



**U.S. DEPARTMENT OF COMMERCE**  
**Office of Inspector General**

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***UNITED STATES PATENT AND  
TRADEMARK OFFICE***

***The Overseas Intellectual Property  
Rights Attaché Program Is Generally  
Working Well, but a Comprehensive  
Operating Plan Is Needed***

***Final Report  
IPE-19044/July 2008***

**FOR PUBLIC RELEASE**

***Office of Audit and Evaluation***





July 17, 2008

**MEMORANDUM FOR:** Jon W. Dudas  
Under Secretary for Intellectual Property and  
Director of the U.S. Patent and Trademark Office

Lois Boland  
Director of the Office of Intellectual  
Property Policy and Enforcement

**FROM:**   
Judith J. Gordon  
Assistant Inspector General for Audit and Evaluation

**SUBJECT:** Final Report: *The Overseas Intellectual Property Rights Attaché Program Is Generally Working Well, but a Comprehensive Operating Plan Is Needed* (IPE-19044)

As a follow-up to our June 18, 2008, draft report, we are pleased to provide you with the final report summarizing the results of our review of the U.S. Patent and Trademark Office's (USPTO's) overseas intellectual property rights (IPR) attaché program. We thank you for your comments on the draft report and enclose them in their entirety as an appendix to this report. USPTO attachés provide legal and technical expertise on IPR matters at their respective posts. We found they are generally coordinating their activities with other U.S. government agencies. The attachés have good relationships with their U.S. mission counterparts and with host government officials. However, the roles and responsibilities of the attachés in relation to the International Trade Administration's (ITA's) Commercial Service (CS) and the U.S. Department of State need to be better defined. In addition, guidelines and criteria for program expansion need to be addressed, as do attaché training and program continuity. To address these findings, we recommend USPTO develop and implement a comprehensive operating plan for the attaché program in consultation with relevant U.S. government agencies to better integrate attachés in their respective U.S. overseas missions and help them effectively perform their duties. We appreciate your concurrence with our recommendation and look forward to USPTO's early FY 2009 implementation of the comprehensive operating plan we recommend.

## INTRODUCTION

According to the U.S. Chamber of Commerce, IPR theft costs at least \$200 billion per year and the loss of at least 750,000 U.S. jobs. IPR theft also increases safety and health risks, impacting a wide range of industry sectors such as manufacturing, consumer goods, technology, software, and pharmaceuticals.<sup>1</sup> Intellectual property rights include copyrights, trademarks, patents,

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<sup>1</sup> U.S. Chamber of Commerce. *Counterfeiting and Piracy* [Online]. <http://www.uschamber.com/issues/index/counterfeiting/default> (accessed April 28, 2008).

industrial designs, and trade secrets. USPTO issues patents and registers trademarks to inventors, authors of written works, and creators to protect their intellectual property rights in the United States. USPTO also promotes IPR protection and enforcement domestically and abroad by conducting outreach and training activities to foster respect for IPR, working to secure strong IPR provisions in international agreements, and encouraging strong IPR enforcement by U.S. trading partners to deter intellectual property theft.

In 2005, the State Department added China, the United States's largest trading partner, to a priority watch list of countries that failed to adequately protect intellectual property rights.<sup>2</sup> That same year, USPTO posted an attaché at the U.S. embassy in Beijing to improve IPR protection and enforcement. USPTO expanded the program in 2006 after receiving positive feedback from U.S. industry and other government officials, placing an additional attaché at the U.S. embassy in Beijing. USPTO also posted attachés at U.S. embassies in Egypt, Thailand, India, and Russia and at U.S. consulates in Sao Paulo, Brazil and Guangzhou, China, for a total of eight IPR attachés.<sup>3</sup> To place these attachés, USPTO signed memorandums of understanding with CS.<sup>4</sup>

The attachés' primary responsibilities include 1) advocating U.S. government IPR policy, interests, and initiatives; 2) assisting U.S. businesses on IPR protection; 3) improving IPR protection by conducting training activities with host governments; and 4) monitoring the implementation of IPR provisions in international trade agreements. In addition, they perform limited commercial duties as necessary, such as representing CS at host government functions and advising U.S. companies on the local IPR environment. In some instances, the ambassador, who heads the U.S. mission and all its employees, may also direct an attaché to perform non-IPR duties as needed. To fulfill these responsibilities, the attachés work with several U.S. government agencies, at the post and in Washington, D.C., including the departments of Commerce, State, Justice, Homeland Security, and the Office of the U.S. Trade Representative. The IPR attachés report their day-to-day activities to the senior commercial officer (SCO) at their post and coordinate their programmatic responsibilities with the Office of Intellectual Property Policy and Enforcement within the Office of External Affairs at USPTO headquarters.

## **OBJECTIVES, SCOPE, AND METHODOLOGY**

For this review, we evaluated (1) the adequacy of the overseas attaché program's objectives; (2) how the attachés work with CS and government organizations with a role in IPR protection; (3) USPTO's attaché recruitment process, training, and the attachés' terms of appointment; and (4) USPTO's methodology for placing the attachés. To achieve our objectives, we interviewed the IPR attachés stationed in Brazil, China, Egypt, India, Russia, and Thailand; managers and staff from USPTO's Office of Intellectual Property Policy and Enforcement; and officials from the departments of Commerce, State, Justice, and Homeland Security's Customs and Border Protection in Washington, D.C. and at the posts where the attachés are stationed. We also

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<sup>2</sup> <http://usinfo.state.gov/usinfo/Archive/2005/Apr/29-580129.html>

<sup>3</sup> In April 2008, the Brazil attaché relocated to Rio de Janeiro to better fulfill his IPR responsibilities.

<sup>4</sup> Under 15 U.S.C. 4721(c)(4), the Secretary of Commerce has authority, in consultation with the Secretary of State, to establish foreign offices of the Commercial Service and assign to them Commercial Service Officers and such other personnel as the Secretary considers necessary, using the Foreign Service personnel system. CS is the International Trade Administration's export promotion unit.

reviewed program material, budget documentation, and mission plans for the IPR attaché program as well as relevant guidance, procedures, laws, and regulations.

We conducted our review from January through April 2008 under the authority of the Inspector General Act of 1978, Department Organizational Order 10-13, and Department Administrative Order 213-2. This review was conducted in accordance with the *Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency.

## FINDINGS AND RECOMMENDATIONS

### USPTO's Overseas IPR Attaché Program Needs Improvement in Several Areas

Although IPR attachés provide valuable expertise at their overseas post and generally have good relationships with U.S. government agencies and host government officials, we found USPTO should address program issues involving (1) the attachés' roles and responsibilities, (2) attaché training, (3) program continuity, and (4) program expansion.

Attaché responsibilities for CS. Memorandums of understanding between USPTO and CS for each individual attaché allow for them to perform limited CS duties as necessary. These duties can include following and reporting on important commercial developments, such as industry sector trends and structural changes, company behavior, and product availability. In addition, attachés may be asked to represent U.S. commercial interests as part of the U.S. mission (as directed by the SCO or the principal commercial officer at a consulate). However, expectations and priorities regarding the attachés' responsibilities to CS are not clearly set forth in the memorandums.

SCOs told us they were unclear about which CS mission-related duties the resident attachés are responsible for fulfilling. For example, the extent and content of counseling the attachés should provide to individual companies is unclear. It is also not clear whether the attachés should be responsible for reporting export successes when their actions induce a host government to take favorable action on an IPR-related trade impediment which then leads to increased U.S. exports.<sup>5</sup> As commercial officers, the attachés were placed on traditional CS workplans that require that they report export successes. Because of the lack of clarity regarding the attachés' CS responsibilities, some SCOs indicated the need for additional specific guidance from CS and USPTO on this subject prior to the attachés' postings.

To better clarify the attachés' responsibilities, USPTO is working with ITA's Market Access and Compliance Office of Intellectual Property to revise the attachés' workplans to better define their CS and USPTO responsibilities.<sup>6</sup> CS staff members have also been consulted to assist in developing a common workplan for use by all the attachés. The aim is to tailor the workplan to account for and give credit to the attachés for their nontraditional CS duties, which should better define expectations.

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<sup>5</sup> Export successes are CS' primary performance measure and calculate the dollar value of exports completed by U.S. companies as a result of direct CS assistance.

<sup>6</sup> Market Access and Compliance's Office of Intellectual Property works with the attachés to help U.S. businesses enforce their intellectual property rights in foreign markets.

Roles and responsibilities of USPTO attachés and State economic affairs officers. State Department economic affairs officers, who already covered IPR as part of their portfolios, were also unclear about the IPR attachés' responsibilities and whether the attachés would complement existing activities. At U.S. missions overseas, intellectual property rights have traditionally been the domain of State's economic affairs section. Prior to the attachés' postings overseas, diplomatic cables announcing the attachés' arrival stated they would focus on IPR protection and enforcement, provide training to host government officials, and offer legal and technical IPR expertise at the post. As the attachés became established at the post, the economic affairs officers and the IPR attachés verbally agreed which party was to take the lead on issues or tasks involving intellectual property rights. These arrangements suffice for the moment, but they will have to be revisited every time officer assignments change if they are not documented.

Even though the attachés and the economic affairs officers have forged their own verbal agreements, official responsibility for certain IPR-related tasks has not been determined. One example is the extent of cable reporting on IPR-related meetings and activities. State's primary method of communication with headquarters is through diplomatic cables, but USPTO communicates with e-mail. Another question is how much input the attachés should have in formulating the post's Special 301 report<sup>7</sup> on the local IPR environment. Yet another involves the extent of the attachés' collaboration on the posts' mission strategic plans. Without clear definition of responsibilities, there is always a risk that these tasks either might not be completed or might be done without sufficient input from relevant embassy sections. Several attachés and economic affairs officers said clarifying the roles and responsibilities between the economic affairs sections and the IPR attachés would help avoid overlap in duties and ensure key activities are completed even if officers rotated out of positions.

Attaché training. Embassy officials told us that some attachés adapted well to embassy operations and performed additional post functions when needed. But many of the attachés have not previously worked in an embassy and their relative lack of experience and preparation working for the U.S. government overseas has caused some problems. According to embassy and other government officials, the attachés' unfamiliarity with the embassy culture and operations has at times strained relations between the attachés and embassy staff. Embassy officials also expressed concern that due to their lack of embassy experience, several attachés do not adequately coordinate with others in the mission who are also working on complementary issues. Several embassy staff members said a few attachés minimized their involvement with embassy tasks because they worked for USPTO, rather than CS or the State Department. In addition, embassy and Commerce officials mentioned that some attachés have trouble with cable reporting. Cable writing is a necessary responsibility in an overseas mission, but three of the eight attachés have not taken a cable writing training course.

The formal training provided to attachés to prepare for working in an embassy is limited. CS sends all commercial officers to be deployed overseas to training at the State Department's Foreign Service Institute. CS mandates that the IPR attachés take the *Equal Employment Opportunity/Diversity*, *Security Overseas Seminar*, and *Simplified Acquisition Procedures* training courses. According to the attachés' training records, five of the eight attachés had taken

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<sup>7</sup> The Special 301 Report is the U.S. Trade Representative's annual review of the global state of IPR protection and enforcement, conducted per the Special 301 provisions of the Trade Act of 1974.

at least two of the three mandatory courses, but none had taken all three. CS personnel told us existing work commitments, limited class openings, weekend training dates, and a general lack of interest limited the attachés participation in the training programs.

During our review, USPTO officials acknowledged they need to improve training for embassy posting and stated that the agency will consider additional training alternatives to improve the attachés' preparation for working in overseas posts. Many embassy officials we spoke to told us it is inherently difficult to add new officers to a pre-existing embassy structure, but they believed they would have better working relationships with the USPTO attachés if those attachés were better trained at performing embassy functions before arriving at the post.

Current attachés also told us they are interested in providing on-the-job training to new attachés' to ease transition at the posts. They said a significant part of an attaché's job requires building relationships with host government officials, and their successors would be able to deepen established relationships and continue IPR activities at the posts if there were a structured transition plan. Such a plan could include temporary duty assignments for incoming attachés, mentoring by current attachés, and participating in the attachés' IPR training programs.

Ensuring attaché continuity at post. During our review, it was clear that the attachés are filling a critical need at their respective U.S. missions, even though the overseas IPR attaché program is still relatively new. In the coming year, at least two of the attachés will leave their posts and need to be replaced. The attaché position in Egypt and the senior attaché position in Beijing will be vacant in September 2008 and March 2009, respectively. Because of their important roles, USPTO needs to ensure continuity and coverage during the attachés' transitions at the posts.

Currently, attachés serve initial 2-year limited appointments and may extend their assignments for up to 3 additional years. USPTO uses CS' Office of Foreign Service Human Resources (OFSHR) to handle recruitment, training, and other personnel-related tasks involved in posting an attaché overseas. In March 2008, OFSHR posted vacancy announcements for the China and Egypt attaché positions on the federal government's *USAJobs* website.<sup>8</sup> In addition, USPTO advertised the positions internally and held discussions among its attorney-advisors to gauge interest in the positions.

While it appears there is sufficient lead time to fill the position in China, it is not clear whether the position in Egypt will be filled prior to the departure of the current attaché.<sup>9</sup> Allowing sufficient lead time for filling attaché vacancies is critical for ensuring continuity at the posts. The bureau should have started recruiting for the Egypt position earlier than it did because CS' human resources manager generally recommends advertising limited appointment vacancies 9 to 12 months prior to the date the position should be filled. This long lead time is necessary to fill

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<sup>8</sup> According to USPTO, OFSHR received 40 applications for the vacancy in China and 23 applications for the one in Egypt at the close of the announcements in April 2008.

<sup>9</sup> At our exit conference, the director and acting deputy director of the Office of Intellectual Property Policy and Enforcement informed us that embassy officials in Cairo may not continue to support the placement of the Middle East regional attaché in Egypt after this fiscal year. As a result, USPTO is evaluating placing the attaché in another location in the Middle East region. If this happens, there will certainly be a gap in coverage for the region, as moving the position to a new location would require Chief of Mission approval, and the position would need to be announced by CS.

an overseas position because the quality of the applicant pool and the security and medical clearance processes can often result in delays. For example, prior vacancies in Russia and China took significantly more time to fill than anticipated, which delayed the actual postings overseas. Several attachés and other U.S. government officials suggested to us that USPTO could increase the size and quality of its applicant pool by directly advertising to law firms specializing in IPR and business advocacy groups that support IPR protection.

Program expansion. USPTO considers the attaché program to be in the pilot stage, and has not developed specific guidelines or criteria for posting additional attachés. USPTO officials told us that the current attachés were placed in critical overseas markets and several were tasked with regional responsibilities covering Southeast Asia, Latin America, and the Middle East. Although industry groups have given USPTO positive feedback on the attaché program, USPTO had not planned to assess the program and consider expansion until the first round of attachés had completed their initial appointments.

However, on December 5, 2007, a bill was introduced in the U.S. House of Representatives to restructure federal government resources to improve IPR enforcement.<sup>10</sup> One section of the bill calls for posting at least 10 more attachés overseas within 2 years of the bill's enactment. USPTO has been monitoring the bill's progress and submitted comments on the legislation. If the bill is enacted, USPTO will need to develop criteria to guide the placement of additional attachés. During our review, we raised the possibility of the program's expansion with USPTO staff. They suggested criteria such as the size of a country's economy, political and geographic divisions, transshipment levels, and deficiencies in a country's IPR regulatory structure or enforcement regime. However, no significant work to date has been done to develop a plan for expanding the program. Planning and developing the criteria now would help USPTO facilitate the process for posting additional attachés at a later date.

### **Summary and Recommendation**

USPTO's attachés provide legal and technical IPR expertise at their overseas post and generally have good relationships with their U.S. government counterparts and host government officials. However, USPTO needs to better define attachés' roles and responsibilities, improve attaché training, ensure program continuity, and establish guidelines and criteria for the program's expansion. We recommend that USPTO develop a comprehensive operating plan for the overseas attaché program. This plan should encompass the elements of the program from candidate recruitment to ensuring IPR coverage and continuity at the post when the attachés transition. Once developed, this plan should be implemented in consultation with other relevant U.S. government agencies to better integrate attachés within their respective U.S. missions.

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<sup>10</sup> Prioritizing Resources and Organization for Intellectual Property Act of 2008 (Pro-IP Bill), H.R. 4279, 110<sup>th</sup> Cong. (2008). The House of Representatives passed this bill on May 8, 2008. It was received in the Senate and referred to the Senate Committee on the Judiciary on May 12, 2008.

**USPTO's Response**

In your written response to our draft report, USPTO agreed with our recommendation to establish a comprehensive operating plan for the overseas IPR attaché program. USPTO staff are working on the operating plan and expect it to be in place by the first quarter of FY 2009.

Please provide us with an action plan in response to our recommendation within 60 calendar days. If you have any questions or comments about this final report, please contact me on (202) 482-5643 or Lisa Allen, Deputy Assistant Inspector General for Inspections and Program Evaluations, on 202-482-2754.

cc: Todd J. Zinser, Inspector General  
Barry K. Hudson, Chief Financial Officer, USPTO  
Paul Salmon, Acting Deputy Director, Office of Intellectual Property Policy and Enforcement, USPTO  
Welton Lloyd, Audit Liaison, Office of Corporate Planning, USPTO  
Daniel E. Harris, Deputy Assistant Secretary for International Operations, CS  
William Zarit, Regional Director for the East Asia and Pacific Region, CS

APPENDIX:  
USPTO MANAGEMENT RESPONSE TO THE DRAFT REPORT



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND  
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

JUL 10 2008

MEMORANDUM FOR Lisa Allen  
Deputy Assistant Inspector General for  
Inspections and Program Evaluations

FROM: Jon W. Dudas, *M. Petralin Acting*  
Under Secretary of Commerce for Intellectual Property and  
Director of the United States Patent and Trademark Office

SUBJECT: Draft Inspection Report: *The Overseas Intellectual Property  
Rights Attaché Program is Generally Working Well but a  
Comprehensive Operating Plan Is Needed (IPE-19044)*

Thank you for your memorandum of June 18, 2008, detailing OIG's findings and recommendation with regard to the Intellectual Property Rights (IPR) Attaché Program.

The concept of posting IPR attachés around the world was developed as a Secretarial initiative and adopted as a part of the Administration's successful interagency Strategy Targeting Organized Piracy (STOP!) initiative. Candidly, we are pleased that the OIG has viewed this program as valuable and generally working well. Moreover, we welcome the OIG's findings and the recommendation to establish a comprehensive Operating Plan for the program.

In the course of developing and executing the ambitious IPR Attaché initiative, the United States Patent and Trademark Office (USPTO) has developed numerous "lessons learned." In fact, we began working on a comprehensive Operating Plan prior to the June 16, 2008 exit interview. We expect that the plan will be in place by the first quarter of FY 2009 and that it will evolve as the program evolves.

By way of background, we evaluated several mechanisms for expeditiously posting the IPR attachés. Posting via the State Department (an established mechanism), obtaining USPTO authority for direct posting, and partnering our Department of Commerce colleagues through the Foreign Commercial Service (FCS) were all explored. As you know, we selected the FCS route based on a recommendation from your Office, following a review of FCS operations in China. We are grateful to our FCS colleagues, and were happy that such an established mechanism existed within DOC for posting non-traditional FCS officers from other DOC Bureaus (such as NIST and ITA/MAC).

The USPTO-FCS partnership, which enjoys the support of the Secretary and our STOP! interagency partners, has generally been welcomed by the Senior Commercial Officers (SCOs) at the various IPR Attaché posts, many of which have not previously experienced non-traditional FCS officers.

As the OIG's report suggests, integration of the IPR attachés, as non-traditional FCS officers, has understandably encountered some challenges. We will continue work with our FCS colleagues to ensure both full integration of the IPR attachés at post and maximum use in their area of intellectual property expertise. Similarly, we are working through the State Department to ensure that various post Economic Sections are fully aware of the IPR attachés' mission and the conditions established when these positions were established through the NSDD-38 process. In particular, we need to provide a better understanding that the attachés are a "go-to" resource for IP issues, not competitors with Econ Officers. The IPR attachés are USG team players who support the Embassy or Consulate as resources on IPR matters.

The USPTO recently revised the IPR attaché work plan, which was submitted to the Department of Commerce's Human Resources department for review. The work plan better defines the IPR attachés' responsibilities and expectations, providing clarification to their nontraditional CS duties, and should help to further differentiate their role from that of State Department Econ Officers.

The OIG's report mentions the need for further attaché training. We agree fully that training is critical. As an example of our complete agreement, in 2007 – prior to his permanent posting – the USPTO sent the IPR attaché in Guangzhou, China, to China for a three-month temporary duty assignment (TDY), to introduce him to host government officials, and to expose him to embassy culture and operations. In addition, in December 2007, we brought all IPR attachés available back to the USPTO for meetings and consultations with various U.S. Government agencies, and industry representatives. This week's worth of meetings were designed to update the attachés on substantive IP issues and to provide the attachés with the opportunity to speak with and learn from other IPR attachés from other regions, with more familiarity and experience with embassy operations. We will work to make TDYs a regular part of the training that new attachés receive prior to their postings, and will continue to hold annual IPR attaché meetings at the USPTO.

We very much appreciate the OIG's support of this strategic program. The USPTO will continue to work closely with our FCS colleagues and interagency partners to better define the IPR attachés' roles and responsibilities, improve training, ensure program continuity, and establish guidelines and criteria for anticipated expansion of the program.