

# **Agreement on Initiatives for a New Millennium Between The United States Patent and Trademark Office and The Patent Office Professional Association**

The parties agree to the following provisions subject to approval by OPM of the special pay schedule set forth in Section A.1. below. This entire agreement shall not be effective unless OPM approves the special pay schedule in accordance with Section A.3. below. The parties, through the Automation Workgroup, will continue to discuss all automation topics that they were previously expected to discuss except for those explicitly dealt with below. The Patent Work at Home (PWH) workgroup will also continue to discuss issues not addressed herein. No partnership recommendations shall be inconsistent with the agreements made below.

## **A. UNIFORM SPECIAL PAY SCHEDULE**

1. The USPTO shall request approval from OPM for a uniform special pay schedule for GS 1220, 1222, 1223, 1224, 1226 series employees which shall provide:
  - a. For grades 5-7, a 10% salary increase over the January 2001 special pay rate scale No. 576,
  - b. For grade 9, a 15% salary increase over the January 2001 special pay rate scale No. 576,
  - c. For grade 11, a 15% salary increase over the January 2001 General Schedule pay scale for the Washington-Baltimore locality,
  - d. For grades 12-15, a 10% salary increase over the January 2001 General Schedule pay scale for Washington-Baltimore locality,
  - e. For the newly established special pay rate, USPTO shall request OPM to establish a GS10 special pay rate for the purposes of computing overtime pay only. The USPTO shall recommend that the GS10 step 1 be set at a level halfway in between the GS 9 step 1 and GS 11 step 1 rate.
  - f. Pay shall be subject to statutory limitations.
2. The USPTO shall request OPM approval for the next five years to increase the special pay schedule so as to maintain the 10% and 15% salary differentials relative to the updated GS rates, in a manner consistent with OPM regulations. If OPM refuses the request, the Agency shall enter into discussions with POPA in order to provide substantially equivalent alternatives.
3. The USPTO will specifically request that OPM either approve or disapprove the entire request for special pay set forth in Section 1 above. Additionally the USPTO will make it clear in its request that if OPM cannot approve the entire 1224 series, the request is withdrawn. If OPM still disapproves any part of the 1224 series, the entire agreement will not be implemented. If OPM approves the 1224 series but disapproves the special pay rate for any of the 1220, 1222, 1223 and/or 1226 series, the agreement will not apply to those disapproved series, and the parties will discuss alternatives and compensate for impacts.

4. USPTO will continue to publish and use objective criteria for superior qualification appointments for new employees.
5. For employees affected by an unintended pay inversion caused by the move to the new uniform special pay schedule, (e.g. those currently on the complex biotech scale), the USPTO will provide each employee an opportunity to avoid the pay inversion if at all possible.

## **B. PAPER SEARCH FILES REDUCTION**

1. Management and POPA will jointly develop a prioritized list of classes/dockets for U.S. paper documents removal using the following criteria, in order:
  - a. Classes in which 5 or fewer patents have issued in each of the last two years (excluding cross reference collection classes);
  - b. Classes in which 5 or fewer newly filed applications have been classified and examined in each of the last two years;
  - c. Classes/dockets in which all the examiners who examine therein voluntarily agree to have the paper files removed;
  - d. Classes, or portions of classes (dockets), identified by the examiners to whom they are assigned, where all the examiners have indicated that the paper files are unnecessary, as indicated by the Automation Census. The results of the Automation Census should be confirmed by comparison with statistics on refiling of paper patents in particular areas;
  - e. Classes, or portions of classes (dockets) identified by the examiners to whom they are assigned, where a majority of the examiners have indicated that the paper files are unnecessary, as indicated by the Automation Census;
  - f. Classes in which 15 or fewer patents have issued in each of the last two years (excluding cross reference collection classes);
  - g. Classes in which 15 or fewer newly filed applications have been classified and examined in each of the last two years;
  - h. Classes in areas where refiling of paper patents indicates a low level of usage of the paper files.
2. An examiner will be considered to examine applications in a particular area for the purpose of items 1(c), (d), and (e) if at least 25% of the new applications on the examiner's docket in a year are classified in that area.

3. With respect to docket areas identified in items 1(e) and 1(h), examiners who are in the minority with respect to retention of their paper search files will be consulted jointly by POPA and management in order to determine ways to facilitate removal of paper files. The Office will consider voluntary adjustment of the examiner's docket or voluntary transfer to a different art.
4. When possible, the Office will provide accommodations for employees who cannot make the transition from paper files searching to electronic searching, such as transfers to a different art area or job, or assignment of other duties. Such employees when applying for other jobs in the USPTO will get priority consideration. An employee will be considered to be unable to make the transition if the employee's performance drops to below fully successful within one year of the removal of the paper search files.
5. The classes or portions of classes to be removed in any year will be **identified** according to the following schedule:
  - a. first group by implementation date of this agreement,
  - b. second group by implementation date of this agreement or February 28, 2001, whichever is later,
  - c. third group by October 1, 2002.
6. The number of paper patent copies to be removed each year will be determined based on the total number of U.S. patents and the total number of cross reference copies of U.S. patents. The schedule for removal will be as follows:
  - a. 25% of the total original and cross reference patent copies as of January 1, 2001, by the end of calendar year 2001. If the Automation Census unanimously supports more than 25%, then more can be removed in the first year.
  - b. one third of the total number of remaining original and cross reference patent copies as of January 1, 2001, by the end of calendar year 2002, but not exceeding 50% of the original total.
  - c. one half of the total number of remaining original and cross reference patent copies by the end of calendar year 2003, but not exceeding 75% of the original total.

The actual number of search files removed will be approximate, based on the sizes of the classes or portions of classes to be removed.
7. Examiners will be given at least three months prior notice of the intended removal of the paper search files in their docket area, in order to allow them to take advantage of training and to transition to the use of automated search tools.

8. Prior to the third year, in addition to the criteria set forth in item B.1. above, an evaluation of the removal and further data to be gathered will be considered when selecting which files may be removed.
9. In 2001 and 2002, pre-grant publications will be placed in the 50% of the examiner search files which will not be removed in those two years. The classes where the pre-grant publications will be included in the paper files will be identified preferably by February 28, 2001.
10. At the time the U.S. patent paper files are removed from any area, examiners in that area will be offered a full three-tier shoe case in good condition which will be moved into their office. The examiners may retain in their office as many of the U.S. patent paper files as they can store in that or other appropriate furniture in their office.

In case of conflict between examiners as to documents to be retained, priority shall be based on seniority, as defined in the Ross Award, on the basis of the number of years that the particular art area has been a part of the examiner's assigned dockets.

Foreign patent documents and non-patent literature now available in the paper search files will not be removed unless they are available via automated search tools by U.S. classification. Management will meet and consult with all primary examiners in an art concerning the usefulness of maintaining foreign and non-patent literature now available in the paper search files. When a consensus is reached that documents are out of date or easily findable electronically, they will be removed. As part of this process, primary examiners may select and move U.S. patents, foreign patents and non-patent literature they would like to retain into their rooms.

11. The automated search systems will include mechanisms whereby an examiner will have the ability to add additional cross references and to change the classification of incorrectly classified documents from the desktop. This capability will be provided within one year of the effective date of this agreement.
12. The U.S. classification system will be maintained, including reclassification. Priority for reclassification will be given in areas where the nature of the art is such that text searching is least effective, and in areas of emerging technologies. Examiners will be encouraged to participate in reclassification projects.
13. The Office will continue to maintain and provide support services for use of the paper search files, until all paper search files are removed. Maintenance and support for remaining paper search files will continue at the current level, with the addition of pre-grant publication documents in accordance with section B.9. above.

## C. EQUIPMENT

1. As paper files are removed, the goal is to provide high speed printers and monitor upgrades to the examiners losing their files prior to the removal of the paper files. The Office will provide these upgrades to all affected examiners at least three months before the actual removal of the paper files except in FY'01, when the equipment should be provided as long as possible before the removal of the paper files. Either or both of the monitor and printer can be refused by the examiner in favor of existing equipment. A refusal at one time will not preclude the examiner requesting the equipment later and receiving it in a reasonable amount of time.
2. Monitors:
  - a. New monitors will be distributed to one third of the examining corps in each of the next three years. The distribution will parallel the removal of paper files. However, if the number of monitors falls short of the number of examiners whose paper files are removed, distribution will be by seniority, as defined in the Ross award, to those examiners whose files are being removed. If there is a shortfall in any year, those employees who do not receive a new monitor will be first in priority to receive one the following year.
  - b. The desired display will produce at least a full page image. A "full page" is defined as the equivalent useful, simultaneously readable information on a comparable front page, drawing, or text pages in a printed patent as they exist in the year 2000. More specifically, in view of current technology and database conditions, the outcome desired is a high contrast, bright display with minimal flicker (high refresh rate or continuous image) and high resolution that allows the user to easily read a scanned image of text at approximately 1.25 X magnification of an 8.5 x 11 inch sheet of paper. The resolution will preferably be capable of at least 1200 pixels horizontally and 1600 vertically. This means there are on the order of 150 pixels per inch of original document. Higher resolutions are usually preferable, depending on the technology.
  - c. Annually, the Office will obtain the latest full page monitors for evaluation purposes. USPTO will provide a rough framework of available budget for the monitors, so that POPA can understand what the realistic choices are. POPA will be allowed to access the evaluation models (including the models described above and models previously acquired and demonstrated by USPTO) and to confer with examiners to decide on preferred configurations.
  - d. The Office and POPA will work together on requirements for a contract that will provide a monitor that is acceptable to examiners to perform the work of the Office. The requirements will be designed to fit currently available off-the-shelf technology. If practicable and mutually agreeable, the Office will provide choices to individual examiners to select a monitor.

- e. A sufficient number of existing monitors will be saved and not surplus to ensure a backup supply of replacement monitors.
3. Printers:
- a. New printers will be distributed to one third of the examining corps in each of the next three years. The distribution will parallel the removal of paper files. However, if the number of printers falls short of the number of examiners whose paper files are removed, distribution will be by seniority, as defined in the Ross award, to those examiners whose files are being removed. If there is a shortfall in any year, those employees who do not receive a printer will be first in priority to receive one the following year.
  - b. In fiscal year 2001, the Office will provide 17 ppm or faster laser printers, capable of reproducing at 600 dpi, with reasonably quiet operation, high capacity sheet feeder(s) (i.e. > 400 pgs). For future years, the parties will work together to evaluate improved printers (e.g. 24 ppm).
  - c. High speed group printers will be maintained at least at the current level for the first year the paper files are removed. Increase and decrease of usage will be evaluated. Group printers which break and are not cost effective to fix will not be fixed. At least one group printer will be maintained on every floor. Either party may revisit this issue in preparation for the relocation to Carlyle.

#### **D. SEARCH SYSTEM TRAINING**

1. Employees will be able to take overview training on the array of available automated search tools, and how those search tools will help the examiner work efficiently.
2. An employee may take and retake, or take 2 different level courses in any automated search tool and any new versions thereof, e.g. EAST, WEST, CAS STN/EXP. This training will not be part of the employee's discretionary training account.
3. The year an employee's paper files are removed, 6 hours of one-on-one consultation with an ITRP (Information Technology Research Provider) will be provided. The consultation will not be part of the employee's discretionary training account.
4. Safety Net: If an employee's SPE verifies that the employee is predominantly a paper files searcher, and the employee makes a bona fide attempt to make the transition to electronic searching when paper files are removed, the employee will not be subject to an oral warning or other performance based action based on the production element of the PAP for either of the 2 quarters after the paper files are removed.
5. A POPA representative will be invited to work with the training developer and give input on each course. POPA will be invited to the training pilot and have an opportunity to provide comments in response.

6. To the extent possible, courses will be listed by instructor.

## **E. TOOLS DEVELOPMENT**

### 1. Automation Briefings

- a. In order to gain user input on planned development of automated tools and selection of new hardware for desktop workstations, the USPTO will hold an annual Automation Briefing, which will be held in the first quarter of each fiscal year. This meeting will provide an overview of projects currently underway and projects to be undertaken over the next five years. Particular emphasis will be placed on current projects needing immediate guidance related to a development or implementation phase, on projects being initiated in the near term (e.g. one year or less), and projects which must be budgeted for in the upcoming budgeting cycle.
- b. The Automation Briefing will include representatives from SIRA and Patents Management. The POPA Executive Committee will be invited to attend.
- c. POPA will be notified approximately one month in advance of the date and time of the Automation Briefing. POPA may provide to management a list of topics of concern related to automation at least 2 weeks before the meeting to assist in formulating a comprehensive agenda. An agenda with related informational attachments will be provided by management to all participants at least 5 business days prior to the meeting.

While it is understood that plans can and do change, the USPTO will present the best information available to management at the time of the meeting for the projects on the meeting's agenda, and its best estimate of their long range automation plans.

The information presented at the meeting will encompass all automation projects which impact POPA bargaining unit members. This information will include but is not limited to topics such as anticipated resources for the projects, anticipated and/or potential problems which may have to be overcome during the projects, and estimated time frames for the projects. To the extent possible, management will include specific information on plans for gathering user input on projects (e.g. planned focus groups, beta tests, etc.), and on the training plans required by new automated tools.

The USPTO will explain the various projects, and the rationale behind them. To aid in establishing priorities, POPA will provide input on the importance of various projects to users within the overall automation context presented by management. POPA may also identify additional projects which they feel would aid in supporting user's work processes.

- d. Within three weeks after the Automation Briefing, POPA will have the opportunity to submit written comments and recommendations to a designated management official, including rationales, benefits, and basic user requirements. These comments will also be distributed to all participants in the Automation Briefing.

Within two weeks of the receipt of POPA's written comments, a written response by USPTO will be provided to POPA. The purpose of the written response is to inform the participants about the decisions made by the USPTO with respect to the comments and recommendations provided by POPA, and the reasons for those decisions. A second meeting of all participants will be held if appropriate. A second meeting will be appropriate if the decisions of the USPTO are in substantial conflict with POPA's written comments and recommendations. It is understood that circumstances may require a change in these plans, and changes will be explained by the normal avenues of communications between labor and management, for example at JLM meetings and Automation Partnership Working Group meetings.

- e. As a follow up to the annual Automation Briefing, a semi-annual meeting will be held. The attendees at the semi-annual meeting will depend on the topics to be covered, but may include all those who participated in the annual meeting. Potential topics for discussion at semi-annual meetings include changes in the plans discussed at the annual meeting, further feedback on POPA's comments on the annual meeting, more in-depth discussions of specific automation project plans, or other topics or recommendations raised by management or POPA.
- f. POPA will be notified approximately one month in advance of the date and time of the semi-annual Automation Briefings. POPA may provide to management a list of topics of concern related to automation at least 2 weeks before the meeting to assist in formulating a comprehensive agenda. An agenda with related informational attachments will be provided by management to all participants at least 5 business days prior to the meeting.
- g. Time spent by participants in all Automation Briefings, in preparation for those meetings, and in responding to those meetings, will be treated as partnership time.

## 2. Tools Development/Hardware Selection Projects

- a. For each project identified at an Automation Briefing, POPA will appoint an appropriate number of POPA representative(s) who will be advisors to the project development team. Generally there will be two POPA representatives assigned to any project. Before members of the project team are selected, the POPA representatives will be identified. The POPA representatives' primary roles are to insure that user input is considered when decisions are made, to identify how a particular project will impact users, to provide input into the development or selection process on how to minimize negative impacts on users, and to attempt to resolve labor relations issues which arise due to the project.
- b. The POPA representatives will be responsible for referring these issues to the project manager. Those issues that are not resolved through the development process will be referred to an impacts resolution mechanism. The POPA representatives may participate in the project.

- c. The POPA representatives (but not to exceed two) will be invited as observers to the TRB (Technical Review Board) at all meetings thereof concerning the project to which they are assigned.
- d. For each project identified at an Automation Briefing, management will consider nominations from POPA of individuals to participate on the project team. To the extent possible, POPA will nominate bargaining unit members who are among those who will be impacted by a particular project, and who have particular knowledge or skills which would be valuable to the project.
- e. In many projects, work will be less than full-time. In both full-time and part time instances, time spent by the team members on the project team will be considered as examining related time for the purpose of gainsharing and SAA award calculations.

In the instance of very small projects, the POPA representative position and team member positions may both be filled by a single individual.

### 3. Impacts Resolution Mechanism

While it is the intent of the parties that the user representatives will identify and mitigate many of the I&I concerns throughout the project life-cycle, it is recognized that some issues will remain unresolved. Accordingly, an Impacts Resolution Committee (IRC) will be established to resolve outstanding issues related to a particular project. Each IRC will be limited to three members of POPA and three members from Patents Management.

The goal of each IRC is to attempt to avoid or minimize all remaining I&I issues. Any issues which cannot be resolved through an IRC two months prior to planned implementation will be subject to traditional I&I bargaining.

### 4. Additional User Input

In addition to the opportunities listed above, users will continue to be asked for input via a variety of evaluation vehicles such as focus sessions, surveys, round-table discussions, and beta-tests. POPA will be invited to participate in development of focus sessions, surveys, and roundtable discussion, and will be permitted to participate in these activities. Time spent in these activities by employees will be considered as examining related time for the purpose of gainsharing and SAA award calculations. In each instance, participants and POPA will be provided with the respective results as soon as reasonably possible.

With respect to beta-tests, each beta-tester will be provided with guidelines for participation prior to providing any input. These guidelines would include at a minimum, the specific goals, expectations, and objectives of the beta-test, details for providing feedback, training as appropriate and the mechanism to report system bugs and problems. The training may include training on the tool being tested, and beta testing procedures.

## F. DOWN TIME AND ARRANGEMENTS

1. Examiners and classifiers will be encouraged to accurately record time, on their timesheets, in separate and distinct time category(ies) while doing the following:
  - a. Recreating work lost due to failure of either the USPTO network, the employee's desk top workstation, or commercial database access.
  - b. Attempting to correct computer problems, in excess of an initial brief telephone call to the help desk. This time includes, but is not limited to communication with the USPTO help desk and computer specialists (e.g. when help desk personnel remotely controls the employee's workstation).
  - c. Waiting due to degraded performance or other work slow downs of the automated systems which disrupt normal work flow.
  - d. Waiting due to an inability to perform work due to failure of the network, employee's desktop workstation, or commercial databases, including when the employee's workstation loses search capability but still functions as a word processor, once the employee runs out of reasonable alternative work that can be readily performed.

Such time may be accumulated so as to provide an accounting in whole hour increments.

2. In the event of the failure of a desktop workstation, the employee generally will not be required to use another employee's workstation, unless circumstances warrant a decision to the contrary.
3. Counting of an application will not be delayed if references are missing due directly to the failure of the USPTO network, group patent printers, commercial database access and/or the examiner's desktop work station.
4. No employee will be charged with negative workflow points or penalized on workflow when work cannot be timely completed due directly to the failure of the USPTO network, group patent printers, commercial database access and/or the employee's desktop work station.
5. Employees will report computer problems/failures to their supervisor in a timely manner.
6. When a problem is reported to the USPTO Help Desk and the employee requests it, the USPTO help desk will immediately provide a problem report identification number (ticket number) for purpose of verification of the employee's problem.
7. The Office will provide prior notification to employees at least 72 hours in advance of all specially scheduled shutdowns of automated systems whenever possible. The Office will provide to employees in advance a schedule of all regularly scheduled shutdowns.

8. The Office shall provide, where practicable and in as expedient a manner as possible, feedback regarding problem resolution to employees who have reported problems with the automated systems.
9. No automation system down time will be scheduled during normal system operating hours (current hours are 5:30-10, Sat & Sun 7:30-5), during the last two biweeks of any fiscal year and last biweek of any quarter. Except for emergency situations, e.g. viruses, no changes to the desktop tools will be made during the last two biweeks of any fiscal year and the last biweek of any quarter.
10. When an employee is away from the worksite, they may call the help desk for the current availability of automated systems.

### **G. CUSTOMER SERVICE INITIATIVE**

1. Management has decided to apply a non-critical performance element of Customer Service to each bargaining unit member who is put on a special pay schedule pursuant to Section A of this agreement. The examiner element is attached and the others will be equivalent. This Customer Service element will be incorporated into the PAP no earlier than the beginning of the third quarter of FY 2001, but in no case earlier than the beginning of the next quarter following the effective date of this agreement. Prior to incorporation, management shall distribute copies of this new performance element to all affected employees, and shall provide a briefing to all affected employees to explain this new performance element.
2. Prior to the Customer Service element being incorporated as a non-critical element of the PAP, the employee will be given a laminated or similarly durable heavy sheet by management listing no more than 50 contact points to which the employee may direct external customers, including a general information number. This sheet will be updated concurrently with each new USPTO Information (telephone) Directory or when any of the numbers change. If the proper contact is not readily discernible by the employee after a brief discussion with the external customer, the employee may give the external customer a general number to request more information.
3. Management
  - a. shall provide assistance (including individual instruction) so that the employee can set up a macro (e.g. hot key, tailored form paragraph) in OACS or other action writing tools to indicate the employee's work schedule in communications to external customers, and
  - b. will investigate means to facilitate the expedient change of a voice mail message from a remote location without requiring speech input and will provide such to employees as soon as practicable.
4. Before an assessment of negative points under this performance element, the employee's supervisor will provide the employee with a written description of the incident in a timely

manner (normally within one biweek of the complaint), and the employee will be afforded the opportunity to respond orally or in writing.

5. In order for a day to qualify in the time periods referenced in this performance element, it must be a regular business day, the employee must have been in normal duty status, and must have been available for a substantial portion of the day.
6. A regular business day is defined as a normal Monday through Friday. This excludes holidays, days during which adjusted work dismissal occurs, days in which the Agency is closed, and days in which employees are excused from duty early. "More than two" is defined as three.
7. Plus/minus points will be tabulated and communicated in writing to the employee on a biweekly basis. There shall be no retroactive debiting of customer service points.
8. "In writing" is a typewritten or word-processed memorandum, a hand-written communication, or e-mail.
9. No "fake" (e.g. from contractor, supervisor, etc.) external customer calls or e-mails will be used against individual employees under any circumstances. No entrapment shall occur.

## **H. WORK AT HOME**

Patents Work at Home (PWH) is a six month pilot work arrangement that allows examiners to work at home during paid work hours to conduct their officially assigned duties. As used herein, "alternative work site" is defined as the location in an employee's home designated by the employee as the location they will use to perform their official USPTO duties.

The Patents Work at Home pilot program has two components – one in which the participant is provided with a fully supported workstation, another in which the participant does not have a fully supported workstation. At least three participants per technology center will have a fully supported workstation. The USPTO will work in partnership with POPA to provide hardware and/or software so that other participants in the pilot will have access to Actionwriter or OACS, whichever is used by the employee at the Office, while working at home. Selection of the hardware and/or software to provide access to Actionwriter or OACS to other participants working at home will be developed within one month of the effective date of the special pay rate.

### **a. Implementation Procedures**

1. Examiners will be allowed to work from home one day per week (up to 12 hours). At least one of the workdays at home per pay period must be a Monday – Friday. No overtime, comp time, or credit hours may be worked at home during the pilot.
2. Employee participation is voluntary.

3. The pilot will begin within one month of the effective date of the special pay schedule.
4. The first phase of the program will be for 6 months. The number of participants to begin the program will be 10% of Primary Examiners and GS-14 Classifiers per Technology Center, unless there are not enough volunteers, and 10% of GS-14 and above employees in other units within Patents (e.g. PCT, Special Program Law Office), unless there are not enough volunteers. Unless significant problems have been identified, after six months, the number of participants on the program will increase to 15% of the Primary Examiners and GS-14 Classifiers per Technology Center, unless there are not enough volunteers, and 15% of GS-14 and above employees in other units within Patents, unless there are not enough volunteers. A pilot program for non-patents POPA bargaining unit employees will be developed to commence six months after commencement of the pilot in Patents.

Within each Technology Center or other unit within Patents, priority of selection to be a participant shall be determined first by the grade of the employee, and finally by the amount of time served in the employee's current and previous higher grades (as in the case of downgraded employees) while an employee of the USPTO.

5. Prior to commencement of the pilot program, management will provide POPA with the names of all employees participating in the program. Management will promptly notify POPA of any vacancies.
6. Participants in the PWH program are required to:
  - have Full Signatory Authority (or be a GS-14 classifier)
  - work a full time work schedule during the pilot.
  - be performing at least at Fully Successful in the current rating of record and for an employee's cumulative most recent four full quarters of work.
7. Participants in the fully supported workstation portion of the PWH program must have DSL service available to their home.

b. Equipment & Files

1. Participants will work from USPTO applications. For the purposes of this program, employees will be permitted to remove USPTO applications from the office in order to perform their officially assigned duties at home. The participant is responsible for the transportation of the application to and from home.
2. USPTO will provide the fully supported workstation equipment used in the fully supported workstation component of the pilot program.
3. The USPTO maintains ownership and control of any and all hardware, software, telecommunication equipment and data used in the fully supported workstation

component of the program. Repair and maintenance of all government-owned equipment placed in a participant's home is the responsibility of the USPTO.

4. USPTO will provide telephone calling cards to cover the cost of long distance business related phone calls.
5. For full or partial equipment failure, lost work (catastrophic time), computer slowdown when using high speed access, training, and installation, participants will be treated the same as employees working on-site at the USPTO; however, it is recognized that the participants may be more limited in the ability to perform alternative work during these interruptions.
6. All USPTO owned equipment is for official use. Use of the equipment for private purposes are prohibited except as permitted by USPTO.

c. Rights & Responsibilities

1. Participation in the six month pilot of PWH will not change the conditions of employment established by past practices, law, rule, regulation and any previous agreements except as specified in the agreement and the guidelines.
2. Employees participating in the PWH pilot program will have their performance evaluated under the criteria set out in the PAP.
3. Participants must commit to the program for a period of at least 6 months. Participation in the program may be terminated after the 6 months or under exigent circumstances.
4. For the six month pilot period, when working at home, the examiner must perform patent examining functions and related activities, as per the Gainsharing agreement.
5. Participants that are renters are responsible for ensuring that their lease allows the installation of all the necessary equipment and lines for the pilot.
6. The participant is responsible to ensure that they comply with all local laws or rules governing an office in their home.

d. Pilot Program Evaluation

The USPTO and POPA agree to meet on a periodic basis at least every six months to assess the progress of the program, address any questions and/or concerns that arise from the implementation of PWH and discuss needed changes.

After the first phase of the program is completed (6 months), there will be a 30-day evaluation period conducted by the USPTO and POPA in partnership to assess the progress made to date.

During this period, the program will be evaluated on, but not limited to:

- Cost Effectiveness/ Organizational Costs
- Employee Satisfaction
- Customer Service
- Performance (Organizational and Individual)

USPTO and POPA agree to provide each other with all studies, evaluations, agreements, surveys, questionnaires, etc. that they develop related to PWH, contemporaneously with the issuance of such materials.

e. Distribution of PWH Agreement

1. Prior to the commencement of the pilot, an announcement will be placed on the “What’s New” e-mail and intranet page with appropriate links to a copy of this agreement and any other program guidelines developed, and an application including a complete set of instructions of how to apply for the pilot program. This information will also be disseminated through the chain of command. Enrollment in the program will be ongoing as long as openings are available.
2. USPTO will provide written notification to all employees that file an application for the program of their acceptance or non-acceptance.

f. Guidelines for PWH

1. In general
  - a. Participants are reminded that all standards governing ethical behavior and confidentiality remain in effect regardless of where or when the official duties of the USPTO are performed.
  - b. Participants will apply approved safeguards to protect all USPTO records and data from unauthorized disclosure, access, damage, or destruction and will comply with the Privacy Act requirements.
  - c. Employees must designate a room or location in their home which will be their alternative work site for placement and use of the equipment for the PWH program.
  - d. Employees will be required to complete a self-certification of the safety of their alternative work site within their home.
  - e. Employees will be the property custodians for all USPTO-owned equipment placed in their home.

2. Participants must notify their supervisors by appropriate means prior to beginning a workday at home.
3. Where a participant finds it necessary to report to the official duty station on a day on which the participant normally works at home, the participant may adjust their work schedule to choose another day on which to work at home. Changes to the schedule should be communicated to management in a reasonable manner, which may include voice messaging and e-mail among others.
4. Employees will be given advance notice of two USPTO business days for all meetings, legal lectures, training, or other events that require their attendance at the USPTO.
5. Where the USPTO has an unusual need for an application that is located at an employee's home, the employee with whom the application is located may be required to provide the application or other requested information to the Office within one USPTO business day. An unusual need for an application is one that does not occur on a regular basis and cannot wait for the employee's scheduled return to the USPTO or be resolved through other means.
6. If a participant is working at home on any day from Monday to Friday, the participant should access voice mail at least once a day during USPTO business hours. If the participant is equipped with a fully supported workstation, the participant will access both voice mail and email at least once a day during USPTO business hours when working at home.
7. Participants will notify their supervisor by appropriate means of the applications they are taking home. When the files are returned, the participant will inform the supervisor by appropriate means.
8. If the program is expanded to permit participants to work additional time at home, participants may be required to share an office so long as participants are only required to come into the workplace two days per week. The USPTO may require those two days to occur Monday through Friday.
9. If the employee is unable to work at home because of equipment failure which the employee discovers during the first two hours of any day's tour of duty, the employee will notify a designated USPTO official as soon as the employee is able to do so. The USPTO may require the employee to report to the official duty station. Transportation time to the official duty station in these circumstances will be treated as time during which an employee cannot access their computer and cannot reasonably perform another task. Alternatively, the employee may request annual leave or may request use of accrued compensatory time rather than report to the official duty station. If the employee chooses to report to the official duty station for reasons other than emergency equipment failure discovered that day, transportation time is the responsibility of the employee and will not be treated as duty time.

10. If an equipment failure or condition resulting in non-access to necessary equipment occurs after the first two hours of any day's tour of duty at home and renders an employee unable to work for the remainder of that day, management may excuse the remaining portion of the day by granting administrative leave or approving non-production time. Depending on the circumstances, the employee may choose to report to the official duty station for the remainder of the day. Transportation time to the official duty station in these circumstances will be treated as time during which an employee cannot access their computer and cannot reasonably perform another task. If the employee has other work that may be performed without the use of the downed automated systems, the employee is expected to do that work before any non-production time is granted.
11. Repair and maintenance of all government-owned equipment placed in a participant's home is the responsibility of the USPTO.
12. The USPTO will designate an official(s) for the employee to contact to report equipment failures or problems during all work hours (5:30 am-10:00 pm). The employee will report such failures or problems as soon as they are discovered.
13. The USPTO will provide bargaining unit professionals participating in the PWH with supplies equivalent to that provided to non-participating bargaining unit professionals.
14. The Office will provide the necessary equipment to accomplish the duties of the position prior to the employee beginning participation in the PWH. The USPTO is not responsible for any utility cost, heating, or lighting at the alternative work site in the employee's home. The USPTO will not be responsible for any re-wiring, updating, or improvements necessary to bring the electrical connections in an employee's home up to the required standards for PWH.
15. Except for an employee's chain of command and those who require the information for installation and repair of USPTO owned equipment located in the employee's home, the USPTO will ensure that an employee's address and telephone number is not divulged to other USPTO personnel or members of the public without the employee's prior consent.
16. The participant agrees to maintain reasonable care of all USPTO-owned equipment. The Office acts as the insurer for damage, theft or other loss (e.g. fire, flood, etc.) of the Office's equipment.
17. The employee is covered under the Federal Employee's Compensation Act if injured in the course of actually performing official duties at home. If so injured, the employee will notify the supervisor or another designated USPTO official as soon as possible (in accordance with FECA).
18. For the six month pilot, the USPTO will investigate all accident and injury reports, following notification, that occur at the alternative work sites within employees' homes.

19. The Government will not be liable for damages to an employee's personal or real property during the course of performance of official duties or while using Government equipment in the employee's residence, except to the extent the Government is held liable by the Federal Tort Claims Acts claims or claims arising under the Military Personnel and Civilian Employees Claims Act.
20. An official electronic USPTO 690E (or equivalent timesheet) will be provided to participants who are provided with a fully supported workstation having capability to communicate electronically with the USPTO. At the end of each biweek, the participant agrees to e-mail the timesheet form to the participant's supervisor. The supervisor will notify the participant via e-mail of any changes made to the electronic timesheet form.
21. Participants provided with a USPTO-owned computer at home agree to use the current Examiner's Electronic Toolkit, as appropriate.
22. The USPTO and POPA agree to continue to work in partnership to develop further guidelines for this program.

### I. MORE EXAMINATION TIME

The USPTO and POPA will jointly develop a proposal to present to the Patent Public Advisory Committee and Congress for increased funding to benefit patent quality, a substantial portion of which shall be used for directly increasing time for examination (substantial means more than a majority).

For the USPTO:

For POPA:

/s/

/s/

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Nicholas P. Godici  
Commissioner for Patents

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Ronald J. Stern  
President, POPA

Date: January 4, 2001

Date: January 4, 2001

For the USPTO and in accordance with 5 U.S.C., Section 7114(c) of the Federal Labor-Management Relations Statute, I have reviewed and approve this agreement.

\_\_\_\_\_/s/\_\_\_\_\_  
Q. Todd Dickinson  
Under Secretary of Commerce for Intellectual Property and  
Director of the United States Patent and Trademark Office

Date: January 4, 2001

## CUSTOMER SERVICE ELEMENT

### NON-CRITICAL

Weighting Factor is **10**. (Weights reflect the amount of time devoted to accomplishing the element and/or its importance. Weight for performance plans must total 100.)

| PAP Weights      | Probationary |          | GS 5-13 |          | Part Sig Auth |          | Full Sig Auth |          |
|------------------|--------------|----------|---------|----------|---------------|----------|---------------|----------|
|                  | CURRENT      | PROPOSED | CURRENT | PROPOSED | CURRENT       | PROPOSED | CURRENT       | PROPOSED |
| PEF              | 90           | 80       | 45      | 35       | 30            | 25       | 10            | 10       |
| Action Taking    |              |          |         |          | 15            | 15       | 15            | 10       |
| Patentability    |              |          |         |          |               |          | 20            | 20       |
| Customer Service |              | 10       |         | 10       |               | 10       |               | 10       |
| Productivity     |              |          | 45      | 45       | 45            | 40       | 45            | 40       |
| Workflow         | 10           | 10       | 10      | 10       | 10            | 10       | 10            | 10       |

Major Activities (Identify activities or results that need to be accomplished in support of the performance element.)

1. Returns phone calls from external customers, generally in one business day.
2. Reviews electronic messages generally at least once every work day, and responds by any appropriate means.
3. Provides external customers with normal schedule information via voice mail if working less than a Monday through Friday schedule.
4. Provides external customers with voice mail notice of extended absences of more than two business days.
5. Directs external customers to appropriate office or person, in accordance with a list provided by Management.

- A) An examiner will start at zero (0) points and will be credited base line points for the rating period as follows:

(Base line rate) x (the number of biweekly periods which have been completed in the rating period) wherein the base line rate is:

- for a rating period of seven (7) biweeks or less + 1.5;
- for a rating period of more than seven (7) biweeks but less than thirteen (13) biweeks + 1.25; and
- for a rating period of thirteen (13) biweeks or more + 1.0.

- B) In each instance set forth below, the designated number of points is added to or subtracted from the base line of points:

## **MINUS POINTS**

1. Subtract 1.0 points for each second and subsequent substantiated instance of failing to return external customer telephone calls on the next regular business day the employee is in the office, unless excused by the supervisor.
2. Subtract 0.2 points for each second and subsequent occurrence of failing to have alternative work schedule on voice mail message;
3. Subtract 0.2 points for each second and subsequent failure to leave an extended absence greeting on voice mail after preplanned absence of more than 2 entire regular business days when known in advance;
4. Subtract 0.2 points for each second and subsequent substantiated instance of failing to review electronic messages generally at least every regular business day.

Before an assessment of negative points under this performance element, the employee's supervisor will provide the employee a written description of the incident in a timely manner normally within 1 biweek of the complaint, and the employee will be afforded the opportunity to respond orally or in writing.

Documents related to and including allegations of failure to comply with any part of this performance element (substantiated or unsubstantiated) are temporary and shall not be kept in the employee record or file for longer than the fiscal year during which such occurred. This does not include documents necessary to complete the rating process until issues surrounding the rating are resolved, or documents in related grievance or arbitration files.

Relative to 2-4, no successive points shall be assessed to the employee unless after written notice the deficiency has not been corrected in a timely manner, In 2 and 4 this is not less than one regular business day thereafter. In 3 it is understood that the subtraction of points shall occur only once per extended absence.

In order for a day to qualify in the time periods referenced herein, it must be a regular business day, the employee must have been in normal duty status, and must have been available for a substantial portion of the day.

A regular business day is defined as a normal Monday through Friday. Such excludes holidays, days in which adjusted work dismissal occurs, days in which the Agency is closed, and days in which employees are excused from duty early. "More than two" is defined as three.

Plus/minus points will be tabulated and communicated in writing to the employee on a biweekly basis. There shall be no retroactive debiting of customer service points.

"In writing" is a typewritten or word-processed memorandum, a hand-written communication, or e-mail.

## **PLUS POINTS**

5. Add 2.0 points per quarter wherein Office actions normally contain notification of the employee's regular or alternative work schedule.
6. Add 2.0 points for each specific unsolicited occurrence of positive recognition of the employee from an external customer for customer service (either orally or in writing). If written, a copy shall be given to the employee and if oral such shall be reduced to writing and a copy given to the employee.
7. Add 2.0 points for each quarter in which most external customer phone calls are answered in less than one regular business day.
8. Add 2.0 points for each quarter in which the employee uses "out-of-office assistant" (or its electronic equivalent) to provide external customers with notice of extended absence of more than two days.
9. Add 2.0 points for each quarter in which the employee responds to most external customer e-mails in the next regular business day or sooner.

In 5, and 7-9, points will be added in the absence of evidence to the contrary, and points will be added on a quarterly basis. Evidence to the contrary shall consist of substantiated complaints from external customers.

### **C) Rating**

Upon completion of the computations set forth above, a rating is assigned by comparing the point total obtained by the examiner with the following:

|                          |   |
|--------------------------|---|
| <u>Outstanding:</u>      | $\geq .92$ x base line points for the rating period under consideration |
| <u>Commendable:</u>      | $\geq .81$ x base line points for the rating period under consideration |
| <u>Fully Successful:</u> | $\geq .58$ x base line points for the rating period under consideration |
| <u>Marginal:</u>         | $\geq .23$ x base line points for the rating period under consideration |
| <u>Unacceptable:</u>     | $< .23$ x base line points for the rating period under consideration    |