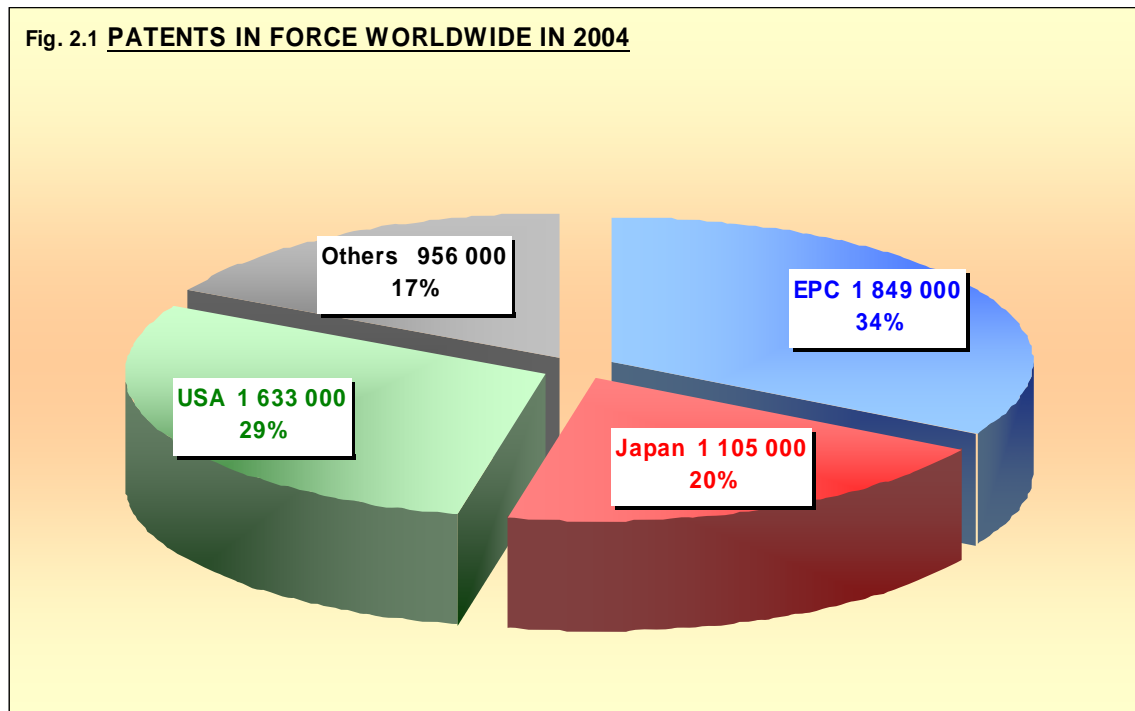


Chapter 2

THE TRILATERAL OFFICES

Patent rights are well used throughout the world. The most recent information on worldwide patent rights is available from the 2004 WIPO Industrial Property Statistics. At the end of the year 2004, a total of 5.5 million patents were in force. The EPC contracting states, the JPO and the USPTO, together cover about 83% 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, represents a good example of economic and political cooperation, providing patent protection in up to 36 European countries on the basis of a single patent application and a unitary grant procedure. The EPO currently receives about twice as many patent filings as it did in 1996.

The Organization continues to expand. In 2005 the European Patent Convention entered into force in Latvia, which so became the 31st EPC Contracting state. By the end of the year, the members of the underlying European Patent Organization were:

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

Other states have agreements with the EPO to allow applicants to request an extension of European patents to their territory. No new such agreements entered recently into force. At the end of 2005, extensions of European patent could be requested for:

Albania, Bosnia-Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, and Serbia and Montenegro.

Together, the above states build a market of about 590 million people.

Some other states that have expressed recently their intention to join the Organisation are Norway, Malta and Croatia.

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 European Patent Convention (EPC). Moreover, the EPO acts as a receiving, searching, and examining authority under the Patent Cooperation Treaty (PCT). A further task is to perform, on the 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.

To keep pace with the higher demand for its services, the Office continued with its internal adjustments. With the completed deployment of the BEST⁵ project, a number of changes have been made to the grant procedure to speed up patenting without sacrificing quality.

Since July 2005, all applications entering the European granting procedure are subject to an extended European search. Considering the success of the project when used for first filings, the EPO decided to expand the new process to all applications. The search report is now supplemented with the first substantive examination communication. This gives the applicants added value on the top of the

⁵ Bringing Examination and Search Together

search report and enables earlier risk management.

A new comprehensive quality management system was introduced at the EPO in 2005. By having implications at every stage of the procedure, as well as on training and equipment provided to examiners and including internal auditing of granted patents, the system aims at establishing a quality standard to reinforce the innovation support function of the EPO.

The EPO launched a "Scenario Project" to prepare its future, in order to realign if and where necessary the patent system and its significance in the years to come. The project is based on a series of interviews with different partners such as patent system users, experts and critics around the world to gather enough material to establish meaningful scenarios for the future development of the patent system. Results are expected to be presented in 2007.

Table 2.1: PRODUCTION INFORMATION EPO

PRODUCTION FIGURES	2004	2005
Filings		
Total Euro-direct & Euro-PCT international phase	180 662	193 623
Total Euro-direct & Euro-PCT regional phase	123 775	128 679
Searches carried out		
European searches (Euro & Euro-PCT supplementary)	77 984	74 068
PCT international searches	65 898	69 722
Searches on behalf of national offices and other searches	21 964	19 354
Total production search	165 846	163 144
Examination: final actions performed		
European examination	76 328	84 026
PCT Chapter II	27 805	17 975
Opposition (final action)	1 979	2 331
Total final actions examination / opposition	106 112	104 332
Appeals settled		
Technical appeals	1 369	1 395
PCT protests	32	37
Other appeals	50	50
Total decisions	1 451	1 482

In Table 2.1, the latest production figures for search (European, PCT and national searches), for examination (European and PCT Ch. II), for opposition and for appeal in the European procedure are given for the years 2004 and 2005.

In 2005, the Office production in search decreased by 2% to about 163 100 completed searches. While the examination work under the PCT has been further reduced, the number of final actions in European examination increased by 10% to 84 000. In 2005, 1 480 decisions in appeal were completed (2% more than in 2004).

Documentation

The Office further improved the range and quality of its databases and online search tools. The EPO documentation database grew further in 2005. The electronically searchable EPO database contains more than 53 million patent documents. The non-patent literature now contains 62 million searchable abstracts. New databases were acquired in the fields of telecommunication standards and traditional knowledge. Special efforts helped to give users access to 1.3 million Chinese patent documents.

The EPO citation database currently contains 14 million references relating to 5 million applications or publications.

In 2005, a total of 236 million documents were viewed from EPOQUE, a rise of 25% over 2004.

The EPO's in-house classification system (ECLA⁶) is an expanded form of the IPC⁷. With 130 000 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. A major activity in 2005 was the implementation of the IPC reform in the EPO's tool to make it ready for the new IPC to enter into force at the beginning of 2006.

The electronic filing tool epoline[®] made available by the EPO received a growing response from the users. About 23% of European applications were made using the online-filing offered within epoline[®].

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 EPIDOS⁸. These 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 (PATLIB⁹) is one of the key elements for the effective patent based transfer of knowledge in Europe. These information centres are equipped with CD-ROM workstations, which facilitate user access to patent documents.

On 1 April 2005, the European Publication Server became the official vehicle for the publication of European patent documents. This allows free publication of all European patent applications and patents on the Internet to replace the paper versions. The paper version of the European patent bulletin was discontinued at the end of 2004 and is replaced by the Internet version.

On 1 January 2005, the European Patent Academy opened its doors. In partnership with the IP offices of the member states, it will support the development and harmonization of patent-related intellectual property law and practice in the EPC contracting states by improving IP-related training and education structures in Europe.

The 2005 Patent Information Conference was held in Budapest in November in parallel with the European Commission's PATINOVA conference. Some 630 delegates and 40 exhibitors attended this

⁶ EPO CLAssification

⁷ International Patent Classification. See www.wipo.int/classifications/ipc/en/preface.htm

⁸ European Patent Information and DOcumentation Services - formerly INPADOC

⁹ PATent LIBrary

joint event. The 2005 PATLIB conference took place in Romania in May. Co-organized with the Romanian Patent Office, it attracted 450 participants from 39 countries. The “Far East meets West” meeting was organised in Vienna, where patent information experts from Japan, China and Korea met with European patent users.

Among other events, an International Conference on “Intellectual property as an economic asset” was held in Berlin in June 2005 in cooperation with the OECD and the German Economics and Labour Ministry.

Technical Cooperation

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

During 2005, substantial progress was made on the EPTOS¹⁰ tool box. This system will soon provide the National Offices with a complete set of automation tools to manage their business of Patents, Trademarks and other types of Industrial Property.

In 2005, various technical projects were conducted in cooperation with the European Commission, the WIPO, the OHIM¹¹ and national local authorities. Such activities were held in Ukraine, Croatia, Serbia and Montenegro. They aim at supporting the development of the local IP infra-structure and at fostering patent awareness in the countries.

In the context of the EC-ASEAN IP cooperation programme, the EPO contributed to the organization of seminars and workshops on geographical indication protection, IPR border control and IPC enforcement.

The annual joint committee meeting between the EPO and the Chinese Office (SIPO) agreed on the 2006 bilateral action plan, providing for the transition from a technical cooperation to a strategic partnership.

In cooperation with the WIPO and the French Office (INPI), a regional training centre for the African supranational Office OAPI was officially opened in Cameroon. The EPO agreed with the Egyptian Patent Office to set up a Patent Information Centre in Alexandria, and in cooperation with the WIPO to establish an IP training centre in Egypt.

¹⁰ Electronic Patent and Trademark Office System

¹¹ Office of Harmonization for the Internal Market

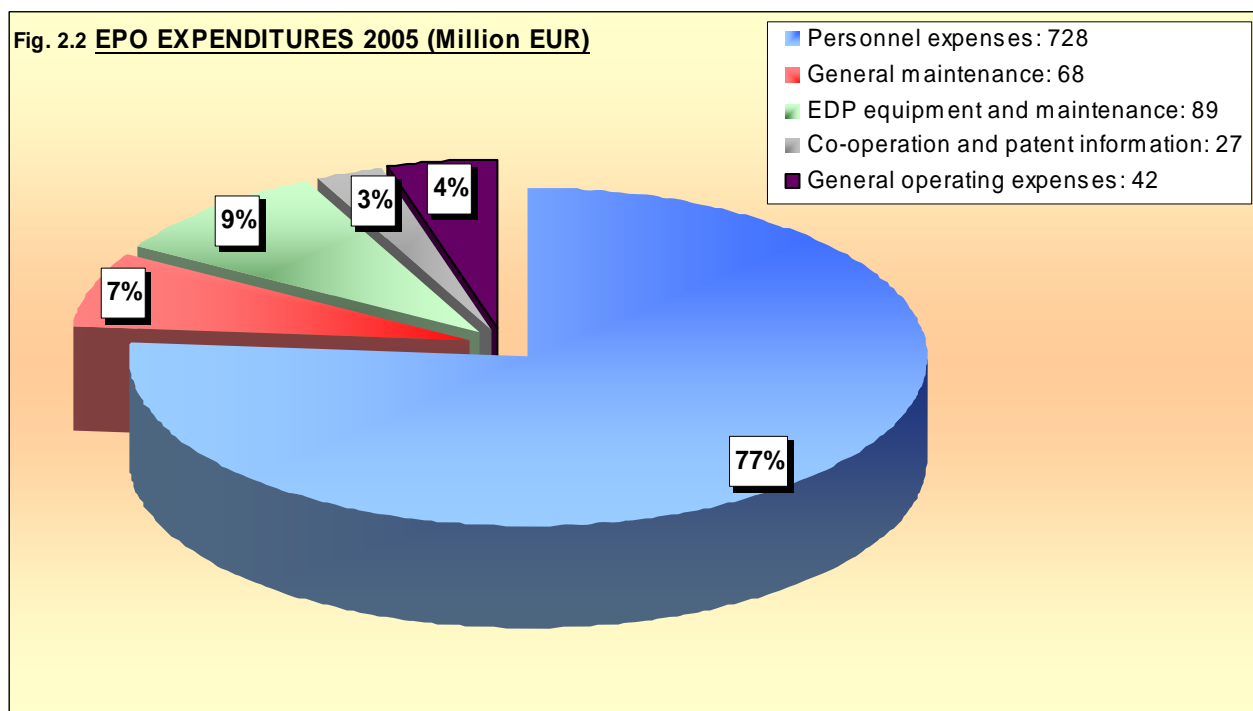
EPO's budget

The EPO is financially autonomous. Expenditure is met entirely out of 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 in later years. On the other hand, the renewal fees for European patents are collected by the designated contracting states and determined by national law. From these renewal fees, 50% is kept by the National Offices and 50% is transferred to the EPO.

Total expenditure in the year 2005 (excluding investments) was EUR 953 million. This breaks down into EUR 728 million (77%) for personnel expenses, EUR 68 million (7%) for general maintenance (including depreciation), EUR 89 million (9%) 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 to the EPO in 2005 amounted to EUR 1 005 million.

Detailed description of the budget items can be found in Annex 1.



EPO Staff Composition

During 2005, the EPO increased its number of employees by 3.4% and 200 examiners have been recruited partly to compensate for departure. By the end of the year, the staff reached a total of 6 118, including 3 449 examiners in search, examination, opposition, and 138 members of Boards of Appeal.

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

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 under the system of industrial property rights, which includes patents, utility models, designs, and trademarks.

In order to ensure sustainable growth, it is essential for Japan to establish itself as an intellectual property-based nation where the achievements of intellectual creation activities become the source of national wealth. It is necessary to establish “the intellectual creation cycle” of creation, protection and exploitation of intellectual property in order to achieve an intellectual property-based nation. To this end, the JPO, which is responsible for the core of the intellectual property administration, shall continue specific measures to establish the human and system environments that will support the adequate protection and effective exploitation of intellectual property.

Examination and appeal examination

In patent examination, the number of requests for examination has exceeded the number of first office actions for seven years since 1999. Furthermore, due to factors such as the ever-increasing examination burden due to technology becoming increasingly complex and advanced, and the number of international search reports rapidly rising, we are in a more severe examination environment than ever before. In addition, since the period to file a request for examination was shortened in October 2001, the number of requests is beginning to increase at a high rate (an increase of about 21%, from 330 000 in 2004 to 400 000 in 2005.)

Under these circumstances, the JPO has been making efforts to promote expeditious and accurate examinations through several approaches mentioned later. As a result, in 2005, the period for the first office action was 26 months on average.

The total number of requests for appeal examination in 2005 was 23 054, decreasing by 954 under the previous year.

Achieving expeditious and accurate patent examination at the highest global standard

To strengthen the examination system, the JPO has scheduled to employ 500 fixed-term examiners for 5 years since FY 2004 in addition to increasing regular examiners. The JPO has employed 98 fixed-term employees every year from FY2004 to FY2006. Also, the JPO will further promote outsourcing of prior art search to registered search agencies in the private sector.

International efforts

With the objective to expedite patent examination on a global scale and improve convenience for users, the JPO and the USPTO will commence the Patent Prosecution Highway (PPH) pilot program from July 2006 based on the discussion at the trilateral conference in 2005. The JPO will also promote the PPH plan with the Republic of Korea Office (KIPO) based on the agreement reached at the meeting between commissioners of JPO and KIPO. Furthermore, as anti-counterfeiting measures, the JPO will request the governments of infringing countries to strengthen protection of intellectual property, and will provide regulatory authorities of such countries with support for capacity building. The JPO will implement these measures proactively through close coordination between the government and private sectors and with cooperation from European countries and the United States.

Strengthening protection of designs and brands

In order to strengthen the international competitiveness of Japanese companies, it is also absolutely

necessary to support activities to increase product values with attractive designs and brands. In the “Bill for Partial Revision to the Design Act and Related Acts” submitted to the current session of the Diet, it is proposed that the term of a design right should be extended from 15 years to 20 years, trademarks used by retailers should be protected as service marks, and an act of exporting counterfeits from Japan should be regarded as infringement. Also, the JPO will make active efforts to publicize and implement the regionally based collective mark system that was put into force in April 2006 for the protection of regional brands.

Supporting local companies and SMEs

As measures for local companies and SME¹²s, the JPO will support revitalizations of local regions from the perspective of protecting and utilizing intellectual property, and also help SMEs that fall behind large companies in establishing systems for the strategic use of intellectual property. More specifically, the JPO will support “Regional Intellectual Property Strategy Headquarters” established in each regional block, and support the implementation of various projects such as holding seminars in accordance with the “Regional Intellectual Property Strategy Program” formulated by each headquarters. The JPO will also provide SMEs with support for conducting prior art search.

Developing an environment to stimulate the Intellectual Property Cycle

The JPO will promote environmental development in order to stimulate the “Intellectual Creation Cycle,” which consists of creation, protection, and utilization of intellectual property, and achieve the goal of “making Japan an Intellectual Property-Based Nation.” Via the NCIP¹³, the JPO will carry out projects to enhance the essential infrastructures to achieve the goals of “information” and “human resources,” encouraging strategic protection and utilization of intellectual property in industry through an active exchange of opinions with business executives.

Table 2.2: PRODUCTION INFORMATION JPO

PRODUCTION FIGURES	2004	2005
Applications filed		
Domestic	368 416	367 960
Foreign	54 665	59 118
Total	423 081	427 078
Grants		
Domestic	112 527	111 088
Foreign	11 665	11 856
Total	124 192	122 944
Applications in appeal	24 008	23 054
(Acceptance)	(5 728)	(5 712)

Budget

The JPO FY2005¹⁴ budget totaled approximately 117 554 million yen. The breakdown of expenditures is as follows:

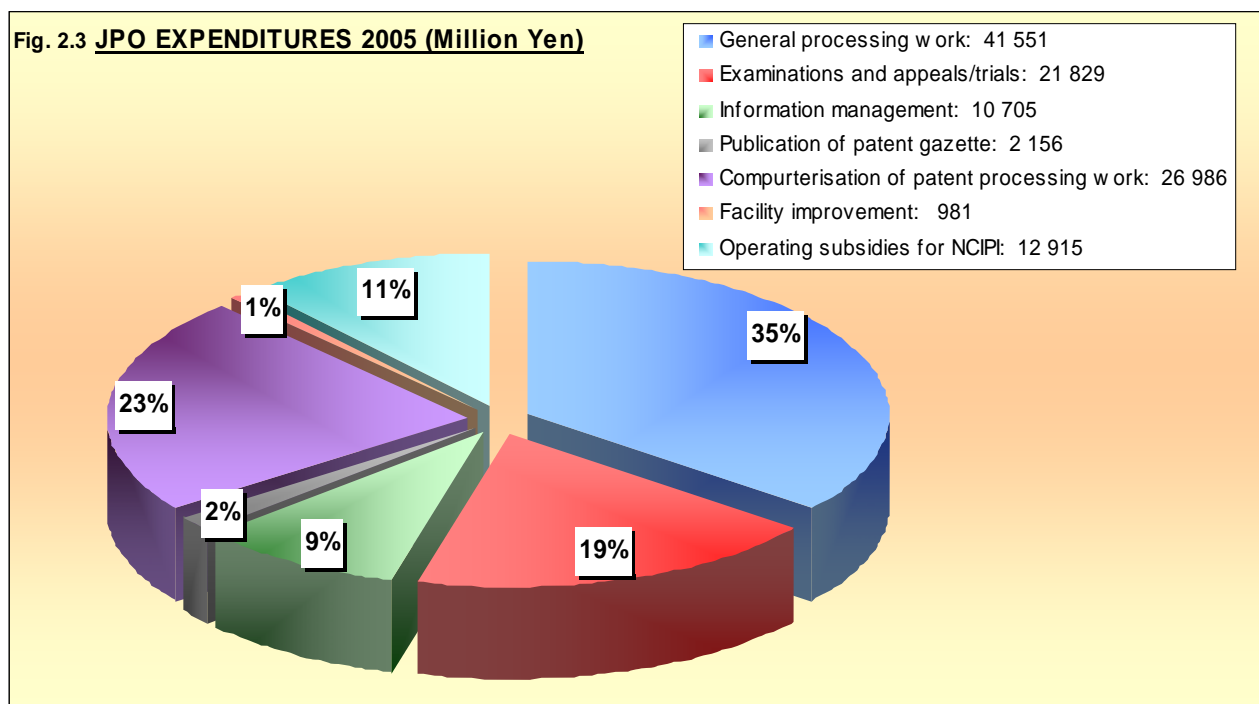
¹² Small and Medium size Enterprises

¹³ National Center for Industrial Property Information and Training

¹⁴ Period of JPO's FY2005 is from April 1, 2005 to March 31, 2006

- 41 551 million yen for general processing work (includes personnel expenses)
- (30 384 million yen for existing personnel)
- 21 829 million yen for examinations and appeals/trials, etc.
- 10 705 million yen for information management
- 2 156 million yen for publication of patent gazette, etc.
- 26 986 million yen for computerisation of patent processing work
- 981 million yen for facility improvement
- 12 915 million yen for operating for NCIPI (subsidy)
- 431 million yens for others.

Detailed description of the budget items can be found in Annex 1.



JPO Staff Composition

As of the end of FY2005, the JPO employed a total of 2 651 staff. This includes 98 new fixed-term examiners to further cut the time required for examination.

Examiners:	1 557
Patent / Utility model:	1 358
Design:	51
Trademark:	148
Appeal examiners:	389
General staff:	705

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Mission Statement

The mission of the United States Patent and Trademark Office (USPTO) is to ensure that the intellectual property system contributes to a strong national and global economy, encourages investment in innovation, and fosters entrepreneurship. This mission is accomplished by the USPTO through its two distinct business lines, Patents and Trademarks, which embodies Intellectual Property inventions or creations and aims 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.
- ❑ Build the infrastructure for innovation and lead the way in creating a quality-focused, highly productive, responsive organization that supports a market-driven Intellectual Property system for the 21st Century.

Services and Operations

As an agency of the United States Department of Commerce, the primary services provided by the USPTO are examining patent and trademark applications and disseminating patent and trademark information. The USPTO encourages technological advancement by providing incentives to invent, invest in, and disclose new technology by issuing patents.

The USPTO provides valued products and services to its customers in exchange for fees that are appropriated 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.

USPTO Strategic Plan

The USPTO has faced unprecedented challenges in recent years including 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, in fiscal year 2002 the USPTO implemented the 21st Century Strategic Plan. This plan also assists the USPTO in carrying out the Government Performance and Results Act (GPRA), which requires U.S. agencies to plan and measure the performance of their programs. The 21st Century Strategic Plan was updated in fiscal year 2003 and it covers the period through fiscal year 2008. The goal of the plan is to transform the USPTO into a responsive and flexible agency capable of competing in a global, market-driven economy.

With the passage of the Consolidated Appropriations Act, 2005 (P.L. 108-447) in December 2004, certain fee changes were enacted for two fiscal years with the USPTO receiving full access to its projected fee income for 2005. This allows the USPTO to move forward with many of the initiatives contained in the 21st Century Strategic Plan. The plan builds the foundation to facilitate improvements in patent and trademark quality and address increases in pendency due to the growing complexity of applications and increasing workloads. The USPTO will continue to explore all opportunities available to optimize patent and trademark quality and processing times, including working with its IP partners on worksharing initiatives, expanding and training examination staff with a focus on core examination functions, and working with customers and stakeholders on changes to processes which will aid in meeting the workload challenges it faces. Additionally, the USPTO continues to focus on increasing the number of applications and communications received and processed electronically, as well as other e-government initiatives. Strengthening worldwide protection and enforcement of intellectual property is also a priority of the USPTO, as many of its initiatives address this effort. Achievement of the USPTO's long-term goals is dependent upon permanent authorization of the revised fee schedule that was set forth in the Consolidated Appropriations Act, 2005.

Intellectual Property Protection

Throughout fiscal year 2005, strengthening intellectual property protection and enforcement was one of the main themes of USPTO efforts worldwide. Officials from the USPTO discussed ways of enhancing protection for copyrights, geographical indications, patents, trademarks, trade secrets and other forms of intellectual property in China, Brazil, Russia, Turkey, India, throughout Asia, the Middle East region, and the continent of Africa, as well as for the countries with which the United States is negotiating or has negotiated Free Trade Agreements (Thailand, Andean countries, Oman, United Arab Emirates, and the Southern Africa Customs Union).

Fiscal year 2005 marked the expansion of IP protection and enforcement programs, which included training assistance programs; special work assignments aimed at enhancing technical assistance; a public awareness campaign; and studies on key intellectual property issues. Attorney specialists from the Office of International Relations and the Office of Enforcement provided country specific review of intellectual property laws, and recommended strengthened enforcement provisions along with training of judges, prosecutors, customs officials, and intellectual property office technical staff. Broader multilateral training programs, such as the intellectual property Enforcement Academy and the Visiting Scholars Program were offered to representatives of a variety of countries throughout the year.

Piracy and counterfeiting continued as major concerns during 2005, 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. As part of the President's Strategy Targeting Organized Piracy! (STOP!) initiative, the USPTO worked with other U.S. government agencies on the shared goal of fighting piracy and counterfeiting. The USPTO staffed the STOP! hotline, 1-866-999-HALT, which lets callers receive information from our attorneys with regional expertise on intellectual property rights and enforcement. The STOP! gateway website, www.stopfakes.gov, features specialized information, including USPTO-designed "intellectual property toolkits" to help businesses protect their rights in other countries, such as China, Korea, and Mexico. The USPTO will continue to work with other countries to build a consensus and protect America's IP community.

Table 2.3: PRODUCTION INFORMATION USPTO

PRODUCTION FIGURES	2004		2005	
Applications Filed¹⁵	356 943		390 733	
First Actions¹⁶	288 530		302 659	
Grants				
U.S. Residents	84 271	51%	74 637	52%
Foreign	80 022	49%	69 169	48%
Japan	35 350	22%	30 341	21%
EPC states	26 246	16%	22 182	15%
Others	18 426	11%	16 646	12%
Total	164 293	100%	143 806	100%
PCT Chapter II	17 030		11 427	
Applications in appeal and interference proceedings				
Ex-parte Appeal Contested	2 387		2 973	
Ex-parte Appeal Disposed	3 355		2 888	
Inter-partes Appeal Contested	70		109	
Inter-partes Appeal Disposed	99		106	
Patent Cases in Litigation				
Cases filed	66		51	
Cases disposed	61		55	
Pending cases (end of calendar year)	42		42	

USPTO's budget

In calendar year 2005, USPTO expenditures reached \$1.5 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.

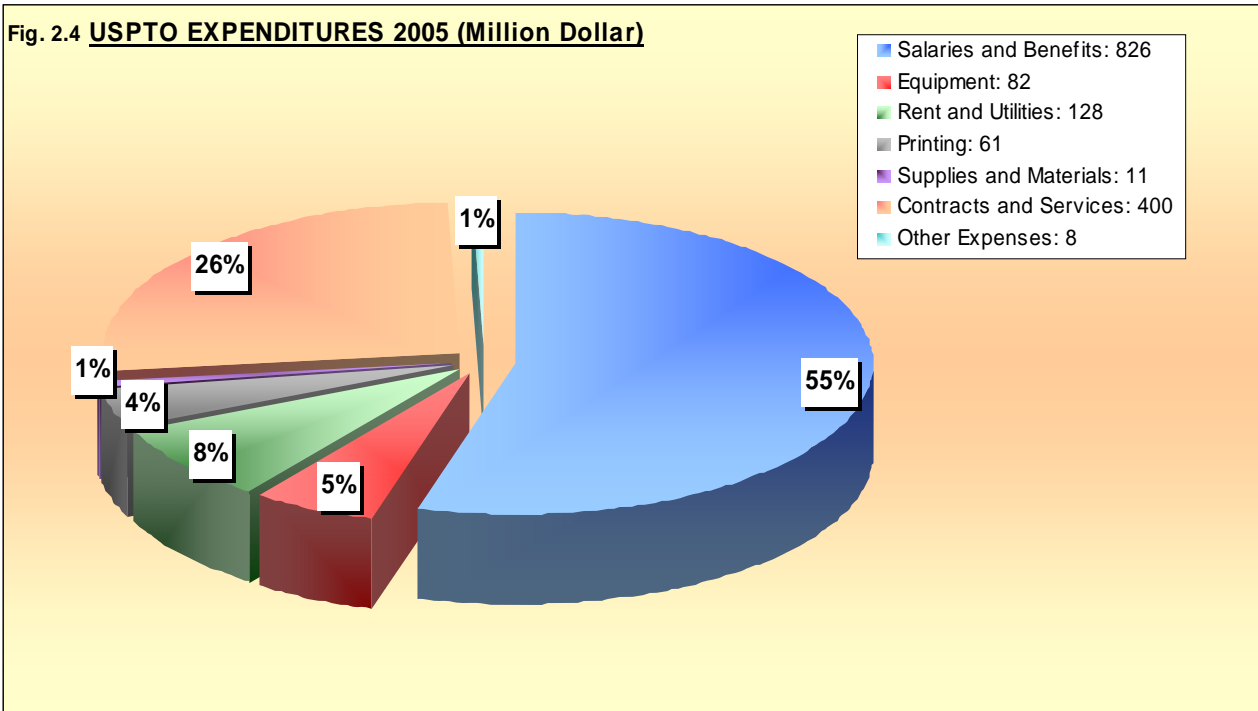
The majority of expenditures in 2005 were attributed to the USPTO's labor force. Salaries and benefits accounted for 54.5 percent of overall expenditures, or about \$826 million. Contracts and services were the second major expenditure, which represented about 26.4 percent of expenditures. Rent and utilities were the third largest at 8.4 percent. A breakdown of all the major spending categories is shown in Fig. 2.4.

Detailed description of the budget items can be found in Annex 1.

¹⁵ For utility patents only

¹⁶ Utility, plant, and reissue patents

Fig. 2.4 **USPTO EXPENDITURES 2005 (Million Dollar)**



USPTO Staff Composition

In fiscal year¹⁷ 2005, the total staff at the USPTO was 7 363. The Patent staff total was 5 699. This total was comprised of 4 177 Utility, Plant and Reissue (UPR) examiners, 81 Design examiners, and 1 441 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 230 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 employees on the Board of Patent Appeals and Interferences decreased in 2005, and the total at the end of the year was 103.

More Information

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

<http://www.uspto.gov>

¹⁷ Period of USPTO's FY2005 is from October 1, 2004 to September 30, 2005