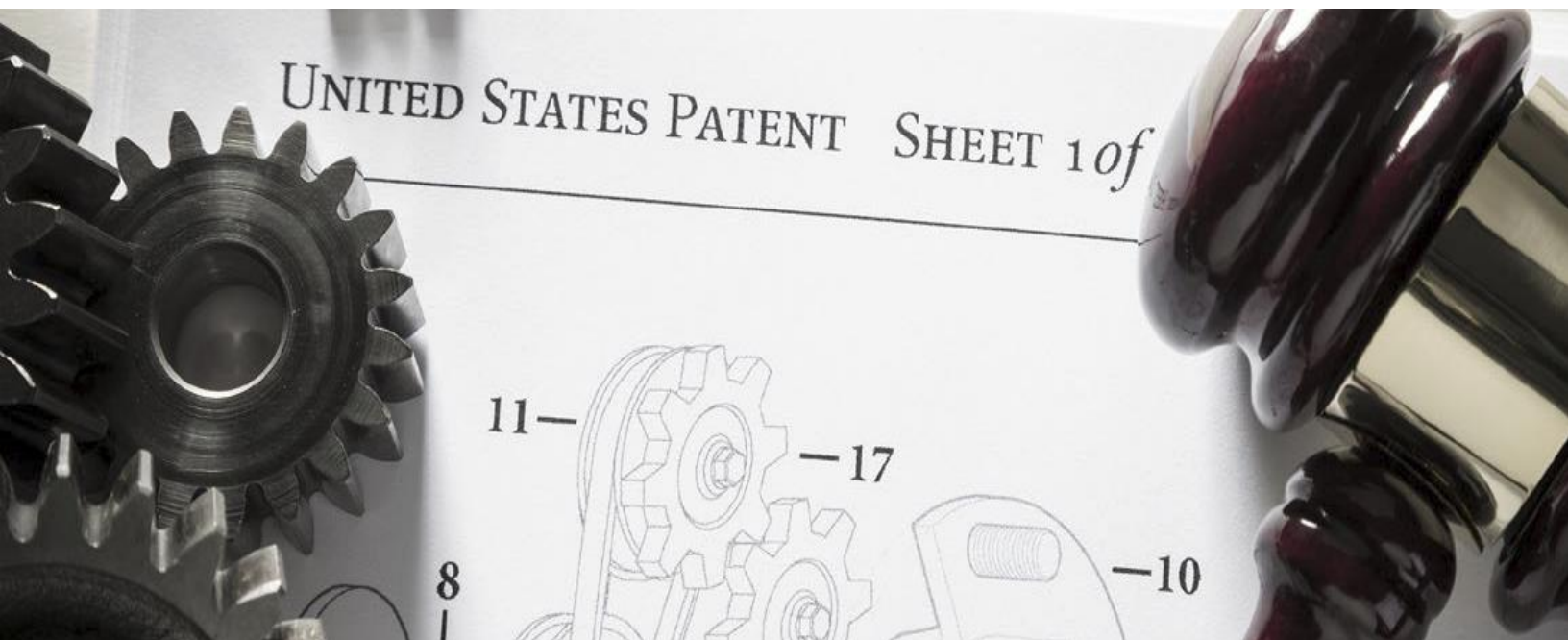


A Report by a Panel of the
NATIONAL ACADEMY OF PUBLIC ADMINISTRATION
for the United States Patent and Trademark Office



*The United States Patent and Trademark Office:
A Telework Internal Control and Program Review*



July 2015

ABOUT THE ACADEMY

The National Academy of Public Administration is an independent, non-profit, and non-partisan organization established in 1967 and chartered by Congress in 1984. It provides expert advice to government leaders in building more effective, efficient, accountable, and transparent organizations. To carry out this mission, the Academy draws on the knowledge and experience of its over 800 Fellows—including former cabinet officers, Members of Congress, governors, mayors, and state legislators, as well as prominent scholars, business executives, and public administrators. The Academy helps public institutions address their most critical governance and management challenges through in-depth studies and analyses, advisory services and technical assistance, Congressional testimony, forums and conferences, and online stakeholder engagement. Learn more about the Academy and its work at www.NAPAwash.org.

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For the United States Patent and Trademark Office

July 31, 2015

***The United States Patent and Trademark Office:
An Internal Controls and Telework Program Review***

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The views expressed in this report are those of the Panel. They do not necessarily reflect the views of the Academy as an institution.

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FOREWORD

“The history of federal telework reflects the evolution of one of the most significant and progressive changes in work conditions for Federal employees. Beginning during the last decade of the 20th century, the Federal telework movement reflected that period’s interest in workforce impact on family, environment, and general quality of life. It was also one of the most important barometers of the transition from industrial age to information age human resources and workplace management. It is a classic study of the struggle for change in a 20th century bureaucracy.”¹

The United States Patent and Trademark Office (USPTO), an agency in the Department of Commerce employing nearly 13,000 individuals, has been the federal leader in instituting telework as a critical element of its organizational and workforce strategy. Its telework program started in 1997, with 18 trademark attorneys working several days a week from home and sharing office space when they returned to headquarters. Over the past eighteen years, the program has expanded in response to the Agency’s needs and such legislative changes as the Telework Enhancement Act of 2010 (Public Law 111-292). Now, most of the USPTO workforce—including trademark and patent examiners and many of their supervisors—have the ability to work off-site and the flexibility, within certain parameters, to choose a work schedule that accommodates their personal and family needs. USPTO’s leadership in adapting this program to the needs of a 21st century government agency has paved the way for adoption of telework for other federal agencies.

At the request of the USPTO, the Academy formed an independent Panel to examine the Agency’s operations and management as it relates to telework, with an emphasis on its patent operations. The study specifically focuses on the Agency’s Time and Attendance (T&A) process to ensure that management controls are in place. The Panel determined that the USPTO has the controls in place to manage time and attendance for both on-site workers and teleworkers. The Panel also determined that the telework program has provided important benefits to USPTO, including saving money, enhancing employee quality of life, increasing recruitment and retention, and ensuring on-going work during emergencies. To strengthen the telework program, the Panel issued a number of recommendations that, if implemented, will ensure that telework continues to be of maximum benefit to the Agency and its employees in accomplishing USPTO’s critical mission while maintaining USPTO’s leading role as a federal employer of choice.

As a Congressionally chartered non-partisan and non-profit organization with over 800 distinguished Fellows, the Academy brings seasoned experts together to help public policy organization’s address their most critical challenges. We are pleased to assist the USPTO by conducting this review. USPTO’s leadership, union representatives, and stakeholders provided important insight and context throughout the study process. Also, I thank the members of the Academy Panel, chaired by Fellow David Chu, who provided invaluable expertise and thoughtful analysis to this undertaking, and the professional study team, led by Project Director, Karla Perri, that provided critical support to the Panel.

¹ Joice, Wendell, PhD., Office of Government Wide Policy, U.S. General Services Administration, “The Evolution of Telework in the Federal Government,” (Feb. 2000).

Dan G. Blair
President and CEO
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ACRONYMS

AWA	Alternative Workplace Arrangements
CCI	Consistent Credit Initiative
COOP	Continuity of Operations
CSI	Count System Initiative
ERA	Enterprise Remote Access
ER	Employee Relations
FAOM	First Action on the Merits
GSA	General Services Administration
IP5	Intellectual Property 5
LMF	Labor Management Forum
MOU	Memorandum of Understanding
MPEP	Manual of Patent Examining Procedures
NTEU	National Treasury Employees Union
OCIO	Office of the Chief Information Officer
OIG	Office of the Inspector General
OGL	Office of General Law
OHR	Office of Human Resources
OPM	Office of Personnel Management
PAP	Performance Appraisal Plan
PAR	Performance and Accountability Report
PHP	Patent Hoteling Program
PMTP	Patents Management Telework Program
POPA	Patent Office Professional Association
PPAC	Patent Public Advisory Committee
PTAB	Patent Trial and Appeal Board
PTONET	USPTO's Network
PTP	Patents Telework Program
RCE	Request for Continued Examination
SPE	Supervisory Patent Examiner
TC	Technology Center
TEA	Telework Enhancement Act
TEAPP	Telework Enhancement Act Pilot Program
TPAC	Trademark Public Advisory Committee
TTAB	Trademark Trial and Appeal Board
TQAS	Training Quality Assurance Specialist
T&A	Time and Attendance
USPTO	United States Patent and Trademark Office
VPN	Virtual Private Network
UL	Universal Laptop

EXECUTIVE SUMMARY

Introduction

The United States Patent and Trademark Office (the USPTO, Agency or the Office) of the U.S. Department of Commerce (DOC) is charged with the critical mission of protecting intellectual property by examining applications for patents and trademarks. Quality and timeliness in issuing patents and registering trademarks are integral to the successful long-term performance of the U.S. economy.

In recent years, the USPTO has focused on reducing the backlog of patent applications waiting to be examined. This, in turn, has prompted a strong focus on recruiting and retaining patent examiners with the requisite skills and training to examine patent applications. The USPTO has been aggressive in adopting innovative workplace practices that make working at the Agency more attractive. Prominent among these is telework. The Agency uses these practices not only to fulfill its staffing needs, but also to reduce costs. This study examines the USPTO's teleworking programs and the adequacy of the internal controls used to manage time and attendance.

As a general rule, USPTO patent examiners are eligible for part-time telework when they are at the GS-9 level and achieve a fully successful performance rating. Examiners who advance to GS-12 become eligible to work full-time from their home offices. As "virtual" workers they no longer have an assigned work station at headquarters, and use flexible space any time they return to work in the office. The USPTO refers to this as "hoteling." A recent and unique addition to the suite of telework options is a pilot program authorized by the Telework Enhancement Act of 2010, (P.L.111-292) (Telework Enhancement Act Pilot Program, or TEAPP²). Under this program, participating employees are required to live outside of a 50-mile radius of the USPTO headquarters, but within the 48 contiguous states, and are not required to report to headquarters on a regular and recurring basis. TEAPP further requires that the Agency minimize travel expenses and employee travel requirements, and use reasonable technological means or other alternatives to travel, such as teleconferencing or video conferencing, to minimize travel. TEAPP enables the USPTO to retain trained and talented examiners who want to relocate outside the National Capitol Region, and establishes the long-distance arrangement as a viable career option for some employees.

National Academy of Public Administration and the USPTO

The USPTO has a history of working with the National Academy of Public Administration (the Academy). In 2005, Congress asked the Academy to conduct an independent

² Telework Enhancement Act of 2010, (P.L.111-292).

evaluation of the USPTO's organizational structure and work processes.³ The USPTO implemented 65 of the Academy's 69 recommendations listed in that report; the few not implemented are no longer applicable. At that time, only one of that Panel's 69 recommendations specifically mentioned telework. That recommendation and some of the other recommendations, however, are still relevant today because of their potential impact on the telework program or their connection to the broader issues listed in this current report. These recommendations include the topics of recruitment and retention, productivity and quality, communication and collaboration, and supervisor training. An overview of pertinent portions of that report can be found at Appendix D. The USPTO has made substantial progress over the past ten years, not only in implementing the Academy's recommendations, but also by showing initiative in numerous other areas.

In October 2014, the USPTO again requested assistance from the Academy and with the support of Congress,^{4,5} asked for an independent evaluation of its telework programs, including its patent examiner hoteling program, and the Time and Attendance (T&A) process. The purpose of the review was to determine whether the USPTO telework programs comply with applicable laws and regulations, have adequate management controls, and are operating effectively and efficiently to achieve their programmatic goals.

Purpose and Scope of the Study

An independent Panel of five Academy Fellows, along with a professional study team of subject matter experts and analysts, conducted this two-part review that included the following:

- **The Internal Controls (IC) review** evaluated the Telework and T&A management controls, pursuant to Office of Management and Budget (OMB) Circular A-123, *Management's Responsibility for Internal Control*. The Panel examined whether the appropriate management guidance was issued, available, and followed, and whether the telework programs complied with Federal laws and regulations. The IC review was conducted by a team from Grant Thornton. These findings were incorporated into the program review.

³ National Academy of Public Administration. "U.S. Patent and Trademark Office: Transforming to Meet the Challenges of the 21st Century," (Washington, D.C.: August 2005).

⁴ "Working closely with the Department of Commerce at the end of [October], we contracted with the National Academy of Public Administration (NAPA). NAPA is an independent, nonpartisan nonprofit organization chartered by Congress to improve government performance. We engaged this highly respected group to provide a thorough and independent evaluation of our telework programs and to advise us on further opportunities for improvement and the application of any additional best practices in this area." *USPTO Testimony on Telework*, 113th Cong. (2014) (testimony of Margaret Focarino).

⁵ "I understand that PTO has brought in the National Academy of Public Administration to review its telework program. This is a very, very positive first step. But I would urge the Committee to ask that NAPA report not only to the PTO, but also to the Committees. You need to make sure that their recommendations are carried out." *USPTO Testimony on Telework*, 113th Cong. (2014) (testimony of Congressman Frank Wolf).

- **The Program Review** evaluated the effectiveness and efficiency of the USPTO's telework programs, including whether the current telework structure achieves the following intended programmatic objectives:
 - Increasing recruitment and retention;
 - Ensuring continuity of operations during emergency conditions;
 - Reducing management and operations costs; and
 - Improving productivity without negatively impacting quality.

As part of this review, the Academy study team also submitted a survey to all Supervisory Patent Examiners (SPEs) to develop a current picture of the SPEs' perspective on whether recent training and policy improvements have been beneficial to the Patent Organization. While the review of the telework program, T&A management controls and compliance with laws and regulations covered the entire Agency, additional evaluation work was performed to assess the relationship between the patent production system and the T&A process controls. Specific metrics that support telework across the Agency, as well as recruitment and retention data for both the Patent and Trademark Organizations, were examined. The sections of the report concerning the investigation of complaints submitted to the Department of Commerce (DOC) Office of the Inspector General (OIG), and the management of patent production for hotelers and non-hotelers, focused entirely on the patent examiner corps. Other components of this review, covering the entire Agency, included an assessment of stakeholder involvement, a benchmarking study to validate a previous USPTO study on best practices for teleworking, and a general review of other issues related to the efficient and effective management of the workforce.

Because individual patent decision work products were not examined as part of this study, the Panel was unable to determine whether working on-site or teleworking affected the quality of individual examiner decisions. The study team did, however, receive and review data from the USPTO on the Quality Index Report (QIR), which uses a series of variable metrics, one of which determines patent quality for individual examiners. Data were separated between examiners who hotel and those who do not hotel and the results showed that hotelers and non-hotelers produce work at the same level of quality. These data are part of the Agency's broad quality assessment, but are not currently used to evaluate individual examiner work.

Throughout the course of obtaining the high-level understanding of the patent examination processes, policies, and procedures, the Panel identified some other issues that the Panel believes warrant the USPTO's future attention. They pertain to furthering the Agency's work on patent quality, evaluating whether the patent examiner production standards are set at the appropriate level for all art units, and exploring the expansion of the Agency's efforts in collaboration on patent searches. The Panel, however, did not fully evaluate these issues because they are beyond the scope of this review. The Panel is bringing these issues to the USPTO's attention for future consideration.

Background

The USPTO sought the Academy's review following the USPTO's actions on, and significant Congressional interest in response to whistleblower allegations received by the DOC OIG in 2012, about possible T&A violations by USPTO patent examiners. Specifically, the OIG received four anonymous complaints alleging T&A abuses including overtime being paid for no work performed. The complaints also alleged disproportionate endloading (waiting until the end of a quarter or other rating period to submit most or all work) and mortgaging (knowingly submitting incomplete work as complete).

The OIG referred the issues raised in the complaints back to the USPTO to investigate. The USPTO tasked an investigation team comprised of experienced employees to research and report on the allegations. The investigation team prepared an initial draft report (Draft Report) and the Office subsequently issued a final report, "Internal Administrative Inquiry Report" (Final Report). The investigation team was not able to reach a conclusion as to whether some patent examiners were accurately reporting their T&A or whether the Agency has effective controls in place to guard against T&A abuse by patent examiners. The Agency nonetheless recognized the need to address the issues raised in the complaints and immediately took the actions described below.

The USPTO has taken a series of steps to address more broadly the concerns related to T&A and other issues raised by the OIG and through the internal investigation (see Appendix H), including:

- Clarifying existing T&A policies and procedures;
- Providing additional T&A training for examiners and SPEs;
- Implementing a patent corps-wide program to reduce endloading by patent examiners;
- Negotiating with the Agency's labor unions to require the mandatory use of an electronic computer screen presence indicator for full-time teleworking examiners and supervisors, that shows their availability; and
- Changing policy and providing the USPTO Employee Relations (ER) personnel full and timely access to all employee records when abuse is suspected.

It would appear to be unlikely that T&A abuse is widespread or unique to teleworkers, and it does not appear to reflect the actions of the workforce as a whole. Therefore, the Panel recommends that the USPTO should continue its Telework and Hoteling Programs, while enhancing the tools it uses in strengthening their management practices as recommended in the report. The Teleworking and Hoteling programs have benefitted the Agency by saving costs in real estate, allowing the Agency to perform work during office closures and has contributed to the recruitment and retention of employees. The Office's 20-year roll out of teleworking has been deliberative and the Agency has routinely sought input and feedback from all employees, unions and their many stakeholders to continually improve the workforce structure.

While the USPTO has made significant progress, the Panel believes that the Agency can do more to strengthen its telework program. As part of this review, the Academy surveyed SPEs and found that some supervisors still believe that further steps are needed to ensure a clear understanding of policies and procedures in managing the examiner corps. Although only SPEs were surveyed for this report, many of the managerial related findings and recommendations contained here could be applicable to all supervisors or employees across the Agency. The Panel encourages the USPTO to look globally across the USPTO when implementing all recommendations. Table 1 provides a high-level summary of some of the Panel’s key findings on the programmatic objectives that the USPTO asked the Academy to evaluate. The remaining findings and recommendations compiled throughout the report are listed after the table. Chapter 4 contains a separate table highlighting the internal controls objectives of the study.

Table 1: Comparison of Programmatic Objects to Panel Findings

Key Programmatic Objectives for Achieving Efficiency and Effectiveness	Summary Panel Finding
Time and Attendance Review	Internal controls are in place, and the production system can be used to verify hours claimed consistent with work produced.
Recruitment and Retention of the Workforce	Teleworking is one of many factors that have enabled the USPTO to effectively recruit and retain employees. Other factors include the 23 percent higher salary (GS-5 and 7), and 17 percent higher salary (GS-9), for entry-level patent examiners, an attractive federal benefits package, and substantial financial awards for high production levels.
Continuity of Operations During Emergency Conditions	The USPTO’s virtual workforce maintains productivity during weather-related and other emergency closures of the USPTO headquarters. COOP savings vary year to year, but, on average, are \$7 million per year.
Reduction in Management and Operating Costs	Hoteling saves USPTO money on real estate, transit, IT, and other fixed costs. In a typical year, the savings are \$26 million.
Improved Productivity	Production is about the same, by grade level for on-site examiners and hotelers. Overall, hotelers complete, on average, 1–1.5 more patent applications per year. Hotelers complete more cases because they are at higher grade levels.
Benchmarking Best Practices	The Panel found that the USPTO policies are in line with many best practices in the public and private sector. This review validated many of the USPTO’s practices. One of the biggest differences, however, is that all of the organizations interviewed as part of this review consider telework a privilege, and as such they adjust teleworking arrangements if they are not working well for either the employee or the organization. In contrast, the USPTO telework eligibility criteria are defined in agreements with USPTO unions and therefore would have to be re-negotiated.
Performance and Conduct of Teleworkers vis-à-vis Non-Teleworkers	The Panel found no differences between the teleworkers and non-teleworkers in their performance and conduct.

Effectiveness of the Patent Production System to Verify Reported T&A	The Production system, which is used to measure output in the Patent Organization, clearly provides data sufficient to verify work output. This is an allowable method of verifying time worked in a flexible work environment.
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PANEL FINDINGS AND RECOMMENDATIONS—CHAPTER 4: INTERNAL CONTROLS REVIEW OF TIME AND ATTENDANCE AND TELEWORK

Findings

- The USPTO applies the same T&A internal controls (IC) for teleworkers as it does for on-site employees. Both teleworkers and on-site workers use the automated T&A system, "WebTA." The processes and procedures required to use this system do not distinguish between the two types of workers, although the system requires all employees to use different project codes to distinguish what activities they work on and whether they are performed at a USPTO facility or at the employees' designated telework sites. There was no difference in the IC test results between the two groups.
- The IC review, including testing of the control activities identified in the Telework program, shows that the USPTO's internal controls over the program are in place and are designed and operating effectively to reduce relevant risks to an acceptable level. USPTO's Telework program has established adequate policies and procedures that conform to the requirements of the Telework Enhancement Act of 2010. The USPTO union agreements comply with USPTO policy. These provisions are documented, employees are trained on them and follow them.
- Based on the Telework policy testing, an internal control observation related to separated employees not being removed from the Telework database by the business units (BUs) in a timely manner was identified. Specifically, 24 employees from the list of 515 separation/terminations between 4/1/2014-3/31/2015 were included as active teleworkers in the telework database as of 4/1/2015 (which included 9,940 employees).
- The supervisory review and certification of time is subjective in nature, meaning that each supervisor may use different communication methods during the bi-weekly reporting period to validate that their employees are working. Some supervisors review reports to verify production and some verify time by having constant communication with the employee. Therefore, the evidence that an employee worked the hours recorded on her/his timecard is not substantiated by any documented evidence other than the supervisors' approval in the time keeping system. There is no requirement to maintain evidence and documentation to support whether any supervisors perform additional work to verify T&A before they certify an employee's timecard.
- Based on T&A testing, an internal control finding related to the Patent Organization's failure to use the required "Authorization for Paid Overtime and/or Holiday Work and Compensatory Overtime" form (CD-81) for approval to work overtime and compensatory overtime was identified. Out of a sample of 45 employees who worked overtime, five Patent CD-81s were unable to be located and two Patent employees exceeded the authorized overtime amount.
- The USPTO has policies and procedures, including the USPTO Telework Policy, in place

that complies with the Telework Enhancement Act of 2010 (the Act). The Telework Policy was properly implemented, and the USPTO's Union Agreements comply with USPTO's Telework Policy.

Recommendations

- The USPTO's Telework Program Office (TPO)/Telework Management Officer (TMO) should require the BUs to input employee separation data into the telework database in a timely manner. For better accountability, the TPO/TMO should set a specific timeframe during which the BUs must make the updates and document this requirement in a memorandum or official policy.
- The Patent SPEs should ensure that there is an approved Form CD-81 for every employee before approving overtime. The forms should be reviewed for each employee every bi-week to verify that the employees are approved to work overtime. These forms can be manual or electronic and each BU is responsible for retaining the hard or electronic copies of the approved form for all employees within its BU.
- The Patent Organization should consider using the automated premium pay request, which is currently available in WebTA, as a way to further automate the collection (and maintenance) of accurate information contained in the form CD-81. In addition, the Patent Organization should consider updating the "Overtime Policies for Professional/and Clerical Employee under the Assistant Commissioner for Patents" (issued on March 26, 1990) as a way to revisit current processes.
- OHR and the National Finance Center (NFC) should address the reporting issue when pulling data for employees who separate from USPTO but transfer to another agency within DOC. Instead of pulling the last action USPTO processed as the "Actual Separation Date" for reporting purposes, they should pull the transfer date as the separation date.

PANEL FINDINGS AND RECOMMENDATIONS—CHAPTER 5: COMPLAINTS AND INVESTIGATION

Findings

- The USPTO has taken numerous steps to address issues raised in the Draft and Final Reports.
- The USPTO's crosswalk of the recommendations from the draft and final internal investigations into T&A abuse was reasonably accurate, and that the Final Report incorporated all but one of the recommendations in the Draft Report.
- The USPTO has requisite procedures in place to monitor T&A. The Patent Organization has taken significant action to improve the management of time and attendance by issuing new guidance and making sure that all SPEs are trained on this guidance. The Panel also finds that the Patent Organization has established comprehensive training on the T&A guidance and senior leaders personally

emphasized to the SPEs the importance of attention to this issue. Training of examiners is still ongoing.

- For effective management of examiners, the manager should report time issues to ER when EITHER the amount of work produced OR responsiveness to calls or meetings is deficient. Currently the management guidance states that both issues, the amount of work completed AND responsiveness to calls and emails must be present before concerns are reported to ER.
- There is no evidence that off-site workers are more likely to commit T&A abuse.
- The communication issues raised in the final report have been effectively addressed, by the Communication Tools MOU 2013, requiring the connection to the VPN, the use of other collaboration tools and the requirement to use the presence indicator (as directed by the USPTO Deputy Director in the 2015 agreement). However, the SPE survey has highlighted that the presence indicator is not required for all employees. Since all employee teams are not co-located, the collaboration tools are an important means of communication and collaboration in a virtual environment.
- Collaboration tools are needed by everyone in the Agency. Not all employees in either the Patent Organization or the Agency are covered by the 2015 MOU. This is a serious oversight for Agency-wide communication and collaboration.
- The Agency developed the Consistent Credit Initiative (CCI) to encourage examiners with a history of uneven production activity to submit their work more consistently. More consistent submission of work has the potential to allow SPEs more time to review work and therefore produce a higher-quality patent review. Initial results show the initiative may be driving more consistent production.
- The new Patent Organization policy of denying the examiners' ability to submit their cases for credit without review (auto-count) if the examiner has exceeded the number of errors allowed has reduced the number of cases returned for correction.
- Modifying the criteria for earning a Patent Pendency Award has been a positive tool because it has improved examiners' management of their docket.
- The Agency has procedures in place to provide supervisors a list of employees who meet the eligibility requirements of fully successful performance so they can notify employees of their right to work overtime. These procedures do not exempt the Agency from the recommendations to use CD-81 as stated in Chapter 4. Production requirements are increased for each examiner who has claimed overtime. Therefore, the use of overtime appears to achieve the objective of increasing production.
- The Agency has consolidated memoranda and policies in a single location by creating the "Patent Global Management Knowledge Base," in the Supervisory Resource Center.
- Since the T&A Guidance was issued, extensive training has been made available and continues.

Recommendations

- Management should continue to review the procedures with supervisors to ensure that they are using available tools to confirm that employees are actively engaged in patent examination.
- The USPTO should change the guidance to require managers to report T&A issues to Employee Relations when EITHER the failure to return calls OR the amount of work produced is not consistent with the hours claimed. The USPTO should consider implementing this revised guidance for the Trademark Organization as well.
- The USPTO should extend the mandate to use the presence indicator to all USPTO employees regardless of the location where they are working.
- The USPTO needs to continue to constantly review the Docket Management provisions and negotiate changes where appropriate to achieve the right balance between moving new cases expeditiously and completing applications that have been returned for further review.
- The USPTO should look into whether granting authority to work overtime could have additional requirements. For example, the policy on approving overtime might deny the right to work overtime to examiners who have had their auto-count suspended or who have a performance rating below the Commendable level. This would provide even greater assurance that overtime is granted to examiners performing a higher quality of work.
- The USPTO should continue to monitor the number of cases returned to correct errors, to ensure that the suspension of auto-count continues to be effective.
- The USPTO should continue to provide refresher training on the management guidance concerning T&A.

PANEL FINDINGS AND RECOMMENDATIONS—CHAPTER 6: METRICS THAT SUPPORT TELEWORK

Findings

- While the telework and hoteling programs do potentially enhance recruitment and retention efforts, telework is only one of several factors responsible for the USPTO's increased success in these areas. Like other federal agencies, the USPTO allows flexible work schedule arrangements and offers a competitive benefits package. Federal benefits include health and life insurance, a retirement plan with a lifetime annuity (no longer offered by many private companies), the Thrift Savings Plan that features a 5 percent employer contribution match, and generous sick and annual leave benefits.
- Moreover, the special pay scale for entry level patent examiners makes their base salaries 23 percent higher at the GS-5 and GS-7 levels, and 17 percent higher at the GS-9 level, than other federal hires at the same grade level in the Washington, DC metropolitan area. The USPTO's performance and production-based awards system (awards and bonuses for meeting production quotas, along with the ability to earn overtime), coupled with the flexible schedule referred to above, serve as recruitment and retention tools.

- The USPTO’s telework program has reduced real estate costs and allowed for continuity of operations during emergencies.
- Being recognized as one of the “Best Places to Work in the Federal Government” has enhanced recruiting for the USPTO. The Federal Employee Viewpoint Survey (FEVS) data show that teleworkers have higher job satisfaction, are more likely to recommend their employer to candidates, and have a stronger feeling of accountability for achieving outcomes.⁶ These findings support the USPTO’s case for telework as an effective recruitment and retention tool.

Recommendations

- There are no recommendations in this chapter.

PANEL FINDINGS AND RECOMMENDATIONS—CHAPTER 7: MANAGING PRODUCTION OF HOTELERS AND NON-HOTELERS

Findings

- While a detailed analysis of what the production standards should be was not conducted as part of this study, it came to the Panel’s attention that external organizations and the USPTO have reviewed the production standards at various times in the past, yet the USPTO has not made significant changes to the standards. Although the DOC OIG recommended a review of production standards in 2004, and the Office employed consultants to examine this issue as recently as 2010, the USPTO has not changed the existing production quotas, even though many of the current standards for art units were established as long ago as 1976. Instead of reviewing each art unit individually, the Office’s most recent changes were to add 2.5 hours for all art units to complete the examination of a patent application. While this additional time may be necessary in certain art units, this one-size-fits-all approach may provide more time than necessary for less-complex patent applications. The Office should consider the impact of technological advances, including search engines that assist with searches for prior art, as it revises production standards.
- The PAP provides strong management controls on the operation of the patent examination process and provides data which when reviewed by the SPE can be used to certify T&A.
- There was no significant difference in production by grade levels between hotelers and non-hotelers. Therefore, there is no evidence that the telework program hinders or supports the Agency’s production.
- Data from the QIR and responses from the SPEs suggest there is no difference in the quality of the examination process between hotelers and non-hotelers.
- The USPTO has used its production-based awards program successfully to achieve various objectives. For example, the Pendency Award has helped the Agency reduce

⁶ Federal Employee Viewpoint Survey, 2014.

the number of cases that are active beyond their ceiling control days. The “Special Achievement for Superior Performance” and “Gainsharing” Awards have incentivized patent examiners to go beyond the fully successful level of performance.

- The Trademark Organization has used awards effectively to incentivize higher production and increase quality.
- Examiners’ performance in production and docket management is comparable between hotelers and non-hotelers.

Recommendations

- The USPTO should perform an in-depth review of production standards for all of the 600-plus art units to determine if they are set at appropriate levels, and make adjustments, as needed.
- Initiate an expert review of potential approaches to measuring and reporting on patent quality. The USPTO can leverage its new Patent Quality Initiative⁷ as the foundation for this review. The review should give USPTO the ability to measure the quality of individual examiner performance, not just the throughput, and must recognize that quality should be assessed on a continuum. The USPTO should continue to focus on developing ways to measure the quality of the examination process, to target areas for training and to provide indicators of activities in the process that might lead to future improvements in the quality of the patent.
- Establish separate probationary/conditional periods for beginning full-time teleworkers. Full-time teleworkers should be required to maintain “fully successful” status for two years after completing their training in order to continue being eligible for full-time telework.
- Work with the Patent Office Professional Association (POPA) to explore if an alternative to the “clear error” standard might provide distinctions in work quality that would be beneficial to the examiners and the Agency.
- The USPTO should continue to focus on developing ways to measure the quality of the examination process to target areas for training and to provide indicators of activities in the process that might lead to future improvements in the quality of the patent.
- Consider imposing additional controls on approving overtime and suspend the ability to work overtime for any examiner whose auto-count has been suspended. The Agency should also limit overtime to examiners whose quality rating is “outstanding” or “commendable.” This would limit overtime overall to examiners performing a higher quality of work.
- Additional tools besides the Quality element of the PAP should be used to evaluate the quality of the examiner’s work.

⁷ “Request for Comments on Enhancing Patent Quality,” 73 Federal Register 1 (5 Feb 2015), pp. 6475 - 6481.

PANEL FINDINGS AND RECOMMENDATIONS—CHAPTER 8: BENCHMARKING TELEWORKING AND HOTELING PROGRAMS

Findings

- The USPTO's telework policies are in line with best practices in the private and public sectors with regard to telework eligibility, collaboration tools, training, and performance measures. However, the Agency could do more to leverage its existing policies to enhance telework efficacy in each of these areas.
- Personal communication (e.g., video conferencing), not just electronic communication (e.g., email), is a best practice used to effectively manage a remote workforce. Although visual collaboration tools are readily available to Agency employees, they are not used as regularly as they should be to provide virtual face-to-face communication among employees, and between employees and supervisors. Electronic communication is used more frequently than personal face-to-face contact to the detriment of both managers and staff.
- Effective management and strong supervisor/employee relationships, especially with respect to regular visual communication, are critical to successful telework programs.
- In other organizations, it is common for telework policies not to include specific eligibility information to provide employers with flexibility in determining whether to allow telework based on the specific employee and/or the type of work performed.

Recommendations

- The USPTO should place more emphasis on continually developing a culture of collaboration among employees. The Office should also reconsider whether the individual researcher model for patent examination can be enhanced through greater team interaction.
- The USPTO should work to improve communication between supervisors and front-line employees, as well as between upper management and supervisors specifically using video conferencing and personal interaction, as mentioned above.

PANEL FINDINGS AND RECOMMENDATIONS—CHAPTER 9: THE ACADEMY SUPERVISORY PATENT EXAMINER SURVEY

Findings

- The Teleworking and Hoteling programs have benefitted the Agency by saving costs in real estate, allowing the Agency to perform work during office closures and has contributed to the recruitment and retention of employees. The Office's 20-year roll out of teleworking has been deliberative and the Agency has routinely sought input and feedback from all employees, unions and their many stakeholders to continually

improve the workforce structure. The USPTO should reach out to all supervisors for additional input on managing the workforce.

- While only SPEs were surveyed as part of this study, many of the managerial related findings and recommendations could be applicable to all supervisors or employees throughout the USPTO.
- 80 percent of SPEs reported that they have sufficient resources to certify T&A. As noted in the Panel's overall findings, however, about 17 percent of SPEs stated they do not have the resources they need to manage T&A, and 10 percent said they do not have the same ability to verify T&A for both on-site and teleworking employees.
- SPEs surveyed reported that they have to wait several months to conclude an investigation of T&A abuse, because of delays in ER to address concerns and respond to employees if inaccuracies or abuses are suspected. This delay dilutes their ability to quickly discipline employees who abuse T&A, and hampers the speedy resolution of employee issues.
- Some SPEs reported that they need more tools to hold employees accountable for falling behind on expected production. While 90 percent of SPEs said they had enough resources to manage production (more than 39 percent said they have a lot of resources, but would welcome more), 8 percent of SPEs said they did not have the resources to do their jobs. Because performance requirements at the USPTO are production-based, supervisors need additional resources to maximize production oversight of their employees.
- Once an employee meets the eligibility criteria in the telework agreements negotiated with the USPTO unions, teleworking becomes somewhat of a right and not a privilege that can be revoked. Changing telework agreements would require the USPTO to open negotiations with their unions.
- More than 73 percent of SPEs who responded to the Academy's survey would call back examiners to headquarters when there are performance or conduct issues, either for a probationary period until they improve, or permanently if they do not improve. This new management tool would have to be negotiated with the unions. However, it is possible that simply returning to headquarters and learning from peers would help examiners who perform poorly so that they could improve.
- Only 55 percent of SPEs surveyed agreed that they have "adequate opportunities to make recommendations for process improvements." This suggests that a greater proportion of SPEs needs to be engaged in discussions about how to improve work processes.
- Supervisors need to be familiar with the complex details of 29 different telework agreements.
- Current supervisory tools do not provide sufficient information on when employees are working. An electronic presence indicator shows when employees are available to do work, not whether they are working, and it is not required for all workers. In addition, they do not have a defined schedule—examiners only have to notify their supervisors of how many hours they plan to work, not the actual hours they will be at work (e.g. 9:30 AM -6:00 PM) and they can change their schedules at any time. This work schedule flexibility makes it difficult for supervisors to know when an employee is working.

Recommendations

- The USPTO should continue its Telework and Hoteling Programs, while enhancing the tools it uses in strengthening their management practices as recommended in the report.
- The USPTO should look globally across the Agency when implementing recommendations in this section and others that are applicable across the USPTO.
- Examine impediments and concerns raised by SPEs with regard to being able to do their jobs more effectively.
- Provide more support to SPEs in their efforts to enhance employee accountability. Seek specific input from all SPEs to conduct a baseline assessment of how effective current management tools are for the oversight of employees. As part of this assessment, consider providing the employee accountability tools SPEs requested in the Academy survey.
- Allow SPEs to participate in any re-evaluation of the goals for evaluating patents, changes to the length of time an examiner has to submit work and penalties for not complying with deadlines.
- Expand the existing set of tools to help supervisors better manage the workforce. Technology Center directors should reach out directly to all of their SPEs and offer immediate assistance to help them manage their staffs T&A and production.
- Negotiate new requirements with all unions to allow SPEs to require underperforming employees (less than fully successful) to return to headquarters and specify the exact hours for each day (e.g., 8:30 AM–5:30 PM) they are working at all times.
- Require employees to routinely provide advance notice of their planned work hours for each bi-week at least two weeks in advance of the bi-week, rather than just the total number of hours they plan to work in any given day. This change will enhance supervisors' ability to manage their teams and their certainty about signing and approving timesheets.
- Consider other supporting tools such as an online team calendar to help managers and peers schedule time to collaborate.
- Clarify that teleworking is a privilege, by renegotiating union agreements. Require all teleworking employees to renew telework agreements (preferably every two years) to acknowledge acceptance of current policies and procedures. Presently, employees are not required to re-sign agreements. Once agreements are in place, the Agency assumes that employees will be working under a telework agreement for the duration of their career at the USPTO. Renewing these agreements will also allow the USPTO and employees to reassess whether telework arrangements are in the best interests of both parties. The Panel understands that this change would have to be negotiated with the unions.
- Conduct an evaluation of the ER office to find out if there are any bottlenecks or other impediments to providing more timely responses to supervisor requests when a T&A violation is suspected.

- Consolidate, align and refine all existing teleworking agreements, addendums, memorandums, policies and all other written documentation added to them. Reducing the number and variability of agreements will help all supervisors more effectively manage the workforce and improve understanding of the parameters of these agreements for all employees.
- Establish a separate probationary/conditional periods for beginning full-time teleworkers. Full-time teleworkers should be required to maintain “fully successful” status for two years after completing their training in order to continue being eligible for full-time telework.

PANEL FINDINGS AND RECOMMENDATIONS—CHAPTER 10: COLLABORATION ON PATENT SEARCHES

The Panel believes that there are broad, strategic questions that warrant USPTO’s attention. The key strategic question is whether the Office is using the most effective strategy to carry out its statutory responsibilities. Specifically, the USPTO needs to examine what the nation expects, related to quality, effectiveness, and efficiency in issuing patents and assess whether it is delivering these outcomes.

Patent quality needs further examination. The current system stresses quantitative production over quality. The USPTO recognizes the need to continue to explore mechanisms to better assess quality, and is now in the early stages of re-evaluating the existing performance measures for patent quality and methods for data collection.

Recommendations

In order to address these broader issues, the Panel recommends that USPTO:

- Continue to focus on patent quality and leverage the new Patent Quality Initiative⁸ as the foundation for an expert review on improving individual examiner quality. Quality should be assessed on a continuum.
- Continue to collaborate with other countries to improve patent prior art searches.
- Continue to explore whether crowdsourcing or other methods would improve the quality of prior art searches.

⁸ “Request for Comments on Enhancing Patent Quality,” 73 Federal Register 1 (5 Feb 2015), pp. 6475 - 6481.

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CHAPTER ONE: INTRODUCTION

1.1 OVERVIEW OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

The United States Patent and Trademark Office (the USPTO, Agency or Office) is responsible for granting patents for the protection of inventions and for registering trademarks. This responds to the mandate of Article I, Section 8, Clauses 8 and 3 of the U.S. Constitution that the legislative branch “promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”

In carrying out its mission, the Agency recognizes its role in contributing to U.S. economic growth and competitiveness, while also “guiding” intellectual property (IP) policy and education, especially in the context of a globalized economy.⁹ The USPTO’s commitment to its mission is also crucial to achieving its broad strategic goals,¹⁰ which follow:

- Optimize patent quality and timeliness;
- Optimize trademark quality and timeliness;
- Provide domestic and global leadership to improve intellectual property policy, protection, and enforcement worldwide; and
- Achieve organizational excellence.

A patent confers “the right to exclude others from making, using, offering for sale, or selling” an invention in the United States or “importing” the invention into the United States.¹¹ It essentially grants a property right to the inventor. Once a patent is granted, the patentee must enforce the patent without the USPTO’s aid. In exchange for the valuable rights the patent confers, the inventor must provide a complete disclosure of the invention, which promotes additional innovation and discourages duplication of research. Thus, the rights of individual inventors are balanced against the rights of the public. The term of a new patent is 20 years. U.S. patents are effective only within the United States, U.S. territories and possessions. An inventor secures a patent by filing an application that includes a detailed description of the invention, drawings (if applicable), a declaration that the inventor believes he/she is the first and original inventor of the item, and a fee. After the USPTO determines that the application is complete, it sends it to the appropriate art unit, where a patent examiner conducts a search of prior art and then determines whether the invention is patentable under the law. The decision is made to grant the patent if the invention is truly new, not obvious (at the time of the invention to those having a skill or knowledge in the subject), and useful.

⁹ United States Patent and Trademark Office, 2011-20154 Strategic Human Capital Plan. <http://www.uspto.gov/sites/default/files/about/stratplan/USPTO_2011-2015_Strategic_Human_Capital_Plan_Highlights.pdf>

¹⁰ USPTO Strategic Plan 2014-2018, p. 4

¹¹ Title 35, Part II, Chapter 14

<https://www.law.cornell.edu/uscode/pdf/uscode35/lii_usc_TI_35_PA_II_CH_14_SE_154.pdf>.

Patent Pendency, which varies by the subject area of the application, is the key measure that the USPTO uses to assess the timeliness of processing patent applications. First-action pendency is defined as the time (measured in months) from when an applicant files an application and the USPTO takes a first office action. A first office action is a written correspondence from the patent examiner documenting his or her initial findings that requires a response from the applicant for the patent application prosecution to continue. First-action pendency includes time an examiner is not reviewing an application—primarily time in the queue. Total pendency is the average number of months from the patent application filing date, to the date the application has reached final disposition. Total pendency includes first-action pendency and time waiting for action by the applicant.

The USPTO receives approximately 600,000 patent applications in a typical year, and this number is projected to grow to over 700,000 per year within the next five years. The USPTO estimates that by the end of fiscal year 2015 there will be a “backlog” (that is, patent applications in the system) of approximately 535,500 unexamined patent applications waiting for a first office action by a patent examiner.¹² Today, first action pendency is about 18 months and total average pendency is at about 27 months.¹³ Other actions, such as a “Request for Continued Examination,” (RCE)¹⁴ require additional time in the system. The USPTO’s efforts to reduce the backlog include hiring additional examiners (mentored by experienced staff) and making other changes that will reduce patent application review time. Despite the increasing number of applications, the USPTO expects to further reduce pendency in future years.

A trademark is a brand name. It is generally a word, name, phrase, symbol, device, or design, or a combination of them, that identifies and distinguishes the source of goods of one party from those of others. A service mark is the same as a trademark, except that it identifies and distinguishes the source of a service rather than goods. A trademark typically protects brand names and logos used on goods and services.¹⁵ A trademark application goes through a review process; once granted, it is published in the Official Gazette, a weekly publication of the USPTO. Approximately three months after this publication of the specific mark, and if no one files an objection, the USPTO issues a registration. After registration, the trademark is “kept alive” when the registrant files a specific maintenance document. Six years after the registration date, or within the six-month grace period after the expiration of the sixth year, the trademark owner must file a “Declaration of Use or Excusable Nonuse”

¹² The United States Patent and Trademark Office, “Fiscal Year 2016: President’s Budget Submission/Congressional Justification.” (Washington, D.C.: February 2, 2015), 16.

¹³ Pendency is the time elapsed from the date of request for examination until disposal, and can include variations in time required for applicants to respond to office actions.

¹⁴ Section 4403 of the “American Inventors Protection Act of 1999” amends 35 U.S.C. § 132 to provide, at the request of the applicant, for continued examination of an application for a fee (request for continued examination or RCE practice), without requiring the applicant to file a continuing application under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d). (<http://www.uspto.gov/patents/law/aipa/rcefaq.jsp>)

¹⁵ The United States Patent and Trademark Office. “Protecting Your Trademark: Enhancing Your Rights Through Federal Registration.” (Washington, D.C.: 2014), 1. <<http://www.uspto.gov/sites/default/files/trademarks/basics/BasicFacts.pdf>>.

under Section 8. If the owner does not do this, then the registration is cancelled. If it holds, then within one year before the end of every 10-year period after the registration date, or within the six-month grace period thereafter, the registration owner must file a “Combined Declaration of Use or Excusable Nonuse/Application for Renewal” to maintain the trademark.

The USPTO receives over 455,000 new trademark applications each year, and has a current backlog of 112,000 applications waiting from the date of the application filing to the examining attorney’s first office action (first action pendency).¹⁶ The rate of activity in processing trademarks is expected to increase to nearly 700,000 per year by 2020.¹⁷ The Trademark Organization maintains a three-month pipeline of trademark applications to ensure a continuous workflow for the organization. Today, the average amount of time from the date of application filing to the trademark examining attorney’s first office action (first action pendency) is about three months. In total, it takes about an average of 10 months from date of application filing to disposal or notice of allowance for registration (total pendency).

The USPTO has established programs to retain experienced patent examiners and trademark examining attorneys. One of its key retention initiatives is to continue to enhance the teleworking environment by expanding teleworking opportunities and developing skill sets specific to working remotely.¹⁸ The push toward a “virtual workforce” represents the Agency’s move from traditional teleworking arrangements, where employees work off-site for a few days each week, to an arrangement where a significant number of employees relinquish office space and work off-site, full-time from home. Most full-time virtual workers, also called “hotelers,” live within a 50-mile radius of the Alexandria, VA headquarters. However, a recent addition to the suite of telework options is the Telework Enhancement Act Pilot Program (TEAPP) that was authorized by the Telework Enhancement Act of 2010, (P.L.111-292)¹⁹ and which permits employees to request a change to their duty station so they can live 50 miles or more away from headquarters within the 48 contiguous states; this program also requires the employee to pay their own expenses for a limited number of trips to headquarters when they are asked to return.²⁰ The USPTO’s use of telework as a significant workforce strategy represents one of most robust efforts by a federal government agency to promote and use teleworking options. Over the years, the USPTO has received substantial praise for its large-scale effort to promote telework but has recently faced a significant level of scrutiny about how it manages its virtual workforce.

¹⁶ USPTO, 2014 Performance and Accountability Report, 30.

<<http://www.uspto.gov/dashboards/trademarks/main.dashxml>>.

¹⁷ The United States Patent and Trademark Office, “Fiscal Year 2016: President’s Budget Submission/Congressional Justification.” (Washington, D.C.: February 2, 2015), 18.

¹⁸ United States Patent and Trademark Office, 2014-2018 Strategic Plan, 21

¹⁹Telework Enhancement Act of 2010, Chapter 65: Telework. Pub. L. 111-292, 124 Stat. 3165. 9 December 2010.

²⁰ Presently at the USPTO, approximately 35 percent of employees who hotel under existing full-time telework agreements are participating in TEAPP.

1.2 THE ACADEMY CHARGE

The USPTO, with the support of Congress, and in Congressional testimony stated it had requested that an independent Panel of the National Academy of Public Administration (the Academy) evaluate whether the USPTO telework programs comply with laws and regulations, have adequate management controls, and are operating effectively and efficiently to achieve the programmatic goals. The USPTO requested the Academy review to address these concerns and to provide an outside perspective.²¹

The need for a review grew out of external concerns regarding alleged T&A abuse by USPTO employees, because of four anonymous complaints submitted to the Department of Commerce (DOC) Office of Inspector General (OIG) in 2012.²² In response to these complaints, the OIG referred the matter back to the USPTO to look into the allegations. An internal USPTO investigation team of experienced staff examined the allegations and prepared an initial draft report (Draft Report) referred to in a series of articles in the *Washington Post*²³). The Office subsequently issued a final report entitled, “Internal Administrative Inquiry Report” (Final Report). The Final Report was inconclusive on whether T&A abuse was occurring. The Draft and Final Reports also identified concerns about some examiners using excessive endloading (waiting until the end of a quarter or other review rating period to submit most or all work) and mortgaging (knowingly submitting incomplete work as complete) as well as the adequacy of USPTO performance plans. While endloading has always occurred at the USPTO, it is not unique to teleworking and is not necessarily improper. However, submitting a disproportionate amount of work all at one time and the use of consistent, recurring endloading as a routine way of turning in work makes it difficult for SPEs to assess the quality of the work submitted. This may also result in a lower quality of work by examiners who do this.

Following the release of the Final Report, outside parties expressed concerns that the report did not adequately address issues raised in the Draft Report. *Washington Post* articles described instances of alleged employee misconduct and suggested Agency officials may have revised the initial report to conceal possible abuses and mismanagement in the patent examination telework program.²⁴

The Academy’s charge was to examine the USPTO Telework Program and the Time and Attendance controls, by conducting an internal control review and a program review:

²¹ *USPTO Testimony on Telework*, 113th Cong. (2014) (testimonies of Congressman Frank Wolf and Margaret Focarino).

²² The OIG also received complaints related to paralegals working at the Patent Trial and Appeals Board. (PTAB). The scope of this review did not include this issue because the USPTO had previously contracted for an independent review of the issues surrounding the PTAB paralegals.

²³ Rein, Lisa, “Patent Office Filters out Worst Telework Abuses I Report to its Watchdog,” *Washington Post* (August 10, 2014).

²⁴ Joint Hearing before the House Committee on the Judiciary and the Committee on Oversight and Government Reform, “Abuse of USPTO’s Telework Program: Ensuring Oversight, Accountability and Quality,” (November 18, 2014), p. 3.

- The internal control review was an evaluation of management controls. It consisted of an Office of Management and Budget (OMB) Circular A-123, *Management's Responsibility for Internal Control*, review of the telework program and T&A processes. It was also conducted to ascertain whether appropriate management guidance is issued, available, and followed, and to confirm whether the telework program complied with Federal laws and regulations. These findings were incorporated into the program review.
- The program review was an evaluation of the effectiveness and efficiency of the USPTO telework programs, including whether the current telework structure achieves the intended programmatic objectives. The Office also asked the Academy to verify whether key metrics that it uses to support teleworking are effective and intended to increase recruitment and retention, improve continuity of operations, reduce management and operations costs, and improve productivity without negatively impacting quality.

To complete the evaluation, the Academy examined how the telework programs are structured, how employees are hired and rewarded, and how the USPTO measures work in the patent production system. The Academy examined whether there are differences in production for patent examiners who hotel (telework full-time) or do not hotel (work on-site full-time or telework part-time). USPTO policy is to manage all workers similarly and to have patent examiners meet their performance standards, regardless of where they perform the work.

In conducting this review, the Academy reviewed both the Patent Organization's and the Trademark Organization's telework programs, their T&A policies, stakeholder interaction, best practices used in teleworking (as part of our benchmarking review), hiring, awards and internal controls. Greater emphasis, however, was on specific components of the Patent Organization, with a focus on the examiner corps, on SPEs, and determining whether working on-site or off-site as a teleworker affects the work produced. The issues examined for the Patent and Trademark Organizations as part of this effort included the following:

- Examiner and supervisor work structures;
- Compensation (including overtime, awards and salary);
- Relationships with internal and external stakeholders; and,
- High level understanding of processes, policies and procedures in patent examination.

Because it was beyond the scope of this review to examine individual patent decisions, the Panel was unable to determine whether working on-site or teleworking affected the quality of individual examiners decisions. The Panel did, however, receive data on the patent "Quality Index Reporting Variables" (QIR) which uses a series of metrics to determine patent quality per examiner, which are reported separately for examiners who work on-site and telework. This matters because it is the only information the Academy has (in addition to the information used in the quality element of the Performance Appraisal Plan

(PAP), on individual performance. The Academy believes that the quality element of the PAP can be enhanced. Although the Agency reports these data, we do not have any evidence that it is actively used to manage individual employees. In addition, as part of this review the Academy administered a survey of SPEs that included some questions on quality. Further information on the data from the SPE survey may be found in Chapters 7, 9 and Appendix J.

Throughout the course of obtaining a high-level understanding of the patent examination processes, policies, and procedures, the Academy identified some other issues it believes warrant the USPTO's attention. These issues pertain to furthering the Agency's work on patent quality, evaluating whether patent examiner production standards are set at the appropriate level for all art units, and exploring the expansion of the Agency's efforts to facilitate patent searches. The Academy Panel did not fully evaluate these issues because they are beyond the scope of this review. However, the Panel is bringing them to the USPTO's attention for further consideration because of their significance in the patent examination process.

1.3 APPROACH AND METHODOLOGY

The Academy's research approach included extensive discussions, in-person interviews, and collaboration between USPTO senior officials, subject matter experts and staff. The study team's work also included holding interviews with numerous individuals, including internal USPTO subject matter experts, telework specialists in several other federal agencies, designing and conducting a survey of SPEs, and collecting and analyzing extensive data on the federal workforce. Guided by the Academy Panel the study team also conducted secondary research through an extensive literature search on patent and trademark issues, performance management, teleworking and a range of other topics pertinent to the review.

Academy Panel

The Academy convened a five-member panel of Academy Fellows to review the effectiveness and efficiency of the USPTO's telework programs, and asked them to make recommendations to the USPTO. The Panel includes individuals with expertise and experience in federal government laws, regulations, operations and procedures, finance, human capital, and telework. Appendix A contains additional background information on Panel members and the study team of subject matter experts and analysts. The Panel met six times over the course of the eight-month engagement. These meetings were deliberative executive sessions where the Panel collaborated with the study team to refine its work plan, direct research, formulate preliminary observations, and develop and approve the findings and recommendations contained in this final report.

Interviews

The Panel and study team engaged with a wide variety of stakeholders to collect information about the USPTO's operations and structure, to understand the Office's challenges and opportunities, and discuss potential areas for improvement. In addition to extensive USPTO staff sessions to understand patent and trademark processes, operations, policies and initiatives, these interviews included meeting with the USPTO's stakeholders, including union representatives from the Patent Office Professional Association (POPA), the National Treasury Employees Union 245 (NTEU), and the Patent Public Advisory Committee (PPAC).²⁵ The study team also interviewed auditors, survey experts, professional organization officials, federal and state agency experts in telework and executives in the private sector who have managed sizeable telework and virtual work programs. See Appendix B for a list of interviewees.

Secondary Research

The Panel and study team conducted an extensive review of the USPTO's operations and structure as it relates to managing in a telework and virtual environment. Documents reviewed included congressional testimony and public laws, USPTO reports, USPTO policies, data, directives, budgets, and guidance; stakeholder reports including web-based research which contained numerous documents, policies, position papers, and in some cases, direct transcripts from meetings. See Appendix C for a list of information sources.

Supervisory Patent Examiner Survey

With the assistance of the USPTO, and experts from the General Accounting Office (GAO) Applied Research Methods team, and other survey research experts, the study team also designed a survey of SPEs that focused on Telework and T&A, recent training and tools provided by the Office to clarify policies and procedures, and a range of program issues related to the scope of the study. More than 66 percent of SPEs responded to the survey and more than 27 percent wrote individual comments. The individual responses to the survey and personal comments will remain anonymous and confidential and not be shared with the USPTO. The respondents' broad themes and concerns, however, were shared to emphasize and support our analysis. The survey was completed toward the end of the study term, to determine whether much of the refresher training on recording and certifying T&A, reiteration and refinements of policies and procedures issued since August 2014 were helpful and effective in clarifying how to track and verify T&A and manage teleworkers and the virtual workforce. A list of the actions by the USPTO since that time is provided in Appendix H.

²⁵ The USPTO also works with the NTEU 243, a Trademark Public Advisory Committee, and numerous other stakeholders, who were not interviewed because the study team was able to capture issues, background and concerns from other interviewees, and by doing research using other methods.

1.4 HOW THE REPORT IS ORGANIZED

Structure of the Organization

Chapters 1 through 3 provide an overview of the issues.

Internal Control Review

Chapter 4 summarizes the results from the internal control review performed in accordance with OMB Circular A-123, conducted to determine whether management controls for telework and T&A are adequate to support the USPTO program and operations.

Program Review

The remaining chapters, 5-10, present results of the program review of the telework program performance and operations, a benchmarking study, a survey of supervisors, and additional issues identified by the Panel. These chapters include analysis of the following areas:

- Chapter 5:
 - Internal Administrative Inquiry Draft and Final Reports—an assessment of whether the USPTO document providing a crosswalk between the 15 recommendations in the draft report and the 8 recommendations in the final report was reasonably accurate. To do this the study team thoroughly reviewed both reports. Table 5.1 shows the crosswalk between the Draft and Final reports.
 - New Management Initiatives—a discussion of guidance by the USPTO to ensure that employees are accountable, including ensuring employees receive necessary training to implement appropriate procedures for recording and certifying hours worked and initiatives undertaken to address issues raised in the Draft and Final Reports.
- Chapter 6:
 - Recruitment and Retention—an analysis of the extent to which telework is a factor in recruitment and retention.
 - Metrics that Support Telework—an analysis of whether mobility metrics accurately portray financial savings in operating costs such as real estate, transportation, and employee turnover.
- Chapter 7:
 - Production—an analysis of how factors that affect production, including awards and discipline, provide incentives to get the work done and support verifying hours worked.
- Chapter 8:
 - Academy Benchmarking Study—the Academy’s benchmarking study comparing the USPTO’s previous benchmarking study on telework and hotel programs to practices in both the private and public sectors.

- Chapter 9:
 - Academy Survey of Supervisory Patent Examiners (SPE)— the results of the Academy's survey of SPEs and key themes for discussion.
- Chapter 10:
 - Collaboration on Patent Searches—collaboration, cooperation, and broader issues for further consideration by the USPTO.

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CHAPTER TWO: BACKGROUND

This chapter includes a brief legislative history on federal telework. In addition, it includes background on the complaints received by the DOC OIG's office in 2012, and the Academy's much broader review in 2005 of the USPTO's organizational structure and processes, which provide further context for this study.

2.1 HISTORY OF FEDERAL TELEWORK

One of the earliest government-wide policies related to federal telework was in 1957, when the Comptroller General approved payment of salaries, on a case-by-case basis, to federal employees for work done at home. The earliest effort to generate a federal telework program, however, is believed to have occurred in the early 1960s when Jack Nilles, commonly considered to be the father of telework, began teleworking from Los Angeles to Washington, DC, while working as a consulting rocket scientist to the US Air Force Space Program. Inspired by this experience, Nilles coined both the words "telecommuting" and "teleworking" in 1973. He began promoting the value and importance of the concept and thus gave birth to the telework movement.²⁶ Nilles' work led to small scale pilot telework programs being introduced in the 1970s. However, it would not be until the 1990s that the federal government began introducing formal telework program with standard policies, procedures, and telework work schedules.

The late 1980s witnessed a concern about the quality of the future workforce, as exemplified by a U.S. Department of Labor report, "Workforce 2000."²⁷ The US Office of Personnel Management (OPM) published a similar report, "Civil Service 2000," that focused on the federal employee workforce. OPM was concerned about the federal government's ability to hire and retain a highly-educated, highly-skilled workforce. The resulting response was a federal push for solutions, especially non-salary incentives to enhance federal recruiting and retention. One of OPM's solutions was to conduct a small telework pilot based on research and recommendations on home-based employment.²⁸

In 1990, the President's Council on Management Improvement introduced the Federal Workplace Pilot Project also referred to as "Flexiplace." The program allowed approximately 1,000 employees from 15 federal agencies across the country to telecommute. OPM and the U.S. General Services Administration (GSA) were responsible for running the program. By early 1996, there were between 3,000 and 4,000 federal employees telecommuting through formal programs.²⁹ Since that time, the number of

²⁶ Joice, Wendell, PhD., Office of Government wide Policy, U.S. General Services Administration, "The Evolution of Telework in the Federal Government," (Feb. 2000).

²⁷ Johnston, William B., et al., *Workforce 2000: Work and Workers for the 21st Century*. Hudson Inst., Indianapolis, IN. Employment and Training Administration (DOL), Washington, D.C. REPORT NO HI-3796-RR, Jun 1987, available at <http://files.eric.ed.gov/fulltext/ED290887.pdf> (last visited 27 May 2015)

²⁸ Joice, Wendell, PhD., Office of Government wide Policy, U.S. General Services Administration, "The Evolution of Telework in the Federal Government," (Feb. 2000).

²⁹ Goluboff, Nicole Belson, "The Law of Telecommuting," (2001) p. 5, citing the President's Management Council National Telecommuting Initiative Action Plan (NTIAP) Jan. 1996

employees' teleworking has continued to increase. As of the end of FY2014, four percent of federal employees are teleworking three or more days a week and 10 percent are teleworking one to two days a week.³⁰

Legislative History

Since the 1990s, telework has maintained bipartisan support from both the executive and legislative branches. Working collaboratively with Senator Ted Stevens, Representative Frank Wolf introduced the Treasury, Postal Service, and General Government Appropriation Act of 1990, which included provisions to allow federal agencies to pay for extra telephone lines, related equipment, and fees needed in the homes of federal telecommuters. The bill, which was signed into law (P.L. 101-509) by President Bush in November 1990, removed one of the early barriers to federal telecommuting. Its initial introduction was as a temporary exemption that was to be reauthorized by Congress on an annual basis. In 1996, the legislation was made permanent (P.L. 104-52).

Beginning in 1993, Congress appropriated substantial funds for GSA to develop telework centers in the Washington, D.C. area as part of the Federal Interagency Telecommuting Center Pilot Project (FITCPP). The Department of Defense, the Department of Transportation, and GSA were included among agencies who utilized these "telecenters."³¹ To further promote use of telework centers, P.L. 105-277 §630(a) included a provision that, for fiscal year 1999 and each fiscal year thereafter, a minimum of \$50,000 of the funds made available to each executive agency for salaries and expenses shall be available only for the necessary expense of the executive agency to carry out a flexible workplace telecommuting program.

In 1996, the President's Management Council introduced the National Telecommuting Initiative (NTI), which allowed the federal government to attempt the first wide-scale government program plan to have 60,000 Federal teleworkers within two years and 160,000 employees telecommuting by the end of 2002.^{32,33} To further boost telework availability to federal employees, the "Department of Transportation and Related Agencies Appropriations Act"³⁴ was enacted in 2001, requiring all executive agencies to "establish a policy under which employees of the agency could participate in telecommuting to the maximum extent possible without diminished employee performance."³⁵ Since then, additional efforts have been made to promote telework, leading up to the 2010 Telework Enhancement Act, discussed below.

³⁰ Federal Employee Survey from 2014

³¹ Goluboff, Nicole Belson, "The Law of Telecommuting," (2001) p. 7.

³² Joice, Wendell, PhD., Office of Government wide Policy, U.S. General Services Administration, "The Evolution of Telework in the Federal Government," (Feb. 2000).

³³ NTIAP; Federal Interagency Telecommuting Center Pilot Project (FITCPP) July 1997 Report to Congress ("1997 FITCPP Report").

³⁴ P.L. 106-346 §359

³⁵ NTIAP; Federal Interagency Telecommuting Center Pilot Project (FITCPP) July 1997 Report to Congress ("1997 FITCPP Report").

The Telework Enhancement Act of 2010 (P.L. 111-292)

The Telework Enhancement Act of 2010 resulted from years of legislative activity to advance federal telework and mandated that all executive branch agencies implement telework programs. Some of the primary highlights and provisions of the Act include:

- Providing a framework for federal agencies to better leverage technology and maximize the use of telework;
- Helping agencies recruit new federal workers and retain valuable talent;
- Improving the ability of the federal government to maintain Continuity of Operations (COOP) to keep government operational during national security incidents, natural disasters, or other emergencies; and
- Enhancing the ability of federal employees to better manage their work and family obligations.

The Act is considered a key factor in the federal government's ability to achieve greater flexibility in managing its workforce through the use of telework.

Under the Act, the USPTO was mandated to begin the Telework Enhancement Act Pilot Program (TEAPP). Currently, 35 percent of USPTO employees eligible to hotel under existing full-time telework agreements are participating in TEAPP. The TEAPP does not prescribe the percentage of employees able to participate, but the unions and the USPTO management have agreed on a phased participation plan. The program permits employees to change their official duty station to any location within the contiguous 48 states and telework without regular and recurring trips back to headquarters. In fact, the legislation requires that TEAPP minimize "Agency travel expenses and employee travel requirements." TEAPP allows the Agency to require employees to waive their right to be reimbursed for travel expenses for a reasonable number of mandatory trips to headquarters (5 U.S.C. § 5711(f)). This means that, if the Agency requests that an employee return to headquarters, the employee must cover his or her own travel expenses.³⁶ Additionally, the program must ensure that "reasonable technological or other alternatives to employee travel are used before requiring employee travel, including teleconferencing, videoconferencing or internet based technologies." Therefore, the pilot program was implemented with a number of policies to protect both the Agency and the employees from travel-related expenses.³⁷ TEAPP has provided the USPTO with a means to significantly increase the number of employees who are able to telework long-distance, making it a frontrunner among federal agencies in developing a virtual workforce. (Additional background on TEAPP is discussed in the benchmarking section of this report.)

³⁶ United States Patent and Trademark Office, "Telework Enhancement Act Pilot Program: Annual Evaluation," FY 2014, p. 11.

³⁷ United States Patent and Trademark Office, "Telework Enhancement Act Pilot Program: Annual Evaluation," FY 2014, pp. 2-3.

Congressional Hearings on the USPTO Telework Program

Previous Congressional hearings on telework were generally focused on expanding and encouraging managers to support telework in the federal government. The most recent hearing, however, raised concerns specific to the USPTO's telework program. On November 18, 2014, the House Committee on the Judiciary and the House Committee on Oversight and Government Reform held a joint hearing on the alleged abuse of the USPTO's telework program.³⁸ Committee members recognized the USPTO's telework program as a model for the public sector in recent years. However, they were concerned about two published reports from the DOC OIG, investigating unfair hiring practices at the Trademark Organization and T&A abuse at the Patent Trial Appeal Board.³⁹ Committee members also expressed concern over potential T&A violations, raised in an internal report prepared by a USPTO internal investigation team in response to four anonymous complaints received by the OIG. This report was referred to in a series of articles in the *Washington Post*⁴⁰ that described instances of alleged employee misconduct and suggested Agency officials may have revised an initial report to conceal possible abuses and mismanagement in the patent examination telework program.⁴¹ While the USPTO's reported successes with its telework program were discussed, the main focus of the hearing was to rehabilitate the positive status of telework in the federal government. Congress urged the USPTO to verify the extent of reported abuse and undertake immediate action to hold accountable those who may have committed fraud to maintain the integrity of the telework program.⁴²

Additional issues raised at the hearing included the patent examination backlog and concern about its impact on the American economy and entrepreneurs. Committee members stressed the USPTO's responsibility to "promote innovation and ensure the integrity and advancement of intellectual property rights by thoroughly examining applications and issuing quality patents and trademarks."⁴³ Given the USPTO's statutory obligations to the public and the allegations of T&A abuse in the Patent Organization, a primary focus of the hearing was to discuss ways to root out abuse and determine whether such abuse had impacted patent examination quality and the patent application backlog.

³⁸ Joint Hearing before the House Committee on the Judiciary and the Committee on Oversight and Government Reform, "Abuse of USPTO's Telework Program: Ensuring Oversight, Accountability and Quality," (November 18, 2014), p. 2.

³⁹ Joint Hearing before the House Committee on the Judiciary and the Committee on Oversight and Government Reform, "Abuse of USPTO's Telework Program: Ensuring Oversight, Accountability and Quality," (November 18, 2014), p. 2.

⁴⁰ Rein, Lisa, "Patent Office Filters out Worst Telework Abuses I Report to its Watchdog," *Washington Post* (August 10, 2014).

⁴¹ Joint Hearing before the House Committee on the Judiciary and the Committee on Oversight and Government Reform, "Abuse of USPTO's Telework Program: Ensuring Oversight, Accountability and Quality," (November 18, 2014), p. 3.

⁴² Joint Hearing before the House Committee on the Judiciary and the Committee on Oversight and Government Reform, "Abuse of USPTO's Telework Program: Ensuring Oversight, Accountability and Quality," (November 18, 2014), p. 4.

⁴³ Joint Hearing before the House Committee on the Judiciary and the Committee on Oversight and Government Reform, "Abuse of USPTO's Telework Program: Ensuring Oversight, Accountability and Quality," (November 18, 2014), p. 2.

However, Committee members were careful to point out that the issues raised during the hearing were not telework issues *per se*, suggesting instead that they are likely fundamental problems related to insufficient performance metrics that may be subject to gaming and managers who are stuck in an antiquated, “If I can’t see you, you must not be working” mentality. The fact that this distinction was raised emphasizes the idea that it was not the USPTO’s telework program that was under scrutiny, as much as it was a question of whether managers were effectively supervising employees and had the adequate tools to measure quality, which is an aspect of patent examiner performance.

2012 OIG Inquiries

Many issues raised at the November 2014 Congressional hearing derived from the USPTO’s report responding to the four complaints received by the OIG in 2012 alleging systemic abuses within the Patents telework program, including:

- T&A abuse;
- End-loading (waiting until the end of a quarter or other review period to submit most or all work);
- Mortgaging (knowingly submitting incomplete work as complete); and
- Other performance plan issues at the Patents office.⁴⁴

In response to these complaints, the OIG referred the matter back to the USPTO and asked the Agency to look into the allegations. The USPTO established an investigation team comprised of experienced staff to conduct an investigation and submit a response to the OIG. Following the investigation team’s inquiry, a Draft Report was circulated for internal review. Several months later, the Agency completed the inquiry and issued a final, signed report, “Internal Administrative Inquiry” (Final Report)” which was sent to the OIG. The Final Report consolidated the 15 recommendations presented in the Draft Report into 8 final recommendations. See Chapter 5 for further discussion of this consolidation. The investigation team’s report and subsequent press attention led to the 2014 Congressional hearing.

The Academy’s 2005 Report: US Patent and Trademark Office: Transforming To Meet the Challenges of the 21st Century

As explained above, the Academy was tasked by the USPTO to provide an independent review and perspective. An additional reason that USPTO sought the Academy’s expertise is that in 2005 the Academy had completed a study for the Agency, *US Patent and Trademark Office: Transforming to Meet the Challenges of the 21st Century* (Academy 2005 Report). That study contained numerous recommendations, one of which specifically addressed telework. Some of the other recommendations of that Academy Panel are also relevant to the current review because of their potential impact on the telework program or connection to the Final Report recommendations. The 2005 report covered the general

⁴⁴ USPTO OIG, “Top Management Challenges Facing the Department of Commerce,” Final Report No. OIG—14-002, November 25, 2013

themes of recruitment and retention, improved productivity and quality, communication and collaboration, and supervisor training. Appendix D of this report contains a detailed analysis of the 2005 Report recommendations, followed by a look at USPTO actions since 2005 on those issues.⁴⁵

In this section, the pertinent general themes of the relevant recommendations from the 2005 USPTO Report are discussed in relation to the telework program and the USPTO investigation team's Final Report (2013), followed by a review of actions taken since 2005 on those issues,⁴⁶ and the current Academy Panel's recommendation on what, if any, further steps could be taken.

1. Recruitment and Retention

The general theme of recruitment and retention includes the only specific reference to telework within the 2005 Academy Panel's Report on the USPTO. The reference to telework is made in the context of increasing OPM flexibilities⁴⁷ to address human capital challenges, including enhancing performance, ensuring accountability, and positioning the workforce for the future.⁴⁸ The 2005 Academy Panel's Report on the USPTO identifies most effective flexibilities: work-life programs; alternative work schedules; and monetary incentives.⁴⁹ These particular flexibilities relate to the benefits provided in the USPTO's current Telework Program (for work-life and alternative work schedules) afforded to all employees, and the ultimate monetary incentives that come from the USPTO's increased pay rate, bonus, overtime, and monetary savings from teleworking. The specific reference to telework in the 2005 Academy Panel's Report on the USPTO is in the report discussion on legislation recently enacted in 2005 that further supported the USPTO's ability to compete with the private sector and made the USPTO more agile in pursuing and retaining its critical work force.⁵⁰ Since 2005, the USPTO's telework program has greatly expanded and is the primary subject of this current report. For purposes of efficiency, an entire review of the Telework Program will not be repeated here.

Other recommendations listed in the 2005 Academy Panel's Report on the USPTO related to recruitment and retention, which is discussed in greater detail in Chapter 6, are:

⁴⁵ See the USPTO's Memorandum "USPTO Implementation of Recommendations for the Academy Report: *USPTO Transforming to Meet the Challenges of the 21st Century (August 2005)*", dated April 18, 2012 and the USPTO internal document, "The Academy's Aug 2005 Recommendations updated 12-31-2011" for more comprehensive view of the USPTO's responses to each recommendations.

⁴⁶ See the USPTO's Memorandum "USPTO Implementation of Recommendations for NAPA Report: *USPTO Transforming to Meet the Challenges of the 21st Century (August 2005)*", dated April 18, 2012 and the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011" for more comprehensive view of the USPTO's responses to each recommendations.

⁴⁷ See 2005 USPTO Report, Page 115-120 and page 271. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is Academy Recommendation # 48.

⁴⁸ 2005 USPTO Report, Page 115.

⁴⁹ 2005 USPTO Report, Page 116.

⁵⁰ 2005 USPTO Report, Page 119.

- *Create a group award to spur innovation in work processes and overcome the "production loner" concept (2005 Academy Recommendation #33).*⁵¹ Group awards would promote retention of employees, as well as play a role in recruitment to that extent that applicants are aware of them. According to the USPTO, group awards are now being used.
- *Set priorities for human capital initiatives and clearly delineate funding for each (2005 Academy Recommendation #42).*⁵² Human capital initiatives are critical to effective recruitment and retention. The USPTO reports funding concerns have been addressed and human capital initiatives have been implemented since 2005. The Telework Program is itself an example of the use of flexibilities in human capital initiatives to recruit and retain qualified employees.
- *Ensure that the vision and goals in its Strategic Plan are integrated into its human capital planning (2005 Academy Recommendation #52).*⁵³ In response to this recommendation, the USPTO developed and implemented the Human Capital Plan.
- *Raise the commitment to and visibility of human capital improvement efforts by incorporating some aspects of this work into the broader Strategic Plan (2005 Academy Recommendation #53).*⁵⁴ Elements of the Human Capital Plan 2011-2015 have been incorporated into the USPTO's strategic plan.
- *Develop a process for initial employee orientation that stresses the positive work environment and many benefits of working for USPTO. (2005 Academy Recommendation #55).*⁵⁵ During the interview and research process for the current study, the Academy study team learned that employee orientation processes are comprehensive and address this issue.⁵⁶

2. Improved Productivity and Quality

Improving productivity without negatively impacting quality is both an element of the scope of this Academy review, as well as concern referred to in the Final Report (Recommendation # 3) and Draft Report (Recommendation # 3 and 4). In addition, there is arguably a connection between quality and endloading, which is a major area of concern in the original complaints to the OIG. The Academy 2005 USPTO Report speaks to this theme through the following recommendations:

- *As part of the evaluation of the pilot, examine the potential to outsource the search function to a Federally Funded Research and Development Center (FFRDC). (2005*

⁵¹ See 2005 USPTO Report, Chapter 4 and Page 269. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is NAPA Recommendation #33.

⁵² See 2005 USPTO Report, Chapter 5 and Page 270. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is NAPA Recommendation #42.

⁵³ See 2005 USPTO Report, Chapter 6 and Page 271. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is NAPA Recommendation #52.

⁵⁴ See 2005 USPTO Report, Chapter 6 and Page 271. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is NAPA Recommendation #53.

⁵⁵ See 2005 USPTO Report, Chapter 6 and Page 271. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is NAPA Recommendation #55.

⁵⁶ NAPA Study Team interviews with Patents, on Feb. 6, 2015, and Trademarks, on Feb. 10, 2015.

Academy Recommendation #6).⁵⁷ Outsourcing can serve an important role in the process of improving efficiencies without reducing quality. Also, in the context of the Telework Program, it serves as another tool to complete comprehensive searches in a virtual environment. It is referenced in the USPTO's strategic plan and it can be considered a component of the USPTO's cooperation with the Intellectual Property 5, a global network of five major patent offices.⁵⁸ Outsourcing is further discussed in Chapter 3.

- *Update the production and quality standards and awards.* (2005 Academy Recommendation #31).⁵⁹ This directly relates to improved production and quality, which are important to the overall health of the patent examination system as supported by the Telework Program. Data show that production and quality standards between teleworkers, non-teleworkers, and hotelers and non-hotelers are comparable. A new PAP and award system were proposed to Patent Office Professional Association (POPA) to address this. See Chapter 7 for more details on the USPTO's efforts to update its production and quality standards.

3. Communication and Collaboration

In the current study, the Academy was asked to consider the use of communication and collaboration tools in an overall look at the Telework Program. In addition, in the Final Report (Recommendation #2) and the Draft Report (Recommendation #8), this general theme is specifically mentioned. Some recommendations in the Academy Panel's 2005 USPTO Report that relate to this are:

- *Create a group award to spur innovation in work processes and overcome the "production loner" concept* (2005 Academy Recommendation #33).⁶⁰ This recommendation is also discussed above under Recruitment and Retention. Its impact cuts across the thematic areas. Use of group awards also promotes collaboration, which address Final Report Recommendation #2 and Draft Report Recommendation #8. Chapter 5 further discusses the Final and Draft Reports. Information provided by the USPTO on this recommendation indicates that group awards have been developed and are in use.
- *Develop a communication strategy, including pre-decisional input from labor unions as well as individual employees, and explain priorities, costs, and impacts of human capital choice.* (2005 Academy Recommendation #45).⁶¹ These recommendations tie into the other recommendations on creating a better communication flow. In

⁵⁷ See 2005 USPTO Report, Chapter 2 and Page 267. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is NAPA Recommendation #6.

⁵⁸ The European Patent Office (EPO); the Japan Patent Office (JPO); the Korean Intellectual Property Office (KIPO); the State Intellectual Property Office of the People's Republic of China (SIPO); and the United States Patent and Trademark Office (USPTO).

⁵⁹ See 2005 USPTO Report, Chapter 4 and Page 269. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is NAPA Recommendation #31.

⁶⁰ See 2005 USPTO Report, Chapter 4 and Page 269. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is NAPA Recommendation #33.

⁶¹ See 2005 USPTO Report, Chapter 5 and Page 270. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is NAPA Recommendation #45.

response to this recommendation, the USPTO developed and implemented its internal communication roadmap and structure, which includes feedback loops for labor and employee input, such as Commissioner and Director-led town hall meetings and the Director's blog.

- *Develop strategies to make its organizational culture more positive and collaborative. These efforts should start with an assessment of the current culture, probably by an external group, and should involve employees and managers (2005 Academy Recommendation #54).*⁶² While this recommendation is discussed above under "Improved Productivity and Quality," it is a cross-cutting theme that also impacts Productivity and Quality. This recommendation ties into the effect of a more positive and collaborative culture, inclusive of a Telework Program, on more efficiently producing quality patents, and was implemented.
- *Reinforce the initial positive presentation of USPTO's environment with periodic informal opportunities to interact with senior management in a social setting, such as "coffee with a commissioner" at lunchtime several times each year (2005 Academy Recommendation #56).*⁶³ This recommendation, also linked to 2005 Academy Recommendations #45 and #54, reinforces the importance of communication and collaboration. In response to this recommendation, and as stated above, the USPTO holds ongoing town hall meetings, other social meetings, and sets up volunteer opportunities so that examiners can interact with each other and with upper management. In addition, the USPTO Strategic Plan addresses this issue.⁶⁴
- *Devote additional resources to examiner exchanges so as to learn more about the search strategies and work methods of the European Patent Office and Japan Patent Office (2005 Academy Recommendation #64).*⁶⁵ This recommendation is linked to the USPTO's collaboration efforts with other major global patent offices. In 2005, the USPTO was engaged in collaborative efforts through the "Trilateral Exchange," and since then this group has expanded and become the IP5, with its own new collaborative efforts.
- *Conduct a cost-benefit analysis, using the Management Analysis Unit described in Chapter 6, in order to estimate the amount of resources that should be devoted to future trilateral exchanges (2005 Academy Recommendation #67).*⁶⁶ This recommendation is related to recommendation #64 above.

⁶² See 2005 USPTO Report, Chapter 6 and Page 271. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is NAPA Recommendation #54.

⁶³ See 2005 USPTO Report, Chapter 6 and Page 272. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is NAPA Recommendation #56.

⁶⁴ See the USPTO Strategic Plans 2010 and 2014: p37- Obj. 3B 1) Establish at least two new formal or informal collaborations per year with sister DOC agencies and other Federal agencies. 3E 1) Establish at least three new formal or informal collaborations with stakeholders per year, including those in regional office and outreach regions. p. 38-Obj. 5B further develop regional cooperative opportunities. 1) Increase number of programs in regional office and regional cities. 2) Increase the number of partnerships or collaborations with entities in satellite and regional cities.

⁶⁵ See 2005 USPTO Report, Chapter 8 and Page 273. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is NAPA Recommendation #64.

⁶⁶ See 2005 USPTO Report, Chapter 8 and Page 273. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is Academy Recommendation #67.

- *Emphasize improved harmonization as a source of efficiency across the trilateral offices* (2005 Academy Recommendation #68).⁶⁷ This recommendation is also related to USPTO's membership in the IP5. See Chapter 2 for more information.

4. Supervisor Training

The Final Report (Recommendation #8) and Draft Reports (Recommendation # 14) specifically mention supervisor training as a recommendation. Enhanced management abilities of supervisors also feed into the overall program health of the Telework Program. Some recommendations in the 2005 Academy Panel's Report on the USPTO that relate to Supervisor Training are:

- *Enhance supervisory and management training for new supervisors.* (2005 Academy Recommendation #25).⁶⁸ This recommendation is connected to enhancing the management abilities of supervisors, which addresses both the Final and Draft Report recommendations and the overall health of the Telework Program review. This is addressed in the USPTO's Strategic Plan⁶⁹.
- *Establish a formal rotational program for examiners who aspire to careers in management at USPTO.* (2005 Academy Recommendation #30).⁷⁰ This recommendation relates to the development and maintenance of a healthy Telework Program through professional development of its participants. It also connects to the Final and Draft Report Recommendations on supervisor training. In response to this recommendation, the USPTO incorporated this element into its Leadership Development Program (LDP). The LDP was developed to promote leadership at all levels of the organization and provide a wide variety of career development opportunities. These programs feature rich and diverse learning opportunities, including classroom instruction, computer-based training, coaching, mentoring, and other development activities. Program components are designed to "cross-pollinate" participants by helping them gain new information and perspectives about operational responsibilities and leadership in business units other than their own.

⁶⁷ See 2005 USPTO Report, Chapter 8 and Page 273. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is Academy Recommendation #68.

⁶⁸ See 2005 USPTO Report, Chapter 4 and Page 269. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is Academy Recommendation #25.

⁶⁹ The USPTO Strategic Plan 2010: p47- Goal I, Obj 4: Measure and improve patent quality. B) Improve and provide effective training. P50- Goal II, Obj 6: Develop a new generation of Trademark Leaders. A) Improve and provide effective training. Number of training courses given (human capital plan). And the USPTO Strategic Plan 2014: p28- Goal I, Obj 2, B) Develop and train an adaptable workforce to meet pendency targets. 1) Identify nature and extent of training courses provided and make changes as needed. 2) Increase the number of patent examiners that can examine across a wider range of tech (generalists). P32- Goal II, Obj 2A: ...Providing targeted training to address quality issues and provide legal training and education. 4) Continue to issue training materials and exam guides and hold legal education programs on targeted issues. P36- Obj 2, A, 1) Increase training and workshops on effective leadership in a telework environment. B, 1) Increase visual training and workshop opportunities.

⁷⁰ See 2005 USPTO Report, Chapter 4 and Page 269. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is Academy Recommendation #30.

CHAPTER THREE: OVERVIEW OF THE USPTO

This chapter explains how the USPTO is organized, provides details about the Agency's work, information about the people it hires and how it operates. These factors are all part of the complex picture of how the organization is structured and functions to provide a broader context for its current challenges managing its telework programs.

3.1 ORGANIZATIONAL STRUCTURE

The USPTO is led by an Under Secretary of Commerce for Intellectual Property and Director of the USPTO (referred to as the Agency Director), and the Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the USPTO (Deputy Director). The executive leadership is also comprised of nine organizational unit heads, including the Patent Organization and Trademark Organization, each led by a Commissioner appointed by the Secretary of Commerce. The USPTO currently has more than 12,600 employees, three quarters of whom are patent examiners and trademark examining attorneys, with many of the remaining employees also having technical and legal training. Two trial and appeal boards exist for the Patents and Trademarks Organizations, the Patent Trial and Appeal Board (PTAB) and the Trademark Trial and Appeal Board (TTAB). PTAB and TTAB are responsible for hearing cases and rendering decisions for challenges to examiners' decisions. Patent applications are received at a rate of well over 600,000 per year, and expected to increase to well over 700,000 per year by 2020.⁷¹ Trademark applications are received at a rate of well over 400,000 per year, and are expected to increase to almost 700,000 per year by 2020.⁷²

Because of its statutory mandates, national importance and the complexity of the work it does, the USPTO consults with both internal and external stakeholder organizations on all aspects of its operations, programs, and functions. This helps the Agency maintain transparency and incorporate feedback from outside experts. The Agency also relies on the public to get input and feedback on multiple issues and for planning future improvement (e.g., through the Federal Register). The Patent Public Advisory Committee (PPAC) and Trademark Public Advisory Committee (TPAC) are composed of citizen members who are appointed by the Secretary of Commerce and advise the Agency Director on matters of patent and trademark operations.

The work of the Agency supports two primary functions, granting patents for the protection of inventions and registering trademarks. The USPTO subjects the patent applications it receives to a series of examination processes that ensure a fair and consistent review of patent applications. These review processes differ depending on the nature of each application and related field of research resulting in unique patents. The average time to complete a patent varies by the type of patent being processed. The time spent reviewing an application takes on average 23 hours and is significantly longer than

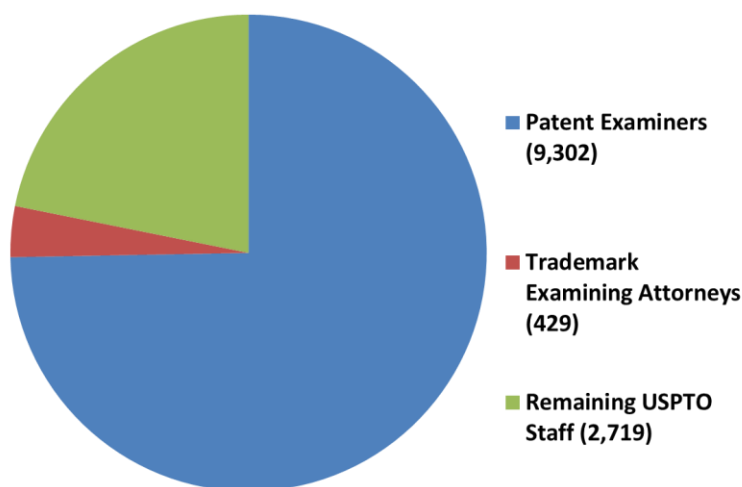
⁷¹ FY 2016 Budget Plans (President's Budget).

⁷² FY 2016 Budget Plans (President's Budget).

the time it takes to register a trademark. The review time for a patent can be spread out over a period of time, or the work can be completed in its entirety over the course of one or two weeks (the latter known as a “bi-week”).

In contrast, an initial trademark application review takes approximately one hour to complete. Even though both of the Patent and Trademark Organizations examine applications and both use production quotas to measure performance, the work is substantially different, and the education and training of the workforce for the two offices likewise differ. Figure 3-1 shows the USPTO’s workforce composition.

Figure 3-1: USPTO Workforce Composition⁷³



3.2 THE PATENT ORGANIZATION

The Patent Organization is overseen by a Commissioner for Patents who is appointed by the Secretary of Commerce. The Commissioner executes annual performance agreements with the Secretary and reports to the Director of the USPTO. The Patent Organization consists of five main operational components,⁷⁴ including the Office of the Deputy Commissioner for Patent Operations, the Deputy Commissioner for Patent Examination Policy; the Deputy Commissioner for Patent Quality; the Deputy Commissioner for Patent Administration; and the Deputy Commissioner for International Patent Cooperation.

Every year, the Patent Organization receives hundreds of thousands of new patent applications (600,000 in FY 2014). In addition to these applications, the USPTO has a current backlog (FY 2015) of approximately 600,000 unexamined patent applications. The average time for a final decision on a patent application in this backlog is now 27 months.

⁷³ USPTO 2014 Performance and Accountability Report, 11.

⁷⁴ USPTO, Office of the Commissioner for Patents (<http://www.uspto.gov/about-us/organizational-offices/office-commissioner-patents>)

The initial patent decision (i.e., “First Action on the Merits”) takes an average of 18 months. The 600,000 new applications includes from 150,000-175,000 Request for Continued Examinations (RCEs). In addition to deciding on new applications, the Agency must make decisions on RCEs, as well as on legal actions and other issues. Because a patent decision is a multi-year process, the actual backlog, RCEs, personal interviews with patent applicants, and any other work that the examiner does vary greatly depending on the workload and complexity of each individual patent. The bulk of the work at the Patent Organization is for the new applications and the USPTO believes that when it reduces this backlog, an eventual 10-month inventory will provide a steady pipeline of work for existing employees.

Patent Organization Systems and Processes

The work of examining applications for patents is divided among a number of examining technology centers (TCs), with each TC having jurisdiction over certain assigned fields (“art units”) of technology. Each TC is headed by a group director and staffed by SPEs, patent examiners, and support staff. The patent examiners review applications for patents and determine whether patents can be granted.⁷⁵ Patent examiner performance is measured according to their performance appraisal plan (PAP).

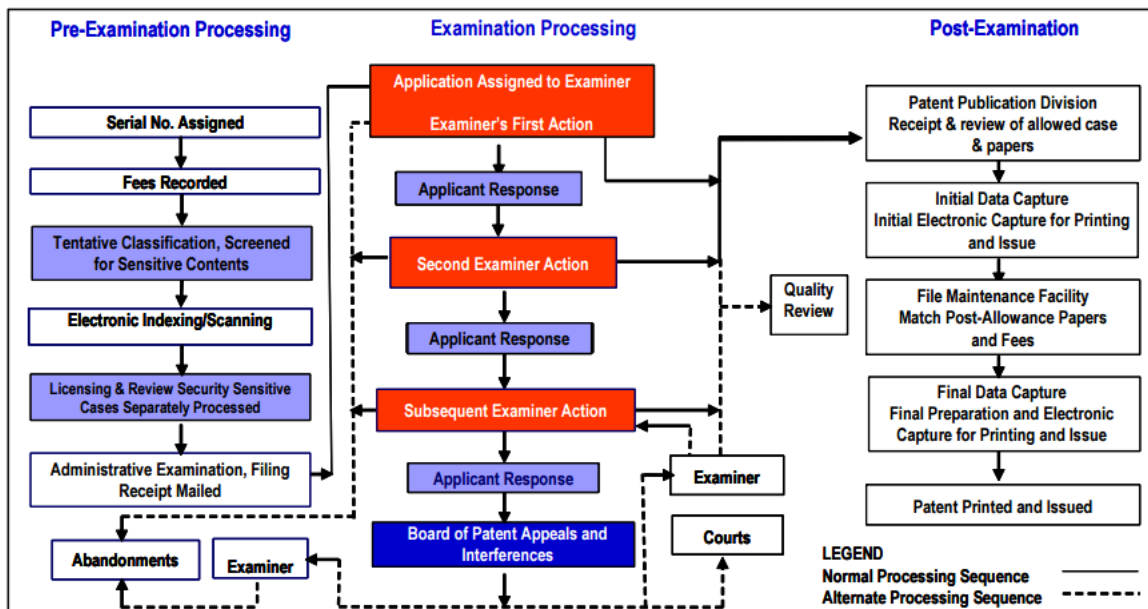
The patent examination process is divided into three process categories, including pre-examination processing, examination processing and post-examination. An application is assigned to an individual patent examiner, who ensures that the basic requirements are met. The assignment of patent applications to patent examiners is at the discretion of each Technology Center. In addition, the production expected of an examiner is based on the hours that they are using to process the patent application, exclusive of time the examiner devotes to other things, including leave, training, and interviews with patent applicants.

Patent applicants maintain a relationship with their assigned patent examiner throughout the examination process. Assuming the patent is allowed, the applicant is solely responsible for enforcement of his or her patent.⁷⁶ Figure 3-2 provides a more technical illustration of the patent examination process workflow, including both normal and alternative processing sequences.

⁷⁵ From the USPTO Website: <<http://www.uspto.gov/patents-getting-started/general-information-concerning-patents#heading-1>>.

⁷⁶ Patents process overview: <<http://www.uspto.gov/patents-getting-started/patent-process-overview#step7>>.

Figure 3-2: Patent Examination Process⁷⁷



3.3 THE TRADEMARK ORGANIZATION

This section provides an overview of the Trademark Organization and its processes. The Trademark Organization registers marks (trademarks, service marks, certification marks, and collective membership marks) that meet the requirements of the Trademark Act of 1946, as amended, and provides notice to the public and businesses of the trademark rights claimed in the pending applications and existing registrations of others.⁷⁸

Trademarks include words, phrases, signs, or a combination that identify a business's goods or services to its customers and allows customers to distinguish those goods or services from the goods and services of other competitors. The Trademark Organization functions (which parallel many Patent Organization functions) include⁷⁹:

- Maintaining the federal register of trademarks;
- Performing initial processing and preliminary examination of applications for registration;
- Examining trademark applications;
- Publishing trademarks for issuing trademark registrations;
- Offering search and information resources to provide notice of trademarks in use;
- Providing policy support;

⁷⁷ USPTO, FY 2014 President's Budget, p. 67

<<http://www.uspto.gov/sites/default/files/about/stratplan/budget/fy14pbr.pdf>>.

⁷⁸ United States Patent and Trademark Office, Fiscal Year 2014 Performance and Accountability Report, p. 11.

⁷⁹ "United States Patent and Trademark Office Overview Document," Slide 16 (November 21, 2014).

- Proposing and implementing new rules;
- Conducting employee training;
- Interpreting and applying trademark law, practice and procedure; and
- Disseminating information and raising awareness of intellectual property issues.

As with the Patent Organization, the Trademark Organization is overseen by its own Commissioner, who is appointed by the Secretary of Commerce. The Commissioner executes annual performance agreements with the Secretary and reports to the Director of the USPTO. Two Deputy Commissioners are responsible for examination policy and operational aspects of the unit. Broadly, the Office of the Commissioner for Trademarks is responsible for establishing and disseminating trademark examination policy, managing examination operations, and providing informational services to the general public.

As shown in Figure 3-1, Trademark Organization staffing for FY 2014 consisted of 697 employees (6 percent of the size of the USPTO workforce), 426 of whom are trademark examining attorneys (61 percent the of Trademarks' staff).⁸⁰ The Trademark Organization's structure and culture benefit from the smaller size of its workforce and difference in work product from the Patent Organization. In addition, Trademark attorneys do not specialize; they examine all types of Trademark applications before the Agency. In the management of its telework program, the Trademark Organization structures its program differently from the Patent Organization. Although similar, the Trademark Organization has fewer teleworking agreements with its unions (and therefore less variation in teleworking). Teleworking employees who work full-time and have not changed their duty station must still report to the office every bi-week. Eighty-six percent, of all Trademark Organization employees, telework between one and five days per week. All GS-13/GS-14 examining attorneys are eligible to telework full-time (i.e., "hotel"), and 80 percent of those who qualify do so. Nineteen percent of examining attorneys participate in TEAPP, which means they have changed their duty station, have agreed to waive reimbursement for a limited amount of travel costs when called back to headquarters, and telework full-time from 29 different states.⁸¹

Trademark Organization Systems and Processes

The core process of the Trademark Organization is the examination of applications for trademark registration. As part of that process, examining attorneys make determinations on whether to register a trademark under the provisions of the Trademark Act. This includes searching the in-house electronic database for any pending or registered marks that are confusingly similar to the mark in an application, preparing letters informing applicants of the attorney's findings, approving applications to be published for opposition, and examining statements of use in applications filed under the "intent-to-use" provisions

⁸⁰ "United States Patent and Trademark Office Overview Document," Slide 6 (November 21, 2014).

⁸¹ Trademark Organization brief from Nov. 21, 2014

of the Trademark Act.⁸² As depicted in Figure 3-3 Trademarks workflow is complex and varies by the type of filing and actions taken.

Similar to the patent application process, the Trademark Organization reviews a new application to determine minimum filing requirements, including payment of fees. The trademark process is governed by Trademark Act of 1946, as Amended (15 U.S.C. Sections 1051 et. Seq.) and Rules (37 C.F.R. PART 2-Rules of Practice in Trademark Cases). Trademark examining attorney duties include performing nearly all examination tasks in a highly automated, paperless environment, working on multiple files per day, and sending most office actions by e-mail. Examining attorneys are also highly encouraged to resolve issues with applicants over e-mail and telephone.⁸³ Figure 3-3 depicts a diagram of the trademark workflow process. Production levels are adjusted in situations where on-site employees are unable to work, such as during office closures caused by inclement weather. In addition, production levels are adjusted if an employee attends training that is over 12 hours a quarter.

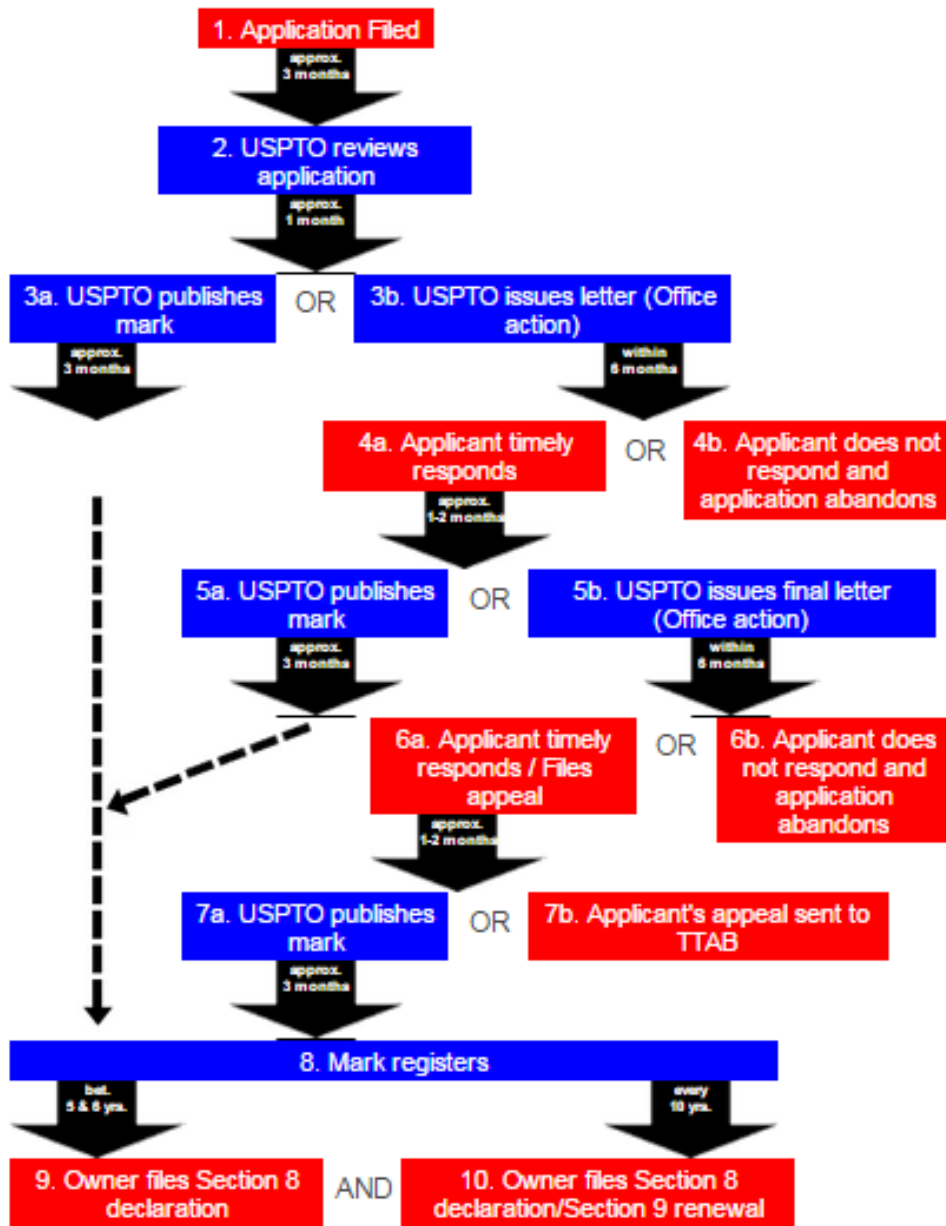
As of the second quarter of FY 2015, the Trademark Organization's first action pendency is 3.1 months and total pendency is 10.1 months. First action pendency measures the average number of months from the date of application filing to the examining attorney's first office action. Total pendency measures the average number of months from the date of filing to abandonment, notice of allowance, or registration for applications based on use in that month. It excludes applications that were previously suspended or were involved in inter-parties proceedings at the Trademark Trial and Appeal Board.⁸⁴

⁸² United States Patent and Trademark Organization, Fiscal Year 2014 Performance and Accountability Report, p. 11.

⁸³ "United States Patent and Trademark Office f," Slide 20 (November 21, 2014).

⁸⁴ Trademarks Dashboard, Second Quarter FY 2015, At a Glance, <<http://www.uspto.gov/dashboards/trademarks/main.dashxml>>.

Figure 3-3: Trademark Workflow Process⁸⁵



⁸⁵ USPTO, Section (a) Timeline: Application based on use in Commerce <<http://www.uspto.gov/trademark/trademark-timelines/section-1a-timeline-application-based-use-commerce>>. See <http://www.uspto.gov/trademark/trademark-timelines/trademark-application-and-post-registration-process-timelines> for timelines for other filing bases.

3.4 BUDGET

In 1980, P.L. 96-517 created within the U.S. Treasury a Patent and Trademark Office Appropriations Account and mandated that all fees collected be credited to this account.⁸⁶ Subsequently, in 1982, Congress significantly increased the fees charged to customers for the application and maintenance of patents and trademarks to pay for the administration of such activities. Funds generated by the fees were considered offsetting collections and made available to the USPTO on a dollar-for-dollar basis through the Congressional appropriations process. Additional direct appropriations from taxpayer revenues, above the fees collected were made to support other operating costs. Under this program, the USPTO received approximately 50 percent of its income from user fees.

Under the Omnibus Budget Reconciliation Act of 1990 (OBRA), USPTO became a fully fee-funded agency, but Congress still required that USPTO receive annual appropriations.⁸⁷ OBRA created a surcharge on certain patent fees. Funds generated through the surcharge were considered offsetting receipts and were defined as offsets to mandatory spending. The use of these receipts was controlled by the annual appropriation acts; the receipts were considered discretionary funding, and counted against the caps under which the Appropriations Committee operated. Once the OBRA surcharge on patent fees expired in September 1998, the USPTO had deposited \$233.5 million of surcharge funds as offsetting receipts that were never made available for spending on operations. The funds generated through the basic fee structure continued to be designated as offsetting collections and also subject to spending limits placed on the Appropriations Committee.

According to a Congressional Research Service Report of 2014, beginning in 1990, appropriations measures at times limited the ability of the USPTO to use the full amount of fees collected in each fiscal year. Even when the Office was given the budget authority to spend all fees, the issue remained an area of controversy. Proponents of the withholding approach to funding the USPTO claimed that despite the ability of the appropriators to impose limits on spending current year fee collections, the Office was provided with sufficient financial support to operate. Advocates of this appropriations structure saw it as a means to provide necessary funding for other programs in the relevant budget category given the caps placed upon the Committee on Appropriations. However, many in the community that pay the fees to maintain and administer intellectual property disagreed with this assessment. Critics argued that, over time, a significant portion of the fees collected were not returned to the USPTO due to the ceilings established by the appropriations process and the inability of the Office to use the fees on a dollar-for-dollar basis. They claimed that all fees were necessary to cover actual, time-dependent activities at the USPTO and that the ability of the appropriators to limit funds severely diminished the efficient and effective operation of the Office. The USPTO fiscal year 2014 Performance and Accountability Report states that USPTO has collected \$938 million in user fees (in addition to the \$233.5 million mentioned above) but it has never received an appropriation permitting it to spend these user fees to support operations.

⁸⁶ Patent and Trademark Law Amendment Act. Pub. L. 96-517, 94 Stat. 3015. 12 Dec. 1980.

⁸⁷Omnibus Budget Reconciliation Act of 1990. Pub. L. 101-508, 104 Stat. 1388. 5 Nov. 1990.

The America Invents Act of 2011, (AIA, P.L. 112-29)⁸⁸ substantially improved the funding situation for the USPTO. While it kept the USPTO spending authorization within the annual appropriations process, it also created a structure to facilitate that all fees collected would be available in a timely manner for USPTO operations in support of the fee-paying community. Specifically, the AIA created a Patent and Trademark Fee Reserve Fund (PTFRF) with the Treasury in which to deposit all actual fees collected in excess of the USPTO's appropriation for that fiscal year. Each year, Congress includes language in the annual appropriations act to direct that all fees collected in excess of its annual appropriated level to be deposited in the Patent and Trademark Fee Reserve fund and designates them as available until expended. The USPTO can access those fees to support patent and trademark operations once it executes typical reprogramming notifications.

Another key financial tenet of the AIA was providing the USPTO with the authority to set and adjust all patent and trademark fees that were previously set in statute. This was significant because the USPTO operating structure is like a business in that it receives requests for services—applications for patents and trademark registrations and charges fees projected to cover the cost of performing the services it provides. This fee-setting authority provided the USPTO with the ability to adapt to changes in its operating environment and to manage its operations in a timelier manner. These two recent advancements in the USPTO funding model have significantly improved the USPTO's ability to maintain a reliable and sustainable source of funding and provide stakeholders with the level of service they desire.

Today, the USPTO charges user fees to fully fund all of its operations, and unlike many agencies whose funds expire after one year, USPTO's funds are available until expended. USPTO can save its collections and spend them in subsequent years, thereby maintaining an operating reserve. This is something most businesses are able to do, but most agencies (whose funds expire upon expiration of the annual appropriation acts) cannot do. Congress still provides an appropriation through the Congressional appropriations process authorizing the USPTO to spend the fees it collects. Any fees collected in excess of the USPTO's annual appropriation are deposited into the PTFRF, and can be made available to the USPTO to support patent and trademark operations through standard reprogramming notifications to the congressional Committees on Appropriations. At the same time, any fee collections that are appropriated (or provided via a PTFRF reprogramming) but are not spent are carried forward as the USPTO's operating reserve. The Agency can spend these funds if needed while waiting for the next annual appropriation to be approved. Operating reserve funds are also available for additional expenses over the amount of the annual appropriation to the extent that plans are communicated to the Congress, either through the USPTO's annual spending plan or through subsequent reprogramming notifications.

The advantage of this funding model is that it allows the Agency to adequately plan for all of its funding needs and align that spending with its strategic and human capital plans to support its mission to process trademark and patent applications.

⁸⁸America Invents Act of 2011. Pub L. 112-29, 125 Stat. 284. 16 Sep. 2011.

3.5 INTERRELATIONSHIP BETWEEN STRATEGIC, HUMAN CAPITAL, AND PEOPLE PLANS

As a fully fee-funded agency with performance-based features, another way the USPTO operates differently from traditional governmental agencies and more like a business is by depending more heavily on its strategic and human capital plans to direct its spending, hiring, and other operational activities. Patent and trademark applicants and owners pay the USPTO to examine patent and trademark applications, maintain intellectual property rights, and handle any related disputes if necessary. The USPTO also employs a production-oriented performance measurement system for most of its employees.

In the FY 2010-2015 Strategic Plan, the USPTO highlighted its three mission-focused strategic goals: (1) optimize patent quality and timeliness; (2) optimize trademark quality and timeliness; and (3) provide domestic and global leadership to improve intellectual property policy, protection and enforcement worldwide. The plan also included one management goal, to achieve organizational excellence. (These strategic goals are discussed in greater detail in the section on human capital.)

While its strategic plan for FY 2014-2018 highlights the same mission and management goals of its previous strategic plan for FY 2010-2015, a key distinction between the two is the status of unexamined patent applications and the pendency (the length of time between filing a patent application and getting a final decision) of those applications. For FY 2010-2015, the Agency goal focused on reducing the number of patent applications, waiting for an examiner to take an initial action by almost 50 percent (slightly less than 10 months of inventory).⁸⁹ After significantly reducing the backlog of unexamined patent applications and their pendency over the last four years, the new strategic plan for FY 2014-2018 includes further reducing the backlog to a level that will support processing the number of new applications received each year, as well as to maintain the desired pipeline of work (10 months of inventory). While the two plans had different starting points, both were targeting the same first-action and total patent pendencies (10 and 20 months). However, the USPTO was closer to achieving that goal at the time the FY 2014-2018 Strategic Plan was published than it was when the FY 2010-2015 Strategic Plan was published.⁹⁰

As the USPTO comes closer to achieving its patent pendency and inventory targets, the Agency anticipates additional challenges to effectively manage the transition to a “steady-state” operation that include aligning workforce size with workload and addressing the reality of achieving pendency targets in certain technology areas sooner than others.”⁹¹

The strategic plan also is being used to focus efforts on outreach. The Agency has established four regional offices often used for hosting user meetings around the country with patent and trademark applicants, lawyers and others invested in intellectual property. The USPTO also continues to use a public website and other electronic tools to keep

⁸⁹ United States Patent and Trademark Office, 2010-2015 Strategic Plan, p. 5.

⁹⁰ United States Patent and Trademark Office, 2010-2015 Strategic Plan, p. 3.

⁹¹ United States Patent and Trademark Office, 2014-2018 Strategic Plan, p. 3.

employees and outside stakeholders apprised of its progress in implementing the plan. There is also a greater emphasis on quality as noted by the increased number of initiatives in this area.

3.6 WORKFORCE AND ORGANIZATIONAL CULTURE

Most of the USPTO's senior staff, such as Patent Technology Center (TC) Directors and Trademark Group Directors are long-standing employees who began their careers at the Agency. A significant number of general managers and administrators were promoted from within the organization.

An organization's culture includes the values that determine the norms, attitudes, and behaviors that are long-lasting in an organization and socialized into new hires. Culture also involves the mindsets of an organization's members and the mental models through which they interpret events. A key feature of the USPTO's culture is that its work is far more geared to measurable production than most federal agencies with a similarly highly educated workforce. USPTO hires patent examiners and trademark examining attorneys with the expectation that they will be able to process large volumes of information and issue decisions within a short timeframe. The Trademark Organization takes over 450,000 first actions on trademark applications a year and processes about one-half of a million Trademark applications. The Patent Organization examines well over one-half of a million patent applications annually. The work itself is complex and requires a significant degree of expertise and detail-oriented thought. In addition, because many examiners begin teleworking two years after being hired, they also must be able to work independently and accomplish the majority of their work virtually. Based on interviews with supervisors and senior managers, the USPTO's work and business model attracts people who prefer to work independently. Although these patent examiners and trademark examining attorneys work within art units and law offices comprising a team of experts, the work itself is conducted under a sole-practitioner model.

3.7 OVERVIEW OF INTERNAL AND EXTERNAL STAKEHOLDER ORGANIZATIONS

Intense stakeholder interest and participation exists in almost all aspects of the USPTO's work within the intellectual property community.

Outside Stakeholder Groups

Outside the formal advisory committee is a mix of organizations with an interest in patents and other intellectual property issues. Some of these organizations are larger trade groups that represent intellectual property owners, organizations that are concerned with IP in specific industries or technologies, professionals who represent patent attorneys like the National Association of Patent Practitioners, organizations that represent individual inventors like the National Society of Inventors, and the International Trademark Association.

Unions

Three unions represent USPTO employees:

- Patent Office Professional Association (POPA)—represents patent examiners and other non-Trademarks USPTO professional series positions (e.g., accountants, computer scientists, and economists).
- National Treasury Employees Union (NTEU) Chapter 245—represents trademark examining attorneys and interlocutory attorneys at the Trademark Trial and Appeals Board.
- NTEU Chapter 243—represents non-professional employees across the Agency, including technical support staff, computer specialists, and interpreters.

All of the unions interface with the USPTO management on issues such as working conditions, personnel policies, overtime rules, performance evaluation standards, awards, work schedules⁹², and telework eligibility and programs. POPA was founded in 1964 and is an independent union representing approximately 9,300 professionals in the USPTO.

The POPA executive committee, currently consisting of five officers and 40 delegates, holds regular bi-weekly meetings for officers and delegates. To better serve its members, POPA has regular office hours in its office located in Alexandria, Virginia. In addition, POPA distributes newsletters to help bargaining unit employees keep up with the latest news and events in the USPTO and the federal government.

Established in 1938, the NTEU represents approximately 155,000 non-supervisory employees of 31 federal agencies. NTEU has a national office in Washington, DC and seven field offices across the country. NTEU Chapter 245 is the local chapter representing more than 300 USPTO trademark attorneys in contract negotiations and settling workplace grievances.⁹³ NTEU Chapter 243 represents over 1,000⁹⁴ USPTO paralegals, legal instrument examiners, assistants, IT specialists, and other support staff. NTEU and POPA have the responsibility to raise the needs and concerns of employees to USPTO management.

POPA representatives and USPTO management have cited examples of improved labor-management relations and noted significant steps toward cooperative and collaborative efforts. Previously, their relationship was less constructive and played a major role in limiting the ability of the USPTO management to make changes to work processes. The Academy's 2005 study concluded that this relationship was not operating effectively. The

⁹² Appendix I provides a summary of flexible work schedule options for employees of the USPTO.

⁹³ The National Treasury Employee's Union, Chapter 245, "President's Corner."
<<http://www.nteu245.org/presidentscorner.htm>>.

⁹⁴ The Center for Union Facts, "Treasury Employees, Chapter 243."
<<https://www.unionfacts.com/lu/504421/NTEU/243/>>.

report cited, as examples, POPA's opposition to legislation and its support for increasing patent application cycle time, contrary to the Agency's primary goal to reduce it.

The USPTO and union leaders established a number of joint labor-management initiatives to improve relations, including:

- Count System Initiatives to improve the productivity of patent examiners and reduce the patent applications backlog;
- A TEAPP Memorandum of Agreement signed in July 2011 and administered by a joint oversight committee consisting of equal representation from management and three unions; and
- Collaboration on improving performance measurement plans of attorneys and examiners, strengthening employee award programs, and implementing a bar dues reimbursement program for attorneys.

The Agency meets with leadership from all three unions and members often to review current programs and address concerns. Both Agency and union leaders emphasize the importance of early communication and involving unions in pre-decisional issues. Trust and transparency are critical to the success of labor-management collaboration. Union representatives are engaged in the discussions before decisions are made. In addition, USPTO and three unions formed an agency wide labor management forum to bring together senior leaders of labor unions and Agency major business units to enhance communication and maintain effective collaborations.

The Trademark Organization has a longer history of successful collaboration with its unions. However, the Trademarks organization recently disagreed with NTEU 245 about issuing Management Guidance on Certifying Time and Attendance (T&A policy) on March 24, 2015 to Trademark managers and supervisors. The NTEU Chapter 245 filed an unfair labor practice (ULP) charge, contending that changes to the T&A policy required negotiation with the unions and that the USPTO management failed to do so.

This updated T&A guidance for managers in the Trademark Organization was implemented following issuance of similar guidance to managers in the Patents organization in January 2013. The Trademarks Management Guidance on Certifying Time and Attendance was released to centralize information from existing USPTO policies and negotiated agreements. The purpose of issuing this guidance was to remind managers of existing tools to help them perform their obligations to review and certify an employee's T&A report. In addition to the guidance, the Trademarks organization also made minor modifications to two existing production reports. The USPTO asserts that these minor modifications make it easier for managers and employees to see data reflecting an employee's work rate and the times that office actions are submitted. These modifications re-positioned existing data which had been previously available, so that the data would be more accessible. Because the guidance did not represent a change to terms and conditions of employment, the USPTO officials determined that they were not required to engage with NTEU Chapter 245 for formal bargaining on the guidance. However, a courtesy copy of the guidance was

shared with the union on March 18, 2015, a few days prior to its release to Trademarks management. In response, NTEU 245 filed an unfair labor practice (ULP), asserting that it should have been notified in advance of changes to requirements for certifying and recording T&A. Although this ULP is the first one in a long time, according to USPTO officials, it is not reflective of the good labor management relationship between the union and the Agency. The ULP was amicably resolved in July 2015.

USPTO's Public Advisory Committees

In 1999, the President signed into law the Patent and Trademark Office Efficiency Act, Public Law 106-223⁹⁵, which, among other things, established the Patent Public Advisory Committee (PPAC) and the Trademark Public Advisory Committee (TPAC) to review the policies, goals, performance, budget and user fees of the USPTO for patents (PPAC), and for trademarks, (TPAC), and to advise the Director of the USPTO on these matters (now codified at 35 U.S.C. 5). The America Invents Act Technical Corrections Act made several amendments to the 1999 Act, including the alignment of the Advisory Committee member terms by 2014, so that December 1 is now the start and end date of each three-year term. Each Advisory Committee is composed of nine voting members who are appointed by the Secretary of Commerce and serve at the pleasure of the Secretary for three-year terms.

Advisory Committee members must be U.S. citizens and are chosen to represent the interests of diverse users of the USPTO on patents (PPAC), and for Trademarks (TPAC). Members must represent small and large entity applicants located in the U.S. in proportion to the number of applications filed by such applicants. The Committees must include individuals with "substantial background and achievement in finance, management, labor relations, science, technology, and office automation"[35 U.S.C. 5(b)(3)]. Each Advisory Committee also includes three non-voting members representing each labor organization recognized by the USPTO.

Meetings of each Advisory Committee take place at the call of the respective Committee Chair to consider an agenda set by that Chair. The meetings of each Advisory Committee will be open to the public except each Advisory Committee may, by majority vote, meet in executive session when considering personnel, privileged, or other confidential information. Each Advisory Committee has at least two public meetings per year. By statute, within 60 days after the end of each fiscal year, each Advisory Committee must prepare an annual report and transmit the report to the Secretary of Commerce, the President, and the Committees on the Judiciary of the Senate and House of Representatives, and publish the annual report in the Official Gazette of the USPTO.

Patent Public Advisory Committee

For the past five years (2010-2014), PPAC has held public meetings four times per year. During these public meetings, PPAC members reviewed USPTO initiatives, financial management issues, patent operations performance, and human capital issues. USPTO

⁹⁵ Patent and Trademark Office Efficiency Act. Pub. L. 106-113. 113 Stat. 1501A-572. 29 Nov. 1999.

officials participate in each PPAC public meeting to discuss USPTO management and operational initiatives.

PPAC has a transparent, productive working relationship with the Agency and labor organizations.⁹⁶ Generally, PPAC members believe that USPTO management is receptive to their views and advice⁹⁷ and the Committee is a strong supporter of the development of USPTO telework programs. In November 2014, Esther Keplinger, then PPAC Vice-Chair (currently Chair), testified before the House Committee on Judiciary and the Committee on Oversight and Government Reform regarding the USPTO's telework program, and stated PPAC's position that the telework incidents that had received publicity were isolated and did not represent a systematic problem in the USPTO telework program. PPAC plans to continue working closely with USPTO management and the unions to support the effectiveness and efficiency of telework programs, and recommended that the USPTO, "continue to support, promote, and expand the Patents Hoteling Program and the other telework programs that are offered..."⁹⁸

Trademark Public Advisory Committee

For the past five years (2010-2014) TPAC has held three-to-four public meetings. During these public meetings, TPAC addressed a broad agenda of policy and operational issues, including legislative developments, financial management and budget, trademark operations performance, and technology development. TPAC has worked closely with USPTO management and the unions on a variety of issues. USPTO management officials participate in every public TPAC meeting to review developments in USPTO management, and in particular, Trademark operations and performance. In each of its last five Annual Reports, TPAC praised the USPTO for achieving exceptional performance. The Committee has been very supportive of the USPTO's initiatives to expand and improve its telework program, and TPAC asserts that the USPTO serves as, "A model for other government agencies in the area of e-government and telework."⁹⁹

Additional Stakeholders

There are additional organizations outside the formal advisory committees with an interest in patents and trademarks:

- Organizations that represent individual inventors (such as the National Congress of Inventor Organizations or the National Society of Inventors);
- Grass-roots groups of individual inventors, in many cities across the country;

⁹⁶ *Abuse of USPTO's Telework Program: Ensuring Oversight, Accountability and Quality*, 113th Cong. (2014)(testimony of Esther Keplinger) <http://judiciary.house.gov/_cache/files/49de38ca-8ef8-4ef1-80e1-aaef5e17e6a1/keplinger-updated-testimony-judiciary.pdf>.

⁹⁷ Ibid.

⁹⁸ USPTO, 2014 Annual Report <http://www.uspto.gov/about/advisory/ppac/PPAC_2014_AnnualReport.pdf>.

⁹⁹ TPAC, 2011 Annual Report <http://www.uspto.gov/sites/default/files/about/advisory/tpac/tpac_2011annualrpt.pdf>.

- Professional groups that represent patent and trademark attorneys (such as the National Association of Patent Practitioners or the Section on Intellectual Property Law of the American Bar Association);
- Larger trade groups that represent intellectual property owners (generally firms) or focus on legal issues [(such as the Intellectual Property Owners (IPO)];
- Organizations that are concerned with IP in specific industries or technologies;
- The International Trademark Association (INTA);
- The American Intellectual Property Law Association (AIPLA); and
- The Association of Corporate Counsel (ACC).

CHAPTER FOUR: INTERNAL CONTROLS ASSESSMENT

This chapter discusses the study team's review of the internal controls processes. A detailed analysis and the full Internal Control Report is provided in Appendix E.

4.1 DOCUMENTATION OF OPERATING PROCEDURES

To ensure that TEAPP was implemented in the USPTO effectively as well as to ensure the Telework Program had internal controls in place and complied with laws and regulations, the USPTO requested that an OMB Circular A-123, *Management's Responsibility for Internal Control*, review be performed for its Telework Program. The USPTO also requested an OMB Circular A-123 review of its T&A Process. This OMB Circular provides guidelines on improving the accountability and effectiveness of Federal programs and operations by establishing, assessing, correcting, and reporting on internal controls. The scope of the Telework Program internal control review included the controls in place during the telework policy development and implementation, USPTO's policy-compliance telework documents; the role of the manager, telework coordinator and employee telework resources; and USPTO's telework program evaluation and internal and external reporting of USPTO's telework information. The scope of the T&A Process internal control review included the controls in place when an employee records his/her time, the time approval by the employee's supervisor, the transmission of time to the National Finance Center (NFC) and the reporting that the Office of Human Resources performs on T&A information.

4.2 PURPOSE AND SCOPE

The Academy study team assessed the program controls and evaluated management control activities associated with:

- USPTO teleworkers accurately reporting time and attendance information for both regular and overtime work hours;
- Approval to work overtime and compensatory time;
- Administration of leave;
- Documented telework program requirements for employees to notify their supervisors of telework and work schedules;
- Documented telework program requirements for the use of USPTO-designated information technology and collaboration tools; and
- Whether USPTO policies and their implementation provide adequate management controls to assess the amount of completed work.

The following section highlights the steps that were taken in conducting an internal control review of the USPTO Telework and T&A Process to determine if they comply with the internal control standards outlined in OMB Circular A-123. In the USPTO Internal Control Report (Appendix E), this approach is described in detail.

4.3 INTERNAL CONTROL REVIEW PROCESS

As part of the internal control review, internal control narratives, which capture the processes and controls within a specific process area, were prepared, in coordination with USPTO subject-matter experts, in the following areas:

- Telework program;
- Time and attendance process;
- Overview of patent examination process; and
- Overview of trademark examination process.

Throughout the narratives, control activities in the Telework Program and the T&A process were identified and tested for effectiveness. Testing the control activities for the Patent examination process and Trademark examination process was not in scope for this review. The process narratives capturing the examination processes and controls for the Patent Organization and Trademark Organization were documented to obtain a better high-level understanding of the processes and to assist with testing the Telework and Time and Attendance Programs' controls.

The documentation phase involved developing internal control narratives by performing research and interviewing USPTO subject-matter experts, documenting the research and discussions and preparing the internal control narratives, with control activities. The factual accuracy of the process narratives was confirmed by the USPTO process owners. The control activities were used as the basis for developing test plans for these program areas. A list of documents and questions necessary to complete the testing was developed and provided to USPTO. The documentation USPTO provided was used to test the control activities to determine if they complied with federal financial management regulations and USPTO policy and procedures.

In addition to the internal control narratives for the Telework and T&A Process, control matrices were created that included the control activity, associated risk, the control owner, control type and method, control frequency, and whether the control was a key control for each management control. A risk assessment was conducted to determine the likelihood and impact of potential risks using a Risk Rating Matrix to score the risks and inform this evaluation of the USPTO Telework and T&A process in determining if they complied with the internal control standards outlined in OMB Circular A-123.

These control activities were tested by sampling transactions and determining their compliance and conformance with the control activities by observation or by testing transactions.

Based on the results of completing the Internal Control Review, the Academy Study Team observed and documented deficiencies (findings and observations) in control effectiveness for the control activities identified in the process narratives. For each identified deficiency (finding and observation), recommendations are included to assist in resolving the

deficiency. In addition, each finding and observation was assessed to determine if it met the definition of an internal control deficiency as defined by the American Institutes of Certified Public Accountants (AICPA).

The following audit and internal control terms are used within this report and have been defined by the AICPA in the Statement on Auditing Standards (SAS) Number 115, "Communication of Internal Control Related Matters Identified in an Audit"¹⁰⁰:

Material Weakness: A deficiency or combination of deficiencies in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis; additionally, a material weakness is a deficiency that significantly impairs the fulfillment of USPTO's mission, or that the Accountability and Performance Integration Council (APIC) determines to be significant enough to report outside of USPTO.

Significant Deficiency: A deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Internal Control Deficiency: When the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. Internal control deficiencies are not required to be reported outside the Agency.

Although currently none of the findings¹⁰¹ or observations within the internal control review have escalated to the level of an internal control deficiency, significant deficiency or material weaknesses, USPTO should take corrective actions to address the identified findings and observations to further improve the operating and design effectiveness of the program internal controls.

Listed below are the internal control related findings and observations based on the Telework and T&A Process testing. Additional detail on the process narratives, control activities, and testing procedures is in the full Internal Control Report in Appendix E.

¹⁰⁰ American Institute of CPAs, "Statement on Auditing Standards." 2015.
<<http://www.aicpa.org/research/standards/auditattest/pages/sas.aspx>>.

¹⁰¹ The terms findings and observations used within the internal control portions of the report are terms used when issues are discovered during an internal control review. These are technical terms used in internal control reviews and audits.

Telework Program

Within the Telework Program narrative explained above, 18 Telework Program control activities were tested by interviews, observation and sampling transactions to determine their compliance and conformance with the control activities. The review was conducted and the sample was taken from a population of all of the USPTO teleworkers. From the tests performed on the 18 control activities, an observation, which is the least severe internal control rating, about USPTO's conformance with the Telework Policy requirements was noted and is included below.

Observation

There was one Telework observation related to the control activity TP 3.1.7. The requirement was that each time a new employee is hired or a teleworker is terminated from the program, the BU should update this information in the telework data base. Out of the 515 employees who separated/terminated between 4/1/2014-3/31/2015, twenty four employees were still included as active teleworkers in the telework data base as of 4/1/2015. The telework database contained 9,940 active employees when the test was conducted.

Recommendation

The USPTO's Telework Program Office (TPO)/Telework Management Officer (TMO) should require the BUs to input employee separation data into the telework database in a timely manner. For better accountability, the TPO/TMO should set a specific deadline by which the BUs must make updates and document this requirement in a memorandum or official policy.

T&A Process

Within the T&A Process narrative explained above, 34 T&A control activities were tested by interviews, observation and sampling transactions to determine their compliance and conformance with the control activities. From the tests performed on the 34 control activities, one finding, which signifies that USPTO did not follow a policy or regulation, and one observation regarding USPTO's conformance with T&A requirements was noted.

Observation

There was one T&A observation related to the control activity TA 1.1.2. Timekeepers are required to inactivate user accounts in the WebTA system when employees separate from the Agency. Samples of 45 employees who separated/were terminated from USPTO between 4/1/2014-3/31/2015 were reviewed along with the final timecards to ensure that their user accounts were inactivated from the WebTA system. During the comparison of the 45 separated employees and their final timecards, it was noted that one employee had a separation date of 6/29/2014 but a timecard was submitted for the August 24-September 6, 2014 time period, which was the timecard date in our sample. Further testing showed that the employee transferred to another agency within DOC on 9/6/2014, yet had a separation date in the report from which the sample was chosen of 6/29/2014. When this occurs, the Timekeeper inactivates the user in the T&A system; however, the gaining

agency processes the paperwork in the personnel system. In this test, the timekeeper accurately coded the 9/6/2014 timesheet as final. However, the study team found that the incorrect data elements were used in the report that was run to show the separation dates for those who transferred within DOC, making it appear that the person had already separated from USPTO. The incorrect reporting occurred when an employee transfers to another DOC bureau. When the employee transferred, the USPTO found the Agency therefore does not process a personnel action for the transfer.

Recommendations

OHR and the National Finance Center (NFC) should address the reporting issue when pulling data for employees who separate from USPTO but transfer to another agency within DOC. Instead of pulling the last action USPTO processed as the “Actual Separation Date” for reporting purposes, they should pull the transfer date as the separation date.

Finding

There was one overall T&A finding related to the control activities TA 4.2.3, TA 4.2.6 and TA 4.2.7. The activities’ requirements are that all Patent overtime, compensatory time and leave requests must be consistent with the 1990 USPTO premium pay memorandum. Overtime is to be requested and approved by using a CD-81 at the Technology Center level on a bi-weekly basis. The CD-81 is what authorizes the use of these funds for the amount of overtime specified in the document. A sample of 45 employees who worked overtime, compensatory time, or credit hours on their timecards between 4/1/2014-3/31/2015 was pulled and the associated CD-81s were requested. Out of the 45 sampled, five Patent CD-81s were unable to be located, and two Patent employees exceeded the authorized overtime amount.

Recommendation

The Patent Organization should consider using the automated premium pay request, which is currently available in WebTA, as a way to further automate the collection (and maintenance) of accurate information contained in the Form CD-81. In addition, the Patent Organization should consider updating the “Overtime Policies for Professional/and Clerical Employee under the Assistant Commissioner for Patents” Policy, issued on March 26, 1990, to revisit current processes.

4.4 OVERVIEW OF COMPLIANCE OF USPTO’S TELEWORK POLICY WITH THE TELEWORK ENHANCEMENT ACT OF 2010

In addition to testing the control activities within the Telework Program process narrative, the team was asked to confirm that the USPTO has policies and procedures in place that comply with the Telework Enhancement Act of 2010 (the Act) and to document and test the implementing procedures to ensure that the USPTO is operating in a manner consistent with its policies.

To confirm that USPTO’s Telework Policy was properly implemented, the elements of USPTO’s telework policy were compared to the elements in the telework agreements

signed with the POPA, NTEU 243 and NTEU 245), USPTO signed after April 2011. The union agreements were reviewed and the elements in the USPTO policy document were compared to the elements in the union agreements, if present, and this information was documented in a matrix found in Appendix F.

This includes following the “fundamental elements” that OPM requires all agencies to incorporate into their telework programs, as well as the best practices for federal agencies that are suggested but not required, which are included below.

OPM’s fundamental elements include the following:

- Establish a policy under which eligible employees may be authorized to telework;
- Determine employee eligibility to participate in telework;
- Notify all employees of their eligibility to telework;
- Incorporate telework into Continuity of Operations (COOP) plans;
- Ensure that each eligible employee authorized to telework enters into a written telework agreement with his/her supervisor;
- Ensure that an interactive telework training program is provided to eligible employees and their managers and that the program is successfully completed by employees prior to entering into a written telework agreement;
- Designate a TMO to serve as the primary point of contact with OPM on telework matters on behalf of the Agency; and
- While developing telework policies, consult with OPM as needed for policy guidance in various areas such as performance management, pay and leave, recruitment and retention, and so forth.

The best practices that OPM suggests agencies consider include the following:

- For the type of telework specified by the agreement, describe if the agreement is for regular, recurring telework, or situational/ad-hoc/episodic telework;
- For schedule, specify days of the week and the hours to be worked during telework days;
- Outline any additional requirements (e.g., technology) beyond the prerequisites to telework outlined in the Act (e.g., training, written agreement);
- Clarify any assumptions, for example, regarding work location (e.g., if expected to work only from home) and frequency and modes of communication (e.g., email vs. telephone, core hours for contact, speed for returning calls);
- Determine and specify equipment and/or expenses that will be covered by the Agency, employee, or shared;
- Be clear on whether or not an employee is expected to work in the case of a continuity event such as a National or local emergency; during an emergency event involving inclement weather, or another situation that may result in a disruption to normal office operations;
- Note that Emergency Relocation Group (ERG) members telework at any time;

- Provide a summary for data security procedures in the agreement;
- Provide a self-certification safety checklist to telework employees as a guide when preparing the alternative work location for telework; and
- Ensure that employees know the agreement can be terminated or modified, and outline the conditions for termination/modification.

The remainder of the report provides the program review to support the findings and recommendations of the Panel's study. The distinguishing element of a programmatic review is that it takes into consideration internal controls and other policies and procedures that are established to provide structure and process into a bureaucracy. If these structures are present, understood, and followed, the next question is how the work is conducted and whether the controls are used most effectively to achieve program objectives. The programmatic review uses the internal control assessment, which determined that the USPTO has the appropriate T&A procedures in place for effective operation, and considers how these procedures work in terms of how the USPTO structures its telework program. Consideration is given to whether there are differences in production for workers who work on-site, telework part-time, or hotel full-time. Chapters 5 through 10 are part of the program review and provide detail about the select issues in the statement of work pertaining to telework. The focus in chapter 5 begins by looking at the USPTO's internal investigation into alleged T&A abuse.

PANEL FINDINGS

- **The USPTO applies the same T&A internal controls (IC) for teleworkers as it does for on-site employees. Both teleworkers and on-site workers use the automated T&A system, "WebTA." The processes and procedures required to use this system do not distinguish between the two types of workers, although the system requires all employees to use different project codes to distinguish what activities they work on and whether they are performed at a USPTO facility or at the employees' designated telework sites. There was no difference in the IC test results between the two groups.**
- **The IC review, including testing of the control activities identified in the Telework program, shows that the USPTO's internal controls over the program are in place and are designed and operating effectively to reduce relevant risks to an acceptable level. USPTO's Telework program has established adequate policies and procedures that conform to the requirements of the Telework Enhancement Act of 2010. The USPTO union agreements comply with USPTO policy. These provisions are documented, employees are trained on them, and employees follow them.**
- **Based on the Telework policy testing, an internal control observation related to separated employees not being removed from the Telework database by the BUs in a timely manner was identified. Specifically, twenty-four employees from the list of 515 separation/terminations between 4/1/2014-3/31/2015 were**

included as active teleworkers in the telework database as of 4/1/2015 (which included 9,940 employees).

- The supervisory review and certification of time is subjective in nature, meaning that each supervisor may use different communication methods during the bi-weekly reporting period to validate that their employees are working. Some supervisors review reports to verify production and some verify time by having constant communication with the employee, and therefore the evidence that an employee worked the hours recorded on their timecard is not substantiated by any documented evidence other than the supervisors' approval in the time keeping system. There is no requirement to maintain evidence and documentation to support whether any supervisors perform additional work to verify T&A before they certify an employee's timecard.
- Based on T&A testing, an internal control finding related to the Patent Organization's failure to use the required "Authorization for Paid Overtime and/or Holiday Work and Compensatory Overtime" Form (CD-81) for approval to work overtime and compensatory overtime was identified. Out of a sample of 45 employees who worked overtime, five patent CD-81s were unable to be located and two patent employees exceeded the authorized overtime amount.
- The USPTO has policies and procedures, including the USPTO Telework Policy, in place that complies with the Telework Enhancement Act of 2010 (the Act). The Telework Policy was properly implemented, and the USPTO's Union Agreements comply with USPTO's Telework Policy.

PANEL RECOMMENDATIONS

- The USPTO's Telework Program Office (TPO)/Telework Management Officer (TMO) should require the BUs to input employee separation data into the telework database in a timely manner. For better accountability, the TPO/TMO should set a specific timeframe during which the BUs must make the updates and document this requirement in a memorandum or official policy.
- The Patent SPEs should ensure that there is an approved Form CD-81 for every employee before approving overtime. The forms should be reviewed for each employee every bi-week to verify that the employees are approved to work overtime. These forms can be manual or electronic and each business unit is responsible for retaining the hard or electronic copies of the approved form for all employees within its BU.
- The Patent Organization should consider using the automated premium pay request, which is currently available in WebTA, as a way to further automate the collection (and maintenance) of accurate information contained in the Form CD-81. In addition, the Patent Organization should consider updating the "Overtime Policies for Professional/and Clerical Employee under the Assistant Commissioner for Patents" Policy issued March 26, 1990 in order to revisit current processes.

- **OHR and the National Finance Center (NFC) should address the reporting issue when pulling data for employees who separate from USPTO but transfer to another agency within DOC. Instead of pulling the last action USPTO processed as the “Actual Separation Date” for reporting purposes, they should pull the transfer date as the separation date.**

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CHAPTER FIVE: USPTO'S RECENT POLICY AND MANAGEMENT CHANGES

5.1 RESULTS OF REVIEW OF THE COMPLAINTS MADE TO THE OFFICE OF INSPECTOR GENERAL

This chapter examines the improvements in policy, guidance, and training relative to Telework and T&A made over the past several years, including those made in response to the USPTO's internal administrative investigation on T&A abuse allegations reported to the OIG in 2012. As discussed in Chapter 1, the OIG referred the matter back to the USPTO to look into the allegations. A USPTO investigation team examined the allegations and the resulting report entitled, "Internal Administrative Inquiry Report" (Final Report) was issued by the Chief Administrative Officer. The Final Report concluded that the interview responses compiled during the investigation were inconclusive as to whether T&A abuse was occurring on a systemic basis and found no records that supported such a finding of systemic abuse. However, the report highlighted a number of areas that would benefit from improvement. The Final Report contained eight recommendations.

Before the Final Report was issued, the investigation team drafted a report (Draft Report) that was circulated for internal review. The Draft Report indicated that the patent program required more controls in place to assure time was accurately reported and that business was conducted according to valid standards established by the Agency. The summary stated:

Patent Examiners have been given a considerable amount of flexibility in performing their work duties with a variety of work schedule and programs, which are important for the morale and productivity of the workforce. However, with great flexibility and trust must come accountability.

The Draft Report contained 15 recommendations. The work plan agreed to between the Academy and the USPTO requires the following:

The USPTO will provide NAPA a crosswalk between the 15 recommendations included in the draft 32 page, "USPTO Internal Administrative Inquiry Report," and the 8 recommendations included in the final 16 page report. The Academy team will look at whether the cross-walk between the 15 and 8 recommendations is reasonably accurate, and will also look at the implementation status of the 8 recommendations.

Time and Attendance Abuse

While conducting research the USPTO investigation team identified five cases of alleged T&A abuse which helped guide the development of research questions to support their review. The Academy study team reviewed the actions taken by the USPTO regarding the potential T&A abuse in the five cases identified in the Draft Report. Four out of the five employees were disciplined. The fifth employee could not be identified and no action was taken. The Academy team could not determine, based on the limited data provided by the investigation team whether T&A abuse was systemic and more prevalent among employees who telework. The employees disciplined worked both on-site and off-site, suggesting that T&A abuse is not confined to telework, or that the telework arrangement encourages T&A abuse. Moreover, the Agency's concern over the accurate reporting of T&A abuse has highlighted this issue and more cases of potential T&A abuse are being reported as shown below.

The USPTO reports that there has been an increase in attention to potential T&A abuse since 2014. In FY 2014 there were 46 total cases of potential T&A abuse referred to the Employee Relations (ER) office. In contrast during the first 3 quarters of 2015 there were 58 cases (see Table 5-1) cases of potential T&A abuse which projected for a full year would equal 77 cases. We do not know if these cases are substantiated, but clearly more cases are being reported because of the increased focused on T&A. Seventy seven cases is less than one-tenth of one percent of examiners who are being reviewed as potential T&A abusers. Therefore, it would appear to be unlikely that T&A abuse is widespread or unique to teleworkers, and it does not appear to reflect the actions of the workforce as a whole.

Table 5-1: Time and Attendance-Related Abuse Cases Increase (2014-2015)¹⁰²

Measure	Fiscal Year	
	2014	2015 (partial)
T&A-Related Cases	46	58

PANEL FINDINGS

There is no evidence that off-site workers are more likely to commit T&A abuse.

¹⁰² Ibid.

Crosswalk of the Draft and Final Recommendations

The USPTO provided the crosswalk of the recommendations in the draft report to the recommendations in the final, and the Academy created an independent version of that same information. The Academy team found that the USPTO's crosswalk was reasonably accurate and that the Final Report incorporated all but one of the recommendations in the Draft Report. The USPTO believed two of the recommendations were not addressed. The Academy and the Agency agree that the recommendation to perform a review of the Agency's awards to patent examiners was not addressed. However, the Academy believes the recommendation to enforce leave procedures was adequately addressed in the issuance of the guidance on certifying T&A, while the USPTO believes work remains on this recommendation.¹⁰³ The Academy team believes that improving the processes identified to address issues in the investigation is ongoing for all issues but that the initial work on enforcing leave-request procedures is credible.

Also, the USPTO moved quickly to address issues raised by the investigation team. The Agency issued the new guidance document referenced previously, "Management Guidance on Certifying Time and Attendance," in April 2013 (several months before the release of the Final Report) to document in more detail the procedures for certifying T&A (See Appendix G). This indicates that the USPTO took the recommendations in the Draft Report seriously and made immediate corrections. In addition, the Agency took many other steps to not only issue new policies, but also to provide training on them, to make the training mandatory in some cases, and to mandate that supervisors verify that they had completed the trainings.

PANEL FINDINGS

The USPTO has taken numerous steps to address issues raised in the Draft and Final reports (See Appendix H).

The USPTO's crosswalk of the recommendations from the draft and final internal investigations into T&A abuse was reasonably accurate, and that the Final Report incorporated all but one of the recommendations in the Draft Report.

Table 5.2 presents the Academy's crosswalk between the Final and Draft reports followed by a narrative discussion of the issues. The categories in the table follow the nomenclature used in the reports being analyzed.

¹⁰³ USPTO, Patents Office, "Management Guidance on Certifying Time and Attendance." (Washington, DC: January 11, 2013).

Table 5-2: Recommendations by Topic from the USPTO Internal Administrative Inquiry Draft and Final Reports

Report	Recommendation #	Recommendation
Final Report	1	Management Guidance on Certifying Time and Attendance
Draft Report	1	Management Should Enforce Work Schedule Policies
Draft Report	12	Enforce leave requesting procedures
Final Report	2	Communication Tools
Draft Report	2	Require employees to work in their USPTO office or at their approved telework location
Draft Report	7	Requirement to login while working
Draft Report	8	Requirement to use collaboration tools
Final Report	3	Quality Element in PAP
Draft Report	3	Implementing Endloading Deterrents
Draft Report	4	Review Quality Element in the PAP
Draft Report	6	Review Auto Count
Final Report	4	Docket Management Element in the PAP
Draft Report	5	Revise Docket Management Element
Final Report	5	Overtime Reporting
Draft Report	9	Change overtime eligibility requirements
Final Report	6	Use of Records
Draft Report	10	Delegate approval of investigations
Draft Report	11	Full use of records
Final Report	7	Consolidation of Memoranda and Policies
Draft Report	13	Consolidate/centralize memos/policies
Final Report	8	Supervisory Training
Draft Report	14	More Supervisory Training

Discussion of Each of the Recommendations from the USPTO Internal Administrative Inquiry Final Report (2013)

I. Patents Management Guidance on Certifying Time and Attendance

On April 17, 2013, the Patent Organization issued T&A guidance, “Management Guidance on Certifying Time and Attendance” (Patent T&A Guidance Memo), which specifies procedures that must be followed for an accurate implementation of the USPTO T&A Policy No-. OHR-202-05-1 (T&A Policy), in effect since June 2008.

The Patent T&A Guidance Memo reiterates that employees will have access to the previously existing automated web-based T&A system known as WebTA.¹⁰⁴ The system requires that on a bi-weekly basis.

T& A information be entered, verified, electronically certified, and collected for transmission to the centralized personnel and payroll system. Managers are required to perform a list of duties that include such administrative functions as designating timekeepers, providing the proper program, project, and activity (“PPA”) codes, and providing the personnel information necessary to create employee records in the system.

Managers are also required to perform the following essential functions:

- Be responsible for the proper recording and reporting of T&A data and use of PPA codes, to include time worked on projects or activities during the reporting period for employees under their authority;
- Certify the accuracy of T&A data in the WebTA system;
- Approve and/or deny leave requests;
- Assist the timekeeper and employee in determining the need for corrected T&A reporting; and
- Disseminate the T&A expectations and utilize the audits to eliminate the possibility of T&A fraud.

According to the Patent’s Organization T&A Guidance, managers have the final responsibility for properly recording and reporting of all T&A data for their employees. Without any concern or direct knowledge of abuse, they should certify the timesheets with reasonable certainty. The Patent T&A Guidance Memo also provides guidance on how to identify T&A abuse and what actions to take when abuse is suspected.¹⁰⁵ If a manager has direct knowledge or recognizes clear warning signs of abuse in an employee’s T&A records, the manager should first notify the TC Director.

¹⁰⁴ USPTO, Patents Office, “Management Guidance on Certifying Time and Attendance.” (Washington, DC: January 11, 2013).

¹⁰⁵ USPTO, “Management Guidance on Certifying Time and Attendance.” (Washington, DC: January 11, 2013).

The following is a sample list of behaviors described in the Patent T&A Guidance Memo that may suggest that an employee has acted in a manner in conflict with the performance, conduct, and/or leave standards of the USPTO:

- Inconsistent work load activity – No or minimal work turned in for credit while validating work hours on WebTA;
- Non-responsive to supervisory communications (e.g. requests, directives, inquiries);
- Non-responsive to internal/external stakeholder communications (e.g. email, phone, voicemail);
- Non-responsive to mandatory directives (e.g. IT security, training, meeting);
- Customer complaints;
- Failure to attend scheduled interviews, internal meetings, consultations, appeal conferences, and so forth;
- Routinely non-communicative and/or unavailable;
- Failure to use collaboration tools (when mandatory); and
- Failure to follow work schedule requirements.

The Patent T&A Guidance also provides the following steps that managers should be taking at the managers' level to address any suspected T&A inconsistencies.

- The manager should talk to the employee as soon as a concern, such as one or more of the above referenced indicators, has been noticed, to clarify, address and/or counsel the employee on the issue (SPEs should check the pseudo 3205 report, which provides a real time view into examiner production activities).¹⁰⁶
- If a manager proposes to question a bargaining unit employee on a topic that could reasonably be expected to result in the employee's discipline, then the manager must first observe the employee's *Weingarten* rights, and give the employee the opportunity to secure union representation at the examination.
- If a manager finds discrepancies or has questions concerning the accuracy of an employee's recorded T&A data, the manager should first attempt to contact the employee for clarification. Alternatively, if the employee is not available or has not responded, the manager should select the "reject/decertify" button in the WebTA system. In the remarks section, the manager must enter the discrepancy found and/or reasons for rejection.

Throughout this process, the manager must keep clear records verifying notices to the employee regarding T&A concerns, detailing meetings or conversations with the employee about his/her work hours or T&A, and documenting concerns. After noticing such discrepancies or concerns, the manager must notify his/her TC Director of concerns. In addition, managers should request clear written guidance from Employee Relations (ER) specialists on how to proceed as soon as any suspicion of T&A abuse is raised, regardless of

¹⁰⁶ The 3205 Report is an examiner-specific report showing the amount of production units employees have produced compared to the amount they should have produced. This is based on their specific art unit and the number of examining hours they have claimed.

whether it is the end of a pay period. An ER specialist can then provide guidance on how to address any T&A concerns.

Patent employees are generally required to be responsive to emails and phone calls during their working hours. The Patent Organization's guidance "Time Sheet Certification for Biweekly Instances of Employees Completing No/Minimal Work and Establishing a Lack of Responsiveness Throughout the Bi-Week" includes the following instruction:

When certifying a time sheet for the bi-week, managers should consider both the amount of work submitted for credit and the level of responsiveness of the employee. Timesheets should initially be "rejected" when both the amount of work submitted for credit and the level of responsiveness of the employee suggest that the employee may not have been working during the hours reported on the timesheet.¹⁰⁷

As a result, the management guidance found in the Patent T&A Guidance Memo provides that the amount of work submitted should be reviewed in the production system by the manager along with attentiveness to calls and email, to provide assurance that the hours claimed in the WebTA system are valid before certifying the time in the system.

Some managers interviewed by the Academy study team stated that they had clear indications of the work being produced by an employee. However, some SPE's who responded to the Academy survey said they had difficulty certifying T&A based on the information in the production system.

The Patent T&A Guidance Memo addresses enforcement of leave requests, which was identified by the investigation team as an area of concern in the Final Report. The Patent T&A Guidance Memo requires recording leave in the T&A system.

The Academy study team interviewed SPEs about steps they take in managing their employees and all reported that generally they require leave to be preapproved. However, requests for leave for illness and emergency clearly cannot be preapproved and periodically leave is reported in an email and the employee neglects to follow-up with the request through the system. However, the actual leave taken is approved after the fact through certification of the employee's WebTA.

PANEL FINDINGS

The USPTO has the requisite procedures in place to monitor T&A. The Patent Organization has taken significant action to improve the management of time and attendance by issuing new guidance and making sure that all SPEs are trained on this guidance. The Panel also finds that the Patent Organization has established comprehensive training on the T&A guidance and senior leaders personally

¹⁰⁷ USPTO, Patents Office, "Management Guidance on Certifying Time and Attendance." (Washington, DC: January 11, 2013).

emphasized to the SPEs the importance of attention to this issue. Training of examiners is still ongoing.

For effective management of examiners the manager should report time issues to ER when EITHER the amount of work produced OR responsiveness to calls or meetings is deficient. Currently the management guidance states that both the amount of work completed AND responsiveness to calls and emails must be present before concerns are reported to ER.

PANEL RECOMMENDATIONS

Management should continue to review the procedures with supervisors to ensure that they are using available tools to confirm that employees are actively engaged in patent examination.

The USPTO should change the guidance to require managers to report T&A issues to ER when EITHER failure to return calls OR the amount of work produced is not consistent with the hours claimed. The USPTO should consider implementing this revised guidance for the Trademark Organization as well.

II. Communication Tools

On June 24, 2013, POPA and the USPTO signed a Memorandum of Understanding (Communication Tools MOU 2013)¹⁰⁸ covering the use of collaboration tools. The tools were as follows:

- Instant messaging
- Document/desktop sharing and “whiteboard” features
- Virtual meeting tools
- Video communication and conferencing equipment and software
- Presence indicator

The Communications Tools MOU 2013 specified that the above tools would be mandatory for bargaining unit employees in the Patent Organization who are full-time teleworkers, patent examiners without full signatory authority being trained by senior employees, or SPEs if the senior employee or SPE’s communication preference is to use the collaboration tools. The purpose of requiring the use of these tools was to encourage collaboration.

The following question-and-answer was provided in the FAQ’s included with the Communications Tools MOU 2013:

- What is meant by “mandatory use of the collaboration tools?”

¹⁰⁸ USPTO, “Memorandum of Understanding between the U.S. Patent and Trademark Office (USPTO) and The Patent Office Professional Association (POPA) On the Use of Collaboration Tools and Effective Collaboration in the Nationwide Workforce” (Washington, DC.: June 24, 2013).

- Answer: “Mandatory use” means that generally the collaboration tools must be turned on while working. The presence indicator can be set to any status other than “Do not disturb.”

Based on this requirement, examiners should be available for collaboration with their supervisors and colleagues through these communication tools. While discussion of use of the collaboration tools has often focused on the presence indicator, even without the presence indicator, a supervisor and ER still have other “after-the-fact” records available for determining an employee’s working status, such as the record of a connection made to the Virtual Private Network (VPN). In fact, connection to the VPN is required prior to use of any of the collaboration tools. The implementation of the MOU has increased the ability to maintain contact with examiners.

On February 9, 2015, the USPTO then-Deputy Director Michelle K. Lee announced a new policy, “United States Patent And Trademark Office Policy On Work Schedule Notification, Communication, and Collaboration” that had been agreed upon in the Labor Management Forum (LMF) and with all three unions (POPA, NTEU 245, and NTEU 243).¹⁰⁹ The LMF had been focusing on ways to facilitate better communication, transparency, and notice of availability among employees and this new agreement was sought to do that, to accommodate the growing virtual workforce. The new policy, which applies to all full-time teleworkers and supervisors, covers work schedule notification, use of collaboration tools, and logging into PTONET. It became effective February 22, 2015.

The new policy provides the following:

- All full-time teleworkers must remain logged into PTONET during their working hours when PTONET is available to the teleworker. All full-time teleworkers (when working remotely) and supervisors (regardless of work location) will be signed into the electronic communication tools provided (currently Lync) when these tools are properly functioning and available.
- Full-time teleworkers and their supervisors will use the collaboration tools, including the presence indicator, to effectively communicate, participate in any USPTO events, training or appropriate business meetings. The presence indicator is used to determine when an employee is present to facilitate communications. Participants may use any presence indicator status, except that participants should not take action to block available communication methods (i.e., by setting a "do not disturb" status in Lync.).

¹⁰⁹ USPTO, Internal memo, entitled “United States Patent And Trademark Office Policy On Work Schedule Notification, Communication, and Collaboration.” (Washington, DC: February 22, 2015).

Issues Raised in the SPE Survey

Chapter 9 fully addresses the results of the Academy SPE survey. However, some SPE survey results are also pertinent here. The presence indicator is not universally required of all employees who work on-site and SPEs commented that they cannot determine when on-site employees are working because they are not co-located. Therefore SPEs and in fact all supervisors could benefit from the use of the presence indicator to help them verify whether the employee is at work and available for consultation, coaching and other discussions. All managers need to have the same tools available to manage their employees, regardless of their work location. Those exempt from the mandatory presence indicator have the same need to communicate their presence to all other employees and managers. All employees should be subject to the same requirements for using the presence indicator.

PANEL FINDINGS

The communication issues raised in the final report have been effectively addressed, by the Communication Tools MOU 2013, requiring the connection to the VPN, the use of other collaboration tools and the requirement to use the presence indicator (as directed by the USPTO Deputy Director in the 2015 agreement). However, the SPE survey has highlighted the issue that the presence indicator is not required of all employees, regardless of work location. Employees on-site are not necessarily co-located with their SPE. Since all employee teams are not co-located, the collaboration tools are an important means of communication and collaboration in a virtual environment.

Collaboration tools are needed by everyone in the Agency. Not all employees in either the Patent Organization or the Agency are covered by the 2015 MOU. This is a serious oversight for Agency-wide communication and collaboration.

PANEL RECOMMENDATION

The USPTO should extend the mandate to use the presence indicator to all USPTO employees regardless of the location where they are working.

III. Quality Element in the PAP

The third recommendation in the Final Report pertained to issues with the potential to impact patent quality.

The Final Report recommended more training on applying the Quality Element in rating examiners. It also suggested that changing the quality element in the PAP could result in improvements in addressing such issues as endloading and cases returned for errors.

Quality Element of the Patent Examiner PAP

The objective of the Quality Element of the patent examiner PAP is to assess the quality of examiners' review of the patent applications. This element accounts for 35 percent of the employee's rating and it is a critical element of the PAP.

The SPE rates each employee on whether the examiner has checked the application for compliance with applicable statutes, the manner in which the search was conducted, the determination of whether the application was for new matter, and whether the record was clear and complete. Although errors can be identified by the SPE, the rating of the quality element requires more subjectivity on the part of the SPE than the more objective data associated with the production and docket management elements.

The Final Report states that although there is no statistical data to support a conclusion that quality is not being consistently enforced as a PAP element. Some SPEs stated that the quality element is too difficult and complex to apply and enforce. The Agency has responded to concerns about reviewing and rating for quality by hiring additional Quality Assurance Specialists (QAS). In addition, the jurisdiction of re-issue applications (applications that are filed to correct an error in a patent that has not expired) has been transferred from the TCs to the Central Re-exam Unit. This change now allows the TQASs to further concentrate on TC quality efforts.

Consistent Credit Initiative

Endloading has been an issue for some examiners for many years. It is neither a new issue nor specific to telework. After the complaints were registered with the OIG, but before the Final Report was issued, Patent Organization management endorsed the Consistent Credit Initiative pilot program in Technology Center 2600 to try to solve the problem of examiners submitting much of their work at the end of the quarter to meet quarterly production targets. TC Directors from TC 2600 developed and implemented in December 2013, a program which focused on reducing pendency and improving quality by encouraging and mentoring examiners on the importance of producing consistent work credit on a bi-weekly basis. Bi-weekly reports were generated that identified any examiners in a given work group that are non-probationary, have a low number of work product turned in for credit and a low percentage of productivity, yet claim significant examining hours. The lower percentage was chosen by the Agency as an indicator of potential production weaknesses and an initial production point from which to begin improvement. SPEs were then alerted and asked to meet regularly with the examiners who meet the criteria. Repeat occurrences lead to intervention by the TC Director.

The goal of the CCI pilot was to increase interaction between the examiner and the SPE and thus mentor the employees to manage the submission of work more consistently. For the nine quarters prior to the CCI pilot, the average number of examiners submitting less than 25 percent of the required work was 228. For the three quarters after the implementation of the CCI pilot the number declined to 127 for a reduction of 44 percent. For the five quarters prior to the CCI pilot, the average quarterly number of endloaders was 55. For the

three months following the CCI pilot, the quarterly average was 33, a reduction of 40 percent. The CCI pilot was initiated Agency wide as a CCI program on October 19, 2014.

On December 5, 2014, the Assistant Deputy Commissioners issued an email to all examiners and SPEs in the Technology Centers communicating the details of the CCI program, stating:

The Consistent Credit Initiative (CCI) is a Patent-Corps-wide program intended to 1) foster good work habits; 2) increase employee engagement; and 3) communicate expectations of performing work to our Managers and Examiners. The CCI program was piloted in TC 2600 during Fiscal Year 2014 and resulted in significant improvements in Examiner and Agency operational efficiencies. More importantly, the CCI TC 2600 pilot resulted in individual examiners avoiding the pitfalls of inconsistent performance and disengagement. **Taking the current CCI criteria and applying them to Patent Corps data from FY 12-14, an Examiner exhibiting inconsistent performance during four or more pay periods during a fiscal year was over 100 times more likely to receive a performance warning based on production, and nearly 50 times more likely to receive a performance warning based on Docket Management [Academy Panel emphasis].**

Based on emphasizing expectations of working more consistently, the USPTO expects an increase in engagement leading to an increase in overall efficiency, an increase in time management, a focus on quality, and an overall positive impact on production.

Under the CCI pilot the threshold of bi-weekly production that would trigger identification of a patent examiner as subject to action was 25 percent of their production quota. The 25 percent threshold made sense when reviewing the data for the pilot TC. However, after additional analysis of data for the entire patent corps, the threshold was set at 30 percent for CCI program implementation Agency wide. Ultimately, the goal is to continually assess the effectiveness of the initiative and, if warranted, increase the threshold at which an examiner is identified as not producing enough to maintain consistency and assist all examiners to submit their work more consistently. The work of the CCI program is ongoing, but early results suggest it is successful, and may significantly enhance the ability to manage the throughput of work. Nonetheless, several comments from the SPE survey indicate that the initiative has yet to curtail the most serious cases of endloading.

Table 5.3 shows the number of examiners who have not completed 30 percent of their production. The pilot was expanded corps-wide in the second quarter of 2015. The number of examiners meeting the threshold has decreased 50 percent, falling from 1,812, to 909 from the second quarter of 2014 to the second quarter of 2015. Early data shows they have reduced the number of endloaders by half during this time period.

Table 5-3: Mid-Year CCI Comparison - FY14 vs FY15 (excludes probationary examiners)¹¹⁰

Technology Center FY '14	Q1 (PP1-PP6)	Q2	Mid-Year FY14 Total
1600	122	148	270
1700	228	226	454
2100	195	202	397
2400	205	146	351
2600	280	180	460
2800	341	297	638
2900	35	40	75
3600	309	285	594
3700	297	288	585
CORPS TOTAL	2,012	1,812	3,824

Technology Center FY '15	Q1 (PP1-PP6)	Q2	Mid-Year FY15 Total
1600	114	60	174
1700	175	97	272
2100	170	121	291
2400	191	86	277
2600	172	101	273
2800	269	137	406
2900	18	13	31
3600	253	126	379
3700	248	168	416
CORPS TOTAL	1,610	909	2,519

PANEL FINDING

The Agency developed the CCI to encourage examiners with a history of uneven production activity to submit their work more consistently. More consistent submission of work has the potential to allow SPEs more time to review work and therefore produce a higher-quality patent review. Initial results show the initiative may be driving more consistent production.

¹¹⁰ At the time of this comparison, the CCI had only been implemented Corps-wide in the 2nd quarter. This comparison reflects that timeline.

Auto-count

During the investigation of the complaints referred by the OIG, the Investigation Team reported that cases with errors returned for correction had increased with the largest number of cases returned being from GS-12s. The cause of these increased errors was attributed to the extension of auto count in the Docket Management System to an expanded number of examiners.

The quantity of work that a patent examiners completes is evaluated by comparing the amount of time that the examiner spends on patent examination to the amount of work (i.e., “production counts”) that he or she accomplishes in that time. Counts are earned at various points in the examination process, but are primarily earned upon completing a “First Action on the Merits” (FAOM) and upon disposal of the application. Meeting or exceeding one’s production goals throughout the year enables the examiner to receive bonuses and awards, as set forth in the production award union agreements. Therefore receiving credit for work completed as quickly as possible is a critical component in managing the work as well as in compensating the employee.

Traditionally, an examiner without signatory authority would only receive credit for his or her production counts after a supervisor had reviewed and approved the office action in question. But in FY 2011, the USPTO adopted a new Examiner Performance Appraisal Plan package developed by a joint task force with POPA. In part, the package allowed certain examiners to receive their production counts upon submission of the action, rather than having to wait for a supervisor to review and approve the action. This feature is known as “auto-count.”

The feature primarily affected GS-12 examiners. GS-14 Primary Examiners and GS-13s with signatory authority already had their Office actions auto-counted when they posted actions for credit. Employees at GS-11 and below had no change in when they received credit for their work because they still submitted their cases for review before counting. But under this new policy GS-12 and GS-13 examiners with no signatory authority get “non-final” type actions auto-counted. This new initiative allowed examiners to receive credit more quickly.

On June 12, 2014, the Deputy Commissioner for Patent Operations issued a memo making changes to the auto-count provisions. The memo noted that a new policy was needed because the then-established auto-count process, while giving examiners greater certainty as to their production and allowed reviewers to more thoroughly review actions throughout the pay period, had resulted in an increase in the number of office actions awaiting correction and an increase in patent term adjustment. Therefore, a new policy was being implemented. Specifically:

For GS-12 and GS-13 examiners without temporary or permanent signatory authority, the Agency would track two groups of actions. Group 1 was the number of SPE returns, for correction, that exceed the ceiling (28 days), and Group 2 was the number of SPE returns that have been in

return status on an examiner's docket for more than 28 days cumulatively. If an examiner has two returns in either Group 1 or Group 2, and in a combination of the two groups, then that examiner's auto-count privilege will be temporarily suspended.

For examiners who have had auto-count temporarily suspended, they will instead have a five day delayed auto-count. During this time a reviewer will have five days to review the action. If that review does not happen, the case will be auto-counted at the end of five days. Once suspended, auto-count will be restored after all returns in the two groups have been approved and one additional pay period has passed without any new returns falling into either group.

Docket Management Category 5 counts the number of returns. The number of Category 5 occurrences has steadily decreased since the change was made to restrict auto-count. Category 5 returns decreased from 1574 (end of FY14, 4th Quarter) to 1200 (end of FY15, 1st Quarter).

PANEL FINDING

The new Patent Organization policy of denying the examiners' ability to submit their cases for credit without review (auto-count) if the examiner has exceeded the number of errors allowed has reduced the number of cases returned for correction.

PANEL RECOMMENDATION

The USPTO should continue to monitor the number of cases returned to correct errors, to ensure that the suspension of auto-count continues to be effective.

Mortgaging

The Draft Report suggested that changes to the Quality element in the PAP may prevent mortgaging. Patent mortgaging, or work credit abuse, occurs when an examiner submits an incomplete work product for credit knowing that it will need additional work. Mortgaging is identified by the USPTO as a conduct issue and when it is proven to have occurred the employee can be terminated. The practice also disrupts workflow. Sometimes the term "endloading" is confused with "mortgaging," but the two actions are different. Cases considered to be endloading may be correct or contain inadvertent errors. Endloading is not misconduct, but also disrupts workflow.

Ultimately, a specific recommendation to address mortgaging did not emerge from the investigation.

The determination as to whether mortgaging has occurred is fact-based and begins with a review by the Technology Center Director.¹¹¹ Mortgaging is work credit abuse; examples of that include the following:

- Posting for credit blank office actions;
- Posting for credit office actions with only trivial issues generically addressed, with no substantive objections or rejections;
- Posting for credit office actions where there was no bona-fide attempt to complete the office action;
- Posting for credit an action with an omission resulting in a return by the TSS where the office actions is substantially rewritten prior to mailing back to an applicant; and
- Posting for credit an office action that contain only text copied from a previous Office action such as an action being made final with no address of applicant's response to the previous office action.

Based on the above examples of work credit abuse, a determination is made as to whether the errors were deliberate and therefore whether the action was determined to be mortgaged.

The Department of Commerce Office of Inspector General Report, *USPTO Needs to Strengthen Patent Quality Assurance Practices*(April 2015) found that disciplinary actions for patent mortgaging, which is when an employee knowingly submits incomplete work for credit, appeared to be inconsistently applied. The CCI initiative and the restriction of auto count abuse have the potential to reduce errors and instances of endloading and mortgaging. The CCI ensures that the examiner submits work regularly, rather than at the end of a reporting period. The restriction of auto count prevents examiners who are making an unacceptable number of errors from submitting cases before they are reviewed by someone who is more senior.

IV. Docket Management

The fourth recommendation in the Final Report concerned the Docket Management element, which has the objective to “conduct examining activities within prescribed timeframes,”¹¹² and was recently revised. The report recommended that docket management be monitored for cases in the “ceiling exceeded” category on their docket to ensure that examiners did not receive “outstanding” ratings of record and unjustified monetary awards.

The Docket Management element of the PAP is worth 20 percent of an examiner's overall performance score and is a “critical element”, which means that failure in this portion of the standards results in failure for the entire performance appraisal. Docket Management policies are established to assure that examiners address all requirements in the patent examination process in an expeditious manner and do not fail to address the more difficult

¹¹¹ Work Credit Abuse Guidelines to TC Director issued on June 13, 2013

¹¹² Source: internal sample of an examiner PAP.

issues in a timely manner. The Final Report demonstrated that the number of cases visible on the “Ceiling Exceeded” tab in the docket management system had quadrupled since the Docket Management element was changed. The percentage of amendments older than 112 days rose from one percent on October 31, 2011 to about eight percent on August 31, 2012.

The Docket Management element in the examiner’s FY 2011 PAP was created by an October 22, 2010 MOU (MOU 2010) between USPTO and POPA. MOU 2010 also created the Pendency Award. This award is a monetary incentive to process cases in accord with Docket Management policies.

The Docket Management system provides an objective measure of the flow of patent applications in accordance with prescribed time periods. Each case falls into one of five categories:

- Amendments with a ceiling of 98 days;
- “Special new” and “special amended” categories with a ceiling of 28 days;
- “New” with a ceiling of 56 days;
- “Expedited” with a ceiling of 28 days; and
- “Returns” with a ceiling of 28 days.

The timely examination of applications is a critical part of the mission of the Office and is of substantial importance to the patent applicants. The applicants expect that an examination will be done generally in the order that it was received, or in other words on a “first-in, first-out” basis. Docket Management policies provide examiners some latitude to manage their cases while directing reasonable adherence to the “first-in, first-out” objective.

In another MOU dated April 1, 2013, the Deputy Commissioner for Patent Operations announced the Agency and POPA agreed on the extension of the Pendency Award (Pendency MOU 2013). However, according to this announcement further renewals of the award would depend upon reducing the number of ceiling exceeded cases. To incentivize the reduction of ceiling exceeded cases, the Pendency MOU detailed several changes to Docket Management. To receive the award, among other criteria, the examiner must minimize (zero or no more than one) cases exceeding the ceiling (maximum days established within the Docket Management by which the category of case should be completed on and examiners docket). When the Pendency Award MOU 2013 was released, (end of FY 2013) the number of ceiling exceeded cases was 14,424 and by the end of FY 2014 the number had dropped to 6,658.

The Pendency Award was modified again through an MOU dated June 12, 2014 (Pendency Award MOU 2014). The new MOU continues to restrict the ability to earn the award when cases exceed the ceiling or in the event that a case does exceed the ceiling, that a predetermined number of old/asterisk cases are completed. Asterisk cases are ones that pose special challenges. Therefore, the modifications to the award requirement continue to emphasize the elimination of ceiling exceeded cases.

The Pendency Award has only been in place since FY 2011, and in that short time it has been amended twice to incentivize completing work in a desired order. The purpose of the amendments has been to incentivize closing cases that are particularly difficult or old, and so some relief in not exceeding ceilings is provided when asterisk or especially difficult cases are done. The Agency has reviewed the data in the past and has structured the award to drive completion of cases in a strategic manner. The current agreement only extends the award through the second quarter of FY 2016.

PANEL FINDING

Modifying the criteria for earning a Patent Pendency Award has been a positive tool because it has improved examiners' management of their docket.

PANEL RECOMMENDATION

The USPTO needs to continue to constantly review the Docket Management provisions and negotiate changes where appropriate to achieve the right balance between moving new cases expeditiously and completing applications that have been returned for further review.

V. Overtime Reporting

Recommendation five of the Final Report states that although there is currently no requirement that an examiner specifically identify the particular work product produced on overtime hours, the Agency should explore a requirement that examiners specifically identify the work produced in overtime hours instead of relying entirely on production reports.

The drafters of the Final Report were investigating the allegations that employees were being paid for overtime that they did not work and that employees who produce more work in the regular time allotted then claimed overtime for the additional work previously completed.

The Patent Organization considered a requirement that a product be identified when requesting overtime but ultimately rejected the idea as being impossible to administer. Currently, authorization to work overtime is based on the examiner being in a "fully successful" performance rating status which equals 95 percent of the production standard and is reviewed each bi-week after the initial quarter of the fiscal year. The examiner must also be fully successful in the other critical components of the PAP which include Quality and Docket Management. The non-production component of performance is reviewed quarterly once the initial quarter of the fiscal year has passed. Once the examiner works overtime his or her production goal is increased according to the amount of overtime worked.

The Agency believes the use of overtime is beneficial to processing its workload. According to the USPTO's analysis, the cost per production unit on overtime is approximately one-fourth the cost of producing a patent during normal working hours. This is the result of the cost of benefits, leave, retirement, equipment, and management being distributed over the basic pay of the employee.

PANEL FINDING

The Agency has procedures in place to provide supervisors a list of employees who meet the eligibility requirements of fully successful performance so they can notify employees of their right to work overtime. These procedures do not exempt the Agency from the recommendations to use CD-81 as stated in Chapter 4. Production requirements are increased for each examiner who has claimed overtime. Therefore, the use of overtime appears to achieve the objective of increasing production.

PANEL RECOMMENDATION

The USPTO should look into whether granting authority to work overtime could have additional requirements. For example, the policy on approving overtime might deny the right to work overtime to examiners who have had their auto-count suspended or who have a performance rating below the Commendable level. This would provide even greater assurance that overtime is granted to examiners performing a higher quality of work.

VI. Use of Records

In the Patent Management Guidance on Certifying T&A the manager is advised to talk to the employee as soon as a concern has been noticed. If the concern is not addressed, the manager must notify the Director and then request clear guidance from the ER specialists on how to proceed. The ER specialist can advise the manager on how to proceed. The ER specialist has full access to any records needed to assist the manager in investigating a suspected T&A violation. To assure the consistent use of records, the ER office has established policies on when records should be accessed. The USPTO has adopted a policy, across business units, that the ER Division has the authority to decide when supporting records can be accessed on T&A cases. The ER Division will work with the business unit internal ER advisors (who work with the business unit supervisors), and the Office of General Law in reviewing the supporting records when needed. Deciding officials are not involved in the decisions to pull records.

VII. Consolidation of Memoranda and Policies

The Final Report recommendation 7 arose because during the initial review of the issues, the team preparing the Draft Report was frequently unable to determine what the most current policies were on issues affecting the management of the workforce. Therefore, the team recommended there be a centralized location for all policies and memos.

The USPTO concurred with these recommendations and Patents has created an electronic central repository the “Patent Global Management Knowledge Base”, located within the Supervisory Resource Center. This centralized site contains all managerial-related memos and policies and can be accessed via the SPE Dashboard or individual Technology Center SharePoint sites.¹¹³

PANEL FINDING

The Agency has consolidated memoranda and policies in a single location by creating the “Patent Global Management Knowledge Base,” in the Supervisory Resource Center.

VIII. Supervisory Training

The Final Report contained information expressing concerns that supervisors did not know what the work schedule policies or the policies on managing T&A were, and as a result recommendation 8 was to conduct supervisory training on T&A including the following:

Work Schedules, Leave, Overtime, and Part-time Program
Management Approach to Correcting Career Employee Misconduct and Performance Concerns (implemented April 2013)

PANEL FINDING

Since the T&A Guidance was issued, extensive training has been made available and continues. ¹¹⁴

PANEL RECOMMENDATION

The USPTO should continue to provide refresher training on the management guidance concerning T&A.

¹¹³ Internal “Recommendations and Status” document provided to the study team.

CHAPTER SIX: METRICS THAT SUPPORT TELEWORK

This chapter discusses some of the basic metrics that the federal government uses to demonstrate the advantages of telework. These include showing that telework results in increased recruitment and retention of employees, continuity of operations during weather related emergencies and other federal office closures, and savings in real estate and other operational costs.

6.1 RECRUITMENT AND RETENTION

The USPTO asserts that its telework program is a major reason that people want to work and stay working for the Agency, and the Academy's Statement of Work included a requirement to analyze this issue. The study team analyzed the factors that may contribute to recruitment and retention, including the qualifications of the workforce, growth of the workforce over time, telework options, and financial incentives. The analysis focused on patent examiners and trademark attorneys, who comprised over 80 percent of the employees of the Agency during the fourth quarter of FY 2014. Throughout this chapter, the study team used the latest compiled and published data provided by the USPTO and FedScope.¹¹⁵

Based on this analysis, the Panel finds that telework is a factor that operates in conjunction with others, such as financial incentives, to create a work environment that promotes recruitment and encourages retention of high-performing patent examiners and trademark attorneys.

A Statistical Review of the Patent Examiner Workforce at USPTO

As shown in Table 6-1, over the ten-year period between 2004 and 2014, the USPTO has seen substantial growth in its patent examiner workforce—an increase of 125 percent in the number of examiners on board at the end of this ten-year period as displayed below

¹¹⁵ Data sourced from FedScope (<http://www.fedscope.opm.gov/separations.asp>). The Office of Personnel Management (OPM) Enterprise Human Resources Integration (EHRI) Program's Data Warehouse is the Government's premier source for integrated Federal workforce information. The system currently collects, integrates, and publishes data for 2.0 million Executive Branch employees on a bi-weekly basis, supporting agency and government-wide analytics. In addition, the system provides Federal workforce data to other Government systems and processes dependent upon the integrated data. The EHRI warehouse is a reporting system that stores HR, Payroll, and Training workforce information sent from Executive Branch agencies. The FedScope database includes quarterly reports on ascensions, separations, as well and on-roll data.

Table 6-1: USPTO's Patent Examiner Workforce Growth (FY 2004-2014)¹¹⁶

Fiscal Year	Patent Examiner Workforce	Design Examiner Workforce	Total Examiner Workforce
2004	3,982	60	4,042
2005	4,559	86	4,645
2006	5,239	110	5,349
2007	5,915	107	6,022
2008	6,551	105	6,656
2009	6,715	104	6,819
2010	6,533	102	6,635
2011	7,180	100	7,280
2012	8,294	109	8,403
2013	8,492	106	8,598
2014	8,941	155	9,096

Table 6-2 shows hiring from 2012-2014. The Agency's human resource professionals have confirmed they have been able to meet their hiring goals for the three years reported on below.

Table 6-2: Applications Received Versus Selections and Hires¹¹⁷

Fiscal Year	Unique Applications Received	Total Selections	Total Hired
2012	13,375	2,092	1,505
2013	3,941	525	559
2014	5,846	1,338	933

Note: Hires are reported in the year the individual was on-boarded, which is why FY 13 shows a larger number of hires than selections.

The USPTO strives to recruit examiners who will stay with the Agency, partly to recoup the large investment made in training an examiner in the early years of employment. Therefore, USPTO is continually looking for ways to attract and select candidates that are a good fit for the job. The USPTO advertises its vacancies on the federal government jobs website, USAJOBS. The Agency recruits at many grade levels, but new hires are primarily in grades GS-7 and GS-9. New examiners also come from a wide range of engineering fields. The government-wide qualification standards for engineers apply, and candidates are eligible to advance based on increasing grade levels if they have completed higher levels of education and have more years of experience.

¹¹⁶ Source: FedScope

¹¹⁷ Source: USPTO Internal Data

The role of a patent examiner is to produce a specific work product independently and consistently. The work requires a high level of expertise and also demands an ability to work independently and consistently to achieve very specific production goals. The USPTO has several recruitment tools that encourage a wide range of candidates to apply including graduating engineers, experienced engineers, and students with science. The study team compiled patent examiner new hire grade data over a nine-year period. As shown in Table 6-3, most of the USPTO's new patent examiners are hired at the GS-7 and GS-9 levels.

Table 6-3: Patent Examiner Hires (Fiscal Years 2005-2013)¹¹⁸

GS Grade	Patent Examiner New Hires								
	2005	2006	2007	2008	2009	2010	2011	2012	2013
5	109	137	130	182	64	1	72	0	0
6	0	0	0	0	0	0	0	0	0
7	600	749	559	622	273	75	332	814	236
8	0	0	0	0	0	0	0	0	0
9	153	213	370	395	227	62	358	490	250
10	0	0	0	0	0	0	0	0	0
11	92	90	32	3	10	109	62	182	50
12	0	0	6	2	8	11	4	6	0
13	2	2	3	4	4	8	4	2	1
14	2	1	1	1	3	10	0	1	0
15	0	0	0	1	0	0	0	0	0
TOTALS	958	1192	1101	1210	589	276	832	1495	537

USPTO significantly improved its process for hiring patent examiners in 2014, eliminating 76 unnecessary hiring process steps. The average time to hire a patent examiner decreased from 100 days to 77 days, thus exceeding OPM's hiring target of 80 days.¹¹⁹

In 2014, the USPTO implemented several new marketing and communication efforts to supplement previous efforts to attract high-quality employees. For example, the Office of Human Resources (OHR) regularly advertises job openings through both traditional recruitment channels and social media (e.g. Twitter, Facebook, and LinkedIn). The OHR redesigned the Agency's LinkedIn page to make it more visually appealing to potential candidates. Additionally, USPTO's recruitment campaign "You Don't Have to be in Uniform to Protect this Country's Assets" successfully boosted the Agency's recruitment of qualified veterans and transitioning service members.¹²⁰

¹¹⁸ Source: FedScope

¹¹⁹ USPTO, *FY2014 Performance and Accountability Report*, p. 86

¹²⁰ Ibid.

To supplement previous efforts to attract applicants who will be a good fit with the job requirements, the USPTO has produced a “Day in the Life of a Patent Examiner” video and designed the vacancy announcement to identify the competencies required by the position. Candidates are assessed based on skills demonstrated through their application and supporting documentation detailing experience and education.

Vacancy announcements also require candidates to complete a self-assessment on the following competencies:

- Ability to analyze and interpret written technical materials, rules, regulations, instructions and reports;
- Ability to establish and maintain effective public relations with diverse groups;
- Skill in oral communications to make clear and convincing oral presentations; and
- Ability to produce well-written information for technical material.

In addition to a well-designed vacancy announcement and video targeted to the skillset required, the USPTO:

- Designs a recruiting schedule based on analysis of what actions have generated recent hires;
- Maintains and uses a database of source for specific technical skills;
- Attends university career fairs; and
- Holds regional career fairs and virtual career events to attract many potential applicants to the Alexandria and regional offices.

The study team selected a small sample of responses to a USPTO entrance on duty (EOD) survey. Table 6-4 depicts the responses and shows the breadth of educational fields and the high level of advanced degrees of the new employees.

Table 6-4: Entrance on Duty (EOD) Survey of Patent Examiners¹²¹

FY 14 PATENT EXAMINER RESPONSES Q11.2 & Q12.1: Education Degree Received Sample size: 46 (every 20th person from survey respondents)			
Bachelor's degree: 100% of hires	Degree Type	Frequency	Percent of Total
	Electrical Engineering	17	36.96%
	Computer Engineering	6	13.04%
	Mechanical Engineering	5	10.87%
	Biomedical Engineering	3	6.52%
	Chemical Engineering	3	6.52%
	Computer Science	3	6.52%
	Physics	2	4.35%
	Aerospace Engineering	1	2.17%
	Biochemistry	1	2.17%
	Circuit Analysis	1	2.17%
	Electrical and Computer	1	2.17%
	Fire Protection	1	2.17%
	Government	1	2.17%
	Optoelectronic	1	2.17%
Master's degree: 43.48% of hires	Degree Type	Frequency	Percent of Total
	Electrical Engineering	10	21.74%
	Computer Engineering	2	4.35%
	Physics	2	4.35%
	Business/MBA	2	4.35%
	Engineering	2	4.35%
	Aerospace Engineering	1	2.17%
	Optics/Photonics	1	2.17%
	No Master degree	26	56.52%

Financial Recruitment Tools

USPTO employees receive the benefits provided to all other federal employees, and human resources staff report that benefits are cited in the interview process as an attractive incentive. In addition to these standard federal benefits, the USPTO provides financial incentives beyond those available to the typical federal agency, as it uses a special pay scale for patent examiners approved by OPM. Table 6-5 (below) represents the scale for salaries paid to patent examiners nationwide (effective January 1, 2015), unless a locality pay scale is higher.

¹²¹ Source: Internal EOD report provided by USPTO's Office of Human Resources (OHR).

Table 6-5: General Schedule Rate: Patent Examiners (Nationwide)¹²²

Grade	Step 1	Step 2	Step3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
5	42,812	44,240	45,667	47,095	48,522	49,950	51,377	52,805	54,232	55,660
7	53,033	54,800	56,567	58,334	60,101	61,869	63,636	65,403	67,170	68,937
9	61,903	63,966	66,029	68,091	70,154	72,217	74,280	76,343	78,406	80,469
11	71,304	73,681	76,058	78,435	80,812	83,189	85,566	87,943	90,319	92,696
12	81,776	84,503	87,229	89,956	92,682	95,409	98,135	100,862	103,588	106,315
13	97,243	100,484	103,725	106,967	110,208	113,449	116,690	119,931	123,173	126,414
14	114,911	118,741	122,571	126,402	130,232	134,063	137,893	141,723	145,554	149,384
15	135,168	139,674	144,180	148,686	153,192	157,698	158,700	158,700	158,700	158,700

Table 6-6 shows the General Schedule pay rates for other Federal employees in Alexandria, Virginia (also as of January 1, 2015).

Table 6-6: General Schedule Rate: Other Federal Employees (Alexandria, VA)¹²³

Grade	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
5	34,759	35,918	37,077	38,236	39,395	40,554	41,713	42,872	44,031	45,190
7	43,057	44,492	45,927	47,361	48,796	50,231	51,666	53,100	54,535	55,970
9	52,668	54,423	56,178	57,934	59,689	61,444	63,199	64,955	66,710	68,465
11	63,722	65,847	67,971	70,095	72,219	74,343	76,467	78,592	80,716	82,840
12	76,378	78,924	81,471	84,017	86,564	89,110	91,657	94,203	96,750	99,296
13	90,823	93,851	96,878	99,905	102,932	105,960	108,987	112,014	115,041	118,069
14	107,325	110,902	114,480	118,057	121,635	125,213	128,790	132,368	135,945	139,523
15	126,245	130,453	134,662	138,871	143,079	147,288	151,496	155,705	158,700	158,700

The Examiner special rates are 23 percent higher than the General Schedule rates for Alexandria at the GS-5 and GS-7 levels; 17.5 percent higher for GS-9; 11.9 percent higher for GS-11 and GS-12; and 7.1 percent higher for GS-13 and GS-14. At the GS-15 level, it is 7.1 percent higher at Step 1, reducing to no difference at GS-15 Step 10 in accordance with the government-wide cap of \$158,700 at this level.

As a result, salaries offered to patent examiners exceed those of non-patent examiners who are engineers at the same grade and step in Washington, DC, at agencies or in job series without special pay authority. Also, since these special rates are applicable nationwide examiners who relocate under the TEAPP (Telework Enhancement Act Pilot Program) will retain this pay scale except in the unlikely event that the locality rate where they move is higher than the special rate scale.

¹²² Source: USPTO Internal Data

¹²³ Source: USPTO Internal Data

USPTO is confident in its ongoing ability to recruit a sufficient number of applicants to fill future vacancies, projecting it will fill approximately 400 vacancies during Fiscal Year (FY) 2015 and is recruiting accordingly. The Agency varies the amount of outreach done and believes it can increase applications to meet its needs. Given the recent decrease in the backlog, patent officials expect to hire fewer new patent examiners in the near future.

Telework in the Recruitment of Patent Examiners

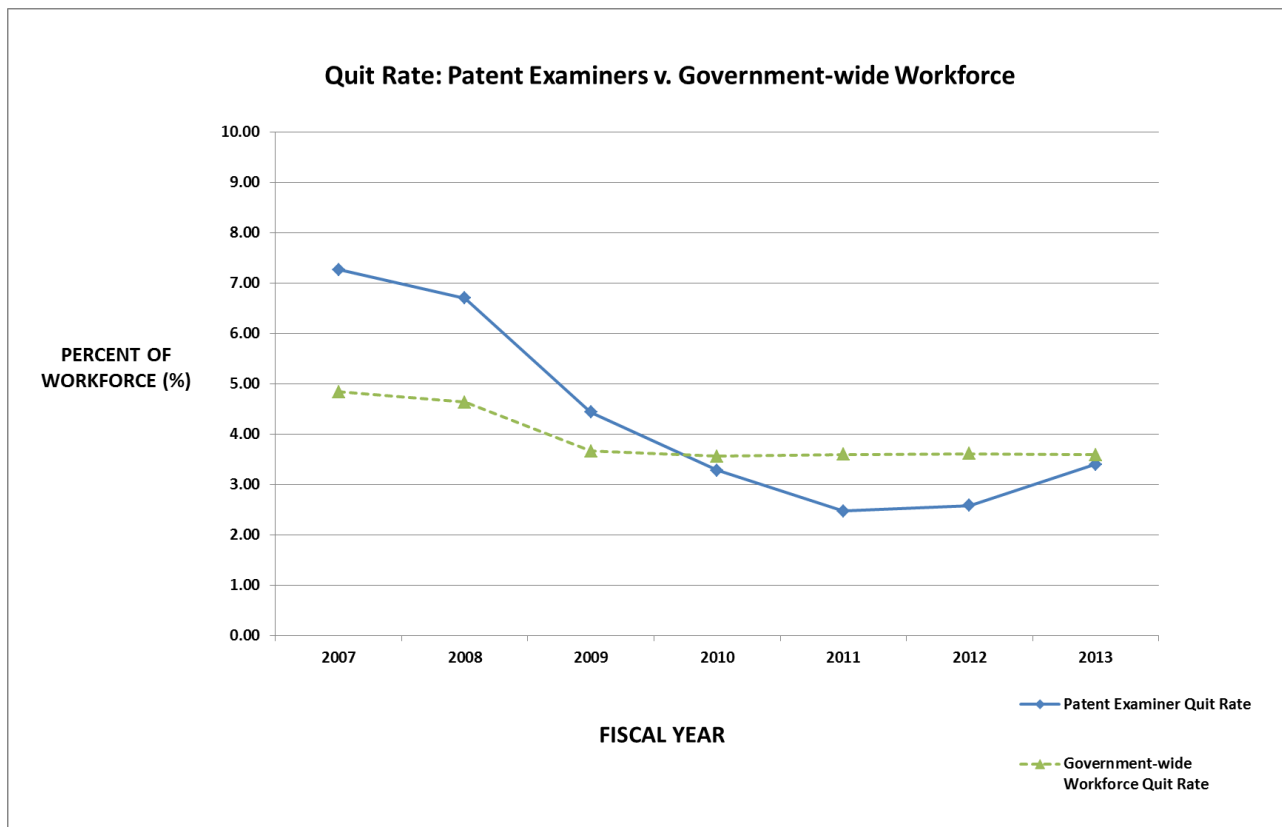
USPTO interviewees credit USPTO's ability to recruit to a variety of factors—most importantly, the Agency's identification as one of the "Best Places to Work" in the Federal Government. However, when asked the specific question as to whether telework was a major recruitment factor, interview respondents did not mention telework more frequently than health insurance, flexible work schedules, work-life balance, or the ability to progress rapidly in their career.

Patent Examiner Retention

Retention of a fully trained examiner is a critical goal of the Agency. The Agency is facing an increasing number of patents filed each year, but the overall patent application backlog is declining due to recent hiring and other efforts by the Agency. The USPTO also invests years in training an examiner to reach full production level. Therefore, it is committed to provide incentives for the hired examiners to make working for USPTO a career. As demonstrated by Figure 6-1, the Agency's overall quit rate¹²⁴ has reduced dramatically from 2007 levels, although it has increased modestly since 2011. This modest increase may be due to the recent influx of new patent examiner hires.

¹²⁴ This report utilizes the FedScope definition for quits, which is defined as voluntary resignation by an employee, abandoning one's position, joining the military, or failing to return from military furlough. Quits also include separations by the agency if an employee declines a new position or relocation (<http://www.fedscope.opm.gov/datadefn/index.asp>).

Figure 6-1: Quit Rate of USPTO Patent Examiners v. Employees Government-wide¹²⁵



Patent Recruitment Observation

Although the Patent Organization is concerned that attrition is a risk to its operation, not all attrition is detrimental to the operation. Each year, the USPTO conducts an exit survey of its departing employees, and the study team reviewed results for Fiscal Years 2011 to 2014. Although the results were collected Agency wide, 73 percent of the responses were from Patents, 4.1 percent from Trademarks, and the remainder from the rest of the Agency. Since the results were not reported separately for each of these divisions no definite conclusions can be reached.

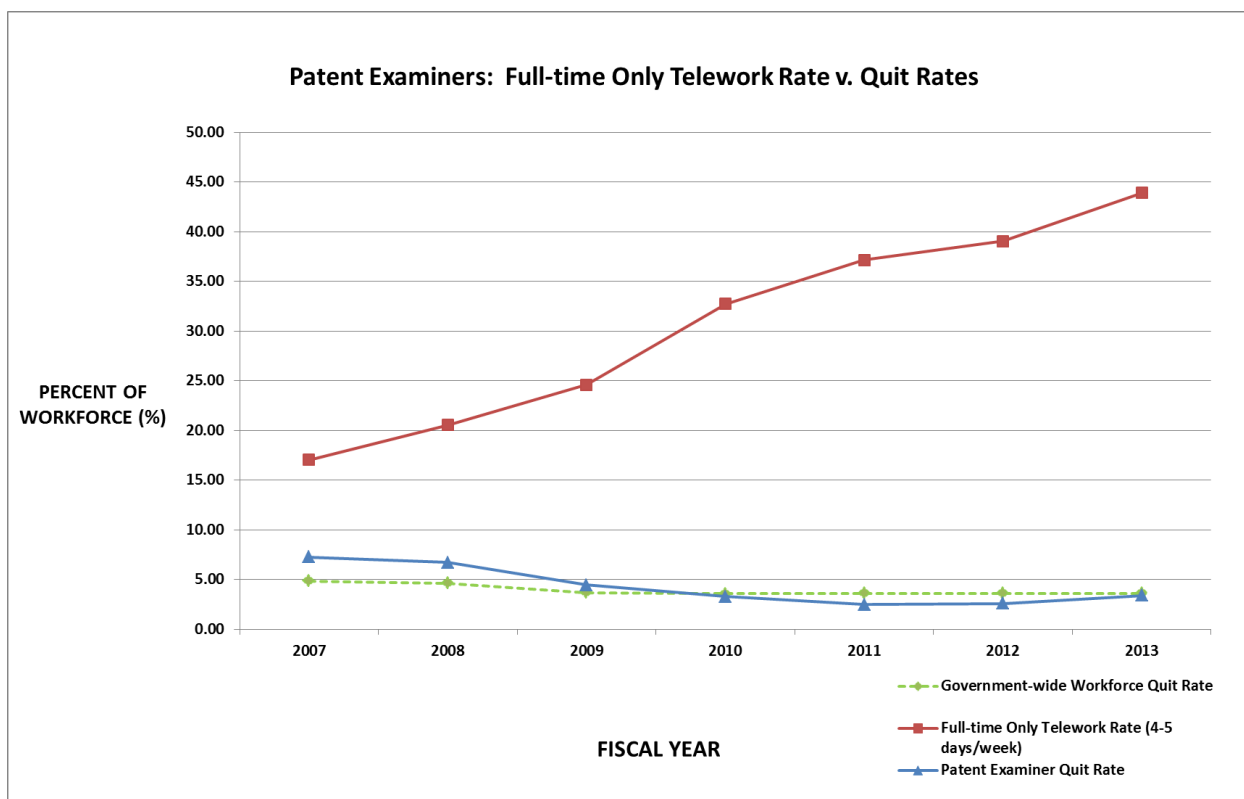
However, since three-quarters of the respondents are from the Patent Organization, the results are still informative. From 2011 through 2014, between 4 percent and 13 percent reported they were leaving involuntarily due to a termination or in lieu of being terminated. Between 37 percent and 52 percent of respondents said they were leaving because of the nature of the work, which included employees who said that the work was not interesting or that they were not the right fit for the job. Between 12 percent and 18 percent said compensation was a factor.

¹²⁵ Source: FedScope

The USPTO is striving to reduce the quit rate of patent examiners in early years. One of its major strategies in this regard is to recruit candidates that are best aligned with the skillset needed to examine patents.

The Agency believes the increase in the number of full-time teleworkers has played a role in reducing the quit rate over time. Figure 6-2 (below) shows the increase in the number of full-time teleworkers at USPTO from 2007 to 2013 compared to the change in the USPTO quit rate. The quit rate declined during the largest period of increase in teleworkers (2009 to 2011). However, as the same table shows the quit rate for all executive branch employees declined from 2007 to 2010, likely reflecting the nation's economic challenges during this period.

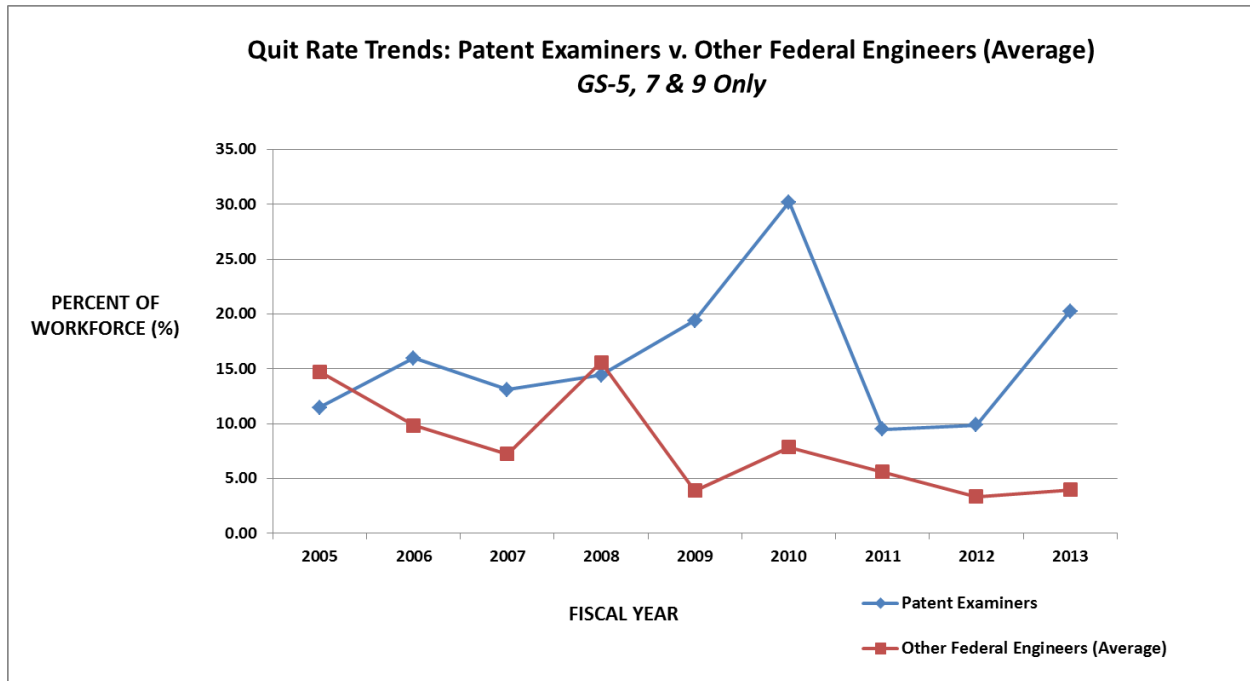
Figure 6-2: Comparison of Full-time Telework rate to Quit Rate (Patent Examiners and Government-wide)¹²⁶



Moreover, when the quit rate of examiners at the GS-5 through GS-9 levels is compared to that of other engineers in same grade across the Executive Branch (Figures 6-9 and 6-10), the USPTO's quit rate is higher than other federal engineers among all grade levels. The pattern of a higher quit rate among lower grades (GS-5, GS-7, and GS-9 levels) is also consistent across the spectrum of federal engineers. Also, as reported earlier, in recent years the number of hires by the Agency has been very high.

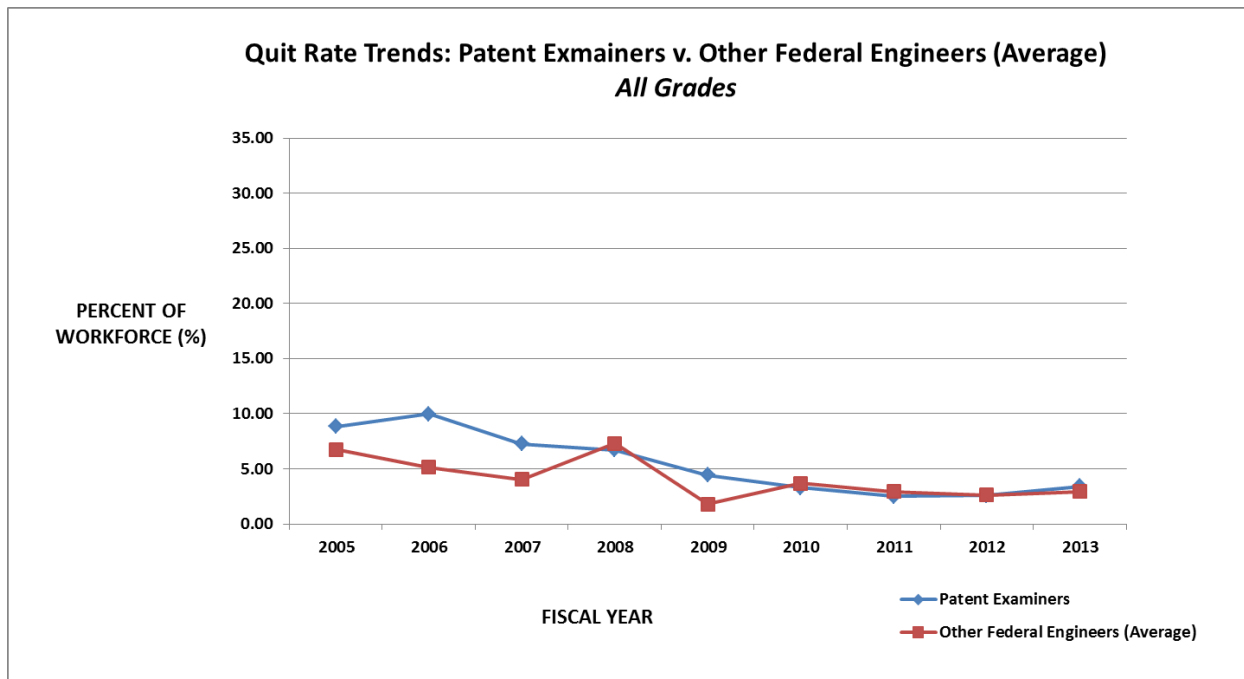
¹²⁶ Source: FedScope and USPTO Internal Data

Figure 6-3: Comparison of Quit Rates—Patent Examiners v. Other Federal Engineer (GS 5, 7 & 9 Levels Only)¹²⁷



¹²⁷ Source: FedScope

Figure 6-4: Comparison of Quit Rates—Patent Examiners v. Other Federal Engineers (All Grade Levels)¹²⁸



The USPTO’s quit rate has fluctuated over the years, and the Agency has deployed a number of tools to try and reduce it, including providing awards for achieving specific goals and the potential to move to full-time time telework once the training and experience requirements are met. The special pay rate for patent examiners was in effect prior to 2009 so is not a new retention incentive for someone to remain with the Agency, but still has an impact on the quit rate experienced as of FY 2013. Some of the decline shown in Figure 6-4 was consistent with the decline in the quit-rate for engineers federal government wide; therefore, the study team cannot state with certainty that telework was the primary reason that engineers chose to continue their employment at the USPTO.

Trademark Examining Attorneys

Growth has also occurred in the number of trademark examining attorneys hired between 2004 and 2014. According to data provided by USPTO, the number of attorneys has grown 50 percent over that period of time compared to a 125 percent growth in patent examiners. Figure 6-5 illustrates the level of growth in the trademark attorney workforce during the past 10 years.

¹²⁸ Source: FedScope

Figure 6-5: Trademark Examining Attorney Workforce Population¹²⁹



In recent years, the Trademark Organization management team has been reviewing applications for new examining attorneys by considering law school transcripts, GPA, legal experience, IP courses, and other pertinent information to find indicators for success as an examining attorney with the Agency. These factors form the basis for the screening process. The Trademark Organization team also assesses writing skills displayed in the responses to required questions about the applicants’ background and experience.

Trademark examining attorneys are hired under the excepted service hiring provisions. The entry level for Trademark examining attorney is GS-11, Step 1 (\$51,298).¹³⁰ There are also avenues to reinstate attorneys who were previously employed in the position.

The duration of the vacancy announcement has been limited to seven days recently to reduce applications to a number that can be thoroughly reviewed. The data in Table 6-7 shows that the number of applications received under the new examining attorney hiring announcement, as of 2014, are approximately 33 times larger than the number of selections made.

¹²⁹ Source: FedScope

¹³⁰ OPM, GS Base Salary Table (<http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2015/GS.pdf>), effective as of January 2015.

Table 6-7: Application & Hiring Statistics for Trademark Attorney Positions¹³¹

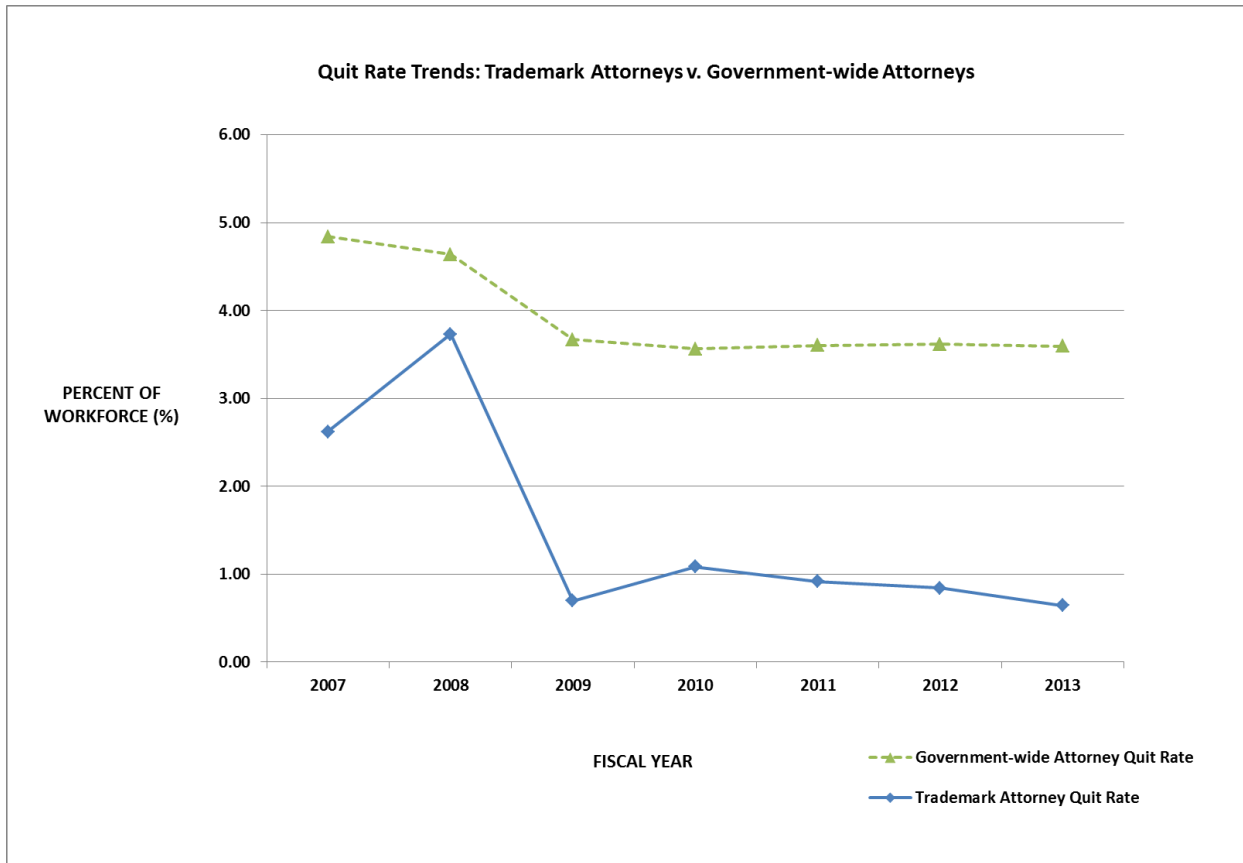
Fiscal Year	Applications Received	Number Referred	Number Hired
2012	509	414	20
2013	732	617	30
2014	701	640	30
2015	1,003	935	40

Trademark Recruitment and Retention Observations

The Academy study team interviewed the human resources and Trademark Organization staff involved in the recruitment and selection process. They reported other reasons for the ample candidate pool, including the opportunity to take a position with promotion potential, job security, and federal benefits (such as health, retirement, and leave). Senior trademark managing attorneys, interviewed by the study team, said that telework may have been a factor in reducing the quit rate since 2008. However, at the same time, the nation's economic challenges in recent years have reduced the need for trademark attorneys in the private sector and also have likely contributed to the Trademark Organization's ability to retain examining attorneys. Figure 6-6 depicts quit rate trends for examining attorneys compared with the rest of the federal workforce.

¹³¹ Source: USPTO Internal Data

Figure 6-6: Comparison of Quit Rates—Trademark Attorneys v. Government-wide Attorneys¹³²



6.2 ANALYSIS OF CONTINUITY OF OPERATIONS AND THE PATENT ORGANIZATION’S ABILITY TO CONTINUE PRODUCTIVE WORK DURING WEATHER EMERGENCIES OR OTHER OFFICE CLOSURES

The Office has negotiated language in all union agreements that require employees who are teleworking to continue to work from their home during closures due to weather or other events that prevent them from traveling to their work sites.

The study team reviewed the closing schedule for the Washington, DC metropolitan area from FY 2009 to 2014. They used an estimate of nine hours given per day per patent employee to recognize the large number of employees on a ten hour day schedule. The study team also estimated two hours excused absence for late arrivals, three hours for early dismissals, and four hours for a noon opening. The result was an average of 25 hours of excused absences annually for employees not on a full-time telework schedule. There is substantial variation year to year, but the study team believes a six-year period is a reasonable span to capture the variation. The resulting estimated hours worked of excused absences per patent employee may be found in Table 6-8.

¹³² Source: FedScope

Table 6-8: Total Hours for Excused Absences (FY 2009-2014)¹³³

Fiscal Year	Hours
2009	11
2010	43
2011	9
2012	20
2013	24
2014	42
Average	25

Although closure decisions outside of Washington, DC are made locally, the study team assumed the same 25-hour average applied nationwide.¹³⁴ The savings estimate was based on the entire patent corps. The percentage of the week off-site teleworkers were working was applied to the number of patent employees using that telework schedule. For example, for employees teleworking four or five days per week, the assumption is that they would receive no excused absence due to government closure (i.e., the Agency would benefit from 25 hours of work gained). However, it is assumed that a person who only teleworked one day per week would have a twenty percent chance of working through closures. The result was that 68.3 percent¹³⁵ of employees in the Office of Patents would work 25 hours more on average annually in a year than employees who were not on telework agreements.

These additional annual hours totaled 137,000 hours annually.¹³⁶ The study team applied an average annual salary for USPTO employees of \$108,305, based on data from FedScope as of September 30, 2014. This is an hourly rate of \$51.92. Therefore, it is estimated that the agreements requiring employees working away from the office to continue to work during government closures saves about \$7 million in an average year.

The study team also estimated the savings for the 6,730 examiners in a telework program on September 30, 2014. It is estimated that, based on the telework schedules of these examiners, 4,663 would be required to work during the dismissals for 116,600 hours of time saved. This is equivalent to 56 examiners and about 4,025 additional patents processed per year.

¹³³ Source: USPTO Internal Data

¹³⁴ Due to the small number of individuals working for the USPTO outside of the Washington, DC metropolitan area, this average calculation does not incorporate closure data for other jurisdictions.

¹³⁵ This number relies on the following data calculation: 5,476.3[Number of teleworking employees “protected” based on the probability of working on a day of closure] / 8,021 [Total potential teleworking Patents Organization employees]/5,473.3 = 68.3%. Staffing data sourced from the USPTO.

¹³⁶ This number relies on the following data calculation: 5,476.3[Number of teleworking employees “protected” based on the probability of working on a day of closure] X 25 [Established average of hours worked annually during agency closure] = 136,907.5 total annual hours. Staffing data sourced from the USPTO.

6.3 ANALYSIS OF REAL ESTATE EXPENDITURES

As federal agencies continue to plan for and adapt to a telework-based model, real estate and ancillary expenditures are key considerations. In addition to re-examining the physical footprint, comprehensive strategic planning includes space utilization, proportion of space types, office location(s), and space design.¹³⁷ As stated in US Executive Order 13327, “departments shall recognize the importance of real property resources through increased management attention, the establishment of clear goals and objectives, improved policies and levels of accountability, and other appropriate action.”¹³⁸ This approach is designed to accommodate a federal workforce with a growing need and desire for “mobility” and to maximize potential savings in a less space-reliant era.¹³⁹

Agencies’ approach to planning real estate needs in the context of varying telework programs government-wide. However, GSA has established guidelines and best practices for all federal entities. Regarding workplace location, GSA has authorized several alternative workplace arrangements (AWA), including telecommuting, hoteling, virtual offices, telework centers, and hot desking.¹⁴⁰ In addition, GSA permits agencies to provide equipment and telecommunications connections may be provided to alternative worksite employees based on an understanding that any equipment remains government property and equipment location is consistently audited.¹⁴¹ At a broad level, such guidelines provide clarity to agencies in their real estate and IT planning processes as they transition their physical footprint.

Patents Real Estate Analysis: Past & Current Structure

A previous real estate analysis for USPTO was released in 2012 by the Department of Commerce Office of Inspector General (OIG). The OIG analysis found that USPTO avoided \$15.88 million annually in real estate costs related to the Agency’s Patent Hoteling Program (PHP) alone. In addition, an internal estimate conducted by USPTO identified \$19.88 million in office space cost savings as a result of all of its hoteling programs. Although the USPTO has not modified the allocation of office space because of union agreements, which this calculation incorporates, the Agency is “exploring options to restack and reconfigure spaces within the existing square footage to accommodate future growth of employees.”¹⁴²

Based on an August 8, 2013 directive from the DOC, the department has adopted a standardized space utilization rate (170 square feet per person) including office and all common/ancillary spaces. This directive is supported by seven principles for the Agency to follow, including “supporting maximum utility” and to “promote sustainable workplaces

¹³⁷ GSA, *Leveraging Mobility, Managing Place*, 2010, p. 8

¹³⁸ Executive Order 13327. February 4, 2004, Federal Real Property Asset Management, p. 5897

¹³⁹ GSA, *Leveraging Mobility, Managing Place*, 2010, p. 2

¹⁴⁰ GSA, Guidelines for Alternative Work Arrangements (AWA), <http://www.gsa.gov/graphics/ogp/AWABulletin-b3-2006_R25U8_0Z5RDZ-i34K-pR.pdf>

¹⁴¹ GSA, Guidelines for Alternative Work Arrangements (AWA), <http://www.gsa.gov/graphics/ogp/AWABulletin-b3-2006_R25U8_0Z5RDZ-i34K-pR.pdf>

¹⁴² USPTO, *2014 Performance and Accountability Report*, p. 136 <<http://www.uspto.gov/about/stratplan/ar/USPTOFY2014PAR.pdf>>.

that can adapt to changes in work processes and staffing.” The overall department goal is to support greater efficiency and alignment of resources across operating units. Along with the previously cited Executive Order, the department conforms to OMB guidance and a Presidential memorandum.¹⁴³ However, per the Patent and Trademark Office Efficiency Act (PTOEA), the USPTO has been provided with certain administrative flexibilities independent of the Department of Commerce, including the management of its office space.¹⁴⁴

The key components of the Academy’s analysis differ from the previous analyses in that it accounts for all of USPTO’s Patents telework programs, leading to a more comprehensive calculation. Additionally, OIG structured its analysis by differentiating between “First-Year” and “Subsequent-Year” costs among PHP and Non-PHP participants, whereas this analysis utilizes “With Equipment” and “Without Equipment” calculations to account for equipment and IT-related disparities. This analysis also provides a distinction between part-time employees with two different standards of Agency-provided equipment.

Patents Real Estate Analysis: On-site versus Telework Cost Components

The extent to which USPTO is able to realize savings from its telework programs for Patents employees depends on several factors, such as real estate and related costs, the IT equipment suite¹⁴⁵ virtual infrastructure, remote technical support, support services for teleworkers, the provision of transit benefits, and how Internet Service Provider (ISP) services are procured. Other crucial factors are the local market rate for renting office space and the amount of space dedicated to hoteling employees. This scenario demonstrates the need to continually balance the Agency’s reduction in traditional overhead costs with additional costs incurred by the USPTO’s telework programs, such as Patent Hoteling Program (PHP), Patents Management Telework Program (PMTP), the Patents Telework Program (PTP), and the telework program designated for its National Treasury Employees Union (NTEU) employees (PTP-N). Tables 6-9 and 6-10 illustrate the latest independent per-employee measures and aggregated costs, respectively.

¹⁴³ Additional authority on real estate policy has been provided in Presidential Memorandum, “Disposing of Unneeded Federal Real Estate: Increasing Sales Proceeds, Cutting Operating Costs, and Improving Energy Efficiency,” dated June 10, 2010; Office of Management and Budget (OMB) Memorandum M-12-12, *Promoting Efficient Spending to Support Agency Operations*, dated May 11, 2012; and Office of Management and Budget Management Procedures Memorandum No. 2013-02, *Implementation of OMB Memorandum M-12-12 Section 3: Freeze the Footprint*, dated March 14, 2013.

¹⁴⁴ The Patent and Trademark Office Efficiency Act (PTOEA), 1999.

¹⁴⁵ The IT equipment suite does not include assistance at an employee’s home to ensure that equipment is operational.

Table 6-9: FY 2014 Cost Comparison by Patents Employee Type¹⁴⁶

Factor	Full-time telework Employees ¹⁴⁷	Part-time Telework Employees (Standard 1) ¹⁴⁸	Part-time Telework Employees (Standard 2)	Non-Telework Employees
Rental Cost¹⁴⁹	N/A	\$6,650	\$6,650	\$6,650
Hoteling Space¹⁵⁰	27.47	N/A	N/A	N/A
Equipment¹⁵¹	3,999	4,561	4,912.12	3,564
Enterprise Remote Access Services & Support	211.90	211.90	211.90	N/A
Desk/Flex Reservation System (RoomRez)¹⁵²	.78	N/A	N/A	N/A
Transit benefits¹⁵³	N/A	1,080	1,080	1,080
VPN & Portal System	184.21	184.21	184.21	N/A

¹⁴⁶ With the exception of equipment (explained in footnote 125), all cost factors are annualized.

¹⁴⁷ Full-time Patents telework program participants are defined as working from home 4-5 days per week; part-time participants are defined as working from home approximately 1-3 days per week or less (i.e., 10 hours per bi-week). It is assumed that all full-time participants have relinquished their office space and do not use transit benefits.

¹⁴⁸ Standard 1 for part-time employees is based on the typical equipment cost for 1-day/week or 10 hours per bi-week telework program participants; Standard 2 is based on a weighted average of equipment cost for 2-3 day/week telework program participants. Although there are numerous standards for equipment based on business need, we have only included the two major equipment configurations as reported by USPTO for part-time Patent telework program participants.

¹⁴⁹ These calculations are based on an independent report of the Alexandria City, VA market rental rate for Class A office space (\$38 per square foot) as of Q4 2014, including all tax and utility costs (<http://www.colliers.com/-/media/2EE14627BFBC4F12A700FC57A0853F7A.ashx>). Based on standard office space allocated for GS-12 and GS-13 employees (receiving 100 square feet and 200 square feet of office space, respectively), this calculation applies a weighted average of 175 square feet per workspace for full-time teleworkers.

¹⁵⁰ The USPTO has implemented approximately 92 hoteling work spaces for its full-time Patent employees, and we have utilized 35 square feet per work space for this calculation, allocated on a per-employee basis for full-time Patents employees. Additionally, this aligns with GSA's standard for "externally mobile" workers. Please see the methodology for further information.

¹⁵¹ Although equipment is an initial cost, we sought to account for it in this calculation using the Full-time, Standard 1 and Standard 2 configurations, as previously noted. All other employees receive an equipment suite as new hires for on-site work only. Also, as the cost of equipment is periodic, occurring approximately every five years, this is excluded in a separate calculation.

¹⁵² Although the Desk Flex system is used only by the Trademarks Organization and the Patent Trial and Appeal Board (PTAB), this number reflects the FY 2014 expenditure averaged among all full-time teleworkers.

¹⁵³ Eligible USPTO employees currently receive a maximum monthly transit subsidy of \$130. Not all part-time teleworking and non-teleworking employees receive the full subsidy; the amount is based on an average annual subsidy provided to participants.

<i>ISP Charge/Reimbursement</i> ¹⁵⁴	1,140	N/A	N/A	N/A
Including Equipment	\$5,563	\$12,687	\$13,038	\$11,294
Excluding Equipment	\$1,564	\$8,126	\$8,126	\$7,730

Table 6-10: Aggregated Annual Real Estate & Related Cost Savings¹⁵⁵

Calculation Type	Full-time Employees		Telework		Part-time Employees (Standard 1)		Telework		Part-time Employees (Standard 2)		Total Savings
	Total Cost	Differential ¹⁵⁶	Total Cost	Differential	Total Cost	Differential	Total Cost	Differential	Total Cost	Differential	
Including Equipment	24,783,165	+25,531,605	21,720,144	-2,384,816	24,172,452	-3,233,376					\$19,913,413
Excluding Equipment	6,967,620	+27,469,530	13,911,712	-677,952	15,065,604	-734,184					\$26,057,394

Methodology & Analysis of Real Estate Cost-Savings

For the purpose of this calculation, it is assumed that part-time telework program participants maintain standard office spaces at the USPTO’s headquarters.¹⁵⁷ For hoteling costs, the USPTO confirmed the amount of allocated space also complies with GSA’s guidance for office space. Full-time teleworkers who only occasionally visit their workplace appear to best align with the “externally mobile” work style, which is meant for employees who spend “significant amounts of time working away from the office” and have a need for collaboration space. The recommendation for space provided in this arrangement ranges between 30-48 square feet per person.¹⁵⁸ In an effort not to use more office space, the

¹⁵⁴ Part-time teleworkers within the Patents Organization are ineligible for ISP reimbursement. Otherwise, Patent Hoteling Program (PHP) participants must go through a reimbursement process to receive ISP service coverage; the reimbursement rate ranges from 50-100%, not to be exceeded by an amount of \$120, depending on how their usage is certified. An internal memo, dated January 14, 2015, outlines the stipulations of ISP reimbursement and service coverage for Patent teleworkers. Any personal use of ISP service, less than 50% of total usage, is reimbursable at a 50% rate. Employees are reimbursed in-full for ISP usage dedicated exclusively to work activities. For the purpose of this calculation, an average cost of \$95 per month is utilized for all telework program participants.

¹⁵⁵ Source: USPTO Internal Data

¹⁵⁶ The differential is the aggregated savings among teleworkers subtracted from the anticipated cost of working full-time on-site. The positive indicator is reflective of net savings; a negative indicator is reflective of net loss.

¹⁵⁷ Office space, which may be in single offices, shared offices or workstations, is contingent upon grade level, as specified in union agreements, and position. Through various Collective Bargaining Agreements, employees GS-13 and above must be provided with private offices of approximately 150 square feet. See POPA Collective Bargaining Agreement 1986, p.95, III E., Also see NTEU 245, Collective Bargaining Agreement, Article 14, p. 42, December 22, 2000; and NTEU 243, Partnership Recommendation: The U.S. Patent and Trademark Office and The National Treasury Employees Union, Chapter 243, Item 2, p. 1, April 19, 1999.

¹⁵⁸ GSA, *Leveraging Mobility, Managing Place*, p. 5.

USPTO utilizes existing shared offices for this “touch-down” function. The space is 75 square feet per person.

Compared with estimates in “Hoteling is Succeeding as a Business Strategy,” the dramatic increase in annual real estate savings in this analysis can be attributed to two primary factors. First, there has been a 68 percent increase in the number of eligible employees teleworking full-time in the past two years. Additionally, the adoption of a universal laptop (UL) system for all USPTO employees has eliminated a \$4,500 in virtual telework infrastructure costs per person annually and “provided a cost-effective means of supporting teleworkers and non-teleworkers alike.”¹⁵⁹ Even with a reduced amount of allocated office space per employee, the combined effect of a decrease in IT infrastructure costs and a substantial increase in the number of full-time teleworkers relinquishing their offices enables USPTO to realize higher savings. Although part-time employees reduce the savings as a result of some duplicate equipment, this is a necessary expense to facilitate the transition to full-time telework status, which maximizes savings.

The aggregated annual estimate is based on the number of Patents telework program participants based on a FY 2014-Q4 internal Agency report. The numbers provided in this report were also used to determine the cost distribution for the Enterprise Remote Access (ERA) Services/Support and VPN and Portal System across the entire USPTO teleworking workforce. Although the Academy’s review is focused on both trademark examining attorneys and patent examiners, the study team only measured the patents portion of real estate costs. In addition, the USPTO has established and will be establishing several regional offices,¹⁶⁰ but this analysis assumes office space savings realized for its Alexandria, Virginia-based headquarters.

As stated at the beginning of this section, one of the key elements of the business case for telework is the structural savings from reduced need to house an organization and its employees. This recognizes all of the core analysis metrics, as defined by GSA and OPM, such as real estate costs, transit benefits, equipment and IT infrastructure. The study team’s analysis shows that USPTO is taking all of these factors into consideration. Overall, the patent corps is saving approximately \$26 million in a typical year, although this is reduced to \$19.91 million a year when the Agency must account for standard equipment outlays.

PANEL FINDINGS

- **While the telework and hoteling programs do potentially enhance recruitment and retention efforts, telework is only one of several factors responsible for the USPTO’s increased success in these areas. Like other federal agencies, the USPTO allows flexible work schedule arrangements and offers a competitive benefits package. Federal benefits include health and life insurance, a retirement plan with a lifetime annuity (no longer offered by many private companies), the Thrift**

¹⁵⁹ USPTO, *2012 Telework Annual Report*, p. 5.

¹⁶⁰ Regional offices have been established or proposed in Michigan, Colorado, Texas and California.

Savings Plan that features a 5 percent employer contribution match and generous sick and annual leave benefits.

- **Moreover, the special pay scale for entry level patent examiners makes their base salaries 23 percent higher at the GS-5 and GS-7 levels, and 17 percent higher at the GS-9 level, than other federal hires at the same grade level in the Washington, DC metropolitan area. The USPTO's performance and production-based awards system (awards and bonuses for meeting production quotas, along with the ability to earn overtime), coupled with the flexible schedule referred to above, serve as recruitment and retention tools.**
- **The USPTO's telework program has reduced real estate costs and allowed for continuity of operations during emergencies.**
- **Being recognized as one of the "Best Places to Work in the Federal Government" has enhanced recruiting for the USPTO. The Federal Employee Viewpoint Survey (FEVS) data show that teleworkers have higher job satisfaction, are more likely to recommend their employer to candidates, and have a stronger feeling of accountability for achieving outcomes.¹⁶¹ These findings support the USPTO's case for telework as an effective recruitment and retention tool.**

PANEL RECOMMENDATIONS

There are no recommendations in this chapter.

¹⁶¹ Federal Employee Viewpoint Survey, 2014.

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CHAPTER SEVEN: MANAGING PRODUCTION OF HOTELERS AND NON-HOTELERS

Chapter 7 satisfies two requirements of the work plan. The first is to analyze how hoteling impacts production and whether the teleworking program improves productivity without negatively impacting quality. The analysis below demonstrates that the rate of production is the same whether the examiner is teleworking or working on site. Hotelers examine 1-1.5 more patent applications per year because they work when the government is closed (see discussion in Chapter 6 on continuity of operations) but the rate of production is the same. Therefore, hoteling does not improve production; hotelers do not work faster because they are off site. Our research did not allow us to assess whether quality is negatively impacted by the examiner teleworking. To do this we would need to systematically analyze individual patent examiner work products for quality from both groups of workers; this was not part of this review.

The second requirement is to determine if the systems in place are sufficient for allowing the Agency to certify T&A. The Patent Organization "Management Guidance on Certifying Time and Attendance: Appendix A" advises the following:

When certifying a time sheet for the bi-week, a manager should consider both the amount of work submitted for credit and the level of responsiveness of the employee.

Relying on evidence of work produced has been authorized by GAO's exposure draft dated December 2000, "Maintaining Effective Control over Time and Attendance Reporting."

In the section on "Alternative Workplace Arrangements", the GAO draft states:

As a basis for approving T&A data, supervisors are required to obtain reasonable assurance that employees working at remote sites are working when scheduled and that T&A information accurately reflects time worked and absences from scheduled tours of duty. Numerous techniques are available to the supervisor to obtain this assurance, for example, reviewing the work output of the employee and occasional phone call or visits to the employee.

7.1 PATENT PRODUCTION ELEMENTS AND MEASUREMENT

The patent production system provides extensive and reliable information on the amount of work examiners produce on a bi-weekly basis. Although a quality rating is performed for each examiner the information produced is a less informative analysis because the standard for reporting errors only identifies "clear errors." This is less robust information about the quality of the examiners' work.

When a patent application is received by the USPTO it first undergoes an administrative review to determine compliance with the requirements for form, content, adequacy, and payment of appropriate fees.

Currently, approximately 97 percent of patent applications are filed electronically. Those not submitted electronically are converted to an electronic format. Once this application has been captured in electronic format, it is labeled with an application tracking number, filing date, a priority date, and is input into the Patent Application Location and Monitoring (PALM) system. Based on today's staffing levels and depending on the technology, after approximately 18 months the application is examined by a patent examiner and a First Office action is mailed to the applicant.

Patent examiners reside in one of nine Technology Centers:

- TC 1600 Biotechnology and Organic chemistry;
- TC 1700 Chemical and Materials Engineering;
- TC 2100 Computer Architecture Software and Information Security;
- TC 2400 Computer Networks, Multiplex, Cable and Cryptograph/Security;
- TC 2600 Communications;
- TC 2800 Semiconductors, Electrical and Optical Systems and Components;
- TC 2900 Designs;
- TC 3600 Transportation, Construction, Electronic commerce, Agriculture, Licensing and Review; and
- TC 3700 Mechanical Engineering, Manufacturing and Products.

Within the technology centers, there are a variety of art units. The patent application is assigned to the art unit that deals with the technology most closely aligned with the applicant's invention.

Once the patent application has been placed on the examiner's docket, it is reviewed using tools and databases available to the patent corps and is examined according to the Manual of Patent Examining Procedure (MPEP). This manual is a reference for patent examiners, applicants, attorneys, and agents on the practices and procedures to examine patent applications. The manual includes instructions to examiners and material in the nature of information and interpretation. It also outlines the current procedures that the examiners are required or authorized to follow in appropriate cases in the normal examination of a patent application. The Manual does not have the force of law or the force of the rules in Title 37 of the Code of Federal Regulations.

The USPTO provides every examiner with a PAP which describes the major duties of the examiner position and provides specific standards that the examiner must follow. The PAP must first be negotiated with the union (POPA). A non-probationary patent examiner's PAP (GS-5 to GS-15) contains three critical elements (quality, production, and docket management) and one non-critical element (stakeholder interaction). However, because probationary examiners are not rated on production, their first year PAP contains only

three elements. The rating official, the SPE evaluates the employee performance against the standards of the PAP elements and, using a five-level rating scale, determines the rating for each element. SPEs conduct semiannual performance reviews for all examiners—a mid-year progress review in April and a final review at the end of the fiscal year. However, the quality element is evaluated quarterly, and production and docket management goals are reviewed even more frequently.

The PAP is a tool that clearly defines the standards an examiner must meet and provides an appropriate framework for assuring the examiner is addressing the issues important to the Agency. The PAP does not distinguish between the hoteling or non-hoteling status of the examiner.

Production Element

For non-probationary examiners the production element accounts for 35 percent of the entire rating and is “critical.” A critical element is one that will dictate the overall rating for an examiner if the critical element rating falls below fully successful. Table 7-1 lists the standard ratings for all grade levels on the production element.

Table 7-1: Patent Examiners’ Performance Appraisal Plan¹⁶²

Standard for Rating the ‘Production Element’ of the Examiner's Performance Appraisal Plan	
Rating	Production Percentage
Outstanding	110% and above
Commendable	103%-109%
Fully Successful	95%-102%
Marginal	88%-94%
Unacceptable	Below 88%

Each technology art unit is assigned a production goal, or expectancy. Expectancy is the number of hours per production unit (PU) which the examiner should take to examine an application by completing activities from first action to final disposal. Generally the completion of all activities will result in a total of two “counts,” which combined are equivalent to one PU. The value of the expectancy before adjustment for grade level and signatory authority status is based on a system that has been in place since 1976. This is specific to the art (technology) area in which the patent application falls and recognizes the complexity of the technology in that art unit. The production system calculation is the

¹⁶² Source: USPTO Internal Data

same for all examiners (except for entry level examiners who initially do not have a production element in their PAP) with adjustments for grade and technology as recognized in the variations in expectancy.

The base expectancy (time given to complete work) is based on the GS-12 standard and then is adjusted by a position factor based on the grade level and signatory authority of the examiner. For example, a GS-13 has a lower adjusted expectancy (fewer hours per application) than a GS-11 in the same art unit for the same work because the GS-13 is expected to produce more work in the same amount of time. GS 13s and 14s with Signatory Authority have a further reduction in adjusted expectancy than examiners at the same grade level without Signatory Authority.

For example, an examiner with an expectancy of 15 hours after adjustments for grade level and technology who completes five PUs worth of work (ten “counts”) in a pay period would be credited with 75 calculated production hours. If the examiner spent 70 hours examining applications in that pay period, then his or her production would be 107 percent (75 calculated production hours/70 examining hours = 107 percent). The production system is completely transparent, and except for entry-level examiners who initially do not have a production standard in their PAP, the system is the same for all examiners with adjustments for grade and art unit.

The examiners written work product is called an office action. An examiner receives credit for completing an office action, which is called a count. The amount of the credit is detailed in a Count System. For example, an examiner earns 1.25 counts for producing a FAOM (First Action on the Merits) and .25 counts for submitting a final office action. This count system is constructed to provide incentives for completing work (office actions) through varying the counts given for specific office actions in the examination process.

The operation of the Docket management system described later provides additional management controls on the flow of work and the order in which the examiner completes their work on a patent application.

Fiscal Year 2010 was the last major change in the count system and arose out of the “Joint Labor and Management Count System Task Force.” One of the purposes of the new count system was to align the patent examiner PAP to organizational goals, and ensure strategic alignment at all levels. The new count system also introduced incentives to examiners to conduct early interviews with applicants to reduce the need for RCE filings.¹⁶³ The previous system gave equal credits for first actions on the merits and for each first action after the filing of an RCE. The current system gives a greater amount of credit for the FAOM in the application but gives less credit for the first action after the filing of the first RCE and even less for actions after the filing of a second RCE.

During implementation of this new count system in FY 2010, each utility and plant examiner had their expectancy increased by two hours to compensate for differences in RCE filing rates by technology. The expectancy was adjusted up or down based on their

¹⁶³ An RCE is a request by an applicant to reopen prosecution of the patent application after the prosecution of the application has been closed.

expected caseload of RCEs. Under this initiative each examiner was given one hour of non-examining time to prepare for and conduct examiner interviews. No production requirement was added to the examiner's production goal for this hour. As cited in the 2005 Academy Report¹⁶⁴, a 2004 DOC OIG report stated the following with regard to production goals:

- Production goals have not been re-evaluated to reflect efficiencies in work processes and improved technology since 1976.
- Examiners told the IG that they “could do more work, but that there is no additional incentive.”¹⁶⁵ (POPA has voiced their disagreement on this issue and stated that many patent examiners work voluntary, unpaid overtime to meet their goals and that these unreported hours are not factored into the OIG assessment. Some SPEs with whom Academy staff spoke concur that voluntary overtime is common).
- Most examiner production goals may be too easily obtainable, because approximately 95 percent of their art units processed applications in less time than their allotted goals.¹⁶⁶
- The Agency had a well-defined awards program that was well understood by supervisors and examiners.¹⁶⁷

For Fiscal Year 2012 the system remained primarily the same except that each plant and utility examiner's expectancy was increased by an additional 0.5 hours and was no longer adjusted based on the examiner's RCEs. Despite the effort to focus the examiner's time on the first action to reduce RCEs, the number continued to rise. For FY 2014, adjustments were made to the examiner's PAP to give additional counts to RCEs completed within a quarter.

Docket Management Element

The Docket Management (DM) element discussed below provides a framework for the order in which to complete that work. The docket management system allows the patent examiner some control over how they manage their workload while allowing the applicant some assurance of how quickly his or her patent application will be prosecuted once it is entered into an examiner's docket. The docket management system provides rules under which examiners must operate, without distinction between hotelers and non-hotelers.

The rating under the docket management element of the PAP is worth twenty percent of an examiner's overall rating, and is another critical element. The docket management system

¹⁶⁴ 2005 USPTO Report, Page 101.

¹⁶⁵ US. Department of Commerce, Office of the Inspector General, Final Report No. IPE-15722/September 2004, p. ii.

¹⁶⁶ Ibid.

¹⁶⁷ US. Department of Commerce, Office of the Inspector General, Final Report No. IPE-15722/September 2004, p. 24.

provides an objective measure of the flow of patent applications through the examiner's docket in accordance with prescribed time periods that are set by Office policy.

Every action within an application falls into one of five categories and each category has its own expected average days for completion. Each category also has a ceiling control on days in which the action should be completed. Table 7.2 lists those categories and the assigned ceiling.

Table 7-2: Docket Management Categories (Examiner Performance) ¹⁶⁸

Category	Component (Action Types)	Expected Average (Days)	Ceiling Control (Days)
1	Amendments response to non-final OA Appeal Briefs	56	98
2	Special New and Special Amended e.g. PPH, Accelerated Examination, Petitions to Make Special, Track 1, PCT, Re-exam, Reissues, Board Decisions/Remands	14	28
3	New Regular New, Continuations in Part (CIPs), Continuations, Divisionals, RCEs	28	56
4	Expedited e.g. After Finals, Responses under 37 CFR 1.312, PUBs Cases (Printer Rushes)	14	28
5	Returns (Returned by TSS and Reviewer)	14	28

Each component receives a score based on the average number of days to post for credit all actions in that category compared to the expected average number of days. The category scores are then weighted based on the number of actions in that component compared to the total number of actions in all components and a docket management score is produced. Regarding the docket management score, the patent examiner earns a rating based on the scale found in Table 7.3.

¹⁶⁸ Source: USPTO Internal Data

Table 7-3: Standards for Rating Docket Management Element¹⁶⁹

Standards for Rating the “Docket Management Element” of the Examiner’s Performance Appraisal Plan	
Rating	Docket Management Percentage
Outstanding	110% and above
Commendable	103%-109%
Fully Successful	95%-102%
Marginal	88%-94%
Unacceptable	Below 88%

The above standards for rating are the same as those used for production.

A Pendency award has been negotiated with POPA for all quarters since October 22, 2010, and has been formally extended through the second quarter of FY 2016. The award in place through the third quarter of FY 2016 is three levels, 0.25 percent, 0.5 percent, or 0.75 percent of the examiner’s annual salary, and it requires examiners to achieve a Docket Management score of 110 percent, 120 percent or 140 percent, respectively. To receive the award, among other criteria, the examiner must minimize (zero or no more than one) cases exceeding the ceiling (maximum days established within the DM by which the category of case should be completed) on his or her docket, and for the two higher tiers of awards, must also complete a set number of “oldest new” cases each quarter. Receiving a high score in the docket management system requires disposing of the examiner’s cases in an orderly manner and not allowing certain old cases to linger on the docket. The incentive to not allow cases to linger is a protection to the applicant. These prescribed time periods in the DM system allow the patent applicant to know where their application is in the process. This automated system requires the examiner to take an action within a prescribed period of time so that patents get processed in an orderly manner. The automated system also allows supervisors to better manage the cases within their units.

Quality Element in the PAP

The quality element of the PAP is a critical element accounting for 35 percent of the examiner’s score. Despite the emphasis on quality, during the investigation conducted by the Agency concerning the allegations of T&A abuse, the investigation team reported that when discussing the impact of endloading, some SPE’s interviewed expressed concerns

¹⁶⁹ Source: USPTO Internal Data

that they could not use the quality element effectively when reviewing a large amount of work at the end of a period.

Unlike the production and the docket management elements of the PAP, there is no automated score generated by a system that results in a rating. The quality measurement is divided into three distinct categories of major activities:

- Category 1: Basic patent examining duties;
- Category 2: Advanced patent examining duties requiring analysis of application compliance with patent statutes and making proper rejections; and
- Category 3: Legal duties of determining patentability or non-patentability of patent claims.

The quality element activities and their corresponding category level are listed in the below chart. A number indicates at which grade level the examiner becomes responsible for conducting the activity. Only Primary Examiners are responsible for category 3 Activities and for the Category 2 activity of closing prosecution/making no premature final rejections.

Table 7-4: Quality Major Activities¹⁷⁰

Quality Major Activities	Evaluation Level								
	GS 5	GS 7	GS 9	GS 11	GS 12	GS 13	GS 13/14 PSA	GS 14 FSA	GS 15
(1) checking applications for (a) compliance with formal requirements of patent statutes and rules and (b) technological accuracy	1	1	1	1	1	1	1	1	1
(2) treating disclosure statements and claims of priority	1	1	1	1	1	1	1	1	1
(3) analyzing disclosure and claims for compliance with 35 USC 112;		2	2	2	2	2	2	2	2
(4) planning field of search;		1	1	1	1	1	1	1	1
(5) conducting search;	1	1	1	1	1	1	1	1	1
(6) making proper rejections under 35 USC 102 and 103 with supporting rationale, or determining how claim(s) distinguish over the prior art;		2	2	2	2	2	2	2	2
(7) determining whether amendment introduces new matter;				2	2	2	2	2	2
(8) appropriately formulating restriction requirements, where application could be restricted				1	1	1	1	1	1
(9) determining whether claimed invention is in compliance with 35 USC 101;				2	2	2	2	2	2
(10) evaluating/applying case law as necessary;					*	*	*	*	*
(11) determining where appropriate line of patentable distinction is maintained between applications and/or patents;				1	1	1	1	1	1
(12) evaluating sufficiency of affidavits/declaration;					*	*	*	*	*
(13) evaluating sufficiency of reissue oath/declaration;					1	1	1	1	1
(14) promotes compact prosecution by including all reasonable grounds of rejections, objections, and formal requirements; (M.P.E.P. 707.07(g) etc.);							1	1	1
(15) make the record, taken as a whole, reasonably clear and complete							1	1	1
(16) properly treats all matters of substance in applicant's response;							1	1	1
(17) formulates and independently signs final determinations of patentability (final rejections, allowance, examiner answers and advisory actions)								*	*
(18) properly closes prosecution; makes no premature final rejection								2	2
(19) properly rejects all rejectable claims in a final rejection; properly allows all claims in an allowance								3	3

**Errors for these items show up under a chargeable category*

¹⁷⁰ Source: USPTO Internal Data

The SPE rates the examiner on the element by reviewing cases and identifying “clear errors” committed in performing the activities in the standard. The “Clear Error” standard occurs when the examiner’s action:

- Does not reasonably comply with the major activities of the Quality Element;
- Could not have been permitted at the time and under the circumstances that the action was taken; and
- Is not an honest and legitimate difference of opinion between the examiner and a reviewer as to what action should have been taken. If the action taken by the examiner is reasonable and the action preferred by the SPE is reasonable, this constitutes an honest and legitimate difference of opinion and the action taken by the examiner is free of clear error.

There are three categories of errors:

- Category 1 errors can be charged after several occurrences of the same error when mentoring and training has failed to eliminate the problem;
- Category 2 and 3 errors can be charged after a single occurrence;
- Both a Category 1 and Category 2 error may be charged if they are unrelated;
- Also a Category 1 and Category 3 error may be charged if they are unrelated; and
- Cannot charge both a Category 2 and Category 3 in the same office action even if unrelated.

Table 7-5: Categories of Patent Examiner Performance¹⁷¹

Outstanding	0%-4.49%	Rare Exceptions to compliance with indicia 1-3 of Outstanding or Commendable Performance
Commendable	4.50%-5.49%	Substantially all actions comply with indicia 1-3 of Outstanding or Commendable Performance
Fully Successful	5.50%-6.49%	
Marginal	6.50%-7.49%	
Unacceptable	7.50% and above	

¹⁷¹ Source: USPTO Internal Data. In this table, the second column shows the percent of errors that result in the rating in the first column. The third column describes the additional requirement on manner in which the work is completed for the three actions described below to achieve the rating in column one.

The following 3 indicia are used in conjunction with Table 7-5 (above) to determine outstanding and commendable performance:

- The examiners' statements of rejection, objection, and response to arguments clearly and concisely present the positions taken or recommended in the resulting Office actions including a thorough substantive explanation to convey those positions to the applicant;
- The Office actions as well as the file record clearly indicate that the examiner fully complies with the principles of compact prosecution; and
- The record developed by the examiner usually shows an indication of allowable subject matter at the earliest time consistent with the file record and prosecution of the application.

The assigned rating results from developing a error rating (errors divided by number of actions) for each category of error and averaging total of the error ratings. The rating of the element is done through a thorough review of at least one office action per quarter per primary examiner and numerous office actions per quarter for examiners without full signatory authority, as well as office actions for which credit has been received during the period under consideration which come to the rating official's attention for any reason. The review is focused toward the work product submitted by the examiner in final form, and is directed only to those major activities indicated in the PAP as a responsibility for the examiner's level.

Stakeholder Interaction

The PAP contains a Stakeholder Interaction element that comprises 10 percent of the overall rating. This element is not critical—that is, examiners can fail this area without necessarily failing the overall appraisal.

The rating of the Stakeholder Interaction element is based on two major activities. The first is to treat external stakeholders with courtesy and professionalism. The examiner is expected to meet the following standards in this area:

- Return phone calls generally in one business day;
- Review email messages generally at least once every workday and respond in an appropriate means;
- Provide normal schedule information via voice mail if not working a Monday through Friday schedule;
- Direct external stakeholders to appropriate office or person;
- Conduct all interviews as scheduled with adequate preparations and in a courteous manner and refuse no interview in an arbitrary manner; and
- Display proper decorum in official communications.

A business day is defined as Monday through Friday from 8:30 AM to 5:00 PM. Therefore, although there is much flexibility available in scheduling work hours, the examiner is expected to schedule sufficient time during the official business day to meet the above expectations.

The second activity is to provide search consultation to the public and peers. The consultation must be commensurate with examiner's experience in the particular area in which consulted. The examiner should provide a list of classes and subclasses most relevant to the art pertaining to the subject matter being searched.

Although the Stakeholder Interaction element of the PAP provides very clear requirements for dealing with the public and peers, like the Quality Element of the PAP, the rating must be assigned by the SPE and therefore is more subjective than the Production and Docket Management ratings.

Summary of the Impact of the PAP on Patent Operations

The production element clearly defines the quantity of work that must be completed by each examiner. The docket management element provides a framework for controlling the order in which work gets completed and assists with meeting the goal of first-in, first-out. These elements provide a structure within which the examiner must operate. Together they effectively ensure that the operations are performed in the same order and at the same rate by hotelers and non-hotelers. Individual examiners may not meet their goals or they may exceed their goals based on their own efforts and capabilities but these differences are measured and reported in the appraisal process and the resulting awards process.

The very structured performance plans of the patent examiners at the USPTO set clear and measureable expectations for each examiner. As such, all elements of the PAP are the same for hotelers and non-hotelers. The stakeholder interaction and quality elements, while subjective, both have clear criteria to guide all examiners and managers in complying with these requirements.

Analysis of Performance for Teleworkers and Non-Teleworkers

The clear and prescriptive standards in the PAP are exactly the same for each examiner regardless of his or her telework status. The variation by grade is defined in the PAP by varying the expectancies by grade under the Production Standard and by identifying activities appropriate for the grade level of the examiner in the Quality Element. Therefore, the output is expected to be the same. We were provided a report of the production of the examiner corps for Fiscal years 2012-2014 with the following fields:

- Art unit;
- Fiscal year;
- Grade;

- Work at Home Indicator;
- Production Percentage of Work Done to Work Expected to be done;
- Production Units actually done; and
- Expected Production units based on production time charged (including overtime)

Production

The production calculated is per production hour worked. Therefore, any leave or non-production hours were not counted. We sorted the data by year of work, grade level of the examiner, and work at home indicator; the results are found in Table 7-6.

Table 7-6: Comparison of Non-Hotelers to Hotelers: Production by Hour and Grade¹⁷²

Fiscal Year	Non-Hotelers				Hotelers				Ratio of Non-Hotelers to Hotelers
	Grade	Actual	Expected	Difference between actual and expected	Grade	Actual	Expected	Difference between actual and expected	
2014	14	86,989	77,173	1.13	14	215,774	191,626	1.13	1.00
	13	38,730	37,053	1.05	13	72,547	70,335	1.03	1.01
	12	34,435	33,125	1.04	12	41,090	39,527	1.04	1.00
2013	14	82,941	73,112	1.13	14	202,348	178,877	1.13	1.00
	13	43,344	40,864	1.06	13	79,164	76,022	1.04	1.02
	12	31,172	29,636	1.05	12	43,485	42,220	1.03	1.02
2012	14	76,448	67,470	1.13	14	175,177	154,180	1.14	0.99
	13	41,551	39,328	1.06	13	79,939	76,348	1.05	1.01
	12	32,857	31,611	1.04	12	44,877	43,720	1.03	1.01

¹⁷² Source: USPTO Internal Data

The above table shows that when the ratio of actual production to expected production for non-hotelers is compared to the ratio of actual production to expected production, the results are between 1.00 and 1.02, regardless of telework status. The data demonstrate that examiners are working at the same rate whether hoteling or not hoteling. Generally, the GS-14s were producing 13 percent more work than their art unit and grade would require, but this excess over the standard was consistent for the groups regardless of their teleworking status. The most variation occurred in Fiscal Year 2013 for GS-13s and GS-12s with the non-teleworkers exceeding their expectations more, but the Fiscal Year 2012 differential decreased.

Figure 7-1: Production Element Rating¹⁷³

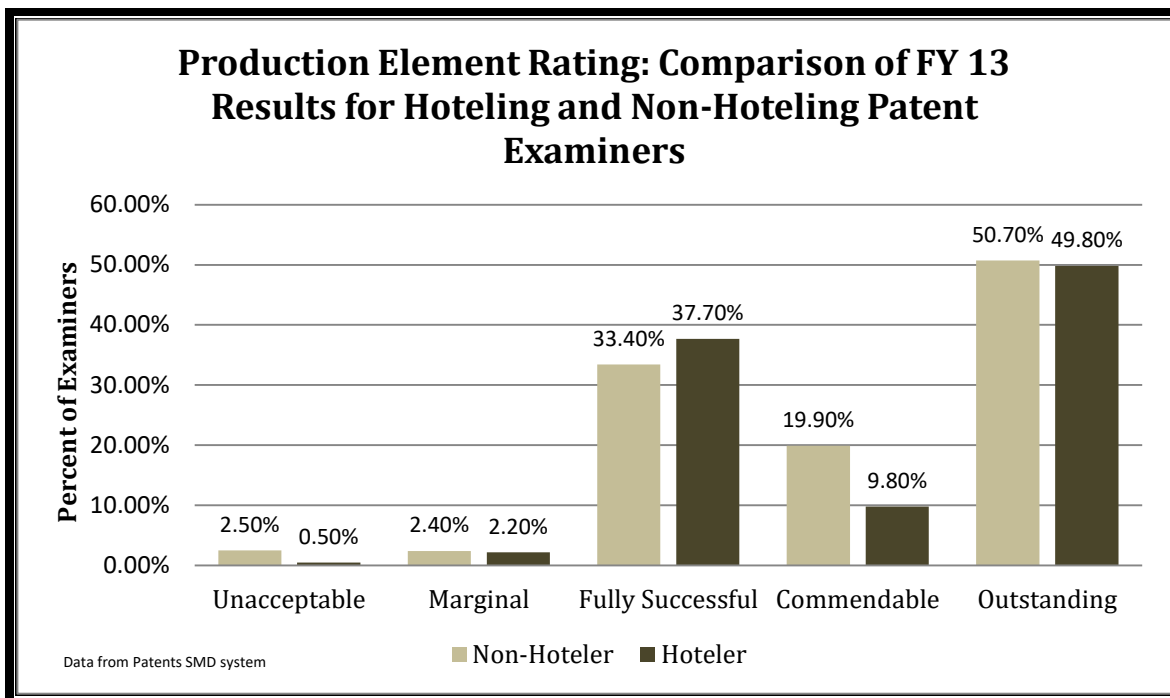
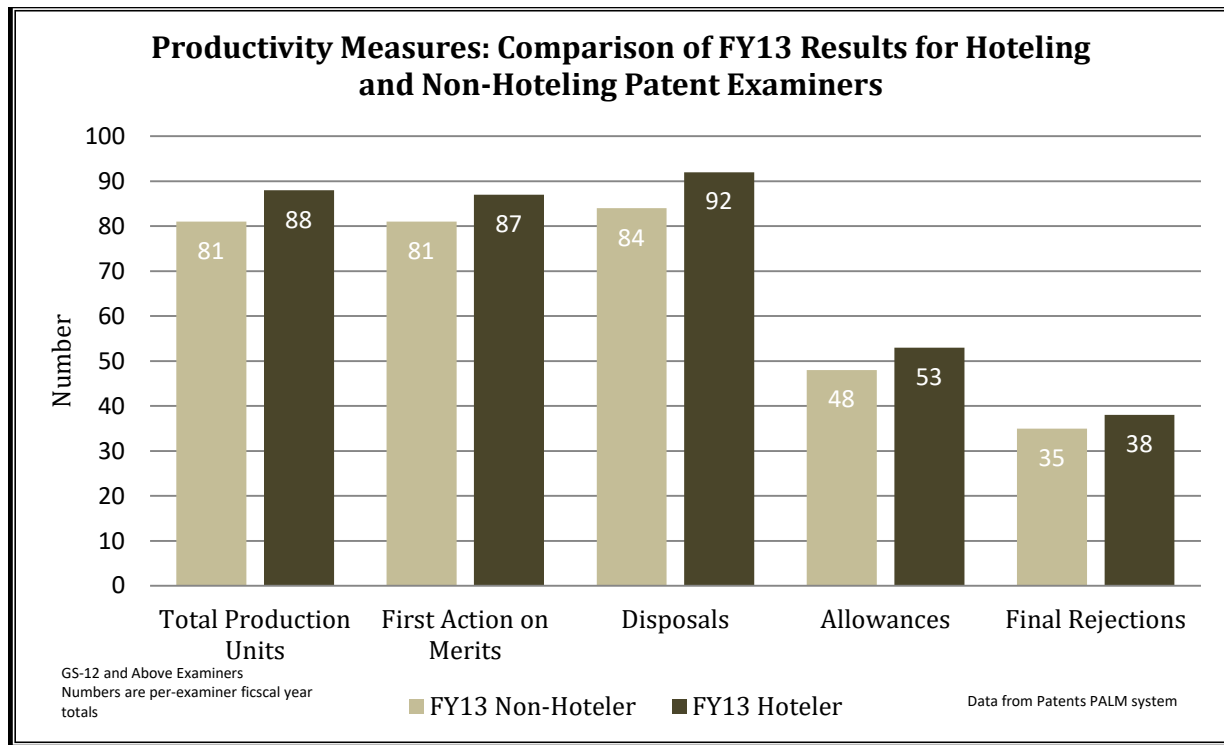


Figure 7-1 was provided by USPTO for FY 2013 for hoteling and non-hoteling patent examiners. The data is limited to GS-12 and above examiners to ensure comparability because the hoteling program is limited to those grades. 97.3 percent of hotelers are fully successful and above in the production element of the PAP compared to 95.0 percent for non hotelers. Therefore, hotelers have achieved an average higher level of rating at fully successful and above although non hotelers earner a higher level of outstanding. The differences do not indicate a significant difference in the performance ratings on the production standard.

¹⁷³ Source: USPTO presentation.

As seen in Figure 7-2, USPTO also provided the study team the following production data for hotelers and non-hotelers at the GS-12 level and above.

Figure 7-2: Productivity Measures¹⁷⁴

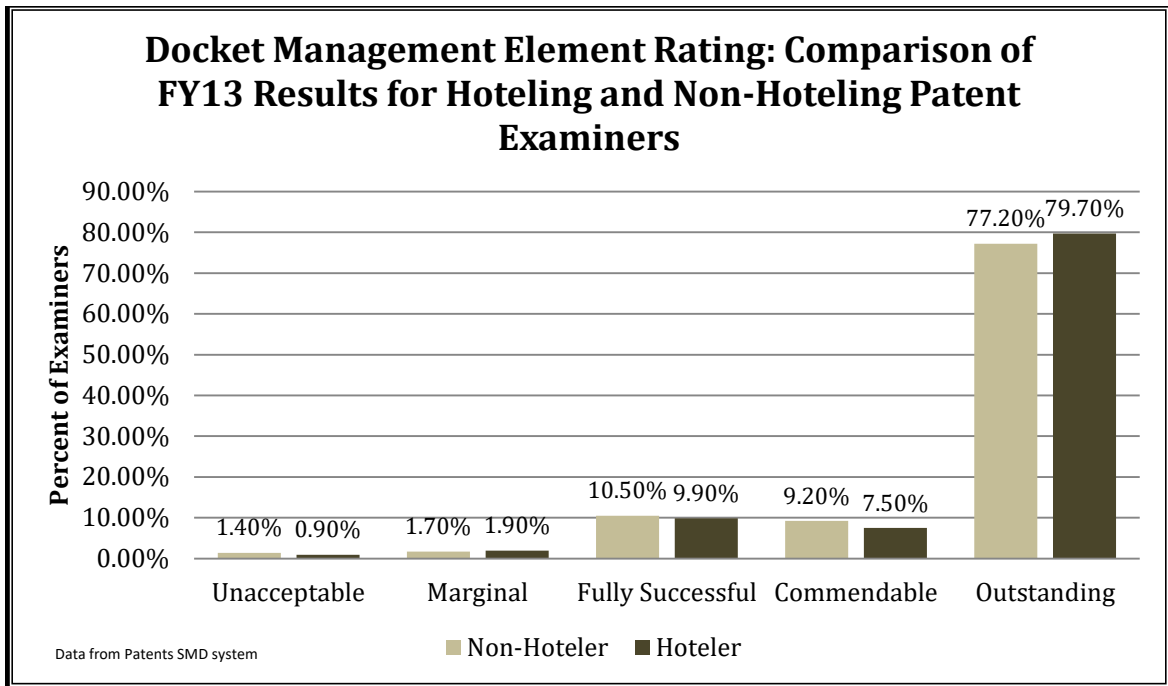


The above figure does show that hotelers produced 8.6 percent more production units in FY13 and consistently higher other actions than the non-hotelers.

To test the reasonableness in the differences in production units (in Figure 7-2 above) between hotelers and non-hotelers, the USPTO provided the distribution of examiners by grade level and hoteling status. That distribution showed that the hotelers on average are somewhat higher in grade level, and because of that, expected to produce more. We estimated the impact this grade level distribution would have on production. In addition in the Washington, DC area in FY 2013, we estimated about twenty-five additional hours of excused absence was granted to non-hotelers due to federal government closures in the Washington, DC area, during which hotelers would have been required to work or take leave. Therefore, the difference in production units in the above table is consistent with the differences expected because of working during weather emergencies and grade level.

¹⁷⁴ Source: USPTO presentation.

Figure 7-3: Docket Management Element Rating¹⁷⁵



The above Figure 7-3 demonstrates that 96.9 percent of non hotelers are fully successful and above in the docket management element of the PAP compared to 97.1 percent for hotelers. Based on the above distribution of ratings the Academy team concludes that the management of the examiner’s docket is comparable between hotelers and non-hotellers. As the chart demonstrates most examiners were very successful in meeting the docket management standards in FY 2013. The requirements have since changed for this element. OPM advises that performance standards should be designed to make “meaningful distinctions” in performance. The USPTO may wish to consider whether or not the high percentage of patent examiners achieving an outstanding rating in this reflects a standard that does, in fact, make meaningful distinctions in performance.

Quality Data: Hotelers vs. Non-Hotelers

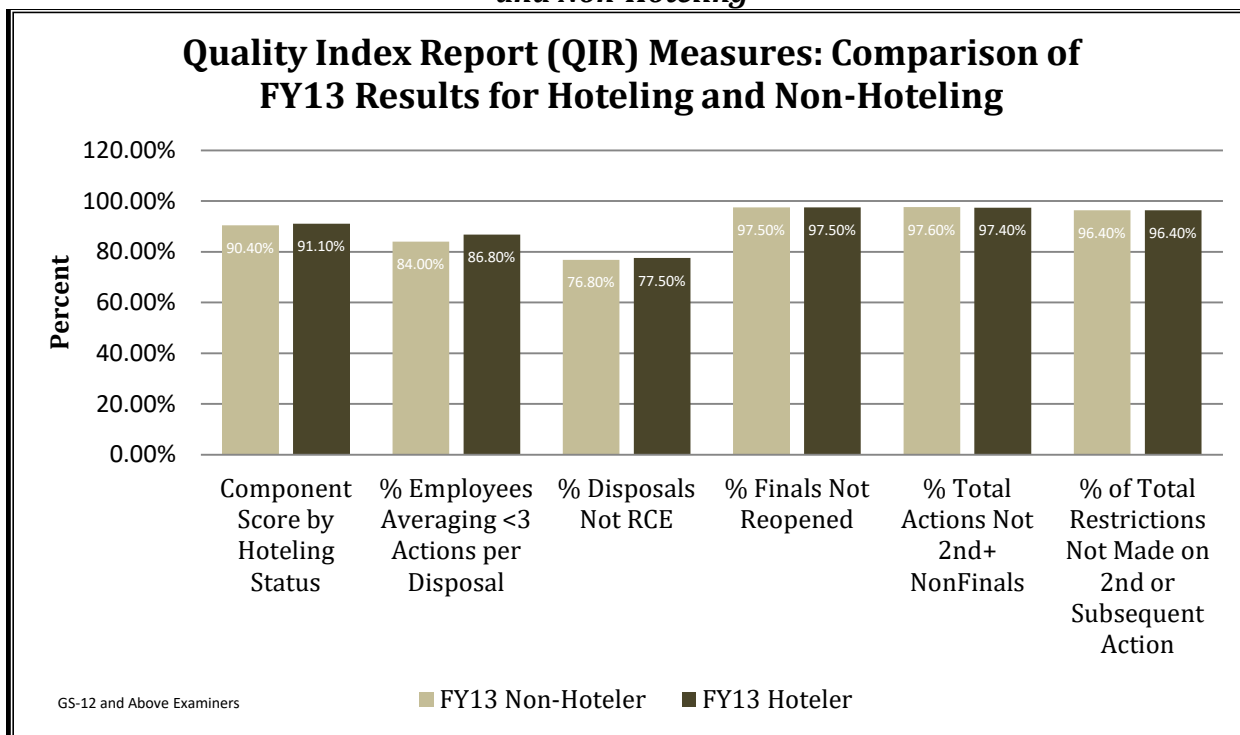
The Academy team did not have rating data on the Quality Element of the PAP. However, the DOC IG reviewed USPTO’s quality assurance practices, issuing its finding in an April 2015 report. The report states that the PAPs are ineffective at measuring whether examiners are issuing high quality patents, because the majority of individuals are rated as “outstanding” or “commendable. The OIG report showed that 95 percent of the workforce was rated as either outstanding or commendable in FY 2013, which suggests that the standard is not making meaningful distinctions in its requirement. The OIG, through an internal audit, also

¹⁷⁵ Source: USPTO Internal Data

found that the USPTO has inconsistent policies for charging errors to employees' performance plans, and that the application of the element did not measure the quality of the examiner's written decisions.

The Patent Quality Composite provides a single indication of patent examination quality that covers inputs, examination processes and outputs of patent examiner activities. The Quality Index Report (QIR) is the only component of the Patent Quality Composite that can be computed at the individual patent examiner level. The USPTO has provided the figure below as one indicator of the quality of the examination process by examiner and yet this index is not part of the evaluation of the examiners. The SPE survey conducted by the Academy, however, asked specifically about the quality of the work product between on-site and off-site examiners, and of those responding, 87 percent felt that the quality of the work product was the same regardless of where someone worked.

Figure 7-4: Quality Index Report Measures: Comparison of FY13 Results for Hoteling and Non-Hoteling¹⁷⁶



Based on the QIR results and the SPE survey, the Academy team concludes that quality is comparable for hotelers and non-hotellers.

¹⁷⁶ Source: USPTO Internal Data

Additional Tools to Manage Performance Issues for Patent Examiners

Effective and timely feedback is a critical component of a successful performance management program and should be used in conjunction with setting performance goals.¹⁷⁷ Federal law¹⁷⁸ provides employees with a statutory right to an opportunity for improving performance where performance has been determined to be unacceptable¹⁷⁹ This statutory improvement period is associated with a “performance improvement period” (referred to generically in the Federal government as a PIP and within Patents as a “written warning”) regarding the employee’s performance.

Before the Agency starts to take action under the statute and regulations for poor performance, it may apply additional procedures that are used to drive employees to improve their performance. These are oral warnings and safety zones. The Trademark Organization does not utilize these measures. The use of oral warnings for patent examiners, prior to the use of written warning, has been used to correct unacceptable patent examiner performance.¹⁸⁰ An oral warning constitutes a notice to a patent examiner of unacceptable performance and provides for a quarter-long improvement period to hopefully avoid the issuance of the statutory written warning. Based on interviews conducted for this study, statements were made that retaining qualified examiners is an important goal and that training replacement examiners is a lengthy and expensive process. Therefore, the Agency wanted to provide employees with additional opportunity to correct unacceptable performance before issuing the written warning.

In 2010, Patents added in an additional measure that would be administered prior to the oral warning, called a “safety zone notices.” The new performance management tool was set forth by memorandum, “‘Safety Zones’ and Repeated Performance Warnings under the new Examiner Performance Appraisal Plan,” issued by the Deputy Commissioner for Patents and was attached to the new Examiner PAP Agreement.¹⁸¹ These measures are designed to give examiners whose performance is just below the acceptable range in a critical PAP element an opportunity to improve their performance before being placed on an oral warning.”¹⁸² For example, if a patent examiner’s performance in the Production or Docket Management elements fell between 80 and 87% (i.e., “just below the Unacceptable

¹⁷⁷<http://www.opm.gov/policy-data-oversight/performance-management/performance-management-cycle/monitoring/feedback-is-critical-to-improving-performance/>

¹⁷⁸ 5 USC 4302(b)(6)

¹⁷⁹ This is from 5 U.S.C. § 4302, but is not true of performance actions taken under Chapter 75, which is an option the USPTO should to keep open. Under law, agencies have two legal processes available to them for removing unacceptably-performing employees: 5 U.S.C. Chapter 43, and 5 U.S.C. Chapter 75. The processes for Chapter 43 and Chapter 75 actions vary slightly – Chapter 43, for example, requires that an employee receive an opportunity to improve his performance (a “written warning” or “PIP”) before being removed; Chapter 75 allows agencies to remove employees for poor performance without a PIP. To address poor performance, the USPTO generally, but not exclusively, uses Chapter 43 processes, and the agency should reserve the right to use of Chapter 75 processes in the future.

¹⁸⁰ Source: Interview Data

¹⁸¹ USPTO, Internal memo, “‘Safety Zones’ and Repeated Performance Warnings under the new Examiner Performance Appraisal Plan.” (Washington, D.C.: in the October 27, 2010).

¹⁸² Ibid.

range...”), or if the examiner’s quality error rate was between 7.50 percent and 9.99 percent, the examiner would be given one quarter to improve their performance above the unacceptable range. If the examiner fails to improve performance to at least a marginal level, then an oral warning would be issued. Additionally, if an examiner’s production or docket management is below 80 percent, or if the examiner’s quality error rate exceeds 9.99 percent, then the examiner may be placed directly on an oral warning without benefit of the safety zone.

Examiners are considered an asset to the Agency, because they are expensive to recruit, train and retain. The creation of oral warnings and safety zones was intended to support the USPTO’s business objective of retaining talent while improving individual performance to acceptable levels.

A table of performance-based actions related to patent examiners for three separate fiscal years may be found in Table 7-7.

Table 7-7: Performance-based Actions for Patent Examiners (2010, 2012, and 2014)¹⁸³

Measure	Fiscal Year		
	2010	2012	2014
Total Patent Examiners	6,225	7,935	8,466
Safety Zone	N/A	344	456
Oral Warnings	367	436	658

7.2 PATENT QUALITY AND THE NEW QUALITY INITIATIVE

An examiner’s work location, on-site or off-site, does not matter for purposes of producing more work, or based on the SPE survey, how examiners are managed. In addition, SPEs who responded to the survey said overwhelmingly that they cannot detect a difference in the quality of work between off-site and on-site examiners. (See Question 32, Appendix J). When assessing the issue of whether quality might be impacted by teleworking, the Panel repeatedly turned to the question of whether the work examiners produce is also the right work. This is the quality of patent examination. The Panel understands that patent quality is critically important because it is at the core of the Office mission, which is to approve high quality patents, in a timely manner.

Over the years, the USPTO along with POPA and its patent public advisory committee, PPAC, have worked on aspects of the patent process to improve patent quality. In 2009, for example, they worked together to develop a quality measure that was adopted by the Office

¹⁸³ Source: Internal Agency data from Employee Relations.

in 2011. This “Quality Composite Metric” was designed to track high level indicators to measure the overall quality of the patent application as it moved through the examination and review process prior to being issued. The goal was to identify the Quality Composite Metric as a single indicator of patent examination quality, relying on data collected from different sources at different points in the patent application examination process.

After using this metric for several years, the USPTO and its stakeholders decided improvements were needed.¹⁸⁴ The metric was not easily understood and, as a composite it did not provide sufficient information on the areas where quality was lacking. The quality composite consists of five components, which if taken individually, may suggest a level of quality but, when combined, do not accurately reflect overall patent quality. Furthermore, some of the scores that comprised the composite measured improvement toward a specific goal and did not help determine patent quality. Therefore, Agency officials decided that new standards were warranted. In April/May of 2014 the USPTO and PPAC met to discuss revising this metric. The Agency issued a Federal Register notice on July 1, 2014, to solicit comments. Because the USPTO is re-assessing the effectiveness of the quality composite metric, it has acknowledged that additional enhancements to measuring and improving quality will require long-term and sustained efforts.¹⁸⁵

In addition, in 2011, the USPTO’s office of Patent Quality Assurance (OPQA), the office that randomly checks patent applications for quality, changed its procedures to include assessing the quality of an examiner’s initial search, and whether the examiner’s preliminary decisions conformed to best practices. The Office also revised how it measures the quality of each examiner’s work in the PAP¹⁸⁶

The USPTO initiated a major patent quality initiative and January 2015, appointed a Deputy Commissioner for Patent Quality to oversee improvements in patent quality. Activities to date include a two-day, inaugural patent quality summit with outside experts (the stakeholder groups mentioned earlier), with invited participation from the entire patent examiner corps and their supervisors. In July 2015, the Patent Organization is requiring that a group of patent examiners, including hotelers and those who are participating in the TEAPP program, return to headquarters for an in-person training on various subjects including quality. The initial group selected for this training represented a diverse selection of employees, including those from the Detroit and Alexandria Offices, and the Patent Hoteling Program (PHP).

¹⁸⁴ PPAC Report, p. 41

¹⁸⁵ “Request for Comments on Enhancing Patent Quality,” 73 Federal Register 1 (5 Feb 2015), pp. 6475 - 6481.

¹⁸⁶ OIG, Department of Commerce report, “USPTO Needs to Strengthen Patent Quality Assurance Practices,” OIG-15-000-A, April 10, 2015. The reason cited for the audit was to “(1) determine the sufficiency of USPTO’s quality assurance program 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.” GS-13’s and 14’s after a period of training take a test trial period and are given -partial or full signatory authority meaning that some or all of their work does not have to be approved by a supervisor. The decisions of these individuals are still subject to random reviews by OPQA and their supervisors.

7.3 PATENT EXAMINER AND TRADEMARK EXAMINING ATTORNEY AWARDS

The following section provides a review of the awards available for patent examiners for pendency and productivity, and to trademark examining attorneys for production and quality.

Special Achievement Award for Patent Examiners

The Special Achievement Award for Superior Performance (SAA award) is earned by patent examiners for producing 110 percent or more of their assigned production goal and for performing at a fully successful or higher level in all other critical elements of their PAP over four consecutive quarters. The award is equal to 3 percent of base pay. Table 7-9 provides data on the SAA amounts.

Table 7-9: Special Achievement Award Amounts (Fiscal Years 2009-2014)¹⁸⁷

Fiscal Year	Total Examiners	Number of Examiners Receiving Award	Total Dollars Awarded	Percent Receiving Award	Average Dollar Amount of Award
2009	6,243	2,653	8,069,288	42	3,042
2010	6,225	3,228	10,067,040	52	3,119
2011	6,780	3,070	10,052,063	45	3,274
2012	7,935	3,267	11,045,951	41	3,381
2013	8,051	3,537	12,048,282	44	3,406
2014	8,611	3,942	13,481,061	46	3,420

Gainsharing Award for Patent Examiners

The Gainsharing Award is earned by exceeding expected production based on factors such as technology and grad. Award amounts range from 2 to 7 percent based on the production levels. To earn the award, an examiner must be rated at least “fully successful” in all critical PAP elements, during the fiscal year from (October 1-September 30). Table 7-10 (below) shows the percent of examiners earning each level of the award for Fiscal Years 2012 to 2013, and Table 7-11 (below) shows the actual number of examiners and average amount of the award for Fiscal Years 2009-2014. To earn the award all critical performance elements, the PAP must be rated at least “Fully Successful.”

¹⁸⁷ Source: USPTO Internal Data

Table 7-10: Award Percentage by Production¹⁸⁸

Production	110%	115%	120%	125%	130%	135%
Award	2%	3%	4%	5%	6%	7%
Percent of Examiners Receiving Award 2012	1%	17%	7%	4%	3%	9%
2013	3%	15%	6%	4%	3%	10%
2014	5%	16%	6%	4%	3%	10%

Table 7-11: Patent Examiner Gainsharing Award by Amount (Fiscal Years 2009-2014)¹⁸⁹

Fiscal Year	Total Examiners	Number of Examiners Receiving Award	Total Dollars Awarded	Percent Receiving Award	Average Dollar Amount of Award
2009	6,243	2,588	8,111,754	41	3,134
2010	6,225	3,178	11,979,609	51	3,770
2011	6,780	2,942	11,610,033	43	3,946
2012	7,935	3,180	13,754,104	40	4,325
2013	8,051	3,388	15,311,746	42	4,519
2014	8,611	3,789	17,060,637	44	4,503

Pendency Award for Patent Examiners

The Pendency Award is given quarterly. The amount is based on the criteria shown in Table 7-12 (below). The award is given to examiners who maintain sustained performance for the Tier 1 and Tier 2 level for four consecutive months. The Pendency Award was created in 2010, implemented in 2012, and was recently renegotiated. One of the goals of the current award design is to reduce ceiling exceeded cases and reduce the time required to dispose of RCEs. Prior to 2012, the pendency award had more restrictive criteria and payouts were significantly lower (no greater than 1 percent for the fiscal year).

¹⁸⁸ Source: USPTO Internal Data

¹⁸⁹ Source: USPTO Internal Data

Table 7-12: Criteria for Pendency Award¹⁹⁰

Criterion	Entry Tier	Tier 1	Tier 2
Award Payout	0.25% of salary	0.5% + 0.5% Supplemental Payment for FY14 Q3-Q4 and FY15 Q1-Q2	0.75% + 1.0% Supplemental Payment for FY14 Q3-Q4 and FY15 Q1-Q2
1. Docket Management Scores	110% overall score	120% overall score with no category score under 100%	140% overall score with no category score under 120%
2. Ceiling Exceeded	No ceiling cases	No more than one application (of any kind) exceeds the ceiling in the quarter	
3. New Cases	N/A	The requirement varies depending on the number of full bi-weeks in a quarter. (see Table on next slide)	
4. Returns	Excluded from the calculation but must be at 100% or more		

The supplemental payments are available to examiners who maintain sustained performance for the Tier 1 and Tier 2 level for four consecutive months. The Pendency Award was created in 2010, implemented in 2012, and was recently renegotiated. One of the goals of the current award design is to reduce ceiling exceeded cases and reduce the time required to dispose of RCEs. Prior to 2012, the pendency award available to examiners (Pendency Reduction Gainsharing Award) was more restrictive in terms of qualification parameters and was worth significantly less in terms of payout (up to 1 percent for the fiscal year). Further data regarding the Pendency Award is found in Table 7-13 shows pendency award distribution and amounts for FYs 2009-14.

¹⁹⁰ From briefing slides, Docket Management or Pendency, 10/17/2014

Table 7-13: Pendency Award Amounts for Patent Examiners¹⁹¹

Fiscal Year	Total Examiners	Estimated Examiners Receiving Award	Total Dollars Awarded	Percent Receiving Award	Average Amount Per Recipient
2009	6,243	562	448,184	9	825
2010	6,225	623	559,701	10	916
2011	6,780	746	741,768	11	960
2012	7,935	4,126	10,641,124	52	2,602
2013	8,051	5,072	12,741,409	63	2,511
2014	8,611	6,372	16,884,846	74	2,643

An “Outstanding” examiner can receive the 3 percent SAA award, up to 7 percent Gainsharing Award, up to 3 percent for the Docket Management Award over four quarters, and 2 percent for the Supplemental Docket management Award of 1 percent in FY 2015. These potential awards are a very strong incentive for examiners to remain with the Agency, produce above the established expectation, and manage cases in accord with the docket management policies. Despite a government wide restriction on awards during the economic downturn, examiners continued to receive awards in compliance with negotiated collective bargaining agreements. For its production-based employees, the USPTO also went through a rigorous process to obtain an exception from the government-wide performance award cap of 1 percent. OMB approved the Agency exception based on data showing that the Agency’s awards were not classified as performance awards. As a result, the awards program helps the Agency recruit and retain talent and drive production.

The overall combined effect of these financial awards is to help drive behavior and incentivizes employees to meet the production goals necessary to move applications through the patent system. The next section will present the Trademark Organization use of awards to further demonstrate that the financial awards offered in response to meeting production quotas are successful tools that both organizations use to incentivize their workers. Financial incentives are helpful tools, and it would appear that without them it would be difficult to motivate employees towards meeting these production quotas.

Trademark Organization Examining Attorney Awards

Trademark examining attorneys receive major awards for productivity and quality. The next chart shows by quarter the pattern by which Trademark examining attorneys are receiving these awards.

¹⁹¹ Internal Agency data.

The Productivity Award may be awarded up to four times a year. Any Trademark examining attorney receiving an “Outstanding” rating in the critical element of Pendency or Production, and also receiving at least a “Fully Successful” rating in every other critical element at the end of the quarter, will be recommended for the award subject to budget limitations. Table 7-14 shows the production criteria and award amounts. Trademark examining attorneys who receive “Commendable” ratings in the critical element of Pendency Production and “Fully Successful” ratings in every other critical element at the end of the quarter will be recommended for an award of one-half of the amounts shown in the table.

Table 7-14: Productivity Award Thresholds for Trademark Examining Attorneys¹⁹²

Production Units	Award Amount
800 or more	\$5,000
775-799	\$4,500
750-774	\$4,000
725-749	\$3,500
700-721	\$3,000
675-699	\$2,500
650-674	\$2,000
625-649	\$1,750
600-624	\$1,500
575-599	\$1,250
525-574	\$1,000
475-524	\$750
425-474	\$500

The average annual production award is \$4,600. The maximum annual award is \$20,000 and was received by five percent of examining attorneys. Table 7-15 provides the award amounts and distribution for FY2010-14.

¹⁹² Source: USPTO Internal Data

Table 7-15: Productivity Award Amounts for Trademark Examining Attorneys (FY 2010-2014; by Quarter)¹⁹³

Fiscal Year	Awards Category	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Total
2014	Total Awards FY 14	\$434,750	\$548,125	\$517,125	\$499,500	\$1,997,000
	Percentage Receiving Awards	55%	67%	59%	56%	76%
2013	Total Awards FY 13	\$367,000	\$502,875	\$468,625	\$483,625	\$1,822,125
	Percentage Receiving Awards	58%	69%	59%	58%	77%
2012	Total Awards FY 12	\$436,750	\$517,625	\$469,500	\$410,375	\$1,834,250
	Percentage Receiving Awards	54%	68%	61%	52%	77%
2011	Total Awards FY 11	\$228,000	\$602,250	\$485,875	\$437,500	\$1,753,625
	Percentage Receiving Awards	52%	67%	60%	55%	77%
2010	Total Awards FY 10	\$235,625	\$254,375	\$243,500	\$259,750	\$993,250
	Percentage Receiving Awards	57%	61%	58%	55%	78%

Quality Award

The Trademark Organization also gives an award of three percent of salary for achieving an “Outstanding” level of quality. The examining attorney must have an outstanding rating in the quality element and at least “Fully Successful” in all other elements based on the performance appraisal at the end of the annual rating period. Table 7-16 provides more detailed information regarding eligibility and amounts provided.

¹⁹³ For FY 2011, the top award was capped at \$1,500 for the first quarter and went to \$5,000 for the other 3 quarters; For FY 2010, the top award was capped at \$1,250 for the first 3 quarters and at \$1,500 for the final quarter; for 2014, the total number of examiners receiving an award at some point in the year is 330, which is greater than the number receiving an award for any particular quarter.

Figure 7-16: Quality Award Amounts and Eligibility¹⁹⁴

Fiscal Year	Estimated Eligible	Number Received	Total Dollars (\$)	Percent Received	Average Award (\$)
2010	376	299	1,027,422	80%	\$3,436
2011	367	299	1,050,924	81%	\$3,515
2012	397	316	1,128,207	80%	\$3,570
2013	413	329	1,163,313	80%	\$3,536
2014	432	342	1,208,957	79%	\$3,535

ACE (Award for Comprehensive Excellence)

The ACE award supplements the three percent quality bonus. The base requirement for the award is to have earned the Outstanding Quality Award. The examining attorney is then rated on additional criteria, including the quality of writing and analysis in support of First Office Actions, the appropriate use of phone and email to resolve issues informally, and a level of errors per balance disposal below specified thresholds.

The award is given annually and the maximum award is \$3,500. Six percent of examiners received the top award in 2014. An additional 31 percent received lower awards under this program.

In total, an examining attorney can earn up to \$20,000 annually for producing a high volume of work, another 3 percent based on the quality of their work, and an additional \$3,500 for complying with additional quality criteria. To date, no attorney has achieved the maximum of all three awards, although a few come close every year. The awards program serves as a strong financial incentive for recruitment and retention of attorneys.

Overtime for Patent Examiners

The Agency is a strong advocate of the use of overtime. Any patent examiner who is fully successful at the end of the prior fiscal year is eligible to work overtime during the first quarter of the new fiscal year. Examiners must then maintain fully successful performance to remain eligible for overtime work. SPEs review the examiner's production status and other PAP indicators and identify examiners who have met the fully successful threshold and can continue to work overtime for the remainder of the fiscal year. Specifically, SPEs check production bi-weekly and the other elements of the appraisal quarterly to ensure that

¹⁹⁴ Source: USPTO Internal Data

the fully successful standard is maintained, and that these employees remain eligible to receive these additional financial awards. The USPTO estimates that in FY2014, overtime was 77 percent more efficient use of financial resources, compared to hiring an additional staff, and training and paying them a regular salary.¹⁹⁵ Table 7-17 shows the amount of USPTO overtime in FY2014. On average, patent examiners worked 233.35 hours or about 9 hours per pay period.

Table 7-17: Overtime Report Counts (FY 2014) ¹⁹⁶

Employee Class	Total OT Hours	Employee Count Receiving OT
OTHER	238,755.75	1,081
PE-1224	1,107,504.00	4,746
TM -0905	27,533.50	199
Total Hours	1,373,793.25	6,026

PANEL FINDINGS

- While a detailed analysis of what the production standards should be was not included as part of this study, it came to the Panel’s attention that external organizations and the USPTO have reviewed the production standards at various times in the past, yet the USPTO has not made significant changes to the standards. Although the DOC OIG recommended a review of production standards in 2004, and the Office employed consultants to examine this issue as recently as 2010, the USPTO has not changed the existing production quotas, even though many of the current standards for art units were established as long ago as 1976. Instead of reviewing each art unit individually, the Office’s most recent changes were to add 2.5 hours for all art units to complete the examination of a patent application. While this additional time may be necessary in certain art units, this one-size-fits-all approach may provide more time than necessary for less-complex patent applications. The Office should consider the impact of technological advances, including search engines that assist with searches for prior art, as it revises production standards.

¹⁹⁵ USPTO Production Unit Cost FY2014 Charts on “Cost per production unit”

¹⁹⁶ Source: USPTO Internal Data

- The PAP provides strong management controls on the operation of the patent examination process and provides data which when reviewed by the SPE can be used to certify T&A.
- There was no significant difference in production by grade levels between hotelers and non-hotelers. Therefore, there is no evidence that the telework program hinders or supports the Agency's production.
- Data from the QIR and responses from the SPEs suggest there is no difference in the quality of the examination process between hotelers and non-hotelers.
- The USPTO has used its production-based awards program successfully to achieve various objectives. For example, the Pendency Award has helped the Agency reduce the number of cases that are active beyond their ceiling control days. The "Special Achievement for Superior Performance" and "Gainsharing" Awards have incentivized patent examiners to go beyond the fully successful level of performance.
- The Trademark Organization has used awards effectively to incentivize higher production and increase quality.
- Examiners' performance in production and docket management is comparable between hotelers and non-hotelers.

PANEL RECOMMENDATIONS

- The USPTO should perform an in-depth review of production standards for all of the 600-plus art units to determine if they are set at appropriate levels, and make adjustments, as needed.
- Initiate an expert review of potential approaches to measuring and reporting on patent quality. The USPTO can leverage its new Patent Quality Initiative¹⁹⁷ as the foundation for this review. The review should give USPTO the ability to measure the quality of individual examiner performance, not just the throughput, and must recognize that quality should be assessed on a continuum. The USPTO should continue to focus on developing ways to measure the quality of the examination process, to target areas for training and to provide indicators of activities in the process that might lead to future improvements in the quality of the patent.
- Establish separate probationary/conditional periods for beginning full-time teleworkers. Full-time teleworkers should be required to maintain "fully successful" status for two years after completing their training in order to continue being eligible for full-time telework.
- Work with the Patent Office Professional Association (POPA) to explore if an alternative to the "clear error" standard might provide distinctions in work quality that would be beneficial to the examiners and the Agency.
- The USPTO should continue to focus on developing ways to measure the quality of the examination process to target areas for training and to provide indicators of

¹⁹⁷ "Request for Comments on Enhancing Patent Quality," 73 Federal Register 1 (5 Feb 2015), pp. 6475 - 6481.

activities in the process that might lead to future improvements in the quality of the patent.

- **Consider imposing additional controls on approving overtime and suspend the ability to work overtime for any examiner whose auto-count has been suspended. The Agency should also limit overtime to examiners whose quality rating is “outstanding” or “commendable.” This would limit overtime overall to examiners performing a higher quality of work.**
- **Additional tools besides the Quality element of the PAP should be used to evaluate the quality of the examiner’s work.**

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CHAPTER EIGHT: BENCHMARKING TELEWORKING AND HOTELING PROGRAMS

As part of this report and analysis, the Academy Panel and study team conducted a benchmarking study to identify telework program best practices in the public and private sectors. The study team reviewed USPTO's 2014 benchmarking study on telework, which focused only on private sector programs, and then conducted a separate study that included additional private sector companies, federal agencies, and local government organizations.

Background

The USPTO has been designing, testing, and implementing various telework programs for almost 20 years. Throughout this time, the USPTO developed multiple telework programs resulting in one of the most robust programs in the federal government. Based on the study team's research, the structure provided by the USPTO policies that define telework eligibility, provide electronic collaboration tools, provide in-person and online training, and establish clear performance measures align with the best practices common in both public and private sector telework programs.

8.1 FEDERAL TELEWORK PROGRAMS

The 2014 Federal Employee Viewpoint Survey (FEVS) results revealed that telework participation is increasing across the federal government. The number of federal employees who telework three or more days per week increased from 2 percent in 2011 to 4 percent in 2014. The number of federal employees who only telework one or two days a week has also grown from 2 percent in 2011 to 10 percent in 2014.¹⁹⁸ FEVS data show that federal employees are increasingly satisfied with the telework programs, with a satisfaction approval rating increasing from 70 percent in 2011, to 77 percent in 2014. In addition to employee satisfaction, telework has been linked to improved recruitment and retention.¹⁹⁹

Similarly positive results have been found in the most recent ranking of federal agencies in the Partnership's, "The Best Places to Work in the Federal Government." Among 315 agency subcomponents, the 2014 survey found that USPTO ranked second, with the highest index score ever achieved (85.6).²⁰⁰ Moreover, the Agency's overall index score has increased seven consecutive times since 2005, when it was 56.8. As mirrored by the FEVS survey, the Agency's specific ratings on compensation and awards are extraordinarily positive.²⁰¹ When asked the question, "Considering everything, how satisfied are you with your pay," the USPTO employees' responses were 75.7% positive compared to the positive response rate of 55.8% government-wide. When asked, "How satisfied are you with the recognition you

¹⁹⁸ Federal Employee Viewpoint Survey, 2014.

¹⁹⁹ http://www.telework.gov/Reports_and_Studies/Annual_Reports/2013teleworkreport.pdf

²⁰⁰ USPTO had been surveyed 9 previous times since the survey began in 2003.

²⁰¹ Partnership for Public Service. "Ten Years of the Best Places to Work in the Federal Government." (Washington, D.C.: December 2013), 5-6.

receive for doing a good job,” the USPTO employees were 75.3% positive compared to the government-wide positive responses rate of 44.6%.

USPTO’s Telework Program

While telework programs are expanding in the federal government, the USPTO’s program has the highest eligibility (90 percent of employees) and participation (80 percent of employees) rates, and the most diverse range of telework programs. Telework and virtual work (permanent long-distance telework arrangements)²⁰² are considered a fundamental element in the USPTO’s business strategy. In fact, the USPTO’s patent examiner hiring process emphasizes that employees become eligible for telework and potentially virtual work after meeting specific program requirements. While employees have the option to remain working on-site at the headquarters location, the hiring structure and budget indicate an Agency-wide move toward a permanent virtual workforce.

The USPTO began its telework program in 1997 with 18 trademark examining attorneys and now has more than 9,939 employees Agency-wide who telework between one and five days per week. Of these, more than 4,600 employees work from home four to five days per week. Those employees who opt to telework full-time completely relinquish an assigned workspace, requiring them to reserve a “hoteling” space (located on the USPTO campus) when they do return to headquarters.²⁰³

8.2 USPTO’S 2014 BENCHMARKING STUDY

In 2014, the USPTO conducted a benchmarking study of private sector organizations to identify best practices in organizations with large-scale telework programs. This effort was intended to provide the USPTO with an elevated understanding of the development and evolution of private sector telework programs. The results of USPTO’s benchmarking study included recurring “best practice” themes, such as leveraging common technology including collaboration tools, to support employee productivity and ensuring that the telework workforce remains engaged. The study further concluded that while organizations varied in how they measured results, there was an overwhelming focus on promoting telework to reduce employee turnover, increase productivity, avoid real estate costs, and maintain continuity of operations.²⁰⁴

Previously, in 2006, the Telework Coalition (TelCoa) conducted a benchmarking study that was later updated in 2011 to identify the best practices of 13 public and private sector organizations with large-scale telework programs to better understand how their programs

²⁰² According to OPM Telework Policy, long-distance telework arrangements, in which employees work most or all of the time from a different geographic area typically require a change of an employee’s official worksite to the telework location.

²⁰³ USPTO 2014 Benchmarking Study, p 5.

²⁰⁴ USPTO 2014 Benchmarking Study, p 3.

were created and had grown.²⁰⁵ The study presented several common emerging themes to explain how the participating organizations' telework programs had changed over time and how they were currently administered.

- For several participating organizations, business continuity became an increasingly important driver, especially for those that felt the direct effects of catastrophic events such as 9/11 and Hurricane Katrina.
- Recruitment and retention remained a key driver for many participating organizations, particularly since flexibility was in high demand by the current workforce.
- Mobility, the ability to work anywhere, was becoming the trend for many of the participating organizations – typically those that already had a large number of teleworkers. Much of this was driven by the global economy and concerns about business continuity.
- In most cases, the participating organizations' telework programs were administered internally using a small core staff or a cross-functional team. All of the participating organizations had “formal” telework programs with written policies and procedures, but those organizations with the largest numbers of teleworkers stressed driving the decision down to the manager-employee level.

The results of TelCoa's study revealed many of the same trends in telework programs that were presented in USPTO's 2014 benchmarking study.

Building on the benchmarking efforts of the USPTO and organizations such as TelCoa, the Academy study team conducted a separate benchmarking study that included both private and public sector telework programs.²⁰⁶ The study team interviewed senior level officials responsible for administering telework programs at federal agencies, municipal governments, and private companies. Additionally, the study team interviewed telework experts from non-profit organizations that advise managers and administrators at companies and organizations on a wide array of issues related to developing successful telework programs. All interviews were conducted on a not-for-attribution basis. The study team also reviewed numerous source documents on telework and virtual work programs. The primary focus of the benchmarking effort was to validate the findings, conclusions and recommendations from the USPTO's 2014 benchmarking study while also identifying best practices and challenges in the areas of telework eligibility, collaboration tools, training, and performance measures that could be instructive to the USPTO's telework program.

²⁰⁵ Telework Coalition, “Telework Benchmarking Study: Best Practices for Large Scale Implementation in Public and Private Sector Organizations,” 2006. In 2011, TelCoa conducted follow up conversations with participants and determined and upheld the findings from the 2006 study.

²⁰⁶ The study team interviewed seven federal agencies and two private sector companies.

Lessons Learned from the Benchmarking Study

- It is common for telework policies not to include specific eligibility information to provide employers with flexibility in determining whether to allow telework based on the specific employee and/or the type of work to be performed.
- Acculturation is a concern in the private and public sector. Employers want to ensure that employees are part of the office culture even when they are teleworking. This is particularly challenging when newer employees are provided the opportunity to telework.
- Telework has enabled employers to increase retention and increase savings through reduced real estate costs, and allowed continuity of operations during emergencies.
- In the federal government, FEVS data shows that teleworkers have higher job satisfaction, are more likely to recommend their employer to job candidates, and have a stronger feeling of accountability for achieving outcomes.²⁰⁷
- Effective management and strong supervisor/employee relationships, especially with respect to regular communication, are critical to successful telework programs. Employees should have the opportunity to provide input and supervisors must clearly communicate expectations.

Effective Practices

- Telework agreements should clearly convey that the manager has decision-making authority (e.g., a manager can require an employee to come back to the office if underperforming/unresponsive, require attendance at regular meetings).²⁰⁸
- As with all employees, employees who telework must be provided with clear performance expectations (e.g., being responsive to supervisors and clients, coming in for important meetings that fall on a scheduled telework day) and be held accountable for adhering to them. In addition to outlining performance requirements in a telework agreement and/or performance plans as the USPTO does, employers should provide mandatory training and supervisors should discuss expectations with employees.
- Even if done virtually via video conferencing, supervisors should require regular face-to-face meetings to engage teleworking employees and more effectively oversee their productivity and work quality. When feasible, employees should also be provided opportunities to meet as teams, either in the same physical location or virtually.
- The launching point for effective telework is communication—leaders can never over communicate.²⁰⁹ Clear, open, disciplined, and deliberate communication is vital to success. Managers need to ensure that their teams are on the same page by talking

²⁰⁷ Federal Employee Viewpoint Survey, 2014.

²⁰⁸ Academy Study Team Interview, 2015.

²⁰⁹ Offstein, Evan H. and Jason M. Morwick, *Making Telework Work: Leading People and Leveraging Technology for High-Impact Results*, p. 6, 2009

with them about completed work and providing regular feedback on work quality and performance.²¹⁰

- For telework to be successful, staff, managers, and organizations must address culture, strategic and personal change, training, communicating, influencing and listening.²¹¹
- When issues arise in telework arrangements, changes must be put in place to ensure improved outcomes.

Telework Challenges in Federal Government and at USPTO²¹²

- **Telework Governance:** While there has been an increase in permanent long-distance teleworkers (virtual workers), current laws and regulations, including OPM policies, do not include many specific provisions for managing a virtual workforce. In fact, OPM does not currently track virtual workers separately from other teleworkers.
- **Quality Measurement:** While it is possible to measure efficiency for teleworkers, effectiveness indicators are needed across the federal government to measure quality.²¹³ At the USPTO, the structure of telework is formalized with a series of agreements. There are a range of systems in place to measure performance, including production and quality. The USPTO Patent Organization is now embarking on a larger effort to define quality among staff, managers, and stakeholders, to help them further improve their metrics and patent decisions.
- **Labor Relations:** Union negotiations are a critical component to the development of telework programs, and negotiations may cause delays in making changes to existing programs. As described previously in this report, all three USPTO unions (POPA, NTEU-243, and NTEU-245) have strong leadership and active participation among employees. The unions have a pronounced say in key factors concerning working conditions at the USPTO, and the unions have the right to negotiate, to the extent allowed by law, changes to working conditions. The USPTO would need to negotiate with their unions any changes in the terms of telework agreements. This would be true if the Agency decides to implement some of the Academy's specific suggestions such as bringing staff back on site and having them periodically renew their telework agreements to make sure the arrangement is working for both the Office and the employee.

While USPTO's relationship with the POPA and the two NTEU chapters have been primarily collaborative in recent years, the unions' influence on working conditions has a significant impact on the management of a virtual workforce as well as on-site employees. Many participants in the study team's benchmarking effort work with unions to get employee buy-in and foster a collaborative relationship. However, all public and private employers, including federal agencies, interviewed by the study team, including federal agencies,

²¹⁰ Offstein, Evan H. and Jason M. Morwick, *Making Telework Work: Leading People and Leveraging Technology for High-Impact Results*, p. 20, 2009

²¹¹ Offstein, Evan H. and Jason M. Morwick, *Making Telework Work: Leading People and Leveraging Technology for High-Impact Results*, p. xvii, 2009.

²¹² Academy Study Team interviews, 2015.

²¹³ Academy interview, 2015.

stressed the importance of treating telework as a privilege that is made available at the discretion of management. By contrast, the USPTO's telework agreements with the unions define specific eligibility criteria to telework, which makes telework appear as a right and may present a significant management challenge.

Benchmarking Results

Figure 8-1 is a comparison of findings from USPTO's 2014 benchmarking study and the Academy study team's benchmarking results from employers in the private and public sector:²¹⁴

²¹⁴ The Academy Benchmarking Study findings presented in Figure 8.1 are based on Academy Study Team interviews, 2015.

Table 8.1: Benchmarking Results Comparison

Section by Section Comparison of Benchmarking Results			
	USPTO Benchmarking Study	Academy Benchmarking Study-Public Sector	Academy Benchmarking Study-Private Sector
Employee Engagement	<ul style="list-style-type: none"> – Employee engagement teams are specifically cited by most benchmarking participants. 	<ul style="list-style-type: none"> – Regular engagement of employees by supervisors is encouraged. 	<ul style="list-style-type: none"> – Supervisors require regular face-to-face meetings (including via video conferencing) to engage teleworking employees.
Collaboration Tools	<ul style="list-style-type: none"> – Use of collaboration tools (e.g. instant messaging, video teleconference, WebEx, cameras, etc.) is almost universally emphasized. 	<ul style="list-style-type: none"> – Collaboration tools are provided to teleworkers including meeting platforms such as WebEx and cameras for videoconferencing. 	<ul style="list-style-type: none"> – Collaboration tools are provided to teleworkers including WebEx and cameras for videoconferencing.
Information Security	<ul style="list-style-type: none"> – All benchmarking participants use VPN to access networks. 	<ul style="list-style-type: none"> – VPN networks are used. 	<ul style="list-style-type: none"> – VPN networks are used.
Availability of telework option for employees	<ul style="list-style-type: none"> – 77percent (median) of employees allowed to telework at least one day per week. – Flexible work schedules are the norm. – Both regular and situational telework are available to employees. 	<ul style="list-style-type: none"> – Both regular and situational telework are available to employees. 	<ul style="list-style-type: none"> – Telework arrangements and flexible work schedules are the norm.
Returns on investment to employer attributed to telework	<ul style="list-style-type: none"> – Key returns on investment emphasized repeatedly are: reduced employee turnover, increased productivity, real estate cost avoidance, and benefits of continuity of operations. – Higher employee satisfaction is universally cited. 	<ul style="list-style-type: none"> – Telework results in improved employee retention and real estate savings. – FEVS survey data shows increased job satisfaction among teleworkers vs. non-teleworkers. – Teleworkers are more likely to recommend their employer to candidates, and teleworkers feel more accountable for achieving outcomes. 	<ul style="list-style-type: none"> – Telework results in improved employee retention and real estate savings.

PANEL FINDINGS

- **The USPTO's telework policies are in line with best practices in the private and public sectors with regard to telework eligibility, collaboration tools, training, and performance measures. However, the Agency could do more to leverage its existing policies to enhance telework efficacy in each of these areas.**
- **Personal communication (e.g., video conferencing), not just electronic communication (e.g., email), is one of the best practices necessary to effectively manage a remote workforce. Although collaboration tools are readily available to the USPTO employees, they are not used as regularly as they should be to provide virtual face-to-face communication among employees, and between employees and supervisors. Electronic communication is used more frequently than personal face-to-face contact to the detriment of both managers and staff.**
- **Effective management and strong supervisor/employee relationships, especially with respect to regular visual communication, are critical to successful telework programs.**
- **In other organizations, it is common for telework policies not to include specific eligibility information to provide employers with flexibility in determining whether to allow telework based on the specific employee and/or the type of work to be performed.**

PANEL RECOMMENDATIONS

- **The USPTO should place more emphasis on continually developing a culture of collaboration among employees. The Office should also reconsider whether the individual researcher model for patent examination can be enhanced through greater team interaction.**
- **The USPTO should work to improve communication between supervisors and front-line employees, as well as between upper management and supervisors specifically using video conferencing and personal interaction, as mentioned above.**

CHAPTER NINE: THE ACADEMY SUPERVISORY PATENT EXAMINER SURVEY

Introduction

The scope of the Academy SPE survey largely focused on T&A issues, including the tools used to record and certify T&A. The survey provided the study team with SPE input on key issues addressed in the program review, including whether SPEs report that they:

- Manage teleworkers differently than on-site workers including whether there are distinct challenges to managing either; and,
- Possess the necessary tools, training and support from upper management to effectively oversee employees.

The SPE survey data presented in this section is also incorporated throughout the study to support observations, findings and conclusions. This section provides more detail on the survey itself and discusses key themes. The overall results were provided to the USPTO, and the written personal comments have been summarized in the key themes discussed in this chapter. Thirty-six percent of respondents provided written comments that expressed concerns about T&A, employee performance and conduct, and a range of other issues. The study team surveyed all 631 SPEs. Before sending out the final survey, the team pilot tested the 38 questions. It was then administered over a two week period to all SPEs. More than 66 percent of SPEs responded (379 out of 631) The survey results are considered statistically valid thereby allowing the Panel to make generalizations regarding the overall population of SPEs, with a margin of error of ± 4 percent at a 95 percent confidence level. The 27 percent response rate (100 out of 379) for individual written comments shows that many supervisors are invested in and are committed to the Agency. The response rate varied by question, but because we cannot assess which SPEs answered which questions, we are using 379 as the response rate total.

The USPTO has the benefit of information not only from this survey but others conducted at their direction, and from the FEVS. This Academy study team survey, however, was designed specifically not to repeat questions administered to SPEs through other surveys, and it was not intended to be part of any comprehensive review of data collected by other organizations, because that was outside the scope of the Academy's work. The USPTO uses surveys as one tool among many to obtain input and understand their workforce, and to use the data continually to make improvements to its operations and the management of its staff. The survey in this review was crafted with the assistance and support of the USPTO so that the questions were clear and not a duplication of issues previously surveyed. In addition, the survey was designed to inquire about telework and T&A and related topics to provide insight into the beliefs, perceptions and concerns of front line managers.

Conducting a survey during the end of the research process was intended to help verify that the analysis of the data developed through primary research methods—in-depth briefings with USPTO subject matter experts other experts in the patent and trademark fields, and

union representatives, combined with secondary research, was accurate. The survey was also designed to obtain data on whether some of the actions the USPTO has taken since their internal investigation into these issues achieved their intended purpose and were helpful. Some of the changes that the Office has made are recent, and it may take additional effort and time to implement them. The results here may provide additional direction on where the USPTO should focus.

The survey produced many positive findings, and a complete list of the survey results is in Appendix J. This section highlights some of the key findings and provides recommendations based on the responses. The clear message is that SPEs are committed to the Agency. They appreciate the additional training and clarification of policies and process for both supervisors and staff and would welcome further assistance. However, they also expressed frustrations and like most supervisors they would welcome more time to work with their employees.

One of the most interesting findings, however, was that 73- percent of respondents reported that they would bring poor performers back to headquarters for additional training or coaching. Of those, more than 52 percent responded that they would bring back examiners who perform poorly until their performance improved, more than 40 percent would bring them back for a specific probationary period, and 6.5 percent would bring them back permanently. This finding is surprising because managers' report that they manage employees the same whether they are working on-site or teleworking, yet clearly they see some advantage in being able to work with employees in person on-site. This finding is discussed in more detail below. It should be noted that the Panel cannot comment on how many examiners would potentially be asked to return on-site for performance improvements. However, current union agreements do not allow this, except for conduct issues, and any changes would have to be negotiated.

9.1 SURVEY RESEARCH AND METHODOLOGY

In conducting research for this report, as well as in designing the survey and study questions in this section, the study team made sure to use a variety of research techniques and to use a range of approaches to understand the telework programs, operations and management. The SPE survey was administered through SurveyMonkey®, an online survey tool, and distributed to all SPEs by USPTO through their in-house communication system. Responses were anonymous and sent directly to the Academy through the survey site. They were not provided to the USPTO. In developing the questions for the survey we talked to survey research and methodology experts in the federal government at OPM and GAO who routinely administer surveys to federal employees. The Panel decided to survey SPEs because they are the first line managers of patent examiners, and because it was their concerns about T&A and related employee management issues that were highlighted in the USPTO's internal investigation into T&A abuse. In that investigation the USPTO surveyed 80 managers, including SPEs, who were contacted by the internal team for their input, and we read direct remarks from SPEs who commented on the issues researched through the

investigation. The Academy survey differed from the USPTO survey because it was administered to all 631 SPEs.

FEVS is the preeminent ongoing survey of federal employees and has been conducted by OPM since 2002 to provide human capital information to Federal agencies about their workforce. Like other major survey programs, it has evolved methodologically over the years to improve the statistically reliable data it provides, and has a well-documented track record of methodological experimentation and evaluation. FEVS data also informs research by public management experts and is the basis for the highly visible Partnership for Public Service's "Best Places to Work in the Federal Government" rankings.

In 2013, the USPTO was ranked by the Partnership in first place in the "Best Places" in the federal government among agency sub-components.²¹⁵ As stated in the report, the USPTO achieved a 20.1 percent increase in their satisfaction score between 2009 and 2013 through changed work processes, better communication with labor and an engaged leadership that resulted in reduced patent backlogs even as applications increased." The Partnership observed that the USPTO understood the connection between employee satisfaction and the Agency's ability to recruit and retain the best talent and accomplish its mission. The FEVS survey is administered to all USPTO employees but was not disaggregated into position classifications and demographics (i.e., responses among supervisors v. non-supervisors), and therefore we could not directly compare the FEVS to the Academy's results. In addition, because the scope of the Academy study specifically focused on T&A and telework, the questions and the survey population were different from the FEVS.

The study team independently reviewed a survey designed and administered in 2014 by Sirota Consulting, LLC, customized to look at employee engagement. That survey distinguished between teleworkers and non-teleworkers, was administered Agency-wide to all employees, and separated results for the Patents Organization. However, the Sirota survey did not distinguish between managers and non-managers. Even though the survey included a question about supervisors generally, the Panel found it more useful to collect more precise data on the specific perspective of SPEs. Survey topics looked at by Sirota covered leadership, Agency organization and careers, communications and general satisfaction with working at the USPTO. According to the Sirota survey results, 90 percent of examiners believe that SPEs communicate their expectations, 90 percent of employees are dedicated to their jobs, 83 percent view their SPEs favorably, and 88 percent are proud of their work. This suggests that both SPEs and examiners are working together to a great extent to perform the high-quality of work expected of the Office. All of the results are snapshots in time of the viewpoints and perspectives of those responding. They provide insight into what works and what does not in managing people and a process.

²¹⁵ Partnership for Public Service. "Ten Years of the Best Places to Work in the Federal Government." (Washington, D.C.: December 2013), 5-6.

Demographics

Of those SPEs who responded, 70 percent have been managers 10 years or fewer. The remaining 30 percent have been SPEs for more than 10 years. All SPEs are former examiners who have a long history with the Agency and extensive familiarity with the many policies and requirements used to process and issue patents. Over 95 percent of the respondents manage engineers, which is the key occupation of most patent examiners. Of those, about 50 percent work in electrical engineering, 20 percent in chemical engineering and 27 percent in mechanical engineering. The vast majority of SPEs manage both on-site workers and teleworkers, with 30 percent managing 1-5 people, 50 percent managing 6-10 people and the remaining 20 percent managing 11 or more examiners. SPEs have just recently been allowed to hotel and over 90 percent of the SPEs telework or hotel (20 percent of respondents were hotelers). SPEs, therefore, understand the challenges of working remotely and communicating with a supervisor.

Regarding supervisory responsibility, SPE respondents overwhelmingly oversee teleworking and hoteling employees, with approximately 93 percent and 96 percent selecting these options, respectively. Additionally, over 4 in 5 (80.8 percent) indicated that they oversee examiners who do not participate in a telework program and just over 1 in 4 (26.1 percent) oversee satellite office examiners. This profile information indicates that respondents represent a broad-cross section of SPEs. Further, it is clear that some managers are overseeing patent examiners in all four different types of work structures.

9.2 ACADEMY SURVEY RESULTS

Several key themes emerged from the Academy's survey of SPEs that provide useful input to the USPTO as it assesses efforts to address management challenges related to its T&A and telework programs. In fact, many of the SPE comments mirror some SPE and TC interview comments made during the USPTO's internal investigation²¹⁶ of complaints submitted to the OIG in 2012 (discussed in Chapter 5 of this report). Given that the USPTO's internal investigation took place approximately two years ago, the fact that some SPEs continue to voice similar concerns indicates that similar management challenges persist. Specifically, SPEs indicated a need for improvement in the following areas:

- Management tools;
- Employee accountability; and
- Communication.

A list of the survey results and accompanying analysis for each question (excluding open-ended responses) is found in Appendix J.

²¹⁶ For USPTO's internal investigation, staff interviewed 49 randomly selected SPEs, all but one of the TC directors and all ADCs from the Patent Office. Interviewees were asked about the same issues that the study team is reviewing including possible abuse of telework programs and time and attendance.

Management Tools

The Academy survey results indicate that there is not a significant difference in how SPEs manage teleworkers and on-site workers. SPEs reported that it is easier to determine when teleworkers are available because these examiners are required to use a visual presence indicator that can be seen by supervisors.²¹⁷ Several SPEs provided comments stating that it would be helpful for all on-site workers to use this tool as well. Using the presence indicator would be helpful not only for SPEs but for all everyone working at the USPTO. In fact, many private and public companies that use Lync, also use other on line visual meeting and collaboration tools and calendar functions so that communication with others in their offices is seamless. Colleagues and supervisors can “see” whether someone is in a meeting, out of the office or is otherwise not available, and they can use the information to then schedule time to “talk” to someone or a group of employees. This is not viewed as punitive by most workers but is considered the most efficient way to work in a virtual environment and to be responsive to others in the organization.

Requiring mandatory use of the presence indicator would be useful for all employees. Many SPEs are not in the same building as their employees, which may be common for many large organizations and other federal offices. Examiners are not required to tell SPEs when they are working (e.g., what time of day they plan to work each day or each week) which could be anywhere between 5:30 AM and 10:30 PM, Monday through Saturday. Only full-time teleworkers and supervisors are required to submit a schedule of the projected total hours they plan to work and they can change that schedule at any time without notice. Other employees do not have to give any schedule notification at all. Some SPEs provided written comments stating that turnstile data (when an employee enters the USPTO headquarters they go through a turnstile and swipe their employee I.D) and additional login data would help to more accurately monitor employee hours and provide greater transparency.

In general, requiring additional log-in and presence information indicating when an examiner is available, as described above, enables communication and collaboration because supervisors and fellow examiners would know when they would be able to contact an examiner. SPEs have to approve timesheets for the employees they oversee and it is important that they be able to base this on a reasonable certainty that employees have worked the hours reported. This degree of certainty can be further enhanced with a combination of tools, including using the presence indicator, regularly communicating the actual hours an employee intends to be working, , and notifying supervisors when their reported schedule changes. These tools will not only improve SPEs awareness of when employees are working, but will also provide greater confidence that the T&A system accurately represent the hours being worked.

²¹⁷ The requirement for teleworkers to use a presence indicator is a new policy negotiated by the USPTO and POA that took effect in early 2015 for hotelers and supervisors. In addition, there is a 2013 (and other) Union agreement(s) that require other populations of employees to use the presence indicator.

Moreover, to reasonably certify T&A, SPEs also must be well acquainted with the details of the 29 different teleworking agreements in place.²¹⁸ In fact, comments from several SPEs suggested that to be able to navigate the many requirements associated with those separate agreements, flexible work schedules, and the lack of real time data on exactly when someone is working (discussed in Chapter 7) makes managing people a real challenge. SPEs need to understand expectations for these different working arrangements to properly manage their employees. However, changes to teleworking agreements would have to be negotiated with the unions. SPEs will have the continuing burden of needing to be available to manage a workforce at all times, 5:30 AM-10:30 PM, six days a week, and potentially Sundays when overtime and other work is allowed.

Tools for managing T&A

The SPEs were asked whether they have the resources to manage both the T&A as well as the production of their employees. Eighty-percent of SPEs say they have the resources they need to manage T&A (about 48 percent of SPEs responded that they have a lot of resources, but would welcome additional tools), but over 17 percent said they do not have the resources to manage T&A. However, Because this question directly asked about resources related to T&A, this result, combined with a flexible work schedule, makes it less likely that SPEs know with reasonable certainty when someone is working. Another question pertained to having enough resources to manage the production of examiners, but the results were slightly different. Ninety percent said that they do have the resources to manage production and 7.7 percent reported that they lacked the supervisory resources to manage the production of their examiners. Requiring all employees to provide accurate information of the hours during which they plan to be working (i.e., between 6:30 AM and 3:00 PM) would help supervisors assess who is going to be available and when. This is also helpful to other employees because supervisors can plan their schedules based on when most of their employees are working and therefore would be available for direct communication and consultation. As an example, awareness of when employees are working provides the supervisor with necessary information to maintain customer relations informing patent applicants when they can expect to hear from the patent examiner handling their application.

Employee Accountability

Lack of accountability/consequences for poor performers

Another area of concern for the responding SPEs, and the most important theme in the survey, is that some SPEs believe there is a lack of consequences for poor performance and conduct violations, such as T&A abuse. What is significant about this finding is that many of those responding to open-ended questions feel this way, even after changes were made since August 2014, to clarify T&A procedures and policies and mandatory training on T&A was required. This past spring (2015) all employees, both SPEs and examiners, were provided online and in-person training on T&A. Because this training was recent, and

²¹⁸ See Appendix K for a listing of telework agreements in place at the USPTO, by bargaining unit.

everyone who responded said they took it, the survey results suggest that the USPTO upper management should reach out to SPEs to further evaluate the reason for these results.

As stated in the introduction to this section, more than 73 percent of respondents reported that they would bring poor performers back to headquarters for additional training or coaching. When asked to further clarify their responses, 52 percent answered that they would bring them back until their performance improved, 40 percent would bring them back for a specific probationary period, and 6.5 percent would bring them back permanently. Examples of specific comments in this area included requiring hotelers who are unable to maintain at least marginal performance to report on-site at least once a week, and requiring on-site workers who fail to achieve fully successful status for at least 50 percent of the pay periods to work a standard schedule (8:30AM-5PM).

Some SPEs providing written comments expressly stated that they are unable to correct problems with employees because of union influences on the day-to-day operations of the Patent Organization, as well as a lack of support by upper management when issues are raised by supervisors. The USPTO has worked with the union outside of formal negotiations on many key provisions regarding how patent examiners are managed. The USPTO and the unions all value their ability to professionally resolve issues through informal processes. Some of the SPE comments suggest that USPTO management made concessions to incentivize and retain employees. As several comments have indicated, these concessions may have had the unintended effect of limiting the SPEs ability to manage their workforce. Several SPEs also suggested that poor performers and those who cannot achieve consistent credit above a designated minimum amount should be subject to some form of discipline.

This overall finding, of returning poor performers to headquarters, is significant not only because there is a large majority who thinks bringing teleworkers back on-site would make a difference, but also because it directly responds to a key question asked by this review, whether there are differences in how on-site and teleworkers are managed. Even though the SPEs indicate that they manage everyone similarly, their comments suggest that they need different management strategies and tools to manage teleworkers and hotelers more effectively. SPEs believe that teleworkers and hotelers are a challenge to manage off-site and that bringing them back to headquarters would make a significant difference. Bringing someone back may be a tool to manage employees who cannot create their own work structure. A more structured on-site environment could enable them to meet performance and quality objectives. Several SPEs commented that upper management is pursuing the move to hoteling as a business strategy without regard to SPEs' ability to manage the workforce. Several commentators also stated these issues led directly to a potential decline or lack of quality in patent decisions. While not conclusive, this points to the need for upper management to engage SPEs on what additional tools and management strategies would allow them to more successfully manage their staffs, including supporting the teleworking and virtual workforce.

Telework is a right at the USPTO

Another common theme in the survey is that SPEs are concerned that examiners view telework as an entitlement or a right, not a privilege. In the benchmarking chapter, a best practice cited is to make it clear that telework and virtual work are optional benefits provided at the discretion of the employer. At the USPTO however, the Agency would have to change existing negotiated telework agreements. According to these agreements, once an employee meets the teleworking eligibility criteria, teleworking has become a right rather than a privilege. Labor relations attorneys at the Agency explained that generally the USPTO may not make unilateral changes to programs. To implement changes, the Agency may be required to reopen negotiations on one or more existing agreements.²¹⁹

The Panel recognizes that agencies are obligated to bargain over negotiable terms and conditions of employment (like telework) and abide by those negotiated agreements.²²⁰ The Panel further recognizes that negotiated (or Federal Service Impasses Panel-imposed) agreements create legally-enforceable rights for employees and unions.²²¹ However, the Panel recommends that the USPTO make a concerted effort to renegotiate agreements, including under TEAPP, to require examiners to return to headquarters if performance or conduct warrants increased oversight.

Although there are constraints in the existing agreements, this is not impossible now. The USPTO has called a small number of examiners back on-site, but because of the legal authorities governing telework at the Agency, most examiners do not expect to have their telework hours reduced by being asked to return to headquarters for an extended period, especially TEAPP participants. Under TEAPP, there is an implied agreement that employees will not return to headquarters for an extended period of time because they are permanently relocating to other parts of the country. Since telework is a key business and human capital strategy, the Agency can approach this challenge so that supervisors are able to suspend telework and hoteling privileges for employees who are underperforming. The Panel would have no way of knowing based on the survey results, how many people this would involve.

²¹⁹ *E.g., Dep't of Housing and Urban Dev. and AFGE Local 3956*, 66 F.L.R.A. 106 (2011). *See also* 5 U.S.C. § 7116 (a)(5); *AFGE Local 1547 and Dep't of the Air Force, Luke A.F.B., Ariz.*, 64 F.L.R.A. 642, 647 (2010) (noting that "it is well established that the duty of an agency under the Statute is to negotiate with an exclusive representative concerning conditions of employment to the extent of the agency's discretion"); 5 U.S.C. § 7119; *e.g., Dep't of Labor, Wash., D.C.*, 04 FSIP 111, *4-5 (2005) (FSIP ordering agency to accede to union's bargaining proposal, under which all employees meeting certain criteria would be eligible to telework and agency could not consider current job performance).

²²⁰ *AFGE Local 1547 and Dep't of the Air Force, Luke A.F.B., Ariz.*, 64 F.L.R.A. 642, 647 (2010) (noting that "it is well established that the duty of an agency under the Statute is to negotiate with an exclusive representative concerning conditions of employment to the extent of the agency's discretion").

²²¹ 5 U.S.C. § 7119; *e.g., Dep't of Labor, Wash., D.C.*, 04 FSIP 111, *4-5 (2005) (FSIP ordering agency to accede to union's bargaining proposal, under which all employees meeting certain criteria would be eligible to telework and agency could not consider current job performance).

Communication

As discussed in the benchmarking section, personal interaction is essential for maintaining good communication, developing a team, and providing access to others who may be able to improve the work product. Based on survey results a solid majority of SPEs indicated that they utilize communication tools such as WebEx (95%) and/or conduct in-person group meetings (66%). While this is a very positive result, all SPEs need to continue to reach out to examiners personally, and both SPEs and examiners should continue to use their video capabilities and have face to face conversations to improve communication. In addition, some SPEs stated that they have taken t additional time to cultivate relationships with their employees and that managing them was easier as a result.

As part of the benchmarking study and the survey design work for this section, the team contacted the GAO Applied Research Methods team that designs surveys for GAO. That team recently completed a survey specifically on telework at the Agency. Interestingly, in this most recent survey of GAO employees, some GAO respondents commented that telework negatively affected their connections with coworkers because they were no longer able to share knowledge and experiences in person. For field offices, (similar to USPTO's regional offices) 27 percent of respondents felt that telework negatively affected the spirit of community and collaboration in their office locations. Some GAO supervisors also commented that telework negatively affected their ability to mentor and coach employees. The GAO findings support the conclusion that teleworking and more significantly virtual working, do affect the culture and connection to a workplace. GAO's employees are knowledge workers like those at the USPTO and although GAO as an organization is not as experienced as the USPTO in using telework and virtual work, GAO employees understand that connecting to and learning from others is a way to improve job performance. This need to create and maintain a virtual community and encourage informal collaboration was also emphasized by the public and private sector organizations we spoke to, as being beneficial for employees and managers.²²²

The high-level results of the Academy's survey demonstrate that the USPTO should further explore which additional resources SPEs believe they need to effectively manage employees. This should include support from upper management in holding employees accountable for conduct and performance. While the survey results suggest that communication levels are generally high, there is still a need, based on open-ended feedback, to explore enhanced communication between some supervisors and employees to ensure that SPEs can provide optimal performance management.

²²² U.S. Government Accountability Office: Internal Evaluation of GAO's Telework Program. (Washington, D.C.: June 10, 2015).

PANEL FINDINGS

- The Teleworking and Hoteling programs have benefitted the Agency by saving costs in real estate, allowing the Agency to perform work during office closures and has contributed to the recruitment and retention of employees. The Office's 20-year roll out of teleworking has been deliberative and the Agency has routinely sought input and feedback from all employees, unions and their many stakeholders to continually improve the workforce structure. The USPTO should reach out to all supervisors for additional input on managing the workforce.
- While only SPEs were surveyed as part of this study, many of the managerial related findings and recommendations could be applicable to all supervisors or employees throughout the USPTO.
- 80 percent of SPEs reported that they have sufficient resources to certify T&A. As noted in the Panel's overall findings, however, about 17 percent of SPEs stated they do not have the resources they need to manage T&A, and 10 percent said they do not have the same ability to verify T&A for both on-site and teleworking employees.
- SPEs surveyed reported that they have to wait several months to conclude an investigation of T&A abuse, because of delays in ER to address concerns and respond to employees if inaccuracies or abuses are suspected. This delay dilutes their ability to quickly discipline employees who abuse T&A, and hampers the speedy resolution of employee issues.
- Some SPEs reported that they need more tools to hold employees accountable for falling behind on expected production. While 90 percent of SPEs said they had enough resources to manage production (more than 39 percent said they have a lot of resources, but would welcome more), 8 percent of SPEs said they did not have the resources to do their jobs. Because performance requirements at the USPTO are production-based, supervisors need additional resources to maximize production oversight of their employees.
- Once an employee meets the eligibility criteria in the telework agreements negotiated with the USPTO unions, teleworking becomes somewhat of a right and not a privilege that can be revoked. Changing telework agreements would require the USPTO to open negotiations with their unions.
- More than 73 percent of SPEs who responded to the Academy's survey would call back examiners to headquarters when there are performance or conduct issues, either for a probationary period until they improve, or permanently if they do not improve. This new management tool would have to be negotiated with the unions. However, it is possible that simply returning to headquarters and learning from peers would help examiners who perform poorly so they can improve.
- Only 55 percent of SPEs surveyed agreed that they have "adequate opportunities to make recommendations for process improvements." This suggests that a greater proportion of SPEs needs to be engaged in discussions about how to improve work processes.

- Supervisors need to be familiar with the complex details of 29 different telework agreements.
- Current supervisory tools do not provide sufficient information on when employees are working. An electronic presence indicator shows when employees are available to do work, not whether they are working, and it is not required for all workers. In addition, they do not have a defined schedule—examiners only have to notify their supervisors of how many hours they plan to work, not the actual hours they will be at work (e.g., 9:30 AM -6:00 PM) and they can change their schedules at any time. This work schedule flexibility makes it difficult for supervisors to know when an employee is working.

PANEL RECOMMENDATIONS

- The USPTO should continue its Telework and Hoteling Programs, while enhancing the tools it uses in strengthening their management practices as recommended in the report.
- The USPTO should look globally across the Agency when implementing the recommendations in this section and others that are applicable across the USPTO.
- Examine impediments and concerns raised by SPEs with regard to being able to do their jobs more effectively.
- Provide more support to SPEs in their efforts to enhance employee accountability. Seek specific input from all SPEs to conduct a baseline assessment of how effective current management tools are for the oversight of employees. As part of this assessment, consider providing the employee accountability tools SPEs requested in the Academy survey.
- Allow SPEs to participate in any re-evaluation of the goals for evaluating patents, changes to the length of time an examiner has to submit work and penalties for not complying with deadlines.
- Expand the existing set of tools to help supervisors better manage the workforce. Technology Center directors should reach out directly to all of their SPEs and offer immediate assistance to help them manage their staffs T&A and production.
- Negotiate new requirements with all unions to allow SPEs to require underperforming employees (less than Fully Successful) to return to headquarters and specify the exact hours for each day (e.g., 8:30 AM–5:30 PM) they are working at all times.
- Require employees to routinely provide advance notice of their planned work hours for each bi-week at least two weeks in advance of the bi-week, rather than just the total number of hours they plan to work in any given day. This change will enhance supervisors' ability to manage their teams and their certainty about signing and approving timesheets.
- Consider other supporting tools such as an online team calendar to help managers and peers schedule time to collaborate.
- Clarify that teleworking is a privilege by renegotiating union agreements. Require all teleworking employees to renew telework agreements (preferably

every two years) to acknowledge acceptance of current policies and procedures. Presently, employees are not required to re-sign agreements. Once agreements are in place, the Agency assumes that employees will be working under a telework agreement for the duration of their career at the USPTO. Renewing these agreements will also allow the USPTO and employees to reassess whether telework arrangements are in the best interests of both parties. The Panel understands that this change would also have to be negotiated with the unions.

- Conduct an evaluation of the ER office to find out if there are any bottlenecks or other impediments to providing more timely responses to supervisor requests when a T&A violation is suspected.
- Consolidate, align and refine all existing teleworking agreements, addendums, memorandums, policies and all other written documentation added to them. Reducing the number and variability of agreements will help all supervisors more effectively manage the workforce and improve understanding of the parameters of these agreements for all employees.
- Establish a separate probationary/conditional periods for beginning full-time teleworkers. Full-time teleworkers should be required to maintain “fully successful” status for two years after completing their training in order to continue being eligible for full-time telework.

CHAPTER TEN: COLLABORATION ON PATENT SEARCHES

The USPTO has been implementing different collaboration tools at the individual, organizational and Agency level for several years, including through the administration of some notable pilot programs. In addition, the USPTO has extensively worked with Congress to identify best approaches for implementing more collaborative work arrangements. Some examples of the collaboration tools the Agency has considered include outsourcing, agency-level cooperation, and crowdsourcing. While some tools are better suited to the context of the USPTO than others, in general, the USPTO acknowledges their benefit in the examination process.

Outsourcing patent review searches was proposed previously to help reduce pendency. At Congress' direction, the USPTO initiated a pilot program to test the concept. However, the USPTO faced many challenges in designing an outsourcing system that ensured the quality of the searches. Outsourcing searches had been piloted in Japan and Europe, but the specific methods under which those pilot programs were managed raised conflict of interest concerns in the USPTO.

In the 2005 Academy Report that Panel discussed the prospect of outsourcing at the USPTO:

In discussions with the Academy Panel, USPTO senior managers said they expected that it would take an examiner 20 percent less time per application if the examiner started with a completed search. No senior manager has said or implied that outsourcing the search will not work. However, some managers said that the costs for private-sector searches could be higher than examiner searches depending on the pay rates established for private firms. These senior managers view outsourcing as a necessary step to help reduce pendency. Academy staff has discussed outsourcing with USPTO staff at the working level, and most do not favor it. They believe that as they conduct a search they mentally organize their strategy for assessing the patent application. In addition, they believe it is through continually reviewing prior art during the search process that they become proficient examiners. In other works, the synergies that result from having the same person conduct the search and examination functions make the examiners more efficient. A number of individuals who represented stakeholder organizations also made these points.

Outsourcing is a common tool used in the private sector, where privacy and confidentiality concerns are considered important and mitigated through outsourcing program designs. In fact, outsourcing is so common that it has now reached the level of "global collaboration." While the USPTO may not face the same need to maintain a competitive advantage that leads successful private companies to advance their outsourcing to global collaboration, the concept of using outsourcing as an effective tool to collaborate with sources of knowledge, internal and external, could apply to the USPTO. The USPTO initiated a congressionally mandated outsourcing pilot and it resulted in cooperation with international patent offices.

Today, those cooperative efforts take the form of the USPTO's membership in the IP5²²³ whose vision for cooperation to eliminate unnecessary duplication of work among the national offices, enhance patent examination efficiency and quality, and guarantee the stability of patent rights.

One specific cooperative in which the USPTO participates and which was referenced in the recent USPTO Quality Summit is the Common Citation Document ("CCD"). The CCD is a patent information tool developed to provide single point access to citation data for their examined patent application. It consolidates the prior art cited by all participating offices, thus enabling the search result for the same invention produced by several offices to be visualized on a single page. The creation of the CCD application is part of an ongoing process to harmonize technology at the international level aimed at establishing the infrastructure for greater integration of the global patent system.

The USPTO may also benefit from considering how other international patent office's address key elements of the patent process. These approaches include addressing pendency and quality, and using crowdsourcing. The USPTO is participating in a pilot program with the Japan Patent Office (JPO) and the Korean Intellectual Property Office (KIPO). This program, the Collaborative Search Pilot Program, is designed to provide stakeholders with search results from the two offices early in the examination process. This early information helps an applicant determine their next steps in patent prosecution. Similarly, the USPTO has additional cooperative agreements with other members of the IP5, such as the Cooperative Patent Classification with the European Patent Office (EPO), which aims to harmonize the European Classification (ECLA) and United States Patent Classification (USPC) system and migrate towards a common classification scheme.

Pendency and the quality of patents are discussed in other sections of this report. Crowdsourcing has not yet been addressed, but is discussed below in the context of other international patent offices. Crowdsourcing has been extensively reviewed by the USPTO as a potential method for collaboration. In crowdsourcing, individuals or organizations solicit ideas from a large group of unknown individuals ("the crowd") or, in some cases, a bounded group of trusted individuals or experts. Crowdsourcing is a new business model that attempts to leverage the connected world. It essentially outsources a task to a large network of individuals. Unlike "open source" where the final product is owned collectively by the public, the final product of a "crowd-sourced" product is owned by the organization that initially made the request. Drawing on a vast pool of people linked through technology, crowdsourcing can help solve very complex problems because it combines a large and diverse range of expertise rather than a single unit trying to unilaterally solve a problem.

²²³ The five largest patent offices are the U.S. Patent and Trademark Office ("USPTO"), the Japanese Patent Office ("JPO"), the European Patent Office ("EPO"), the Korean Intellectual Property Office ("KIPO"), and the State Intellectual Property Office of the People's Republic of China ("SIPO"). These five offices, collectively known as the "IP5," handle over 80% of the worldwide patent workload and 95% of all work carried out under the Patent Cooperation Treaty (PCT). The IP5 was set up as an organization to improve the efficiency of the examination process for patents worldwide.

10.1 THE JAPAN PATENT OFFICE

JPO's website states that the Office indicates that it is dedicated to broad development of industry through planning and carrying out examinations and appeals/trials under the Japanese system of industrial property rights which includes patents, utility models, designs and trademarks. JPO functions as a traditional government agency with its budget approved by the legislature. In 2005, the average pendency at JPO was 31.1 months. However, by 2013, JPO had reduced pendency to 11 months.

JPO has an open space work environment that encourages examiners to consult one another. JPO believes this facilitates production of quality patents, because examiners can consult group leaders and directors, and there is also a division check before the application is disposed. The JPO Quality Policy sets forth fundamental principles:

- Granting robust, broad and valuable patents;
- Improving quality and cooperation with concerned persons and parties;
- Contributing to improve operations; and
- Raising the knowledge and capabilities of its staff.

According to NAPA's 2005 Report, the JPO improved quality by clarifying and revising examination standards to ensure thorough examinations. The JPO had also implemented countermeasures to prevent bad patent applications by publicizing what can and cannot be patented. In April 2014, JPO announced that it had created the Subcommittee on Examination Quality Management under the Intellectual Property Committee of the Industrial Structure Council. The subcommittee, which includes a wide-range of experts from enterprises to legal and academic circles aims to further JPO's enhanced quality management initiatives. The subcommittee evaluates the current status of JPO examination quality management from the viewpoint of experts in the field and suggests improvements.

In addition to the efforts to improve quality, the JPO established its own crowdsourcing pilot for patent applications. The pilot revealed that, although crowdsourcing improves the quality of information available to examiners, there was not enough participation. The JPO's experience showed that crowdsourcing requires incentives to encourage key technology companies to embrace and participate in the peer review process. One proposed solution was to improve quality was to establish incentives to build up a community and make profiles public.

10.2 THE KOREAN INTELLECTUAL PROPERTY OFFICE (KIPO)

The KIPO is the patent and intellectual property office of South Korea. KIPO has made efforts to become more efficient by reducing its pendency. KIPO's average first action pendency for 2013 was 13.2 months for patents and utility models, 7.7 months for trademarks, and 7.4 months for designs. Compared with 2012, these averages represent reductions of 1.6 months for patent and utility models, 12 months for trademark and 1.4 months for designs. KIPO's

2014 target goals were 11.7 months for patents and utility models and 6.5 months for trademark and design.

To continue this reduction in pendency and address an increase in requests for international searches under the Patent Cooperation Treaty, KIPO has started recruiting additional examiners. KIPO also introduced measures to reduce its patent examiner workloads, which were generally considered higher than those of the USPTO and the EPO, KIPO aims to reduce its average examination pendency to 10 months by the end of 2015. To help meet its goal, KIPO has also made its prior art search program more efficient by expanding the role of prior art searchers and providing them with additional training. In addition, KIPO improved its IT system to provide current tools for improving patent examination productivity, thereby helping examiners to meet the pendency goal.

While taking major steps to reduce pendency, KIPO has simultaneously been taking steps to improve quality. KIPO plans to strengthen the capacity of its examiners by improving its application-to-examiner ratio. To do this KIPO will lower the number of examinations being processed by each examiner. By incrementally expanding its examination budget and increasing its staff, KIPO plans to bring the ratio down to more competitive levels. As another aspect of its quality improvement efforts, the KIPO has introduced a type of examination cooperation process, which includes enhancing examination service by improving the capabilities of prior art searchers, upgrading searching environments, and expanding the scope of searches. Also, the KIPO is expanding its customized patent examination services by introducing a collective examination system in which multiple applications related to one product can be examined simultaneously. To ensure the systematic management of the examination quality, the KIPO's Examination Quality Assurance Office has established the Examination Quality Warning System (EQWS). The EQWS uses biannual quality reviews to provide warnings for changes in quality.

While the KIPO has been taking significant measures to improve quality through better internal collaboration, further research is required to understand what role, if any, crowdsourcing is playing in these efforts.

Conclusion

Collaboration appears to be an important tool that is used by the USPTO and its international counterparts, although the forms of collaboration differ according to the context of each patent office. Additionally, the importance of collaboration was emphasized on February 24, 2014, when the White House issued a series of executive actions to strengthen patent quality that included crowdsourcing prior art. In response to the executive action, the USPTO hosted a roundtable in December 2, 2014 and requested written comments on the use of crowdsourcing to identify relevant prior art (79 Fed. Reg.15319). The roundtable addressed the executive action by exploring: 1) how the USPTO can utilize crowdsourcing tools to obtain relevant prior art to enhance the quality of examination and issued patents, and 2) ways the USPTO can leverage existing private sector solutions to electronically receive and host crowd sourced materials as a means to provide prior art to examiners. However, the Agency has made clear that "any requirement that the USPTO undertake broader crowdsourcing efforts should be included only after careful consideration of the

legal ramifications of a specific crowdsourcing plan or approach and after taking into account the rationales and statutory contours of the current ex parte system of patent examination.” The Panel recognizes this concern, and provides this discussion on collaboration as general overview worthy of further research and consideration by the USPTO in future studies.

Although the Panel did not focus research efforts as extensively on this topic as in other areas, it was discussed extensively from the beginning of the Academy’s work and the study team completed a limited review of collaboration approaches. Although this area is beyond the scope of the current engagement, the Panel believes that these initiatives raise a broader question not asked in this review, which is whether the USPTO is positioned to deliver the highest quality service and the best product for the American public in the 21st century. The Panel also believes that, regardless of where the USPTO examiners work (on-site, as teleworkers, or hotelers), they need to use 21st century tools and technology. The USPTO is upgrading its IT systems, and has a pilot program on the use of extensive collaboration and crowdsourcing to search for prior art. Beyond these existing changes, the USPTO could consider piloting teaming on patent applications to determine whether this approach produces higher-quality products. Teaming would change how the docket management system operates, and would require additional training, coaching and other investments of time and resources by both management and employees. It would also require negotiating with the unions.

PANEL RECOMMENDATIONS

USPTO should:

- **Continue to focus on patent quality and leverage the new Patent Quality Initiative²²⁴ as the foundation for an expert review on improving individual examiner quality. Quality should be assessed on a continuum.**
- **Continue to collaborate with other countries to improve patent prior art searches.**
- **Continue to explore whether crowdsourcing or other methods would improve the quality of prior art searches.**

²²⁴ “Request for Comments on Enhancing Patent Quality,” 73 Federal Register 1 (5 Feb 2015), pp. 6475 - 6481.

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APPENDIX A: PANEL AND STAFF

PANEL

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**Academy Fellow*

STUDY TEAM

Joseph P. Mitchell, Ph.D., *Director of Project Development*—leads and manages the Academy’s studies program and serves as a senior advisor to the Academy’s President and CEO. He has served as Project Director for past Academy studies for the Government Printing Office, the U.S. Senate Sergeant at Arms, USAID/Management Systems International, the National Park Service’s Natural Resource Stewardship and Science Directorate, and the USDA Natural Resources Conservation Service. During his more than 10 years at the Academy, Dr. Mitchell has worked with a wide range of federal cabinet departments and agencies to identify changes to improve public policy and program management, as well as to develop practical tools that strengthen organizational performance and assessment capabilities. He holds a Ph.D. From the Virginia Polytechnic Institute and State University, a Master of International Public Policy from The Johns Hopkins University School of Advanced International Studies, a Master of Public Administration from the University of North Carolina at Charlotte, and a B.A. in History from the University of North Carolina at Wilmington.

Karla Perri, *Project Director*—Karla Perri joins the Academy as a Project Director. Ms. Perri is a senior executive and attorney with over 25 years of experience working on a range of Federal and State legislative and policy issues related to defense, environment, and energy. She is a Principal in a major Washington DC consulting firm providing strategic advice to corporate clients in these topic areas, and she is also President of Federal Solutions, LLC, a woman owned consulting firm. She served as a Presidential appointee to the Senior Executive Service at the Department of Defense, and has been a former senior advisor at the USEPA, staff in the U.S. Senate, and at the Congressional Research Service of the Library of Congress. She has a J.D. from the George Washington School of Law, an M.A. in Public Administration from Colorado State University, and a B.A. in Political Science from the University of South Carolina.

Nancy Kichak, *Senior Advisor*—Ms. Kichak has over 25 years of experience as a member of the Senior Executive Service at the U.S. Office of Personnel Management with responsibility for managing a broad range of human resource programs. As the Associate Director and Chief Human Capital Officer (CHCO), Employee Services, she lead the design and development for the Federal government’s merit based policies for recruitment and hiring, pay, leave, training, work life, and labor relations. Before becoming Associate Director, she was the Director of the Office of Actuaries where she lead the actuarial analysis supporting the health, life, and retirement benefits for employees and played a key role in the development of Federal long term care insurance and dental benefits. Ms. Kichak testified before Congress multiple times on the operations she oversaw. She is a recipient of the Presidential Rank Award of Distinguished Executive and the American Academy of Actuaries Robert J. Myers Award. She is an Associate of the Society of Actuaries and a Member of the American Academy of Actuaries.

Brenda M. Kyle, *Senior Advisor* (Grant Thornton)—retired from the U.S. Department of Labor (DOL) as the Deputy Chief Financial Officer (DCFO). She has worked for Grant Thornton as a Financial Management Consultant for nine years. As the DOL DCFO, she

managed a staff of 95 Federal employees and 25 contractors and a budget of \$15M. Her responsibilities included, in coordination with DOL's Office of Human Resources, implementation of the telework program in the DOL and operating DOL's Payroll Office. As a Grant Thornton Consultant, she has performed OMB Circular A-123, Appendix A compliant internal control reviews of the Administrative Office of the U.S. Court's budget formulation and execution programs. She also managed the National Aeronautics and Space Administration's (NASA) OMB A-123, Appendix C program to determine NASA's compliance with the Improper Payments Elimination and Recovery Act of 2010. Brenda received her BBA from Howard University.

Bobbi-Jo Pankaj, *Senior Advisor* (Grant Thornton)—Ms. Pankaj, a Senior Manager at Grant Thornton and a Certified Government Financial Manager, has more than fourteen years of experience working within a Federal Government contracting capacity, wherein she acquired experience in numerous areas. More specifically, she has over ten years of experience supporting all phases of an internal control program, from developing program governance to creating corrective action plans. Ms. Pankaj has been actively involved in the development and implementation of robust internal control programs within the Department of Transportation (DOT), which involve the implementation of the Federal Managers' Financial Integrity Act (FMFIA) and OMB Circular A-123. She has conducted internal control assessments on over 20 assessable units, including the Human Resource and Time and Attendance areas. She is currently assisting the National Aeronautics and Science Administration (NASA) with executing their improper payment program. Furthermore, she has served in a training capacity at over ten Potomac Forums at which Grant Thornton administered a training course for Federal Government employees on OMB Circular A-123. Ms. Pankaj holds a Project Management Professional (PMP) certification and has managed client and contractor teams of up to 30 individuals. In conjunction with her diversified government experience, she boasts excellent time management, interpersonal, multitasking and communication skills.

Serwat Perwaiz, *Senior Advisor*—has over 13 years of experience in both the domestic and international arena. As a policy advisor with the United Nations Development Program (UNDP) in its National Institution Building Program, she provided advisory services to central government and donor agencies in streamlining public sector programs to meet good governance objectives and to increase the accountability and transparency of programs. As the lead capacity development advisor, she managed and trained more than 30 senior national capacity development officers for key government agencies. Ms. Perwaiz also led the technical process for development of National Programs for Civil Service in Afghanistan. As a Team Lead on a multi-million dollar USAID-funded project, Ms. Perwaiz provided Public Administration Reform advisory services to the Independent Commission for Administrative Reform. She assisted in the Organizational Capacity Assessment of key government agencies to identify agencies' capacity gaps for service delivery to citizens. Ms. Perwaiz also managed the American University of Afghanistan's programs to enhance the capacity of government ministries and agencies, including the Ministries of Higher Education and Justice. As a Legal and Business Management Consultant in China, she assisted private entities during China's opening up of the private sector economy and provided assistance to China's provincial and national law drafting committees on labor law,

intellectual property, and economic development of rural areas through cooperation with the American Chamber of Commerce. At the Bureau of National Affairs in Washington, DC, Ms. Perwaiz led a comparative analysis of health law and she has also served as a US government contractor providing quality assurance for compliance with US treaties and other obligations. Ms. Perwaiz has a J.D. from American University's Washington College of Law and a Master of International Public Policy from the Johns Hopkins University's School of Advanced International Studies. She has also completed a Special Studies Program at Harvard University's Graduate School of Arts and Sciences.

Greg Wallig, *Senior Advisor* (Grant Thornton)—leads Grant Thornton's Public Sector Governance, Risk and Compliance (GRC) and Information Assurance practices. He is responsible for thought leadership, methodology and quality assurance over all of Grant Thornton's GRC and Information Assurance engagements, with particular focus on such topics as Enterprise Risk Management, Internal Controls over Financial Reporting, the Federal Information Security Management Act (FISMA) and the Improper Payments Elimination and Recovery Improvement Act (IPERIA). To that end, Mr. Wallig has created, assessed and optimized risk frameworks for some of Grant Thornton's largest clients. He has served in both an internal and external audit capacity for both civilian and defense agencies. He is particularly adept at working in highly complex environments with high volumes of transactional data, and addressing the role of technology in supporting the business. Prior to joining Grant Thornton in 2005, Greg was a Manager with Accenture and a Principal with American Management Systems (now CGI), focused on global technology development, program management and product launch. Mr. Wallig holds a Bachelor of Arts in International Relations, with secondary concentration in Mathematics, from The College of William & Mary. He frequently writes and speaks on the topic of utilizing risk management concepts to improve the efficiency and effectiveness of government programs.

Nicole Camarillo, *Project Advisor*—National Academy of Public Administration. Nicole Camarillo is the Associate General Counsel and Project Development Advisor for the Academy. She has a legal background in regulatory compliance and employment law issues. She has extensive experience working for nonprofits on a variety of advocacy issues and has federal campaign experience. At the Academy, Nicole assists the General Counsel on all employment law and policy matters affecting the organization. Nicole also serves as a legal advisor on Academy studies, particularly those involving legislative and regulatory matters. She assists the Director of Project Development with the development of Academy proposals and studies. Nicole received her BA from Stanford University and her JD from the University of California, Berkeley School of Law.

Daniel Orr, *Research Associate*—has previously served as a Research Associate on the Academy's management review of the Department of Justice (DOJ), Civil Rights Division, the development of a long-term vision and high-level strategic plan for the Social Security Administration (SSA), as well as reviews of the National Aeronautics and Space Administration's (NASA) foreign national program and the Pension Benefit Guaranty Corporation's (PBGC) governance structure. Prior to joining the Academy, Mr. Orr served as an AmeriCorps VISTA focusing on capacity-building and strategic planning for housing outcomes and completed an internship with the National League of Cities. He is a graduate

of the Master of Public Administration program at Penn State University, Capital College, writing his Thesis on organizational models for homelessness prevention program implementation. Mr. Orr is also a 2008 graduate of American University's School of Public Affairs, holding a B.A. in Political Science.

APPENDIX B: PARTICIPATING INDIVIDUALS AND ORGANIZATIONS

The Panel and study team met with numerous stakeholders through formal interviews, meetings, and discussion groups. The Academy would like to thank these individuals for their contributions.

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Washington, Eddie—County Transportation Program Manager, Los Angeles County

Wilsker, Chuck— President, CEO, and Co-Founder, Telework Coalition

APPENDIX C: SELECTED BIBLIOGRAPHY

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**APPENDIX D: 2005 ACADEMY PANEL'S REPORT ON THE USPTO
OVERVIEW**

Of the 69 recommendations from the 2005 Academy Panel's Report on the USPTO, only one recommendation specifically mentioned telework, while additional recommendations appeared to be relevant through their potential impact on the Telework Program or their connection to the recommendations articulated in the Final Report. The general themes of the relevant recommendations are recruitment and retention; improved productivity and quality; communication and collaboration; and supervisor training.

In this section, the relevant recommendations are discussed in consideration of the Telework Program and the Final Report, followed by an overview of actions taken since 2005 on those issued. After reviewing this information, the study team has concluded that the USPTO has been diligent in implementing recommendations related to recruitment and retention that effect telework and other recommendations that would have impacted the other themes of improved productivity and quality; communication and collaboration and supervisor training. Significant progress has been made in the ten years since the 2005 USPTO Report was released, while other areas of improvement remain which are discussed in relevant sections of the current study report.

Recruitment and Retention

The general theme of recruitment and retention includes the only specific reference to telework within the 2005 Academy Panel Report. The reference to telework is made in the context of increasing OPM flexibilities²²⁵ to address human capital challenges, including challenges to enhance performance, ensure accountability, and position the workforce for the future.²²⁶ The 2005 Academy Panel Report includes in its list of most effective flexibilities: work-life programs; alternative work schedules; and monetary incentives.²²⁷ These particular flexibilities relate to the benefits provided in the USPTO's current Telework Program (for work-life and alternative work schedules) and the ultimate monetary incentives that come from the USPTO's increased pay rate, bonus, overtime, and monetary savings from teleworking. The specific reference to telework in the 2005 Academy Panel Report is in the discussion on legislation recently enacted in 2005 that further supported the USPTO's ability to compete with private sector and made the USPTO more agile in pursuing and retaining its critical work force.²²⁸ Since 2005, the USPTO's telework program has greatly expanded and is, independently, the primary subject of this current report. For purposes of efficiency, an entire review of the Telework Program will not be repeated here. Please see Chapter 2.

²²⁵ See 2005 Academy Panel Report on the USPTO, Page 115-120 and page 271. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is NAPA Recommendation # 48.

²²⁶ 2005 Academy Panel Report on the USPTO, Page 115

²²⁷ 2005 Academy Panel Report on the USPTO, Page 116

²²⁸ 2005 Academy Panel Report on the USPTO, Page 119.

Other recommendations listed in the 2005 Academy Panel Report on the USPTO related to recruitment and retention are:

- *Create a group award to spur innovation in work processes and overcome the "production loner" concept.* (2005 Academy Recommendation #33).²²⁹ Group awards would promote retention of employees, as well as play a role in recruitment to that extent that applicants are aware of them. Chapter 6 of this report discusses Recruitment and Retention in greater detail in the context of the Telework Program. **Information provided by the USPTO on this recommendation indicates that group awards have been developed and are in use.**
- *Set priorities for human capital initiatives and clearly delineate funding for each.* (2005 Academy Recommendation #42).²³⁰ Human capital initiatives are critical to effective recruitment and retention efforts. Chapter 6 of this report discusses Recruitment and Retention in greater detail in the context of the Telework Program. **Information provided by the USPTO on this recommendation indicates that funding concerns have been addressed and human capital initiatives have been implemented since 2005. The Telework Program is itself an example of the use of flexibilities in human capital initiatives to recruit and retain qualified employees.**
- *Ensure that the vision and goals in its Strategic Plan are integrated into its human capital planning.* (2005 Academy Recommendation #52).²³¹ This recommendation ties to recruitment and retention concerns. **In response to this recommendation, the USPTO developed and implemented the Human Capital Plan. The Human Capital Plan is further discussed in Chapter 3.**
- *Raise the commitment to and visibility of human capital improvement efforts by incorporating some aspects of this work into the broader Strategic Plan.* (2005 Academy Recommendation #53).²³² This recommendation relates to recruitment and retention and is tied to the above recommendation. **Elements of the Human Capital Plan 2011-2015 have been incorporated into the USPTO's strategic plan and, generally, more information on the Human Capital Plan can found in this report in Chapter 3.**
- *Develop a process for initial employee orientation that stresses the positive work environment and many benefits of working for USPTO.* (2005 Academy Recommendation #55).²³³ This recommendation is also directly related to recruitment and retention. **During the interview and research process of the**

²²⁹ See 2005 Academy Panel Report on the USPTO, Chapter 4 and Page 269. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is NAPA Recommendation #33.

²³⁰ See 2005 Academy Panel Report on the USPTO, Chapter 5 and Page 270. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is NAPA Recommendation #42.

²³¹ See 2005 Academy Panel Report on the USPTO, Chapter 6 and Page 271. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is NAPA Recommendation #52.

²³² See 2005 Academy Panel Report on the USPTO, Chapter 6 and Page 271. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is NAPA Recommendation #53.

²³³ See 2005 Academy Panel Report on the USPTO, Chapter 6 and Page 271. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is NAPA Recommendation #55.

current study, the Academy study team learned that employee orientation processes are comprehensive and address this issue.²³⁴

1. Improved Productivity and Quality

Improving productivity without negatively impacting quality is both a major element of the scope of this review, as well as concern referred to in the Final (Recommendation # 3) and Draft Reports (Recommendation # 3 and 4). In addition, there is arguably a connection between quality and endloading, which is a major area of concern in the original complaints to the OIG, which resulted in the Final Report. The 2005 Academy Panel's Report on the USPTO speaks to this theme through the following recommendations:

- *As part of the evaluation of the pilot, USPTO examine the potential to outsource the search function to an FFRDC. (2005 Academy Recommendation #6).*²³⁵ Outsourcing can serve an important role in the process of improving efficiencies without reducing quality. Also, in the context of the Telework Program, it serves as another tool to complete comprehensive searches in a virtual environment. **It is referenced in the USPTO's strategic plan and it can be considered a component of the USPTO's cooperation with the IP5. Outsourcing is further discussed in Chapter 3.**
- *Update the production and quality standards and awards. (2005 Academy Recommendation #31).*²³⁶ This directly relates to improved production and quality, which are important to the overall health of the Telework Program. Data shows that production and quality standards between teleworkers and non-teleworkers are comparable. **A new PAP and award system were proposed to POPA to address this. See Chapter 7 for more details on the USPTO's efforts to update its production and quality standards.**
- *Develop strategies to make its organizational culture more positive and collaborative. These efforts should start with an assessment of the current culture, probably by an external group, and should involve employees and managers. (2005 Academy Recommendation #54).*²³⁷ This recommendations ties into the effect of a more positive and collaborative culture, inclusive of a Telework Program, on more efficiently producing quality patents. In response to this recommendation, the USPTO had an outside organization complete a study and survey on the internal communications at the USPTO. **An internal communications roadmap and structure was put in place, including an Internal Communications Working Group ("ICWG"), which meets on a regular basis.**

²³⁴ NAPA Study Team interviews with Patents, on Feb. 6, 2015, and Trademarks, on Feb. 10, 2015.

²³⁵ See 2005 Academy Panel Report on the USPTO, Chapter 2 and Page 267. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is NAPA Recommendation #6.

²³⁶ See 2005 Academy Panel Report on the USPTO, Chapter 4 and Page 269. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is NAPA Recommendation #31.

²³⁷ See 2005 Academy Panel Report on the USPTO, Chapter 6 and Page 271. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is NAPA Recommendation #54.

2. Communication and Collaboration

In the current study, the Academy is asked to consider the use of communication and collaboration tools in an overall look at the Telework Program. In addition, in the Final (Recommendation #2) and Draft Report (Recommendation #8), this general theme is specifically mentioned. Some recommendations in the 2005 Academy Panel's Report on the USPTO that relate to this are:

- *Create a group award to spur innovation in work processes and overcome the "production loner" concept.* (2005 Academy Recommendation #33).²³⁸ This recommendation is discussed, above, under Recruitment and Retentions, also. Its impact cuts across the thematic areas. Use of group awards also promotes collaboration, which address Final Report Recommendation #2 and Draft Report Recommendation #8. Chapter 5 further discusses the Final and Draft Reports. **Information provided by the USPTO on this recommendation indicates that group awards have been developed and are in use.**
- *As part of the evaluation of the pilot, USPTO examine the potential to outsource the search function to an FFRDC.* (2005 Academy Recommendation #6).²³⁹ This recommendation is also discussed, above, under Improved Productivity and Quality. Its impact cuts across the thematic areas. Outsourcing is a form of collaboration through which the USPTO can work with private sector search agents and global patent offices for more comprehensive and potentially more efficient searches. Outsourcing in the context of the IP5 is discussed in more detail in Chapter 5.
- *Develop a communication strategy, including pre-decisional input from labor unions as well as individual employees, and explain priorities, costs, and impacts of human capital choices.* (2005 Academy Recommendation #45).²⁴⁰ This recommendation ties into the other recommendations related to creating a better communication flow. **In response to this recommendation, the USPTO developed and implemented its internal communication roadmap and structure, which includes feedback loops for labor and employee input, such as Town Hall meetings and the Commissioner's Corner.**
- *Develop strategies to make its organizational culture more positive and collaborative. These efforts should start with an assessment of the current culture, probably by an external group, and should involve employees and managers.* (2005 Academy Recommendation #54).²⁴¹ While this recommendation is discussed above under Improved Productivity and Quality, it is a cross-cutting theme that is also relevant to Communications and Collaboration. This recommendations ties into the effect of a more positive and collaborative culture, inclusive of a Telework Program, on more

²³⁸ See 2005 Academy Panel Report on the USPTO, Chapter 4 and Page 269. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is NAPA Recommendation #33.

²³⁹ See 2005 Academy Panel Report on the USPTO, Chapter 2 and Page 267. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is NAPA Recommendation #6.

²⁴⁰ See 2005 Academy Panel Report on the USPTO, Chapter 5 and Page 270. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is NAPA Recommendation #45.

²⁴¹ See 2005 Academy Panel Report on the USPTO, Chapter 6 and Page 271. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is NAPA Recommendation #54.

efficiently producing quality patents. **In response to this recommendation, the USPTO had an outside organization complete a study and survey on the internal communications at the USPTO. An internal communications roadmap and structure was put in place, including an Internal Communications Working Group (“ICWG”), which meets on a regular basis.**

- *Reinforce the initial positive presentation of USPTO's environment with periodic informal opportunities to interact with senior management in a social setting, such as "coffee with a commissioner" at lunchtime several times each year. (2005 Academy Recommendation #56).*²⁴² This recommendation is linked to 2005 Academy Panel Recommendation #45 and 54. It reinforces the importance of communication and collaboration. **In response to this recommendation, the USPTO holds on-going town hall meetings with Commissioners, and other social meetings and volunteer opportunities are set up for examiners to interact with each other and with upper management. In addition, the USPTO Strategic Plan addresses this issue.**²⁴³
- *Devote additional resources to examiner exchanges so as to learn more about the search strategies and work methods of the European Patent Office and Japan Patent Office. (2005 Academy Recommendation #64).*²⁴⁴ This recommendation is linked to the USPTO's collaboration efforts with other major global patent offices. **In 2005, the USPTO was engaged in collaborative efforts through the Trilateral Exchange, and since then that group has expanded and become the IP5, with its own new collaborative efforts.** This is discussed in greater detail in Chapter 5.
- *Conduct a cost-benefit analysis, using the Management Analysis Unit described in Chapter 6, in order to estimate the amount of resources that should be devoted to future trilateral exchanges. (2005 Academy Recommendation #67).*²⁴⁵ **This recommendation is related to recommendation #64 above. Please see Chapter 5 for more information.**
- *Emphasize improved harmonization as a source of efficiency across the trilateral offices. (2005 Academy Recommendation #68).*²⁴⁶ **This recommendation is also related to USPTO's membership in the IP5 (the successor to the “trilateral exchange” group), a global network of major patent offices. See Chapter 5 for more information.**

²⁴² See 2005 Academy Panel Report on the USPTO, Chapter 6 and Page 272. In the USPTO internal document, “NAPA Aug 2005 Recommendations updated 12-31-2011”, this is NAPA Recommendation #56.

²⁴³ See the USPTO Strategic Plans 2010 and 2014: p37- Obj 3B 1) Establish at least two new formal or informal collaborations per year with sister DOC agencies and other Federal agencies. 3E 1) Establish at least three new formal or informal collaborations with stakeholders per year, including those in regional office and outreach regions. p38- Obj 5B further develop regional cooperative opportunities. 1) Increase number of programs in regional office and regional cities. 2) Increase the number of partnerships or collaborations with entities in satellite and regional cities.

²⁴⁴ See 2005 USPTO Report, Chapter 8 and Page 273. In the USPTO internal document, “NAPA Aug 2005 Recommendations updated 12-31-2011”, this is NAPA Recommendation #64.

²⁴⁵ See 2005 USPTO Report, Chapter 8 and Page 273. In the USPTO internal document, “NAPA Aug 2005 Recommendations updated 12-31-2011”, this is NAPA Recommendation #67.

²⁴⁶ See 2005 USPTO Report, Chapter 8 and Page 273. In the USPTO internal document, “NAPA Aug 2005 Recommendations updated 12-31-2011”, this is NAPA Recommendation #68.

3. Supervisor Training

The Final (Recommendation #8) and Draft Reports (Recommendation # 14) specifically mention supervisor training as a recommendation. Enhanced management abilities of supervisors also feed into the overall program health of the Telework Program. Some recommendations in the 2005 Academy Panel Report on the USPTO that relate to Supervisor Training are:

- *Enhance supervisory and management training for new supervisors.* (2005 Academy Panel Recommendation #25)²⁴⁷. This recommendation is connected to enhancing the management abilities of supervisors, which addresses both the Final and Draft Report recommendations and the overall health of the Telework Program review. **It is mentioned the USPTO's Strategic Plan**²⁴⁸.
- *Establish a formal rotational program for examiners who aspire to careers in management at USPTO.* (2005 Academy Recommendation #30).²⁴⁹ This recommendation relates to the development and maintenance of a healthy Telework Program through professional development of its participants. It also connects to the Final and Draft Report Recommendations on Supervisor Training. **In response to this recommendation, the USPTO incorporated this element into its Leadership Development Program ("LDP").** The LDP was developed to promote leadership at all levels of the organization and provide a wide variety of career development opportunities. The programs features rich and diverse learning opportunities, including classroom instruction, computer-based training, coaching, mentoring, and other development activities. Program components are designed to "cross-pollinate" participants by helping them gain new information and perspectives about operational responsibilities and leadership in business units other than their own.

²⁴⁷ See 2005 USPTO Report, Chapter 4 and Page 269. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is NAPA Recommendation #25.

²⁴⁸ The USPTO Strategic Plan 2010: p47- Goal I, Obj 4: Measure and improve patent quality. B) Improve and provide effective training. P50- Goal II, Obj 6: Develop a new generation of Trademark Leaders. A) Improve and provide effective training. Number of training courses given (human capital plan). And the USPTO Strategic Plan 2014: p28- Goal I, Obj 2, B) Develop and train an adaptable workforce to meet pendency targets. 1) Identify nature and extent of training courses provided and make changes as needed. 2) Increase the number of patent examiners that can examine across a wider range of tech (generalists). P32- Goal II, Obj 2A: ...Providing targeted training to address quality issues and provide legal training and education. 4) Continue to issue training materials and exam guides and hold legal education programs on targeted issues. P36- Obj 2, A, 1) Increase training and workshops on effective leadership in a telework environment. B, 1) Increase visual training and workshop opportunities.

²⁴⁹ See 2005 Academy Panel Report on the USPTO, Chapter 4 and Page 269. In the USPTO internal document, "NAPA Aug 2005 Recommendations updated 12-31-2011", this is NAPA Recommendation #30.

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APPENDIX E: INTERNAL CONTROLS FULL REPORT

Executive Summary

For many years, laws addressing telework (under various names – “work at home,” “flexible work,” “telecommuting,” etc.) have been in effect for Federal employees. The initial legislative mandate for telework was established in 2000 (§ 359 of Public Law 106-346). This law states that “[e]ach executive agency shall establish a policy under which eligible employees of the agency may participate in telecommuting to the maximum extent possible without diminished employee performance.” Further legislation (Public Law 108-199, Division B, § 627 of January 23, 2004, and Public Law 108-447, Division B, § 622 of December 8, 2004) followed this mandate with directives to certain agencies to increase telework participation in the workforce by specified amounts.

The Telework Enhancement Act of 2010 (the Act), was signed into law on December 9, 2010. The passage and signing of this legislation (Public Law 111-292) was a significant milestone in the history of Federal telework. The Act is a key factor in the Federal Government’s ability to achieve greater flexibility in managing its workforce through the use of telework. The Act established baseline expectations for the Federal telework program.

To ensure that the Act was implemented in the USPTO effectively, the USPTO requested that an OMB Circular A-123, *Management’s Responsibility for Internal Control*, review be performed for its Telework Program. The USPTO also requested an OMB Circular A-123 review of its T&A Process. This Circular provides guidelines on improving the accountability and effectiveness of Federal programs and operations by establishing, assessing, correcting, and reporting on internal control.

Seventeen (17) control activities in the Telework Program Internal Control narrative and thirty-four (34) control activities in the T&A Process Internal Control narrative were tested by observation, inquiry, interviews, sampling and testing transactions to determine their compliance and conformance with laws, regulations and policies. With the exception of one observation, the Telework Program Policy controls were found to be effective. There was one finding and one observation related to the T&A control activities.

It was found that the internal controls over T&A for teleworkers are not substantially different from controls for non-teleworkers. The processes and procedures applicable for teleworkers and non-teleworkers are essentially the same. Specifically, the automated T&A system, WebTA, is used by both teleworkers and non-teleworkers and the processes and procedures required to use this system do not distinguish between the two types of workers. The system requires both types of employees to use different project codes to distinguish what activities they perform and whether they are performed at a USPTO facility or at the employees’ designated telework sites. Therefore, there was no difference in the test results for teleworkers and non-teleworkers. Based on the testing results described in the report below, it was found that USPTO’s internal controls over the Telework and T&A

process were found to be in place and designed and operating effectively to reduce relevant risks to an acceptable level.

Purpose and Scope

The purpose of this document is to illustrate the overall approach, results and findings for the USPTO internal control review and assessment process for the Telework and T&A process. As contracted by USPTO, the Academy Team assessed the program controls and evaluated management control activities associated with:

1. USPTO teleworkers accurately reporting time & attendance information for both regular and overtime work hours.
2. Approval to work overtime and compensatory time.
3. Administration of leave.
4. Documented telework program requirements to notify of telework and work schedules, and use of USPTO-designated information technology and collaboration tools.
5. Whether USPTO policies and their implementation provide adequate management controls to assess the amount of accomplished work.

In the following sections, we describe our approach for conducting an internal control review of the USPTO telework and T&A process to determine if it complies with the internal control standards outlined in OMB Circular A-123.

- **Methodology and Approach**

As part of our internal control review we performed the following steps to assess USPTO's compliance with OMB Circular A-123:

- Evaluate Control Design
- Develop Test Plans
- Test Design Effectiveness
- Test Operating Effectiveness
- Identify Control Gaps and Compensating Controls
- Document Test Results
- Identify Deficiencies and Corrective Action Plans
- Report Assessment Results

Evaluate Control Design

The Academy Team reviewed and assessed USPTO's existing internal control documentation to identify areas for improvement. In doing so, we reviewed and assessed USPTO's existing:

- Internal control templates
- Process narratives

- Process flowcharts



Figure 1: Approach for reviewing, assessing and updating documentation

To accomplish this, the Academy Team employed the approach listed in **Figure 1** above.

- **Reviewed applicable guidance.** The Academy Team began the process to determine if management controls were adequate by reviewing any new and/or updated GAO and OMB guidance, along with internal USPTO policies and procedures that could affect the USPTO Telework and T&A Processes and associated processes that we evaluated.
- **Conducted process owner interviews.** The Academy Team then conducted process owner interviews to identify changes and identify controls in the process. We confirmed that a review of the T&A Process is performed annually, but review of the Telework Program has not been conducted to date. Prior to each interview, we provided the process owner with the portion of the existing process narrative in which we believed the process owner to have direct involvement. During the process owner interviews, we identified any new sub-processes and related controls. Changes within existing sub-processes due to new technology or other factors that may cause an existing control to be outdated were taken into consideration following the same process detailed above for assessing individual process narratives. Additionally, the Academy Team also considered inherent risk to the program to take into consideration the appropriate balance between controls and the relative risk in the USPTO Telework and T&A Process and operations.
- **Identified any gaps or weaknesses.** After conducting process owner interviews, the Academy Team identified weaknesses between guidance, policies, and the current control environment that could reduce the effectiveness of controls and increase the exposure/vulnerability over the USPTO telework and T&A process, including lack of controls, changes to controls, or controls that are no longer applicable to a particular key business process.
- **Conducted internal quality assurance review on the documented controls.** The Academy Team conducted internal deliverable quality assurance reviews. These reviews were conducted by the Project Manager and Partner prior to submission to USPTO.
- **Tested Design Effectiveness.** At the process level, the Academy Team determined if the controls in place were designed to achieve the desired outcome. The Academy Team assessed the effectiveness of the design of controls by comparing the design to the internal control requirements mandated by the Federal Government, which is depicted in **Figure 2** below.

As part of this assessment, the Academy Team reviewed how the USPTO teleworkers, including patent examiners and trademark examining attorneys, report their T&A information for both regular and overtime work hours. The Academy Team focused on the approval to work overtime and compensatory time in accordance with USPTO policies as

well as the administration of leave in accordance with USPTO policies. The Academy Team reviewed these policies and their implementation to test whether they provide adequate management controls to assess the amount of work being accomplished during a pay period.

With the assistance of USPTO subject-matter experts, internal control narratives were prepared, documenting the processes USPTO follows, including identifying control activities for the Telework Program, Time and Attendance Program, Patent Examination process and Trademark Examination process. A full internal control assessment was completed for the Telework Program and T&A Process. The USPTO Telework and T&A subject-matter experts identified 17 Telework and 39 Time and Attendance key control activities. Each of the control activities (identified as TP ### and TA ###) listed in Appendix A (within Appendix E) were reviewed using the approach displayed in **Figure 2** below.

Testing Operating Effectiveness

Taking into consideration the nature of USPTO’s business processes, the Academy Team implemented the following sequence, as depicted in **Figure 2**, in testing entity- and process-level controls for the Telework and T&A process and documenting the test results and providing recommendations.



Figure 2: Testing Entity and Process-Level Controls

Developed testing plans to detail the test procedures by business process. The testing methodology was documented to reflect the nature, extent and timing of our control tests.

Tested design effectiveness within the Telework Program and T&A Process by interviewing key personnel, conducting walkthroughs of major processes, wherein a single transaction or activity was traced through the respective process. The Academy Team assessed whether or not the control was performed properly and whether or not it addressed the control objective and business risk as described in the process narratives/documentation. The Academy Team also determined whether the control should be adjusted based on changes in the risk environment, technology, operating conditions, and other considerations. The Academy Team presented draft conclusions and recommendations to the USPTO stakeholders for review of accuracy throughout the process.

Tested operating effectiveness for the key controls within the Telework Program and T&A Process by performing one or more of the following tests: inquiry, inspection, observation, and re-performance. We selected a random sample, as described in the GAO's Government Auditing Standards (Yellow Book), based on the frequency of the control. We identified the relevant process owners and contacted them with a list of documents required to conduct our testing.

Identified control gaps and compensating controls via the comparison of controls to various Federal requirements, to see if the controls sufficiently met the stated requirements. The Academy Team determined if a compensating control was in place to mitigate the risk associated with the control gap.

Documented test results that included an evaluation of the level of assurance provided by the tested controls, considering the nature and application of the control, and the manner in which and by whom the control is applied. Further, we completed work papers to support and substantiate the results of the testing performed.

Identified Deficiencies and Provided Recommendations by reviewing the documented test results and determining the best course of action needed to resolve the deficiencies to ensure that the five interrelated components of internal controls (Control Environment, Risk Assessments, Control Activities, Information and Communication, and Monitoring) are optimal for providing strong Telework and T&A Process. Provided USPTO with recommendations on how to resolve the deficiencies (findings and observations) found from testing the controls.

Reported Assessment Results by documenting and summarizing the results below, which include recommendations to overcome any internal control deficiencies identified, as well as to improve business operations. As part of this report, we have prepared the following for all deficiencies (findings and observations) noted:

- **Condition.** Description of the finding.
- **Criteria.** Policies or requirements supporting the control.
- **Cause.** Reason for the deficiency.
- **Effect.** Effect of the deficiency on the Program and/or the agency.
- **Recommendation.** Recommended steps for correcting the deficiency.
- **Severity rating.** Potential of the deficiency to affect the Program and/or the agency.

There were no material weaknesses or significant deficiencies identified in our review.

Control Matrices and Risk Assessments

As part of the internal control review conducted on the Telework and T&A Process, a control matrix (Control Activity Assessment Tool) was created for each process area that

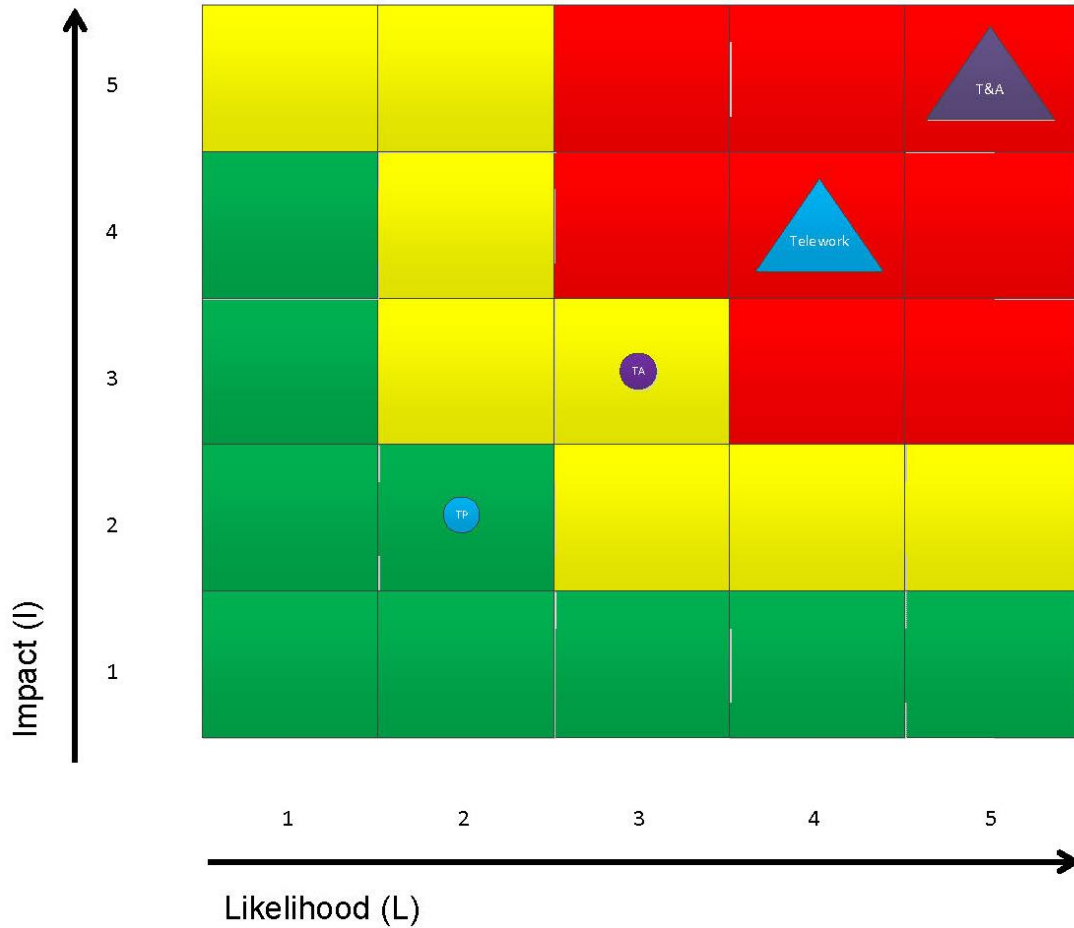
included the control activity, associated risk, the control owner, control type and method, control frequency, and whether the control was a key control for each management control.

A risk assessment matrix was developed to readily identify high risk areas within the Programs and direct testing efforts to those areas.

We assessed the likelihood and impact of potential risks using a Risk Rating Matrix to score the risks and inform our evaluation of the USPTO telework and T&A Process in determining if it complied with the internal control standards outlined in OMB Circular A-123. The Academy Team determined the likelihood of a risk by multiplying the frequency, and the probability of failure. It then rated severity on a scale of 1-5, which we determined by the impact a risk has on a process area. The Academy Team multiplied the likelihood (slight, not likely, likely, highly likely and expected) by severity (low, moderate, high, significant and critical) to determine the risk rating. **Figure 3** depicts the Risk Rating Matrix and shows the relationship between the matrix and the risk ratings (low, medium and high) as well as the relationship between the inherent risk (signified by the triangle) and residual risk (signified by the circle) for both the Telework (signified by the abbreviation TP) and T&A (signified by the abbreviation TA) Program. Inherent risk is the risk that exists if there were no controls in place. The residual risk is the remaining risk after the controls have been applied. In the matrix below, both the T&A and Telework Programs are inherently risky and are shown as high risk, but with the controls and procedures USPTO has put in place within these Programs the residual risk was evaluated as moderate and low.

Conducting this risk assessment allowed us to review internal control elements such as authorizations, efficient operations, correct classification, and documentation of selected major processes and/or program activities. The Academy Team reviewed supporting

Figure 3: USPTO Risk Matrix Heat Map



Impact: 1 - Low; 2 - Moderate; 3 - High; 4 - Significant; 5 - Critical

Likelihood: 1 - Slight; 2 - Not Likely; 3 - Likely; 4 - Highly Likely; 5 - Expected

documentation and day-to-day operations. The Academy Team identified risk factors for fraud, waste and abuse and types of errors that *could* occur within the business processes (inherent risk) and the relevant internal control policies and procedures designed to prevent or detect the types of errors that could occur. Having relevant policies and procedures in place may reduce your risk, leaving a lower residual risk. Lastly, the Academy Team considered factors, such as previous deficiencies and known weaknesses, the

existence of compensating controls, changes in the control environment and automated controls. The ten risk factors included in the assessment were:

- Complexity of the programs, operations, and transactions
- Magnitude of programs, operations and transactions
- Extent of manual processes
- Fraud risk
- New or revamped information systems
- Significantly new or changed programs or operations
- Decentralized vs. centralized operations
- History of audit or internal control findings
- New or amended laws, regulations, or accounting standards
- New personnel or significant personnel changes

During the risk assessment update, the Academy Team evaluated the adequacy of documented key controls by using this risk assessment matrix. The purpose of the risk assessment matrix was to readily identify high risk areas within the identified key controls and direct efforts to those areas.

Section 1: Test Results

• **Description of Testing Performed**

As a part of the review of USPTO internal controls, the Academy Team performed a variety of tests that provided the basis for understanding the framework for controls. The tests determined whether the control activities were in place, designed correctly, and functioning effectively. The types of testing we performed to determine the effectiveness of the control activities are described below:

TEST	DESCRIPTION
Observation	We observed the application of specific control structure activities, including observation of the existence and availability of specific, written control structure policies and procedures, or application of specific control structure activities within the process narrative to ascertain whether control policies and procedures were being followed.
Corroborative Inquiry	We made inquiries of management and corroborated responses with appropriate personnel. We also conducted

TEST	DESCRIPTION
	inquiries of personnel responsible for carrying out distinct control policies and procedures in the specific process narrative unit and area, and corroborated responses with other personnel responsible for carrying out these procedures.
Inspection	We inspected documents and reports indicating performance of the control structure, policy, or procedure, and a selection of system input, output and edit reports to ascertain whether controls over systems were operating as described and the control policies and procedures were operating effectively. We also determined whether the transactions (complaints, cases, projects, referrals) and associated reports and deliverables were prepared, approved, and maintained in accordance with specific control policies and procedures, and evaluated whether the control policies and procedures were operating effectively.
Transaction Testing and/or Walk-Throughs	We re-performed application of the control structure, policy, or procedure, or performed walk-throughs of specific control activities on current data to ascertain that the control policies and procedures were implemented and the control was operating effectively.

Table 1: Types of Testing Performed

- **Testing Results**

Upon completion of the control testing, the results were evaluated to determine if control gaps existed. A control gap exists when a control for a given process or assertion does not exist, does not adequately address a relevant assertion, or is not operating and/or not designed effectively. To ascertain whether a control gap did exist, the Academy Team considered whether the ineffective control would allow a material error to go undetected. Where appropriate, compensating controls were considered when such controls could potentially mitigate the program risk or risk of misstatement. Control gaps were then categorized based on the definitions below, as defined by the AICPA in the Statement on

Auditing Standards (SAS) No. 115, Communication of Internal Control Related Matters Identified in an Audit.

Material Weakness: A deficiency or combination of deficiencies in internal control, such that there is a reasonable possibility that a material misstatement of the entity’s financial statements will not be prevented, or detected and corrected on a timely basis; additionally, a material weakness is a deficiency that significantly impairs the fulfillment of USPTO’s mission, or that the Accountability and Performance Integration Council (APIC) determines to be significant enough to report outside of USPTO.

Significant Deficiency: A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Internal Control Deficiency: Control deficiencies exist when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. Deficiencies are not required to be reported outside the agency.

The deficiencies found in the Telework and T&A review were not severe enough to be placed in the three categories above. The term finding and observation were used to describe the deficiencies we noted, with observations being less severe than findings.

- **Results by Sub-Process**

The ultimate goal of testing control activities is to validate that the control activities are functioning effectively to meet the control objectives. To perform testing efficiently, test plans were developed for the Telework and T&A Processes to document planned testing procedures and to gain evidence to support the operating effectiveness of each control. In determining how extensively a key control is tested (e.g., sample size or type of test performed), we considered the complexity of the control activity, how often the control activity is performed, and whether the control activity is manual or automated. **Table 2** below displays the number of deficiencies found by sub-process:

Telework Program

Sub-Processes	Description	Number of Key Controls Tested	Deficiencies/ Findings	Observations
Telework Policy	The Telework Enhancement Act 2010 (the Act) was signed into law	2	0	0

Sub-Processes	Description	Number of Key Controls Tested	Deficiencies/ Findings	Observations
Development and Implementation	<p>on December 9, 2010 (Public Law (Pub. L.) 111-292). The Act specifies roles, responsibilities, and expectations for all Federal executive agencies with regard to telework policies; employee eligibility and participation; program implementation; and reporting. The Act created a Telework Management Officer (TMO) in each agency who has direct access to the head of the agency. The TMO for USPTO is located in the TPO and is responsible for telework policy development and implementation; serves as an advisor for agency leadership; serves as a resource for managers and employees on telework matters; and is the primary contact with OPM on telework matters.</p> <p>Federal agencies, including USPTO, have the legal requirement to establish a telework policy under which eligible employees of the agency may be authorized to telework, determine the eligibility for all employees of the agency to participate in telework and notify all employees of the agency of their eligibility to telework.</p>			
Policy-Compliant Telework	The Telework Program Officer (TPO) informs the Office of Human Resources, Labor Relations	3	0	0

Sub-Processes	Description	Number of Key Controls Tested	Deficiencies/ Findings	Observations
Documents	organization and the USPTO Telework Coordinators of all OPM telework policy changes to ensure that all USPTO Telework Agreements negotiated with the Union are consistent with the policies in OPM's <i>Guide to Telework in the Federal Government, April 2011</i> .			
Manager, Telework Coordinator and Employee Telework Resource	<p>The TPO serves as a resource for managers, business unit telework coordinators and employees on telework matters by:</p> <ul style="list-style-type: none"> • ensuring that the same performance standards, derived from a modern, effective, credible, and validated performance system, are used to evaluate both teleworkers and non-teleworkers; • conducting assessment of teleworker and organization technology needs; • developing guidelines about whether the organization or employee will provide necessary technology, equipment, and supplies for telework; • providing technical support for teleworkers via the Office of the Chief Information Officer (OCIO); • addressing access and security issues with the OCIO as it relates to 	9	0	1*

Sub-Processes	Description	Number of Key Controls Tested	Deficiencies/ Findings	Observations
	<p>telework; and</p> <ul style="list-style-type: none"> establishing standards for equipment in the telework environment with support by the OCIO. 			
Program Evaluation	For telework programs such as the Telework Enhancement Act Pilot Program (TEAPP), an evaluation is conducted on an annual basis. As a part of this evaluation, a survey is deployed to all USPTO employees. In addition, a data base and application platform have been developed for all USPTO employees who are interested and eligible to participate in the program.	1	0	0
Internal/External Reporting	The Act requires OPM to prepare an annual <i>Status of Telework in the Federal Government Report to Congress</i> . Therefore, the USPTO must collect telework information to respond to the data call for the OPM requested information and provide USPTO management with the information required to monitor and manage the Telework Program.	3	0	0
TOTALS		18	0	1

Table 2: Telework Program Internal Control Observations

Time and Attendance Program

Sub-Processes	Description	Number of Key Controls Tested	Deficiencies /Findings	Observations
Roles and Responsibilities	Employee, Timekeeper, Supervisor/Manager, Business Unit Administrator and System Administrator roles and responsibilities are defined.	5	0	1**
The T&A Process	USPTO employees have access to an automated web-based T&A system known as WebTA. This system permits T&A information to be entered, verified, electronically certified, and transmitted to the National Finance Center (NFC) to process the payroll on a bi-weekly basis. The WebTA system provides an electronic means to capture and report hours worked and leave used. The data collected by this system represents the official record of T&A information.	8	0	0
Recording Time	The WebTA system holds records for USPTO employees who can enter their own basic time and attendance information, request and obtain approval for leave (OPM SF-71 equivalent)and premium pay (automated version of the CD-81), and capture various other categories of time. Time must be entered at least bi-weekly, but the automated system permits an employee to enter their time daily.	3	0	0
Time Approval	Timesheets are processed on a bi-weekly basis. Supervisors review and certify the T&A information submitted	22	3***	0

Sub-Processes	Description	Number of Key Controls Tested	Deficiencies /Findings	Observations
	by employees and timekeepers. T&A data cannot be sent to NFC for processing until the record is certified. The appropriate supervisor (or their delegate) certifies that all reported time was worked and approved according to law and regulation.			
Transmission to NFC	The first Monday of the new pay period, T&A records are transmitted to NFC throughout the day for T&A processing. Prior to transmission of T&A data for payroll processing the timekeepers monitor the status of timecards.	1	0	0
Reporting	NFC Missing Personnel (CULP 0099) and Missing T&A (CULP 0013) Reports are generated throughout the payroll transmission process to use as a monitoring tool to determine the status of timesheets and ensure that all employee timesheets are processed and transmitted to NFC.	0	0	0
Information Technology	The BU Administrators manage the T&A process for the employees they represent and review records of employees within their organization. The WebTA system is used for T&A and Labor Distribution recording and reporting and is used to support the USPTO T&A Processes.	0	0	0
TOTALS		34	3	1

Table 3: T&A Process Internal Control Observations

Based on the results of completing the Internal Control Review, the Academy Team observed and documented deficiencies/findings and observations related to control effectiveness for the control activities listed in the table below. For each identified deficiency/finding and observation, we formulated and documented recommendations to assist in resolving the finding or observation. Although currently none have escalated to internal control deficiency, significant deficiency or material weaknesses, the USPTO should take steps to address corrective actions in an effort to address these findings and observations and to further improve the operating and design effectiveness of the Program internal controls.

- *Telework Program*

The Telework Program process was tested to validate the operating and design effectiveness of internal controls that support the entity level control framework, including compliance with the Telework Enhancement Act of 2010 and USPTO Union Agreements' compliance with USPTO Policy. Based on observations, testing, interviews and walkthroughs with USPTO personnel the following observation was noted:

Telework Program	
Control Activity	TP 3.1.7: Each time a new employee is hired or a teleworker is terminated from the program, the BU updates this information in the telework data base.
Test Performed	Obtained a list of separated/terminated employees from OHR as of 3/31/15. Separately received a list of all active teleworkers from the TPO as of 03/31/15. Performed a comparison of both files to determine if any of the separated/terminated employees were included in the active telework file.
Condition	During the comparison of separated/terminated employees to the active teleworkers, it was noted that twenty four (24) employees from the list of 515 separation/terminations dated between 4/1/2014 - 3/31/2015 were included as active teleworkers in the Patent telework data base as of 4/1/2015. The telework database contained 9940 employees.
# of Occurrences	24

Telework Program	
Cause	The individual Business Units (BUs) are responsible for removing separated/terminated employees from the telework data base.
Effect	Delays in removing separated/terminated employees may result in reporting inaccurate telework data to OPM and GSA.
Conclusion for Test	Based on the testing performed, the control is partially effective.
Recommendations	The USPTO's TPO/TMO should inform the BUs to input separations in the telework database in a timely manner. For better accountability, the TPO/TMO should set a specific timeframe that the BUs have to make the updates and document this requirement in a memorandum or policy.

Table 4: Telework Related Observation

- *T&A Process*

The T&A Process process was tested to validate the operating and design effectiveness of internal controls that support the program including compliance with roles and responsibilities, recording time, time approval and transmission to NFC. A high level description of the process for reporting and information systems was included in the process narrative but not tested. Based on observations, testing, interviews and walkthroughs with USPTO personnel the following observation and finding was noted:

Time and Attendance Program	
Control Activity	TA 1.1.2: Timekeepers inactivate user accounts in the WebTA system when employees separate from the agency.
Test Performed	Obtained a list of employees who separated from USPTO between 4/1/2014 - 3/31/2015. From the list of 515 separated employees, pulled a random sample of 45 and requested the last timecard for each separated employee.
Condition	During the comparison of the 45 separated employees and their final timecards, it was noted that one employee had a separation date of 6/29/14 but timecards were submitted as of 8/1/14. Further testing showed that the employee did not separate from USPTO until after 8/1/14 and did not separate from DOC, rather transferred to another DOC agency.
# of Occurrences	1
Cause	The timekeepers are responsible for inactivating user accounts in the WebTA system when employees completely separate from the Department of Commerce (DOC). There is a different process in place when employees transfer to a different agency within DOC. The receiving agency is responsible for completing the appropriate paperwork and they are not required to share this paperwork with the employee's former agency. The employee in our sample was leaving USPTO but joining a different agency with in DOC. When the report was pulled for separated employees, the National Finance Center (NFC) pulled the date of last action by the Bureau, not the actual separation/transfer date.
Effect	Issues with pulling the wrong separation/transfer dates from WebTA may cause internal and external entities to report

Time and Attendance Program	
	inaccurate T&A data.
Conclusion for Test	Based on the testing performed, the reporting portion of the control is partially effective.
Recommendation	OHR and the NFC should address the reporting issue when pulling data for employees who separate from USPTO but transfer to another agency within DOC. Instead of pulling the last action USPTO processed as the "Actual Separation Date" for reporting purposes, they should pull the transfer date as the separation date.

Table 5: Time and Attendance Related Observation

Time and Attendance Program	
Control Activities	<p>TA 4.2.3: All overtime, compensatory time and leave requests must be consistent with the 1990 USPTO premium pay policy memorandum.</p> <p>TA 4.2.6: Overtime is requested and approved by using a CD-81 at the TC level on a bi-weekly basis.</p> <p>TA 4.2.7 For Patents, this authorizes the use of these funds for the amount of overtime specified in the document.</p>
Test Performed	<p>Requested the Overtime (OT) and Comp Time Reports worked by employees with the org code/org code description/PPA codes for each OT, comp and credit hours for the following pay periods:</p> <ul style="list-style-type: none"> a. Pay period #11 for 2014 (June 14, 2014) b. Pay period #14 for 2014 (July 26, 2014) c. Pay period #17 for 2014 (September 6, 2014) d. Pay period #1 for 2015 (January 24, 2015) e. Pay period #3 for 2015 (February 21, 2015) <p>Pulled a random sample of 8 employees from each of the reports provided for the pay periods above and requested the CD-81s for each of these employees.</p> <p>Compared the maximum number of hours listed on the CD-81s to the number of hours recorded in the WebTA system.</p>
Condition	<p>Out of the 45 sampled, 5 Patent employee's CD-81s could not be located. During the comparison of the remaining 36 CD-81s, the maximum number of hours listed for one Patent employee was .05 lower than the amount on the timecard and for another Patent employee, the CD-81 noted that this person did not have approval to work the overtime that was recorded and approved</p>

Time and Attendance Program	
	on the timecard.
# of Occurrences	7
Cause	The Supervisors certifying the employee's timecards are responsible for ensuring that the employee has received approval to work the appropriate number of OT, compensatory time and credit hours prior to approving the request.
Effect	Employees work and receive time/hours or pay for OT, compensatory time and credit hours they are not approved to receive. When employee OT is worked and has not been approved, the Office budgets are affected and could potentially cause them to spend money they do not have in their budgets for the overtime line item.
Conclusion for Test	Based on the testing performed, the control is ineffective.
Recommendation	The Patent Organization should consider using the automated premium pay request, which is currently available in WebTA, as a way to further automate the collection (and maintenance) of accurate information contained in the Form CD-81. In addition, the Patent Organization should consider updating the "Overtime Policies for Professional/and Clerical Employee under the Assistant Commissioner for Patents" Policy issued March 26, 1990 in order to revisit current processes.

Table 6: Time and Attendance Related Finding

Appendix A (within Appendix E): Controls identified in the telework and time and attendance process narratives

Telework Program

A. Telework Policy Development and Implementation

1. TP 1.1.1 The Director determines the telework policy/strategy for the organization, the Telework Program Office (TPO) develops the policy document for the USPTO and the draft policy document is placed in the USPTO policy approval system.
2. TP 1.1.2 The TPO finalizes the procedures to implement the policy which must be consistent with OPM's Guide to Telework in the Federal Government, April 2011.

B. Policy-Compliant Telework Documents

3. TP 2.1.1 The Telework Agreements must be consistent with the requirements specified on pages 11 through 12 of OPM's Guide to Telework in the Federal Government, April 2011.
4. TP 2.1.2 The TMO provides each BU with guidelines for identifying those positions in their organization that are suited for telework.
5. TP 2.1.3 The Office of Human Resources, Labor Relations Division uses an existing Telework Agreement with a Union as a guide for preparing future agreements.

C. Manager, Telework Coordinator and Employee Telework Resource

6. TP 3.1.1 The TPO ensures that the same performance standards, derived from a modern, effective, credible, and validated performance system, are used to evaluate both teleworkers and non-teleworkers.
7. TP 3.1.2 The TPO develops guidelines regarding whether the organization or employee will provide necessary technology, equipment, and supplies for telework.
8. TP 3.1.3 The TPO provides technical support for teleworkers with support from the OCIO.
9. TP 3.1.4 The TPO addresses access and security issues related to telework.
10. TP 3.1.5 The TPO establishes standards for equipment in the telework environment with support by the OCIO.
11. TP 3.1.6 The TPO enters eligible positions into the telework data base along with the number of days the employee teleworks, the employee's address, and a copy of the employee's telework agreement.
12. TP 3.1.7 Each time a new employee is hired or a teleworker is terminated from the program, the BU updates this information in the telework data base.
13. TP 3.1.8 The TPO monitors active/ inactive status of teleworkers in the data base to ensure that information is current and tracks telework training through the UCCMS telework data base to ensure that all employees deployed to telework have taken telework training.

D. Program Evaluation

14. TP 4.1.1 An evaluation of the Telework Enhancement Act Pilot Program (TEAPP) is conducted on an annual basis.

E. Internal/External Reporting

15. TP 5.1.1 The TPO provides OPM the USPTO information needed to prepare an annual Status of Telework in the Federal Government Report to Congress and USPTO management with information required to monitor and manage their telework programs.
16. TP 5.1.2 USPTO reports TEAPP data on a quarterly basis to the General Services Administration (GSA).
17. TP 5.1.3 The TPO issues a TEAPP annual report to document the impact that TEAPP has had on agency efficiency, real estate, continuity of operations, salary, transit subsidy, and administrative costs.

Time and Attendance

Roles and Responsibilities

1. TA 1.1.1 Timekeepers prepare leave audits to correct any leave discrepancies that may exist between an employee's Earnings and Leave Statement and the T&A reporting system.
2. TA 1.1.2 Timekeepers inactivate user accounts in the WebTA system when employees separate from the agency.
3. TA 1.1.3 System Administrators resolve bi-weekly T&A report processing problems with the NFC and appropriate T&A Contact points and/or timekeepers.
4. TA 1.1.4 System Administrators issue all T&A process policy and documentation including the maintenance, publication, and distribution of T&A brochures, notices, and manuals.
5. TA 1.1.5 System Administrators evaluate the overall T&A process, including analyses of overall USPTO T&A errors and related program deficiencies.

The Time and Attendance Process

6. TA 2.1.1 When a WebTA automated leave request is submitted by an employee within the WebTA system, the leave requested automatically populates the employee's timecard with the day and hours being requested.
7. TA 2.1.2 When leave requests are approved, an e-mail message is sent to the employee.
8. TA 2.1.3 If the supervisor determines that the needs of the work unit preclude a grant of leave, or if the reasons expressed by the employee for absence are not acceptable, the supervisor may order the employee to report to duty. In such instances, the supervisor at his or her discretion may grant sufficient time on

approved leave to reach the worksite or charge all or part of the absence to Absent Without Official Leave (AWOL)

9. TA 2.1.4 Before a timecard is validated, it goes through a series of edit checks in the WebTA system. The system returns a list of errors and/or warnings after the verification is run
10. TA 2.1.5 The system displays error/warning messages upon validation if the timecard displays an error (for example, base hours do not equal 80). Errors must be corrected before the timecard can be successfully validated.
11. TA 2.1.6 When the timecard has been verified through the edit check process, the employee is prompted to review the data and affirm that all information is correct. After the employee submits the affirmation, an automated message is displayed when the T&A records have validated successfully.
12. TA 2.1.7 Supervisors review the validated timecards for accuracy and completeness of the information, including number of hours, leave category charged, and PPA codes charged and certify the timecard in the system.
13. TA 2.1.8 Once a timecard has been validated by either the employee or a timekeeper then it is certified by the supervisor and saved within the WebTA system.

A. Recording Time

14. TA 3.1.1 Timekeepers have access to enter and update hours worked and hours absent.

B. Time Approval

15. TA 4.1.1 Supervisors review and certify the T&A information submitted by employees and timekeepers.
16. TA 4.1.2 In a supervisor's absence, a proxy delegate reviews and certifies the T&A information submitted by employees.
17. TA 4.1.3 Supervisors must notify delegate supervisors of responsibilities when absent.

Patent Specific Time Approval:

18. TA 4.2.1 If work is submitted and there are questions about the amount of work submitted to the SPEs during the two (2) week period, the SPEs review the "PSEUDO" PALM 3205 report to determine how much work was performed.
19. TA 4.2.2 If the SPEs question the overtime, compensatory time worked or used and leave, these issues are resolved on a case-by-case basis and the timesheets are certified.
20. TA 4.2.3 All overtime, compensatory time and leave requests must be consistent with the "Overtime Policies for Professional/and Clerical Employee under the Assistant Commissioner for Patents" Policy issued March 26, 1990
21. TA 4.2.4 To be eligible to work overtime, patent examiners must have "fully successful" ratings for the previous fiscal year.

22. TA 4.2.5 The coding will indicate to the NFC system to pay the employee beyond the bi-weekly cap but not beyond the annual pay cap.
23. TA 4.2.6 Overtime is requested and approved by using a CD-81 at the TC level on a bi-weekly basis.
24. TA 4.2.7 For Patents, this authorizes the use of these funds for the amount of overtime specified in the document.
25. TA 4.2.8 If a patent examiner is granted overtime, it is recorded in WebTA and their production requirements increase.
26. TA 4.2.9 The total examining hours (regular time and overtime) is systematically fed to PALM where production expectancy is calculated. This information is reflected in the PALM 3205 report.
27. TA 4.2.10 If a manager has direct knowledge or recognizes clear warning signs of abuse in an employee's T&A records, the manager should first notify the Director.
28. TA 4.2.11 In the remarks section, the manager must enter the discrepancy found and/or reasons for rejection.
29. TA 4.2.12 The manager must keep clear records verifying notices to the employee regarding T&A concerns, detailing meetings or conversations with the employee about their work hours or T&A, and documenting concerns.
30. TA 4.2.13 The manager must notify their Director of concerns

Trademark Specific Time Approval:

31. TA 4.3.1 If the volume of work is reasonable for time worked and there are no premium pay or unapproved leave requests, the timesheet is certified.
32. TA 4.3.2 If the premium pay or leave was not pre-approved then the former is removed from the timesheet and the latter is either approved and the timesheet is approved or not approved and the Managing or Senior Attorneys consult with their Group Director, and then OHR, as necessary.
33. TA 4.3.3 Once the issue is resolved, the timesheet is certified.

C. Transmission to NFC

34. TA 5.1.1 Prior to transmission of T&A data for payroll processing the timekeepers monitor the status of timecards.

D. Reporting

No control activities included in scope of our review.

E. Information Technology

No control activities included in scope of our review.

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**APPENDIX F: INTERNAL CONTROLS COMPARISON OF
TELEWORK PROGRAM COLLECTIVE BARGAINING UNIT
AGREEMENTS**

USPTO Policy	Office of the Chief Financial Officer Telework Program Handbook	Patents Telework Program For Patents Employees represented by NTEU, Chapter 243	OPIA Work Schedule Assignment	Trademark Trial and Appeal Board Work at Home Program	RQAS Telework Agreement Between the USPTO and the Patent Office Professional Association	TQAS Full-Time Telework Program	SPE/MQAS Full-Time Telework Program	Trademark Work at Home (TW@H) Hoteling Program and Telework Pilot Program for Trademark Examining Attorneys	Part-Time Program	MOU on Trademark Work at Home (TW@H) Program for Trademark NTEU 243 Bargaining Unit	The Patents Telework Program 2013			Amendment to Patents Telework Program 2013	OCG Office of the Solicitor
	6/2011	12/15/2011	3/28/2012	9/27/2012	5/30/2013	5/30/2013	5/30/2013	9/27/2013	11/20/2013	2/26/2014	5/12/2014			5/12/2014	6/6/2014
	NTEU 243 and POPA	USPTO and NTEU 243		USPTO and NTEU 245	USPTO and POPA	USPTO and POPA	USPTO and POPA	NTEU 245	USPTO and POPA	USPTO and NTEU Chapter 243	USPTO and POPA				NTEU 243
	The OCFO Telework Program (Program) is aligned with the United States Patent and Trademark Office (USPTO) Strategic Human Capital Vision. To fulfill the USPTO Strategic Human Capital Vision, the OCFO has developed	The Patents Telework Program - NTEU 243 (PTP-N) is a work arrangement that allows eligible employees under the Commissioner for Patents in the National Treasury Employees Union Chapter 243 (NTEU 243) bargaining unit to work at an alternate work site during paid work hours to	N/A	The parties to this memorandum of understanding (MOU), the United States Patent and Trademark Office (Agency) and the National Treasury Employees Union, Chapter 245 (NTEU), agree to implement the Trademark Trial and Appeal Board Work at Home (TTABWAH) program in accordance	This agreement between the United States Patent and Trademark Office (USPTO or Office) and the Patent Office Professional Association (POPA or Union) describes options and conditions of RQAS bargaining unit employees	The Training Quality Assurance Specialists (TQAS) Full-Time Telework Program will allow eligible TQAS under the Commissioner for Patents in the POPA bargaining unit to perform officially assigned duties at an alternate	The parties to this agreement, the Patent Office Professional Association (POPA or Union) and the United States Patent and Trademark Office (USPTO or Agency) have met in pre-decisional involvement (POI) regarding the Agency's decision to implement a Full-Time Telework program for supervisory patent examiners (SPE) and Management Quality Assurance Specialists	This MOU between the U.S. Patent & Trademark Office (USPTO or Office) and the National Treasury Employees Union Chapter 245 (NTEU or Union), collectively referred to as the Parties, establishes the terms and conditions	This agreement between the United States Patent and Trademark Office (USPTO or Agency) and the Patent Office Professional Association (POPA) supersedes previous part-time agreements between the parties.	This MOU between the U.S. Patent & Trademark Office (USPTO or Office) and the National Treasury Employees Union Chapter 243 (NTEU or Union), collectively referred to as Parties, establishes the terms and conditions	Intro Permits participants to work at an alternate worksite during paid work hours to conduct their officially assigned duties without diminished employee performance. Overview 10 hours/GS9 or 11/1 year	Intro Permits participants to work at an alternate worksite during paid work hours to conduct their officially assigned duties without diminished employee performance. Overview 20 hours/GS-12 and	Intro Permits participants to work at an alternate worksite during paid work hours to conduct their officially assigned duties without diminished employee performance. Overview 32 hours/GS-	Several issues have arisen concerning the Patents Telework Program. This document is meant to clarify and address those issues.	The United States Patent and Trademark Office will implement a Telework Program for the paralegal specialists in the Office of the Solicitor. The program, hereinafter SOTP, is a work arrangement that allows eligible employees in the National Treasury Employees Union Chapter 243 (NTEU243) bargaining unit to work at an alternate work

<p>a framework that sets the course for the Telework program by defining its goal, objectives, and guiding principles.</p>	<p>conduct their officially assigned duties without diminished employee performance.</p>			<p>with the attached guidelines which have been cooperatively developed by the parties in accordance with Executive Order 13522.</p>	<p>relating to telework. This agreement also resolves Grievance Number 10-12-ASN-01, regarding reimbursement for Internet Service for RQAS working full time from an alternate worksite.</p>	<p>worksite.</p>	<p>(MQAS). Through the PDI process, the parties have devised the attached Guidelines for the program. In addition, the parties agree as follows regarding management's ...</p>	<p>for implementing the TW@H Hoteling Program and Telework Pilot Program for Trademark Examining Attorneys (collectively "Programs"). This MOU incorporates by reference the Guidelines for the TW@H Hoteling Program and Telework Pilot Program for Trademark Examining Attorneys (Fiscal Year 2014) ("Guidelines")...</p>		<p>for implementing the TW@H Programs for the Trademark NTEU 243 Bargaining Unit. This MOU incorporates by reference the Guidelines for the USPTO Trademark NTEU 243 Bargaining Unit Work at Home Programs and Pilot Programs (Fiscal Year 2014) (Guidelines) and the terms of the collective bargaining agreement between the Office and the Union (CBA).</p>	<p>continuous USPTO service/1 day per week, up to 10 hours When participants are promoted to GS-12, they will be transitioned to the 32 hour option. Participant will be notified via e-mail and ...</p>	<p>above//1 year continuous USPTO service /1 day per week, up to 10 hours</p>	<p>12 and above/1 year of continuous USPTO service, variable</p>		<p>site during paid work hours to conduct their officially assigned duties without diminished employee performance.</p>
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VII.C.4. Participation in any telework program at the USPTO is voluntary ...	I.A.1. Participation is voluntary.	Employee Participation in the PTP-N is voluntary.	N/A	3.1 Participation in the TTABWAH Program is voluntary.	N/A	I.A.1) Participation in the Program is voluntary.	5. Participation in the program is voluntary.	6. Participation in all Programs is voluntary.	N/A	I.d. Participation in all Programs is voluntary.	I.d. Participation is voluntary. I.a. Hoteling participants may elect this action by requesting to change their official duty station to their home address and, if approved, by signing a new Work Agreement indicating that their home address will be their official duty station. I.b. The work agreement will require participants to certify that 1) at participants convenience, 2) not eligible for relocation expenses, 3) residence within 50 mile radius from Alexandria, 4) if participants plans to change residences he/she will notify and request	II.A.10. When participants are promoted to a GS-12, they will be transitioned to the 32 hour option.	II.C.11. Participants will not be permitted to voluntarily switch to the 20 hour option for at least one year once approved for the 32 hour option.	3. Pg. 3. Section II. Paragraph B. Number 10 and 11 have been added. 10. Participants will not be permitted to voluntarily switch to the 20 hour option for at least one year, once approved for the 32 hour option. This limitation only applies to participants who remain eligible for the 32 hour option. 11. Participants who withdraw from the 32 hour option voluntarily are responsible for the return of the USPTO-issued monitor. Participants who wish to transfer from the 32 hour option to the 20 hour option will not be approved for	EMPLOYEE PARTICIPATION Participation in the SOTP is voluntary.
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										<p>approval from his/her supervisor and the program coordinator.</p> <p>I.l. Any changes to the official duty station must be pre-approved by the USPTO.</p> <p>I.m. Employees wishing to change their duty station back to Headquarters must provide 8 ...</p>			<p>the 20 hour option until the monitor has been returned to the designated location.</p>	
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<p>IV. The USPTO Telework Program is a work arrangement that allows eligible employees to work at an alternate worksite during paid work hours to conduct their officially assigned duties.</p> <p>Participants in a USPTO telework program are required to: Sign a USPTO Telework Agreement</p>	<p>Employee Eligibility:</p> <ul style="list-style-type: none"> - Be in an eligible Position. - Have a rating of record of at least Fully Successful and be performing at a fully successful level or above. - If receiving equipment as a requirement for participation in this program, have access to high speed broadband internet service (cable or FiOS), regardless of the number of days to be worked at the alternate work site. - Typically, recurring teleworkers, with a set number of days worked at the alternate work site 	<p>Eligibility Criteria</p> <p>Employee must have been in his/her current position for at least two (2) years. Employee must be issued a universal laptop to be on this telework program. Employee must be performing at least at a fully successful level in each critical element of the performance appraisal plan as of the current fiscal year to date and as of the last rating of record. Employee must not have been subject to a Performance Improvement Plan (PIP), or a suspension in the previous 12-month period prior to the date of application for the program. Employees will be selected</p>	<p>N/A</p>	<p>3.2 Participation Criteria</p> <p>a. When NTEU 245 bargaining unit members are hired by the TTAB, they will be notified in writing that they may volunteer to participate in the USPTO TTABWAH Program after they have worked for two years at the USPTO, with at least six months at the TTAB, unless the criterion is waived by management. Other eligibility criteria outlined below in this section must also be satisfied.</p> <p>4.2 TTABWAH</p> <p>Ensure that the USPTOTTABWAH Individual Work Agreement is completed and signed by each participant.</p>	<p>2) Participation in and Modifications to the PHP and PTP: Currently teleworking RQAS must sign up for either the PHP or the PTP using the online application system found on the telework resource page within two full biweeks of the effective date of this agreement. The following modifications and rules apply to these RQAS participants who timely elect either the PHP or PTP. These modifications and rules are not precedential for other participants in this</p>	<p>I.B.1) Must have at least 1 year of experience as a TQAS to participate in the Program; 2) Must have at least 1 year of experience as a TQAS to participate in the Program; 3) Not currently be subject to a performance improvement plan; 4) Sign and comply with the TQAS Full-Time Telework Program Work Agreement; 6) Not be under an active investigation or proposal for disciplinary or adverse action for misconduct that would</p>	<p>Eligibility requirements remain unchanged from the pilot eligibility requirements; participants must meet all of the following criteria:</p> <ol style="list-style-type: none"> 1. Have at least 1 year of experience as a SPE/MQAS. 2. Have at least a Fully Successful rating of record for entry into the program, and not currently be subject to a performance improvement plan. 3. Sign and comply with the SPE/MQAS Full-Time Telework Program Work Agreement. 4. Demonstrate the ability to work remotely by successfully completing required group training on collaboration tools with individual make-up sessions, if needed. 5. Not be under an active investigation or proposal for disciplinary or adverse action for misconduct that would warrant suspension or removal from the program... 	<p>3.3.2.b. To be eligible for selection for the USPTO TWAH Program, trademark examining attorneys must meet the following requirements:</p> <ol style="list-style-type: none"> 1. Be on production as at least a GS-13 and have full signatory authority and be performing at least at a fully successful level in each critical element of the performance appraisal plan as of the current fiscal year to date; 2. Have not been subject to a Performance Improvement Plan (PIP) in the 	<p>5. Eligibility</p> <p>This agreement between the United States Patent and Trademark Office (USPTO or Agency) and the Patent Office Professional Association (POPA) supersedes previous part-time agreements between the parties.</p> <p>N/A -- must be a current participant in a Telework Program to participate in this program.</p>	<p>Section I.3.2a. Subject to budget and business needs, every quarter, eligible participants will be notified that they may volunteer to participate.</p> <ol style="list-style-type: none"> a. To be eligible for selection and remain in the Trademark 243 W@H Program, participants must meet the following requirements: i. Have 18 months of experience immediately prior to the date of application to the program in their respective unit and current 	<p>III.A.3/4. Have a cumulative performance at the Fully Successful level in all elements for the 13 pay periods prior to application.</p> <p>III.A.7. Not under an active investigation or proposal for disciplinary or adverse action for misconduct.</p> <p>III.A.8. Not have been suspended pursuant to a disciplinary or adverse action with the last 12 months.</p> <p>III.A.9. Not currently on an oral or written warning improvement period or in a quarter in which the participant received a safety zone letter in any critical element in their PAP.</p> <p>III.D. 1. For employees with previous</p>	<p>III.B.3. Have a Fully Successful rating of record.</p> <p>III.B.6. Not under an active investigation or proposal for disciplinary or adverse action for misconduct.</p> <p>III.B.7. Not have been suspended pursuant to a disciplinary or adverse action with the last 12 months.</p> <p>III.B.8. Not currently on an oral or written warning improvement period or in a quarter in which the participant received a safety zone letter in any critical element in their PAP.</p> <p>III.B.9. Must not have been approved to participate in the 32 hour option within the last year.</p> <p>III.D.2. For employees</p>	<p>III.C.3. Have a Fully Successful rating of record.</p> <p>III.C.5. Receive USPTO issued monitor or supply a participant owned monitor.</p> <p>III.C.7 Not under an active investigation or proposal for disciplinary or adverse action for misconduct.</p> <p>III.C.8. Not have been suspended within the last 12 months.</p> <p>III.C.9. Not currently on an oral or written warning improvement period or in a quarter in which the participant received a safety zone letter in any critical element in their PAP.</p> <p>III.D.2. For employees</p>	<p>N/A -- no changes to this language.</p>	<p>Selection and Participation Criteria</p> <p>Employee must be performing at least at a fully successful level in each critical element of the performance appraisal plan as of the last annual rating of record.</p> <p>Employee must not have been subject to a Performance Improvement Plan (PIP), or disciplinary or adverse action in the previous 12-month period prior to the date of application for the program.</p> <p>Employee must have been in his/her current position for at least one year.</p>
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<p>each week, should have the capability for high-speed broadband connectivity and meet all other USPTO technical requirements.</p> <p>A.10. These employees will need to sign a Telework Program work agreement ...</p>	<p>based upon grade and service computation date (SCD) as necessary within each business area. Total time in service will ...</p>			<p>program. a. PHP participants may work up to 12 hours in a day, whether these are regular hours, overtime, compensatory time earned, or credit hours earned. b. PHP participants will be required to relinquish their office and will have two weeks to vacate their assigned office space from the time their application is approved...</p>	<p>warrant suspension or removal from the program; 7) Not have been suspended pursuant to a disciplinary or adverse action within the last 12 months unless the Agency decides to waive this requirement; 8) Arrange for and use high speed broadband Internet Service at the alternate worksite as defined by the OCIO as specified at the start of this program; and</p>		<p>previous 18-month period prior to the date of application for the USPTO TWAH 3. As of the last rating of record have achieved at least an overall rating.. 9.9.1 b. All participating employees and their managers must complete and sign the applicable USPTO TWAH program Work ...</p>		<p>position, and be performing at least at a fully successful level in each critical element of the performance appraisal plan as of the last rating of record. Further, there must be no indication of performance below the fully successful level during the midyear progress review. ... 4.4.a. Complete the Trademark 243 W@H Program Work Agreement and safety certification.</p>	<p>patent examiner service who previously served less than a year at the USPTO, none of the time previously served will count towards the service requirement. III.D.2. For employees with previous patent service who previously served 1 year or more, performance must be at the fully successful level in all elements of the non-probation Patent Examiner PAP for their grade for the 13 pay periods immediately ...</p>	<p>with previous patent service who previously served 1 year or more, performance must be at the fully successful level in all element of the non-probation Patent Examiner PAP for their grade for the 13 pay periods immediately ...</p>	<p>with previous patent service who previously served 1 year or more, performance must be at the fully successful level in all element of the non-probation Patent Examiner PAP for their grade for the 13 pay periods immediately prior to application. For employees with previous ...</p>		
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<p>B.1. . Positions generally eligible for telework are those positions, as determined by each BU, involving tasks that are suitable to be performed away from the traditional worksite (see Section VI, Section A).</p>	<p>ELIGIBILITY REQUIREMENTS</p> <p>The position eligibility criteria are used to determine the eligibility for recurring telework. Positions may be deemed eligible for telework zero, one, two, or three days per week, depending on the volume and type of work that can be performed remotely.</p>	<p>Eligibility Criteria</p> <p>To be eligible for selection in the PTP-N, employees must meet the following criteria: Employee must have been in his/her current position for at least two (2) years. Employee must be issued a universal laptop to be on this telework program. Employee must be performing at least at a fully successful level in each critical element of the performance appraisal plan as of the current fiscal year to date and as of the last rating of record. Employee must not have been subject to a Performance Improvement Plan (PIP), or a suspension in the previous 12-month period</p>	<p>N/A</p>	<p>3.2 Participation Criteria</p> <p>1. Be a GS 15 employee with full signatory authority for at least six months, and be performing at least at a fully successful level in each critical element of the performance appraisal plan as of the current fiscal year to date;</p> <p>2. Have not been subject to a Performance Improvement Plan (PIP) in the previous 12-month period prior to the date of application for the USPTO TTABWAH Program;</p> <p>3. Have a rating of record of at least fully successful;</p> <p>4. ...</p>	<p>2) Participation and Modifications to the PHP and PTP:</p> <p>Currently teleworking RQAS must sign up for either the PHP or the PTP using the online application system found on the telework resource page within two full biweeks of the effective date of this agreement.</p>	<p>I. Procedures</p> <p>B. Eligibility</p> <p>1) Must have at least 1 year of experience as a TQAS to participate in the Program;</p> <p>2) Must have at least a Fully Successful rating of record for entry into the program;</p> <p>3) Not currently be subject to a performance improvement plan;</p> <p>4) Sign and comply with the TQAS Full-Time Telework Program Work Agreement;</p> <p>5) Demonstrate ability to work remotely by</p>	<p>Eligibility Criteria</p> <p>1. Have at least 1 year of experience as a SPE/MQAS.</p> <p>2. Have at least a Fully Successful rating of record for entry into the program, and not currently be subject to a performance improvement plan.</p> <p>3. Sign and comply with the SPE/MQAS Full-Time Telework Program Work Agreement.</p> <p>4. Demonstrate the ability to work remotely by successfully completing required group collaboration tools with individual make-up sessions, if needed.</p> <p>5. Not be under an active investigation or proposal for disciplinary or adverse action for misconduct that would warrant suspension or removal from the program.</p> <p>6. Not have been suspended pursuant to a disciplinary or adverse action within the last 12 ...</p>	<p>3.3.2 Selection and Participation Criteria</p> <p>b. To be eligible for selection for the USPTO TWAH Program, trademark examining attorneys must meet the following requirements:</p> <p>1. Be on production as at least a GS-13 and have full signatory authority and be performing at least at a fully successful level in each critical element of the performance appraisal plan as of the current fiscal year to date;</p> <p>2. Have not been subject to a</p>	<p>5. Eligibility Requirements to Enter Program</p> <p>1) Have completed the first year of employment at the USPTO;</p> <p>2) Have a rating of record of at least Marginal, and current performance at least at the Marginal level in all critical elements of the PAP based on the last full quarter, and for quarters 2-4, year to date production at the end of the biweek before starting the program at least at the Marginal level; and</p> <p>3) For employees without a</p>	<p>3.2 Selection and Participation Criteria:</p> <p>...3.2.b. To be eligible for selection and remain in the Trademark 243 W@H Program, participants must meet the following requirements: i. Have 18 months of experience immediately prior to the date of application to the program in their respective unit and current position, and be performing at least at a fully successful level in each critical element of the performance appraisal</p>	<p>VI. A. Applicants must apply via the intranet under Telework Resource webpage or equivalent.</p> <p>VI.B. Applicants must sign the appropriate Work Agreement and if required provide a copy of their ISP (internet service provider).</p> <p>VI.C. Applicants must complete a self-certification of the safety of the alternate worksite.</p> <p>VI.D. Applications may be submitted at any time, but approval and notification will be on a monthly basis.</p> <p>VI.E. The USPTO will provide written notification to all employees who file an</p>	<p>VI. A. Applicants must apply via the intranet under Telework Resource webpage or equivalent.</p> <p>VI.B. Applicants must sign the appropriate Work Agreement and if required provide a copy of their ISP (internet service provider).</p> <p>VI.C. Applicants must complete a self-certification of the safety of the alternate worksite.</p> <p>VI.D. Applications may be submitted at any time, but approval and notification will be on a monthly basis.</p> <p>VI.E. The USPTO will provide written notification to all employees who file an</p>	<p>VI. A. Applicants must apply via the intranet under Telework Resource webpage or equivalent.</p> <p>VI.B. Applicants must sign the appropriate Work Agreement and if required provide a copy of their ISP (internet service provider).</p> <p>VI.C. Applicants must complete a self-certification of the safety of the alternate worksite.</p> <p>VI.D. Applications may be submitted at any time, but approval and notification will be on a monthly basis.</p> <p>VI.E. The USPTO will provide written</p>	<p>N/A</p>	<p>Selection and Participation Criteria</p> <p>Employee must be able to work independently and able to identify required work products with limited supervision and hands-on guidance.</p>
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		<p>prior to the date of application for the program... Employees will be selected based upon grade and service computation date (SCD) as ...</p>			<p>successfully completing required group training on collaboration tools with individual make-up sessions, if needed. The Office will establish requirements defining the computer skills needed to work utilizing remote access to USPTO Information Technology (IT) systems to accomplish employee job tasks without a ...</p>	<p>Performance Improvement Plan (PIP) in the previous 18-month period prior to the date of application for the USPTO TWAH Program; .3. As of the last rating of record have achieved at least an overall rating of fully successful; or for those without a rating of record ...</p>	<p>rating of record, most recent one full quarter of performance at least at the Marginal level.</p>	<p>plan as of the last rating of record. Further, there must be no indication of performance below the fully successful level during the midyear progress review.</p>	<p>application for a program. VI.F. To switch options, participants must reapply. VI.G. 10 hour option participants may begin teleworking the biweek following written notification of acceptance and receipt of ERA fob.</p>	<p>application for a program. VI.F. To switch options, participants must reapply. VI.H. 20 hour option participants may begin teleworking the biweek following notification of acceptance and receipt of ERA fob, if required.</p>	<p>notification to all employees[; who file an application for a program. VI.F. To switch options, participants must reapply. VI.I. Participant must have a monitor and may be required to take to the alternate worksite the webcam.</p>	
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<p>VLC. Authorization to TeleworkAn employee may telework if the following criteria are met: The employee is in a position deemed eligible by the USPTO BU and approved by the BU head and/or their designee; 2) employee has met , at minimum, Fully Successful rating of record unless specifically approved by the BU; 3) employee is not currently on a PIP; 4) employee reads, understands, and signs the USPTO Telework Program Work Agreement including the safety certification; 5) the employee participates in USPTO training prior to teleworking 6) employee, if renting their place of residence, ensures their lease allows for the installation of all necessary equipment and lines for the program; employee complies with all local laws or</p>	<p>B. Application Requirements1. Be in an eligible Position. 2. Have a rating of record of at least Fully Successful and be performing at a fully successful level or above....</p>	<p>Selection and Participation CriteriaPTP- Allows participants to work from the alternate worksite 1, 2, 3 or 4 days per week, depending on their assigned duties and business area. Required time at the office may be designated by the Agency based on business needs within each business area.</p>	<p>N/A</p>	<p>3.2 Participation Criteria1. Be a GS 15 employee with full signatory authority for at least six months, and be performing at least at a fully successful level in each critical element of the performance appraisal plan as of the current fiscal year to date;</p>	<p>2) Participation Modifications to the PHP and PTP: Currently teleworking RQAS must sign up for either the PHP or the PTP using the online application system found on the telework resource page within two full biweeks of the effective date of this agreement. The following modifications and rules apply to these RQAS participants who timely elect either the PHP or PTP. These modifications and rules are not precedential for other participants in this</p>	<p>I.B.1) Must have at least 1 year of experience as a TQAS to participate in the Program; 2) Must have at least 1 year of experience as a TQAS to participate in the Program; 3) Not currently be subject to a performance improvement plan; 4) Sign and comply with the TQAS Full-Time Telework Program Work Agreement; 6) Not be under an active investigation or proposal for disciplinary or adverse action for misconduct that would</p>	<p>Selection Criteria1. Pilot program participants will be grandfathered into the permanent program if they continue to meet eligibility requirements and have demonstrated the ability to effectively work remotely while on the pilot.2. If the number of eligible applicants exceeds the number of open slots, participants will be selected by lottery. Those not selected will be placed on a waitlist by TC in prioritized order based on the results of the lottery process. Subsequent to the lottery, new applicants will be placed on the waitlist in order of submission of the SPE/MQAS Full-Time Telework Program Work application. Again, consideration will be given to the number of applicants in a workgroup so as to not have over-representation in any one workgroup.</p>	<p>10.6 Initial participants will be selected based upon the seniority levels of those people who apply by the deadline, using the definition of seniority defined in §3.2.c. of these Guidelines.</p>	<p>5. Eligibility Requirements to Enter Program1) Have completed the first year of employment at the USPTO; 2) Have a rating of record of at least Marginal, and current performance at least at the Marginal level in all critical elements of the PAP based on the last full quarter, and for quarters 2-4, year to date production at the end of the biweek before starting the program at least at the Marginal level; and3) For employees without a rating of</p>	<p>3.2.b. To be eligible for selection and remain in the Trademark 243 W@H Program, participants must meet the following requirements: i. Have 18 months of experience immediately prior to the date of application in their respective unit and current position, and be performing at least at a fully successful level in each critical element of the performance appraisal plan as of the last rating of record. Further, there</p>	<p>III.A. To begin this option the employee must: 1. be a GS-9 or GS-11; 2. have at least 1 year of continuous service at the USPTO immediately prior to beginning participation ; 3. (for patent examiners): have cumulative performance at least at the Fully Successful level in all elements of the non-probationary Patent Examiner PAP for their grade for the 13 pay periods immediately prior to application; 4. (for employees other than patent examiners): have cumulative performance at least at the Fully Successful level in all elements of their PAP for</p>	<p>III.B. To begin this option the employee must: 1. be a GS-12 or higher; 2. have at least 1 year of continuous service at the USPTO immediately prior to beginning participation ; 3. have at least a fully successful rating of record; 4. for those on the option with ERA fob, have access to high-speed broadband internet service; 5. for those on the option with ERA fob, have received an ERA fob; 6. not be under an active investigation or proposal for disciplinary or adverse action for misconduct that would warrant suspension or removal from the program; ..VI.B.</p>	<p>III.C. To begin this option the employee must: 1. be a GS-12 or higher; 2. have at least 1 year of continuous service at the USPTO immediately prior to beginning participation; 3. have at least a fully successful rating of record; 4. have access to high-speed broadband internet service; 5. receive USPTO issued monitor or supply a participant-owned monitor; 6. have received an ERA fob; 7. not be under an active investigation or proposal for disciplinary or adverse action for misconduct that would</p>	<p>N/A -- no changes to this language.</p>	<p>Selection and Participation CriteriaEmployee must be performing at least at a fully successful level in each critical element of the performance appraisal plan as of the last annual rating of record.Employee must not have been subject to a Performance Improvement Plan (PIP), or disciplinary or adverse action in the previous 12-month period prior to the date of application for the program.Employee must have been in his/her current position for at least one year.</p>
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<p>rules governing an office in their residence and 7) employee complies with all local laws or rules governing an office ...</p>					<p>program.a. PHP participant s may work up to 12 hours in a day, whether these are regular hours,overtime, compensatory time earned, or credit hours earned.b. PHP participant s will be required to relinquish their office and will have two weeks to vacate their assigned office space from the time their application is approved...</p>	<p>warrant suspension or removal from the program; 7) Not have been suspended pursuant to a disciplinary or adverse action within the last 12 months unless the Agency decides to waive this requirement; 8) Arrange for and use high speed broadband Internet Service at the alternate worksite as defined by the OCIO as specified at the start of this program...</p>			<p>record, most recent one full quarter of performance at least at the Marginal level.</p>	<p>must be no indication of performance below the fully successful level during the midyear progress review.</p>	<p>the 13 pay periods immediately prior to application; 5. have access to high-speed broadband internet service; ...VI.B. Applicants must sign the appropriate Work Agreement</p>	<p>Applicants must sign the appropriate Work Agreement</p>	<p>warrant suspension or removal from the program; 8. not have been suspended pursuant to a ...VI.B. Applicants must sign the appropriate Work Agreement</p>		
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<p><u>VI.F.8. An Employee</u></p> <p>Must be available and accessible for communication with the office and perform work tasks expected to be performed while in telework status.</p>	<p>Customer Service:</p> <p>Participants are expected to provide customer service to both internal and external customers by being accessible and available during their working hours. Participants must check and respond appropriately to voice-mail and e-mail periodically throughout their telework day during business hours.</p>	<p>Consultation and Collaboration.</p> <p>All employees are expected to provide customer service to both internal and external customers by being accessible and available during work hours. Participants working at the alternate work site must check and respond appropriately to voicemail and e-mail periodically throughout the workday during USPTO business hours. Participants will be available for consultation during their workday or as designated by their business unit. Participants in the PTP-N involved with the training of other employees will notify the employees who they train of their schedule or</p>	<p>N/A</p>	<p>4.4 Participants</p> <p>p. Provide customer service to both internal and external customers by being accessible and available during working hours. Participants shall be courteous, timely and responsive to all internal and external customer requests...</p>	<p>N/A</p>	<p>I.E.1) All employees are expected to provide customer service to both internal and external stakeholders by being accessible and available during working hours. Participants working at the alternate worksite must check and respond appropriately to voicemail and e-mail periodically throughout their workday.</p> <p>2) Participants will be available for consultation during their workday. Participants are required to use the Office Communicator (or</p>	<p>Consultation and Collaboration</p> <p>2. Program participants will be available for consultation during their workday. Participants are required to use the Lync Communicator (or any later equivalent) to provide others with schedule and real-time availability information. A combination of automatic presence awareness indicator, personalized contact card information and customizable status information is recommended to give others accurate and updated availability information.</p>	<p>4.4.4.p. Provide customer service to both internal and external customers by being accessible and available during working hours. Participants shall be courteous, timely and responsive to all internal and external customer requests. Because USPTO TWAH Program participants are physically unavailable at Headquarters for the majority of the workweek while working at the alternate worksite, participants should utilize</p>	<p>4.j) Participants with contact hour requirements for internal customers may be required to work fixed hours, but the fixed hours will be limited to those hours required to meet the customer service obligations.</p>	<p>4.4.n. Provide customer service to both internal and external customers by being accessible and available during the employee's tour of duty. Participants shall be courteous, timely and responsive to all internal and external customer requests. Because USPTO TWAH Program participants are physically unavailable for the majority of the workweek while working at the alternative site, participants should</p>	<p>II.A.5./6. Participants will check their voicemail near the beginning and midpoint of the workday. IV. Participants are expected to maintain communication and responsiveness regardless of where they work.</p>	<p>II.B.4./5. Participants will check their voicemail near the beginning and midpoint of the workday. IV. Participants are expected to maintain communication and responsiveness regardless of where they work.</p>	<p>IIC.5. Participant will check their e-mail periodically during their workday. II.C.6. Participants will check their voicemail near the beginning and midpoint of their workday. IV. Participants are expected to maintain communication and responsiveness regardless of where they work.</p>	<p>N/A</p>	<p>EMPLOYEE RESPONSIBILITIES</p> <p>Provide customer service to both internal and external customers by being accessible and available during working hours. Check voicemail and email throughout the day and return telephone calls during business hours.</p>
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	will schedule appointments with the employees who they train. All employees will be required to use the collaboration tools when working.			any later equivalent) to provide others with schedule and real-time availability information. A combination of automatic presence awareness indicator, personalized contact card information and customizable status information is recommended to give others accurate and updated availability information.		their technology to optimize their level of customer service. To that end, participants should leave their electronic mail window open and answer their business telephone whenever doing so will not unduly interfere with accomplishing their work.	utilize their technology to optimize their level of customer service. To that end, participants should leave their electronic mail window open and answer their business telephone whenever doing so will not unduly interfere with accomplishing their work. During any period an employee closes the e-mail window or does not answer ...							
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<p>VI.H. Equipment, Recorded, Files, and Documents</p> <p>Participants must apply approved safeguards to protect all USPTO records and data from unauthorized disclosure, access, damage, or destruction and comply with the Privacy Act requirements.</p> <p>The USPTO may provide equipment, software, and other materials for participants' use at the alternate worksite. What equipment, if any, is provided will be determined by the BU based on their specific operational requirements.</p>	<p>E. Records and Data</p> <p>2. Participants will apply approved safeguards to protect all USPTO records and data from unauthorized disclosure, access, damage, or destruction and will comply with the Privacy Act requirements.</p>	<p>FILES, DOCUMENTS, AND OTHER MATERIAL</p> <p>For the purposes of this program, participants will be permitted with supervisory approval to remove USPTO files, documents, and other material from the USPTO as needed to perform their official assigned duties at the alternate work site. The participant is responsible for the transportation of the files, documents, and other material from the alternate work site...</p>	<p>N/A</p>	<p>3.7 Privacy Act Statement</p> <p>Participants will apply approved safeguards to protect Government/Agency records from unauthorized disclosure or damage and will comply with the Privacy Act requirements set forth in the Privacy Act of 1974, Public Law 93-579, codified at 5 U.S.C. Section 552a. ...</p>	<p>N/A</p>	<p>I.G.I) Participants will be able to work on documents and data files at the participants' designated alternate worksite. Only for the purposes of this program, participants will be permitted to remove documents from the USPTO worksite in order to perform their officially assigned duties at the alternate worksite.</p> <p>3) Participants must ensure that the designated location at the alternate worksite has reasonable physical security to protect</p>	<p>N/A</p>	<p>6.6.4 All files or components of a physical file, including paper documents and all other materials, of an application or registration must be returned to Headquarters when employees are on extended absence of periods exceeding five calendar days, unless arrangements are otherwise made, in exigent circumstances, with the employee's managing attorney. At all other times, files and components must be returned</p>	<p>N/A -- covered under basic program agreement</p>	<p>3.12. Participants will apply approved safeguards to protect Government/Agency records from unauthorized disclosure or damage and will comply with the Privacy Act requirements set forth in the Privacy Act of 1974, Public Law 93-579, codified at 5 U.S.C. Section 552a.</p>	<p>X. RECORDS AND DATA</p> <p>B. Participants will apply approved safeguards to protect all USPTO records and data from unauthorized disclosure, access, damage, or destruction and will comply with the Privacy Act requirements.</p>	<p>X. RECORDS AND DATA</p> <p>B. Participants will apply approved safeguards to protect all USPTO records and data from unauthorized disclosure, access, damage, or destruction and will comply with the Privacy Act requirements.</p>	<p>X. RECORDS AND DATA</p> <p>B. Participants will apply approved safeguards to protect all USPTO records and data from unauthorized disclosure, access, damage, or destruction and will comply with the Privacy Act requirements.</p>	<p>N/A</p>	<p>In-Home Work Area</p> <p>Employees must ensure that the designated workspace has reasonable physical security to protect the equipment from being accessed by unauthorized individuals.</p>
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						document s, files and equipment from being accessed by unauthori zed individual s.		office when requested by another employee ...							
E.1. The supervisor works with the employee to identify the days and times he/she will work in each work setting. Normally, work schedules at the telework location will parallel those at the regular worksite but can be structured to meet the needs of participating employees, their supervisors, and their organizational mission. The process of establishing work schedules permits periodic adjustments to achieve an optimal schedule, which meet organizational requirements and suit employee needs	Work Schedules: Participants working more than one day per week at the alternate work site must work the Increased Flexitime Policy (IFP) flexible work schedule. Participants may work no more than ten hours per day at the alternate work site. Overtime and compensatory time in addition to the ten hours may be worked at the alternate work site so long as the time has been approved by the	EMPLOYEES Provide the Supervisor with all of the specific information surrounding their work schedule, and location of the alternate work site, and alternate phone number.	1. Employees will have available to them all work schedules that have been available to them in the past (Compressed Work Schedule, Eight Hour Flex Schedule and Eight Hour fixed Schedule). In addition, the Increased Flexitime Policy (the IFP), as modified by the provisions set forth below,	7.13 Duty Hours All USPTO ITAB WAH Program participants must work at either the USPTO Headquarters or the alternate work site during the same hours, Eastern Standard Time, as ITAB employees at the USPTO Headquarters.	N/A	I.C.1. A maximum of 12 creditable regular hours may be worked at the alternate worksite on a given day. On days employees ' work 6 or more hours at the alternate worksite Monday-Friday, at least 6 shall normally be completed between 6:30 a.m. and 7:00 p.m. If the employee works less than 6 hours, all hours worked must be completed during this band. I.C.2	Work and Reporting Schedule 3. Participants will specify work schedules weekly by email, including planned days/hours to be on-campus with timely updates provided as necessary.	7.7.2 Participation in the USPTO TWAH Program requires that employees' work schedules maximize the flexible scheduling opportunities of the USPTO's Increased Flexibility Program.	N/A -- covered under basic program agreement .	3.2 Selection and Participation Criteria d. Regarding work schedules at home, CBA Article 58, Section 7 applies. TAC employees will work 8 hour days Monday through Friday between the hours of 8:30a.m. and 8:30p.m. whether at the alternate or official duty station.	II.A.1. Participants may work at alternate worksite for 1 day per pay period for up to 10 hours, except for instances when the participant is required to be at their duty station. For participants on the "Increased Flexitime Program" (IFP), the telework day may be a Saturday. II.A.2. Participants must schedule their telework day by notifying their supervisor of the intent by 10 PM the prior evening or participants may schedule the	II.B.1. Participants may work at alternate worksite for 1 day per pay period for up to 10 hours, except for instances when the participant is required to be at their duty station. For participants on the "Increased Flexitime Program" (IFP), the telework day may be a Saturday. II.B.2. Participants must schedule their telework day by notifying their supervisor of the intent by 10 PM the prior evening or participants may schedule the	II.C.1. Participants may work at alternate worksite for 1 day per pay period for up to 32 hours, except for instances when the participant is required to be at their duty station. For participants on the "Increased Flexitime Program" (IFP), the telework day may be a Saturday. II.C.2. Participant must notify their supervisor prior to teleworking. II.C.9 & 10. Participants may work regular hours at	Pg. 2. Section II. Paragraph A2. has been amended as follows: Participants must schedule their telework day by notifying their supervisor of their intent by-- 10 PM-- the prior evening. Alternatively, participants may schedule the same telework day every pay period, and provide a single notification to their supervisor. -- Participants who notify their supervisors by either method above are	Provide the supervisor with all of the specific information surrounding the employee's work schedule, location of the alternate work site, and home telephone number.

	<p>immediate supervisor prior to the participant working the additional hours.</p>		<p>will be available to employees. ...</p> <p>2. Selection of a work schedule from those available will be at the discretion of the employee. Employees may modify their work schedule at least once each quarter. The change in schedule will take effect the first full pay period after the request is made to the supervisor.</p>		<p>....Work schedules must be communicated on the first work day of each pay period and updated timely upon any change during that pay period.</p> <p>I.C.3. Participants shall adjust their schedule to attend all meetings and training.</p>							<p>same telework day every pay period and provide a single notification.</p> <p>II.A.9. Participants may not work regular hours at alternate worksite and USPTO ...</p>	<p>same telework day every pay period and provide a single notification.</p> <p>II.B.9. Participants may not work regular hours at alternate worksite and USPTO ...</p>	<p>alternate worksite and USPTO on the same day and need not to schedule telework in advance.</p> <p>VII.B.1. Participants may work any full-time schedule approved by the USPTO. Part-time employees may...</p>	<p>considered telework ready for their scheduled days. - Pg. 3. Section II. Paragraph B2. "Participants must schedule their telework day by notifying their supervisor prior to teleworking. Alternatively, participants may schedule the same telework day(s) every pay period, and provide a single notification to their supervisor.1 1 The following ...</p>
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VII.D.9. Establish communication requirements and methods to ensure the employee is informed of:• performance expectations and progress;• requirements regarding availability for contact by the supervisor, co-workers, customers, etc. to include scheduling staff or all-hands meetings, conference calls, etc.VII.F.8. Be available and accessible for communication with the office and perform work tasks expected to be performed while in telework status	Employees:All OCFO employees participating or not participating in the Program are responsible for:Establishing clear communication channels, whether in person or through the provided collaboration tools.A.1. Participants are expected to provide customer service to both internal and external customers by being accessible and available during their working hours. Participants must check and respond appropriately to voicemail and e-mail periodically throughout their	EMPLOYEEProvide customer service to both internal and external customers by being accessible and available during working hours.	N/A	4.4 Participantsp. Provide customer service to both internal and external customers by being accessible and available during working hours.	N/A	I.E.1) All employees are expected to provide customer service to both internal and external stakeholders by being accessible and available during working hours. Participants working at the alternate worksite must check and respond appropriately to voicemail and e-mail periodically throughout their workday.	N/A	4.4 Employees p. Provide customer service to both internal and external customers by being accessible and available during working hours. Participant s shall be courteous, timely and responsive to all internal and external customer requests. Because USPTO TWAH Program participant s are physically unavailable at Headquarters for the majority of the workweek while working at the alternate worksite, participant s should	4.j) Participants with contact hour requirements for internal or external customers may be required to work fixed hours, but the fixed hours will be limited to those hours required to meet the customer service obligations.	4.4.4.b. Provide. the Supervisor with all of the specific information surrounding their work schedule, and location of the alternative work site, and home phone number.	II.A.3. Participant will be provided office space .	II.B.3. Participant will be provided office space .	II.C.3. Participant will be provided office space .	N/A -- No changes to this language.	EMPLOYEE RESPONSIBILITIESProvide customer service to both internal and external customers by being accessible and available during working hours. Check voicemail and email throughout the day and return telephone calls during business hours.
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telework day during business hours.								utilize their technology to optimize their level of customer service. To that end, participant s should leave their electronic mail window open and answer their business telephone whenever doing so will not unduly interfere with accomplish ing their work.							
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<p>IX. Individuals who have been identified as key contact personnel in the case of a COOP event or a pandemic health crisis should have a separate COOP telework agreement in place that provides for such an occurrence. COOP telework personnel must be "telework ready" and have:</p> <ul style="list-style-type: none"> A. Adequate technological capacity in terms of equipment, software (i.e., remote access, anti-virus, etc.), and connectivity; B. Access to technological assistance to include Help Desk support when possible; C. Training, testing, and periodic exercises to include briefings and training in COOP and telework, IT training including security training, and periodic testing and exercise of telework ability (i.e., with telework scenarios incorporated into 	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
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<p>Appendix C</p> <p>Early Dismissal/Closure due to hazardous weather.</p> <p>Hoteling employees or employees scheduled to telework are expected to begin teleworking or hoteling on time.</p>	<p>J. Additional Guidelines</p> <p>11. Early or partial dismissals, delayed arrivals or closures due to road conditions or conditions that affect part or all of the Alexandria, VA headquarters normally do not affect the status of the employees working at an alternate work site. Normally, the employee will continue to work during these closures and will not be granted administrative leave. If these weather conditions limit the employee's ability to perform their</p>	<p>TIME AND ATTENDANCE, HOURS OF DUTY AND ALTERNATE WORK SCHEDULES</p> <p>Adjustments to Schedule Due to Weather/Road Conditions, etc.</p> <p>Employee must follow OPM regulations. The employee is aware that the Office (official duty station) closures due to weather, road condition, or conditions at or around the Office do not normally affect the employee's ability to work from the alternate work site. The employee will continue to work during these closures and will not normally be granted administrative leave. However, if the condition at the official duty station does impact</p>	<p>N/A</p>	<p>7.10</p> <p>The participant is aware that closure of the USPTO Headquarters due to weather, road conditions, or conditions at or around the USPTO Headquarters does not normally affect the participant's ability to work at home</p>	<p>N/A</p>	<p>I.C.11. Early departure s, delayed arrivals, Office closures and partial dismissals (i.e., dismissal of a portion of the US PTO campus) due to road conditions or conditions that affect part or the entire USPTO worksite normally do not affect the status of employees working at an alternate worksite.</p>	<p>N/A</p>	<p>7.7.10 The employee is aware that closures of the Office at Headquarters due to weather, road conditions, or any other such conditions at or around the Headquarters, do not normally affect the employee's ability to work at the alternate worksite. In the absence of exigent circumstances, the employee will continue to work during these closures and will not normally be granted administrative leave. However, if the</p>	<p>N/A -- covered under basic program agreement</p>	<p>7.7.9 Except in the event of closures or dismissals by the Office or higher Federal authorities due to emergency circumstances at the official duty station, employees working at the alternate work site will be granted the same Holiday and administrative leave as those at the Official duty station.</p>	<p>VII.C.1. Normally, participants are "telework ready" on a given day will not receive administrative leave on a day that the government closes for the entire day due to emergency or weather conditions. On such days, participants may telework, notify their supervisor that they intend to flex their schedule to be absent for the entire day, or request to take leave for that day. VI.C.1.i. 10 hour option participants are "telework ready" on days they are scheduled to telework and on days for which they notify their supervisor that they will be telework</p>	<p>VII.C.1. Normally, participants are "telework ready" on a given day will not receive administrative leave on a day that the government closes for the entire day due to emergency or weather conditions. On such days, participants may telework, notify their supervisor that they intend to flex their schedule to be absent for the entire day, or request to take leave for that day. VII.C.ii. 20 hour option participants are "telework ready" on days they are scheduled to telework. Participants with a previously scheduled telework day must notify</p>	<p>VII.C.1. Normally, participants are "telework ready" on a given day will not receive administrative leave on a day that the government closes for the entire day due to emergency or weather conditions. VII.c.2.c. If participant plans to telework but cannot do so because conditions limit participant's ability to perform his/her duties and participant cannot come to USPTO due to early/imm</p>	<p>N/A -- no changes to this language.</p>	<p>Adjustments to Schedule Due to Weather/ Road Conditions, etc.</p> <p>The employee is aware that full or partial Office (official duty station) closures due to weather, road condition, or conditions at or around the Office do not normally affect the employee's ability to work from the alternate work site. The employee will continue to work during these closures and will not normally be granted administrative leave. However, if the condition at the official duty station does impact the ability to work at the alternate work site, (e.g., the Office network servers are shut down), an employee at the alternate work site will be treated in the same manner as those at the official duty station.</p>
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<p>duties, e.g. cause a power outage at the employee's home or at headquarters, supervisors will consider requests for administrative leave. Supervisors will consider requests for leave under this section even though the request was not made in advance. The request should be made promptly so that it may be given consideration and so that approved leave may be recorded on the electronic time sheet. Participants scheduled to work at the USPTO work site</p>	<p>the ability to work at the alternate work station, (e.g. the Office network servers are shut down), employees at the alternate work station will be treated in the same manner as those at the official duty station.</p>						<p>condition at Headquarters does impact the ability to work at the alternate worksite, (e.g. the Office network servers are shut down), employees at the alternate worksite will be treated in the same manner as those at Headquarters. If an employee's inability to work is because of conditions at the ...</p>			<p>ready. VII.C.2.a. Administrative leave for early/immediate dismissal not due to emergency or weather conditions will be granted to participants working at the alternate worksite... VII.C.2b. Participants will not be granted administrative leave for ...</p>	<p>their supervisor by 10 PM the evening prior to the closure if they no longer plan to telework in order to be eligible for administrative leave. VII.C.2.a. Administrative leave for early/immediate dismissal not due to emergency or weather conditions will be granted ..</p>	<p>mediate dismissal, management will grant. VII.C.2.d. If participant plans to telework but cannot do so because conditions limit participant's ability to perform his/her duties and participant cannot come to USPTO due to a delayed arrival occurrence, management will grant a reasonable request for ...</p>		
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shall follow
the same
rules and
guidelines
as other
employees
at the
USPTO
work
site.

<p>VI.I. Federal agencies and staff are responsible for the security of Federal government property, information, and information systems. Telework does not change this responsibility. If not properly implemented, telework may introduce vulnerabilities into agency systems and networks. To prevent security incidents, the Federal Information Security Management Act of 2002 requires agencies to protect information and information systems commensurate with risk. In addition, OMB memorandum M-06-16 recommends actions to protect remote information that all agencies should continue to implement. The telework applicant certifies each year with their immediate Supervisor that</p>	<p>Safeguarding Equipment: Take normal security precautions to safeguard all asset(s). Laptops shall be tethered securely to desks with cable locks when used at the traditional office. Laptops shall be secured appropriately when at alternate worksites or while in transit.</p>	<p>FILES, DOCUMENTS, AND OTHER MATERIAL</p> <p>For the purposes of this program, participants will be permitted with supervisory approval to remove USPTO files, documents, and other material from the USPTO as needed to perform their official assigned duties at the alternate work site. The participant is responsible for the transportation of the files, documents, and other material from the alternate work site...</p>	<p>N/A</p>	<p>4.4 Participants</p> <p>h. Comply with all required security measures. Protect all government records and data against unauthorized disclosure, access, mutilation, obliteration, or destruction.</p>	<p>N/A</p>	<p>I.G.3) Participants must ensure that the designated location at the alternate worksite has reasonable physical security to protect documents, files and equipment from being accessed by unauthorized individuals. Participants will apply approved safeguards to protect all Agency records and data from unauthorized disclosure, access, damage, or destruction and will comply with the Privacy Act requirements.</p>	<p>N/A</p>	<p>4.4.4.h. Comply with all required security measures. Protect all government records and data against unauthorized disclosure, access, mutilation, obliteration, or destruction.</p> <p>5.5.10 All USPTO provided equipment, data, and software must be protected during non-working hours from theft, unauthorized access, tampering and other physical hazards. Locks and/or restraining devices are appropriate...</p>	<p>N/A -- covered under basic program agreement.</p>	<p>4.4.g. Comply with all required security measures, and protect all government records and data against unauthorized disclosure, access, mutilation, obliteration, or destruction.</p>	<p>X.B. Participants will apply approved safeguards to protect all USPTO records and data from unauthorized disclosure, access, damage, or destruction and will comply with the Privacy Act requirements.</p>	<p>X.B. Participants will apply approved safeguards to protect all USPTO records and data from unauthorized disclosure, access, damage, or destruction and will comply with the Privacy Act requirements.</p>	<p>X.B. Participants will apply approved safeguards to protect all USPTO records and data from unauthorized disclosure, access, damage, or destruction and will comply with the Privacy Act requirements.</p>	<p>N/A -- no changes to this language.</p>	<p>EMPLOYEE RESPONSIBILITIES</p> <p>Comply with all required security measures, and protect all government records and data against unauthorized disclosure, access, mutilation, obliteration, or destruction and comply with Privacy Act requirements.</p>
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they have
complied with
the USPTO
mandatory IT
Security
Awareness
Training.

<p>VI.G. Modification and Termination of the Telework Agreement Employees do not have an automatic right to continue to telework and telework arrangements may be modified, adjusted, suspended, or terminated at any time by management (or when requested by the employee). Participation will be terminated when the employee no longer meets the eligibility criteria and /or suspended when not meeting authorization criteria. All USPTO owned equipment/materials associated with this program must be returned to the USPTO.</p>	<p>K. Termination and Withdrawal. 1. To withdraw from the Program, including for the purpose of promotion or retirement, employees will notify their supervisor and the program coordinator via email. 2. The USPTO will give employees being removed from the program two weeks advance notice, unless exigent circumstances exist.</p>	<p>PERFORMANCE EXPECTATIONS AND STANDARDS Removal of Employee from Telework Program The supervisor may remove an employee from the PTP-N for any of the following reasons: The employee violates the terms of the PTP-Agreement, written policies or guidelines; The employee fails to fulfill the responsibilities outlined in the "FACILITIES AND EQUIPMENT" portion of this agreement; The employee demonstrates an inability to work without continuous supervision; The program is terminated by the Agency;</p>	<p>N/A</p>	<p>6.2 Termination The USPTO may terminate a participant from the USPTO TTABWAH Program because of any of the following reasons: ...The USPTO will give participants one month advance notice in writing of termination unless exigent circumstances exist.</p>	<p>N/A</p>	<p>I.F.1) Participants may voluntarily terminate participation by giving written notification (via e-mail) to the Telework Coordinator and their supervisor. Notice of termination should be given two weeks in advance unless exigent circumstances exist.</p>	<p>Continuance of Participation 1. Participants will be reevaluated at least twice a year regarding their compliance/performance on the program (taking the form of a meeting with the Group Director and discussion of what is working, not working). 2. Failure to comply with ISP requirements may result in removal from the program. 3. Any abuse of the program guidelines may result in suspension or removal from the program.</p>	<p>6.6.2 The USPTO may terminate an employee from the USPTO TWAH Program because of any of the following reasons: the employee violates the terms of the applicable USPTO TWAH program Work Agreement, written policies or these Guidelines; the employee's conduct or performance demonstrates an inability to work without continuous supervision; the employee's alternate work site does not meet technical or safety requirements, or</p>	<p>N/A -- covered under basic program agreement.</p>	<p>6.6.2a. The USPTO may terminate an employee from the program because of any of the following reasons: i. The participant violates the terms of the Trademark 243 W@H Program Work Agreement, written policies or Guidelines; ii. The participant demonstrates an inability to work without continuous supervision; iii. The program is terminated by the agency.</p>	<p>IX.D. USPTO will give participants being suspended or removed from the program two weeks advance notice, unless exigent circumstances exist. IX.E. Participants who receive an oral or written warning will not be permitted to telework until they successfully complete the oral or written warning improvement or until the end of the quarter in which the safety zone letter was issued. XI.A. Abuse of the program guidelines may result in suspension from the program for no longer than 6 bi-weeks. Notification of suspension will be in writing</p>	<p>IX.D. USPTO will give participants being suspended or removed from the program two weeks advance notice, unless exigent circumstances exist. IX.F. Participants who receive an oral or written warning can continue to telework one day per week (up to 10 hours per day). XII.A. To withdraw from program, participants will notify their supervisor and program coordinator via e-mail.</p>	<p>IX.D. USPTO will give participants being suspended or removed from the program two weeks advance notice, unless exigent circumstances exist. IX.G. Participants who receive a written warning will be limited to telework in accordance with the 20 hour option. XII.A. To withdraw from program, participants will notify their supervisor and program coordinator via e-mail.</p>	<p>N/A -- no changes to this language.</p>	<p>TERMINATION OF PARTICIPATION The Agency may remove an employee from the SOTP for any of the following reasons: ...The Agency will give an employee two (2) weeks advance notice in writing of termination of the Program or of the employee's removal from the program unless exigent circumstances exist.</p>
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								the USPTO TWAH Program is terminated by the agency. The USPTO will give employees one month advance notice in writing ...			including the duration. This suspension in and of itself is not a disciplinary action. XII.A. To withdraw from program, participants will notify their supervisor and program coordinator via e-mail.				
C.4. The employee reads, understands, and signs the USPTO Telework Program Work Agreement, including the safety certification.	Alternate Work Site When applying to the Program, an employee must complete a self-certification of the safety of the alternate work site	EMPLOYEES The responsibilities of the Employees are to: Complete the PTP...N Agreement. Read and sign the Safety Guidelines.	N/A	5.3 Participants will complete a USPTO TIABWAH Individual Work Agreement and a self-certification of the safety of their alternate work site and update the Work Agreement and self-certification if the designated room or location changes.	N/A	I.B.9) Complete a self-certification of the safety of the alternate worksite.	Eligibility Criteria 7. Have completed a self-certification of the safety of the alternate worksite.	9:9.1.b. All participating employees must complete and sign the ... and Safety Checklist.	N/A -- covered under basic program agreement .	4.4.4.a. Complete the Trademark 243 W@H Program Work Agreement and safety certification.	VI.C. Applicants must complete a self-certification of the safety of the alternate worksite.	VI.C. Applicants must complete a self-certification of the safety of the alternate worksite.	VI.C. Applicants must complete a self-certification of the safety of the alternate worksite.	N/A -- no changes to this language.	EMPLOYEE RESPONSIBILITIES Read and sign Safety Guidelines.

**APPENDIX G: PATENT MANAGEMENT GUIDANCE ON CERTIFYING
TIME AND ATTENDANCE**

This document serves as guidance to managers concerning requirements and procedures applicable to time and attendance reporting for “employees” as defined under 5 U.S.C. §2105.

USPTO employees will have access to an automated web-based time and attendance (T&A) system known as WebTA. This system will permit T&A information to be entered, verified, electronically certified, and collected for transmission to a centralized payroll and personnel system on a bi-weekly basis. As outlined in the Agency’s Time and Attendance Policy¹, Managers will:

1. Designate the timekeepers and alternates and ensure they are properly trained in T&A reporting procedures;
2. Understand the USPTO T&A reporting procedures and requirements;
3. Provide timekeepers and alternates with the personnel information that is necessary to complete timecards (employee accessions, retirements, tour of duty changes, etc.);
4. Be responsible for the proper recording and reporting of T&A data and use of program project activity (PPA) codes, to include the time worked on projects or activities during the reporting period for employees under their authority;
5. Be responsible for responding to employee inquiries regarding PPA codes;
6. Certify the accuracy of T&A data in the WebTA system;
7. Approve and/or deny leave requests;
8. Assist the timekeeper and employee in determining the need for corrected T&A reporting;
9. Ensure that supporting documentation is maintained and accessible for audit purposes for six years (e.g. CD-81 request for overtime, jury duty summons etc.); and
10. Disseminate the above T&A expectations via the link² and utilize audits to eliminate the possibility of T&A fraud

A. Managers Responsibility – Pursuant to the Agency’s T&A Policy, Managers have the final responsibility for the “proper recording and reporting” of all time and attendance data for employees under their authority. This includes certifying the accuracy of time and attendance data electronically in an automated system themselves or by their designated alternate.

- Absent any concern or direct knowledge of T&A abuse, managers should timely certify employee’s biweekly electronic timesheets.

B. Time and Attendance Abuse Identifiers (one or more) - If a manager has direct knowledge or recognizes clear warning signs of abuse in an employee’s T&A records, the manager should first notify the Director. The following is a list of behavior that may imply that an employee has acted in a manner in conflict with the performance, conduct,

¹ USPTO Time and Attendance, Policy No. OHR-202-05-1, June 2008.

² See <http://ptoweb.uspto.gov/ptointranet/ohr/systems/webta/taresponsibilities.pdf> for employee role and responsibilities.

and/or leave standards of the USPTO (note: this is not intended to be an all-inclusive list of possible concerns).

1. Inconsistent work load activity – No or minimal work turned in for credit while validating work hours on WebTA.
2. Non-responsive to supervisory communications³ (e.g. requests, directives, inquiries)
3. Non-responsive to internal/external stakeholder communications (e.g. email, phone, voicemail).
4. Non-responsive to mandatory directives (e.g. IT security, training, meeting).
5. Customer complaints.
6. Failure to attend scheduled interviews, internal meetings, consultations, appeal conferences, etc.
7. Routinely non-communicative and/or unavailable.
8. Failure to use collaboration tools (when mandatory).
9. Failure to follow work schedule requirements.

C. Steps to addressing possible T&A Inconsistencies - Managers should address situations at their level consistent with the guidance provided.

1. The manager should talk to the employee as soon as a concern, such as one or more of the above referenced indicators has been noticed, in order to clarify, address and/or counsel the employee on the issue (SPEs should check the pseudo 3205 report);
2. The manager should not question the employee in an investigative manner, as this will create a Weingarten meeting (see attachment) situation where the employee has the right to a union representative.
3. If a manager finds discrepancies or has questions concerning the accuracy of an employee's recorded T&A data, the manager should first attempt to contact the employee for clarification purposes. Alternatively, if the employee is not available or has not responded, the manager should select the reject/decertify button in the WebTA system. In the remarks section, the manager must enter the discrepancy found and/or reasons for rejection;
4. The manager must keep clear records verifying notices to the employee regarding T&A concerns, detailing meetings or conversations with the employee about their work hours or T&A, and documenting concerns;
5. The manager must notify their Director of concerns;
6. Managers should request clear written guidance from ER specialists on how to proceed as soon as any suspicion of T&A abuse is raised, regardless of whether

³ If the employee is completely unresponsive or AWOL from work for more than a short period of time, the manager should inform the director and contact an employee relations specialist for assistance. It may be a situation where a direct to work order, a direct to log-on and call the manager order, or a well-being check on the employee is necessary.

it is the end of a pay period. ER can then provide guidance on how to address any T&A concerns.

- For example, ER specialists may recommend that the manager continue to certify the employee's time while ER conducts an investigation.

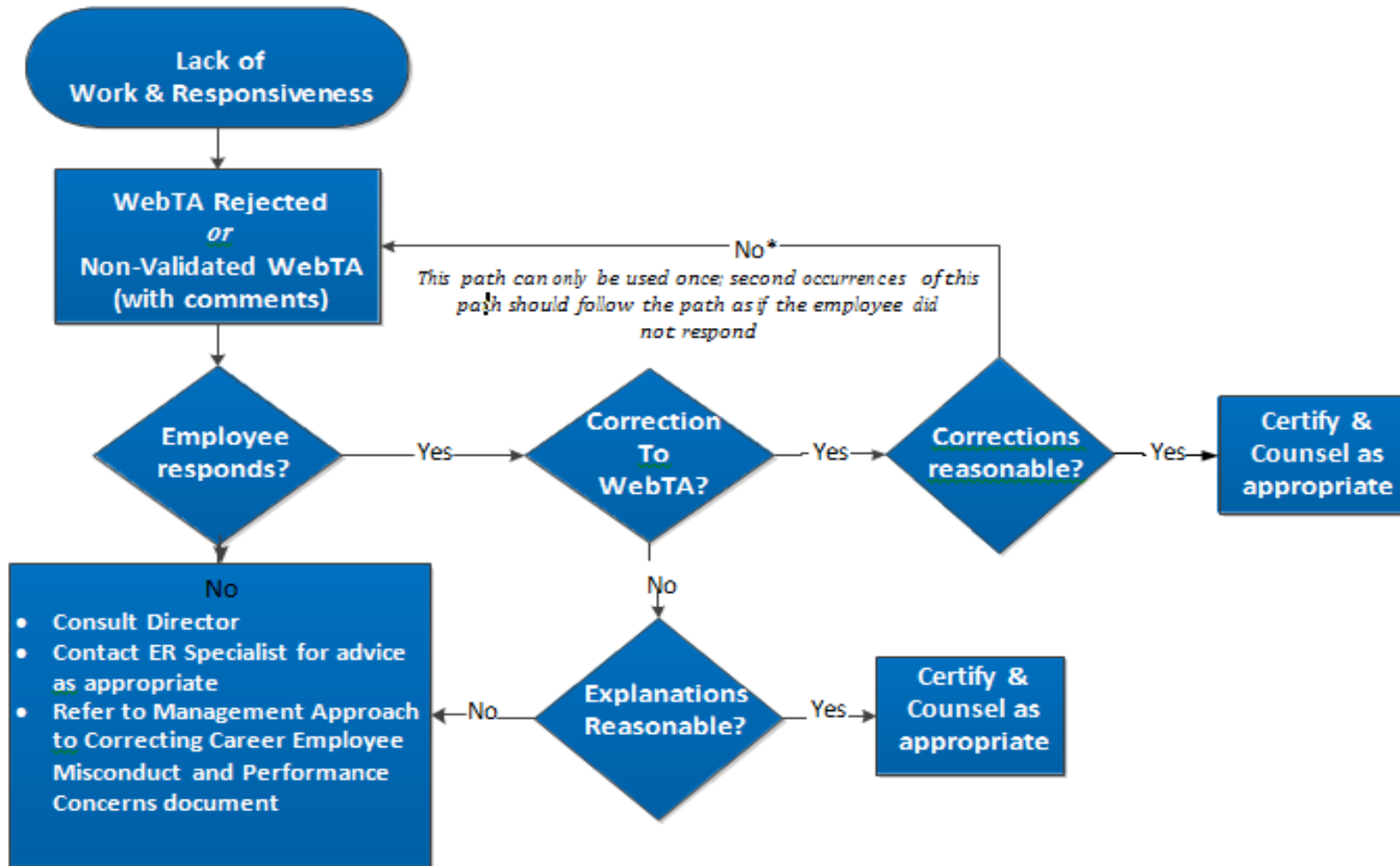
D. Guidance for addressing lack of work and responsiveness – Guidance when both the amount of work **and** the level of responsiveness of the employee suggest that the employee may not have been working during the hours reported on the timesheet.

- See Appendix Below

APPENDIX: Time Sheet Certification For Bi-Weekly Instances of Employees Completing No/Minimal Work and Establishing a Lack of Responsiveness Throughout the Bi-Week

The scope of this document is limited to timesheet certification when **both** criteria of minimal/no work submitted for credit **and** a lack of responsiveness are present – other tools/processes are available for conduct/performance issues.

- When certifying a time sheet for the bi-week, managers should consider both the amount of work submitted for credit and the level of responsiveness of the employee
 - Timesheets should initially be “rejected” when **both** the amount of work submitted for credit **and** the level of responsiveness of the employee suggest that the employee may not have been working during the hours reported on the timesheet.
 - In rejecting the employee’s WebTA, managers should include the comment “Please contact me ASAP” along with the reason for rejecting the timesheet.
 - Once the manager has rejected the employee’s WebTA, there are several different outcomes. See the attached flowchart for the appropriate next course of action.
- In determining that minimal/no work has been submitted for credit, managers should carefully review the Bi-weekly Examiner Time and Activity Report, PALM 3205, early on the first Tuesday of the bi-week. Then correlate the claimed examining time with the amount and type of work completed by the end of the bi-week, as well any leave or other absences. When the amount of work completed is far less than expected, this criterion of “minimal work submitted” has been met.
 - Examples of minimal work credit include but are not limited to
 - a single advisory action;
 - solely one or more notice of abandonments;
 - solely one or more disposal for a RCE; or
 - no FAOM or Final with significant hours claimed.
- As a fundamental management practice, managers should routinely be communicating with their employees to maintain open lines of communication, discuss Office/unit priorities, and provide assistance when needed. When an employee fails to meaningfully communicate or ignores a supervisor’s attempts at communication during the bi-week and the employee fails to complete a reasonable level of work, it is reasonable to assume that the employee may not have been working. Certification of timesheets is a common denominator for all employees, and these same standards apply regardless of the employee’s physical location or work schedule.



**APPENDIX H: STEPS TAKEN TO ADDRESS MANAGEMENT
CHALLENGES**

Overview of Agency for Patents and Agency-wide Actions Taken prior to August 2014²⁵⁰

Timeline of USPTO-Patents Management Training, Guidance, Pilots and Teams Related to Telework			
Implementation Date	Communication Vehicle	Audience	Subject/Description
February 2006	Interactive training	Patents Supervisors	Patent full-time telework program training for supervisors - Training to supervisors on Patents new telework program. Recognizing supervisory responsibilities plus techniques and strategies for managing employees on full-time telework.
March 2007	Interactive training	Patents Supervisors	Change management training for supervisors of telework employees - Training to supervisors on new Patents telework program. As in 2006, the training included recognizing supervisory responsibilities plus techniques and strategies for managing employees on full-time telework.
2007	Intranet - Computer Based Training	All New Employees at On-boarding/ Accessible to All Employees	Time and Attendance Training for Employees - Computer Based Training (CBT) on time and attendance procedures to all new employees during their initial on-boarding training. Includes employee and supervisor time and attendance responsibilities. The CBT is also available to all employees as refresher training.
April 2008	Workshop style training	Patents Supervisors	Managing in a telework world - Improving management skills for supervisors of teleworking employees; training supervisors on effective communication; training supervisors on identifying and addressing possible conduct issues.
April 2008	Lecture Style Training	Full-time Telework Employees	The Engaged Teleworker: Communication Training for Telework Examiners - Information and tools necessary for telework employees to stay connected with both internal and external customers of the USPTO. This training included information on collaboration tools, rules, responsibilities, conduct, and expectations of examiners.
June 2009	Guidance Document posted to Intranet	Patents Examiners	Patent Examiners WebTA Quick Reference Guide - Time and attendance system, quick reference guide published and distributed.
February 2010	Email Guidance/ Intranet	All Employees	Leave and Telework Guidance for Specific Weather Event - Guidance distributed to address telework during specific office closure/significant weather event.
July 2010	Lecture Style Training	Patents Supervisors	Supervisor Training on Employee Relations Topics (Conduct and Discipline) - Training provided to supervisors to distinguish between performance and conduct, to understand the role of disciplinary/adverse action, and to recognize and respond to conduct problems.

²⁵⁰ Source: Prepared by the USPTO

March 2011	Lecture Style Training	Patents Supervisors	Supervisor Refresher Training on Employee Relations Topics (Leave; Work Schedules; Conduct & Discipline; Performance) - Training provided to supervisors to distinguish between performance and conduct, to understand the role of disciplinary/adverse action, and to recognize and respond to conduct problems. Updated from July 2010 training to include substantial guidance on supervisors' responsibilities as they relate to employees' performance.
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Implementation Date	Communication Vehicle	Audience	Subject/Description
November 2011	Email Guidance	Patents Senior Managers	Patent Manager Guidance on telework (all telework/remote work programs) - talking points for management staff meetings - Reminder of the rules and requirements of all telework programs in Patents.
December 2011	Email Guidance	Patents Employees	Telework and remote access program reminder - Pursuant to management guidance issued in November 2011, a reminder of the rules and requirements for use of laptops and worksite locations for telework programs (including less than full-time programs).
January 2013	Lecture Style Training and Q&A/Intranet	Patents Senior Managers/Supervisors	Management Guidance on Certifying Time and Attendance - Senior managers held meetings on guidance to supervisors concerning requirements and procedures applicable to time and attendance reporting. Guidance included roles and responsibilities in certifying employees' time and attendance records. Includes guidance on time and attendance abuse identifiers.
April 2013	Memo distributed by email	Patents Examiners/Supervisors	Changes to Examiner Performance Appraisal Plan and Related Issues - Memo distributed describing changes to performance measures related to timeliness of work completion.
April-May 2013	Lecture Style Training and Q&A/Intranet	Patents Senior Managers/Supervisors	Managing a Federal Professional in Today's Environment (Talking Points) - Senior managers held meetings with supervisors to discuss how to address performance and misconduct issues.
May 2013	Union Agreement	Patents Examiners/Supervisors	The Patents Telework Program 2013 - This agreement provides updates to participants who work at an alternate worksite during paid work hours to conduct their officially assigned duties without diminished employee performance.
May 2013	Email Guidance	Patents Senior Managers/Supervisors	Expectations of performing work as a patent examiner in a professional environment - Guidance to further clarify management's expectations in determining whether a patent examiner is performing daily duties of examining patent applications.
June 2013	Email Guidance and Meetings	Patents Supervisors	Work Credit Abuse (Mortgaging Work) - Defines for supervisors work credit abuse; states the factors to be used in deciding if work credit abuse has occurred, and explains the penalty range once work credit abuse has been determined.
June 2013	Email Guidance	Patents Examiners/Supervisors	Patents Telework Program 2013 and Patents remote access Agreement Announcements - Announcement of new versions of less than full-time telework program options and schedule requirements. Also announces the limited capability for email access to employees not on a formal telework program.

July 2013	Memo distributed by email	Patents Examiners/Supervisors	Union Agreement On the Use of Collaboration Tools and Effective Collaboration in the Nationwide Workforce - Includes mandatory use of collaboration tools which requires computer log-in.
October 2013	Management meetings and Intranet	Patents Examiner/Supervisors	Patent Examiner Performance Appraisal Plan (PAP) Guidelines - Guidance for supervisors on the critical elements of the employees' performance plan. Includes guidance when both the amount of work and the level of responsiveness of the employee indicate potential time and attendance abuse.

Implementation Date	Communication Vehicle	Audience	Subject/Description
November 2013	N/A - Senior Management Taskforce	Patents Senior Management Taskforce	Endloader Initiative - Study and understand 'endloading', the definition, effects and root causes to ultimately develop solutions to even out the finished work submitted by examiners throughout the pay period and the quarter. Resulted in pilot program being established in one patent group of about 1,100 examiners. The pilot was successful and is planned for full deployment to all examiners in October 2014.
December 2013	N/A - Pilot Program	Examiners/Supervisors in one Patent group	Pilot program to reduce endloading - Outcome of the November 2013 endloader study - includes intervention, coaching and training by supervisors when examiners exhibit endloading behavior.
December 2013	Guidance Document/Intranet	Patents Supervisors	Compilation of Patents Supervisor Guidelines - document centrally posted for supervisors' access. A comprehensive compilation of current guidance. Covers, for example, T&A, unscheduled leave approval of annual and sick leave (pgs. 16-20), leave without pay, AWOL, work schedules, Patents telework program, overtime, and time sheet procedures.
January 2014	Email Guidance	All Employees	Operating Status during significant weather event - Guidance instructing teleworkers on the use of unscheduled leave and expectation for teleworkers to continue working
March 2014	Email Guidance Document/Intranet	All Examiners	Update Patent Examiner's WebTA Quick Reference Guide - Time and attendance system, updated quick reference guide published and distributed.
June 2014	N/A - Interdisciplinary Team (includes Patents, OGL, ER, LR)	Patents Senior Managers	Preventive Measures to Reduce Employee Misconduct - Interdisciplinary team developing recommendations on reducing employee misconduct (ex. endloading, mortgaging, etc.) through education/training of employees by defining mortgaging and identifying best practices to avoid end loading. Outcomes will include supervisory training on recognizing and intervening before issues arise; alternate rehabilitation paths; and identifying different approaches to addressing poor performance and misconduct.
June 2014	N/A - Interdisciplinary Team (includes Patents, OGL, ER, LR)	Patents Senior Managers	Review and revision of current employee disciplinary process - Interdisciplinary team revising the system used to administer employee misconduct. Exploring the entire disciplinary process and making recommendations for process improvement. The new process will be designed to address issues such as timeframes for action and defined responsibilities of management, ER, LR and OGL in the process.

June 2014	Memo Emailed/Lecture Style Training	Patents Examiners/Supervisors	Changes to Patent Examiner Performance Appraisal Plan specific to Docket Management - Distributed to all examiners on changes to performance plan and awards process. Supervisors and examiners trained on docket management updates. Focus on changes to timeliness requirements of moving work, specifically criteria to remove auto-counting privileges, docket management deadlines and docket management award changes (limit on the number of ceiling exceeded cases to remain award eligible).
August 2014	Email Guidance	Patents Senior Managers/Supervisors	Employee Responsible for Attending Mandatory Meetings - Provides guidance to supervisors regarding employees attending mandatory meetings and the consequences of disregarding supervisor's directions.
eTeam Initiatives			

Implementation Date	Communication Vehicle	Audience	Subject/Description
TBD	N/A - Senior Management working group	Patents Examiners/Supervisors	(1) Delivering mandatory annual training on time and attendance, work schedules, leave and overtime policies to all Patents employees.
TBD	N/A - Senior Management working group	Patents Examiners/Managers	(2) Revising current policies and procedures as appropriate based on feedback gathered from supervisors following the annual training. Administering surveys to employees to gauge effectiveness of the training.
TBD	N/A - Senior Management working group	Patents Examiners/Managers	(3) Expanding the telework awareness campaign to include additional outreach to agency teleworkers including dissemination of teleworking best practices.
TBD	N/A - Senior Management working group	Patents Examiners/Managers	(4) Reinforcing the successful resolution of T&A abuse by emphasizing effective handling of conduct issues as set forth in the current performance appraisal plan for supervisors.
TBD	N/A - Senior Management working group	Patents Senior Managers	(5) Revising the policy for obtaining and using agency records (including computer records) to support T&A abuse cases including designating appropriate authorization levels for accessing these records. Develop, document and monitor the process for requesting and using these records.
Third Party Review of Telework Program			
TBD	TBD	TBD	Perform an objective third party program review of the accountability and effectiveness of USPTO Telework programs including the Patent Hoteling Program (PHP).

Overview of Agency for Patents and Agency-wide Actions Taken since August 2014²⁵¹

Over the past several months, the USPTO has formed several different project teams to address its time and attendance, performance, and disciplinary policies and procedures. The results of these teams' efforts are described below.

1. Mandatory annual training on time and attendance, work schedules, leave, and overtime policies (ETEAM 1)

Title of Action	Summary	Completion Date
1(a) Training for Patent Managers on Work Schedules, Time & Attendance (T&A), and Leave and Overtime Policies	Patent managers were trained on management responsibilities in certifying employee's time and attendance; assisting employees in managing their work schedules; and administering USPTO leave and overtime policies.	September 23-26, 2014
1(b) Training for Examiners on Work Schedules, Time & Attendance (T&A), and Leave and Overtime policies	Patent employees were trained on USPTO leave and overtime policies, employee responsibilities for accurately recording and validating time and attendance, and adhering to an appropriate work schedule.	Training on-going, 75 percent completed
1(c) Quick Reference Guide for Employees: Work Schedules and Telework Programs	A quick reference guide for Patents employees was developed and covers various telework program options, including eligibility and requirements, and alternative work schedules. The guide is accessible to all Patents employees and managers on the intranet.	October 14, 2014 (managers) January 30, 2015 (employees)
Trademark Management Guidance on Certifying Time and Attendance	Trademark managers and supervisors were provided written guidance and trained on time and attendance policy.	March 24, 2015

2. Improved Management training on time and attendance, work schedule, leave, and overtime policies and procedures based on feedback gathered from supervisors following annual training (ETEAM 2)

Title of Action	Summary	Completion Date
2(a) Developed and Conducted a Management Feedback Survey on Work Schedules, Time & Attendance (T&A), and Leave and Overtime Policies	An electronic feedback survey was disseminated to determine the effectiveness of the September management training and to identify if additional training is needed in the areas of leave, overtime, work schedule, and T&A certification employee training.	October 20, 2014
2(b) Report summarizing survey results and describing next steps for revising guidance on the training topics	The survey results indicated opportunities for revising future training to highlight current policies and procedures as appropriate based on feedback gathered from managers following the training.	December 5, 2014

²⁵¹ Source: Prepared by the USPTO

3. Expansion of telework awareness campaign to include additional outreach to agency teleworkers including dissemination of teleworking best practices (ETEAM 3)

Title of Action	Summary	Completion Date
3(a) Developed Patents Telework Resources Page	An intranet website for Patent employees has been developed to describe all telework programs in the Patents Business Unit. The website provides access to telework program guidelines, agreements, Rules of the Road for internet and automation tools use, newsletters, help with tools (e.g. how to set up a WebEx meeting and tips for use of telephone headsets), training materials, and other general telework information such as articles related to telework.	Updated September 9, 2014/being continuously updated as necessary
3(b) Telework Presentation at TC Staff meetings	A presentation was delivered to Patents Operations managers at TC staff meetings. The presentation was a review of the Patents telework programs and included a discussion portion where managers asked telework specific questions. Points of Contact (POC) for the telework programs (Telework POCs) provided training for their own areas and identified resources available to managers.	October 23, 2014
3(c) Examiner Interview and Collaboration Tools Training	Art Unit (AU) level training was given by Supervisors (SPEs) to review interview best practices and provide refresher training on WebEx capabilities. As part of this training, all examiners were required to initiate a WebEx conference with their SPE to ensure they have experience and are proficient at conducting WebEx meetings. SPEs verified completion of this training and sent a confirmation to Technology Center (TC) Directors when examiners completed the training and demonstrated WebEx proficiency. Additionally, the training educated examiners on the Public Interview room, which increased internal awareness of the resources available to remote examiners when an on-campus, in-person interview is not an available option, thereby helping to ensure examiner accessibility and responsiveness.	October 31, 2014
3(d) Developed Resource for managers on Engagement and Management of Remote employees	Patent Managers Guide to Engagement includes best practices on how to engage a remote employee.	November 4, 2014/being continuously updated as necessary
3(e) Presentation and dissemination of Best Practices to Patent Operations managers at staff meetings	Employee engagement techniques specific to patent examining were presented in a way that supervisors can apply to their units. This was accomplished via on campus and WebEx presentations.	January 30, 2015
3(f) Update of Virtual Private Network (VPN) Access page	The initial VPN access landing page that teleworkers see each time they remotely log into the network was updated to include a message that reminds teleworkers of their teleworking responsibilities. Three short bullets about telework, rotated each quarter, are shown. Patent Operations coordinated with the Office of the Chief Information Officer and Trademarks to modify this agency wide page.	January 30, 2015
3(g) Update Manager Telework Handbook	The Patents Manager Telework Handbook was updated and disseminated to Patents managers. The Handbook addressed best practices for managing teleworking employees. The document includes the best practice usage of available collaboration tools. Also, access to links for managers such as SPE dashboard and/or SPE Manager Database was provided.	February 16, 2015

4. Improved management handling of conduct issues in the current performance appraisal plan (ETEAM 4)

Title of Action	Summary	Completion Date
4(a) Reinforce the effective identification and resolution of conduct issues by managers	Consistent language for TC Directors was created to use in SPE performance evaluations, beginning with the FY 2014 evaluation, as positive reinforcement for addressing conduct issues. SPEs now outline specific positive actions taken throughout the Fiscal Year to effectively identify and resolve conduct issues.	September 19, 2014
4(b) Revise SPE performance plan to strengthen handling of Time and Attendance issues	The FY 2015 SPE Performance Appraisal Plan (PAP) was modified to include a Coaching and Mentoring element that requires SPEs to monitor time and attendance activities and to address conduct and performance issues in accordance with established practices. The PAP was rewritten to strengthen the language regarding SPE oversight and accountability of these responsibilities.	January 6, 2015
4(c) Maximize use of existing tools and reports to support SPEs - SPE Toolkit	Patent Operations standardized/identified a set of tools and reports that managers can effectively utilize to monitor and coach examiners with respect to their time and activity recordation, with additional tools being added/deleted over time as appropriate. (See item 6c)	February 5, 2015

5. Revision of the policy for obtaining and using agency records (including computer records) to support T&A abuse cases and developed process for reviewing and using these records (ETEAM 5)

Title of Action	Summary	Completion Date
5(a) Revision of Computer Records Process	Discussion of the process to review computer records, including a flow chart when such records may prove useful in conduct actions, was developed with employee relations (ER), labor relations (LR), and the Office of General Law (OGL) in addition to TC Directors and TC ER Advisors. The process revisions included providing ER access to all computer records for possible use in addressing misconduct.	January 31, 2015

6. Identification of major types of misconduct and root causes for misconduct and recommendations for preventative measures (Preventative Measures Team)

Title of Action	Summary	Completion Date
6(a) Implemented the Consistent Credit Initiative (CCI) across all TCs.	Expansion of the TC 2600 Consistent Credit Initiative, a program involving supervisory coaching of examiners on the importance of producing consistent work credit on a bi-weekly basis (<i>i.e.</i> , reduce end-loading), across all TCs with updated criteria and process.	November 14, 2014
6(b) Developed and Delivered Preventive Measures Training	Development of Scenario-based training on conduct awareness and delivered such training to supervisors and examiners.	Training on-going, 85 percent completed
6(c) Identify Indicators of Outlier Examiner Behavior and Develop mechanism to report-out	Identification of indicators of outlier behavior based on available data sources in an effort to intervene before misconduct occurs. These outlier data sources are potential entry points to identify and remedy behaviors and additional data sources will be added/deleted over time as appropriate. The team has leveraged a user-interface (SPE Toolkit – see item 4c) and linked to data to enable Supervisors to readily access outlier indicators to intervene with coaching/mentoring.	April 4, 2015

7. Participation in agency-wide Workforce Management Alliance to outline the agency’s vision to maintain productive employee-management relationships as they directly affect the performance, motivation, engagement and morale of employees.

Title of Action	Summary	Completion Date
7(a) Set and Adopt Framework for Guiding Principles: Vision, Mission, and Identify Goals	The vision, mission, and goals of the Workforce Management Alliance were collectively and clearly identified by all members of the working group and adopted by agency management for implementation agency-wide.	November 7, 2014 Adopted February 17, 2015
7(b) Define Roles and Relationships Between the Patent Operations, ER, and OGL	The team mapped the role, relationships and responsibilities of management, Employee Relations, and the Office of General Law (OGL) as they relate to managing workforce performance, conduct and rehabilitation.	November 21, 2014
7(c) Define language to be Introduced into revised PAPs	The team defined language for inclusion in revised PAPs to reflect new roles, activities, responsibilities and criteria for evaluation for all involved in managing workforce performance, conduct and rehabilitation (<i>i.e.</i> , SPEs in TCs, ER Supervisors/Specialists, and OGL Attorneys).	December 31, 2014 January 30, 2015

8. Implementation of a new agency-wide policy that improves work schedule notification, communication, and collaboration among employees and supervisors at the USPTO as the USPTO workforce increasingly migrates away from the Alexandria headquarters office through telework and the opening of regional offices.

Title of Action	Summary	Completion Date
8(a) Connecting to USPTO-PTONET while working	All full-time teleworkers and supervisors must remain logged into PTONET during their working hours when PTONET is available to the teleworker. PTONET is considered unavailable to the teleworker during any period of outage and/or when the teleworker's duties make PTONET inaccessible (e.g., when attending training, meetings, or traveling for official business).	February 22, 2015
8(b) Required use of the electronic communication tools	All full-time teleworkers and supervisors must be signed into the electronic communication tools provided. Specifically, full-time teleworkers and their supervisors must use collaboration tools, including a presence indicator, to effectively communicate and participate in USPTO events, training or business meetings.	February 22, 2015
8(c) Notification of work schedule	All supervisors and full-time teleworkers must provide advance notice of the number of hours that they intend to work.	February 22, 2015
8 (d) Notification of Mandatory Patents Training at Headquarters (PaTH) for all teleworkers	The event seeks to enhance quality examination through effective and efficient communication between all stakeholders in a growing and increasingly dispersed Patents workforce. In-person attendance is required for all off-site employees.	May 18, 2015

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**APPENDIX I: SUMMARY OF FLEXIBLE WORK SCHEDULE
OPTIONS**

Agency employees are able to work a range of flexible schedule options that are offered to all federal employees. The “Increased Flextime Program (IFP)” is one of the USPTO’s main programs for flexible schedules. IFP allows full-time employees to work their regular hours in less than 10 full workdays. Regular hours are those hours that constitute the 80-hour bi-weekly basic work requirement and they must be worked within the designated six-day workweek (i.e., Monday through Saturday) between the hours of 5:30 a.m. and 10 p.m. Under the IFP, full-time employees may vary the number of hours worked each day and the days worked each week, as long as they meet the 80-hour requirement within agency-set limits and satisfy the core hour requirements.²⁵² 5 U.S.C. § 6122 (P.L. 97-221) requires agencies to designate days and hours during which employees must be present for work (referred to as “core hours”). Therefore, employees are required to be in a paid status (i.e. i.e. “at work” or on approved leave, including compensatory time and credit hours), including telecommuting from home or an alternative work site, attending a conference, at a training or at an officially sponsored event during core hours. Core hours vary among employees:

- Non-Bargaining Unit Employees: Core hours are from 1-2 p.m. each Tuesday of each bi-week unless designated otherwise by the organization.
- NTEU 243 and NTEU 245 Bargaining Unit Employees: Core hours are from 1-2 p.m. each Tuesday of the bi-week.
- POPA Bargaining Unit Employees: Core hours are from 1-2 p.m. each Thursday.²⁵³

In addition to providing flexible work schedule options, the USPTO has more than a dozen telework programs intended to address the specific needs of its business units and employees. All of these programs follow procedures set forth in a USPTO enterprise-wide Telework Policy and are overseen by an agency-wide telework coordinator working with individual business unit telework coordinators. The USPTO’s most flexible teleworking program, the Telework Enhancement Act Pilot Program (TEAPP), is a seven year pilot program established under the Telework Enhancement act of 2010 (the program was not formalized by the USPTO until January 2012). TEAPP is only available at the USPTO and allows certain eligible employees to reside anywhere in the contiguous 48 United States only returning to the main USPTO campus by exception.²⁵⁴ By contrast, other federal agencies are required to have employees with telework agreements that live outside a 50 mile radius of the regular worksite report physically at least twice each bi-weekly pay period on a regular and recurring basis to their regular worksite.²⁵⁵ The TEAPP program

²⁵² USPTO, “Increased Flextime Program for Employees of the U.S. Patent and Trademark Office,” p. 1.

²⁵³ USPTO, “Increased Flextime Program for Employees of the U.S. Patent and Trademark Office,” p. 2.

²⁵⁴ USPTO 2014 Benchmarking Study, pg. 5.

²⁵⁵ “Determining an employee’s official worksite,” 73 Federal Register 66154 (1 Jan 2012), pp. 407-408.

can accept 35 percent of all employees who are eligible for full-time telework and is administered by the USPTO Telework Oversight Committee comprised of an equal representation of labor and management. TEAPP enables the agency to allow its employees to change their duty station and report back to agency headquarters a limited number of times each year without having to reimburse employees for travel costs associated with reporting back to USPTO headquarters.²⁵⁶

²⁵⁶ USPTO, "TEAPP FAQs," <http://ptoweb.uspto.gov/teleworkNew/TEAPP/faq.html>.

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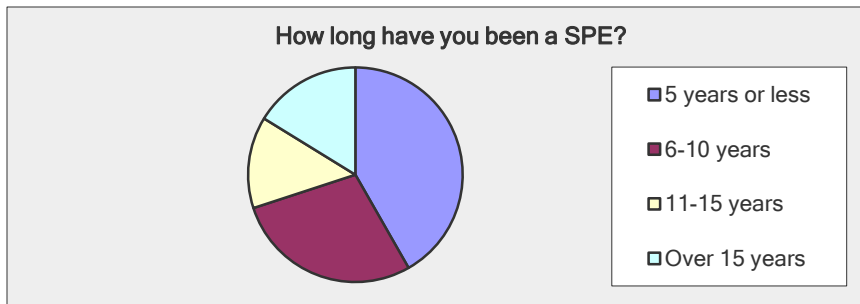
APPENDIX J: SPE SURVEY FULL RESULTS

As noted in Chapter 9, 36 percent of respondents provided written comments, they included concerns with regard to T&A, employee performance and conduct, and the range of issues covered in this survey. The Academy recognizes that the survey results indicate that SPEs are largely positive regarding they survey topic areas, but in the interest of improving management practices, all results deserve equal consideration.

➤ **Question 1: How long have you been a SPE?**

The data indicate that the vast majority of respondents have been in a SPE position for 10 years or less, with a plurality of respondents serving fewer than 5 years.

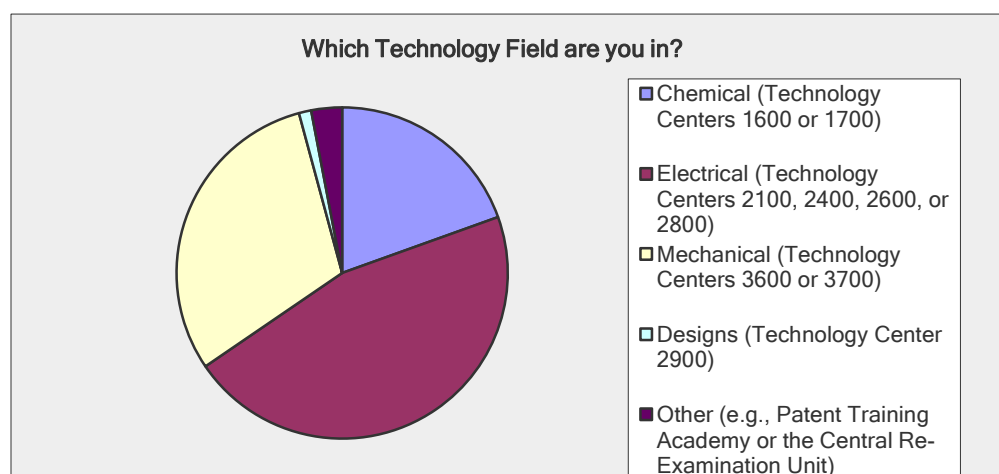
How long have you been a SPE?		
Answer Options	Response Percent	Response Count
5 years or less	41.7%	139
6-10 years	28.2%	94
11-15 years	13.8%	46
Over 15 years	16.2%	54
<i>answered question</i>		333
<i>skipped question</i>		0



➤ **Question 2: Which Technology Field are you in?**

Respondents largely came from the Electrical and Mechanical Technology Centers. SPEs respondents in the Chemical Technology Center served as the third largest cohort.

Which Technology Field are you in?		
Answer Options	Response Percent	Response Count
Chemical (Technology Centers 1600 or 1700)	19.5%	65
Electrical (Technology Centers 2100, 2400, 2600, or 2800)	45.9%	153
Mechanical (Technology Centers 3600 or 3700)	30.3%	101
Designs (Technology Center 2900)	1.2%	4
Other (e.g., Patent Training Academy or the Central Re-Examination Unit)	3.0%	10
answered question		333
skipped question		0

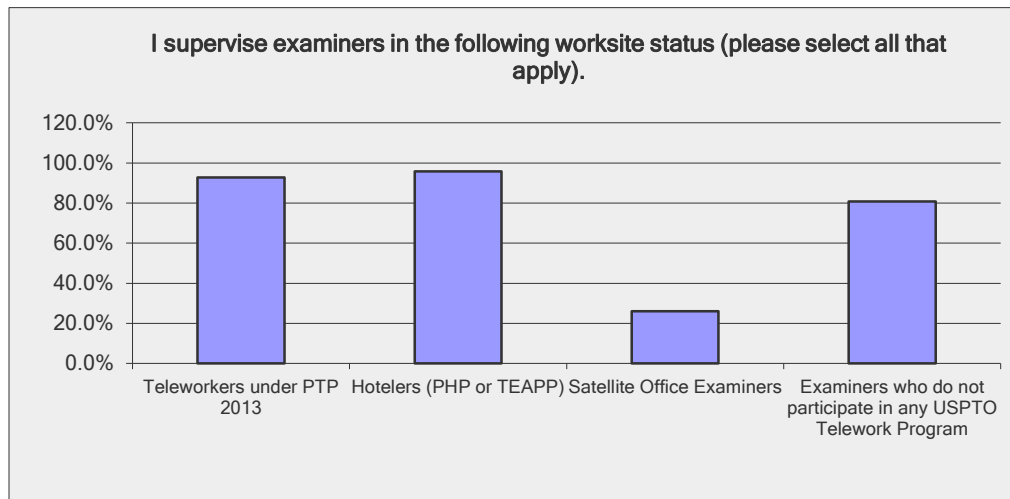


➤ **Question 3: I supervise examiners in the following worksite status (please select all that apply).**

Over 9 in 10 respondents indicated that they had supervisory responsibility for examiners in the PTP 2013 Teleworking program and hotelers, while slightly fewer (4 in 5) oversee employees who do not telework at all. In addition, 1 in 4 respondents indicated that they oversee examiners residing in satellite offices.

I supervise examiners in the following worksite status (please select all that apply).

Answer Options	Response Percent	Response Count
Teleworkers under PTP 2013	92.8%	309
Hotelers (PHP or TEAPP)	95.8%	319
Satellite Office Examiners	26.1%	87
Examiners who do not participate in any USPTO Telework Program	80.8%	269
answered question		333
skipped question		0

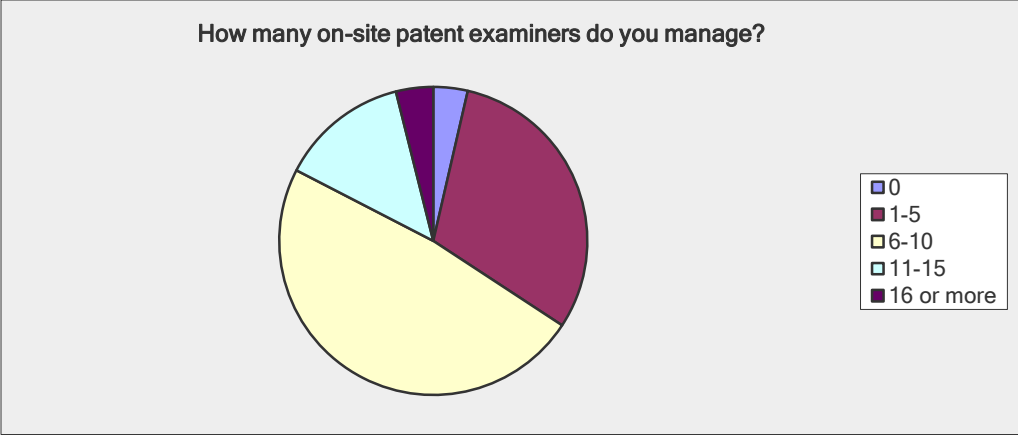


➤ **Question 4: How many on-site patent examiners do you manage?**

Respondents overwhelmingly indicated that they oversee between 1-10 on-site examiners, with a plurality of those having overseeing between 6-10 on-site examiners.

How many on-site patent examiners do you manage?

Answer Options	Response Percent	Response Count
0	3.6%	12
1-5	30.6%	102
6-10	48.3%	161
11-15	13.5%	45
16 or more	3.9%	13
answered question		333
skipped question		0

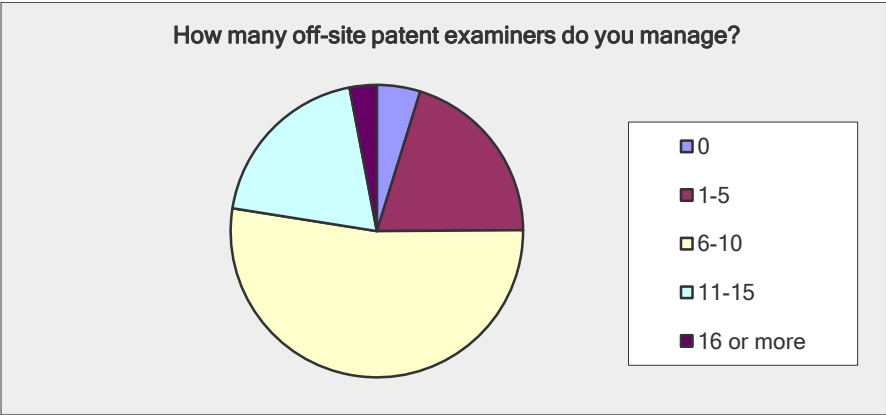


➤ **Question 5: How many off-site patent examiners do you manage?**

The number of off-site examiners managed by SPEs appears to mirror the number of on-site examiners. However, it is clear that many SPEs are responsible for managing somewhat more off-site patent examiners. Over half (53%) of SPEs managing 6-10 off-site examiners, and nearly 1 in 5 (20%) manage between 11-15 examiners. This is an increase of approximately 4% and 6% for each category, respectively.

How many off-site patent examiners do you manage?

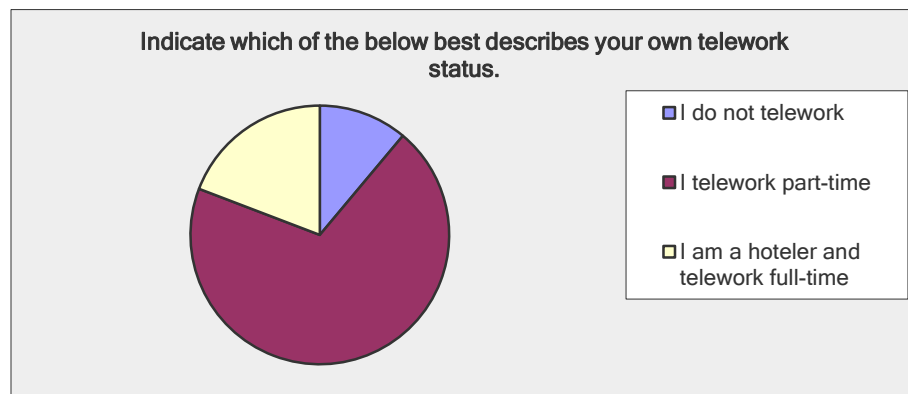
Answer Options	Response Percent	Response Count
0	4.8%	16
1-5	20.1%	67
6-10	52.6%	175
11-15	19.5%	65
16 or more	3.0%	10
answered question		333
skipped question		0



➤ **Question 6: Indicate which of the below best describes your own telework status**

Nearly 9 in 10 of SPEs have indicated that they telework at least part-time, including nearly 1 in 5 who telework full-time.

Indicate which of the below best describes your own telework status.		
Answer Options	Response Percent	Response Count
I do not telework	11.1%	37
I telework part-time	69.7%	232
I am a hotelier and telework full-time	19.2%	64
answered question		333
skipped question		0

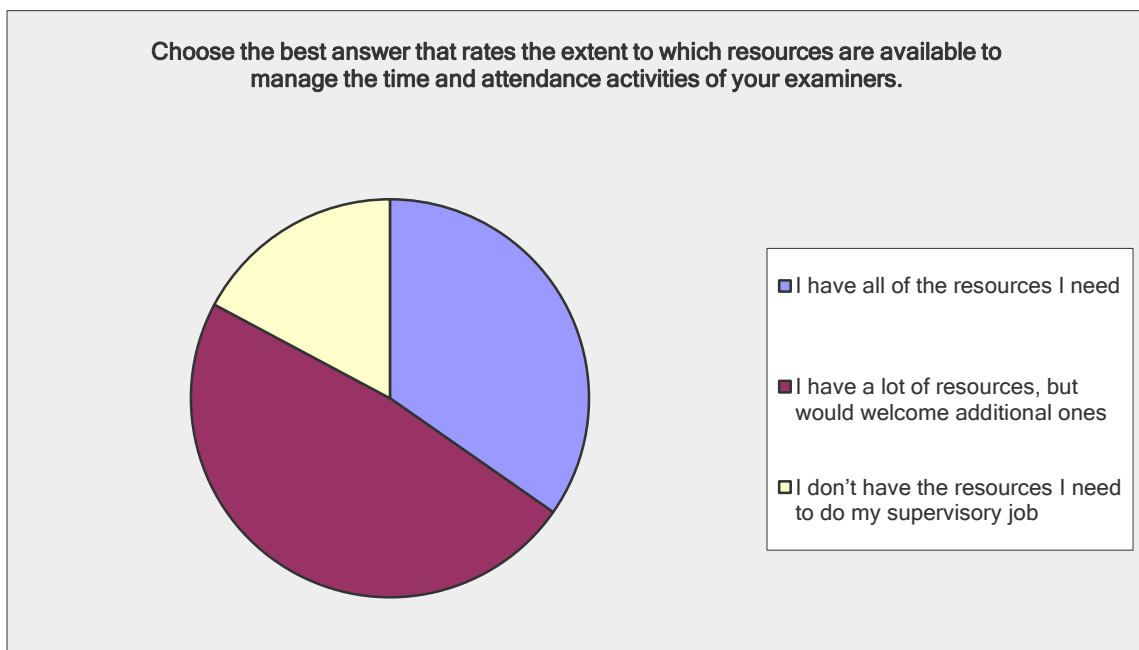


➤ **Question 7: Choose the best answer that rates the extent to which resources are available to manage the time and attendance activities of your examiners.**

Over 80% of respondents indicated that they at least have sufficient resources (48% would welcome additional resources) to manage the time and attendance activities of your examiners. While 80% may have sufficient resources, it is worthwhile to note that almost 1/5 of respondents indicated that they do not have sufficient resources to supervise the T&A activities of their examiners, which is a significant proportion. This supports the finding that it is important for SPEs to know, with reasonable assurance, when exactly somebody is working.

Choose the best answer that rates the extent to which resources are available to manage the time and attendance activities of your examiners.

Answer Options	Response Percent	Response Count
I have all of the resources I need	34.7%	103
I have a lot of resources, but would welcome additional ones	48.1%	143
I don't have the resources I need to do my supervisory job	17.2%	51
<i>answered question</i>		297
<i>skipped question</i>		36

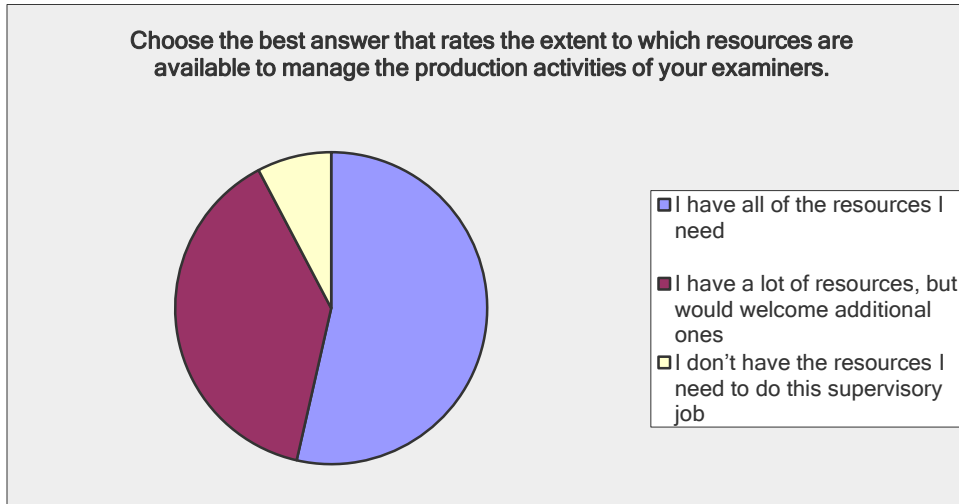


➤ ***Question 8: Choose the best answer that rates the extent to which resources are available to manage the production activities of your examiners.***

Over 90% of respondents indicated that they have sufficient resources to manage the production activities of their examiners (although about 2/5 of these said they would welcome additional resources). 7.7% indicated they lack the resources to perform this supervisory duty, so while it appears that, for the most part, the necessary resources are being made available to SPEs to manage the production activities of their examiners, clearly some supervisors need additional support. Depending on how many people the 23 respondents who answered negatively manage, this may or may not be a significant issue.

Choose the best answer that rates the extent to which resources are available to manage the production activities of your examiners.

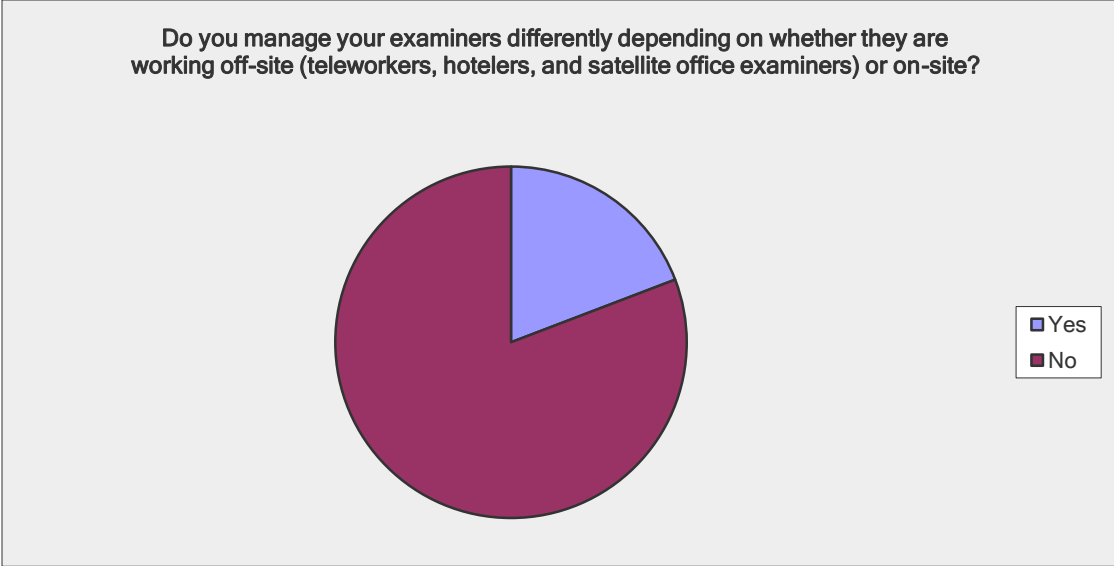
Answer Options	Response Percent	Response Count
I have all of the resources I need	53.5%	159
I have a lot of resources, but would welcome additional ones	38.7%	115
I don't have the resources I need to do this supervisory job	7.7%	23
answered question		297
skipped question		36



➤ **Question 9: Do you manage your examiners differently depending on whether they are working off-site (teleworkers, hotelers, and satellite office examiners) or on-site?**

While 80% of respondents indicated that they do not manage their examiners differently based on whether they are off-site or on-site, it is important to highlight that 20%, or 1/5, of respondents indicated that they do manage differently. The comments from those who do manage differently largely detailed that they only differ in their communication method between off-site and on-site employees, which is to be expected.

Do you manage your examiners differently depending on whether they are working off-site (teleworkers, hotelers, and satellite office examiners) or on-site?		
Answer Options	Response Percent	Response Count
Yes	19.2%	57
No	80.8%	240
If Yes, please describe:		54
answered question		297
skipped question		36

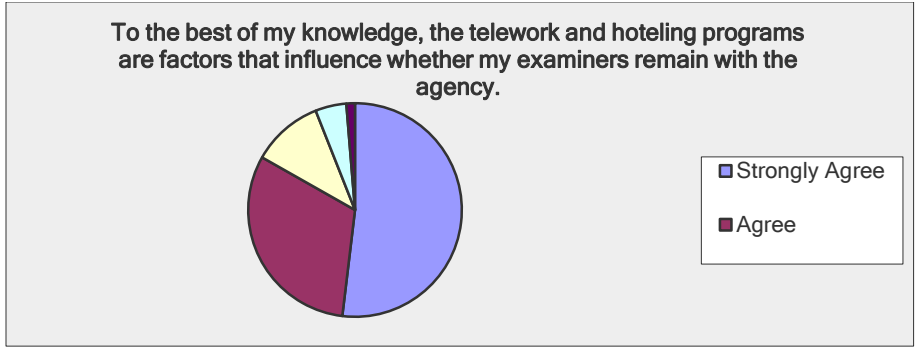


➤ ***Question 10: To the best of my knowledge, the telework and hoteling programs are factors that influence whether my examiners remain with the agency.***

80% of the respondents agree in some capacity that the teleworking and hoteling programs are factors that have a positive effect on employee retention. Based on this, it is clear that the flexibility of working off-site is a major point of attraction for examiners. Should this flexibility be removed or restricted, there is reason to believe it may influence the retention of patent examiners.

To the best of my knowledge, the telework and hoteling programs are factors that influence whether my examiners remain with the agency.

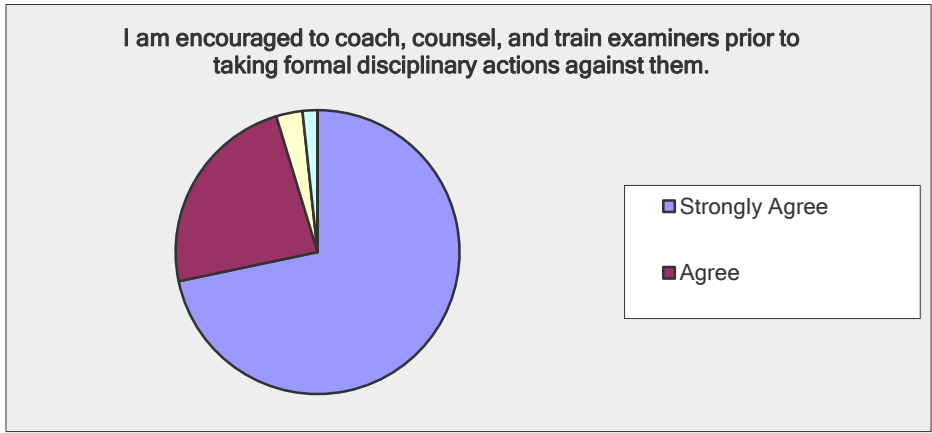
Answer Options	Response Percent	Response Count
Strongly Agree	51.9%	154
Agree	31.3%	93
I Don't Know	10.8%	32
Disagree	4.7%	14
Strongly Disagree	1.3%	4
<i>answered question</i>		297
<i>skipped question</i>		36



➤ **Question 11: I am encouraged to coach, counsel, and train examiners prior to taking formal disciplinary actions against them.**
 Nearly 95% of respondents indicated that they are encouraged to coach, counsel, or train examiners prior to taking disciplinary action against them. This overwhelming majority is indicative of a culture of improvement, rather than a disciplinary one. This, along with the flexibility of working off-site, might contribute to increased employee retention rates.

I am encouraged to coach, counsel, and train examiners prior to taking formal disciplinary actions against them.

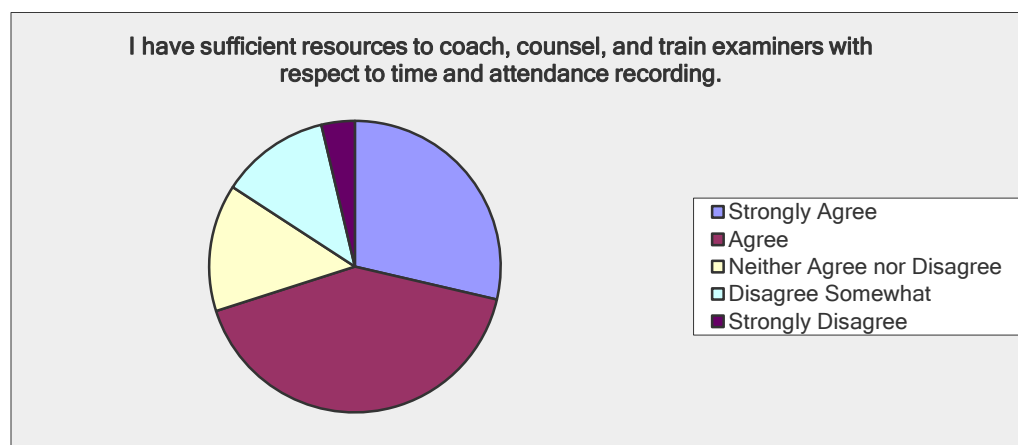
Answer Options	Response Percent	Response Count
Strongly Agree	71.7%	213
Agree	23.6%	70
Neither Agree nor Disagree	3.0%	9
Disagree Somewhat	1.7%	5
Strongly Disagree	0.0%	0
answered question		297
skipped question		36



➤ **Question 12: I have sufficient resources to coach, counsel, and train examiners with respect to time and attendance recording.**

Less than 30% of respondents strongly agreed that they have the sufficient resources to train and counsel their examiners with respect to time and attendance. Even though 41% agreed (70% aggregate agreed), about 30% were either not sure or felt that they did not have sufficient resources to perform this supervisory activity. SPEs would welcome additional resources to effectively coach their examiners on proper time and attendance policies. If SPEs dedicated less time to T&A procedures, they could allocate more time towards other, more productive activities. In addition, being able to properly train examiners on T&A recording would reduce the amount of examiners that have to be called back to headquarters.

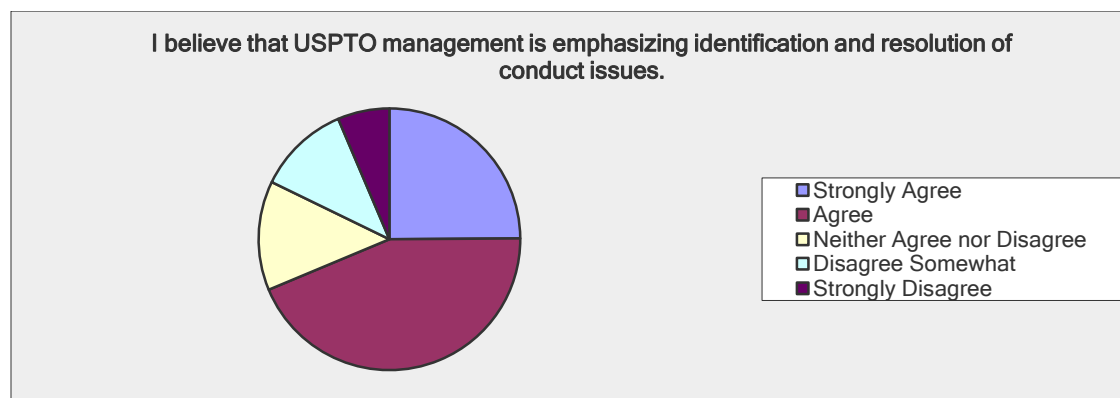
I have sufficient resources to coach, counsel, and train examiners with respect to time and attendance recording.		
Answer Options	Response Percent	Response Count
Strongly Agree	28.6%	85
Agree	41.4%	123
Neither Agree nor Disagree	14.1%	42
Disagree Somewhat	12.1%	36
Strongly Disagree	3.7%	11
answered question		297
skipped question		36



➤ **Question 13: I believe that USPTO management is emphasizing identification and resolution of conduct issues.**

Respondents largely (68%) indicate that USPTO management is placing emphasis on identifying and resolving conduct issues. This compares very favorably to the nearly 18% who somewhat or strongly disagree. However, this segment of the SPE population suggests that there may be room for improvement in terms of the ability of management to identify and resolve conduct issues.

I believe that USPTO management is emphasizing identification and resolution of conduct issues.		
Answer Options	Response Percent	Response Count
Strongly Agree	24.9%	74
Agree	43.8%	130
Neither Agree nor Disagree	13.5%	40
Disagree Somewhat	11.4%	34
Strongly Disagree	6.4%	19
answered question		297
skipped question		36

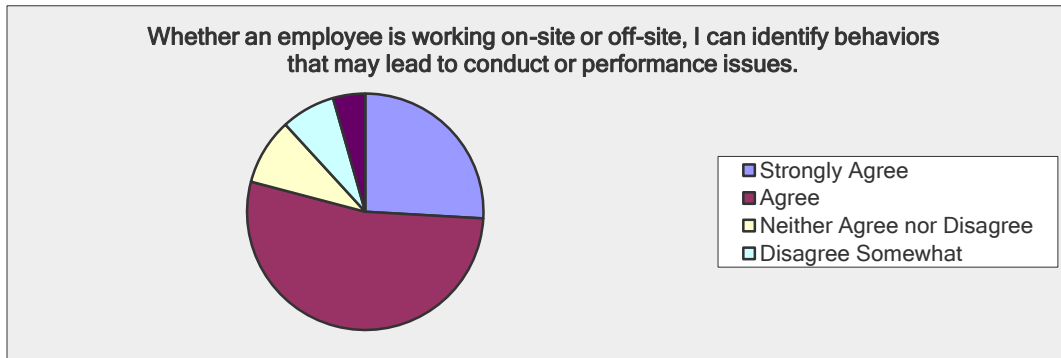


➤ **Question 14: Whether an employee is working on-site or off-site, I can identify behaviors that may lead to conduct or performance issues.**

The fact that almost 80% of respondents indicated that they can identify behaviors that might lead to conduct or performance issues, regardless of whether an employee is on-site or off-site, reduces the concern that employees may be able to act inappropriately because they are out of the immediate sight of their supervisor. Several SPEs noted in written comments that they find it easier to oversee the work habits of on-site employees. The fact that even a few SPEs report that they feel that they can more effectively gauge performance and conduct among on-site examiners as compared to off-site examiners suggests continual monitoring of employee conduct and performance of employees by hoteling and non-hoteling status is critical.

Whether an employee is working on-site or off-site, I can identify behaviors that may lead to conduct or performance issues.

Answer Options	Response Percent	Response Count
Strongly Agree	25.9%	77
Agree	53.2%	158
Neither Agree nor Disagree	9.1%	27
Disagree Somewhat	7.4%	22
Strongly Disagree	4.4%	13
answered question		297
skipped question		36

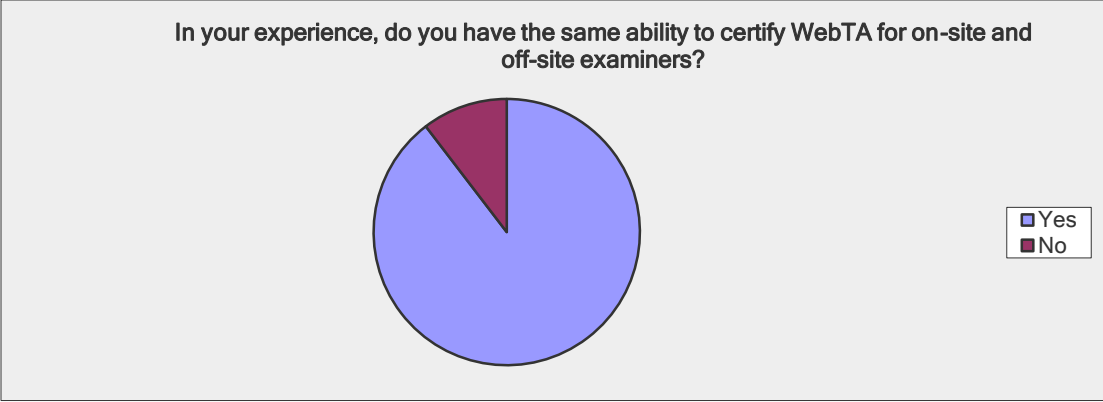


➤ **Question 15: In your experience, do you have the same ability to certify WebTA for on-site and off-site examiners?**

Approximately 9 in 10 respondents have indicated that they can certify WebTA for on-site and off-site examiners, which demonstrates that there are generally few potential certification challenges based on employees' location. However, several commenters indicated that they lack the same confidence in certifying T&A for off-site examiners as they have for on-site examiners. This suggests that further analysis is needed to examine the extent to which individual SPEs, although a minority may not feel the same degree of certainty in certifying T&A for their employees.

In your experience, do you have the same ability to certify WebTA for on-site and off-site examiners?

Answer Options	Response Percent	Response Count
Yes	89.6%	266
No	10.4%	31
If No, please describe:		29
answered question		297
skipped question		36



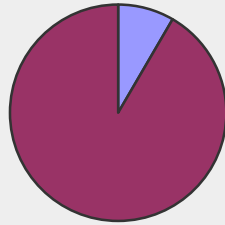
➤ **Question 16: Is there a difference in how frequently you coach, counsel, train, or take formal disciplinary actions related to time and attendance between on-site and off-site examiners?**

The overwhelming majority of SPEs indicated they do not approach training, counseling, or disciplinary actions related to T&A differently based on whether their examiners are on-site or off-site. This demonstrates that SPEs are generally engaging off-site employees, particularly in regards to coaching or disciplinary actions. Similar to results to previous questions, however, further inquiry into the small cohort of SPEs answering positively to this particular may reveal challenges regarding T&A management activities for certain individuals based on their employees' workplace location.

Is there a difference in how frequently you coach, counsel, train, or take formal disciplinary actions related to time and attendance between on-site and off-site examiners?

Answer Options	Response Percent	Response Count
Yes	8.4%	25
No	91.6%	272
If Yes, please describe:		22
<i>answered question</i>		297
<i>skipped question</i>		36

Is there a difference in how frequently you coach, counsel, train, or take formal disciplinary actions related to time and attendance between on-site and off-site examiners?

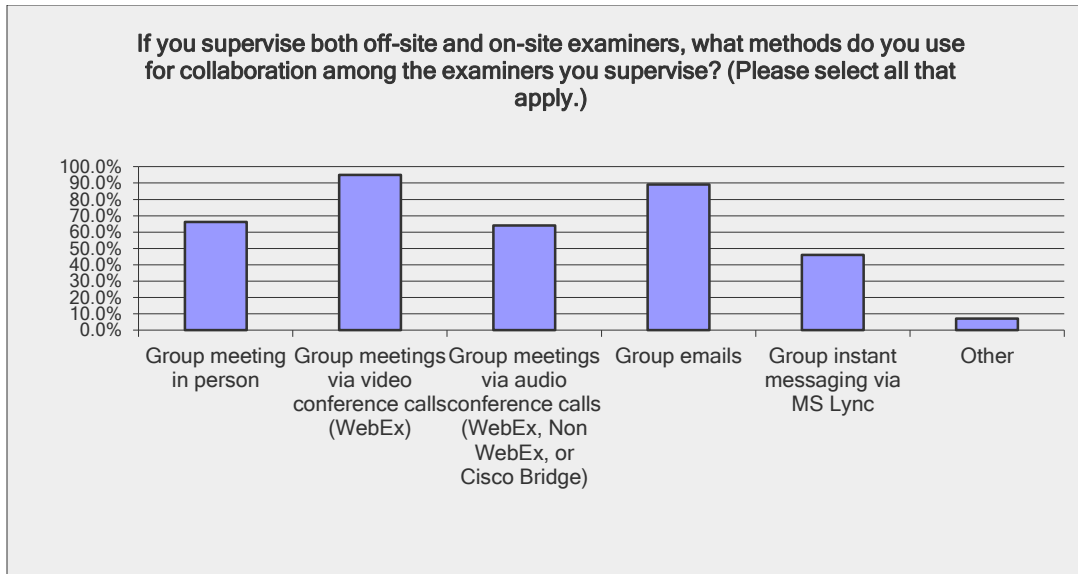


➤ **Question 17: If you supervise both off-site and on-site examiners, what methods do you use for collaboration among the examiners you supervise? (Please select all that apply.)**

The results demonstrate that SPEs are generally utilizing a wide variety of tools to collaborate with their employees, with a majority of respondents reporting the use of at least 4 tools for this purpose. This reflects very positively on SPEs experience with multiple modes of communication and collaboration.

If you supervise both off-site and on-site examiners, what methods do you use for collaboration among the examiners you supervise? (Please select all that apply.)

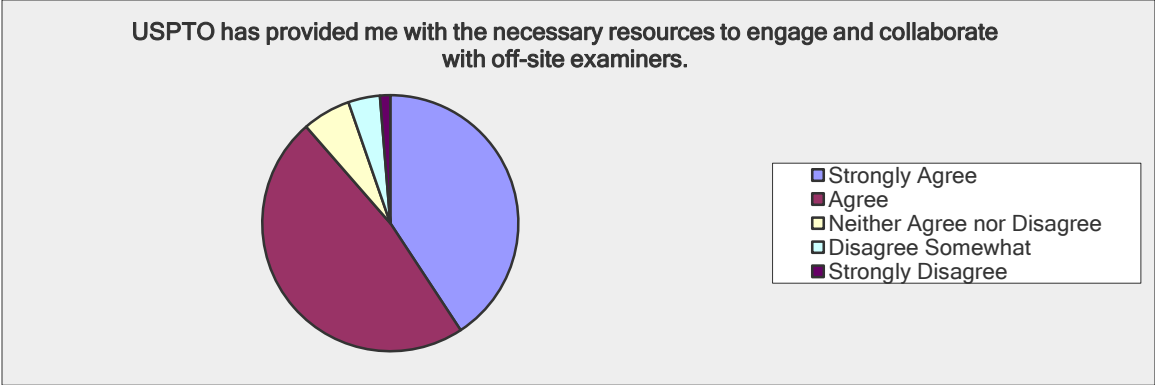
Answer Options	Response Percent	Response Count
Group meeting in person	66.3%	197
Group meetings via video conference calls (WebEx)	94.9%	282
Group meetings via audio conference calls (WebEx, Non WebEx, or Cisco Bridge)	64.0%	190
Group emails	89.2%	265
Group instant messaging via MS Lync	46.1%	137
Other	7.1%	21
If Other, please describe:		23
answered question		297
skipped question		36



➤ **Question 18: USPTO has provided me with the necessary resources to engage and collaborate with off-site examiners.**

Approximately 90% of SPEs agreed in some capacity that USPTO provides them the necessary resources to engage and collaborate with off-site examiners. This coupled with the variety of methods SPEs use to collaborate with their examiners, shows that the tools are available for use.

USPTO has provided me with the necessary resources to engage and collaborate with off-site examiners.		
Answer Options	Response Percent	Response Count
Strongly Agree	40.7%	121
Agree	47.8%	142
Neither Agree nor Disagree	6.1%	18
Disagree Somewhat	4.0%	12
Strongly Disagree	1.3%	4
answered question		297
skipped question		36

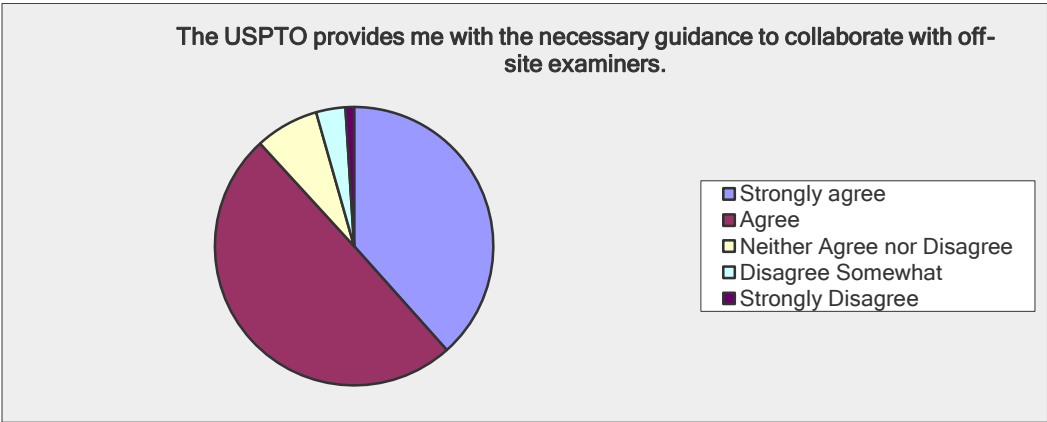


➤ **Question 19: The USPTO provides me with the necessary guidance to collaborate with off-site examiners.**

Over 90% of respondents either “strongly agree” or “agree” that they have necessary guidance to collaborate with off-site examiners. Although the USPTO provides SPEs with the necessary resources (WebEx, Cisco Bridge, MS Lync, etc.), and this corroborates the information in the previous question that tools are available for use.

The USPTO provides me with the necessary guidance to collaborate with off-site examiners.

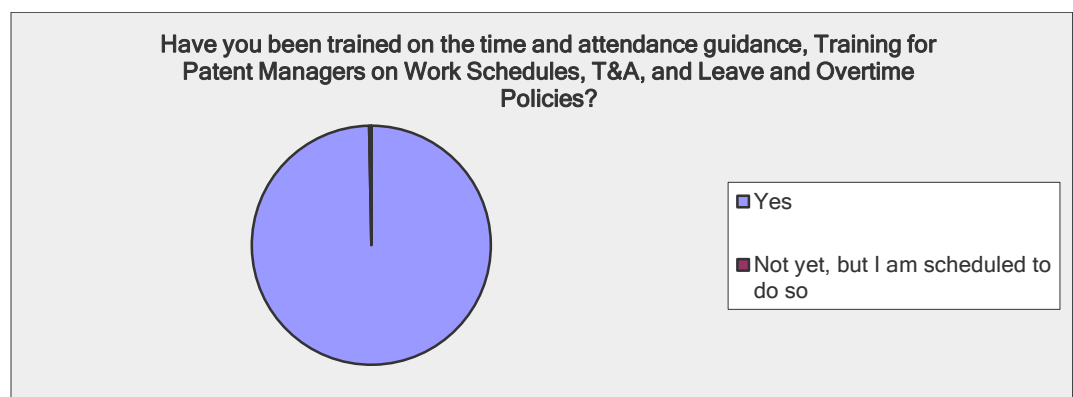
Answer Options	Response Percent	Response Count
Strongly agree	38.4%	114
Agree	49.8%	148
Neither Agree nor Disagree	7.4%	22
Disagree Somewhat	3.4%	10
Strongly Disagree	1.0%	3
answered question		297
skipped question		36



➤ **Question 20: Have you been trained on the time and attendance guidance, Training for Patent Managers on Work Schedules, T&A, and Leave and Overtime Policies?**

Every respondent has either been trained or is scheduled to be trained on time and attendance guidance, Training for Patent Managers on Work Schedules, T&A, and Leave and Overtime Policies. This indicates a strong commitment from leadership to ensure SPEs are properly trained and minimize the possibility of T&A mishaps as a result of supervisory lapses.

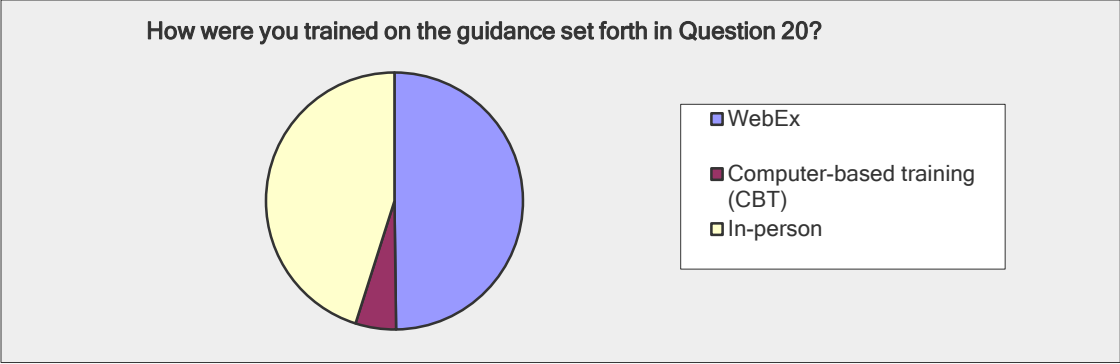
Have you been trained on the time and attendance guidance, Training for Patent Managers on Work Schedules, T&A, and Leave and Overtime Policies?		
Answer Options	Response Percent	Response Count
Yes	99.7%	296
Not yet, but I am scheduled to do so	0.3%	1
No	0.0%	0
answered question		297
skipped question		36



➤ **Question 21: How were you trained on the guidance set forth in Question 20?**

Following-up to Question 20, the results to this question indicate that SPEs have generally used WebEx or in-person options for training.

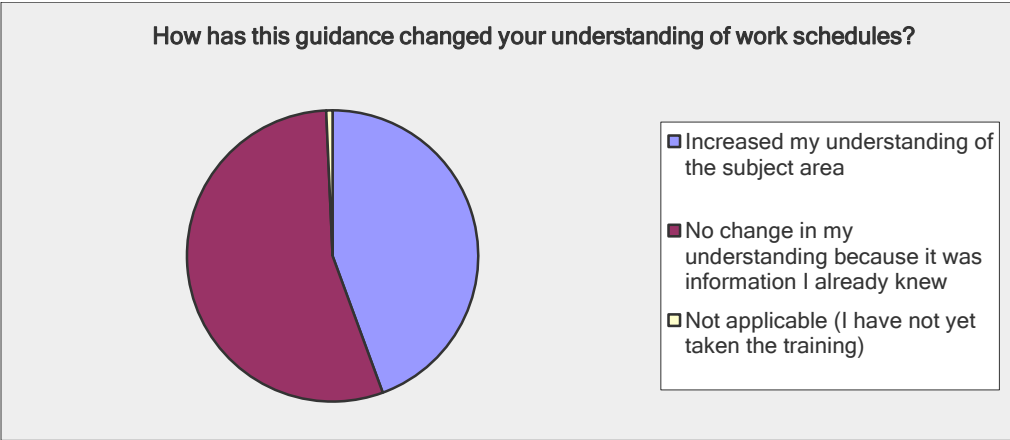
How were you trained on the guidance set forth in Question 20?		
Answer Options	Response Percent	Response Count
WebEx	49.8%	148
Computer-based training (CBT)	5.1%	15
In-person	45.1%	134
answered question		297
skipped question		36



➤ **Question 22: How has this guidance changed your understanding of work schedules?**

Over 44% of respondents indicated that guidance on T&A policy did change their understanding of work schedules. This suggests that the recent training and re-issuance of polices on this topic has been beneficial.

How has this guidance changed your understanding of work schedules?		
Answer Options	Response Percent	Response Count
Increased my understanding of the subject area	44.4%	132
No change in my understanding because it was information I already knew	54.9%	163
Not applicable (I have not yet taken the training)	0.7%	2
answered question		297
skipped question		36

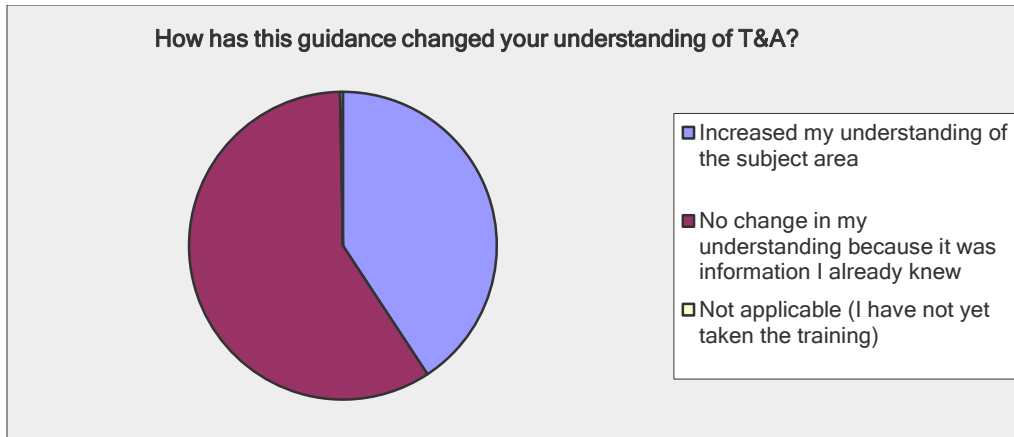


➤ **Question 23: How has this guidance changed your understanding of T&A?**

The results demonstrate that approximately 4 in 10 respondents increased their understanding of T&A as a result of guidance, and nearly 6 in 10 respondents (59%) had already had an understanding of the T&A guidance provided. Again, the results warrant

some examination into the content of trainings to ensure that salient information gaps are the primary focus, as opposed to pre-existing knowledge.

How has this guidance changed your understanding of T&A?		
Answer Options	Response Percent	Response Count
Increased my understanding of the subject area	40.7%	121
No change in my understanding because it was information I already knew	58.9%	175
Not applicable (I have not yet taken the training)	0.3%	1
<i>answered question</i>		297
<i>skipped question</i>		36

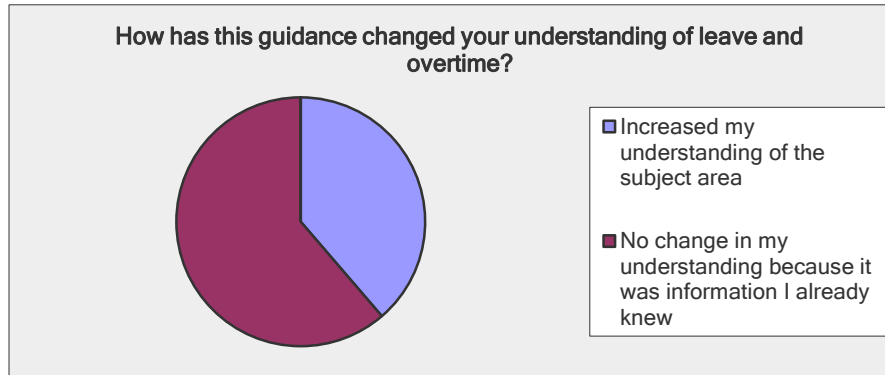


➤ ***Question 24: How has this guidance changed your understanding of leave and overtime?***

61.3% of respondents indicated that the guidance on T&A policies did not change their understanding of work leave and overtime because it was information they already knew. While it is commendable that the USPTO is offering this guidance as a protocol, Again, the results warrant some examination into the content of trainings to ensure that salient information gaps are the primary focus, as opposed to pre-existing knowledge.

How has this guidance changed your understanding of leave and overtime?

Answer Options	Response Percent	Response Count
Increased my understanding of the subject area	38.7%	115
No change in my understanding because it was information I already knew	61.3%	182
Not applicable (I have not yet taken the training)	0.0%	0
answered question		297
skipped question		36

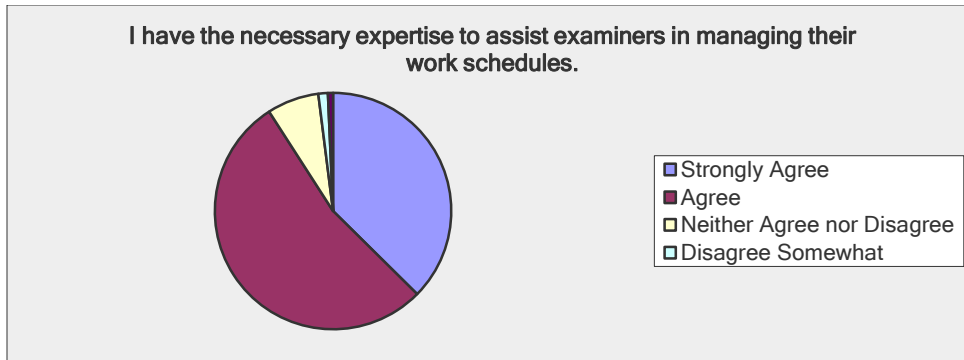


➤ **Question 25: I have the necessary expertise to assist examiners in managing their work schedules.**

Respondents are overwhelmingly positive in their ability to assist examiners in terms of managing their work schedules, with over 9 in 10 agreeing or disagreeing with “having the necessary expertise.” The results indicate that the managers generally do not have work schedule challenges from their employees for which they are not able to resolve.

I have the necessary expertise to assist examiners in managing their work schedules.

Answer Options	Response Percent	Response Count
Strongly Agree	37.4%	111
Agree	53.5%	159
Neither Agree nor Disagree	7.1%	21
Disagree Somewhat	1.3%	4
Strongly Disagree	0.7%	2
answered question		297
skipped question		36

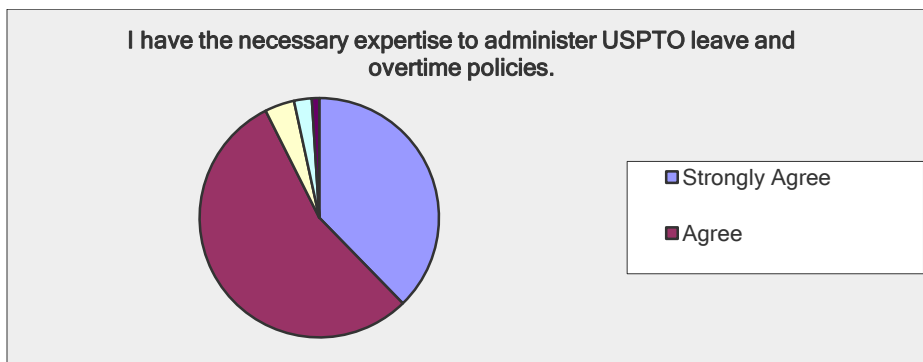


➤ **Question 26: I have the necessary expertise to administer USPTO leave and overtime policies.**

Approximately 90% of respondents agreed in some capacity that they have the necessary expertise to administer USPTO leave and overtime policies. However, there may still be room for improvement. The larger portion of SPEs selecting “agree,” as opposed to “strongly agree” suggests SPEs might be welcome to training that further enhances their current knowledge on administering leave and overtime policies.

I have the necessary expertise to administer USPTO leave and overtime policies.

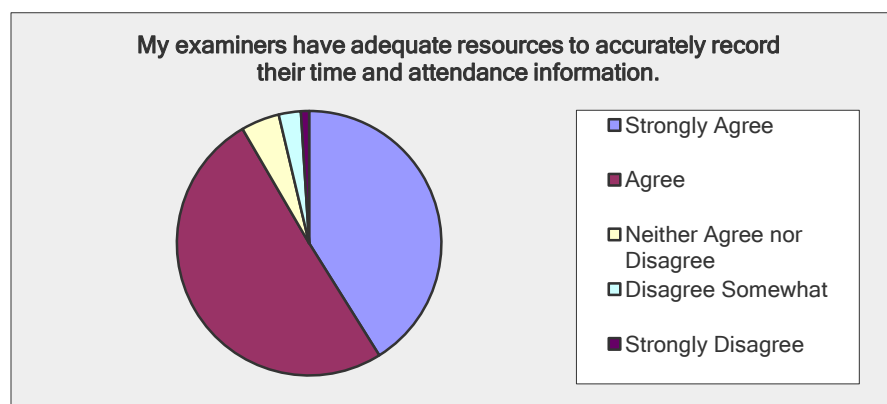
Answer Options	Response Percent	Response Count
Strongly Agree	37.7%	112
Agree	54.9%	163
Neither Agree nor Disagree	4.0%	12
Disagree Somewhat	2.4%	7
Strongly Disagree	1.0%	3
answered question		297
skipped question		36



➤ **Question 27: My examiners have adequate resources to accurately record their time and attendance information.**

SPEs generally answered very affirmatively to the question of their examiners having adequate resources to accurately record T&A information, with over 9 in 10 “agreeing” or “strongly disagreeing.” However, it is important to caveat that this is based on a self-assessment of how they perceive the resources of their employees, which may or may not be accurate.

My examiners have adequate resources to accurately record their time and attendance information.		
Answer Options	Response Percent	Response Count
Strongly Agree	41.1%	122
Agree	50.5%	150
Neither Agree nor Disagree	4.7%	14
Disagree Somewhat	2.7%	8
Strongly Disagree	1.0%	3
<i>answered question</i>		297
<i>skipped question</i>		36

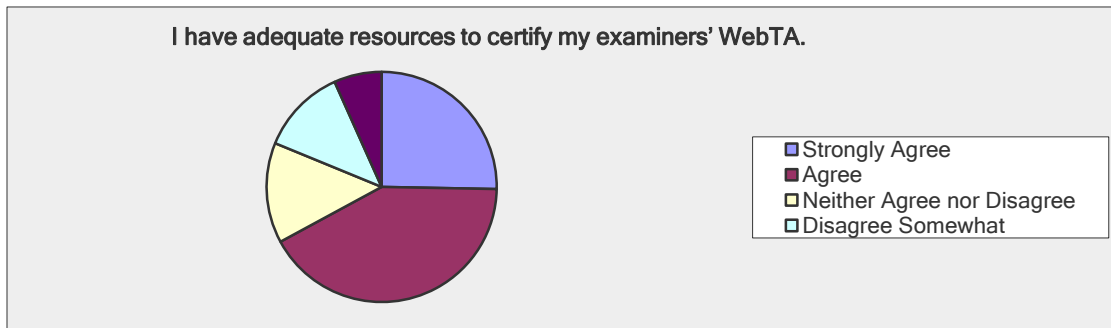


➤ **Question 28: I have adequate resources to certify my examiners’ WebTA.**

18% of respondents indicated in some capacity that they do not have adequate resources to certify their examiners’ WebTA, while an additional 14% neither agreed nor disagreed. Although 1/5 of SPEs feel ill-equipped to verify their examiners’ time and attendance records and that is concerning, we did not have sufficient additional information from the written comments to analyze whether they are concerned that employees have worked the actual hours claimed or whether they cannot judge that the employee did not work the hours consistent with production. The answers to this question conflict somewhat to the responses in Questions 8 and 15 and warrants a further look by the USPTO.

I have adequate resources to certify my examiners' WebTA.

Answer Options	Response Percent	Response Count
Strongly Agree	25.3%	75
Agree	41.8%	124
Neither Agree nor Disagree	14.1%	42
Disagree Somewhat	12.1%	36
Strongly Disagree	6.7%	20
answered question		297
skipped question		36

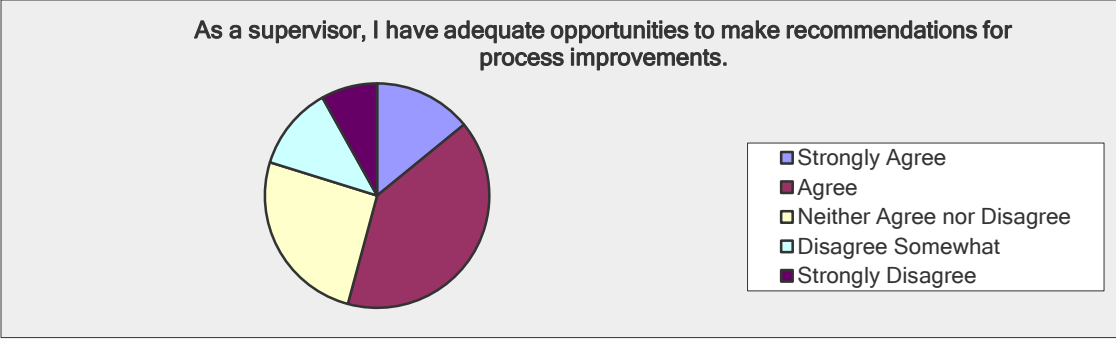


➤ **Question 29: As a supervisor, I have adequate opportunities to make recommendations for process improvements.**

Just over half of respondents believe they have adequate opportunities to make recommendations for process improvements. This is significant because it means that just under half (46%) are either neutral about or disagree in some capacity that they have opportunities to make recommendations for process improvements. This indicates that nearly half of SPEs feel that they have a valuable recommendation to make, but lack the means of doing so.

As a supervisor, I have adequate opportunities to make recommendations for process improvements.

Answer Options	Response Percent	Response Count
Strongly Agree	14.1%	42
Agree	40.1%	119
Neither Agree nor Disagree	25.6%	76
Disagree Somewhat	12.1%	36
Strongly Disagree	8.1%	24
answered question		297
skipped question		36

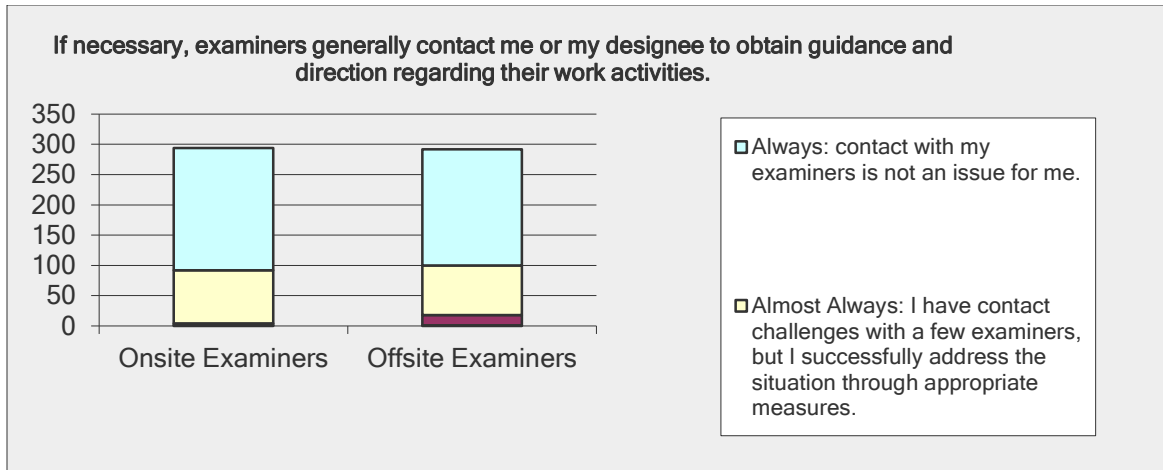


➤ **Question 30: If necessary, examiners generally contact me or my designee to obtain guidance and direction regarding their work activities.**

While this data shows that almost all examiners, both on-site and off-site, contact SPEs to obtain guidance regarding their work activities, SPEs reported slightly more challenges with off-site examiners than with on-site examiners.

If necessary, examiners generally contact me or my designee to obtain guidance and direction regarding their work activities.

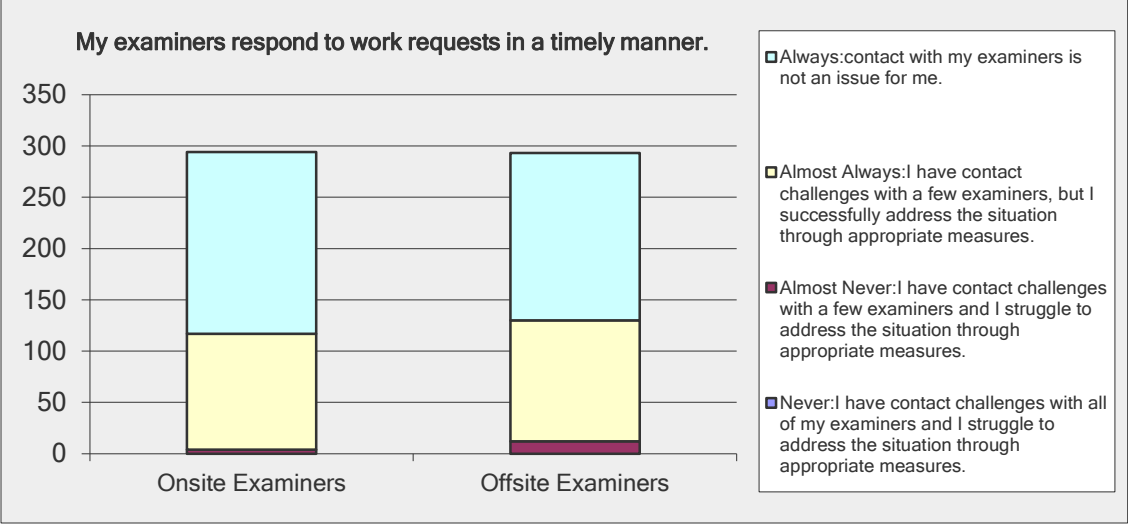
Answer Options	Always: contact with my examiners is not an issue for me.	Almost Always: I have contact challenges with a few examiners, but I successfully address the situation through appropriate measures.	Almost Never: I have contact challenges with a few examiners and I struggle to address the situation through appropriate measures.	Never: I have contact challenges with all of my examiners and I struggle to address the situation through appropriate measures.	Response Count
On-site Examiners	202	88	3	1	294
Off-site Examiners	192	82	17	1	292
answered question					297
skipped question					36



➤ **Question 31: My examiners respond to work requests in a timely manner.**

While this data shows that almost all examiners, both on-site and off-site, respond to work requests from their SPEs in a timely manner, SPEs experience slightly greater challenges in contacting their off-site examiners than their on-site examiners in regards to work requests. The difference between contacting on-site examiners and off-site examiners is very small, but this trend is common in regards to both responding to work requests and contacting the SPEs for guidance. In general, it can be noted that communication and engagement with off-site examiners is slightly more challenging than that with on-site examiners.

My examiners respond to work requests in a timely manner.					
Answer Options	Always:contact with my examiners is not an issue for me.	Almost Always:I have contact challenges with a few examiners, but I successfully address the situation through appropriate measures.	Almost Never:I have contact challenges with a few examiners and I struggle to address the situation through appropriate measures.	Never:I have contact challenges with all of my examiners and I struggle to address the situation through appropriate measures.	Response Count
On-site Examiners	177	113	4	0	294
Off-site Examiners	163	118	12	0	293
<i>answered question</i>					297
<i>skipped question</i>					36



➤ **Question 32: In general, how do the following categories compare for similarly situated on-site and off-site examiners? (Please select one answer in each category using the drop-down menu.)**

The majority of respondents indicated that on-site and off-site examiners are the same in terms of availability, quality of the work product, and production. In regards to availability, 53 SPEs reported that on-site examiners are more available, while 27 reported that off-site examiners are more available. Similarly, 24 respondents indicated that on-site examiners have higher quality work products, while only 8 reported that off-site examiners have higher quality work products. However, 27 SPEs reported that off-site examiners actually produce more work, while only 15 reported that on-site examiners produce more work. There seems to be a general trend that on-site examiners are more available and easier to communicate with, but in regards to production, the trend is less clear.

In general, how do the following categories compare for similarly situated on-site and off-site examiners? (Please select one answer in each category using the drop-down menu.)

AVAILABILITY

Answer Options	The Same	On-site Examiners are More Available	Off-site Examiners are More Available	I Don't Know	Response Count
Answer Choices	213	53	27	4	297

QUALITY OF THE WORK PRODUCT

Answer Options	The Same	On-site Examiners Have Better Quality	Off-site examiners Have Better Quality	I Don't Know	Response Count
Answer Choices	260	24	8	5	297

PRODUCTION

Answer Options	The Same	On-site Examiners Produce More	Off-site Examiners Produce More	I Don't Know	Response Count
Answer Choices	250	15	27	5	297

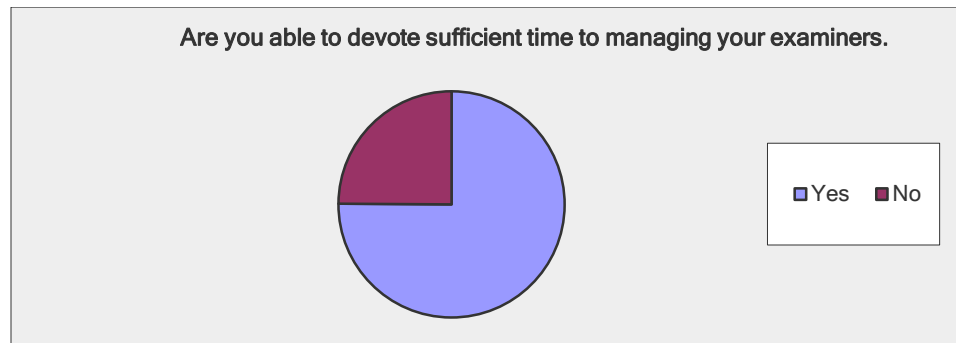
TOTALS

	Question Totals
<i>answered question</i>	297
<i>skipped question</i>	36

➤ **Question 33: Are you able to devote sufficient time to managing your examiners.**

25% of SPEs reported that they are not able to devote sufficient time to managing their examiners. We have no additional supporting data to understand why this is the case.

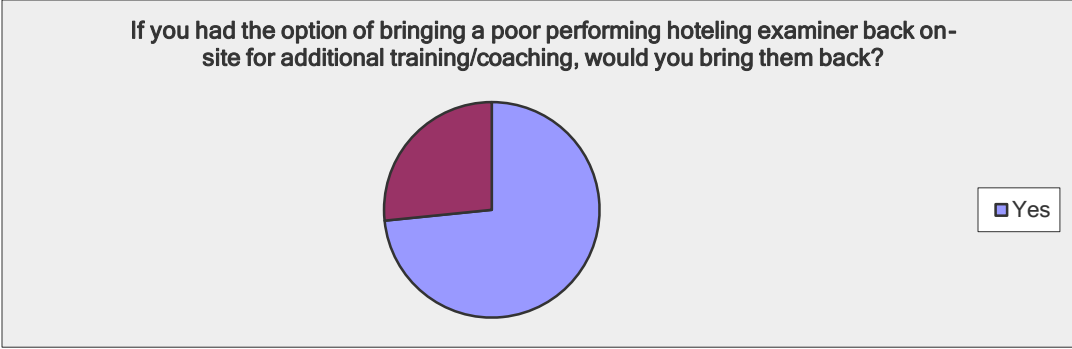
Are you able to devote sufficient time to managing your examiners.		
Answer Options	Response Percent	Response Count
Yes	75.1%	223
No	24.9%	74
answered question		297
skipped question		36



➤ **Question 34: If you had the option of bringing a poor performing hoteling examiner back on-site for additional training/coaching, would you bring them back?**

The fact that nearly $\frac{3}{4}$ of respondents indicated that they would bring a poor performing hotelier back on-site for training indicates that SPEs value quality work and are committed to improving their examiners.

If you had the option of bringing a poor performing hoteling examiner back on-site for additional training/coaching, would you bring them back?		
Answer Options	Response Percent	Response Count
Yes	73.4%	218
No	26.6%	79
answered question		297
skipped question		36

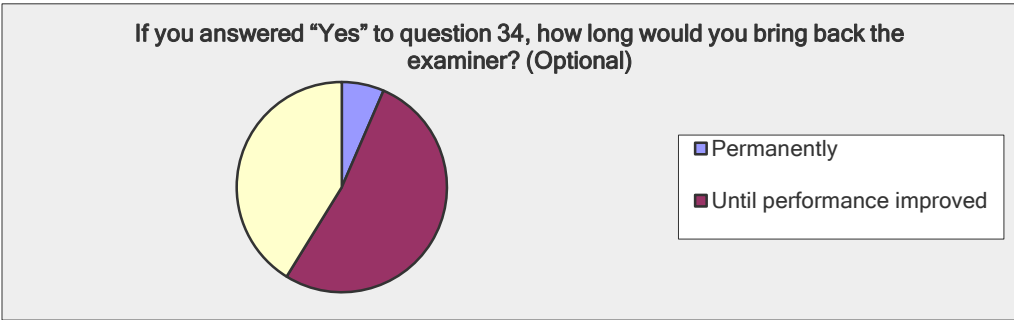


➤ **Question 35: If you answered “Yes” to question 34, how long would you bring back the examiner? (Optional)**

Overwhelmingly, SPEs indicated that they would bring back examiners for a specific probationary period or until performance improved, as opposed to a small cohort (6.5%) that would do so permanently. This suggests that many SPEs see on-site training/coaching as an effective tool for certain examiners, but it is not necessarily meant to be a permanent solution.

If you answered “Yes” to question 34, how long would you bring back the examiner? (Optional)

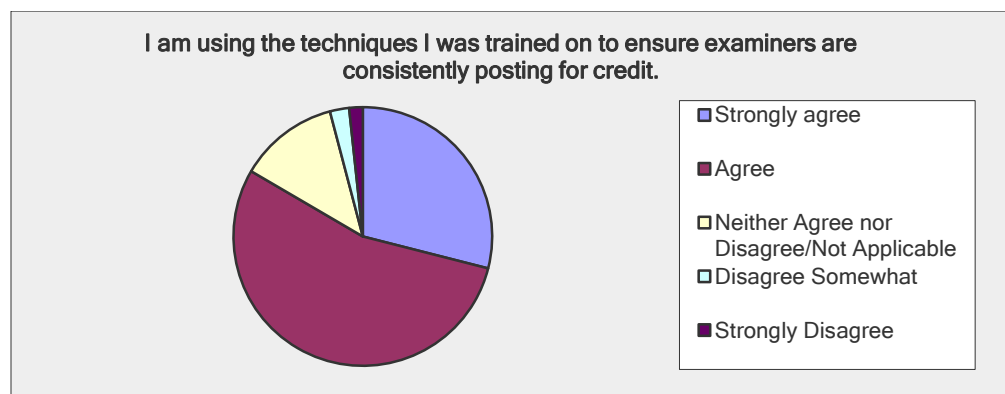
Answer Options	Response Percent	Response Count
Permanently	6.5%	14
Until performance improved	52.3%	113
For a specific probationary period	41.2%	89
answered question		216
skipped question		117



➤ **Question 36: I am using the techniques I was trained on to ensure examiners are consistently posting for credit.**

The results for this question are generally affirming of the training administered to SPEs in terms of techniques that ensure their employees are consistently posting for credit. Over 8 in 10 of respondents either “agree” or “strongly agree” with the statement that they are utilizing techniques covered in training, while a nominal 4.1% “somewhat disagreed” or “strongly disagreed.”

I am using the techniques I was trained on to ensure examiners are consistently posting for credit.		
Answer Options	Response Percent	Response Count
Strongly agree	29.0%	86
Agree	54.5%	162
Neither Agree nor Disagree/Not Applicable	12.5%	37
Disagree Somewhat	2.4%	7
Strongly Disagree	1.7%	5
answered question		297
skipped question		36

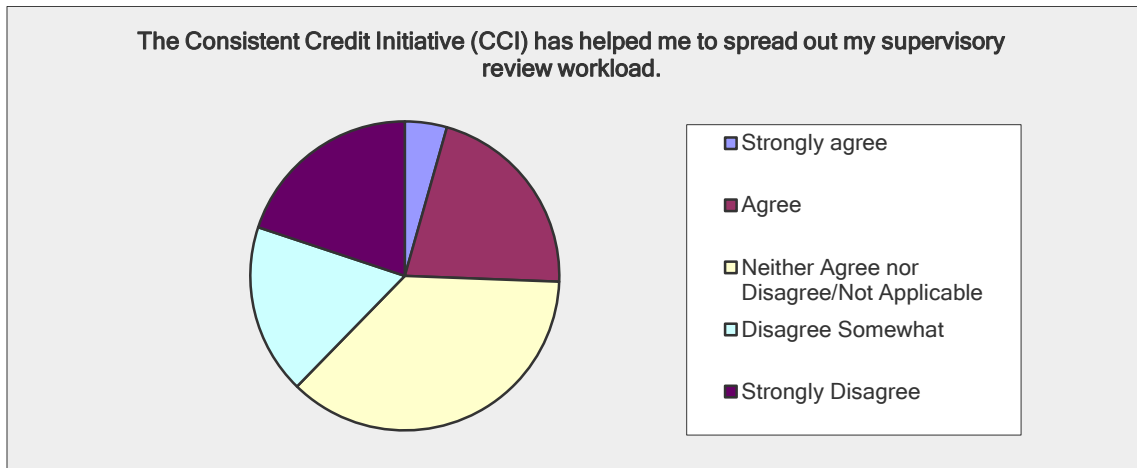


➤ **Question 37: The Consistent Credit Initiative (CCI) has helped me to spread out my supervisory review workload.**

Nearly 40% of respondents indicated to some degree that the CCI has helped them spread out their supervisory workload, while an additional 37% “neither agreed nor disagreed” that it has helped them. Clearly, issues remain regarding spreading out the supervisory review workload of SPEs.

The Consistent Credit Initiative (CCI) has helped me to spread out my supervisory review workload.

Answer Options	Response Percent	Response Count
Strongly agree	4.4%	13
Agree	21.2%	63
Neither Agree nor Disagree/Not Applicable	36.7%	109
Disagree Somewhat	17.8%	53
Strongly Disagree	19.9%	59
answered question		297
skipped question		36



➤ **Question 38: Please provide any additional details you care to provide on the overall structure for managing time and attendance and/or telework, your knowledge of the time and attendance and/or telework rules and requirements for managing people within that structure, and any problems you have or had implementing those requirements.**

This was an open-ended question providing opportunity for additional comments regarding issues raised throughout the survey. Based on the response count, approximately 36% of respondents provided additional feedback.

Please provide any additional details you care to provide on the overall structure for managing time and attendance and/or telework, your knowledge of the time and attendance and/or telework rules and requirements for managing people within that structure, and any problems you have or had implementing those requirements.

Answer Options	Response Count
	88

**APPENDIX K: LIST OF USPTO BARGAINING UNIT TELEWORK
AGREEMENTS**

Telework Enhancement Act of 2010 Guidance Issued by OPM in April 2011*

Signed Prior to April 2011

POPA

1	Telework Program B Review Quality Assurance Specialist (RQAS)(5/30/13)	1	1	Telework Program B (10/8/08)
2	Training Quality Assurance Specialist (TQAS)(5/30/13)	2		
3	Management Quality Assurance Specialist (MQAS)(5/30/13)	3		
4	Patents Telework Program 2013 (5/12/2014)	4		
5	Amendment to Patents Telework Program 2013 (5/12/14)	5		
		13		
	Patents Hoteling Program (8/7/2008)	6	2	Patents Hoteling Program (8/7/2008)
	50 Mile Radius Agreement and Provisions Related to POPA Hoteling and Telework Programs and Increased Flexitime Policy (IFP)(3/9/2010)	7	3	50 Mile Radius Agreement and Provisions Related to POPA Hoteling and Telework Programs and Increased Flexitime Policy (IFP)(3/9/2010)
	Patents Hoteling Guidelines (7/8/08)	14	4	Patents Hoteling Guidelines (7/8/08)
	Patents Hoteling Settlement (6/21/07)	15	5	Patents Hoteling Settlement (6/21/07)
	Patents Hoteling Settlement (5/21/09)	16	6	Patents Hoteling Settlement (5/21/09)
	Patents Hoteling 50-mile radius agreement (3/9/10)	17	7	Patents Hoteling 50-mile radius agreement (3/9/10)
6	Patents Hoteling Part-Time Agreement (11/20/13)	18		
	OCIO Telework Program Handbook (1/09)	19	8	OCIO Telework Program Handbook (1/09)
7	OCFO Telework Handbook and Guidelines (6/11)	20		
8	OPIA Work Schedule Assignment (3/28/12)	21		

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9	Patents Telework Program for Patents Employees (12/15/2011)	8	
	Patents Hoteling Program (8/7/08)	9	9 Patents Hoteling Program (8/7/08)
10	MOU Trademark Work at Home (TW@H) Program for Trademark (2/26/14)	10	
	50 Mile Radius Agreement and Provisions Related to NTEU 243 Hoteling and Increased Flexitime Policy (IFP)(3/17/10)	11	10 50 Mile Radius Agreement and Provisions Related to NTEU 243 Hoteling and Increased Flexitime Policy (IFP)(3/17/10)
	PTAB BPAI Hoteling Program (8/3/10)	22	11 PTAB BPAI Hoteling Program (8/3/10)
	PTAB BPAI 50 Mile Radius Hoteling/IFP (8/3/10)	23	12 PTAB BPAI 50 Mile Radius Hoteling/IFP (8/3/10)
	CFO/CIO/SIRA_____ (11/17/08)	24	13 CFO/CIO/SIRA_____ (11/17/08)
	OCIO Telework Handbook and Guidelines (1/09)	25	14 OCIO Telework Handbook and Guidelines (1/09)
	OCIO Recordation Branch Assignments (3/10/10)	26	15 OCIO Recordation Branch Assignments (3/10/10)
11	OCFO Telework Handbook and Guidelines (6/11)	27	
	OAS Office of Corporate Services (6/24/10)	28	16 OAS Office of Corporate Services (6/24/10)
12	OGC Office of the Solicitor (6/6/14)	29	

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13	Memorandum of Understanding (MOU) on the Trademark Work at Home (TW@H) Hoteling Program and the Telework Pilot Program for Trademark Examining Attorneys (9/27/13)	12	
14	TTAB MOU (9/29/12)	30	
	On Comparison Chart	12	
	Added	18	
	TOTAL	30	
	Signed in or after April 2011	14	
	Signed before April 2011	16	16
	Already Analyzed	7	5
	To be analyzed	7	11

Proposal: Perform analysis on those agreements signed in or after April 2011 (the month OPM issued its Guidance) because the other agreements are not required to be compliant with the Telework Enhancement Act of 2010

***Effective for all 3 Unions: The Memorandum of Understanding for the Telework Enhancement Act Oversight Committee**

COVER IMAGES CREDITS

Top source: <http://assets.urbanturf.com/dc/images/blog/2009/10/uspto.jpg>

Bottom source:

<http://www.uspto.gov/sites/default/files/documents/TeleworkAnnualReport2014-508.pdf>



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