

Pro Se Art Unit Pilot
August 17, 2016

Preamble:

This Memorandum of Understanding (MOU) was reached through predecisional discussion between the parties, the United States Patent and Trademark Office (USPTO) and the Patent Office Professional Association (POPA). As a result of these discussions, the USPTO has determined to operate the Pro Se Pilot Art Unit in accordance with the Procedures for the Pro Se Pilot Art Unit, attached hereto as Appendix A. This agreement is entered into in accordance with item 3.d) of the September 29, 2014 MOU entitled "Establishment of a Pro Se Art Unit Pilot."

1. Providing Information and Data to POPA

The USPTO will provide POPA with the aggregate results of surveys and focus sessions (Data) for consideration in evaluating the success of the Pro Se Pilot Art Unit. This Data shall be provided promptly so that both parties may analyze the Data contemporaneously, and POPA may participate in the evaluation. Detailed information from the surveys and focus sessions will be provided upon request.

2. Ongoing Discussions

The parties shall meet at the request of either party to discuss issues arising from the establishment or termination of the Pro Se Art Pilot Unit. The parties agree to work together to jointly address issues raised by either party with a goal of reaching a resolution to the issues that is acceptable to both parties within a reasonable time. No changes, other than those that are de minimis, will be made to the pilot unless the parties agree informally to the change.

3. Duration and Termination

- a) The Pro Se Pilot Art Unit will operate from October 1, 2016 through September 30, 2018.
- b) The USPTO may terminate the Pro Se Pilot Art Unit at its sole discretion by providing 2 months advance notice to POPA.
- c) Whether at the end of the pilot or earlier, the procedures set forth in Appendix A will be followed for termination.
- d) The Pro Se Pilot Art Unit will not be extended beyond September 30, 2018, unless (a) the parties reach agreement on the extension or (b) the Agency provides POPA notice of a new pilot or program along with an opportunity to bargain to the extent required by law, and if POPA elects to bargain, bargaining has been completed, including any impasse procedures.


4. Bargaining Obligation

POPA acknowledges that the USPTO's obligation to negotiate over the operation of the Pro Se Pilot Art Unit as set forth in this MOU and its Appendix A for a two year period if the terms remain unchanged, has been fully satisfied.


Signatures:

FOR POPA:

FOR THE USPTO:


Pamela R. Schwartz
President

8/18/2016
Date


Kathy Matecki
Director, TC 3600

8/17/2016
Date

Appendix A

Procedures for the Pro Se Pilot Art Unit

1. This pilot program will run for fiscal years 2017 and 2018, starting October 1, 2016.
2. The Pro se Pilot Art Unit will comprise up to 20 temporary positions for GS-15 Patent Examiners selected from diverse disciplines. The pilot art unit will be located in Technology Center 3600 and designated as Art Unit 3649.
3. The position factor for examiners in the art unit is 1.35. Examiners will not be given learning curves but will be given additional time for examination on a case-by-case basis, considering the complexity of the specific application and the degree to which subject matter is related to the examiner's native docket.
4. Examiners who volunteer for the pilot will be able to opt out and return to their native docket as GS-14 Primary examiners at the beginning of the next full pay period after notification to the SPE, as long as notice is provided on or before the first Friday of a biweek.
5. CRU examiners may apply.
6. Examiners in the pilot unit will examine predominantly applications which are pro se. Selected examiners will bring their current amended docket and a docket of at least 26 new and continuing new applications per year from their native docket, including RCEs. Examiners will retain continuing new applications and RCEs filed over the course of the pilot as applicable. Examiners will keep all amendments and other applications in prosecution at the start of the pilot.
7. Participants will be selected from applicants in response to a vacancy announcement to be posted in August 2016. When selecting participants, management will take into consideration factors such as the proportion of pro se applications typically filed in applicants' native dockets and approximate ratio to the historical filing distribution of pro se applications among the various disciplines.
8. Applications will initially be selected from the inventory of oldest undocketed pro se applications in status 20 or below, and pro se applications on participants' dockets at the start of the pilot. To avoid creating short docket situations, applications will not generally be taken from areas where inventories are low, unless examiners from that area have also been selected as participants.
9. Participants will be evaluated using the GS-15 Generalist Patent Examiner Performance Appraisal Plan (PAP).
10. Participants will use the PALM split docket calculator to calculate their expectancy based on the assigned hours/pt for each of the applications examined.
11. In addition to the duties encompassed by the PAP, participants will be expected to participate in a number of additional activities, including:
 - a. Providing support to the Office of Innovation Development (OID), Office of Patent Legal Administration (OPLA), Office of Patent Examination Processing (OPAP), and the Electronic Business Center (EBC), including responding to inquiries from pro se applicants, face to face meetings with independent inventors, and outreach to unrepresented individuals and groups.

- b. Quality Enhancement Meetings (QEMs) with peers or other USPTO employees, to discuss and share best practices for prosecuting pro se applications throughout the entire prosecution process (filing through disposal) and ways to provide effective assistance to pro se applicants.
 - c. Assistance with development of training materials and resources for examiners, pro se applicants, and other stakeholders.
 - d. Possible participation in outreach events.
 - e. Surveys, focus sessions, and other activities as part of the evaluation of the pilot program.
12. In the course of prosecution, participants will be encouraged to engage in frequent interviews with applicants, to provide any needed assistance and clarification of the patent process. Non-production time for these interviews will be permitted consistent with current practice.
 13. When examining applications in an unfamiliar art area, participants will be encouraged to consult with CPC QNs in the relevant area, and will have access to the CPC FSTs for the relevant art area, to ensure that an appropriate field of search is identified. A reasonable amount of non-production time will be permitted for these activities.
 14. Time spent for non-examining activities and examining-related activities (e.g. consultation with CPC QNs, viewing of FSTs, participation in QEMs, surveys and other evaluation activities, and assistance in the Office of Innovation Development) will be recorded as non-production time, and may be accumulated and recorded as whole hours.
 15. An appropriate Docket Management clock adjustment will be available in situations where a response after a final rejection has been filed by an applicant, and the scheduling of an interview (either examiner- or applicant-initiated) delays completion of an action. Examiners should consult with the SPE to determine appropriate steps to take in this situation.
 16. Participants who are CPC QNs in their home art unit may continue in that role, and may continue to provide search and consultation assistance to examiners from other art units.
 17. Examiners new to AU 3649 will be provided with several training modules related to pro se prosecution and related topics at the outset of the pilot and at other times throughout the duration as needs are identified.
 18. On a voluntary basis, a limited number of Design and Plant examiners may participate in the pilot training, QEMs, and other activities. Those examiners would be asked to participate in surveys and evaluations related to the pilot.
 19. At the termination of the Pro Se Art Unit Pilot, the following procedures will be followed:
 - a. Examiners will be reassigned to their native docket, or a similar area if changes in inventories, organizational structure, or other circumstances have occurred which necessitate a different assignment.
 - b. Examiners will keep all amendments and other applications in prosecution at the time of termination.
 - c. Unexamined applications assigned to the Pro Se Pilot Art Unit will be returned to their originally classified area for reassignment.
 - d. Upon termination of the Pro Se Pilot Art Unit, if an examiner is returned to a docket area different from the docket area assigned prior to the pilot, learning curves will be given following current practice.

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PRD 8/18/16*