



# Report in Brief

August 22, 2019

## Background

American innovators and businesses rely on patents to protect their innovations. Timely processing and issuance of high-quality patents provides market certainty and advances economic prosperity by cultivating and protecting new ideas, technologies, services, and products.

The timely examination of patent applications is a critical part of the U.S. Patent and Trademark Office's (USPTO's) mission. To help meet its mission, USPTO utilizes various production-based incentives for USPTO employees, including monetary awards. In fiscal year (FY) 2016, more than 7,000 patent examiners received nearly 34,000 monetary awards totaling more than \$48 million.

USPTO patent examiners are eligible for three types of performance awards based on productivity and performance ratings: productivity gainsharing (**gainsharing**) awards, special achievement awards (**SAAs**), and **pendency** awards. The criteria and the amounts of the monetary awards are updated through collective bargaining agreements between USPTO and the Patent Office Professional Association, an independent union that represents all of USPTO's non-managerial patent professionals.

## Why We Did This Review

Our audit objective was to determine whether USPTO monetary awards were (a) granted in compliance with the relevant award criteria and (b) sufficiently documented. Our audit scope included awards related to patent examiners' performance and productivity ratings in FY 2016.

## U.S. PATENT AND TRADEMARK OFFICE

### USPTO Did Not Provide Adequate Oversight of Monetary Awards to Ensure Patent Examiners Receive Accurate Payments

OIG-19-023-A

#### WHAT WE FOUND

We found that USPTO monetary awards were neither (a) granted in compliance with the relevant award criteria, nor (b) sufficiently documented. Overall, USPTO did not provide adequate oversight to ensure patent examiners received accurate award payments. Specifically, we found that USPTO did not

1. have a standardized process to calculate award payments;
2. validate the addition or accuracy of examiner-related hours included in award calculations; and
3. provide adequate evidence to support award payments.

Although we did not find significant errors in awards for full-time examiners, we found that USPTO did not adequately manage the part-time examiners' awards.

Performance evaluations—such as annual performance appraisals and feedback—supplemented by an effective reward system should help employees understand the connection between their performance and the organization's success. Effective oversight is a key management control to ensure this connection. Without adequate and appropriate oversight, USPTO is unable to detect and prevent (1) erroneous award payments, (2) possible abuse of the award program, and (3) wasted funds that can be put to better use.

#### WHAT WE RECOMMEND

We recommend that the Under Secretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office direct the Commissioner for Patents to do the following:

1. Implement guidance to clearly define the policies, process, validation, and oversight responsibilities covering all key components of the award calculation process.
2. Clarify, document, and publish to Supervisory Patent Examiners a list of the examining-related activities eligible for inclusion in gainsharing and SAAs.
3. Establish requirements to document Supervisory Patent Examiner reviews of examining-related activities for inclusion in award calculations and maintain all supporting documentation for subsequent manual adjustments to award calculations.
4. Develop written policies and procedures to identify responsibilities and requirements to review, approve, and validate the accuracy of manual adjustments to monetary award calculations.
5. Ensure award nomination forms are complete and accurate, and maintain all documentation that supports awards included in year-end rating forms.