POPA NEWS
Patent Office Professional Association
June-July 2005 Vol. 05 No. 4

GAO Reports Fault USPTO Policies on Retention and Automation

The USPTO's failure to address long-standing human capital challenges could undermine its strategic plan, and the agency has demonstrated ineffective planning and management of its patent automation projects, according to two separate June reports by the Government Accountability Office (GAO).

In its report, "USPTO Has Made Progress in Hiring Examiners, but Challenges to Retention Remain" (GAO-05-720), the GAO cites three underlying problems.

■ "First, the agency lacks effective mechanisms for helping managers to communicate and collaborate with examiners," stated the report. It further stated that the USPTO emphasizes "communication between managers and not between managers and examiners. Patent examiners and supervisory patent examiners in our focus groups frequently said that communication with management was poor or nonexistent, and they reported little involvement in providing input to key agency decisions." This lack "has created an atmosphere of distrust of USPTO management and lowered examiner morale, which is further exacerbated by the contentious relationship between USPTO management and the examiners' union," the report stated.

■ "Second, human capital models suggest that agencies should periodically assess their monetary awards systems to ensure that they help attract and retain qualified staff," the

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USPTO Handcuffs Examiner for Time Infractions

A patent examiner was handcuffed and arrested at the USPTO June 2 for the charge that he allegedly did "embezzle funds by submitting false hours of employment, such funds belonging to the U.S. Government and having a value of $200 or more," according to the arrest warrant. This marks the first time in known USPTO history that an employee has been arrested and criminally charged by local police for a workplace time or attendance infraction.

The USPTO is alleging that the embezzlement took place between February and September 2004. The agency first discussed the problem at an investigatory interview with the employee in January 2005. The agency has not clarified why it waited many, many months after these problems began to begin addressing them. Unexplained is the total absence of progressive discipline, which is the usual course for employee infractions.

The USPTO is basing its case on the ID card-in, card-out time records it keeps on employees at its new Carlyle campus.

At the investigatory interview the USPTO suggested that if the employee paid back the time, it would take that into consideration when determining consequences. The employee was working 10 hours per pay period of voluntary overtime specifically to that end. Two weeks after the investigatory meeting, two Office of the Inspector General (OIG) representatives visited the employee.

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Progressive Discipline at the USPTO

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GAO Reports Fault USPTO Policies

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report stated. "Patent examiners' awards are based largely on the number of applications they process, but the assumptions underlying their application processing quotas have not been updated since 1976. USPTO management and examiners have differing opinions on whether these assumptions need to be updated."

Despite these varying beliefs, the GAO found that many examiners and supervisors "reported that examiners do not have enough time to conduct high-quality reviews of patent applications. According to agency surveys, these inadequate time frames create a stressful work environment and is cited in the agency's exit surveys as a primary reason examiners leave the agency."

■ "Finally, counter to current workforce models, USPTO does not require ongoing technical education for patent examiners, which could negatively affect the quality of its patent examination workforce," the GAO report concluded.

"USPTO offers some voluntary in-house training, but the agency could provide no data on the extent to which examiners have taken advantage of such training. Moreover, patent examiners told us that they are reluctant to attend such training, given the time demands involved."

As a result, the GAO recommended that the USPTO "develop formal strategies to improve communication and collaboration across all levels of the organization," and reported that the agency agreed with its findings, conclusions and recommendations.

However, in his letter of response to the GAO, USPTO Director Jon Dudas wrote, "We assume that GAO's findings are not meant to suggest that more time may be needed for examination."

"Of course that's what the combined GAO reports are suggesting," wrote the *Internet Patent News Service.* "Is there anyone outside the Beltway… who doubts that examiners need more time for examinations? … No one championing the public's interest in the patent system would make such a statement."

A second GAO report, "Key Processes for Managing Patent Automation Strategy Need Strengthening" (GAO-05-336), found that the electronic filing system and the Image File Wrapper (IFW) "have not yielded processing improvements that the agency had deemed essential to operate successfully in an electronic environment."

It cited patent filers' comments that the electronic filing system is "cumbersome, time-consuming, and costly, and does not meet their business and technical needs," resulting in fewer than 2 percent of patent applications being filed electronically. Because of the IFW performance problems, according to patent officials, the system "has not provided many of the capabilities deemed essential to eliminating manual actions and improving worker productivity," stated the GAO report.

The USPTO did not follow information technology best practices to guide implementation of these IT programs, the GAO found. It attributed the failure of these two key electronic tools to "systemic weaknesses in the agency's overall information technology investment management processes." One result is that the USPTO "lacked reliable experience-based data to consistently demonstrate the costs and benefits of its systems."

The GAO specifically advised the USPTO "before proceeding with any new patent automation initiatives," to:

1. Reassess, and, where necessary, revise its approach for implementing and achieving effective uses of IT systems supporting a fully automated patent process;
2. Establish disciplined processes for planning and managing the development of patent systems based on well-established business cases; and
3. Fully institute and enforce information technology investment management processes and practices to ensure that its automation initiatives support the agency's mission.

To review the GAO reports, go to *www.gao.gov* and enter the report number in the search box at the top of the page.

Union Reminder Gets Practice Time for Examiners

Sometimes the USPTO only needs a low-key reminder from your friendly, neighborhood union to remember what it promised employees.

When the USPTO announced updated training classes in four of the computer software programs used by examiners (EAST, WEST, OACS and EDAN), it encouraged all examiners to take the training by offering two hours of "other" time for participation in each class and one hour of "other" time for practice after each class.

One supervisor e-mailed his employees to support that they schedule time for the courses and reiterated to take "other" time for each. However, he added, "None of you should need practice afterwards so I am not authorizing practice 'other' time after the normal class. Use the new stuff in your real work only. (I believe I have this authority and I am exercising it.)"

An alert examiner questioned the supervisor's judgment and asked the union for clarification. The POPA representative then sent the supervisor a copy of Deputy Commissioner for Patent Operations Peggy Focarino's all-employee memo, which wisely stated, "Examiners will be given practice time in increments of 1 hour for every 2-hour automation training course that they have taken."

The supervisor to his credit then withdrew the denial of practice time.

USPTO Handcuffs Examiner

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Though the examiner requested his right to consult with union counsel, the OIG reps denied that request, which is considered a gross violation of his statutory rights according to Supreme Court case law. At that meeting, the OIG reps stated that the examiner had to sign papers confirming that he was absent for specific hours. The employee and the union received no copies of those papers.

On June 2, the examiner's supervisor told the examiner that someone wanted to talk to him at the guard's desk. When he went down, OIG special agents handcuffed him and immediately turned him over to Alexandria police, who charged him with a felony, took him to jail, and released him on bail. He is awaiting trial. While POPA does not condone employees claiming pay for work not done, the union is dismayed at the extreme action taken by the agency.

Beyond the unnecessary overzealousness of the USPTO's actions, many employees believe that the agency's actions betray racist motives. The arrested employee is black. Five years ago a white employee was found to have stashed 137 cases at his home and falsified records—including timesheets—yet he was allowed to resign without any criminal actions taken.

For Your Protection

POPA wants you to be aware of your legal rights if supervisors, managers or Office of Inspector General representatives contact you.

If you are called to an investigatory interview, or to discuss your timesheets or any matter that has the potential to result in criminal charges, please remember:

- You have the legal right to union representation during the meeting;
- You have the right to refuse to answer any question that could incriminate you with a crime; this is your right to remain silent under the Constitution;
- If you don't remember, just say that you don't remember; giving the wrong information is worse than giving no information at all;
- You may not refuse to answer employers' questions about workplace activities if the agency has given you a waiver of criminal prosecution.

POPA advises you to remain silent if there is the potential that confusion about your responses could lead to criminal charges. Refusal to answer such questions does not imply an employee is guilty of any crime. Give no information that you are not totally sure of; even if you later correct it, the USPTO has termed the initial statement "providing false information" and an "aggravating factor" in employee discipline and removal.

Track the Time Trackers

To see what the USPTO sees as it keeps tabs on your comings and goings at Carlyle, you have the right to request your time records from the agency for any time period that you specify. You may also wish to request phone records and time-stamped computer records, such as search requests in EAST.

You can submit a Freedom of Information Act/Privacy Act request—for your own time records only—by following these steps.

By E-mail

1. Compose an e-mail to *efoia@uspto.gov.*
2. In the subject line write "Privacy Act request [5USC 552a (d)]"
3. State in the body of the e-mail the specific start and stop dates and times of the period of your request, e.g., 8 a.m. Jan. 1, 2005, through 6 p.m. March 30, 2005.
4. State your name and employee ID number.
5. State how you want the information delivered, i.e., via e-mail at your office or home e-mail address, or you can pick up a paper copy.

In Person

1. Go to the USPTO Security Office at 1/A21 in the Carlyle Townhouses (facing John Carlyle St.).
2. State that you are requesting your time records for the specific period according to your rights under the Privacy Act [5USC 552a (d)].
3. Show your ID badge.

"Third Pair of Eyes" Quality Review

Patent supervisors in May informed examiners that the USPTO was immediately instituting a "third-pair-of-eyes" review of all allowances, due to an unacceptably high error rate in allowed applications corps-wide so far this year. Supervisors also told employees that if examiners show more than 31 additional patentability errors before the end of the fiscal year, the USPTO will fail to meet its own error goal.

The agency issued no written notice of this change and informed only some art units, not all.

The USPTO did not mandate that primary examiners perform the additional reviews of their colleagues' work, and instead is seeking "volunteers" for that service. Primary examiners need not volunteer, but supervisors are pressuring employees to do so, and the agency may give no additional time to perform these duties. If a supervisor directly assigns a primary examiner to conduct such reviews and/or to submit his or her allowances for review by another primary examiner, such a directive would need to be followed in order to avoid being insubordinate.

Far-reaching Impacts of Pending Patent Reform Legislation

Recently introduced congressional legislation to reform the patent system could deeply impact patent examination and the make-up of the USPTO.

Rep. Lamar Smith (R-Texas) in early June introduced the Patent Reform Act of 2005 (H.R. 2795). The bill would change many features of the patent system, adding a post-grant opposition system, third-party submission of prior art, restrictions on injunctive relief, a first-inventor-to-file system instead of the current first-to-invent system, limits on filing continuations, duty-of-candor alterations, and elimination of the best mode requirement.

Post-grant Opposition

The proposed legislation would create a post-grant opposition system that emphasizes correcting errors after examination rather than investing in a quality examination upfront. In other words, the legislation implies that you only need to get patents right the second time around.

The bill would provide two windows of time for third parties to challenge the grant of a patent based upon newly discovered prior art and/or other evidence of prior knowledge and use, initially presented by affidavit and then at a hearing. The first window would permit challenges by anyone within the first nine months after issuance and the second would allow a challenge within six months following notice by a patentee that a party is infringing, after which the alleged infringer can initiate post-grant opposition. By establishing the second window, few would use the first.

The legislation would allow the identity of the party funding the challenge, while known to the government, to remain secret from the public. Thus a company that is already using the patented process/product, and doesn't want to divulge that fact to the patent holder, can launch a challenge.

Small entities may be hit by a multitude of opposition proceedings that they can't afford. Some companies would be able to protect their financial interests by filing a multitude of opposition proceedings against smaller companies, forcing them to respond and effectively breaking their bankroll. The proposed law provides an element of protection by allowing the USPTO to determine if there's a substantial question of patentability, whether the patentee does or does not respond.

Post-grant opposition can create unacceptable risk for many inventors. For example, pharmaceutical companies' average cost for the development of a new product is $1-2 billion, a large part of which is invested after obtaining a patent. The companies need to ensure exclusivity to protect their investments. Getting socked with post-grant opposition proceedings can jeopardize these huge investments. The same holds true for university researchers and small companies that rely on venture capital investments.

Post-grant Opposition's Effects on Examiners

The proposed law says that panels of three administrative patent judges (APJs) will adjudicate the opposition proceedings. Even if a relatively small percentage of granted patents receive post-grant challenges, the USPTO will have to hire many more APJs to handle the workload.

In 2004, the USPTO issued approximately 180,000 patents. That number is likely to rise to more than 200,000 within the next two years. The European Patent Office (EPO), which already has post-grant opposition, receives an annual average of 4.4 percent of patents challenged after issuance. Applying that average to the USPTO would create more than 8,000 opposition proceedings per year in the near future. Even a 1 percent challenge rate would equal 2,000 proceedings.

USPTO experts have projected that each APJ will lead a panel that will handle about 40 cases per year, in addition to sitting on others' panels as a second or third member. The USPTO would therefore need between 50 and 200 additional APJs to handle the workload. Since many in the field believe that virtually every post-grant opposition will go to appeal, the workload of the CAFC will also explode. All those appeals will also require additional solicitors from the USPTO.

The agency will have to devote funds to hiring, training and managing the increased number of APJs and solicitors. This would prove an expensive expansion. If Congress appropriates no additional funds, the USPTO would need to move money from examination into adjudicating opposition proceedings. This could result in fewer examiners doing more work and cutting more corners on quality to make the production numbers, thereby creating a vicious cycle of poor quality.

While some think post-grant opposition is a solution to poor quality, the EPO's experience shows otherwise. In Europe, the number of challenges is not a function of the quality of the initial examination, but is based more on the competitiveness and the practices in the patent's particular art. Not all challengers come up with better prior art, just different art. Even with quality examination, some still may challenge a patent just for the sake of challenging, to try to knock down the other guy.

The patents for everyday items that have embarrassed the USPTO and raised the biggest fuss over quality represent few big economic interests. However, it's the patents that indeed affect major financial interests that tend to bring opposition. Many third parties don't even realize the economic impact of a patent for many months after issue. This naturally delays the challenge. As a result, if the two time windows for post-grant opposition are enacted, few may file during the first nine-month period, choosing the wait-and-see option instead.

While current examiners may view the additional hiring of APJs as an opportunity to advance into those jobs, the USPTO would likely hire more experienced patent attorneys for the positions.

Third Party Prior Art Submission

The proposed legislation allows a third party to submit

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prior art to the USPTO before the grant of a patent, in response to pre-grant publication of the application. Presently the USPTO's role is to protect applicants from having to respond to pre-grant opposition proceedings, so as to defend smaller companies from the extra costs of having to respond to third-party submissions. This bill would negate that protection.

If an examiner issues a first action prior to publication, any prior art submitted by a third party after publication will extend prosecution and take more examination, but the USPTO historically has given examiners no additional time for such examination.

When a third party submits the prior art in a pre-grant opposition, according to this proposal, the party won't continue to be part of the proceeding after an applicant responds as would be possible during a post-grant opposition proceeding. Therefore this option—created with the intention of improving patent quality—likely will go unused by most parties in favor of the more costly and time-consuming post-grant challenges.

Restrictions on Injunctive Relief

The pending legislation proposes new restrictions on injunctive relief that one federal judge has characterized as weakening patents—turning them from protected property rights into simple government-permitted privileges.

Currently, under court-established precedents, if a patent is found to be valid and infringed, in virtually all cases an injunction issues. At a recent conference on patent reform sponsored by the National Academy of Sciences, the Federal Trade Commission and the American Intellectual Property Law Association, a panel of federal judges stated that the proposed law would bias courts against granting an injunction. Instead the law would steer judges toward granting a reasonable royalty, which is seen by many as nothing more than compulsory licensing.

The judges counseled congressional lawmakers to proceed with extreme caution in changing patent law. "This bill is decidedly not pro-patent," said Judge T.S. Ellis of the U.S. District Court for the Eastern District of Virginia. He said enacting the bill would mean "a fundamental sea change in what a patent represents," and would effectively convert patents from a "property right" to a mere "privilege."

Judge Pauline Newman of the U.S. Court of Appeals for the Federal Circuit said, "The thought that too many patents are being upheld is something that needs a firmer economic and statistical evaluation than I have seen so far," according to a report in *Drug Industry Daily.*

Judge Newman said that the increase in innovation has been dramatic since the 1983 establishment of the Court of Appeals for the Federal Circuit (CAFC), which hears all patents appeals from U.S. district courts. She maintained that the unified judicial oversight has strengthened patents and spurred research and development. During the 20 to 30 years prior to the establishment of the CAFC, patents were rarely held valid and innovation was not rewarded.

First-inventor-to-file System

The proposed law would give the rights to a patent to the first inventor to file an application, rather than the current system of giving priority to the first to invent. The bill still allows a one-year grace period for publications by the inventor, i.e., any publication by the inventor within the year prior to filing would not prohibit the grant of a patent.

The overall intent of this provision would be to eliminate expensive interference proceedings and create greater global harmonization. Yet a high number of post-grant opposition challenges would potentially generate equal or greater expense. It also doesn't accomplish harmonization because it still requires that the applicant be an inventor.

Standard for Treble Damages or Willful Infringement

The proposed legislation states that knowledge of the existence of a patent does not equal willful infringement. This provision would address the current fear of some patent applicants that if they review the patents of others and then design a product or process that can be said to include subject matter claimed in those patents, then they can be accused of willful infringement.

The bill also states that one legitimate defense against the charge of willful infringement would be for the alleged infringer to rely on the good faith opinion of counsel that the patent is invalid, or that the conclusion of infringement is incorrect. In other words, one patent attorney's opinion would equal an adequate defense. Some in the patent community think this will weaken the treble-damages remedy; others think that it's essential for innovation.

Commenting on this proposal, Judge Ellis said that willful infringement is often pled, but seldom granted.

Duty of Candor

The proposed legislation takes the oversight of violations of the duty of candor—the obligation of an applicant to divulge all known prior art—from the courts, and places it before the USPTO. This will require an expensive expansion of the USPTO administration.

Prior duty-of-candor violations have resulted in the entire patent rendered unenforceable, even those claims that are otherwise valid. The proposed bill would require that one patent claim first be found invalid; then the patent would be referred to USPTO for a validity determination. To find the entire patent invalid, the USPTO would have to find that the fraud was the responsibility of the patent owner and that with the undisclosed prior art an examiner would have found the claims unpatentable.

What remains unclear is what happens when the patent is sold—the finding of fraud may not apply to the new patent owner. This proposed change would significantly

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reduce the likelihood of finding duty-of-candor violations, limit the amount of court system discovery, and possibly encourage applicants to risk withholding information. Many patent attorneys oppose the proposals to change the duty of candor rules.

Judge Ellis contested the bill's diminishing of the court's functions and the expansion of the role of the USPTO. "I'm very opposed to allowing district courts to refer things to an administrative proceeding," Ellis said, as stated in *Drug Industry Daily.* "That's the last thing in the world I would favor. All you're doing is creating another bureaucracy and another level of litigation. It troubles me a good bit. I think the provision even as written is not coherent."

Other Legislative Changes

The proposed patent reform would also eliminate the best-mode requirement. No one has proven any need for this change to limit disclosure; this is a fundamental quid pro quo in exchange for the grant of a patent.

The bill also changes continuation procedures. Some in the patent community believe that applicants abuse the right to file continuations by waiting to see what others do subsequent to their filing an application and *then* seek to file claims in a continuation application tailored to what others have done. The legislative proposal states, "The Director may by regulation limit the circumstances under which an application for patent, other than a divisional application that meets the requirements for filing under section 121, may be entitled to the benefit under section 120 of the filing date of a prior-filed application. No such regulation may deny applicants an adequate opportunity to obtain claims for any invention disclosed in an application for patent."

This standard is too vague. Most applicants use the continuation process legitimately to refine the claim language to provide an adequate scope of coverage. This provision doesn't solve the problem, but instead abdicates congressional policymaking authority to the USPTO, thereby postponing a solution.

> "There are a number of reasons public employees have been able to preserve the kinds of benefits and, in some instances, living standards that were once more common to American workers generally, but chief among these is unions. While 37 percent of public-sector works are unionized, just 8 percent of private-sector workers are."
>
> —*Harold Meyerson in* The Washington Post, *June 9, 2005*

Reforming USPTO Restriction Practice

As part of its 21st Century Strategic Plan, the USPTO is conducting a study of its restriction practice. After the agency requested public comments to help guide the study, the USPTO evaluated suggestions by various members of the public and prepared a "Green Paper" describing four options to reform restriction practice. Before drafting proposed legislation in a "White Paper," the USPTO is seeking public comment on the Green Paper.

Summary of Four Options to Reform Restrictions

Option 1 – Current Practice with Option to Pay for Additional Inventions. The current 35 U.S.C. §121 "independent or distinct" standard for restriction would be retained and applicants would be given the option to request and pay for examination of up to two additional independent or distinct inventions beyond that which would be examined in the current practice. Applicants would also have the option to request and pay for examination of up to 10 species separately claimed, or claimed within a genus or Markush group, at an additional per species cost.

Option 2 – Modified PCT Unity of Invention. The current PCT "unity of invention" standard, modified to require that any purported special technical/common feature comply with 35 U.S.C. §112, 1st paragraph (in addition to being novel and non-obvious), would be applied to all U.S. applications. Applicants would be given the option of concurrent examination of up to two additional inventions that lack unity of invention for an additional fee.

Option 3 – Three-tiered Fee Structure. The standard would be based upon whether inventions are "related or unrelated" and the amount of fees paid in any particular application would be based upon a three-tiered structure. The fees would be determined by the search burden associated with, and the presence of different patentability issues between, the various inventions claimed in the application.

In the first tier, applicants would pay a base fee if only claims directed to "substantially similar" inventions were elected. In the second tier, an additional fee or surcharge above the base fee would be charged for election of a number of "related" inventions that raise substantially different patentability issues but do not require a substantially different search. The third tier would comprise "unrelated" inventions that require additional searching and also present dissimilar patentability issues. (If Option 3 were ultimately adopted, the agency would permit inventions in the first two tiers to be examined in the same application, but would not permit inventions in the third tier to be examined in the same application.)

Option 4 – "Independent and Distinct" Inventions.

Under this option, the 35 U.S.C. § 121 standard would be re-interpreted to require that inventions subject to restriction be both "independent *and* distinct" (rather than "independent or distinct" per current practice). Inventions

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would be distinct if they are patentable over each other. Inventions would be independent if there is no common feature(s) among the inventions. In addition, inventions would be independent if they share a common feature(s), but the common feature(s) does not define over the prior art and/or satisfy the enablement and written description requirements of 35 U.S.C. § 112. Under this option, applicant would be required to pay an additional fee upon election to offset the potential additional search and examination burden.

In setting forth an initial restriction requirement where the independent inventions share a common feature(s), the examiner should infer that the common feature(s) fails to define over the prior art. The inference that the common feature(s) fails to define over the prior art may be rebutted.

If the elected invention is not patentable, any restriction requirement would be maintained and claims to any non-elected inventions would remain withdrawn. However, if such an inference is made and the elected invention is patentable, the examiner would continue to search the common feature(s) either by searching a nonelected invention that requires the common feature(s) or by searching the common feature(s) by itself. The search would continue until either the common feature(s) or a previously nonelected invention that requires the common feature(s) was determined not to be patentable, or until all the previously nonelected inventions are determined to be patentable.

View the full USPTO Green Paper at: *www.uspto.gov/web/patents/greenpaper.pdf.*

Arbitrator Rules USPTO Broke Law in Firing Disabled Examiner

An arbitrator ruled that the USPTO "cannot arbitrarily ignore the facts as it has done" when it fired an employee after disregarding his dramatically improved performance when his medically confirmed sleep disorder was successfully treated.

Arbitrator Jerome T. Barrett stated that the agency "failed to engage in **any** [emphasis in original] consideration of the medical evidence" in the case of an employee who was suffering from undiagnosed sleep apnea during most of the period of his performance improvement plan. His production had fallen to 84 percent. Yet after the examiner's condition was diagnosed and treated, his production rose almost immediately to 118 percent.

"There can be no doubt that were it not for Grievant's condition, he would have passed the PIP," wrote Barrett. "His subsequent performance, when not suffering the debilitating effects of his condition, further confirm this."

The arbitrator cited law showing that an agency cannot sustain a performance-based removal if it fails to provide a reasonable accommodation for handicapped employees. The law also finds sleep apnea a qualified disability.

"One would think that with all the emphasis by the Administration on 'human capital,'" wrote Barrett, "the Agency would believe that it is in the interest of the government to retain an employee with a consistent record of the highest quality and who has shown that, now that his medical condition has been identified and is being successfully treated, he is producing at excellent levels." Instead, he was fired.

Barrett ordered that the employee be reinstated with backpay.

Rather than accept this decision, the USPTO has chosen to contest it, claiming that it has the right to appeal this ruling to the Federal Labor Relations Authority (FLRA). The FLRA does not normally accept such appeals. The agency appears to be using this case as a vehicle to try to create new appeal rights for management. POPA is continuing the fight to have this employee reinstated.

A True Way to Quality

The following points are excerpted from the "14 points for management" in *Out of the Crisis,* by W. Edwards Deming, whose management tenets are often credited as the basis for quality management.

Deming's precepts encourage a workplace team orientation, with the manager acting as coach and cheerleader rather than as police and judge.

- Cease dependence on inspection to achieve quality. Eliminate the need for inspection on a mass basis by building quality into the product in the first place.
- Drive out fear, so that everyone may work effectively for the company.
- Break down barriers between departments. People must work as a team, to foresee problems of production and in use that may be encountered with the product or service.
- Eliminate slogans, exhortations, and targets for the work force asking for zero defects and new levels of productivity. Such exhortations only create adversarial relationships, as the bulk of the causes of low quality and low productivity belong to the system.
- Remove barriers that rob people of their right to pride of workmanship.
- Institute a vigorous program of education and self-improvement.

—From the W. Edwards Deming Institute, *www.deming.org*

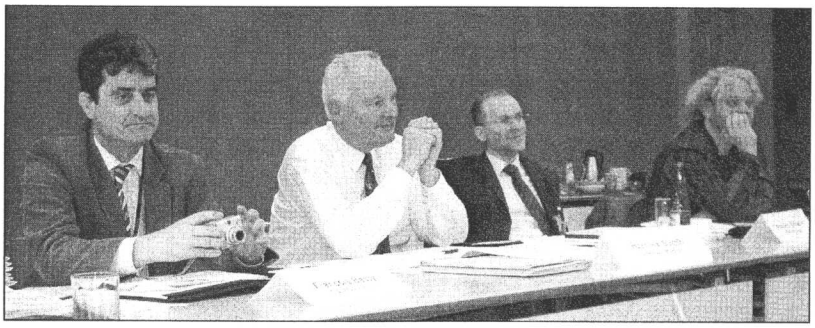
POPA Delegation Visits European Counterparts

A delegation of four POPA officials took annual leave in May to travel at their own expense to visit with representatives of the Staff Union of the European Patent Office (SUEPO) in Vienna.

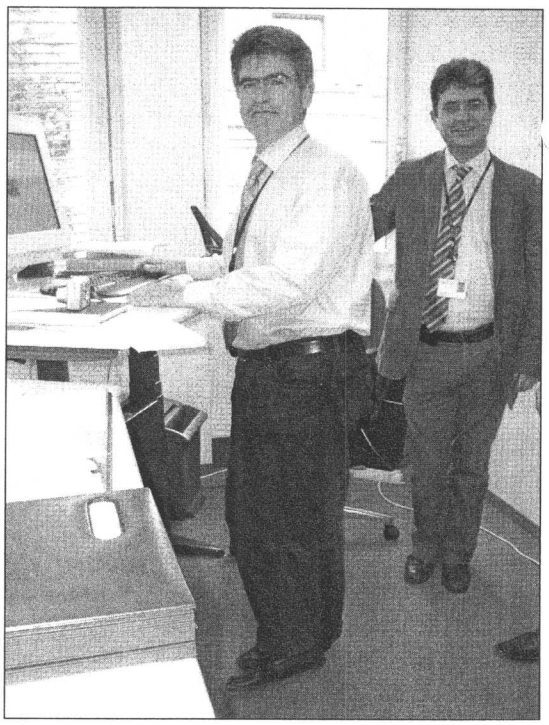
During their discussions, the two patent employees unions recommitted themselves to:

- Exchange information on issues such as automation, working conditions, and patent law; publish developments in each other's offices to their members;
- Invite colleagues in the Japanese Patent Office to participate in future discussions;
- Organize additional joint conferences;
- Aid each other in advocating a high-quality, professional approach to patent search and examination and in counteracting attempts to lower quality or register patents.

Representatives from POPA and SUEPO pose by Belvedere Castle, located near the EPO Vienna office. (L to R) POPA Vice President Larry Oresky; Andreas Domann, SUEPO-Berlin; POPA Chemical Area Delegate Adrienne Johnstone; POPA Treasurer Randy Myers; SUEPO Chairman Jesus Areso y Salinas; POPA President Ron Stern; Ansgar Wansing, SUEPO-The Hague; François Basty, SUEPO-Vienna.



SUEPO representatives at a work session with POPA representatives. (L to R) François Basty, SUEPO-Vienna; Hannes Senftl, SUEPO-Munich; Andreas Domann, SUEPO-Berlin; Ansgar Wansing, SUEPO-The Hague.



Jesus Areso y Salinas, chairman of the Staff Union of the European Patent Office (SUEPO), demonstrates the motorized computer desks, used by EPO examiners, which change heights so they can be used while standing. With him is François Basty, SUEPO-Vienna.

Patent Office Professional Association

Letters from readers are welcome. Address to:
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