POPA NEWS
Patent Office Professional Association
www.popa.org
PROFESSIONAL REPRESENTATION FOR PATENT PROFESSIONALS
June 2008 Vol. 08 No. 3

POPA Flat Goal Challenge Moves Ahead

POPA's efforts to ensure fairness and objectivity in measuring examiners' performance continue.

In early April the union and the USPTO presented oral arguments over three days of hearings to the arbitrator who is deciding POPA's flat goal grievance. POPA argued that the program violates federal statutes, including federal employee performance appraisal and leave statutes; violates numerous provisions of the POPA-USPTO collective bargaining agreement; and was an unfair labor practice including unilateral implementation before completion of bargaining.

In its oral statements, POPA quoted the USPTO's own description of the flat goal program: "The pilot will test the concept of piecework . . . It changes the focus to the product itself, and away from time accounting as being equated to work performed. …If successful, demonstration project could be sought for a pay-by-the-piece system. Examiners . . . would be paid for each production unit completed, regardless of where the work was completed."

Although the flat goal purports to account for annual, holiday and sick leave, automation system downtime, and the assignment of other duties, the USPTO in fact arbitrarily chose the amount of time designated for those activities—20 percent of working hours. Although the USPTO claimed to rely on "historical examining and non-examining time" in establishing the flat goal, the response to POPA's requests for documentation revealed that this was not true. The patent examiner corps historically averages 72 percent examining time, not the 80 percent standard set in the flat goal program. Thus, the flat goal program actually represents an increase in examiners' production goals.

Statute and case law also require that performance standards must "to the maximum extent feasible, permit the accurate evaluation of job performance…" The flat goal does not provide an accurate evaluation of performance if an examiner takes accumulated annual leave or takes the current year's annual leave in a particular quarter in excess of the prorated amount; or is assigned other duties that exceed 32 hours in a given quarter or 127 hours in a year.

At an April 21 all-hands meeting of Technology Center 1600, after Commissioner for Patents John Doll spoke of the supposedly increased flexibility for examiners of the flat goal program, POPA President Robert Budens stood up and asked the assembled examiners, "How many of you want to have the flat goal?" No one raised a hand.

Written briefs are due to the arbitrator June 27 with a high likelihood of additional reply briefs during the summer. A decision on the grievance will likely come near the end of 2008.

Behind the Scenes on the New Transit Subsidy

POPA bargaining unit employees should have read in the May 13 USPTO Weekly Extra and in a May 16 e-mail from POPA President Robert Budens about the generous and streamlined new transit subsidy program. What these communications didn't discuss was the hard work and compromise that went into the USPTO-POPA negotiations to attain that program.

The phasing out of Metrocheks prompted the negotiations. The talks began shortly after the release of a Government Accountability Office study that found abuse of transit subsidies in several federal agencies. The USPTO came to the bargaining table with heightened sensitivity to preventing abuse and some very restrictive proposals. To its credit, it worked with POPA to create a beneficial program.

The online transit subsidy application facilitates the process. Gone is the need to include a Social Security number and to copy the supervisor. The system automatically provides a receipt and confirmation when the subsidy is approved.

While the current maximum benefit increases to $115 per month, the new negotiated program includes an automatic benefit increase whenever the U.S. government increases the maximum monthly transit subsidy. This guarantees the largest allowable payment without requiring new negotiations—the best possible subsidy for employees.

POPA thanks the transit subsidy negotiators for their effort and commitment: For POPA—Kathleen Duda and Howard Locker; for the USPTO—Tom Hellmer, Robert Oberleitner and Kimberly Oliver.

To read the full agreement, go to *www.popa.org* under Useful Info/Agreements.

Why I Joined POPA

"I felt alone and powerless . . . to seek reasonable recourse."

As a new employee in the Patent Training Academy, I am still learning the ins-and-outs of the particularly complex job of patent examining. POPA was barely on

(*continued on page 2*)

Why I Joined POPA

(continued from page 1)

my mind until a couple of weeks ago, when I did not receive my transit subsidy, as the office said I'd made an error in my submission and had missed a deadline.

This stemmed from back and forth e-mail correspondence between the office and me wherein I expressed my need for guidance. The office replied with instructions and a form for me to submit, and I replied with what I believed to be a valid submission and with my intentions and understanding of the situation fully explained.

Several months later when I inquired as to why I had not received a transit subsidy I was told that my application was improperly submitted. I produced the correspondence proving my stated need for guidance and intent to enroll in the subsidy benefits program, in addition to the clearly and correctly marked forms. I further explained that no one indicated to me that my submission was in error and that I only wished at this point to help correct what was clearly a misunderstanding of no one's particular fault. I was met with a reply that my submission was incorrect and that I would just have to miss out.

I contacted POPA and met with knowledgeable representatives who quickly looked into the situation.

The regulations and agency barriers in this matter were far greater than I was prepared for, and I was uncomfortable attempting to surmount them on my own. I felt the agency was being completely inflexible, and I felt alone and powerless in my struggle to seek reasonable recourse. At this point I contacted POPA and met with knowledgeable representatives who quickly looked into the situation. Suddenly things seemed not so dire after all. In the end, POPA's efforts made the agency see that it indeed bore some responsibility in this matter, and *I received my full transit subsidy*—albeit somewhat late. I also appreciate very much that POPA did this at a low-key level—no grievance was filed. Misunderstandings and differences were overcome and reasonable minds prevailed.

I hope you will never need POPA's services directly, but most likely you're already benefiting from POPA's presence. I greatly encourage new and old employees alike to become dues-paying members of this fine organization as I have. I was also surprised to learn that I could have become a POPA dues-paying member from day one.

—A Probationary Employee

POPA and the USPTO Agree to First Action Interview Pilot

From its outreach efforts to the patent community, the Patent Public Advisory Committee learned that many patent applicants wanted the opportunity to speak with the patent examiner assigned to their application prior to the first action to explain their inventions. Both POPA and USPTO management agreed that, in most instances, examiners understand the applications as received. The parties also recognized, however, that in many cases an effective interview can shorten the time for an applicant and examiner to get to allowable subject matter.

These discussions helped to mold the USPTO First Action Interview Pilot Program, which POPA and the USPTO negotiated and agreed would begin April 28.

Applicants with cases in either of two areas of Technology Center 2100 can volunteer to participate in the pilot—Class 707 (Data Processing: Database and File Management or Data Structures) and Class 709 (Electrical Computers and Digital Processing Systems: Multicomputer Data Transferring).

Under the pilot, the examiner will do a prior art search and, instead of writing a normal first action on the merits (FAOM), will complete a "Pre-Interview Communication," a pre-interview office action summary to be mailed to the applicant. It is at this point that the examiner will be credited with the FAOM count in the case. The applicant will have 30 days to schedule an interview or decline the interview option. The interview, via phone, videoconference or in person, must take place within 60 days after mailing of the Pre-Interview Communication.

Four Interview Outcomes

The interview process can result in four possible outcomes:

1. The application is ready for allowance, with or without amendment. The examiner prepares the Interview Summary Form and the Notice of Allowability and receives the disposal count.

2. The applicant and examiner agree that the claims are properly rejected as written. The examiner notes this in an Interview Summary Form and prepares a First Action Interview Office Action, which will either duplicate the Pre-Interview Communication or include minor changes resulting from the interview and agreed to by the parties. Together, these forms act as the applicant's first notice of rejection and the examiner does not receive a count for this action.

3. The applicant and examiner disagree that the claims are properly rejected. If they don't agree after discussion, the examiner prepares an Interview Summary Form and First Action Interview Office Action as noted above in 2.

4. The applicant and examiner agree that at least one claim was not properly rejected. The examiner notes this on an Interview Summary Form, completes a replacement Pre-

(*continued on next page*)

POPA, USPTO Agree to Pilot

(*continued from page 2*)

Interview Communication with the claims properly rejected, and mails it to the applicant to restart the process. This is analogous to a current second non-final office action.

Options 1 and 2 may save examiners time. If the applicant doesn't agree with the examiner in an interview, the amendment is treated similarly to the current after-final practice. If the interview raises new search or rejection issues, the examiner may choose not to enter those amendments.

POPA expects to learn from this pilot if the interview process will improve the ability to reach allowable subject matter in many patent applications—perhaps by reducing the number of actions per disposal, a number that has been increasing significantly in recent years.

After six months of the pilot, POPA and the USPTO will review the resulting data to determine whether to end or extend the pilot or to expand the interview practice corps-wide. The data will include the number of first-action interviews requested, the outcomes of the interviews, and the number of hours of "other" time claimed under the initiative. If the agency wishes to establish a permanent program, it has agreed to negotiate with POPA beforehand to the extent required by law.

No Unpaid Overtime for GS 5-7 Examiners

If you are a GS 5-7 examiner and your trainer or supervisor tells you with a wink and a nudge that you can work unauthorized, unpaid overtime to make your goals, don't do it! You could lose your job.

The Fair Labor Standards Act (FLSA) states that an employer may not accept any uncompensated overtime from any FLSA-covered employees, such as GS 5-7 examiners. Higher-graded examiners are not covered by FLSA because they are considered "professionals" who "frequently exercise discretion and independent judgment, under only general supervision, in performing the normal day-to-day work," according to the Office of Personnel Management. Lower-graded examiners, on the other hand, must be compensated for all overtime and may not work unpaid overtime.

Receiving Mixed Messages

However, new examiners at the Patent Training Academy received a contrary message when instructors told them that, though they aren't authorized to work unpaid overtime, everyone does and their supervisors will turn a blind eye to those hours.

For some examiners that didn't happen—the USPTO handed proposed job removal letters to several GS 5-7 examiners who'd worked unpaid overtime. For example, just a few months after a technology center director warned one probationary examiner to raise his fully successful production level, and another manager advised the examiner to work unpaid overtime to boost production, the examiner was terminated during the last bi-week of his two-year probation.

At the time the examiner was let go, he was producing approximately 110 percent of goal, maintaining an outstanding level of workflow, and had successfully completed the cycle for promotion to GS 9. Despite being told not to do unpaid overtime, the examiner's supervisor gave him many amendments from former employees—some of them not classified in the art unit or tech center—with little or no compensation—only a probability of negative workflow points.

Fortunately, this probationary employee and others came for help to POPA, which interceded on their behalf with senior Patents management, demonstrating the mixed message these trainees had received. At press time the agency had rescinded several of the proposed removals.

Make Goals Without Overtime?

What's the solution for new examiners who need to work overtime to make their production goals while they are learning how to examine patent applications? They can request paid overtime authorization from their supervisors, but paid overtime hours count as examination time in the production goal calculation and would increase examiners' required production.

The current system places new, lower-graded examiners in a production predicament: Risk losing your job by working unpaid overtime or face not meeting production goals. The solution is to revamp the production goals for these probationary and lower-graded employees.

POPA will continue to encourage the USPTO to pay for needed overtime for GS 5-7 examiners and to work with the association to revise the production system to reflect the realities of patent examination.

POPA Help Available to Witnesses

If you are called as a witness in an investigation being handled by USPTO Employee Relations, you may request a POPA representative to accompany you.

The current POPA-USPTO collective bargaining agreement allows any employee who believes a meeting with management could lead to disciplinary action to have a union representative present; in fact, management must inform the employee of his/her right to POPA representation. In addition, if an employee is asked as a witness to a meeting regarding another employee, Employee Relations will not normally oppose the presence of a POPA representative at such a meeting.

POPA recommends that employees take advantage of this ability to have POPA assistance. A witness can turn into a suspect in a heartbeat depending upon how a question is answered—you'll appreciate having POPA's expertise by your side.

USPTO Seeks Legislation to Avoid Paying Hotelers' Travel Costs

An onerous aspect of hoteling for most participating examiners is the one-hour per week they are required to report to the USPTO's Alexandria, Va., headquarters, but the agency is pushing for a fix that could be worse for hotelers.

The USPTO is lobbying Congress to approve legislation, currently part of Senate bill S.1000, which would extend the authority for the General Services Administration to approve experimental travel expenses test programs for six years. This legislation, while only appearing to directly affect the General Services Administration, would allow the USPTO to change hotelers' duty stations to their home offices, thereby negating the weekly required in-office hour, yet not reimburse them for their travel expenses —transportation, lodging and meals—when they are required to come to the USPTO headquarters on an "as-needed" basis.

In addition, according to the USPTO's "Section by Section Analysis, Travel Expense Test Program for Federal Employees," a paper discussing the pending legislation, the agency intends to pay hotelers' salaries based on where they actually live. In its analysis, the agency indicated "the employee's official worksite for pay purposes would be the telework location."

USPTO Tries to Burden Examiners with Cost

POPA opposes the agency's proposed legislation because the agency is attempting to transfer a major cost of doing business onto its examiners.

Under existing statute and regulation, an agency is not required to pay commuting costs for employees living within the local commuting area (locations within a maximum 50 mile radius of the agency). The vast majority of the USPTO's teleworking employees fall within the local commuting area of the USPTO's Alexandria headquarters. Thus, the agency could eliminate the one-hour per week requirement for all these employees at no cost to the agency. For those employees living outside the local commuting area, the USPTO should assume the costs of travel expenses when it requires an employee to report to agency headquarters. This represents a normal cost of doing business for most major companies or government agencies that employ nationwide workforces.

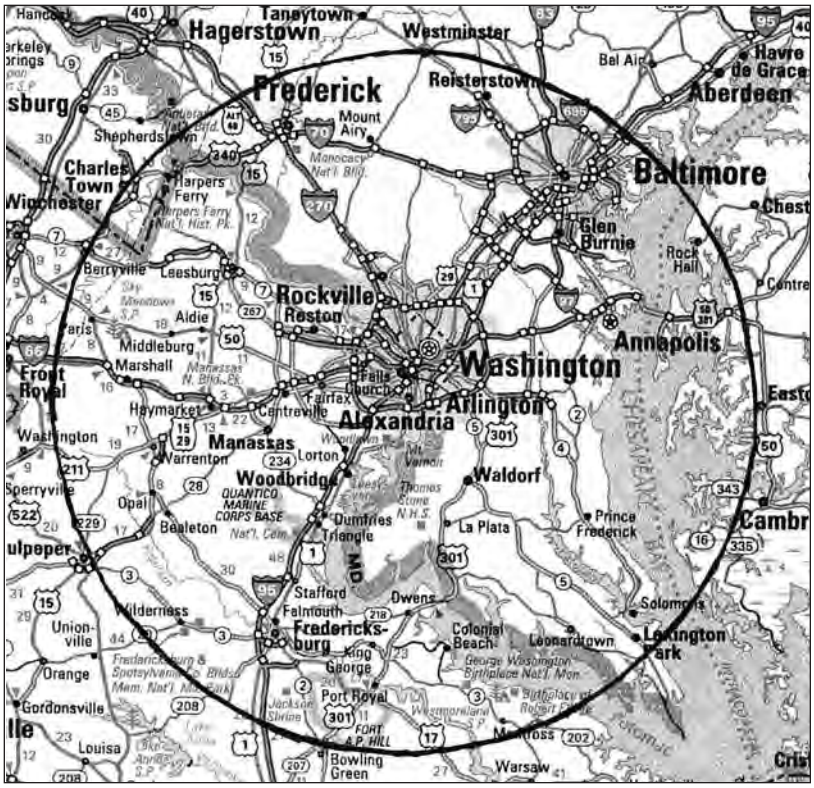
The USPTO fully admits that it now requires hotelers to travel to the Virginia agency headquarters for one hour per week "so that the agency is not required to reimburse these employees for travel expenses when they are required to report to the originating office" according to the USPTO's analysis. "Because patent and trademark examiners work in a production-based environment, the once-a-week requirement for these employees has a negative impact on USPTO's productivity at a time when the agency needs to reduce pendency," the USPTO paper continued.

USPTO management has often stated publicly that it needs the flexibility of a nationwide workforce to improve its hiring and retention capabilities. Therefore, the agency proposes to use the "test program" authority to allow hotelers to work full time from home (anywhere in the United States), thereby boosting USPTO productivity, improving hiring and retention and saving the agency huge sums in real estate and its attendant costs, e.g., utilities and furnishings.

The USPTO, however, wants to shirk its responsibility to reimburse these employees for travel costs when the agency requires them to travel to headquarters for supervision, training or whatever. As the paper states, "USPTO believes that since it is accommodating the desires of the employee in regard to worksite, it believes that the agency should have the discretion in determining whether the employee should be personally liable for the expenses of traveling to the originating office when the employee's presence is determined to be officially necessary at that site." What the agency really means by "officially necessary" is: whenever it wants, for any reason it wants, and for however long it wants.

If a supervisor doesn't like an employee, all he or she has to do is require the examiner to repeatedly return to

(*continued on next page*)



The circle indicates the USPTO's potential maximum local commuting area, encompassing a 50 mile radius from the Alexandria, Va., headquarters.

USPTO Seeks to Avoid Travel Costs

(continued from previous page)

USPTO headquarters for "training" or "counseling" or "review," etc. The examiner will be left facing a Hobson's choice of paying considerable travel expenses or finding a new job. Hoteling examiners will find themselves with a financial sword hanging constantly over their heads.

The agency enjoys being the showcase example of a highly successful federal telework program and it wants to

(*continued on page 7*)

If First-year Examiner Attrition Is Down; Is Second-year Attrition Up?

USPTO Director Jon Dudas testified with pride at a Feb. 27 congressional hearing that the USPTO had reduced attrition of first-year examiners by about 25 percent since 2005. That sounds reassuringly like a great improvement, but has the attrition of second-year examiners gone up instead?

POPA gets a little credit for the reduction in first-year attrition. POPA lobbies our own management on behalf of its bargaining unit of patent professionals as well as lobbying Congress.

When the USPTO had changed the probationary period to two years for new examiners, the agency seemed to be showing new examiners the exit before their training even ended, or just as it ended, without giving some examiners a chance in a real art unit. The USPTO has rationalized the two-year probation by saying supervisors needed more time to evaluate new examiners since they work on relatively few applications in the first year—the additional probation time would give a better snapshot of success in the organization.

POPA stressed that managers seemed to be acting contrary to their stated needs when they were cutting loose new examiners without adequate time to put their training to work and acclimate to the production system. POPA also said that the actual supervisor can better determine the value of any individual examiner to their particular art.

Senior USPTO managers listened, gave more new examiners a chance and reduced the number of examiners let go so early. This is something to brag about as Director Dudas did, but statistics are a funny thing. A look at the percentage of new examiners let go in the second year can assure the agency and Congress that the first-year attrition's decline didn't cause the second-year attrition to increase. It's possible that USPTO's admirable changes simply pushed the bulge in first-year attrition to the second year.

The health of hiring and retention measures needs both first and second-year attrition statistics to determine what is actually happening with new-examiner retention. The problems in keeping new examiners may or may not be truly fixed—a harder look at the numbers can help the agency pinpoint how to best train and retain its examining corps.

Freedom from Badging Out

Unpaid Overtime Study Possible Without Gate Records

The USPTO announced in early May that effective May 19 it was discontinuing the requirement that employees, contractors and visitors electronically swipe their badges to exit an agency building. Employees greeted the USPTO about-face on badging out with relief and a little skepticism.

In his memo to employees, USPTO Director Jon Dudas said, "Our emergency preparedness since 2001—including our evacuation and sheltering plans—has improved the USPTO's ability to act should an emergency occur. These improvements allowed us to reexamine our system."

POPA has appealed for an end to this punch-the-clock practice since its inception in 2003 when the agency began its move to its new Alexandria facilities. The January-February 2004 *POPA News* stated: "The agency's given rationale for the ID clock-out feature was to identify employees remaining in the buildings after an evacuation. But because the clock-out system [gates] will be lifted during an emergency, which will eliminate the stop at security checkpoints, to find employees still in the building will be impossible. Therefore, the agency's rationale is fallacious."

Most feel emancipated from this Big Brother aspect of USPTO employment.

Most employees report feeling emancipated from this Big Brother aspect of USPTO employment. Others voiced distrust of the agency's motives for choosing to change the badge-out system at this time. Congress is now leaning on the USPTO to perform a study of the production goal system to determine its impact on examiner attrition and productivity. Some examiners fear that ending the badge-out process will destroy their ability to show the hundreds of hours of unpaid overtime they work to meet their production goals. They worry that the USPTO may plead that it can't accurately account for unpaid examining time.

Congress is smarter than that and can require that the USPTO perform a statistically valid study of the hours of unpaid overtime that examiners work without the electronic gate records.

Enjoy your freedom from the time clock. You at last are being treated as the professionals you are.

USPTO Pulls Examiners from Telework Programs and Flexible Work Schedules

The USPTO is refusing to follow its recent hoteling agreement with POPA. It has created a crazy dichotomy of unfair and inequitable treatment of employees by relying on outdated provisions of the Increased Flexitime Agreement and its own unilaterally-implemented Patent Hoteling Program policy to unfairly lasso hotelers and teleworkers and yank them off the programs and back to the office. The agency has chosen to take the most punitive path for employees.

Provision 8 of the USPTO-POPA hoteling agreement states, "POPA bargaining unit members issued oral warnings for performance will not be removed from IFP [Increased Flexitime Program] or from the Patents Hoteling Program, unless the employee opts to withdraw from either or both programs." In a compromise with the agency, POPA agreed that "Employees given performance improvement plans (written warnings) will be removed from Increased Flex Program (IFP) and the Patents Hoteling Program." That is the single stated situation in the agreement under which an employee can be involuntarily removed from hoteling and IFP.

POPA negotiated this provision to prevent examiners from being dropped from hoteling or telework as well as flexible work schedules—forcing employees to move to the Alexandria office and upend their lives—for a temporary drop in performance. Staying in a stable office environment with improved remote supervision would more likely benefit their performance and production. The USPTO apparently agreed, but now has chosen to circumvent that agreement.

Hoteling/teleworking examiners whose performance drops to unacceptable levels in any given quarter would usually be given an oral warning. However, if that quarter happens to coincide with the end of the fiscal year or the due date for an employee's within-grade increase, the agency's crazy dichotomy appears. In these instances, the agency must issue an official rating of record—either the end-of-year rating, or a rating of record required to deny the employee's within-grade increase. The USPTO has recently determined that "those employees with ratings of record less than fully successful [are] ineligible for the hoteling program."

That an examiner can be unacceptable for a quarter and be given a performance-based disciplinary action, i.e., an oral warning, is a given. However, if that oral warning is given at the end of the fiscal year or when the examiner is up for a within-grade increase and the employee's performance rating is less than fully successful (as it often can be with an oral warning, particularly in any of the quality elements), the agency is denying that examiner hoteling and telework for a whole year and taking the employee off of flexible work schedules.

If that same employee is rated marginal or is rated unacceptable and issued an oral warning at any other time, the USPTO says it's fine for that employee to continue hoteling or teleworking. The marginal rating or oral warning doesn't remove the examiner from hoteling or telework, but a rating of less than fully successful will boot him or her off only at the end of the year or when the employee is up for a within-grade increase. A marginal rating in any of the critical elements only at those times results in the employee's life going topsy-turvy.

A Tale of Two Examiners

This is the dichotomy the agency has created—two hoteling examiners with the same technology and supervisor, having performance problems at mid-year, for example, can be treated entirely differently. One employee's performance is unacceptable and he/she is given an oral warning, but if no rating of record is involved the employee is not penalized further. The other employee, however, is rated marginal but is due for a within-grade increase, which the supervisor wants to deny. To do so, the supervisor must issue an official rating of record. Given the marginal performance, it is likely that the mid-year rating of record will be marginal. This employee, while actually performing better than the first one, will be further punished by being removed from hoteling and IFP.

The employee, while actually performing better, will be removed from hoteling.

In a memo to USPTO's senior managers, POPA President Robert Budens wrote:

> "In my opinion, the agency's position on this represents a complete failure of the agency to provide an employee having performance problems with the best assistance and encouragement to improve their performance. Giving an employee the best opportunity for improvement was the very reason for the provision in the hoteling agreement.
>
> "The very existence of the disparate employee situations set forth above suggests the agency's willingness and intent to use the removal of an employee from hoteling and IFP as a purely punitive measure and shows the agency's intent not to treat its employees fairly and equitably. It has no bearing whatsoever on the likelihood of the employee improving their performance."

POPA has filed a grievance on this issue and continues to press the USPTO to follow the spirit of its agreement and stop this practice.

Congress Grills USPTO on Some Vital Issues

Citing the USPTO's Feb. 2008 congressional testimony, Congress has asked USPTO Director Jon Dudas to answer a series of tough questions prompted by testimony from POPA and other witnesses.

Rep. Howard Berman (D-Calif.), the chairman of the House Judiciary Subcommittee on Courts, the Internet and Intellectual Property, detailed five pages of questions to Director Dudas in an April 29 letter. A summary of some of Rep. Berman's questions/requests of particular interest to POPA bargaining unit members follows, excerpted from the letter:

1. Please describe in detail the methods the USPTO uses to project the number of future patent applications.
2. Please explain why the projected rise in patent applications was reduced in your fiscal year 2009 budget document [from 8 percent to 5 percent yearly].
3. Please explain what was meant by the statement in the FY2009 budget document that the projected 5 percent application growth rate "may be affected by the Agency's rule governing continuation practice."
4. What role, if any, did the USPTO's Patent Public Advisory Committee have in determining and reviewing the agency's patent application filing projections in the FY2008 and FY2009 budget documents?
5. Aside from implementing the recently enjoined continuation and claims rules, describe all the possible actions the USPTO or Congress can take that would impact patent pendency and the respective impact each action would have on reducing patent pendency.
6. How many patent examiners would have to be hired in the next five years to reduce the patent backlog?
7. What is the current progress of the study [promised in a USPTO October 2007 press release] to "review assumptions the agency uses to establish production goals for patent examiners" and when can Congress expect the study to be completed?
8. What may account for the discrepancy between what the USPTO believes are the reasons patent examiners leave the agency and the Government Accountability Office's 2007 report on USPTO hiring and retention?
9. Director Dudas mentioned in his testimony that in 2000, 70 percent of all applications led to a patent while in the first quarter of 2007 only 44 percent of all applications led to a patent. How did the USPTO account in these statistics for Requests for Continuing Examination applications, continuation applications and the applications that had to be abandoned in order to file continuation applications?
10. Over the last three years, what resources have been dedicated to the planning and establishment of USPTO offices outside of Alexandria, Va.? If the USPTO has concluded its evaluation of establishing satellite, back-up or other additional facilities, what were the agency's conclusions about the location, expense, and general feasibility associated with establishing and operating such facilities?
11. Please provide information concerning the diversity of the USPTO workforce.
12. Why did the USPTO reject the policy of examination on request (or, as the USPTO called it, deferred examination) when such a method has the potential to reduce its workload and increase efficiency?

POPA looks forward to reviewing the agency's answers to Rep. Berman's questions.

USPTO Seeks to Avoid Travel Costs

(continued from page 5)

use hoteling to create a nationwide workforce, but it wants special legislation to skirt paying the federally-mandated costs of doing business. It wants to lay those costs squarely on its already overworked examiners.

Develop Superior Telework Tools

If, instead, the USPTO is held responsible for employee travel expenses as a necessary cost of doing business, it has incentive to create outstanding tools to train and supervise employees working remotely. Such tools would reduce the need for travel to the Virginia office and reduce USPTO costs.

In addition to reducing travel expenses, developing enhanced training and supervision tools for teleworkers would truly be the mark of a flagship federal telework program. Pushing for special legislation to make employees pay hoteling costs—and trying to make it look as if the agency is doing employees a favor—is a stain on USPTO's reputation.

Because of the onerous burden this legislation will place on examiners, POPA opposes S.1000 as currently amended. POPA, instead, supports H.4106, recently passed by the House of Representatives, which lacks the agency's proposed language.

POPA urges Congress and GSA to deny the USPTO the ability to escape its responsibility to pay the true costs of a nationwide professional patent examination hoteling program. The union renews its call for the USPTO to enable hotelers to have a home duty station—abolishing the one-hour-per-week-on-site requirement—and accept its responsibility to pay for any subsequent travel costs as currently mandated by federal statute and regulation.

A copy of the agency's proposed legislation and analysis can be seen at *www.popa.org* under Recent News/Hoteling, Telework and Alternate Worksites.

USPTO Computer System Fails

Record Loss as "General Catastrophic Time"

The USPTO computer network crashed at approximately 4 p.m. on Wednesday, May 21 and returned to service at about 8 a.m. the following day. Some problems persisted for additional periods. This appears to have been due to a catastrophic failure of both power systems that feed the agency's data center.

Many USPTO employees lost time and work due to this failure. When an agency automation failure occurs, the agency expects employees to do other work if it is available. This is becoming increasingly difficult, however, in the USPTO's fully automated environment. This is particularly problematic for people in the agency's telework programs because the hoteling and laptop programs depend totally on secured access to the agency's networks.

If and when you lose time or work because the USPTO's automated systems are having problems, accurately record that time on your time sheet (Subproject Code 090180—General Catastrophic Time). If your supervisor does not approve the time, please contact your local POPA representative immediately.

Both POPA and the agency need an accurate understanding of the costs to the employees and the agency when such failures occur. With that understanding, we can work together with the USPTO and Congress to improve the automated tools.

This recent computer outage affected even the USPTO Help Desk. The Help Desk staffers were unable to provide ticket numbers to the multitude of employees calling in with problems. When POPA President Robert Budens called in, the Help Desk recording politely told him that 94 people were ahead of him. Other employees experienced even longer waits.

Crisis Solutions Possible

POPA has suggested to the agency solutions that will enable examiners to continue working on their own computers when the USPTO network fails. For example, if the agency made the "hot docket" workflow management tool interactive, when an examiner moved cases to his/her hot docket, the files needed for those cases could automatically be transferred to the examiner's computer. Then, whenever the network crashes, the examiner would have access on his or her computer to the files needed to continue working for the short term.

POPA first proposed this concept in 2001-2002 during the development of the agency's current Image File Wrapper system (IFW) but the USPTO said it was too costly. With the experience of this recent catastrophic loss of time and work, the agency may reconsider and deem it a worthwhile expense to incorporate into the new Patent File Wrapper system (PFW) currently under development.

Don't Get Lost – Stay in Touch to Get Possible Backpay

The Millennium Agreement pay litigation is still alive and could mean money in your pocket if POPA prevails. Therefore, if you are or were a USPTO employee who has worked any, some or all of fiscal years 2002, 2003, 2004, 2005 or 2006, notify POPA of your contact information before you retire or otherwise leave the agency.

The Federal Labor Relations Authority has stalled the litigation, which likely will not be resolved during the remainder of the Bush administration. There is currently a vacancy on the three-member FLRA. With one Republican and one Democratic member, the FLRA can only render decisions in cases where the remaining two members agree. Please contact POPA Treasurer Randy Myers via e-mail at randy.myers@uspto.gov if you are separating from the USPTO so he can add you to the POPA contact list. POPA will try to contact you if POPA prevails in this litigation and the USPTO says it can't find you to pay you your monetary award. If you know of others who worked as examiners during the above time period who have not contacted POPA, please ask them to do so.

One caveat: To receive monetary damages, affected employees must have had at least a fully successful rating in the year for which they would receive a monetary award.

JOIN POPA

JOB PROTECTION • BENEFITS
INFORMATION • ADVOCACY

Patent Office Professional Association

Letters from readers are welcome. Address to:
The Editor, Patent Office Professional Association,
P.O. Box 2745, Arlington, VA 22202

Officers

Robert D. Budens, *President,* (571) 272-0897

Lawrence J. Oresky
Vice President/Director of Grievances, (571) 272-6930

Howard Locker, *Secretary/*
Director of Adverse Action Challenges, (571) 272-0980

Pamela R. Schwartz, *Assistant Secretary/*
Director of Unfair Labor Practices, (571) 272-1528

Randy Myers, *Treasurer,* (571) 272-7526

Visit us on the Web at http://www.popa.org

© 2008 Patent Office Professional Association