POPA NEWS
Patent Office Professional Association
www.popa.org
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Negotiations Update: Standing Firm for Employees

At presstime, the period for bilateral negotiations on the POPA-USPTO collective bargaining agreement is nearly over, but the parties remain divided on many issues crucial to patent professionals.

If issues remain at the end of bilateral negotiations, during which union and agency reps work side by side to agree on contract terms, the parties enter mediation, which could continue for an unspecified length of time.

POPA is standing firm on several issues that patent professionals have said are of vital importance.

Reasonable Telework. Current agreements between the USPTO and POPA enable examiners to telework one day per week for up to 10 hours or to enter the hoteling program, whereby they give up their agency office and work from home, but are required to report to USPTO's Alexandria headquarters at least one hour per week. POPA originally proposed a contract change to allow examiners to keep their offices and telework one, two or three days per week. The agency only offered one telework day per week for up to 12 hours. When the agency rejected POPA's proposal, the union offered a compromise of 24 hours of telework, taken in any intervals, over an employee's bi-week.

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POPA Delegate Julie Anne Watko discussed contract negotiations issues at the POPA Annual Meeting in December. See story on page 4.

A Seat at the Table

Dear Patent Professionals,

Your professional integrity and ability to represent the U.S. government in protecting the intellectual property interests of America's inventors, its industries and its people have been on the minds of leaders in Congress in recent weeks.

POPA has been quite busy in the new year meeting with members and staff of the U.S. Senate. We have been sharing with them patent examiners' concerns that the pending patent reform legislation will weaken, not strengthen, the U.S. patent system. We are telling them that the best way to improve patent quality and reduce pendency is for Congress to provide you with the time and resources you need to do the job right the first time.

We have joined with over 650 other unions, industries and associations in raising concerns about the Patent Reform Act of 2007 (S. 1145) and urging the Senate to insure that any patent reform legislation truly strengthens the U.S. patent system and has a consensus of all stakeholders, including USPTO patent professionals.

These lawmakers—along with leaders from corporations such as Caterpillar, Eli Lilly and Cummins-Allison and organizations such as the National Association of Manufacturers, the Innovation Alliance, and the International Federation of Professional and Technical Engineers—listened with respect and appreciation to your concerns for the patent system's future. They heard, and virtually all agreed, that the prior art search belongs in the hands of qualified U.S. patent examiners—not effectively outsourced to patent applicants with the Applicant Quality Submission. They understood that limiting damages and instituting post-grant oppositions would make it easier to undermine patents and encourage infringement. They shared your concerns that patent reform done wrong would open America's doors to unfair foreign competition and offshore more American jobs. And they now know that part of improving the patent system is to retain experienced, highly skilled patent examiners and provide you with sufficient time and resources to do the best job possible.

POPA's participation in these diverse coalitions has opened many doors and made many new friends for examiners. Through POPA, you've gotten a seat at the table and your voice is being heard. If you're a dues-paying POPA member, thank you for your support and the resources to make these efforts possible. If you haven't yet joined, please consider signing up to ensure that your association can continue to succeed for U.S. patent professionals—go to *www.popa.org* and click on "Join POPA."

Thank you,

Robert D. Budens, POPA President

Negotiations Update

(continued from page 1)

For most people in any profession, a 12-hour day is difficult. When POPA has offered counter-proposals, the agency's response has been, "We don't want to offer employees more flexibility in telework because we want to encourage them to hotel." Many employees, however, have told POPA that hoteling simply is not an option, while teleworking for two days per week would cut their commuting headaches, make them more efficient and enable them to work the bulk of their time on campus.

Timely Work Review and Return. POPA proposed that the USPTO commit to reviewing the work of junior examiners promptly so examiners can receive credit for their work that is complete or substantially complete. The agency refused.

The USPTO says that junior examiners are responsible for ensuring that their work is turned in with enough time for review and corrections if the examiners want credit for the work.

The USPTO, however, rejected any POPA proposal to limit the time supervisors can take to review the work so that examiners could know they will get proper credit for their work in any given bi-week.

Some supervisors have taken six weeks to review examiners' work. Many employees turn in work early, giving their supervisor a full week to review the work, yet the supervisor won't return it for corrections until "count Monday," the day it's due for credit. To non-examiners this may seem like no big deal, but when an examiner's production and/or workflow rating is negatively affected by such supervisor disregard, the employee may lose important career benefits such as promotions, flexible work schedules or telework. In many cases, the examiner's job will be in jeopardy.

Fair and Equitable Treatment. The USPTO will not agree to offer all patent examiners fair and equitable treatment. The agency maintains that it meets the letter of the law as long as each supervisor treats all of his or her own employees fairly and equitably. This may sound fine, but consider this USPTO example of fair and equitable treatment:

> Employee A in Art Unit A yells obscenities at Supervisor A and receives a written reprimand as discipline.
>
> Employee B in Art Unit B yells obscenities at Supervisor B and receives a four-day suspension without pay as discipline.

The USPTO wants to create 450-500 different USPTO discipline policies, one for each art unit. Employees may feel they currently have a good supervisor and do not have to be concerned about disciplinary issues but, as often happens at the USPTO, they could be transferred or reorganized into a different art unit with a different supervisor. They will have no guarantees of what to expect and could be fair game for any kind of disciplinary treatment.

USPTO managers have actually stated at the bargaining table that they cannot agree to agency-wide fair and equitable treatment because all 450-500 supervisors cannot be expected to make consistent decisions. However, the USPTO expects all of its nearly 6,000 patent examiners to apply the patent laws consistently and adhere to agency rules for performance and conduct consistently or face performance or disciplinary action. The agency should apply the same standards for consistency to its supervisors that it requires of its examiners.

Office Space. In 1999, prior to completion of the Carlyle campus, the USPTO agreed to provide private offices for all employees GS-13 and above. By doing so, the agency acknowledged that patent examination—especially in our production-driven environment—requires intense focus and concentration. Today, however, the USPTO refuses to agree to private offices for *any* examiners. In fact, it will not agree to provide offices as opposed to cubicles, bullpens or other arrangements. Some senior examiners have said that such office space terms would be enough incentive for them to take early retirement.

POPA will outline more negotiations issues in upcoming newsletter issues. For more information, go to *www.popa.org.*

In Memoriam: Richard J. Scanlan III

Richard J. Scanlan III, 84, a retired patent examiner, patent agent, and former POPA president, died Dec. 31 of heart disease at his home in Lake Ridge.

Scanlan worked for the USPTO from 1960 until he retired in 1987. He served as POPA president for several years in the late '60s and early '70s. His assignments included details to the State Department, where he assisted in negotiations for the Patent Cooperation Treaty.

He was born in Detroit and enlisted in the Army Air Forces at the start of World War II. He trained as a pilot in Texas and flew B-25s and B-29s. He also drew illustrations and cartoons for the Army Air Forces yearbook. Scanlan graduated from the Detroit Institute of Technology and Michigan College of Mining and Technology. He attended two years of law school at George Washington University.

He was a technical service representative and engineering instructor at Hudson Motor Car Co. in New York at the end of the 1940s and at American Motors in Alexandria through much of the 1950s. The job enabled him to work as a troubleshooter for the limousines used during the inauguration ceremonies for President Eisenhower.

Scanlan was a member of the Society of Automotive Engineers and the American Society of Mechanical Engineers. He also was a life member of the Delta Theta Phi law fraternity.

POPA Awards Outstanding Service

At its December Annual Meeting, POPA recognized several members and other supporters for their exemplary service in 2007 to the association and the patent system.

Dr. Kathleen Duda – Distinguished Service Award. Duda, a Technology Center 1700 examiner and long-time Chemical Area delegate for POPA, received the award in appreciation for her technical and legal expertise in representing her fellow professionals in family-friendly programs and negotiations.

Dr. Gerald Ewoldt – Grievance Director's Award. Ewoldt, a Technology Center 1600 examiner, was given the award in appreciation for his achievements in representing his fellow professionals in grievances and investigations.

Dr. Gerald Ewoldt receives the Grievance Director's Award from POPA Vice President and Grievance Director Lawrence Oresky.

Lawrence Oresky – Ronald J. Stern Outstanding Service Award. As a POPA Executive Committee member from the Mechanical area (currently Technology Center 3600) since 1971 and POPA vice president for 25 years, Oresky was recognized with appreciation for his achievements in successfully representing his fellow professionals in grievances, arbitrations and negotiations.

Dr. Christine Saoud – Special Service Award. A Technology Center 1600 examiner, Saoud was given the award in appreciation for her enthusiasm, dedication and volunteer spirit in representing her fellow professionals and fostering effective communications among professionals.

Helen Delich Bentley and Ronald J. Stern – Defender of the Patent System Awards. Bentley, former congresswoman from Maryland and strong supporter of the patent system, serves as POPA's emissary to Congress. Stern, former POPA president, continues to provide valuable advice to POPA officials on the many issues facing the union and the patent system. This award, POPA's highest, is given with sincere appreciation for invaluable service not only to POPA, but in defense and promotion of the U.S. patent system.

Adrienne Johnstone – Special Service Award. A Chemical Area POPA delegate and examiner in Technology Center 1700, Johnstone accepted the award given in appreciation for her expertise, dedication and volunteer spirit in representing her fellow professionals in furthering effective patent examining procedures.

Adrienne Johnstone accepts the Special Service Award from POPA President Robert Budens.

Susan Holliday – Outstanding Service Award. The award was given in appreciation for Holliday's ten years of dedicated service in fostering effective communications among patent professionals and the public as writer for the POPA newsletter.

Nothing Special about Poor Pay Increase for Examiners

While the federal General Schedule 2008 pay increase, including locality pay, for the Washington/ Baltimore area is 4.49 percent, the 2008 special pay rate increase for patent examiners is only 2.5 percent—so far. That is because the locality portion of the annual pay raise is not automatically applied to special pay rates.

POPA leaders met with Commissioner for Patents John Doll and Deputy Commissioner for Patent Operations Peggy Focarino in late January and discussed the needed make-up pay raise. The USPTO is responsible for requesting from the Office of Personnel Management a special pay rate increase to offset the pay erosion from not receiving locality pay for 2007 and 2008.

When POPA asked, Doll and Focarino responded that the request was completed and is sitting on USPTO Director Jon Dudas's desk for approval. They said they didn't know whether it included both the 2007 and 2008 pay raises.

POPA will persevere in advocating for a special pay rate increase to compensate for the lacking 2007 and 2008 locality pay.

POPA Progress and Challenges Outlined at Annual Meeting

The overarching theme of the December POPA Annual Meeting was clear: When patent professionals take pride in their work and speak up—individually and together with their colleagues—to improve their workplace and the integrity of the patent system, then the administration, Congress and the wider patent community listen.

"Your message—'Fix the problems with the patent system'—is going all over Capitol Hill," said POPA President Robert Budens in his address to hundreds of patent professionals at the December meeting. "Your voice is being heard."

In addition to POPA's work with Congress, Budens cited the news media coverage POPA's efforts received in 2007. When the association joined with patent examiners from Europe and Canada to call for more examination time per case to produce consistently high-quality patents, the resulting press reporting "brought pressure to bear" on the patent agencies worldwide, noted Budens.

To continue and expand their effectiveness as a partner in the USPTO workplace, patent professionals need to let the agency know what we stand for, said Budens.

"When [Commissioner for Patents] John Doll says at a town hall meeting that he wants to hear from you, take him at his word and tell him," said Budens. If you don't feel comfortable communicating directly with agency management, e-mail your thoughts to POPA, which will carry your message forward.

"And stand up and be counted as a dues-paying member of POPA," added Budens. For dues of only 35 cents a day, you can give your workplace representative the resources to stand up for your rights through litigation and arbitration, on the Hill, in the news media, and at the negotiations table.

Your Role in Negotiations

POPA Delegate Julie Anne Watko, who is a member of POPA's contract negotiations team, told the assembled patent professionals to review the USPTO's contract proposals (available at *www.popa.org*). "Find the one proposal that makes you the maddest, the one proposal that makes you the saddest, the one proposal that makes you afraid, the one proposal that will make you send your resume out," said Watko. Then tell USPTO management that these working conditions "are intolerable and will drive away the employees that they want and need to keep."

While the agency may respond that its proposals are all part of the give-and-take of negotiations, "The way to change management's unreasonable position is not to trade away what you love about working here," noted Watko, it's "to get their own people, your supervisors and their bosses, talking about how attrition will increase if the agency succeeds in increasing its firing power this much, despite the Government Accountability Office's assertion that the agency must keep examiners. Let's change management's thinking from within."

Protecting Employees' Rights

POPA Grievance Director Larry Oresky and POPA Secretary Howard Locker reviewed several ways the association in 2007 protected employees from unfair USPTO actions. Locker pointed out that under the current POPA-USPTO contract, if employees receive an adverse agency action, 1) you cannot be summarily fired due to a POPA-USPTO negotiated process that must be followed, and 2) you can represent yourself, hire a lawyer, or come to POPA at no cost for advice and possible representation.

POPA had much success on employees' behalf before deciding officials—and the agency's culpability for many of the adverse actions hasn't been lost on officials. "POPA is trying to achieve systemic change," said Locker, to hold the supervisor and managers, in addition to the employee, accountable for the perceived failure. "That the tenth floor [the offices of top USPTO officials] is often listening and looking into the situation is a good thing," said Locker. POPA's successes have resulted in the agency's willingness "to discuss and take actions less than removal of employees."

The down side is that all of these gains and employees' due-process rights when facing an adverse action could disappear if the USPTO gets its way in contract negotiations. The agency refuses to state that it will treat all employees "fairly and equitably," which effectively will take away most of employees' ability to challenge unfair actions by their supervisors. [See Negotiations Update article, page 2.] Locker suggested that employees use this point and others like it to "question authority and get answers to your questions."

Letters to POPA

Q. I heard in a town-hall meeting (from John Doll) that the PTO is in the process of obtaining signing bonuses for those who did not receive them. What is the status of that?

A. POPA has heard much the same from other employees. We're sorry to say that this may just be a lot of hot air. We're not aware of a mechanism to retroactively pay employees a signing bonus that was put in place after they were hired.

For examiners in this Catch-22 situation, POPA suggested that the USPTO pay them retention bonuses instead, as these employees are likely to leave the USPTO because they didn't receive the signing bonus. The USPTO chose not to use this mechanism and quite a bit of time has elapsed since those employees were adversely impacted, so please don't hold your breath until the agency does something this time. Three years from now, managers may be making the same statement in hopes of retaining a few more employees.

Lastly, POPA has no ongoing negotiations or discussions concerning this matter, which would indicate very little interest on the part of management.

Legislative Action

China and India Winners; USA Loser Again

Former Maryland Rep. Helen Delich Bentley, who represents POPA to the U.S. Congress, wrote to members of the Senate urging them to push back against the tide of corporate lobbyists looking for quick patent system fixes and to heed the interpretation of the pending Patent Reform Act by foreign competitors. The essay, which follows, was later printed in the Baltimore Examiner.

America's patent system has met the enemy, and it is the United States Congress.

That's the word from China and India, where America's economic adversaries are whooping it up over congressional patent reform.

Patent reform is a fashionable issue on the Hill. The titans of American industry—technology firms and drug makers—have mobilized armies of lobbyists, making the Patent Reform Act one of the most heavily lobbied bills in years.

And Congress, in dealing with a technical thicket of arcane patent concepts and accompanying legalese, can't see the forest for the trees.

The starting point—the overarching purpose of any national patent system—is the protection of intellectual property rights, which rewards inventors whose innovations drive economic development.

But even as America howls in protest as the jobs of more U.S. workers wind up overseas, this pending legislation fails to protect our IP from the prying eyes of the very same nations that drive that job loss and threaten the economic security of millions of American families—like China and India.

The bill has already been approved by the U.S. House of Representatives (H.R. 1908) and is moving through the Senate (S. 1145), which is expected to bring it to the floor early this year.

But the early reviews from our competitors overseas can hardly inspire confidence that the reform package does America any favors.

Quite the contrary: IP professionals in China and India predict Congress will open a Pandora's box of strategic possibilities that foreign competitors will use to invalidate and challenge the U.S. patent system, and reduce the value of America's intellectual capital.

Yes, Congress is about to throw open the henhouse door. And the foxes are out there—waiting and watching and licking their chops.

The 2007 Patent Reform Act "is friendlier to the infringers than to the patentees," according to Yongshun Cheng, former senior judge and deputy director of the Intellectual Property Division of Beijing High People's Court.

"This bill will give the companies from developing countries more freedom and flexibility to challenge the relative U.S. patent for doing business in the U.S. and make it less costly to infringe," said Mr. Cheng, quoted in an article appearing in the Nov. 7, 2007, issue of *China Intellectual Property News.*

"We can see that the bill will weaken the right of patentees greatly, increase their burden, and reduce the remedies for infringement," he said. "It is not bad news for developing countries which have fewer patents. Many of the Chinese companies are not patent owners in the U.S. market and their products are often excluded from the market because of patent infringement accusations."

This comes on top of July 2007 remarks in *The Economic Times* by D.G. Shaw, general secretary of the Indian Pharmaceutical Alliance, who called the reform bill "beneficial" to Indian companies.

It "will subject many existing U.S. patents to an immediate threat of invalidation as it makes it easier to show the obviousness of the invention," said Shaw, referring to the bill's post-grant review provision.

Shaw declared that Indian firms will incorporate the provision into their "patent strategy" to seize greater share of the lucrative U.S. market, or "opt for the existing process of litigation, or a mix of both" on a case-to-case basis.

The reforms "will give more flexibility and freedom for adopting the appropriate patent challenge strategy" said Anoop Narayanan of the Mumbai-based Majmudar & Co. law firm.

What does Congress hope to achieve by patent reform? Most critics point to the growing backlog of pending patent applications—a.k.a. "pendency"—as the most urgent problem confronting America's patent system.

There's a simple solution, according to the patent examiners—the 5,000 or so frontline decision-makers who make the calls on the validity of patent applications. All they need is a little more time.

Thanks to the technology boom, examiners must contend with greatly more complex applications. Yet management has not adjusted its production goals in [nearly] 40 years, forcing the majority of examiners to work unpaid overtime just to keep up.

Among all federal employees, examiners have one of the highest attrition rates. A 2007 GAO report identified unrealistic and outdated production goals as the main culprit.

As a former member of Congress, I know that complicated legislation requires the art of compromise. But we must never, ever compromise our nation's economic security.

There is already plenty of anger in America about jobs being offshored. This legislation, if allowed to stand, will give voters a good deal more to think about.

Since when does America need legislation that enfeebles its economic endowment and arms its economic aggressors?

Why I Joined POPA

"You Had to Work Like a Dog to Make the Production"

I'm retired military. I was an Air Force helicopter pilot, then I worked for another federal agency and joined the USPTO in 1996. I spent my first 10 years at the office in Class 606 Surgery, specializing in the orthopedic surgery art, which has a production expectancy of 16.3 hours per disposal for a GS-12.

I started as a GS-9 and it didn't take me long to realize that you had to work like a dog to make the production expectancy. As I worked my way up from a GS-9 to a full signatory GS-14, I thought, "Why is it so hard to make the numbers?" You're often working on your own time or on annual leave, especially at the ends of quarters and the fiscal year.

So I asked people who'd been around the office their whole careers and found out the production expectancies were established as rough guesses in the late '60s or early '70s. The rough-guess numbers magically became hard numbers, and were last adjusted upward an average of 1 hour per disposal in approximately 1975. What? The more I asked about it the more unfair it seemed. Surgical procedures and devices have gotten more complex in 33 years, and the volume of patents and non-patent literature in the art has exploded!

"For more than 30 years, POPA has been fighting for more time per case."

I thought, "I'm working for a management that thinks this is fair and reasonable?" Instead of suffering in silence, I joined POPA. For more than 30 years, POPA has been fighting for more time per case. I became a [POPA] rep to help other people.

By becoming a dues-paying member of POPA you give the organization the means to help more people—for example, by taking more [employee grievance] cases to arbitration. If you don't pay dues, we may not have the resources to financially back your case—and if you run into trouble and end up being unfairly terminated, it can make the difference in winning back your job.

—David Reip, Primary Examiner,
Central Reexamination Unit;
Mechanical Area POPA Delegate

POPA Budget 2007-2008

The following report includes 2007 Association income and expenditures through December 31, 2007 and the 2008 Association budget approved by the Executive Committee.

Income	**2007 Actual**	**2008 Budget**
Dues	$ 202,520.00	$ 202,800.00
Interest	$ 6,012.14	$ 5,200.00
Other	$ 10,791.66	$
Total Income	**$ 219,323.80**	**$ 208,000.00**
Expenditures		
Litigation, Lobbying	$ 125,611.53	$ 125,000.00
Newsletter	$ 25,792.40	$ 33,000.00
National Activities	$ 1,615.12	$ 2,000.00
Training & Conferences	$ 4,585.75	$ 6,000.00
Legal Info. Resources	$ 5,789.45	$ 9,000.00
Elections*	$ 0	$ 6,000.00
Administrative	$ 10,350.11	$ 12,800.00
Membership Services	$ 3,264.63	$ 5,000.00
Membership Meetings	$ 1,161.47	$ 3,000.00
Capital Expenditures	$ 0	$ 6,000.00
Total Expenditures	**$ 178,170.46**	**$ 207,800.00**
Net to Reserve	**$ 41,153.34**	**$ 200.00**

* Election expenses are incurred only in even numbered years.

Notes:

National Activities: Membership dues for national organizations such as Public Employees Roundtable and Society of Federal Employee and Labor Relations Professionals.

Administrative: Includes expenses for accounting, secretarial, postage, office supplies and equipment, insurance, miscellaneous and bank fees.

Membership Services: Membership incentives and participation in USPTO Community Day.

JOIN POPA

Patent Office Professional Association

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