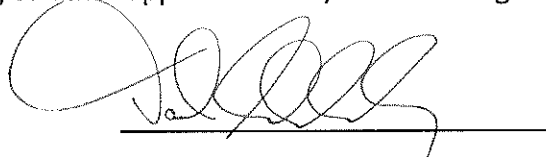


DECISION ON AGENCY-HEAD REVIEW

Agency-head review under 5 USC 7114(c) has been completed on the **Modified Gainsharing Award Agreement MOU** which was executed by POPA and the Agency on June 7, 2023. Under the authority delegated to me by the General Counsel, on July 19, 2018:

I approve this Agreement as in accordance with the Federal Service Labor-Management Relations Statute, 5 USC 7101, et seq., and other applicable laws, rules and regulations.

I disapprove this Agreement as inconsistent with the Federal Service Labor-Management Relations Statute, 5 USC 7101, et seq., and/or other applicable laws, rules and regulations.



David Shewchuk

Deputy General Counsel for General Law

United States Patent and Trademark Office

Date: June 7, 2023

Cc: Stefanie Wehagen
Mari Santiago-Cordero
Ben Ahlstrom
Kathryn Siehndel

Modified Gainsharing Award Agreement June 07, 2023

This agreement between the Patent Office Professional Association (POPA) and the United States Patent and Trademark Office (USPTO) covers the implementation of the following provisions regarding changes to the Gainsharing Award agreement (1988) as modified by the Count System Initiative Package ("Package") and made permanent in the July 2, 2019 agreement between the parties titled "2019 Agreement on Count Systems Initiatives.". This agreement applies to all patent examiners, both utility and design. The awards set forth in this agreement are subject to any fiscal year budget limitations. To resolve the USPTO's bargaining obligation over these matters, the parties agree as follows:

A. FY2023 Modified Gainsharing Award

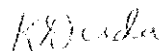
- 1) **Change to FY2023 Gainsharing Award:** The Gainsharing Award will be modified for FY2023 as outlined in the table in Appendix A, beginning with a 1% award at 103% productivity achievement (Commendable level) and increasing with each 1% increase in achievement, up to a 7% award at 135% achievement. There are no other changes to the Gainsharing Award as laid out in the Gainsharing Award Agreement signed October 6, 1988 and as modified in the Package.

B. FY2024 Modified Gainsharing Award Pilot

- 1) **Criteria:** FY2024 Modified Gainsharing Award Pilot ("Pilot Award") provides for biannual award payouts as outlined in the table in Appendix A of this agreement.
 - a. The award period will span two full quarters, with two award periods in FY2024:
 - i. First award period: Q1 and Q2, paid after the conclusion of Q2;
 - ii. Second award period: Q3 and Q4, paid after the conclusion of Q4.
 - b. The Pilot Award payout will be based on a percentage of an examiner's biannual salary corresponding to the cumulative production percent achievement (see Appendix A) at the conclusion of the award period. An examiner must meet the biannual hour requirement during each two-quarter award period, not including hours in an examiner's first year of employment with the USPTO, as follows:
 - i. Prorated award: 350 hours in award period;
 - ii. Full award: 700 hours in award period.
 - c. No single award may exceed the threshold which requires OPM approval (\$10,000 as of the date of signing of this MOU).
- 2) **Eligibility:** To be eligible for the Pilot Award in an award period, an examiner must have:
 - a. performed at the fully successful level or better in all critical elements at the conclusion of the award period under award consideration;
 - b. a minimum of 350 examining-related hours in the award period under consideration, not including hours in an examiner's first year of employment with the USPTO;
and
 - c. met the production percent achievement criteria outlined in Appendix A.

- 3) **Pilot and Evaluation of Award:** The modification to the Gainsharing Award Agreement is a pilot to test whether this award increases productivity in a cost-effective manner for the Agency. The USPTO will provide data on the awards to POPA once it is collected. The parties will use this data as the basis for further discussions on whether to permanently modify the Gainsharing Award Agreement.
- 4) **Termination of Agreement and Award:** This award is payable for FY2024 only. This agreement expires once awards are paid pursuant to paragraph one (1) above (if applicable), except that discussions pursuant to paragraph three (3) will continue as long as both parties feel they are beneficial. Upon expiration, the award will revert to the Gainsharing Award agreement (1988) as modified by the Count System Initiative Package.
- 5) **Proposed Changes to This Agreement**
- a. Either party may request a meeting to discuss any issues in this agreement. The parties agree to meet to discuss and attempt to resolve issues related to the program upon request of either party. If either party believes that changes to the program 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.
 - b. If the parties fail to reach agreement following discussions provided in the paragraph above, this agreement may be reopened at any point from the date it is signed.
 - c. If, during any period of reopening, 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. 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 these proposed changes before this time. If agreement is not reached over a POPA-proposed change, POPA may notify the USPTO of its intent to bargain to the extent required by law pursuant to midterm ground rules, beginning with the submission of POPA proposal.

Signatures



Kathleen Duda
President
POPA

6/7/2023

Date



Jerry Lorengo
Assistant Commissioner
for Patents
USPTO

Digitally signed by Users, Lorengo, Jerry
DN: dc=gov, dc=USPTO, cn=Users,
cn=Lorengo, Jerry
Date: 2023.06.07 05:57:19 -04'00'

Date

Appendix A: Modified Gainsharing Award Pilot Payout Table

Production Percent Achievement	Award Amount (% of biannual salary)
103%	1.0%
104%	1.1%
105%	1.2%
106%	1.3%
107%	1.4%
108%	1.5%
109%	1.6%
110%	2.0%
111%	2.1%
112%	2.2%
113%	2.3%
114%	2.4%
115%	3.0%
116%	3.1%
117%	3.2%
118%	3.3%
119%	3.4%
120%	4.0%
121%	4.1%
122%	4.2%
123%	4.3%
124%	4.4%
125%	5.0%
126%	5.1%
127%	5.2%
128%	5.3%
129%	5.4%
130%	6.0%
131%	6.1%
132%	6.2%
133%	6.3%
134%	6.4%
135%	7.0%