



Report in Brief

August 16, 2022

Background

In fiscal year 2021, the United States Patent and Trademark Office (USPTO) received more than 500,000 new patent applications, and issued more than 370,000 patents. USPTO also continues to accept supplemental filings from applicants with already-pending patent applications. These supplemental documents may change a variety of information in an already-filed application, including claims, drawings, or even inventors. USPTO maintains all application-related documents in electronic form.

USPTO must publish most patent applications at a particular time. USPTO also publishes every granted patent, as well as supplemental papers. To complete critical steps in the processing of these documents, USPTO contracts for data capture services. The contractor converts the information from the documents into USPTO-mandated formats, performs quality assurance and file maintenance steps, and returns the documents to USPTO. In March 2021, USPTO informed us about a security incident at a contractor facility, which potentially put sensitive data at risk. We have also received multiple complaints about USPTO's management of these contracts (the "PaDaCap Contracts"). We conducted this audit to address the risks and challenges USPTO faces in overseeing this group of PaDaCap Contracts.

Why We Did This Review

Our audit objective was to determine whether USPTO awarded and administered PaDaCap Contracts in compliance with applicable laws and federal regulations and U.S. Department of Commerce policies and procedures.

UNITED STATES PATENT AND TRADEMARK OFFICE

USPTO Should Strengthen Its Planning and Oversight of Patent Data Capture Contracts to Manage Risks and Prevent Unnecessary Costs

OIG-22-028-A

WHAT WE FOUND

Overall, we found that USPTO did not fully comply with one or more requirements or best practices in the Federal Acquisition Regulation, the *Commerce Acquisition Manual*, and USPTO policies and procedures applicable to awarding and administering the PaDaCap Contracts. Specifically, we found the following:

- I. Ineffective acquisition planning delayed the use of competition and achieving lower prices.
- II. USPTO inadequately managed contract risks.
- III. USPTO did not timely inspect contractor deliverables and track errors.
- IV. USPTO inadequately addressed contractor security issues.

WHAT WE RECOMMEND

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

1. Develop controls to prevent unnecessary or unreasonable costs, such as the \$22,418,462 in questioned costs, by (a) developing procedures to define the structure, roles, and communication methods of the offices and individuals on an acquisitions team and (b) completing *Patent and Trademark Acquisition Manual* guidance on the reasonableness of noncompetitive acquisitions.
2. Develop procedures to assess, mitigate, and track risks to acquisitions, including the identification of responsible individuals and the establishment of timeframes for mitigation.

We recommend that the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office direct the Director of the Office of Data Management to do the following:

3. Revise database inspection procedures to specify sampling procedures.
4. Revise box inspection procedures to specify (1) error communication and resolution procedures and (2) sampling procedures.

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

5. Develop policies and procedures to monitor plan of action and milestones documents against timelines and communicate and escalate contractor security issues, including existing issues such as contractor background investigations. The procedures should clarify (a) communication of serious or persistent issues to the Contracting Officer for action and (b) available enforcement actions, including the reduction of payments.