POPA NEWS
Patent Office Professional Association
www.popa.org
PROFESSIONAL REPRESENTATION FOR PATENT PROFESSIONALS
December 2011 Vol. 11 No. 4

Grievance Seeks Fair Compensation for Faulty Production Calculations

Examiners reported to POPA problems with incorrect production calculations in PALM, the Patent Application Locating and Monitoring system, beginning last summer. POPA and the agency immediately began trying to work out solutions and agree on fair employee compensation for the production shortchanges that have apparently existed unnoticed since PALM was created many years ago. With those talks stalemated, POPA filed an association grievance in November to gain adequate employee recompense.

How did the problem come to light after so many years? The start of the COPA (Clearing Old Patent Applications) program caused many more examiners to have cases with different expectancies (hours per balanced disposal, or hours/BD), known as split dockets. The PALM problem only comes into play when examiners have multiple expectancies and only became noticeable when employees had significantly different multiple expectancies such as occurred with the transfer of COPA cases between examiners, art units and technology centers. For examiners not on split dockets, i.e., all their cases have the same expectancy, their quarter and fiscal year production is correct.

Examiners' production percentages can differ significantly depending upon which biweek of the quarter the work gets turned in and counted if they have cases with different expectancies. The time during the quarter that examiners turn in the cases with high expectancy, compared to cases with lower expectancy, also affects production calculations.

Each pay period examiners on split dockets must update their expectancy based on the mix of cases they worked in the period. The adjusted expectancy is entered into PALM and PALM does a weighted average calculation. The pay period is accurate (assuming the adjusted expectancy has been timely entered into PALM), but the quarter and fiscal year calculations are not.

PALM calculates an examiner's production for an individual pay period by generating a composite goal, which will generate an accurate reporting of production within the individual pay periods. What PALM is failing to do is generate a composite goal for multiple pay periods. This is why PALM is accurate within a pay period, but inaccurate for quarterly and yearly production where multiple pay periods are involved in the calculations.

The example below uses a ratio of hours, not BDs, to avoid calculating a composite goal for the six pay periods. Using this methodology to calculate cumulative production avoids having to generate any composite goals and a simple ratio of hours will generate an accurate cumulative production.

In a hypothetical situation, an examiner has 30 counts

(continued on page 2)

Wide-ranging Employee Services Available

Personal Help, Free of Charge

Many employees know that the USPTO offers an employee assistance program (EAP), but often think that EAP is only there to help with personal problems such as substance abuse or depression. Most employees don't know that it can help with many everyday problems affecting many people, saving you time and money and giving peace of mind.

Confidentiality. State and federal laws require that all employee interactions with employer-offered assistance programs remain confidential. By law, your concerns will not be disclosed to USPTO officials. However, when clients disclose life-threatening situations, such as child or elder abuse or threats of serious harm to themselves or others, counselors legally must report these disclosures.

Financial and Legal Services. Employees can consult

(*continued on page 3*)

Resources for Your Stage of Life

USPTO employees can contact specialists from LifeCare, an agency-paid benefit to help you and your household members better manage daily responsibilities and life events. Here's how LifeCare can help.

Get Personalized Referrals. Specialists will help you find child care, adult care, fitness centers, schools, adoption resources, home improvement professionals, pet care, and more—all with confirmed availability.

Request Free Educational Materials. Up-to-date info on child care and parenting, pregnancy and adoption, adult care and aging, fitness, losing weight, budgeting, relocation, college prep, pet care, balancing work and life, and more.

How to Access Interactive Tools. Log on for quick tips, in-depth articles, webinars, social networks, blogs, podcasts, audio tips, streaming videos, and more at www.lifecare.com.

(*continued on page 3*)

Grievance Seeks Fair Compensation

(continued from page 1)

(there are two counts per BD) credited during a quarter—15 counts at 20 hours/BD and the other 15 at 30 hours/BD. In order to determine the actual and correct cumulative production, perform the cumulative production as if it were one long pay period. For example, if one were to determine the actual and correct cumulative production for pay periods 1 through 6, follow the calculations below.

Expectancy 1 is 20 hours/BD
Expectancy 2 is 30 hours/BD

Pay Period	Counts	Examining Hours
1	5 Counts @ 20 hrs/BD 2 Counts @ 30 hrs/BD	70
2	3 Counts @ 30 hrs/BD	57
3	5 Counts @ 20 hrs/BD 2 Counts @ 30 hrs/BD	70
4	3 Counts @ 30 hrs/BD	71
5	5 Counts @ 20 hrs/BD 3 Counts @ 30 hrs/BD	62
6	2 Counts @ 30 hrs/BD	57
	15 Counts @ 20 hrs/BD 15 Counts @ 30 hrs/BD	387 total hours worked

The above is the data for the calculations below. The important thing to realize is that a composite goal is never used in determining the cumulative production. One just determines the total hours for each of the dockets, then divides by the actual number of hours worked.

BDs (2 counts/BD)	BDs x expectancy = Hours
15/2 = 7.5 BDs in Expectancy 1	7.5 x 20 = 150 hours
15/2 = 7.5 BDs in Expectancy 2	7.5 x 30 = 225 hours
	375 hours of work completed

375 hours of work completed ÷ 387 total hours worked = .9690 or 96.9% which rounds to 97% production.

PALM would have reported the above cumulative production as 100.8 percent (rounding to 101 percent)—a difference of 4 percent due to the way PALM is calculating cumulative production.

The USPTO has said it cannot fix this easily or quickly. However, the new USPTO docket management system, just implemented on Oct. 12, 2011, does the math exactly as the production math should be done, and docket management calculations are substantially more involved in many respects.

Although the agency has said it's willing to fix the problem and do the math correctly in the future, it is unwilling to address past production miscalculations that resulted in shortchanged compensation.

POPA will continue to work with the USPTO to reach a solution that is equitable to affected examiners. If you believe you were harmed by PALM's miscalculations in FY-2011, please contact David Fenstermacher (2-7102 – Knx 3B07).

Millennium Pay Case Court Date Set

Though the USPTO and POPA met two times with a court-appointed mediator over the last several weeks, the two parties did not reach a settlement. This case stems from the Federal Labor Relations Authority ruling upholding an arbitrator's decision on the agency-union Millennium Agreement, which required the agency to "provide substantially equivalent alternatives" when the USPTO failed to seek a special pay rate increase for POPA-represented employees in 2003.

The parties are set to meet in federal appeals court Dec. 8 to seek a judicial ruling in the case.

The Millennium Agreement, signed by POPA and the USPTO in 2001, required the USPTO to request the Office of Personnel Management to increase the special pay rate each year to "maintain the 10 percent and 15 percent salary differentials relative to the updated GS rates." If OPM does not approve the agency's request, the agreement states that the USPTO must work with POPA to provide substantially equivalent alternative compensation.

The arbitrator's decision found for the union and ordered the parties to work out a "substantially equivalent alternative." In view of "the Agency's improper and illegal tactics…," the arbitrator also determined that an appropriate remedy "should include interest on any money the employees might receive…" The agency appealed the arbitrator's decision to the FLRA, but the FLRA rejected each aspect of the agency's appeal and upheld the arbitrator's decision. It is the FLRA's decision that is now set to be heard before the U.S. Court of Appeals for the D.C. Circuit on Dec. 8.

The remaining three grievances over the same issue for 2004, 2005 and 2006 have been held in abeyance pending the final outcome of the 2003 case. The agency, however, knows that a great deal of money is at stake in these four cases and is planning for that contingency. The USPTO stated in its 2010 annual report, "As of September 30, 2010, management expects it is reasonably possible that approximately $85,612 thousand may be owed for awards or damages involving labor relations claims."

Wide Range of Employee Services *(continued from page 1)*

Personal Help, Free of Charge (*continued*)
for free with financial experts and licensed attorneys for assistance with living will preparation, health care power of attorney, housing or real estate matters, estate planning, education funding, retirement planning, and investment strategies.

Counseling Services. Licensed or credentialed professional counselors provide face-to-face, short-term counseling to employees and family members. Counselors can also provide referrals to community resources based on client needs, health insurance coverage, and financial resources.

Critical Incident Response. Professionally trained critical incident stress management counselors assist in managing traumatic situations such as threats, acts of violence, natural disasters, injury, or death. Employees receive immediate consultations, services and follow-up as needed and appropriate.

Convenient Access by Phone or Web. Employees need only call 800-222-0364 or 888-262-7848 (TTY) from anywhere in the U.S. to receive immediate assistance, 24 hours a day, 365 days a year. You can also go online to *wwwFOH4You.com* for easy access to educational materials, self-assessment tools, and specific information on available services.

Resources for Your Stage of Life (*continued*)

- Log on and look for the "Member Login" box
Not registered yet? Follow the "New Users Sign Up" link and enter Registration Code: USPTO
- For quick access to the site, simply enter Screen Name: usptogroup and Password: login (case sensitive)
- Trouble logging in? Call the LifeCare Help Desk: 888-604-9565

Call for Information and Assistance. Call toll-free any time of the day or night at 800-456-0845. For TDD/TTY service, call 800-873-1322.

Examples of LifeCare Benefits.

- Geriatric care managers can conduct an agency-paid, in-person assessment for your aging loved one (limits apply; contact LifeCare for details)
- A prenatal kit containing free products and information for expecting parents.
- A child safety kit containing free products and safety information for parents of children under age three.
- A college kit of products and information to help parents and their college-bound children manage the transition.
- An adult care kit loaded with free products and helpful information for seniors and their caregivers.
- A be well kit containing free products and information to help you live a healthier lifestyle.

Do's and Don'ts of Unscheduled Leave and Telework

USPTO employees in the Washington, D.C., area can follow Office of Personnel Management announcements for the Washington, D.C., area regarding weather delays, unscheduled leave, and unscheduled telework as long as the USPTO is not specifically excluded from the announcement. You do not need to wait for the USPTO to issue guidance. You can learn the operating status for the federal government in the D.C. area by visiting www.opm.gov.

Employees must notify their supervisor to advise them of their intent to use unscheduled leave. This leave can be annual leave, earned compensatory time off, earned credit hours, or leave without pay (LWOP). There is no requirement to have used all leave before using LWOP.

To do unscheduled telework, you must have a telework agreement in place and have work that can be performed at the alternate work site. This option is available to Patents Telework Program (PTP) and Patent Examiner Laptop Program participants. Unscheduled telework does not count against your limit of telework days. For example, if you teleworked on Monday under the PTP and then an unscheduled telework day is announced for Friday, you would be able to telework that day as long as you have work that you can perform at the alternate work site. As with unscheduled leave, you must notify your supervisor of your intent to perform unscheduled telework. (*con't. on page 4*)

Show Compassion, Generosity Through CFC

Each autumn, federal employees are asked to open their hearts and contribute to the Combined Federal Campaign. This year marks the 50th anniversary of the CFC, which has grown to become the nation's leading workplace giving program since its creation by President John F. Kennedy.

The CFC gives us the opportunity to have a positive impact on the lives of those in need. Many organizations dedicated to improving people's lives need your support. This is especially true today. With the current economic situation, many charitable organizations are experiencing lower donations and need your support. Whether you give by payroll deduction or support one or more of the many CFC bake sales, contests and other activities, please open your heart and your wallet and help one or more among the many organizations that benefit your coworkers, community and nation.

POPA is proud to support the CFC and proud of the compassion that its bargaining unit members have exhibited in past years and hope you again will show your generosity. Thank you for your support of this federal government-wide effort and for making a difference in the lives of those less fortunate.

Attend the

POPA Annual Meeting

Thursday, December 8

11:30 a.m. – 12:30 p.m.

Madison Auditorium

Meet the new POPA Executive Committee

Learn the latest on workplace issues

Hear from POPA's officers

AIPLA Discounts for Patent Examiners

The American Intellectual Property Law Association (AIPLA) gives USPTO employees deeply discounted membership, which offers continuing education and networking opportunities to intellectual property professionals.

The regular 2011 membership fee is $345 per year. The USPTO employee annual membership fee is $90. Participating in AIPLA events can benefit examiners' careers and improve working relationships between the examining corps and the patent community.

Employees participating in AIPLA activities must remember, however, that they must not give the impression that their comments or opinions in any way represent the position or policy of the USPTO. They must make clear that they are only offering their own comments, views and/or opinions.

For more information, go to *www.AIPLA.org.*

Do's and Don'ts *(continued from page 3)*

Both of these options are in addition to any scheduled flexibilities you may have, such as a non-work day under the Increased Flexitime Program.

Direct any questions to POPA Secretary Kathleen Duda, kathleen.duda@uspto.gov or 571-272-1383.

JOIN POPA

Patent Office Professional Association

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

Howard J. Locker
Vice President/Director of Adverse Action Challenges
(571) 272-0980

Dr. Kathleen Duda
Secretary/Director of EEO Activities
(571) 272-1383

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

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

David Fenstermacher, *Director of Grievances,* (571) 272-7102

Letters from readers are welcome. Address to:
The Editor, Patent Office Professional Association,
P.O. Box 25287, Alexandria, VA 22313

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

© 2011 Patent Office Professional Association