

**SUMMARY OF INVESTIGATIVE REPORT NO. 15-0076**  
**August 2015**

***The Office of Inspector General's Investigation into Alleged Time and Attendance Abuse by Patent Examiner A***

In August 2014, two supervisory patent examiners at the U.S. Patent and Trademark Office (USPTO) walked into their offices and found copies of the same anonymous letter. The letter alleged that an examiner (Examiner A) “never shows up to work” and “seems to get away with anything.” The note stated that Examiner A came into the office only at the “end of each quarter” to submit work and described Examiner A’s work product as “garbage.” The note questioned how the supervisors “could allow this type of behavior” to occur and why Examiner A had not “been fired for performance.” After receiving the anonymous letter, both supervisors brought the document to the attention of their manager. Their manager subsequently contacted the USPTO’s Employee Relations Division (ER), who then conducted an analysis of the data related to Examiner A. ER discovered hundreds of hours of apparent time and attendance abuse by Examiner A and contacted the Office of the Inspector General (OIG) of the United States Department of Commerce concerning the magnitude of Examiner A’s suspected abuse. The OIG consequently initiated this investigation.

In 2008, Examiner A joined the USPTO as a patent examiner and worked on patent applications. He appeared to perform adequately for his first four years with the agency. In 2012, however, his performance declined dramatically, and he received the lowest possible performance rating for three consecutive years. During that time, his failure to produce an acceptable level of work also elicited nine oral and written warnings. In addition, the OIG identified numerous complaints from patent applicants and their representatives, who communicated to the USPTO management and complained that Examiner A was not responsive to e-mails or phone calls.

The OIG investigated the time and attendance allegations by interviewing witnesses, reviewing the hours Examiner A claimed to have worked in fiscal year (FY) 2014, and cross-referencing those hours with multiple USPTO databases: controlled-access turnstile records; secured virtual private network (VPN) access records; and laptop activity records. Generally speaking, the OIG interpreted the data in the light most favorable to Examiner A, giving him credit for hours he certified, unless there was evidence to the contrary.

The OIG’s investigation substantiated that Examiner A committed at least 730 hours of time and attendance abuse, resulting in the payment of approximately \$25,500 for hours not worked in FY 2014 alone. The number of Examiner A’s unsupported hours in FY 2014 amounted to approximately 43 percent of the total hours he certified for the fiscal year. Considering that Examiner A was given the benefit of the doubt, our analysis likely gave him credit for many hours that he did not work.

The OIG found that 613 of the 730 unsupported hours claimed by Examiner A (85 percent) stemmed from days where there was no evidence that he visited his USPTO campus,

connected to the USPTO network from off campus, or performed any work on his government-issued laptop when connected to the network.

The remaining 117 unsupported hours stemmed from days in which Examiner A appeared to visit the USPTO campus or logged in to the VPN—but only for a limited amount of time. The OIG also reviewed Examiner A’s official USPTO e-mail and instant messages (IMs) to determine how long he worked on certain days with limited data. In several instances, Examiner A informed colleagues that he was leaving work to hit golf balls at Golf Bar [a pseudonym for a driving range amusement and bar complex], play pool, or socialize at restaurants, though he certified a full day in the time and attendance management system. For example, on one such occasion, Examiner A appeared to leave work after spending less than three hours at the USPTO campus, telling a co-worker at USPTO:

**Examiner A** [12:57 PM]: ok, did u wanna [hit golf balls at Golf Bar] today at all?

**Examiner Y** [12:58 PM]: actually yeah, let's just go there now?

**Examiner A** [12:58 PM]: yeah i'm down,

**Examiner Y** [12:58 PM]: alright cool, like now now? my car's in front of [a building on the USPTO campus]

**Examiner A** [12:59 PM]: i'll walk over lemme just hit the restroom

**Examiner Y** [12:59 PM]: alright, see ya out there

The OIG did not identify any other data that would indicate work took place after the IM conversation, yet Examiner A certified a full day of work.

In light of the evidence obtained over the course of the investigation, the OIG concluded that there was sufficient evidence to support a finding that Examiner A violated 18 U.S.C. §§ 287, 641, and 1001, 5 C.F.R. § 2635.101, and the USPTO’s policy on work schedules. The OIG referred the case to the U.S. Attorney’s Office, Eastern District of Virginia, which declined to pursue the matter.

Examiner A resigned from his position immediately prior to a scheduled interview with OIG investigators. In an IM to a co-worker on the day of his resignation, Examiner A stated that the Patent Office Professional Association, the union representing patent examiners, advised him that he could keep his official personnel file free of any derogatory information if he resigned before the OIG interview. At the conclusion of the investigation, Examiner A declined an opportunity to review the draft report and provide comments.

The evidence regarding Examiner A’s actions raise concerns about whether the agency’s internal controls to prevent such misconduct are adequate and function properly. Despite numerous red flags and the USPTO’s internal controls, the agency did not review Examiner A’s time and attendance records to determine if he was claiming time for work he did not perform. According to the evidence, Examiner A received payment for over 18 full weeks of work, in aggregate, that he did not actually work. Ultimately, USPTO management’s system of internal

controls did not detect Examiner A's time and attendance abuse; to the contrary, these issues did not come to light until a whistleblower submitted anonymous notes to the examiner's supervisor and another manager.

In light of Examiner A's egregious time and attendance abuse, the OIG is recommending that the USPTO consider legal avenues to recover approximately \$25,500 paid to Examiner A as a result of his time and attendance abuse in FY 2014, review Examiner A's records for fiscal year 2015, and recover any funds improperly paid to Examiner A for FY 2015 as well. The OIG further recommends that the USPTO (I) review its policies to determine whether adequate controls are in place to monitor the time and attendance of its employees and ensure the controls are functioning properly, and (II) review the related policies that currently inhibit its ability to pursue time and attendance abuse.

*The OIG's full report of investigation on this matter may be requested pursuant to the Freedom of Information Act (5 U.S.C. § 552). For more information or to file a request, visit the OIG's website and click "FOIA" at the bottom of the screen.*