



Report in Brief

August 30, 2023

Background

When the United States Patent and Trademark Office (USPTO) receives a patent application, it classifies the application before the examination process begins. Historically, USPTO classified documents using the United States Patent Classification system (USPC). In October 2020, USPTO shifted to Cooperative Patent Classification system (CPC) to route patent applications to examiners. The new system was designed to automate routing by using an algorithm to match the CPC symbols on an application to an examiner's portfolio of previously examined applications, while considering other factors. Only the symbols that represent at least one concept that is claimed in an application form the basis for routing and are given a claim indicator (known as a "C-star" or C*).

USPTO also created a new challenge process. Supervisory patent examiners (SPEs) decide whether to approve or deny a challenge and may refer the challenge to search and classification examiners (SCEs). USPTO received feedback from some examiners that the new routing system was assigning them applications that they were not qualified to examine. As a result, USPTO paused its transition to CPC-based routing in August 2022.

USPTO relies on contractors for initial classification and reclassification services.

Why We Did This Review

Our objective was to determine whether USPTO's patent application classification and routing processes were effective. We determined whether (1) USPTO adequately ensured that classification contractors were providing quality patent classification and reclassification services; (2) USPTO examiners properly challenged C* classifications and whether USPTO properly resolved challenges; and (3) USPTO effectively designed and implemented CPC-based routing.

UNITED STATES PATENT AND TRADEMARK OFFICE

USPTO Needs to Improve Oversight and Implementation of Patent Classification and Routing Processes

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WHAT WE FOUND

We found that USPTO's patent classification and routing processes were not effective. Specifically, we found that:

- I. USPTO did not ensure effective contract oversight for classification services.
- II. USPTO lacked adequate controls to ensure that classification challenges were efficiently and effectively submitted and adjudicated.
- III. USPTO did not effectively design and implement CPC-based routing.

WHAT WE RECOMMEND

We recommend that the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office direct the Directors of the Office of Procurement and the Office of International Patent Cooperation to:

1. Develop a plan to address the continuing lack of compliance with initial classification error rate requirements. Specifically, this plan should include (a) methods to optimize oversight resources to ensure effective communication and collaboration between USPTO and vendors regarding technical or quality issues and (b) contingencies for the contract structure for future option periods, including consideration of the optimal number of vendors, the effectiveness of the use of volume adjustments to drive quality improvements or lower costs, the inclusion of quality price incentives or disincentives for all vendors, and thresholds for enforcement of price reductions or other considerations for nonconformance.
2. Document the official roles and responsibilities for all members of the contract team and all offices tasked with contractual planning and oversight duties, and develop procedures to ensure that task order managers are nominated for all orders.
3. Strengthen controls to ensure Contractor Performance Assessment Reporting System ratings for the classification contracts are accurate and completed in accordance with USPTO policy.
4. Improve oversight of reclassification projects by formalizing: (a) the 2023 updates to the reclassification technical evaluation and award process and (b) the termination for default process for reclassification projects.

We recommend that the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office direct the Commissioner for Patents to:

5. Develop controls, such as edit checks in the Classification Allocation Tool, to ensure that examiners and reviewers enter comments for classification challenges.
6. Strengthen controls on the classification challenge process to ensure examiners, SPEs, and SCEs review and address the challenge history when submitting and adjudicating any challenge after the first challenge for an application.
7. Create a routing implementation plan that articulates roles and responsibilities (including decision-making authority and accountability), goals and measures, milestones, associated timelines, employee engagement, and transparent reporting of progress.