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Commerce Secretary Meets with POPA Leaders

POPA President Robert Budens received a phone call on April 21 that he'll not soon forget.

"Mr. Budens, Secretary Locke would like to speak with you—please hold."

In a moment, Secretary of Commerce Gary Locke was on the line, exchanging pleasantries and requesting to meet with Budens the next morning.

The phone call and meeting marked the first time that a Commerce secretary initiated a meeting with the patent professionals' association to discuss the future of the patent system.

At 8:30 a.m. the following day, Budens and POPA Secretary Randy Myers were sitting in Secretary Locke's office. For 20 minutes they discussed patent employees' perspectives on USPTO problems and steps to move the agency forward. To that end, the POPA representatives also presented Secretary Locke with a letter from POPA encouraging swift action on appointing the next agency director to lead the changes. They noted that the new director won't have the luxury of time to learn about patent law and regulation or labor-management relations, but must immediately be able to deal with the USPTO's complex problems. Similar letters were sent to President Obama and the members of the Senate Judiciary Committee.

Secretary of Commerce Gary Locke (center) invited POPA leaders to discuss patent professionals' priorities. He met with POPA Secretary Randy Myers (left) and POPA President Robert Budens.

Secretary Locke said, and later testified before Congress, that when he was the governor of Washington, he decreased the wait time for motor vehicle services at the state Department of Licensing from 60 minutes to 10 minutes. He hopes to similarly work on the patent processing system to reduce pendency to 12 months.

An improved turnaround time on patent applications is essential to allowing industries to stimulate innovation and ultimately job growth, Secretary Locke said during the meeting.

When Secretary Locke said he wants to ensure that patent employees have the resources they need to examine applications and get them out the door, the POPA officers emphasized that patent examiners need more time per application to get the job done right the first time. The secretary responded that he will give that task to the new USPTO director to consider.

Union Wishes Kappos Well on Nomination

POPA congratulates David Kappos on his nomination to serve as USPTO director.

The union looks forward to working with him and his administration in the event of his confirmation.

POPA Urges Administration, Congress to Avert USPTO Furloughs

POPA reps have been busy since June working with Congress, the Commerce Department and USPTO management to craft legislation to adequately fund Patent operations and avert employee furloughs for the current fiscal year. In late June the Senate passed such a measure and in early July the House approved a similar bill.

The title of the Senate bill, S.1358, describes it well: "A bill to authorize the Director of the United States Patent and Trademark Office to use funds made available under the Trademark Act of 1946 for patent operations in order to avoid furloughs and reductions-in-force."

Under normal circumstances, Trademark funds cannot by used to fund Patent operations due to a statutory "fence" that Congress placed around Trademark fees. Those fees can

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POPA Urges Averting USPTO Furloughs

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only be used for Trademark operations. The current legislation would provide USPTO management with authority to temporarily borrow surplus Trademark funds for the express purpose of preventing furloughs or reductions-in-force at the USPTO. Any borrowed funds would be required to be paid back to Trademark operations at a future date.

When the House bill was being drafted, POPA successfully advocated the inclusion of language to ensure that Trademark employees do not find themselves threatened with furloughs due to the temporary use of Trademark funds by Patent operations. The bill that passed, H.R. 3114, states that Patents may use Trademark funds "…if the [USPTO] Director certifies in writing to the Congress that the use of the [Trademark funds by Patents] is reasonably necessary to avoid furloughs or a reduction-in-force, or both, in the [USPTO], and does not create a substantial risk of a furlough or reduction-in-force of personnel working in the Trademark Operation of the [USPTO]." While no such furloughs or reductions-in-force are anticipated in Trademark operations, this language would act as a safeguard to reassure Trademark employees and help ease opposition to the bill within the trademark community.

POPA has been assured by officials from Secretary of Commerce Locke's office, congressional personnel and USPTO management that everyone will do whatever it takes to make sure that no USPTO employees will be subjected to furloughs or reductions-in-force. Employees can also rest assured that POPA is doing everything it can to make sure that furloughs and/or reductions-in force will not occur at the USPTO.

Agency and Union Agree on Process for Production Goal Study

The USPTO and POPA hammered out an agreement to involve the union as a partner and stakeholder in the review and revision of patent examiners' 33-year-old production goals.

The production goal review got rolling after Congress inserted a line in the 2009 Omnibus Appropriation Act stating that "of the amounts provided to the USPTO within this account, $5 million shall not become available for obligation until the Director of the USPTO has completed a comprehensive review of the assumptions behind the patent examiner expectancy goals and adopted a revised set of expectancy goals for patent examination."

In plainer language, Congress is holding back $5 million of the 2009 USPTO appropriation until the agency evaluates and reworks production goals.

With this news, POPA and the USPTO agreed to have their negotiating teams, which were already assembled to discuss the collective bargaining agreement, switch their short-term focus to this production goal-study task.

Not long after the teams got to work, they determined that a thorough review of the production system and subsequent recommendations for change would demand an independent, detailed study. This in turn would require a formal request for proposals from contractors to conduct the study.

A Seat at the Table

The agreement recently signed places two POPA representatives on the procurement evaluation team for the goals study. POPA will serve as a stakeholder, participating in focus groups and other meetings with employees and the contractor. POPA "will be given an equal opportunity as is management to provide internal feedback during the process," states the agreement.

All communications to employees about progress of the study shall come jointly from the USPTO and POPA. "The parties will create and issue joint communications at significant milestones in the goals study process," according to the agreement.

Because the contract bidding, study and eventual methodology for a new production system would likely take multiple years to complete, the agency and POPA tried to negotiate a fast-track, interim goal adjustment, separate from the signed agreement. A short-term goal agreement would mean that examiners wouldn't have to wait those additional years for an improvement in the production structure—and the USPTO would have access to the $5 million that Congress was withholding pending a new production goals system.

POPA proposed for this short-term fix a method to have the time allotment per case reflect the increase in examiners' duties over the last 33 years. The USPTO proposed, based solely on the fiscal year 2008 production results, that if one technology center wasn't using as much time to reach its production goals as another technology center, the hours simply be taken from one tech center and given to another.

Wait a minute, POPA said. Those official numbers don't tell the whole story of time spent per case. The association said this method would only work if the USPTO could have the production figures reflect the hours per case spent on paid and unpaid overtime. Nearly everyone in the patents corps, management and rank and file, understands that many examiners use many hours of their own time—sometimes taking annual leave—to examine patents to meet their production goals.

The USPTO said it couldn't come up with those overtime figures expeditiously. When POPA offered counter proposals, the agency said no and gave no alternatives of its own. The negotiations for a short-term fix of production goals were at impasse.

Nonetheless, POPA looks forward to working with the USPTO on a long-term goal study that will ensure a fair and timely revision of the production goal system.

USPTO to Launch Intranet Social Networking Tool

POPA and Agency Agree to Implementation Conditions

If you enjoy online social networking tools such as Facebook® or MySpace®, you may welcome a new USPTO pilot program for an internal online networking tool to allow examiners to share examination tips and information via text, pictures, videos and more.

The agency plans to launch a pilot for its online Examiner Collaboration Center (ExCC) in the fourth quarter of fiscal year 2009. The agency and POPA negotiated employees' rights surrounding the impact and implementation of the pilot and signed an agreement on June 2, 2009.

The pilot will be limited initially to up to 100 randomly selected examiners across all grades in workgroups 2410, 2420 and 2430. Program participation is entirely voluntary; any examiner invited into the ExCC pilot can decline with no negative repercussions. Should the pilot be well-accepted and not adversely impact employees and/or USPTO network performance, POPA and the agency will look at expanding the pilot to more examiners.

The agency intends for examiners to be able to share examination information via pictures, videos, messages, wikis, blogs and other media. The USPTO expects participating examiners to self-monitor their posted content and to adhere to the USPTO Rules of the Road Services Guide at *http://ptoweb.uspto.gov/ptointranet/telework/docs/rules_road.pdf*

POPA warns all employees, participating in the pilot program or otherwise, to always adhere to these rules. Failure to do so can result in disciplinary action. Always use professional judgment when using a government-owned computer for communicating any messages or surfing/researching on the Internet. Posting or viewing objectionable material can result in disciplinary actions including termination.

Examiners who agree to participate in the ExCC pilot will receive an information packet and one hour of non-examining time to learn how to use ExCC. Participants must maintain at least a fully successful performance rating and not have been disciplined for electronic communications issues within the past 12 months. Participants may be asked for feedback on the program before, during or after the pilot. For research and evaluation purposes, participants will be identified only by grade, signatory authority and workgroup.

The idea for the ExCC originated with the Patent Public Advisory Committee (PPAC), a group of nine appointed, private sector advisors as well as a representative from each of the three USPTO employee unions. The PPAC advises USPTO management on patent matters and makes an annual report to the president and Congress on USPTO issues.

Hoteling Change Reduces Travel Time

Good news for hoteling patent examiners: The Office of Personnel Management changed the telework regulations, which enabled the USPTO and POPA to relax the hoteling rules. Hotelers can now report to the Carlyle office a minimum of two days per biweek, rather than the current one day per week.

While it doesn't seem significant at first, most hotelers will immediately understand the advantage. Under the new rules, a hoteling employee may travel to work on Friday and Saturday of one biweek, stay over the Sunday, then report to work for Monday and Tuesday of the next biweek before returning home. It would then be nearly four weeks before the employee had to travel again to the Northern Virginia office, rather than the two weeks under the former rules.

The USPTO is maintaining its restriction against working Sundays to fulfill this requirement. The rule remains unchanged that a hoteler cannot use annual leave to routinely avoid the on-site reporting requirement.

Though POPA welcomes this change on behalf of hoteling examiners, the union will continue to advocate for a change in duty station for those hotelers who must commute from beyond the 50-mile radius of the headquarters office. As the *POPA News* reported in September 2008, the USPTO made that duty-station change for many of its hoteling managers, thereby paying for their travel expenses when required at the Carlyle offices. POPA supports equal treatment for hoteling patent examiners.

AIPLA Membership Now Open to USPTO Patent Professionals

The American Intellectual Property Law Association (AIPLA) has opened its membership to USPTO patent professionals after considering such a request from POPA.

AIPLA has created a special reduced-rate membership category of "USPTO Professional Affiliate." Patent corps members who join at the reduced membership rate of $80/year can attend AIPLA meetings and events, serve on the association's standing committees and take advantage of other AIPLA membership benefits, though they may not participate in elections or hold office.

POPA thanks AIPLA President Teresa Rea, Executive Director Q. Todd Dickinson and the officers and Board of Directors of AIPLA for extending this opportunity to patent professionals at the USPTO. POPA encourages all interested employees to take advantage of the AIPLA membership offer.

To learn more about AIPLA membership, go to *www.aipla.org*, click on "Join" at the top of the page, and then "Click here to join."

Perspectives on Patent Examination

Chief Judge Paul Michel of the Court of Appeals for the Federal Circuit was appointed to the Federal Circuit in 1988 and assumed the duties of chief judge in 2004. Prior to his court appointment, Chief Judge Michel served in the executive and legislative branches of government for 22 years. In the January 2009 online edition of Intellectual Property Colloquium, he discussed changes he's seen at the USPTO and in the courts and accomplishments he'd like to see from the agency. The following is excerpted from his remarks, which can be heard at www.ipcolloquium.com/Programs/4.html

I think there are significant improvements that could be made with the existing regime at the patent office with fairly modest funding increases and with some internal management changes.

For example, the way that the examiners are evaluated for purposes of promotion and bonuses and other rewards looks to me to be just terrible, and to push against careful, good examination. Secondly, the inexperience of a very large portion of the examining corps is the second major problem that has nothing to do with the lack of adversarial content in the [patent] process. People of my generation (I'm now 67) who were young patent office examiners back 30 or 40 years ago often stayed for extended periods of time. But I've read recently that half of the examiners have been there less than three years and that the turnover is huge; that for every 1,000 they hire they lose 600.

I think a lot of things could be done to improve the quality of the examination itself without changing rules.

* * * *

Judge Richard Linn of the Court of Appeals for the Federal Circuit served as a patent examiner from 1965 to 1968, just prior to earning his law degree. He continued his career in intellectual property law, first at other federal agencies and then the private sector, and was appointed to his current position in 1999. The following remarks are excerpted from Judge Linn's keynote address to the Patent and Trademark Office Society(PTOS) Annual Meeting on Feb. 18, 2009.

The Patent Office, as it was known in those days, was a particularly interesting place to work. The technology was interesting, but not necessarily overwhelming in complexity. The pace was modest and easily managed. The law was stable and for the most part understandable.

But things are not the same now as they were back then. Your job is much harder now than it was for me all those years ago. The technology of today's inventions is immensely more complex than ever before. The length and breadth of applications is greater. The volume of prior art is much larger. The legal issues are more intricate and harder to comprehend. And the law is in a continual state of change. Compounding all of this is the perception among some individuals that the work of the PTO in general, and the examiners in particular, is somehow of secondary importance and questionable quality. It is commonly said that the real action in patents is in private or corporate practice.

Let me set the record straight right here and now. The work of the PTO and of the many extremely talented and capable examiners who serve in this agency is by no means secondary in importance or lacking in quality. And this is the first point I would like you to remember. The work of the office is important, challenging and is central to the continuing vitality of our information-based economy. Your role is not just important. It is critical. Just as the decisions of the Federal Circuit affect all patents, so too, the decisions you make as examiners will affect every issued patent. And it is essential that the examinations you conduct are effective, efficient, and based on sound judgment, consistent with the high standards the public has come to expect from the office.

More Requirements for Administrative Leave for Medical Rest

A Department of Commerce policy on employee administrative leave for medically necessary rest continues to confuse USPTO employees and their supervisors, sending POPA to senior agency officials last month to clarify the issue on patent professionals' behalf.

The Department of Commerce Handbook of Leave Administration states: "An employee who is required under the advice of a physician to rest or receive periodic treatment may be excused, on a limited basis, for up to one hour in a day. This discretionary provision covers unusual circumstances of short duration; it is not intended to be used as a substitute for sick leave."

For many years, the USPTO left this practice to managers' discretion. In 1999, when a pregnant examiner provided a doctor's request for a rest period and the supervisor denied the time, POPA filed a grievance. Then USPTO Director Q. Todd Dickenson affirmed the agency's policy to provide the medically requested administrative leave.

The issue has arisen regularly over the years when agency managers have refused to allow administrative time and the managers regularly have reversed themselves after POPA reminded them of the policy.

In recent months several employees were denied the time despite providing doctors' written prescriptions for rest periods. However, when these supervisors didn't relent after being informed of the policy, POPA intervened with senior administrators. Acting Commissioner for Patents Peggy Focarino confirmed the agency's policy, but now supports more stringent conditions applied by the USPTO Office of Human Resources management:

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More Requirements for Medical Rest

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■ Employees requesting administrative leave for rest periods need to have a prescription from their doctor requiring the rest for a medical complication.

■ The doctor's note cannot just recommend or advise rest periods, but must require the rest.

■ Submit the doctor's note to your supervisor, who will then submit the note to the Office of Human Resources for approval.

■ If approved, your supervisor can then authorize up to 1 hour of administrative leave per day for the required rest period.

■ While the USPTO recommends that the rest periods be taken in the Health Center, it is not required.

■ Hoteling examiners can take rest periods under this policy and may not be excluded because they are hoteling.

If you meet these requirements for obtaining administrative leave for medically required rest and still are denied, please see your area POPA representative to discuss your options.

UNITED STATES DEPARTMENT OF COMMERCE
The Secretary of Commerce
Washington, D.C. 20230

June 1, 2009

Mr. Robert D. Budens
President
Patent Office Professional Association
Box 25287
Alexandria, VA 22313

Dear Mr. Budens:

Thank you for your letter of congratulations, and for offering—on behalf of the Patent Office Professional Association (POPA)—perspectives on the challenges facing the United States Patent and Trademark Office (USPTO). In particular, I appreciate the time POPA has taken to articulate specific attributes that it suggests are appropriate in the new Under Secretary of Commerce for Intellectual Property and Director of the USPTO.

You know from our conversation that I am committed to supporting the USPTO. I enjoyed talking with you, appreciate your candor, and look forward to working closely with all of the USPTO's stakeholders, including POPA, to achieve the Obama Administration's goals in the field of intellectual property.

Sincerely,

Gary Locke

Why I Joined POPA

You never know when *you'll* need POPA

When I was new to the office, the older employees advised me to put the most I could into my retirement account and to join the union. It was good advice.

I come from a family that always fought for what they believed in. My parents marched with Dr. King. As a woman of color I believe in standing up for what's right and standing up for other people who aren't always willing or able to fight for themselves.

The PTO is unique to the federal government because of the type of production system used. In examination, so many variables are subjective. One examiner can review a case and a second examiner can review it and note very distinct differences.

An examiner is required to make a sound decision and substantiate it. Sometimes, however, the subjective nature of examiners' jobs may put examiners in need of additional support to defend themselves against management charges of error. That's where POPA comes in.

I've had six supervisors in my 14 years here, and I have been fortunate for the most part. However, this does not always apply to every employee, some of whom may be managed unreasonably. This, too, is where POPA comes in.

While I love being a part of the U.S. workforce, I also understand the need for ongoing checks and balances to ensure job security, sound pay and performance standards, and employee equity throughout the system. This is why I think union activity is a key ingredient to a quality work life, and why I was determined to become a partner with the union.

I strongly believe that union activity should be an integral part of any government or business organization. The presence of a strong union greatly enhances the quality and productivity of any organization. It serves as a critical platform for both management and employees to develop, map out, and implement sound and mutually beneficial labor decisions.

Without people joining POPA, it would be hard for the union to continue performing its great work. Many people are not even aware that they have benefited from POPA's efforts on their behalf. The dues help the union to work for them. Too often people don't realize how important the union is until something happens to them and they need POPA.

—Kim Lockett, Primary Patent Examiner, Art Unit 2837, and POPA Electrical Area Delegate

Thrift Savings Plan Terms Changed

Newly-hired federal employees will be automatically enrolled in the federal Thrift Savings Plan (TSP) and will be eligible to receive an immediate matching contribution from their employing agency as a result of the enactment in June of Public Law 111-31, informally known as the Family Smoking Prevention and Tobacco Control Act. TSP is the tax-deferred retirement savings program created by Congress for federal employees in 1986 and is similar to 401(k) plans offered to private-sector employees.

Many federal employee organizations lauded the change as a way to increase the percentage of federal employees who participate in the TSP to ensure they are better prepared for retirement.

The new law also gives the Federal Retirement Thrift Investment Board, the independent federal agency and fiduciary that administers the TSP, the authority to add a Roth option to the plan that would allow participants to make after-tax contributions to TSP accounts and withdraw their earnings tax-free upon retirement.

Under the former law, a spouse married to a TSP participant who passed away is required to either transfer the inherited account to an individual retirement account (IRA) or take the benefit as cash withdrawal, subject to federal income taxes. The new law would allow the spouse who inherited the account to retain it, under the same rules as any other TSP participant.

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Patent Office Professional Association

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