THE 21ST CENTURY STRATEGIC PLAN

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EXECUTIVE OVERVIEW

Today, the United States Patent and Trademark Office (USPTO) is under siege. Patent application filings have increased dramatically throughout the world. There are an estimated seven million pending applications in the world's examination pipeline, and the annual workload growth rate in the previous decade was in the range of 20-30 percent. Technology has become increasingly complex, and demands from customers for higher quality products and services have escalated. Our applicants are concerned that the USPTO does not have access to all of the fees they pay to have their patent and trademark applications examined, thereby jeopardizing the benefits intellectual property rights bring to our national economy. In the United States, these demands have created a workload crisis. The Congress, the owners of intellectual property, the patent bar, and the public-at-large have all told us that we must address these challenges aggressively and promptly.

We agree. We believe that the USPTO must transform itself into *a quality-focused, highly productive, responsive organization supporting a market-driven intellectual property system*. And we also believe that we have the tools, the skills, the will and the plan to do so.

- The tools: The technology exists to create a high-quality, cost-effective, responsive, paperless patent examination process, building on our current success in automating trademarks.
- The skills: We have a cadre of talented staff with the technical expertise and the vision to help guide and support the technical and, even more important, the cultural transformation of the USPTO.
- The will: Organizational transformations require sustained commitment and constancy of purpose “from the top.” The USPTO leadership is dedicated to this task.
- The plan: This strategic plan lays out our approach to creating, over the next five years, an *agile, capable and productive* organization fully worthy of the unique leadership role the American intellectual property system plays in both the American and the global economies.

This new 21st Century Strategic Plan is aggressive and far-reaching. However, anything less would fall short of the expectations of the U.S. Congress, the applicants for, and owners of, patents and trademarks, the patent and trademark bar, and the public-at-large. Additionally, the failure to adopt this strategic plan would have negative consequences. We would be unable to implement our quality and e-Government initiatives, pendency would rise to uncontrollable levels, and our costs would continue to grow.

After the implementation of this strategic plan:

- Market forces will drive our business model.
- Geography and time will be irrelevant when doing business with the USPTO.
- We will strengthen our ability to be ranked as one of the highest quality, most-efficient intellectual property organizations in the world.
- Our products and services will be tailored to meet the needs of customers.
- Examination will be our core expertise.
- Our employees will be recognized as expert decision makers.
- Independent inventors, U.S. industry and the public will benefit from stronger, more enforceable intellectual property rights worldwide.
- Our workplace will become a state-of-the art facility designed for the 21st Century.
- Following implementation of this plan and its underlying assumptions, including the enactment of legislation to restructure fees, statutory fees will remain steady for the foreseeable future.

ABOUT THE 21ST CENTURY STRATEGIC PLAN

This five-year strategic plan reflects both a thorough internal process review and a systematic attempt to incorporate the best thinking of our applicants, our counterparts in Europe, Japan and other countries, and our stakeholders, including our Public Advisory Committees. Key stakeholders also include our dedicated employees, without whose commitment the strategic plan could not have been developed and its success could not be assured.

The strategic plan takes a global perspective by envisioning the patent and trademark systems of the future that American innovators would need to remain competitive around the world. It is built on the premise that American innovators want to obtain enforceable intellectual property rights here and abroad as seamlessly and cost-effectively as possible. It emphasizes the opportunity for the USPTO to collaborate with intellectual property organizations in automation, global patent classification, and exploitation of search results. Finally, the plan is predicated on changes to the way all players in the intellectual property system do business with the USPTO and the way USPTO employees respond.

The strategic plan is supported with detailed documentation analyzing all of the related issues, a five-year implementation plan with identified critical tasks, proposed revisions to the fiscal year 2003 budget request to enable timely implementation of the strategic plan, and corresponding proposed legislation and regulations necessary for a successful multi-year implementation.

This strategic plan cannot succeed without enactment of the legislation changing the USPTO's current fee schedule and access to revenue generated in fiscal year 2003, to the extent provided in the President's fiscal year 2003 Budget, revisions to current rules, and legislation for streamlining the patent and trademark systems to facilitate these changes. There are a number of variables, such as potential changes in restriction practice and the use of commercial search services that could affect our projected costs and revenues. Once they have been clarified, any ensuing revisions to our program costs and fee schedule will be resolved in the context of the USPTO's annual budget submission to the Congress.

Proof of Concept

To ensure the USPTO proposes appropriate changes to patent and trademark laws, makes changes to internal processes that provide benefits and increased efficiency, and makes sound investment decisions, the initiatives proposed in this plan will be subjected to thorough evaluation. Pilot projects will be initiated and tested wherever necessary. Evaluation plans will incorporate, where appropriate, measurable objectives, critical measures of success, baseline data, and conditions for full implementation.

Performance Measures

This plan contains measurable objectives and milestones for each of the general goals. The annual budget submission to the Congress will provide additional criteria by establishing key measurements and yearly milestones that will be used to determine the USPTO's success in achieving these goals. The annual integrated budget/performance plan is the most efficient and effective way of establishing accountability by making sure that performance measures and milestones are consistent with the views of the Administration and the Congress in the enacted annual budget.

STRATEGIC AGENDA

VISION

The USPTO will lead the way in creating a quality-focused, highly productive, responsive organization supporting a market-driven intellectual property system for the 21st Century.

We believe that quality must permeate every action taken by every employee of the USPTO. The new initiatives in our strategic plan are targeted toward creating a cultural transformation whereby quality is the principal focus of everything we do.

MISSION

The USPTO mission is to ensure that the intellectual property system contributes to a strong global economy, encourages investment in innovation, and fosters entrepreneurial spirit.

In order to accomplish our mission, we have prepared this strategic plan. Provided we receive the funding and statutory changes necessary to implement this new strategy, we will:

- Enhance the quality of patent and trademark examining operations through consolidation of quality assurance activities in fiscal year 2003.
- Achieve 27 months overall patent pendency goal¹ in fiscal year 2008.
- Reduce total patent examiner hires through fiscal year 2008 by 2,400 compared to the 2003 Business Plan.²
- Accelerate processing time by implementing e-Government in Trademarks by November 2, 2003, and in Patents by October 1, 2004.
- Competitively source classification and search functions, and concentrate Office expertise as much as possible on the core government functions.
- Expand our bilateral and multilateral discussions to strengthen intellectual property rights globally and to reduce duplication of effort among offices.

¹ Pendency is a measurement of USPTO's traditional examination processing time; i.e., from filing (under 35 U.S.C. 111(a)) to ultimate disposal.

² The 2003 Business Plan was submitted to the Congress in February 2002 as part of the USPTO's fiscal year 2003 Budget.

STRATEGIC THEMES

To achieve our vision and accomplish our mission, we must transform our organization and become a more agile, more capable and more productive USPTO. The Congress has directed us to (1) improve patent and trademark quality, (2) aggressively implement e-Government to handle the workload associated with the 21st Century economy, and (3) reduce patent and trademark pendency. We have identified three strategic themes that correspond directly to these Congressional requirements:

- 1. Agility: Address the 21st Century Economy by Becoming a More Agile Organization** – We will create a flexible organization and work processes that can handle the increasing expectations of our markets, the growing complexity and volume of our work, and the globalization that characterize the 21st Century economy. We will work, both bilaterally and multilaterally, with our partners to create a stronger, better-coordinated and more streamlined framework for protecting intellectual property around the world. We will transform the USPTO workplace by radically reducing labor-intensive paper processing.
- 2. Capability: Enhance Quality through Workforce and Process Improvements** – We will make patent and trademark quality our highest priority by emphasizing quality in every component of this strategic plan. Through the timely issuance of high-quality patents and trademarks, we will respond to market forces by promoting advances in technology, expanding business opportunities and creating jobs.
- 3. Productivity: Accelerate Processing Times Through Focused Examination** – We will control patent and trademark pendency, reduce time to first Office action, and recover our investments in people, processes and technology.

We will transform the USPTO by adhering to these themes in each of the improvement initiatives upon which this strategic plan is based, as well as in all of our other programs. These initiatives are discussed in more detail under each of the major theme sections.

AGILITY: ADDRESS THE 21ST CENTURY ECONOMY BY BECOMING A MORE AGILE ORGANIZATION

An *agile* organization responds quickly and efficiently to changes in the economy, the marketplace, and the nature and size of workloads. In pursuit of an agile organization, the USPTO will focus both internally and externally.

As a first priority, we have made electronic end-to-end processing of both patents and trademarks the centerpiece of our business model.

We will create a nimble, flexible enterprise that responds rapidly to changing market conditions. We will make the USPTO a premier place to work; we will rely on a smaller cadre of highly trained and skilled employees; and we will place greater reliance on the private sector, including drawing on the strengths of the information industry. We will enhance the quality of work life for our employees by exploring expansion of work-at-home opportunities and moving to the new Carlyle campus facility in Alexandria, Virginia.

Further, we will enhance existing and establish new alliances with our friends in other national and international intellectual property organizations to strengthen American intellectual property rights around the world.

Specific actions, with parenthetical cross-references to the analyses and implementation plans in the Appendices, include:

Implement automation for patent and trademark applications

- Develop a trademark electronic file management system and begin e-Government operations on November 2, 2003, in tandem with implementation of the Madrid Protocol. [E-Government 1]
- Deliver an operational system to process patent applications electronically by October 1, 2004, including electronic image capture of all incoming and outgoing paper documents. [E-Government 2]
- Develop an automated information system to support a post-grant patent review process. [E-Government 3]
- Establish an information technology security program for fully certifying and accrediting the security of automated information systems. [E-Government 4]
- Provide back-up systems to ensure maximum availability of computer systems to examiners, attorneys, the public and other patent and trademark offices by establishing appropriate back-up systems. [E-Government 5]

Expand work-at-home opportunities

- Increase the efficiency and return on investment of our work-at-home program and thereby encourage more employees to participate. [Work-at-Home 1]

Increase flexibility through greater reliance on the private sector or other intellectual property offices

- Increase reliance on the private sector or other intellectual property offices for:
 - Classifying patent documents. [Flexibility 1]
 - Supporting national application and Patent Cooperation Treaty search activities. [Flexibility 2]
 - Transitioning to a new global patent classification system. [Flexibility 3]
 - Classifying trademark goods/services and searching design codes. [Flexibility 4]

Global Development: Streamline intellectual property systems and strengthen intellectual property rights around the world

- Promote harmonization in the framework of the World Intellectual Property Organization and its Standing Committee on the Law of Patents; resolve major issues in a broader context and pursue substantive harmonization goals that will strengthen the rights of American intellectual property holders by making it easier to obtain international protection for their inventions and creations. [Global Development 1]
- Negotiate bilateral and multilateral agreements to facilitate global convergence of patent standards. [Global Development 2]
- Accelerate Patent Cooperation Treaty reform efforts, focusing on the USPTO's proposal for simplified processing. [Global Development 3]
- Develop a "universal" trademark electronic application by leveraging the United States' experience with electronic filing of trademark applications. [Global Development 4]

Share search results with other intellectual property offices

- Reduce duplication of effort and decrease workload by relying on search results obtained via partnerships with other intellectual property offices. [Work Sharing 1]

Planned Agility Accomplishments

- Accelerate processing time by implementing e-Government in Trademarks by November 2, 2003, and in Patents by October 1, 2004.
- Competitively source classification and search functions, and concentrate USPTO expertise as much as possible on core government functions.
- Expand our bilateral and multilateral discussions to strengthen intellectual property rights globally and to reduce duplication of effort among intellectual property offices.

CAPABILITY: ENHANCE QUALITY THROUGH WORKFORCE AND PROCESS IMPROVEMENTS

A *capable* organization has a highly skilled, appropriately sized workforce; it has systems and procedures that enhance the capability of every employee; and it has in place effective quality management processes to ensure high quality work and continuous performance improvement. In other words, a *capable* organization is committed to doing the right job right — the first time and every time. We will be such an organization.

Quality will be assured throughout the process by hiring the people who make the best patent and trademark examiners, certifying their knowledge and competencies throughout their careers at the USPTO, and focusing on quality throughout the examination of patent and trademark applications. By bolstering confidence in the quality of U.S. patents and trademarks, the USPTO will enhance the reliability in the quality of products and services needed to increasingly spur our economy and reduce litigation costs.

Specific actions, with parenthetical cross-references to the analyses and implementation plans in the Appendices, include:

Enhance workforce capabilities by certifying competencies

- Create an enterprise-wide training strategy that meets the needs of the new business model and the e-Government generation. [Transformation 1]
- Restructure the USPTO by redirecting resources to core examination activities, implement revised performance plans to incorporate changes required to implement an e-Government workplace, meet agency-wide standards for senior executives, and implement selected award packages. [Transformation 2 and 3]
- Transform the workforce by exploring alternative organizational concepts and structures. [Transformation 4]
- Ensure that professionals, support staff and supervisors responsible for the patent process possess the requisite skills needed to carry out their responsibilities. [Transformation 5]
- Certification of knowledge, skills and ability in the Trademark Process. [Transformation 6]
- Implement pre-employment testing for patent examiners. [Transformation 7 and 8]
- Recertify the knowledge, skills and abilities of primary examiners to ensure currency in patent law, practice and procedures. [Transformation 9]
- Certify the legal competency and negotiation abilities of patent examiners before promotion to grade 13. [Transformation 10]
- Improve the selection and training of supervisory patent examiners to focus on their primary responsibilities of training patent examiners and reviewing and approving their work. [Transformation 11]

Make improvements in patent and trademark quality assurance techniques

- Enhance the current quality assurance programs by integrating reviews to cover all stages of examination. [Quality 1]
- Expand reviews of primary examiner work. [Quality 2]
- Engineer quality into our processing including the selective expansion of the “second pair of eyes” review³ of work products in such advanced fields of technology as semiconductors, telecommunications, and biotechnology. [Quality 3 and 4]
- Incorporate an evaluation of search quality into the patent work product review process, and survey practitioners on specific applications. [Quality 5 and 6]
- Enhance the reviewable record of prosecution in patent applications. [Quality 7]
- Certify and monitor the quality of searching authorities to ensure that patent searches provided by the private sector contractors or other patent offices are complete and of the highest quality. [Quality 8]

Make process improvements that contribute to enhanced quality through legislation/rule changes

- Propose legislation and/or rule changes that have been identified as critical for the accomplishment of this strategic plan. Continue the process of seeking comments from stakeholders on proposed changes.

Planned Capability Accomplishments

- Enhance the quality of patent and trademark examining operations through consolidation of quality assurance activities in fiscal year 2003.

³ A secondary review of applications for proper claim interpretation and to ensure that the closest prior art has been discovered and correctly applied.

PRODUCTIVITY: ACCELERATE PROCESSING TIMES THROUGH FOCUSED EXAMINATION

We are committed to promoting advances in technology, expansion of business opportunities and creation of jobs through the timely issuance of high quality patents and trademarks. A *productive* organization maximizes its output of work performed. Improved productivity is key to reducing pendency and inventory.

This strategic plan has aggressive timeliness goals: to make available, on average, a first Office action for first-filed U.S. non-provisional patent applications, at the time of 18-month publication, and a patent search report for other patent applications in the same time frame – by far the fastest in the world. This will be accomplished through a redesign of the entire patent search and examination systems based upon multiple-examination tracks, greater reliance on qualified patent search services, and variable, incentive-driven fees. In Trademarks, achieve an average 12-month total pendency. This will be accomplished by a three-track examination system. Likewise, both Patents and Trademarks will restructure the way they do business to be compatible with an e-Government environment.

Specific actions, with parenthetical cross-references to the analyses and implementation plans in the Appendices, include:

Transition to market-driven examination options

- Adopt procedures that give greater choice and flexibility to trademark applicants for filing and examination of applications for the registration of trademarks, with a focus on using technology to improve the process and provide a lower cost filing option. [Pendency 1]
- Move from a “one-size-fits-all” patent examination process to a multi-track examination process that leverages search results of other organizations and permits applicants to have freedom of choice in the processing of their applications. This new process will eliminate duplication of effort, encourage greater participation by the applicant community and public, and improve the quality of our patents and decrease processing time. [Pendency 2]
- Address the number of claims presented for examination in an application and the size of applications through fee-setting legislation to reflect the cost of processing complex applications. [Shared Responsibility 1]
- Achieve greater examiner productivity by reducing their prior art search responsibilities. [Pendency 3]

Implement an accelerated examination path option

- Offer patent applicants the market-driven new “rocket docket” option of choosing an accelerated examination procedure with priority processing and a pendency time of no longer than 12 months. [Accelerated Examination 1]

Share responsibility for timely and high quality patents and trademarks between applicant and the USPTO

- Seek enactment of legislation to restructure the USPTO fee schedule by mid-fiscal year 2003, and thereby create incentives that contribute to achievement of USPTO goals. For example, the filing fee will be kept as low as possible to incentivize applicants to file, and the refund provision expanded to allow the USPTO to refund a portion of the search fee if the application is expressly abandoned before search or examination. [Shared Responsibility 1]
- Make patents more reliable by proposing amendments to patent laws to improve a post-grant review of patents. [Shared Responsibility 2]

Planned Productivity Accomplishments

- Achieve first Office action patent pendency of 14.7 months in fiscal year 2008.
- Achieve an interim patent pendency goal of 27 months by fiscal year 2008.
Note: The USPTO will continue to work toward reducing pendency and pursue the long-term optimum goal of 18 months pendency beyond the five-year horizon of this strategic plan. Our best estimate is that it will take at least a decade to achieve the 18-month goal.
- Reduce total patent examiner hires through fiscal year 2008 by 2,400 compared to the 2003 Business Plan projection. [See Figure 1]

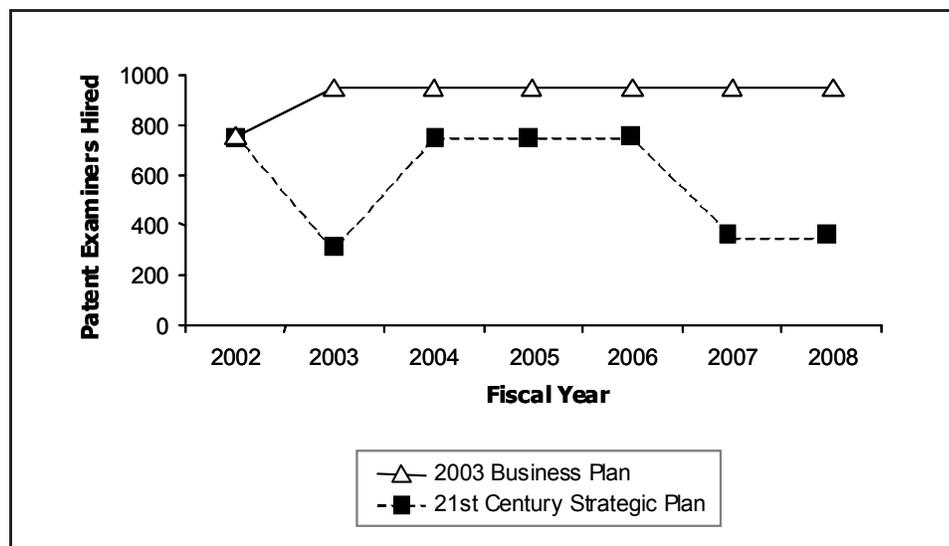


FIGURE 1. PATENT EXAMINER HIRING COMPARISON

Critical Needs

The performance commitments outlined in this strategic plan demand extraordinary effort from every USPTO employee, and the full support of our key stakeholders. Our strategic plan is built around the following critical needs.

MULTILATERAL AND BILATERAL AGREEMENTS

We need to consult with, and receive support of, other patent offices in structuring new bilateral and multilateral initiatives.

LEGISLATION/RULES

We will need enactment of legislation by the Congress to adjust certain patent and trademark fees and access to revenue generated by mid-fiscal year 2003 to the extent provided in the President's fiscal year 2003 Budget. We also will need to promulgate final rules to effect fee changes.

We will need to continue working to develop the proposed legislation and rule changes that have been identified, and continue the process of seeking comments from interested parties on ways to improve our operation.

Labor Relations

We will need to notify the three bargaining units representing USPTO employees of proposed changes and negotiate, where necessary, any changes in working conditions.

BUDGET

We will need enactment of an appropriation for fiscal year 2003 that is consistent with the level of the President's 2003 Budget.

MOVE TO CARLYLE IN ALEXANDRIA, VIRGINIA

We will need to carefully plan the logistics for relocating the USPTO to a consolidated campus in Alexandria, Virginia, while minimizing any adverse effects on employees, applicants and the public. The USPTO is quickly moving into the implementation phase of the relocation of its facilities from 18 buildings spread throughout Crystal City to a single lease in a consolidated campus. This consolidation is expected to save us \$72 million over the 20-year term of the lease, but it is a highly complex and difficult endeavor.

President's Management Agenda

Secretary Donald Evans has committed the Department of Commerce to speedy implementation of the President's Management Agenda. President Bush has stated that true government reform must be based on a reexamination of the role of the Federal Government. In this regard, he has called for "active, but limited" government: a government that empowers states, cities, and citizens to make decisions; ensures results through accountability; and promotes innovation through competition. The reforms that he has identified to help the Federal Government adapt to a rapidly changing world include a government that is:

- Citizen-centered – not bureaucracy-centered;
- Results-oriented – not process-oriented; and
- Market-based – actively promoting, not stifling, innovation, and competition.

This strategic plan supports the President's Management Agenda:

Human Capital – We will provide the tools and the resources to ensure that we have a highly qualified, certified, knowledge-based, accountable workforce. Specifically, we will strengthen pre-employment testing; develop a competency certification program; create a new labor-management paradigm to meet changing business needs; streamline our workforce to maximize quality and efficiency; and focus our training, performance evaluation and assessment environment on our core expertise – examination.

Competitive Sourcing – We are committed to achieving performance enhancements and cost-savings, through the process of competitive sourcing. This process compares the capabilities and costs of commercial service providers with current government program providers. Greater competition drives down costs and yields more innovative solutions. We will seek improved effectiveness in the following areas: patent searching, patent documentation classification, and information technology and logistical support operations.

Improved Financial Management – The USPTO has a strong, fully integrated financial management system in place and we will continue to strengthen our internal controls, improve the timeliness and usefulness of our management information and continue to achieve an unqualified financial audit opinion.

E-Government – We are accelerating deployment of critical automated information systems, particularly electronic end-to-end processing of patent and trademark applications. In addition, we are currently working on ways to improve delivery schedules, reliability, performance, security and the cost of all our automated information systems.

Budget/Performance Integration – We will allocate budget resources to the programs based on the concept of linking them to the achievement of both enterprise-wide goals and individual unit performance. The USPTO will expand the involvement of applicants and the public in assessing the accomplishment of our goals and performance targets.

As a reflection of our commitment to fund our strategic priorities, we conducted a comprehensive review of current operations and redirected substantial fiscal year 2003 resources toward improving examination quality and implementing e-Government processing.

LONG-TERM AGENDA

This strategic plan is only the first step toward creating a quality-focused, highly productive, responsive USPTO that supports a market-based intellectual property system for the 21st Century. Once the initial phases of this plan have been supported, adopted and implemented, the USPTO will explore further options to enhance its ability to more fully operate like a business.

Within the framework of the legislative and regulatory packages there are a number of items that will be implemented in the out-years of the strategic plan.

Restriction practice – We will conduct a study of the changes needed to implement a Patent Cooperation Treaty (PCT) style unity of invention standard in the United States. The study will be completed and appropriate legislation will be introduced before the end of the 108th Congress.

Patent term adjustment – Before seeking legislation to simplify patent term adjustment, we will explore a number of options to address this issue with the small business community and other key stakeholders.

Mutual exploitation of examination results – In anticipation of achieving our long-term goal of substantive patent harmonization, we will take a cautious approach to mutual exploitation of examination results by first evaluating International Preliminary Examination Reports during national stage examination. We will subsequently analyze the potential of whether the acceptance of examination results (granted patents) from foreign offices is a proper basis for use in counterpart applications in the United States. However, the USPTO will never recommend any changes that would compromise our sovereign right to determine patentability issues or to preclude our right to make further examinations when necessary.

Copyright issues – As part of the implementation of the electronic file wrapper, we will ascertain the best means for assuring that these documents in an application file that may be subject to copyright protection can be included in the USPTO's databases. The intent of this option would be to ensure full public access to all the information contained in a pending application file.

Third party request for reexamination – As part of the initiative to seek post-grant review legislation, we will explore the need for retention of third-party requested reexamination.

District court actions – We will evaluate the desirability of a revision to the provisions for judicial review of USPTO decisions to make an appeal to the U.S. Court of Appeals for the Federal Circuit the sole avenue for judicial review of a Board of Patent Appeals and Interferences or a Trademark Trial and Appeal Board decision.

Patent Cooperation Treaty Activities – We will actively pursue revisions to Patent Cooperation Treaty search and examination guidelines to achieve an enhanced level of reliance on PCT International Search Reports and International Preliminary Examination Reports.

Business-like practices – We also will explore whether we have a good justification for operating in a more business-like manner.

USPTO Campus – Once we have settled into the Carlyle campus and have fully implemented automated patent and trademark processing, we will be able to assess the feasibility of expanding our work-at-home program by using such virtual office concepts as telecommuting and flexible workplace to the maximum potential.

Examiner Training – We will evaluate the feasibility of reinstating the Examiner Education Program through corporate sponsorship to enable patent examiners to gain better insights into technological developments in the fields in which they examine.

SOME FINAL THOUGHTS

This 21st Century Strategic Plan sets forth an ambitious agenda to resolve the crisis all intellectual property organizations are facing. We believe economic and technological progress in the United States and the global market can be significantly enhanced through the implementation of the initiatives proposed in this plan.

We intend to refine and update our strategic plan periodically to adjust to changing conditions and to incorporate the best thinking of the entire intellectual property community. We are eager to work with those who believe, as we do, that American innovators and businesses must have the very best intellectual property system in the world. This 21st Century Strategic Plan represents an important first step in the pursuit of this goal.