

# Memorandum of Understanding Between the United States Patent and Trademark Office and the Patent Office Professional Association Regarding the new Patent Reexamination Specialist Performance Appraisal Plan (PAP)

October ~~XX~~, 2017

PRS 11/7/17

MC 11/7/17

The agreements contained herein, and policies referenced in this document, supersede portions of any agreements, memoranda of understanding, policies, or practices with which they conflict. If any portion of an agreement, memorandum, policy, or practice does not conflict with the provisions and policies set forth herein, that portion of the previous agreement, memorandum, policy, or practice will remain in force.

## I. 2018 Patent Reexamination Specialist Performance Appraisal Plan

- A. Attached to this MOU are the new Patent Reexamination Specialist Performance Appraisal Plan (PAP) (Attachment A) and PAP Guidelines (Attachment B). These documents comprise the Package. The United States Patent and Trademark Office (the Office) has determined to implement this PAP and PAP Guidelines after extensive pre-decisional involvement by the Patent Office Professional Association (POPA).
- B. The new PAP shall be implemented for all patent reexamination specialists on October 1, 2017, with exceptions noted in this MOU and/or accompanying memoranda.
  1. The parties agree the portions of the PAP other than the Workflow element, as detailed in 1.B.2. below, will be implemented pursuant to this Agreement.
  2. The new Workflow element will not be implemented without at least two bi-weeks' notice to POPA that the electronic Workflow Management functionality is fully operational. Management and POPA will meet for a demonstration of the workflow management functionality in advance of the notice to POPA. The new Workflow element of the PAP will take effect at the beginning of the quarter following POPA's two bi-week notice period.
  3. Once the PAP has been implemented, Supervisory Patent Reexamination Specialists (SPRSs) will advise specialists on how to best position their dockets for the implementation of the new Workflow element deployment. It is recommended specialists start positioning their dockets as soon as possible.
- C. The Agency has created reports for patent reexamination specialists to use in monitoring their requirements and performance under the new Workflow element. The reports at a minimum, allow specialists to (a) see what work is due and when, and (b) see what work has been completed and has received credit under the Workflow element. The report(s) will be updated daily.

## **II. Time Tracking**

A list of time codes has been established for employees (See Appendix A). These codes will be used by specialists to accurately record their time on their Time and Attendance record.

## **III. Evaluation Criteria**

### **A. Providing Information and Data to the Union**

So that the Union can participate in evaluation of the PAP, it will be provided with any evaluation data as set forth below, as well as any other information the Agency considers when evaluating the impact of the PAP. The information and data shall be provided promptly so that both parties may analyze the data contemporaneously.

### **B. Information to be considered in evaluation of the package may include:**

- Number of ratings of record in each level (i.e. outstanding, commendable, fully successful, etc.) will be compared to the ratings of the previous year.
- Rating of record FY 2017 PAPs.
- Time code data analysis: number of hours recorded under each time code, including newly established time codes.
- Pendency numbers, including overall pendency, time to order, time to first action on the merits, time to examiner's answer, time to first after final action, NIRC, and subsequent actions.
- Awards data, including SAA levels and Gainsharing levels.
- Attrition from time of implementation of this agreement, including separately the number of specialists who leave the Office or return to the Corps.
- Data from survey or focus group of a random sampling of CRU specialists on what worked, what didn't work, and what should be changed.
- Docket size comparison of previous year to current year.
- Number and reasons for excusals related to workflow.

## **III. Transition issues**

Until the new workflow element is implemented, employees will follow the workflow standards currently in practice. The new workflow element will not be implemented until POPA is provided two bi-weeks' notice that the Workflow functionality is fully operational. Once POPA receives two bi-weeks' notice, the workflow element will be effective at the beginning of the next quarter. Employees' FY2018 Workflow Management Critical element will be calculated using a prorated scoring on a quarterly basis from the old PAP Workflow element and the addition of a quarterly probation of the new PAP Workflow element:

**Equation:**  $(\text{percentage of year by quarter}) \times \text{current workflow element score}$   
 $+ (\text{percentage of year by quarter}) \times \text{new workflow element score}$   
**Equals:** workflow management score for FY2018 Performance year.

The parties agree to round up to the nearest whole number if the calculation ends in .5 or higher.

#### IV. Other provisions

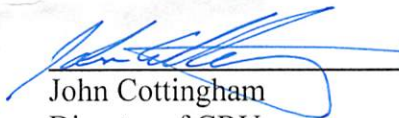
- A. On the effective date of this MOU, the following Agency-issued memorandum, attached hereto, shall be implemented:
 

“Option to return to Technical Center” under the New CRU Patent Reexamination Specialist Performance Appraisal Plan
- B. The parties agree to meet one year after the Workflow Management element has been implemented to discuss and assess any issues identified with the new PAP being implemented. The parties may also request a meeting to discuss issues in advance of the Workflow Management’s implementation date anniversary.
- C. At the request of either party, the parties will meet to discuss modification to the Package or related issues.
- E. Upon either party's request, the parties shall meet at mutually agreed upon times, for the purpose of collaboratively discussing all concerns relating to the PAP with a goal of reaching agreement over how the issues will be resolved. If the issues are not resolved informally, the parties will negotiate formally over the unresolved issues following midterm bargaining procedures in place at the time of the negotiations. This paragraph does not constitute an agreement to negotiate permissive topics to impasse or to otherwise negotiate where bargaining is not required by law. For a period of two years the Agency agrees that it will not assert the "covered-by" doctrine on proposals in negotiation so long as the proposal in question is not inconsistent with this agreement.
- F. If agreement is not reached, either party may reopen the MOU. If the USPTO determines to move forward with a change, it will provide notice to POPA and provide an opportunity to bargain to the extent required by law. Following notification, bargaining will be at POPA's request. Bargaining will be conducted in accordance with the parties' mid-term bargaining ground rules starting with the opportunity for meetings with affected employees
- E. The USPTO will maintain the status quo regarding the proposed changes until resolution of the issue, or the completion of bargaining (including mediation and impasse proceedings), unless permitted by law to implement the proposed changes earlier.
- F. The Union acknowledges that the Agency’s obligation to negotiate over the substance and/or impact and implementation of the changes described in this MOU, the attached new PAP, new PAP Guidelines, and the above-referenced memorandum has been met.

**V. Notice of Changes**

Employees will be notified of the status and/or changes to the Agreement at least 30 days prior to the implementation of any changes.

**Signatures:**

  
\_\_\_\_\_  
John Cottingham  
Director of CRU  
U.S. Patent and Trademark  
Office

4/7/17  
Date

  
\_\_\_\_\_  
Pamela Schwartz  
President  
Patent Office Professional  
Association

4/7/17  
Date