

Appendix C
**Agreement On Trial Gainsharing Program
 Between
 The Patent And Trademark Office
 And
 The Patent Office Professional Association**

The PTO and POPA hereby agree to establish a trial gainsharing program, effective October 1, 1988, as follows:

**SECTION 1
 PRODUCTIVITY GAINSHARING AWARDS**

A. Productivity Award

An employee is entitled to a Productivity Gainsharing Award in an amount based upon the percentages listed below of the employee's current base per annum salary as of the end of the award period if an employee performs at the following levels over a complete fiscal year beginning October 1, 1988, or any portion of a subsequent fiscal year as provided for under Section 4A.

1. For patent examiners and patentability review examiners:

Achievement of Goal*	Performance Rated Quality Elements	Amount of Current Base Salary
110%	At least all Fully Successful	1%
110%	At least all Commendable	2%
120%	At least all Fully Successful	3%
120%	At least all Commendable	4%
130%	At least all Fully Successful	5%
130%	At least all Commendable	6%

At least a Fully Successful level of performance in Workflow Management is also required.

2. For classifiers:

Achievement of Goal*	Performance Rated Quality Elements	Amount of Current Base Salary
110%	At least Fully Successful	1%
120%	At least Fully Successful	3%
130%	At least Fully Successful	5%

The classifier's production shall be reduced to a single percentage achievement by creating a weighted average of the percent achievement for all production tasks with the weighting factor being the time spent on each task.

Employees in part 1 and 2 above who have spent at least 1400 hours in a fiscal year performing the functions of the employee's assigned job shall receive the full amount designated above within the appropriate award category. An employee who has spent at least 700 hours in a fiscal year performing the functions of the employee's assigned job shall receive a proportionate amount within the appropriate award category. The proportionate amount shall be the full amount of the appropriate award times the number of hours spent performing the job functions divided by the 1400 hour base. The functions of patent examiner's assigned job are patent examining and examining related activities.

3. For all other members of the bargaining unit:

Total Score Critical and Non-Critical Elements	Amount of Current Base Salary
460-474	1%
475-489	3%
490-500	5%

For the 3%, and 5% awards under 3, the immediate supervisor Must document that the contributions far exceed the minimum requirements for outstanding performance in those areas which affect the Office Pendency and Quality Reinforcement Programs.

An employee in part 3 who has spent at least 1400 hours in a fiscal year performing the functions of the employee's assigned job which directly contribute to the Pendency Reduction and Quality Reinforcement Programs shall receive the full amount designated above

*The percentages set forth above are applicable for employee.,, having no effective QSIs. For employees with effective QSIs, the performance necessary for award consideration are 10, 20 or 30 percentage points above the minimum quantitative achievement necessary to qualify for the employee's most recent effective QSI.

within the appropriate award category. An employee who has spent at least 700 hours in a fiscal year performing the functions of the employee's assigned job which directly contribute to the Pendency Reduction and Quality Reinforcement Programs shall receive a proportionate amount within the appropriate award category. The proportionate amount shall be the full amount of the appropriate award times the number of hours spent performing the job functions divided by the 1400 hour base.

No Productivity Award shall include the hours of an employee's first year in the Patent and Trademark Office.

4. If the award period for a Productivity Award encompasses the date when an employee has received a promotion or a permanent increase in signatory authority, the quantitative achievement required to earn that award shall be the sum of:

1) 110%, 120%, or 130% as appropriate, of the minimum quantitative achievement necessary to qualify for the promotion or permanent increase in signatory authority for the number of pay periods, up to 13, that are both within the award period and prior to that date; and

2) the achievement that would be otherwise necessary for the award during the pay periods that are both outside the 13 pay periods prior to that date and within the award period.

B. Pendency Redtiction Award

In addition to and independent of any Productivity Gainsharing Award under (A) above, patent examiners ~will be entitled to a Pendency Reduction Award in an amount based upon the percentages listed below of the employee's current base per annum salary as of the end of the award period. In addition to the criteria below, the examiner must perform at a level of at least Fully Successful in the Production Goal Achievement and Quality elements over a period of two consecutive quarters beginning October 1, 1988. In the Workflow Management element, in addition to the criteria set forth below, no more than nine (9) subtraction points may be lost during the two consecutive quarter period.

1. For the 1st and 2nd Quarters of FY 1989:

<u>Pendency Reduction Award</u>	<u>Amount of Current Base Salary</u>
All examiner's answers and responses to amendments replying to non-final Office actions are completed and submitted for credit within one month of their receipt by the examiner.	1%

All typed Office communications are mailed within 15 calendar days from the submission for credit by the examiner.

The new case having the oldest actual filing date is completed and submitted for credit each pay period.

2. For the 2nd and 3rd Quarters of FY 1989:

<u>Pendency Reduction Award</u>	<u>Amount of Current Base Salary</u>
Same as above	0.75%

3. Each subsequent two consecutive quarters beginning with the 3rd Quarter of FY 1989:

<u>Pendency Reduction Award</u>	<u>Amount of Current Base Salary</u>
Same as above	0.5%

However, no Quarter may be used to justify more than one of the above Pendency Reduction awards.

A patent examiner who has spent at least 700 hours during two consecutive quarters performing the functions of the examiner's assigned job shall receive the full amount designated above within the appropriate award category. A patent examiner who has spent at least 350 hours during two consecutive quarters performing the functions of the examiner's assigned job shall receive a proportionate amount within the appropriate award category. The proportionate amount shall be the full amount of the appropriate award times the number of hours spent performing the job functions divided by the 700 hour base. The functions of a patent examiner's job are patent examining and examining related activities.

No Pendency Award shall include the hours of the employee's first year in the Patent and Trademark Office or the first quarter after the completion of a four month or longer detail.

**SECTION 2
IMPLEMENTATION PROCEDURES**

A. Awards granted pursuant to this Agreement shall be in addition to and independent of any benefit conferred by the parties' June 27, 1983 Agreement on Awards, which has been incorporated into the parties 1986 Basic Agreement.

B. A written explanation of the reasons for denial of any award and/or any recognition level required for an award under this Program shall be given to the employee upon his/her request.

C. In determining whether an employee has sufficient quantity to earn a Productivity Award and in determining the number of hours spent performing the functions of the employee's job, some or all of the hours the employee worked overtime may be subtracted from the total number of hours spent performing the functions of the employee's job during the award period. When a patent examiner has overtime hours subtracted, a number of BDs equal to the number of subtracted overtime hours divided by the examiner's H/BD goal will be subtracted from the total BDs achieved during the award period. When a classifier has overtime hours subtracted, an analogous computation will be made. The overtime subtraction provision contained herein is not applicable to the Pendency Award.

D. Awards will be submitted and forwarded to payroll within two months of the end of the award period.

E. For the purpose of this Agreement, productivity, quality and workflow performance elements and standards are those defined in the October 30, 1986 PAP, regardless of the outcome of the litigation pending before Arbitrator Bloch. The use of the 1986 PAP in this Agreement shall not be used as evidence of the fairness, reasonableness or desirability of using the 1986 PAP for other performance determinations. Accordingly, the PTO shall be barred from introducing this Agreement or any information regarding this Agreement in the pending litigation before Arbitrator Bloch, any litigation arising out of Mr. Bloch's award (including enforcement proceedings), any FSIP proceedings or interest arbitration arising from or replacing the current performance appraisal negotiations and any future litigation arising therefrom or the outcome therefrom, unless explicit written permission is granted by POPA.

SECTION 3 DURATION

The Program shall remain in effect for a period of three years from its creation, Subject to the availability of funds and a determination after October 1, 1989 or at anytime thereafter, by the Office with approval by the Department of Commerce, of the continuing exigencies and the effectiveness of the Program in dealing with the exigencies. If the Office determines that the exigent circumstances no longer exist, or that the Awards Program is not effective in combating the exigencies, or that funding is not available, the Program may be terminated on or after October 1, 1989 subject to the provisions of Section 4.

SECTION 4 TERMINATION PROCEDURES

A. Upon providing notice of termination to the members of the bargaining unit, the Trial Gainsharing Program shall terminate at the end of the fiscal quarter in which notice is given. Eligibility standards and award amounts shall be prorated relative to a yearly basis depending on the quarter in which termination is effective.

B. When PTO terminates the Program, it will provide notice to POPA. POPA will be given an opportunity to bargain over the impact resulting from termination of the Program. This will not affect PTO's right to terminate the Program as of October 1, 1989 or at the end of any quarter thereafter. The right to notice and to negotiate over impact will not preclude the PTO from terminating the Program at the end of any quarter after September 30, 1989.

C. If a decision is made to terminate, PTO will provide POPA with available Program cost information and available productivity and pendency data for the period in which the Program was in effect.

FOR: Patent Office Professional Association

/s/ Ronald J. Stern

Ronald J. Stern, President

October 6, 1988

Date

FOR: Patent and Trademark Office

/s/ James E. Denny for

Donald J. Quigg, Assistant Secretary and Commissioner
of Patents and Trademarks

October 6, 1988

Date