



UNITED STATES PATENT AND TRADEMARK OFFICE

CHIEF ADMINISTRATIVE OFFICER

MEMORANDUM FOR: Jennifer H. Nobles
Director
Complaint Inquiry and Analysis Branch

FROM: Frederick W. Steckler
Chief Administrative Officer

SUBJECT: Inspector General Referral No. PPC-CI-12-1196-H

RE: Abuse of Telework Program at USPTO

Between June 21, 2012 and August 29, 2012, the U.S. Department of Commerce Office of the Inspector General received a series of four complaints alleging systemic abuses within the telework program and time and attendance fraud at the U.S. Patent and Trademark Office.

The following are the allegations contained in the four complaints:

1. Time Fraud

- a. Unnamed Patent Examiners are misrepresenting their time and attendance records, to include claiming overtime that is not being worked.
- b. Unnamed Patent Examiners are misrepresenting their time and attendance records by claiming time based on work completed instead of time worked.
- c. There is a lack of accountability for Patent Examiners to record their time correctly as long as the examiner meets his or her production goals.
- d. The Agency is not policing or monitoring abuse of timesheets.
- e. Conduct issues and time fraud are routinely overlooked as long as an examiner's production levels are acceptable.
- f. There is a lack of accountability for Patent Examiners participating in the Hoteling Program.
- g. Unnamed Patent Examiners are receiving overtime pay for time they are not working.
- h. Management is dissuading supervisors from questioning employees about time and attendance discrepancies.
- i. There is a lack of accountability for Patent Examiners to record their time correctly.

2. End-loading

- a. Unnamed Patent Examiners are only working at the end of the quarter, known as "end-loading" their work and can go from unacceptable performance to award levels in one bi-week by doing 500% to more than 1000% of their production goal.
- b. Supervisors are not equipped to monitor the quality of the work submitted effectively due to "end-loading".

3. Mortgaging of Work

- a. Patent Examiners are submitting incomplete work for credit before the end of a bi-week and then going in after the bi-week to submit valid work.

4. Performance Plan Issues

- a. Unnamed Patent Examiners are receiving bonuses for Docket Management while they have overdue cases in their dockets.
- b. Standards have gotten easier with the implementation of the new PAP in FY 2010 as GS-12s and above can now get credit for the work before it is reviewed.
- c. There is no reasonable way for a supervisor to monitor the quality of the work.
- d. Performance standards became easier with the new count system and examiner PAP.

BACKGROUND

As of this report, the USPTO is an Agency of 11,627 employees; 7,902 are Patent Examiners.

Patent Examiners are divided into different Art Units depending on the type of technology for the patent applications they are responsible for reviewing. There is a Supervisory Patent Examiner (SPE) who leads each Art Unit and is the first-line supervisor for the patent examiners. As of November 2, 2012, the Agency had 557 SPEs (*Exhibit dd*).

Art Units specializing in similar types of art (subject matter) are grouped together and are categorized into Technology Centers (TC). Each Technology Center is led by a team of Directors. The SPEs report to the Directors in their TC. The Agency currently has twenty-six (26) TC Directors in nine TCs.

The TC Directors report to one of the five Assistant Deputy Commissioners for Patents Operations (ADC) who in turn report to the Deputy Commissioner for Patents Operations, Andrew Faile. Andrew Faile reports to the Commissioner for Patents Operations, Peggy Focarino.

An Organization Chart of the Patents organization is provided in Exhibit A.

METHOD OF INVESTIGATION

A Task Force was assembled and conducted an administrative investigation into the above-described allegations and whether the Agency has sufficient controls in place. The Task Force comprised of a team of four Human Resource Specialists in the Office of Human Resources (OHR) Employee Relations Division (ERD), two attorneys of the Office of General Law and an accountant from the Office of the Chief Financial Officer. The members of this team are as follows:

Stacey Fumey – Human Resources Specialist, GS-12 – OHR - ERD
Jessica Crawford – Human Resources Specialist, GS-13– OHR - ERD
Martin Koerner – Human Resources Specialist, GS-13– OHR- ERD
Jessica Patterson – Human Resources Specialist, GS-13– OHR - ERD
Jennifer Seifert – Associate Counsel, GS-15– General Law Office
Chieko Clarke – Associate Counsel, GS-15– General Law Office
Daniel Smith – Accountant, GS-15 – Office of Finance

1. Interviews:

The Investigation team began by conducting administrative interviews.

SPEs:

The administrative investigation began by interviewing a random sampling of ten percent of the Agency’s Supervisory Patent Examiners. The Human Resource Information Systems Division generated a report to provide a randomized list of forty-nine (49) SPEs to be interviewed.

The Task Force compiled the results of the forty-nine (49) SPE interviews to identify if there was validity to the allegations mentioned in the complaints. As the examiners’ first line-supervisors, SPEs are able to provide the most insight into the allegations. SPEs are responsible for evaluating Patent Examiners work and for certifying their time and attendance records.

A list of the questions that the SPEs were asked is provided in *Exhibit B*.

Directors:

The Task Force also interviewed all of the twenty-six (26) TC Directors. The Directors were interviewed to acquire insight into management’s perspective on the allegations, as well as to gain any other relevant information. Because SPEs report to and consult with Directors on issues related to examiner conduct and performance, the Directors are able to provide clarity on the patterns of the Patent Examiners that are assigned to their TCs. SPEs report any concerns related to conduct or performance issues with a Patent Examiner to their TC Director. The TC Directors provide guidance and support to the SPEs in how to best address the concerns. Also, the TC Directors are well aware of types of concerns that SPEs often run across because prior to being promoted to the TC Director level, all of the Directors were SPEs. Finally, when there are performance or conduct issues that require disciplinary or adverse actions, the TC Director will serve as either the Proposing Official or Deciding Official.

A list of the questions that the TC Directors were asked is provided in *Exhibit C*.

ADCs:

After all of the SPE and TC Director interviews were completed, the Task Force interviewed each of the five ADCs in order to acquire Senior Management’s perspective on the allegations that were raised, as well as to gain any other relevant information. The ADCs are aware of the more severe or persistent performance and conduct cases because they serve as Deciding Officials on adverse actions. The ADCs help to formulate the Agency’s strategy and processes for handling performance and conduct related issues. The TC Directors will report any ongoing performance or conduct issues to the ADCs that they are not able to resolve.

A list of the questions that the ADCs were asked is provided in *Exhibit D*. There were five (5) graphs shown to the ADCs during their interviews. Those graphs are also in *Exhibit D* and are labeled in the same manner in which they are found in the list of questions.

2. Review of authorities:

Agency Policy and Guidance:

During the course of the Agency's administrative investigation, the Task Force reviewed the following authorities related to the allegations:

- **Patent Examiner Laptop Program (PELP) - *Exhibit E*.**
- **Patent Telework Program (PTP) - *Exhibit F*.**
- **Patent Hoteling Program (PHP) - *Exhibit G*.**
- **Time and Attendance Policy - *Exhibit H*.**
- **Work Schedule Policy - *Exhibit I*.**
- **Increased Flexitime Policy - *Exhibit J*.**
- **Telework Enhancement Act Pilot Program (TEAPP) Operating Procedure - *Exhibit K*.**
- **50 Mile Radius Agreement and Provision Related to the POPA Hoteling and Telework Programs and IFP - *Exhibit L*.**
- **Telework Enhancement Act of 2010 - *Exhibit M*.**
- **OPM's Guide to Telework in the Federal Government - *Exhibit N*.**
- **USPTO's Telework Policy - *Exhibit O*.**
- **IG Report on PHP - *Exhibit P*.**

These authorities set out the standards applicable to the programs and processes identified in the Complaints. They set out controls for monitoring and managing the corresponding programs. A review of these documents was necessary in identifying whether or not the problem was a lack of controls or rather a lack of enforcement of those controls.

3. Review of data:

The Task Force reviewed pertinent data related to the allegations such as Agency reports on overtime claimed, Docket Management awards, ceiling exceeded cases, and end-loading for fiscal year (FY) 2012. The Task Force also considered data from FY 2009 through FY 2012 for these reports to provide the best representation and most relevant information to the concerns raised in the OIG complaints.

Additionally, the Task Force compared the performance standards under the Patent Examiner's current Performance Appraisal Plan (PAP) and the previous Patent Examiner PAP. The administrative investigation evaluated the number of production counts per employee under each PAP to determine if there have been any negative changes as suggested in the OIG complaints filed. The Task force also analyzed the statistics related to pendency to identify if there has been a reduction in the turnaround time for office actions after the implementation of the performance standards.

INVESTIGATIVE RESULTS

Summary of Interviews

Supervisors (Exhibit Q)

Fifty (50) randomly selected Supervisory Patent Examiners were interviewed and asked identical questions about possible abuse of USPTO telework programs and time fraud. These questions were developed to address the issues that were raised in the multiple complaints, including controls in place for on-campus employees, controls in place for teleworking participants, controls in place for PHP participants, end-loading, overtime, and bonuses. The interviewers found that many supervisors had troubling answers to some of the questions that were asked.

Directors (Exhibit R)

All USPTO Patent Technology Center Directors were interviewed and asked identical questions about possible abuse of USPTO time and attendance and telework programs. These questions were developed to address the issues that were named in the multiple complaints, including controls in place for on-campus employees, controls in place for teleworking participants, controls in place for PHP participants, end-loading, overtime, and bonuses.

Assistant Deputy Commissioners for Patent Operations (Exhibit S)

All USPTO Assistant Deputy Commissioners for Patent Operations (ADCs) were interviewed and asked identical questions about possible abuse of USPTO time and attendance and telework programs. These questions were developed to respond to and provide information regarding both issues raised in the SPE and Director interviews, and the issues that were named in the multiple complaints, including overall time & attendance questions, controls in place for on-campus employees, controls in place for PHP participants, controls in place for teleworking participants, end-loading, overtime, and bonuses.

1. Time Fraud

When the SPEs were asked about whether they had the tools needed to address employees claiming hours not worked, twenty-two SPEs (44%) said that they did not have the tools that they needed. The following responses were received when asked this question:

- *“No. I don’t waste my time. They can go to POPA and win. I am not aware of 1 person who successfully terminated an examiner for time fraud. The belief is that it cannot be done. No one tries. No one wastes their time” (Exhibit Q, SPE #34)*
- *“I don’t know. There has been a liberalization of hours if the work is accomplished” (Exhibit Q, SPE #44)*
- *“When it gets egregious enough. If it is at a low level, then no” (Exhibit Q, SPE #39)*
- *“No, don’t really have the tools because the examiners are so flexible. Can’t use the technology available either” (Exhibit Q, SPE #12)*
- *“It seems like there is [sic] no tools” (Exhibit Q, SPE #23)*
- *“None, our hands are tied” (Exhibit Q, SPE #45)*

Of the SPEs who felt there were tools available to deal with examiners who they suspected were claiming time not worked, the tool most cited was the Quality element of the PAP.

The SPEs were asked if they ever had requested swipe records or computer records from their director in order to check on an examiner's time when abuse was suspected, and if so, was their request approved or denied. The following responses were received when asked this question:

- *"The Director said we aren't pulling them anymore" (Exhibit Q, SPE #32)*
- *"We have been told that it hard to obtain records, virtually impossible" (Exhibit Q, SPE #38)*
- *"ADC said no. We had evidence that the timesheet was not accurate, but they still said no. Was 4-5 months ago and there was a push not to pull records. But my Director felt the situation warranted it and ran it up to the ADC" (Exhibit Q, SPE #39)*
- *[Request was denied] "They didn't say. Something with the ADCs. There are so many hoops to go through" (Exhibit Q, SPE #42)*
- *[Didn't ask for records] "No, I feel we cannot do anything. Other SPEs feel that way too" (Exhibit Q, SPE #45)*
- *"Denied from above the Director" (Exhibit Q, SPE #47)*
- *"We talked about pulling his records but I was told that could be construed as singling an employee out – so I asked for the whole art unit, but they said no, you can't do the whole art unit" (Exhibit Q, SPE #49)*
- *[Didn't go to Director] "talked to senior SPE and they said there was no way to chase them down and correct behavior unless the person has a performance issue" (Exhibit Q, SPE #23)*

When asked if they thought that the Agency was willing to overlook conduct issues as long as an examiners performance was acceptable at the end of the quarter, nineteen SPEs (38%) said that they felt that the Agency was willing to overlook conduct issues if an examiners performance was acceptable. The following responses were received when asked this question:

- *"I think it would depend upon the conduct issue. Obviously, if it were something like violence absolutely not. If it is just the time stuff, I think the Agency would overlook it as long as the production was good" (Exhibit Q, SPE #7)*
- *"Depends on the conduct" (Exhibit Q, SPE #13)*
- *"I think it is something that they are not aware of. IFP probably has people working past 10. They are not pulling records. I had a high producer who had a mouse mover program on their computer. SPE saw it and took a picture. Showed it to the Director, who talked to the ADC, and then nothing happened" (Exhibit Q, SPE #32) [Note: Mouse mover software gives the appearance that someone is using the computer, and therefore working, when they are not.]*
- *"Yes. They don't care anymore. The only focus is that the Agency is the #1 Agency with happy employees" (Exhibit Q, SPE #47)*

The SPEs were asked if they thought that some examiners wait until the end of the bi-week to see how many counts they have submitted before completing their timesheet so as to control the

number of hours claimed to match the amount of work turned in. Thirty-five SPEs (71%) said yes, they thought examiners did this.

During the Director interviews, thirty-six percent (36%) of Directors said that they had never requested records that could be used to verify employee time and attendance, such as swipe records or computer records for an employee suspected of not working all the hours claimed. Twenty percent (20%) of all the Directors said that they felt the Agency was willing to overlook misconduct as long as the examiners performance was acceptable. Thirty-six percent (36%) said that they had requested records on an employee suspected of not working all of the hours claimed and had their request denied by an ADC. Several Directors said that they did not request records, but that they had heard records couldn't be used. The following statements were made:

- *“Told we cannot use computer records and that we can only use swipe if the issue is escalated” (Exhibit R, Director #3)*
- *“Tried to get computer/VPN records, but couldn't get those records released. The last reason was that we don't do that anymore.” (Exhibit R, Director #4)*
- *[regarding an employee the Director wanted records on] “Yes, had to keep repeating, had to counsel him, had to call him in, to this point – we have never been able to have records” (Exhibit R, Director #4)*
- *“But, he has had discussions where the question of whether to pull records has come up for discussion, and it was decided not to pull or use the computer and swipe records” (Exhibit R, Director #8)*
- *“No, lately told that we cannot ask for computer records” (Exhibit R, Director #12)*
- *[regarding asking for records] “Yes, was told I couldn't have them” (Exhibit R, Director #15)*
- *“Office is getting away from swipe records for fear of creating [big brother] effect” (Exhibit R, Director #18)*
- *[when denied use of records] “asking and receiving records may affect the morale of all employees and feel we are big brother” (Exhibit R, Director #19)*
- *“I was asked how their performance was and if they were performing well. Was asked if performing well, why affect their morale. [The TC] was told to cancel several IMs [investigatory meetings]. We were told to have conversation with employees that we had evidence of not working several days and tell them that they needed to be working the hours on their timecard” (Exhibit R, Director #19)*
- *“Agency afraid of following up with bottom 5% behavior problems. Will cast cloud on 95% and might have morale impact” (Exhibit R, Director #19)*
- *“6 months ago I was able to ask for records, not able to do that now. SPE have to counsel employee now, then do it again, and then I counsel, then, maybe I can request records” (Exhibit R, Director #20)*

When ADCs were asked about what they thought about the number of SPEs and Directors who felt that the Agency was willing to overlook misconduct if the examiners performance was acceptable, ADCs disagreed that this was true and generally said that it was a misperception.

Every ADC expressed that communication and interaction between the supervisor and the employee was the primary means for validating that the employee was working. Three out of the five ADCs did not know whether hoteling employees were required to log into the VPN when working. The ADCs discussed a series of documents that they were developing to provide to the SPEs and Directors to assist with time and attendance and conduct issues. There were multiple times when the ADC's responses to questions were that they were too far removed from examining and therefore, they did not know the answers.

To date, the first set of documents referenced by the ADCs has been released. This document is titled *Management Guidance on Certifying Time and Attendance (Exhibit bb)*. The document prescribes two-prong criteria for dealing with time and attendance concerns. SPEs are instructed on how to handle examiners who are **both** unresponsive for at least several days and who have not submitted work. Based on this, the document is intended to address the most serious cases of examiners who submit no work at all for an entire bi-week and fail to respond to their manager's attempts to contact them. While the document is a good first step, and may prove helpful for the most egregious cases, it does not go far enough to address employees missing for entire occasional days when it is less than a bi-week, or those examiners who respond to e-mails but fail to submit any work, both of which are serious misconduct.

The Agency has "swipe records" that record each employee via swiping of their USPTO badge as they enter USPTO buildings. Records of employees holding monthly parking passes entering and exiting the garage are also available. Agency computer log on records, search records, production reports, and time and attendance records are also available. These records are important tools, and when used together, can provide compelling evidence on the activities of an employee. These records would clearly establish and meet the required "preponderance of the evidence" standard for conduct cases.

However, in recent months, Patents management has in several cases refused the use of these records. This interferes with the investigative process. Employee Relations should have full and unmitigated access to any and all records in order to properly investigate any abuse allegations. The reason given for not allowing use of the records was not wanting to create a "big brother" atmosphere. However, this results in a frustrated management team that cannot effectively deal with serious misconduct and feels they are in effect being told to look the other way. This tends to actually have a negative effect on the vast majority of employees who work hard and are diligent about their time and see misconduct being tolerated.

ER has recently investigated several cases related to time and attendance abuse that have caused concern. In one case, the examiner claimed excessive hours on their timesheet for time they never worked; in fact the examiner did not even come into the office at all for at least 304 hours during the time period under investigation. This misconduct occurred for over a year. When the examiner was put on clear notice that the behavior was inappropriate and would not be tolerated, the examiner modified the misconduct in an attempt to continue receiving pay for hours not worked while avoiding further detection while continuing the same misconduct.

The Director proposed the examiner's removal. When the examiner met with the deciding official for the oral reply to the proposed removal, the examiner stated a desire to continue

working at the USPTO and claimed remorse. After the oral reply, the examiner immediately engaged in the same misconduct. Despite the evidence presented by the proposing official in the proposed removal and the fact that the examiner showed no potential for rehabilitation, the deciding official offered the examiner a last chance agreement. In this case, Employee Relations was in possession of additional aggravating evidence, but was told by senior management that it could not be used or disclosed.

In a separate case, an examiner engaged in time and attendance abuse, after already serving a 21-day suspension for the same misconduct. The proposing official proposed the examiner's removal, yet the deciding official offered the examiner a last chance agreement, despite the examiner having shown no potential for rehabilitation.

In January 2012, a SPE had evidence that her employee was not working all of the hours that he claimed. She had noted that he was not in his office on several occasions and that he failed to attend a scheduled meeting. Her request to review his swipe in records was denied at the ADC level. USPTO management demonstrates reluctance to take decisive action when the misconduct is egregious and the evidence is compelling. This may fail to prevent future misconduct in the subject, as well as other employees who undoubtedly see the misconduct occurring. In addition, this has led not only to the failure of preventing future misconduct, but has validated the conception that the Agency will allow misconduct if an employee is performing at an acceptable level. Further, by giving examiners with serious misconduct repeated chances to behave appropriately, the burden to monitor and track these problem employees falls on the SPEs. This is a difficult and time-consuming task and the SPEs are provided with very few tools to help them, since controls are almost non-existent.

In another case, an out-of-state hoteling examiner was being investigated for mortgaging (submitting incomplete office actions for credit) nine office actions at the end of FY 2011 in order to avoid being placed on a performance warning and being rated less than Fully Successful for the fiscal year. Her misconduct also resulted in her being eligible to receive a variety of performance awards (e.g., Docket Management, SAA, COPA). In addition, the examiner is a habitual end-loader who consistently end-loads in the last bi-week of a quarter and at the end of a performance warning. She is currently serving a post-PIP maintenance period and is end-loading in the last bi-week of each period, therefore avoiding failing her post-PIP period and being issued a proposed removal.

During the mortgaging investigation, the ER Specialist discovered that the hoteling examiner had been misrepresenting a substantial amount of hours on her timesheet. The examiner claimed to have worked 265.5 hours for which there was no evidence she was working, and received \$12,533.02 in pay for those fraudulently claimed hours. When the TC was notified of the time fraud, they asked the ADC if they could use the computer records as evidence so she could be charged with misrepresenting her timesheet. The ADC refused to allow the TC to use the computer records as evidence; as such, the examiner was not charged with time fraud. The examiner was, instead, charged with not following the hoteling policy for her lack of responsiveness to her supervisor's repeated attempts to get in touch with her and failure to follow supervisory instructions.

The Agency proposed a 21-day suspension for mortgaging, failure to follow the hoteling policy, and failure to follow supervisory instructions. Both parties entered into an abeyance agreement where the examiner served a ten-day suspension, with eleven days held in abeyance for two years. Sometime after the conclusion of this case, the ADC notified his TCs that he will not approve any requests for swipe or computer records, period.

There was another examiner in the same TC that was investigated around the same time for misrepresenting his time on his timesheet. The examiner claimed approximately 25 hours for which there was no evidence he worked, and received \$1,333.25 in pay for those fraudulently claimed hours. The TC was told they were not permitted to use the computer records as evidence, and as a result, the examiner received a counseling letter for not following his work schedule.

The multiple hurdles and approval levels required to follow through with a time and attendance case, along with senior management's reluctance to sustain proposed disciplinary or adverse action is a likely factor in the SPEs' and Directors' perception that time and attendance abuse is overlooked, or that it is fruitless to request any kind of records as part of an investigation. This leads to an erosion of supervisors following up with employee misconduct.

2. End-loading

End-loading data from FY 2007 through FY 2012 was analyzed (*Exhibit V*). The data indicates that end-loading was slowly decreasing until FY 2009. After FY 2009, end-loading has been generally increasing in the third and fourth quarters of the fiscal year. In the 4th quarter of FY 2012, for example, approximately 20% of examiners (roughly 1,600 examiners) completed 50% or more of their total annual balanced disposals¹ in the last two pay periods (or four weeks) of the quarter (typically six or seven bi-weeks²), and approximately 5% of examiners (roughly 450 examiners) completed 70% or more of their total balanced disposals in the last two pay periods of the quarter.

Comparing the last quarter of FY 2012 to the last quarter of FY 2007, shows that the number of examiners engaging in this behavior has almost doubled (*Exhibit V, p. 2*). In the last quarter of FY 2007, approximately 12.5% of examiners completed 50% or more of their balanced disposals for the quarter in the last two pay periods, equating to approximately 700 examiners, and approximately 4% of examiners completed 70% or more of their balanced disposals for the quarter in the last two pay periods, equating to approximately 225 examiners.

Since the USPTO's workforce increased between FY 2007 and FY 2012, it is important to note that it was not just the raw number of examiners engaging in this behavior that increased. Importantly, the percent of total employees engaging in this behavior was also increasing. The line graph in *Exhibit V* shows that the average percentage of examiners that completed 50% or more of their balanced disposals in the last two pay periods of a quarter increased by 49.5%. The graph also show that the average percentage of examiners that completed 70% or more of their

¹ A balanced disposal is equivalent to two counts

² The Patent Corp uses the term "bi-week" rather than "pay period".

balanced disposals in the last two pay period of a quarter increased by 70.9%. This is a notable increase and confirms the SPEs' and Directors' perception that this behavior has been increasing.

The prevalence of end-loading suggested that there is a significant number of examiners that are not working for significant periods of time during the early bi-weeks of each quarter since these examiners are only submitting completed work at the end of the quarters and/or year. The end-loading examiners are being paid the same salaries and bonuses as examiners who are consistently submitting work throughout the quarter/fiscal year.

The SPEs were asked if they had examiners who engaged in end-loading and whether they felt end-loading compromised the quality of the work. Thirty-eight SPEs (77%) said that they have one or more employees who engage in end-loading and thirty-five SPEs (71%) said that they felt that end-loading could compromise the quality of the work. They were also asked if they had the tools to be able to adequately address end-loading, with fourteen SPEs (28%) saying that they did not have tools to be able to adequately address end-loading. For those who believed tools were available, the most cited tool was the quality element of the PAP. However, when discussing using this performance element to address end-loading, the following responses were received:

- *“It is a lot of work for managers to do it” (Exhibit Q, SPE #1)*
- *“We have the tools, but most SPEs don't use them. You have to review the cases, but the SPEs are overwhelmed. It is difficult to address Quality” (Exhibit Q, SPE #2)*
- *“Not to the extent that it is prevalent. If it were isolated, yes. But there are too many examiners doing it” (Exhibit Q, SPE #3)*
- *“No. Quality issues have to be found in a lot of office actions. If there is a flood of actions turned in, it is a disaster to try and evaluate all of those. Especially at mid-year and EOY, when it is very prevalent” (Exhibit Q, SPE #44)*

More than 90% of the Directors stated their belief that when a patent examiner end-loads their work, the quality of their work is negatively affected. The data reports shows that though the Directors estimate that between 5 and 10 percent of patent examiners end load their work, the number of examiners who end-load by doing 50% or more of their quarter's balanced disposals in the last two bi-weeks of the quarter is actually close to 20% (*Exhibit V*). The overall feeling is that end-loading is not an appropriate practice and that it negatively impacts quality of the work, but that USPTO tolerates it. The following statements were made:

- *“Seems as I spot check, more and more examiners at the mid-point quarter are below FS level and have to climb back up” (Exhibit R, Director #4)*
- *[regarding end-loading] “Auto-count may have created some of it” (Exhibit R, Director #6)*
- *[regarding why end-loading increased] “all the loosening of the guidelines, IFP. It fuels procrastination” (Exhibit R, Director #11)*
- *[regarding end-loading affecting quality] “Our quality standards are low. We aren't looking for good work. We are looking for work that meets minimal requirements” (Exhibit R, Director #19)*

3. Mortgaging of Work

GS-14 Primary Examiners get all actions auto-counted when they post their actions for credit, meaning that when they electronically submit work as complete, it is automatically counted and credit immediately given to the examiner without review or verification of the work by management. GS-12 and GS-13 Patent Examiners also get “non-final” type actions (e.g., non-final rejections) auto-counted upon posting for credit. They get “final” type actions auto-counted when approved by a Primary Patent Examiner. Examiners below GS-12 get all actions auto-counted when actions are approved by a Primary Examiner (*Exhibit ii, Slide 27*).

The new auto-count system allows an employee to submit work, as described above, for credit. This has led to cases where an examiner has submitted mortgaged work for credit, meaning work that was knowingly incomplete, but the examiner is claiming it is complete and accepting credit for the work. This allows the examiner to manipulate the system and get undeserved credit towards their ratings and awards, and credit for meeting deadlines that they have not actually met.

There are a high number of examiners with auto-count that have a large percentage of their work returned for corrections. The data in *Exhibit qq* shows that GS-12 examiners account for a large percentage of examiners with cases returned. GS-12 examiners make up 13.6% of the patent examiners, but they have 21.9% of total returns and 42.47% of total returns in the ceiling exceeded tab (*Exhibit qq*).

4. Performance Plan Issues

In FY 2009, changes were made to the Performance Appraisal Plan (PAP) for examiners (*Exhibits ii, jj, and kk*). *Exhibit ll* is the *Patent Examiner Performance Appraisal Plan Handbook*, which was used prior to the changes made in FY 2009. An example of a GS-12 examiner PAP prior to the changes is provided in *Exhibit mm*. The changes went into effect FY 2010. An example of a GS-12 examiner PAP has been included with all of the changes made except Docket Management (*Exhibit nn*). The final Docket Management changes went into effect in FY 2011, and an example of the GS-12 examiner PAP with those final changes is included (*Exhibit oo*).

Those changes, as evidenced by the interviews with SPEs and Directors, have appeared to make it easier for examiners to meet their individual goals, to the detriment of Agency-level quality, timeliness, and amount of work actually completed by the workforce. Of the forty-nine SPEs interviewed, thirty-one SPEs (63%) said that they felt that the standards for employee performance have gotten easier over the last several years.

More than 50% of the Directors said that the standards for evaluating patent examiners performance had gotten easier under the new PAP. For those that found it has become easier, the main reasons were the additional hours given to examiners to examine a patent, the changes to

the docket management element, and the new quality error rate calculation for the quality element. The following statements were made:

- *“The accountability issue has shifted to the SPEs to be proactive with the examiner. Production is probably easier. An examiner could do all their production in 3 days and then be gone” (Exhibit R, Director #3)*
- *“New PAP in 2012 gave more credit for first action. Do less work and get more. Docket Management element is easier than Workflow standards.” (Exhibit R, Director #17)*
- *[Regarding Docket Management] “The productivity standards reduced, quality element much reduced. DM – some examiners poorly but more examiners are 130% or more, but more overdue cases in TC, higher than ever” (Exhibit R, Director #19)*

The major changes made to the Patent Examiner’s PAP included changes in the critical elements that are used to evaluate Patent Examiners performance and are highlighted below.

Production:

The current PAP that went into effect FY 2010, converted the “Productivity Goal Achievement (Patent Examining)” critical element to a new critical element entitled “Production.” This critical element measures the number of assigned patent applications the examiner examines from first action to final disposition within an assigned expectancy (hours per balanced disposal). The new “Production” element was assigned a weight of 35%. This is compared to a weight of 40% for the former “Production Goal Achievement” element. The way that this critical element was rated also changed. Please note from the chart below that standards for the Unacceptable through Commendable levels changed as a result of the conversion to the new PAP:

Rating	FY 2009 PAP	FY 2010 PAP (Current PAP)
Outstanding	110% & above	110% & above
Commendable	105% - 109%	103% - 109%
Fully Successful	95% - 104%	95% - 102%
Marginal	90% - 94%	88% - 94%
Unacceptable	<90%	<88%

Prior to the new PAP going into effect, an employee performing below 90% of their assigned goal could be placed under an Oral Warning, which consisted of a period during which they needed to show improvement to the Marginal level – 90%. If an employee was unable to show this improvement, the examiner would receive a Written Warning, with an improvement period during which they must improve to the Marginal level. If the examiner did not improve his or her performance to the Marginal level, the examiner could be removed from the Federal service for failure to meet the necessary performance standards. Under the new PAP, in addition to the Marginal level being reduced from 90% to 88%, an additional performance improvement tier was added – the Safety Zone Notice. An examiner performing between 80% - 88% no longer received an Oral Warning. Instead, they receive a Safety Zone letter that counsels them to improve their performance. If they are still Unacceptable at the end of the “Safety Zone

Quarter”, the examiner would be given an oral warning, even if the examiner falls in the Safety Zone range.

These changes allow an employee to perform at an Unacceptable level for a longer period of time before being required to improve their performance. It is important to note that by regulation, Agencies are only required to give an employee one opportunity to improve. In some cases, examiners can get up to three, thereby extending the period of tolerable Unacceptable performance.

In addition, this system uses an auto-counting system designated by a Patent Examiner’s grade level. Under the new DM element, GS-14 Primary Examiners get all actions auto-counted when they post their actions for credit, meaning that when they electronically submit work as complete, it is automatically counted and credit immediately given to the examiner without review or verification of the work by management. GS-12 and GS-13 Patent Examiners, as well as Partial Signatory examiners, get “non-final” type actions (e.g., non-final rejections) auto-counted upon posting for credit. They get “final” type actions auto-counted when approved by a Primary Patent Examiner. Examiners below GS-12 get all actions auto-counted when actions are approved by a Primary Examiner (*Exhibit ii, Slide 27*).

Quality:

The PAP that took effect in FY 2010 replaced three critical elements – Patent Examining Functions, Action Taking, and Patentability Determination – with one critical element entitled Quality. The Quality critical element is worth 35% of an examiner overall performance rating. Under the previous PAP, the three elements combined accounted for a weight worth 40% of the overall performance rating. This critical element reviews three categories of errors. GS-11 Patent Examiners or higher are assigned a rating in Quality of examination based on both an error rate and indicia of Outstanding or Commendable performance. The SPE is responsible for assigning a “clear error” when the examiner’s office action(s) or office communication(s) does not reasonably comply with the major activities set forth in the PAP, 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 as to what action should have been taken. An examiner’s rating is assigned using the embedded chart:

Rating	Error Rate Range
Outstanding	0 – 4.49%
Commendable	4.50 – 5.49%
Fully Successful	5.50% - 6.49%
Marginal	6.5% - 7.49%
Unacceptable	Greater than or equal to 7.50%

The new Quality element is made up of three types of errors: Categories I, II, and III. For lower graded employees, the entire element is based on Category I. GS-11 – GS-13 examiners are rated based on the average of Category I and Category II. GS-14s are rated on an average of Category I – III. For GS-11s and above, if any one of the categories alone falls below 7.49%, the overall element is capped at either Marginal or Unacceptable based on the calculation of the single category.

This element is structured such that the examiner begins at the Outstanding level and only reduced below Outstanding if a SPE proves that the performance is less than Outstanding. The “averaging” of different categories of errors allows for examiners to subsidize lower performance in one category with higher performance in the other(s). Yet, when an examiner is Unacceptable in one of the categories, any resulting warning is based only on the particular category, as opposed to the Quality element as a whole. Thus, an examiner can successfully complete an improvement period related to one of the categories while still being Unacceptable in Quality by altering the type of work that they perform, for example, no longer doing work that could result in a Category III error.

Several SPEs felt that performance standards had gotten easier, the following responses were received relating to the critical element Quality:

- *“Couldn’t hold a quality error even if they had a gun to your head. Every single case one of my examiners did was ceiling exceeded and they were still Commendable for Docket Management.” (Exhibit Q, SPE #34)*
- *“The level to hold at FS [in relation to quality] is a hurdle that is almost impossible unless there is some major issue” (Exhibit Q, SPE #3)*
- *“Feel the burden to show someone is less than Outstanding takes too much work and the SPEs don’t do it” (Exhibit Q, SPE #46)*
- *“We have a new count system implemented. I’ll define as more safety nets for people who don’t perform” (Exhibit Q, SPE #6)*
- *“The curve has shifted to Outstanding” (Exhibit Q, SPE #27)*
- *“Now the examiner is Outstanding and you have to prove otherwise. One employee can go above and beyond and be Outstanding, and you can have another employee who does the minimum and is also Outstanding” (Exhibit Q, SPE #31)*
- *“There is almost an automatic Outstanding or Commendable. An examiner’s Quality has to be really bad before it can be brought down from Outstanding” (Exhibit Q, SPE #38)*

Docket Management:

The critical element “Docket Management” (DM) replaced the former critical element “Workflow Management” in the new PAP. While “Workflow Management” was assigned a weight of 10% of the examiner’s overall performance rating, “Docket Management” is assigned a weight of 20% of the examiner’s rating. Patent Examiners are assigned DM scores which are calculated using a component score percentage derived from the average of the number of days to complete actions compared to the expected number of days for that action type. The component score percentages is weight-averaged to determine the overall rating for docket management.

Rating	DM Score
Outstanding	110% & above
Commendable	103% - 109%
Fully Successful	95% - 102%
Marginal	88% - 94%
Unacceptable	<88%

Under the previous PAP, an examiner had a designated number of points added to or subtracted from a base line number of points based on how an examiner handled various office actions and examining tasks.

Under the new DM element a system was established to assign a time value, or “clock” for processing office actions. The system is based on an average number of days to complete a Docket Management item. The Docket Management items are organized into several categories or tabs (e.g., Regular New, Amendments, Returns, Ceiling Exceeded, Rejected, Workflow Plan (also known as the Docket Management Plan)).

The Docket Management system assigns each type of office action an expected average number of days to be completed and a maximum, or ceiling number, of days; completion is determined by when the office action is posted by the examiner for credit, approved, or counted. For example, Amendments should be processed in an average of 56 days; Regular New (cases with the oldest new filing date) should be processed in an average of 28 days; and a Returned Case should be processed in an average of 11 days. The ceiling number of days is typically twice the average number of days. Examiners can complete the office actions in fewer than the expected average number of days. If the examiner does not process the office action prior to the maximum number of days, it will be moved to the ceiling exceeded tab.

Cases on the ceiling exceeded tab have no time period or “due dates” associated with them. In fact, once an application is placed in the ceiling exceeded tab, there is no incentive for an examiner to do it at all.

Using a complex mathematical formula, the Docket Management system averages the number of days an examiner took to process the office actions, as compared to the expected average number of days to complete the actions for that category, to come up with an overall total Docket Management score for the bi-week. If an examiner processes enough newer cases, the penalty days for the cases on the Ceiling Exceeded Tab will not have an effect on the examiner’s overall DM score for the bi-week, or examiners can subsidize poor scores in one category of cases by doing well in a different category. Examiners are also permitted to choose which office actions he or she will work on each bi-week.

For cases on the ceiling exceeded tab, the supervisor can move those cases to the Docket Management Plan tab. However, the formula for determining how many cases can be moved to the DMP is so conservative that cases enter the ceiling much faster than they can leave. This has led to examiners who have a large number of ceiling exceeded cases while still being rated well in performance (*Exhibits W, gg, and rr*). Additionally, there is no requirement that the examiner work on the cases placed on the Docket Management Plan immediately. If the examiner has

easier and newer office actions on his or her docket, the examiner can choose to work on all the easy cases first, then the more difficult ones some time later.

The Docket Management clocks can be stopped, paused or restarted based on a variety of circumstances. For example, when an examiner is (1) out of the office for five days or more, (2) out of the office for twenty-eight or more contiguous days on FMLA or sick leave – excludes vacations, or (3) on detail for more than 50% of the time, the examiner’s DM clock will be paused. The time period considered for pausing Docket Management clocks includes weekends. If an examiner takes leave on a Friday, and the office is closed Monday and Tuesday due to weather conditions, the examiner’s DM clock will be paused until his or her return to the office. The DM clocks can be stopped when an examiner posts a case for credit, approved, or counted. If an applicant files a supplemental amendment, the examiner’s DM clock will be restarted for that case.

Examiners qualify for Docket Management awards based on their overall Docket Management score. The examiner can have numerous cases on the ceiling exceeded tab and still be eligible to receive a monetary Docket Management award, as long as they are performing at the Fully Successful level.

A review into the Docket Management element and awards given for Docket Management revealed that changes need to be made to the element and award system. *Exhibit kk* includes the memos and guidance that was issued in 2011 and 2012 regarding the Docket Management awards. In *Exhibit W*, the graph shows the number of examiners who had cases that were past due and have gone into the ceiling exceeded tab, yet they are still rated at Fully Successful or higher for FY 2012. *Exhibit gg* shows a clearer picture in that at the Outstanding level, there were examiners with 40 cases or more, and in some instances, up to 80 cases, past due in the ceiling exceeded tab. There were also some examiners that were rated Fully Successful and Commendable, yet they had past due cases in the ceiling exceeded tab, some to an egregious extent. In *Exhibit rr*, the data shows that there were 3,639 examiners, rated Fully Successful or above, who contributed 26,216 applications to the ceiling exceeded tab throughout FY 2012.

In *Exhibit hh*, the data shows that more than 800 Docket Management awards were paid out in FY 2012 to examiners with cases in the ceiling exceeded tab. The graph is broken down quarterly and it appears to show that the total number of awards being paid out each quarter has almost doubled (*Exhibit hh*). This data suggests that patent examiners are eligible to receive a Docket Management award, even though they have a significant number of overdue cases on their Ceiling Exceeded tab. The Docket Management element of the performance appraisal plan (PAP), as well as, the corresponding docket management award program, needs to be reviewed to ensure that only deserving examiners are granted awards, and that poor performance results can be appropriately assessed and corrected under the performance plan. The new Docket Management element of the PAP does not appear to be able to effectively measure an examiner’s performance.

Exhibit X shows that between the first quarter of FY 2012 and the fourth quarter of FY 2012, the number of amendments that went into the ceiling exceeded tab, therefore going past due, more than quadrupled. *Exhibit Y* shows that the number of amendments that were past due, greater

than 112 days, was steadily decreasing until the beginning of FY 2012, when the new changes to the Docket Management element went into effect. Another way to look at this is in *Exhibit cc*, which shows that the average turnaround time for amendments has increased to an average of 56 days, when compared to pre-Docket Management levels, where it was at 54 days. Therefore, it appears that all of the cases in the ceiling exceeded tab are causing USPTO's average amendment turnaround time to increase above pre-Docket Management levels. *Exhibit ee* shows the cumulative number of ceiling exceeded cases at the end of FY 2012. For example, 338 examiners had between 26-50 cases in the ceiling exceeded tab, which contributed to 12,027 (30%) of the total number of ceiling exceeded cases in FY 2012. *Exhibit ff* shows the Amendments that have gone into the ceiling exceeded tab broken down by TC over four separate time periods.

Past due cases not only have a negative effect on the Agency; they also impact the applicant with delays, some substantial. As mentioned above, the average turnaround time is greater, and for cases in the ceiling exceeded tab, the response time continues to grow.

The SPEs were asked about the Docket Management ratings and awards. Five SPEs (10%) said that they had examiners who had received Docket Management awards despite having cases past due in the ceiling exceeded tab. Twenty-two SPEs (44%) said that they had examiners who were rated Outstanding despite having cases in the ceiling exceeded tab. Thirty-five SPEs (71%) said that the Docket Management critical element, formerly called Workflow Management, had gotten easier since the new element went into effect. Forty-three SPEs (87%) said that Docket Management awards in their technology center had increased and twenty SPEs (40%) said that the Agency was not getting reduced pendency, instead cases awaiting examiner action are getting older, with some getting much older than would have been acceptable under the previous PAP standard.

When the Directors were asked about Docket Management awards, Twenty-eight percent (28%) said that there were examiners in their TC who received Docket Management awards while having past due cases in the ceiling exceeded tab, however fifty-three percent (53%) of the Directors did not know the answer to this question. Forty-eight percent (48%) of the Directors said that they had some examiners in their TC that had been rated Outstanding despite having past due cases in the ceiling exceeded tab, although a large percentage of Directors did not know the answer to this question or have the data readily available to check. Seventy-two percent (72%) of the Directors said that awards in their TC had increased since the changes to the Docket Management element went into effect. Yet, thirty-six percent (36%) of the Directors said that there were more cases getting older than before the changes, and an even larger percentage of the Directors did not know the answer to this question. This concerning information was confirmed with the data, as seen in (*Exhibit X and Y*).

It is important to note that Patents Management has reopened discussions with the POPA bargaining unit and is currently involved in discussions to reach an agreement on a revised DM element and award that will possibly address some of these issues.

Stakeholder Interaction:

The PAP adopted in FY 2010 included some changes to the non-critical element “Customer Service” and changed the title to “Stakeholder Interaction.” This element is not a critical element in the Examiner PAP and was not discussed in the complaints raised to the OIG and as such will not be analyzed in this report.

Policy review results

Rules of the Road (Exhibit T)

The PTOnet and USPTO Automated Information Systems (AIS) “Rules of the Road” provide guidance for using the USPTO’s computing and network facilities responsibly, safely, and efficiently. This document advises employees that they should not have any expectation of privacy on while on government systems. Therefore, employees should not be surprised if their computers records are used in a misconduct investigation. Employees are reminded of the “Rules of the Road” during the required annual IT Security Training that each employee is mandated to take.

Patent Examiner Laptop Program (Exhibit E)

The Patent Examiner Laptop Program work agreement requires that the participant follow established USPTO procedures when requesting and taking leave. They must adhere to their work schedules. This program is for work outside of USPTO, and in addition to their normal work schedule. It includes voluntary overtime and paid overtime and/or compensatory time only. Participants are not permitted to work any regular hour on this program. There is no requirement to log into the Virtual Private Network (VPN) or to be available to other employees and the participant’s supervisor through the use of the collaboration tools.

Patents Telework Program (Exhibit F)

The Patent Telework Program (PTP) requires employees to work on-campus a minimum of three days between Monday and Friday. When teleworking, participants must complete six hours of their telework day between the hours of 6:30 a.m. and 7:00 p.m. The document states that, “*All examiners are expected to provide customer service to both internal and external customers by being accessible and available during working hours*” (Exhibit F, Section A, #5). The document also states that, “*When working at the alternate work site, the examiner must perform patent examining functions and related activities ...*” (Exhibit F, Section C, #7). The participants in the program are required to indicate on their timecard when they are working at home. The participants must identify their telework day in advance and have approval from their supervisor. In addition, the document states that, “*participants will notify their supervisor when their work day commences, or prior thereto, of the hours to be worked*” (Exhibit F, Section E, #18).

In the Patent Telework Program document, it clearly states that participants must be accessible and available throughout the work day. This is not possible if the participant is not logged into the VPN. The participant’s telephone does not ring if they are not connected to the VPN. The participant is not able to utilize the collaboration tools when they are not connected to the VPN. USPTO has transitioned from desktop workstations to universal laptops for all employees. Therefore, each employee who is participating in any of the numerous telework programs

available at USPTO has access to a laptop, and that laptop should be utilized during the hours that the employee is teleworking.

An employee can effectively work limited amounts of time while not logged into the VPN or using their USPTO issued laptop; however, employees cannot be available and accessible when they are not logged in. Employees must be logged into the VPN to have access to the patent examining systems that are required to perform their work.

Patents Hoteling Program (Exhibit G)

The Patents Hoteling Program (PHP) requires employees to be performing patent examining functions and related activities when working at the alternate work site. The document states that, “*participants will notify their supervisor when their work-day commences, or prior thereto, of the hours to be worked. Employees working a set schedule each week may so notify their supervisors and will not need to meet the daily approval and notification requirements*” (Exhibit G, Section A2, #13). Participants in PHP must also, “*Consult and collaborate with PHP participants and between PHP participants and the USPTO work site*” (Exhibit G, Section A3, #4). As with PTP, PHP participants are, “... *expected to provide customer service to both internal and external customers by being accessible and available during working hours*” and they must also, “*check and respond appropriately to voicemail and e-mail periodically throughout the workday during USPTO business hours*” (Exhibit G, Section A6, #1). There is nothing in the document that states that the participants must log into the VPN.

Settlement Agreement on Patents Hoteling Program (Exhibit U)

The third item in the agreement requires that, “*Semiannually, the Agency will remind hotelers of their commitment to provide internal customer service, including providing their work schedule to trainees or setting up training appointments. Hotelers will be encouraged to respond to calls or e-mails frequently throughout their work day*” (Exhibit U, p. 1). This provision which is an accountability control, is not being enforced.

Time and Attendance Policy (Exhibit H)

The Time and Attendance Policy document articulates the requirements and procedures applicable to time and attendance reporting for the USPTO. This policy outlines the responsibilities of OHR, the supervisor, the T&A Contact Points, the timekeeper and the employee. There are three specific responsibilities that relate to this investigation. The employee is responsible for accurately recording the time actually worked and leave earned and used in 15-minute increments. The employee is also responsible for validating the entry of T&A information each pay period and affirming that the information is correct, as submitted. The supervisor is responsible for certifying the accuracy of T&A data in WebTA.

Work Schedules Policy (Exhibit I)

The Work Schedules Policy document highlights the OPM regulations and United States Code (USC) laws and regulations pertaining to alternative work schedules that apply to employees in the USPTO. It notes that it is the employee’s responsibility for maintaining and keeping accurate time records of the hours they work and for validating their own time on a biweekly basis. Employees at the USPTO have the flexibility in selecting work schedules. Management officials are responsible for approving their employee’s schedules and for ensuring appropriate office

coverage. Outlined in this policy is a definition and explanation on the administration of the various compressed and flexible work schedules. The Work Schedules available to USPTO employees are as follows:

Compressed Work Schedules (CWS)

4/10 - Employee works four 10-hour days each of the two weeks in a pay period.

5/4/9 - Employee works eight 9-hour days and one 8-hour day for a total of nine days in a pay period.

Flexible Work Schedules

Increased Flexitime Policy (IFP) - allows employees to meet their 80-hour biweekly work requirement Monday through Saturday between the hours of 5:30 a.m. and 10:00 p.m., Monday through Saturday. Employees must work a minimum of four days per week and may work a maximum of 12 hours per workday (excluding the required 30-minute meal period). See Appendix A to Workplace Schedules policy.

Maxiflex - (this does not apply to Patent employees). Allows full-time employees to meet their 80-hour biweekly work requirement in less than 10 full days between the hours of 5:00 a.m. and 8:00 p.m., Monday through Saturday. See Appendix B.

SES Maxiflex - allows full-time executives to meet their 80-hour biweekly work requirement in less than 10 full workdays between the hours of 5:30 a.m. and 8:00 p.m., Monday through Friday. Heads of business units may establish *5/4/9*, *4/10*, 1st 40 or 1st 80 hours of duty within this work schedule. See Appendix C to Workplace Schedules policy.

Patents SES Maxiflex - allows full-time executives in the Patents Cost Center to meet their 80-hour biweekly work requirement in less than 10 full workdays between the hours of 5:30 a.m. and 8:00 p.m., Monday through Friday. Work on Saturday or Sunday may be allowed upon request. See Appendix D Workplace Schedules policy.

Eight-hour Flexible Schedule - allows employees to work eight hours per day Monday-Friday, between 5:30 am and 8:00 pm. Allows midday flex.

The policy also outlines guidance on how to administer credit hours, premium pay and excused absences, holidays and meal periods.

Increased Flexitime Program (Exhibit J)

The Increased Flexitime Program (IFP) is the most popular selection for work schedules in the USPTO. This policy provides details on how the Agency is to manage the IFP work schedule. This document articulates the employees' responsibility for keeping track of their own time and accurately recording it in WebTA. Employees must notify their supervisor if they will be absent on a weekday, prior to the absence.

Telework Enhancement Act Pilot Program (Exhibit K)

The Telework Enhancement Act Pilot Program (TEAPP) document explains the pilot program that the USPTO is participating in that allows employees to change their duty station and work full-time anywhere in the continental 48 states. The employees who participate in TEAPP must read and sign the underlying full-time telework program agreement in their business unit to participate. For patent examiners, that telework program is the Patent Hoteling Program (PHP). Aside from that requirement, there is nothing in the TEAPP document that is relative to this investigation.

50 Mile Radius Agreement (Exhibit L)

The 50 Mile Radius Agreement and Provision Related to the POPA Hoteling and Telework Programs and IFP document explains the agreement for examiners living within the 50 mile radius of USPTO, allowing them to waive their bi-weekly reporting requirement. The participants in the 50 mile radius program are still bound by the requirements in the Patent Hoteling Program or the Patent Telework Program.

Telework Enhancement Act of 2010 (Exhibit M)

The Telework Enhancement Act of 2010 document became Public Law 111-292 on December 9, 2010. The law requires that an Agency's telework policy shall, "*ensure that telework does not diminish employee performance or agency operations;*" (Exhibit M, Section 6502(b)(1)). The law also states that, "*teleworkers and non-teleworkers are treated the same for purposes of – (A) periodic appraisals of job performance of employees; (B) training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees; (C) work requirements; or (D) other acts involving managerial discretion ...*" (Exhibit M, Section 6503(a)(3)).

Guide to Telework in the Federal Government (Exhibit N)

The Guide to Telework in the Federal Government states that, "*customers should not notice that the teleworker is working from an alternative worksite (i.e., work should be seamless)*" (Exhibit N, p.29). The Guide also states that, "*the manager must be kept apprised of the teleworker's schedule, how to make contact with the teleworker, and the status of all pending work*" (Exhibit N, p.29).

USPTO Telework Policy (Exhibit O)

The USPTO Telework Policy is derived from several laws, including the Telework Enhancement Act of 2010 (Exhibit M). The policy states that, "*The provisions of this document apply to all employees participating in a USPTO telework program*" (Exhibit O, Section IV, p. 2). The policy also states that employees must, "*Be available and accessible for communication with the office and perform work tasks as expected to be performed while in telework status*" (Exhibit O, Section VII(F)(8), p.14).

Inspector General Report on PHP (Exhibit P)

In February 2012, the Office of Inspector General released its final report, OIG-12-018-A, on the Patent Hoteling Program, entitled ***The Patent Hoteling Program is Succeeding as a Business Strategy***. The report was the result of an audit to determine:

- 1) “how USPTO measures productivity for its PHP participants and whether USPTO’s data indicate improvement in productivity;”
- 2) “the extent that USPTO has achieved its stated cost saving for the PHP program, including real estate savings; and”
- 3) “the extent that USPTO policies and their implementation provide adequate controls over PHP.” (Exhibit P, p. 2).

Several of the Assistant Deputy Commissioners referred to this report to state that USPTO was found to have a successful PHP program, that the USPTO provides adequate control over participants, and that PHP participants spend more time examining patents every year than examiners working full-time at USPTO headquarters.

The report indicates that PHP participants spend more time per year examining patents than full-time on campus employees, because they use less sick and administrative leave, and charge less time to other activities not defined as examining patents. The audit found that PHP participants are equally efficient at reviewing patent applications during the hours they are reviewing patent applications as their counterparts who work full time at USPTO headquarters.

The audit found that USPTO has adequate controls over PHP in key areas. Specifically, the report states that USPTO developed a program that complies with key federal statutes related to telework, addressing employee eligibility and participation, work schedules, the application process, and selection criteria. The audit reviewed a sample of PHP participants to determine whether they met eligibility requirements for the program and that USPTO had appropriate documentation to support the eligibility. The audit also reviewed the USPTO controls over its Internet service provider (ISP) reimbursement policy to ensure adequate controls were in place to prevent improper payments to PHP participants. The audit reviewed the USPTO remote access policies to reduce security risks to USPTO systems and data.

The audit did not review PHP to determine whether mechanisms were in place to ensure that participants were working the hours that they claimed or that they adhered to the work schedules. Therefore, the OIG report cannot be relied upon to show that USPTO has adequate controls in place to ensure PHP participants are working the hours that they have claimed as it does not support or refute the allegation.

SUMMARY

Patent Examiners have been given a considerable amount of flexibility in performing their work duties within a variety of work schedules and programs, which are important for the morale and productivity of the workforce. However, with great flexibility and trust must come accountability. Examiners, both those that work on campus and those who telework, are permitted to work their hours between 5:30 a.m. and 10:00 p.m., Monday through Saturday. They are not required to log on to USPTO systems and they do not have to tell their managers when they intend to work. Management assumes employees are working each bi-week unless no work is submitted at the end of the period. The amount of work submitted is used as an indication of time worked by the employee, as submitted in WebTA, rather than the employee’s presence. The SPE interviews (*Exhibit Q*) validate this pattern with more than fifty percent

(50%) of the SPEs stating that performance is a tool for ensuring that employees are working the hours that they claim. For example:

- *“I can determine if they are working based on production” (Exhibit Q, SPE #3)*
- *“If there are no performance issues, there is no need to follow up on T&A” (Exhibit Q, SPE #4)*
- *[...] “work product is key in determining whether T&A info is accurate” (Exhibit Q, SPE #5)*
- *“I don’t care so much about the amount of hours as I do about the amount of work that gets done” (Exhibit Q, SPE #7)*
- *“I make no extra effort to see if they are in the office. I see it when cases are turned in. If production is fine, I have no difficulty in knowing that they are doing what they are supposed to” (Exhibit Q, SPE # 21)*
- *“Quite frankly, I don’t care what hours they work” (Exhibit Q, SPE #36)*

The controls necessary for ensuring that these programs are used properly and not abused are not in place. This investigation found that while some controls exist, there are so many work programs and policies in place, that it is difficult for management officials to know the rules and requirements of each program and how to enforce them. Disciplining employees for abusing these programs is further complicated by a history of lax enforcement, non-enforcement, and inconsistent enforcement that has rendered the existing controls completely ineffective.

As mentioned earlier, Patents upper management has for the most part prohibited TCs and Employee Relations from using computer and swipe records as evidence against employees found to be misrepresenting time worked on their timesheets. The rationale for not using computer and swipe records is that the Agency does not want to harm employees by having “big brother” watching them. However, as evidenced by the increasing number of OIG complaints regarding time fraud throughout the Patent Corps, some employees are becoming increasingly frustrated by management’s lack of enforcement.

In recent years, more and more of the existing controls have been used as bargaining chips with the union to reach agreements on Agency initiatives. This has resulted in a lackadaisical approach to enforcing work schedules and telework programs, as well as a failure to address end-loading and other performance-manipulation issues.

It appears that the loosened controls has either encouraged, or at the very least, failed to discourage end-loading. Examiners can work inconsistently throughout the year, and even fail to be present at work, with little or no consequences. These examiners are receiving the same salary and performance awards as those employees who are consistently turning in work throughout the quarter and fiscal year. Examiners are also engaging in misconduct in order to avoid being placed on performance warnings and be eligible to receive performance awards. Examiners can submit incomplete office actions for credit, called mortgaging, then go back later and complete the office action. As long as the examiner submits an appropriate amount of work by the end of each quarter, the examiner will be eligible to receive a variety of performance awards.

In the course of investigating the OIG complaints, the Agency found multiple instances where there was evidence that an employee was potentially engaging in time and attendance abuse, yet management would not allow a thorough investigation. Nor would management allow these records to be used as evidence in a disciplinary or adverse action. This adds to the impression that time and attendance abuse is tolerated.

The ADCs have developed a series of guidance documents for supervisors in an effort to help address their frustration with the perceived inability to manage employees who are unresponsive and do not appear to be working – commonly referred to by the ADCs as “extreme outliers”.

The first document in this three-set program is titled *Management Guidance on Certifying Time and Attendance (Exhibit bb)*. The guidance relies on a two prong test: (1) the amount of work submitted by the examiner in a bi-week, and (2) the level of responsiveness of the examiner. If the examiner does not respond to a supervisor’s e-mails or voicemails, and does not appear to be in the office or hoteling during the workday, the supervisor needs to review the PALM report on the first Tuesday of the new bi-week. If the examiner did not submit a reasonable amount of work for the number of hours he or she claimed to have worked that bi-week, and did not respond to the supervisor’s attempts to contact the examiner, then the supervisor should call and/or e-mail the examiner. If the examiner does not respond, the supervisor should call and/or e-mail the examiner again the next day. If the examiner still does not respond, the supervisor should contact his or her TC Director about the situation, and then contact Employee Relations.

Employee Relations will send the examiner a letter that lets the examiner know the supervisor is concerned about the examiner’s non-responsiveness and lack of work, directs the employee to report to work or sign into the hoteling equipment, provides a variety of options and services available (e.g., FMLA, EAP, LifeCare), and a reminder of the work schedule and leave requesting requirements. If the examiner is still unresponsive, then the supervisor may charge the examiner with Absence Without Leave (“AWOL”) and begin the disciplinary or adverse action process.

This guidance is flawed and ineffective as it relies on a two-prong test – the examiner not submitting work **AND** not being responsive. If the examiner meets one of those two requirements, then the supervisor cannot take further action. Supervisors will once again be faced with the inability to hold examiners AWOL or take disciplinary action against them. The ADCs rely heavily on “coaching, mentoring, and training” examiners on properly recording their time and submitting work. However, when this does not work, it is necessary to take appropriate disciplinary action.

FINDINGS ON EACH ALLEGATION:

1. Time Fraud

- a. Unnamed Patent Examiners are misrepresenting their time and attendance records, to include claiming overtime that is not being worked. This allegation cannot be proved or disproved. The lack of controls such as the requirement to log into USPTO systems and to notify managers of work schedules results in a lack of reviewable records from which a conclusion can be drawn on the time

- a particular examiner is working. Therefore, this allegation is UNSUBSTANTIATED. However, evidence such as the prevalence of end-loading, as well as, the observations of SPEs indicates that this is a problem that requires significant remedial attention.
- b. Unnamed Patent Examiners are misrepresenting their time and attendance records by claiming time based on work completed instead of time worked. This allegation cannot be proved or disproved. The lack of controls such as the requirement to log into USPTO systems and to notify managers of work schedules results in a lack of reviewable records from which a conclusion can be drawn on the time a particular examiner is working. Therefore, this allegation is UNSUBSTANTIATED. However, evidence such as the prevalence of end-loading, as well as, the observations of our SPEs indicates that this is a problem that requires significant remedial attention.
 - c. There is a lack of accountability for Patent Examiners to record their time correctly as long as the examiner meets his or her production goals. This allegation is SUBSTANTIATED
 - d. The Agency is not policing or monitoring abuse of timesheets. This allegation is SUBSTANTIATED
 - e. Conduct issues and time fraud are routinely overlooked as long as an examiner's production levels are acceptable. There is insufficient evidence to substantiate this allegation. However, anecdotal evidence and observation by the SPEs indicates that this is a problem that needs to be addressed uniformly and across all TCs. - UNSUBSTANTIATED
 - f. There is a lack of accountability for Patent Examiners participating in the Hoteling Program. SUBSTANTIATED
 - g. Unnamed Patent Examiners are receiving overtime pay for time they are not working. This allegation cannot be proved or disproved. The lack of controls such as the requirement to log into USPTO systems and to notify managers of work schedules which therefore results in a lack of reviewable records from which a conclusion can be drawn on the time a particular examiner is working. Therefore, this allegation is UNSUBSTANTIATED.
 - h. Management is dissuading supervisors from questioning employees about time and attendance discrepancies - This allegation is SUBSTANTIATED based on the testimony of the interviewed SPEs. However, we cannot determine how widespread this issue is.
 - i. There is a lack of accountability for Patent Examiners to record their time correctly. – As a result of the USPTO's very flexible work schedules, coupled with a lack of controls such as requiring employees to log in to USPTO systems or to notify managers of their work schedules, demonstrates that many managers do not know when or if their employees are working on given days throughout the bi-week. Therefore, this allegation is SUBSTANTIATED

2. End-loading

- a. Patent Examiners are only working at the end of the quarter, known as “end-loading” their work and can go from unacceptable performance to award levels in one bi-week by doing 500% to more than 1000% of their production goal. SUBSTANTIATED – Data shows that approximately 20% of examiner end-load.

- b. Supervisors are not equipped to monitor the quality of the work submitted effectively due to “end-loading”. SUBSTANTIATED

3. Mortgaging of Work

- a. Patent Examiners are submitting incomplete work for credit before the end of a bi-week and then going in after the bi-week to submit valid work; something the Agency calls “mortgaging” of work - SUBSTANTIATED

4. Performance Plan Issues

- a. Unnamed Patent Examiners are receiving bonuses for Docket Management while they have overdue cases in their dockets. SUBSTANTIATED
- b. Standards have gotten easier with the implementation of the new PAP in FY 2010 as GS12s and above can now get credit for the work before it is checked. SUBSTANTIATED
- c. There is no reasonable way for a supervisor to monitor the quality of the work. SUBSTANTIATED
- d. Performance standards became easier with the new count system and examiner PAP. SUBSTANTIATED

RECOMMENDATIONS

1. Enforce work schedule policies

Supervisors should enforce the work schedule hours. The guidelines are very clear on the hours that examiners are permitted to work. Employees should be required to submit their work schedule to their supervisor on a weekly basis, unless they work the same schedule regularly. With the flexibility of work schedules at USPTO, it is difficult for supervisors to know when all their employees are working if they are varying their work hours regularly. Supervisors must know when their employees are working and what their work schedules are in order to accurately certify WebTA. Supervisors should not make exceptions for employees to allow them to violate the guidelines and work regular hours outside of the time bands. Employees should be required to follow policies and procedures, and held accountable if they do not. With the USPTO being promulgated as both a professional environment and model Federal telework Agency, it is a reasonable expectation that employees, including Patent Examiners, can and should follow policies and procedures, thereby providing management with a tool for accountability.

2. Require employees to work in their USPTO office, or at their approved telework location

Patents management allows patent examiners to take their USPTO issued government laptop anywhere on campus, as well as to work while on vacation outside of their approved telework location. This makes locating examiners very difficult. SPEs can often not find examiners in their offices, but they cannot always use this as evidence they are not working because when confronted about their whereabouts, employees will say they were working in Dulany Gardens or the cafeteria. Employees should be required to be at their assigned USPTO office so that they are available during duty hours, and held accountable if they do not.

3. Implement End-loading Deterrents

Currently, there is only a quarterly production requirement; this allows examiners to submit large volumes of work at the end of the quarter, rather than working consistently and steadily throughout the period. This practice places a lot of pressure on the SPEs to review large amounts of work in the few days following the quarter's end. As evidenced by the interviews, there is a consensus that this practice has a negative impact on quality. Further, it allows examiners great freedom in their work hours, and no real requirement to be present or to work consistently throughout the quarter and year, which leads to a lack of accountability towards pay for work performed and the supervisors ability to accurately and truthfully certify WebTA.

4. Review Quality Element

Because such a high percentage of interviewees said that the Quality element does not begin a patent examiner at the Fully Successful level and then earning a rating up or down from there, and that the element is often overlooked and not properly addressed because of the exorbitant amount of effort and time required to address quality issues, this element should be reviewed. The USPTO should follow 5 U.S.C. Part 430, in particular, § 430.208(a)(2), which states, “An agency shall not issue a rating of record that assumes a level of performance by an employee without an actual evaluation of that employee’s performance” (**Exhibit Z**). USPTO should also utilize the guidance provided on OPM’s website and seek their assistance if needed.

In OPM’s guidance Appraisal Design, it states, “Designers must decide how much flexibility the program users will need and ensure the design supports reserving the Outstanding level for truly exceptional performance” (**Exhibit aa, p.7**). Having a robust Quality element is especially important as the SPEs, Directors, and ADCs agreed that holding examiners accountable for Quality is one of the tools that they have to combat time and attendance misconduct. It is also important in ensuring the Agency’s communication means with the Applicants is of the highest quality and accuracy.

5. Revise Docket Management Element

To prevent employees with cases in the Ceiling Exceeded tab from receiving Outstanding ratings of record and unjustified monetary awards, it is recommended that the Docket Management element and award be revised. In addition, the manner with which examiners manipulate the Docket Management system processes and calculations has resulted in the number of cases on the Ceiling Exceeded Tab to more than quadruple since the Docket Management element was revamped (**Exhibits W, X, and Y**).

In FY 2009, the Agency paid out \$448,184.35 in awards for Pendency (Docket Management) (**Exhibit pp**). In FY 2012, the Agency paid out \$10,649,884.77 in awards for Docket Management (**Exhibit pp**). This is an increase of \$10,201,700.42, which is more than a 95% increase. It is recommended that a cost-benefit analysis be thoroughly conducted to ensure that the amount of awards currently being paid out for Docket Management is benefiting the Agency and the applicants. It is also recommended that the ratings in this element more accurately account for the number and age of applications in the examiners’ ceiling exceeded tabs.

The Agency has already begun this process and is currently in discussions with the bargaining unit to revise the element and award criteria to address these issues.

6. Review Auto-Count

It is recommended that USPTO review the auto-count function of the production element to ensure that it is not contributing to end-loading and mortgaging. It is also recommended that auto-count be reviewed to ensure that it cannot be manipulated.

It appears that there are a high number of examiners with auto-count that have a large percentage of their work returned for corrections. The data in *Exhibit qq* shows that GS 12 examiners account for a large percentage of examiners with cases returned. GS 12 examiners make up 13.6% of the patent examiners, but they have 21.9% of total returns and 42.47% of total returns in the ceiling exceeded tab (*Exhibit qq*). A potential solution to be considered is whether auto-count could be given as a benefit to an examiner that can be earned and lost depending on their quality and end-loading behavior.

It is important to implement checks on this behavior, as this type of misconduct is very difficult to prove and the union generally will argue that it is a quality error, rather than intentional misconduct.

7. Requirement to log in while working, including teleworking

The USPTO is renowned in both the private and public sectors for its award-winning telework programs. Agency telework representatives are often dispatched to provide guidance and assistance to other agencies and companies in developing, establishing and maintaining a telework program. It is imperative that the USPTO also be able to demonstrate that it does address instances of employees abusing a telework program. If the Agency continues its failure to ignore employee misconduct, it faces a potentially enormous amount of embarrassment on an otherwise successful and pioneering program.

USPTO should require all teleworking employees to log into the Virtual Private Network (VPN) and be active on e-mail and collaboration tools, including the telephone and instant messaging systems, when they are teleworking. This requirement should be present in all teleworking agreements. While an employee does not need to be active on their computer to be working for limited amounts of time, examiners do need to be logged into the VPN to be available to their supervisor, co-workers, and stakeholders (customers). They also must be logged in to use the collaboration tools and examination tools and systems. Telework is intended to be seamless and there should be no difference, except location, when an employee is working from home, or other designated telework location. The OPM Guide to Telework in the Federal Government states that, “customers should not notice that the teleworker is working from an alternative worksite (i.e., work should be seamless)” (*Exhibit M, p.29*). The Guide also states that, “the manager must be kept apprised of the teleworker’s schedule, how to make contact with the teleworker, and the status of all pending work” (*Exhibit M, p.29*).

Furthermore, the ADCs all expressed communication as the means for supervisors to interact and validate their employee is working. When teleworking employees are not logged into the VPN, they are not available by their work phone or work e-mail, and they do not have access to the collaboration tools. Therefore, teleworking employees should be logged in at all times when they are working and be at least periodically active throughout the business day so as to check

for e-mails, telephone calls, and instant messages. All teleworking program documents, training, and agreements should be updated to reflect the requirement to log into the VPN and reflect the requirements in the Guide to Telework in the Federal Government. Management must then enforce these policies by addressing those known to not be adhering to the rules and enforcing consequences for those that do not.

8. Requirement to use collaboration tools

USPTO should require mandatory use of the collaboration tools, including Office Communicator and the presence indicator, by all employees, both on-site and off-site. With so many employees working off-site, it is beneficial to all employees to have the ability to communicate in real time with one another. It is also beneficial for employees to know at-a-glance whether another employee is currently active on their computer and thus available for consultation. Employees should be required to remain active and ensure that their status is up-to-date. The Office Communicator syncs with the Outlook calendar and will alert when an employee is on leave or in a meeting, etc. The collaboration tools should be, and can be, set at a system level to ensure that employees are not able to manipulate them or override settings in an effort to intentionally or unintentionally deceive others regarding their presence.

9. Change OT eligibility requirements

Overtime eligibility should be evaluated on a more frequent, preferably bi-weekly basis. This would assist in eliminating examiners from working overtime when their performance is below Fully Successful. Examiners should be at least Fully Successful in each critical element the bi-week before they request to work overtime. The original memo that addresses the requirements for overtime is outdated. It is recommended that USPTO update and enforce this policy. Further, the overtime and compensatory time eligibility requirements should be consistent to avoid confusion.

10. Delegate approval of investigations

Currently, the pulling and reviewing of all records requires ADC approval. The ADCs are often the deciding officials in proposed conduct actions, and should not be involved in the case prior to receiving the proposed action and supporting documents. It is important that the deciding officials be unbiased and rely only on what is provided in the proposal package. When the ADC/deciding official is involved in the case throughout the entire process and makes the decision on whether or not evidence can be used, the process becomes tainted. It is recommended that the ADCs delegate the authority to approve records and investigations to Employee Relations Division, who conducts the investigations and can determine what records are necessary for each case.

11. Full use of records

Managers should be allowed full access to and use of any available records when investigating suspected misconduct. Based on the interviews with the SPEs and Directors, the most common reason for not allowing the use of records was that it would create an environment of fear for the majority of examiners, or that the records are not reliable. This investigation has found that there is no evidence that employees are afraid of management looking at their records. Furthermore, employees are unaware of management's review of records, unless the review reveals misconduct. This investigation also revealed that the only time that employees are aware that

management has reviewed their records is when they are called into an investigatory meeting to discuss the evidence and any discrepancies or when they receive a disciplinary or adverse action.

As a federal employee, it is reasonable to assume that the Agency has the means and ability to monitor them to some degree. Even if employees hear through the rumor mill that another employee had their records reviewed, honest employees do not have a reason to fear a records review. More importantly, employees use Agency-issued computers, badges, Internet connection, and software on a daily basis and have no right to privacy. The Agency is well within its legal right to routinely monitor employee activity and use of its equipment and systems.

The reliability of the records can be determined by the proposing and/or deciding official. This investigation found that when records from multiple sources are used together, they can provide a compelling case. It is imperative that the Agency not overlook improper conduct, especially time and attendance fraud. If necessary, the Agency should make modifications to the way that data is collected and stored, including the length of time that data is stored, so that there is no concern about the reliability of records.

12. Enforce leave requesting procedures

Management should be sure to enforce leave requesting procedures. Examiners are required to request leave in advance, in writing, except in unforeseen instances or emergencies. Supervisors should not grant leave after it is taken, except in rare instances. The enforcement of the leave requesting procedures should assist in ensuring that examiners are not manipulating their hours or production requirements. This will also provide supervisors with a tool to ensure with more certainty the accuracy of the examiners timecards at the end of the bi-week.

Currently, many examiners are requesting leave at the end of the bi-week, without having informed their supervisor previously. This is unacceptable and a violation of the leave requesting procedures that are in place. Supervisors are compounding the problem by making exceptions which violate policies and procedures. The USPTO has a professional environment with a highly technical and educated workforce that can be expected to follow policies and procedures. In addition, it is important to note that Patent Examiners are permitted to work while on annual leave as a way to artificially boost their productivity numbers. As a result, it is not uncommon for examiners to add leave to their timecard retroactively after knowing how much work they completed for the bi-week. Retroactive use of leave should be prohibited.

13. Consolidate and centralize memos/policies

During the investigation, it became clear that the location and relativeness of policies and memos relating to the rules and regulations at USPTO were scattered and difficult to find. Many supervisors did not know which policy or memo was the current one in place or where to look if they had a question or needed more guidance. It is recommended that USPTO place current policies and memos in a central location and remove outdated and non-applicable policies and memos. Additionally, the policies and memos should be systematically reviewed and updated as necessary. Every effort should be made to update and consolidate all memos and policies so that it is clear to all employees and managers what is current and effective. If changes or updates need to be made to a policy once they are all updated and centralized, it is recommended that an

updated policy or addendum be available once the changes/updates are made instead of sending out memos and that a notification is sent out informing employees that changes/updates have been made.

14. More supervisory training

This investigation revealed that many supervisors, directors, and ADCs are not aware of the current policies in place at USPTO. This is concerning and could lead to the inequitable treatment of employees. The recommendation is that USPTO, in conjunction with centralizing all current policies and memos, provide yearly training to supervisors on the policies in place that affect them and/or their employees.

15. Cost Benefit Analysis

It is recommended that USPTO perform a thorough cost benefit analysis of the patent examiner award structure to ensure that the changes made to the examiner PAP in 2010 and the restructure of the award program is appropriately benefitting the Agency and that it is a justified expense to the Agency and the taxpayers.