United States Government Accountability Office

Report to Congressional Committees

March 2024

INTELLECTUAL PROPERTY

Stronger Fraud Risk Management Could Improve the Integrity of the Trademark System

GAO-24-106533

GAO Highlights

Highlights of GAO-24-106533, a report to congressional committees

March 2024

INTELLECTUAL PROPERTY

Stronger Fraud Risk Management Could Improve the Integrity of the Trademark System

Why GAO Did This Study

Registering a trademark such as a word or symbol is often an essential part of building a business. In recent years there have been a growing number of trademark applications that include false or inaccurate images showing goods that are not actually sold or used in commerce. This has made it more difficult for businesses to find unused trademarks.

The TMA includes a provision for GAO to review the USPTO's efforts to address inaccurate and false claims in trademark applications and registrations. This report examines (1) the extent to which the USPTO and third parties used the new TMA procedures; (2) other USPTO initiatives; and (3) the extent to which USPTO used fraud risk principles to address the issue.

GAO analyzed USPTO trademark data related to TMA's new procedures and interviewed USPTO officials on other programs and procedures used to protect the integrity of the trademark register. GAO also evaluated the USPTO's current fraud risk practices against key elements of GAO's Fraud Risk Framework and conducted semi-structured interviews with trademark attorneys, top trademark-owning companies, academics, and trademark industry associations to obtain their views on the new procedures.

What GAO Recommends

GAO is recommending that USPTO 1) conduct regular fraud risk assessments of the trademark register, and 2) improve its data systems to enable trademark data analytics for stronger fraud risk management. USPTO concurred with the recommendations.

View GAO-24-106533. For more information, contact Candice N. Wright at (202) 512-6888 or wrightc@gao.gov.

What GAO Found

The Trademark Modernization Act of 2020 (TMA) established two new procedures—expungement and reexamination—that allow individuals and businesses to challenge a registered trademark on the basis that it was not used in commerce, as is normally required. A successful challenge results in the trademark being removed from the register, thus making it available for potential use for the challenger or other applicants.

GAO found that from December 2021 through June 2023 the U.S. Patent and Trademark Office (USPTO) and attorneys representing trademark owners filed nearly 500 petitions under the new procedures. Collectively, these petitions resulted in the removal of more than 2,500 falsely claimed goods and services from the trademark register. Trademark attorneys told GAO that the new procedures can be cost-effective and low-risk.

Existing USPTO programs have also addressed inaccurate or false trademark applications and registrations. The agency's post registration audit program removed trademarked goods and services in about half of its randomly selected audits each year from the start of the program in 2017. This suggests that there may be more than 1 million false and inaccurate registrations out of about 2.8 million overall due to an influx of applications, among other factors.

Fraudulent Images of the Same Flashlight with Different Logos Included in Trademark Applications Submitted to USPTO

Source: GAO adaptation of U.S. Patent and Trademark Office images. | GAO-24-106533

The USPTO has taken steps to limit fraud risks, such as establishing a culture conducive to fraud risk management. However, the USPTO has not conducted a comprehensive fraud risk assessment of the trademark register or designed a fraud risk strategy. Implementing leading practices from GAO's Fraud Risk Framework would allow the USPTO to comprehensively consider fraud risks, establish more effective controls, and fully articulate a tolerable level of fraud risk while considering the costs and benefits of potential control activities. GAO also found that the USPTO's current data systems do not allow the agency to: (1) assess the effectiveness of current trademark fraud prevention programs and (2) implement new technologies for identifying fraud. Academics told GAO that computational tools such as predictive analytics could help the USPTO identify trademark applications with false or inaccurate information more effectively.

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Abbreviations

TMA	Trademark Modernization Act of 2020
TTAB	Trademark Trial and Appeal Board
USPTO	U.S. Patent and Trademark Office

U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

March 14, 2024

The Honorable Richard Durbin
Chairman
The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
United States Senate

The Honorable Jim Jordan
Chairman
The Honorable Jerrold Nadler
Ranking Member
Committee on the Judiciary
House of Representatives

A trademark is any word, phrase, symbol, design, or combination of these things that identifies and distinguishes goods and services of one business from those of other businesses. Registering a trademark with the U.S. Patent and Trademark Office (USPTO) provides a legal presumption that a business owns a trademark and has the right to use it on the goods or services for which it is registered.[1] Trademark registration is often a highly valuable part of creating and building new brands and businesses.

By the end of 2022, the USPTO's trademark register contained approximately 3 million domestic and foreign-owned trademark registrations. Some academics have found that many words in the English language are already registered, leaving less room for businesses to register new goods and services. Further, the Office of the Inspector General for the Department of Commerce reported in 2021 that the USPTO's trademark registration process was not effective in preventing fraudulent or inaccurate registrations, and found evidence that

[1]The USPTO is an agency within the U.S. Department of Commerce. Its mission is to drive U.S. innovation, inclusive capitalism, and global competitiveness.

a significant portion of trademark registrations contained goods or services not being sold, which is not allowed.[2]

Some applicants file for trademark registration without having a bona fide intention to use the mark in commerce at the time of filing. This could be the case if the applicant intended to warehouse or hold the mark for the future, either for their own use or for transfer to someone else for a profit. However, doing so can prevent other applicants from finding unclaimed trademarks.

Inaccurate and false claims in applications filed by applicants poses a significant risk to the integrity of the trademark register. For example, researchers found that approximately 0.6 percent of all applications (12,973 out of 2,154,990) filed for registration from 2012 through 2017 were refused due to fraudulent specimens, or samples of the trademark, being used in commerce; and 71 percent of these applications were filed by entities in China. Typically, fraudulent specimens are digitally altered product images in trademark applications showing a logo on a product that was not available for sale.[3]

The Trademark Modernization Act of 2020 (TMA) created two new procedures—expungement and reexamination proceedings—that allow individuals and entities to challenge a registered trademark on the basis that it was not used in commerce (i.e., a false claim of use).[4] A successful challenge results in the trademark being removed from the register, thus making it available for potential use for the challenger or other applicants. The act also provided the USPTO Director with the authority to initiate expungement and reexamination proceedings to address inaccurate and false claims of use in trademark registrations.

The Trademark Modernization Act of 2020 also included a provision for GAO to assess the newly created procedures as well as the USPTO's efforts to address inaccurate and false claims of use in trademark applications and registrations. This report examines 1) the extent to which

[2]U.S. Department of Commerce Office of Inspector General, *USPTO Should Improve Controls over Examination of Trademark Filings to Enhance the Integrity of the Trademark Register*, OIG-21-033-A (Washington, D.C.: August 11, 2021).

[3]Barton Beebe and Jeanne C. Fromer, "Fake Trademark Specimens: An Empirical Analysis," *Columbia Law Review* Forum, vol. 120, no. 7 (2020): 217-249, http://dx.doi.org/10.2139/ssrn.3556121.

[4]Trademark Modernization Act of 2020, Pub. L. No. 116-260, § 225, 134 Stat. 2200, 2202-08.

third parties and the USPTO have used the new procedures to address inaccurate and false claims of use in trademark registrations; 2) other USPTO initiatives that address inaccurate and false claims of use; and 3) the extent to which the USPTO is using fraud risk principles to address inaccurate and false claims of use in trademarks.

To address these objectives, we reviewed USPTO data related to expungement and reexamination proceedings for the period December 21, 2021, through June 27, 2023. This time frame reflects the most complete data available for the 30-month period since the TMA was enacted, because the new procedures took effect in December 2021. We also reviewed USPTO data and interviewed USPTO officials on other programs and procedures used to protect the integrity of the trademark register. We evaluated the USPTO's current fraud risk policies and practices against key elements of the fraud risk assessment process in GAO's Fraud Risk Framework.[5] In addition, we conducted semi-structured interviews with trademark attorneys, representatives of top trademark-owning companies, academics who study trademark practices and fraud, and industry associations to ask about the effectiveness of the TMA procedures and additional actions that could improve the integrity of the trademark register.[6] Appendix I contains additional information about our objectives, scope, and methodology.

We conducted this performance audit from January 2023 to March 2024 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.

Background

Registering trademarks with the USPTO is optional. Trademark owners have legal protection without federal registration, although a registration

[5]Our assessment focused on leading practices from the *Commit* and *Assess* key elements. GAO, *A Framework for Managing Fraud Risks in Federal Programs*, GAO-15-593SP (Washington, D.C.: Jul 28, 2015).

[6]For the purposes of this report, the term "trademark attorneys" refers to attorneys representing clients who are applying for trademarks or maintaining their existing registered trademarks. The term "examining attorneys" refers to USPTO attorneys who review registration applications to determine whether the application meets requirements such as not conflicting with another trademark; has proper proof of use (i.e., the good or service must be for sale), and correctly identifies the goods and services in use.

issued by the USPTO receives certain legal presumptions in federal court and provides notice to the public about which trademarks have been registered already and cannot be used for certain goods and services.[7] Individuals or entities must follow a series of steps required by the USPTO when applying for a trademark.[8] As part of this process, most applicants must submit proof that the trademark is currently being used legitimately in the category (or categories) of goods and services they specify on the application.[9] This often involves submitting a photo of a product with a logo that the applicant wants to trademark or an advertisement for a service (the specimen). Depending on whether the application meets requirements such as not conflicting with another trademark, having proper proof of use (i.e., the good or service must be for sale or publicly transported in interstate commerce), and correctly identifying the goods and services in use, the USPTO examining attorney will either approve or reject the application. Registered trademarks are subject to periodic post-registration maintenance that includes declarations of continued use in commerce, applications for renewal, and audits.[10]

The number of trademark applications that include inaccurate or fraudulent content has grown in recent years (fig. 1). This often includes photos that are digitally altered or mocked-up in an attempt to prove use of the trademark. Academics we interviewed said potential causes for the spike in applications included subsidies provided by local governments in China to companies to register trademarks, and e-commerce website

[7]The Lanham Act of 1946 granted the USPTO the authority to register trademarks. Codified, in relevant part, at 15 U.S.C. § 1051(a). Trademark applications can be based on whether trademarks are in use in commerce or are intended to be used later.

[8]Applicants may be represented by an attorney, and foreign-domiciled applicants must be represented by a U.S.-licensed attorney. 37 C.F.R. § 2.11.

[9]Two exceptions to this are applications filed from other countries under the Paris Convention or via the Madrid Protocol. These applicants do not have to prove use by registration, they only have to submit a declaration of bona fide intention to use the mark in commerce. They do have to prove use to maintain a registration.

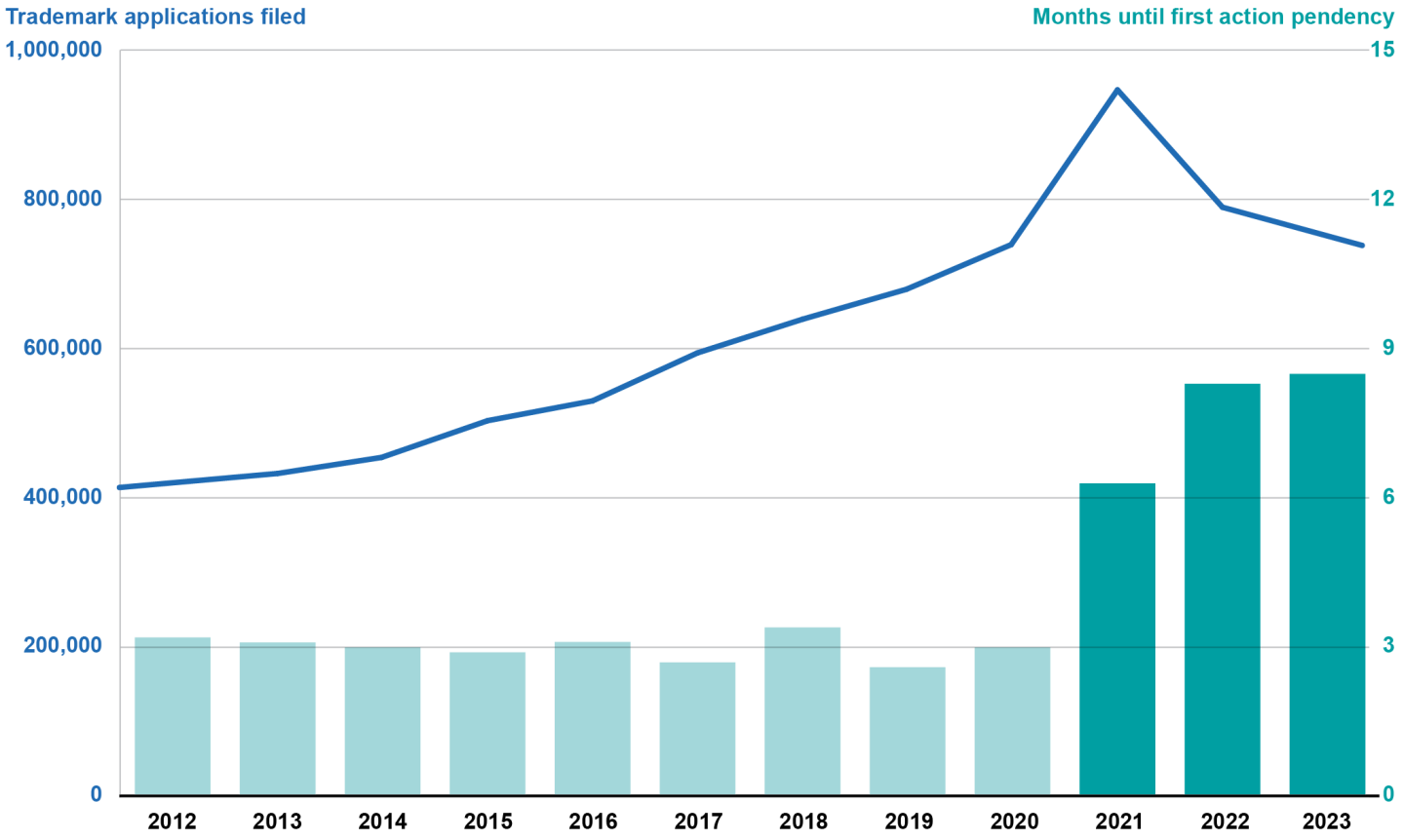
Proof of use often involves submitting a photo of a product with a word, phrase, device, or logo that the applicant wishes to trademark. This is unique to the U.S., as many countries do not require proof of use to register a trademark.

[10]To maintain a registration and avoid cancelation of a trademark, the trademark owner must file a declaration including a verified statement and evidence showing that the trademark is being used in commerce or, a showing of special circumstances for excusable non-use, to avoid cancelation of the trademark. This declaration is first due at between 5 and 6 years after the registration date. For renewal of the registration, a declaration must be filed every 10 years after the date of registration.

initiatives to incentivize sellers to obtain U.S. registrations, which enables access to U.S. consumers. A 2021 USPTO report found that the agency experienced a surge in fraudulent trademark applications originating in China after some Chinese cities began offering subsidies for overseas trade applications.[11] Academics said these factors created an influx of trademark applications that has cluttered the trademark register and prevented the USPTO from examining trademark applications in a timely way. This influx of trademark applications burdens businesses and consumers with an increasingly lengthy registration process and expensive costs to search for unused words or phrases, devices or logos that can be registered. In addition to an increase in foreign filings, USPTO officials note that the data also shows a significant increase in domestic filings during the pandemic, likely due to an overall increase in entrepreneurship during COVID lockdowns.

[11]USPTO, *Trademarks and Patents in China: The Impact of Non-Market Factors on Filing Trends and IP Systems*, (January 2021).

Figure 1. Trademark Applications Filed and Average Number of Months before the USPTO Examined the Applications, Fiscal Years 2012 through 2022



Source: GAO analysis of U.S. Patent and Trademark Office information. | GAO−24−106533

Note: The USPTO defines first action pendency as the average number of months from the patent application filing date to the date a first office action is mailed by the USPTO. First action refers to the first office action, or correspondence, sent to the applicant by the examining attorney. It results from the examining attorney's initial review of the trademark application.

Trademark Register Protection

The TMA was implemented in December 2021 and included two new procedures to enable third parties—individuals or entities—to challenge a registered trademark on the basis that it was not used in commerce. Prior to the TMA, third parties could only file petitions with the USPTO to cancel registrations containing inaccurate or false claims at the

Trademark Trial and Appeal Board (TTAB) in an adversarial proceeding.[12] The establishment of the new TMA proceedings provided third parties with new methods to challenge trademarks that either have never been used or were not in use when required, among other things. Further, the TMA also granted the USPTO Director the authority to self-initiate these proceedings. In addition, the TMA formalized an existing practice for a third party to submit evidence to the USPTO during the trademark examination process through a "letter of protest." Following implementation of the TMA, the USPTO began accepting letters of protest that included evidence of non-use. A successful letter of protest containing relevant evidence that is considered by the examining attorney may prevent a trademark from being registered. Some of the programs and processes shown in Table 1 were already being used by the USPTO before 2021 while others were created by the act.

Table 1: USPTO Trademark Register Protection Programs and Procedures

Programs and procedures used internally by the USPTO	US counsel rule	The USPTO requires U.S.-licensed lawyers to represent foreign applicants and registrants.
	Identity verification measures	The USPTO requires a login on the USPTO website and identity and address verification for trademark filers.
	Director-initiated expungement and reexamination proceedings (Created by the Trademark Modernization Act of 2020 (TMA))	The USPTO Director institutes an expungement or reexamination proceeding. For example, if the USPTO discovered that a trademark registration was never in use, the USPTO Director could initiate an expungement proceeding to remove it from the register.
	Administrative sanctions program	The USPTO reviews and sanctions applications and registrations that are potentially fraudulent or improper.
	Post registration audit program	The USPTO randomly audits trademark registrations with required maintenance filings to ensure the register is a reliable reflection of trademarks in use. Trademark registrations that are no longer in use are removed from the register or updated through this audit.
Procedures used by external third parties (typically attorneys representing trademark owners and applicants)	Expungement proceeding (Created by TMA)	Third parties file petitions to cancel some or all of the goods or services in a trademark registration because the trademark had never been used in commerce.

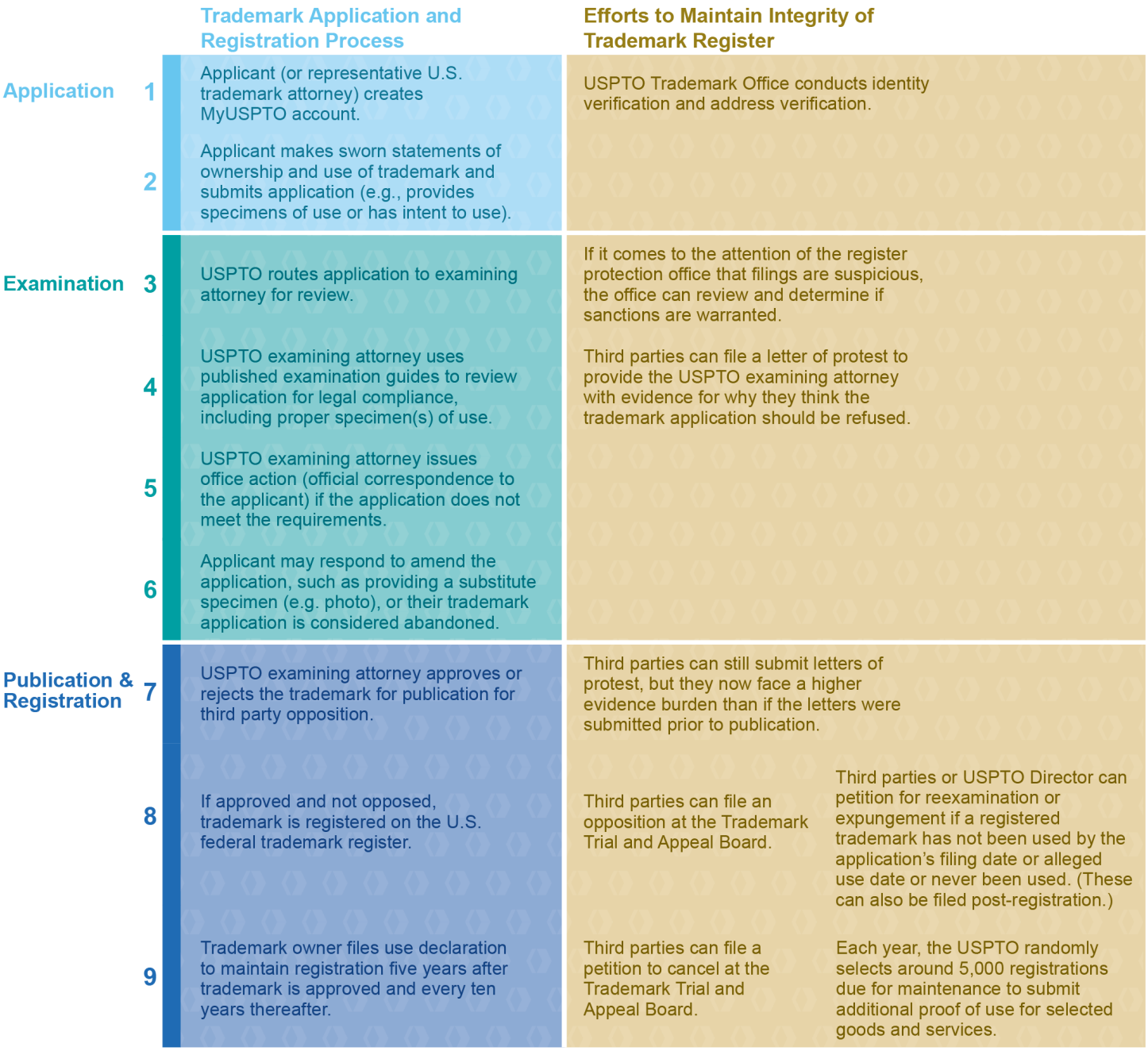
[12]In November 2021, the USPTO published its final rules implementing provisions of the TMA. Changes To Implement Provisions of the Trademark Modernization Act of 2020, 86 Fed. Reg. 64,300 (Nov. 17, 2021). TTAB is responsible for hearing several types of adversarial (inter partes) proceeding, including cancellation proceedings against registered marks. In an adversarial proceeding, both the petitioner and trademark owner may participate at stages throughout the procedure. By contrast, in an ex parte proceeding the petitioner is only involved in filing the initial request for review.

Reexamination proceeding (Created by TMA)	Third parties file petitions to cancel some or all goods or services in a registration because the trademark had not been used in commerce by its application or other relevant use date.
Letters of protest (Formalized by TMA)	Third parties submit letters of protest to the USPTO with evidence about the registrability of a trademark in a pending application. For example, letters of protest can be sent when the pending application contains a trademark that is not used in commerce, or when the pending application is likely to be confused with a trademark in U.S registration.
Trademark Trial and Appeal Board (TTAB) Proceedings	The TTAB adjudicates appeals on trademark examination decisions and petitions to cancel trademark registrations. The TMA added an expungement option through the TTAB for petitioners. For example, a third party could file a petition for cancellation through TTAB on the grounds that a trademark holder has never used the mark in commerce.

Source: GAO analysis of USPTO documentation. | GAO-24-106533

Figure 2 illustrates the process for applicants to register their trademarks with the USPTO, and the register protection programs that the USPTO can use at different stages to prevent inaccurate and fraudulent trademarks.

Figure 2: Trademark Registration Process and Register Protection Programs



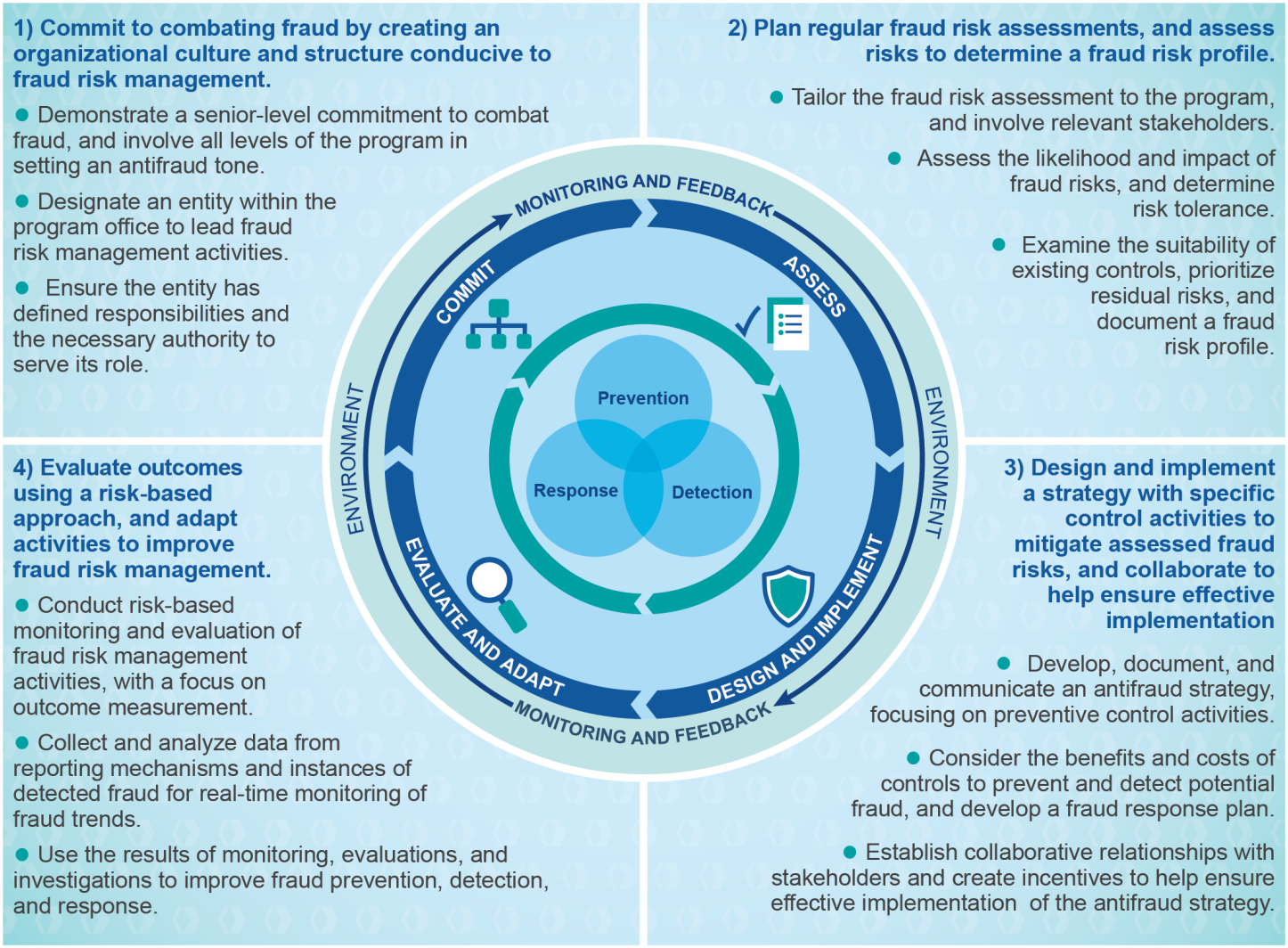
Source: GAO analysis of U.S. Patent and Trademark Office information. | GAO-24-106533

Fraud Risk Management

While not all inaccurate claims of use are fraudulent, fraud poses a significant risk to the integrity of the trademark register because registrations issued by the USPTO may not be accurate reflections of claims of rights, creating uncertainty and costs for businesses, according to USPTO officials. To help managers at federal agencies combat fraud and preserve integrity in their agencies and programs, GAO identified and organized leading practices for managing fraud risks into a conceptual framework.[13] Issued in 2015, the Fraud Risk Management Framework encompasses control activities to prevent, detect, and respond to fraud, with an emphasis on prevention, as well as structures and environmental factors that influence or help managers achieve their objective to mitigate fraud risks. In addition, the Fraud Risk Framework also highlights the importance of risk-based monitoring and incorporating feedback.

[13]GAO, *A Framework for Managing Fraud Risks in Federal Programs*, GAO-15-593SP (Washington, D.C.: Jul 28, 2015).

Figure 3: GAO Fraud Risk Management Framework



Source: GAO (information and icons). | GAO−24−106533

The USPTO Director and Trademark Attorneys Used New Procedures to Complement Other Efforts to Address Inaccurate Trademarks

Based on our analysis of USPTO data for the period December 21, 2021, through June 27, 2023, we found that the USPTO Director and trademark attorneys representing their clients used the new expungement and reexamination procedures to remove more than 2,500 falsely or inaccurately claimed goods and services from trademark registrations.[14] Trademark attorneys told us they consider a number of factors when determining whether to use the new procedures or alternative approaches. Trademark attorneys also told us they consider the letter of protest procedure to be useful in general, but rarely use it to submit nonuse evidence.

The USPTO and Attorneys Used Expungement and Reexamination Procedures to Remove Over 2,500 Goods and Services from Trademark Registrations

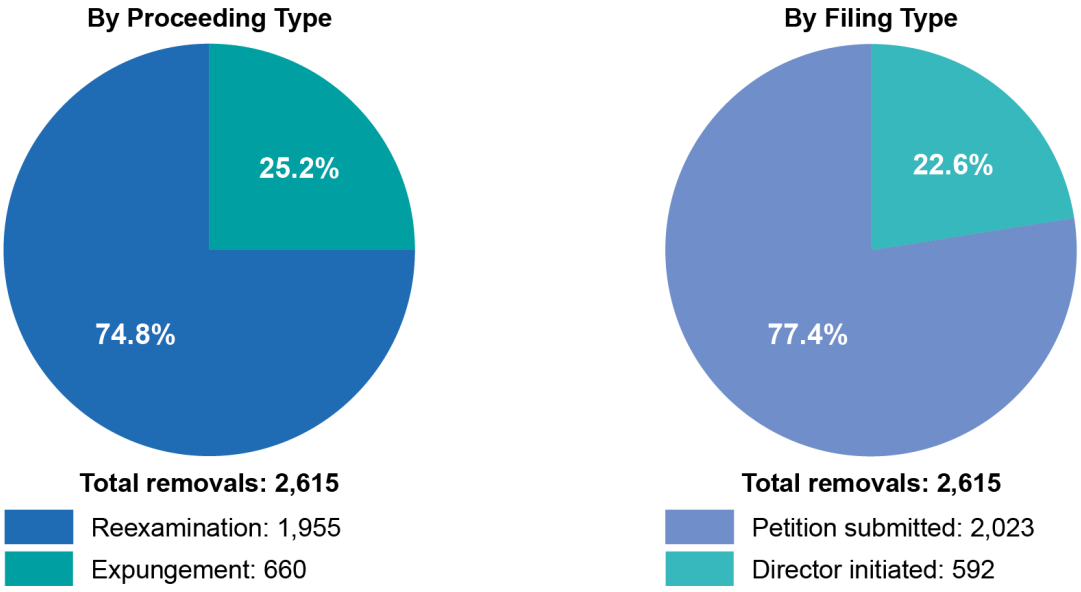
Based on our analysis of USPTO data for the period December 21, 2021, through June 27, 2023, we found that the USPTO Director and trademark attorneys representing their clients used the TMA's new expungement and reexamination procedures to remove 2,615 falsely or inaccurately claimed goods and services from trademark registrations. Specifically:

- Reexamination proceedings accounted for 1,955 of the removals compared to 660 removals resulting from expungement proceedings (see fig. 4).
- Director-initiated proceedings accounted for 592 of the removals and third-party petitions accounted for 2,023 of the removals.

[14]This analysis reflects the most complete data available for the 30-month period since TMA was enacted. The analysis begins on December 21, 2021, because this is when the first expungement petition was submitted to the USPTO.

For the purposes of this report, the term "trademark attorneys" refers to practicing trademark attorneys that represent their clients before the USPTO and does not include trademark attorneys working for USPTO.

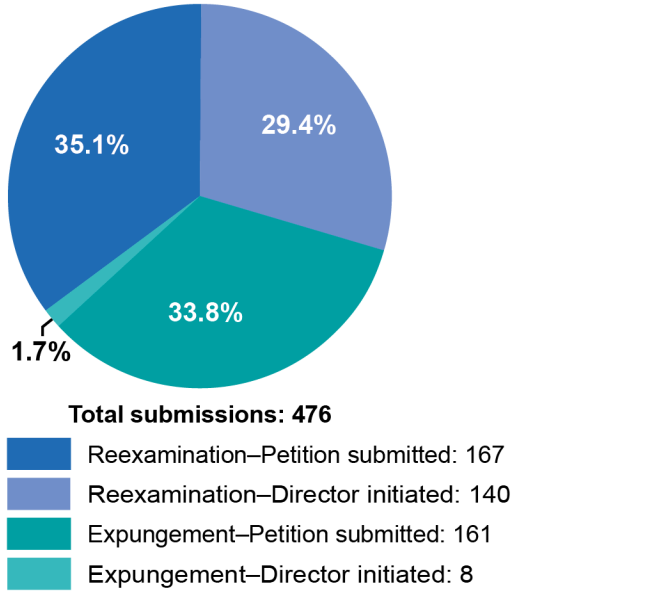
Figure 4: Goods and Services Removed from USPTO Trademark Registrations Due to Expungement and Reexamination (Sorted by Proceeding Type and by Filing Type), December 21, 2021, through June 27, 2023



Source: GAO analysis of U.S. Patent and Trademark Office information. | GAO−24−106533

The 2,615 removals resulted from 476 total expungement and reexamination submissions. Among the 476 total submissions, 169 are expungement proceedings and 307 are reexamination proceedings (see fig. 5). In total, the USPTO Director initiated 148 proceedings and third parties filed 328 petitions. Director-initiated proceedings tend to be reexamination proceedings, while third-party petitions are more evenly split between expungement and reexamination proceedings. See appendix II for more information on the expungement and reexamination procedures.

Figure 5: Expungement and Reexamination Submissions Received by the USPTO, December 21, 2021, through June 27, 2023



Source: GAO analysis of U.S. Patent and Trademark Office information. | GAO−24−106533

Trademark Attorneys Cited Benefits and Challenges with Using the New Procedures

According to the USPTO, expungement and reexamination procedures are intended to offer alternatives to Trademark Trial and Appeal Board (TTAB) proceedings. Trademark attorneys we spoke with highlighted various benefits that may influence their decision to use expungement and reexamination procedures instead of the TTAB.

Reduced Cost and Time. Several trademark attorneys we interviewed stated that they use expungement and reexamination proceedings to avoid the expense of engaging in an adversarial proceeding with the trademark owner they are filing against. Trademark attorneys also stated that filing a petition with the TTAB can result in a lengthy and expensive legal process, and that they avoid filing petitions with the TTAB if they think there is a risk of that happening.[15]

[15]Several trademark attorneys we met with stated that they could not provide accurate cost estimates for engaging in a TTAB proceeding or filing a petition for expungement or reexamination because costs vary greatly depending on the circumstances of the proceeding or petition.

The USPTO Handles the Dispute. Once a petitioner submits their expungement or reexamination petition with the USPTO, they are no longer involved in the process. If the trademark owner wants to dispute the petition, this has no effect on the petitioner, as all further interactions are handled by the USPTO. One trademark attorney we interviewed stated that the principal advantage associated with expungement and reexamination is that they are ideal for clients who want to avoid engaging in adversarial activity.

Anonymity. Petitioners can file anonymously, further protecting them from any potential retaliation from the trademark owner. One trademark attorney we interviewed stated that filing anonymously also allows the petitioner to avoid the risk of a counterclaim being filed against one of their trademarks in retaliation.

Additional Authority for the USPTO. An additional benefit of the expungement and reexamination procedures is that the USPTO Director can initiate the procedures without any third-party involvement. Before the expungement and reexamination procedures, the agency had only limited ability to independently remove trademark registrations from the official trademark register on their own initiative, even if the agency knew that there were inaccurate or false claims in the registration.[16]

Trademark attorneys also identified several challenges associated with using expungement or reexamination proceedings rather than TTAB proceedings.

Default Judgment Can Make TTAB Faster and Cheaper. Trademark attorneys said that filing a TTAB petition could be faster and less expensive than expungement or reexamination if the defending trademark owner fails to respond to the TTAB petition. A defendant's failure to respond within the time initially set can trigger a default judgement in favor of the petitioner.

Trademark attorneys stated that filing a petition with TTAB can result in a lengthy and expensive legal process. However, if the TTAB petition

[16]Before expungement and reexamination, the USPTO had the ability to independently remove trademark registrations from the official trademark register through the post registration audit. However, the audit relies on random selection and is not currently used by the USPTO to remove registrations on the agency's initiative. For example, if the USPTO identifies an inaccurate or false registration, the USPTO Director can initiate an expungement or reexamination proceeding against the registration at their discretion, but does not currently initiate a post registration audit against the registration.

results in a default judgment, trademark attorneys avoid being pulled into such a process.[17] As such, if a petitioner can avoid litigation with a default judgment, then it may be cheaper to file a petition with the TTAB. Trademark attorneys said they can often predict which trademark owners were likely to not respond, which helps them decide when to file a TTAB challenge. However, one attorney stated that it can be difficult to know for certain if a default judgment will be issued in their favor, and that can make filing a petition with the TTAB riskier than filing an expungement or reexamination petition.

Trademark attorneys stated that it can be cheaper to receive a default judgment from a TTAB proceeding rather than filing an expungement or reexamination petition given the higher relative initial costs associated with constructing an expungement or reexamination petition. Additionally, trademark attorneys told us that it takes more time and resources to prepare an expungement or reexamination petition because of the higher initial evidence standard that the petition must meet and because it can be challenging to collect evidence to "prove a negative," which in the case of an expungement petition means proving that a trademark has never been used, and in the case of a reexamination petition means proving that a trademark was not in use on or before a particular relevant date.[18]

New Procedures Are Unfamiliar. Because the procedures are new, trademark attorneys need extra time to become familiar with them. Several trademark attorneys stated that their law firms have processes and resources for handling TTAB proceedings, but do not have such processes and resources for the new procedures. For example, several

[17]A petitioner receiving a default judgment from the USPTO on a nonuse claim may also receive a partial refund of the filing fee associated with filing a petition with TTAB. Specifically, the petitioner may receive a $200 refund for each class of goods and services included in the petition. Without consideration for the potential refund, submitting a cancellation petition to TTAB has a $600 filing fee if filed electronically and $700 if filed with a paper form.

[18]Expungement and reexamination petitions have a higher initial evidence standard because they must establish a "prima facie" case, which is an argument supported by enough evidence that it is accepted at face value. Filing with TTAB does not require the petitioner to provide evidence in the complaint.

In order to prove documentary evidence of nonuse, USPTO guidance recommends petitioners provide documentation that a trademark did not show up in searches across multiple e-commerce websites or relevant specialty retailers. The USPTO also recommends using Archive.org's "Wayback Machine" to search for evidence of past nonuse. If the USPTO determines that a petitioner's search was not sufficiently comprehensive, the agency will not institute the expungement or reexamination petition.

attorneys stated that their law firms have developed standardized forms and templates they can use to easily file TTAB petitions. One attorney added that having established processes and resources for handling TTAB petitions lowers the administrative burden associated with filing these petitions relative to expungement and reexamination petitions.

New Procedures Have Longer Response Times. The USPTO gives trademark owners who have an expungement or reexamination petition filed against them 3 months to respond to the petition. For a TTAB proceeding, TTAB generally allows the trademark owner 40 days to respond to a cancellation petition. If the trademark owner being petitioned does not respond within 40 days, then the TTAB issues a notice of default along with a show cause order, giving the registrant an additional 30 days to respond. If no response is forthcoming, the TTAB enters a default judgment in the petitioner's favor. Given these time frames, if a petitioner anticipates they will receive a default judgment in their favor, they can resolve the issue more quickly at TTAB. Several trademark attorneys stated they believe the 3-month response period associated with expungement and reexamination petitions is too long.

Settlement Agreements Are Ruled Out. Trademark attorneys also identified that expungement and reexamination petitions foreclose the possibility of reaching a settlement or trademark coexistence agreement as being a disadvantage of using the new procedures.[19] Because expungement and reexamination procedures are "ex parte," the petitioner is no longer involved in the process once they submit their petition to the USPTO. Petitioners do not have the ability to withdraw an expungement or reexamination petition once they submit it to the USPTO. Because a TTAB proceeding allows for negotiations between participants to continue, and expungement and reexamination proceedings do not, a petitioner who believes they may be able to reach a settlement with the trademark owner they are petitioning against would likely not want to use the new procedures.

[19]A trademark coexistence describes a situation in which two different trademark owners reach an agreement to use a similar or identical trademark to market a product or service without necessarily interfering with each other's businesses. For example, the hypothetical companies of ACME automobiles and ACME gyms may agree to a trademark coexistence that describes the circumstances under which each company can use their "ACME" trademark to ensure they do not interfere with each other's businesses.

Trademark Attorneys Rarely Use Letters of Protest to Address Potentially False or Inaccurate Claims of Use

Trademark attorneys consider the third-party evidence submission procedure (i.e., letter of protest) to be a low-cost, low-risk method of bringing evidence to the attention of USPTO trademark examining attorneys that they otherwise may have missed during the examination process.[20] Many trademark attorneys we spoke with stated they have used the procedure, although infrequently to contend that a trademark application includes false or inaccurate claims of use, such as a manipulated image.[21] This is reflected in data we reviewed on letters of protest. We found that 1.1 percent (42 out of 3,811) of all letters of protest in Fiscal Year 2022 were submitted on the basis of nonuse.[22]

Small Businesses Avoid Trademark Disputes.

According to trademark attorneys we met with, small businesses rarely engage in trademark disputes, such as expungement, reexamination, and TTAB proceedings, because small businesses are sensitive to the costs associated with disputes. One trademark attorney further stated that small businesses will potentially pursue alternatives that will hopefully allow them to avoid a dispute. Alternatives could include choosing a new trademark, trying to work out a coexistence agreement with the blocking trademark owner, or using the letter of protest procedure.

Source: GAO. | GAO-24-106533

One trademark attorney stated that they do not typically file letters of protest on the basis of nonuse because it can be difficult to construct the submission such that it aligns with USPTO guidance. Specifically, USPTO guidance says letters of protest should not include "legal arguments or persuasive language," and the trademark attorney stated it can be difficult to construct a nonuse letter of protest without crossing this line.[23]

In total, between December 29, 2021, and June 27, 2023, the USPTO received 122 letters of protest that assert that a trademark has not been used in commerce.[24] When the USPTO receives a letter of protest, the agency considers whether the evidence is relevant. If relevant, the USPTO will forward the evidence to the assigned USPTO trademark examining attorney for consideration of whether a refusal should be made. Of the 122 letters of protest it received between December 29,

[20]The USPTO charges a $50 filing fee for letter of protest submissions.

[21]Letters of protest can be submitted under several different bases, such as likelihood of confusion or genericness.

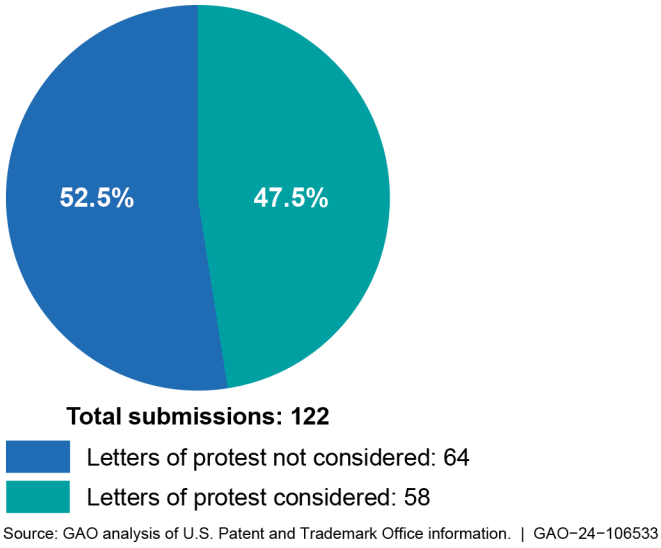
[22]Letters of protest could not be submitted on the basis of nonuse until December 2021. As such, there were 2 months in fiscal year 2022 where letters of protest could not be submitted on the basis of nonuse.

[23]One attorney stated that it is easier to file a letter of protest for some filing bases, such as likelihood of confusion, because it is easier to intuitively understand why the evidence is relevant. Evidence submitted on the basis of nonuse may not be as easy to intuitively understand. As such, the individual submitting the evidence may need additional explanation of what their evidence is showing. However, it can be difficult to include this additional explanation of the evidence while also abiding by the USPTO's guidance of not including "legal arguments or persuasive language."

[24]This analysis reflects the most complete data available for the 30-month period since the TMA was enacted. The analysis begins on December 29, 2021, because this is when the first letter of protest on the basis of non-use was submitted to the USPTO.

2021, and June 27, 2023, the USPTO forwarded 58 for further consideration by a USPTO trademark examining attorney (fig. 6).

Figure 6: USPTO Decisions on Whether to Consider Letters of Protest, December 29, 2021, to June 27, 2023



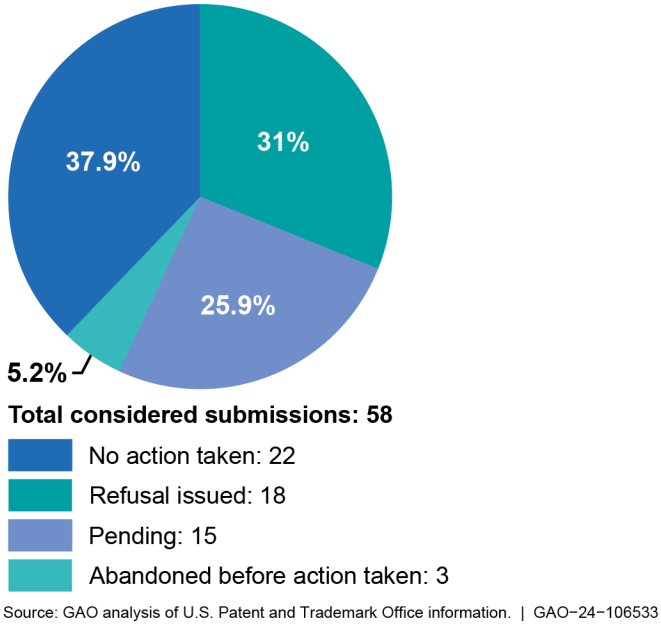
Source: GAO analysis of U.S. Patent and Trademark Office information. | GAO−24−106533

Of the 58 “considered” letters of protest, 18 resulted in the trademark examining attorney issuing a refusal of registration on the trademark in question based on the evidence included in the letter of protest, while 22 did not result in a refusal (fig. 7).[25] All other “considered” submissions were either abandoned by the applicant before the examining attorney took an action or are still waiting for the examining attorney to take a final action. Additionally, of the 58 “considered” letters of protest, 18 resulted in the trademark examining attorney requesting additional information from the applicant related to claims of use.[26]

[25]If an examining attorney did not issue a refusal based on the evidence in the letter of protest, this does not mean that the examining attorney approved the application for publication or that the trademark application issued as a registration. This is because there could be other grounds on which the application was refused. The protestor’s evidence may be relevant, but it may not matter because the examining attorney already issued the refusal on the basis of other relevant evidence.

[26]All 18 letters of protest in which the trademark examining attorney requested additional information from the applicant related to claims of use eventually resulted in the trademark examiner issuing a refusal of registration on the trademark in question.

Figure 7: USPTO Actions Taken on Letters of Protest, December 29, 2021, to June 27, 2023



Source: GAO analysis of U.S. Patent and Trademark Office information. | GAO−24−106533

Some trademark attorneys stated that they consider the letter of protest procedure to be a useful tool to the extent that the submissions provide an opportunity to share evidence regarding a trademark early to avoid more costly litigation options through the TTAB.

The USPTO Uses Sanction and Audit Programs to Address False and Inaccurate Claims of Use

The USPTO uses its administrative sanctions program to identify and sanction trademark applicants who file applications that have false or inaccurate claims of use or are otherwise fraudulent. The USPTO also uses its post registration audit to cancel some trademark registrations with false claims of use.

The USPTO Sanctions Trademark Owners and Applicants Who Have Filed False or Inaccurate Trademark Applications

The USPTO's administrative sanctions program identifies and reviews trademark filings that appear to violate the USPTO's Trademark Rules of Practice or the USPTO website's Terms of Use, and as appropriate, issues sanctions against trademark owners and applicants responsible for

violating USPTO rules.[27] The administrative sanctions program uses a number of different information sources to initiate and support its reviews, including internal data sources, external tips, and internet searches.

USPTO Sanction Order

In January 2022, the USPTO issued a sanction order after it discovered that a Pakistani company was posing as dozens of different companies that appeared to be based in the United States and offering low-cost assistance with filing U.S. trademark applications.

The company would solicit parties interested in applying for a trademark registration by touting falsely low fees and time frames to obtain registration. The company would intercept official USPTO communications by providing improper email addresses, and in turn send their clients false, yet official-looking letters, bearing the actual seal of the USPTO, threatening customers with legal action if they failed to register their logos with the USPTO within a particular time period. These fake demand letters, misappropriating the USPTO name, logo, and seal, scared customers into paying for unnecessary services.

The company also falsified electronic signatures on forms that needed to be signed by their clients when submitting trademark filings with the USPTO. The company named in the sanction order has also been under investigation from Pakistan's Federal Investigation Agency for criminal fraud.

Source: U.S. Patent and Trademark Office (USPTO). | GAO-24-106533

Unlike the new expungement and reexamination procedures created by the TMA, the administrative sanctions program does not focus exclusively on issues related to false claims of use and sanction orders may be issued without any connection to false claims of use. The program may identify several violations in a single sanction order, including a false domicile address, unauthorized practice of law, improper signatures, or unauthorized account access.[28]

Many final sanction orders only affect one trademark application or registration. However, final sanction orders do not need to address problematic trademark applications or registrations on a case-by-case basis, unlike the new reexamination and expungement procedures created by the TMA. As such, one final sanction could potentially address thousands of applications and registrations. Because sanction orders can broadly address problematic trademark filings, they offer an effective method for addressing large scale violations of USPTO rules, according to USPTO officials.

For example, the USPTO issued a final sanction order in January 2022 that affected more than 5,500 trademark applications and registrations, although it was not related to false claims of use. While the USPTO has not issued a large scale final sanction order that identifies false claims of use as a basis for the sanctions, it has issued sanction precursor orders

[27]The USPTO's Trademark Rules of Practice include rules concerning signatures, certificates, and representation of others in trademark matters before the USPTO.

[28]Attorneys with USPTO.gov verified accounts can sponsor additional accounts that are then attached to their own. The intent is to provide trademark attorney support staff with access to the USPTO's online trademark systems under the direct supervision of the sponsoring attorney. However, according to the USPTO, some users have abused this feature to allow unauthorized individuals, such as foreign domiciled agents and attorneys, to access the USPTO's online trademark systems. The USPTO will require sponsored support staff accounts to be ID verified beginning in January 2024.

called “show cause orders” that do so.[29] For example, the USPTO issued a show cause order against a trademark filing firm and its officials in August 2022 that affected more than 2,200 trademark applications and registrations, and another against a different entity in December 2022 that affected more than 5,300 trademark applications and registrations, each of which identified false claims of use as a basis for the proposed sanctions.[30]

A given sanction order may include various types of sanctions such as deactivating the USPTO.gov account of the sanctioned user; not allowing the sanctioned user to submit documents for filings (such as a trademark renewal filing); terminating submissions from sanctioned users (such as trademark applications); and removing privileges from the account of the sanctioned user (such as not allowing them to sponsor USPTO.gov accounts).

The administrative sanctions program uses several different information inputs to support its reviews, including internal data sources, external tips, and internet searches. For example:

- Internal data sources used by the administrative sanctions program include Trademark Reporting and Application Monitoring system data reports, Trademark Electronic Application System filing metadata, finance data (such as payment methods used in connection with fee-based submissions), and USPTO.gov account information.
- The USPTO also may receive external tips about activities that violate USPTO trademark guidelines through the TMScams@USPTO.gov email inbox.[31] According to data provided by USPTO there were 547 total submissions to the TMScams@USPTO.gov inbox in fiscal years 2021 and 2022, and 1378 submissions in fiscal year 2023.

[29]Before the USPTO issues a final sanction order, it may first issue a “show cause order” to the party it is attempting to sanction. The “show cause order” proposes sanctions, describes the basis for the sanctions, and provides supporting evidence for the guideline violating behavior. The party receiving the “show cause order” is then given an opportunity to argue why they should not be sanctioned before the USPTO makes a decision on whether it will issue a final sanction order.

[30]The “false claims of use” in each of the example show cause orders were related to falsified invoices and mocked-up e-commerce storefronts.

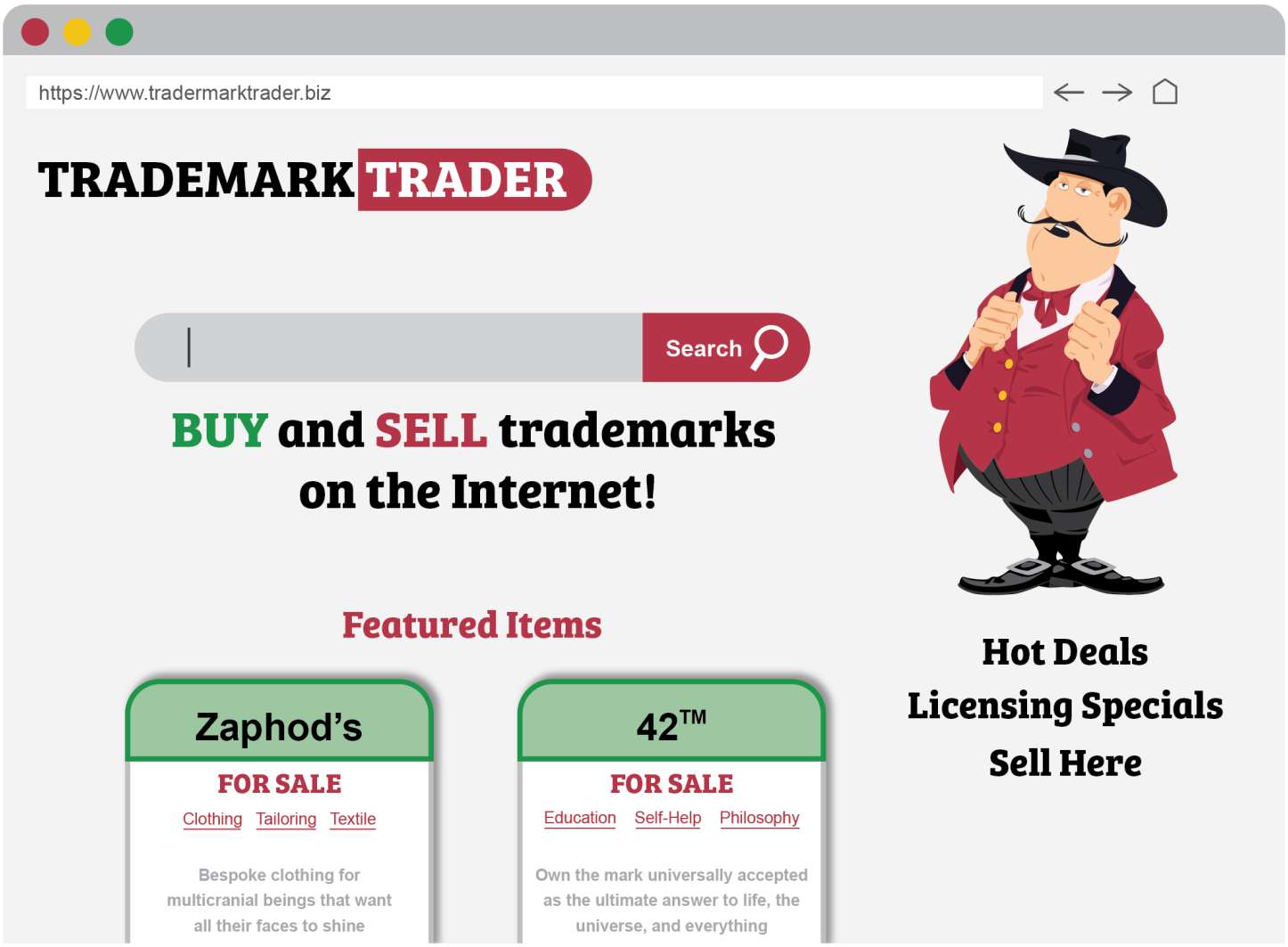
[31]Individuals who are affected by or who identify behavior that violates USPTO guidelines can share their observations with the USPTO through the TMScams@USPTO.gov email inbox. USPTO officials stated that they regularly review submissions to the inbox.

- USPTO officials involved with the administrative sanctions program stated that they also leverage internet searches to support their investigations. Specifically, the USPTO may search for evidence to support their sanction orders on social media sites, law firm websites, mocked-up e-commerce storefronts, or trademark auction sites (fig. 8).[32] Trademarks for sale on trademark auction sites might not be in use in commerce.

[32]A mocked-up e-commerce storefront is an illegitimate e-commerce website that does not sell actual goods and has been created solely for the purpose of creating the perception that a trademark is legitimately being used in commerce. According to a USPTO official, some trademark applicants attempt to prove use of the trademark by submitting links to or screenshots of these illegitimate e-commerce sites in trademark applications.

According to USPTO officials, potential types of evidence that may be identified through internet searches include evidence that: the trademark is listed for sale on a trademark auction site; the trademark does not have a presence on popular social media sites; goods or services using the trademark cannot be purchased on popular online shopping websites; goods or services using the trademark are listed on a mocked-up e-commerce storefront; or the website for the law firm associated with the trademark includes fake names or otherwise does not seem legitimate.

Figure 8: Illustrative Example of a Fictitious Trademark Auction Site



Source: GAO (data); Alexandr Sidorov/stock.adobe.com (images). | GAO-24-106533

Note: The trademarks and website in this figure are fictitious and for illustrative purposes only.

The USPTO has mechanisms and processes in place for enforcing sanctions related to USPTO.gov accounts or pending applications. However, the USPTO has not yet implemented a scalable method of enforcing sanctions against trademark registrations where the agency has identified a large-scale pattern of rule violations through the sanctions review process.

The USPTO has implemented additional initiatives to support the administrative sanctions program. For example, the USPTO requires identity verification for USPTO.gov accounts.[33] Before account verification, a user whose account was suspended for misuse could circumvent the suspension by creating a new account with a new email address. Now that USPTO.gov accounts are tied to the user's identity, users who violate USPTO guidelines are no longer able to create a new account, which helps the USPTO ensure that the sanctions it issues are enforced.

Another initiative the USPTO has implemented is the "U.S. counsel rule", which requires individuals who are not domiciled in the United States to be represented by a U.S.-licensed attorney when engaging in trademark matters before the USPTO. The USPTO requires that all trademark applicants and registrants provide their current domicile address when submitting trademark filings so that the USPTO can determine the identity of the owner or applicant, and whether the owner or applicant must be represented by a U.S.-licensed attorney to file documents related to trademark matters with the USPTO.[34] The USPTO stated that the address requirement is "crucial" to the agency's efforts to fight the "unprecedented increase in trademark filing scams" that the agency has experienced in the last few years.

While the USPTO relies on initiatives such as identity and address verification to enforce sanctions, trademark attorneys stated that the new verification initiatives are too burdensome and invasive for honest trademark owners and applicants. For example, trademark attorneys expressed concerns with having to provide their personal information, such as photos of themselves, to obtain a verified USPTO.gov account. USPTO identity verification policy allows individuals to submit a notarized paper verification form to verify their identity, which does not require them to provide a photograph of themselves.

[33]As part of mandatory account verification, the USPTO verifies the identity of any individual registering for a USPTO.gov account. Individuals can complete verification online, which requires them to provide identification, such as a government-issued ID, and proof that the identification is their own, such as a picture of themselves. Individuals can also verify their identity by submitting a notarized paper verification form through the mail, which does not require them to provide a photograph of themselves.

[34]The USPTO uses an address verification system to ensure provided domicile addresses meet agency requirements.

Trademark attorneys also stated they had concerns with the address verification initiative. For example, several trademark attorneys stated that their clients do not always have acceptable domicile addresses to provide to the USPTO. Trademark attorneys stated that many trademark owners' official listed addresses are a PO Box or commercial mail receiving agency (CMRA), but USPTO guidance states that these are generally not considered acceptable domicile addresses.[35] Trademark attorneys also stated that they have had to go "back and forth" with the USPTO to determine what would be considered an acceptable domicile address, and that this process added unnecessary time and cost to the trademark registration process.

Trademark attorneys also expressed concerns with having to provide the USPTO with home addresses for their clients. Several trademark attorneys said that the USPTO has previously inadvertently exposed the home addresses of trademark owners and applicants.[36] The USPTO's notice regarding the data exposure stated that the leak was not the result of malicious activity and that the USPTO does not believe the exposed domicile information had been misused.[37]

[35]The USPTO does not accept PO Boxes and CMRAs as acceptable domicile addresses for statutory, operational, and fraud risk reasons. PO boxes and CMRAs do not meet the Lanham Act's requirement for a domicile address (a PO box, by definition, is not a domicile); do not allow the USPTO ascertain whether the applicant is a real person; and were routinely used by foreign applicants to circumvent the U.S. Counsel Rule.

[36]According to the USPTO, between February 2020 and March 2023, the USPTO inadvertently exposed domicile addresses associated with trademark filings. The exposure was caused by issues with data retrieval performed by USPTO's application programming interfaces (APIs).

[37]According to USPTO officials, the agency responded to the inadvertent disclosure of personal information by shutting down noncritical APIs and removing the impacted data from public facing databases. The agency then worked to resolve the technical issues within their system that allowed the exposure by developing and testing long-term fixes. Once the USPTO was confident that the technical issues were remedied, the agency re-enabled the APIs and put the data back on public facing databases, with the personal information now properly hidden. To prevent similar issues from occurring, the USPTO Office of the Chief Information Officer added checks in the functional and integration testing steps to verify and double check sensitive data are properly hidden.

The USPTO Conducts Audits and Removes Falsely or Inaccurately Claimed Goods and Services from Trademark Registrations

The USPTO's post registration audit provides the agency with a method to regularly address false claims of use in trademark registrations at a large scale. According to data provided by the USPTO, since the post registration audit was formalized in November 2017, the USPTO has audited 27,009 randomly selected trademark registrations.[38] Of these 27,009 audits, 3,518 have resulted in a cancellation of the entire trademark registration (including all goods and services), and 10,919 have resulted in at least one deletion of a specific good or service within a trademark registration.[39] For additional details about the total number of audits conducted by the USPTO, see appendix III.

The USPTO deletes goods or services within classes from trademark registrations when audited trademark owners are unable to prove that they are using their trademark for the goods and services that the USPTO is auditing. Additionally, if a trademark owner ignores USPTO's notification of the post registration audit, the USPTO will cancel their entire trademark registration. According to USPTO data we reviewed, 87 percent of trademark owners responded to the initial audit notification between fiscal years 2018 and 2022.[40]

[38]To be eligible for audit selection, the trademark owner must have filed a Section 8 or Section 71 declaration of use to maintain the trademark registration within required timelines and the trademark registration must include at least one class with four or more claimed goods or services or at least two classes with two or more claimed goods or services per class.

Data are through June 27, 2023, to account for the 30-month period since the TMA was enacted on December 27, 2020.

[39]A single trademark registration may cover many goods and services across many different classes. As such, if an audit results in a good or service being deleted from a trademark registration, this does not necessarily mean that the entire registration is cancelled. Rather, the trademark owner gets to keep their registration, but it covers fewer goods and services than it did previously. The total number of goods and services deleted as a result of audits cannot be reliably reported because of inconsistencies in the USPTO's data collection.

Among the 27,009 audits we reviewed, 479 resulted in both the deletion of at least one specific good or service within the trademark registration, and the cancellation of the entire trademark registration. USPTO guidance describes situations where this may occur. For example, if the trademark owner deletes a good or service from their registration, but does not pay the deletion fee or does not respond to subsequent USPTO office actions, this results in their entire registration being cancelled.

[40]Fiscal year 2018 data begin in November 2017 when the post registration audit was formalized.

USPTO officials stated that they use post registration audit "deletion rate" as a measure of trademark register integrity.[41] The "deletion rate" represents the share of audits that received responses that resulted in at least one deleted good or service. Based on our review of USPTO data, the overall deletion rate for post registration audits between fiscal years 2018 and 2021 was 53 percent, meaning that 53 percent of audits that received responses eventually resulted in at least one deletion. Further, the overall deletion rate peaked in fiscal year 2018 at 57 percent but has decreased each year since, to a low of 49.5 percent in fiscal year 2021, suggesting that the overall integrity of the trademark register is marginally improving each fiscal year.[42] USPTO officials believe that these audits are representative of the overall health of the trademark register—which suggests that more than 1 million trademark registrations may include falsely or inaccurately claimed goods and services.[43] According to USPTO officials, these falsely and inaccurately claimed goods and services originate from a historical global and domestic practice of inaccurately overclaiming goods and services to obtain a larger scope for the registration as well as a more recent influx of applications intended to be warehoused for possible future use, among other factors.

The deletion rate differs substantially depending on the filing basis that was originally used to file the trademark application. Most registrations that USPTO audits are "use based" applications, but the agency also audits trademark registrations received from foreign countries with different registration requirements through trademark treaty agreements

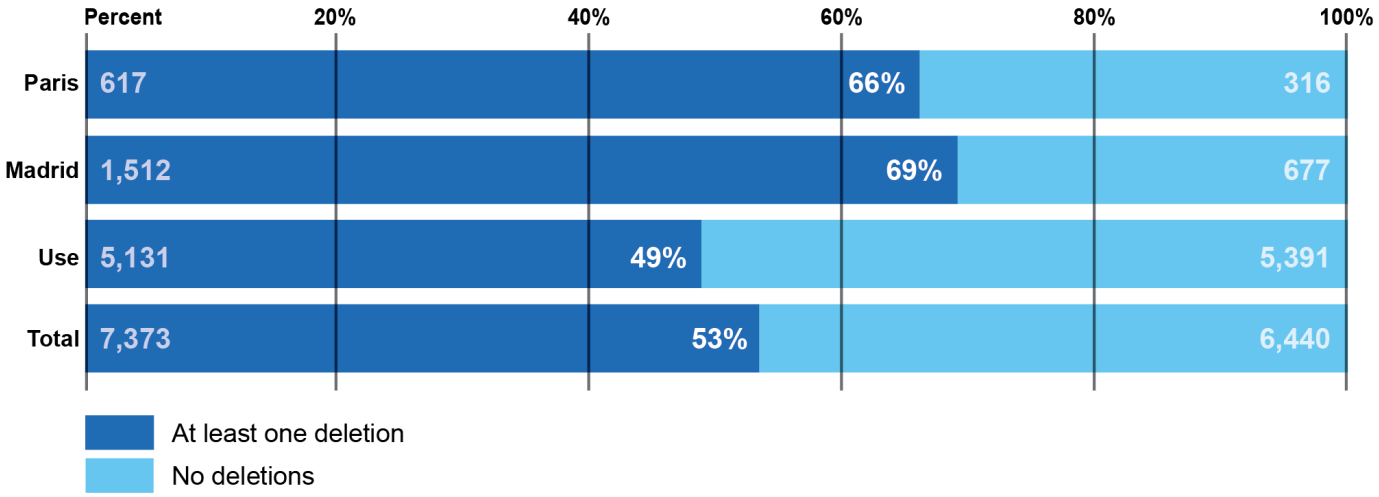
[41]While the USPTO does not reliably track the total number of goods and services deleted by audits, it does reliably track the number of audits that have resulted in at least one deletion. Because deletion rate is calculated using the number of audits that have resulted in at least one deletion, and not the total number of deleted goods and services, it is not affected by the USPTO's incomplete deletions data and can be considered a reliable statistic.

[42]Fiscal year 2021 data ends on June 27, 2021. Deletion rate cannot be accurately calculated after June 27, 2021, as the USPTO does not have a method of filtering pending audits out of the overall data. USPTO officials stated that no audit has taken longer than 2 years to complete, so the 2 most recent years of data were excluded from deletion rate calculations to ensure they would not be biased by pending audits.

[43]We arrive at the claim that more than 1 million trademark registrations may include falsely or inaccurately claimed goods by multiplying the post registration audit deletion rate for fiscal year 2021 (49.5 percent), by the total number of active USPTO trademark registrations as of fiscal year 2021 (2.8 million).

such as the Madrid Protocol or the Paris Convention. [44] Based on our review of USPTO data, treaty applications from foreign countries have higher deletion rates than "use based" applications. Specifically, "use based" registrations audited between fiscal years 2018 and 2021 have an overall deletion rate of 49 percent, compared to 69 percent for Madrid Protocol registrations and 66 percent for Paris Convention registrations (see fig. 9). Given that the USPTO considers deletion rate to be representative of the integrity of the trademark register, these figures indicate that treaty registrations are more likely to include false claims of use than "use based" registrations. Total deletion rate figures sorted by fiscal year and filing basis are included in appendix III.

Figure 9: USPTO Post Registration Audit Deletion Rates by Filing Basis, Fiscal Years 2018-2021



Source: GAO analysis of U.S. Patent and Trademark Office information. | GAO−24−106533

Note: Use based filings are trademarks filed under Lanham Act Section 1(a) on the basis that the trademark is currently in use in commerce or filed under Lanham Act Section 1(b) on the basis that the mark is intended to be used and where use must be established prior to registration.

Paris Convention applications are filed under Lanham Act Section 44(e) and are filed by trademark owners with a foreign registration of the same mark for the same goods and/or services from the owner's country of origin.

[44]A foreign trademark owner may file an application at the USPTO via the Madrid Protocol or Paris Convention, claiming treaty benefits based on their foreign trademark application or registration. To claim those benefits, the original trademark application or registration must be filed with or registered in a country that is a contracting party to the relevant treaty agreement. Trademark owners in the United States may also use these treaty agreements to gain treaty benefits for their trademarks in foreign countries.

Madrid Protocol applications are filed under Lanham Act Section 66(a) and are based on a request for extension of protection of an international registration to the United States sent from the International Bureau of the World Intellectual Property Organization.

USPTO officials and trademark attorneys stated that treaty registrations, such as those obtained from Madrid Protocol or Paris Convention trademark applications, likely have higher rates of falsely or inaccurately claimed goods and services because many foreign trademark offices do not require applicants to demonstrate that a trademark has been "used in commerce" before receiving a trademark registration.[45] As such, a treaty application may go through legitimate processes to get on the USPTO trademark register and still fail to pass an audit.

Several trademark attorneys stated that the post registration audit gives them a way to communicate to their clients the importance of only filing their applications for goods and services that they are legitimately using in commerce or that they have a bona fide intent to use in commerce. Specifically, trademark attorneys can communicate the risk of cancellation or deletion, as well as having to pay the deletion fee associated with a failed audit, with their client to reinforce the idea that there may be consequences if they falsely or inaccurately claim goods or services in their trademark application.[46] Some of these trademark attorneys stated that this is especially useful for communicating risks with foreign clients who may be filing their trademark application through a treaty agreement.

Several trademark attorneys stated that they would like to see the USPTO move away from the current process of randomly auditing registrations due for their maintenance filings, and instead have a more targeted audit that would be aimed at trademark registrations likely to have falsely or inaccurately claimed goods. USPTO officials stated that they are currently exploring options to conduct audits that are targeted toward registrations that are more likely to include falsely or inaccurately claimed goods and services.

While many trademark attorneys we spoke with like the post registration audit and want to see it expanded, several thought it was very

[45]The USPTO has a "use based" trademark system that requires all registered trademarks to have been "used in commerce". This system is different from the systems that most foreign trademark offices use.

[46]The USPTO charges a deletion fee of $250 for each class in which goods or services are deleted.

burdensome, even for legitimate trademark owners.[47] Specifically, some trademark attorneys stated that the USPTO reviews evidence of use with more rigor during the audit process than it does during the application process, and that it can be difficult to obtain evidence of use that satisfies this more rigorous review.[48] To satisfy audit requirements, trademark owners must also provide the USPTO with more evidence of use than they were required to provide for their initial application.[49] One trademark attorney stated that they have had to delete goods from a trademark registration that their clients were legitimately selling because they were unable to produce evidence of use that met USPTO requirements, and they did not want to continue expending resources in an effort to satisfy the agency.

USPTO officials stated that the post registration audit is a useful tool for cleaning up the trademark register, but that it is still unclear how the audit is affecting the behavior of those who have not been audited. USPTO officials stated that they would like to be able to track if trademark owners are proactively updating their registrations by deleting unused goods and services from their trademark registrations in anticipation of a potential audit. However, current USPTO data systems are unable to capture all the information the agency would need to fully evaluate the impact of the audit on the behavior of trademark owners. As such, USPTO officials

[47]Some trademark attorneys also stated that the post registration audit can be frustrating for their clients because of unexpected costs including legal fees. Specifically, they noted that after paying to have their trademark renewed, clients do not expect to incur additional expenses. However, when a trademark owner is selected for an audit, they incur additional legal fees associated with the audit process, which trademark attorneys stated can be lengthy and resource intensive.

[48]USPTO guidance states that acceptable evidence of use must meet several requirements. For example, evidence of use must: (1) be a real example of how the trademark is being used in commerce (not a mock up, printer's proof, digitally altered image, rendering of intended packaging, or draft of a website that shows how your mark might appear), (2) show that the trademark is being used with the goods or services listed in the trademark application or registration, (3) show the trademark used in a way that directly associates the trademark with the goods or services included in the application or registration; and (4) show the trademark used in a way that consumers would perceive it as a source indicator for the good or services in your application (it functions as a trademark).

[49]USPTO guidance states that the USPTO will identify two specific goods or services per audited class and require audited trademark owners to provide additional evidence of use for the identified goods and services. When applying for a trademark, trademark applicants are only required to provide one piece of evidence of use per class, and they can choose which specific good or service they would like to provide the evidence of use for.

stated that they currently cannot determine how effective the audit has been overall.

The USPTO Has Taken Steps to Address Trademark Fraud, but Has Not Conducted a Fraud Risk Assessment and Faces Challenges in Employing Data Analytics for Fraud Risk Management

The USPTO has taken steps to address false and inaccurate claims and to address fraud risks to the trademark register. However, the agency has not conducted a comprehensive fraud risk assessment. In addition, it faces obstacles in using data analytics to support fraud risk management activities to prevent and detect trademark fraud.

The USPTO Has Taken Steps to Establish a Culture Conducive to Fraud Risk Management

We found that the USPTO has shown a commitment to combating fraud by taking steps to establish a culture conducive to fraud risk management. USPTO officials told us they use the term “register protection” to refer to efforts to protect the integrity of the trademark register, whether improper activities are deemed to be fraud or not.

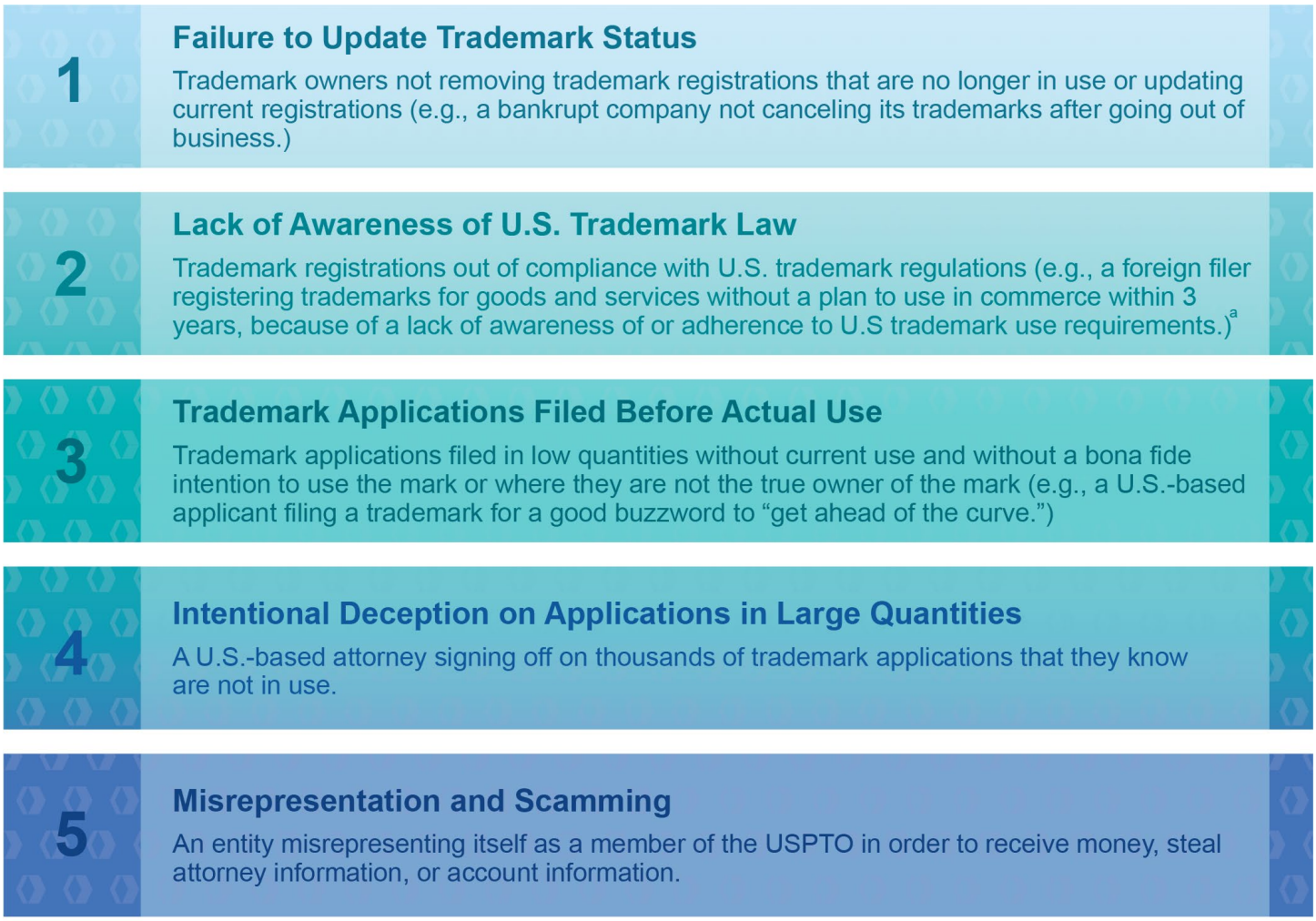
GAO Fraud Risk Framework Component

Commit to combating fraud by creating an organizational culture and structure conducive to fraud risk management.

Source: GAO. | GAO-24-106533

As we noted earlier, some inaccurate claims of use stem from foreign applicants and owners who often file trademarks on products before they are sold and are not considered fraudulent. Other claims stem from U.S. filers unfamiliar with use requirements, while trademark filings with altered images are clearly fraudulent (see fig. 10). Altered images may include different words or logos superimposed on the same product (fig. 11). The first step of GAO’s Fraud Risk Framework—commit—is for agencies to create an organizational culture and structure conducive to fraud risk management and establish a dedicated entity to lead fraud risk management activities.

Figure 10: Examples of Inaccurate Claims of Use and Trademark Fraud Risks



Source: GAO analysis of U.S. Patent and Trademark Office information. | GAO−24−106533

[a]According to the USPTO, case law requires filers under trademark treaty agreements such as the Madrid and Paris treaties to use their trademark by year three, although the USPTO does not affirmatively require proof of use until year five in maintenance procedures.

Figure 11: Fraudulent Images of the Same Flashlight with Different Logos Included in Trademark Applications Submitted to the USPTO

Source: GAO adaptation of U.S. Patent and Trademark Office images. | GAO-24-106533

The USPTO has responded to a rise in fraudulent trademark filings by establishing antifraud programs and changing the way potentially improper and fraudulent trademark applications are examined. For example, USPTO officials created a special task force in 2019 that is now known as the Register Protection Office. The office leads the agency's trademark antifraud efforts, develops policies to handle inaccurate, false, or fraudulent trademark applications, and reviews filing data and the TMScams@USPTO.gov inbox to identify trends or schemes that may justify the issuance of sanctions. Register protection officials also monitor sanctioned and suspicious accounts using information such as names, IP address, and payment information to track similar submissions. USPTO officials also engage in meetings, briefings, and training events with attorneys, brand owners, and intellectual property industry groups. Officials told us that these meetings are part of their informal fraud risk

assessment process. The register protection office works directly with USPTO senior leadership to discuss and confirm potential fraud schemes and sanctioning. However, officials told us that because the USPTO is set up to be a registration agency and not a law enforcement agency, it lacks statutory authority to prosecute parties engaging in improper behavior or levy civil fines.[50] As a result, USPTO's control activities to combat fraud involve administrative measures.

USPTO officials told us that during the significant rise in fraudulent and improper trademark applications, the agency told examining attorneys to report fraud if they noticed suspicious behavior or applications. But as trademark fraud schemes have become more difficult to identify during examination, the USPTO experienced a sharp rise in the backlog of unexamined trademark applications and examination inefficiency.[51] As a result, the USPTO now relies on the register protection office to lead antifraud work and remove suspicious applications from the examination pool for further review, thus enabling other examining attorneys to keep working.

The USPTO Has Not Conducted a Comprehensive Fraud Risk Assessment of the Trademark Register

USPTO officials described efforts to monitor and address fraud as part of their trademark register protection efforts. These efforts include the post registration audit and the administrative sanctions program. In addition, officials told us they had created a basic fraud risk profile in response to a Department of Commerce Inspector General report.[52] However, officials said they did not conduct a fraud risk assessment to create that profile, and we determined that the fraud risk profile did not contain many of the leading practices outlined below, such as determining a fraud risk tolerance that articulates an acceptable level of fraud risk.

[50]Individuals who knowingly and willfully submit fraudulent information to the USPTO could be subject to penalties under 18 U.S.C. § 1001; however, the USPTO would need to refer suspected instances to the Department of Justice (DOJ), and it would be incumbent on DOJ to pursue charges.

[51]According to USPTO data, the total number of unexamined new applications prior to first office action or awaiting examination more than tripled from 139,674 in Q1 2020 to 539,477 in Q1 2023. Application review time (total pendency) has increased from 9.4 months in Q1 2020 to 14.3 months in Q1 2023. (See https://www.uspto.gov/dashboard/trademarks/.)

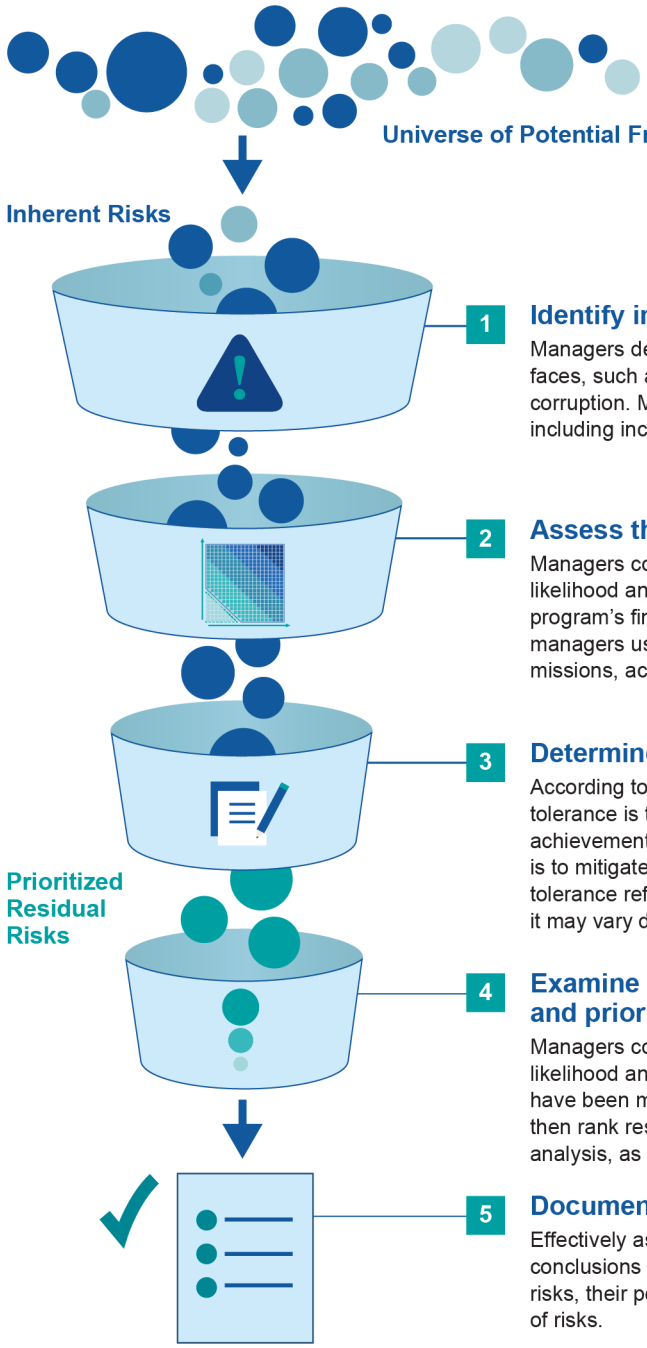
[52]U.S. Department of Commerce Office of Inspector General, *USPTO Should Improve Controls over Examination of Trademark Filings to Enhance the Integrity of the Trademark Register*, OIG-21-033-A (Washington, D.C.: August 11, 2021). This 2021 report made seven recommendations to USPTO to enhance the integrity of the trademark register.

Fraud Risk Framework Component: Plan regular fraud risk assessments and assess risks to determine a fraud risk profile.

Source: GAO. | GAO-24-106533

GAO's Fraud Risk Framework states that effective managers conduct a fraud risk assessment specific to their program by taking steps such as identifying appropriate tools, methods, and sources for gathering information about fraud risks and involving relevant stakeholders in the assessment process. Fraud risk assessments that align with the Fraud Risk Framework involve identifying inherent fraud risks affecting the program, assessing the likelihood and impact of those fraud risks, determining fraud risk tolerance, examining the suitability of existing fraud controls and prioritizing residual fraud risks, and documenting the results (fig. 12).

Figure 12: Key Steps of a Fraud Risk Assessment as Defined by GAO's Fraud Risk Framework



1 Identify inherent fraud risks affecting the program

Managers determine where fraud can occur and the types of fraud the program faces, such as fraud related to financial reporting, misappropriation of assets, or corruption. Managers may consider factors that are specific to fraud risks, including incentives, opportunity, and rationalization to commit fraud.

2 Assess the likelihood and impact of inherent fraud risks

Managers conduct quantitative or qualitative assessments, or both, of the likelihood and impact of inherent risks, including the impact of fraud risks on the program's finances, reputation, and compliance. The specific methodology managers use to assess fraud risks can vary by program because of differences in missions, activities, capacity, and other factors.

3 Determine fraud risk tolerance

According to *Standards for Internal Control in the Federal Government*,[a] risk tolerance is the acceptable level of variation in performance relative to the achievement of objectives. In the context of fraud risk management, if the objective is to mitigate fraud risks—in general, to have a very low level of fraud—the risk tolerance reflects managers' willingness to accept a higher level of fraud risks, and it may vary depending on the circumstances of the program.

4 Examine the suitability of existing fraud controls and prioritize residual fraud risks

Managers consider the extent to which existing control activities mitigate the likelihood and impact of inherent risks. The risk that remains after inherent risks have been mitigated by existing control activities is called residual risk. Managers then rank residual fraud risks in order of priority, using the likelihood and impact analysis, as well as risk tolerance, to inform prioritization.

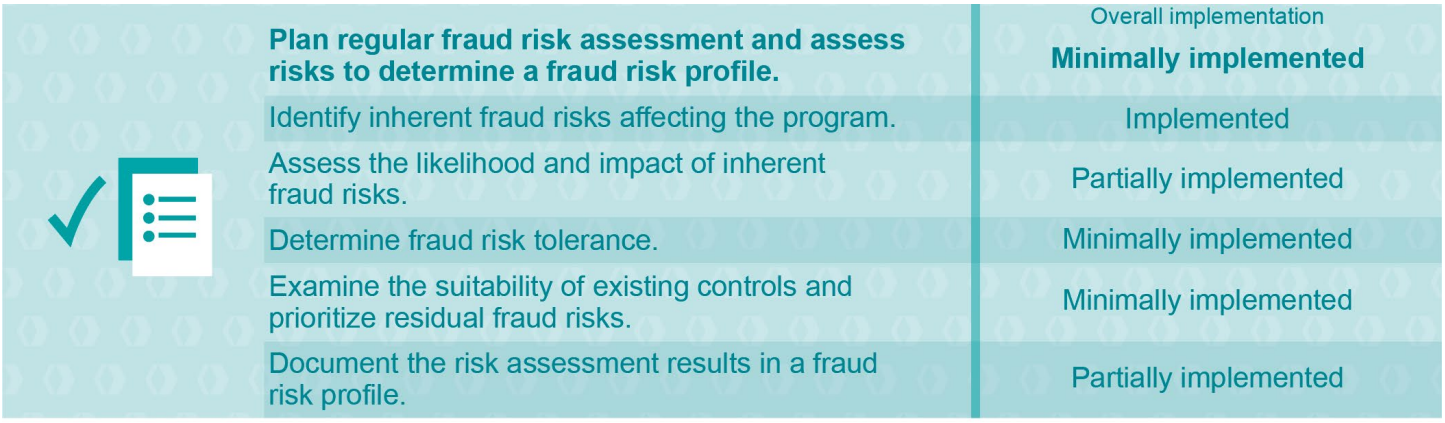
5 Document the program's fraud risk profile

Effectively assessing fraud risks involves documenting the key findings and conclusions from the actions above, including the analysis of the types of fraud risks, their perceived likelihood and impact, risk tolerance, and the prioritization of risks.

Source: GAO (information and icons). | GAO-24-106533

Below are details from our evaluation of the USPTO's current fraud risk policies and practices against key elements of the fraud risk assessment process in GAO's Fraud Risk Framework (fig. 13).[53]

Figure 13: Scorecard of the USPTO's Trademark Program Fraud Risk Assessment Efforts



Source: GAO analysis of U.S. Patent and Trademark Office information; GAO (icons). | GAO−24−106533

Note: See appendix I for details on how we determined the extent of implementation for each of the leading practices under the Fraud Risk Framework.

Identifying inherent fraud risks affecting the program. The USPTO has taken steps to identify inherent fraud risks from the universe of potential vulnerabilities facing the trademark register, including threats from various sources. USPTO officials described two different types of fraud schemes in the trademark system: filing mills and criminal groups. Filing mills are a common scheme in which companies file thousands of trademark applications, without any actual use, to receive trademark registrations that can subsequently be resold for a profit to those seeking access to the U.S market on e-commerce websites. Another common scheme involves criminal groups posing as the USPTO to fraudulently request money from trademark owners or steal client account information. According to USPTO officials, most of the agency's current fraud monitoring activities are ad hoc and include monitoring internal sources like the TMscams@USPTO.gov inbox, where applicants, registrants, and attorneys that have encountered potentially fraudulent behavior can submit complaints to the agency, and external sources like trade publications such as the World Trademark Review. Agency officials

[53]GAO, *A Framework For Managing Fraud Risks in Federal Programs*, GAO-15-593SP (Washington, D.C.: July 2015).

said that the high volume of trademark applications and constantly changing fraud schemes make assessing fraud risks to the trademark register difficult, especially with limited resources.

Assessing the likelihood and impact of fraud risks. The USPTO has considered the likelihood of fraud risks to some extent. Trademark schemes can vary in severity and likelihood, but each negatively impacts the trademark register, trademark owners, and attorneys. Trademark attorneys told us that navigating fraud on the register can increase time and costs for clients, and having account information hijacked can lead to a loss of current registrations and significant costs to attorneys and trademark owners. However, the USPTO did not document the likelihood or impacts of these schemes as part of a Fraud Risk Assessment. The USPTO's fraud risk profile in response to Commerce's Office of the Inspector General did acknowledge a general likelihood and impact, but it only did this for the general risk event of the USPTO issuing and maintaining trademark registrations obtained through fraudulent submissions. GAO's Fraud Risk Framework calls for agencies to undertake a more detailed likelihood and impact assessment, which would include not only a description of the likelihood but also of the impact of each identified fraud risk to a program. For example, these assessments could include either quantitative analysis, such as estimating the frequency of fraud and amount of losses based on a statistically valid sample or historical data of detected fraud, or qualitative analyses like risk scoring, where fraud risks are scored and ranked relative to each other based on likelihood and impact.

Determining fraud risk tolerance. GAO's Fraud Risk Framework defines risk tolerance as the acceptable level of fraud risks relative to the achievement of objectives. In other words, this could be managers' willingness to tolerate some potentially fraudulent activity, given the resource constraints in eliminating all fraud risks. Based on the risk tolerance, managers then rank remaining fraud risks in order of priority and document the fraud risk profile. Based on our assessment, the risk tolerance that the USPTO developed in response to the Commerce's Office of the Inspector General did not determine acceptable levels of fraud risk—for example, a permissible number of fraudulent applications getting registered each year. Additionally, the tolerance was not based on likelihood and impact assessments for multiple inherent fraud risks facing the trademark register. USPTO officials told us that they try to limit fraud to the greatest extent possible. However, according to the Fraud Risk Framework, eliminating fraud risk is not a realistic goal. Rather, effective managers are to define and document their level of tolerable

fraud risk. USPTO officials said they are devoting more examining attorneys to trademark examination rather than targeting fraudulent applications. Although they are making this tradeoff, they have not articulated it by describing a risk tolerance with a defined acceptable level of trademark fraud risk. Determining what fraud risks fall under a defined tolerance threshold could better position the USPTO to articulate what risks it is willing to tolerate including the acceptable level of impact on the integrity of the trademark register.

Examining the suitability of existing fraud controls and prioritizing residual fraud risks. The USPTO has enacted several control activities to reduce fraud risk, such as the creation of identity and address verification measures, mandatory USPTO.gov accounts, administrative sanctions, and the post registration audit, and has been able to evaluate the effectiveness of some of these fraud control activities. For example, the USPTO observed that account hijacking decreased after identity verification was implemented. It could observe this because its information systems can track the number of "unauthorized change of correspondence address" forms that had been submitted. However, the USPTO has not evaluated the effectiveness of sanctions orders, for example. Officials told us they aim to evaluate the effectiveness of sanctioning orders on fraud, but they lack the data systems to be able to make these evaluations. According to the Fraud Risk Framework, managers should consider the extent to which existing control activities—whether focused on prevention, detection, or response—mitigate the likelihood and impact of inherent risks and whether the remaining risks exceed managers' tolerance. The USPTO told us they lack sufficient data and data analytics capabilities to be able to fully examine the suitability of such fraud controls. By fully assessing existing fraud control activities and prioritizing remaining fraud risks, the USPTO could better ensure that its current control activities are addressing the most significant risks. Such analysis would also help the USPTO determine whether additional, preferably preventive, fraud controls are needed to mitigate residual risks or adjust existing control activities.

Documenting the risk assessment results in a fraud risk profile. According to the Fraud Risk Framework, effectively assessing fraud risks involves documenting the key findings and conclusions from the actions above, such as likelihood and impact assessments and a risk tolerance. The summation of these findings and conclusions is referred to as a fraud risk profile. Given that the USPTO has not fully addressed earlier steps in the Fraud Risk Framework, the agency has not been able to develop a comprehensive fraud risk profile. According to the Fraud Risk Framework, a risk profile can also help

agencies decide how to allocate resources to respond to residual fraud risks. Given the large size and complexity of the trademark register, a documented fraud risk profile could support the USPTO's resource allocation decisions as well as facilitate the transfer of knowledge and continuity across USPTO staff and changing administrations. Additionally, officials told us that USPTO is funded by user fees, and resource allocation and the cost-benefit analysis associated with it is a key concern when it comes to targeting fraud and efficiently examining trademark applications. Officials also reiterated that they would not want to devote trademark examining attorneys to fraud detection activities because this could increase the backlog of trademark applications. They also mentioned that they have limited expertise in conducting a comprehensive risk assessment, and their data systems are not always adequate for detecting and addressing fraud. As a result, the USPTO lacks reasonable assurance that it is aware of and addressing the most significant fraud risks facing the trademark register. Such a risk assessment would provide the detailed information and insights needed to create a fraud risk profile, which, in turn, is essential for creating an antifraud strategy.

The USPTO Faces Challenges in Employing Data Analytics to Support Fraud Risk Management Activities

The Fraud Risk Framework calls for agencies to design and implement control activities, including data-analytics activities, to prevent and detect fraud. These data-analytics activities can also help inform broader fraud risk management efforts including fraud risk assessments and can be used to develop a fraud risk strategy. The Fraud Risk Framework identifies leading practices for data analytics activities, such as data mining to look for outliers or suspicious activity, including having automated, real-time monitoring approaches. Additionally, federal internal control standards call upon managers in federal agencies to use quality information to achieve entity objectives.

According to USPTO officials, the agency has developed and uses data analytics capabilities to some extent. For example, the USPTO analyzes applications that are suspected of being improper as part of its administrative sanctions program. Officials look at elements in filer data when they are being evaluated for potential improper activity through the administrative sanctions program. This information can help the USPTO target additional applications or registrations than were initially flagged for sanctions. However, USPTO officials told us they were unable to systemically analyze incoming applications on an ongoing basis for potential fraud indicators due to a

Fraud Risk Framework Component: Design and implement a strategy with specific control activities to mitigate assessed fraud risks and collaborate to help ensure effective implementation.

Source: GAO. | GAO-24-106533

lack of data and sophisticated systems to collect and analyze these data. Additionally, USPTO officials told us that they were unable to fully analyze the effectiveness of other current control activities due to their current data systems. For example, the USPTO is unable to track whether trademark owners are proactively deleting unused goods or services in anticipation of a possible post registration audit. Officials told us they lack the data systems to be able to capture this information and evaluate the effectiveness of the post registration audit. Similarly, USPTO officials told us they are unable to evaluate the effectiveness of sanctions orders issued for bad behavior and are unaware of their overall effect on fraudulent behavior and fraud risk. This is because the data systems are outdated and not interoperable. Without effective data systems, the USPTO is unable to evaluate the effectiveness of current control activities.

Further, officials said trademark data systems have limited their ability to use advanced fraud detection analytics, like the ones academics described to us. Academics we interviewed told us that given the potential types of fraud risks the USPTO faces, the implementation of advanced data analytics, including predictive analytics, could be very beneficial to detecting potential fraud.[54] One academic we interviewed told us they believe that improper and fraudulent trademark applications often have indicators that can be used to identify them, such as unusual pairings of goods under the same application, and the use of front-end analytic and detection technology could be beneficial to detecting these applications.[55] Additionally, the Fraud Risk Framework notes that predictive analytic techniques can help increase the effectiveness of antifraud programs and eliminate fraud before it happens.[56] More advanced data systems could also allow the USPTO to automate data-analytics tests to identify unusual

[54]Predictive analytics in fraud detection is a computational technique that flags potentially fraudulent activity by examining patterns in existing data and applying it to incoming data. For more on this and other suggestions from academics, including technologies and procedural changes, see appendix IV.

[55]One academic we interviewed gave the example of a trademark application claiming use of fire extinguishers, eyeglasses, and computer software under one brand name.

[56]Predictive models have been used in federal settings before. We reported in 2012 that the Centers for Medicare & Medicaid Services (CMS) had implemented a system that uses historic Medicare claims and other data to identify high-risk claims in the Medicare fee-for-service program. The system includes predictive models, which aim to help identify providers with billing patterns associated with known forms of fraud. See GAO, *Medicare Fraud Prevention: CMS Has Implemented a Predictive Analytics System, but Needs to Define Measures to Determine Effectiveness*, GAO-13-104 (Washington, D.C.: Oct. 15, 2012).

patterns or outliers in trademark application data on a continuous, real-time basis. Academics told us that as generative AI becomes more advanced, the potential for more sophisticated fraudulent activity could increase, and the USPTO could benefit by thinking ahead in terms of fraud detection.[57] The Fraud Risk Framework describes the importance of updating fraud risk assessments, control activities, and strategies in light of changes to the operating environment. However, under their current data systems, the USPTO would be unable to implement analytics capabilities to detect improper and fraudulent trademark applications more efficiently. Consistent with the Fraud Risk Framework, using data analytics to monitor the trademark register could help position the USPTO to better identify and address trademark fraud as schemes evolve.[58]

Conclusions

The USPTO has recently been inundated with false and inaccurate applications for trademarks that are not being used in commerce. While the USPTO's trademark examining attorneys would ordinarily be the first line of defense in stopping trademark applications with false, inaccurate, or fraudulent claims of use, the office created a separate register protection team, allowing examining attorneys to continue to review trademark applications in a timely manner. The office has decided this tradeoff is an appropriate balance of registering trademarks to businesses that need them as soon as possible while acknowledging that some false, inaccurate, or fraudulent trademarks will end up on the register. However, despite making this tradeoff, the USPTO has not articulated a tolerance for these risks. Nor has the agency fully evaluated the effectiveness of fraud controls or documented a fraud risk profile, all of which are leading practices in GAO's Fraud Risk Framework. Taking actions laid out in the framework would allow the USPTO to better control fraudulent trademark activity and to limit false and inaccurate claims of use in general.

While trademark attorneys found that the new expungement and reexamination procedures were useful in many instances, they are unlikely to remedy upwards of 1 million trademark registrations with likely false and inaccurate claims of use. Given the USPTO's limited resources, using advanced analytics to detect applications or registrations with false,

[57]For more details on how GAO is researching AI for fraud detection in Supreme Audit Institutions, see – *https://www.intosaijournal.org/journal-entry/artificial-intelligence-combat-fraud/.*

[58]USPTO officials said that detection of fraudulent applications would be useful but they would need additional resources to act on those fraudulent applications, that is, to review and sanction the applications and registrations that are detected and to propose discipline for any complicit U.S. licensed attorneys.

inaccurate, or fraudulent claims of use could help to stop these trademarks before they appear on the register. However, the USPTO acknowledged that their data systems are inadequate to take advantage of some of the techniques that experts described to us, like predictive analytics. Taking steps to further improve trademark data systems would enable the USPTO to use advanced techniques to flag and block trademark applications and registrations with false, inaccurate, or fraudulent claims of use, and would help the agency evaluate the effectiveness of its fraud control activities.

Recommendations for Executive Action

Recommendation 1: The Commissioner for Trademarks should plan and conduct regular fraud risk assessments of the trademark register to determine a fraud risk profile that aligns with leading practices in the Fraud Risk Framework. Specifically, this process should include (1) identifying inherent fraud risks to the trademark register, (2) assessing the likelihood and impact of inherent fraud risks, (3) determining fraud risk tolerance, (4) examining the suitability of existing fraud controls, and (5) documenting the fraud risk profile.

Recommendation 2: The Commissioner for Trademarks should identify and implement improvements to current data systems to strengthen trademark data analytics for stronger fraud risk management.

Agency Comments

We provided a draft of this report to the Department of Commerce and the USPTO for review and comment. Commerce concurred with our recommendations, and the USPTO also provided technical comments, which we incorporated as appropriate. In its comments, reproduced in appendix V, Commerce stated that the USPTO has already made progress towards executing the recommendations, including embarking on a fraud risk analysis and adding capacity to fraud control efforts.

We are sending copies of this report to the appropriate congressional committees and the Secretary of Commerce. In addition, the report is available at no charge on the GAO website at http://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-6888 or WrightC@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on

the last page of this report. GAO staff who made key contributions to this report are listed in appendix VI.

Candice N. Wright
Director
Science, Technology Assessment, and Analytics

Appendix I: Objectives, Scope, and Methodology

The Trademark Modernization Act of 2020 (TMA) included a provision for GAO to assess the newly created expungement and reexamination procedures as well as the U.S. Patent and Trademark Office's (USPTO) efforts to address inaccurate and false claims of use in trademark applications and registrations. Specifically, the provision required that GAO examine data for the 30 months following enactment of the TMA, which was enacted on December 27, 2020.

This report examines 1) the extent to which third parties and the USPTO have used the new procedures to address inaccurate and false claims of use in trademark registrations; 2) other USPTO initiatives that address inaccurate and false claims of use; and 3) the extent to which the USPTO is using fraud risk principles to address inaccurate and false claims of use in trademarks.

For all objectives, we interviewed USPTO agency officials and reviewed agency briefings and documentation. Specifically, we met with officials from the Trademark Office for Administration, Trademark Office of Examination Policy, and Trademark Office of Operations. We also met with officials from the Trademark Trial and Appeal Board. In addition, we met with members of the Trademark Public Advisory Committee and the Trademark Examiner's Union.

To examine third party and USPTO use of procedures to address inaccurate and false claims of use, we collected and analyzed usage data from the USPTO on the new expungement and reexamination procedures introduced by the TMA, as well as on letters of protest, the post registration audit, and the administrative sanctions program. For the TMA procedures and letters of protest, we examined data from December 21, 2021, to June 27, 2023. This time frame reflects the most complete data available for the 30-month period since the new procedures took effect in December 2021. For the post registration audit, we analyzed data from the start of the program in 2017 through June 27, 2023. To assess the reliability of USPTO data, we submitted data reliability questionnaires to the agency, met with officials responsible for the data sets and conducted data testing. We determined the data to be reliable for the purposes of our report.

To obtain perspectives on the effectiveness of the USPTO's new procedures and additional actions that could improve the trademark register, we conducted semi-structured interviews with 10 trademark attorneys representing trademark owners, five representatives of top trademark-owning companies, three trademark industry associations, and

six academics who study fraud or trademark law. We selected trademark attorneys representing clients in a range of industries and experiences with USPTO procedures through a questionnaire sent to members of a trademark industry association. We selected representatives of top trademark-owning companies by reviewing a USPTO list of companies with the most trademark registrations, and selecting a subset of companies that included a range of industries and both domestic and international presence. We identified academics through a literature search.

To assess the agency's trademark fraud risk efforts, we evaluated the USPTO's current trademark fraud risk policies and practices against key elements of the fraud risk assessment process in GAO's Fraud Risk Management Framework (Fraud Risk Framework), a conceptual framework that identifies leading practices for managing fraud risk. We applied selected leading practices from the Fraud Risk Framework to the USPTO's fraud risk efforts at the time of our audit. We selected these leading practices from the first two key elements of the Fraud Risk Framework: Commit and Assess.[1] For each selected practice, we considered (1) criteria from the Fraud Risk Framework and (2) relevant federal internal control standards. We then evaluated the USPTO's fraud risk efforts compared to selected leading practices to determine whether the practice was:

- Implemented- The agency provided evidence which showed that it implemented addressed key considerations of the leading practice;
- Partially implemented- The agency provided evidence that it had addressed at least some of the key considerations of the leading practice;
- Minimally implemented- The agency provided evidence that it had addressed one of the key considerations of the leading practice.

We conducted this performance audit from January 2023 to March 2024 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain

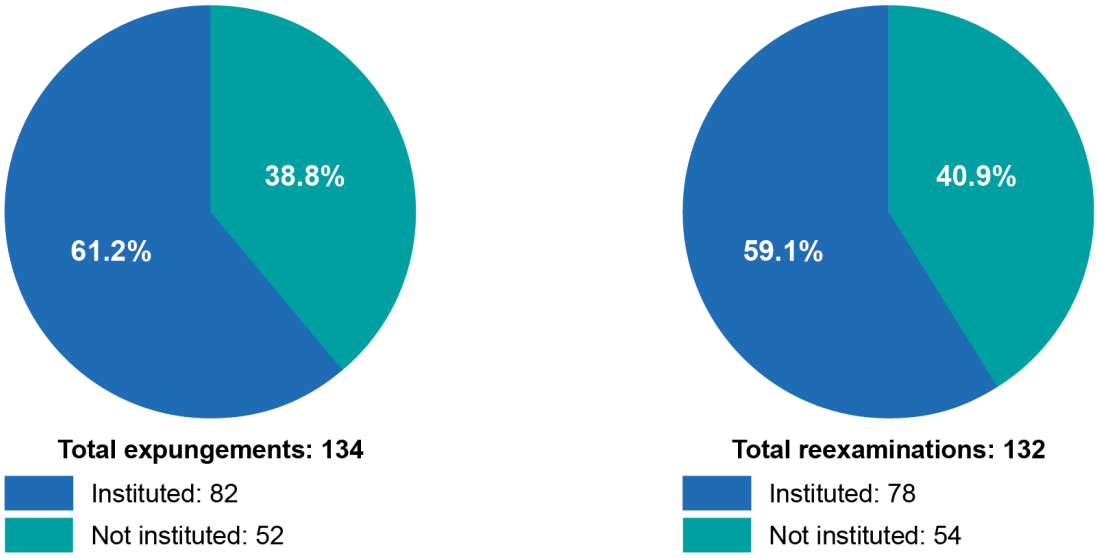
[1]The Fraud Risk Framework consists of discrete elements that build upon each other. In other words, to fully design and implement a strategy with specific control activities to mitigate assessed fraud risks, an entity would have to first implement the *Assess* component and conduct regular, comprehensive fraud risk assessments. Therefore, we did not assess- (3) *Design and Implement* and (4) *Evaluate and Adapt* as part of this review because we determined that the USPTO still needed to make progress in (2) *Assess*.

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.

Appendix II: Data on Expungement and Reexamination

Excluding Director-initiated proceedings, the USPTO has instituted 82 expungement petitions and 78 reexamination petitions (fig. 14).[1] Petitions that were not instituted fall into one of three additional categories: "Not Instituted," "Awaiting Institution Decision," or "Dismissed Due to Prior Pending Proceeding."[2] Excluding any cases that are awaiting an institution decision or that have been dismissed, the USPTO has instituted 61.2 percent of petition submitted expungement proceedings and 59.1 percent of petition submitted reexamination proceedings.

Figure 14: USPTO Expungement and Reexamination Institution Decisions, December 21, 2021, to June 27, 2023



Source: GAO analysis of U.S. Patent and Trademark Office information. | GAO-24-106533

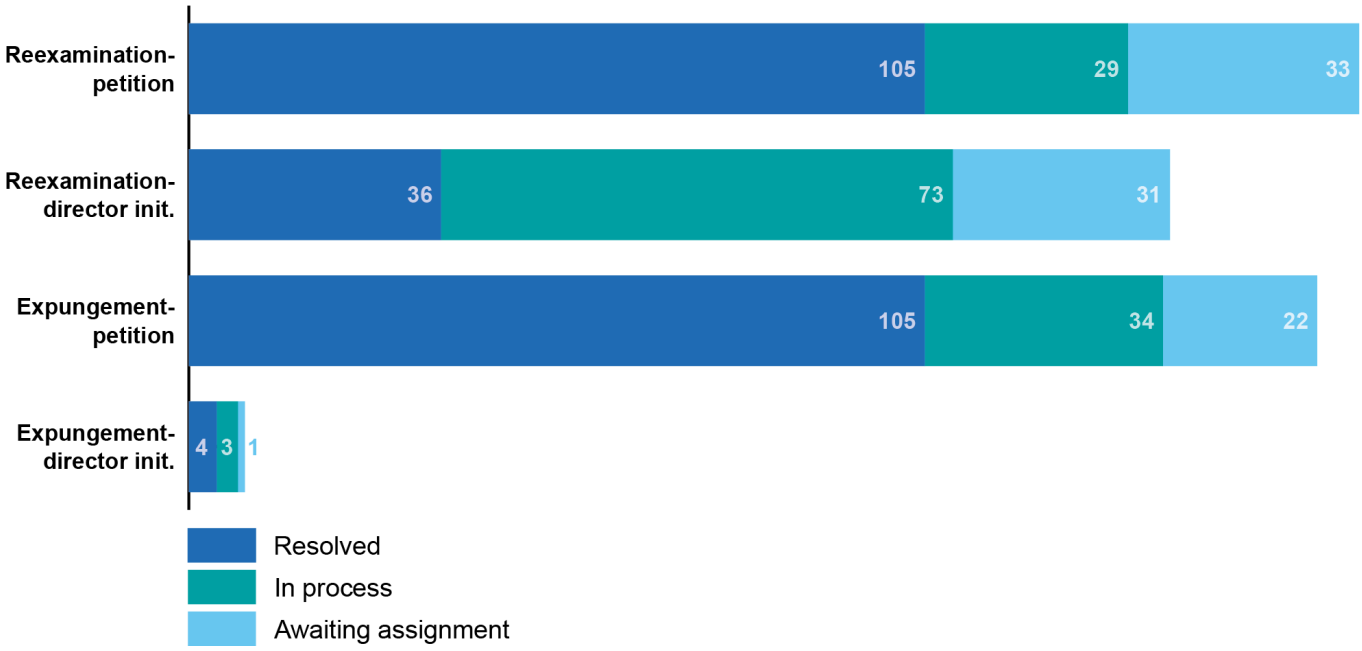
Forty of the 148 Director-initiated expungement and reexamination proceedings have been resolved, and 210 of the 328 expungement and reexamination third-party petitions have been resolved (fig. 15). Any

[1]Director-initiated proceedings excluded because all Director-initiated expungement and reexamination proceedings are instituted by default, meaning that all 148 Director-initiated proceedings were instituted.

[2]If a proceeding is "Dismissed Due to Prior Proceeding," that means that the petition was dismissed before an institution decision was made because the USPTO was already considering a petition that addressed the same goods and services and preempted the dismissed petition.

proceedings that are not resolved fall into one of two categories: “In Process” or “Awaiting Assignment.”

Figure 15: USPTO Expungement and Reexamination Resolution Status, December 21, 2021, to June 27, 2023

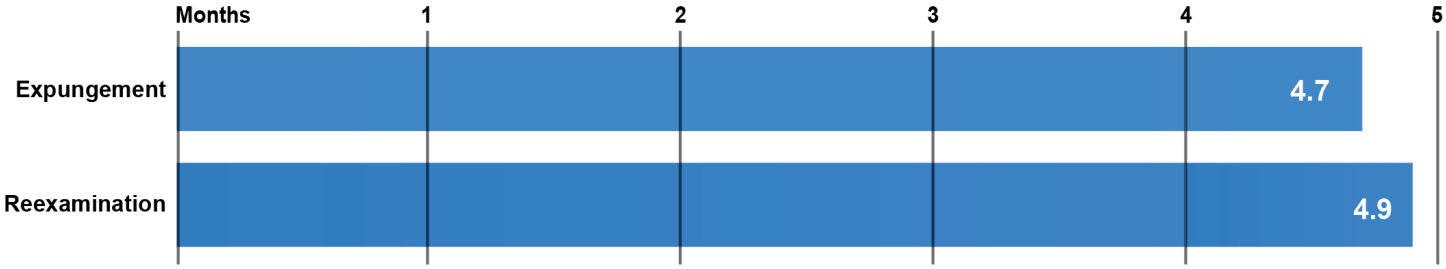


Source: GAO analysis of U.S. Patent and Trademark Office information. | GAO−24−106533

Excluding Director-initiated proceedings, the average amount of time it takes between filing an expungement or reexamination petition and the USPTO reaching a final decision on the petition is 4.8 months.[3] The amount of time it takes the USPTO to process petition submitted expungement and reexamination filings is not substantially different. The amount of time it takes between filing a petition and reaching resolution is 4.7 months for expungement proceedings and 4.9 months for reexamination proceedings (fig. 16).

[3]Director-initiated proceedings are excluded because they are always instituted the same day they are filed. As such, Director-initiated proceeding processing times will be reported where “average amount of time between institution and resolution” values are reported.

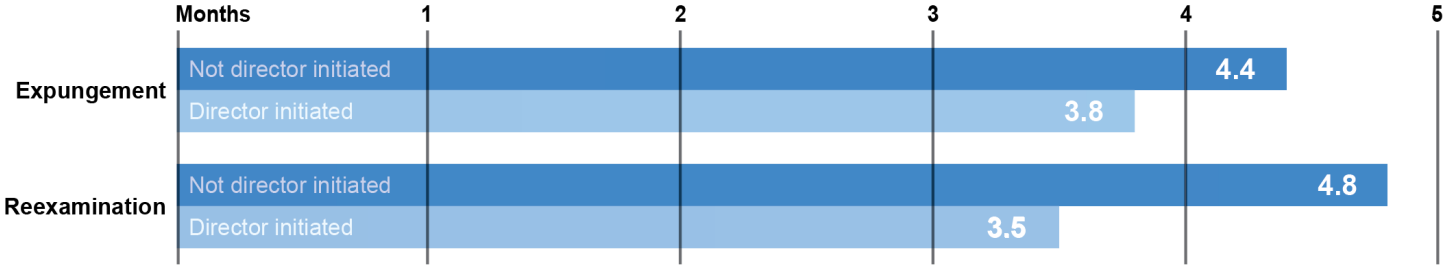
Figure 16: USPTO Expungement and Reexamination Filing to Resolution Processing Time, December 21, 2021, to June 27, 2023



Source: GAO analysis of U.S. Patent and Trademark Office information. | GAO-24-106533

Once an expungement or reexamination proceeding is instituted, Director-initiated proceedings are typically processed more quickly than third-party petitions. The average amount of time it takes between the USPTO instituting an expungement or reexamination petition and the USPTO reaching a final decision on the petition is 3.5 months for Director-initiated proceedings and 4.6 months for petition submission proceedings (fig. 17).

Figure 17: USPTO Expungement and Reexamination Institution to Resolution Processing Time, December 21, 2021, to June 27, 2023



Source: GAO analysis of U.S. Patent and Trademark Office information. | GAO-24-106533

There have been three total combined requests for the USPTO to reconsider the final rejection of registrants' evidence of use and appeals to the TTAB made against USPTO rejections regarding expungement and reexamination proceedings. All appeals have been related to expungement proceedings submitted by third parties. As of December 2023, all three appeals are still pending.

Appendix III: Data on the USPTO's Post Registration Audit

Table 2: Number of Post Registration Audits by Fiscal Year and Filing Basis, FY 2018-FY2023

	Fiscal Year						
Filing Basis	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**Total**
44D/PARIS	1	—	—	1	—	1	**3**
PARIS	184	372	291	245	217	182	**1,491**
MADRID	456	726	784	672	634	478	**3,750**
USE	1,770	3,874	3,984	4,100	4,159	3,584	**21,471**
USE/44D	—	—	1	1	—	1	**3**
USE/PARIS	36	60	48	57	43	47	**291**
Total	**2,447**	**5,032**	**5,108**	**5,076**	**5,053**	**4,293**	**27,009**

Source: GAO analysis of U.S. Patent and Trademark Office data. | GAO-24-106533

Notes: Fiscal year 2023 data cuts off on June 27, 2023

All filing bases except for "USE" are either foreign treaty registrations or hybrid registrations that leverage foreign treaty agreements. Use based filings are trademarks filed under Lanham Act Section 1(a) on the basis that the trademark is currently in use in commerce or filed under Lanham Act Section 1(b) on the basis that the mark is intended to be used and where use must be established prior to registration.

Paris Convention applications are filed under Lanham Act Section 44(e) and are filed by trademark owners with a foreign registration of the same mark for the same goods or services from the owner's country of origin.

Madrid Protocol applications are filed under Lanham Act Section 66(a) and are based on a request for extension of protection of an international registration to the United States sent from the International Bureau of the World Intellectual Property Organization.

Lanham Act Section 44(d) is not a specific filing basis but indicates that a trademark owner with a foreign filed application is requesting that the foreign application filing date be given effect in the United States when evaluating priority between two conflicting marks in the United States.

Table 3: Post Registration Audit Deletion Rate by Fiscal Year and Filing Basis, FY 2018-FY2021

	Fiscal Year				
Filing Basis	**2018**	**2019**	**2020**	**2021**	**Total**
44D/PARIS	100%	—	—	100%	**100%**
	(1/1)	(0/0)	(0/0)	(1/1)	**(2/2)**
PARIS	73%	69%	57%	68%	**66%**
	(123/168)	(233/337)	(157/274)	(104/154)	**(617/933)**
MADRID	72%	68%	68%	69%	**69%**
	(299/417)	(443/650)	(497/727)	(273/395)	**(1,512/2,189)**
USE	51%	51%	48%	44%	**49%**
	(796/1,559)	(1,710/3,343)	(1,675/3,471)	(950/2,149)	**(5,131/10,522)**
USE/44D	—	—	100%	100%	**100%**
	(0/0)	(0/0)	(1/1)	(1/1)	**(2/2)**

	Fiscal Year				
Filing Basis	**2018**	**2019**	**2020**	**2021**	**Total**
USE/PARIS	69%	68%	59%	70%	**66%**
	(24/35)	(38/56)	(26/44)	(21/30)	**(109/165)**
Total	**57%**	**55%**	**52%**	**49%**	**53%**
	(1,243/2,180)	**(2,424/4,386)**	**(2,356/4,517)**	**(1,350/2,730)**	**(7,373/13,813)**

Source: GAO analysis of U.S. Patent and Trademark Office data. | GAO-24-106533

Notes: Data cut off on June 27, 2021, to ensure that only completed audits are considered in the calculations. According to the USPTO, no audit has taken longer than 2 years to complete, so we exclude the most recent 2 years of data to ensure that pending audits are filtered out of the calculations.

Deletion Rate represents the share of audits that received responses that resulted in the deletion of at least one good or service from the trademark registration. Audits without responses are removed from the calculations because non-response results in the cancellation of the entire trademark registration being audited, regardless of if the goods and services included in the registration are truly being used in commerce.

All filing bases except for "USE" are either foreign treaty registrations or hybrid registrations that leverage foreign treaty agreements. Use based filings are trademarks filed under Lanham Act Section 1(a) on the basis that the trademark is currently in use in commerce or filed under Lanham Act Section 1(b) on the basis that the mark is intended to be used and where use must be established prior to registration.

Paris Convention applications are filed under Lanham Act Section 44(e) and are filed by trademark owners with a foreign registration of the same mark for the same goods and/or services from the owner's country of origin.

Madrid Protocol applications are filed under Lanham Act Section 66(a) and are based on a request for extension of protection of an international registration to the United States sent from the International Bureau of the World Intellectual Property Organization.

Lanham Act Section 44(d) is not a specific filing basis but indicates that a trademark owner with a foreign filed application is requesting that the foreign application filing date be given effect in the United States when evaluating priority between two conflicting marks in the United States.

Appendix IV: Academics' Suggestions and the USPTO's Responses on Ways to Limit Inaccurate and False Claims of Use

Academics and trademark attorneys we spoke with identified various technologies that the USPTO could use to limit false and inaccurate trademark applications and registrations. Academics also said there were procedural and policy changes that the USPTO could make to effectively limit false and inaccurate applications.

Suggested Technologies that Could Help the USPTO Detect Inaccurate and False Trademark Applications

Academics we interviewed said the USPTO could use image software and advanced data analytics to better detect false and inaccurate trademark applications. Acknowledging that the USPTO would need to weigh the costs and benefits of new technologies, academics proposed the following for consideration:

Reverse Image Search Software. According to academics, USPTO examining attorneys could use reverse image search software to determine whether images submitted in trademark applications are similar to existing images on the internet. Many of the improper and fraudulent specimens of use they encountered were found on the internet. Reverse image search software could automatically compare photos in applications to pictures on the internet and could then assist examining attorneys with the review of these applications. Academics we interviewed did not cite many limitations with the creation of this tool aside from the costs and the potential that reverse image search tools would not identify altered images.

Academics we interviewed said that reverse image search software could also be used to compare previously submitted images to an internal USPTO trademark database to identify similarities between images. Images submitted as evidence of use in a new application would be compared to a database of previously filed applications, and the software could notify examining attorneys if the photo had been used before. One academic we interviewed mentioned that different examining attorneys may receive different applications with the same improper or fraudulent photos, since examiners are not organized by specific classes of goods or services. Academics said that software to match application photos to existing photos in the USPTO trademark databases could make examination outcomes more uniform.

USPTO officials said that examining attorneys already have access to reverse image searching capability. In addition, the USPTO explored the use of image analysis software which could be used on all incoming images, but that the software became ineffective as applicants began submitting images of fake storefronts, or submitting slightly altered images that could evade the system detection. In addition, officials told us

that there are other more reliable markers of fraud that can be detected on a larger scale rather than having the examining attorneys spend a lot of time attempting to search for a similar image in a USPTO database. One academic told us that image detection tools that the USPTO could use are commercially available.

Image Alteration Detection Software. Fraud detection academics said that image alteration detection software, which is difficult to develop but commercially available, could benefit the USPTO. An academic we met with said the usefulness of the technology depends on the type of alteration. One academic said that images altered with photo editing software are easier to detect than those edited by artificial intelligence (AI), and detection tools often need to be updated as generative AI becomes more specialized in its ability to generate realistic images. However, this academic said that reliable image alteration detectors are available. Many academics told us that as generative AI becomes more specialized, filers could inundate the trademark review system with increasingly sophisticated fraudulent filings. These academics told us that the USPTO should get ahead of this issue and invest resources in prevention and detection to the fullest extent possible.[1] USPTO officials cited similar limitations with this type of software, namely that they have identified more reliable markers of fraud than those that would be detected by this kind of system.

Predictive Analytics. One academic we interviewed said that depending on the quality of the USPTO's historical data, the USPTO may be able to use several different computational data analytics approaches. One academic we interviewed said the USPTO could use predictive analytics to flag applications that are above a likelihood threshold for fraud. Predictive analytics is a computational technique that flags potentially fraudulent applications by examining patterns in existing trademark data and applying it to new applications. For example, this could be the class of goods, the address of the applicant, when the application was filed, the description of the product, and other data points. One academic told us that suspicious trademark applications often contain highly varied goods and services, such as an application for a single trademark to cover fire extinguishers, eye glasses, and computer software.[2] These combinations

[1]For Information on GAO's work examining generative AI, see GAO-23-106782 https://www.gao.gov/products/gao-23-106782.

[2]The concern being that there are few companies that make and sell such disparate products.

would be flagged, and then a predictive analytic tool could leverage these historical data to identify the likelihood that future applications contain indicators of fraud.[3] For example, if a significant number of trademark applications submitted in a short amount of time contain similar descriptions of goods or are from the same applicant, these techniques could flag this incoming application as potentially fraudulent.

Academics said that predictive analytics techniques have a varying level of difficulty associated with them, and that most of the work associated with implementation would be the burden of "training" the tool by feeding it data. One academic said that these techniques have been used by many different entities in law enforcement, securities fraud, invoice fraud, and tax evasion. Further, they said that the key to having successful analytic systems is being transparent and able to explain the analysis and results to resolve any potential biases that may arise. Academics told us that analytics tools can be acquired or developed internally.

Academics said although these analytic tools could be beneficial if the USPTO were to implement them, there are several limitations that should be considered. These are:

Data Quality. One academic we interviewed stated that there needs to be a large availability of data and the data need to be highly accurate for analytic models to be accurate. Another academic mentioned that this is not always the case for many organizations.

Internal Skillset. Another key challenge is ensuring that staff using these analytic tools are sufficiently trained to be able to explain the methodology of these tools and the results they derive. One academic said the ability to clearly explain and modify analytic tools is a key part of their success, and that many organizations that implement analytical tools employ a data scientist. Currently, the USPTO has several employees with data expertise.

Constantly Evolving Fraud. One academic stated that fraud is a constantly evolving issue, which can make modeling it through analytics difficult. The same academic stated that fraud detection models need to be continuously adjusted to capture emerging fraud patterns. The USPTO's current data analytic models do not have this capability.

[3]Predictive analytics tools include logistic regression and neural network techniques, among others.

The approaches described above are tools that could target potentially fraudulent applications as they are received by the agency. Trademark academics we interviewed said the USPTO could also use some of the approaches above to analyze the trademark register itself.[4] USPTO officials said they are beginning to work on developing such analytic and detection tools but that there are challenges due to the agency's outdated data systems and resource constraints. USPTO officials said the agency is currently undertaking efforts to improve current data systems.

Suggested Changes to Trademark Procedures to Limit the Number of Trademark Applications and Registrations with False or Inaccurate Claims of Use

Trademark academics we interviewed said there are several procedural changes that the USPTO could implement to limit the number of inaccurate and false trademark applications that become registrations. These suggestions targeted different policies within the trademark application and review process.

Provide Additional Proof of Use. One academic suggested that the USPTO could update the requirements in applications to require a photo of every good or service listed in the application. Under the current system, an applicant can theoretically apply for a registration with 20 goods and services and will only be required to prove use for one of them. According to this academic, under this additional requirement, applicants would be required to prove use for each of the goods for which they were applying. USPTO examining attorneys could then have more evidence to review applications that appear initially suspicious and could further investigate or deny improper applications. This approach could de-incentivize inaccurate filings and generally improve application quality. USPTO officials said this suggestion has been made in the past but that most stakeholders opposed the additional burden this would create on good faith filers, not to mention the impact on USPTO application pendency as the examining attorneys would have to review the additional specimens for compliance. Additionally, USPTO officials indicated that the bad faith filers have improved their ability to digitally manipulate fake

[4]One academic told us there are cases where registrations are legitimate when they are filed and that they remain on the trademark register for years after the company goes out of business. USPTO officials indicated that the maintenance submissions required between the fifth- and sixth year following registration are timed specifically to eliminate registrations for those businesses that have ceased operations. USPTO's post registration audit reviews a random sample of registrations with required maintenance filings submitted between the fifth and sixth year of registration, and every 10 years thereafter. USPTO officials told us they have considered expanding the post registration audit and implementing targeted audits, but they are currently limited by resources.

applications, so increasing the required number of specimens is unlikely to deter bad faith actors and will instead burden good faith actors.

Provide Additional Information in Applications. Similarly, another academic told us that the USPTO could require applicants to submit more information during the trademark application process. For example, the USPTO could require that applicants submit a statement on the record of their planned use of the trademark. Under the current system, applicants must declare use under a penalty of perjury. According to the academic, declarations about planned use of the trademark could provide additional information for the agency and outside counsel to use when challenging inaccurate applications. Trademark attorneys and the USPTO could leverage such additional information to detect and challenge improper applications through the TTAB or in expungement and reexamination proceedings. USPTO officials stated that it is unclear how such a requirement would assist third parties in challenging a registration for nonuse since the planned mode of use is not relevant to whether the registrant can establish use in commerce when challenged. Moreover, such a requirement would likely increase the burden on all applicants, not just the bad faith actors, and would require additional rulemaking procedures.

Require Applicants to Disclose Trademark Filing Incentives. One academic told us that the application process could include an "subsidy disclosure", where applicants would have to attest as to whether they received financial incentives for filing the trademark application. This could target improper and fraudulent trademark applications that are subsidized by foreign governments and have been associated with false and inaccurate applications.[5] USPTO officials noted that filing subsidies are not per se unlawful and it would be difficult to infer bad faith or lack of bona fide intent to use if one was disclosed in a filing. Additionally, those receiving subsidies would be unlikely to disclose the subsidy without a strong penalty for failing to provide it.

Change the Trademark Fee Structure. One academic told us that some entities often file very high volumes of low-quality applications and

[5]USPTO reported in 2021 it had identified 77 subnational trademark subsidies in China. According to the report, "because the amount of these subsidies often exceeds the cost of registering a trademark, a rational economic actor in China may choose to pursue a trademark application without any intention to use the mark in commerce". The USPTO report also states that after Shenzhen and other cities began offering subsidies for trademark applications, the USPTO experienced a surge in fraudulent trademark applications originating in China.

applications that span many goods and services. Academics suggested a variable fee structure that targets these entities specifically. This fee structure could be created in different ways. One way would be to increase fees for applicants who file high numbers of applications on an annual basis. This could also target any U.S. trademark attorneys who approve thousands of applications and have been linked to inaccurate or fraudulent claims. Another academic suggested increases in fees for renewals in order to give the agency more resources to undertake targeted audits. USPTO officials said they have identified many instances of U.S. trademark attorneys filing thousands of applications in very short periods of time, but they have not seen any scams where one trademark owner files thousands of applications such that the USPTO could charge an excessive filing fee to that applicant. USPTO officials noted that the USPTO Office of Enrollment and Discipline has investigated and disciplined US attorneys who enter into contracts with foreign filing firms to file hundreds or thousands of applications without proper review.

Create a Trademark Attorney Registration System. One academic suggested the creation of a trademark attorney registration system, similar to the patent bar system. Under the patent system, attorneys must pass an exam, pay a fee to register, and take an oath to represent others in front of the USPTO. However, attorneys are not required to apply for registration or recognition to practice before the USPTO on trademark matters. The academic said that extending examination and registration to the trademark realm would be an additional tool that would dis-incentivize lawyers from approving improper and illegitimate trademark applications, similar to the U.S. counsel rule that USPTO implemented. However, implementing this suggestion would require legislation.[6]

Empower Law Schools and Public Interest Groups. One academic we interviewed suggested mobilizing law clinics and public interest groups by giving them incentives to report improper applications and submit expungement and reexamination petitions. Under this proposal, law clinics and public interest groups could submit letters of protest or expungement and reexamination petitions at a reduced cost. The academic told us that the USPTO already has relationships with some intellectual property clinics in law schools, so they could use these relationships to empower law students to file expungement and

[6]By law, any U.S. licensed attorney may practice law and represent parties before any federal agency. The one exception is the specialized patent bar due to the highly technical nature of patent practice. 5 U.S.C. § 500(e). To add a trademark bar would require an amendment to the statute to add another specialized bar.

reexamination proceedings free of charge or with charges reduced. However, USPTO officials said that mobilizing law school clinics and public interest groups to report fraud would be overwhelming for the administrative sanctions program attorneys, examining attorneys or TMA examiners, without a commensurate increase in fee revenue or resources. The USPTO also told us that this could create potential conflict of interest issues were a law school clinic supervisor to use this process to advance their private clients' interests.

Use More Director-Initiated Proceedings. Trademark attorneys suggested that the USPTO Director initiate more expungement and reexamination proceedings. Trademark attorneys and academics told us that although the TMA procedures are useful in many respects, there is often a disconnect between attorney incentives and the ability to clear the trademark register of improper applications. Attorneys are often not willing to spend the time to expunge problematic trademark registrations because it would cost their clients time and money. One trademark attorney stated that trademark attorneys may file expungement or reexamination petitions if there is a filing that affects their client in some way, but in general, trademark attorneys are not going to make personal efforts to try and clean up the trademark register on their own initiative. USPTO officials told us that the number of Director-initiated proceedings has increased but the agency is currently limited in its ability to pursue more due to resource constraints.[7]

[7]Based on our analysis of USPTO data, we identified 35 director-initiated proceedings for expungement and reexamination in 2022, compared to 113 director-initiated proceedings in 2023.

Appendix V: Comments from U.S. Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE
Office of the Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

February 8, 2024

Candice Wright
Director, Science Technology Assessment, and Analytics
U.S. Government Accountability Office
441 G Street NW Washington, DC20548

Dear Ms. Wright:

Thank you for the opportunity to review and comment on the Government Accountability Office (GAO)'s draft report, *Intellectual Property: Stronger Fraud Risk Management Could Improve the Integrity of the Trademark System* (GAO-24-106533).

The Department of Commerce agrees with the GAO's recommendations directed to the United States Patent and Trademark Office. Enclosed is our response to the draft report.

Our response to each recommendation is discussed in detail below and in the accompanying USPTO technical comments. We have also provided some additional remarks to provide further context to the report and its conclusions.

If you have any questions, please contact MaryAnn Mausser, Department GAO Audit Liaison, at (202) 482-8120 or mmausser@doc.gov.

Sincerely,

JEREMY PELTER Digitally signed by JEREMY PELTER Date: 2024.02.09 17:23:09 -05'00'

Jeremy Pelter
Deputy Assistant Secretary for Administration, performing the non-exclusive functions and duties of the Chief Financial Officer and Assistant Secretary for Administration

Department of Commerce's Comments on
GAO Draft Report entitled "Intellectual Property: Stronger Fraud Risk Management Could Improve the Integrity of the Trademark System" (GAO-24-106533)

The Department of Commerce has reviewed the draft report and we offer the following comments for GAO's consideration.

Comments on Recommendations

GAO Recommendation that the Under Secretary of Commerce and Director of the U.S. Patent and Trademark Office take the following action (1):
Plan and conduct regular fraud risk assessments of the trademark register to determine a fraud risk profile that aligns with leading practices in the Fraud Risk Framework. Specifically, this process should include (1) identifying inherent fraud risks to the trademark register, (2) assessing the likelihood and impact of inherent fraud risks, (3) determining fraud risk tolerance, (4) examining the suitability of existing fraud controls, and (5) documenting the fraud risk profile.

Commerce response:
The Department of Commerce concurs with this recommendation.

GAO Recommendation that the Undersecretary of Commerce and Director of the U.S. Patent and Trademark Office take the following action (2):
Should identify and implement improvements to current data systems to strengthen trademark data analytics for stronger fraud risk management

Commerce response:
The Department of Commerce concurs with this recommendation.

Additional Remarks

While the USPTO concurs with both the GAO recommendations, the USPTO submitted a number of substantive technical comments. The USPTO is committed to working closely with the GAO audit team to remediate the issues addressed in the comments.

Conclusion

The Department of Commerce thanks the GAO Managing Director of Science, Technology Assessment, and Analytics, for the GAO's efforts in providing us with this report. The USPTO continues to welcome input from all stakeholders on how its processes may be improved.

The USPTO and the Trademark business unit have plans in place to implement recommendations forwarded in this report. Working closely with the Chief Financial Officer's Enterprise Risk Management staff in the Office of Finance, the Trademark team has embarked on a 360-degree fraud risk analysis. Additionally, the USPTO's Chief Information Officer has

been charged to develop, or procure, cutting edge information technology capability to add capacity to our current fraud control efforts. Finally, the Trademarks Office of Data and Analytics in the Performance Planning and Financial Management Division is working closely with appropriate register protection office staff to better understand the requirements. Their efforts have made substantial progress executing some of the report's recommendations.

The USPTO will use the information in this report to guide their upcoming actions and will complete both outstanding recommendations in a timely manner. We look forward to working with your office as we continue our efforts to address inaccurate and false claims of use in trademark applications and registrations in response to new proceedings and changes made under the Trademark Modernization Act.

Appendix VI: GAO Contact and Staff Acknowledgements

GAO Contact

Candice N. Wright, (202) 512-6888 or WrightC@gao.gov

Staff Acknowledgements

In addition to the contact above, GAO staff who made key contributions to this statement are Rob Marek (Assistant Director), Eleni Orphanides (Analyst-in-Charge), Alex Gammel-Perera, and Jacob Selgestad. Other staff who contributed include Mari Calderon, David Dornisch, Louise Fickel, Patrick Harner, Joe Rando, Brenda Seis, Rebecca Shea, Smon Tesfaldet, and Nick Weeks.

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