

## UNITED STATES PATENT AND TRADEMARK OFFICE

Deputy Commissioner for Patents

## **MEMORANDUM**

Date:

October 22, 2010

To:

**Examining Corps** 

Supervisory Patent Examiners Technology Center Directors

From:

Peggy Focarino

**Deputy Commissioner for Patents** 

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Subject:

Effect of New Examiner Performance Appraisal Plans on Signatory

**Authority Program** 

The United States Patent and Trademark Office has adopted a new Performance Appraisal Plan (PAP) for patent examiners. This new PAP contains refinements to the Production element and significant revisions to the Quality and Docket Management (formerly Workflow Management) elements. This memorandum takes effect on October 24, 2010 and clarifies the relationship of the new PAP to the Agency's existing Signatory Authority Program procedures as set forth in the "Signatory Authority Program" memorandum, dated Dec. 22, 1992, and sets forth modifications to the Signatory Authority Program. Except for the modifications described herein, the Signatory Authority Program is unchanged.

When making a determination that an examiner has passed the trial period for Partial Signatory Authority, the Agency will evaluate the examiner's performance under the new PAP based on the "Category 2" error rate only. The denominator used to calculate the Category 2 error rate will be the number of non-final rejections, requirements for restriction/election, Pilot First Action Interview office actions, and Pilot First Action Interview actions without FA Interviews which have been submitted for credit during the period under consideration.

When making a determination that an examiner has passed the trial period for Full Signatory Authority, the Agency will evaluate the examiner's performance under the new PAP based on the "Category 3" error rate only. The denominator used to calculate the Category 3 error rate will be the number of allowances and final rejections which have been submitted for credit during the period under consideration.

To successfully complete the trial period for either Partial or Full Signatory Authority, examiners must submit for credit at least 17 "reviewable actions" which consist of actions in which a Category 2 or Category 3 error, respectively, can be charged. The number of

"reviewable actions" containing a clear error will be the numerator used to calculate the error rate for each trial period.

If the examiner does not submit at least 17 reviewable actions during a trial period, the examiner will have the option to extend the trial period for up to two additional pay periods. If the examiner does not opt to extend the trial period, or if at the end of the extension the examiner has still not completed at least 17 reviewable actions, the temporary grant of signatory authority will be terminated without a decision on passage or failure. In this event, the examiner may commence another trial period immediately, as long as he or she has performed at the fully successful level for the most recent 10 pay periods. However, an examiner will be permitted to restart a trial period in this manner only once; thereafter another 10 pay period eligibility period must pass before commencing another trial period.

In the event that an examiner withdraws from the signatory authority program during a trial period for performance reasons, the waiting period to restart a trial period has been reduced from 10 to 7 pay periods. The requirement of fully successful performance for the 10 pay periods prior to the start of the trial period will continue to apply in this situation.

Examiners will be given the opportunity to select and submit to their supervisor up to seven reviewable actions (identified by serial number and date of action) which will be part of the sample of actions evaluated. The seven actions must be identified to the supervisor by the end of the week following the end of the 7<sup>th</sup> pay period of the trial period, or the 13th pay period for part-time examiners. Examiners who have completed more than 7 pay periods (13 pay periods, for part-time examiners) of a trial period at the time of implementation of the new PAP will be given the opportunity to select a reduced number of actions for inclusion in the sample, equal to the number of pay periods remaining in the individual examiner's trial period. These actions must be identified to the supervisor by the end of the first full pay period after the effective date of the MOU Regarding the 2011 Examiner Performance Appraisal Plan and Other Matters.

Furthermore, any examiner for whom an eligibility period or a trial period begins before the implementation of the new PAP and does not end until after the new PAP is in effect will be evaluated under the Production and Quality standards of the new PAP for the purpose of determining whether to grant Permanent Partial or Permanent Full Signatory Authority.

With respect to the "current" Workflow Management or the "new" Docket Management elements, the examiner will be evaluated for the trial or evaluation period based only on the time spent under either the current or new element, depending on which element was in place for the majority of time in the trial or evaluation period. During the trial or evaluation period, if the time under the current and new elements is evenly split, only the time under the new element will be used.