



# Report in Brief

October 24, 2024

## Background

The United States Patent and Trademark Office (USPTO) is responsible for registering trademarks that meet the requirements of the Trademark Act of 1946, as amended. Most of the examination process for trademark applications is performed by examining attorneys, who generally examine applications in the order in which they are filed. As part of its performance management, USPTO sets targets and reports results for two application pendency measures: first action pendency and total pendency. First action pendency measures the average number of months from the date of application filing to the examining attorney's first office action. Total pendency measures the average number of months from date of filing to notice of abandonment, notice of allowance, or registration for applications.

First action pendency increased from under 3 months in fiscal year (FY) 2019 to 8.5 months in FY 2023, and the backlog of unexamined applications grew by 256 percent over the same period. To address the increase, USPTO initially relied on hiring more examining attorneys and increasing the amount of overtime and production incentive awards available to examining attorneys. In FY 2023, USPTO developed a phased pendency reduction plan to be implemented in FY 2024. The plan includes strategies such as a new first-action production incentive award and training on more efficient search techniques. Reducing pendency is important because it affects applicants' ability to make timely business decisions.

## Why We Did This Review

Our audit objective was to determine whether USPTO exercised effective oversight and management of trademark pendency.

## UNITED STATES PATENT AND TRADEMARK OFFICE

### USPTO Should Address Risks to Its Pendency Reduction Efforts for Trademark Applications

OIG-25-002-A

## WHAT WE FOUND

We assessed USPTO's development, monitoring, and reporting of trademark pendency measures, as well as the effectiveness of selected pendency reduction efforts. We found that, despite some progress in reducing pendency from its highest levels, USPTO still needs to improve oversight of trademark application pendency. Specifically, we found that:

- I. USPTO missed its pendency targets for multiple years and provided insufficient information in its reporting of pendency goals and results.
- II. USPTO's projections of future pendency reduction may not be achievable.

Weaknesses in USPTO's processes for setting pendency targets and in some of its pendency reduction initiatives create the risk that trademark application pendency will continue at high levels longer than USPTO projects. In particular, USPTO's lack of sufficient long-term strategic goals and workforce plans leaves it vulnerable to changes in application filing trends. Without additional actions, USPTO may not meet applicants' needs for pendency levels that support timely business decisions.

## WHAT WE RECOMMENDED

We recommended that the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office direct the Commissioner for Trademarks to:

1. Develop controls to ensure that pendency targets and revisions to the targets are clearly documented and included in any public materials.
2. Adopt a long-term pendency goal that accounts for stakeholder needs to allow for timely business decisions, particularly for international trademark applications subject to the Madrid Protocol.
3. Set targets for the trademark pendency-related key performance indicators in the *2022–2026 Strategic Plan*.
4. Update the trademark production model to include supportable, data-driven estimates of overtime usage.
5. Formalize a methodology for estimating and validating efficiency gains in the trademark production model.
6. Develop and implement a Trademarks workforce action plan that includes strategies to address challenges in recruitment and retention, milestones, roles of key organization components, measures of success, and a process to continuously assess and revise the plan.