POPA NEWS
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Senate Appropriators Pass Bill Enabling Search Outsourcing

Allow Applicants to Supply Their Own Search Reports

The Senate Appropriations Committee this month passed a fiscal year 2005 appropriations bill that would allow the USPTO to outsource to foreign companies, enable patent applicants to conduct their own prior art searches, and reinstate USPTO fee diversion—actions that POPA and other intellectual property associations worked hard to prevent in the House-passed Fee Modernization bill earlier this year.

The appropriations bill, S. 2809, would grant unconditional authority to the USPTO to accept prior art searches provided by patent applicants and to contract agency searches with "a qualified search authority." However, the bill neglects to define "qualified."

Without statutory protections, the bill implicitly sanctions commercial search providers to compete for applicants' business. This creates a conflict of interest by permitting search providers to offer the most advantageous search outcomes to applicants. Commercial vendors may not have the government's best interest in mind when competing for search dollars.

Giving applicants the opportunity to supply their own search reports—a situation first proposed in the USPTO's 21st Century Strategic Plan—is again like allowing the fox to guard the henhouse.

The House Judiciary Committee tempered this and the agency's broader push to outsource by passing legislation last spring (H.R. 1561) that limits the search outsourcing to an 18-month pilot program. Other conditions for outsourcing in H.R. 1561 include requiring all individuals who conduct USPTO searches to be U.S. citizens, allowing only USPTO personnel to search applications that concern classified information, and prohibiting search contracts to any commercial entity that has a financial interest in any current or pending patent or patent application.

Those conditions are gone from the Senate Appropriations bill, giving the USPTO carte blanche to outsource.

Lose-Lose Situation for Patentee Community

Organizations representing patentee concerns had promoted an end to the government practice of diverting patent fees to the general U.S. Treasury. They accepted steep administration-proposed increases in patent fees in exchange for no fee diversion. Their rationale was that ending fee diversion would dramatically increase USPTO funding, which would enable faster processing of patent applications.

During the House Judiciary Committee's consideration

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POPA Meets with USPTO Director

Since assuming the helm of the USPTO, Jon Dudas has met twice with POPA. At these meetings he listened to employee concerns relative to "festering" problems at the agency that lower-level officials have been unwilling to address. These include the heavy-handed employee monitoring at Carlyle and the agency's refusal to honor labor-management agreements.

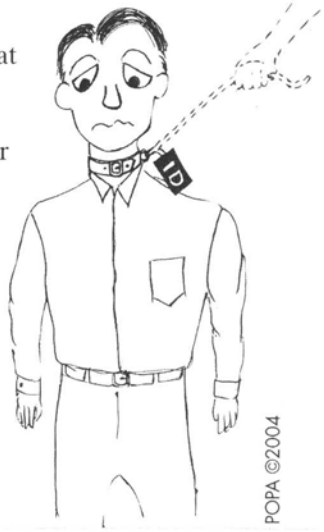
Mr. Dudas on Badging Out

When told of employees' concerns over the time-clock method of badging in and out, Mr. Dudas was puzzled by any objection an honest employee would have to monitoring of his or her whereabouts.

POPA representatives explained to him:

1. The USPTO has shown no legitimate security reason to have badging out. In an emergency the gates will be opened, allowing all to exit without badging. Employees also will be using emergency exits that do not have monitoring equipment. Therefore keeping track of employees will be impossible. In a non-emergency situation, the agency has no security need to know who is in the building at any time. Therefore, employees conclude that the only reason for the badging out is minute-by-minute staff monitoring—a highly unusual workplace practice for professionals.

2. Badging in and out violates the USPTO's own Day One Initiatives. The agency enacted these standards when the USPTO became a performance-based organization in 2000. The initiatives eliminated the sign-in/sign-out requirements and guaranteed no agency subterfuges to closely watch employees.



USPTO Professional: On a Short Leash

One long-time employee described the Day One Initiatives as "an inspiring act of trust" in employees that made her feel renewed loyalty and responsibility to the agency. She said the USPTO's confidence in her

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Examiners Gain Timely Notice of Express Abandonments

The USPTO agreed to keep patent examiners in the information loop regarding Image File Wrapper express abandonments as a result of a grievance that POPA filed in July.

The USPTO process had been that when the agency received express abandonments it first notified examiners. Then in spring 2004 the agency changed the process so that express abandonments went immediately to the IFW staff, which then gave credit for abandonments to the examiners without telling them. Examiners wouldn't discover the abandonments until one to two pay periods later. The USPTO began this process without any forewarning or notification to employees. POPA then filed a grievance.

If an examiner is striving hard to achieve a production goal award, he or she may work unpaid overtime to meet that goal. When the examiner then finds out too late that the extra effort—and the sacrifice of valued family and personal time—was unneeded for earning the production award, the natural result is resentment towards the agency and low morale.

The USPTO, on the other hand, has a legitimate need to have a procedure to quickly note express abandonments so that those applications are not published under the pre-grant publication procedure. Scanning those papers immediately into the system before sending notice to examiners achieves that requirement.

The agency said in its Sept. 3 response to POPA's grievance that it will:

1. Notify examiners "by sending an IFW message when express abandonments are counted in the Pre-Grant Publication Office."

2. Each fiscal year examiners "will be given an opportunity to delay credit until the next fiscal year for an express abandonment that comes in during the last biweek of the fourth quarter."

3. While the USPTO will not adjust third quarter FY '04 production reports at the time, upon an examiner's request it will manually adjust the reports on a case-by-case basis in instances in which the timing has an effect "on ratings, awards or any other aspect of employment." This would include being able to work paid overtime or receive a within-grade increase.

Senate Passes Search Outsourcing Bill

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of H.R. 1561, the parties agreed to compromise on a system that accounted for the concerns of House appropriators about congressional control of USPTO funds. H.R. 1561 includes a system for depositing fee revenues in excess of the legislatively determined USPTO appropriation into a trust fund, from which the USPTO would rebate the unused fees to patent applicants at the end of the fiscal year.

S. 2809 incorporates most of the fee increase provisions from H.R. 1561, but drops the rebate system. Patentees therefore are left with a highly inflated fee schedule with no assurance of rebates or significantly more funding for the USPTO.

While the appropriations bill outwardly would affect only fiscal year 2005, specific language in the legislation says otherwise. The proposal states upfront that the fee increase only affects FY 2005, but language later in the search fee portion of the bill puts a maximum on fees paid to a contracted search provider for a three-year period and then says: "The [USPTO] Director may not increase the search fee by more than 20 percent in each *of the next three one-year periods.*" [Emphasis added.]

POPA is advocating on Capitol Hill to have the appropriations bill amended on the Senate floor or in the House-Senate conference. The union has proposed amendments that will allow an increased USPTO appropriation while protecting the integrity of the patent system from reckless outsourcing.

POPA Meets with USPTO Director

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motivated her to do the best she could.

The badging-in and out, on the other hand, has demoralized employees to the point where they may become clock-watchers, only doing what is required to get by.

3. The USPTO invested many millions of dollars in the ultra-high tech guard stations, but the agency claims it can't afford to turn the air conditioning on during weekend non-peak hours or pay for employee training. By its actions the USPTO demonstrates that it doesn't value employees as individuals willing to strive and excel at all hours on the government's behalf.

USPTO Changes Phone Monitoring Process

On a positive note, Mr. Dudas agreed to reprogram the Carlyle campus phone system so that it only records the phone numbers of incoming and outgoing calls. POPA had published in its August newsletter that the agency was recording all the digits keyed in for incoming and outgoing calls, including personal identification numbers and access codes.

This Management Directive was memorialized in the Aug. 30, 2004, *USPTO Weekly.* POPA hopes that this is the first in a series of positive changes that will help to improve employee quality of life and morale at the USPTO.

While Mr. Dudas may not have expressed enthusiasm for some of the issues brought forth at these meetings, he is (unlike his predecessor) taking the time to listen to the concerns of employees. He is at least interested in looking into issues and in hearing POPA's suggestions and solutions to these problems. POPA hopes to hear from the agency soon about the above and other issues, and looks forward to the lines of communication remaining open.

Seeking Nominations for 2004 POPA Elections

Nominations open October 20 for the 2004 election of Executive Committee Officers and Delegates who will assume office during the POPA Annual Meeting in December. Completed nominating petitions will be accepted from October 20 through 12 Noon on October 29.

The POPA election will be held Wed. Nov. 17 and Thurs. Nov. 18.

All non-managerial patent professionals are members of POPA's bargaining unit. One of the benefits of paying POPA dues is that you get a voice in POPA's organization and a vote in POPA's elections.

The numbers of Area Delegates from the four designated office areas were reapportioned by vote of the POPA Executive Committee in September. The apportionment is designed to equalize the voting power of members in each office area, creating an almost uniform ratio of members to delegates for all areas. POPA delegate apportionment is based only on the number of dues-paying members in each office area, not on bargaining unit size.

Delegates from the four office areas will be elected as follows:

- 9 Delegates from the Chemical Area
- 13 Delegates from the Electrical Area
- 7 Delegates from the Mechanical and Business Methods Areas
- 2 Delegates from Designs and Other Areas combined

The following Officers also will be elected from the membership at large: President, Vice President, Secretary, Assistant Secretary, and Treasurer.

How to Nominate a Candidate

Nominations for an Officer shall be by petition stating the position sought, signifying the nominee's willingness to serve, and signed by at least 15 dues-paying POPA members.

Nominations for an Area Delegate shall be by petition stating the organization area to be represented, signifying the nominee's willingness to serve, and signed by at least five dues-paying members from that same organizational area.

For either type of nominating petition, nominees should obtain in excess of the minimum number of signatures in the event one or more signatures are disqualified for not belonging to dues-paying members.

If you wish to vote in the election and are not now a member, you may contact any POPA representative or the Election Committee Co-chairs listed below for a dues deduction form. You may also download a form from *www.popa.org* by clicking on "Join POPA." Return completed dues deduction forms to one of the Election Committee members listed below prior to the election. The completed form may be returned at the time of balloting. To nominate someone or to be nominated, return the dues deduction form by Noon on October 29.

Nominating petitions will be available at *www.popa.org*. Click on "Elections." Or contact:

Carlyle Election Chair: Bob Ramseur, 202-635-7122
Celia Murphy, REM 5D31, 571-272-2645
Mark Osele, REM 7D19, 571-272-1235
James Peikari, RAND 2C89, 571-272-4185
Ed Tso, JEFF 8A19, 571-272-2087

Crystal City Election Chair: Maria Fernandez, 410-703-8594
Nahid Amiri, PK5 6X06, 703-305-4241
Steve Gravini, PK1 11D42, 703-308-7570
Allen Heinz, PK2 4D16, 703-308-1544
Ruth Smith, in CP2 4D05, 703-308-3063

Voting in the POPA election will be held both at Crystal City and Carlyle for members at their respective office locations.

Patent Advisory Committee Bars Unions from Subcommittees

The chairman of the USPTO's Public Patent Advisory Committee (PPAC) established three working PPAC subcommittees to provide feedback and recommendations on e-filing/e-government, outsourcing, and proposed rulemaking—and purposely excluded representatives of employee organizations from any subcommittee even though three sit on the PPAC.

PPAC Chairman Rick D. Nydegger's rationale for excluding union representatives was his belief that the subcommittees should have only voting PPAC members. The representatives from the three USPTO unions—two in patents and one in trademarks—are the only non-voting members of the 12-member PPAC.

The PPAC is charged with reviewing the policies, goals, budget, performance, and user fees of the USPTO with respect to patents, and is expected to advise the USPTO director on these issues. Input from employees on these items was considered essential, and hence the unions' inclusion on the PPAC.

By not allowing employee participation on any subcommittee, the PPAC is cutting itself off from valuable information that only employees can provide. If the E-filing and E-Government Subcommittee members are to review technologies to improve the USPTO electronic filing process, then employees can tell them how the current processes impact quality and production. If the Outsourcing Subcommittee will help identify appropriate benchmarks for future outsourcing, who better to assist than employees who now do the work?

As said Gerard Arpey, president and chairman of American Airlines, which turned a profit this quarter for the first time since 9/11, "They [employees] have the best ideas. They know how to do the job more efficiently and more effectively, and we have to lead by example. Part of that leading by example is listening."

You've Got the Power to Help

Federal employees are not immune to natural disasters. This past season brought widespread flooding throughout the Washington region. Hurricanes blasted through Florida and other states. Even people with insurance had to pay thousands in expenses.

The Federal Employee Education and Assistance Fund (FEEA), a charity that assists only federal employees and their families with emergency assistance and college scholarships and loans, helped employees get back on their feet after these disasters and others.

FEEA is just one of the many worthy organizations in the Combined Federal Campaign. The CFC gives us the power to express our own personal commitment to helping the less fortunate. Your donation will give you the good feeling that comes from knowing that you helped and gave hope to your neighbors, here and around the world.

Employees may make their contributions confidentially. POPA has provided the USPTO with opaque envelopes so that supervisors and keyworkers won't be able to see to whom you are giving. The envelopes are available from your CFC keyworker and should be handed out with the pledge materials.

Sadly, recent USPTO actions towards its workers have so demoralized and angered some employees that they are considering protesting against the USPTO by encouraging their coworkers to boycott the CFC and give to charities independently. I have much sympathy for these feelings of my colleagues. However, I still believe that the decision to contribute via the CFC should not be an issue of making the agency look good or bad. Your donations go not to the USPTO, but to the charities and causes you choose to help.

As a lifelong member of POPA, an organization committed to the ideal of helping people, I urge you to contribute as generously as you can to the CFC.

Sincerely,

Ronald J. Stern

POPA President

Get Well

Several bargaining unit members still urgently need leave donations to help them through serious illness and recuperation. Leave Donation form CD-505 can be downloaded from the USPTO HR Web site, Employee Guide, Leave Transfer Program.

- William Hong, an examiner in Art Unit 3725, is recuperating from a stroke. Please fax completed leave donation forms to Stacy Hoffman, 703-305-8303.
- Ethan Whisenant, an examiner in Technology Center 1600, is recovering from a spinal cord injury and broken pelvis. Please send your completed donation form to B.J. Forman, REM 2C 70, or call 571-272-0741.
- Irene Cuda-Rosenbaum is battling the effects of a stroke and a rare tumor. Please either fax the completed donation form to Stacy Hoffman at 703-746-8495 or hand-deliver it to Marc Jimenez at CP2-5A05, Mark Rosenbaum at CP2-11A06 or Robert Budens at REM 3A35.

Farewell

Long-time POPA Executive Committee Delegate Ed Miller is retiring from the USPTO after more than 37 years. Ed ably served Mechanical Area employees and will be missed by his colleagues. We wish him all the best.

His POPA position will be filled for the short term by Michelle (Shelley) Thomson, Art Unit 3641, 703-306-4176.

JOIN POPA

Patent Office Professional Association

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