



# Report in Brief

February 14, 2024

## Background

The United States Patent and Trademark Office (USPTO) promotes and protects U.S. intellectual property by reviewing and granting patent and trademark applications. In fiscal year 2022, USPTO maintained a workforce of more than 8,000 patent examiners responsible for determining whether to grant patents. Because they have a critical role in ensuring the integrity of the application process, examiners cannot hold financial interests (such as stock holdings) that conflict with performing their duties or participate in matters that could directly and predictably affect their financial interests.

To prevent conflicts of interest, most examiners must file confidential financial disclosure reports (CFDRs), in which they self-disclose assets held and sources of income. The U.S. Department of Commerce's (the Department's) Office of the General Counsel (OGC) oversees the ethics program for all Department bureaus, including USPTO. Within OGC, the Ethics Law and Programs Office (ELPO) administers the financial disclosure program—which includes reviewing CFDRs to identify and resolve potential conflicts—and provides ethics training and advice to examiners.

## Why We Did This Review

In 2022, we received hotline referrals alleging that several patent examiners violated ethics rules by owning stock in one or more companies that could be affected by their decisions on patent applications.

Our evaluation objective was to determine whether USPTO and the Department effectively administered ethics rules to prevent financial conflicts of interest by USPTO patent examiners.

## UNITED STATES PATENT AND TRADEMARK OFFICE

### The Department Needs to Strengthen Its Ethics Oversight for USPTO Patent Examiners

OIG-24-013-I

## WHAT WE FOUND

Overall, we found that USPTO and the Department did not effectively administer the Department's ethics program to protect against potential conflicts of interest by patent examiners. Specifically, we found the following:

- I. USPTO and the Department did not ensure examiners filed CFDRs as required.
- II. The Department did not identify or resolve potential financial conflicts in CFDRs.
- III. USPTO and the Department did not provide specialized training or guidance to examiners on potential ethics conflicts.

## WHAT WE RECOMMENDED

We recommended that the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office direct the Chief Administrative Officer to

- Strengthen controls to ensure that human resource officials identify examiner appointments to positions requiring financial disclosure and notify ELPO in a timely manner.

We recommended that the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office

- Ensure USPTO subject-matter experts work with agency ethics officials to develop specialized training that describes how the industry sector rule is applied.

We recommended that the Department's General Counsel direct the Chief of the Ethics Law and Programs Office to

- Implement processes to ensure that all examiners with filing obligations are captured in the FD Online system and examiners submit CFDRs as required.
- Implement processes or procedures to ensure ELPO conducts thorough conflict-of-interest analyses during CFDR reviews to identify and address potential conflicts.
- Ensure ELPO leverages subject-matter expertise from USPTO to carry out reviews of CFDRs that comply with regulations and internal policies.
- Develop and deliver specialized training for patent examiners that includes an explanation of the exemptions, including the industry sector rule and how it applies.
- Ensure patent examiners receive clear and accurate guidance in response to CFDR filings and specific requests.
- Develop and implement a written process to identify and track conflict-of-interest risks and ensure risk assessment results are used to inform ethics training and guidance given.