



Report In Brief

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Background

In response to stakeholder concerns about patent quality, in fiscal year 2011 USPTO's Office of Patent Quality Assurance (OPQA) expanded its procedures to include assessments of the quality of an examiner's initial search and whether preliminary decisions conformed to best practices. At the same time, USPTO also revised how it measured the quality of each examiner's work product through annual performance assessments. And while USPTO's Signatory Authority Program did not undergo significant changes, in FY 2012 the bureau began to more systematically collect information about the patent decisions or cases that are reviewed by the program.

Why We Did This Review

We conducted this audit to assess USPTO's quality assurance programs. Our audit objectives were to (1) determine the sufficiency of USPTO's quality assurance program's processes to prevent the issuance of low-quality patents and (2) assess the additional quality reviews performed to measure examiner performance and ensure that examiners are fully qualified to issue patent determinations without supervisory review.

To perform this assessment, we conducted interviews with staff and collected quantitative data when available. We also collected data from OPQA's independent quality reviews, performance ratings, and performance warnings issued from FY 2011 to FY 2013. Finally, we reviewed a sample of 60 individuals who participated in USPTO's Signatory Authority Program.

U.S. PATENT AND TRADEMARK OFFICE

USPTO Needs to Strengthen Patent Quality Assurance Practices

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WHAT WE FOUND

USPTO's performance appraisal plan and related policies are ineffective at measuring whether examiners are issuing high-quality patents. USPTO's performance appraisal plans and related policies cannot distinguish between examiners who issue high-quality decisions versus those who issue low-quality decisions. Rather, most examiners are rated on their annual performance appraisals as "above average" and, since the introduction of new performance appraisal standards in FY 2011, an examiner is more likely to obtain an "outstanding" or "commendable" quality rating.

USPTO's official quality metrics may underrepresent the true error rate. We identified concerns both with USPTO's policies for charging errors and with OPQA's internal auditing procedures. For example, some OPQA independent reviewers do not always record errors on the patent determinations that they review when new examination guidance is issued. We also determined that OPQA's internal audits are not structured to assess unwritten or informal policies and procedures.

USPTO is not collecting data that could improve patent quality. USPTO supervisors have not systematically collected information about the quality issues that were found during supervisory reviews of patent applications. Furthermore, USPTO is not collecting valuable information from the program that assesses whether examiners are qualified to issue patent decisions without supervisory review.

USPTO's response to patent mortgaging may not discourage abuse. Disciplinary actions for patent mortgaging—when an employee knowingly submits incomplete work for credit—appeared to be inconsistently applied and could result in real (or perceived) instances of unfair treatment.

WHAT WE RECOMMEND

We recommend that the Undersecretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office:

1. Refine supervisory guidance, processes, and performance plans to effectively measure patent examiner quality efforts and distinguish levels of performance—including taking steps to avoid the disincentives for supervisors to charge errors to examiners when assessing performance under the requirements set forth in the examiner performance appraisal plans.
2. Strengthen OPQA's (a) independent quality review procedures to ensure their consistent application, particularly with respect to the application of new case law and how errors are categorized, and (b) internal audit process, by minimizing the predictable nature of the audit steps and allowing for the identification of the informal practices followed by some OPQA reviewers.
3. Use available databases and systems to collect information on patent applications reviewed and errors found, to improve USPTO's ability to identify quality trends.
4. Develop and document additional controls to better detect and monitor the practice of patent mortgaging and continue to ensure consistent application of USPTO disciplinary policies that address instances of it.