

## **EXTENSION AND MODIFICATION OF THE EXAMINER PENDENCY AWARD**

*June 12, 2023*

The parties to this agreement, the United States Patent and Trademark Office ("USPTO" or "agency") and the Patent Office Professional Association ("POPA" or "union") agree to extend the examiner Pendency Award that was most recently extended and modified on March 24, 2022.

The parties agree that the Examiner Pendency Award will remain in effect until the end of the second quarter of Fiscal Year 2024, at which point the terms of Paragraph F below will apply in the absence of a further agreement.

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 shall remain in force.

A. To be eligible for the Pendency Award in any given quarter, an examiner must

- (1) have a most recent rating of record<sup>1</sup> of Fully Successful or better;
- (2) have completed one full year of employment with the USPTO before the first day of the quarter under consideration;
- (3) meet Production of at least 95% for the period under award consideration; and
- (4) meet the award criteria as outlined below.

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<sup>1</sup> The rating of record at time the award is processed. At the time awards are processed for performance in Q1-Q3, the most recent rating of record is the rating for performance in the previous fiscal year. Q4 awards are processed with the ratings for that same fiscal year. Therefore, the most recent rating of record at the time the Q4 award is processed is the rating for performance in the same fiscal year. Likewise, when a new rating of record is generated to grant or deny a WGI, that rating controls eligibility for any award processed at the same time as or subsequent to generation of the new rating of record.

B. The Pendency Award Program has three tiers of performance award criteria. Quarterly award payments will be made based on performance achieved during that quarter.

Entry-level Tier: 0.25% of current annual salary, excluding overtime and awards, paid following a quarter in which an examiner meets each of the following criteria:

- At least 110% overall Docket Management score; and
- Amendment Category (CAT 1) score must be at least 100%; and
- Completion of Action Hours as described in Section C below; and
- No more than one application exceeds the ceiling at any time in the quarter.

Tier 1: 0.5% of current annual salary, excluding overtime and awards, paid following a quarter in which an examiner meets each of the following criteria:

- At least 115% overall Docket Management score; and
- No single category score under 100%; and
- Completion of Action Hours as described in Section C below; and
- No more than one application exceeds the ceiling at any time in the quarter.

Tier 2: 0.75% of current annual salary, excluding overtime and awards, paid following a quarter in which an examiner meets each of the following criteria:

- At least 130% overall Docket Management score; and
- No single category score under 120%; and
- Completion of Action Hours as described in Section C below; and
- No more than one application exceeds the ceiling at any time in the quarter.

C. Miscellaneous Criteria and Exceptions Applicable to all Tiers

As noted in the Entry Tier, Tier 1 and Tier 2 descriptions above, completion of a minimum number of Action Hours from the following types of Office Actions is required.

- The total accumulation of Action Hours from the following types of Office Actions will count towards the award criteria:

- All new applications (New, Special and RCE), including written restrictions
  - All first actions for Category 1 and 4 amended cases in response to an election due to a restriction requirement
- Action Hours associated with an Office Action include any Attribute hours or Learning Curve credited with the action.
  - Beginning FY 22 Quarter 1 Action Hours associated with an Application that exceeded the ceiling before the application is counted will not be credited towards the award.
  - The minimum number of Action Hours which must be completed in a quarter to meet the Entry Tier, Tier 1 or Tier 2 award criteria depends the examiner's full-time or part-time status, as follows:

	Entry Tier	Tier 1	Tier 2
Full Time Examiner	70 Action Hours	85 Action Hours	110 Action Hours
Part Time Examiner	50 Action Hours	60 Action Hours	85 Action Hours

- If an examiner has a small number of cases in Docket Management categories 1 through 4 (a small number means less than or equal to 5% of the total number of cases included in the total composite score for award purposes) and the score in that category would prevent the examiner from qualifying for an award or higher award level, the category score will not be considered for award purposes.
- Pendency Award payments for part-time examiners will be prorated based on the examiner's examining and examining related hours divided by 280 base hours. The part-time award will be capped at 80% of the full-time award. For example, if an examiner has 140 examining and examining related hours worked in a quarter, the examiner earning an award will receive a payment of 50% ( $140/280 * 100 = 50\%$ ) of the award payment of a full time examiner at the same grade and step. As another example, if an examiner has 252 examining and examining related hours worked in a quarter, the examiner earning an award will receive a payment of 80% ( $252/280 * 100 = 90\%$ , award capped at 80%) of the award payment of a full time examiner at the same grade and step.
- Examiners who change their work schedule from full-time to part-time (or part-time to full-time) at any time during a quarter, must meet the Action Hour award criteria by completing the part-time requirement. The award payment in that quarter

will be based on the examiner's examining and examining related hours divided by 280 base hours and will be capped at 80%.

D. In addition to the quarterly Pendency Award payments, supplemental payments will be available to examiners who achieve sustained performance at the Tier 1 or Tier 2 level. The supplemental payments will be available upon the expiration of the modified Pendency Award, based on performance in the third and fourth quarters of the prior fiscal year and the first and second quarters of the current fiscal year. The parties anticipate that this period may bridge the currently effective Pendency Award and the modified Pendency Award established here and agree that performance in a particular tier under the currently effective Pendency Award will be credited as performance in that tier under the modified Pendency Award for purposes of qualifying for a supplemental payment.

The following chart shows scenarios in which supplemental payments are available, and the corresponding payment.

Prior Fiscal Year (n-1)		Current Fiscal Year (n)		Supplemental Payment at end of Current Fiscal Year (n) Q2
Q3	Q4	Q1	Q2	
Tier 2	Tier 2	Tier 2	Tier 2	1.00%
Tier 2	Tier 2	Tier 2	Tier 1	1.00%
Tier 2	Tier 2	Tier 1	Tier 2	1.00%
Tier 2	Tier 1	Tier 2	Tier 2	1.00%
Tier 1	Tier 2	Tier 2	Tier 2	1.00%
Tier 1 or 2	Tier 1 or 2	Tier 1 or 2	Entry	0.50%
Tier 1 or 2	Tier 1 or 2	Entry	Tier 1 or 2	0.50%
Tier 1 or 2	Entry	Tier 1 or 2	Tier 1 or 2	0.50%
Entry	Tier 1 or 2	Tier 1 or 2	Tier 1 or 2	0.50%
Tier 1 or 2	Tier 1 or 2	Tier 1	Tier 1	0.50%
Tier 1 or 2	Tier 1	Tier 1	Tier 1 or 2	0.50%
Tier 1	Tier 1	Tier 1 or 2	Tier 1 or 2	0.50%
Tier 1	Tier 1 or 2	Tier 1 or 2	Tier 1	0.50%
Tier 1 or 2	Tier 1	Tier 1 or 2	Tier 1	0.50%
Tier 1	Tier 1 or 2	Tier 1	Tier 1 or 2	0.50%
Tier 1	Tier 1	Tier 1	Tier 1	0.50%

- Supplemental payments for part-time examiners will be prorated based on the examiner's examining and examining related hours divided by 1120 base hours. The

supplemental payment for part-time examiners will be capped at 80% of the full-time award. For example, if an examiner has 560 examining and examining related hours worked in the supplemental payment period, the examiner earning the supplemental award will receive a payment of 50% ( $560/1120 * 100 = 50\%$ ) of the award payment of a full time examiner at the same grade and step. As another example, if an examiner has 1008 examining and examining related hours worked in the supplemental payment period, the examiner earning the supplemental award will receive a payment of 80% ( $1008/1120 * 100 = 90\%$ , award capped at 80%) of the award payment of a full time examiner at the same grade and step.

- For examiners who change their work schedule from full-time to part-time (or part-time to full-time) any time during the supplemental payment period, the award payment will be based on the examiner's examining and examining related hours divided by 1120 base hours and will be capped at 80%.

The supplemental payments will be as follows:

Tier 1: 0.5% of current annual salary, excluding overtime and awards, to any examiner who has performed at the Tier I level or better in the third and fourth quarters of the prior fiscal year and the first and second quarters of the current fiscal year.

Tier 2: 1.0% of current annual salary, excluding overtime and awards, to any examiner who has performed at the Tier 2 level in the third and fourth quarters of the prior fiscal year and the first and second quarters of the current fiscal year.

There is no supplemental payment for sustained performance at the entry-level Tier.

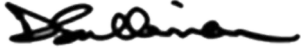

E. If an examiner leaves his or her position after having two qualifying full, quarters (Tier 1 or Tier 2), a supplemental award will be paid, but will be prorated to 50% of the full amount. If the examiner has three qualifying full quarters the supplemental award will be 75%.

F. For the duration of this agreement, the parties shall meet on a quarterly basis at the request of either party to discuss matters that may arise with the Examiner Pendency Award, including sharing and discussing data and information. The parties agree to work together to jointly address issues raised by either party with a goal of reaching a resolution to the issues that is acceptable to both parties within a reasonable time.

If an agreement cannot be reached informally, USPTO may provide notice of a change or the Union may invoke formal bargaining at any time, and the parties will bargain to the extent required by law. Bargaining, if requested, will take place in accordance with the mid-term bargaining ground rules then in place between the parties.

In the event that the parties are unable to agree to extend the award by the end of the second quarter of 2024, Provisions A, B, and C will remain in effect until the end of fiscal year 2024. Provisions D and E pertaining to supplemental payments (i.e., “kickers”) would be modified such that if an examiner has two qualifying full quarters (Tier 1 or Tier 2) in fiscal year 2024 Q3 and Q4, a supplemental award will be paid, but will be prorated to 50% of the full amount.

Signatures:

	<u>6/12/2023</u>		<u>06/12/2023</u>
Daniel M. Sullivan	Date	Kathleen Duda	Date
Director, Technology Center 1600		President	
U.S. Patent and Trademark Office		Patent Office Professional Association	