

Backlog, Quotas Overwhelm Patent Examiners

By Stephen Barr
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Here's how bad it is at the [U.S. Patent and Trademark Office](#).

If the agency could shut its doors to catch up on its work, its 5,500 patent examiners would take at least two years to clear the backlog of pending applications. When the agency reopened, there would be more than 1 million new applications piled up on the doorstep.

In the global economy, innovation, technological progress and the protection of intellectual property rights are keys to U.S. competitiveness. Keeping up with the demand for patents is critical to the nation's health.

But the patent office is suffering from troublesome turnover. One patent examiner leaves for nearly every two the agency hires, according to a report from the [Government Accountability Office](#), an arm of Congress.

About two-thirds of patent examiners surveyed by the GAO said the patent office's production quotas are one of the biggest reasons for quitting. To meet their quotas, 70 percent of examiners surveyed by the GAO said they had to work substantial unpaid overtime in the previous 12 months. Others said they caught up with their work while on vacation.

The production quotas are based on the number of applications that examiners must review and complete biweekly and have not been adjusted since 1976. Since then, patent applications have become more complex, which means it takes longer to review them.

The GAO concluded that "the root of this high level of attrition appears to be the stress resulting from the agency's outdated production goals."

Shortly after the GAO released the report last week, the Patent and Trademark Office issued a statement saying "it will review the assumptions the agency uses to establish production goals for patent examiners."

In an interview, *Jon W. Dudas*, the agency's director, said reducing the backlog of applications for patents involves more than hiring and keeping examiners. "A good part of this solution is saying that, 'Applicants, if you give us better information, we can do a better job,'" he said.

A quarter of applications arrive with no supporting materials and another quarter carry more than 25 references to supporting data, he said. Although an extreme example, Dudas said the agency once received an application that came in 28 boxes, with 2,600 pages per box.

"We need the best material. Not the kitchen sink. And not nothing," Dudas said.

To make the job of an examiner easier, the patent office will require inventors and others to file applications with fewer legal descriptions, known as claims, starting Nov. 1. If applications arrive with more than 25 claims, the agency will expect better supporting data, which should help relieve stress and time pressures on examiners as they research cases, Dudas said.

But whittling down the backlog of 760,000 pending applications is difficult when there is a high level of attrition in the patent office workforce (many examiners are engineers and science and technical professionals).

In the 2002-2006 period studied by the GAO, about 70 percent of the 1,643 examiners who left had been with the agency for less than five years, and nearly 33 percent had been there for less than one year.

Because it takes from four to six years of experience for patent examiners to become fully proficient, the staff

churning results in "years upon years of wasted training," said [Rep. Thomas M. Davis III](#) (R-Va.), who requested the GAO study.

"PTO has been unable to effectively combat its brain drain," Davis said.

The GAO review found that agency management and examiners have different opinions of what is causing the turnover.

In the GAO survey of patent examiners, 67 percent said production quotas were among the top reasons they would consider leaving.

The GAO estimated that 62 percent of examiners are dissatisfied with the time allowed by the agency to meet production goals, and 50 percent are dissatisfied with the methods used to calculate the goals. (Representatives of the Patent Office Professional Association, the union that represents examiners, did not return telephone calls seeking comment.)

The agency's managers, in contrast, said examiners leave the agency because of the nature of the work, the high cost of living in the Washington area and because of the stiff competition to get into the area's graduate and postgraduate programs. Many examiners come to the agency out of college and are looking to polish their résumés before moving on to other jobs, the managers said.

To retain employees, the agency offers "special pay rates" above regular federal scales, pays recruitment and retention bonuses, offers flexible work schedules, a telecommuting program and reimbursement for law school. At its [Alexandria](#) building, the agency provides examiners with a fitness center and a child-care center.

Patent officials are looking at hiring back retirees to work on the patent backlog and at revising "duty station" requirements so the agency can expand into a nationwide workforce.

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