POPA NEWS
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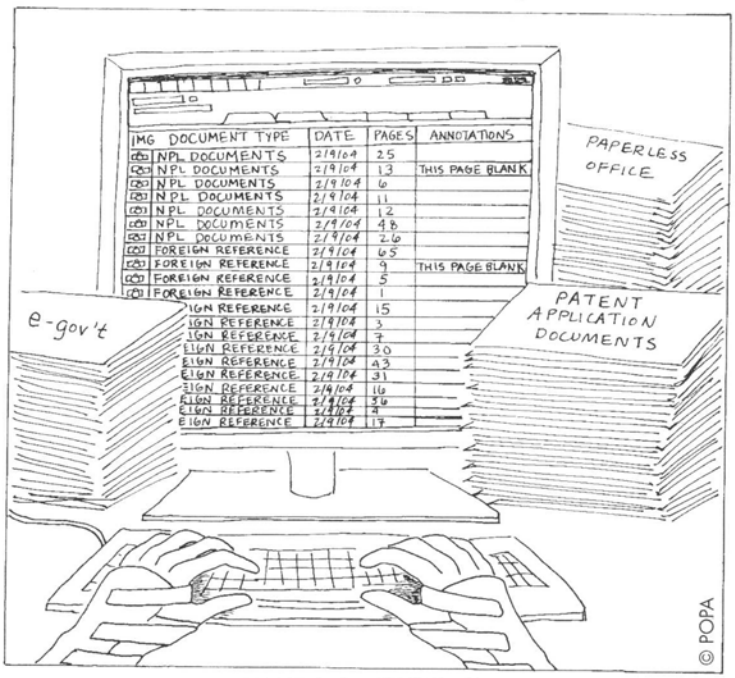
Image File Wrapper Hurts Examiners' Health and Production

POPA Submits Examiners' Sworn Statements in Attempt to Negotiate on Harmful IFW Impacts

At least a dozen examiners have filed affidavits with the Federal Labor Relations Authority about the severely negative impact on their work lives of the USPTO's fully electronic examination system, the Image File Wrapper (IFW).

The IFW often forces examiners to use 30-60 minutes more per action, causes repetitive motion injuries and eye problems, and requires examiners to print reams of documents that they can't adequately examine on screen. Examiners need to review every document to find misclassified paper. Because nonpatent literature and foreign patents are indexed only by generic names or titles, examiners often must type in authors' names and document titles to individually identify dozens of prior art documents.

The examiners' affidavits illustrate to the FLRA POPA's need to negotiate with the USPTO over the impact and implementation of IFW. POPA has filed an unfair labor practice charge against the USPTO to bring the agency to the negotiating table.



IFW: Fast or Half-fast?

One Extra Hour = Unsatisfactory Rating

Many examiners unfortunately have discovered that IFW's imposition of even a relatively small time increase to the examination of every application can drag examiners' production from an outstanding to a fully successful rating or from fully successful to unsatisfactory. Because bonuses only go to those achieving an outstanding rating and an unsatisfactory rating can result in termination, an hour extra per action can make the difference between receiving a performance award or not, and receiving a fully successful rating or a disciplinary action.

As one examiner's affidavit stated, "implementation of the IFW system is resulting in either examiners unable to make their production goal or having to work significant amounts of voluntary overtime in order to maintain their production at pre-IFW levels. To work at the commendable or outstanding levels to obtain monetary awards requires even more voluntary overtime, and becomes impossible to those unable to work voluntary overtime due to family or other responsibilities outside the workplace."

Several examiners' sworn statements demonstrate the problem. One 13-year primary examiner, who had received outstanding performance ratings for at least the last eight consecutive years, wrote: "At the end of fiscal year 2003, my production was 133 percent of my goal. Since starting to use the IFW system in November, my production has slowly and continuously dropped to the point where at midyear FY04 my production is only 110 percent... Because of the additional printing chores as well as the numerous corrections of poor scanning, tracking down missing or late documents and numerous other clerical functions that have been transferred from the technical support staff to examiners, it is taking me about two to three hours of additional time for each patent application that I do. I have not been compensated for this time and no adjustment to my production goal has been made to accommodate the additional duties required by the IFW system."

Another primary examiner, a 16-year USPTO employee, wrote: "The instructor I had for training was not sufficiently familiar with the patent examination process to adequately answer my questions or the questions of other examiners in the training class. Thus I was left to learn the use of the IFW system essentially by trial and error.

"The IFW system does not adequately identify the content or type of document in the table of contents. It is extremely difficult and time consuming to check an application for completeness or to identify references that may be relevant to the patentability… As a primary examiner, I only have approximately 19 hours to completely prosecute a patent application and I now have to spend an additional one to two hours per application just to identify and print out needed documents." (*continued on page 2*)

Image File Wrapper *(continued from page 1)*

From a GS-15, senior primary examiner, who has worked more than 27 years at the USPTO, earning outstanding ratings for at least the last 11 years:

"My percentage of production goal achievement for the first quarter of fiscal year 2004 was 147 percent. During the second quarter I had to use IFW for most of the applications I examined. Because of the additional time needed to open and consider documents in electronic form, to print out paper copies of documents, and to locate and print the prior art references for each case, it took me significantly longer to perform my duties. Consequently, my percentage of production goal achievement for the second quarter was only 105 percent."

IFW Triggers Physical Ailments

Constant mouse and monitor use can and is affecting the physical well-being of examiners. POPA is seeking to negotiate with the USPTO on ways to improve the physical impacts of working with the IFW. Otherwise the IFW will continue to sideline productive examiners, harming them individually and the agency's efforts overall.

"Within three weeks of my starting to work exclusively with the IFW system, I began experiencing discomfort in my right forearm near the elbow," stated a primary examiner who has received outstanding performance ratings for at least the last six of her eight years with the USPTO. "[My physician] indicated that this condition was associated with the need to click the computer mouse repeatedly in the new software program (IFW). The physician indicated that… I would not be able to continue working on the computer using IFW without a reasonable accommodation such as voice-operated systems and that it is probable that I will no longer be able to work if the agency does not provide a reasonable accommodation.

"Because of the continuing pain in my forearm and administrative delays by the agency to make a final determination on a reasonable accommodation, I am currently using a combination of annual leave and sick leave to reduce the number of hours that I must work with the IFW system."

From another examiner's affidavit:

"I have suffered for many years from rheumatoid arthritis in my spine. Prior to implementation of the IFW system, I could routinely shift my physical position so that I could examine a patent application without sitting right at my desk in front of the computer screen. Now, because IFW requires the continuous use of the computer, I have to spend much more time sitting directly at my desk in front of the computer. This is aggravating my rheumatoid arthritis to the point where I have continuous back pain and am not sure how much longer I will be able to do my job."

Defeating the Purpose of E-Gov

The eyestrain caused by close and constant use of even the best and largest monitors can induce many examiners to switch to paper. Because the examiners' paper files have been destroyed, they now must print out most documents themselves. As one examiner wrote: "Because working directly from the computer screen gave me significant eyestrain, I requested working folders for all of my applications. Shortly after implementation, however, the agency changed the procedure so that working folders only contained the original specification, claims, drawings and abstract. No other papers were provided thereby requiring me to spend significant amounts of my time just printing out all of the numerous other documents and prior art necessary to examine my applications. …I am finding that it now takes me two to three hours longer to prosecute a patent application."

The USPTO's paper document scanning services cannot keep pace with the demand, causing needless duplication of examiners' efforts and wasted time. As one examiner stated: "A problem that is just now beginning to come to light is the number of allowed applications that are being returned from our printing contractor with documents that had been filed by the applicant but were not scanned prior to my acting on the application and allowing it to become a patent. Consequently, I am now being inundated with 'printer rush' applications requiring considerable additional work with no allocation of time for that work."

Wrote another examiner: "Most of the time, my official docket reports did not correspond with the availability of

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Fast Facts for Nonexaminers

IFW Formula for Failure

The rating scheme for examiners is:

- Outstanding rating = 110+% of goal achieved
- Commendable = 105-109% of goal achieved
- Fully successful = 95-104% of goal achieved
- Marginal = 90-94% of goal achieved
- Unsatisfactory = Below 90% of goal achieved

For a GS-14 primary examiner:

- A typical docket is 20 hours examination time per case at the GS-12 level
- The position factor* = 1.35
- 100% of production goal = 14.8 hours per case

If a primary examiner needs 30 minutes more per action, then with an officewide average of 2.2 actions per case:

- 0.5 hours x 2.2 = 1.1 more hours needed per case
- 1.1 hours divided by 14.8 hours of production goal = 7.4% loss in productivity**
- **7.4% loss may take examiners down two rating levels**

* "Position factors" reflect an examiner's experience and signatory authority. To calculate an individual examiner's production goal, the GS-12 production goal for the examiner's technology is divided by the individual's position factor. A primary examiner with full signatory authority has a position factor of 1.35.

** The fewer hours to complete an examination, the higher the examiner's job rating

Image File Wrapper *(continued from page 2)*

the patent application in the IFW system. This meant that, while my official docket report indicated that I needed to act on certain patent applications, I really could not act on them in a timely way because the paper file had been removed and the electronic scanned files had not yet appeared in the IFW system." The examiner's production fell to an unsatisfactory level.

Workers' Compensation

Employees who receive injuries on the job can qualify for benefits under workers' compensation laws. If you are injured on the job, to make a claim you must immediately notify your supervisor and complete and submit workers compensation forms that you can download from the Human Resources portion of the USPTO intranet. The USPTO will not recognize claims of repetitive stress injuries without medical proof, therefore a written and signed statement from a doctor that the injury is job-related will be required as soon as possible.

Even the size of documents in some technologies creates time dilemmas for examiners. "There appears to be a size limit for print jobs at the group printer (1.3 GB)," wrote one examiner. "The problem is 1.3 GB of spooling capacity covers only half of my whole application. How do I get the whole document printed?" The examiner's supervisor had no useful answer.

An FLRA investigator is reviewing these signed affidavits and other information from POPA to determine if the authority should issue a complaint, hold hearings and ultimately order the USPTO to negotiate. The process can take years to complete.

Reduce Pendency Through Increased Examining Hours

The USPTO's fiscal year 2005 budget documents show that it plans to hire 900 examiners that year and has allocated $50 million to do so. Because the incremental cost of hiring that number equals only approximately $22 million in FY2005, and because the fee modernization bill's increase in excess claims fees should equal at least $100 million, the agency immediately can bump up examining time to reduce pendency by providing incentives to retain experienced employees and by increasing paid overtime.

Despite the USPTO's congressional testimony and many press statements that the fee modernization bill calls for 2,900 new examiners, only 900 new hires appear in the FY2005 budget. After the 250 attritions that the agency projects for FY2005, the USPTO should only see a net increase of 650 examiners. Recruiting, training and assimilating 900 examiners in a year represents about the maximum that the agency can adequately handle. However, over the long term the USPTO will need many more than 900 to examine the anticipated influx in applications and to reduce pendency.

Money is not the problem, according to POPA's calculations based on USPTO data. The agency assumes the passage of the fee modernization bill and therefore projects an overall increase in FY2005 of $310 million over FY2004 projections. The additional funds required to hire 900 examiners equals roughly $22 million, leaving $28 million at a minimum of the agency's own $50 million hiring allocation to spend on increased examination. In reality, of the $310 million projected increase, the agency should have even more to devote to examination.

The USPTO has acknowledged that the total amount of intellectual effort needed per case to do an examination cannot be cut and overall increased examination hours will decrease pendency, hence its push to hire more examiners. But in the short term of 2005, even if its hiring ability is limited, the agency can still increase examining hours by allotting millions of dollars more in paid overtime and/or incentives to retain experienced examiners.

Paid overtime is a cost-effective way to increase examining hours. Even with the recent overtime cap increase—allowing examiners the higher of either their hourly rate of basic pay or the overtime rate for a GS-10, step 1 employee—the payment for each hour's worth of examination by a highly productive examiner is still a bargain because the USPTO needn't pay for additional employee benefits and training.

Using bonuses to retain experienced employees will pay off if the agency is able to retain even a third of the examiners anticipated to leave during FY2005.

More Fees Without More Service Cheats Applicants

The entire rationale behind increasing excess claim fees is to fund the extra examination time that excess claims require. Charging more to examine excess claims, however, and then not using those fees for examination swindles applicants. The USPTO has not indicated any intentions to boost examination time for current examiners and it has budgeted for an inadequate net increase of only 1,000 examiners. Adding 650 net examiners yearly for many years definitely will be necessary to reduce pendency. By not doing so, the USPTO would be setting itself up to fail.

If the agency squanders its new fees on other projects without hiring an adequate number of examiners, the USPTO could well be appearing again before Congress, hat in hand, begging for additional fees to reduce pendency.

Serious Conditions Prompt Two Leave Donation Requests

Two examiners, seriously debilitated recently, need leave donations from their coworkers to continue to receive their paychecks.

William Hong, an examiner in Art Unit 3725, is battling back from a major stroke suffered several months ago. His

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Leave Donation Requests

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wife, Sara, and daughter, Marie, have been helping him rehabilitate to gain control of his left side, which was completely paralyzed. To donate leave, please fax form CD-505 to Stacy Hoffman at 703-305-8303.

Ethan Whisenant, an examiner in Technology Center 1600, recently fell and suffered a spinal cord injury and broken pelvis. Although the injuries are quite incapacitating and very painful, Ethan has made excellent progress and hopes to return to his job as soon as possible. Ethan lives in Front Royal, Va., with his wife, Sherry, and their 4-year-old daughter, Emily. Ethan has exhausted all of his sick leave yet needs additional time for rehabilitation. Please send completed leave donation forms for Ethan to B.J. Forman, Mailbox: REM 2 C 70, or call 571-272-0741.

You can obtain the leave donation form CD-505 from the HR Web site, Employee Guide, Leave Transfer Program.

USPTO Far from Top of "Best Places to Work" Ranking

The USPTO ranked 63rd out of 115 federal agencies in the ranking of the best places to work in the federal government compiled recently by the Partnership for Public Service and the American University's Institute for the Study of Public Policy Implementation (ISPPI).

The Partnership and ISPPI used data gathered during the Federal Human Capital Survey administered by the Office of Personnel Management from May to August 2002. Those survey results are used as a baseline for ongoing human capital assessment in the Bush administration. Agencies comprising 93 percent of the executive branch workforce participated, representing 189 organizational components of 24 executive departments and independent agencies. More than 100,000 federal employees completed the survey.

The rankings of USPTO focus on feedback in eight out of ten categories of work experience. The study authors only ranked those agencies that scored better than the government-wide average, according to a spokesman from the Partnership. The USPTO scored below that average in the categories of Work/Life Balance and Employee Skills/Mission Match. In other words, the agency scored so low it wasn't even ranked.

Category	USPTO Ranking	Number of Agencies Ranked
Overall	63	115
Training & Development	56	99
Pay & Benefits	133	142
Effective Leadership	96	108
Strategic Management	13	109
Performance-Based Awards & Advancement	22	121
Family-Friendly Culture & Benefits	46	114
Support for Diversity	23	120
Teamwork	98	105

Some of the results in these categories may seem contradictory. According to the authors, "Strategic Management," in which the USPTO ranked high, means that "management ensures that current employees have the necessary skills to do their jobs, is successful at hiring new employees with the necessary skills and works to achieve organizational goals with targeted personnel strategies and performance management." But "Effective Leadership," in which the USPTO ranked low, means "leadership at all levels of the organization generates motivation and commitment from employees, encourages integrity, and manages people fairly, while also promoting the professional development, creativity and empowerment of the employees."

The study defined "Teamwork," in which the USPTO also scored very low, as "employees communicate effectively both inside and outside of their team organizations, creating a friendly work atmosphere and producing high-quality products."

The study authors noted to federal management that this information offers "a concise look at how satisfied your employees are with their workplace." The Partnership and ISPPI also are providing federal agencies with "summary workplace analysis reports to help leaders and managers prioritize a management agenda that will yield the biggest boost in employee satisfaction."

More information is available at *bestplacestowork.org.*

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