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U.S. Sets 21st-Century Goal: Building a Better Patent Office

By **EDWARD WYATT**

WASHINGTON — **President Obama**, who emphasizes American innovation, says modernizing the federal Patent and Trademark Office is crucial to “winning the future.” So at a time when a quarter of patent applications come from California, and many of those from Silicon Valley, the patent office is opening its first satellite office — in Detroit.

That is only one of the signs that have many critics saying that the office has its head firmly in the 20th century, if not the 19th.

Only in the last three years has the office begun to accept a majority of its applications in digital form. Mr. Obama astonished a group of technology executives last year when he described how the office has to print some applications filed by computer and scan them into another, incompatible computer system.

“There is no company I know of that would have permitted its information technology to get into the state we’re in,” David J. Kappos, who 18 months ago became director of the Patent and Trademark Office and undersecretary of commerce for intellectual property, said in a recent interview. “If it had, the C.E.O. would have been fired, the board would have been thrown out, and you would have had shareholder lawsuits.”

Once patent applications are in the system, they sit — for years. The patent office’s pipeline is so clogged it takes two years for an inventor to get an initial ruling, and an additional year or more before a patent is finally issued.

The delays and inefficiencies are more than a nuisance for inventors. Patentable ideas are the basis for many start-up companies and small businesses. Venture capitalists often require start-ups to have a patent before offering financing. That means that patent delays cost jobs, slow the economy and threaten the ability of American companies to compete with foreign businesses.

Much of the patent office’s decline has occurred in the last 13 years, as the Internet age created a surge in applications. In 1997, 2.25 patents were pending for every one issued. By 2008, that rate had nearly tripled, to 6.6 patents pending for every one issued. The figure fell below six last year.

Though the office’s ranks of patent examiners and its budget have increased by about 25 percent in the last five years, that has not been enough to keep up with a flood of applications — which grew

to more than 2,000 a day last year, for a total of 509,000, from 950 a day in 1997.

The office, like a few other corners of the government, has long paid its way, thanks to application and maintenance fees. That income — \$2.1 billion last year — has made it an inviting target for Congress, which over the last 20 years has diverted a total of \$800 million to other uses, rather than letting the office invest the money in its operations.

Applications have also become far more complex, said Douglas K. Norman, president of the Intellectual Property Owners Association, a trade group mainly of large technology and manufacturing companies.

“When I was a young patent lawyer, a patent application would be 20 to 25 pages and have 10 to 15 claims,” Mr. Norman said. A claim is the part of the patent that defines what is protected. “Now they run hundreds of pages, with hundreds, and sometimes thousands, of claims.”

Lost in the scrutiny of the office’s logjam, however, was the fact that the number of patents issued reached a record last year — more than 209,000, or 29 percent more than the average of 162,000 a year over the previous four years. Rejections also hit a high of 258,000 — not a measure of quality, Mr. Kappos said, but a sign of greater efficiency.

Between the backlog of 700,000 patents awaiting their first action by an examiner and the 500,000 patents that are in process, a total of 1.2 million applications are pending.

Sitting in his suburban Virginia office, not far from a model of the light bulb Edison presented for patent in November 1879 (which was approved two and a half months later), Mr. Kappos proudly ticked off figures that he said proved the agency was heading in the right direction.

The backlog has actually declined about 10 percent from a peak of 770,000 at the end of 2008.

“We were able to work a 13-month year last year,” he said, referring to the productivity increase in 2010 over the 2009. “We are processing a far larger workload with the same number of examiners.”

Still, Mr. Kappos wants to add more than 1,000 examiners in each of the next two years, a 30 percent increase. Mr. Obama’s 2012 budget calls for a 28 percent increase in spending, to \$2.7 billion, over 2010. In two consecutive sessions, Congress has defeated a bill that would allow the patent office to keep all of the fees it collects. While another similar effort is under way, a big staffing increase will not be easy in a climate of cuts.

Mr. Kappos, a former electrical engineer and lawyer who joined the patent office in 2009 after 27 years at I.B.M., has improved relations with the union representing patent examiners. He and the union agreed on performance evaluation measures last year, the first time in 50 years that the yardsticks had been revised.

“I give David Kappos a good deal of credit for seeing where the problems have been and being

willing to address them,” said Robert D. Budens, president of the union, the Patent Office Professional Association. “I think it’s a little early to see the full extent of the changes. But we have seen an increase in morale and a decrease in attrition, which is now almost the lowest it’s been since I came here” in 1990.

Patent applications come from all over the United States, and the office has forgone satellite offices — until now. Last year, the office announced it would put about 100 examiners in Detroit. Some prominent lawmakers from Michigan have worked on patent issues, including Representative [John Conyers Jr.](#), a Detroit Democrat who, when the decision was made, was chairman of the House Judiciary Committee, which oversees patents.

Mr. Kappos said he chose Detroit because it had a large communities of patent lawyers and agents, nearby universities and transportation centers, and relatively low costs of living and real estate. “Detroit has long been an innovation center,” he said. “It’s undervalued, and that is where we want to invest.” He said it would also attract a work force with more varied skills.

Mr. Kappos is also pushing an initiative that would charge patent applicants a higher fee to guarantee that their applications will receive a ruling within a year. But that initiative and others are not enough, said Paul R. Michel, who recently retired as chief judge for the United States Court of Appeals for the Federal Circuit in Washington, the main forum for patent appeals.

“The office can’t be made efficient in 18 months without a vast increase in finances,” said Mr. Michel, who has made evangelizing for an overhaul of the office a pet cause. “Small efficiency improvements will only make a small difference in the problem.”