POPA NEWS
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Faulty Patent Application Routing Delays Action

Misclassification by the Office of Initial Patent Examination (OIPE) using the electronic Application Routing Tool (ART) is delaying action on newly filed patent applications by routing them to the wrong art units and/or technology centers (TCs). This is causing applications to languish in USPTO cyberspace for weeks, months or sometimes even a year or more. This problem is made worse by the lack of an adequate application transfer procedure and an audit trail to identify problem areas. OIPE Director Thomas Koontz reports that the agency is working to correct the initial routing insufficiencies.

The current ART software, a part of the Image File Wrapper system (IFW), does not automatically assign continuation-type cases to the art unit and examiner who worked on the parent application. In addition, the software routes applications to the first art unit in a TC or workgroup that meets its keyword searching criteria. Thus, docketing examiners spend considerable additional time researching classification issues and trying to transfer cases to the right art units. Some docketing examiners have an unfair burden because they must docket the majority of cases for their workgroups, which hold up to ten art units.

Research Highlights Problems

Before OIPE started using ART, about a dozen full-time classifiers designated cases to the correct art unit approximately 80 percent of the time. Now that percentage is reversed. Recent research within several biotechnology art units found that, of 109 cases sent to one particular art unit, ART assigned 13.7 percent correctly and 86.2 percent incorrectly.

Of those incorrectly assigned, 63.3 percent were determined to belong elsewhere after an examiner consulted Patent Application Location and Monitoring (PALM) continuation data that ART had ignored because ART was not designed to access PALM data.

In addition, a snapshot of undocketed cases assigned to TC 1600 demonstrated the disproportionate assignment of cases by ART. Of 12,766 total cases, 3,452 cases (27 percent) were assigned to one art unit. This is more than ten times the cases assigned to most other art units in the TC and shows how ART simply routes cases for docketing to the first art unit that meets its criteria. This places a significant burden on that art unit and docketing examiner to quickly redocket cases to the proper art units in the TC or wherever they belong.

In addition, transferring incorrectly routed cases can be a nightmare. Within a TC, if a docketing examiner mistakenly receives a case from ART, the examiner then must send an eDAN message to the docketing examiner that he or she thinks it goes to. If that examiner disagrees, then it goes to a classification team of managers and docketing examiners to resolve.

When eDAN sends these messages to managers about cases needing reassignment, it fails to alert managers that cases are awaiting their action. Managers need to actively check to see if cases need reassignment. When an application clearly belongs in a different TC, there is no way to require the other TC to accept transfer of the application. If managers don't timely take appropriate action, cases can sit for weeks or months awaiting docketing.

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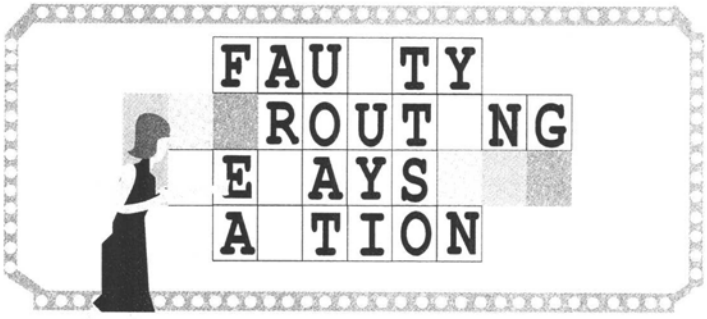

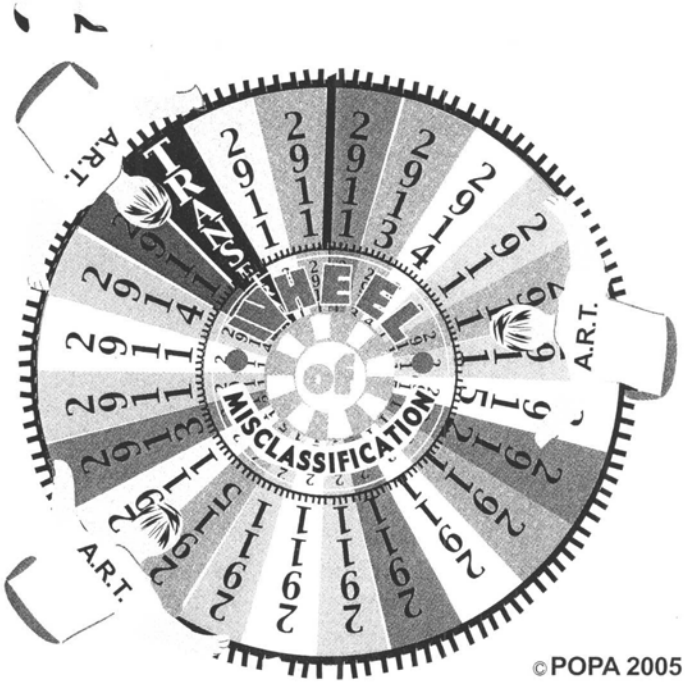

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Application Routing Delays Action

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Cases with No Histories

When managers do pick up the eDAN messages, they contain no information on where the case has been, who has reviewed it or why it's bouncing around. The software doesn't allow any history to accompany the reassignment message, obliging the manager to docket blindly or conduct additional research.

A parallel transfer inquiry system exists in the PALM Expo software that allows an examiner to create a record or audit trail. However, only about half of the docketing examiners use this process because it requires double the effort to duplicate the eDAN transfer message in PALM Expo. Even if the docketing examiners send two messages, some examiners only respond to the eDAN message and not the PALM Expo message, thereby negating the recordkeeping system. Creating a separate PALM Expo message consumes extra time because it requires the docketing examiner to write down or memorize the application serial number from eDAN to then key it into the PALM Expo system.

Each assignment also needs to carry an audit trail, outlining each person who heretofore has acted on the case and why.

Currently primary examiners and managers waste untold hours determining the rightful dockets for cases misassigned by faulty ART software. The time saved by fixing these problems could be rechanneled into examination to reduce the patents backlog.

OIPE Director Koontz in early August reported plans to install a new software program to enable use of parent data keyed in by OIPE staff as part of the creation of the PALM data account for a new application. The software will provide the current classification of the parent case, which will be used to direct the application to the correct art unit. The software also would immediately flag security cases, simplifying that designation process.

The OIPE program system modification was to be in place in early August. However, the modifications to the contract for the outsourced OIPE staffers who run the program were still needed at press time. Koontz expected that to be accomplished by the end of August.

PALM Reading

To quickly access PALM continuity data from within eDAN, examiners can do the following:

- Click on "View," then click on "Bib" in the dialog box;
- On the bib sheet for the current application, click on the link to "continuity data";
- Right click on the parent serial number.

This will take you to the PALM application info page for the parent application.

While this change represents a major advance, it will only partly fix the problems. When a case gets to the docketing examiner at the art unit level, the examiner will still need to look up the current parent case classification and the name of the examiner handling the parent case.

Reservations on USPTO "Hoteling" Program

POPA has offered employee stakeholder input on the USPTO's proposed "hoteling" program, in which patents employees would relinquish their workstations in exchange for onsite "hotel work space" that's available for short periods via reservation.

Through informal union-management discussions on hoteling—which employees would prefer as just one feature of the patents telework program—the agency can gain insight on employee concerns without jeopardizing the standing telework benefits. If the USPTO and POPA enter formal negotiations, all of the current benefits become bargaining chips. Because it's very easy for the agency to declare a negotiations impasse and refer the decision-making to the Federal Service Impasses Panel (FSIP), and because the current FSIP has regularly rubber-stamped management proposals, formal negotiations could risk employees' hard won gains. Sincere, informal union-management discussions present the only viable way for the USPTO to understand employee hopes and anxieties about hoteling.

POPA already has voiced employee worries about several of the USPTO's proposed terms for the hoteling program that place employees in unfair situations:

- Any downtime for computer or other equipment failures would be the employee's responsibility. The agency is ignoring that equipment failure is a conventional risk of doing business that is normally borne by the employer rather than its salaried staff.
- Employees in the hoteling program would get no assured rights to private office space if they choose to return to the workplace or if the agency removes them from the hoteling program.
- The USPTO would have full authority to remove participating employees from the program for any reason, including any alleged, unjustified or minor infraction, or for other reasons unrelated to telework. Immediate removal could create severe commuting and family hardships for employees.
- No additional time would be given to employees remaining onsite to cover the additional duties created by removing a significant number of senior employees in the workplace, such as customer service, training, and junior-employee supervision.

The union rejected the USPTO's proposal for formal negotiations. "Experience demonstrates that the agency is more concerned with asserting its rights than it is with the actual issues and concerns of employees," wrote POPA in

USPTO "Hoteling" Program

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response to the USPTO. The union urged that union representatives and managers informally discuss how to create a program that will enhance employee worklife and benefit patent processing. The agency and its telework programs can only improve by including employee "stakeholders," a much-vaunted value of the Bush administration.

POPA Appeals to Uphold USPTO Pay Promises

POPA has appealed the Federal Labor Relations Authority's April decision that allows the USPTO to break its promise to seek a special-rate pay increase or to provide alternative compensation.

In the 2000 USPTO-POPA Agreement on Initiatives for a New Millennium, the agency agreed to seek special-rate pay increases for patent professionals over the next five years to maintain the special rate differentials over the General Schedule scale.

In May 2004 an arbitrator agreed with POPA that the agency was bound by its agreement with the union to provide alternative compensation if the Office of Personnel Management turned down a request for a special-rate pay increase. The FLRA overturned the arbitrator's decision earlier this year.

In overturning the 2004 arbitrator's decision, the FLRA ruled the USPTO-POPA contract to be unenforceable because it interfered with the agency's right to establish policies or practices that encourage or discourage employees from remaining employed by an agency.

When the USPTO appealed the arbitrator's decision to the FLRA in 2004, it argued that it didn't have to keep its promise because the Millennium Agreement clause was not "an appropriate arrangement because rather than alleviating the adverse effects of the exercise of a management right, it provides a benefit to employees," according to the FLRA decision.

In response POPA recently filed an appeal with the U.S. Court of Appeals for the D.C. Circuit to vindicate the legality of the 2000 Millennium Agreement. The FLRA in return filed a motion to dismiss the case alleging that the court has no jurisdiction and the union has no appeal rights because the FLRA's decision didn't involve an unfair labor practice (ULP). POPA filed a brief in opposition saying it did have jurisdiction because the arbitrator had said that the agency committed a ULP by negotiating in bad faith for alternative compensation. The appeal also involves another ULP because the Millennium Agreement itself constituted the remedy for a prior USPTO ULP committed when the agency previously failed to negotiate on special pay rates.

Constructive Ideas from TC 2100 "Town Hall" Meeting

Relocation assistance and better training were two of the constructive recruiting ideas that new Technology Center 2100 employees communicated to senior USPTO managers at a "town hall" meeting in July.

Deputy Commissioner for Patent Operations Peggy Focarino and Deputy Commissioner for Patent Examination Policy Joe Rolla addressed questions and concerns from approximately 35 invited probationary employees in TC 2100, the center responsible for computer architecture, software, and information security. By listening and acting on employee concerns, the agency can ensure that more employees adjust to USPTO worklife, stay in their jobs beyond their probationary periods, and provide a return on the USPTO's recruiting and training investment.

Some of the worthwhile feedback communicated to management during the meeting:

- **Give relocation information** to new employees who are moving to the D.C. area as soon as they accept a position. Employees need information on temporary and permanent housing, commuting/transportation, schools and local governments.
- **Provide transit subsidy information and applications** with the letter that notifies employees that they're hired. The information can impact housing and commuting decisions and ease employees into the subsidy program sooner.
- **Give new examiners a small bank of "other" time** to hand-out to senior examiners who take the time to help them. This will ease the probationary period because new employees have difficulty getting answers to questions from their supervisors and because senior examiners must take time away from their own production to answer questions. The senior USPTO managers at the meeting replied that all the new employees had to do was interrupt the senior examiners and ask for help and they'd absorb the time, which does not answer junior or senior employees' concerns at all.
- **More training on searching is needed.** While the introductory TC 2100 training excelled (employees receive an extra, third week of training after PEIT-Patent Examiner Initial Training), employees asked for more in-depth time learning searching. The agency officials replied that each TC 2100 workgroup has a "search mentor," an examiner assigned to answer search questions. The trouble was, few employees knew such a position existed, let alone the name of the workgroup person with the mentoring job.
- **Beef up Sect. 102 and 103 training.** When employees receive training on Sect. 102 and 103 later in their probationary year, the information is too elementary; they have taught themselves most of it through trial and error. The employees recommended that the Sect. 102 and 103 instruction be more advanced and use examples tailored to their own art.

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Current dues-paying POPA members will receive $50 for every new member they sign up by December 2.

See the insert in this newsletter or contact your POPA representative for details.

Stand Up for the Union that Stands Up for You!

Lack of Employee Transfer Process Forces Good Examiners to Leave

A valued patent examiner recently quit—and the USPTO continues to lose trained, successful patent examiners—due to the agency's lack of a standardized art-unit transfer procedure.

The employee, who had progressed through the probationary period and been promoted from GS-9 to GS-11, requested a transfer to an art unit that reflected the employee's education and experience. "Both my family and professional lives are suffering severely" from working many hours of unpaid overtime to maintain high production, the employee said.

Through informal channels, the employee met with and received the okay to transfer from a supervisor in another art unit and from the current supervisor. The employee then spoke with the technology center director, who said he'd consider the issue. Then a month went by with no action from the director. The employee then met again with the director, who still wasn't negative about the transfer but acknowledged that he didn't want to lose a good employee to another technology center.

The employee then researched and reported to the director a willingness to transfer to a different art unit within the current technology center, but the director continued to sit on his hands for another month. So the employee found a job elsewhere.

When joining the agency, "I turned down [another government job] because I always wanted to work for the PTO," the employee wrote to POPA, which had provided help in seeking a transfer. "I came here because I wanted to be here. It was not meant to be."

Alexandria Creates New Metered Parking Zone

The Alexandria Traffic and Parking Board recommended and the Alexandria City Council approved the creation of a new parking meter zone (Zone 3) in Eisenhower East—the area encompassing the USPTO campus, the courthouse and the Hoffman Center—with the rate of $1 per hour with a time limit of two-hours Monday through Friday, except holidays, from 8 a.m. to 7 p.m.

The proposed parking zone is bounded from West St. to Telegraph Rd. and from Duke St. to the Capital Beltway. Initial estimates on the number of spaces are approximately 481 existing parking spaces and 300 new parking spaces, though the figure "is a moving target" due to ongoing construction, according to Bob Garbacz with the Traffic and Planning Board.

Garbacz said that the next step for the board is to decide on which streets to place the meters. The roads within the zone include John Carlyle Dr., Dulany St., Elizabeth La., Englehardt La., Mill Rd., Jamieson Ave., Ballenger Ave., Emerson Ave. and West St. The decision may be made as soon as this coming fall or winter.

One of the city's goals for the Eisenhower East area "small sector plan" was to minimize overall parking while providing sufficient on-street, short-term parking to support ground floor retail. Existing parking garage rates in the area for all-day parking are between $6 a day for early bird, up to a maximum of $10 a day.

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