

**MOU Between the United States Patent and Trademark
Office and the Patent Office Professional Association
Regarding the 2010 Count System Initiatives and Other
Initiatives on November 3, 2009**

These initiatives supersede portions of any agreements, memoranda of understanding, policies, or practices with which they conflict. If any portion of an agreement, memorandum, policy, or practice does not conflict with the provisions and policies set forth herein, that portion of the previous agreement, memorandum, policy, or practice will remain in force.

Effective Date of the Agreement

This Agreement shall become effective at the earlier of Agency Head approval or 31 days after the date it is signed by all signatories. If the Agency Head approves the Agreement, the Union will be notified of the date of that approval.

1. On the effective date of the Agreement the following memoranda, attached hereto, shall be implemented:

Memoranda by Peggy Focarino, Deputy Commissioner for Patents

- “Certification and Recertification Programs” of November 3, 2009
- “Patent Examiners’ Work Credit” of November 3, 2009
- “Changes in Docket Management Policies” of November 3, 2009
- “Patent Examiner Patentability Determination Performance Element and Examiner Hoteling Waiver Period” of November 3, 2009
- “Examiner-Initiated Interviews” of November 3, 2009

2. The following Memorandum, attached hereto, shall be effective at the beginning of the second quarter of FY 2010 or at a time thereafter agreed upon by the parties:

Memorandum by Peggy Focarino, Deputy Commissioner for Patents

- “Revisions to Examiner Production Credits and Expectancies” of November 3, 2009

3. The memoranda of paragraphs 1 and 2 are a package to be known as the 2010 Count System Initiatives (referred to in this Agreement as the “Package”). The Union acknowledges that the Agency’s obligation to negotiate over the impact and implementation of the changes discussed in this Agreement has been met.

4. The Agreement On Trial Gainsharing Program Between the Patent and Trademark Office and the Patent Office Professional Association signed on October 6, 1988, is modified as follows:

Section 1.A.1. is replaced with the following:

1. For patent examiners:

| Achievement of Goal* | Amount of Current Base Salary |
|----------------------|-------------------------------|
| 110-114% | 2% |
| 115%-119% | 3% |
| 120%-124% | 4% |
| 125%-129% | 5% |
| 130%-134% | 6% |
| 135% or higher | 7% |

At least a Fully Successful level of performance in all critical elements of the employee's Performance Appraisal Plan is required.

A. This modification applies to Productivity Gainsharing Awards for FY 2010. Unless the parties agree otherwise, Section 1.A.1 of the Agreement will revert to the original on October 1, 2010.

B. No single award may exceed the threshold which requires OPM approval (currently \$10,000).

5. Evaluation Criteria

Information to be considered in evaluation of the Package and other initiatives may include:

- Actions per disposal
- Allowance rates
- Examiner-initiated interviews
- First action allowance rate
- Joint employee surveys – examiners, tech support, patent managers
- Award program-Cost, Distribution of employees, Comparison between years (in vs. out; levels)
- Certification pass rate
- Performance actions
- Attrition rates
- New (non-RCE) Backlog, Pendency to first action
- RCE Filings (1st, 2nd and subsequent), FAOMs (1st, 2nd and subsequent), pendency to first action, and mix (general patterns and examiner-level patterns)
- Transferred applications/inherited amendments
- IT impacts-Load data: end of biweek, end of quarter, distribution of counts/transactions
- Productivity
- Workflow
- Quality
- Revenue
- How often the safety net was used, for what purpose, and why (if a reason can be determined)

6. Providing Information and Data to the Union

So that the Union can participate in evaluation of the initiatives, it will be provided with any evaluation data as set forth above, as well as any other information the Agency considers when evaluating the impact of the initiatives. The information and data shall be provided promptly so that both parties may analyze the data contemporaneously.

7. Periodic Meetings to Evaluate and Discuss Changes

The parties shall meet quarterly, and additionally at the request of either party, to discuss the progress of the initiatives in meeting objectives and to determine if any changes to the initiatives should be implemented. Changes to initiatives will be implemented upon agreement of the parties.

8. Transition Issues

- A. RCEs already on the Amended Docket will remain there and are subject to the new count system.
- B. As early as possible and at least about one month prior to implementation of the new count system, the Agency will begin placing RCEs on the Special New Docket rather than on the examiners' Amended Dockets. After the transition, RCEs will continue to be placed on the Special New Docket.
- C. Management will make every effort to ensure that RCEs filed prior to the implementation of the new count system are processed and the disposal credited to the examiner prior to the implementation of the new count system.
- D. Should an examiner receive more RCEs filed during the period after notice is presented to the public and prior to the implementation of the new count system so that all due applications cannot reasonably be completed in the examiner's available examining time, upon request by the examiner, on a biweekly basis, the supervisor will prioritize a reasonable number of applications to be completed and will excuse the rest.
- E. Each examiner will be provided with an addendum to the productivity goal achievement element of his or her performance appraisal plan at least one biweek prior to the effective date of the count system change. This addendum will specify, among other things, the adjusted expectancy that he or she will receive for the relevant rating period.
- F. Should the Agency be unable to implement the new count system at the beginning of the 2nd quarter, notice will be provided to the employees at least 1 biweek prior to the beginning of the 2nd quarter. Additionally, employees will be notified at least 1 biweek prior to the new implementation date.
- G. Pending applications for which FAOM credit was received under the previous count system will have 0.75 counts available, even if a final rejection has been issued under the previous count system.

- H. When an application was disposed of under the previous count system, and the disposal count is withdrawn after implementation of the new count system, the examiner will lose 0.75 counts. There will then be 0.75 counts available in the application.
- I. Any RCE disposal credit given to the examiner for the biweek before implementation of the new count system without timely notice to the examiner will be subtracted from the examiner's productivity for that quarter if requested by the examiner.
- J. Situations not specifically addressed above that are relevant to the implementation of the new count system will be jointly addressed with the goal being to reach a reasonable decision in an expedient manner.

9. Safety Net

- A. The Agency shall maintain PALM functionality so that an examiner's performance may be calculated under the count system in effect at the end of FY 2009.
- B. When the need to make performance determinations arises, (e.g. annual performance ratings, performance actions, promotions, WIGIs, award eligibility, and determinations regarding the retention or non-retention of probationary or trial period examiners), a "safety net" shall be applied, under which the examiner's production shall be calculated using both the count system in effect at the end of FY 2009 and the prevailing count system(s), except as described in D., below. The best result for the employee will be used to determine the production goal achievement element in the PAP and/or to inform probationary or trial period retention decisions.
- C. The safety net will be maintained for the duration of this Agreement and will also apply to performance determinations, such as those listed in B above, after the agreement is terminated or expires, provided that the performance determination is related at least in part to the examiner's performance during the duration of this Agreement.
- D. For the duration of the safety net, to evaluate production for all purposes (including evaluation of compliance with last chance agreements) other than performance actions, the Agency will evaluate an examiner's performance for the period at issue under (a) the count system in effect at the end of FY 2009, and (b) the prevailing count system(s), and use the better of the two results for determining the employee's production. For the duration of the safety net, to evaluate production for performance actions, the Agency will evaluate an examiner's performance for the entire period at issue under (a) the count system in effect at the end of FY 2009, and (b) the count system set forth in this Agreement, and use the better of the two results for determining the employee's production.
- E. Situations not specifically addressed above that are relevant to the impacts of the new count system will be jointly addressed with the goal being to reach a reasonable decision in an expedient manner.

10. Duration of the Agreement

The Agreement shall remain in effect until the end of FY 2010. If the Agreement is not extended or modified by mutual agreement, all working conditions set forth as part of the Package shall return to their status prior to implementation of this Agreement.

The parties shall commence meeting no later than August 1, 2010 to determine if the Agreement will lapse or be continued for an agreed period of time. By September 1, 2010, employees will be notified of the status of the Agreement.

11. Termination for the Proper Functioning of the Agency during the Term of the MOU

If the Agency determines that it must terminate any aspect of the Package (as defined in numeral 3 above) for the proper functioning of the Agency, the entirety of the Package shall be terminated unless the parties reach agreement on an alternative prior to the date of termination.

If the Agency determines that it must terminate the Package prior to the expiration of the Agreement, the Agency will provide the union with at least two weeks notice including a brief statement of the reasons for termination. During that time, the parties shall meet to determine if the Package can be modified to avoid termination.

In the case of termination, all working conditions changed as a result of the Package shall return to their status immediately prior to implementation of this Agreement. Upon notification of termination, the Union will have ten days to request post-implementation negotiations over the termination.

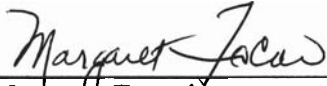
12. Termination upon Modification or Revocation of Memorandum on Revision of Examiner Expectancies

On November 3, 2009, Deputy Commissioner for Patents Peggy Focarino issued a memorandum titled "Change to Patent Examiners' Expectancies." The Union agrees that any bargaining obligations stemming from that memorandum have been satisfied.

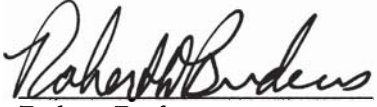
The "Change to Patent Examiners' Expectancies" memorandum is separate from the Package, except that if that memorandum is modified or terminated before September 30, 2010, then – at the Union's election – all components of the Package will terminate and all working conditions set forth as part of the Package shall automatically return to their status prior to implementation of this Agreement.

Termination of the Package, whether due to expiration or for the proper functioning of the Agency, does not require the Agency to modify or terminate the "Change to Patent Examiners' Expectancies" memorandum. The "Change to Patent Examiners' Expectancies" memorandum will remain in effect unless modified, terminated, or otherwise replaced by a new policy following notice to the Union and the opportunity to bargain.

Signatures:


Margaret Focarino
Deputy Commissioner
for Patents

11/3/09
Date


Robert Budens
President, Patent Office
Professional Association

11/3/2009
Date




UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

Pursuant to 5 U.S.C. § 7114(c), I have reviewed the collective bargaining agreement between the United States Patent and Trademark Office and the Patent Office Professional Association entitled, "MOU Between the United States Patent and Trademark Office and the Patent Office Professional Association Regarding the 2010 Count System Initiatives and Other Initiatives on November 3, 2009," executed on this date.

I have determined that the agreement is in accordance with the provisions of 5 U.S.C. Chapter 71 and other applicable laws, rules, or regulations and, therefore, I approve of the agreement.

 11/3/09
Date

David Kappos

Under Secretary of Commerce for Intellectual
Property and Director, United States Patent and
Trademark Office