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Count System Initiatives Change and Stay the Same

Parts of the 2010 Count System Initiatives (CSI) will be extended through fiscal year 2012, and other parts will be modified under an agreement between the USPTO and POPA to take effect Oct. 1, 2011.

One modification replaces the FY 2011 provision for individual adjustments relating to requests for continued examination, or RCEs. In FY 2010 and FY 2011, the agency sought to reduce the number of counts in RCE applications. To avoid harming examiners in the process, the USPTO and POPA agreed to a system that depended on an examiner's number of RCE first action on the merits (FAOMs) relative to the examiner's total number of FAOMs. Under the original 2010 Count System Initiatives agreement signed on Nov. 3, 2009, examiners who did more than 27 percent RCEs would receive an additional time adjustment, on top of the 2.0 hours per balanced disposal (BD) of the agreement.

The calculations of each examiner's individual RCE adjustment were burdensome. Agency data showed that the average hours/BD including RCE adjustment for examiners in FY 2011 was approximately 2.34 hours/BD. Therefore, POPA and the agency agreed to replace the individual RCE adjustment calculation with an across-the-board 2.5 hour increase for each utility and plant examiner's expectancy in the new fiscal year and 0.75 hour for designs examiners.

To ensure that examiners are not harmed by the 2012 count system relative to any aspect of performance, the agreement includes continuation of the safety net provision. The safety net enables measurement of an examiner's performance under both the previous count system and the CSI system. The examiner then will receive benefit of the better of the performance measurements under the 2012 count system or the previous count system. Examiners and supervisors, however, do not have the choice or option of which system to use; the system with the better result for the examiner relative to the performance issue at hand will be used.

POPA and the USPTO also agreed that the maximum number of RCEs that an examiner would have to do for reduced credit, i.e., 1.75 or 1.5 counts, under the performance appraisal plan will be one every other biweek, as RCEs remain on the examiner's special new case docket. And the oldest special new case must be moved (on average) once every other biweek for performance appraisal plan purposes.

If, however, the USPTO directs an examiner to do an RCE before the ceiling control date for that application, the employee will receive two counts for that application.

To see the 2012 Extension Agreement and the original 2010 Count System Initiatives Agreement, go to *www.popa.org*, click on Useful Info/Agreements/Count System Initiatives (CSI).

Nominations for POPA Elected Positions

The nomination period for POPA's elected officers and delegates opens Sept. 30, 2011, and ends at close-of-business (5 p.m.) on Oct. 15, 2011. Nomination forms will be available on the POPA website, *www.popa.org,* the morning of Sept. 30.

The 42 positions open for nomination are as follows:

- 10 Delegates from the Chemical Area
- 17 Delegates from the Electrical Area
- 8 Delegates from the Mechanical and Business Methods Areas
- 2 Delegates from Designs and Other Areas combined.
- 5 POPA officers, to be elected from the membership at large: President, Vice President, Secretary, Assistant Secretary, and Treasurer.

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Employees Go the Extra Mile Coping With COPA

In a time of frozen salaries and tight budgets, the dedicated examiners and other patent professionals of the USPTO have shown once again why they are its greatest asset. The agency recently announced that the primary goal of the COPA initiative (Clearing the Oldest Patent Applications)—to move 235,000 of the oldest pending patent applications—has been reached. In fact, employees are well on the way to helping the agency move 245,000 or even 255,000 cases by the end of fiscal year 2011.

Achievement of the COPA goal means that all employees working under the commissioner of Patents and having fully successful performance will receive a $700 award with an additional award of $150 for achievement of the 245,000 case goal and an additional $150 for reaching the 255,000 goal. Reaching the COPA goal represents a monumental effort on the part of employees to help the agency move toward its ultimate goal of reducing the backlog and achieving pendency of 10 months to first action.

Attaining this COPA milestone, however, has not been without a few bumps in the road. There has been some confusion among managers and employees as to the

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Nominations for POPA

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How to Nominate a Candidate

Candidates for officers and delegates must be POPA members in good standing, i.e., current dues-paying members. Nominations for an officer shall be by petition stating the position sought, signifying the nominee's willingness to serve, and signed by at least 15 dues-paying POPA members.

Nominations for an area delegate shall be by petition stating the nominee's organizational area to be represented, signifying the nominee's willingness to serve, and signed by at least five dues-paying members from that same organizational area.

For either type of nominating petition, nominees are recommended to obtain more than the minimum number of signatures in case one or more signatures are disqualified for not being that of a dues-paying member. The candidate may sign his or her own petition to count toward the minimum number of signatures needed.

Completed nominating petitions may be turned into any member of the Election Committee or to POPA Secretary Kathleen Duda. All members of the Election Committee are dues-paying members who do not hold and are not seeking elected POPA office. Members of the Election Committee will be listed on the bottom of the nominating petition and at *www.popa.org* under "Elections."

If you wish to vote in the election or sign a nominating petition and are not a dues-paying member, you may contact any POPA representative for a dues deduction form. You may also download a form from *www.popa.org* by clicking on "Join POPA." Return completed dues deduction forms to any POPA officer or area delegate. To nominate someone or to be nominated, you must return your dues deduction form—Standard Form 1187—by close of business on October 15.

The ballot will also list a write-in option for each elected position.

Constitutional Amendment Proposed

The ballot will also include a proposed amendment to the POPA constitution. Article 10, section 5 of the constitution currently reads: (*continued on next page*)

2011 POPA Election Rules

1. Only members in good standing may vote. This means your FY 2011 dues have been paid or you are currently on the payroll deduction program as of 5 p.m. Oct. 15, 2011.

2. Members of the bargaining unit who wish to vote in the election must submit a signed dues deduction form to a member of the Election Committee by 5 p.m. Oct. 15, 2011. Employees should keep a photocopy of their dues form in the event of a challenge or any question regarding their eligibility to vote.

3. The election shall be conducted by secret ballot.

4. A ballot will be mailed to the last known address of each dues-paying member. The accuracy of the mailing address is the responsibility of the member. Confirmation of your current address or change-of-address requests can be sent to *popa_election_2011@verizon.net*.

5. All dues-paying members may vote for officers but may only vote for area delegates from their own organizational area, e.g., Chemical, Mechanical, Electrical or Designs & Others.

6. Avoid making any extraneous marks, signatures, initials, etc., on the ballot or return envelopes, which could serve as a personal identifier. Such marks may nullify your ballot.

7. Ballots marked with more than the maximum number of votes permitted will be nullified.

8. Members are permitted to run both as an area delegate and as an officer, however, they may serve in only one position. If a candidate runs for more than one position and is elected to more than one position, the candidate must select which position to serve in.

9. Election of officers shall be by a plurality of the vote. Election of delegates shall be by a plurality of the vote where election of delegates within each organizational area shall be determined by ranking the candidates by the number of votes received and choosing a sufficient number of the highest vote getters to equal the number of vacancies in the organizational area.

10. The candidates for officers and area delegates will appear on the ballots in randomly selected order with an asterisk (*) denoting an incumbent.

11. Write-in candidates are permitted. A write-in candidate for an officer must receive at least fifteen (15) votes to be eligible for election. A write-in candidate for an area delegate must receive at least five (5) votes to be eligible for election.

12. Any candidate may appoint an observer for the election. Candidates may serve as their own observer or appoint an observer who is a member in good standing of the association. The observer may observe the counting of the ballots but shall in no way interfere with the balloting and ballot-counting procedures or with the individuals carrying out the ballot-counting procedures. An observer shall not handle any of the ballots. No observer shall be left unattended with the election ballots.

For additional rules or guidelines please see the POPA Constitution and Standing Rules at www. popa.org.

Nominations for POPA

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"A majority of the Executive Committee shall constitute a quorum for the transaction of business at any Executive Committee meeting. A majority of the President's Committee shall constitute a quorum for the transaction of business at any President's Committee meeting."

The amendment would change the first words, "A majority," to "Forty percent." The POPA Executive Committee recommends approval of this proposed constitutional amendment.

Due to the growth of the POPA bargaining unit and the POPA Executive Committee, in addition to the increase in teleworking among POPA bargaining unit members, it has been increasingly difficult to reach a quorum at regular Executive Committee meetings, which limits the association's ability to conduct business and vote on time-sensitive matters such as labor agreements and arbitrations. If approved, the proposed change would reduce the number necessary for a quorum from 22 to 17, and enhance the ability of the POPA Executive Committee to transact necessary business in a timely manner.

Secret Balloting

The mail-in balloting will be open for 21 days. Ballots will be mailed to dues-paying members on Oct. 31, 2011, and must be received at the special election return post office box by 9 a.m. on Nov. 22, 2011, to be counted as an official ballot.

All balloting will be secret, as required by the U.S. Department of Labor and POPA's constitution. The ballots completed by members will be mailed to a post office box managed by Election Services Solutions, an independent election contractor, which will also be responsible for counting the ballots and reporting the results of the election to the Election Committee.

Voting will be open only to dues-paying POPA members. Under the prior in-person voting system, bargaining unit members could join the union on election day and then cast their vote the same day. However, under the new system, bargaining unit members who wish to vote must join the union by completing a Standard Form 1187 dues deduction form and submitting it to POPA by the end of the nominating period at close-of-business on Oct. 15, 2011.

Because ballots will be mailed to dues-paying members, POPA must have accurate home mailing addresses for all members. To ensure proper receipt of their ballots, POPA dues-paying members must contact POPA with their home addresses if they have moved within the last three years or if they wish to confirm their proper address. Members can email their change-of-address requests to *popa_election_2011@verizon.net*.

Coping with COPA

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parameters of the COPA initiative. In his recent blog, COPA project leader George Elliott, group director in Technology Center 1600, reminded everyone of the following provisions of the COPA program that the agency and POPA had agreed upon:

- COPA is a voluntary effort—while management always retains the right to assign work, with respect to COPA work shifts, cases from a "foreign" docket will be assigned only to examiners who are willing to take them.
- COPA cases may not be assigned to examiners on the signatory programs. If an examiner goes on the program and has COPA cases on his or her docket and is still under a learning curve, those cases must be removed and reassigned to another examiner. If examiners request COPA cases while on the program, they must be informed that they will be held accountable for errors in those cases and that all cases with qualifying actions are reviewable, whether COPA shift cases or not.
- When cases are assigned to examiners, examiners must be told up front what their learning curve is for those cases. A special form has been provided for this purpose. The examiner should be given a copy and the supervisor or technology center should keep a copy for the record.
- The agency will continue to take advantage of the results of the examiner COPA questionnaire that was completed earlier in the year to identify examiners who are willing to work on COPA cases from outside their normal dockets.

POPA congratulates all of our hard-working bargaining unit members who have gone the extra mile in helping the USPTO reach its COPA goal.

Are You Getting Your Continuing Applications?

While assignment of work is ultimately a management right, examiners should, nevertheless, normally receive their continuing applications. If you receive a continuation or divisional application or a request for continued application (RCE) that clearly should belong to another examiner, i.e., another current examiner did the prior work in the RCE application or the parent application of a continuation or divisional application, contact that examiner to inquire about transferring it before you act on the application. If that examiner agrees to take the application, contact your supervisor to have the application transferred.

If your supervisor doesn't cooperate, contact your POPA delegate or POPA Vice President Howard Locker (*howard.locker@uspto.gov*) or POPA Grievance Director Dave Fenstermacher (*david.fenstermacher@uspto.gov*) for assistance.

If Employee Relations Wants to See You, Contact POPA

If You are Being Investigated

If you are called into a meeting in which the agency is investigating possible disciplinary action against you, prior to the meeting's start the USPTO must inform you of the general nature of the meeting and of your right to POPA representation. (See the POPA Collective Bargaining Agreement, Article 4, Section 8.A, at *www.popa.org*). You also have the right to request union representation as soon as you believe that disciplinary action may result from the meeting (Article 4, Section 8.B).

If you request a POPA representative, the agency is obligated to wait a reasonable time to allow you to contact POPA and secure representation before proceeding with the meeting (Article 4, Section 8.C).

What should you do if you are called into a meeting and informed of your right to POPA representation? Email and call POPA representatives Howard Locker (*howard.locker@uspto.gov*, 571-272-0980) and Gerald Ewoldt (*gerald.ewoldt@uspto.gov*, 571-272-0843) immediately. Do not go into the investigatory meeting alone! If you don't hear from one of them directly, please inform one of the other POPA officers or your local POPA representative.

If You are Questioned as a Witness

If the agency calls you into a meeting as a witness in an USPTO Office of Employee Relations investigation of another employee or workplace situation, you may request a POPA representative to accompany you to the meeting.

POPA strongly recommends that employees take advantage of this right. A witness can turn into a suspect in a heartbeat depending upon how a question is asked and answered. Say the wrong thing, and you can become the focus of an investigation instead of a witness.

If you are called as a witness, email and call Howard Locker (howard.locker@uspto.gov, 571-272-0980) and Gerald Ewoldt (gerald.ewoldt@uspto.gov, 571-272-0843) immediately. If you don't hear from one of them right away, inform one of the other POPA officers or your local POPA representative.

At the witness meeting, the Employee Relations representative will ask you questions, take notes, and later draft a statement that you will be asked to review and sign. Your signing the statement is voluntary, and the statement itself should indicate that you are signing *voluntarily*. Whether you sign the statement or not is your choice. You cannot be penalized for not signing the statement.

If you choose to sign the statement, you have the right to change the statement to clarify and/or make the words your own. Your statement could be used in proceedings against the subject of the investigation.

Patent End-to-End Pilot Rolls Out

A complete redesign of all computer-based patent examination tools, called the Patent End-to-End project (PE2E), is underway at the USPTO. This project will ultimately replace the current automated tools, including the Image File Wrapper system (IFW), the IFW user interface known as the "electronic Desktop Application Navigator" (eDAN), and the EAST and WEST examiner search tools. The initial phase of the PE2E project will be piloted in the Central Reexamination Unit (CRU) beginning Oct. 1, 2011, and continuing through the first quarter of the fiscal year.

During this pilot, the 65 to 75 CRU examiners will receive a new graphical user interface to replace eDAN. The project will also convert CRU reexamination files to a more robust and text based data storage format that will allow examiners to text search all documents in a patent application as well as highlight and annotate relevant text for use later in composition of office actions. A recent demonstration of the new interface for POPA's Executive Committee suggests that these new changes will be welcome advancements for patent examiners in the CRU and throughout the patent examining corps.

The redesign will further develop through FY 2012 with additional rollouts to other parts of the examining corps and full dissemination of the new tools expected in FY 2015.

Examiners given the new software should get extensive special training on the new systems. While POPA is still looking into potential impacts on the bargaining unit, the union expects that examiners will be provided official time codes for training time and "catastrophic" software problems that would otherwise affect their production.

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