INTELLECTUAL PROPERTY

USPTO Has Made Progress in Hiring Examiners, but Challenges to Retention Remain

Why GAO Did This Study

The U.S. Patent and Trademark Office (USPTO) is responsible for issuing U.S. patents that protect new ideas and investments in innovation and creativity. Recent increases in both the complexity and volume of patent applications have increased the time it takes to process patents and have raised concerns about the validity of the patents USPTO issues. Adding to these challenges is the difficulty that USPTO has had attracting and retaining qualified staff. In this context, GAO was asked to obtain information about USPTO's patent organization. Specifically GAO reviewed (1) overall progress in implementing the initiatives in its strategic plan; (2) efforts to attract and retain a qualified patent workforce; and (3) remaining challenges, if any, in attracting and retaining a qualified patent workforce.

What GAO Recommends

GAO recommends that USPTO develop formal strategies to improve communication and collaboration between management, patent examiners, and the union to help to address the issues identified in this report. USPTO agreed with our recommendations.

www.gao.gov/cgi-bin/getrpt?GAO-05-720.

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

What GAO Found

USPTO has made more progress in implementing its strategic plan initiatives to increase the agency's capability than initiatives aimed at decreasing patent pendency. USPTO has fully or partially implemented all 23 capability initiatives that focus on improving the skills of employees, enhancing quality assurance, and altering the patent system through changes in existing laws or regulations. In contrast, the agency has partially or fully implemented only 8 of the 15 initiatives aimed at reducing pendency. Lack of funding was cited as the primary reason for not implementing these initiatives. With passage of legislation in December 2004 to increase fees available to USPTO for the next two years, the agency is re-evaluating the feasibility of implementing some of these initiatives.

Since 2000, USPTO has taken steps intended to help attract and retain a qualified patent examination workforce, such as enhancing its recruiting efforts and using many of the human capital benefits available under federal personnel regulations. However, it is too soon to determine the long-term success of the agency's recruiting efforts because they have been in place only a short time and have not been consistently sustained due to budgetary constraints. Long-term uncertainty about USPTO's hiring and retention success is also due to the unknown impact of the economy. In the past, when the economy was doing well, the agency had more difficulty in recruiting and retaining the staff it needed.

USPTO faces three long-standing challenges that could also undermine its efforts to retain a qualified workforce: the lack of an effective strategy to communicate and collaborate with examiners; outdated assumptions in the production quotas it uses to reward examiners; and the lack of required ongoing technical training for examiners. According to patent examiners, the lack of communication and a collaborative work environment has resulted in low morale and an atmosphere of distrust that is exacerbated by the contentious relationship between management and union officials. Also, managers and examiners have differing opinions on the need to update the monetary award system that is based on assumptions that were established in 1976. As a result, examiners told us they have to contend with a highly stressful work environment and work voluntary overtime to meet their assigned quotas. Similarly, managers and examiners disagree on the need for required ongoing technical training. Examiners said they need this training to keep current in their technical fields, while managers believe that reviewing patent applications is the best way for examiners to remain current.