

Patent Examiners May Have Claimed \$18M in Unworked Hours

Published: Aug 31 2016 18:50:11

By Joseph Marks

* Actual number of unworked hours could be twice as high

* Union leader says report data is unreliable

Aug. 31 (BNA) -- Government patent examiners claimed credit for at least 288,000 hours they may not have actually worked during a 15-month period ending November 2015, possibly bilking the government out of more than \$18 million, according to an auditor's report released Aug. 31.

The actual number of over-claimed hours could be double that figure, the report from the Commerce Department inspector general said.

If the examiners had actually worked those hours, they could have cleared nearly 16,000 cases out of the PTO patent application backlog, the report concludes. That backlog stood at roughly 550,000 applications at the close of the 2015 fiscal year, according to PTO data.

Roughly one-fourth of the unsupported hours were overtime hours, for which examiners were paid more than \$5.4 million, according to the report. About 43 percent of the unsupported hours belonged to just 415 of the roughly 8,400 examiners the study tracked, 310 of whom received above average performance ratings, the report states.

The inspector general's office is not recommending the PTO take administrative actions against any particular examiners, the report notes.

Just 2 Percent or 'the Tip of the Iceberg.'

There could be alternate explanations for the seemingly unworked hours, PTO spokesman Patrick Ross said in a statement. He also noted those hours only add up to about 2 percent of the total work hours examiners claimed.

Ross called the report a "resource" for ongoing efforts to improve time and attendance policies.

Former PTO Commissioner for Patents Robert Stoll told Bloomberg BNA the PTO should "take corrective action" to better monitor employees' work hours, but also stressed the 2 percent gap is quite small.

"I believe the vast majority of employees there do an honest job, meaning they do not fudge their hours," he said. "That doesn't mean we don't need to have a system in place to monitor."

Some patent lawyers found the report more damning.

"I think this is just the tip of the iceberg," David Boundy, a patent attorney with Cambridge Technology Law LLC and noted PTO critic, said. He argued examiners are incentivized to approve or reject patent applications on a set schedule rather than to give each application the time and work it deserves.

"This creates a culture of cutting corners," he said. "In other organizations where there's a culture of cutting corners, it's not cutting corners in one area, it's cutting corners in all areas."

The inspector general investigation follows an earlier report that found one particular patent examiner falsely claimed to have worked 730 hours during fiscal year 2014, earning \$25,500, which prompted a joint hearing by the House Judiciary and Oversight and Government Reform committees.

Congress Concerned

The oversight committee ranking member, Rep. Elijah Cummings, (D-Md.), called the latest report's findings

"troubling" and "unacceptable" in an e-mailed statement to Bloomberg BNA.

"The PTO's internal controls are clearly deficient, and the agency needs to take immediate steps to implement all of the inspector general's recommendations," Cummings said.

The report was based on comparing examiners' reported hours with evidence they were actually working those hours, such as badging in and out at the PTO Arlington campus, connecting to PTO computer systems either directly or through a virtual private network and when they accessed patent application materials online.

Patent Office Professional Association President Pamela Schwartz criticized that methodology, saying those systems weren't designed to track employee hours and working hours could easily go unrecorded. For example, a teleworking examiner could be studying printed-out files while not connected to PTO networks, she said in an interview. The association is the union that represents patent examiners.

The IG's office acknowledged several gaps in the data. For instance, PTO employees must badge into the office's Arlington campus at all times but are only required to badge out between 10 p.m. and 5:30 a.m. There's also no evidence that a teleworking employee is actually working just because he or she is connected to the PTO VPN, and many employees leave their computers connected through the VPN 24 hours a day, the report notes.

In all instances, the PTO interpreted those gaps in the light most favorable to the examiner, the report said.

Recommendations

The report recommends that the PTO require examiners to badge in and out of the Arlington campus at all times when they are working there, and to always connect to the PTO VPN when they are working remotely.

The PTO should also revise its overtime policies to prevent abuse and require all examiners to report their schedules to managers, the report states.

Some of those recommendations would produce more accurate measurements of examiner work hours, Schwartz said, but she cautioned they could also damage morale.

"These are employees with very difficult professional jobs," she said. "You might as well have us punch time cards if that's how the government wants to treat professional employees. At least it's more honest."

Union leaders plan to reach out to employees about the report but haven't determined if they'll respond directly to the IG's office, she said.

The report's 15-month time frame straddles the February 2015 launch of PTO full-time teleworker policy. The agency touted that policy in an annual report as the "gold standard" for federal teleworking. As of the close of fiscal year 2015, about 82 percent of PTO employees teleworked at least part time, according to that report.

Telework and Efficiencies

The IG report collected separate data for the nine months following the launch of the telework policy, but that dataset included a smaller number of employees so it is impossible to precisely compare results. Most trends are stable between the two time frames.

The report could point out broader issues with tracking the work hours of teleworking government employees, Deborah Collier, director of technology and telecommunications policy for Citizens Against Government Waste, said.

"Telework in itself is a good thing because it does reduce cost, and it reduces the hours employees spend commuting—as long as it's properly managed, monitored and supervised," she said.

The report also recommends that the PTO "reevaluate its examiner production goals for each art unit" and update them "to reflect efficiencies in work processes from automation and other enhancements."

Union leader Schwartz took issue with that recommendation. In many cases, the patent examination process has become more complex as technology has expanded, because that technology has linked

examiners with more examples of prior art that might make an invention unpatentable, she said.

"The amount of prior art is huge, and it's a very demanding job," she said.

To contact the reporter on this story: Joseph Marks in Washington at jmarks@bna.com

To contact the editor responsible for this story: Mike Wilczek at mwilczek@bna.com

For More Information

The inspector general's report is at: <https://www.oig.doc.gov/OIGPublications/14-0990.pdf>.

To view the complete story, {FIFW BBLs DD PKA0K0N6G9U1<GO>}

Run {BNA<go>} to subscribe to Bloomberg BNA Law Reports.

The above story appeared in:

Daily Report for Executives

Electronic Commerce & Law Rep.