

United States Patent and Trademark Office  
and  
Patent Office Professional Association

**QUALITY INITIATIVES**  
Imposed Pursuant To Case No. 03 FSIP 67  
November 4, 2003

Category 1: Provisions Applicable to All Issues

1. Three years following the implementation of this agreement, management will negotiate, to the extent required by law, over the following:
  - a. Proposals submitted by POPA related to any changes that management decides to implement to the certification exam in the event that greater than 20% of examiners fail to earn their promotion to the GS-13 level solely because of their inability to successfully complete the exam. This will be a cumulative percentage of employees who have been denied promotion in the second and third year following the implementation of this agreement.
  - b. Proposals submitted by POPA related to any changes that management decides to implement to the recertification process in the event that fewer than 80% of examiners at the GS-13 level and above fail to gain recertification. This will be a cumulative percentage of employees who have undergone the recertification process in the second and third years following the implementation of this agreement.
  - c. Proposals submitted by POPA related to any changes that management decides to implement to tests given after individual training courses in the event that fewer than 90% of examiners pass the tests. This will be a cumulative percentage of tests given the second and third years following the implementation of this agreement.

Implementation of management's final offer is not intended to permit management to make other non-*de minimis* midterm changes in conditions of employment in connection with its Quality Initiatives program without fulfilling its statutory bargaining obligations, or to otherwise limit the Union's statutory rights to bargain mid-term.

2. If any provision of this agreement is disapproved on Agency Head Review, the remainder of the agreement will be effective upon the completion of the Agency Head Review process.

## Category 2: Provisions Applicable to All Tests

3. Current laws, rules, and regulations regarding the release of information will govern access to completed tests.
4. The Office shall retain completed tests for a minimum of four months following the report of the results to the employees.
5. Management will retain and produce records of test results as required by law.
6. Employee training identification numbers will be used in lieu of names on all tests. The correlation between the identification number and the name of the employee taking the test, and the demographics of the employee, shall not be disclosed to those grading the exam.
7. All test questions, answers, and grading shall be objective, except when written communication techniques themselves are the primary subject matter of the course.
8. All test questions, answers, and grading shall be written, either in paper or electronically.

## Category 3: Provisions Applicable to All Competence Testing Associated with Specific Training Courses

9.
  - a. Notice of the intent to expand the review of an employee's work product after the second failure of a test after training shall be given to the employee at the time the review is begun.
  - b. In any review in paragraph (a) above that results in notification to an employee that an error has been found, the employee shall be given access to the file of the application containing the error.
  - c. The employee shall be given 30 days after notification of an error, pursuant to paragraph (b) above, to present a written defense (and any verbal argument) to management. Management shall issue a written decision within 30 days thereafter.
  - d. Initially, the time employees spend defending themselves in meetings with management, plus reasonable preparation time, shall be accounted for as examining time. The time associated with this defense shall in no case exceed the time allotted for the initial action in which the error was made. If the employee is successful in persuading management to withdraw its determination that an error has been committed, all such time shall be treated and recorded as examining-related time for purposes of the employee's performance appraisal and awards.

10.
  - a. The tests are intended to measure competence in the knowledge necessary to perform functions of the position held by the employees.
  - b. The tests will be pass/fail.
  - c. The tests alone will not be a basis for performance appraisal or for denial of an award.
  - d. All tests shall be performed on duty time, and shall be treated as examining-related time.
  - e. Failure of a test a second time will be used as a trigger to increase review of the work done by the employee.
  - f. Performance appraisals will be based solely on the standards set forth in the Performance Appraisal Plan (PAP).

11. There shall be no expectation that an employee read and research material on their own time in order to answer any questions on the agency- administered test.

12. Each test shall be designed so that time shall not be a significant factor in successfully completing the test. A reasonable time will be provided for each test, with adjustments granted for unusual circumstances at management's discretion.

13. Tests will be given as soon as possible after the corresponding training is given.

14. Unless on approved leave, employees must take tests when offered, unless excused at PTO's sole discretion. PTO will determine the format and content of any test or make up test.

15. Employees participating in the same session of a training class shall normally take the tests simultaneously.

16. In the case of an employee who files an EEO complaint or grievance based on his or her failure of a test after training, the employee's test will be kept until the issue is resolved, or the parties to the EEO complaint or grievance agree that the information is not in dispute.

17. During a test, at the instructor's discretion, answers to an employee's request for a clarification of a test question will be given to the employee and to all other employees taking the test in the same session.

18. At the employee's request, references to a test failure shall be deleted from all individual employee files kept in the Technology Center upon successful completion of the test on the second attempt, or at the end of the quarter following the expiration of twenty-four months after the communication of the second failure to the employee.

19. Any public report covering employee passage rates of tests after training shall be made available to POPA (upon request) generally at the same time as the public release.
20. Unless there are unusual circumstances which affect timing, training and testing shall not be mandatory in the last biweek of any quarter or during the last two biweeks of the fiscal year.
21. Whenever possible, management will give examiners two weeks notice of upcoming training and provide an opportunity for class registration at that time.
22. Employees should expect that every training course will include a test at the end to determine whether the employee can demonstrate satisfactory competence of the material presented at the training.
23. At POPA's request, the Deputy Commissioner for Patent Operations, or designee, will meet annually for up to one hour with up to three representatives of the Association to allow the Association to provide input into the type of training that would be most beneficial to examiners.
24. Employees who fail a test for the first time must sign up for the next available time that course is offered, or they may retake the test with up to two hours of preparatory time.
25. Employees who fail a test for a second time will receive appropriate remedial training, as determined by management.
26. At the PTO's discretion, and on a course-by-course basis, employees may be given the option to take the test prior to receiving training, and if the employee passes the test, the training requirement shall be waived.

#### Category 4: Provisions Applicable to Certification Examination

27. Content may be drawn from Agent's exams, or from other sources determined by the USPTO.
28. Patent Examiners will be required to pass the certification examination, in addition to the other requirements, to qualify for promotion to the GS-13 level. Employees who meet the other requirements for promotion to the GS-13 level prior to March 1, 2004, will not be required to pass the certification examination in order to qualify for promotion to the GS-13 level.

29. Nonprobationary employees may take the certification exam within two years of being eligible for a GS-13 position.
30. Any employee who has passed the Agent's exam administered by the Office of Enrollment and Discipline (or successor organization) shall be exempt from taking the certification exam.
31. The certification examination will be pass/fail. To pass the certification exam, an examiner must answer at least 70% of the questions correctly.
32. Employees who fail the certification exam should work with their Supervisory Patent Examiner to determine appropriate training.
33. Employees may take the certification exam no more than twice per fiscal year.
34. When an examiner fails a certification examination, management will confer with the examiner, upon the examiner's request, and provide an explanation of the correct answer for any question that was answered incorrectly by the examiner. An examiner may be granted up to one hour of examining related time for this purpose.
35. Management will offer the certification exam at least twice per year. In order to accommodate the initial group of employees that will be subject to the certification examination requirement, management will offer the exam on multiple occasions in the first year.
36. Management will provide a course covering patent law, evidence and practice and procedure to GS-12 examiners to help prepare for the certification exam. This course will be approximately one week long.

#### Category 5: Provisions Applicable to the Recertification Process

37. Recertification shall be applicable to all POPA bargaining unit employees in the 1220-1226 job series who are GS-13 and above, except as set forth in M38. The recertification process shall consist of meeting the requirements of the mandatory continuing education program and, for examiners, an enhanced review of the employee's work product once every three years. Each year, approximately 1/3 of GS-13 through GS-15 examiners will undergo the enhanced work product review.
38. Employees at the GS 13-15 level who have not examined applications for one year preceding the time that they are scheduled to undergo the enhanced work product review will not be recertified, but must still meet the requirements of the mandatory continuing

education program. Management will conduct the enhanced review of an employee's work product six months after the employee resumes examining duties.

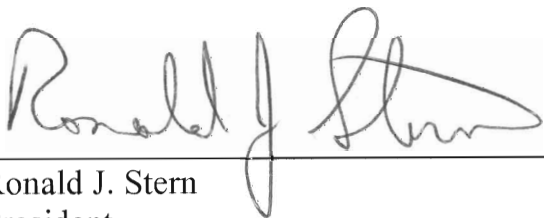
Category 6: Provisions Applicable to Enhancing the File Wrapper History

39. The MPEP will require that the examiner provide a full summary of the interview and the reasons for withdrawing a rejection.

40. At management's discretion, and in extraordinary circumstances, an examiner may be granted additional examining-related time to record the substance of an interview with an applicant. An examiner must make an application for such additional time to his or her Group Director and the additional time, if any, must be approved prior to the interview.

**SIGNATURES OF THE PARTIES**

**For the Union:**



Ronald J. Stern  
President  
Patent Office Professional Association

Feb 8, 2005

Date

**For Management:**



Jasemine C. Chambers  
Chief Negotiator and  
Director, Technology Center 1600  
U. S. Patent and Trademark Office

2/8/05

Date