POPA NEWS
Patent Office Professional Association
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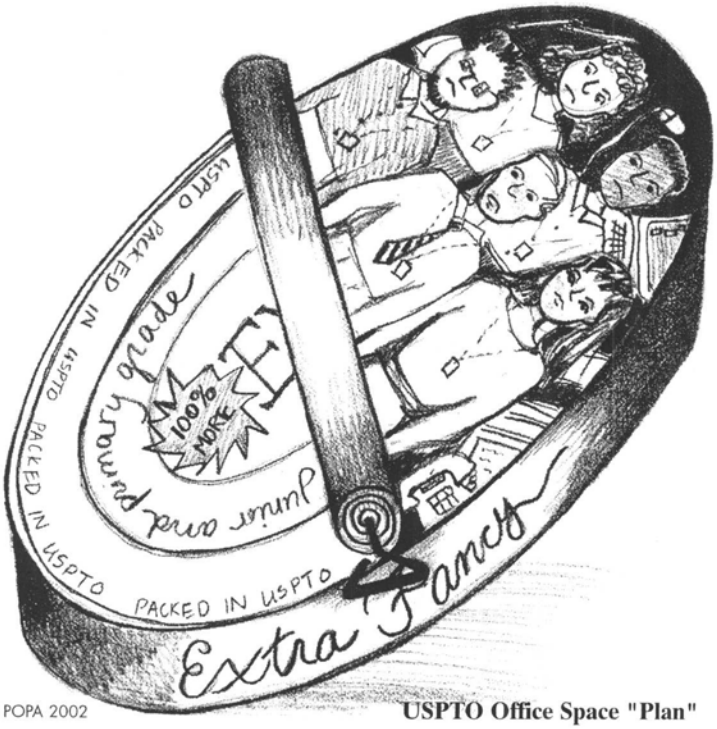
Where You Stand

Work at Home: The USPTO incorrectly reported in a January "What's New" message that a "partnership team" agreed to a four month extension of the Work at Home program. The USPTO-POPA Millennium Agreement provides for a permanent Work at Home program. The agreement negates the need for continued agreements to extend the Work at Home program and allows for changes of problems identified. The Work at Home six-month pilot program was just the initial phase of an ongoing program, which can be continually modified per the Millennium Agreement based on problems found in the pilot phase.

At the end of the first six-month pilot, POPA proposed expanding the program to meet the terms of Public Law 106-346 – the Department of Transportation and Related Agencies Appropriations Act of 2001, which states that 50 percent of all eligible federal employees should be offered the option of telecommuting by a year and six months after enactment, which is April 23, 2002. Senior USPTO officials stated that they had thought the deadline was October 2002. They instead wanted only to extend by four months the "evaluation period," originally intended to be limited to one month per the Millennium Agreement, and to restrict the program to only current participants.

The USPTO appears to be attempting to set adverse precedents in expanding Work at Home to other employees.



© POPA 2002 **USPTO Office Space "Plan"**

The agency wants to impose many more conditions on participants from non-patent corps areas, e.g., quality review examiners and CIO employees. These conditions haven't proven necessary for the success of the program for examiners. No cases of abuse of the program have been reported.

As an example of one condition, the USPTO wishes not only to bar from Work at Home employees who have been subjected to disciplinary action within the last five years, but also those simply under investigation for disciplinary action. To allow the placement of such conditions would set a precedent for changing the Work at Home program that is already established for examiners and others.

The agency representatives on the USPTO/POPA Work at Home workgroup have been collaborating with their union counterparts in finding amicable solutions, in contrast to the actions of senior USPTO officials.

Many local members of Congress have a keen interest in maximizing work-at-home options, and believe they are key to a family-friendly workplace and to reduced traffic congestion.

Office Space: The USPTO has doubled into shared offices *all* GS-13 employees and part-time employees (including part-time GS-14s) in Tech Center 2800. The agency has announced that part-time primary examiners starting next quarter will be doubled. It plans at that time to place most GS-13 employees back into private offices.

By USPTO/POPA agreements and past practice all GS-13 and higher employees have been guaranteed private offices of 150 square feet. The agency reaffirmed in the 1999 Space Agreement its adherence to Article 16, Section 1 of the USPTO/POPA contract which states that all examiners are entitled to private offices whenever possible.

The USPTO has long known that it does not have enough office space for examiners. It plans to hire 750 examiners in fiscal year 2002 for a net examining corps of 3,435, and to hire 950 examiners in FY2003 for a net corps of 3,991. But the agency is not offering to publicly disclose any plan or strategy to adequately accommodate everyone now and in the future.

The agency continues to claim that the move to Carlyle is to save money. However, the projected USPTO workforce at the time of the move will likely be more than 10,000, which cannot fit within the original design at the Carlyle site and will necessitate the additional, unbudgeted leasing of office space. Space will also needed to accommodate the at least 1,500 contract employees now working at the USPTO. The agency also didn't ask for funds necessary for the cost

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of space needed for a required expansion before the move. The USPTO has the numbers showing what the space needs are now and will be at Carlyle. Any overcrowding and doubling up will occur with the USPTO's knowledge and forethought.

Office Furniture: The USPTO informed POPA that it will not purchase new office furniture for currently employed examiners. The existing furniture, much of it World War II surplus, will be moved to the Carlyle site.

The Bush Administration's 2003 proposed budget for the USPTO is the largest annual increase in the agency's history. Despite this increase and the agency's written commitment in 2000 to provide new office furniture, Deputy Commissioner for Patent Operations Esther Kepplinger explained to POPA that she and Commissioner for Patents Nick Godici chose to exclude money for furniture from the USPTO 2003 budget request to the administration.

Special Pay Increase: The USPTO concurred in the Millennium Agreement to seek adjustments from the Office of Personnel Management to "maintain" the agency's special pay rate differentials. The USPTO first submitted its request two months into the new pay year.

Each day of agency delay will mean less money for employees.

In early Dec. 2001 when the 2002 general pay increase was announced, POPA suggested that the USPTO quickly submit its proposal to OPM. The agency delayed. It was mid-February when the USPTO gave to POPA a second draft of a request for the 1.17 percent increase. The union replied within hours with its comments and told the agency to please send the request to OPM.

POPA also suggested that the USPTO request a special rate pay for GS-10, Step 1, which determines the overtime rate cap. Such an increase would raise that specific salary step to enable the statutorily limited overtime rate to rise from approximately $30.40 per hour to $35.90 per hour. Increased use of overtime is a cost-effective means to increase productivity. The cost of an overtime hour of examining time is less than half the effective cost of an hour of examining time during regular hours.

The agency included only a cursory mention of an overtime increase request in its submission to OPM.

More Time for Examination: The USPTO promised in writing that it would develop jointly with POPA a proposal to garner funding to increase quality through more examination time. Agency officials have flatly refused to do so.

Senior USPTO officials have stated that the agency cannot ask to fund more time until the USPTO is able to use all of its patent fees, i.e., until Congress and the administration no longer divert patent fees to the general treasury. However, in its budget request to the administration, the USPTO requested an average 20 percent increase in patent fees and still the agency rejects its promise to seek more time for quality examination.

Esther Kepplinger said that the patent community's only concern is "pendency, pendency, pendency." In contrast, the Patent Public Advisory Committee in its November 2001 Annual Report to Congress said the opposite, that quality is more important than pendency:

> "The P-PAC continues its support that quality is a priority goal of the USPTO, and at its public meeting resolved that the Director's and USPTO's top priority of putting quality first is supported unanimously by the P-PAC....If there are budget deficiencies, then processing time will increase rather than sacrificing quality."

When asked by POPA about new quality initiatives, Kepplinger said that no new quality programs are scheduled for this year and next. The only quality project being considered for expansion is the one that allows for a supervisory second pair of eyes to review patent applications. This USPTO focus implies that the most important quality failures are the fault of examiners. Senior patents management is refusing to consider the possibility that the examination system can be improved to upgrade quality, even though only last year management agreed that more time per case was a worthwhile quality improvement.

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Economic Justification for Increased Overtime Rates

When evaluating the value of overtime, understanding the real hourly cost of regular-time employment is important. The effective hourly cost of the time actually devoted to patent examination is calculated as follows for a typical full signatory authority examiner:

Yearly salary	$ 96,000
Retirement	
FERS	10,000
TSP	3,000
Social Security	6,000
Health Insurance	7,000
Office Space	6,000
Supervision	8,000
Subtotal	$136,000

Expected number of productive hours per annum: 1,664
$136,000 ÷ 1,664 hours = $82 per regular time examining hour

Considering that the POPA-proposed overtime rate is less than $36 per hour, this represents a savings of roughly $46 for each hour of overtime worked.

Considering that examiners currently work approximately 330,000 hours of overtime, the proposed increased overtime rate would add a cost of approximately $1.65 million for existing overtime. It will take 35,900 hours of additional overtime to offset this cost in productivity gains. This represents a lot less than 1 percent of the total examining hours currently being worked and thus it is likely that increasing the incentives for overtime will produce a significant financial benefit for the agency.

Not only is raising the overtime maximum financially effective, it also will benefit quality. Raising the maximum overtime rate will induce some experienced employees to work overtime, and thus increase the USPTO output of cases acted on by experienced employees.

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In addition, the USPTO requested and received from the president a 21 percent overall fiscal year 2003 budget increase, one of the largest budget increases government-wide for a non-defense agency. Adding this to the 10 percent funding increase in FY2002, the USPTO has no valid reason not to honor its promise in the Millennium Agreement.

Automation Issues: The USPTO carried through on one point in the Millennium Agreement by holding an automation briefing in the first quarter of the year. However it failed its signed pledge to:

> "...provide an overview of projects currently underway and projects to be undertaken over the next five years. Particular emphasis will be placed on current projects needing immediate guidance related to a development or implementation phase, on projects being initiated in the near term (e.g. one year or less), and projects which must be budgeted for in the upcoming budgeting cycle."

The briefing supplied virtually no meaningful information and explicitly excluded at least one significant current project. POPA representatives asked specific questions for which the agency representatives had few answers.

The USPTO often claims that the software and hardware needs suggested by employees are too expensive, but will not give employees any information on how much money it spends on the development of any of its tools. The agency also won't share the recommendations it received from IBM, with which it contracted to generate hardware and software development initiatives. The USPTO's making important automation decisions in secret is not in the public's best interest.

To circumvent the potentially disastrous results of rolling out a new automation tool without proper employee testing (remember the first days of the EAST software, and more recently the roll-out of PALM Expo?), POPA submitted the names of 11 qualified employees to participate in developing the various parts of the TEAM (electronic file wrapper) project. This project will have a far-reaching impact on examiners' worklives, likely greater than any computer tool to date.

The Millennium Agreement again states that the union can nominate bargaining unit members to assist in automation project development. However, the agency chose only four of the 11 nominated individuals to participate. The collaborative approach to developing automation tools provided for in the Millennium Agreement seems to have evaporated.

In addition, in a March 2001 report entitled "USPTO Search System Problems Being Addressed, but Improvements Needed for Future Systems," the Department of Commerce Office of the Inspector General stated:

> "Communication with end users needs to be improved. Although some examiners participated in some system life-cycle activities, many of them stated that they were not adequately involved in the system development process and expressed dissatisfaction with the new system. We believe that the examiners' dissatisfaction stems from inadequate communications with the program manager and developers and lack of a significant, formalized role. USPTO should involve the examiners throughout the life-cycle and formally define and document their roles in order to increase the likelihood that their needs and expectations will be met when a system is delivered." [OSE-12679, 3/01]

Pay Inversion: For employees affected by an unintended pay inversion when the patent corps moved to a higher special pay scale, the USPTO in the Millennium Agreement stated that it "will provide each employee an opportunity to avoid the pay inversion if at all possible." In February, Esther Kepplinger claimed that such a pay inversion doesn't exist.

A pay inversion occurs when an employee who expected upon hiring to be paid more than other examiners at the same grade gets paid less than others. The prime examples of this are employees who were hired on the complex biotech scale being paid less than employees hired on the non-complex scale.

The pay inversion in part was a consequence of moving employees onto a unified pay scale and not paying as big an increase to those remaining on the complex biotech scale. New examiners are most often hired at the GS-7, Step-10 level. Employees who were on the complex and non-complex pay scales received the same dollar amount at that level. When promoted, employees generally receive a salary that's at least two within-grade steps higher. Because the complex biotech scale was higher, when GS-7 employees on the biotech scale were promoted to GS-9 they wound up at lower step than those on a non-complex scale but were making the same or more money.

When employees at this level on the complex biotech scale were converted to the unified scale they kept their lower grade and step, which translated into a lower salary than those originally hired on a non-complex scale.

The USPTO was aware of this problem when the new unified pay scale was devised and promised to do all it could to fix it. However, Kepplinger most recently reported that no real pay inversion exists because employees on the complex biotech scale didn't get a pay decrease during the conversion to the new scale.

POPA believes that the USPTO can do more to "avoid the pay inversion if at all possible." The association has suggested giving those employees affected by the pay inversion a retention allowance. Because they are getting paid less than they were promised when they were hired, it is reasonable to believe that these employees would be more likely to leave the agency. Kepplinger refused to consider offering these allowances because it's "speculative" and because no one so far has left. She stated that the agency also discussed the issue with OPM, which agreed that nothing more should be done for the employees harmed by the pay inversion. *(continued on page 4)*

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Training examiners: The training of new examiners beyond the Patent Academy is usually done one-on-one by supervisory patent examiners (SPEs) or is assigned by SPEs to primary examiners. Because of production pressures, SPEs don't like to give time to primaries to train others. Senior USPTO management values and rewards the special project work done by SPEs more than it values and rewards their mentoring. This creates a training void for junior examiners.

POPA is seeking suggestions on how to document the availability of SPEs for employee training. Some have proposed encouraging employees to e-mail their questions to their supervisors when their SPE is not available. The goal of this and other possible documentation methods would be to quantify the lack of needed supervision and training.

For primary examiners who have the opportunity to train junior examiners, greater resources need to be put into "train the trainer" activities. The trainers themselves need access and instruction on rule changes and recent case law to most effectively train new employees.

IN MEMORIAM
Dr. Paul Lintz

With sadness we announce the death of Dr. Paul R. Lintz, a primary examiner in Art Unit 2771 and POPA delegate, on Jan. 13, 2002. He was 59.

Dr. Lintz joined the USPTO in 1992, specializing in database systems and file management. He was an active member of the USPTO community, serving as a Combined Federal Campaign key worker as well as a supporter of the Haitian-American Intellectual Property Association. He was elected as an electrical delegate to the POPA Executive Committee in November 2000. He mentored many junior patent examiners and represented fellow examiners in grievance matters.

After graduating from the University of Dallas in 1963, Dr. Lintz moved to Washington to study at Catholic University, from which he received his M.S. in physics in 1965. He earned his Ph.D. in electrical engineering from Catholic University in 1977 by attending night classes while working full time over a period of ten years.

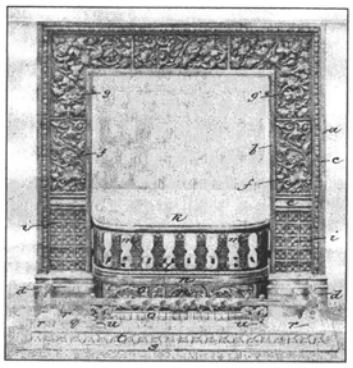
From 1967 until 1990 Dr. Lintz worked at defense technology firms, applying signal-processing theory to various projects including the design of systems to detect and distinguish between earthquakes and underground nuclear blasts. During this time, he co-authored several works for scientific journals.

Dr. Lintz is survived by his wife, Mary Grace Lintz, four children and one grandchild. The family requested that donations in his memory be made to the University of Dallas, 1845 E. Northgate Dr., Irving, TX 75062.

Paper File Disposal Reconsidered

The USPTO is heeding a call made by POPA and others late last year and is considering offering its paper files to non-profit organizations before destroying them.

In a *Federal Register* notice published Feb. 12, 2002, the USPTO wrote, "The USPTO is seeking input on whether any non-profit organization is interested in acquiring the paper copies of the U.S. patents to be removed from the examiners' search rooms."



Photos courtesy of Jim Davie

Photos taken from paper patents in the Design group that were originally slated to be destroyed. At left, an 1885 photo that was attached to a fireplace-front patent. At right, an 1886 photo for an advertising sign patent. According to a patents historian, applicants for Design patents between approximately 1870-1893 were allowed to submit photos. The photos, however, were never reproduced when additional patent copies were created. The photo images scanned for use with automated tools are degraded past recognition. Hence the remaining photos attached to these paper patents hold historical significance.

Interested non-profits have until March 14 to contact the USPTO to express interest in obtaining paper files. If such interest is communicated and the agency chooses not to destroy the paper files, "interested non-profit organizations will then be required to contact the USPTO within thirty days of the date the USPTO's Web site is updated to include the subclasses in which the organization is interested," stated the USPTO notice in the *Federal Register.*

During February the agency continued to send hampers full of paper patents to be destroyed.

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