



Testimony of

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Inspector General

U.S. Department of Commerce

before a joint hearing of the

Committee on Oversight and Government Reform
and
Committee on the Judiciary
U.S. House of Representatives

***Abuse of USPTO's Telework Program:
Ensuring Oversight, Accountability and Quality***

November 18, 2014

Chairmen Goodlatte and Issa, Ranking Members Conyers and Cummings, and Members of the Committees:

We appreciate the opportunity to testify today concerning the telework programs of the U.S. Patent and Trademark Office (USPTO).

In October 2014, my office issued our annual report on the *Top Management Challenges Facing the Department of Commerce*.¹ We reported that USPTO faces significant workforce management challenges, and our testimony today will detail some of those challenges.

In the summer of 2014, our office issued two public investigative reports: one related to concerns with hiring practices at the Trademark Office, and the other related to waste and mismanagement at the Patent Trial and Appeal Board (PTAB).² In the Trademark Office investigation, we found that a senior official intervened in the hiring process to ensure that a nonselected candidate, who was the fiancé of a close relative of the official, was ultimately selected for a position as a trademark examiner. In the PTAB investigation, we found that managers and supervisors at USPTO were aware that, of their 38–51 paralegals (95 percent of whom participated in USPTO’s Patent Hoteling Program), many had insufficient work assigned to them over a 4-year period despite a significant and growing backlog of appeals. As a result, USPTO wasted approximately \$5 million in salary and bonuses over that period on paralegals who had significant idle time and engaged in personal, non-work-related activities while on government time. Although the paralegals billed significant time to a code designated for doing no work, the vast majority of them received the highest performance rating of “outstanding.” Moreover, supervisors and senior managers who oversaw the program received over \$700,000 in performance bonuses during the relevant time period.

In addition to our public report on the waste and mismanagement at PTAB, our October 2014 *Top Management Challenges* report also noted that additional challenges exist with the management of USPTO’s telework programs. In a 16-page memorandum dated July 8, 2013, USPTO responded to OIG’s request that it examine allegations of systemic misreporting of time and attendance and how supervisors did not have the tools, and were not empowered by USPTO senior management, to adequately address it. USPTO concluded that its investigative team “was not able to reach a conclusion on whether some Patent Examiners are accurately reporting T&A [time and attendance] or whether the Agency has effective controls to guard against ... abuses” and that “there are no records that could be relied upon or referenced to support such findings.” Essentially, the 16-page memorandum failed to substantiate multiple anonymous allegations of systemic time and attendance abuse occurring at USPTO. The 16-page memorandum did, however, include eight recommendations, including supervisory training and better oversight of such practices as “end-loading” and “patent mortgaging.”

¹ U.S. Department of Commerce Office of Inspector General, October 16, 2014. *Top Management Challenges Facing the Department of Commerce*, OIG-15-002. Washington, DC: Department of Commerce OIG.

² See DOC OIG, July 8, 2014, *Review of Conduct by a High-Ranking Official in the Hiring of a Trademark Organization Employee*, 13-0726, Washington, DC: DOC OIG, and *Ibid.*, July 28, 2014, *Review of Waste and Mismanagement at the Patent Trial and Appeal Board*, 13-1077.

After receiving USPTO's July 2013 memorandum, OIG learned of an earlier, 32-page version of the report—which was not officially provided to OIG, and which included findings and recommendations, in much greater detail, in the following areas:

- time and attendance (including claiming time based on work submitted as completed instead of time worked, as well as alleged overtime pay for time not worked)
- *end-loading* (i.e., when employees save significant quantities of their work for the very end of the fiscal quarter, potentially affecting examination quality while meeting or even exceeding production standards)
- *mortgaging* (i.e., when patent examiners knowingly submit incomplete work for credit in the bi-week period before they actually correctly complete the work)
- performance plan issues (e.g., examiners receiving bonuses they might not have earned, the difficulty supervisors have monitoring the quality of the work, and concerns that performance standards have become too easy for examiners to meet)

Unlike the 16-page report, the 32-page report concluded that 12 of 16 specific allegations were substantiated. The 32-page report found that patent examiners are provided wide flexibility in performing their work with a variety of work schedules and programs. However, supervisors are not provided sufficient tools for ensuring that their employees are actually working the hours claimed. Further, USPTO senior management has essentially prohibited supervisors and employee relations personnel from obtaining building and computer records to follow up on employees suspected of misrepresenting time worked on their time sheets—or allowing these records to be used as evidence in a disciplinary action—giving the impression that time and attendance abuse is tolerated at USPTO.

The 32-page report also made 15 specific recommendations, including the following: requiring patent examiners to work in their USPTO office or at their approved telework location; mandating the use of collaboration tools including the presence indicator; enforcing leave requesting procedures; implementing end-loading deterrents; and allowing the full use of building and computer records by managers. (See appendix B for a comparison of the recommendations contained in the two USPTO reports, as well as USPTO's reported status of its implementation of recommendations as of August 14, 2014.)

While these findings and recommendations were not formally issued by the agency, their publication by *The Washington Post* highlights additional controls that may be put in place—and identifies challenges that USPTO must address.

My office has been following up on a number of the issues raised in the internal USPTO reports concerning its telework program. My testimony today will address the following:

- I. Background information on USPTO, including recent legislation affecting the U.S. patent award system, a brief overview of the current status of patents awaiting examinations, and the various flexible schedule options available to patent examiners
- II. OIG's ongoing USPTO-related audit and investigative work, including analyses of patent mortgaging and end-loading
- III. USPTO's current and ongoing corrective actions—as well as additional OIG recommendations for further action

I. Background

America Invents Act

USPTO, as the U.S. authority for issuing all patents and trademarks, has a critical role in awarding intellectual property (IP) rights and working on the global stage to further IP policy, protection, and enforcement. As a fee-funded agency with approximately 12,000 employees, USPTO has undergone significant changes over the past 5 years. In September 2011, Congress enacted and the President signed the Leahy-Smith America Invents Act (AIA), representing the most fundamental change to the U.S. patent system in more than 50 years. Among the reforms under AIA, Congress gave USPTO greater authority to set and retain fees, to ensure it has sufficient resources for its operations. In FY 2015, USPTO expects to collect over \$3 billion in revenue from patent and trademark fees. USPTO has also greatly expanded the size of its examiner and patent trial and appeal judge workforce over the past 5 years, while expanding its telework program.

Patent Application Backlogs and Pendency

Although USPTO has made progress in reducing the time an applicant waits to have a new application reviewed (known within USPTO as “pendency”), waiting times for other types of filings have increased (see table 1, next page). The patent application backlog decreased from 718,835 applications in FY 2009 to 616,019 applications as of the third quarter of FY 2014. During that same time, however, waiting times for another type of filing, the request for continued examination (RCE³), increased from 2 months in FY 2009 to 8.7 months as of the third quarter of FY 2014. Pendency also grew for appeals filed with PTAB. Although USPTO has begun to reduce the backlog of RCEs, the rapid rise in the RCE backlog over the last 5 years highlights the challenges USPTO encounters when it prioritizes the review of new applications to the detriment of other types of filings. The steady growth in the appeal backlog and in waiting times also raises concerns about the timely adjudication of IP rights at USPTO.

³ RCEs are patent applications resubmitted for consideration after an examiner has previously rejected the inventor's claims.

Table I. Backlogs and Pendency at USPTO for New Patent Applications, RCEs, and Appeals FY 2009–FY 2014

FY	Patent Application Backlog	Traditional Patent Pendency (Months) ^a	RCE Backlog	RCE First-Action Pendency (Months) ^b	PTAB Ex Parte Appeal Backlog ^c
2014	605,646	27.4	46,441	6.2	25,658
2013	584,998	29.1	78,272	7.8	25,570
2012	608,283	32.4	95,200	5.9	26,837
2011	669,625	33.7	63,487	4.0	24,927
2010	708,535	35.3	40,939	2.4	17,754
2009	718,835	34.6	14,620	2.0	12,489

Source: USPTO

^a Average number of months between an application’s filing and its disposal.

^b Average number of months between the filing of an RCE and the examiner’s initial decision.

^c Average number of months between PTAB’s assigning an appeal number and its making a decision.

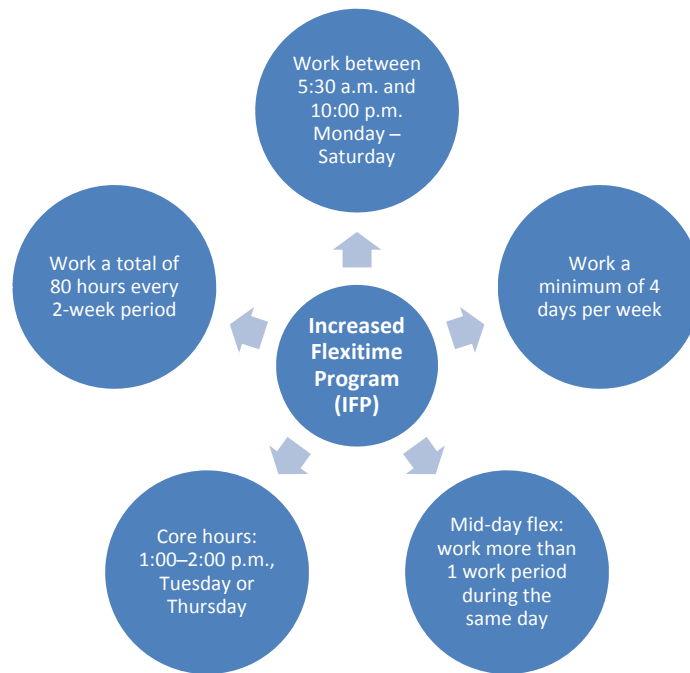
USPTO must also balance the pressure to issue patents in a timelier manner with its responsibility to ensure that it issues high-quality patents. Earlier this year, we initiated an audit of USPTO’s quality assurance programs, to determine their sufficiency in preventing the issuance of low-quality patents and assess quality reviews performed by USPTO to measure examiner performance. Included in our work is an examination of the end-loading and mortgaging issues identified by the USPTO’s internal reports.

Telework and Work Schedule Flexibilities

USPTO has established eight telework programs for its patent examiner and management workforce—and also permits telework for the other members of its workforce. A list describing USPTO’s telework programs is included in appendix A.

In addition, USPTO has implemented an Increased Flexitime Program (IFP), which provides employees increased flexibility with respect to their work schedules (see figure I, next page, for major elements of the IFP).

Figure I. Major Elements of the IFP



Source: OIG analysis of USPTO data

The IFP

- allows full-time employees to (a) work their regular 80 hours a pay period in fewer than 10 full work days (but in a minimum of 4 days per work week) and (b) vary the number of hours worked each day, as well as the days worked each week—as long as they satisfy core hour requirements.
- requires employees to be in paid status (e.g., working from home or an alternative site; attending a conference, training, or officially sponsored event; being on travel status) or on approved leave (including compensatory time and credit hours) 1:00–2:00 p.m. each Tuesday (1:00–2:00 p.m. each Thursday for Patent Office Professional Association, or POPA, bargaining unit members).
- permits employees to work between 5:30 a.m. and 10:00 p.m., Monday–Saturday (as well as work credit hours on Sunday).
- enables mid-day flexibility (i.e., employees may work more than 1 work period during the same day).

Further, USPTO's "Employee Responsibilities" note that employees

- are responsible for keeping track of their time and accurately recording their time and attendance;
- must notify their supervisors if they will be absent on a weekly basis, prior to the absence; and
- are required to leave "out of office" notices on their e-mail and phone, as appropriate.

The telework and work schedule flexibilities adopted by USPTO, combined with what are essentially production quotas for patent examinations, present particular challenges and risks for ensuring workforce compliance with time and attendance regulations. In addition to specific allegations of time and attendance abuse currently under OIG investigation, we have also examined the practices of end-loading and patent mortgaging. As discussed below, both end-loading and patent mortgaging have implications for patent quality. Both practices may also occur because some patent examiners may not be working for periods of time during the early bi-weeks (i.e., 2-week pay periods) of each quarter and engage in end-loading or mortgaging in order to meet their production goals for the quarter.

II. Ongoing OIG Work

Time and Attendance Investigations

OIG is currently investigating the following allegations of time and attendance abuse by patent examiners:

- A Trademark examiner and another USPTO employee allegedly go to their offices in the morning—and then immediately leave for other destinations, returning at the end of the day.
- An anonymous complaint reported reading an article online, which included information that a patent examiner had run for election and stated that he was available "at all times."
- USPTO reported that a patent examiner at USPTO allegedly falsified time and attendance records for over 600 hours, amounting to a possible loss of over \$24,000 to the government. (See appendix C for OIG analysis of time and attendance records.)
- An anonymous complaint indicated that a patent examiner had been bragging about producing zero work products for a 6-month period—and that no action had been taken against the examiner.

We are also investigating the following instances of alleged time and attendance abuse reported by lower-level supervisors, then disregarded by more senior management:

- An examiner, falsely claiming to be working for at least 304 hours, was given notice that the behavior was inappropriate; the examiner continued not working but changed behavior to avoid detection; the examiner was permitted to enter into a “last chance agreement.”⁴
- Another examiner engaged in time and attendance abuse after already serving a 21-day suspension for the same misconduct; one official proposed the examiner’s removal, yet the deciding official offered the examiner a last chance agreement.
- An examiner who engaged in time and attendance abuse as well as mortgaging received performance awards as a result of the mortgaging; however, the USPTO investigator was not permitted to access related computer data, and the employee was ultimately found only responsible for not following the agency hoteling policy.
- An examiner falsely claimed 25 hours, for which there was no evidence of work, and received \$1,333.25 in pay; however, the use of computer data was not permitted and, subsequently, the examiner only received a counseling letter for not staying on schedule.
- Another examiner’s supervisor was denied access to review the employee’s building badge swipe records by agency management, even after the supervisor obtained evidence that the employee was committing time and attendance abuse.

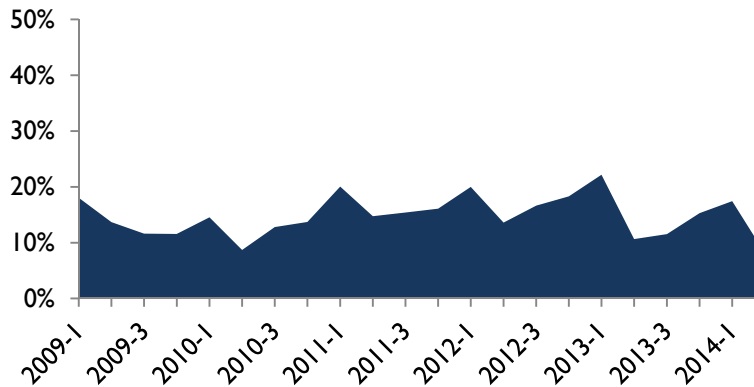
End-Loading

Examiner production is evaluated quarterly; end-loading occurs when patent examiners submit a high volume of written decisions at the end of each quarter instead of submitting work consistently throughout the quarter. USPTO’s 32-page report found that 71 percent of the supervisors they interviewed and 90 percent of the 25 directors they interviewed believed that end-loading could compromise the quality of examiner work. Further, while USPTO does not consider end-loading to be misconduct, the 32-page report noted that end-loading “allows examiners great freedom in their work hours, and no real requirement to be present . . . which leads to a lack of accountability towards pay for work performed and the supervisors ability to accurately and truthfully certify WebTA.”

To identify end-loading, our quality assurance audit flagged examiners who submitted more than 50 percent of their work in the last 4 weeks of a quarter. Over the last 4 fiscal years, we found that almost one-fifth (approximately 15–20 percent) of examiners end-loaded in any given quarter (see figure 2, next page)—making end-loading a wide-spread practice throughout USPTO.

⁴ In a last chance agreement (LCA) between an agency and employee, the employee agrees to comply with the terms of the agreement in order to avoid an adverse action such as a removal from service. LCAs are a form of alternative discipline that can involve the employee waiving some rights to file an appeal with the Merit Systems Protection Board should they be terminated for violating the agreement.

Figure 2. Percent of Examiners who End-Loaded, by Quarter (FYs 2010–14)



Source: OIG analysis of USPTO data

Unfortunately, USPTO is unable to track all of the quality errors that result from end-loading. Prior to April 2014, when supervisors identified errors in examiner decisions, there was no requirement to track those errors in a supervisory database. Since April 2014, the database tracks some examiner errors. Supervisors have discretion to choose whether errors actually count against examiners' error rates, which affect the quality element of their performance appraisals. In addition, the supervisory database does not track which cases supervisors reviewed to determine examiner error rates—data that could be used to establish patterns. We found that, without knowing all of the cases reviewed by supervisors or other quality specialists, it is difficult for USPTO to evaluate the impact of end-loading on the quality of determinations issued to applicants.

Beyond concerns about its effect on quality, the prevalence of end-loading also raises questions about employee time and attendance. If a fifth of all patent examiners are not submitting the majority of their work until the end of the quarter, questions inevitably arise about how they are spending the rest of their certified work time. Examiners certify that they are working 80 hours every 2 weeks. Some end-loaders may have a legitimate reason for not submitting their work until the end of the quarter: perhaps they conduct their examinations incrementally on multiple reviews before submitting their decisions simultaneously. However, in other cases, end-loading could represent employees actually doing the majority of their work at the end of the quarter.

Even if an examiner can meet production goals for the entire quarter in only half a quarter, that employee is still required to spend the remaining time reviewing additional applications or conducting other official duties. As USPTO's 32-page report notes, "The prevalence of end-loading suggest[s] that there [are] a significant number of examiners [who] are not working for significant periods of time during the early bi-weeks of each quarter since these examiners are only submitting completed work at the end of the quarters and/or year. The end-loading examiners are being paid the same salaries and bonuses as examiners who are consistently submitting work throughout the quarter/fiscal year."

Mortgaging

USPTO’s 32-page report also substantiated evidence of mortgaging—a practice that, unlike end-loading, USPTO considers misconduct. Examiners must complete their work in accordance with quarterly production goals, in order to receive performance awards and avoid a progressive number of oral and written warnings for poor production. If examiners are in danger of missing those goals, they may decide to engage in “patent mortgaging,” or submitting knowingly incomplete applications to receive credit before actually completing the work. Senior examiners are able to receive credit for their submitted work prior to review. In addition, as a result of a 2010 agreement between USPTO and POPA, GS-12 and GS-13 examiners without signatory authority are also able to receive credit upon submission of certain types of applications without first going through supervisory review. This procedure is referred to as “auto-count.”

Although examiners earn credit for incomplete work, those decisions are not directly sent to applicants. Before that happens, all applications are reviewed for completeness by administrative staff at USPTO. If those employees find missing or incomplete administrative information on the application, they return the applications to examiners for correction before they are mailed. Hence, some examiners can deliberately submit incomplete work, receive credit, and then complete the work after knowing it would be returned by the administrative staff.

The number of mortgaging allegations has increased in recent years. Between October 2008 and August 2014, 121 examiners were accused of mortgaging. Over half of these allegations occurred over the 11-month period from October 1, 2013, to August 29, 2014 (see table 2, below).

Table 2. Mortgaging Allegations Received by USPTO

Fiscal Year (FY)	Allegations of Mortgaging	Total Patent Examiner Corps
2009	2	6,243
2010	5	6,225
2011	11	6,780
2012	18	7,935
2013	21	8,051
2014	64	7,986 ^a

Source: OIG analysis of USPTO data received between October 1, 2009, and August 29, 2014

^a Data as of June 5, 2014.

Unfortunately, mortgaging is not easy to detect. Supervisors can monitor the number of administrative returns for each examiner through a supervisory dashboard. However, there may be legitimate reasons for an examiner to have an application returned. For example, in FYs 2012 and 2013, the majority of patent examiners had at least one application returned by

administrative staff for corrections. Thus, although supervisors can monitor administrative returns, they cannot readily identify mortgaging without analyzing behavioral patterns of these patent examiners.

Further, USPTO applies a wide-range of responses to allegations of mortgaging. The penalties for a first occurrence range from reprimands and counseling to as much as a 14-day suspension (see table 3, below). Given the challenges associated with identifying mortgaging and the wide range of possible disciplinary outcomes, we found that USPTO should consider revising its policy about mortgaging in order to discourage the practice.

**Table 3. Decisions Rendered for Allegations of Mortgaging^a
Between October 2009 and August 2014**

Disciplinary Actions or Decisions Rendered for Allegations of Mortgaging	Frequency
Abeyance decision	15
No action taken	13
Suspension: 7 days or less	13
Suspension: 8–14 days	12
Oral counseling	7
Pending	7
Reprimand	7
Counseling letter	6
Resignation	5
Employee exonerated	2
Settlement	2
Suspension: more than 14 days	2
Discharge during probationary period	1
Factual situation unproven	1
Insufficient evidence	1
Rescinded action	1
Retirement (voluntary)	1

Source: OIG analysis of USPTO data

^a As of August 2014, 96 of the 121 alleged mortgaging cases reached a final decision and 25 have not been resolved.

If USPTO fails to identify and discipline employees for mortgaging, this can result in examiners receiving performance bonuses they did not earn. As part of our ongoing review of mortgaging, we found that the majority of examiners who had a large number of returns relative to completed patent application reviews—a possible indicator of mortgaging—still received performance awards. Our preliminary analysis indicates that this group of employees, only some of whom may be manipulating the performance system, received millions of dollars in performance bonuses over the last 3 fiscal years. We are continuing to examine this matter;

however, to date, our work suggests that USPTO should respond more effectively to suspected mortgaging.

III. Current and Ongoing USPTO Responses—and Additional OIG Recommendations for Further Response

USPTO Response

According to USPTO, it is currently implementing seven of the eight recommendations from its 16-page report on time and attendance abuse. USPTO conducted additional trainings with supervisory patent examiners—providing information about time and attendance requirements, how to evaluate the quality of examiner work products, and how to determine whether to approve employee time sheets. Additionally, USPTO centralized its policies related to time and attendance and employee misconduct in order to ensure that supervisors have ready access to all relevant requirements.

More substantively, as of June 2013, USPTO required its full-time teleworking examiners to use collaboration tools (e.g. e-mail and instant messaging) while working—but excluded the requirement to use the presence indicator on its supervisory dashboard. Previously, examiners working from home were allowed to remain offline while performing work activities. USPTO now also instructs its supervisory examiners to consider examiner production and responsiveness when determining whether to certify employee time sheets. If examiners have low productivity and are unresponsive to their supervisors' e-mails or phone calls, supervisors are instructed to notify the employee. If the employee does not respond promptly, USPTO will consider the employee absent without leave (AWOL), putting the employee in a nonpay status. Still, since April 2013, only three employees have been charged with being AWOL.

USPTO is also taking some steps to address patent mortgaging and end-loading. USPTO initiated a working group on mortgaging—and, to ensure that it is handled consistently across the organization, the agency report that it has developed guidance for supervisors and employee relations specialists on how to identify and discipline employees for mortgaging. To address end-loading, USPTO piloted an initiative in one of its technology centers that created additional reporting requirements. Under the initiative, if examiners do not submit their work in two pay periods, they are required to meet with their supervisors; if they continue not submitting work for a third pay period, they meet with the technology center director. The agency recently deemed this program successful and plans to expand it to all examiners on October 19, 2014.

Recommendations for Additional Actions

OIG believes that USPTO could take additional actions to prevent and detect employee time and attendance abuse:

- A. Better use the data already available.** USPTO requires its employees to swipe their ID badges upon entering the USPTO building and also collects data on when employees are logged on to their computers. However, USPTO does not require full-

time teleworkers to use the presence indicator, one of the collaboration tools.⁵ USPTO's 32-page report recommended that supervisors should have access to these and other available records and record-gathering methods when investigating employee misconduct. (See appendix D for a brief explanation of tools available for investigating time and attendance abuse at USPTO.)

Instead, supervisors currently must go through a series of steps to obtain this information. A supervisor who suspects time and attendance abuse must first build evidence and present a case to the next-level supervisor, the technology center director. The decision to pull the records must then be authorized by the assistant deputy commissioner (ADC), who supervises the technology center director. Thereafter, each request is reviewed on a case-by-case basis; there are no established thresholds for what constitutes an acceptable standard for pulling the data.

In other words: supervisors must go through a process interviewees described as “burdensome” in order to have access to records which could help them promptly identify or substantiate time and attendance abuse. USPTO's 32-page report identified specific examples of supervisors who tried and failed to obtain these records. One supervisor stated: “ADC said no. We had evidence that the time sheet was not accurate, but they still said no. Was 4–5 months ago and there was a push not to pull records. But my Director felt the situation warranted it and ran it up to the ADC.”

- B. Gather additional information.** USPTO does not require its employees to swipe their badges when leaving the USPTO campus. Requiring employees to swipe badges when leaving would, in the event of a time and attendance investigation, provide additional information to help determine whether abuse was taking place.

Further, USPTO decided not to implement a recommendation in both the 32- and 16-page reports that would require examiners who claimed overtime to specify the work product created during overtime. This is an easy-to-implement internal control for preventing overtime abuse. Collecting this information would make it easier for supervisors to ensure that the overtime was warranted.

As noted previously, supervisors do not collect all relevant error information found during supervisory reviews. Collecting this data would help determine the extent examiner behavior (e.g., end-loading) impacts the quality of examiner decisions—and could assist with identifying patterns of potential abuse by specific examiners.

- C. Reassess its production goals.** Many of the allegations of time and attendance abuse state that it is possible because of USPTO's production goals. Nearly all of the individuals interviewed as part of USPTO's reviews believe that performance standards have become easier by providing patent examiners more time to meet their production goals.

⁵ Documents provided by USPTO do not indicate that employees teleworking fewer than 80 hours per pay period are required to log on or use collaboration tools.

Performance goals matter due to potential excess idle time and excess capacity. For example: an examiner who works 80 examining hours, and is expected to complete a patent review every 20 hours, must complete 4 reviews to meet the production goal. Of course, an examiner who needs only 65 hours to complete the reviews for which 80 hours have been allotted can theoretically do nothing for the excess 15 hours and still achieve a fully satisfactory rating. Alternatively, that employee could complete a fifth review and claim 100 hours of work, in order to receive overtime pay—and potentially earn a performance bonus for completing 110 percent of goal.

Reports of end-loading, time and attendance abuse, and telework abuse suggest that at least some examiners have excess capacity in their schedules. However, despite major changes to the technologies used for patent review—for example, examiners today use online databases instead of paper archives—USPTO did not adjust its production goals between 1976 and 2009, and the minimal updates to the production goals since 2009 all resulted in giving examiners more time for the same amount of work. To increase the efficiency of USPTO and reduce the risk of time and attendance abuse, USPTO should ensure that it has established optimal production goals, taking into accounts variations across art units.

Appendix A: Telework Programs Available at USPTO

Table A-1. Programs Available to Patent Examiners and Their Supervisors

PROGRAM	DESCRIPTION
Patents Hoteling Program (PHP)	Participants (must be GS-12 and higher) have the option to perform officially assigned duties at home during paid working hours. It also includes a component whereby participants can remotely reserve workspace in temporary offices located throughout the USPTO's Alexandria, VA campus.
Patents Hoteling Program 50-mile (PHP 50-mile)	PHP provides participants the option to request a change to their official duty station to their home address if they live within 50 miles of the USPTO Alexandria, VA campus. It eliminates the requirement to report to headquarters twice per bi-week.
Telework Enhancement Act Pilot Program (TEAPP)	The program allows employees teleworking full-time to decide, for their own convenience, to live greater than 50 miles from USPTO located in Alexandria, VA, to change their duty station to an alternate worksite in the city in which they live. The employee must travel to USPTO when directed by the office.
National Treasury Employees Union (NTEU) Hoteling Program (PHP-N)	Participants give up their office and use a defined set of temporary generic offices/cubicles when on the Alexandria campus and in the PTO offices at Randolph Square in Arlington, VA.
Patents Telework Program for NTEU 243 (PTP-N)	PTP-N provides the opportunity to telework from one to four days a week.
Patents Management Telework Program (PMTP)	This program for managers and non-bargaining unit employees allows participants telework up to 32 hours bi-weekly.
Patent Telework Program (PTP)	<p>This program permits patent examiners, patent reexamination specialists, and some bargaining unit employees, to work at home:</p> <ul style="list-style-type: none"> • PTP-10: 10-hour option (one day per pay period, up to 10 hours) for GS-9 or 11 • PTP-20: 20-hour option (one day per week, up to 10 hours per day) for GS-12 or higher • PTP-32: 32-hour per pay period option for GS-12 or higher and includes telework equipment
PMTP Pilot Hoteling Program	This pilot program allows patent managers to work from home full-time.
Supervisory Patent Examiner/Management Quality Assurance Specialist (SPE/MQAS) Full-Time Telework	This program permits eligible SPEs and MQAS to work full time at home.

Table A-2. Programs Available Within Offices at USPTO

PROGRAM	DESCRIPTION
Office of the Chief Information Officer (OCIO)	In FY 2013, telework participation in OCIO increased by 8 percent over the previous year, with 359 trained teleworkers in OCIO working at an alternate worksite 1–2 days per week or on a situational basis
Office of the Chief Financial Officer (OCFO)	In FY 2013, 100 percent of all position activities in OCFO were eligible to telework in some capacity. Depending on the position activities, the employee may be eligible to telework episodically or 1–3 days a week. OCFO had 90 percent of employees participating in the OCFO Telework Program.
Office of Administrative Services (OAS)	OAS incorporated telework into its Continuity of Operations Plan (COOP) exercise, which encouraged all business unit COOP managers to telework.
Office of Human Resources (OHR)	At the end of FY 2013, 23 OHR staff telework two days per week, 48 at least 1 day per week and 21 telework on a situational basis.
Office of the General Counsel (OGC)	In FY 2013, OGC had approximately 90 percent of eligible positions in a telework status, an increase of about 12 percent from FY 2012.
Office of Equal Employment Opportunity and Diversity (OEEOD)	Participating employees have been permitted to telework 1–2 days per week.
Patent Trial and Appeal Board (PTAB)	PTAB ended FY 2013 with 98 percent of eligible positions teleworking.
Trademarks	In FY 2013, 91 percent of Trademark employees in all work units had the opportunity to telework 1 or more days per week. In addition, 19 percent of Trademark examining attorneys were participants in the Telework Enhancement Act Pilot Program in 28 different states.
Trademark Trial and Appeal Board (TTAB)	In FY 2013, 85 percent of eligible positions teleworked. During the same fiscal year, TTAB employees were offered additional full-time telework opportunities. Additionally, TTAB established four new dual hoteling offices.

Sources: FY 2012 Telework Annual Report, FY 2011 Telework Annual Report, Office of Personnel Management 2013 Status of Telework in the Federal Government

Appendix B: Status of USPTO Recommendations

	32-PAGE REPORT	16-PAGE REPORT	CURRENT STATUS ^a
1	Management should enforce work schedule policies	Patents should monitor the effectiveness of a new policy on certifying time and attendance (Final report #1)	USPTO reports it is engaged in ongoing monitoring of the new policy
2	Management should require employees to work at USPTO or approved location	Removed	No status
3	Implement "end-loading" deterrents	USPTO should review the quality element in the Performance Appraisal Plan (PAP) (Final report #3)	USPTO reports it has implemented a pilot project where employees have to submit at least one item per month in order to avoid a counseling session. USPTO reports it is developing training on how to work consistently throughout the pay period
4	USPTO should review the quality element in the PAP	USPTO should review the quality element in the PAP (Final report #3)	USPTO reports it is providing training to supervisors on the quality element, and conducting a review of its effectiveness
5	USPTO should revise the docket management element to prevent unjustified "outstanding" ratings and performance awards	USPTO should "continue to evaluate" the docket management element (Final report #4)	USPTO reports that it is meeting regularly with the union to evaluate the docket management element of the PAP
6	Review "auto-count" feature to ensure that it cannot be used for misconduct	Review "auto-count" feature to ensure that it cannot be used for misconduct (Final report #3)	USPTO reports that it is continuing to evaluate the "auto-count" feature
7	Requirement to log in while working	Final report notes that this requirement was recently implemented (Final report #2)	USPTO reports that it has reached an agreement with the union so that full-time teleworkers will have to use certain tools which require being logged in
8	Mandatory use of collaboration tools, including presence indicator	Final report notes that this requirement was recently implemented, but not presence indicator (Final report #2)	USPTO reports that it has reached an agreement with the union so that full-time teleworkers will have to use certain tools which require being logged in
9	Overtime should be made available only to certain employees based on performance, and eligibility should be frequently assessed	USPTO should "explore the reasonableness" of having employees report what they were working on while claiming overtime (Final report #5)	USPTO reports that it has evaluated this and elected not to require examiners to specify what they are doing while claiming overtime
10	Delegate the authority to pull investigative records from ADCs to Employee Relations Division (ER)		USPTO reports that the policy on pulling records, which essentially "case by case," has been communicated to ER
11	Managers should be given full access to investigative records when misconduct is suspected	USPTO should communicate its policy on pulling records to supervisors (Final report #6)	USPTO reports that the policy on pulling records, which essentially "case by case," has been communicated to supervisors

	32-PAGE REPORT	16-PAGE REPORT	CURRENT STATUS^a
12	Management should enforce leave requesting procedures	Removed	No status
13	Place policies in a central location	Place policies in a central location (Final report # 7)	USPTO reports that policies have been placed in a central location
14	Provide regular training to supervisors	Provide regular training to supervisors (Final report #8)	USPTO reports that training has been posted, and that supervisors will be required to take it within the first quarter of FY 2015
15	Perform cost benefit analysis on FY 2010 changes to PAP	Removed	No status

Source: USPTO

Note: Rows highlighted in dark orange indicate recommendations that were not included in the 16-page report. Rows highlighted in light orange indicate recommendations with noted differences.

^a Implementation status as of August 14, 2014.

Appendix C: Exhibit on Examining Time and Attendance Data

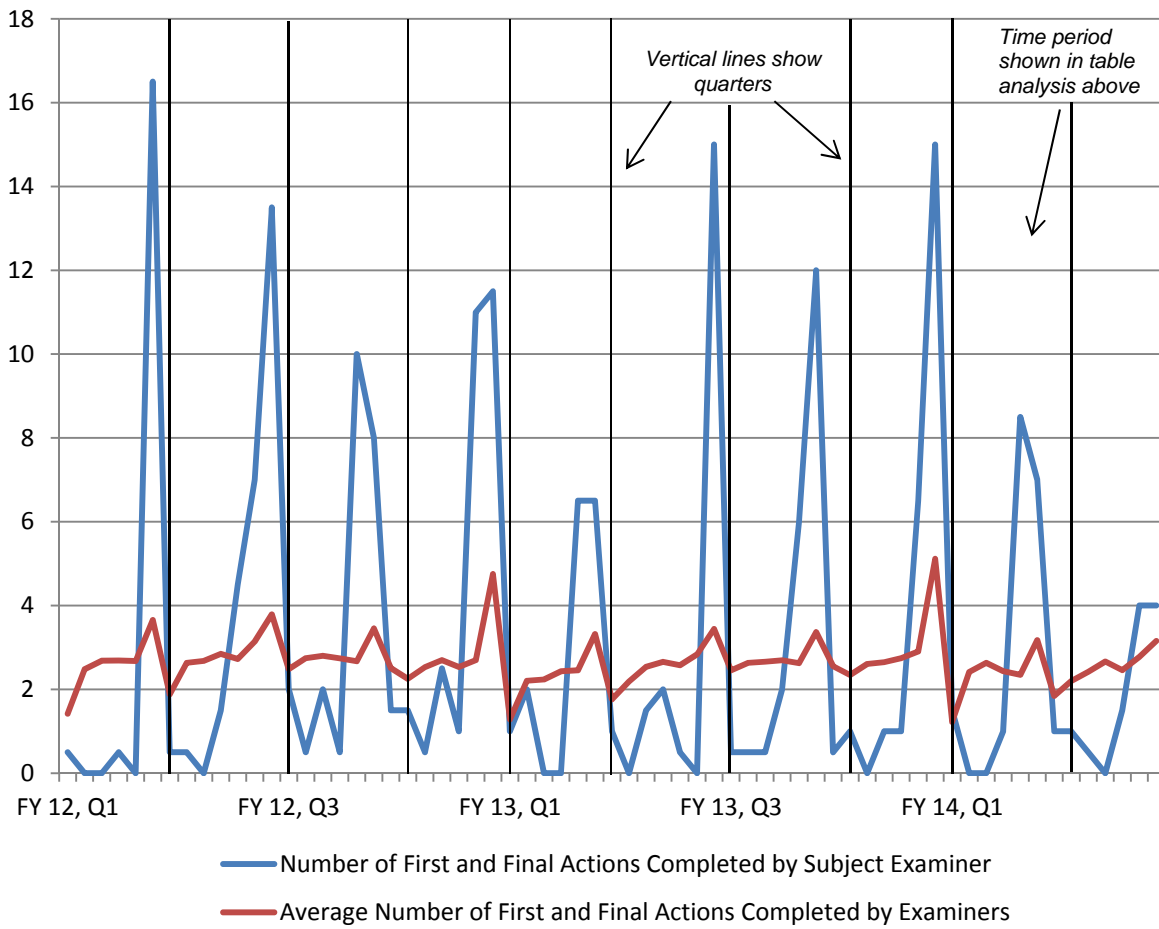
Table C-I. One Quarter of Time and Attendance Data of an Examiner Suspected of Cheating

Date	Badge swipe time in ^a	VPN login	Hours claimed by employee as worked	Discrepancy
10/7/2013	5:09 PM	3:19 PM	10 hours	3 hours, 19 minutes
10/8/2013	10:41 AM	5:30 AM	10 hours	0
10/9/2013	7:28 AM	1:45 PM	10 hours	0
10/10/2013	12:13 PM	5:30 AM	11 hours	0
10/11/2013	No Record	No Record	10 hours	10 hours
10/15/2013	10:32 AM	No Record	11 hours	0
10/21/2013	8:33 AM	No Record	10 hours	0
10/22/2013	No Record	No Record	10 hours	10 hours
10/23/2013	No Record	No Record	10 hours	10 hours
10/24/2013	No Record	No Record	10 hours	10 hours
10/28/2013	10:33 AM	No Record	10 hours	0
10/29/2013	11:39 AM	No Record	10 hours	0
10/30/2013	No Record	No Record	10 hours	10 hours
10/31/2013	No Record	No Record	10 hours	10 hours
11/4/2013	No Record	No Record	10 hours	10 hours
11/5/2013	2:34 PM	No Record	10 hours	2 hours, 34 minutes
11/6/2013	No Record	No Record	10 hours	10 hours
11/7/2013	No Record	No Record	10 hours	10 hours
11/12/2013	2:14 PM	No Record	10 hours	2 hours, 14 minutes
11/13/2013	No Record	No Record	8 hours	8 hours
11/14/2013	No Record	No Record	8 hours	8 hours
11/15/2013	No Record	No Record	6 hours	6 hours
11/18/2013	No Record	No Record	10 hours	10 hours
11/19/2013	No Record	No Record	10 hours	10 hours
11/20/2013	No Record	No Record	6 hours	6 hours
11/25/2013	No Record	11:06 AM	8 hours	0
11/26/2013	No Record	5:30 AM	8 hours	0
12/3/2013	No Record	No Record	10 hours	10 hours
12/4/2013	No Record	No Record	10 hours	10 hours
12/5/2013	No Record	12:25 PM	10 hours	25 minutes
12/6/2013	No Record	5:30 AM	10 hours	0
12/9/2013	No Record	No Record	8 hours	8 hours
12/11/2013	7:56 AM	No Record	12 hours	0
12/16/2013	6:49 AM	10:24 AM	10 hours	0
12/17/2013	12:31 PM	5:30 AM	10 hours	0
12/18/2013	10:27 AM	No Record	10 hours	0
12/19/2013	No Record	No Record	10 hours	10 hours
12/20/2013	1:00 PM	No Record	10 hours	1 hour
12/23/2013	No Record	No Record	11 hours	11 hours
12/26/2013	No Record	12:58 PM	11 hours	1 hour, 58 minutes
12/30/2013	12:52 PM	No Record	12 hours	2 hours, 52 minutes
12/31/2013	No Record	No Record	8 hours	8 hours
			Total	
			Discrepancy	209 hours, 22 minutes

Source: OIG analysis of USPTO data

^a USPTO does not capture badge swipe data exiting the facility.

Figure C-1. Analysis of Production Data Showing End Loading by a Patent Examiner Suspected of Cheating on Time and Attendance



Source: OIG analysis of USPTO data

Appendix D: Examples of Tools for Investigating Time and Attendance Abuse at USPTO

COMMUNICATION TOOLS	
Telephone/e-mail	Supervisors can call and e-mail their employees if they suspect time and attendance abuse. If an employee is not producing sufficient work and is unresponsive to supervisory inquiries, USPTO instructs the employee in writing to contact their supervisor. If they fail to promptly call their supervisor after this notification, they could be considered AWOL.
Mandatory collaboration tools	USPTO's mandatory collaboration tools include instant messaging, document/desktop sharing, virtual meeting tools, video communication and conferencing equipment. As of June 24, 2013, the use of these collaboration tools while working is mandatory for full-time teleworkers (hotelers), technology center quality assurance specialists, review quality assurance specialists, and patent examiners without full signatory authority who are being trained by senior employees who prefer to communicate via collaboration tools.
Optional collaboration tools	USPTO employees are not required to use a presence indicator while working. The presence indicator shows whether employees are available, busy but online, or offline. The presence indicators would allow supervisors to quickly tell whether their employees were online, but, because using the indicator is not mandatory, they are not currently a useful tool for preventing time and attendance abuse.
BUILDING DATA	
Badge-in records	Employees who work from the USPTO office are required to swipe their employee badges in order to enter the building. During a time and attendance abuse investigation, USPTO could use this information to determine whether onsite employees were actually in the building on days that they reported working.
Parking garage records	Similar information exists for employees who use a monthly parking pass to enter and exit the onsite USPTO parking garages.
Badge-out records	Employees who work from the USPTO office are not currently required to swipe their badges in order to leave the building. During a time and attendance abuse investigation, USPTO could use this information to determine whether onsite employees were actually in the building on days that they reported working.

COMPUTER DATA	
Time and attendance data	Employees enter their work hours every bi-weekly pay period. Supervisors certify employee time and can regularly view this information.
Examiner production data	Supervisors also have access to various databases with information on examiner production, including the Patent Application Location and Monitoring System and the Office Action Correspondence System. These systems allow supervisors to view examiner production (e.g. both decisions and interim actions). Looking at examiner production reports would show supervisors periods of examiner inactivity.
Virtual private network (VPN)	In order to access e-mail, collaboration tools, or USPTO databases, examiners must log on to USPTO's VPN. Employees could be working on hard copies of documents without being logged on to the VPN; nonetheless, during a time and attendance investigation, USPTO could use this information to determine whether employees logged on to their computers at any point on days that they reported working.
Universal laptop records	USPTO also has computer logs that include, for example, programs opened and other computer activities.

Source: USPTO

Note: Rows highlighted in white indicate information that supervisors can use to prevent and detect time and attendance abuse. Rows highlighted in dark orange indicate information that is not currently collected by USPTO. Rows highlighted in light orange indicate information that is collected by USPTO but must be requested by supervisors. This table does not necessarily include all possible data that could be used for resolving time and attendance abuse.