



August 23, 2016

MEMORANDUM FOR: Michelle K. Lee
Under Secretary of Commerce for Intellectual Property
and Director of the U.S. Patent and Trademark Office

FROM: Mark Zabarsky
Assistant Inspector General for Acquisition
and Special Program Audits

SUBJECT: *USPTO Needs to Improve Assessment of Attaché Program Performance*
Final Report No. OIG-16-042-A

This final report details the results of our audit of the U.S. Patent and Trademark Office (USPTO) Intellectual Property (IP) Attaché Program. Specifically, our objective was to assess management controls over the Attaché Program. See appendix A for specific details on our objective, scope, and methodology.

Background

USPTO advises the President—through the Secretary of Commerce—and all federal agencies on national and international IP policy issues, and is authorized to provide guidance, conduct programs and studies, and interact with foreign governments and international intergovernmental organizations on IP matters. The Attaché Program is a component in USPTO's efforts to improve international IP policy, protection, and enforcement.

In 2006, USPTO formally established the Attaché Program to promote international IP protection and enforcement for U.S. foreign, economic, and political interests. Attachés serve at U.S. embassies and consulates in 11 countries.¹ Within USPTO, the Office of Policy and International Affairs (OPIA) is responsible for oversight of the Attaché Program. During fiscal years (FYs) 2012–2015, OPIA obligated \$37 million for the program.

The attachés' primary responsibilities include:

- advocating U.S. government IP policies, interests, and initiatives, and assisting U.S. stakeholders on IP matters, including protection, enforcement, use, and licensing;
- improving IP protection and enforcement by conducting training activities with host governments;

¹ Countries where attachés will serve in 2016 consist of Belgium, Brazil, China, India, Kuwait, Mexico, Peru, Russia, Switzerland, Thailand, and Ukraine.

- advising officials at all levels of USPTO, Department of Commerce, and other federal agencies on the host government’s IP system, as well as advising host government representatives on U.S. IP law and policy; and
- helping to secure, and subsequently monitor, the implementation of high quality IP provisions in international agreements and host country laws.

Finding and Recommendation

We found USPTO needs to improve management controls over the Attaché Program. Specifically, USPTO did not adequately assess Attaché Program performance because it did not establish baselines and targets² to evaluate program performance.

USPTO established the following three goals for the Attaché Program:

- promote U.S. government IP policy internationally;
- help secure high standards in international agreements and host country laws; and
- encourage effective IP protection and enforcement by U.S. trading partners for the benefit of U.S. stakeholders.

To track the progress made towards each goal, USPTO established a total of six performance measures, such as the number of training and public awareness programs conducted, and the number of government officials trained. However, none of the performance measures included a baseline or target by which to assess program performance—an important attribute of successful performance measures. Best practices in performance management state that, where appropriate, performance measures should have quantifiable, numerical targets.³ These “targets or other measurable values facilitate future assessments of whether overall goals and objectives were achieved because comparisons can be easily made between projected performance and actual results.”⁴ These best practices—such as expressing performance goals in an objective, quantifiable, and measurable form to provide a basis for comparing actual program results with the established performance goals—are consistent with the requirements called for in the GPRA Modernization Act of 2010.⁵

Numerical targets facilitate future assessments of whether overall program goals and objectives were achieved because comparisons can be easily made between projected performance and actual results. Although USPTO officials stated that they are developing individual baseline measures for the performance measures, these officials explained that it was difficult to establish baselines because each country is distinct and attachés have different challenges that vary from country to country (e.g., political circumstances and ability to engage with foreign officials). Without such baselines and targets, as well as related analysis, it will be difficult to

² A baseline is the value used as a starting point for measurement, while a target is the quantifiable performance goal.

³ U.S. Government Accountability Office (GAO), November 2002. *Tax Administration: IRS Needs to Further Refine Its Tax Filing Season Performance Measures*, GAO-03-143, p. 48. Washington, DC: GAO.

⁴ *Id.*

⁵ See 31 U.S.C. § 1115(b)(2).

determine whether the reported performance meets expectations or achieves intended program goals.

Recommendation

We recommend that the Under Secretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office

- I. Establish baselines and targets for each of the quantifiable performance measures to assess the effectiveness and efficiency of the Attaché Program.

On August 2, 2016, OIG received USPTO's comments on the draft report, consisting of its response and a separate document containing technical comments—the first of which we include as appendix B. Based on USPTO's technical comments on the draft report, we have implemented their suggested changes to the Background section in the report. USPTO concurred with our finding and agreed with our recommendation. This final report will be posted on the OIG's website pursuant to section 8M of the Inspector General Act of 1978, as amended (5 U.S.C. app., § 8M).

In accordance with Departmental Administrative Order 213-5, please submit to us—within 60 calendar days of the date of this memorandum—an action plan that responds to the recommendation of this report.

We appreciate the cooperation and courtesies extended to us by your staff during our audit. Please direct any inquiries regarding this report to me at (202) 482-3884 or Amni Samson at (571) 272-5561.

cc: Russell Slifer, Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the U.S. Patent and Trademark Office
Shira Perlmutter, Chief Policy Officer and Director for International Affairs, USPTO
Anthony Scardino, Chief Financial Officer, USPTO
Welton Lloyd, Audit Liaison, Office of Planning and Budget, USPTO
Robert Fawcett, Audit Liaison, Office of Planning and Budget, USPTO

Appendix A. Objective, Scope, and Methodology

The objective of our audit was to assess management controls over the Attaché Program. To accomplish our audit objective, we conducted the following activities:

- reviewed the Attaché Program objectives and performance measures to assess whether USPTO established specific, measurable objectives to assess program performance;
- interviewed USPTO and International Trade Administration/Global Markets (ITA/GM) personnel to understand their responsibilities for program management; and
- obtained and analyzed policies and guidance on program management to assess management controls over the program including the GPRA Modernization Act of 2010 and GAO's *Standards for Internal Control in the Federal Government*.⁶

Further, we gained an understanding of internal control processes significant within the context of the audit objective by interviewing officials at USPTO and ITA/GM headquarters and reviewing documentation for evidence of internal control procedures. We identified weaknesses in the controls related to management's assessment of attachés' progress in meeting program objectives. While we identified and reported on internal control deficiencies, our work found no incidents of fraud, illegal acts, or abuse.

We conducted this performance audit in accordance with generally accepted government auditing standards. These standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions, based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our finding and conclusion based on our audit objective.

We conducted fieldwork from August 2015 through March 2016 under the authority of the Inspector General Act of 1978, as amended (5 U.S.C. app.), and Department Organization Order 10-13, dated April 26, 2013. We performed our work at the USPTO offices in Alexandria, Virginia, and the Department of Commerce headquarters in Washington, DC.

⁶ GAO, September 2014. *Standards for Internal Control in the Federal Government*, GAO-14-704G. Washington, DC: GAO.

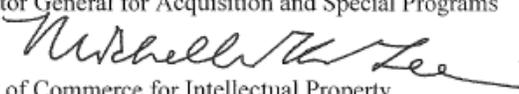
Appendix B. Agency Response



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

MEMORANDUM FOR: Mark Zabarsky
Assistant Inspector General for Acquisition and Special Programs

FROM: Michelle K. Lee 
Under Secretary of Commerce for Intellectual Property
and Director of the U.S. Patent and Trademark Office

SUBJECT: Response to Draft Report: *USPTO Needs to Improve Assessment of Attaché Program Performance* (June 2016)

Executive Summary

We appreciate the effort you and your staff have made in reviewing the financing and management of the United States Patent and Trademark Office's (USPTO) IP Attaché Program. In recent years, we have made considerable strides in developing quantifiable performance measures for the IP Attaché Program, and we concur with OIG's recommendation that we should further advance this process. We will increase our current efforts to collect data that will allow us to establish baselines and targets for each of the quantifiable performance measures. It is important to note, however, that quantifiable performance measures should not be the only means of assessing IP Attaché Program effectiveness and efficiency, and that qualitative measures are often equally important.

Response to Recommendation

(I) Recommend that the Under Secretary of Commerce for Intellectual Property and the Director of the United States Patent and Trademark Office: Establish baselines and targets for each of the quantifiable performance measures to assess the effectiveness and efficiency of the Attaché Program.

USPTO Response:

The USPTO concurs with this recommendation, and is already taking steps to implement it. Starting in FY 2011, we began to track the progress of the attachés based in Brazil, Russia, India and China and their USPTO-based teams, with respect to office administration, enforcement initiatives, developments in laws and regulations, and international cooperation. This includes baselines and targets based on country-specific action plans. In FY 2014, we began to track the allocation of attaché time between patent, trademark, copyright and other areas.

Since the beginning of second quarter of FY 2016, the USPTO has also been collecting data to support performance measures related to the number of attaché meetings with foreign government officials, the number of training programs conducted, the number of foreign officials trained, the number of public awareness programs conducted, the number of participants in public awareness programs, the number of weekly activity reports submitted, the number of same-day reports about IP-related developments, and the number of identifiable successes. Since the beginning of the third quarter of FY 2016, we have begun to collect data to support quantifiable performance measures related to the number of U.S. stakeholders helped, and the number of articles published.

We intend to continue this work. We will also look for ways to improve, revise and optimize these performance measures, as well as to identify new performance measures that would be helpful in assessing the program.

Once we have collected data to support each of the quantifiable performance measures for four consecutive quarters, we will use this data to establish a baseline. We plan to then analyze this data to establish targets for each of the quantifiable performance measures in order to assess the effectiveness and efficiency of the Attaché Program.

Nevertheless, we believe that quantifiable performance measures should not be the sole measure of the effectiveness and efficiency of the IP Attaché Program. The quality of the attachés' diplomatic work, including the caliber of training and advocacy efforts, and assistance provided to U.S. stakeholders, is an important determinant of the Program's effectiveness and efficiency. This quality can be difficult to assess with quantifiable performance measures. A well-planned and executed meeting with an appropriate senior foreign government interlocutor, for example, might yield better results than numerous less targeted or more general meetings. Similarly, a single well-designed and targeted training program, utilizing effective speakers, can result in better educated foreign government officials, better positioned to help U.S. stakeholders, than several programs that are not as well designed and targeted. In addition, the outcome of any particular initiative may take years to become apparent and to be able to be evaluated. Accordingly, we agree that quantifiable measures are relevant to assessing Program effectiveness and efficiency, but do not believe they are alone sufficient or necessarily determinative.

Conclusion

We thank the Assistant Inspector General for Acquisition and Special Program Audits for providing us with this draft report. As described above, the USPTO has started to collect data to establish quantifiable performance measures, and will take steps to continue to improve the development and use of these measures. We are confident in our abilities to meet the OIG recommendation in a timely manner. We look forward to working with your office in the future in our efforts to improve the use of quantifiable performance measures, including baselines and targets, in assessing the effectiveness and efficiency of the IP Attaché Program.