



UNITED STATES PATENT AND TRADEMARK OFFICE

Deputy Commissioner for Patents

MEMORANDUM

Date: August 31, 2010

To: Patent Examining Corps

From: *Peggy Tocarino*
Peggy Tocarino,
Deputy Commissioner for Patents

Subject: FY 2011 Examiner Production Credits and Revisions to Examiner Expectancies

I am pleased to announce the changes to production credits (counts) made in the Count System Initiatives will remain in effect for FY2011 per the memo of November 3, 2009. The examiner expectancy time adjustment will be recalculated for FY2011 using the same formula as used in FY2010 but based on individual examiner's RCE mix in FY2010 in PALM biweeks 2010-01 through 2010-24.

This memo repeats the explanation of the production credits (counts) changes put into effect on February 14, 2010 and explains the calculation for examiner expectancies for FY2011.

Count System

As illustrated in the charts below, examiners will receive the following total credit:

- 2 counts for a new (non-RCE) application
- 1.75 counts for a first RCE
- 1.5 counts for second and subsequent RCEs

The differing count totals will result from different values for the first action on the merits (FAOM) in each type of application. Examiners will receive the following credit for an FAOM:

- 1.25 counts for a new (non-RCE) application
- 1.0 counts for a first RCE
- 0.75 counts for second and subsequent RCEs

Examiners will receive 0.25 counts for final rejections and 0.50 counts for a disposal (Allowance, Abandonment, Examiner's Answer, Interference, or RCE disposal).

Examiner Production Credits and Expectancies

Previous Count System

original			1st RCE			2nd & subsequent RCEs			previous counts	
FAOM	Final	All/Abn/ExAns	FAOM	Final	All/Abn/ExAns	FAOM	Final	All/Abn/ExAns		
1.00		1.00							2	Reg New (non-RCE)
1.00		1.00	1.00		1.00				2	1st RCE
1.00		1.00	1.00		1.00	1.00		1.00	2	2nd & subsequent RCEs

New Count System

original			1st RCE			2nd & subsequent RCEs			new counts	
FAOM	Final	All/Abn/ExAns	FAOM	Final	All/Abn/ExAns	FAOM	Final	All/Abn/ExAns		
1.25	0.25	0.5							2.00	Reg New (non-RCE)
1.25	0.25	0.5	1.00	0.25	0.5				1.75	1st RCE
1.25	0.25	0.5	1.00	0.25	0.5	0.75	0.25	0.5	1.50	2nd & subsequent RCEs

As illustrated in the next set of charts, after completion of an FAOM the examiner receives the remainder of the counts available (0.75) either by disposing of the application without a prior Final Rejection (0.75 counts) or by doing a Final Rejection (0.25 counts) then subsequently disposing of the application (0.50 counts). For example, an allowance of a first RCE after an FAOM (1 count) is credited as 0.75 counts. Examiners will receive the same production credit for continuing applications (continuations and divisionals) and reissues as for new (non-RCE) applications.

Regular, Continuing, or Reissue (Non-RCE) new case

1st action			2nd action		3rd action	total counts
FAOM	Final	Allow	Final	All/Abn/ExrAns	All/Abn/ExrAns	
1.25			0.25		0.50	2.00
1.25				0.75		2.00
	1.50			0.50		2.00
		2.00				2.00

1st RCE

1st action			2nd action		3rd action	total counts
FAOM	Final	Allow	Final	All/Abn/ExrAns	All/Abn/ExrAns	
1.00			0.25		0.50	1.75
1.00				0.75		1.75
	1.25			0.50		1.75
		1.75				1.75

2nd & Subsequent RCEs

1st action			2nd action		3rd action	total counts
FAOM	Final	Allow	Final	All/Abn/ExrAns	All/Abn/ExrAns	
0.75			0.25		0.50	1.50
0.75				0.75		1.50
	1.00			0.50		1.50
		1.50				1.50

Examiner Production Credits and Expectancies

This new count system applies to all applications submitted for credit thereafter regardless of the stage of prosecution.

The PALM system will also retain the ability to track productivity goal achievement under the previous count system for purposes of the safety net.

Adjustment of Examiner Expectancies (for Utility and Plant Examiners) for FY2011

Under this count system, examiners doing more RCEs receive less production credit overall. To continue to compensate for differences in RCE filing rates and to provide a net increase in time, the expectancy assigned to each examiner will be adjusted. The adjustment will be based on the mix of FAOMs in RCEs and FAOMs in new (non-RCE) applications credited in PALM biweeks 2010-01 through 2010-24 (24 biweeks in FY2010).

Each examiner will be provided with a calculation of the adjustment that will be made to his or her assigned expectancy.

Each examiner's expectancy will be calculated as follows:

Start by adding 2 hours to each examiner's GS-12 Hrs/BD¹ divided by his or her position factor as of August 28, 2010:

$[(\text{GS-12 Hrs/BD divided by position factor}) + 2]$

- Determine impact of the reduction in RCE counts based on examiner's FY10 RCE mix in PALM biweeks 2010-01 through 2010-24 (24 biweeks in FY2010).
- Add additional time, if necessary, to account for reduction in RCE counts so that every examiner gets at least 1 net additional hour over their GS-12 Hrs/BD divided by his or her position factor as of August 28, 2010.

See Attachment A for an example of the calculation

Design Examiners

Since Design applications are not eligible for RCE practice, no adjustment to design class expectancies is needed to account for changes to the count system. Design expectancies will be adjusted by an addition of 0.7 hours per BD at each GS level. Thus, each design examiner's individual expectancy will be calculated using the formula $[(\text{GS-12 expectancy/ position factor}) + 0.7]$.

¹ The GS-12 hours/BD is defined as the art expectancy for a given technology area and does not include the additional examining time or the individual RCE adjustment as defined in this memo. As used in the calculation in this memo, it is an examiner's average GS-12 hours/BD for the applications worked on over a period of time which accounts for mixed dockets.

Examiner Production Credits and Expectancies

CPAs will be credited as regular new (non-RCE) applications under the new count system.

Transferred or “Inherited” Amendments

This count system provides standardized production credit for such amendments.

As illustrated in the charts below, examiners will receive the following total credit for transferred amendments:

- 1.5 counts for a transferred new (non-RCE) amendment
- 1.75 counts for all transferred RCEs

Recipient examiners will receive their production credits when they complete their first office action in the application. In situations of transferred or inherited applications, recipient examiners will receive no abandonment credits or RCE disposal credits for applications in which the recipient examiner has not completed an Office action or restriction. In circumstances where the recipient examiner does not receive abandonment credit or RCE disposal credit but has done substantial work on an application (for example, an interview prior to an express abandonment) the SPE will give appropriate compensation to the examiner.

In a new (non-RCE) application, for the first action completed, the recipient examiner will receive:

- 0.75 counts for a non-final rejection
- 1.0 count for a final rejection
- 1.5 counts for an allowance

In an RCE, for the first action completed, the recipient examiner will receive:

- 1.0 count for a non-final rejection
- 1.25 counts for a final rejection
- 1.75 counts for an allowance

After the first action by the recipient examiner, the counts available to the examiner will revert to the amounts that would be available had the application originated with that examiner.

See Attachment B for the transferred or “inherited” amendment count scheme.

Production Credit for PCT Applications

Production credit for PCT applications is not affected by this memorandum.

Examiner Production Credits and Expectancies

Promotions, Awards, and Performance Appraisals

Promotions

For the purpose of determining eligibility for promotions, examiners will be evaluated using the expectancy applicable during each of the 13 biweeks in the promotion cycle.

Awards and Performance Appraisals

Production levels will be determined using the examiner's expectancy for the biweeks during the award or rating periods.

Attachment A: Example and calculation of time adjustment for Utility and Plant examiners

Example:

If examiner has a mix in PALM biweeks 2010-01 through 2010-24 (24 biweeks in FY2010) of FY10 of 70% Reg (Non-RCE) FAOMs, 22.5% 1st RCE FAOMs, and 7.5% 2nd + RCE FAOMs:

	Previous Counts	New Counts	Individual Examiner FAOM mix from FY09
Reg/Original (Non-RCE)	2.0	2.0	70% Reg (Non-RCE) FAOMs
1st RCE	2.0	1.75	22.5% 1st RCE FAOMs
2nd & subsequent RCEs	2.0	1.50	7.5% 2nd + RCEs FAOMs

Equivalent HRs/BD impact based this 24 biweek FY10 time-period RCE mix due to count changes:

$$\text{Impact} = \frac{[\text{weighted proposed counts} - \text{current counts}]}{\text{current counts}}$$

$$\text{Impact} = \frac{[(2.0 \times 70\%) + (1.75 \times 22.5\%) + (1.50 \times 7.5\%) - 2.0]}{2.0}$$

$$\text{Impact} = -4.69\%$$

$$\text{Impact} = -4.69\% \times 23.0 \text{ HRs/BD [Examiners HRs/BD at their position factor]}$$

$$\text{Impact} = -1.08 \text{ HRs/BD [Impact to Examiners HRs/BD]}$$

Examples of Calculation:

Examiner's avg. FY10 GS-12 HRs/BD divided by Position Factor as of 8/28/10	Start by Adding 2-hours	Examiner's 24 biweeks FY10 % Mix of Reg FAOMs - 1st RCE FAOMs - 2nd+ RCE FAOMs	HRs/BD impact based on 24 biweek FY10 RCE mix due to count changes	Determine if net gain with RCE impact is at least a 1 HR/BD increase	Determine final increase to Current HRs/BD at Position Factor (FY11 adjustment)	Adjusted FY11 HRs/BD at Position Factor
23.0 (HRs/BD)	2.0 (HRs/BD)	90 - 7.5 - 2.5 (low RCEs)	-0.36	2.0 - 0.36 = 1.64 (≥ 1.0, no adj.)	2.0 (HRs/BD)	25.0 (HRs/BD)
23.0	2.0	73 - 20.3 - 6.8 (Approx. Corps Avg)	-0.97	2.0 - 0.97 = 1.03 (≥ 1.0, no adj.)	2.0	25.0
23.0 [Example from above]	2.0	70 - 22.5 - 7.5	-1.08	2.0 - 1.08 = 0.92 (< 1.0, needs adj.)	2.08 2 + [1.0 - (0.92)] = 2.08	25.08
23.0	2.0	50 - 37.5 - 12.5	-1.80	2.0 - 1.80 = 0.20 (< 1.0, needs adj.)	2.8 2 + [1.0 - (0.20)] = 2.8	25.8
23.0	2.0	20 - 60 - 20 (high RCEs)	-2.88	2.0 - 2.88 = -0.88 (< 1.0, needs adj.)	3.88 2 + [1.0 - (0.88)] = 3.88	26.88

Examiner Production Credits and Expectancies

Attachment B: Transferred or “Inherited” Amendment Count Scheme

Regular (Non-RCE) new case

1st action			2nd action		3rd action	total counts
FAOM	Final	Allow	Final	All/Abn/ExrAns	All/Abn/ExrAns	
1.25			0.25		0.50	2.00
1.25				0.75		2.00
	1.50			0.50		2.00
		2.00				2.00

Transferred or inherited Reg (Non-RCE) amendment

1st action by new exmr			2nd action		3rd action	2nd Exmr counts
Non-Final	Final	Allow	Final	All/Abn/ExrAns	All/Abn/ExrAns	
0.75			0.25		0.50	1.50
0.75				0.75		1.50
	1.00			0.50		1.50
		1.50				1.50

1st RCE

1st			2nd action		3rd action	total counts
FAOM	Final	Allow	Final	All/Abn/ExrAns	All/Abn/ExrAns	
1.00			0.25		0.50	1.75
1.00				0.75		1.75
	1.25			0.50		1.75
		1.75				1.75

Transferred or inherited 1st RCE: No prior action in the RCE

1st action by new exmr			2nd action		3rd action	2nd Exmr counts
FAOM	Final	Allow	Final	All/Abn/ExrAns	All/Abn/ExrAns	
1.00			0.25		0.50	1.75
1.00				0.75		1.75
	1.25			0.50		1.75
		1.75				1.75

Transferred or inherited 1st RCE: A prior action in the RCE by previous exmr

1st action by new exmr			2nd action		3rd action	2nd Exmr counts
Non-Final	Final	Allow	Final	All/Abn/ExrAns	All/Abn/ExrAns	
1.00			0.25		0.50	1.75
1.00				0.75		1.75
	1.25			0.50		1.75
		1.75				1.75

Attachment B continued on next page

Examiner Production Credits and Expectancies

Attachment B: Transferred or “Inherited” Amendment Count Scheme (continued)

2nd& Subsequent RCEs

1st			2nd action		3rd action	total counts
FAOM	Final	Allow	Final	All/Abn/ExrAns	All/Abn/ExrAns	
0.75			0.25		0.50	1.50
0.75				0.75		1.50
	1.00			0.50		1.50
		1.50				1.50

Transferred or inherited 2nd+ RCE: No prior action in the RCE

1st action by new exmr			2nd action		3rd action	2nd Exmr counts
FAOM	Final	Allow	Final	All/Abn/ExrAns	All/Abn/ExrAns	
1.00			0.25		0.50	1.75
1.00				0.75		1.75
	1.25			0.50		1.75
		1.75				1.75

Transferred or inherited 2nd+ RCE: A prior action in the RCE by previous exmr

1st action by new exmr			2nd action		3rd action	2nd Exmr counts
Non-Final	Final	Allow	Final	All/Abn/ExrAns	All/Abn/ExrAns	
1.00			0.25		0.50	1.75
1.00				0.75		1.75
	1.25			0.50		1.75
		1.75				1.75