

CAPACITY-BUILDING AS AN INTEGRAL TOOL IN IPR ENFORCEMENT EFFORTS: THE USPTO EXPERIENCE

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The protection and enforcement of intellectual property rights (IPR) is a national priority because of the importance of intellectual property to the United States economy and its continued growth. Intellectual property protection plays an important role in many industries in which the United States has a comparative advantage and contributes to the size, growth, and exports of the American economy. In all, U.S. intellectual property may be worth more than \$5 trillion, and represents a growing share of exports.² Of course, intellectual property protection alone does not drive economic growth. There must be an existing research base in a country, a relatively unconstrained trade regime, a stable macroeconomic environment, the rule of law, and well-functioning institutions that grant, monitor, and enforce the intellectual property rights.³ This is the primary reason for a strong commitment by the U.S. Government, and the USPTO in turn, to provide extensive and substantial technical assistance and training to foreign governments since the creation and improvement of strong intellectual property protection and enforcement regimes in those countries with which the U.S. trades directly benefits American industries and intellectual property rights holders.

It is estimated that counterfeiting and piracy are costing the United States between \$200 and \$250 billion annually. Combating copyright piracy and trademark counterfeiting is, and has been, a priority for the Congress and several administrations because intellectual property theft represents direct losses to the economy, finances terrorism, threatens consumer safety, and contributes to the loss of American jobs.

The efforts of the U.S. Government to protect U.S. intellectual property overseas fall into three general categories: trade policy initiatives, training and technical assistance, and U.S. law enforcement actions. Technical assistance from the U.S. Government to make support the enactment of good laws, training and capacity-building initiatives by the U.S. Government to assist developing and least developed economies in building capacity in their own ranks for enforcement of those laws, and educational activities to educate the public about the importance and value of strong intellectual property protection and enforcement are all avenues of approaches taken by the U.S. Government. Of these, technical assistance and training are key components in combating the threat of rampant intellectual property infringement both in the United States and around the world.

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² Economic Report of the President of the United States of America (2006) (hereinafter cited as Economic Report), at 218-220.

³ *Id.* at 222.

Given the importance of technical assistance and training to the overall U.S. strategy of improving legal frameworks for protection and enforcement of intellectual property in developing countries and to combating the global epidemic of piracy and counterfeiting, the USPTO plays a crucial role in this effort. The USPTO's Global Intellectual Property Academy (GIPA) is viewed as the primary vehicle for the delivery of IPR capacity-building and training assistance within the Executive Branch, with its primary goal being to consolidate and expand IPR training programs for foreign judges, enforcement officials, and relevant administrators.⁴ The USPTO is committed to expand significantly its activities and efforts in this regard.

In Congressional testimony in 2006, Chris Israel, then Coordinator of International Intellectual Property Enforcement, speaking on behalf of the Bush Administration, stated that President Bush had directed the Executive Branch to address the issue of intellectual property enforcement actively, aggressively, and with a results-oriented approach, and that the Global Intellectual Property Academy is the "primary vehicle for the delivery of intellectual property capacity-building and training assistance within the Administration."⁵ Early statements by President Obama support this same approach and direction to enforcement and technical assistance to protect American intellectual property abroad.

As then U.S. Secretary of Commerce Carlos M. Gutierrez stated on more than one occasion, "The protection of intellectual property is vital to our economic growth and global competitiveness and it has major consequences in our ongoing effort to promote security and stability around the world, ... and [we are] committed to stopping trade in pirated and counterfeit goods."⁶ In this regard, Secretary Gutierrez directed the USPTO and GIPA to work closely with other federal government agencies to offer training on IPR issues to officials from developing countries including judges, prosecutors, patent, trademark and copyright officials, and foreign policy makers in the effort to further raise awareness of IPR theft worldwide.⁷

As then Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office Jon W. Dudas stated in 2007, USPTO is committed to "expanding our technical assistance and training programs to help other countries improve their IP

⁴ Economic Report states that:

[t]he Administration has established a 'Global Intellectual Property Rights Academy,' located within the USPTO, to consolidate and expand intellectual property training programs for foreign judges, enforcement officials and relevant administrators. These programs are designed to foster respect for intellectual property encourage governmental and rights holders' efforts to combat infringement, and promote best practices in the enforcement of intellectual property rights.

Id. at 227.

⁵ *Testimony of Chris Israel, U.S. Coordinator for International Intellectual Property Enforcement, Before the Senate Committee on Homeland Security & Governmental Affairs Subcommittee on Oversight of Federal Management, the Federal Workforce, and the District of Columbia*, at 1 (July 26, 2006).

⁶ U.S. Department of Commerce Press Release Statement, "Commerce Secretary Carlos Gutierrez Unveils Initiatives to Fight Intellectual Property Theft" (September 21, 2005).

⁷ *Id.*

protection.”⁸ In March 2007, Under Secretary Dudas reiterated in Congressional testimony that the USPTO is committed to significantly expand its efforts to strengthen intellectual property rights protection globally, and that the Global IP Academy is a key component in this international strategy.⁹

In the letter of transmittal to Congress of the 2006 NIPLECC Report, the Coordinator for International Intellectual Property Enforcement, the Under Secretary of Commerce for Intellectual Property, and the Assistant Attorney General for the Criminal Division of the U.S. Department of Justice noted that “[t]he task of protecting intellectual property has never been more important to our country, ... [a]nd the failure to protect intellectual property has potentially serious health and safety consequences.”¹⁰

The mission of the USPTO is to promote industrial and technological progress in the United States, and to ensure that the intellectual property system contributes to a strong global economy, encourages investment in innovation, fosters entrepreneurial spirit, and enhances the quality of life for everyone. The USPTO is focused on strengthening the U.S. economy, by ensuring that innovators and entrepreneurs are rewarded for their creative efforts through free and fair markets, and providing that citizens of the U.S. and countries around the world have the opportunities and benefits provided by new technologies.

The USPTO promotes effective intellectual property for American innovators and entrepreneurs worldwide by insisting on strong intellectual property provisions in free trade agreement and other international agreements. This is implemented through providing training, education and capacity building programs designed to foster respect for intellectual property and encourage the development of strong intellectual property enforcement regimes by U.S. trading partners.

Pursuant to the United States Senate Commerce-Justice-State Appropriations legislative language in late 2004, which required the allocation of a minimum of \$20 million annually on initiatives to assist intellectual property rights holders in the protection and enforcement of intellectual property rights overseas,¹¹ the USPTO took several programmatic steps:

- establishing a full-time, permanent Global Intellectual Property Academy (GIPA), to expand existing training, technical assistance, educational outreach and capacity-building programs and activities carried out by the Office of External Affairs;

⁸ See, e.g., *Remarks of Jon W. Dudas, “Global Trends in IP Protection: A U.S. Perspective”, Global Forum on Intellectual Property Protection and Innovation*, Beijing, China, at 4 (March 27, 2007).

⁹ *Statement of Jon W. Dudas, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, Before the Subcommittee on Commerce, Justice, Science, and Related Agencies, Committee on Appropriations, U.S. House of Representatives* (March 8, 2007).

¹⁰ Report to the President and Congress on Coordination of Intellectual Property and Enforcement Protection, at ix (September 2006).

¹¹ P.L. 108-447, 118 STAT. 2809 (Dec. 8, 2004); cited as Consolidated Appropriations Act, 2005; and as contained in Conf. Rep. (H.Rept. 108-792).

- formalizing existing capacity-building relationships by entering into Memoranda of Understanding (MOUs) with various national intellectual property offices, regional and intergovernmental international organizations;
- establishing new, or extending existing, Inter-Agency Agreements (IAAs) with entities or offices within the U.S. Department of State to obtain reimbursable funding sources for capacity-building and training projects;
- implementing a series of IP and China Road Shows as part of an outreach effort to independent inventors, exporters, and SMEs on how to protect and enforce intellectual property rights domestically and overseas; and
- entering into an agreement with the U.S. and Foreign Commercial Service to establish Regional Intellectual Property Rights Attaché specialist positions in certain missions abroad to act as on-the-ground resources.

As the USPTO responded to the Congressional language, the provision of technical assistance and training activities was viewed as a component of USPTO efforts to create initiatives and to conduct activities to enhance protection and enforcement globally.

The commitment of the USPTO to fund extensive technical assistance and training in the area of intellectual property protection and enforcement, and to operate GIPA, is clearly a commitment undertaken on behalf of the Administration.

USPTO STRATEGIC PLAN 2007-2012

In any consideration of a comprehensive strategic plan on technical assistance and training, it is important to start with the commitments already made by the USPTO in this area as articulated in the USPTO Strategic Plan 2007-2012.¹²

In Goal 3, *Improve Intellectual Property Protection and Enforcement Domestically and Abroad*, of the USPTO Strategic Plan 2007-2012, the USPTO has committed itself to respond to the challenges and opportunities presented by supporting efforts and initiatives aimed at strengthening IP protection and curbing theft of IP (Objective #1), and fostering innovation and competitiveness by delivering IP information and education worldwide (Objective #4).¹³

Specific initiatives articulated under Objective #1 are to:

- Expand foreign postings of IP experts to advocate U.S. Government IP policy, interest, and initiatives; conduct training on IP rights matters; and assist U.S. businesses;
- Expand the GIPA to raise awareness of IP theft world-wide and improve an understanding of IP rights; and

¹² USPTO Strategic Plan 2007-2012 (2007).

¹³ *Id.* at 24-25.

- Expand training and capacity building to help create an understanding of, and the infrastructure for, IP protection in various countries, thereby enabling Americans to increase their ability to market products abroad.¹⁴

The specific initiative articulated under Objective #4 is:

- To promote the importance of IP by taking a coordinated approach in carrying out projects related to communication, education and support, and domestic and international public awareness, including a focus on the special needs of independent inventors and entrepreneurs.¹⁵

To meet these objectives and the goal of the USPTO Strategic Plan 2007-2012, the USPTO will need to continue:

- addressing trademark counterfeiting, copyright piracy, and the failure to respect intellectual property rights both domestically and abroad;
- continue crafting and delivering an effective educational program about the benefits and effective use of intellectual property; and
- continue investing resources in the delivery of technical assistance and training activities.

While the USPTO has a strong program of technical assistance and training built through years of vision, hard work, and expenditure of resources, several challenges exist to providing effective technical assistance and training programs to developing and least developed nations. These range from limited agency resources to the prioritization by individual federal agencies of the importance of intellectual property protection and enforcement, which, in turn, dictates the level of resources devoted to it.

While the ability to tailor programs to utilize both state-of-the-art technology and web-based learning and to incorporate more experience-sharing and problem-solving and less didactic lecture is generally recognized as the ideal, other challenges to successful implementation and provision of capacity-building and training activities exist, and include: identification of program partners; competition for scarce federal resources; greater utilization of distance learning in program delivery; program evaluation and performance measures; and increased federal inter-agency coordination.

CAPACITY BUILDING AN INTEGRAL PART OF SUSTAINED EFFORT TO IMPROVE IP PROTECTION AND ENFORCEMENT

Capacity-building and education are vital tools in raising awareness and expertise in developing and least-developed countries as to the importance of intellectual property protection and

¹⁴ *Id.* at 24.

¹⁵ *Id.* at 25.

enforcement. As noted by Assistant Secretary of State for Economic and Business Affairs E. Anthony Wayne, in testimony before the United States Senate Foreign Relations Committee in 2004, “there are three inter-related activities that need to be part of any sustained effort to improve intellectual property protection: building knowledge, building capacity and building will,”¹⁶ and these must be addressed as part of a sustained effort to improve intellectual property protection.¹⁷

The provision of technical assistance is essential to building a modern framework of intellectual property protection legal regimes. The delivery of educational programs in developing and least developed countries has been linked to the development of an understanding of the importance of intellectual property protection, promotion of economic development and the creation of intellectual property institutions.¹⁸ Finally, capacity-building in the form of training and education is an integral component to a sustained effort to promote the protection and enforcement of intellectual property rights in developing and least-developed nations, to assist in moving these economies from being solely dependent on agricultural or commodity based production, and to establish transparency in decision-making and the rule of law as the norm in the administrative, enforcement and adjudicative realms of government.

World Trade Organization Commitment

The role of training and technical assistance as part of a sustained effort to improve intellectual property protection is recognized by the World Trade Organization (WTO). The United States undertakes training and technical assistance in compliance with WTO obligations under TRIPS Article 67,¹⁹ and much of its technical assistance programs are conducted by the USPTO to contribute to fulfilling this obligation.

In a report dated August 2000, the Department of Commerce, Office of Inspector General reported that “[o]fficials at both [USPTO] and other federal agencies expect requests for training to increase now that the January 2000 deadline for WTO developing country members to comply with the TRIPS Agreement has passed.”²⁰

¹⁶ *Testimony by Assistant Secretary of State for Economic and Business Affairs E. Anthony Wayne, Before the Senate Judiciary Committee* (March 23, 2004) (<http://usinfo.state.gov/xarchives/display.html?p=washfile-english&y=2004&m=March&x=20040323181907MBzemoG0.6781122>).

¹⁷ *Id.*

¹⁸ *See What Type of Work Does IPI Do?* International Intellectual Property Institute, Washington, D.C. (2007) (http://www.iipi.org/nav_faqs).

¹⁹ TRIPS Part VI Art. 67 states: “In order to facilitate the implementation of this Agreement, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members. Such cooperation shall include assistance in the preparation of laws and regulations on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and shall include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including training of personnel.”

²⁰ U.S. Department of Commerce, Office of Inspector General, *Patent and Trademark Office Efforts to Protect U.S. Intellectual Property Rights Overseas Should Be Strengthened*, Final Audit Report No. BT-D-11747 at 9 (August 2000).

The report includes information regarding the number of training sessions in fiscal years 1997-1999²¹.

Fiscal Year	Training Sessions in U.S.		On-Site Seminars in Developing Countries	
	Bilateral	Regional	Bilateral	Regional
1997	19	6	13	1
1998	31	3	31	2
1999	55	5	10	5

A comparison of technical assistance programs implemented by USPTO in fiscal years 1997-1999 and those completed in fiscal years 2000-2007 indicates that the number of technical assistance programs provided after 1999 substantially increased. Records compiled by the USPTO Office of External Affairs regarding the number of technical assistance activities for FY 2000-2007 are indicated below.²²

Fiscal Year	Technical Assistance Activities in U.S.	On-Site Assistance in Developing Countries
FY 00	58	15
FY 01	58	14
FY 02	60	58
FY 03	43	30
FY 04	66	30
FY 05	33	51
FY 06	56	56
FY 07	41	91

Technical assistance programs provided by the United States are reported annually to the WTO in TRIPS Council.²³ In addition to providing technical assistance to developing countries, least developed countries will be in need of similar assistance as the transition period for compliance with TRIPS obligations ends in July 2013. Accordingly, demand for technical assistance by developing and least developed countries will continue.

Strengthening Foreign Laws and Enforcement

The U.S. Government Accountability Office (GAO), in a September 2004 report entitled, *Intellectual Property – U.S. Efforts Have Contributed to Strengthened Laws Overseas, but Challenges Remain*, found that “[t]he efforts of multiple U.S. agencies to protect U.S. intellectual

²¹ *Id.*

²² Statistics provided by USPTO Office of External Affairs.

²³ See http://www.wto.org/english/tratop_e/trips_e/intel9_e.htm.

property overseas fall into three general categories – policy initiatives, training and technical assistance, and U.S. law enforcement actions.”²⁴ This is consistent with the considered view of others, such as reflected in the testimony of Assistant Secretary of State Wayne, discussed above.

With regard to the impact of these activities, the GAO report noted that:

Despite the fact that persistent U.S. efforts have contributed to positive developments, it can be difficult to precisely measure the impact of specific U.S. activities such as policy efforts or training assistance programs. U.S. activities are not conducted in isolation, but are part of the spectrum of political considerations in a foreign country.²⁵

The GAO report went on to conclude, that “despite these limitations, several agency officials we spoke with said that these activities are important and contribute to incremental changes in IPR protection.”²⁶

With regard to training activities, the report noted that an “official at USPTO stated that although he does not believe it is possible to quantify fully the impact of USPTO training programs, accumulated anecdotal evidence from embassies and the private sector has led the office to believe that the activities are useful and have resulted in improvement in IPR enforcement.”²⁷ Likewise, both the Department of State and the Department of Commerce pointed to anecdotal evidence to support a conclusion that training and technical assistance is having a positive impact on the overall level of intellectual property protection and enforcement in those countries where technical assistance and training has taken place.²⁸

HISTORY OF TECHNICAL ASSISTANCE AND TRAINING

Importance of Historical Context

In making decisions for the future, one must bring to bear the insight gleaned from an understanding of why something happened and not merely from the fact that it happened.

So it is with making USPTO decisions on the direction to take on technical assistance and training. The USPTO technical assistance and training programs to date are the product of innumerable decisions, each informed by a variety of influences and motivations, both policy-driven and practical. Whether the result of a vision articulated by earlier heads of the agency, or as an implementation of Administration policy initiatives and expectations, or as a response to

²⁴ Government Accountability Office (GAO), *Intellectual Property: U.S. Efforts Have Contributed to Strengthened Laws Overseas, but Challenges Remain*, GAO-04-912, at 8 (Washington, D.C., 2004).

²⁵ *Id.* at 26.

²⁶ *Id.* at 27.

²⁷ *Id.*

²⁸ *Id.*

pressing international realities, requests or commitments, the technical assistance and training activities of the USPTO today are the culmination in an evolution of thinking about how best to convey the need for greater protection and enforcement of intellectual property in a global economy. Understanding this context and history will better inform future strategic decisions as how best to institutionalize and support the technical assistance and training activities in the future.

Past Activities

For an organization that takes the twin concepts of building a better mousetrap and not reinventing the wheel both seriously and as the touchstones for future innovation, it is valuable to look back at what the agency has been doing in this area for decades. Somewhat unique among U.S. Government agencies, the USPTO has a long history of providing technical assistance and training to foreign government officials in their efforts to develop their patent systems and establish intellectual property protection regimes. Perhaps the most famous example of this willingness on the part of the USPTO to provide technical assistance to a foreign government dates from 1886, when the Japanese government sent Korekiyo Takahashi, then chief of the Bureau of Patents in the Ministry of Agriculture and Commerce, to study the U.S. Patent Office and patent system in an effort to learn how to set up a patent office.²⁹

In terms of virtually any “bang-for-your-buck” economic and political analysis, the technical assistance provided to the Imperial Government of Japan during that single months-long study visit, which in turn significantly influenced the creation of the Japanese patent system and the establishment of the Japan Patent Office, one of the largest patent offices in the world today, was certainly a good investment of time and resources by the U.S. Government in its day.

In the more modern era, the USPTO has continued this tradition of providing technical assistance and training to foreign governments wanting to establish or improve their intellectual property systems. In the Annual Report for 1968, for example, a paragraph concerning international activities states that a “foreign professional training program was started this year in cooperation with the patent offices in six other countries” which led to patent office representatives from Canada, England, Japan, and the Netherlands visiting in the USPTO for a period of two months.³⁰ It was also noted that the USPTO “provides a program of technical assistance for officials of developing countries who are working in the field of the protection of industrial property,” with Kenya and India participating in the program in 1968.³¹

²⁹ See, Kenneth W. Dobyns, *The Patent Office Pony: A History of the Early Patent Office at 198* (1994). This study visit lasted for several months and Commissioner Benjamin Butterworth directed that complete assistance was to be given him in collecting information, and further, that a copy of every publication, notice, and circular ever issued by the Patent Office and then available was to be provided to him as well. Upon his return to Japan, Takahashi was instrumental in creating the Japanese patent system, and was appointed first Commissioner of the Japan Patent Office when it was established as an independent government agency. It was Takahashi who suggested the title of “Commissioner” so as to be comparable to that of the U.S. Patent Office. Following his service as Commissioner, Takahashi served in many government positions, including president of the Bank of Japan, was elected to the Japanese Diet, served as Japan’s 20th Prime Minister in 1921, and on six separate occasions served as finance minister until his assassination in 1936.

³⁰ *Commissioner of Patents Annual Report Fiscal Year 1968*, at 8 (1969).

³¹ *Commissioner of Patents Annual Report Fiscal Year 1969*, at 8 (1970).

By 1969, the technical assistance and training program, which had been initiated in 1968, had been formally named the Foreign Professional Training Program, and training was provided to industrial property office officials from Canada, West Germany, and Japan that year. As the Annual Report notes, in addition to providing training to developed countries, “[i]n furtherance of the broad objectives of U.S. foreign policy to promote the development of improved patent and trademark systems internationally,”³² the USPTO provided in-house training for government industrial property officials of the developing countries of Thailand, the Republic of Korea, and Libya.³³ Later Annual Reports note, with increasing frequency and detail, the degree and scope of the international technical assistance and training being carried out by the agency.³⁴

While a degree of international cooperation with international agencies undoubtedly existed throughout the years, and some references in annual reports were obliquely made to it, it was not until 1979, when the Annual Report for the first time noted that the USPTO was conducting such technical assistance and training efforts in “joint cooperation with the Departments of State and Commerce, the World Intellectual Property Organizations and others,”³⁵ as a way “to facilitate the effective protection of industrial property rights in developing countries and the efficient administration of various systems, which regulate the protection and exercise of these rights.”³⁶

While we might be inclined to think that the current U.S. emphasis and focus on Asia and China is a recent phenomenon, in fact, in the late 1970s and early 1980s, the USPTO was providing extensive technical assistance to countries in the region, training patent and trademark examiners from numerous developing countries, with an emphasis on Republic of Korea, Taiwan, and the People’s Republic of China.³⁷

³² *Id.* at 10.

³³ *Id.*

³⁴ *See, e.g., Commissioner of Patents Annual Report Fiscal Year 1971*, at 4 (mention of 10 foreign patent officials participating in Patent Office Academy training); *Commissioner of Patents and Trademarks Annual Report Fiscal Year 1977*, at 6 (note that the Office continued its training assistance to developing countries, and that trainees and governmental officials from a number of countries visited the Office).

³⁵ *See Commissioner of Patents and Trademarks Annual Report Fiscal Year 1979*, at 18 (technical assistance and training programs were provided to China, Ghana, Kenya, Korea, and Thailand, and of particular note, the fact that the office sent two examiners to the Brazil Patent Office to serve as patent instructors for a period of six months each).

³⁶ *Id.* at 18-19.

³⁷ *See, e.g., Commissioner of Patents and Trademarks Annual Report Fiscal Year 1980*, at 7 (training provided to China, Ghana, Lesotho, Malaysia, Sri Lanka, and Taiwan); *see also, Commissioner of Patents and Trademarks Annual Report Fiscal Year ‘81*, at 10 (training programs provided to China, India, Indonesia, Liberia, Uganda; a two-month training program for Chinese trademark examiners, and an extensive six-month resident training course provided to Chinese patent examiners); *see also, Commissioner of Patents and Trademarks Annual Report Fiscal Year ‘82*, at 11 (in addition to regular short-term training programs that were provided for such countries as Korea and Thailand, lengthier training courses were provided to patent and trademark examiners from China, Korea, and Jamaica); *see also, Commissioner of Patents and Trademarks Annual Report Fiscal Year ‘83*, at 14 (technical assistance provided to Argentina, China, Malaysia, and Singapore; briefings and trainings provided to China, Egypt, Indonesia, Nigeria, Philippines, and Taiwan; lengthier training programs were provided to Korea and the People’s Republic of China; and a memorandum of understanding was concluded between the agency and the African Intellectual Property Organization to provide, among other things, technical assistance and training by specialists); *see also, Commissioner of Patents and Trademarks Annual Report Fiscal Year ‘84*, at 14 (technical assistance provided to Argentina, China, Mexico, and Paraguay; and specialized training courses to eleven developing countries and the African Intellectual Property Organization.).

In July 1985, the USPTO, in cooperation with the Franklin Pierce Law Center, instituted a program to train officials from developing countries who are working in the intellectual property field. The month-long program, which would become a landmark in the agency's technical assistance and training efforts, was called the *Visiting Scholars Program* (VSP). It "was intended to raise [the] awareness of the need for effective protection of intellectual property and provide the necessary technical expertise."³⁸

In its first year, the VSP brought to the program foreign national patent office representatives from Argentina, China, Egypt, Mexico, Malaysia, Philippines, Venezuela, and Zimbabwe. This was in addition to the USPTO continuing to provide bilateral technical assistance and training on a case-by-case basis as it was requested.³⁹

Throughout the remainder of the 1980s and for most of the 1990s, while the VSP underwent some changes in both length and format, and added a copyright law component, it retained its primarily patent and trademark examination orientation and subject-matter content, as well as its focus on training officials from developing and least developed countries.⁴⁰ In 2000, the VSP was expanded and offered on a twice-a-year basis, and continued to do so until 2006, when it was incorporated into GIPA.

Overseas and International Training

In addition to the on-campus technical assistance and training conducted under the aegis of the VSP, the USPTO has a history of providing training programs overseas as well. The documentation of such early efforts in this area is limited. In general, it consisted merely of sending technical experts to speak and participate in seminars or programs. However, beginning in 1976 and continuing to the present, the USPTO has considered overseas and in-country training as part of its mission in working with developing countries.⁴¹ This remains the focal point of the USPTO mission and is now considered commonplace.⁴²

While international training took place with increasing regularity, of particular note as part of an Administration effort to support and build on the launch of the Free Trade Agreement of the

³⁸ See Commissioner of Patents and Trademarks Annual Report Fiscal Year '85, at 12-13.

³⁹ *Id.* at 12-13 (technical assistance and training provided to Indonesia, Korea, Malaysia, Mexico, the Philippines, and Thailand).

⁴⁰ From 1986-1999, many countries participated in the Visiting Scholars Program, with many sending participants on numerous occasions, including: Argentina, Bangladesh, Belgium, Bolivia, Brazil, Brunei Darussalam, Bulgaria, Cambodia, China, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Gambia, Guatemala, India, Indonesia, Iraq, Jamaica, Japan, Korea, Lesotho, Malaysia, Malawi, Mexico, Mongolia, Namibia, Nicaragua, Nigeria, Oman, Pakistan, Panama, Peru, Philippines, Poland, Romania, Russian Federation, Saudi Arabia, Singapore, the Soviet Union, Sudan, Taiwan, Tanzania, Thailand, Trinidad and Tobago, Turkey, Ukraine, United Arab Emirates, Uruguay, Venezuela, Yugoslavia, and Zambia.

⁴¹ See Commissioner of Patents and Trademarks Annual Report Fiscal Year 1976, at 4.

⁴² See, e.g., mentions in subsequent Annual Reports of the USPTO organizing, conducting or co-sponsoring overseas training activities as follows: Thailand (1979); China (1980, 1981, 1982, 1983); Indonesia, Korea, Malaysia, and Thailand (1985); Korea, Philippines (1986); Malaysia, Philippines, Taiwan, and Thailand (1987); Mexico (1992, 1993); and Bulgaria, Cyprus, Egypt, Estonia, Latvia, Lithuania, Mexico, Romania, and Ukraine (1995).

Americas, the USPTO organized and convened the *Intellectual Property Conference of the Americas* in July 1996. A four-day hemispheric conference held in Los Angeles, California, it brought together more than 500 intellectual property and trade officials, industry representatives, nongovernmental and civil society representatives, rights holders, and intellectual property practitioners from the Western Hemisphere for wide-ranging discussions on intellectual property protection and enforcement in the age of TRIPs and at the dawn of the Internet.

This event was followed in September 2000, with the *Symposium of the Americas: Protecting Intellectual Property in the Digital Age*, which brought together 300 Western Hemisphere intellectual property and enforcement officials, industry representatives, and intellectual property rights holders to discuss a wide variety of digital protection and enforcement issues. These two events helped cement the leadership role of the USPTO in the Western Hemisphere on intellectual property protection and enforcement matters.

Emergence of IP Enforcement as Training Issue

In the late 1990s, as developing countries completed the process of enacting into place a legal framework of intellectual property laws and regulations to meet obligations under the TRIPs Agreement, the USPTO became the first office globally to redirect a substantial portion of its technical assistance and training efforts to the enforcement of intellectual property rights. The first mention of an effort at focusing training on enforcement of intellectual property rights actually dates from October 1987, in connection with the co-sponsorship of an enforcement seminar in Taiwan.⁴³ However, with the selective hiring of attorney-advisors with predominant enforcement expertise in the Office of Legislative and International Affairs, and creation of the National Intellectual Property Law Enforcement Coordination Council (NIPLECC) in late 1999,⁴⁴ enforcement of intellectual property rights, and the provision of technical assistance and training on various intellectual property enforcement topics, became a key focus of USPTO program activities.

From 1997 to 2007, the USPTO conducted capacity-building programs around the world, making it a recognized leader in providing quality international technical assistance and training in the enforcement of intellectual property rights. This was primarily as a result of having attorney-advisors with specialized expertise in both geographic areas and subject areas, such as civil and criminal enforcement, and customs and border issues, develop and implement the technical assistance and training programs.

To date, no other federal agency dealing with intellectual property enforcement has done as much quantitatively as the USPTO in this area. The programs conducted from 2002 through 2007, many of which were instituted to assist with either TRIPs compliance or FTA implementation, were designed to assist foreign governments and foreign officials in drafting adequate and effective intellectual property and enforcement laws, promote the commercial

⁴³ See Commissioner of Patents and Trademarks Annual Report Fiscal Year '88, at 14.

⁴⁴ The National Intellectual Property Law Enforcement Coordination Council was established by law in September 1999, when President Clinton signed the Treasury/Postal Appropriations Bill, Pub.L. No. 106-58 §653 (1999).

development and enforcement of intellectual property assets, and implement accessible and effective intellectual property rights enforcement systems.

Recent External Affairs Activities

While the USPTO has been undertaking training efforts and conducting training programs for decades, a detailed review of the training activities conducted in fiscal years 2000-2007, was done in preparation of this plan. A record of actual program activities for those years has been captured primarily from the agency's inventory of technical assistance and training activities maintained by the current Office of Intellectual Property Policy and Enforcement.

A General Description of Activities

During the past few years, the USPTO has variously sponsored, co-sponsored, or otherwise participated in approximately 175 public education events and training programs for foreign officials.⁴⁵ In addition, the USPTO has organized and conducted to date a total of nine (9) China Road Show programs and seventeen (17) Intellectual Property Awareness Campaign (IPAC) programs, the latter having been co-organized with the U.S. Chamber of Commerce in FY 2007.

International and Overseas Programs

The USPTO has generally designed its Enforcement Academy or VSP training programs, and more recently its GIPA programs, to have a specific focus or to be open to a specific target audience of participants, meaning that they were organized along bilateral or regional lines, both as to participants and issues, or open to a more global audience of participants. The total cost to the USPTO for these training programs and the various public education activities that have been conducted is in excess of \$9,327,357,⁴⁶ for the past three fiscal years. No figure is available for the costs incurred by the USPTO in providing bilateral technical assistance on substantive intellectual property or operational matters since these costs were not separately tracked at the time. Of programs conducted in fiscal years 2000-2007, the majority were designed for participants from a particular country or with a regional focus.⁴⁷

⁴⁵ This figure is culled from programs and activities conducted in FY 2005-FY 2007, and is comprised of the following: 76 programs conducted in FY 2005; 44 programs conducted in FY 2006; and 55 programs conducted in FY 2007. Of this number, 6 programs in FY 2005 were pre-GIPA Enforcement Academy or VSP programs, and the remaining 70 were either technical assistance or training programs held at USPTO or overseas; in FY 2006 there were 19 GIPA programs, and in FY 2007 there were 31 GIPA programs; of the remainder in those two fiscal years, 59 programs were presented overseas and the rest were conducted in the United States, mostly at USPTO facilities.

⁴⁶ The following caveats are noted with respect to this estimate: a) the cost figure does not include travel-related expenses for either USPTO or other USG officials; b) since cost data could not be retrieved for 22 of the programs, thereby requiring a calculation, it was assumed that the cost of each of these 22 programs was equal to the average of the approximate costs of the remaining 77 programs; and c) no precise breakdown exists as to the percentage allocation of funds expended by USPTO and other USG agencies in connections with these programs.

⁴⁷ In 2005-2007, 29 programs were either globally focused or open to a global audience, while the remaining 70 programs were designed and conducted for participants from either particular countries or with a regional focus. A total of 18 programs were conducted with the ASEAN Secretariat or in the ASEAN region in FY06 and FY07; similarly, both Latin America and the Middle East were major targets regions with a total of 13 and 15 programs, respectively, conducted in those regions. Other

Combined, these international-focused programs trained an aggregate of 3,629 foreign officials, including judges, public prosecutors, customs and border enforcement personnel, patent, copyright, and trademark officials, public and government librarians, administrative officials, law enforcement officials, numerous trade, commerce, and policy officials, as well as quasi-governmental organization representatives and members of the public.⁴⁸

Intellectual property enforcement was the topic of the majority (68) of the training programs, with the remaining 31 programs devoted to specific subject matter areas, as follows: patents (11), trademarks (9), copyrights (7), general intellectual property matters (3), and intellectual property office administration (1).

Many of the enforcement-oriented programs were designed for particular audiences, with judges and public prosecutors the target audience of 16 programs, and customs and border enforcement officials the target audience of 15 programs. This focus on specific types of stakeholders in the area of enforcement is the result of a general recognition that these are the government institutions or entities with the least experience with intellectual property enforcement-related issues and are generally the groups with the greatest need for capacity-building in intellectual property enforcement matters.

The particular enforcement topics addressed by USPTO programs, however, varied substantially, from intellectual property enforcement matters and procedures generally, to more narrowly focused topics such as: optical media regulation; broadcast, cable and satellite signal piracy; digital and Internet piracy; counterfeit drugs and hard goods counterfeiting; and customs operations and border enforcement of intellectual property rights and border measures for IP rights holders.

The majority of patent-oriented programs were devoted to specific topics, such as biotechnology, advanced patents, designs, and traditional knowledge/genetic resources. Approximately a quarter of patent programs were oriented to a general presentation on patent law and practice for patent examiners.

The majority of trademark oriented programs conducted on-site to date were general trademark programs covering basic trademark issues and law. Beginning in 2006, domestic GIPA trademark programs focused on trademark examination and use of the Madrid Protocol. Programs conducted in foreign countries have been specific in subject matter and tailored to the desires of the local hosts.

Historically, copyright issues were only addressed as a small part of VSPs and were not the main focus of training programs in general. With the exception of occasional copyright oriented

regions/countries where multiple programs were conducted in FY2006-FY2007 were: Russia (4); China (4); Africa (4); and APEC (3).

⁴⁸ This figure reflects attendance at all programs held, however the total is less than the aggregate number of *attendees* at all programs, since some officials attended multiple programs.

seminars or conferences, the USPTO began two regularly scheduled copyright oriented programs in 2006: an introductory program and an advanced course.

Global Intellectual Property Academy (GIPA)

As part of its annual program, the USPTO through GIPA conducts approximately 35 domestic-based educational and training programs annually (hereinafter called “GIPA programs”), for foreign government officials responsible for national intellectual property office administration, copyright administration, intellectual property and trade policy, law enforcement and or judicial administration.⁴⁹

Training for U.S. Government Officials

In addition to training foreign officials, the USPTO is also engaged in training United States Government officials, including training for:

- public and academic librarians at the annual USPTO Patent and Trademark Depository Library (PTDL) Conference on the recordation of trademarks with the U.S. Customs and Border Protection;
- administrative trademark judges and interlocutory attorneys of the Trademark Trial and Appeal Board on the enforcement of exclusion orders in the United States;
- U.S. and Foreign Commercial Service officers and Foreign Service Nationals on intellectual property protection and enforcement issues;
- U.S. Customs and Border Protection officials on the registration of trademarks;
- U.S. Department of Justice prosecutors on intellectual property issues;
- U.S. Department of State officials and Foreign Service Officers at the State Department Foreign Service Institute on negotiating intellectual property provisions in free trade agreements; and
- U.S. Government officials on intellectual property policy and how to advocate for effective intellectual property protection and enforcement.

China Road Shows

Instituted in 2005, the China Road Shows are designed to be a targeted outreach to the business and SMEs community addressing the protection and enforcement of intellectual property rights

⁴⁹ These three dozen domestic-based programs are included in the total number of programs discussed above for Fiscal Years 2006-2007.

in China.⁵⁰ Directed at an audience interested in doing business in China, ten programs have been held to date. Total attendance at these program events has been approximately 1,400.

Intellectual Property Awareness Campaign

The Intellectual Property Awareness Campaign (IPAC) programs, known formally as the *Conference on Intellectual Property in the Global Marketplace*, were initiated in 2005 as public awareness programs for small businesses. They were created to address the intellectual property informational needs of SMEs, exporters, entrepreneurs, and independent inventors interested in manufacturing or selling their products either domestically or abroad. A series of presentations are given on identifying, protecting, and enforcing intellectual property rights.

In addition, programs provide information to assist the attendees to understand the importance of intellectual property as a business asset, and the importance of intellectual property protection and enforcement to local and state economic development. The conferences are free to the public, and USPTO works with local chambers of commerce, Minority Business Development Centers, veteran-owned small business organizations, U.S. Export Assistance Centers, local independent inventor's organizations, and the U.S. Small Business Administration's on-line small business directories to disseminate information and registration details to the target audience.

From 2005-2007, the USPTO conducted IPAC programs had attendance of over 1,500 individuals,⁵¹ and 92% of attendee evaluation surveys reflected an overall rating of "good" or "excellent" of the programs. In FY 2007, IPAC events were conducted in partnership with the U.S. Chamber of Commerce, and have specifically included components on the protection and enforcement of intellectual property rights in the United States and abroad. Major presentations are available on a specially produced CD-ROM available from the USPTO.⁵²

SELECTION OF TRAINING RECIPIENTS

U.S. Government Commitments vs. USPTO Resources

⁵⁰ The China Road Shows took place in the following cities: Alexandria, Virginia; Baltimore, Maryland; Detroit, Michigan (FY2005); Atlanta, Georgia; Chicago, Illinois; Seattle, Washington; Boston, Massachusetts (FY2006); Philadelphia, Pennsylvania; Kansas City, Missouri (FY2007).

⁵¹ The IPAC events took place in the following cities: Salt Lake City, Utah; Phoenix, Arizona; Austin, Texas; and Miami, Florida (FY2005); San Diego, California; McLean, Virginia; Nashville, Tennessee; Columbus, Ohio; Minneapolis, Minnesota; Providence, Rhode Island (FY2006); Raleigh, North Carolina; Detroit, Michigan; Seattle, Washington; Burlington, Vermont; Los Angeles, California; San Antonio, Texas; and Portland, Oregon (FY2007).

⁵² See http://www.uspto.gov/web/offices/dcom/olia/conf_ip_mrkt_place.html.

The United States is a major provider of trade-related assistance and trade capacity-building in general and intellectual property-related training in particular. The role of the U.S. Government in providing capacity-building in the area of intellectual property protection and enforcement arises as a result of a number of formal obligations and informal commitments, and mandated priorities for which funding is provided, such as from the U.S. Department of State Office of International Narcotics and Law Enforcement or the U.S. Department of State Office of the Middle East Partnership Initiative.

As part of its obligations under Article 67 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) in the World Trade Organization (WTO), the United States is committed to assisting both developing and least developed countries in meeting their TRIPs obligations or as part of their WTO accession process.⁵³ In addition, the United States has addressed and committed itself to provide technical assistance and training on intellectual property protection and enforcement pursuant to certain bilateral and regional trade agreements, including a number of free trade agreements (FTAs).⁵⁴

The United States has also entered into a number of Trade and Investment Framework Agreements (TIFAs) with certain of our trading partners,⁵⁵ under which offers and requests to provide technical assistance and capacity-building activities have been extended, discussed, and agreed to. In addition, the United States Trade Representative has entered into various IPR Action Plans with certain trading partners as part of the Special 301 process, which often entails the provision by the U.S. Government of technical assistance and training in the areas of intellectual property protection and enforcement activities.

Finally, the President, the Secretary of Commerce, the Secretary of State, and the U.S. Trade Representative, and other high-ranking cabinet officers, have made, and will continue to make, commitments in the area of intellectual property protection and enforcement capacity-building as part of bilateral and multilateral discussions, such as in the G8, the Enhanced Partnership for ASEAN, APEC, TransAtlantic Business Dialogue, and Joint Commercial Commission meetings with trading partners such as China, Egypt, India, and the Russian Federation.

Given the sheer size of their markets and the impact of pirated and counterfeit goods flowing from them, the Administration's current IPR training priorities are Brazil, Russia, India, and China.⁵⁶ In addition, Southeast Asia, Latin America, the Middle East, and Eastern Europe are considered by U.S. industry and intellectual property rights holders to be particularly important

⁵³ See TRIPs Article 67, *supra* note 9.

⁵⁴ At present, the United States is a party to five regional trade initiatives: 1) the Free Trade Area of the Americas (FTAA); 2) the North American Free Trade Agreement (NAFTA); 3) the Middle East Free Trade Area Initiative (MEFTA); 4) the Enterprise for ASEAN Initiative (EAI); and 5) the Asia-Pacific Economic Cooperation (APEC). In addition, there are twelve bilateral or regional Free Trade Agreements (FTAs) in force (Australia, Bahrain, Chile, Central America, Dominican Republic, Israel, Jordan, Morocco, NAFTA, Oman, Peru, and Singapore); three FTA/TPAs pending Congressional approval (Colombia, Panama, and the Republic of Korea); 40 Bilateral Investment Treaties; and 22 Intellectual Property Rights Agreements.

⁵⁵ There are 31 Trade and Investment Framework Agreements (TIFAs) in force, all of which commit the U.S. Government to providing some degree of technical assistance, training, and capacity-building to the bilateral trading partner.

⁵⁶ See Testimony of Chris Israel, *supra* note 4, at 11-12.

markets, and, as such, are logical targets of any expanded and sustained technical assistance and training, particularly as to intellectual property enforcement.

As a practical matter, a substantial majority of the commitments made as deliverables by the U.S. Government in the area of intellectual property protection technical assistance and enforcement training have fallen to the USPTO to provide to the recipient nation or region. Accordingly, the leading role of USPTO in operating GIPA and in delivering on U.S. Government commitments will likely not diminish, and the challenge to reconcile the sometimes competing priorities of U.S. Government commitments and USPTO resources will continue. Strong leadership and a leveraging of all available U.S. Government resources, combined with vision and astute management, is the key to resolving this potential conflict.

In an August 2000 report by the Department of Commerce Office of Inspector General,⁵⁷ USPTO officials cited the following factors in determining training priorities:

- A country's market size and infrastructure;
- The perceived severity of problems in one or more intellectual property areas;
- Countries identified in Special 301 process;
- Industry requests, priorities, and efforts; and
- Availability of funds from external sources such as WIPO.

In determining the country/regions which have been the focus of past training efforts, a variety of factors were involved. Countries placed on the USTR Special 301 Priority Foreign Country, Priority Watch and Watch lists were targeted as countries in need of technical assistance in an effort to strengthen protection and enforcement of intellectual property rights for U.S. interests in those countries. The political will of a country to implement improvements contributed to a decision to conduct training in a particular country. Requests from U.S. embassies for training would have also been carefully considered by USPTO in determining training areas.

The availability of external funding sources from the State Department or the U.S. Agency for International Development was an additional factor in training resource allocations. Funding sources from these agencies often specify the type of training that qualifies and the regions in which the funds may be expended. For example, training completed utilizing MEPI funds could be provided only to countries in the Middle East, or training funds allocated from the State Department under the ASEAN Cooperation Plan could be directed only to countries in Southeast Asia, or training funds provided by the Office of International Narcotics and Law Enforcement could be used solely for enforcement programs for the countries or regions designated.

These cited factors have not significantly changed since that report was published and continue to be relevant as future training is planned by USPTO in all areas of intellectual property and for all types of programs.

⁵⁷ See U.S. Department of Commerce, Office of Inspector General, *Patent and Trademark Office Efforts to Protect U.S. Intellectual Property Rights Overseas Should Be Strengthened*, Final Audit Report No. BTD-11747 at 9 (August 2000).

WHAT OTHERS IN THE U.S. GOVERNMENT ARE DOING

Intellectual Property and Related Training by Other Federal Agencies

With increasing regularity, intellectual property issues have found their way into both the policy and technical assistance missions of a number of federal agencies. While USPTO remains the primary agency on intellectual property protection and enforcement policy issues, in the area of enforcement of intellectual property, the “gun and badge” operational enforcement agencies are also active in providing technical assistance and training. A brief synopsis of the activities of other federal agencies in relation to existing collaborations and how the activities of those agencies can be leveraged is discussed below.

United States Government IPR-Related Training Efforts

U.S. Department of Commerce

The Commercial Law Development Program (CLDP) of the Department of Commerce, a program housed within the Office of General Counsel, has conducted technical assistance programs in Albania, Algeria, Bulgaria, Croatia, Egypt, Moldova, Nigeria, Pakistan, Romania, the Russian Federation, Serbia and Montenegro, and the Ukraine. The USPTO has regularly worked with CLDP on the provision of technical assistance and training in various areas of the world on intellectual property issues.

U.S. Department of Health and Human Services

The U.S. Department of Health and Human Services, through its Food and Drug Administration, and often with direct involvement of the USPTO, conducts both technical assistance and training programs on issues related to patenting of pharmaceutical products, compulsory licensing of drugs, and issues involving medical devices, surgical and diagnostic procedures, and medical equipment.

U.S. Department of Homeland Security

The Department of Homeland Security (DHS), through its Office of Trade in the Customs and Border Protection Bureau (CPB) and through the Bureau of Immigration and Customs Enforcement (ICE), has participated in international training organized in collaboration with the USPTO and others in: the Balkans, Brazil, China, Estonia, Kuwait, Mexico, Mongolia, Peru, Poland, the Russian Federation, Thailand, Trinidad and Tobago, and Vietnam. The USPTO works in close cooperation with DHS in conducting border enforcement technical assistance, and DHS routinely participates in domestic GIPA programs.

U.S. Department of Justice

The Department of Justice (DOJ), through the Computer Crimes and Intellectual Property Section (CCIPS) of the Criminal Division and the Federal Bureau of Investigation (FBI), regularly participates in both domestic and international programs organized and conducted by

USPTO relating to the investigation, prosecution, and judicial review of intellectual property crimes. In addition to programs in partnership with USPTO, the DOJ has conducted programs in Botswana, Brazil, China, India, Indonesia, Mexico, Nigeria, South Africa, Thailand, Vietnam, and the CAFTA-DR countries.

U.S. Department of State

The Department of State administers funding for technical assistance and training programs through several offices, including the International Narcotics and Law Enforcement Bureau (INL), the Office of the Middle East Partnership Initiative (MEPI), and the United States Agency for International Development (USAID). Training and technical assistance is implemented through USPTO, Department of Justice, Department of Homeland Security, and U.S. embassies. The target audiences for these training programs are investigators, law enforcement officers, prosecutors, judges, customs and border officials, and policymakers. The USPTO has used funding from these programs to organize and conduct training and technical assistance in the following countries and regions: APEC, ASEAN, Algeria, Botswana, Brazil, Chile, China, the CAFTA-DR countries, Colombia, Egypt, India, Indonesia, Jordan, Malaysia, Mexico, Morocco, Nigeria, Oman, Pakistan, Panama, Paraguay, the Russian Federation, Senegal, South Africa, South Korea, Thailand, Turkey, Uganda, the Ukraine, Vietnam, and Yemen.

U.S. Copyright Office

The U.S. Copyright Office of the Library of Congress participates in GIPA programs and in foreign training organized by USPTO. Additionally, the Copyright Office conducts an annual International Copyright Institute for foreign officials.

Multilateral Fora

As intellectual property protection and enforcement has become a major concern in international trade relations as reflected in the WTO TRIPs Agreement, a number of developed countries and regional groupings have devoted substantial resources to providing technical assistance and capacity-building on intellectual property protection and enforcement to developing and least developed countries through multilateral fora. The United States has actively participated in these efforts.

APEC

The Asia Pacific Economic Cooperation forum (APEC), with its twenty-one member economies, has conducted capacity building programs on all aspects of intellectual property rights protection and enforcement through both its experts group, the Intellectual Property Experts Group (APEC-IPEG), and its Small and Medium Sized Enterprises Working Group. The USPTO and the U.S. Department of Commerce have been regular contributors to the capacity-building programs made available under the APEC auspices.

ASEAN

The Association of South East Asian Nations (ASEAN) is a regional organization composed of the ten countries of Southeast Asia, and has a standing Working Group on Intellectual Property Cooperation which coordinates with various donor nation organizations, including the USPTO, on the provision of technical assistance and training program activities. The USPTO entered into an MOU with the ASEAN Secretariat several years ago and regularly engages ASEAN member states through co-sponsored capacity-building programs.

World Intellectual Property Organization

The World Intellectual Property Organization (WIPO) organizes and conducts an extensive program annually of technical assistance and training throughout the world, and is a major pioneer and leader on distance learning initiatives. The USPTO has a long history of collaboration with WIPO on the presentation of training programs in the areas of intellectual property protection and enforcement.

CURRENT CHALLENGES

A number of challenges currently exist in providing effective technical assistance and capacity-building programs to developing and least developed nations. These range from resource issues to the prioritization by individual federal agencies of the importance of intellectual property protection and enforcement, which in turn often dictates the level of resources, both human and financial, available to be devoted to it. Given varying agency missions, technical assistance and training in the areas of intellectual property protection and enforcement is not always a high priority for federal agencies other than the USPTO. While USPTO has developed specific program curricula for judges, public prosecutors, border officials, intellectual property office administrators, and certain policy-makers in the copyright, trademark, and patent fields, often the USPTO needs the cooperation and support of other federal agencies to realize fully these training programs.

Implementation of the Secretary's Vision

The Secretary of Commerce, in announcing the creation of GIPA, laid out his vision of a program of functional training assistance to developing and least developed countries as the target recipients of the Administration's efforts. The Secretary committed the USPTO to take the lead in IPR-related training on behalf of the U.S. Government. Since travel-related funding for participants is a major expense in the implementation of a robust program of training, the USPTO implemented the Secretary's vision for GIPA by underwriting the travel-related funding for program participants from developing and least developed countries. Such target countries typically do not have available to them adequate resources or funding sources to underwrite participation in GIPA programs. In addition, any suggested reliance on U.S. missions abroad as a routine source of funding to underwrite the travel-related expenses of foreign government participants in GIPA programs is also misplaced. With few exceptions, U.S. missions do not

have sufficient funding resources to underwrite the adequate, let alone robust, levels of participation needed for the majority of GIPA programs planned.

Impact on Other U.S. Federal Agencies

Historically, the USPTO has reached out to other executive branch enforcement-oriented and operational agencies to draw on their expertise and experience. Without the expertise, perspective, and active participation of such enforcement agencies, the federal judiciary, and legislators in USPTO-initiated training programs, it would be impractical and unproductive to invest in such training. However, it has become increasingly clear that the resources of those U.S. agencies with which the USPTO has traditionally partnered in developing and conducting programs are limited and increasingly strained.

In fulfilling the commitment of the Administration to intellectual property training and capacity-building, the number and frequency of programs has grown dramatically, with a steady increase in both technical assistance and training and capacity-building activities. In order to meet this demand and continue to offer a robust program of training activities, the USPTO has looked to other agencies to expand their participation in GIPA programs. If the demand for training programs continues to increase, the requests for assistance made by the USPTO to other agencies and branches of government will continue to rise.

In order for GIPA to continue to provide quality programs and training in furtherance of the Administration's priorities, the continued support of other federal agencies and the judiciary is crucial. The ability of USPTO to rely on the resources of other agencies in conducting training programs will become increasingly strained, both financially and politically, as the level of official commitment to programming grows.

Training Philosophy

While changes should certainly be made to the approach of the agency to modes of delivery and instructional techniques, the underlying focus of the USPTO on technical assistance and training should not be altered significantly. Past programs have contributed to the capacity of target governments in the area of IP protection and enforcement, and have assisted both industry and foreign law enforcement officials to change the landscape in the fight against global piracy and counterfeiting. However, programs have often been a response to current circumstances, opportunities, or pressures, as opposed to the product of a more proactive approach. At times, programs, while successful, were conducted without sufficient consideration being given to whether a certain training activity was warranted or would have the desired impact and how it fit in a larger picture. The challenge is to better integrate training activities and efforts into a more cohesive and comprehensive plan for the target recipient.

In addition, training presentation has too often been wedded to a lecture approach instead of a more interactive learning approach. The challenge is to assist professionals in being creative and more experimental in program presentation. Training programs should be developed to address specific needs and to foster a learning environment that promotes participant discussion in all learning aspects, emphasizes a sharing of participant experiences and challenges, utilizes

problem solving activities, and utilizes distance learning concepts and practices where feasible and productive.

Under current practice, evaluation forms are distributed at the conclusion of most technical assistance programs. The evaluation forms are then reviewed by External Affairs attorneys in an effort to improve future training. There is, however, no requirement or process in place for measuring the success of the program or for implementing changes to future programs. Standardized performance measures are needed to more effectively monitor the impact of technical assistance along with procedures for implementing changes based on evaluation responses.

Long-Term Program Planning

To date, technical assistance and training programs operated by the USPTO have been programmed on a short-term basis. Programs are often conducted in response to requests from U.S. missions, federal departments or agencies, specialized offices, such as the U.S. Trade Representative, industry and rights holders' organizations, and internal USPTO decisions. Often, these programs have been formulated and conducted primarily in response to specific pressures or concerns expressed by these various stakeholders.

There is not currently in place an internal process for determining training programs that meet longer range goals. The challenge is for USPTO to plan institutionally longer-term training goals relating to a country, region, or issue. This lack of long-term planning has the effect of diminishing the potential for effecting change in the protection of intellectual property rights in foreign countries.

An additional challenge is to focus strategically on countries where potential exists for improvement due to political will, current legislative developments, or other motivating conditions other than by short-term reactivity. Close coordination with other federal agencies, such as Department of State and USTR, and U.S. missions abroad, is crucial to the success of making the provision of technical assistance and training a change agent in a broader context of goals for a country, such as commercial market reform, judicial reform, the realignment of criminal enforcement priorities, rule of law, or transparency in decision-making.

In conducting training, USPTO has only partially instituted a needs assessment component to training and technical assistance development. While the USPTO has partnered with foreign governments in developing technical assistance and training programs on a multi-year basis as part of an action plan,⁵⁸ such as with China and India, a more systematized effort is needed.

Working with the foreign government recipient of intended training or technical assistance in a more coordinated fashion through the development of a needs assessment would provide added "ownership" or buy-in as to the success of the activity and lead to a greater likelihood of success. In addition, initiating each training project with a needs assessment would increase the

⁵⁸ Action plans that call for the provision of technical assistance and training have been developed by OIPPE for ASEAN, Brazil, China, and India.

effectiveness of the program by better targeting areas that are challenges to a particular country or region, as well as in reaching consensus with the foreign government on training curriculum.

Selection of Program Partners

In developing training programs, USPTO has always worked to include a voice for rights owners and industry. This has been accomplished primarily by working with Washington-based intellectual property rights trade associations and their foreign-based representatives. However, structurally supported efforts to cast a wider net in assessing program priorities would be valuable since it would allow the agency to include voices and experiences of rights owners outside the Washington D.C., area who could constructively contribute to program development, implementation, and success.

In addition, the USPTO has taken advantage, to some degree, of the resources and opportunities available in partnering with universities, research institutions, and other educational-based organizations on intellectual property issues, and a number of nonprofit institutions, international organizations, and intergovernmental organizations. These include the: Asian-Pacific Economic Cooperation (APEC) Forum; United Nations Economic Commission for Europe (UNECE) Intellectual Property Task Force; the Patent Office of the United Kingdom; Caribbean Community Secretariat; Pacific Islands Forum (PIF) Secretariat; Association of Southeast Asian Nations Secretariat (ASEAN); Central American Economic Integration Secretariat (SIECA); Interpol; the World Intellectual Property Organization (WIPO); and the International Intellectual Property Institute (IIPi).

GIPA and the Overseas IPR Attachés

The regional and country specific Intellectual Property Rights attachés funded by the USPTO as Limited Term Appointment technical resource specialists within the U.S. Department of Commerce Foreign Commercial Service at designated U.S. missions overseas⁵⁹ are primarily responsible for operating as technical resource specialist within the USFCS structure and for assisting in counseling U.S. businesses in doing business in a specific country or region.

However, as noted in the 2006 Economic Report of the President, these attaches will “conduct intellectual property rights training.”⁶⁰ Therefore, it is imperative that GIPA should have a better defined relationship with USFCS in regard to their training function. This is due to the nature of the positions acting as “on-the-ground” technical resource specialists in the area of intellectual property protection and enforcement. As such, they are regularly contacted or invited by host governments or organizations within their countries or regions to provide technical assistance and training, or do so at the request or direction of the USPTO or other federal agencies. In addition, in their role of IPR attaché, these positions are responsible for assisting USPTO in organizing and coordinating the delivery of technical assistance and training in their host country or region.

⁵⁹ These positions are established at the following posts, with regional responsibilities, if any, indicated in parentheses: Bangkok, Thailand (Southeast Asia); Beijing, China; North Africa/Middle East; Guangdong, China; Moscow, Russian Federation (Eastern Europe/Central Asia); New Delhi, India (South Asia); Rio de Janeiro, Brazil (South America).

⁶⁰ Economic Report, *supra* note 2, at 227.

In supporting the delivery of GIPA programs, the IPR attachés assist in:

- organizing ambassador-hosted roundtables, briefings, and other local fora on intellectual property rights issues and topics;
- carrying out training needs assessments and supporting the stock-taking process, which is a critical component of the training needs assessment process;
- monitoring host government compliance and follow-through on technical assistance and training plan agreements; and
- delivery of technical assistance and training activities in-country or in-region by facilitating administrative and logistical support for such activities, where feasible.

The Government Accountability Office recently released an initial review of the implementation and overall effectiveness of the IP Attaché program,⁶¹ with a final report expected by Fall 2009.

CONCLUSION

The U.S. Government, and in particular the USPTO through its Global Intellectual Property Academy, is firmly committed to the continued provision of technical assistance and capacity-building for developing and least developed economies. While challenges exist to fulfilling this commitment, the U.S. Government unquestionably views the delivery of technical assistance and capacity-building initiatives as crucial components and tools to attaining enhanced levels of intellectual property protection and enforcement globally.

⁶¹ Government Accountability Office (GAO), *Overseas U.S. Government Personnel Involved in Efforts to Protect and Enforce Intellectual Property Rights*, GAO-09-402R (Washington, D.C., 2009).