

U.S. DEPARTMENT OF COMMERCE
Office of Inspector General



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PATENT AND TRADEMARK OFFICE

*Improved Internal Controls Needed
For Office of Human Resources*

Final Audit Report No. BTD-12830/September 2000

Office of Audits, Business and Trade Audits Division





September 27, 2000

MEMORANDUM FOR: Q. Todd Dickinson
Under Secretary of Commerce for Intellectual Property and
Director of the U.S. Patent and Trademark Office

FROM:

Johnnie E. Frazier

SUBJECT:

*Improved Internal Controls Needed
For Office of Human Resources
Final Audit Report No. BTD-12830*

The Office of Inspector General has completed a performance audit of selected aspects of USPTO's Office of Human Resources (OHR). Our review concentrated on two areas of concern: internal controls over hiring actions, including background investigations, and internal controls over recorded personnel actions and employees' official personnel files (OPFs).

Internal controls over hiring actions, including background investigations, had already been identified as a problem area by USPTO's Associate Commissioner and Chief Financial Officer (CFO). In March 2000, just before we began our audit, the CFO implemented a series of initiatives designed to improve OHR operations. We found that despite these changes, issues remain that warrant continued management attention. We are recommending that senior OHR officials periodically report on the progress being made to resolve the remaining issues.

As of May 2000, background investigations had not been requested for 113 USPTO employees hired since October 1997. For 1,626 employees hired since 1970, there was no documentation of such investigations in the USPTO Security database. A specific schedule has been implemented to clear the backlog of employees with no background investigations.

USPTO has already identified the need to improve internal controls over recorded personnel actions, as evidenced by an estimated 40,000 to 50,000 forms documenting personnel actions that are unfiled. We also found that there is a need to improve internal controls over OPFs. We found that a number of them could not be located.

In USPTO's response to the draft report, the CFO agreed with the findings and recommendations. He informed us that he is reporting to you on the progress made in improving internal controls and overall personnel and security operations. He also stated that OHR and the Office of Security are actively and aggressively implementing a number of measures and procedures to address our concerns. The USPTO response to the draft report is attached to this report.

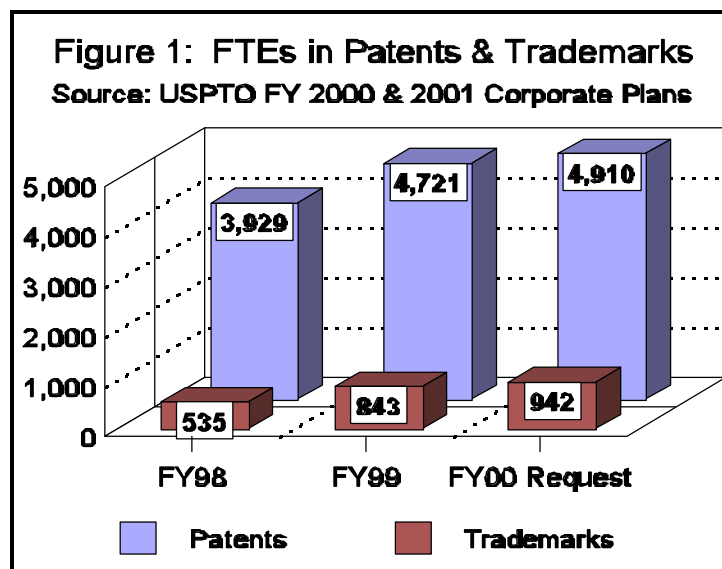
Please provide your audit action plan addressing the recommendations within 60 calendar days, in accordance with Department Administrative Order 213-5. The plan should be in the format

specified in Exhibit 7 of the DAO. Should you have any questions regarding the preparation of audit action plans, please contact Andrew R. Cochran, Director, Business and Trade Audits Division, at (202) 482-4415. We appreciate the cooperation and courtesies extended to us by USPTO staff during the review.

INTRODUCTION

USPTO's mission is to promote industrial and technological progress in the United States; to strengthen the national economy by administering the laws relating to patents and trademarks; and to advise the Administration on patent, trademark, and copyright protection, and the trade-related aspects of intellectual property. USPTO's workload has grown by almost 75 percent since 1992. In fiscal year 1999, there were an estimated 226,000 inventions and 280,000 trademark applications filed.

As the number of patent and trademark filings has increased, USPTO has increased its examining staff and associated support staff. Increases in full-time equivalents (FTEs) in the patent and trademark processes since fiscal year 1998 are shown in Figure 1.



The recruitment and retention needs of USPTO resulted in increased demands on OHR in fiscal years 1998 and 1999, when 976 and 1,187 employees, respectively, were hired. During the first six months of fiscal year 2000, 208 employees were hired. Separations, which also require OHR services, have also been significant. Of the 1,395 accessions since October 1998, 252 employees, or 18 percent, were separated by March 11, 2000.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of this performance audit were to determine whether OHR (1) has adequate internal controls over staffing actions, including background investigations, (2) has adequate internal controls over recorded personnel actions and employees' OPFs, and (3) is efficiently and effectively servicing USPTO's employees. The scope of the audit included fiscal years 1998, 1999, and 2000 (through May 31).

Our review methodology included interviews of key officials in OHR and USPTO's Office of Security. We also reviewed applicable regulations, policies, procedures, and practices, and examined documentation submitted by USPTO officials, management reports, and records. In addition, we selected a statistical sample of 125 OPFs to determine whether employees' files are being safeguarded in accordance with established personnel policies, procedures, and guidelines (described in more detail below). We did not assess the reliability of computer-generated data because such data was not relevant to our review.

Our audit was conducted in accordance with generally accepted government auditing standards, and was performed under the authority of the Inspector General Act of 1978, as amended, and Department Organization Order 10-13, dated May 22, 1980, as amended. Our audit was conducted from March through July 2000 at USPTO's headquarters in Crystal City, Virginia.

FINDINGS AND RECOMMENDATIONS

Our audit revealed that the required background investigations of new employees have not always been carried out or consistently documented. In addition, maintenance of OPFs has deteriorated to such an extent that OHR estimated that tens of thousands of personnel action documents have not been filed. Moreover, security safeguards over OPFs have been insufficient. Based on a systematic random sample in which 10 percent of selected OPFs could not be accounted for by OHR, we estimate that approximately 10 percent—between 108 and 121 OPFs—of employees hired between October 1998 and March 2000 cannot be located. Results of our sample are discussed in more detail in section II below.

In March 2000, just before we began our audit, USPTO's Associate Commissioner and Chief Financial Officer undertook a series of initiatives designed to improve OHR operations, including a reorganization of human resource activities and the reassignment of several OHR officials.

I. Improved System for Processing Background Investigations Is Needed

Background investigations, required of each new employee, have not always been properly performed and documented. As a result, there is no assurance that all personnel hired for certain

examination and administrative functions, with access to sensitive proprietary business data, would have passed the required background investigations. As of May 2000, OHR had not prepared and submitted the forms necessary to request background investigations for 113 employees hired since October 1997. These forms are needed in order to request the Office of Personnel Management (OPM) to conduct a background investigation. Our review further revealed that documentation of background investigations for 1,626 employees hired since 1970–400 of whom were hired since 1990—is not in the USPTO Security database.

The absence of documentation could be the result of either an investigation not being requested or documentation of the investigation results not being recorded in the USPTO Security database. In many cases, the necessary forms were not always submitted by new employees, or forms submitted were not always forwarded to the Office of Security for transmittal to OPM. In other cases, forms were incorrectly completed, requiring the Office of Security to return them to OHR for correction. An official from USPTO's Office of Security said that in some instances, it may be a case of information not being entered into the database rather than personnel not being investigated.

Certain adverse findings in OPM investigative reports require that the agency involved take adjudicative action and return a report form to OPM describing the action taken. Possible adjudicative actions include the agency's (1) not hiring an individual, based on a suitability or security determination; (2) terminating an employee; (3) suspending the employee for a period of time; and (4) taking no action despite the adverse finding. Within USPTO, OHR is responsible for adjudicating OPM investigative report results. We found that OPM reports on 17 employees sent to OHR for adjudication since October 1998 were still awaiting action as of May 2000.

According to an OHR official, the main reason for the lapses was the large number of new hires—over 2,100—processed by OHR during fiscal years 1998-99. Another reason given was the 1:61 servicing ratio of OHR specialists to employees, which leaves little time for specialists to devote to any one employee. A third reason cited was the multiple demands, including special projects unrelated to hiring actions, that have been placed on limited OHR resources.

We found that inadequate internal controls over hiring actions, including background investigations, had also been identified as a problem area by USPTO's Associate Commissioner and CFO. Action has been initiated to address the lapses in OHR's processing of requests for background investigations. A specific schedule has been implemented to clear the backlog of employees lacking background investigations and OPM reports needing adjudication.

The CFO has two additional actions planned. First, responsibility for processing requests for background investigations will be transferred to the Office of Security. To handle this workload, three new security specialists are being hired to process requests for investigations and adjudicate

OPM reports resulting from those investigations. Second, pre-appointment checks will be conducted before an employee's entry on duty; this practice was initiated this fiscal year.

We endorse these measures as first steps in resolving the backlog. However, because of the severity and long history of the problems identified and the importance of background investigations, we believe that the CFO should periodically report to the Under Secretary regarding the progress being made in these areas.

II. Internal Controls over Personnel Action Documents and Official Personnel Files Are Inadequate

Several conditions in OHR's file room indicate a lack of adequate internal controls over personnel action documents and OPFs. There is a backlog of unfiled recorded personnel actions, estimated by OHR to be 40,000 to 50,000; insufficient controls over access to the file room; and insufficient safeguards over the OPFs.

Thousands of Unfiled Personnel Action Forms

USPTO has already identified the need to improve internal controls over recorded personnel actions, as evidenced by an estimated 40,000 to 50,000 forms documenting personnel actions that are unfiled. An OHR official cited two reasons for this backlog of unfiled personnel action forms. One reason given was a lapse in the printing of personnel action forms. USPTO has had interagency agreements with the National Oceanic and Atmospheric Administration for reimbursable printing services, but from October 1999 until mid-May 2000, there was no agreement. According to this official, a huge backlog of personnel action forms was received by OHR after the current agreement was signed in May 2000. Another reason given was the termination of file room contract employees in March 2000. Since then, the two remaining employees have been able to file only the most recent actions, leaving the backlog uncleared.

While these factors may have contributed to the backlog of personnel actions to be filed, the situation also indicates insufficient management oversight and internal controls over personnel operations. The previous manager of this operation acknowledged that she was responsible for managing over 50 USPTO employees and contractors and was unaware of the extent of the filing backlog.

An audit of USPTO's FY 1999 financial statements was conducted by Ernst & Young, LLP, which identified ways to improve internal controls and promote operating efficiencies. In its management letter, issued in January 2000, Ernst & Young reported that SF-50s, *Notification of Personnel Action*, for 6 of 45 employees selected for testing were not maintained in the

employee's OPF and could not be located by OHR¹. In addition, 11 other SF-50s that were effective on January 3, 1999, had not been filed as of September 30, 1999. Ernst & Young noted that without properly maintained OPFs, an audit trail does not exist to support personnel actions.

Insufficient File Room Security

The Privacy Act—5 USC552a(e)(10)—requires agencies to establish appropriate safeguards over covered records. However, our audit found that there are insufficient controls over access to OHR's file room containing OPFs and inconsistent application of OPF checkout procedures. We observed that the OPF file room is not locked when file room employees leave the room. According to the current file room supervisor, a USPTO employee or supervisor may request, in advance, to see an OPF in the file room. However, there are no written guidelines concerning who is authorized to see an OPF. In practice, anyone in OHR is allowed to see an OPF.

To remove an OPF from the file room, OHR employees are supposed to fill out a request form and then sign a charge-out log book. Although this log book for recording OPF removal is near the door, we observed one OHR employee remove an OPF without filling out a request form or signing the log book. When questioned, the current file room supervisor acknowledged that, in addition to the two file room employees and herself, 13 other OHR employees in her division are allowed to remove OPFs without filling out a request form or signing out the OPF. In our opinion, the lack of sufficient controls over access to OHR's file room and the inconsistent application of OPF checkout procedures have resulted in OHR being unable to account for a number of OPFs.

10 Percent of OPFs Not Located

We also found that there is a need to improve internal controls over OPFs. Using a statistical sample to determine the extent of files that could not be accounted for, we found that a number of them could not be located. We conducted a systematic unstratified random sample of 125 OPFs, representing 11 percent of the 1,099 employees hired since October 1998 and still employed as of March 2000.² The sample size was sufficient to find 95 percent of errors that would likely occur within the sample population. The results of our sample were that, of the 125 OPFs:

¹Office of Inspector General. Management letter for PTO's FY 1999 Financial Statements Audit, Final Audit Report No. FSD-11893-0-0001, March 2000, p. 1.

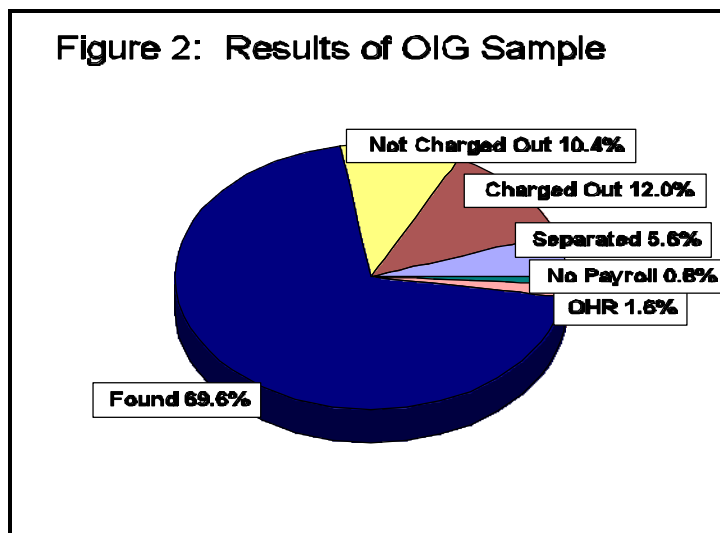
² While most of the difference between the number of accessions, as discussed on p. 2 of report, and the number of employees still employed as of March 2000 was due to separations, some was due to timing differences. Accession data used was based on pay periods while the employee roster used was based on fiscal year data.

- 87 were located in the file room (2 were misfiled but still found);
- 30 were not located in the file room; and
- 8 were marked with “out” markers but OHR staff could not readily determine their location.

Of the 38 OPFs either not found or marked “out,” OHR explained that:

- 15 had been charged out, i.e., their location was recorded;
- 13 had not been charged out, and further research was needed to determine their location;
- 7 were for employees separated since March 2000;
- 2 were for OHR employees, whose OPFs are stored in a separate room; and
- 1 was for an employee for whom there was no record in the payroll system (further research was needed to determine this employee’s status).

Based on the sample and OHR’s explanations, we estimate that between 108 and 121 OPFs of employees hired between October 1998 and March 2000 cannot be located. The results of our sample, with adjustments made for OHR’s explanations, are illustrated in figure 2. On the date the sample was conducted, the 15 OPFs that were charged out had been out of the file room for an average of 115 days.



OHR staff has begun to draft standard procedures to address these conditions. They are also considering hiring contract employees to file the personnel action forms.

We believe that with the exception of file room employees, their supervisor, and the OHR Director and Deputy Director, OHR employees should not be allowed access to the OPF room.

Because of Privacy Act requirements, we also believe that OHR should implement additional internal controls for OPFs and periodically report on progress to senior USPTO management.

Recommendation

We recommend that the Under Secretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office direct the Chief Financial Officer to periodically report to the Under Secretary on the progress being made to improve overall personnel operations, including:

1. clearing the backlog of employees with no background investigations and OPM reports needing adjudication;
2. implementing procedures to prevent future lapses in obtaining background investigations for employees and adjudicating OPM reports;
3. clearing the backlog of unfiled personnel action forms; and
4. strengthening internal controls over OPFs.

PTO Response and OIG Comments

PTO concurred with our recommendations, and PTO's complete response to our draft report is attached.

Attachment



UNITED STATES PATENT and TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
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SEP 15 2000

MEMORANDUM FOR Edward L. Blansitt
Acting Assistant Inspector General for Auditing

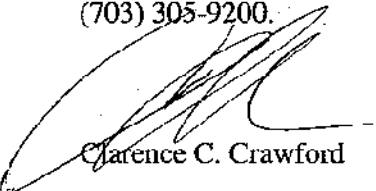
FROM: Chief Financial Officer and
Chief Administrative Officer

SUBJECT: *Improved Internal Controls Needed for
USPTO's Office of Human Resources*
Draft Audit Report No. BTD-12830

This is in response to the subject memorandum, addressed to Q. Todd Dickinson, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, requesting written comments on Draft Audit Report No. BTD-12830.

We have reviewed the draft report and concur with the recommendations set forth therein. The Office of Human Resources and the Office of Security are actively and aggressively implementing a variety of systems, measures, and procedures to address the matters of concern addressed in the draft report. I am pleased with the progress that has been made in our effort to improve internal controls and overall personnel and security operations, and have reported such to Under Secretary and Director Dickinson. We are deeply committed to ensuring that our personnel and security operations clear all backlogs and effectively implement measures which will prevent any such recurrence.

If you have any questions, please contact me or Kimberly H. Walton, Deputy Chief Administrative Officer for Human Resources, Civil Rights and Administrative Services, on (703) 305-9200.


Clarence C. Crawford