



February 23, 2016

MEMORANDUM FOR: Michelle K. Lee
Under Secretary of Commerce for Intellectual Property and
Director of the U.S. Patent and Trademark Office

FROM: Mark Zabarsky
Acting Assistant Inspector General for Acquisition and Special
Programs Audits

SUBJECT: *Audit of Trademark's Activity-Based Information System*
Final Report No. OIG-16-020-A

This report details the results of our audit of Trademark's controls and use of U.S. Patent and Trademark Office's (USPTO's) Activity-Based Information (ABI) system. Specifically, our objectives were to review allocation algorithms and controls of the ABI system and determine whether Trademark's use of ABI justifies and supports fee changes.¹

Background

USPTO provides examination of patent and trademark applications to inventors for their innovations and to businesses for their corporate and product identifications. For its services, applications for patents, and trademark registrations and renewals, the USPTO charges fees projected to cover the aggregate cost of performing those services as a fully fee-funded agency. USPTO uses ABI to implement its activity-based costing methodology to identify, measure, and allocate overhead costs.

ABI System

Since 1997, the USPTO has been using the ABI system to report program costs and process information useful to both internal and external groups concerned with the way in which the organization uses its resources to meet its objectives. Using cost models, the system captures and computes historical costs on a per-process or per-service basis, as well as the costs for the specific fees that are set and adjusted by regulation. The ABI Steering Committee oversees all topics related to ABI and facilitates USPTO-wide collaboration for the system.

¹ This audit was limited to Trademark's use of ABI and did not include Patent's use of ABI.

Fee Setting Authority

Section 205 of the Chief Financial Officers Act of 1990, 31 U.S.C. § 902(a)(8), requires USPTO to review—on a biennial basis—the fees imposed by the agency for services it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services. USPTO conducts a comprehensive biennial fee review at least once every 2 years. Effective September 2011, Section 10 of the Leahy-Smith America Invents Act, 35 U.S.C. § 41 note, authorizes USPTO to set or adjust fees only to recover the aggregate estimated costs for processing, activities, services, and materials relating to patents or trademarks, including administrative costs. This authority expires 7 years from the date of the Act’s enactment.

Results

The cost allocation algorithms were implemented consistent with supporting documentation and their internal control over the execution of ABI methodologies was operating effectively. Also, we found that USPTO used ABI as part of the fee change process.

During our review of the ABI system, we identified that one activity driver—Enterprise Architecture²—was not properly input into the system despite approval by the ABI Steering Committee. Upon our discussion with ABI division personnel, they corrected the error immediately. Subsequently, ABI division personnel implemented new procedures to ensure that activity drivers approved at the ABI Steering Committee meetings are properly input with supervisory approval. Further, ABI division personnel initiated a comprehensive review of all drivers approved by the steering committee. During the audit, however, we identified adequate internal control over the ABI program; therefore, we limited the scope of our work to the high-level review of documentation supporting the program.

This final report will be posted on Office of Inspector General (OIG)’s website pursuant to Section 8M of the Inspector General Act of 1978 (5 U.S.C. app. 3, § 8M), as amended.

We appreciate the assistance and courtesies extended to us by your staff. If you have any questions, please contact me at (202) 482-3884 or Myong Brown at (571) 272-5208.

cc: Anthony Scardino, Chief Financial Officer, USPTO
Mark Krieger, Director, Office of Finance, USPTO
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² Enterprise Architecture provides the technical foundation and plan for future technology investments as a component of a much larger government-wide planning initiative. The revised activity driver will allocate costs incurred on the Enterprise Architecture to the appropriate USPTO components within the ABI system.

Appendix A. Objectives, Scope, and Methodology

The objectives of our audit were to review allocation algorithms and controls of USPTO's ABI system and determine whether Trademark's use of ABI justifies and supports fee changes. To accomplish our objective, we:

- evaluated ABI system supporting documentation to identify compliance with Federal Accounting Standards Advisory Board (FASAB) Statement #4 "Managerial Cost Accounting Standards and Concepts;" OMB Circular A-136, "Financial Reporting Requirements;" OMB Circular A-11, "Preparation, Submission, and Execution of the Budget;" and the Government Performance and Results Act (GPRA) Modernization Act of 2010;
- judgmentally selected and reviewed 10 out of 80 activity drivers approved by the ABI Steering Committee between the dates of January 26, 2012, and February 26, 2015; and
- reviewed the fee setting processes.

We obtained an understanding of the ABI system and the Trademark fee setting processes. We interviewed personnel from the Trademark Office, Office of Finance, and Office of Planning and Budget. We did not identify incidents of fraud, illegal acts, violations, or abuse during our review. OIG contracted with the independent public accounting firm RMA Associates, LLC of Arlington, VA, to help complete a portion of the audit. The Contractor performed a review of the policies and supporting documentation, such as desk procedures and system security plans, used by ABI division personnel to perform activity-based costing in their ABI system.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions, based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We performed our work from February to December 2015 at USPTO in Alexandria, VA, under the authority of the Inspector General Act of 1978 (5 U.S.C. app. 3), as amended, and Department Organization Order 10-13, dated April 26, 2013.

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