

GAO Highlights

Highlights of [GAO-16-883T](#), a statement for the record to the Subcommittee on Courts, Intellectual Property and the Internet, Committee on the Judiciary, House of Representatives

Why GAO Did This Study

USPTO examines patent applications to ensure that inventions meet the legal requirements for patentability as set forth in patent laws and federal case law. Resolving disputes over patent infringement and validity can be costly. Legal scholars and economists have raised concerns that an increase in low quality patents—such as those that are unclear and overly broad—may lead to an increase in patent infringement suits and hinder innovation. GAO was asked to provide information from its recent reports to inform a USPTO oversight hearing.

This statement addresses (1) the challenges examiners face in reviewing applications and issuing high quality patents, and (2) the steps USPTO can take to improve patent examination and the quality of granted patents, drawing from GAO reports issued in June 2016. For these reports, GAO's work included surveying a generalizable, stratified random sample of USPTO examiners with an 80 percent response rate; reviewing USPTO documents and relevant laws; and interviewing USPTO officials and knowledgeable stakeholders.

What GAO Recommends

In its prior work GAO recommended, among other things, that (1) USPTO consistently and clearly define patent quality and a thorough prior art search for different technologies, and establish goals and indicators to monitor examiners' work; and (2) assess the time allotted for examination and analyze the effects of other USPTO incentives on patent quality. USPTO concurred with GAO's recommendations.

View [GAO-16-883T](#). For more information, contact John Neumann at (202) 512-3841 or neumannj@gao.gov.

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INTELLECTUAL PROPERTY

Patent Office Has Opportunities to Further Improve Application Review and Patent Quality

What GAO Found

U.S. Patent and Trademark Office (USPTO) examiners face a variety of challenges in reviewing patent applications and issuing high quality patents. Some challenges affect examiners' ability to complete a thorough review of information relevant to a claimed invention—or a “prior art” search—which is the most time consuming aspect of examining a patent application. For example, the amount and availability of prior art as well as the extent to which examiners are able to search prior art quickly using the search tools USPTO provides may present a challenge to examiners in reviewing patent applications. Additionally, the clarity of patent applications and the amount of time USPTO allots examiners to complete their work, among other challenges, may affect examiners' ability to ensure that patents USPTO issues are high quality.

USPTO is taking steps to address the challenges examiners face in reviewing applications and issuing high quality patents—most notably through the agency's Enhanced Patent Quality Initiative—but some steps have limitations and opportunities exist for further improvement. For example,

- USPTO is taking steps to strengthen monitoring of examiners' work. However, USPTO still faces limitations in assessing patent quality overall, including the thoroughness of examiners' prior art searches, because, for example, USPTO has not established a consistent definition of patent quality or guidance on what constitutes a thorough prior art search for different technologies. Additionally, while USPTO has an overall strategic goal that includes optimizing patent quality, the agency has not developed specific goals and performance indicators related to patent quality and prior art search improvement. Without consistently and clearly defining patent quality and a thorough prior art search, and establishing goals and performance indicators to monitor examiners' work, USPTO will be unable to fully measure progress toward meeting its patent quality strategic goal consistent with internal control standards and leading practices for federal agencies.
- USPTO has not comprehensively assessed the time examiners need to perform high quality patent examinations, including thorough prior art searches, and has not fully assessed the effects of other agency incentive policies on patent quality. For instance, USPTO recently adjusted the time allotted to examiners for reviewing applications in some technologies, but has not recently assessed the time needed for a thorough examination in all technology areas. GAO estimates, based on its survey, that 70 percent of patent examiners say they do not have enough time to complete a thorough examination given a typical workload. Additionally, most stakeholders GAO interviewed said that the time pressures examiners face is one of the central challenges to ensuring patent quality; however, USPTO has not analyzed the effects of its production-based incentive policies on patent quality. According to federal standards for internal control, operational success requires providing personnel with the right incentives for the job. Without comprehensively assessing the time needed to conduct a thorough examination or USPTO's current incentives, USPTO cannot be assured that its time allotments and incentives support the agency's patent quality goal.