

**UNITED STATES  
PATENT AND TRADEMARK OFFICE**





Patent Public Advisory Committee  
Quarterly Meeting

**USPTO Budget Update**

Frank Murphy  
Acting Chief Financial Officer

May 4, 2017

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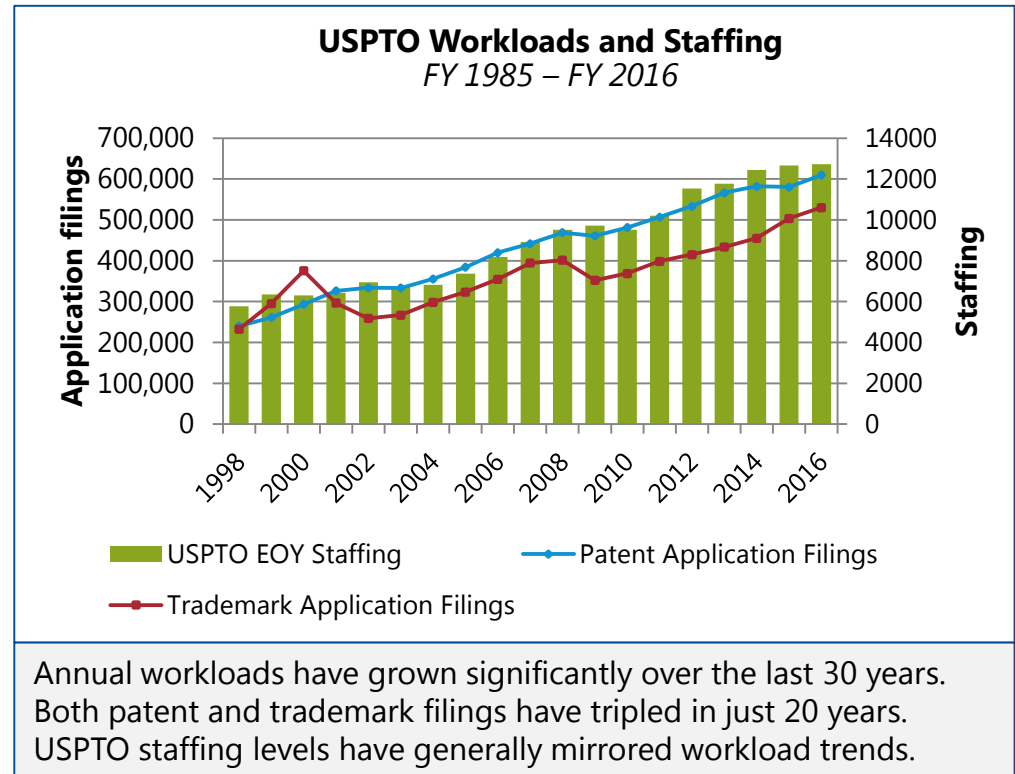
# Agenda

- Budget Background
- FY 2017 Status
- FY 2018 Budget
- FY 2019 Budget
- Fee Review/Fee Rulemaking

# Budget Background

## Demand-Driven

- The size of USPTO's budget and workforce is ultimately determined by customer demand for our products and services.
- Demand is influenced by a number of factors
  - Global and domestic economic activity
  - Policies and legislation
  - Litigation outcomes
  - Process efficiencies
  - Fee rates charged by the USPTO.



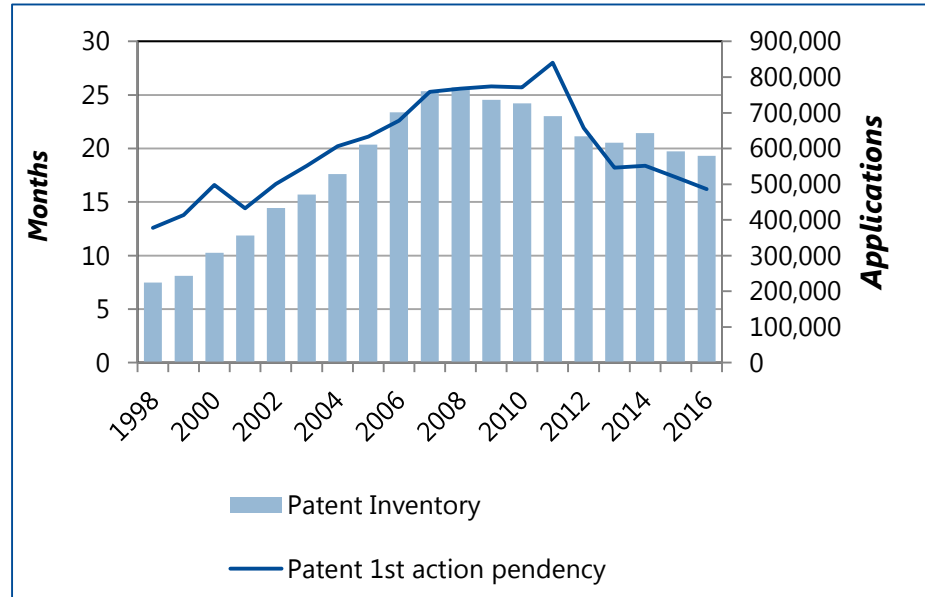
# Budget Background

## Performance-Based

The American Inventors Protection Act of 1999 mandated that the USPTO adopt several key tenets of a performance-based organization. The Act requires that the USPTO operate within a **performance-based process that includes quantitative and qualitative measures and standards for evaluating cost-effectiveness.**

### Frequently Referenced Performance Measures

Measure	Description	Goal
Patent Pendency	Time from filing to action. Patents tracks both pendency to 1 <sup>st</sup> action and total pendency	10 months to 1 <sup>st</sup> action; 20 months total
Patent Inventory	The number of applications awaiting examiner action	10 months inventory



# Budget Background

## Production-Oriented

### Production-Based Performance

Most USPTO employees work under strict **production-based performance management systems**.

- Performance measurement compares the amount/quality of work produced in a given period to the amount of work expected to have been produced.
- *Employees under production systems include patent examiners, trademark attorneys, legal instrument examiners within the patent and trademark business units, and appeal board judges and paralegals.*

### Production Models

Employee performance requirements feed into complex **production models**

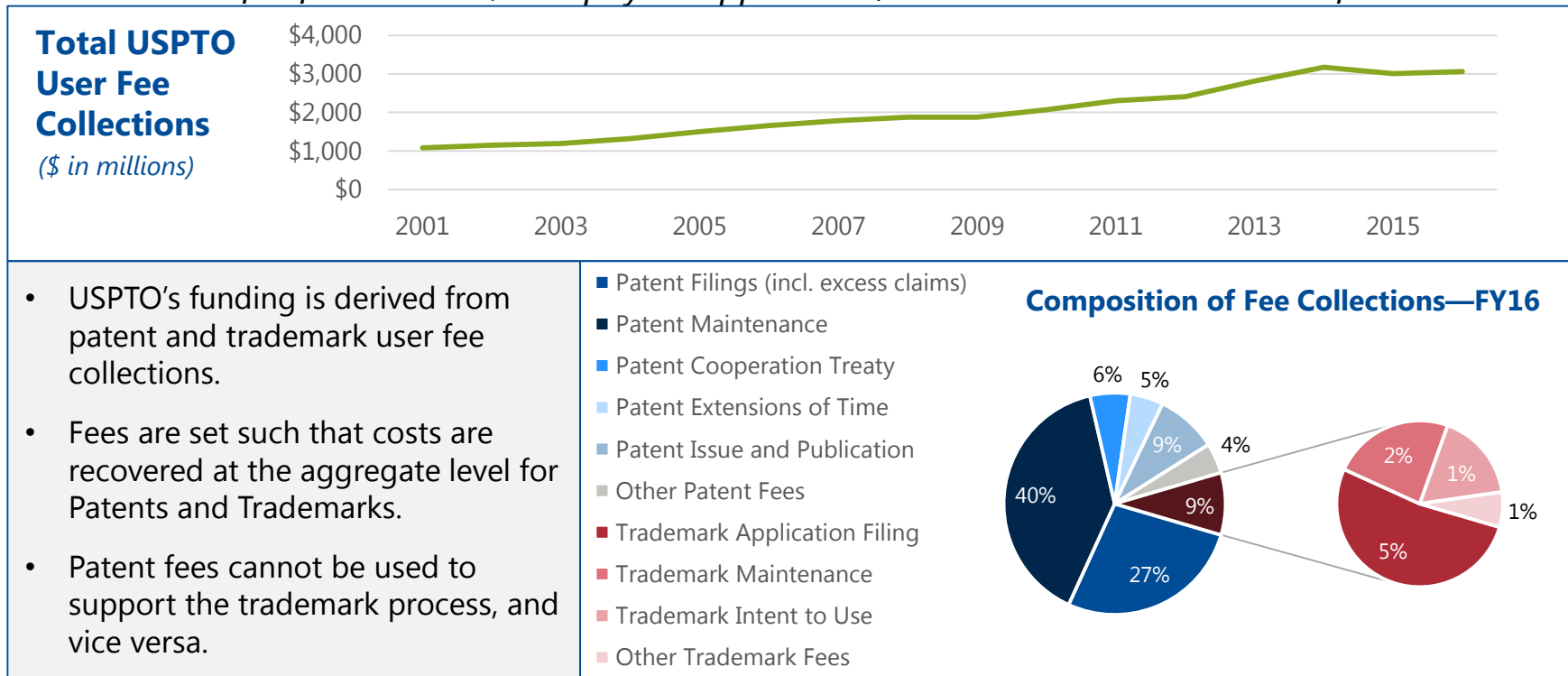
- Production models are used to determine the level of required budgetary resources needed for production staff compensation, workload driven contracts, examination support and related activities.
- *Elements include assumptions about incoming workload, productivity of on-board staff and new hires, attrition rates, training requirements, and process changes/efficiencies.*

*Changes in performance standards and other model assumptions can impact the USPTO's ability to meet its performance targets.*

# Budget Background

## Revenue-Generating

100% fee funded ❖ \$0 taxpayer support ❖ \$0 contribution to Federal deficit



- USPTO’s funding is derived from patent and trademark user fee collections.
- Fees are set such that costs are recovered at the aggregate level for Patents and Trademarks.
- Patent fees cannot be used to support the trademark process, and vice versa.

- Patent Filings (incl. excess claims)
- Patent Maintenance
- Patent Cooperation Treaty
- Patent Extensions of Time
- Patent Issue and Publication
- Other Patent Fees
- Trademark Application Filing
- Trademark Maintenance
- Trademark Intent to Use
- Other Trademark Fees



# Budget Background

## Funding Model Overview

**USPTO is a  
business-like  
organization...**

- 100% user fee funded; \$0 taxpayer support; \$0 contribution to the federal deficit
- Demand for goods and services drives both revenue and workload
- Multi-year, performance-based budgets
- Ability to set fees to recover costs of operations\*
- Use of private sector business tools, such as operating reserve

**...operating in the  
Government  
environment.**

- Require congressional authorization to spend fees collected.
- Subject to certain government-wide spending policies and restrictions
- Fee structure incorporates public policy considerations (e.g., access, equity)

\* USPTO's statutory authority to set its own fee rates expires in September 2018.



# Budget Background

## Operating Reserve vs PTFRF

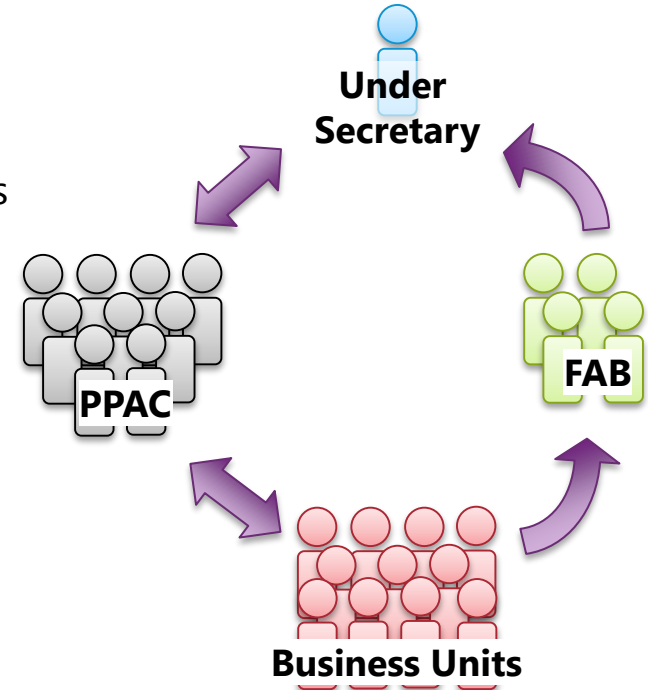
	Operating Reserve (OR)	PTFRF
Definition	The portion of fee collections that have been appropriated (no-year) but not spent and are carried over from the prior year.	A separate Treasury account created by the American Invents Act, into which all fees collected <i>in excess of USPTO's appropriated spending authority</i> are deposited.
Availability	<p>Fees in the ORs were appropriated in prior years, and remain available until spent.</p> <p>The ORs are designated as available for use to sustain operations in the unanticipated event of significant variances of fee collections from forecasted estimates and/or increases in operating expenses.</p>	<p>USPTO can access funds deposited into the Fee Reserve Fund via a reprogramming action.</p> <p>Requires inclusion of language allowing reprogramming of PTFRF deposits in Appropriations Act.</p> <p>Does not require an act of Congress; only requires approval of the Committees.</p>
Targets	<p>Current Patent OR Targets:</p> <ul style="list-style-type: none"> <li>• Minimum: \$300M (Minimum)</li> <li>• Optimal: 3 months operating costs</li> </ul>	Not Applicable



# Budget Background

## PPAC and USPTO Budget Formulation

- The PPAC plays an important role in USPTO budget planning.
- USPTO receives PPAC's feedback on stakeholder concerns and program priorities through various channels throughout the year, including:
  - PPAC Annual Report
  - Quarterly public/subcommittee meetings
  - Fee setting hearings and reports
  - Comments on draft Strategic Plans.
- These data points help inform:
  - Internal business unit (BU) discussions as they formulate business cases and budget proposals;
  - Deliberations of the USPTO Financial Advisory Board, which reviews BU proposals and the overall financial outlook, and makes recommendations to the Under Secretary; and
  - Final decisions by the Under Secretary

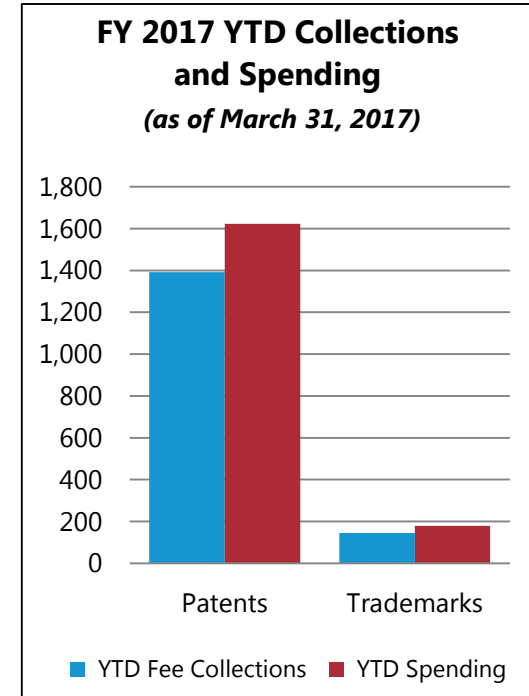


# FY 2017 Status

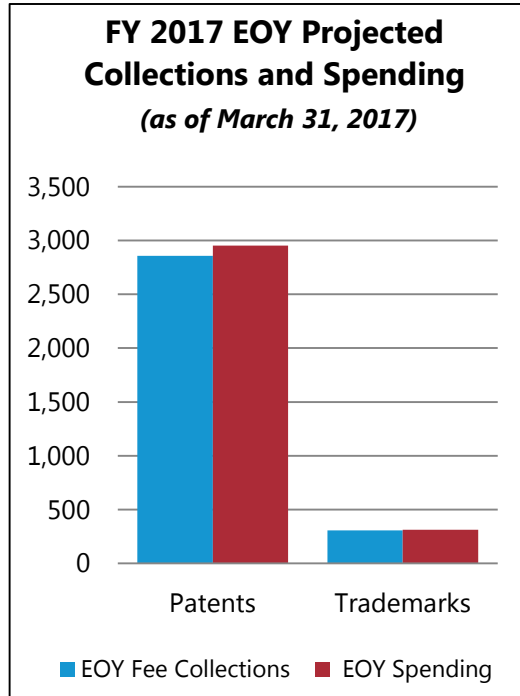
- FY 2017 Appropriation Status
- The federal hiring freeze ended on April 12, 2017
  - USPTO is evaluating hiring needs in conjunction with our long term strategic plans

# FY 2017 Status *(continued)*

- As of March 31, 2017
  - Planned fee collections: \$1,543.4M
    - Patents: \$1,394.8M Trademarks: \$148.6M
  - Year to date fee collections: \$1,537.5M
    - Patents: \$1,391.7M, Trademarks: \$145.7M
  - Year to date spending: \$1,801.5M
    - Patents: \$1,622.4M, Trademarks: \$179.1M



# FY 2017 Status *(continued)*



- As of March 31, 2017
  - End of year projected fee collections of \$3,164.4M
    - Patents: \$2,858.2M, Trademarks: \$306.2M
  - End of year projected spending of \$3,264.3M
    - Patents: \$2,951.9M, Trademarks: \$312.4M
  - End of year projected operating reserve of \$390.6M
    - Patents: \$284.3M, Trademarks: \$106.2M

# FY 2018 Budget

- PPAC, DoC, and OMB received the budget for final review in April
- USPTO anticipates the FY 2018 President's budget will be released in mid to late May 2017

# FY 2019 Budget

- USPTO expects to receive guidance on formulating the FY 2019 OMB in the May/June timeframe
  - The current plan is to submit the FY 2019 Budget to OMB for initial review in September 2017
    - PPAC will be provided a summary of this information to review

# Fee Review/Fee Rulemaking

- USPTO is in the process of finalizing its rulemaking package for the fee setting process that was initiated in FY 2016
- USPTO continues to work on the FY 2017 biennial fee review as required by Chief Financial Officers (CFO) Act of 1990 (Public Law 101 576)
- Absent Congressional action, the USPTO's fee setting authority under section 10 of the AIA will expire on September 16, 2018



# Questions and Comments

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