

**MEMORANDUM OF UNDERSTANDING REGARDING USPTO  
POLICY ON TIME AND ATTENDANCE TOOLS, COMMUNICATION, AND  
COLLABORATION**

The parties to this Memorandum of Understanding (“MOU”), the United States Patent and Trademark Office (“USPTO” or “Agency”) and the Patent Office Professional Association (“POPA” or “Union”), have recently completed extensive pre-decisional discussions concerning the Agency’s adoption of the attached USPTO Policy on Time and Attendance Tools, Communication and Collaboration (the “Policy”).

1. The Agency and POPA (together, the “parties”) agree that the Agency has fulfilled all statutory and contractual obligations to provide notice and/or to bargain over the Policy, and that the Agency may implement the Policy with respect to POPA’s bargaining unit members on the Policy’s effective date.
2. The parties agree that the Policy and this MOU supersede in its entirety the June 24, 2013 Memorandum of Understanding between the USPTO and POPA on the Use of Collaboration Tools and Effective Collaboration in the Nationwide Workforce.

**Badge-in/Badge-out**

3. Consistent with Section IV of the Policy, employees will use their USPTO-provided badges to swipe into and out of all locations with individual badge-in/badge-out capacity for physical access. For any badge-in/badge-out point other than a gate, turnstile, or officer-manned location, the Agency will deploy clearly marked signs instructing employees that they must badge in and out at that access point before requiring badge out at these locations.

**Log-in/Log-out**

4. The Agency will provide POPA with a list of current participants in the Patents Telework Program (PTP) 20-hour no ERA fob option, and the parties will collaborate to verify the accuracy of that list. Employees on the verified list will be permitted to continue participating in the 20-hour no ERA fob option, and the parties agree that there will be no further enrollment in that program. Employees authorized to continue participating in this program will provide their supervisors with start and stop times for their telework days.
5. The Agency agrees to provide Small Office/Home Office (SOHO) routers to all POPA teleworkers who do not already have them, except for employees on the PTP 10-hour option and the PTP 20-hour no ERA fob option.

**Record Sharing Platform**

6. Following implementation of the Record Sharing Platform, the Agency will make the badge-in/badge-out, and log-in/log-out data described in the Policy available on the Record Sharing Platform within one (1) business day of the data being collected, barring any IT

complications or necessary downtime for maintenance of the Record Sharing Platform or PTONET.

7. The Agency agrees to collaborate with POPA when developing the Record Sharing Platform, and to collaborate on the system's features, functionality, display, and other design components to the extent permitted by the Platform and budgetary limitations.

8. The Agency agrees to provide training or guidance to all POPA employees who are not exempt from the Fair Labor Standards Act (referred to as "FLSA non-exempt employees") on the requirements of the Fair Labor Standards Act to remind those employees of the prohibition on working voluntary (unpaid) overtime.

### Collaboration Tools

9. POPA employees will be provided an opportunity to attend real-time training and meetings in person. POPA employees may be required to participate in video conferences for mandatory training and meetings when they are unable to attend in person. The Agency will not pay travel costs for an employee to attend a meeting or training beyond what is required by an individual's telework agreement.

10. Agency agrees to provide training on how to use the collaboration tools, with an emphasis on the presence indicator, to all POPA employees.

### FAQs

11. Within thirty (30) days of the date of this MOU, the parties agree to begin jointly developing a set of Frequently Asked Questions (FAQs) related to the Policy. The FAQs will address the following, in addition to any other issues the parties deem appropriate:

- a. Process for forgotten/lost badges.
- b. Define "individual badge-in/badge-out capacity for physical access" to include all turnstiles, gates, and locations where badges are required to gain access (e.g., Elizabeth Townhouse). Cover Regional Office situation.
- c. What to do when PTONET is unavailable.
- d. Explaining the effect of all Windows functions for terminating connection (lock, sleep, hibernate, etc.), including effect on logging out requirement.
- e. What to do when your UL is not functioning and therefore not unlocking? Call the service desk for assistance and as a best practice record the ticket number in WebTA.
- f. What should an employee do if they believe the platform is displaying inaccurate information? The employee should promptly (before certifying time and attendance for that biweek) bring the apparent inaccuracy to his or her supervisor's attention. Best practice is to note any anomalies in WebTA so they become part of the records. Include discussion of what information an employee should record.

- g. How to track unusual situations (fire drills, etc.) that might skew data in discrete instances.
- h. Discuss ERA fob versus VPN.
- i. Recording in WebTA if you run out of comment space.
- j. What is real time training? Training that is delivered live. In real time training, the trainer delivers the training at the same time the trainee is receiving the training. Real time training does not include pre-recorded training such as Computer Based Training.
- k. What is meant by providing an opportunity to attend real time training or meetings in person? It means that a reasonable room will be provided for the number of employees expected to attend the real time meeting or training in person, even if some or all of the training meeting is being delivered via video teleconference.
- l. Explain "Do Not Disturb" parameters.
- m. Explain Section VIII.B of the Policy, with examples for changes to schedule and the linking of Outlook "out of office" feature to Lync.
- n. Explain Section 4 of this MOU, regarding notification of telework day, start and stop times.
- o. Explain Section V.A of the Policy.
- p. Explain expectations of FLSA non-exempt employees as it relates to hours within the gates.
- q. Explain expectations for responding to instant messages; cover concept that instantaneous response is not required.
- r. Availability for collaboration.

Miscellaneous

12. The parties agree to meet annually, or more often as requested by either party, to discuss issues arising from the Policy's implementation, its effect on POPA employees, its contribution to effective communication and accurate time and attendance reporting, and other related issues of interest to the parties, and to ensure that Union concerns about those issues are heard in a timely and effective fashion.

13. Upon request from the Union, the Agency agrees to share the following without requiring the Union to demonstrate a particularized need: aggregate information on disciplinary and adverse actions taken for time and attendance including numbers, dates and types of actions; aggregate information on disciplinary and adverse actions taken for failure to comply with the Policy including numbers, dates and types of actions; and system-wide inaccuracies in the Record Sharing Platform including numbers, dates and types of inaccuracies. Nothing about this section prohibits the Union from requesting other information pursuant to 5 U.S.C. § 7114(b)(4).

14. If either party believes that changes to the Policy would be useful, the parties will make a good faith effort to expeditiously resolve any issues relative to the proposed changes. Changes will be implemented upon agreement of the parties. If agreement is not reached, then either party may propose changes to the Policy as it applies to members of the Union's bargaining unit.

- a. If the Agency determines to move forward with a change, it will provide notice to the Union and provide an opportunity to bargain to the extent required by law. Following notification, bargaining will be at the Union's request. Bargaining will be conducted in accordance with the parties' mid-term bargaining ground rules, beginning with the clarification meeting (as set forth in Article 14, Section 3.B of the parties' CBA). The USPTO will not implement its proposed policy document(s) with respect to Union employees until resolution of the issue, or the completion of bargaining (including mediation and impasse proceedings), unless permitted by law to implement its proposed changes before this time.
  
- b. If agreement is not reached over a Union-proposed change and at the Union's request, the parties will negotiate to the extent required by law pursuant to the midterm ground rules, beginning with the Agency's presentation of counter-proposals (as set forth in Article 14, Section 3.D of the parties' CBA) within two weeks of the Union's request. The Agency will not refuse to bargain over a Union-proposed change on the basis that the proposed change is "covered by" the Policy or this MOU.

FOR THE AGENCY



1/19/17

Andrew Faile  
Deputy Commissioner for Patent Operations

DATE

FOR THE UNION



1/19/17

Pamela Schwartz  
President, POPA

DATE

**UNITED STATES PATENT AND TRADEMARK OFFICE**  
**POLICY ON TIME AND ATTENDANCE TOOLS, COMMUNICATION, AND**  
**COLLABORATION**

**I. Purpose**

The purpose of this policy (“Policy”) is to provide USPTO employees and supervisors with additional tools to facilitate accurate time and attendance recording and facilitate communication and collaboration.

**II. Scope**

The provisions of this policy apply to all USPTO employees.

**III. Effect on Existing Policies**

This policy supersedes conflicting provisions of any earlier-issued policy or agreement. The following policies are superseded in their entireties:

- Network and Collaboration Tool Use Policy (Aug. 25, 2016)
- Policy on Work Schedule Notification (July 6, 2016)
- Policy on Work Schedule Notification, Communication, and Collaboration (January 20, 2015)

The following policy remains in full effect:

- Time and Attendance Obligations Policy (Aug. 26, 2016)

**IV. Badge-In/Badge-Out**

- A. All USPTO employees working in locations with individual badge-in/badge-out capacity for physical access will use their USPTO-provided badges throughout the workday to gain entry to the USPTO workspace and to exit the workspace (when badge-out requirement is implemented, per paragraph IV.D below).
- B. USPTO facilities that currently lack individual badge-in/badge-out capacity for physical access may acquire that capacity in the future, at which point, employees working in those locations will also badge-in and badge-out throughout the workday.

- C. Employees at Regional Offices are required to individually badge-in on a card reader. Prior to requiring badge-out at these locations, each exit point will be configured to provide individual badge-out capacity.
- D. The Agency will not require employees to badge-out to exit the workspace until the Record Sharing Platform is made available to employees.

## **V. Log-In/Log-Out**

- A. Any USPTO employee working in a location that does not have an individual badge-in requirement will log-in and log-out of the USPTO network at the beginning and end of any period of time for which the employee claims hours of work. This includes all approved telework locations, approved temporary alternate locations, and USPTO buildings that do not have individual badge-in requirements (even if secured). When PTONET is unavailable, these employees will unlock and lock their ULs when they begin and end their work days.
- B. “Logging in” to the USPTO network means accessing PTONET when available, or its successor, through entering user-specific credentials. “Logging out” of the USPTO network for the purpose of this Policy may be accomplished by logging out of PTONET or its successor, or by manually locking the computer (e.g., through Ctrl+Alt+Del).

## **VI. Record Sharing Platform**

- A. The Agency will implement a Record Sharing Platform making each employee’s badge-in/badge-out and log-in/log-out data available to the employee and the employee’s supervisor to assist employees and supervisors in maintaining accurate time keeping. The platform will note the times of badge-in/badge-out and log-in/log-out events (an employee is “logged out” if he or she has manually logged out, manually locked the computer, or the computer automatically locked due to inactivity), and display those times and the total duration of time an employee is badged-in and logged-in on each day.
- B. For many jobs at the USPTO, employees will – in the normal course of performing the duties of their positions – temporarily engage in activities that result in the employee being displayed as not badged-in and/or not logged-in. Reasonable lapses in badged-in and/or logged-in status are therefore normal, and to be expected.

- C. After implementation of the Record Sharing Platform, if an employee believes that the platform is displaying inaccurate information, the employee should promptly (before certifying time and attendance for that biweek) bring the apparent inaccuracy to his or her supervisor's attention in writing.
- D. After implementation of the Record Sharing Platform, if and when the platform is temporarily unavailable for any reason, employees will continue to be required to badge-in and badge-out of equipped workspaces and to log-in and log-out of the USPTO network as provided above. The Agency will reestablish the Record Sharing Platform or its equivalent within a reasonable time period so data collected during the period of unavailability will continue to be captured.

## VII. Collaboration Tools

- A. All employees will use Agency-provided collaboration tools, including the presence indicator, regardless of physical location, during working hours when the collaboration tools are available. The collaboration tools are considered unavailable during any period of outage and/or when the employee's duties make them inaccessible (e.g., attending training or meetings, or traveling for official business).
- B. **Collaboration tools include:** instant messaging; document/desktop sharing and whiteboard features; virtual meeting tools; video communication and conferencing equipment; and presence indicator.
- C. **Presence indicator** refers to the functionality that allows a user to electronically determine whether another user is available to communicate.
- D. Employees will use the presence indicator in a manner that accurately reflects their availability for collaboration. Employees may use the "do not disturb" setting at their discretion to communicate times when they would prefer to work undisturbed, but must first ensure that they have activated the functionality that permits messages to be received from selected associates even in a "do not disturb" status, and further ensure that their supervisor(s) have been added to that list of selected associates.
- E. Presence indicator status alone is not an indication of whether an employee is working. When viewed in conjunction with other information (e.g., extended inability to reach an employee, WebTA

records, lack of responsiveness), it may give rise to a supervisor inquiring further into an employee's work status.

### **VIII. Schedule Notification**

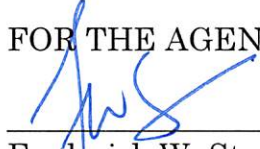
- A. Employees will utilize the editable comment feature ("What's happening today?") on the presence indicator to post their schedule information.
- B. Employees will post a reasonable approximation of either their regular and recurring schedule on the presence indicator per A above (e.g., "8:00 am – 5:30 pm Mon-Thu, 8:00 am – 4:30 pm 1<sup>st</sup> Friday, off 2<sup>nd</sup> Friday; on campus") or of their current day's schedule ("Teleworking 8 am - noon and 4 pm – 8 pm today") on the presence indicator per A above. Schedule should include approximate start and stop times, and the location ("on campus" or "teleworking") where those hours will be worked. Employees will update the schedule to reflect any future changes.
- C. This schedule notification is in addition to, and does not replace, employees' obligations to appropriately request leave as required by the Agency's leave policies.
- D. All currently available work schedules and flexibilities remain in effect and are not restricted by this policy, including the current IFP requirement that employees notify their supervisors in advance if they will not be working at all on any weekday.
- E. It is understood that, at times, the number of hours an employee actually works may vary from the originally-posted schedule provided by the employee. There is no rigid formulation for the required accuracy of the posted information, but employees will provide sufficient information for supervisors to know, with reasonable confidence, when the employee is expected to be available for communication, collaboration, and the performance of official duties.

### **IX. Effective Date**

This policy will take effect April 30, 2017.



FOR THE AGENCY:



1/19/2017

Frederick W. Steckler  
Chief Administrative Officer

Date