

Reforming the Patent Industry from the Small Business Perspective

Washington Internships for Students of Engineering

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Sponsored by IEEE-USA

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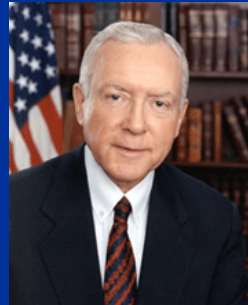
Background

- **United States Patent & Trademark Office (USPTO)**
- **What are patents?**
- **Small Business Administration (SBA)**
 - **Office of Size Standards**
 - **Office of Advocacy**



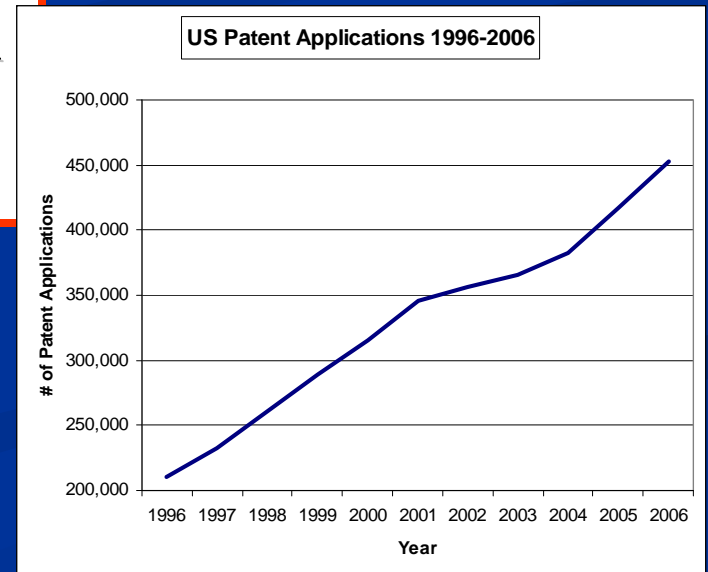
Patent Reform Act of 2007

- Sponsors
- Stakeholders and Interest Groups
 - Coalition for Patent Fairness
 - Coalition for the 21st Century Patent Reform
 - Innovation Alliance
- Potential Changes to Patent System
 - Micro-Entity Status
 - Apportionment Damages



USPTO & Fees

- Patent Applications (800,000)
- Patent Pendency (2 years)
- Average Cost for Patent in U.S:
\$20,000-\$30,000
- Current Fee Reduction for “Small Business”
- Problems with Classification System
- Venue



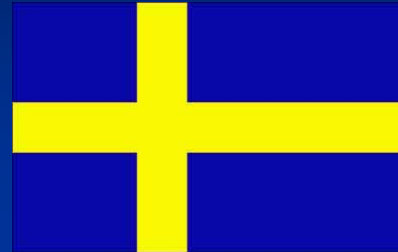
Source: US Patent Statistics, USPTO, Available at http://www.uspto.gov/go/taf/us_stat.pdf
Last accessed on July 12, 2007

International Maintenance Fees



\$13,250

\$22,783



\$5,552

\$1,510



Stage	Costs in U.S. dollars
International stage costs	\$2,100
U.S. attorney and foreign representative fees at the international stage	<10,000-20,000
National stage costs	13,417
U.S. attorney and foreign representative fees at the national stage	<30,000-80,000
Maintenance fees	83,543
U.S. attorney and foreign representative fees during the maintenance stage	<20,000-130,000
Total	\$<159,060-\$329,060

Source: GAO analysis of sources cited in table 4-8.

Source: "Expert's Advice for Small Business Seeking Foreign Patents," GAO-03-910, June 2003, pg. 54

Small Business Innovation Research

- Phase I – Startup: \$100,000
- Phase II – R&D: \$750,000
- Phase III- Commercialization
- Agencies contribute 2.5% of budget



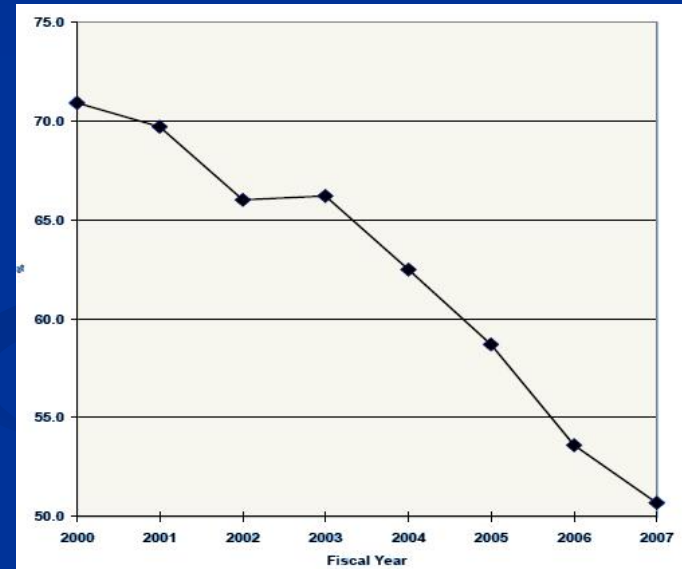
Participating Agencies

- Department of Agriculture
- Department of Commerce
- Department of Defense
- Department of Education
- Department of Energy
- Department of Health & Human Services (NIH)
- Department of Homeland Security
- Department of Transportation
- Environmental Protection Agency
- National Aeronautics and Space Administration
- National Science Foundation

Patent Examiners

- **New Millennium Agreement of 2001 with USPTO and Patent Office Professional Association (POPA)**
- **Pay incentives**
- **Pressures from job**
- **Count system**
- **Rulemaking changes to continuations**

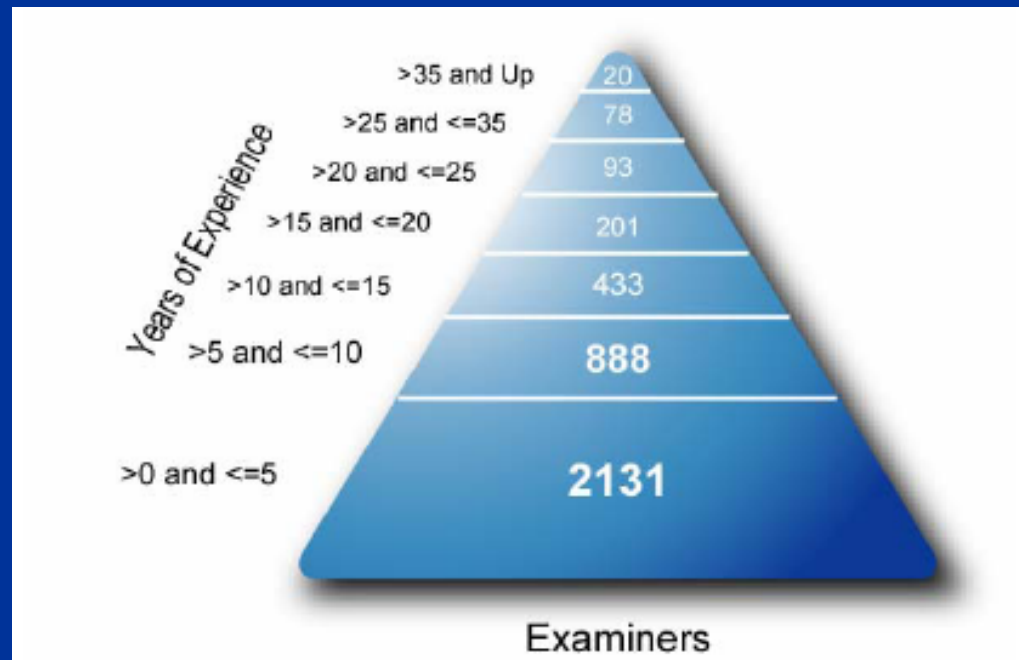
Allowance Rate



Source: Goodwin Procter Presentation on Patent Reform by Stephen Schreiner, June 9, 2006

Patent Examiners

- Next 4 years, 1200 examiners per year
- Third highest turnover rate in government, 55% with less than 5 years experience



Source: U.S. Patent and Trademark Office: Transforming to Meet the Challenges of the 21st Century, National Academy of Public Administration, August 2005. Available at <http://www.napawash.org/Pubs/PTO8-25-05.pdf>. Last accessed on July 18, 2007.

Damages for Infringement Cases

- *Rite-Hite v. Kelley*: **Entire Market Value Rule**
- *Georgia-Pacific Corp. v. United States Plywood Corp.*: **Apportionment Damages**
- *Microsoft vs. Alcatel-Lucent*
- Current Patent Reform Act impacts
- Estimated cost of opposition to patent infringement case: \$100,000



vs.



Conclusions

Issue	Recommendation	Legislative or Agency Action
Fees Cost Small Business	Patent Fee Inclusion for SBIR Proposals	Congressional hearings with SBA and/or Legislative action through Committees on Small Business
Inadequate Small Business Size Standard ----- "Micro-Entity" Status in PRA	Enhanced Classification System at the USPTO	SBA Office of Size Standards work jointly with the USPTO to develop new classification system

Conclusions cont...

Issue	Recommendation	Legislative or Agency Action
Increase Examiner Retention	Increased Salaries and Retention Incentives	Congressional authorization and/or appropriation of funds
	Better System of Evaluating Examiners	Changes to count system including technology considerations within USPTO
Apportionment Damages in PRA	Allow Courts to Further Develop Damage Awards	No action