

## GAO Reports Fault USPTO Policies on Retention and Automation

The USPTO's failure to address long-standing human capital challenges could undermine its strategic plan, and the agency has demonstrated ineffective planning and management of its patent automation projects, according to two separate June reports by the Government Accountability Office (GAO).

In its report, "USPTO Has Made Progress in Hiring Examiners, but Challenges to Retention Remain" (GAO-05-720), the GAO cites three underlying problems.

■ "First, the agency lacks effective mechanisms for helping managers to communicate and collaborate with examiners," stated the report. It further stated that the USPTO emphasizes "communication between managers and

not between managers and examiners. Patent examiners and supervisory patent examiners in our focus groups frequently said that communication with management was poor or nonexistent, and they reported little involvement in providing input to key agency decisions." This lack "has created an atmosphere of distrust of USPTO management and lowered examiner morale, which is further exacerbated by the contentious relationship between USPTO management and the examiners' union," the report stated.

■ "Second, human capital models suggest that agencies should periodically assess their monetary awards systems to ensure that they help attract and retain qualified staff," the  
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## USPTO Handcuffs Examiner for Time Infractions

A patent examiner was handcuffed and arrested at the USPTO June 2 for the charge that he allegedly did "embezzle funds by submitting false hours of employment, such funds belonging to the U.S. Government and having a value of \$200 or more,"

according to the arrest warrant. This marks the first time in known USPTO history that an employee has been arrested and criminally charged by local police for a workplace time or attendance infraction.

The USPTO is alleging that the embezzlement took place between February and September 2004. The agency first discussed the problem at an investigatory interview with the employee in

January 2005. The agency has not clarified why it waited many, many months after these problems began to begin addressing them. Unexplained is the total absence of progressive discipline, which is the usual course for employee infractions.

The USPTO is basing its case on the ID card-in, card-out time records it keeps on employees at its new Carlyle campus.

At the investigatory interview the USPTO suggested that if the employee paid back the time, it would take that into consideration when determining consequences. The employee was working 10 hours per pay period of voluntary overtime specifically to that end. Two weeks after the investigatory meeting, two Office of the Inspector General (OIG) representatives visited the employee.

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### Progressive Discipline at the USPTO



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report stated, "Patent examiners' awards are based largely on the number of applications they process, but the assumptions underlying their application processing quotas have not been updated since 1976. USPTO management and examiners have differing opinions on whether these assumptions need to be updated."

Despite these varying beliefs, the GAO found that many examiners and supervisors "reported that examiners do not have enough time to conduct high-quality reviews of patent applications. According to agency surveys, these inadequate time frames create a stressful work environment and is cited in the agency's exit surveys as a primary reason examiners leave the agency."

■ "Finally, counter to current workforce models, USPTO does not require ongoing technical education for patent examiners, which could negatively affect the quality of its patent examination workforce," the GAO report concluded.

"USPTO offers some voluntary in-house training, but the agency could provide no data on the extent to which examiners have taken advantage of such training. Moreover, patent examiners told us that they are reluctant to attend such training, given the time demands involved."

As a result, the GAO recommended that the USPTO "develop formal strategies to improve communication and collaboration across all levels of the organization," and reported that the agency agreed with its findings, conclusions and recommendations.

However, in his letter of response to the GAO, USPTO Director Jon Dudas wrote, "We assume that GAO's findings are not meant to suggest that more time may be needed for examination."

"Of course that's what the combined GAO reports are suggesting," wrote the *Internet Patent News Service*. "Is there anyone outside the Beltway... who doubts that examiners need more time for examinations? ... No one championing the public's interest in the patent system would make such a statement."

A second GAO report, "Key Processes for Managing Patent Automation Strategy Need Strengthening" (GAO-05-336), found that the electronic filing system and the Image File Wrapper (IFW) "have not yielded processing improvements that the agency had deemed essential to operate successfully in an electronic environment."

It cited patent filers' comments that the electronic filing system is "cumbersome, time-consuming, and costly, and does not meet their business and technical needs," resulting in fewer than 2 percent of patent applications being filed electronically. Because of the IFW performance problems, according to patent officials, the system "has not provided many of the capabilities deemed essential to eliminating manual actions and improving worker productivity," stated the GAO report.

The USPTO did not follow information technology best practices to guide implementation of these IT programs, the GAO found. It attributed the failure of these two key electronic tools to "systemic weaknesses in the agency's overall information technology investment management processes." One result is that the USPTO "lacked reliable experience-based data to consistently demonstrate the costs and benefits of its systems."

The GAO specifically advised the USPTO "before proceeding with any new patent automation initiatives," to:

1. Reassess, and, where necessary, revise its approach for implementing and achieving effective uses of IT systems supporting a fully automated patent process;
2. Establish disciplined processes for planning and managing the development of patent systems based on well-established business cases; and
3. Fully institute and enforce information technology investment management processes and practices to ensure that its automation initiatives support the agency's mission.

To review the GAO reports, go to [www.gao.gov](http://www.gao.gov) and enter the report number in the search box at the top of the page.

## Union Reminder Gets Practice Time for Examiners

Sometimes the USPTO only needs a low-key reminder from your friendly, neighborhood union to remember what it promised employees.

When the USPTO announced updated training classes in four of the computer software programs used by examiners (EAST, WEST, OACS and EDAN), it encouraged all examiners to take the training by offering two hours of "other" time for participation in each class and one hour of "other" time for practice after each class.

One supervisor e-mailed his employees to support that they schedule time for the courses and reiterated to take "other" time for each. However, he added, "None of you should need practice afterwards so I am not authorizing practice 'other' time after the normal class. Use the new stuff in your real work only. (I believe I have this authority and I am exercising it.)"

An alert examiner questioned the supervisor's judgment and asked the union for clarification. The POPA representative then sent the supervisor a copy of Deputy Commissioner for Patent Operations Peggy Focarino's all-employee memo, which wisely stated, "Examiners will be given practice time in increments of 1 hour for every 2-hour automation training course that they have taken."

The supervisor to his credit then withdrew the denial of practice time.

