POPA NEWS
Patent Office Professional Association
July-August 2003 Vol. 03 No. 5

USPTO Wants to Cut Carlyle Costs at Employees' Expense

The USPTO is proposing "cost-saving" measures for the new Carlyle campus that would come at employees' personal expense and well-being. The agency is refusing to move employees' privately-owned office furniture, is denying the request to heat or cool the buildings during the full hours of employees' work schedules, and other steps that will reduce employee effectiveness and morale.

Some of issues that will have a direct impact on employees' worklife and productivity:

Heating, Ventilation and Air Conditioning (HVAC) – POPA is proposing that the HVAC operate during all hours of employees' flexible work schedules, 5:30 a.m. to 10 p.m., Monday through Saturday. The USPTO is agreeing to such operation only 6 a.m. to 7 p.m., Monday to Friday. Each hour of employees' productivity greatly offsets the HVAC cost of pennies per employee per hour. The only seeming reason for this penny-wise and pound-foolish approach is a USPTO attempt to restrict employee work hours. In addition, the agency is planning to prohibit the use of personal fans and space heaters at all times.

Furniture – Employees have always been permitted to have privately-owned furniture in their offices and the USPTO has always moved such furniture with the agency-owned furniture. The agency is refusing to permit any personally-owned furniture at Carlyle, including bookcases. In addition, the USPTO wants non-reviewable discretion to determine what furniture, even government-owned, will be allowed in employees' offices.

Personal Office Items – The USPTO has always moved employees' personally-owned office items, such as framed Primary Examiner certificates, framed award certificates,

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Law School Cut Feels Like Bait-and-Switch to Affected Patents Employees

Several eager, newly hired patent employees — participating in their second week of USPTO orientation in June — were thunderstruck to learn from POPA that the agency's law school tuition reimbursement program, which had been offered to them by USPTO recruiters just three to four months earlier as an inducement to work for the agency, had been cancelled last fall.

These new recruits joined the many other patent employees who feel like they have fallen victim to the USPTO's latest bait-and-switch. POPA in May filed a formal grievance on employees' behalf regarding the USPTO's breaking of its Non-Duty Time Legal Studies Program contract.

The binding 1998 USPTO-POPA agreement states that the only situation under which the agency may reduce or terminate the legal studies program funding is when it "is

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Life at Carlyle: PTO wants employees to absorb lots of non-production time.

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photographs, posters, paper organizers and reference or textbooks. The agency is refusing to move any of these personal items to Carlyle.

Computer – The USPTO is moving towards a completely automated environment at Carlyle. In anticipation, POPA is proposing that if an employee's computer is not installed and operational by the time the employee unpacks the office, after the first hour the employee will be granted computer down time until such computer is installed and operational. Instead, the office is expecting employees to plan for doing a full day's work without any computer support; no other time granted.

Parking – To mitigate the burden on employees being moved of having to pay for parking in both Crystal City and Carlyle in the same month, POPA is suggesting that employees with monthly parking passes in Crystal City who continue to have monthly passes at the Carlyle facility be permitted to park at the Carlyle facility for the remainder of that one month at no additional cost, with the employees paying the Carlyle fee the next full month. The USPTO, however, wants employees to pay for no less than one-half the monthly fee, no matter when during the month they are moved. This is especially onerous for employees moving at the beginning of the month. They would have to pay for a full month in Crystal City, and then would be required to pay a full month for that same month in Carlyle.

Shuttle Service – POPA is proposing unlimited and non-restricted shuttle service for employees between Crystal City and Carlyle during the transition. The USPTO, however, has stated that using the shuttle to go to the credit union, the fitness center, or to visit a coworker will not be permitted. The agency is not willing to make any concessions regarding shuttle use for employees in a carpool wherein the carpool group is split between the two sites. The agency has also not guaranteed that shuttle service will meet employee demand.

The USPTO previously assured POPA and made representations that there would be shuttle service between the King Street and Eisenhower Metro stations and Carlyle.

The *Washington Post* in June reported that the pedestrian concourse under Duke St—linking Carlyle to the King St. station—would not be completed by Norfolk Southern, the land's previous owner, until well after the first employees move to Carlyle.

The *Post* stated, "Nearly half the [Carlyle] office workers are expected to take public transportation, and neighborhood activists worry that they'll bring their cars if they can't walk safely from the station. The concourse is due to open in 2004. Meanwhile, the Norfolk Southern will provide shuttle bus service for PTO employees who take Metro to work." However, the agency now refuses to assure or guarantee this shuttle service.

POPA will continue to negotiate on employees' behalf regarding these issues.

Letters to POPA

I am a member of POPA and appreciate having a body like POPA representing examiners' best interests. However, I found the last newsletter to be quite ridiculous. I am at a GS 11 level and regularly produce at anywhere from 110 percent to 130 percent. Here's the catch though: I don't know how to type. It appears to me that the lack of typing doesn't affect my ability to do my job. I believe that this partly due to the fact that all of our actions are pretty much boilerplate. I don't quite understand how hard it is to type the word "anticipated" or the inventor' s name from the patent into a form paragraph. So my response to this newsletter is: Tell those examiners that are complaining to suck it up!

POPA's response:

Your situation must be very special if the office actions that you type are "boilerplate." Most examiners write lengthy explanations in their actions. In fact, the USPTO requirement for so much detailed explanation in recent years is one factor that has added to the pressure-cooker culture of patent examination.

We represent a somewhat diverse group of individuals. It is important to respect the dignity and history of all. Frankly, there are some who have spent their entire careers having the assistance of typists. To those who feel they cannot type, the withdrawal of typists means the end of the job for them.

No Pay Raise

POPA requested that the USPTO seek a special pay rate increase from the Office of Personnel Management as required in the Millennium Agreement. The actual text of the May USPTO response follows.

Please be advised that the agency will not request an increase to the special pay rate equivalent to the increase in the locality rate this year. As you know, the increase to the locality rate for 2003 in our area is 1.13 percent.

The Agreement on Initiatives for a New Millennium requires the agency to request such an increase in accordance with the regulations governing special pay. These regulations require the head of the agency to certify that the special pay rate is needed for recruitment and retention purposes. Our staffing levels do not support such a certification this year.

Editor's Note: POPA has filed a grievance to enforce the requirements of the Millennium Agreement.

Pilot Program and Evaluation Mandated for Fee Modernization Act

Patent searching by a private sector "qualified search authority," as proposed by the USPTO Fee Modernization legislation, will only proceed after a USPTO pilot program of no more than 18 months and an independent evaluation of its results, according to amendments to the bill approved by the House Judiciary Committee in late June.

(Left to right) Rep. James Sensenbrenner (R-Wisc.), Rep. John Conyers Jr. (D-Mich), and Rep. Howard Berman (D-Calif.) considered the USPTO Fee Modernization Act at a July 9 markup of the bill by the House Judiciary Committee.

The amendments, championed by Rep. Howard Berman (D-Calif.) and Rep. Lamar Smith (R-Texas), state that USPTO searching can only be done by a commercial entity if:

- "the Director conducts a pilot program...which demonstrates that searches by commercial entities...are accurate; and meet or exceed the standards of searches conducted by and used by the PTO...
- "the Director submits a report of the results of the pilot program to the Congress and the Patent Public Advisory Committee (PPAC) that includes...an explanation of the methodology used to evaluate the accuracy and quality of the search reports; an assessment of the effects that the pilot program...had and will have on patentability determinations; productivity of the PTO; costs to the PTO; costs to patent applicants; and other related factors.
- "the PPAC ... submits a separate report on its analysis to the Director and the Congress that includes—an independent evaluation of the effects that the pilot program...had and will have...."

The USPTO intends to limit its pilot program to Patent Cooperation Treaty (PCT) cases, according to an agency document submitted to the Senate Appropriations Committee. The USPTO repeatedly referred to its planned pilot program as the "PCT pilot" in its congressional submission. But the congressional intent of the Fee Modernization Act amendments is to require a pilot program with accepted research methodology and protocols. Searching PCT cases is not equivalent to searching U.S. cases. An agency pilot using only PCT cases will be inherently flawed.

The amendments mandate that the pilot last no more than 18 months and that Congress have the opportunity to legislate a bill negating the use of outsourcing in the one-year period following the submission of a PPAC evaluation of the pilot program.

The House Appropriations Committee markup of the USPTO budget included $1.24 billion and assumes a significant amount of fee diversion. This represents a $57 million increase over the current year's budget or approximately 5 percent, which is about twice the amount of inflation and consequently is viewed as a generous increase by Congress. The fee diversion included in the appropriations bill is at odds with the proposed Fee Modernization Act, which halts diversion.

The next step for the Fee Modernization bill is consideration by the full House of Representatives.

Law School Cut *(continued from page 1)*

necessary for the proper functioning of the agency."

The USPTO cancelled the program last September, at the beginning of fiscal year 2003, when it was operating under a continuing resolution budget. The agency claimed that though it had the same funding as it had in FY2002, "expected future needs" prevented it from funding the law school program, but would not explain what future needs were so critical to the agency's functioning. The USPTO also claimed that even with a continuing resolution, the agency needed cutbacks to account for inflation. But the FY2002 non-recurring capital expenses would likely offset any inflationary increases.

Given the continuing resolution, that the program was budgeted for in FY2002, and that no foreseeable increase in legal studies program participants would increase its costs, the USPTO has no justification for terminating the funding.

The action is especially egregious because the special commitment of attending law school does not permit much student flexibility. Unlike other courses of study, a law student cannot extend or postpone study over many years unless the law school determines extenuating circumstances on a case-by-case basis. Lack of funding is not a typically accepted extenuating circumstance.

The total cut in funding, and the short notice of the cut, caused hardship for most of the enrolled law students. Most employees had at most three months to figure out how to pay for the following semester. As one employee wrote to POPA, "I know this is of great concern to a large group of examiners/students who now have to come up with funding of over $20,000 a year under short notice."

As a remedy to the grievance, POPA asked that the agency make all payments as required under the legal studies agreement, retroactively and with interest as required under the Back Pay Act. And until funding is reinstated, POPA asked that the agency cease and desist from touting the legal studies program to potential new hires.

Postings from the Field

Following are letters regarding the USPTO 21st Century Plan that were posted on the Patent Information Users Group, Inc., Patent Information Discussion List, which is available at www.piug.org. The letters were edited for length.

[The 21st Century Plan] makes me think that these bureaucratic administrators have no concept of the technical complexity of the various technologies involved or the high level of searching skills and acumen that are necessary. They neglected to include a true industry sector professional searcher in their brainstorming sessions!... This level of consideration into the details reminds me of a corporation assigning their corporate librarian to perform all their patent searches as something to do when things get slow.

It is a good concept to lean more on the free enterprise sector to improve efficiency, but the many rules and restrictions in procedure and the dubious supervision of the process and the quality control issues would appear almost insurmountable if allowed to proceed according to the present game plan....

I guess the biggest obstacle that I can see is the very modest number of quality searchers available to pursue the private sector partnership. If we are talking about some 1,000 full time examiners having to be hired each year to a great extent because of the searching requirement, then, even if all of PIUG quit their jobs to perform $500/search contractual work, the need for private searchers would seem to still be far from satisfied. What I see evolving would be a lot of meagerly trained vocational school people filling the positions of turning up prior art for highly sophisticated technologies using no-charge free text databases exclusively. In the end, everybody will pay much, much more on intellectual property efforts due to an exponential increase in litigation over questionable patents.

I am just a searcher and may be missing some critical information, but, if not, my dialogue may be very appropriate before this Hughes Spruce Goose consumes a great deal of time, effort and money not only by the government and the long-suffering taxpayers, but also by those from the private sector being sucked into such fantasies! — *Tom Bailey, Bailey Services: OnLine & Patent Information, Inc.*

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The PTO is proposing outsourcing of classification as well, possibly to more of an IPC-like classification, potentially jointly administered by EPO, JPO & PTO. Since I'm amidst trying to build equivalents between a series of US class-subclasses and their much broader IPC counterparts at present, I hardly think that adopting the IPC will improve the quality of classified searches of US patents. Instead of having to wade through dozens to hundreds of documents, the searchers will have to wade through hundreds to thousands of documents. That is, unless US, EP, and JP negotiate some kind of hybrid classification like F-terms, ECLA, which have greater specificity than in the IPC, though often less specificity than existing US class-subclasses. But then we will need more multi-lingual, technically educated classifier/indexers, not a cheap or abundant workforce for an outside contractor to maintain.

The beauty of having examiners also do the classifications, ...is that you combine functions that naturally merge together, assessing document contents, comparing to existing classifications, subdividing when categories get too full of documents, or creating entirely new classifications when truly new technology emerges. Outsourcing classification and searching to different groups will break up the natural synergy of examiners who search and classify.

I think the PTO's management is really trying to reduce their workforce. Part of the 21st Century Strategic Plan summary noted a big reduction in the number of new examiners to be hired. That was presumably tied to outsourcing of searching and classification. Meanwhile, the number of applications filed continues to mount, the number of experienced examiners seems to be decreasing, with a much larger percent of the examiners having served 3 years or less. Quality crunch time is just around the corner, if not already upon us! — *Roy Zimmermann, Principal Patent Information Specialist*

USPTO: Weekend Sweatshop

The long-awaited summer has brought heat, humidity and stagnant air to Crystal Plaza 2, 3 and 4. In response to POPA's complaints, USPTO replied that even without extra payments by the agency, the building is required to be at a comfortable temperature from 7 a.m. to 6 p.m. on weekdays, and 8 a.m. to 1 p.m. on weekends. As of July 1, the agency stated that the air conditioning system will run till 8 p.m. on weekdays.

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