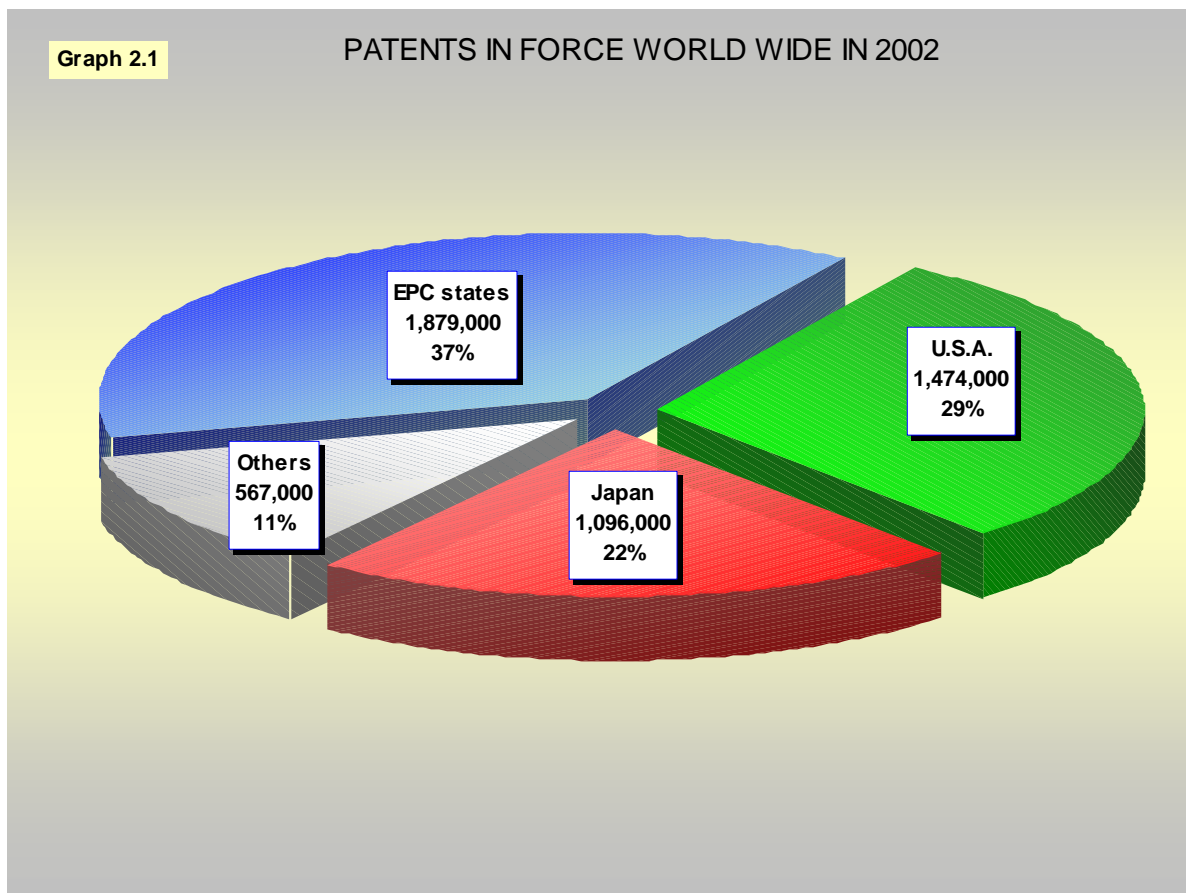


Chapter 2

THE TRILATERAL OFFICES

Patent rights are used throughout the world. The most current information on worldwide patent rights is available from the 2002 WIPO Industrial Property Statistics series. At the end of the calendar year 2002, a total of about five million patents were in force. The EPC contracting states, the JPO, and the USPTO together cover about 89% of the total patents worldwide. In the EPC contracting states, patents are granted either by the national offices or by the EPO.



EUROPEAN PATENT OFFICE

The European Patent Office (EPO), the main patent granting authority for Europe, is the result of successful economic and political cooperation, providing patent protection in up to 31 European countries on the basis of a single patent application and a unitary grant procedure. The EPO currently receives over 160,000 patent applications per year, twice as many as in 1995.

After Hungary (January 1st) and Romania (March 1st) joined the Organization, at the end of 2003, 27 states were members of the underlying European Patent Organization:

Austria	Belgium	Bulgaria	Cyprus	Czech Republic	Denmark
Ellas	Estonia	Finland	France	Germany	Hungary
Ireland	Italy	Liechtenstein	Luxembourg	Monaco	The Netherlands
Portugal	Romania	Slovakia	Slovenia	Spain	Sweden
Switzerland	Turkey	United Kingdom			

The following states have agreements with the EPO to allow extension of European patent applications to their territory:

Albania, Latvia, Lithuania, and the former Yugoslav Republic of Macedonia.

Together, the above states build a market of about 525 million people.

Poland joined the European Patent Organization on March 1, 2004. Latvia and Lithuania have been invited to join and will probably do so in the near future.

Grant Procedure

The mission of the EPO is to support innovation, competitiveness, and economic growth for the benefit of the citizens of Europe. Its main task is to grant European patents according to the EPC. Moreover, the EPO acts as a receiving, searching, and examining authority under the Patent Cooperation Treaty. Another task of the EPO is to perform, on behalf of patent offices of certain member states, state of the art searches for the purpose of national procedures and to carry out searches at the request of third parties.

In 2003, the EPO continued to deploy the measures it had previously decided on to master its workload and to reduce the average time taken to grant a patent. The structural change to a Joint Cluster Office was strengthened. The BEST project that aims to have the same examiner performing search and examination for each patent was spread almost to its ultimate level, since 80% of the examiners are now working under its conditions. It is expected that the project will be fully implemented before the end of 2006.

These measures started to show some positive impact throughput. In 2003, the EPO granted almost 60,000 patents, and more than 20% of these patents were granted within the set timeframe of three years.

In July 2003, the EPO launched the Extended European search report pilot project. For the European first filings, the search report is supplemented with the first substantive examination communication. It is intended to expand this project to all the European applications in due course.

Table 2.1: PRODUCTION INFORMATION EPO

PRODUCTION FIGURES		
	2002	2003
Filings		
Total Euro-direct + Euro-PCT international phase	160,430	162,208
Total Euro-direct + Euro-PCT regional phase	106,325	116,613
Searches carried out		
European searches (Euro + Euro-PCT supplm.)	58,213	71,449
PCT international searches	68,421	69,098
Searches on behalf of national offices	14,980	16,369
Other searches	2,002	1,715
Total production search	143,616	158,631
Examination: final actions performed		
European examination	66,086	73,776
PCT Chapter II	49,438	35,591
Opposition (final action)	1,934	1,872
Total final actions examination / opposition	117,458	111,239
Appeal settled		
Technical appeals	1,336	1,363
PCT protests	19	27
Other appeals	48	35
Total decisions appeal	1,403	1,425

In Table 2.1, the latest production figures for search (European, PCT and national searches), for examination (European and PCT Ch. II) and opposition, and appeal in the European procedure are given for the years 2002 and 2003.

In 2003, the office production in search increased by more than 10% to 158,631 searches completed. While the examination work under the PCT was reduced, the number of final actions in European examination increased by 12% to about 74,000. In 2003, 1,425 decisions in appeal were completed (2% more than in 2002).

Documentation

During the year 2003, the number of electronically searchable documents rose by 1.5 million to a total of 32.1 million patent documents. The Non-Patent-Literature (NPL) database holds

4.6 million documents, and 50 million articles were accessible via the EPOQUE online search system.

The EPO's in-house classification system (ECLA) is an expanded form of the International Patent Classification (IPC). With 129,000 subclasses, it allows for fast and systematic access to the search documentation available in each technical field. The ECLA system is also used in esp@cenet[®], the free Internet service to access patent documents.

The electronic filing tool made available by the EPO received a growing response from the users, who made more than 8% of their European applications using the online filing offered within epoline[®]. National versions of the online filing software have already been installed in Finland and France, and pilot versions were installed in Spain and the United Kingdom in 2003.

On average, 4,500 people at the EPO and the national offices in Europe use the computer based EPOQUE tool each day for document searches. The number of such computer based searches rose by 25% and 167 million documents were viewed in 2003. This system currently combines 77 databases, which will soon be simultaneously accessible.

Patent Information

The EPO is a producer of patent information products and services and has set up databases that are available not only for internal use, but also for dissemination by national offices. The products and services are presented under the acronym EPIDOS (European Patent Information and Documentation Services - formerly INPADOC). EPIDOS products and services are available both directly to users and to commercial data suppliers.

The linking up of national patent libraries to form an information network (PATLIB) is one of the key elements to the effective patent based transfer of knowledge in Europe. These information centers are equipped with CD-ROM workstations, which facilitate user access to patent documents.

In 2003, the EPO surveyed its customers with a view to adjust its products and services to their expectations. A new version of MIMOSA software was made available on CD-ROM, and new publication standards should be applied starting in 2005.

The annual EPIDOS conference and the PATINOVA congress were held simultaneously in Luxembourg and were attended by 620 delegates. The PATLIB conference was held in Lüttich (Belgium) in May and attracted 260 participants. An EPIDOS users' meeting was organized for the second time jointly by the EPO and the JPO in Vienna. It concentrated on Japanese and Korean patent information.

After a redesign, the new EPO website with improved navigation attracts large numbers of users, with over 1.5 million hits per week.

In April 2003, the EPO hosted the first "European Policy for Intellectual Property" conference

of the EU research project on “improving the human research potential and the socio-economic knowledge base”.

Technical Cooperation

In many countries and regions of the world, the EPO is involved in technical cooperation projects in partnership with national patent authorities, the EU Commission, the OHIM, and the WIPO. In 2003, the EPO's "International Academy" offered 22 courses taken by 1,120 staff from patent and trademark offices as well as patent attorneys, patent judges, government officials, and scientists. The EPO together with the Italian Patent and Trademark Office co-organized a seminar on “management of industrial property rights in a knowledge-based economy”, held in Turin. 350 professionals attended this seminar. A seminar on research and development in the European patent system was co-organized with the German patent and trademark office and the Fraunhofer-Institute. An international forum on change in the PCT procedure took place in November, jointly organized by EPO, the WIPO, and the Institute of Professional Representatives before the European Patent Office (*epi*).

In 2003, the EPO pursued cooperation programmes with China, Korea, and other ASEAN countries. In particular, training sessions were organised for the patent examiners of the SIPO.

The EPO actively participated in training courses and seminars co-organised in Latin America. The fourth ELDIPAT conference took place in Havana in March 2003. The EPO strengthened cooperation with Mexico and the five Andean States. A forum on industrial property rights was also jointly organized in South Africa by the EPO, the WIPO, and the UK patent office.

The EPO has pursued cooperation with other European countries concerning IT infrastructure, promoting IP issues, and modernizing patent systems.

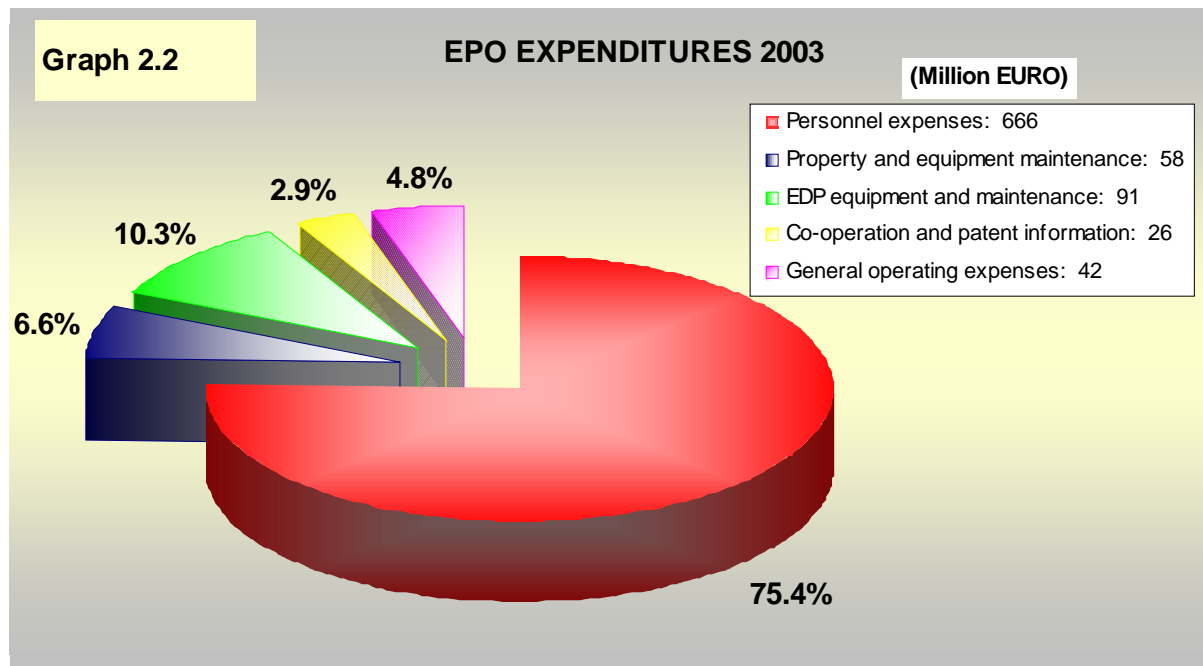
EPO's Budget

The EPO is financially autonomous. Expenditure is met entirely from income, mainly consisting of fees paid by applicants and patentees. Procedural fees, such as the filing, search, examination, appeal fees, and renewal fees, for European patent applications are paid to the EPO directly. These fees are recorded as income for the accounting year, irrespective of the fact that they may partly relate to work to be performed only in the subsequent year. On the other hand, the renewal fees for European patents are collected by the designated contracting states and determined by national law. Of these renewal fees, 50% is kept by the National Offices and 50% is transferred to the EPO.

Total expenditure in the year 2003 (excluding investments) was EUR 883 million. This breaks down into EUR 666 million (75%) for personnel expenses, EUR 58 million (7%) for property and equipment (including depreciation), EUR 91 million (10%) for EDP equipment and

maintenance (including depreciation), EUR 26 million (3%) for patent information and cooperation with the contracting states, and EUR 42 million (4%) for general operating expenses.

Total income for the EPO in 2003 amounted to EUR 878 million, leading to a small operating deficit.



EPO Staff Composition

During 2003, the EPO increased its capacity by continuing its recruitment drive. During the year, more than 200 patent examiners joined the EPO. By the end of the year, the staff reached a total of 5,809, including 3,365 examiners in search, examination, and opposition, and 119 members of Boards of Appeal.

Further information can be found at the EPO's Homepage:

<http://www.european-patent-office.org>

JAPAN PATENT OFFICE

The Japan Patent Office (JPO) is committed to comprehensive development of industry through planning and carrying out examinations and appeals / trials under the system of industrial property rights, which includes patents, utility models, designs, and trademarks.

In order for Japan to maintain its competitive edge internationally, it is essential to improve the system for creating high quality technologies, to timely protect newly created technologies, and to establish a cycle of intellectual creation that provides an environment in which these technologies are optimally utilized. The JPO is making the utmost efforts to realize “timely and high-quality patent examination at the highest level in the world.”

Amendment of Laws to Expedite Patent Examination Processes

In an effort to realize a “nation built on intellectual property”, a “Bill to Patent Law Amendment Reducing Patent Pendency” was submitted to the ordinary session of the Diet in 2004 in order to do the following:

- Allow outsourcing of the service of prior art search not only to public-interest corporations but also to the private sector in search process necessary for patent examination.
- Reduce the fee for request-for-examination in cases where the patent applicants who request examinations show the search reports issued by specified registered designated search organizations. This should provide applicants with incentives to perform their own prior art searches.
- Permit publication and issuance of official gazettes via the Internet so that industrial property information can be readily utilized.
- Extend the term of utility model rights from six to ten years. In addition, permit patent applications based on the utility model registration after registering the utility model right.
- Where an agreement, employment regulation or any other stipulation provides for the remuneration with regard to the employee’s invention, the payment of remuneration in accordance with the said provision(s) shall not be what is recognized unreasonable in light of situations including where a consultation between the employer and the employee had taken place in order to set standards for the determination of the said remuneration. A method is also provided to calculate the remuneration where, under the preceding paragraph, the payment of the remuneration in accordance with the provision(s) is recognized to be unreasonable.

Improvement / Reinforcement of the Examination System

In an effort to accelerate the examination process, the JPO is planning to bolster the examination system, by not only steadily recruiting new regular examiners but also by employing an additional one hundred fixed-term examiners each year to a total of 500 examiners over the next 5 years. This process will immediately dispose of the projected

800,000 applications awaiting examination, with an aim to achieve the goal of eliminating pendency until first action.

Reinforcing Measures against Counterfeits and Pirated Copies

In recent years, there have been frequent infringements of trademark rights, design rights, patent rights, and other rights resulting from the circulation of counterfeits mainly within the Asian nations. This has resulted in adverse affects on the activities of Japanese enterprises through loss of market potential and deterioration of brand images. Therefore, the JPO, in cooperation with the relevant ministries and agencies, shall request the reinforcement of control over counterfeits to the governments of the region by utilizing frameworks of the bilateral and multilateral intergovernmental consultation and joining forces with the International Intellectual Property Protection Forum. The JPO shall promote these aspects of providing information, consultation, etc. by utilizing the overseas offices of JETRO and other organizations in order to support the efforts of Japanese enterprises. The JPO shall also strengthen support by providing human resource development for those engaged in the intellectual property infringement countermeasures, mostly in the Asian nations' courts, customs houses, police, intellectual property-related administrative offices, etc.

Electronic Applications

The JPO has promoted the Paperless Project since 1984 ahead of other countries with the aim to improve efficiency of administrative processing, shorten the examination period, and expand industrial property information services. It started to accept electronic filing of patent and utility model applications in December 1990, and, as of March 2004, about 29,000 applicants and representatives have utilized electronic procedures with the JPO by using the PC electronic filing software distributed free of charge.

The JPO also started to allow electronic procedures for the filing of design and trademark applications, appeal procedures, and national procedures for PCT applications in January 2000. As of 2003, a large proportion of the procedures have become digitized, with 97% of all patent and utility model application filings, 91% of design application filings, 83% of trademark application filings, 98% of appeal procedures, and 99% of national procedures for PCT applications conducted in electronic form.

In July 2003, the JPO adapted the format for the domestic application forms for patents and utility models to be the same as the format for the PCT international application, executed the international standardization in an electronic format (XML), and started electronic filing of PCT international applications electronically from April 2004. JPO is now developing an electronic filing system via the Internet, which is scheduled to begin in 2005. The electronic filing system will utilize the government public key infrastructure (GPKI) to identify applicants electronically and to prevent electronic falsification, and will enable electronic cash payment through the electronic revenue payment system developed by the Ministry of Finance.

Patent Information

Industrial property information is simultaneously innovative technical information, information indicating the range of monopolistic rights, and information usable for grasping development of innovative technology and other companies' trends in R&D efforts.

The JPO started providing the Industrial Property Digital Library (IPDL) service on the JPO Website in March 1999 to allow people to have better access to patent information. English services that have been made available for patents and utility models as of March 2003 are Number search, FI/F-term search, and PAJ search. As for trademarks, wide-ranging English services are available, including information on trademark applications and registrations, searches for figures, searches for well-known and famous Japanese trademarks, and lists of goods and services. At present, the IPDL is accessed approximately 4.5 million times per month for searches and information references.

In addition to the free public inspection services through the IPDL, the JPO has also provided its own search-related data, such as legal status data in a standardized format like SGML, at marginal cost. (Additional costs, such as expenses for data copy, for data carrier, and for delivery, are included, while expenses for data creation and for maintenance are not included.) This dissemination policy has enabled companies to establish their own internal databases and has encouraged private patent information providers to distribute high value-added and diverse services to end-users. Industrial property digital library service has been transferred on October 1, 2004 to National Center for Industrial Property Information. (http://www.ipdl.ncipi.go.jp/homepg_e.ipdl).

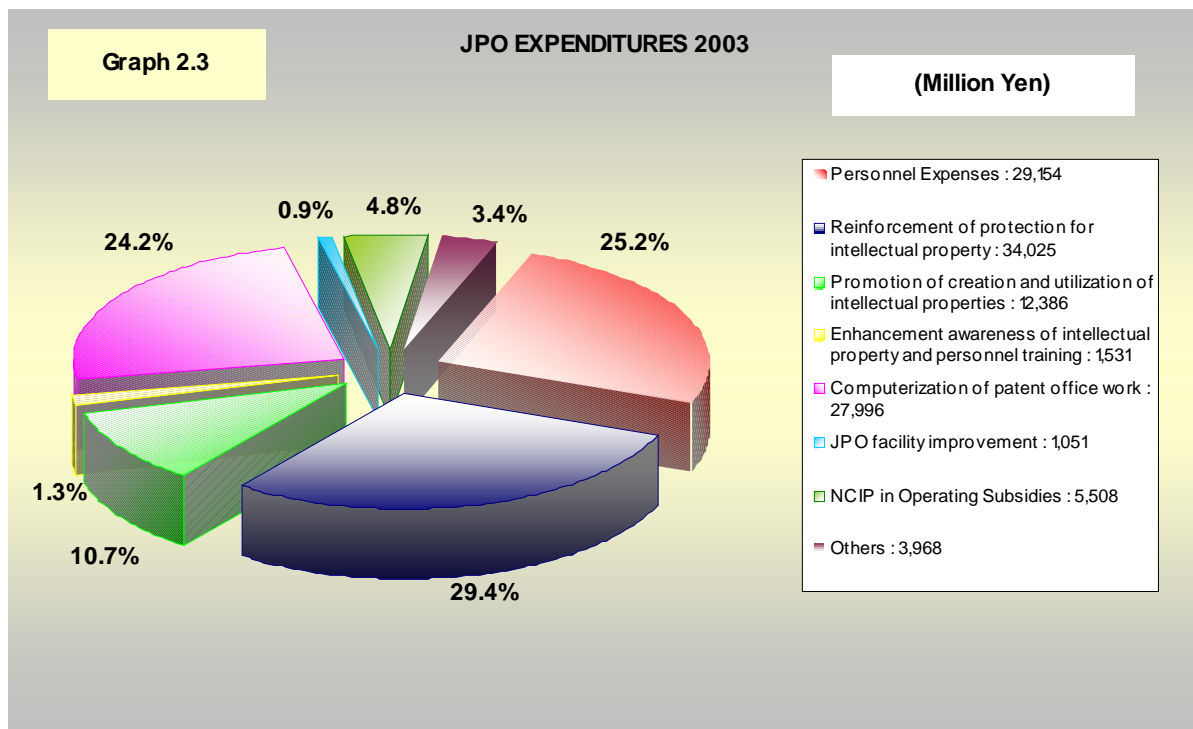
Cooperation with Developing Countries

To help developing countries with the establishment and implementation of intellectual property rights systems, the JPO, in a joint scheme with WIPO, JICA, and other organizations, received a total of 1,856 trainees from both the public and private sectors of 43 countries and regions between 1996 and March 2004. The JPO will continue its human resource development programs with an emphasis on IP enforcement so that IP-related laws will be implemented more effectively. The JPO also utilizes WIPO Funds-in-Trust / Japan and JICA expert dispatch schemes to send its staff members and other qualified people to developing countries as experts in various IP fields. The dispatched experts primarily provide practical day-to-day support in such areas as examination and appeal / trial procedures, computerization, and PCT operations. They also provide seminars designed to help establish as well as educate local people on intellectual property rights systems.

JPO's Main Budget

The JPO FY2003 budget totaled approximately 115,619 million yen. The breakdown of expenses is as follows:

- 34,025 million yen for reinforcement of protection for intellectual property,
- 12,386 million yen for promotion of creation and utilization of intellectual properties,
- 1,531 million yen for enhancement awareness of intellectual property and personnel training,
- 27,996 million yen for patent processing computerization,
- 1,051 million yen for JPO facility improvement,
- 5,508 million yen for the National Center for Industrial Property Information (NCIPI) in operating subsidies, and
- 29,154 million yen for personnel expenses.



JPO Staff Composition

As of the end of FY2003, the JPO employed a total of 2,479 staff. This included an increased number of examiners and appeal examiners to further cut the time required for examination / appeal procedures.

Examiners: 1,325
Patent / Utility model: 1,126
Design: 51
Trademark: 148
Appeal examiners: 396
General staff: 758

Table 2.2: PRODUCTION INFORMATION JPO

PRODUCTION FIGURES	2002	2003
Application filed		
Domestic	369,458	362,711
Foreign	51,586	50,381
T o t a l	421,044	413,092
Grants		
Domestic	108,515	110,835
Foreign	11,503	11,676
T o t a l	120,018	122,511
Applications in appeal	21,847	22,217
(Acceptance)	(4,552)	(4,950)
Applications in opposition	3,150	3,896
(Acceptance)	(987)	(837)

Further information can be found from the JPO's Homepage:

JPO Homepage: <http://www.jpo.go.jp>

UNITED STATES PATENT AND TRADEMARK OFFICE

The mission of the USPTO is to ensure that the intellectual property system contributes to a strong global economy, encourages investment in innovation, and fosters entrepreneurial spirit. This mission is accomplished by the USPTO through its two businesses, Patents and Trademarks, which aim to:

- ❑ Promote the progress of science and the useful arts by securing, for limited times to inventors, the exclusive rights to their respective discoveries (Article 1, Section 8 of the United States Constitution).
- ❑ Provide businesses with enhanced protection of trademark rights and notices of the trademark rights claimed by others, as well as protect consumers against confusion and deception in the marketplace.

Since 1991, the USPTO has operated in much the same way as a private business, providing valued products and services to its customers in exchange for fees that are used to fund its operations. The powers and duties of the USPTO are vested in the Under Secretary of Commerce for Intellectual Property and Director of the USPTO who consults with the Patent Public Advisory Committee and the Trademark Public Advisory Committee. The Commissioners of Patents and Trademarks act as the chief operating officers of the agency's two major business lines.

Over the past decade, the USPTO has faced unprecedented challenges, including soaring workloads, increasingly complex technology, and resource limitations. In response to customer demands for higher quality products and services and Congressional concerns about the agency's ability to continue to operate under a traditional business model, the USPTO developed and implemented the *21st Century Strategic Plan*, which is guided by the President's Management Agenda initiatives on strategic management of human capital, competitive sourcing, improved financial performance, expanded electronic government, and budget and performance integration.

The *21st Century Strategic Plan* is a far-reaching and aggressive one designed to transform the agency into an organization that is responsive to the global economy in which it operates. This plan is crafted around three long-term crosscutting themes: agility, capability, and productivity. Within these themes, the goals of the agency are to: 1) improve quality of patent products and services and optimize patent processing time, 2) improve quality of trademark products and services and optimize trademark processing time, and 3) create a more flexible organization through transitioning patent and trademark operations to an e-Government environment and advancing IP development worldwide.

In pursuit of e-Government, the USPTO and the EPO reached an agreement to foster collaborative development in the areas of e-filing and e-processing of patent applications. The USPTO made significant strides towards achieving the e-Government and quality goals of the *21st Century Strategic Plan* by implementing the Image File Wrapper (IFW) and quality initiatives.

The USPTO is accelerating deployment of critical automated information systems, particularly the electronic end-to-end processing of patent and trademark applications. The USPTO successfully completed deployment of the patent IFW system in August, 2004, whereby 88 percent of patent applications are electronically processed, exceeding the goal to electronically manage 70 percent of patent applications. All incoming and outgoing paper documents are captured electronically in the system and the last remaining pending paper applications will be scanned into the system by the end of 2004, with the electronic version of an application now considered the official file.

In addition to IFW, the Patent organization no longer mails paper U.S. references to applicants, instead making the information available to applicants via the Internet. Additionally, for the first time, anyone with Internet access anywhere in the world can now use the USPTO's website (www.uspto.gov) to track the status of a public patent application as it moves from pre-grant publication to final disposition and review documents in the official application file, including all decisions made by patent examiners and their reasons for making them.

The system, known as PAIR (Patent Application and Information Retrieval), offers the public an advanced electronic portal for PDF viewing, downloading and printing an array of information and documents for patent applications not covered by confidentiality laws. Public PAIR also offers a quick-click feature for ordering certified copies of patent applications and application files.

International

On the international front, the USPTO has faced many challenges. Regrettably, there is growing anti-IP sentiment in the world. This sentiment has been reflected by a number of member states at meetings conducted by the WIPO. The USPTO will continue to work with other countries to build a consensus and protect America's IP community.

Piracy and counterfeiting continued as major concerns during the past year and the USPTO has worked closely with the State Department, the Office of the United States Trade Representative, the Department of Commerce, and others on these vital issues. The USPTO has continued enforcement-training activities for government officials from a wide range of countries around the world. But perhaps the most significant development last year was the appointment of an attorney advisor in the USPTO Office of Enforcement to be an intellectual property attaché to the U.S. Embassy in China. This is the first time the USPTO has placed an official overseas for the purpose of improving intellectual property protection in a specific country. The USPTO believes this assignment will advance the Administration's work in the region, particularly in addressing the widespread counterfeiting and piracy that cost U.S. businesses billions of dollars in lost revenue and tens of thousands of U.S. jobs.

Table 2.3: PRODUCTION INFORMATION USPTO

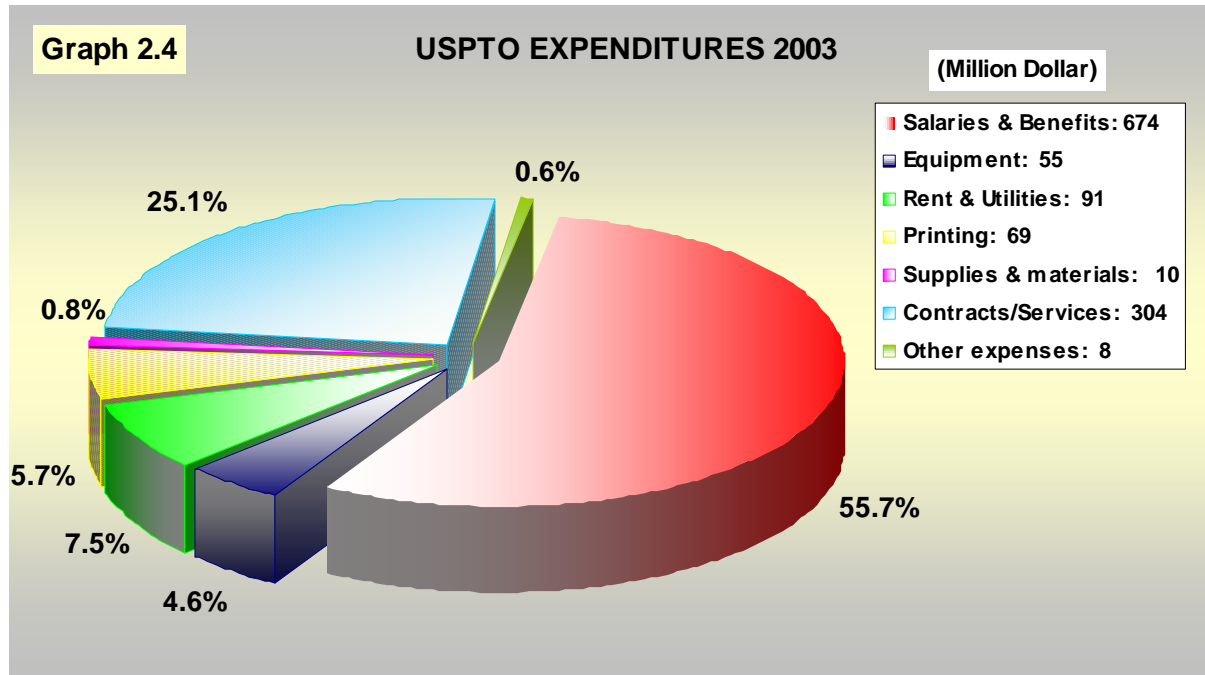
PRODUCTION FIGURES	2002		2003	
Applications filed¹	334,445		342,441	
First Actions	271,624		288,033	
Grants				
U.S. Residents	86,980	52.0%	87,901	52.0%
Foreign	80,354	48.0%	81,127	48.0%
Japan	34,859	20.0%	35,517	21.0%
EPC states	28,428	17.0%	28,174	16.7%
Others	17,067	10.2%	17,436	10.0%
Total	167,334	100.0%	169,028	100.0%
PCT Chapter II	17,505		21,932	
Applications in appeal and interference proceedings				
	Appeals	Interference	Appeals	Interference
Contested	3,253	108	2,683	101
Disposed	4,851	155	3,737	154
Patent cases in litigation				
Cases filed	49		60	
Cases disposed	55		54	
Pending cases (end of calendar year)	33		39	

1: For utility patents only.

USPTO 's Budget

In calendar year 2003, USPTO expenditures reached \$1.2 billion. USPTO expenditures are divided into seven major categories: salaries and benefits, equipment, rent and utilities, printing, supplies and materials, contracts/services, and all other expenses.

The majority of expenditures in 2003 were attributed to the USPTO's labor force. Salaries and benefits accounted for 55.7 percent of overall expenditures, or about \$674 million. Supplies and materials were the second major expenditure, which represented about 25.1 percent of expenditures. Rent and utilities were the third largest at 7.5 percent. A breakdown of all the major spending categories is shown in Graph 2.4.



USPTO Staff Composition

In calendar year 2003, the total staff at the USPTO was 6,723. The Patent staff total was 5,081. This total was comprised of 3,535 Utility, Plant and Reissue (UPR) examiners, 58 Design examiners, and 1,488 managerial, administrative and technical support staff. As reported in past Trilateral Statistical Reports, the Board of Patent Appeals and Interferences is no longer part of the Patent organization. It is now part of the Office of General Counsel (OGC), which has approximately 250 employees and consists of five organizations that are concerned with legal review of agency decisions, defense of agency decisions in court and administrative tribunals, internal agency legal advice, and regulation of persons practicing before the USPTO. The number of members on the Board of Patent Appeals and Interferences decreased in 2003 by one, and the total is now 109.

More Information

Further information can be found at the USPTO 's Homepage:

<http://www.uspto.gov>