



UNITED STATES PATENT AND TRADEMARK OFFICE

Deputy Commissioner for Patents

MEMORANDUM

Date: October 27, 2010

To: Technology Center Directors
Supervisory Patent Examiners
Employee Relations Office

From: *Peggy Focarino*
Peggy Focarino
Deputy Commissioner for Patents

Subject: "Safety Zones" and Repeated Performance Warnings under the new
Examiner Performance Appraisal Plan

This memorandum supersedes the memorandum of the same title dated October 22, 2010.

In conjunction with the new examiner Performance Appraisal Plan (PAP) to be implemented by the Office, I am pleased to announce two changes in how examiner performance issues are handled, effective October 24, 2010.

"Safety Zones"

The first change, referred to as "safety zones," is designed to give examiners whose performance is just below the acceptable range in a critical PAP element an opportunity to improve their performance before being placed on an oral warning.

Under current practice, an examiner is placed on an oral warning if his/her performance in a critical element is Unacceptable at the end of a fiscal quarter, absent extenuating circumstances.

Production Safety Zones

If the examiner's performance in Production is between 80-87% (inclusive) at the end of a fiscal quarter AND the examiner's previous quarterly performance in that element was at least 88%, the examiner will not be placed on an oral warning for the critical element. The SPE will make appropriate efforts to coach and mentor the examiner, and if the examiner's performance in that element in the following quarter improves to at least 88%, no warning will issue. An examiner may benefit from the "safety zone" no more than twice in any rolling five-year period; the third and subsequent occurrences of quarterly Production performance between 80-87% (inclusive) may result in the issuance of an oral warning, absent extenuating circumstances.

If, however, an examiner's Production performance is below 80% at the end of any fiscal quarter, he/she may be placed on an oral warning, absent extenuating circumstances, as under current practice.

If an examiner qualifies for the “safety zone,” but his/her Production performance remains below 88% for a second consecutive fiscal quarter, an oral warning may be issued.

The “safety zone” will also be applied retroactively to the Production critical element for the fourth quarter of FY 2010. If an examiner’s productivity is between 80-87% (inclusive) in the final quarter of FY 2010, he/she will not be placed on an oral warning for Production in the first quarter of FY 2011.

Docket Management “Safety Zone”

The “safety zone” for Docket Management mirrors the Production “safety zone” as set forth above.

Quality Safety Zone

The following steps shall be used for the purpose of determining whether or not an examiner’s performance falls into the quality “safety zone”:

1. Determine the examiner's error rate under the supplemental standards as set out in the PAP.
2. If the examiner’s error rate is between 7.50% and 9.99% for any quality category, and the examiner was not unacceptable in the same quality category in the previous quarter, the safety zone applies (no Oral Warning).
3. If the examiner’s error rate is greater than 9.99% for any quality category and the examiner was not unacceptable in the previous quarter for the same quality category, calculate the “safety zone error rate” for any quality category as:

Safety Zone error rate = (number of clear errors – 1) / (same denominator as used for initial error rate calculation).

If the safety zone error rate is 7.49% or less, the safety zone applies (no Oral Warning).

The SPE will make appropriate efforts to coach and mentor the examiner, and if the examiner’s performance in that category in the following quarter improves to an error rate of 7.49% or less, no warning will issue based on the examiner’s performance in that Quality category.

If, after the “safety zone” determinations, the examiner’s error rate in any Quality category is greater than or equal to 10% at the end of any fiscal quarter, he/she may be placed on an oral warning, absent extenuating circumstances.

If an examiner qualifies for the “safety zone,” but his/her error rate in that Quality category remains at 7.5% or above for a second consecutive fiscal quarter, an oral warning may be issued, absent extenuating circumstances.

An examiner may benefit from the “safety zone” no more than twice in any rolling five-year period in the same Quality category; the third and subsequent occurrences of quarterly performance in the safety zone for any Quality category may result in the issuance of an oral warning, absent extenuating circumstances.

Repeated Performance Warnings

An employee who repeatedly alternates between unacceptable and acceptable performance in a manner that avoids the issuance of a written warning (i.e. an employee who passes an oral warning in one quarter, then becomes unacceptable in the same critical element thereafter), will be handled in the following manner:

- In any rolling five-year period, an employee may receive three oral warnings in any one critical element or quality category.
- A third oral warning in the same critical element or quality category within the five-year period will result in not only the oral warning, but also notice to the employee that a fourth warning in that same critical element or quality category within the five-year period may result in the employee being issued a written warning (statutory performance improvement period) with a corresponding 1-year maintenance period if the employee passes the written warning, rather than a fourth oral warning.
- Subsequent unacceptable performance in the same critical element or quality category within a five-year period that would otherwise result in an oral warning may instead result in a written warning and corresponding 1-year maintenance period if the employee passes the written warning(s).
- Oral warnings issued prior to the effective date of the agreement will be handled as follows:
 - Examiners with two or fewer oral warnings in the last five years in production, workflow management, or any of a quality category will be considered to have that number of oral warnings in production, the quality element, or docket management (once implemented). Prior oral warnings in Patent Examining Functions will be counted as the same number of warnings in Category 1. Prior oral warnings in Action Taking will be counted as the same number of warnings in Category 2. Prior oral warnings in Patentability Determination will be counted as the same number of warnings in Category 3. Prior oral warnings in Workflow Management will be counted as the same number of warnings in Docket Management.
 - Examiners with three or more oral warnings in the last five years will be considered to have two oral warnings in the respective element(s).
 - Prior warnings will only count if they have occurred within a rolling five year period.
 - The issuance of written warnings will not restart the rolling 5 year period.