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**Commissioner's Corner** - (Aug. 28, 2006)

Last week, I was very happy to announce that the USPTO is petitioning the Office of Personnel Management (OPM) to seek a 7% pay increase for all examiners.



Commissioner for Patents John Doll.

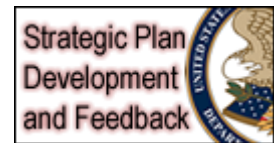
This is a complex process where the Office must justify that patent examiners deserve special pay above what all other federal employees in the same grades are paid.

We are making this request because we truly believe that the challenges facing our patent examiners and the market opportunities available to patent examiners fully justify higher pay than all other similarly situated federal employees. I am very happy to say that POPA has worked with us in preparing this request and has indicated that they will do whatever they can to support our efforts.

In 2001, the Office and POPA entered into an agreement that addressed a number of issues including special pay. Under the Millennium Agreement, beginning in 2002, the Office was to seek annual increases in the special pay rate if it could legally do so in a manner consistent with OPM regulations. We believe this is the first time in the past several years that we have had the appropriate legal basis to make such a request in a manner consistent with OPM regulations. These requests are always rigorously scrutinized by OPM, but we are committed to pursuing this request for additional pay. Quite simply this is the right thing to do!

The same laws and regulations that allow the USPTO to seek the pay increase from the OPM this year have unfortunately not supported such a request in the past several years. This has come as a disappointment to many who believe that the Millennium Agreement *required* the USPTO to maintain the pay increases each year for five years. That interpretation is inconsistent with the law and no agreement between the USPTO and POPA can violate the law.

The USPTO continues to believe that it could not legally and in good faith seek a pay increase in 2003, despite how many have interpreted



the Millennium Agreement. Nonetheless, an arbitrator recently determined that the USPTO violated the Millennium Agreement by not certifying a request for the special pay increase in 2003.

The USPTO believes the arbitrator was simply wrong. In fact, a largely similar decision from a previous arbitrator was found unlawful on appeal to the Federal Labor Relations Authority (FLRA). Consequently, we are filing an appeal to that decision today with the FLRA. We do not believe complying with an arbitration decision that we consider to be unlawful is even an option.

There are some who will interpret this decision to appeal the arbitrator's decision as an unwillingness to pay patent examiners all that is legally appropriate. I say with respect to those people that nothing could be further from the truth.

So, while it is disappointing to me to have to bring to you such a legalistic explanation of a decision the USPTO has made, I think it is important to explain why we made the decision. It is important that you understand my commitment to you and to uphold OPM regulations. And finally, it is important to me to personally deliver to you all of the news, the good and the disappointing, because I respect and care about each of you. I am committed to continuing to keep the lines of communication between us open.

As always, I welcome your feedback on this extremely important issue or any suggestions you would like to share. Please email your comments to the [CommissionersCorner@USPTO.Gov](mailto:CommissionersCorner@USPTO.Gov).

John

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