



Highlights of [GAO-07-1102](#), a report to the Ranking Member, Committee on Oversight and Government Reform, House of Representatives

## Why GAO Did This Study

Increases in the volume and complexity of patent applications have lengthened the amount of time it takes the U.S. Patent and Trademark Office (USPTO) to process them. In addition, concerns have continued about USPTO's efforts to hire and retain an adequate patent examination workforce that can not only meet the demand for patents but also help reduce the growing backlog of unexamined patent applications. In this context, GAO was asked to determine for the last 5 years (1) USPTO's process for identifying its annual hiring estimates and the relationship of these estimates to the patent application backlog; (2) the extent to which patent examiner hiring has been offset by attrition, and the factors that may contribute to this attrition; and (3) the extent to which USPTO's retention efforts align with patent examiners' reasons for staying with the agency. For this review, GAO surveyed 1,420 patent examiners, and received an 80 percent response rate.

## What GAO Recommends

GAO recommends that USPTO undertake a comprehensive evaluation of the assumptions that the agency uses to establish its production goals. USPTO generally agreed with this recommendation.

[www.gao.gov/cgi-bin/getrpt?GAO-07-1102](http://www.gao.gov/cgi-bin/getrpt?GAO-07-1102).

To view the full product, including the scope and methodology, click on the link above. For more information, contact Anu Mittal, 202-512-3841, [mittala@gao.gov](mailto:mittala@gao.gov).

# U.S. PATENT AND TRADEMARK OFFICE

## Hiring Efforts Are Not Sufficient to Reduce the Patent Application Backlog

### What GAO Found

In each of the last 5 years, USPTO primarily identified its projected annual hiring estimates on the basis of available funding levels and its institutional capacity to support additional staff and not on the existing backlog or the expected patent application workload. USPTO's process for identifying its annual hiring estimates is generally consistent with accepted workforce planning strategies. Each year the agency determines how many new patent examiners it has the budget and supervisory and training capacity to hire. However, because this approach does not take into account how many examiners are needed to reduce the existing patent application backlog or address the inflow of new applications, it is unlikely that the agency will be able to reduce the growing backlog simply through its hiring efforts.

Although USPTO is hiring as many new patent examiners as its budget and institutional capacity will support, attrition is offsetting hiring progress, and agency management and patent examiners disagree about the causes for attrition. From 2002 through 2006, one patent examiner left USPTO for nearly every two the agency hired. This represents a significant loss to the agency because 70 percent of those who left had been at the agency for less than 5 years and new patent examiners are primarily responsible for the actions that remove applications from the backlog. According to USPTO management, patent examiners leave the agency primarily for personal reasons, such as the job not being a good fit or family reasons. In contrast, 67 percent of patent examiners identified the agency's production goals as one of the primary reasons examiners may choose to leave USPTO. These production goals are based on the number of applications patent examiners must complete biweekly and have not been adjusted to reflect the complexity of patent applications since 1976. Moreover, 70 percent of patent examiners reported working unpaid overtime during the past year, in order to meet their production goals. Such a large percentage of patent examiners who are working extra time to meet their production goals and would choose to leave the agency because of these goals may be an indication that the production goals do not accurately reflect the time patent examiners need to review applications and is undermining USPTO's hiring efforts.

The retention incentives and flexibilities provided by USPTO over the last 5 years generally align with the primary reasons identified by patent examiners for staying with the agency. Between 2002 and 2006, USPTO used a variety of retention flexibilities such as a special pay rate, performance bonuses, flexible work schedules, and a telework program to encourage patent examiners to stay with the agency. According to USPTO management the most effective retention efforts were those related to compensation and an enhanced work environment. GAO's survey of patent examiners indicates that most patent examiners generally approved of USPTO's retention efforts, and ranked the agency's salary and other pay incentives as well as the flexible work schedule among the primary reasons for staying with the agency.