

Management's Proposals

for

POPA Term Contract

March 1, 2006

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PREFACE

The purpose of this Agreement is to bring certainty and stability to the relationship between the Agency and its employees represented by the Patent Office Professional Association (POPA) as well as the relationship between the Agency and POPA.

This Agreement, including its supplements and attachments, constitutes the complete understanding of the parties.

ARTICLE 1

PARTIES, RECOGNITION, AND REPRESENTATION**Section 1: Parties to the Agreement**

The parties to this Agreement are the United States Patent and Trademark Office (hereinafter "Agency", "Management", "PTO", or "USPTO") and the Patent Office Professional Association, (hereinafter "Union", "Association", or "POPA").

Section 2: Unit of Recognition

The unit of recognition covered by this Agreement is:

Included: All professional employees at PTO other than Trademark professionals.

Excluded: Management officials, employees engaged in Federal personnel work in other than a purely clerical capacity, confidential employees, Trademark professionals, non-professionals and supervisors.

Section 3: Representation

The Agency recognizes the Union as the exclusive representative of all employees in the bargaining unit as defined in Section 2 above. The Union recognizes that it is responsible for representing the interests of all such bargaining unit employees, with respect to grievances, bargaining and working with management regarding personnel policies, practices, or matters affecting their general working conditions without discrimination and without regard to Union membership and in accordance with applicable laws, rules, and regulations.

Section 4: Coverage of Agreement

This Agreement covers only those positions included in the bargaining unit. Where the term "employee" or "employees" is used, it is understood that it includes only bargaining unit employees unless otherwise expressly stated.

ARTICLE 2

PRECEDENCE OF LAW, REGULATION AND OTHER MATERIAL

Section 1: Relationship to Law and Regulations

In the administration of all matters covered by this Agreement, the Agency, the Union and bargaining unit employees are governed by existing and future laws, existing government-wide regulations, and, to the extent not inconsistent with this Agreement, existing and future regulations of the Department of Commerce and the Agency.

ARTICLE 3

DEFINITIONS

When used in this Agreement:

- a. **Days** shall refer to calendar days, with one being the first day following the triggering event (for example, delivery of a notice). If the last day to take an action falls on a Saturday, Sunday, or Federal holiday, the time shall be extended until the next business day as defined in paragraph b below.
- b. **Business Day** shall refer to each Monday through Friday except Federal holidays. Business hours shall run from 8:30 A.M. to 5:00 P.M.
- c. **Employee** shall refer to members of the bargaining unit unless specifically noted in the text.
- d. **Fully Successful Performance** for continued eligibility for overtime and other programs for patent examiners and hybrid examiner/classifiers shall mean: (1) performance during last full quarter was at least fully successful; and (2) during quarters 2-4, year to date achievement (at the end of each biweek) is at least fully successful, unless defined specifically elsewhere with respect to a particular program. For other bargaining unit members, supervisors will determine when the employee's performance has fallen below the fully successful level.
- e. **Reassignment** is the change of an employee, while serving continuously within the same agency, from one position to another without promotion or demotion.
- f. **Realignment** is the movement of an employee and his/her position when (1) a transfer of function or other organization change occurs, and (2) the employee stays in the same agency, and (3) there is no change in the employee's position, grade, or pay.
- g. Reorganization is the planned elimination, addition, or redistribution of functions or duties in an organization.
- h. **Duty hours** shall refer to the hours that an employee is in a paid status and not on any type of approved leave (i.e. annual leave, sick leave, compensatory time off, or credit hours). It includes time when an employee is earning compensatory time off or credit hours.
- i. **Seniority** shall be determined by grade, degree of signatory authority (if applicable), and then service computation date for leave. Ties in seniority shall be broken on a case-by-case basis through random means such as a coin flip or drawing for highest card.
- j. **Official Time** is time used by Union representatives, Union officers, or grievants in accordance with Article 9 of this Agreement in which the employee would otherwise be in a duty status and performing the work of the Agency. Time used must be reasonable. This time is broken into "bank time", which is drawn against a set amount, and nonbank time, which is unlimited.
- k. **Non-production time** refers to time, approved by Management, for which patent examiners and certain other employees need not account for production.

ARTICLE 4

MANAGEMENT RIGHTS**Section 1: Reserved Rights**

Subject to the provisions of 5 U.S.C. 7106 (b)(2) and (b)(3), nothing in this Agreement shall affect the authority of any Management official--

- A. to determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and
- B. in accordance with applicable laws--
 - (1) to hire, assign, direct, layoff, and retain employees in the Agency or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
 - (2) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which Agency operations shall be conducted;
 - (3) with respect to filling positions, to make selections for appointments from among properly ranked and certified candidates for promotion or any other appropriate source; and
 - (4) to take whatever actions may be necessary to carry out the Agency mission during emergencies.

Section 2: Refusal to Bargain Permissive Topics to Impasse

The Agency elects not to bargain to impasse on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work.

Section 3: Reassigning Employees

When Management determines it is appropriate to reassign employees, Management will consider employees' qualifications, and current duties before making the reassignment.

Section 4: Pilot Programs

The Agency may establish pilot programs involving up to 20% of the bargaining unit to test concepts and initiatives for improving the efficiency and effectiveness of the Agency. Such pilots may last for up to two years. Management will consult with POPA before and during any such pilot to allow the Union to make suggestions for reducing potential impact on employees and to help evaluate the pilot program.

ARTICLE 5

MANAGEMENT OBLIGATIONS**Section 1: Notification of Formal Meetings**

Generally, the Agency will provide a minimum of four hours notice to the Union of any formal meeting with bargaining unit members. The Union shall be allowed to send one representative. The representative must introduce him or herself to the management representative conducting the meeting (or the labor relations specialist if one is present), prior to the beginning of the meeting. The Union representative may participate in the meetings by asking questions as appropriate, but may not hinder the progress of the meeting. Union representatives must conduct themselves in a courteous, professional manner.

Section 2: Notification of Rights to Representation in Investigatory Meetings

Annually the Agency will notify bargaining unit members of their right to representation at meetings during an investigation of alleged misconduct when the employee has a reasonable belief that participating in the meeting will result in a disciplinary or adverse action against the employee being directed to participate in the meeting. The notice will be posted electronically. See Article 6, section 1, below.

ARTICLE 6

EMPLOYEE RIGHTS

Section 1: Right to Representation during Investigatory Meetings

- A. When the Agency directs an employee to participate in an investigatory meeting and the employee has a reasonable belief that participation in the meeting will lead to disciplinary action against the employee, the employee may request that a union representative attend the meeting.
- B. This section does not apply to meetings solely concerning the performance of the employee.

Section 2: Right to Form, Join, or Assist Labor Organizations

Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal.

Section 3: Right to Professional, Courteous Treatment

Each supervisor will treat his or her employees fairly and equitably. Supervisors will, however, take into account individual circumstances when dealing with employee issues.

Section 4: Access to Personnel Records

An employee may view his or her Official Personnel Folder (OPF) during business hours at the Office of Human Resources.

ARTICLE 7

EMPLOYEE OBLIGATIONS**Section 1: Knowledge of Law and Policy**

Employees must know and comply with all laws, regulations, and policies that relate to their employment and conduct. The fact that the Agency may not call a particular law, regulation, or policy to an employee's attention will not excuse any violation thereof by the employee.

Section 2: Claiming Non-Production Time

A supervisor must approve all claims for non-production time in advance of the time being used.

Section 3: Emergency Contact Information

Employees must provide emergency contact information, a current mailing address, and a home telephone number to their immediate supervisor and/or other Agency official.

Section 4: Employee Appearance

Employees must maintain a neat and clean appearance for a professional business environment during the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday.

Section 5: Professional Behavior

Employees must conduct themselves with courtesy, proper decorum, and with due respect for the rights of others.

Section 6: Telephone Calls

Employees must return business-related telephone messages within one business day.

Section 7: Extended Absence Message

Employees must create an extended absence outgoing message on their voicemail to notify callers of absences of more than one day from the workplace.

Section 8: Mandatory Use of E-mail

Employees must use the electronic mail (e-mail) system for the purpose of both receiving work related messages and information and for responding to work related inquiries made by electronic mail. Electronic messages must be viewed at least once every day that the employee works. Employees must also recognize the Agency's use of electronic mail for dissemination and issuance of Agency policies and procedures. When an employee expects to be out of the office on a business day, the employee must use the "out-of-office" assistant to indicate the expected schedule.

Section 9: Use of Government Equipment

Employees must comply with Agency policy concerning the use of Government owned equipment such as computers, telephones, fax machines, and copiers, etc.

Section 10: Accuracy of Reporting

Employees must record accurate information on all Agency and business records. Falsification of any Agency records may be the basis for disciplinary and/or adverse action.

Section 11: Children in the Workplace

Children are not allowed in the workplace without prior supervisory approval, other than for occasional brief visits not to exceed 30 minutes and under the supervision of a parent.

Section 12: Automated Reports and Information

Employees may be required to use automated systems to access information such as docket and production reports and to use automated systems for reporting information such as time and attendance.

Section 13: Submission of Work

When work needs to be reviewed before an employee can receive credit for such work, it is the employee's responsibility to submit the work with sufficient time for the supervisor to review the work by the time it is due. Supervisors should inform the employees of the deadline and when they should submit the work so that it can be reviewed.

ARTICLE 8

UNION RIGHTS AND OBLIGATIONS**Section 1: Right to Represent Employees**

In accordance with 5 U.S.C. 7114, and other provisions of this Agreement, the Union shall be afforded the opportunity to be represented at –

- (a) any formal discussion between one or more representatives of the Agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or
- (b) any examination of an employee in the unit by a representative of the Agency in connection with an investigation if – (i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and (ii) the employee requests representation.

Section 2: Right to Bargain

The Union shall have the right to bargain concerning any changes in the conditions of employment of unit members to the extent required by law. Such bargaining shall be conducted in accordance with Article 14 governing bargaining during the term of this Agreement.

Section 3: Maintenance of Relationship and Management Bypass

The parties recognize that a professional, businesslike, and contractual relationship between the Union and the Agency is essential for effective labor management relations. Union representatives shall observe the chain of command in carrying out their representational responsibilities except as otherwise agreed by the parties.

Section 4: Advance Notice before Filing a Unfair Labor Practice

The Union and Management agree to give advance notice of no less than 10 days, of the intent to file an unfair labor practice (ULP) charge with the Federal Labor Relations Authority (FLRA) so as to allow an opportunity for an informal disposition of the matter.

ARTICLE 9

UNION REPRESENTATIVES AND OFFICIAL TIME

Section 1: Recognition of Representatives

The USPTO agrees to recognize representatives designated by the Union in writing. At the beginning of each fiscal year (by October 5), the Union must submit a list of all representatives to the Chief of Labor Relations. The Union may make changes to the list of recognized representatives, but any changes will not be effective until the Agency has been notified in writing. The notice must include the name, phone number and supervisor for each representative.

Section 2: Number of Stewards and Officers

The Agency agrees to recognize one representative for every 200 employees under the Commissioner for Patents as measured at the beginning of the last biweek of the fiscal year for use during the next fiscal year, and one representative each from the Office of the Chief Information Officer and from the Office of the Chief Finance Officer. In addition, the Agency will recognize three officers of the Union. The Agency will notify the Union of the number of employees under the Commissioner for Patents by September 30 of each year.

Section 3: Use of Official Time (General)

In accordance with the provisions of this Agreement, Union representatives and officers may charge appropriate and reasonable official time to time codes provided by Management. Such time codes will be divided between codes that are “nonbank” and “bank” and may be altered as determined by Management.

Section 4: Activities for Which Nonbank Time May Be Used

Nonbank time may be claimed for each of the following activities:

- a. Negotiating with the Agency (excluding preparation time) on topics over which the Agency has a duty to bargain, including participation in proceedings before the Federal Mediation and Conciliation Service and the Federal Service Impasses Panel.
- b. Participation in any activity before the Federal Labor Relations Authority, including Negotiability Appeals, ULP investigations, etc.
- c. Attending meetings initiated by Management.
- d. Any other activity as approved by Management on a case-by-case basis, or as provided by law. Such Management determinations are nonprecedential and may not be appealed.

The time that may be claimed includes the actual time taken for the activity and a reasonable amount of time to travel to the location of the activity. Only one representative may use nonbank time for any activity listed above unless otherwise set forth in this Agreement, provided by law, or as agreed to by Management on a case-by-case, nonprecedential basis. For bargaining sessions, including those before the Federal Mediation and Conciliation Service and the Federal Service Impasses Panel, the Union may have as many representatives as the Agency will have at the table.

Section 5: Bank Time Activities

The Union may use bank time to:

- a. Prepare and present grievances
- b. Participate in arbitration hearings
- c. Prepare for negotiations, including proceedings before the Federal Mediation and Conciliation Service and the Federal Service Impasses Panel
- d. Prepare for any activity before the Federal Labor Relations Authority
- e. Participate in Union initiated meetings with Management.
- f. Represent the Union in formal discussions between Management and bargaining unit members.
- g. Participate as a representative of employees in investigatory interviews where the employees are entitled to, and request, such representation.
- h. Prepare oral and written replies to proposed disciplinary or adverse actions on behalf of employees, whether based on performance or conduct.
- i. Prepare for meetings with Management.
- j. Prepare responses to Management correspondence.
- k. Any other activity approved by Management on a nonprecedential, case-by-case basis.

Such time includes reasonable travel time to engage in the activity.

Section 6: Amount of Bank Time

The Union will be given a bank of 10,000 hours per fiscal year to conduct the activities listed in Section 5 above. Unused time may not be carried over to the next fiscal year.

Section 7: Employee Use of Official Time

Employees may claim official time for grievance presentations and for arbitration. In addition, employees may claim an additional amount of time for preparation as follows:

- a. 1 hour for the initial grievance filing
- b. 1 hour for the second step grievance filing
- c. 2 hours for preparation for arbitration

Section 8: Performance of Job Related Activity

Each representative must spend a minimum of 70% of his or her duty hours in a job-related activity (i.e. not on official time). Officers must spend at least 50% of their duty hours in such activities.

Section 9: Requesting Official Time and Release Procedure

Union representatives and officers, will secure the approval of their immediate supervisors or designee before performing activities on official time. Representatives and officers must request the use of official time by submitting a written request (on a management-approved form) to their immediate supervisor or designee. The form will include the general nature of the activity for which official time is requested, the anticipated amount of time of the activity, the name of at least one manager participating in the activity, or of the employee(s) participating in the activity, if applicable, and the location of the activity. If the activity takes longer than originally

anticipated, the union representative or officer and the employee(s) must contact their respective supervisors for approval to extend the time.

Official time requests will generally be approved, unless work circumstances do not warrant such approval. In the event that a request is disapproved, an alternate time for the activity will be provided, unless the representative or officer is more than 5% below the amount of time required to be spent performing official duties as set forth in this article. Union representatives, officers, and employees must notify their supervisors when they return to the work area.

In addition, Union representatives or officers entering a work area other than their own (for example the organizational boundaries closest to another supervisor) must obtain permission of the supervisor of that area before entering the workspace to conduct union activity.

Section 10: Restriction on Use of Official Time

Official time may not be used for internal Union business. This includes but is not limited to:

- a. Matters pertaining to internal management of the Union;
- b. Soliciting membership;
- c. Collecting dues or assessments;
- d. Campaigning for Union office;
- e. Conducting elections for Union office; and
- f. Preparing, distributing or posting Union literature and notices.

ARTICLE 10**USE OF OFFICIAL FACILITIES AND EQUIPMENT****Section 1: Union Office Space**

The Agency agrees to furnish office space of approximately 450 square feet to the Union to carry out its representational responsibilities. The Union agrees that the space and equipment (as provided for in this article) will not be used for any purpose other than representational activity under Federal labor law and this Agreement. The Union further agrees that the Office of Corporate Services and the Office of the Chief Information Officer will have access to the area for cleaning, safety, and security purposes.

Section 2: Telephones

- A. The Agency will make telephones available to the Union for handling representational duties and conducting labor-management relations activities. The Union will use these phones in a reasonable, prudent, and cost-conscious manner and only for purposes consistent with this Agreement. The Union will reimburse the Agency for any call for which there is a charge by the service provider.
- B. The Union will not install a modem or any other electronic device on any Agency equipment without the specific advance written approval of the Agency's Human Resources Director and the Office of the Chief Information Officer.

Section 3: Equipment

- A. The Union will comply with all Agency computer security policies, software licensing agreements and Agency policies governing employee computer use.
- B. The Union agrees to exercise prudence and responsibility in the use of Agency equipment.

Section 4: Interoffice Mail System

The Union and its representatives may use the interoffice mail system for regular representation communications (e.g., grievances correspondence or memos to Management).

Section 5: E-Mail

- A. Union officers and representatives, while conducting representational activities, are only permitted use of the Agency's e-mail for representational purposes authorized by applicable law and regulation and by this Agreement.
- B. The Union is not permitted to use the e-mail to make general announcements or to send e-mail with over 40 USPTO addressees.
- C. E-mail shall not be used for the conduct of internal Union business, including, but not limited to the solicitation of membership; the collection of dues; or the election of Union officials.

ARTICLE 11

DUES WITHHOLDING**Section 1: Eligibility**

Any bargaining unit employee may have dues deducted through payroll deductions. Such deductions will be discontinued when the employee leaves the unit of recognition, ceases to be a member in good standing of the Union, or submits a timely revocation form under the procedures of this article.

Section 2: Union Responsibilities

- A. The Union agrees to inform management, in writing, of the following:
1. The dues amount(s) or changes in the dues amounts;
 2. The names of the Union officials responsible for certifying each employee's authorization form, the amount of dues to be withheld; and
 3. The name and address of the payee to whom the remittance should be made.
- B. The Union agrees to promptly forward completed and certified dues withholding form(s) to the appropriate administrative office, as designated by Management.

Section 3: Management Responsibilities

It is the responsibility of Management to:

- A. Process voluntary allotments of dues in accordance with this article and in amounts certified by the Union;
- B. Withhold employee dues on a bi-weekly basis; and
- C. Transmit remittance to the official designated by the Union in accordance with this article, as expeditiously as possible at the end of each pay period.

Section 4: Procedures for Withholding

Bargaining unit members wishing to have their dues withheld by payroll deduction will submit their completed and certified SF 1187s to the Agency's Human Resources Office, Labor Relations Branch. If the employee already has the maximum number of allotments that can be processed, the employee will inform the Agency of which allotment to cancel in order to process the allotment for dues withholding. In the event a question exists concerning whether an employee is in the unit of recognition and eligible for payroll deduction of Union dues, the employee's dues will not be withheld until the issue is resolved.

Section 5: Changes in Dues Amount

When there is a change in dues amount, the Union will send a memorandum to the Agency's Human Resources Director, noting the amount of the change. The memorandum must be signed by one of the Union officials designated to certify dues withholding forms. Such changes shall be limited to once per year. A copy of this memorandum must also be delivered to the Chief of Labor Relations Branch and the Director of the Office of Finance.

Section 6: Revocation

Employees may revoke their dues withholding once they have paid dues for a one year period by submitting the appropriate form to the Chief of the Labor Relations Branch.

ARTICLE 12

GRIEVANCE PROCEDURE**Section 1: Definitions**

- A. "Grievance" means any complaint (other than those listed in paragraph B below)-
1. By an employee against the Agency concerning any matter relating to the employment of that employee;
 2. By the Association against the Agency concerning any matter relating to the employment of an employee or employees;
 3. By an employee or the Association against the Agency concerning the effect or interpretation of any agreement between the parties or law, rule or regulation affecting conditions of employment; or
 4. By the Agency against the union.
- B. "Grievance" does not include complaints related to-
1. Any matter excluded by 5 U.S.C. § 7121(c) or any other law;
 2. Any alleged unfair labor practice under 5 U.S.C. Chapter 71;
 3. Termination of probationary employees;
 4. Filling of supervisory positions or other positions outside the bargaining unit;
 5. Any matter which the employee could assert in procedures established under 29 CFR Part 1614 (EEO matters);
 6. Any matter over which the Merit Systems Protection Board has jurisdiction;
 7. Nonselection for promotion from a group of properly ranked and certified candidates;
 8. Warnings or counseling, whether verbal or written;
 9. Written proposed notices of actions which, if effected, would be covered by this procedure or any statutory appeals procedure; or
 10. Denials of Signatory Authority.
- C. "Association Grievance" means any complaint by the Association concerning the effect or interpretation, or a claim of a breach of the provisions of any agreement relating to the rights and benefits that accrue to the Association as the exclusive representative of bargaining unit employees. Grievances on behalf of employees, or that relate to the employment of employees, or that concern any claimed violation, misinterpretation, or misapplication of any law, rule or regulation affecting conditions of employment of employees are not Association Grievances within the meaning of this Agreement.
- D. "Agency Grievance" means any claim by the Agency against the Association concerning any claimed violation of rule, regulation, law or agreement.

Section 2: General Provisions

A. This procedure will be the only procedure available to bargaining unit employees for the processing and disposition of grievances as defined above.

B. The parties agree that the expeditious processing of grievances is beneficial to the Agency and the employees of the bargaining unit. Thus, the parties agree to limit the extensions requested and granted. The parties may, by mutual agreement only, extend any time frame contained within this procedure. The refusal to agree to an extension of the time frames set forth in this agreement will not form the basis of any grievance under this agreement.

C. In accordance with 5 U.S.C. § 7121(b), employees may present grievances on their own behalf. The Association has the right to be present at any meetings that are held during the processing of a grievance presented by an employee on his or her own behalf.

D. When two (2) or more employees file individual grievances involving the same facts, events and issues arising out of the same incident, the grievances may be consolidated and processed through the grievance and arbitration procedure together by mutual agreement of the Association and the Agency on a case-by-base basis.

E. Failure of the grievant or the Association to observe the time limits contained in this procedure, where no extension has been granted, will result in the termination of the grievance.

F. In the event that the Agency fails to abide by the time limits contained in this procedure where no extension has been granted, the grievant, or the Association where the Association has filed the grievance or is representing the grievant, is entitled to elevate the grievance to the next step. If the grievance is not elevated to the next step by fourteen (14) days after the deadline by which the Agency should have issued the relevant decision, then the grievance is terminated.

G. Each party will ensure that its representatives do not submit frivolous grievances or use the grievance procedure as a harassment tactic against the other party.

H. Any meetings held pursuant to this Agreement will be held during business hours at a location of the Agency's choosing.

I. In the event that the defending party asserts that the grievance is procedurally defective or that the grievance is not arbitrable, that matter will be processed through the grievance procedure, including arbitration, prior to the further processing, or the resolution, of the merits of the underlying grievance. The underlying grievance will be held in abeyance until the issue of the procedural defectiveness is resolved.

J. Issues not raised by the party filing the grievance during the grievance procedure may not be raised at arbitration except by written agreement of the parties.

K. An employee processing a grievance under this agreement shall be limited to Association representation or self-representation.

Section 3: Grievance Procedure for Grievances Filed by or on Behalf of Employees**A. STEP ONE**

1. All grievances must be filed in writing with the Agency's Chief, Labor Relations Division, and with a copy presented to the employee's immediate supervisor.

2. All grievances must be filed using an Agency-approved form. The Agency will make the form available for employees and the Association. The failure of the employee or the Association to file a grievance using the official grievance form described in this paragraph will result in the dismissal of the grievance. The failure of an employee or the Association to use the proper form will not result in the tolling of any time limits contained in this agreement.

3. A grievance must include all of the following information:

- A. The name or names of the employee or employees involved;
- B. If there are multiple employees involved, information as to how the employees are similarly situated;
- C. An account of the incident giving rise to the grievance;
- D. A reference to the appropriate contractual provision, law, rule or regulation alleged to have been violated;
- E. A statement of the remedy sought;
- F. If an employee is filing a grievance on his own behalf, the grievance must include the name of the Association representative, if any, or a statement that the employee is self-represented;
- G. If the Association files a grievance on behalf of an employee or employees, the name of the Association representative handling the grievance.

4. A grievance must be filed within fourteen (14) days of the incident giving rise to the grievance, or fourteen (14) days after the aggrieved employee knew or should have known of the incident giving rise to the grievance. In no circumstances shall a grievance be filed more than 180 days after the incident giving rise to the grievance.

5. The Agency retains the exclusive right to designate the management official to decide the grievance at the first step.

6. The grievant, one Association representative, the Step One deciding official, and any other management representative(s) determined helpful by the Agency shall meet within five (5) days of the filing of the grievance to discuss the matter. In situations where the Association is not representing the grievant, the Step One meeting will be held without the Association if the Association declines to designate a representative. The Step One grievance meeting may be waived by mutual agreement. If the employee or Union representative (if the employee is represented by the Union) fails to attend the meeting, the grievance is closed.

7. The Step One deciding official shall issue a written decision on the grievance within fourteen (14) days of the filing of the grievance or from the date of the meeting if one is held. In the event that the Association filed the grievance or the Association represents the

grievant or grievants, then the decision will be delivered to the Association only. If the Association does not represent the grievant, then the Step One decision will be delivered to the grievant and the Association.

8. Employees are encouraged to informally discuss issues of concern to them with their supervisors at any time. Any such discussions, however, including any requests that a supervisor reconsider a decision, will not toll the time period in which a grievance must be filed.

B. STEP TWO

1. In the event that the grievant is not satisfied with the decision of the Step One deciding official, the grievant may appeal the decision in writing within fourteen (14) days of the delivery of the Step One decision. If the Association has filed the grievance or is representing the grievant, then it may appeal the decision in accordance with the procedures established in this section.

2. The appeal must be filed with the Chief, Labor Relations Branch.

3. The appeal will set forth the basis of the appeal. The appeal shall include a copy of the original grievance filed and a copy of the Step One official's decision. If the grievant or the Association wishes to have a Step Two meeting, then the appeal shall so state.

4. The Agency retains the exclusive right to designate the management official to serve as the Step Two deciding official.

5. If both parties agree that a meeting would be beneficial to the resolution of the grievance, then the grievant, one Association representative, the Step Two deciding official, and any other management representative(s) of its own choosing shall meet within five (5) days of the filing of the grievance to discuss the matter. If the Association fails or declines to designate a representative, then the meeting will be held without the Association. If the grievant or representative (if represented by the Union) fails to attend the meeting, the grievance will be closed.

6. The Step Two deciding official shall issue a written decision on the grievance within fourteen (14) days of the filing of the appeal or from the date of the meeting if one is held. In the event that the Association filed the appeal or the Association represents the grievant or grievants, then the decision will be delivered to the Association only. If the Association does not represent the grievant, then the Step Two decision will be delivered to the grievant and the Association.

Section 4: Association Grievance Procedure

A. The procedure contained in this section is limited to Association grievances, as defined above.

B. Association grievances will be filed with the Agency's Chief, Labor Relations Branch. A grievance must be filed within fourteen (14) days of the incident giving rise to the grievance, or

fourteen (14) days after the Association knew or should have known of the incident giving rise to the grievance.

C. Association grievances shall contain the following information:

1. The provision of the agreement alleged to have been violated;
2. A description of the alleged violation with sufficient specificity to advise the Agency of the nature of the harm;
3. A statement of the remedy sought;
4. The name of the Association's representative in the matter.

D. Only the Association President may file Association grievances.

E. Within 5 days of filing the grievance, a meeting will be held between representatives of the parties to address the grievance, unless both parties agree not to hold it. The parties will be limited to two representatives per side. The scheduling of the meeting will have no effect on the time period set forth in Paragraph (F) of this Section.

F. The Agency will issue a written decision on the Association grievance within fourteen (14) days of the filing of the grievance.

Section 5: Agency Grievance Procedure

A. In those instances when the Agency alleges that the Association has violated law, rule, regulation or this or any other agreement, the Agency may file a written grievance with the Association.

B. A grievance must be filed within fourteen (14) days of the incident giving rise to the grievance, or fourteen (14) days after the Agency knew or should have known of the incident giving rise to the grievance.

C. The grievance will contain the following information:

1. The provision of the law, rule, regulation or agreement alleged to have been violated;
2. A description of the alleged violation with sufficient specificity to advise the Association of the nature of the harm;
3. A statement of the remedy sought.

D. Within 5 days of filing the grievance, a meeting will be held between representatives of the parties to address the grievance, unless both parties agree not to hold it. The parties will be limited to two representatives per side. The scheduling of the meeting will have no effect on the time period set forth in Paragraph (E) of this Section.

E. The Association will issue a decision within fourteen (14) days of the filing of the grievance.

Section 6: Arbitration

In the event that Sections 3 through 5 fail to produce a satisfactory resolution, then either the Agency or the Association may proceed to arbitration as provided in this Agreement's provisions on arbitration.

ARTICLE 13

ARBITRATION PROCEDURE**Section 1: General**

The parties may, by mutual agreement only, extend any time frame contained within this procedure, provided that not more than one 14-day extension may be granted per grievance per party once arbitration has been invoked. The refusal to agree to an extension of the time frames established in this procedure will not form the basis of any grievance under this Agreement.

Section 2: Invocation

A. The Agency and the Association shall each have the right to invoke arbitration within fourteen (14) days after a final decision has been issued under the applicable section of the negotiated grievance procedure.

B. In the event that a party has failed to provide a final decision on a grievance as required, the Agency and the Association shall each have the right to invoke arbitration within fourteen (14) days from the deadline by which the decision should have issued under the applicable section of the negotiated grievance procedure.

C. If a party fails to exercise its rights within the time frames set forth in this Section, then the grievance is terminated.

D. Only the Association may invoke arbitration over grievances filed by, or on behalf of, bargaining unit employees. In accordance with 5 U.S.C. § 7121(b)(1)(C)(iii), employees have no right to invoke arbitration.

E. If the Association wishes to invoke arbitration, then it must submit such an invocation in writing to the Chief of Labor Relations.

F. If the Agency wishes to invoke arbitration, then it must submit such an invocation in writing to the Association.

Section 3: Selection

A. Within fourteen (14) days after invoking arbitration, the Party invoking arbitration shall request the Federal Mediation and Conciliation Service (FMCS) to provide a list of seven (7) impartial persons qualified to act as arbitrators. A copy of such a request must be served on the opposing party. The request must state that the arbitrators must be located in the Washington, D.C., metropolitan area and that the arbitrators have Federal Sector arbitration experience.

B. The party invoking arbitration shall bear the fee imposed by FMCS for such a service.

C. If the party invoking arbitration fails to submit a request to FMCS for a panel of arbitrators within the time period set forth in Section 3 (A), then the grievance is terminated.

D. The parties shall meet within fourteen (14) days of the receipt of the list of qualified arbitrators from FMCS to select an arbitrator to hear the grievance. If the party invoking arbitration fails to request a meeting within that time frame, then the grievance is terminated. If the parties cannot agree on an arbitrator at this meeting, then, at the same meeting, the parties will each strike one arbitrator's name from the list of seven (7) and will then repeat this procedure until one name remains; that person shall be the duly selected arbitrator. The party requesting arbitration shall strike the first name.

E. Once the meeting described in Paragraph (D) above has been scheduled, the FMCS shall be empowered to make a direct designation of an arbitrator to hear the case in the event that the defending party refuses to participate in the selection of an arbitrator as set forth above. If the moving party fails to participate in the meeting described in Paragraph (D) above, then the grievance shall be terminated.

Section 4: Scheduling

A. Once an arbitrator has been selected, the party invoking arbitration shall contact the arbitrator within fourteen (14) days of his or her selection, inform him or her of his or her appointment and request the arbitrator's availability. Failure to contact the selected arbitrator within that time frame shall result in the termination of the grievance.

B. The Association and the Agency shall have a telephonic conference with the Arbitrator no later than forty-five (45) days from the date of the selection of the arbitrator. The parties agree to cooperate in good faith in the scheduling of arbitration dates. If the party defending the grievance refuses to participate in good faith in the scheduling of arbitration, then the arbitrator shall set the date for arbitration. If the party invoking arbitration fails to participate in good faith in the scheduling of arbitration within 45 days of the date of the selection of the Arbitrator, the Arbitrator shall dismiss the grievance.

C. The first date for the arbitration must be no later than 180 days following the close of the 45-day time frame established in Section 4(B), subject to the availability of the Arbitrator.

D. Following the establishment of a date for arbitration, either party may request a postponement of the hearing for up to two months. Such postponements will only be granted in extraordinary circumstances and must be made at least 5 days prior to the hearing. Indefinite extensions shall not be granted. Any fee for postponement will be borne by the party seeking the postponement.

E. In the event that the grievance is settled following the scheduling of a hearing, the parties shall equally bear any cancellation fees imposed by the arbitrator. The hearing shall not be cancelled until the agreement is signed.

F. The following procedure applies to grievances pending as of the date of the execution of this agreement:

1. For those grievances over which arbitration has been invoked, arbitration must be scheduled immediately using the procedures established in Sections 3 and 4. In any event, those grievances that are not arbitrated within 270 days of the

execution of this agreement will be terminated, subject to the availability of the arbitrator.

2. For those grievances currently being processed through the grievance procedure, the previous grievance procedure will continue to apply. However, the arbitration procedures, commencing with the procedures established for invoking arbitration, set forth in this agreement will be used to adjudicate the grievance.

Section 5: Arbitration Procedures

A. In the event that the Agency asserts that a grievance is procedurally defective or not arbitrable during the processing of the grievance, then, in accordance with procedures set forth above, the arbitrator will hear and decide that threshold issue prior to the further processing of the underlying grievance. If the arbitrator determines that the grievance is arbitrable and is not procedurally defective, the arbitrator who decided the procedural issue shall not serve as the arbitrator who hears and adjudicates the underlying grievance.

B. In the event that the Agency asserts that the grievance is procedurally defective or not arbitrable due to a failure to comply with the arbitration procedures set forth herein, then the arbitrator will first hear and decide that threshold issue only. If the arbitrator determines that the grievance is arbitrable in this circumstance, then the Association will have fourteen (14) days from the service of that decision to invoke arbitration over the underlying grievance. All procedures contained herein will apply to the adjudication of that grievance. The Arbitrator who decided the procedural issue shall not serve as the arbitrator who hears and adjudicates the underlying grievance.

C. The issues at arbitration shall be limited to those issues raised by the grievant in the grievance procedure.

D. The parties shall agree in advance to the total number of hearing days. All dates shall be scheduled prior to the start of the hearing. The parties agree to expeditiously present their case, and the arbitrator will ensure that the hearing is conducted in a fair and expeditious manner.

E. The parties shall exchange the following items at least 14 days prior to the first date of the arbitration:

1. *Witnesses.* Proposed witness lists, including a brief synopsis of the expected testimony of each witness.
2. *Documents.* Copies of documents, with an index, proposed to be offered into evidence.

Each party shall serve a copy of the information on the arbitrator. A party may not call any witness or enter into evidence any documents not provided to the other side and the arbitrator in accordance with this provision.

F. Both parties shall be entitled to call witnesses before the arbitrator. Witnesses shall be limited to a reasonable number and must have personal knowledge of facts relevant to the matter being

arbitrated. Cross-examination will be permitted of all witnesses. All testimony shall be made under oath or affirmation.

G. The arbitration hearing shall not be open to the public or the press. Attendance at the hearing shall be limited to those individuals serving as advocates of witnesses. All witnesses shall be sequestered prior to their testimony. Under no circumstances shall an individual who is serving as a representative on a case serve as a witness at the hearing on that case. Under no circumstances shall an individual who has served as a witness at a hearing on a case later serve as a representative on that same case.

H. The arbitration hearing will be held on the Agency's premises. The grievant, the grievant's Association representative (one employee) and all employees called as witnesses, and who are on active duty status, shall be granted official time to the extent necessary to participate in the arbitration proceedings.

I. A verbatim transcript of the proceeding shall be made by a court reporter unless the parties mutually agree that one is not needed.

J. The arbitrator shall have no authority to add to, subtract from, alter, amend or modify any provisions of this or any other agreement between the parties.

K. The arbitrator's remedy may not exceed the remedy specifically requested in the original grievance.

L. Post-hearing briefs will be exchanged unless the parties mutually agree to eliminate them on a case-by-case basis. The arbitrator shall set a date, not more than 75 days from the close of the hearing, for the submission of post-hearing briefs. Extensions may only be granted by mutual agreement.

M. The arbitrator's decision shall be mailed to the parties no later than thirty (30) days after the conclusion of the hearing or receipt of the post-hearing briefs, whichever is later.

N. Unless otherwise established in this agreement, the arbitrator's fee and any other expenses (including court reporting fees) will be borne equally by the parties.

ARTICLE 14

MID-TERM BARGAINING; GROUND RULES**Section 1: General**

All of these rules apply unless both parties expressly agree to the contrary.

Section 2: Substantive Bargaining

Upon either party's submission of proposals for substantive bargaining, the receiving party will have seven (7) days to request a meeting with the proposing party to discuss the proposals. The meeting must be offered within seven (7) days of the request. The meeting will last no more than two hours. If the receiving party does not request a meeting, any counterproposals must be submitted within fourteen (14) days of the date it receives the proposals. If the receiving party timely requests a meeting, counterproposals must be submitted within fourteen (14) days following the meeting. The meeting will be held during business hours. Counterproposals must be limited to specific issues related to the proposals.

Section 3: Bargaining Pursuant to 5 U.S.C. § 7106 (b)(2) and § 7106 (b)(3)

A. In the case of a change in the way the Agency exercises any reserved management rights, the union may request to meet with management within seven (7) days of receiving notice of the intended change. The meeting must be held within seven (7) days of the request. The meeting will be limited to two hours. If no meeting is requested or a meeting is not timely held, a request to bargain in response to a management change must be submitted within fourteen (14) days of notice of the change. The request to bargain must include all proposals. If the Union requests a meeting, the Union must submit the request to bargain and its proposals no later than fourteen (14) days following the meeting. Proposals must be limited to procedures and appropriate arrangements in response to the announced management change. The union must identify whether a proposal is intended as a procedure or as an appropriate arrangement. The Union may not raise other topics in negotiations initiated by a change in exercise of any reserved management right.

B. When the Union elects to initiate bargaining over procedures and appropriate arrangements under 5 U.S.C. § 7106 (b)(2) and (b)(3), management may request a meeting to help it understand the Union's proposals within seven (7) days of the Union's submission of its proposals. The meeting shall not last longer than two hours and must be held within seven (7) days of the request. Bargaining will begin on the third Tuesday following the meeting if one is held, or following the union's submission of proposals if a meeting is not requested.

Section 4: Rules Applicable to All Bargaining

A. All proposals must be submitted at one time, in writing, and in advance of the beginning of formal bargaining. Subsequent counterproposals from each party must be aimed at narrowing the difference between the parties, although a party does not need to put forward a counterproposal for each issue. Failure to present a counterproposal shall not be construed as agreement to the proposal.

- B. Notification as set forth in these rules may be electronic. All proposals will be shared electronically by the end of the next business day following the session in which they are presented. A party not receiving an electronic version of the proposals shall request the document and the other party has one business day to respond.
- C. Agreements on any proposals are conditional until agreement is reached on all issues.
- D. No conditional agreement can be reopened without the consent of the other party, except during impasse proceedings.
- E. No more than four (4) people will represent each party at the table at any given time. Either party may, however, request permission to bring an observer who may not serve as note taker or participate in the session, but who may observe the process. Such requests will not be unreasonably denied. Such a request will not be denied because the party receiving the request chooses not to have an observer in attendance.
- F. Each party will have at least one person authorized to speak for their party at every bargaining session. This authority includes the ability to sign off on proposals on which conditional agreement has been reached.
- G. Bargaining will be conducted from 9:30 a.m. to 4:30 p.m.
- H. Negotiations will last no more than 4 weeks.
- I. The parties will meet three (3) days per week (Tuesday – Thursday).
- J. Either party may request a caucus during scheduled negotiating time. The other party may grant such caucus time as it sees reasonable under the circumstances. Generally, the parties will approve up to one hour of caucus time per day.
- K. Counterproposals may be presented during negotiations as the parties discuss the issues raised in the notice and proposals.
- L. Either party may declare impasse once the parties have discussed the proposals and any timely-submitted counterproposals.
- M. After the exchange of proposals and timely-submitted counterproposals, no other issues may be raised without the consent of the other party.
- N. Mediation will last for no more than two weeks, and both parties are required to request release from the mediator at the end of this period. The parties will be free to make a recommendation as to the procedure used by the Federal Service Impasses Panel (FSIP) to resolve the dispute.

O. Union representatives may use official time as covered in Article 9 of this agreement. Time used for this purpose must be reasonable, and the representative or the union Chief Negotiator may be asked to justify the amount of time claimed.

P. Documents shared electronically will be of the file type associated with the document preparation software officially used by the Agency.

Q. All documents provided to the Agency from the Union will be addressed and delivered electronically or by hand-delivery to the Chief of Labor Relations or his/her designee. Agency documents shall be delivered to the Union office or sent to the Union President electronically. Once chief negotiators have been appointed, documents will be exchanged through chief negotiators.

R. The Union must invoke impasse procedures, as appropriate, within three days after a party declares impasse at the table. If the Union does not invoke assistance from either FSIP or FMCS management may implement its last offer, without further bargaining.

S. Any proposal declared nonnegotiable by the Agency upon a written request for a declaration of nonnegotiability shall be severed from the negotiations so that the parties may continue bargaining over the remaining proposals. If the FLRA finds the proposal(s) negotiable, the parties may conduct negotiations on that proposal only, upon the Union's request within fifteen days of the date of FLRA decision. If the FLRA finds the proposal(s) to be not negotiable, then no further negotiations will be conducted over the topic of the proposal(s) found to be not negotiable.

T. If an agreement is disapproved on Agency Head Review, the Agency will notify the Union of the disapproved provision(s). The provision(s) will be severed from the parties' agreement with the remainder of the agreement going into effect. If, upon a timely appeal, the Federal Labor Relations Authority finds any of the disapproved provision(s) to be negotiable, the provision(s) found to be negotiable will be added back into the agreement. No further bargaining will be conducted over the provisions found to be not negotiable.

ARTICLE 15

LABOR MANAGEMENT COMMITTEES**Section 1: Security, Health, and Safety Committee**

- A. The parties will form a joint Security, Health, and Safety Committee to gather information and make recommendations on changes in security, health, and safety policies at the USPTO. The Committee shall have standing meetings once every six months at mutually agreed upon times, and special meetings may be called in between by mutual agreement of management and the Union to address issues that arise. This committee shall replace any existing labor-management committees on these topics.
- B. Each of management and the Union may have up to four regular Committee members, but if at any time management determines that it needs more individuals present at a meeting, the Union may have an equal number present.

Section 2: Joint Labor Management Committee

- A. The parties, recognizing the need for improved communication and a better understanding of each other's concerns, agree that a cooperative involvement must exist at all levels of the Office and the Association in order to enhance labor-management relations. To this end, the parties agree to jointly commit their efforts to establish and support a Joint Labor-Management Committee System. The objectives of the Labor-Management Committee System are to enhance the quality of work life in the Office and to improve the effectiveness of the Office by providing for the discussion of each other's concerns, the open exchange of information, and the opportunity for joint problem-solving of issues and concerns that have an adverse impact on the work environment.
- B. It is understood that the establishment of the Joint Labor-Management Committee System is not intended to replace the collective bargaining process or the grievance procedure, but to provide a foundation from which to build and promote the cooperative relationship the parties acknowledge must exist at all levels of the organization.
- C. The Office and the Association will appoint 3 persons from their organizations to serve as members of the following Discussion Groups (each person must work in the area the Discussion Group represents):
- (1) Chemical Discussion Group
 - (2) Other Discussion Group
 - (3) Electrical Discussion Group
 - (4) Mechanical Discussion Group
- D. The Office shall not appoint managers above the level of first line supervisor to serve as members of the Discussion Groups.
- E. The Association shall not appoint Association officers or representatives to serve as members of Discussion Groups.

F. Discussion Group meetings shall be held every three months, and shall be limited to two hours, unless the Group mutually decides to meet more frequently. At the first meeting, a specific day and time shall be selected for future meetings.

G. The Chair of the Discussion Groups shall alternate every six months between Association and Office Discussion Group members, unless the Group mutually decides to have another arrangement.

H. The Chairperson is responsible for calling meetings, maintaining orderly meetings, obtaining agenda items from the members and preparing the meeting agenda.

I. Except for an agenda, Discussion Group meetings shall be informal.

J. Except for grievances, Unfair Labor Practices and the like, Discussion Groups may discuss any topic related to the Office work environment, despite the fact that such topic(s) may be outside of the scope of bargaining. However, the Discussion Groups have no authority to amend or delete any term of this Agreement or to compel action on any subject.

K. The Discussion Groups shall make recommendations and/or reports to the Joint Labor-Management Committee.

L. Discussion Group members shall be authorized official time to attend Group meetings.

M. The Association may periodically send an Association official to a Discussion Group meeting as an observer. However, the Association official shall not participate in the Group meeting. The official's time at the meeting shall be charged to the Association's bank time.

N. When requested by a Discussion Group, arrangements shall be made for key people from the Office, the Association and elsewhere to address the Group.

O. The Association and the Office shall appoint 5 representatives from their respective organizations to serve on the parties' Joint Labor-Management Committee (JLMC).

P. JLMC meetings shall be held quarterly and shall be limited to four hours, unless the Committee mutually agrees otherwise. At the first meeting, a specific day and time shall be selected for the next meeting.

Q. The JLMC Chair shall be held jointly by a representative of the Office and a representative of the Association. Each party will determine whether it will have a permanent or a rotating co-chairperson.

R. JLMC meetings shall discuss, explore and study the recommendations and reports of the Discussion Groups. However, the Committee has no authority to compel or preclude the Office from action or implementing proposed actions.

S. The JLMC Management Chairperson shall cause an agenda to be prepared and distributed to all Committee members at least two workdays prior to the meeting. Agendas should be limited to Discussion Group recommendations and/or reports. Emergency items may be added to the agenda by mutual consent of the Chairpersons.

T. Every attempt shall be made to keep to the meeting schedule and agenda and, where possible, the parties will avoid carrying agenda items over more than two meetings.

U. In order to have a frank and open discussion, the JLMC shall have no authority to discuss grievances, unfair labor practices, specific circumstances of any individual, or the like, or to amend or delete any of the terms of this Agreement.

V. When necessary, appropriate arrangements will be made for experts to address the JLMC.

W. After 20 months the parties will assess their progress under the JLMC System and determine if it should be continued, discontinued or modified.

ARTICLE 16

RECEIPT OF PAY/LEAVE AND EARNINGS STATEMENTS**Section 1: Report Nonreceipt of Pay and Other Issues**

Employees are responsible for reviewing their leave and earnings statement each biweek to ensure the accuracy of the information. Employees who believe that they have not received the correct amount of pay, or that the leave and earnings statement or other documents are incorrect must contact the Compensation and Benefits Division of the Office of Human Resources. Employees should provide as much information as possible to expedite the investigation.

Section 2: Investigation and Response

The Office of Human Resources will investigate each claim and take corrective action, if necessary, in an expeditious manner.

ARTICLE 17

PERFORMANCE MANAGEMENT**Section 1: Performance Appraisals**

A. Establishment/modification of performance elements and performance standards:

1. Performance elements and Performance standards will be established in writing in accordance with applicable regulations and communicated in writing to the employee within 30 days of the beginning of the appraisal cycle, within 30 days of an employee entering on duty, or within 30 days of a detail or reassignment to a new position.
2. Performance elements and Performance standards will be established based upon the duties and responsibilities of the employee's position.
3. .

B. Timetable of the appraisal period:

1. The annual performance appraisal shall be based on the performance for the rating year or that part of a rating year that an employee has been in a particular position, provided that the employee has been in the position at least 120 days. The rating shall normally be completed within 30 days of the end of the appraisal cycle.
2. If the employee has been in the position less than 120 days at the end of the rating year, the rating will be deferred until the employee has been in the position for 120 days.
3. The employee will sign and date a copy of the evaluation to indicate that the rating was discussed with the rating official.
4. If the employee disagrees with the rating, he or she may comment in writing to the approving official within 5 days, with a written explanation with supporting evidence to justify his or her position. If the employee disagrees with the response from the approving official, then he or she may file a grievance to the next higher management official, and this response shall constitute the final step in the grievance process before arbitration.
5. A new performance appraisal plan for an employee who has had a substantial change in job functions or reassignment within the rating year will be communicated to the employee within 60 days of reassignment. If the employee served in the previous position for 120 days or more, the prior supervisor will issue an interim rating which will be factored in to the end of year rating in accordance with the General Workforce Performance Appraisal System.
6. Performance standards will be communicated to the employee at the beginning of the rating year. At approximately the midpoint in the employee's rating year, the supervisor shall communicate a progress review with regard to how the employee has performed, and, if appropriate, what actions the employee should take to improve performance.

C. Records Retention: Records pertaining to performance appraisals shall be maintained in accordance with applicable law and regulation.

Section 2: Performance-Based Actions

A. If at any time an employee's performance is Unacceptable in one or more critical elements, the employee may be provided written notice of such, in accordance with 5 CFR 432, and given a reasonable period (known as a Performance Improvement Period or PIP) to demonstrate at least marginal performance in that critical element(s).

B. During a Performance Improvement Period (PIP) it is the employee's responsibility to demonstrate the ability to perform at least at a Marginal level in the critical element(s) in which his performance was Unacceptable.

C. For patent examiners or other employees under a PIP for quality, the PIP may be extended for a defined period of time if the employee has not submitted an adequate amount of work for credit and review under the quality element during the time period designated in the PIP.

ARTICLE 18

PERFORMANCE AWARDS**Section 1: Requirement for Fully Successful Performance**

To be eligible for any awards under this Article, employees must perform at least at the Fully Successful level for the award period.

Section 2: Quality Step Increases

A. An employee is eligible for a quality step increase if, in accordance with the employee's performance appraisal plan, the employee performs at an outstanding level in all critical performance elements and achieves at least a satisfactory level in all other performance elements over a period of the four consecutive quarters of a FY. Because a quality increase will indefinitely raise the employee's salary, the employee's performance must give promise of continuing at the same high level in the same grade and type of position.

B. Where a standard that measures the quantity of accomplishment for a critical element is included in the performance appraisal plan, an achievement of 110% of an assigned goal shall warrant the grant of a QSI. An achievement of 120% of an assigned goal shall be prima facie evidence of sufficiently exceptional performance on the factor of quantity to warrant the grant of an additional QSI to an employee having one effective QSI. Achievements of 130%, 140% and 150% are the goals for employees having two, three and four effective QSIs and who which an additional QSI. With respect to all performance standards other than quantity, the achievement required for second and subsequent QSIs shall be the same as for the first QSI. Second and subsequent QSIs may be subject to Agency Head or higher-level approval.

C. An "effective" QSI is a QSI that raises the salary of an employee above the salary level the employee would be at had the employee received the most recent within-grade increase (if applicable) in the employee's current grade in the minimum time provided by law and regulation. When an examiner is promoted from GS-14 to GS-15 examiner position any effective QSIs are still effective. When a salary increase due to a QSI is blocked by a pay cap, that QSI is not an effective QSI.

D. To be eligible for a quality step increase, an employee must have spent a minimum of 1400 hours during the four-quarter fiscal year award period performing the functions of the employee's job, including paid overtime. The functions of a patent examiner's job are patent examining and examining related activities.

E. An employee is only eligible for a QSI if the employee has reached his or her position's full performance level, or if a patent examiner, has been granted full signatory authority.

F. If the employee performs at an outstanding level in all critical performance elements and achieves at least a satisfactory level in all other performance elements over a period of the four consecutive quarters of a fiscal year, an employee who does not have a PAP productivity element

will not be prima facie eligible for a second or subsequent QSI, at the same grade. The employee may however request to be considered for the second or subsequent QSI.

G. Goal adjustments will not be considered for the purpose of determining eligibility for a QSI.

Section 3: Employees on Production (except as set out below)

A. A patent examiner is entitled to a production performance award in an amount based upon the percentages listed below of the examiner's base annual salary as of the end of the award period if, in accordance with the employee's performance appraisal plan, the employee performs at the following production goal achievement levels in the specified two-quarter award periods.

Production Goal Achievement	Award Amount	
	1 st & 2 nd Quarters	3 rd & 4 th Quarters
Achieve 105%	1.0%	1.0%
Achieve 110%	2.5%	2.5%
Achieve 115%	3.0%	3.0%
Achieve 120%	3.5%	3.5%
Achieve 125%	4.0%	4.0%
Achieve 130%	4.5%	4.5%
Achieve 135%	5.0%	5.0%
Achieve 140%	5.5%	5.5%

B. The examiner must be at least fully successful in all other elements of the performance appraisal plan during the award period. For employees with effective QSIs, the performance necessary for award considerations under this section are the stated percentages (5, 10, 15, etc., in Section 2, part A) above the minimum quantitative achievement necessary to qualify for the employees most recent effective QSI.

C. Two production performance awards may be paid out each fiscal year, after the first two quarters of the fiscal year and at the end of the fiscal year. These two award periods equate to the period encompassing the 1st and 2nd quarters of a fiscal year, and a period encompassing the 3rd and 4th quarters of a fiscal year.

D. The above listed award amounts will be prorated based on the number of hours spent performing employee job functions, including paid overtime. The functions of a patent examiner's job are patent examining and examining related activities.

E. An employee who has spent at least 700 hours during a 13-pay period award period performing the above-described functions shall receive the full amount. The proportional amount shall be the specified percentage of the employee's base annual salary times the number of hours spent performing the above described functions divided by the 700-hour base.

Because any two quarters of a fiscal year are not always 13 pay periods, the following chart designates the hours performing the above-described functions:

Number of pay periods in the award period	Minimum hours performing functions for the full award amount	Minimum hours performing functions for a prorated award amount
12 pay periods	650	325
13 pay periods	700	350
14 pay periods	750	375

F. For part-time employees, the minimum hours performing functions for a prorated award amount will be reduced based on the reduced hours of the employee's part-time schedule. For example, an employee working a 40-hour pay period part-time schedule would have the minimum hours for a prorated award amount adjusted at 50% (40 divided by 80) of 350, or 175 hours in a 13-pay period award period.

G. If the award period for a production performance award encompasses the date(s) when an employee has received a promotion or a permanent increase in signatory authority, the quantitative achievement required to earn an award shall be the sum of:

The award level percentage achieved above the minimum quantitative achievement necessary to qualify for the promotion or permanent increase in signatory authority for the number of pay periods prior to said date(s); and

The achievement that would be otherwise necessary for an award during the periods outside those number of pay periods.

H. In any fiscal year in which an employee receives a production performance award, no QSI will be awarded. An employee whose performance merits either a quality step increase or a production performance award shall have the option to refuse either award or both awards.

I. No hours worked before the completion of the first year of employment or reemployment with the Agency will count toward the minimum hours required to earn a production goal achievement award.

J. An examiner who has earned a production performance award in at least one half of a fiscal year (the first and second quarters or the third and fourth quarters) and who spent at least 1400 hours during the fiscal year performing the above-described functions shall receive an additional 0.5% award if he achieves a rating of at least Commendable in all quality elements of the PAP, or an additional 1.0% if he achieves a rating of Outstanding in all quality elements of the PAP.

K. Goal adjustments may be considered for the purpose of determining eligibility for a production performance award.

L. No single award payout amount under this section will exceed \$10,000.

Section 4: Superior Quality Performance Award for Patent Examiners GS-12 and Above

A. In addition to the award in Section 3 above, patent examiners at or above the GS-12 level are entitled to an additional superior examination quality award (SQPA) of 5% of their salary if they meet the following criteria over a period of a Fiscal Year:

1. Outstanding performance in accordance with their performance appraisal plan (PAP), including all indicia, in all quality elements; and at least fully successful rating in all other elements; and

2. In addition to the rating criteria, the following indicia items must be characteristic of the Examiners' work:

a. The statements of rejection, objection, requirement and responses to arguments clearly and concisely present the technical, legal and procedural basis for the positions taken or recommended.

i. The Office actions provide a full explanation of the rationale for each rejection, objection and requirement rather than merely conclusory statements. Similarly, the main or major arguments in an applicant's response are specifically addressed in the subsequent Office action.

ii. The Office actions address the substantive claim limitations with reference to prior art element numerals and figures in order to provide a clear explanation of how the prior art is being relied upon in the action so that the applicant is not left to guess at the examiner's interpretations.

iii. The explanatory portions of the Office action provide clear direction to the applicant on how to proceed in the next response.

b. The file wrapper record developed by the examiner usually evidences an indication of allowable subject matter at the earliest possible time consistent with the file wrapper record and prosecution by the applicant.

i. An appropriate line of patentability is established through the objections, rejections and arguments made by the examiner.

ii. Reasons for allowance are provided when the reason the application has been allowed is not clearly evident from the record. For example, where the allowance is based on persuasive arguments, affidavits, and/or withdrawal of a rejection.

iii. When a statement of Reasons for Allowance is present, it will address the patentable feature of each independent claim without merely being a restatement of the entire claim.

c. The prior art searches performed by the examiner in the examination of most applications, except in rare instances appropriate for the claimed and disclosed subject matter, include a search of the relevant US and foreign patent documents and non-patent literature (NPL). The search includes an appropriate classified search as well as an automated text search. Further, searches that are performed are properly recorded in the file wrapper record in accordance with the provisions of MPEP section 719.05.

i. The focus of this item is the performance of a thorough search including each of the resource areas of US patent documents, foreign patent documents and NPL. In some applications the disclosed and claimed subject matter may not be appropriate for search in one or more of these resource areas. However, this situation is expected to be rare and allowed applications are expected to routinely include a search of all search resources.

d. The prior art cited in the file wrapper record by the examiner includes the closest available prior art from each of the relevant US and foreign patent documents and NPL along with a statement of relevance thereof unless appropriately developed by the submission of an Information Disclosure Statement for any omitted category of prior art resources listed herein.

i. This indicia would require more than merely using the closest prior art in the rejections and/or listing the closest prior art found, which is expected in every application. This requires typically a search and citation with statement of relevance of the closest prior art found from a search of each of the relevant US and foreign patent document and NPL sources, including at least one reference citation from each of these three sources of prior art. It is noted that if the closest prior art found from any of the three sources were used in a rejection, cited and discussed in an IDS, or included on the record in a PCT-style search report, no separate statement of relevance would be required for those references. Mere statements that the reference shows the state of the art, or repetitive use of the same references in different applications to merely show state of the art would not suffice to meet these criteria.

e. Except for rare occurrences, the principles of compact prosecution are followed and premature Final rejections are avoided.

i. The Examiner's action facilitates compact prosecution such as through the application of the closest prior art and where appropriate via input or suggestion of a specific way to correct a defective affidavit or avoid a prior art rejection.

ii. The occurrence of a second or any subsequent non-final rejection (as a result of the examiner failing to make all appropriate rejections/objections that should have been made in the prior Office action) would be rare.

B. The justification for this award noted in section A above will come from two sources, management and the employee.

Management will review a minimum representative case sample. The pool of applications to review will include all applications that are submitted for credit during the course of the fiscal year.

The second source will be a separate and distinct representative sample that the patent examiner is responsible for providing to the SPE. This sample will be at least ten (10) applications that he/she has examined, from the applications submitted for credit during the course of the fiscal year, and presented as representative of the examiner's work that exhibit the above noted criteria.

C. Minimum base hours to qualify for the full award shall be 1400. An employee who has spent at least 700 hours but less than 1400 hours during the fiscal year award period performing the functions of the employee's job shall receive a proportionate amount. The proportionate amount shall be 5% of the employee's base per annum salary times the number of hours spent performing the job functions divided by the 1400-hour base.

The functions of a patent examiner's job are patent examining and examining related activities. Paid overtime hours are included in the calculation of total hours for purposes of award eligibility.

D. If the award period for a superior quality performance award encompasses the date when an employee has received a promotion to a GS-12, the employee will be not eligible until the next full fiscal Year.

E. No hours worked before the completion of the first year of employment or reemployment with the Agency will count toward the minimum hours required to earn a superior examination quality award.

G. This award will be effective the first full year following the implementation of the collective bargaining agreement between POPA and management.

Section 5: Pendency Reduction Award

A. An employee is eligible for a pendency reduction award in the amount of 0.5% of an employee's salary at the end of the award period if they achieve the criteria indicated below. In addition to the criteria, the examiner must perform at a level of at least Fully Successful in the Production Goal Achievement and Quality elements over the period of the award.

B. The award period is two consecutive quarters, namely the first and second quarters and then the third and fourth quarters of the fiscal year.

C. To be eligible for the pendency reduction award, the examiner must meet the following criteria:

- i. All examiner's answers and responses to amendments responding to non-final Office actions must be counted in the pay period that is within one month of their receipt by the examiner;
- ii. All applications with a decision from the BPAI must be acted upon and an action counted in the pay period that is within 4 months of the BPAI decision date;
- iii. The new application with the oldest actual filing date on the examiner's docket is completed and counted each pay period.
- iv. The examiner shall have no more than nine (9) workflow subtraction points during the award period.

D. The above listed award amounts will be prorated based on the number of hours spent performing employee job functions, including paid overtime, during an award period. The functions of a patent examiner's job are patent examining and examining related activities.

An employee who has spent at least 700 hours during a 13-pay period award period performing the above-described functions shall receive the full amount. The proportional amount shall be the specified percentage of the employee's base annual salary times the number of hours spent performing the above described functions divided by the 700-hour base.

E. Because any two quarters of a fiscal year are not always 13 pay periods, the following chart designates the hours performing the above-described functions:

Number of pay periods in the award period	Minimum hours performing functions for the full award amount	Minimum hours performing functions for a prorated award
12 pay periods	650	325
13 pay periods	700	350
14 pay periods	750	375

F. For part-time employees, the minimum hours performing functions for a prorated award amount will be reduced based on the reduced hours of the employee’s part-time schedule. For example, an employee working a 40-hour pay period part-time schedule would have the minimum hours for a prorated award amount adjusted at 50% (40 divided by 80) of 350, or 175 hours in a 13-pay period award period.

Section 6: Hybrid Classifier Awards

A. For employees in the Hybrid Classifier (hereinafter “Hybrid”) position, all the provisions of Section 2 of this article apply in regard to an examiner production performance award for any patent examining functions.

B. A Hybrid is entitled to a classifier performance award in an amount based upon the percentages listed below of the employee’s base annual salary as of the end of the award period if, in accordance with the employee’s performance appraisal plan, the employee performs at the following level of achievement of classifier goal for the same specified two-quarter award periods in Section 2, part C of this article.

<u>Achievement of Classifier Goal</u>	<u>Award</u> (percent of base annual salary as of the end of an award period)
Achieve 110%	0.5%
Achieve 120%	1.5%
Achieve 130%	2.5%

C. The above listed award amounts in Section 5, part B will be prorated based on the number of hours spent performing the employee’s job functions. The additional functions of a Hybrid are classifying and classifying-related activities. Specifics related to hours, overtime, part-time, and promotions are the same as in Section 3, parts E-J, with the following exceptions:

Section 3, paragraph F of this Article is modified as follows relating to Hybrids:

If a Hybrid is eligible for an award based solely on examining functions, the provisions of Section 2, Part F apply;

If a Hybrid is eligible for an award based solely on classifying functions or for combined examining and classifying duties, the award applicable hours for classifying and classifying-

related activities cannot exceed (800 - (examining + examining related hours)) for a 13 pay period award period (adjusted consistent with the schedules above for other award period lengths); and,

Production Performance Award periods cannot overlap. Thus, it is a single Production Performance Award that may be justified by examining duties, classification duties or both, not separate Production Performance Awards for the individual duties.

D. The classification components of the Hybrid’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. Solely for purposes of the award for the Hybrid position, time spent as a classifier or performing classification-related activities is not examining-related for examiner production performance award purposes, and time spent examining or performing examining-related work will not count as classifier award hours. All other performance standards, as stated in Section 3, are applicable.

E. The provisions of Section 4 of this Article for a Superior Quality Performance Award (SQPA) are applicable to hybrids. This includes the GS-12 requirement. Thus, a hybrid at the GS-12 learning curve level for Patent Examining Functions (for the entire award period) and GS-12 or GS-13 learning curve level for productivity (for the entire award period) is eligible to earn a SEPA. Note that there will be NO adjustment for any classifying hours.

Section 7: Awards for Employees other than Patent Examiners and Hybrids

A. For bargaining unit employees without a quantitative performance element in their PAP is entitled to a special achievement award if, in accordance with the employees performance appraisal plan, the employee performs at the following level over a period of one fiscal year:

<u>PAP Rating</u>	<u>Amount of Base Annual Salary at end of the award period</u>
Commendable	2%
Outstanding	4%

B. An employee who has spent at least 1400 hours during the award period performing the functions of the employee’s assigned job shall receive the above basic amount. An employee who has spent at least 700 hours, but less than 1400 hours, shall receive a proportional amount.

C. No employee may receive both a QSI and a production performance award for the same period used to justify the award. An employee whose performance merits either a quality step increase or a production performance award shall have the option to refuse either award or both awards.

Section 8: Miscellaneous Provisions

A. If an employee moves into a job position covered by these awards after the beginning an award period, or out of a job position covered by these awards prior to the end, the employee may still be eligible for an award if they meet the minimum hour criteria and other criteria for the award.

B. An employee put on a performance improvement plan (PIP) for work performed during an award period may not receive an award unless they successfully complete the PIP. If that PIP extends beyond the end of the award period, the final determination of that award will be delayed until the completion of the PIP. Hours worked and work credited between the end of the award period and the end of a PIP will not be considered in determining eligibility for that award.

Section 9: Duration and Termination

A. This article on awards shall remain in effect subject to availability of funds, and subject to a determination by the Office of the continuing exigencies and effectiveness of these awards.

B. If the Office determines that any of these awards are no longer effective in promoting the goals of the Agency, or that funding is not available, any or all of these awards may be modified or terminated subject to the provisions noted below.

C. Upon providing notice of termination of any of the awards in this article, any award shall terminate at the end of the fiscal quarter in which notice is given. Eligibility standards and award amounts shall be prorated relative to the award periods depending upon the quarter the termination is given. When the Office terminates any award in this article, it will provide notice to POPA. POPA will be given an opportunity to bargain over the impact resulting from the termination, but such bargaining will not delay the termination of the award.

D. The Agency may reopen this article outside of any mid-term reopening provisions.

ARTICLE 19**MERIT STAFFING****Section 1: Filling Positions in the Bargaining Unit**

Internal vacancies will be filled consistent with the Agency's Merit Assignment Program (MAP).

Section 2: Application and Evaluation Process

A. Vacancy Announcements: Vacancy announcements, where required, will be posted electronically on the Agency's internal network and on the USAJOBS web site maintained by the Office of Personnel Management (OPM) or its equivalent.

B. Applications and resumes must include accompanying narrative statements addressing the selective and evaluation factors listed under Evaluation of Qualified Candidates in the announcement. Applications will be considered only if they (1) indicate the vacancy announcement for which the candidate is applying; (2) contain sufficient information to enable a determination of whether the candidate meets the minimum qualification requirements for the advertised position; (3) are not delivered through the U.S. mail in an official government franked envelope; (4) are not submitted by fax (supporting documents, such as a Notification of Personnel Action (SF-50), college transcripts, or performance appraisals may be submitted by fax when requested in the announcement or by OHR); (5) are not submitted by email; (6) are submitted by an applicant who is within the area of consideration specified in the vacancy announcement; and (7) are received by the close of business hours in the Office of Human Resources on or before the closing date of the announcement.

C. The Agency may require use of an electronic application system in lieu of a paper application.

Section 3: Evaluation of Qualified Candidates

A. Candidates will be evaluated in accordance with applicable regulations and OPM standards and guidance.

B. All eligible candidates competing for promotion or for a position with greater promotion potential than previously held on a permanent basis will be evaluated using the job-related criteria identified in the vacancy announcement.

Section 4: Selection Certificates

A. A group of best-qualified candidates will be referred to the selecting official in alphabetical order on a selection certificate. The number of persons referred will be based on such factors as natural breaks in scores, the number of vacancies, and the difficulty in filling the position. If multiple grade levels are involved, a separate selection certificate may be issued for each grade level.

B. Selection certificates remain active for 90 days from the issue date. If no selection is made during the 90-day period, the certificate automatically expires and the vacancy may be re-announced.

C. Additional selections may be made from a selection certificate for vacancies that occur within the 90-day timeframe with the same title, series, grade, similar job requirements, and same business unit location as the advertised vacancy.

Section 5: Release Dates

A. OHR will arrange for the release of a selected candidate from his or her current employing organization.

B. USPTO employees selected for a permanent or temporary promotion to a higher graded position or for a position with promotion potential normally will be released within two full pay periods of receipt of the request. Under unusual circumstances, such as to permit completion of essential assignments, the release period may be extended when mutually agreed to by the employee, the supervisor losing the employee and the supervisor gaining the employee. If mutual agreement for release cannot be reached, OHR will set the release date.

C. Employees selected for positions at the same or a lower grade normally will be released within two pay periods.

Section 6: Federal Career Internship Program

Employees hired as interns under the Federal Career Internship Program (FCIP) will be subject to the terms of the FCIP Agency Administrative Order (AAO).

ARTICLE 20

NONCOMPETITIVE PROMOTIONS**Section 1: Career Ladder Promotions**

A. Employees of the Federal government may be selected through competitive or merit procedures for an entry level developmental position that progresses over a period of time and usually through a series of grade levels to a pre-established full performance level. Such a position usually is referred to as a *career ladder position*. A promotion after assignment to a career ladder position usually is referred to as a *career ladder promotion*.

B. Requirements for a Career Ladder Promotion: Assignment to a career ladder position does not guarantee future advancement. Employees must meet all of the following requirements to qualify for a career ladder promotion:

- i. Obtain sufficient service credit to satisfy the time-in-grade requirement;
- ii. Perform at the Fully Successful level or higher;
- iii. Meet all general experience or specialized experience requirements set forth in the OPM Qualification Standards for General Schedule Positions handbook;
- iv. Demonstrate an ability to perform work satisfactorily at the next higher grade level; and
- v. Be recommended for a promotion by the immediate supervisor or other authorizing official who has determined that work at the higher grade level exists, that the employee has satisfied all regulatory requirements for promotion, and that the employee has demonstrated an ability to perform successfully at the next higher grade level.

C. Accelerated Career Ladder Promotions for Patent Examiners hired into the competitive service: Patent Examiners hired into the competitive service at the GS-05, GS-07, or GS-09 grade levels in all disciplines and specializations are eligible for a one-time accelerated promotion after six months in grade with the recommendation and approval of the Supervisory Patent Examiner (SPE) and Technology Center Director. This applies to the first promotion only and may only be implemented before the end of the Examiner's first year of employment.

As with all career ladder advancements, promotion is neither guaranteed nor an absolute right. The SPE will evaluate the progress of a newly hired Examiner at the end of six months and make a recommendation based upon successful completion of at least six months of formal and on-the-job training and demonstrated ability to work at the next higher grade level

D. Career Ladder Promotions for Part-Time Employees: A part-time employee (an employee who works an approved, pre-arranged work schedule each week of between 16 and 32 hours) may receive a career ladder promotion when all qualifications discussed above are met, including time in grade and specialized experience requirements. Credit for experience is determined based upon the actual time a part-time employee spends in pay status. The computation of hours in pay status shall include all regular duty time, administrative leave, holidays, annual leave, sick leave, and other paid leave but will not include overtime or continuation of pay under Workers Compensation. One (1) year of general or specialized experience will be credited for each 2087 hours in pay status.

E. Accelerated Career Ladder Promotions for Patent Examiners hired into the excepted service:
Employees hired under the Federal Career Internship Program (FCIP) will be subject to the terms of the FCIP Agency Administrative Order (AAO).

ARTICLE 21

SIGNATORY AUTHORITY PROGRAM**Section 1: Establishment of Programs**

The USPTO will provide a Signatory Authority Program for patent examiners , and may provide a signatory authority program for other bargaining unit members such as petitions attorneys, conveying authority to perform the duties of the respective position. The Program will include both a normal and an accelerated option. Details of the other programs will be modeled on the program for patent examiners, but will be adjusted by management to fit the specific jobs in question.

Section 2: Participation

Full-time and part-time examiners may participate in the Signatory Authority Program. Every part-time examiner who enters a trial period under the Signatory Authority program must, prior to the beginning of the trial period, elect either a) a trial period of the same duration as a full time examiner or b) an extended trial period. The examiner's election must be submitted in writing and is irrevocable and final.

Section 3: Procedures for Review

A. An examiner may be removed from the program for conduct infractions related to performance of assigned patent examining duties.

B. Where an examiner has timely submitted sufficient reviewable office actions during the trial period, the Agency shall transmit to the examiner a written decision on the grant or denial of permanent Signatory Authority within two (2) pay periods after the expiration of the trial period. Where an examiner has failed to timely submit sufficient reviewable office actions during the trial period, the Agency shall transmit to the examiner a written decision on the grant or denial of permanent Signatory Authority within five (5) pay periods after the expiration of the trial period.

C. If any potential errors could lead to an adverse decision, the examiner will be given an opportunity to respond prior to the final decision. Up to a total of eight hours of non-examining time shall be authorized, with appropriate supervisory approval, for preparation of the examiner's response. The notice of potential errors will be communicated to the examiner no later than ten (10) calendar days before the final decision to grant or deny permanent Signatory Authority is due and the examiner's comments to the Director will be delivered orally and/or in writing within seven (7) calendar days thereafter.

D. If the final decision is a denial of the permanent grant, a written explanation for the denial will be given to the examiner.

E. Examiners may request reconsideration by the Deputy Commissioner for Patent Operations or a designee of a TC Director's final decision to deny signatory authority. The request must be filed in writing within ten (10) calendar days of the notification of the final decision and must include specific reasons why the decision to deny is incorrect.

Section 4: Minimum Work Requirements

All examiners participating in a Signatory Authority trial period are required to meet the minimum trial period hour requirement for the normal program, or with supervisory approval, the accelerated program..

Section 5: Modification of Part-Time Schedules

The Agency will consider a request by an examiner, under a part-time work schedule which has previously been approved by the Agency, who meets the requirements for the eligibility period and desires to enter the trial period under a temporary grant of Signatory Authority to modify his/her part-time schedule during the trial period in order to meet the minimum hour requirement.

ARTICLE 22

CAREER DEVELOPMENT AND WORK DETAILS

Section 1: Career Development Details

The USPTO shall designate certain recurring details as “career development details.” A career development detail is the temporary assignment of an employee (including nonbargaining unit members) to a different position for a specified period with the employee returning to their regular position upon completion. Career development details assist the Agency in efficiently meeting workload requirements, and provide employees an opportunity to develop their knowledge, skills, abilities, and improve their performance in administrative and technical fields in order to prepare for possible future advancement to higher grade level positions.

Section 2: Announcement and Rosters

The Agency reserves the right to announce multiple career development details simultaneously and establish a roster of qualified candidates from the responses to the announcement that is valid for up to one year. An announcement of a career development detail shall include the location of the detail, duration, nature of the work, work schedules available, application procedures, and minimum qualification and requirements of an applicant, as appropriate. The Agency also reserves the right to limit the announcement to employees in a specific Technology Center, workgroup, or other unit.

Section 3: Selection for Career Development Details

Selection for participation on a detail shall be based on the employee’s demonstrated knowledge, skills and abilities and the needs of the Agency. When applicable, the Agency may consider additional selection factors including but not limited to:

- previous relevant experience;
- writing samples;
- most recent performance appraisal rating;
- current performance;
- references;
- grade or level of signatory authority;
- employment status;
- length of service;
- interview; and
- letters of recommendation.

Selection shall be made from the most qualified applicants.

Section 4: Early Termination of Detail

The Agency reserves the right to preclude continuing participation of an employee on a career development detail when workload, conduct, or performance matters arise.

Section 5: Right to Detail Employees Without Application Process

The Agency reserves the right to assign employees to work details. A work detail is the assignment of an employee for a specified duration to do work which may otherwise normally be attributed to a career development detail, without regard to the provisions of this article, when time constraints and workload requirements exist so as to make assignment to a work detail necessary. In selecting an employee to fill a work detail, management may consider factors such as the nature of the work to be done, the availability of current work for the bargaining unit employee, and the qualifications of the employee.

Section 6: Work Schedules for Employees on Detail

The Agency reserves the right to designate the work schedule of any participant in either a career development or a work detail. Work details may be full or part time.

ARTICLE 23

AUTOMATION

Section 1: Introduction of New Technology

A. The Agency may develop, implement, and modify automated systems and technology. When implementing new automated systems, the Agency will provide reasonable training and assistance in adjusting to the new system or technology.

B. Before implementing new automated systems or technology, or before significant modifications in existing systems or technology, the Agency will;

- i. Demonstrate new or significantly modified automated systems or technology to the union at least two weeks prior to implementation
- ii. Consult with the union regarding necessary training and other issues related to the implementation of the new technology
- iii. If the Agency begins with a beta version of new automated systems or technology, the union may designate up to two bargaining unit employees to participate in the beta testing.

C. The Agency may establish a temporary system to gain information regarding effectiveness of new systems. This system may include beta testing and feedback sessions.

Section 2: General

A. On government computers, the automation system is to be maintained in the format provided by the Agency. No programs, peripherals, or enhancements may be added to employees' computer equipment without the express written consent of management.

B. Bargaining unit members must timely report issues related to automated tools to their supervisors and to the help desk or automation support mailboxes as appropriate.

C. Where information is available in an automated format, the Agency is not obligated to maintain duplicate hard copies.

D. Employees are required to use automated tools to perform job functions for which such tools are available.

ARTICLE 24

PHYSICAL FACILITIES AND SERVICES**Section 1: Work Space and Selection**

A. Where practical, the USPTO will continue to provide individual offices for full-time bargaining unit employees working at the USPTO Headquarters in Alexandria. Agency staff size, hoteling participation, and other factors will influence the Agency's decision to do so. Future hiring and space limitations may require continued sharing of office space.

For training, details, and other similar situations, the Office may provide other office configurations such as cubicles, shared space, lecture halls, etc.

B. When a pool of offices or workspaces is assigned by management for selection by a number of professionals, the order of selection will be based on seniority as defined in Article 3 of this Agreement.

Section 2: Physical Facilities

A. HVAC will be provided from 4:30 am to 11:30 pm, Monday through Saturday, and on Sundays and Federal Holidays when overtime is authorized.

B. Professionals will not adjust or tamper with HVAC controls (e.g. thermostats).

C. The USPTO Headquarters in Alexandria is a nonsmoking facility.

Section 3: Moves

A. Employees will be responsible for packing and unpacking the contents of their offices in a timely manner.

B. Personal property that an employee has packed in Agency-provided boxes and office-type personally owned furniture will be moved by the Agency, but in no case will the Agency be responsible for damage to employees' personal property, including personally owned office-type furniture.

C. Management shall encourage accurate recording of time spent packing and unpacking. There will be no arbitrary uniform rules about the amount of time that can be spent packing and unpacking. Employees will engage in a reasonable good faith effort to diligently pack and unpack their offices. Any additional time used because the professional being moved decides that a move is an appropriate occasion to determine which items to discard or retain is not envisioned as caused by the move.

D. Non-production time for moves is not examining related time.

E. Except as provided above, employees are responsible for packing and moving their own personal items.

F. Items left behind or not properly packed or labeled by employees will be discarded.

Section 4: Appearance and Maintenance

A. Professionals will maintain their workspace and its contents in a clean and professional manner.

B. As determined by management, any decorations or contents that are obscene, unsafe, unlawful, or that may contribute to a hostile work environment, are prohibited from any professional's workspace. No decorations are permitted on windows or external office walls or doors.

Section 5: Parking

To the extent that the Agency controls the administration of parking at Agency facilities, the following provisions apply:

A. The USPTO will not subsidize employee parking. The goal of the Agency is to maximize monthly income in order to keep fees at a minimum. If surplus fees are collected in any given month, the surplus will not be refunded, but will be considered in defining the average operating cost of the parking facility.

B. All vehicles, including motorcycles, will be charged the same monthly, daily, or hourly fees.

C. A waiting list of USPTO employees desiring a parking permit at the parking facility will be established if necessary.

D. Parking permits for USPTO employees on the waiting list will be provided by recovering parking permits that have been sold to non-USPTO employees, if any.

E. Free parking will be available to USPTO employees from 10:30 pm to 5:00 am, Monday through Friday, and all day on Saturdays, Sundays, and Federal holidays.

F. Daily and hourly parking will be available from 5:00 am to 10:30 pm, Monday through Friday, except Federal Holidays.

G. Daily and hourly parking will be available on a first-come first-served basis. There will be no designated daily or hourly spots.

H. Daily and hourly parkers will receive a ticket each time they enter the garage and will pay each time they leave the garage. Daily and hourly parkers must exit the garage before 10:30 pm. Daily and hourly parkers that fail to exit before 10:30 pm will be charged the appropriate parking fee plus an additional release fee.

I. Parking fees will be determined based on considerations such as the lease and operating costs of the garage.

J. The availability of parking spaces for monthly parkers and USPTO-employee daily parkers will be monitored. If necessary, the number of non-USPTO employee daily parkers will be limited.

K. The daily parking rate shall at least equal the monthly rate divided by 22 and the hourly rate shall at least be equal to the monthly rate divided by 176.

Section 6: Other

A. Central Files will be provided for storage of artifacts related to applications and other official documents.

B. Refrigerators, microwave ovens, hot plates, space heaters, coffee makers, toasters, and other appliances are not permitted in employees' offices except for medical reasons such as the need to store insulin or lactated milk.

ARTICLE 25

PROFESSIONAL TRAINING AND DEVELOPMENT**Section 1: Training and Testing for Promotion**

The Agency may require specified prerequisite training and testing for promotional opportunities.

Section 2: Employee Requests for Training

With respect to an employee-initiated request for training, the supervisor may consider the following factors in determining whether the request will be approved. OCIO employees must address these points in their requests at least four weeks prior to the beginning of training.

- a. Benefits to be derived by the Agency, including link to Strategic Plan or other Agency goals
- b. Resource limitations
- c. Enhancement of employees' performance
- d. Number and type of training sessions previously attended by the employee
- e. Length of employment in the Agency
- f. Rating of record and current performance
- g. Impact on work unit

Up to 16 hours annually may be authorized by a supervisory for attendance at technical or legal conferences, seminars, or meetings.

Section 3: Training Opportunities

The Agency may, under appropriate laws, rules, regulations, and funding constraints, provide:

- a. Duty hours training which may be subject to testing, and
- b. Opportunities for non-duty hours technical training as set forth in Section 6 below and/or non-duty hours legal training as set forth in Section 7 below.

Section 4: Repeat Training

If management determines it is in the best interest of the Agency and the employee, the employee may be required to repeat training given pursuant to Section 3a above.

Section 5: Reimbursement for Training

An employee may be required to reimburse the USPTO for any tuition and expenses related to training listed above in Section 3b if the employee fails such training or fails to complete such training.

Section 6: Technical Reading

The Office recognizes that the reading of technical and legal publications is necessary to keep professionals abreast of recent developments related to their work assignments. In arts involving rapid technical advances, it is recognized that the reading of technical publications may require time. Accordingly, supervisors shall grant professionals a reasonable amount of non-production time, as determined by the supervisor, per biweek, for this purpose.

Section 7: Technical Training Program

(A) Subject to budgetary or other considerations, the Agency may provide funding for a non-duty hours technical training program. Management may reduce, alter, suspend or terminate funding for this program at its discretion.

(B) Training under this Section is available to all POPA bargaining unit members who are full-time, permanent, non-probationary employees.

(C) The technical courses taken under this Section must be job-related. The following examples illustrate job-related technical subject matter:

- i) subject matter which is disclosed in patent applications assigned to the employee,
 - ii) subject matter which is encompassed by fields of search in patent applications assigned to the employee,
 - iii) subject matter which falls under classes and subclasses assigned to the employee,
- or
- iv) subject matter which would aid in the comprehension or completion of the employee's assigned work.

(D) The technical courses must be taken for credit at an accredited college or university.

(E) The employee's most recent rating of record must be at least Fully Successful and the employee's current performance must be at least fully successful as determined by the employee's cumulative most recent four (4) full quarters of work.

(F) The employee must obtain approval of the first and second level supervisors.

(G) The employee must meet the eligibility criteria for each request for training under this Section.

(H) Up to \$10,000 per fiscal year is available for reimbursement to each participant for actual tuition costs. Any number of credits within this monetary limit may be taken under this Section. If the tuition costs exceed the employee's limit, the employee will be responsible for paying any overbalance to the school. For each approved course taken under this Section, the employee is allocated up to \$200 per course for required course materials. If an employee drops or withdraws from a course, the employee will repay the PTO for expenses incurred from tuition and/or course materials payment. This also applies when an employee fails a course (as defined by the school).

(I) An employee who participates in training under this section must sign an agreement to continue in service with the Agency at the end of the training for one month for each credit or portion thereof paid for by the USPTO. Failure to continue in service may result in the employee having to repay the Agency for expenses incurred in connection with the training.

(J) Procedures

i) submit for each course a completed form SF-182 with the appropriate supervisory signatures to the Training Delegate at least fourteen (14) days prior to the beginning of the course with copies of the (1) tuition rate and (2) the course description from the school catalog. An electronic SF-182 may be printed and used.

ii) During the school's drop/add period, if the employee changes courses, the employee will notify the Training Delegate and will submit a substitute SF-182 with appropriate supervisory signatures.

iii) The employee will sign the continued service agreement when the forms are submitted for processing.

iv) Along with the SF-182, the employee will complete and submit a Program information form with the following information: course(s) paid for in full or in part under this Section, course description, teaching institution, dates of enrollment, employee's technology center, employee's art unit or division, the employee's assigned area or technology.

v) The employee will submit the grade(s) to the Training Delegate within six (6) weeks after the semester ends. If the grades are not available, the employee will notify the Training Delegate within six (6) weeks after the semester ends and will submit the grade(s) as soon as they are available.

vi) The employee will sign and date a copy of this Section and submit it to the Training Delegate. By signing this copy, the employee is certifying that the employee understands the employee's obligation to the PTO as a participant in training under this Section. Signing a copy of this section and participating in non-duty hours technical training constitutes permission by the participant for the PTO to obtain grades for courses which the PTO paid for in whole or in part directly from the school if the participant fails to meet the time frames for submitting his/her grades to the Training Delegate as set forth above.

vii) If the employee decides to resign, the employee will notify the Training Delegate in writing (email notification is sufficient) ten (10) business days prior to termination so that a reimbursement determination can be made. Failure to do so may result in a delay in processing of the employee's release papers.

viii) The employee must comply with the rules and procedures as set forth in this Section. Minor corrections or omissions will not be considered a failure to abide by the rules and procedures of this Section. Failure to comply may result in a denial of training requests under this Section or a denial of reimbursement.

Section 8: Legal Studies Program

(A) Subject to budgetary or other considerations, the Office may provide funding for a Non-Duty Hours Legal Studies Program. Management may reduce, alter, suspend, or terminate funding for this program at its discretion.

(B) This Program is available to any full-time, permanent patent examiner with at least 2 years of continuous service at the PTO or an employee with at least 2 years of continuous service by October 1 of the Fall semester the participant enters the Program.

(C) In order to participate, the employee's most recent rating of record must be at least Fully Successful and the employee's current performance must be at least fully successful as determined by the employee's cumulative most recent four (4) full quarters of work. Each request for tuition assistance will be considered as a new request with regard to the eligibility requirements set forth under this section.

(D) Acceptance at an accredited (ABA) law school is required. The legal courses for which the Office provides tuition assistance under this section must be taken for credit at an accredited law school. Courses for advanced degree programs (i.e. other than J.D.) are not covered under this section. A request for payment of advanced level courses will be considered as a general request for training.

(E) The employee must obtain approval of the first and second line supervisors. Training approved and taken under this program must contribute significantly to accomplishing the goals in the USPTO's strategic plan.

(F) The employee must meet the eligibility criteria for each request for training under this Section.

(G) The PTO will reimburse employees for up to 24 credits per fiscal year, not to exceed 88 total credits under this Program. Each course that is paid for by the Office will include up to \$200.00 for required books. If the tuition costs exceed the employee's limit, the employee will be responsible for paying any overbalance to the school. A participant who withdraws from or fails a course taken under this Program will be required to repay the PTO for expenses incurred from books and tuition.

(H) An employee who participates in training under this section must sign an agreement to continue in service with the Agency at the end of the training for one (1) month for every three (3) PTO-paid-for credits. This continued service agreement will begin at the end of participation in the Program, unless the employee is separated involuntarily. Failure to continue in service may result in the employee having to repay the Agency for the expenses incurred in connection with the training. An employee who leaves the Agency before satisfying the continuing service requirement may petition the Commissioner for Patents for reconsideration of the recovery amount, or for a waiver of the Agency's right to recover. The duration of the required continued service will be extended for employees who work a part time schedule in proportion to the number of hours they work.

(I) Continuing service agreement (CSA) in the event funding is terminated or suspended:

If the Agency terminates or suspends funding while an employee is in training under this Section, the continuing service period will begin immediately and will continue until either completed by the employee or funding is reestablished. If funding is reduced, available funds will first be allocated to bargaining unit members who are already in training under this Section.

(K) Procedures:

(1) Submit a completed SF-182 with the appropriate supervisory signatures to the Training Delegate for each course at least (2) weeks prior to the beginning of the course, with copies of the tuition rate and the course description from the school catalog. An electronic SF-182 may be printed and used.

(2) During the school's drop/add period, if the participant changes courses, the employee will submit a substitute training form.

(3) The employee will sign the continuing service agreement when the forms are submitted for processing.

(4) The employee will sign and date a copy of this Section and submit it to the Training Delegate. By signing the copy, the employee is certifying that the employee has received and read the policy and understands the employee's obligation to the PTO as a participant in training under this Section. Signing a copy of this agreement and participating in non-duty hours Legal Training under this Section constitutes permission by the participant for the PTO to obtain grades for courses which the PTO paid for directly from the law school if the participant fails to meet the time frames for submitting his/her grades to the Training Delegate as set forth below.

(5) The employee will submit the grade(s) to the Patent Academy within six (6) weeks after the semester ends. If the grades are not available, the employee will notify the Training Delegate within six (6) weeks after the semester ends and will submit the grade(s) as soon as they are available.

(6) If the employee decides to resign, the employee will notify the Training Delegate in writing (e-mail notification is sufficient) ten (10) working days prior to termination

so that reimbursement determination can be made. Failure to do so may result in a delay in processing of the employee's release papers.

(7) The employee must comply with the rules and procedures set forth in this Section. Minor corrections or omissions will not be considered a failure to abide by the rules and procedures of this Section. Failure to comply may result in a denial of training requests under this Section or a denial of reimbursement.

ARTICLE 26

WORK SCHEDULES**Section 1: Work Schedule Options**

The Agency will make available to employees the following work schedules. Management, at its discretion, may determine that an employee may not elect schedules II-IV, based on the needs of the Agency. The available schedules are:

Schedule I. Regular Tour of Duty – Fixed hours, eight hours per day, normally, Monday through Friday from 8:30 a.m. to 5:00 p.m. The regular tour of duty consists of 8 hours of work plus one half hour unpaid break.

Schedule II. Compressed Work Schedule—This schedule allows employees to reduce the number of days worked in a biweek by extending the regular workday. There are two options under this schedule:

Option 1, known as the 5/4-9, allows employees to work 8 9-hour days during the biweek and 1 additional day of 8 hours. When selecting this option, employees must identify both the day of the biweek that they will not work and the day on which they will work 8 hours.

Option 2, known as the 4-10, allows the employee to work 4 10-hour days per week. When selecting this option, employees must identify which day of the week they will not work.

Requirements for this schedule include:

- a. Fixed arrival and departure times, with shifts worked during the hours of 4:30 a.m. and 11:30 p.m.
- b. Monday through Friday workweek
- c. When a holiday falls on a day the employee is scheduled to work, the employee may claim the number of hours they are scheduled to work that day, whether it is 8, 9, or 10
- d. When a holiday falls on the day the employee is not expected to work because of a compressed schedule, the employee may claim the next work day as an “in lieu of” day off
- e. When a holiday falls on a Saturday or Sunday, employees should treat the holiday as if it falls on the day given to employees on Schedule I as their holiday and may take an “in lieu of” holiday accordingly
- f. Available to full-time employees only
- g. With prior supervisory approval, employees may change their compressed day off, so long as the employee meets the other requirements of the program
- h. Supervisors may require the employee to modify the scheduled hours to attend training, meetings, conferences, or for other work-related reasons.

Schedule III. Flexitime Plan – Normally, Monday through Friday. Employees may report to work at any time between 4:30 a.m. - 11:30 p.m., be present during core hours and leave after performing eight hours of work, plus one half hour unpaid break. Employees may be required to alter their work schedule for training, meetings, conferences, or for other work-related reasons as required by management, or planned system or power outages.

Schedule IV. Increased Flexible Plan (IFP)- Increased Flexible Plan (IFP) is a flexible work schedule that allows full-time employees to work their regular hours in other than 10 full workdays per biweek. Regular hours are those hours that constitute the 80-hour biweekly basic work requirement (*hereinafter referred to as the "80-hour requirement"*). Regular hours must be worked within the designated six-day workweek (*i.e., Monday through Saturday*). Under the IFP, full-time employees may vary the number of hours worked each day and the days worked each week, as long as they (1) meet the 80-hour requirement within agency set limits and (2) satisfy core hour requirements.

Employees on this schedule are entitled to 8 hours of holiday pay on a Federal holiday and may claim the number of hours they are scheduled to work in the event that the Agency is closed due to snow or other emergency. If the employee is already working when the closure is announced, the employee may use administrative leave to cover the remainder of the scheduled workday. Employees may not use administrative leave and then claim overtime, compensatory time, or credit hours. There will be no administrative leave for employees who cannot work on Saturdays. This provision does not supersede any union or employee agreement regarding an alternate worksite program and the responsibility of the employee to work at the alternate work site during an Agency closure.

Only full time employees will be eligible to participate in IFP. IFP work schedules must be submitted in advance and approved by the supervisor. The employee's proposed schedule must comply with the following:

- a. Employees must satisfy their 80-hour requirement between the hours of 4:30 a.m. and 11:30 p.m., Monday through Saturday.
- b. Participants must schedule 8 hours on each holiday and should claim this time as administrative leave (holiday) on their time and attendance reports.
- c. Employees must submit to their supervisor their intended schedule for the following pay period prior to the beginning of that pay period. Any deviations from that schedule require prior supervisory approval.
- d. When circumstances arise that warrant such a change, an individual employee upon request may, after obtaining appropriate supervisory approval, be permitted to amend his/her daily IFP work schedule, provided that such amendment will not prevent the unit to which the employee is assigned from providing its normal service to the public, the Agency and other agencies of the government.
- e. Regular hours may NOT be worked on a Sunday.
- f. The maximum total hours worked in a given work day, including regular hours, compensatory time, and overtime may not exceed 12 hours.
- g. The maximum total hours worked in a given work week, including regular hours, compensatory time, and overtime, may not exceed 64 hours.
- h. Employees must work a minimum of 4 days per week, including core hours. Employees may use compensatory time or leave to satisfy this requirement.
- i. The shortest period of time an employee may be in pay status (including leave and compensatory time used) to receive credit for a workday is 4 hours.
- j. Core hours are Tuesday and Thursday, 12:00 pm to 2:00 pm, each week.

- k. Employees may voluntarily elect to work IFP. However, participation may be restricted due to the nature of an employee's position, e.g., requires his/her presence during USPTO business hours, to ensure office coverage, etc.
- l. If automated systems become unavailable or fail to function properly and the employee is working under the Increased Flexitime Policy (Schedule IV), the employee must leave work without administrative leave after the later of: 1) completion of all work that can be done without an automated tool, or 2) one hour after the system fails or does not work properly. Nothing in this paragraph shall be read to require the employee to stay until the occurrence of one of the events listed above, unless the employee is required to stay to assist in resolving the issue.
- m. Employees may be required to alter their work schedule for training, meetings, conferences, or other work related reasons, or for planned system or power outages at management's discretion. When practical, meetings and training will be conducted during core hours.

Section 2: Mid-Day Flex

- A. Employees working under either work schedules III or IV as defined in Section 1 above may also mid-day flex. Under mid-day flex, employees may leave work in the middle of the day and return to work to complete their scheduled work hours. Mid-day flex hours are not duty hours.
- B. Employees must request and obtain supervisory approval in advance from their supervisor or designee, prior to mid-day flexing. The request must include time and number of hours an employee intends to mid-day flex.

Section 3: Election of Work Schedule

All full-time employees are required to elect one of the work schedule plans in Section 1 above. An employee's election to participate in a work schedule plan other than the normal tour of duty must be approved by his/her supervisor. Employees must elect work schedules II through IV in the last biweek of the quarter before the newly elected schedule is effective. If an employee does not make a selection, the employee is deemed to have selected work schedule I. Employees on detail or in training may be required to elect a particular work schedule at management's discretion.

Section 4: Withdrawal from Work Schedule

An employee's elected work schedule plan will remain in effect until the participant withdraws from the current work schedule. Employees participating in a work schedule plan other than the normal tour of duty (Schedule I) may withdraw from that work schedule plan at any time. The change will be effective at the beginning of the next pay period. Employees who withdraw from such plans shall revert to the normal tour of duty.

Section 5: Trial Period and Probationary Employee Work Schedule

Trial period and probationary employees will not be eligible to participate in Schedules II through IV as defined in Section 1 above, for the first eight months and thereafter only with supervisory approval. Supervisors and employees being trained as a group may agree to work the 5/4-9 option of Schedule II, so long as the group can agree to the modification.

Section 6: Work Schedules for Transferring Employees

Employees transferring from one business unit to another will be required to obtain approval, from the new supervisor, of their previous election or make a new election at the time of the transfer. Upon supervisory approval the employee can begin participation in a work schedule other than the normal tour of duty at the beginning of the next pay period. It is recognized that it is possible that the new position may be such that the employee may have his or her participation restricted or denied.

Section 7: Removal from Schedules II, III, or IV

- A. Employees may be removed from Schedule II, Schedule III, or Schedule IV if they do not maintain at least a fully successful level of performance.
- B. An employee who receives a disciplinary or adverse action may be removed from Schedules II, III, or IV.
- C. Employees may be prohibited from electing Schedules II, III, or IV for up to three years following a disciplinary or adverse action.

Section 8: Work Schedules While on Travel

A. An employee participating in Schedule IV who is in travel status or on Agency business outside the normal work site will revert to Schedule I or III for the biweek(s) involved. Management may waive this requirement if such waiver prevents the employee from working overtime or compensatory time.

B. For employees on Schedule IV (IFP), when an employee is on office business away from the normal work site but in the local vicinity, and the duration of the business is less than the duration of the employee's normally scheduled work day, the employee must report to the normal work site and work for a period of time equal to the difference less reasonable travel time from the place of the Agency business to the normal work site.

C. For employees on Schedules I, II, or III (Normal Tour of Duty, Compressed, or Flextime), when an employee is on Agency business away from the normal work site but in the local vicinity, and the duration of the business is less than the employee's normal workday (8, 9, or 10 hours), the employee must report to the normal work site and work for at least a period of time equal to the difference between the time worked and the employee's normal workday hours, less reasonable travel time from the place of the office business to the normal work site.

Section 9: General Leave/Holiday/Administrative Leave

General Leave - When an employee is absent from the job other than for a holiday or other administrative leave, he or she will be charged with leave equal in hours to the scheduled length of the work day. Employees working under Schedule II or IV will be charged the number of hours that they scheduled for that day. Employees working under Schedules I or III will be charged with eight hours leave.

Section 10: Requirement for Meal Period

If an employee works more than 6 hours, the employee must take an uncompensated break of at least 30 minutes. The break may not be at the beginning or end of the employee's workday.

Section 11: Time and Attendance

Management shall determine the official form and procedure for recording, certifying and reporting of Time and Attendance. Such system may be automated or via paper.

Section 12: Part-Time Program

A. This program consists of two separate programs: a first component, the “childcare/eldercare component” and a second component, the “retention component”.

B. Number of participants: this program will normally include a total of 110 slots, with 90 for the childcare/eldercare component and twenty for the retention component. There is no limit on the number of slots available for pre-school age child care. Priority in the childcare/eldercare component will go to employees with pre-school children. If the cap of 90 is reached, a parent with a preschool aged child may still convert to a part-time schedule; however there will be no available slots in the childcare/eldercare component until the number of total participants goes back below 90.

C. Length of Participation: Each participant will be eligible to serve a minimum of three months and a maximum of eighteen months. Participants may reapply in three to eighteen month increments so long as slots are available. When applying, employees will specify the desired length of participation and the component of the program for which they are applying. At the end of the agreed upon period of part-time status, the employee shall revert to full-time status. The Agency shall allow earlier conversion to full-time status at an employee’s request, consistent with the needs of the Agency.

D. Within the Childcare and Eldercare Component employees will work a regular set schedule of between 32 and 64 hours per bi-week (“scheduled working hours”). The regular schedule will include at least 2 days per week including at least one core day (Tuesday or Thursday). Each participant in this component will work a minimum of 4 hours and a maximum of 10 hours per day (“scheduled workday”). Employees must have a current rating of record of at least fully successful and current performance of at least fully successful to be eligible to participate in this component.

E. Within the Retention Component of this program, only employees that are GS-11 and above and at least three-years PTO experience will be eligible to participate. Further, the employee’s most recent rating of record must be at least Fully Successful, and the employee’s current performance must be at least fully successful as determined by the employee’s cumulative most recent four (4) full quarters of work. Participants in this component will work a regular set schedule of between 40 and 64 hours per bi-week. The regular schedule will include at least three days per week, including both core days (Tuesday and Thursday). The participant will work a minimum of 4 hours and a maximum of 10 hours per scheduled workday. At least 4 hours of every scheduled workday must fall between the hours of 8:30 a.m. and 5:00 p.m.

F. Employees must notify the program administrator when they withdraw from the part time program.

G. Conditions -

- (1) Subject to supervisory approval, an employee may be permitted to amend his/her choice of non-work days to another day or days in the same bi-week, provided that such amendment will not prevent the unit to which the employee is assigned from providing its normal service to the public and the Agency. No amendment can be made which results in an amended scheduled workday to fall on a holiday. Such amendment may not be used to habitually change the employee's regular work schedule.
- (2) Subject to prior supervisory approval, an employee may arrange to schedule and work additional regular paid hours when necessary to meet the needs of the Agency or the employee.
- (3) Subject to prior supervisory approval, an employee may be permitted to change his/her work schedule during the program (i.e. a change from 2 ten-hour days per week to 3 nine-hour days per week).
- (4) If the employee converts to a part-time schedule and there is insufficient time to complete all items of work within the scheduled hours, the immediate supervisor will determine the number and priority of the items to be completed by the employee.
- (5) All part-time employees may be required to share an office.

H. Procedures

- (1) The Agency will allocate slots in the program to eligible applicants based on the order of receipt of their requests by date to the appropriate Group Director's or equivalent's office. Current participants will not need to reapply to maintain their slots until the end of their approved period of participation.
- (2) The Agency will designate a program administrator to whom requests must be submitted. Requests shall also be forwarded to the first and second line supervisors of the employee. Employees may be required to submit requests electronically.

ARTICLE 27

ANNUAL LEAVE**Section 1: Requesting Annual Leave**

A. **Scheduled Leave:** Annual leave should be scheduled in advance. An employee must submit a completed USPTO approved leave request form to his/her immediate supervisor at least three (3) business days prior to the absence. The employee has a responsibility to comply with this requirement; however, in unusual circumstances an employee request made less than three (3) business days in advance will be considered and may be approved.

B. **Unscheduled Leave:** Annual leave, including emergency annual leave, shall be granted or denied by the immediate supervisor or authorized designee. Employees must contact their supervisor or designee within the first hour of the employee's tour of duty or as soon as possible thereafter in order to obtain approval for their use of leave. If the immediate supervisor is not available to respond to such requests, the supervisor will designate another individual, with appropriate authority, who will be available to respond thereto. If unable to contact the supervisor or designee telephonically, employees may request leave by voice mail or email to the supervisor. If the employee chooses to leave a message or sends an e-mail, the employee must leave a telephone number where he/she can be reached and any information that may assist the supervisor in granting the leave. The supervisor will call or e-mail the employee if the leave is to be denied. Messages left for the supervisor do not ensure that the leave has been approved. If the leave is denied, see section 5 below.

C. Upon returning to work, an employee must complete a USPTO approved leave request form to document the unscheduled annual leave.

Section 2: Conflicting Requests for Annual Leave

In order to fairly allocate leave periods, in the event of a conflict in scheduling annual leave among employees, first consideration will be given to those who requested leave earliest in writing, provided however that a request may not be made earlier than one year before the requested leave date. In the event of identical leave request dates, preference will be given in the following order subject to the needs of the Agency:

A. To the employee who was not afforded an opportunity to take leave during the period in question during the previous year; then

B. To the employee with the most seniority. The supervisor may make exceptions to this provision in those cases where determinable personal hardship exists.

Section 3: Cancellation of Annual Leave

Management reserves the right to change or cancel approved leave of an employee due to operational needs.

Section 4: Forfeiture of Annual Leave

It is the responsibility of supervisors and employees to consult in order that leave may be scheduled fairly and equitably and so that annual leave will not be forfeited.

Section 5: Denial of Requests for Annual Leave

When the supervisor denies an employee's request, the employee is expected to report to work as scheduled, or as soon as possible. If the employee reports as soon as possible, the period between the beginning of the work schedule or the time the employee is due to report back and the actual reporting time will be charged to annual leave. If the employee does not report to work as soon as possible, the employee will be placed on Absence Without Leave (AWOL) for the time which the employee does not report to work in increments of 15 minutes, and may also receive a disciplinary action.

Section 6: Substituting Sick Leave for Annual Leave

Whenever circumstances within a period of annual leave would clearly justify the granting of sick leave rather than annual leave, the leave-approving official may grant sick leave, and the charge against annual leave reduced accordingly. Application for substitution must be made not later than two working days after the employee returns to duty and must be supported by such evidence as required for a request for use of Sick Leave as set forth in Article 28, Section 2.

Section 7: Advanced Annual Leave

A. Grants of advance annual leave are rare and at the discretion of management. In no case will advance annual leave be approved if:

1. the requesting employee is ineligible to earn annual leave;
2. the requesting employee has not served more than 90 days in his/her current position;
3. the requested amount exceeds the amount of annual leave the employee would earn during the remainder of the leave year.

B. Valid requests for annual leave by other employees will take precedence over requests for advanced annual leave.

ARTICLE 28**SICK LEAVE****Section 1: General**

An employee shall earn sick leave in accordance with applicable laws and regulations. An employee may use sick leave in accordance with applicable laws and regulations, and the specific procedures of this Agreement for absences due to medical, dental, optical examinations or treatment, incapacitation for the performance of duties by physical or mental illness, injury, pregnancy, or childbirth, or certain circumstances involving communicable diseases. In accordance with applicable laws and regulations, sick leave may also be used for care of a family member who is incapacitated by a medical or mental condition or to attend to a family member receiving medical, dental, optical examination or treatment, as well as to care for a family member with a serious health condition, to arrange and attend funeral services for a family member, and for purposes relating to the adoption of a child.

Section 2: Requesting Sick Leave

A. **Scheduled Leave:** Sick leave shall be requested in advance where possible, such as for routine dental, eye, or other medical examinations. An employee must submit an approved USPTO leave request form to his/her immediate supervisor prior to the anticipated sick leave. The leave request form must be completed in its entirety.

B. **Unscheduled Leave: Prior to the Start of the Workday:** Sick leave shall be authorized or denied by the immediate supervisor or authorized designee. An employee must contact his or her supervisor or designee within the first hour of the employee's tour of duty or as soon as possible thereafter, in order to obtain approval for use of sick leave. If the immediate supervisor is not available to respond to leave requests, the supervisor will designate another individual, with appropriate authority, who will be available to respond thereto. If unable to contact the supervisor or designee telephonically, employees may request leave by voice mail or e-mail to the supervisor. If the employee chooses to leave a message or sends an email, the employee must leave a telephone number where he/she can be reached and/or any information that may assist the supervisor in granting the leave. The supervisor will call or e-mail the employee if the leave is to be denied. The supervisor will leave a message on an answering device but will not be required to call back if an employee has no answering device. Messages left for the supervisor do not ensure that the leave has been approved. Upon returning to work, an employee must complete a USPTO-approved leave request form documenting any unscheduled sick leave. If the employee's leave is denied, see paragraph F below.

C. **Sickness While at the Work Site:** An employee who gets sick after the workday begins must request leave from his/her supervisor, or in the supervisor's absence, from an authorized designee prior to leaving the work site. The employee must complete a USPTO approved leave request form prior to leaving the work site, whenever practicable.

D. **Employee Unable to Request Leave:** Where for good and sufficient reasons, an employee is unable to notify his/her supervisor of his/her inability to report for duty, another person may act in his/her behalf to notify the supervisor of the employee's absence.

E. Requesting Leave for Incapacitation Lasting More Than One Day: Employees are required to call in to report continued sickness on each business day they are absent unless sick leave for a continued period has been approved.

F. Denial of Sick Leave Request: When an employee's request for sick leave is denied, the employee is expected to report to work as scheduled or as soon as possible. If the employee does not report to work as soon as possible, the employee may be placed on Absence Without Leave (AWOL). Denial of a sick leave request will not preclude a later change in leave status for good and sufficient reasons.

G. Medical Certificates

1. An acceptable medical certificate is a written statement signed and dated by a registered practicing physician or other health care provider certifying to the incapacitation, examination, treatment, or the period of disability of an employee while he/she was undergoing professional treatment by the physician or other health care provider.

2. Employees shall not be required to furnish a medical certificate to substantiate requests for approval of sick leave unless the leave exceeds 3 consecutive business days, or the employee has been placed on leave restriction.

Section 3: Leave Restriction

Where the Agency has reasonable grounds to believe that an employee has abused sick leave, a warning may be issued informing the employee that if the described abuse continues, sick leave restriction may be imposed. If leave restriction is subsequently imposed, written notice will be provided explaining that, for a stated period not to exceed six (6) months, a medical certificate must accompany requests for approval for sick leave. At the end of the stated period, the Agency shall review the employee's situation and give the employee notice of rescission or notice of renewal of the restriction due to continued abuse.

Section 4: Advanced Sick Leave

Full-time, non-probationary employees may be granted up to 104 hours of advanced sick leave in compliance with applicable laws and regulations. The following criteria will be considered:

A. Whether the employee is expected to return to duty for a period sufficient to repay the leave and the employee has sufficient funds in his or her retirement account or any other source of monies owed to the employee by the Government to reimburse the Employer for the advance should the employee not return to work.

B. Whether the employee has provided acceptable medical documentation.

C. Whether the employee is subject to leave restriction as described above.

Section 5: Substituting Annual Leave for Sick Leave

Consistent with applicable laws and regulations and this Agreement, an approved absence, which would otherwise be chargeable to sick leave, may be chargeable to annual leave at the option of the employee.

ARTICLE 29

LEAVE WITHOUT PAY

In most circumstances, Leave Without Pay (LWOP) is not an entitlement, however, an employee who desires leave, but who does not have an adequate leave balance in the appropriate leave category, may request leave without pay.

Section 1: Requesting Leave Without Pay

A) Consistent with applicable regulations and this Agreement, an employee who desires leave, but who does not have an adequate leave balance in the appropriate leave category, may request Leave Without Pay. To request Leave Without Pay, employees must submit a completed USPTO approved leave request form to their immediate supervisor. The reason for the request must be included on the leave request form. If the leave is for medical reasons, a medical certificate as defined in Article 28, Section 2G must be submitted. Leave Without Pay will generally be granted only in extraordinary circumstances, and not merely for the personal convenience of the employee. LWOP requests must be approved by both the first and the second line supervisors.

Section 2: Requests for Leave Without Pay for 30 Days or More

If the employee requests Leave Without Pay for 30 days or more, in addition to the OPM-71, the employee must submit a written statement fully explaining the reasons for the request, and, if the request is made for medical reasons, a statement from the physician indicating the need for the absence and the prognosis of the employee's ability to return to work at the end of the period of Leave Without Pay.

ARTICLE 30**OVERTIME****Section 1: Overtime in General**

Authorized work performed that exceeds 8 hours in a day or 40 hours in a week (80 hours per pay period for those on a flexible schedule) is overtime work. Employees are entitled to overtime compensation or compensatory time as appropriate for overtime worked in accordance with applicable provisions of law, regulation, and Agency policy.

Section 2: Limits on Overtime Hours

Employees may be limited to a maximum number of hours (including compensatory time worked in lieu of overtime and credit hours) of overtime each bi-weekly pay period. The statutory limit on aggregate pay may dictate a lower limit than is set by the Agency. The Group Director or equivalent may authorize limited exceptions to the biweekly cap in limited situations where an individual can demonstrate the ability to efficiently work at a higher limit, or to meet specific needs of the Agency.

Section 3: Availability of Overtime

Management reserves the right to grant or deny overtime in accordance with the availability of funds, operational needs, employee's qualifications, performance and/or conduct.

Section 4: When Overtime May be Worked

A. For patent examiners, overtime may be worked on any day of the week including Saturdays, Sundays and Federal holidays. A maximum of 12 hours, including the normally scheduled workday and overtime, may be worked on any day. Paid overtime may not begin before 4:30 a.m. and must be completed by 11:30 p.m. Credit hours and compensatory time count toward the twelve hour limit. Hours worked on a Federal holiday during the employee's regularly scheduled work hours must be paid as holiday premium pay.

B. For other employees, management will determine when overtime may be worked. Limitations will be based on operational needs or other needs of the Agency.

Section 5: Requirement for a Break

No more than 6 consecutive hours of overtime work are permitted in the absence of an uncompensated 1/2-hour break.

Section 6: Performance

An employee must be performing at least at the Fully Successful level before being authorized to work overtime. Authorization will be on a biweekly basis.

Section 7: Conduct

Management may declare an employee ineligible to work overtime if the employee has received a disciplinary or adverse action within the last three years.

Section 8: Probationary Employees

First year employees must have a minimum of 6 months of tenure before being considered to work overtime unless otherwise authorized by management.

Section 9: FLSA Requirements

Employees covered by the Fair Labor Standards Act (FLSA) will not work overtime unless approved in advance and for pay (or, at the employee's election, compensatory time in lieu of pay).

Section 10: Mandatory Overtime

Management may require employees to work mandatory overtime.

ARTICLE 31

COMPENSATORY TIME**Section 1: Compensatory Time**

A. Employees may be limited to a maximum number of hours (including overtime hours worked for pay and credit hours) of compensatory time each bi-weekly pay period, as determined by management. The statutory pay cap may prevent certain employees from working the biweekly total of hours allowed by management.

B. Group Directors or equivalent managers may authorize individual exceptions to the set hour limit in limited situations to meet specific needs of the Agency.

C. This compensatory time program contains no waiver of due dates. The employee is responsible for arranging to meet established due dates or obtaining adjustments as allowed by the supervisor.

D. An employee cannot carry forward more than a cumulative 80 hours of compensatory time and credit hours per pay period including all types, except religious compensatory time, from one pay period to the next, unless management, at its sole discretion, determines that additional compensatory time for an employee is in the best interest of the Agency.

E. Employees may earn up to 400 hours of compensatory time per fiscal year, excluding those hours earned in the maternity/paternity and religious compensatory time programs. The 400-hour total also includes credit hours.

F. Compensatory time may be earned in accordance with the regulations governing the earning of overtime. Eligibility requirements for earning compensatory time are the same as those for working overtime.

G. The compensatory time worked will be added to the employee's production time for the bi-weekly period in which the time was worked.

H. Compensatory time must be earned in advance of being used, except as provided in Section 4(B) of this Article.

I. The same pay cap limitations that apply to paid overtime apply also to compensatory time.

J. Compensatory time may not be earned on a day when the employee is incapacitated because of sickness, or uses leave for the entire day.

K. An employee may not earn compensatory time on any normal business day until the employee has completed his/her normal work schedule. The amount of compensatory time that may be earned on Saturdays and Sundays during any one bi-week is sixteen (16) hours.

L. No more than 6 consecutive hours of compensatory time can be earned in the absence of an uncompensated 1/2-hour break.

M. First year employees may be considered eligible for compensatory time when it is determined that they meet the criteria for eligibility of paid overtime in accordance with the overtime policy.

N. An employee may be ineligible to earn compensatory time if the employee has received a disciplinary or adverse action within the last three years.

O. Compensatory time may not be earned during an employee's regularly scheduled hours on a holiday. Compensatory time may, however, be earned for hours worked outside of the regularly scheduled hours on a holiday.

Section 2: Use of Compensatory Time

A. The use of compensatory time will follow the same guidelines as annual leave in that the use of compensatory time must be approved in advance except when the government is on unscheduled leave.

B. In the event of a government-wide regulation requiring the use of accrued compensatory time in a limited period, employees shall have the time set out in the regulations to be in compliance with this rule.

Section 3: Maternity/Paternity Compensatory Time

A) In addition to the compensatory time described above, an expectant parent may elect to work maternity/paternity (mat/pat) compensatory time in order to accrue and use compensatory time for maternity/paternity reasons.

B) The cap on the total number of mat/pat compensatory time hours that may be earned per calendar year is 80 hours.

C) No more than 6 consecutive hours of Maternity/Paternity compensatory time can be earned in the absence of an uncompensated 1/2-hour break.

D) An employee may be ineligible to earn Maternity/Paternity compensatory time if the employee has received a disciplinary or adverse action within the last three years.

Section 4: Religious Compensatory Time

A. Requests for religious compensatory time off must be made in advance and in writing. The employee must complete an approved USPTO leave request form identifying the date(s), number of hours requested for the absence, and a brief explanation of the religious belief that necessitates the employee's absence from work. The explanation must be indicated in the "REMARKS" section of the USPTO-approved leave request form or attached to the form as a separate statement.

B. Religious compensatory time may be earned either before or after the absence from work. Religious compensatory time may be earned no more than four pay periods before or after the absence from work. An employee's request for religious compensatory time off should not be granted without simultaneously scheduling the hours during which the employee will work to earn the compensatory time.

C. The employee shall provide management a clear record of the employee's adjusted work schedule.

D. Employees are only allowed to accumulate the number of hours of compensatory time needed to make up for previous or anticipated absences from work for religious purposes.

E. No more than 6 consecutive hours of religious compensatory time can be earned in the absence of an uncompensated 1/2-hour meal break.

F. In the event that the employee is unable to repay advanced religious compensatory time used (e.g. prolonged illness of employee), the four pay period limit may be extended at the discretion of the supervisor.

G. An employee with an outstanding balance of religious compensatory time must eliminate that balance before he/she may earn additional compensatory time of any kind.

H. If an employee is absent when he/she is scheduled to perform work to make up for a planned or past absence for a religious observance, the employee must take paid leave, request leave without pay, or be charged with AWOL, if appropriate.

ARTICLE 32

MATERNITY/PATERNITY LEAVE

Section 1: USPTO Policy

Generally, the USPTO allows for absences of up to 6 months for maternity/paternity purposes for non-probationary employees. However, in considering the length of the absence, the operational needs of the Agency will be taken into account. Employees (both male and female) may use any combination of available annual leave, compensatory time, credit hours (if applicable), or leave without pay (LWOP) for maternity/paternity purposes and sick leave in accordance with applicable laws and regulations. Requests for advanced annual or sick leave will be considered in accordance with Agency policy and this agreement.

Section 2: Sick Leave used for Maternity/Paternity Purposes

In accordance with applicable laws and regulations, female employees are entitled to use available sick leave for prenatal and postnatal medical appointments or treatment and any periods of incapacitation as a result of pregnancy and childbirth. Depending upon available sick leave balances, fathers are entitled to use sick leave up to a maximum of 480 hours to care for the mother during the period of time of her incapacitation due to pregnancy and childbirth, or for prenatal care.

Section 3: Family and Medical Leave Act (FMLA)

In accordance with the provisions of the FMLA, eligible employees (both male and female) are entitled to use up to 12 administrative work weeks (480 hours) of leave without pay under the Family and Medical Leave Act (FMLA) for the birth of a baby, or for the placement of a son or daughter with the employee for adoption of a child or foster care. Annual leave or sick leave as appropriate may be substituted for leave without pay.

Section 4: Leave for Adoption Purposes

In accordance with applicable laws and regulations, an employee may use accrued sick leave for purposes relating to the adoption of a child. An adoptive parent may use sick leave for any purpose that would allow the adoption to proceed including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and for any other activities necessary to allow the adoption to proceed. Adoptive parents who voluntarily choose to be absent from work to bond with an adopted child may not use sick leave for this purpose. Parents may use annual leave or leave without pay for these purposes.

Section 5: Notice to Supervisor

Employees must request leave for maternity/paternity reasons indicating the type of leave and the probable duration, normally at least 30 days in advance or when practicable. It is understood that unanticipated medical circumstances and issues may arise during pregnancy that will require an employee to alter their request and not allow 30-day advance notice.

ARTICLE 33**ADMIN. LEAVE FOR VOTING, JURY DUTY, AND BLOOD DONATIONS****Section 1: Voting**

When voting polls are not open at least 3 hours either before or after an employee's regular hours of work if the employee is on a regular tour of duty or a flextime plan, then he/she will, upon written request, be granted a sufficient amount of administrative leave by his/her supervisor, which will permit him/her to report for work 3 hours after the polls are open or leave work 3 hours before the polls close, whichever requires the lesser amount of administrative leave.

Section 2: Jury Duty

Administrative leave shall be granted in accordance with applicable rules and regulations to employees for jury duty or for appearing in court as a witness in an official capacity or in a non-official capacity as a witness on behalf of the United States. The employee will need to provide a copy of the summons for the leave to be granted.

Section 3: Donations of Blood

Upon advance request to his/her supervisor, an employee who makes a donation of blood without compensation may receive administrative leave up to 4 hours from the time he/she leaves his/her office for donation and recuperative purposes.

ARTICLE 34

CREDIT HOURS**Section 1: Who May Earn Credit Hours**

The use of credit hours will be limited to employees who are prevented from working overtime or earning compensatory time off in lieu of overtime because of restrictions on pay that apply to some employees at higher steps and steps within grades.

Section 2: Earning Credit Hours

A. Credit hours may be earned when the employees would otherwise be eligible to work overtime or compensatory time.

B. The maximum number of credit hours that may be earned in a single fiscal year is the lesser of 400 hours or the number of hours of compensatory time that the employee was prevented from earning because of pay restrictions during the fiscal year.

C. The maximum number of credit hours that may be earned in a single biweek is the number of hours of compensatory time that the employee was prevented from earning because of pay restrictions during the biweek.

D. Employees may not carry over more than 24 credit hours from one pay period to the next. For each hour of compensatory time carried over from one biweek to the next that exceeds 56, the total number of credit hours that can be carried over is reduced by 1.

E. One credit hour will be earned for each hour worked over eighty hours in a biweek.

Section 3: Use of Credit Hours

Credit hours may be used in the same manner as annual leave.

ARTICLE 35

REORGANIZATION AND REALIGNMENTS

Section 1: Union Notification

Before implementing a reorganization or realignment, the Agency will notify the Union of the reorganization, indicating the employees involved and the date of the reorganization.

Section 2: Consultation with Union

Before implementing the reorganization, the Office will consult with the Union concerning the reorganization. The union must request such consultation within 7 days of the notice from the Agency. Any meeting must take place within 7 days of the request. The Agency will consider issues and suggestions raised by the union and will inform the union of the disposition of these issues before reorganizing.

ARTICLE 36

DURATION OF AGREEMENT

Section 1: Duration

This Agreement shall remain in effect for four years from the effective date of the agreement, except that the ground rules section of this Article shall be binding on the parties until a successor agreement is in place.

Section 2: Roll-Over Provision

Unless notice to terminate this Agreement is provided pursuant to Section 4 of this Article, this Agreement shall automatically roll-over for one year periods on its anniversary date.

Section 3: Amendment of Agreement

The parties may amend this Agreement only by mutual consent.

Section 4: Limited Reopening Provision

At the midpoint of this Agreement, either party may reopen up to three Articles of this Agreement. If this occurs, the other party may also choose up to three Articles to reopen. Negotiations will follow the ground rules for midterm bargaining. Notice may be given no more than sixty days prior to the two year anniversary of the effective date of this agreement, but in no event after the midpoint.

Section 5: Procedures for Renegotiation of the Basic Agreement

At the end of the four-year period, or any year thereafter, either party may give notice of its desire to renegotiate this Agreement. Such notice must be given not more than 180 days or less than 120 days prior to the expiration date of the Agreement. Ground rules for negotiating the successor agreement shall be as follows:

A. **Application of Law:** The agreement shall be negotiated in accordance with applicable law and regulations.

B. **Exchange of Proposals:** The parties shall exchange initial proposals for a collective bargaining agreement sixty days prior to the expiration of this Agreement. Except by mutual agreement, negotiations will be confined to those articles exchanged in the initial proposals.

C. Bargaining Teams

1. The Agency has determined to have six members on its negotiating team; therefore, the Union may have up to six members on its team.
2. Each party must have at least one member authorized to speak for and bind the party at each bargaining session.
3. Either party may change the members assigned to its team. The Union will notify the Agency of such a change prior to the use of any official time by the replacement team member under these rules.

D. Official Time

1. Pursuant to 5 U.S.C. 7131(a), time spent by USPTO employees serving as Union representatives during all bargaining sessions shall be “official time” for time and attendance purposes. This includes any mutually agreed upon caucus during negotiations as well as any time the parties are participating in a mediation session under the auspices of the Federal Mediation and Conciliation Service (FMCS) or a session directed by the Federal Service Impasses Panel (FSIP) pursuant to the negotiation of a contract.
2. Union representatives must report to their supervisors that they will be on official time each day before using any official time.
3. The Agency will grant up to 200 hours of official time to prepare for bargaining, if used during a time that the Union representative would otherwise be in a duty status.

E. Time and Place of Negotiation

1. Negotiation Schedule: The parties shall commence bargaining on the fourth Tuesday after the day they exchange proposals. Sessions shall take place on Tuesdays, Wednesdays, and Thursdays from 9:00 A.M. until 4:00 P.M. with a one-hour break for lunch and caucus for a period of two weeks. The parties shall then recess for one week. This schedule shall be maintained for a total of eight weeks of bargaining, not counting the recess weeks. This schedule may be altered by mutual agreement of the parties.
2. Parties may not caucus on negotiating days for more than one hour except by mutual agreement.
3. If the Agency is closed for any reason, bargaining shall not take place during the closure.
4. Negotiations will be conducted in space provided by the Agency. The Agency will also provide the Union with an appropriate place to caucus as close to the negotiating room as possible.

F. Notes and Records

1. Each party shall keep its own notes.
2. Electronic recording of negotiation sessions or meetings between the parties pursuant to the negotiations is prohibited.

G. Method of Bargaining the Collective Bargaining Agreement

1. Agreement on any article of the contract is subject to agreement of the whole contract.
2. The parties’ chief negotiators will initial each article when tentative agreement is reached.
3. The order of discussion of articles will be decided at least two weeks prior to the initial session. The parties will determine the order, alternately selecting proposed articles for negotiation. A coin toss will determine which party will select first. The pre-determined order may be changed by mutual agreement.
4. Subject to the provisions of subparagraph 7 below, no provision shall be effective until the entire agreement is effective.
5. Mediation, if necessary, shall be requested through the Federal Mediation and Conciliation Service. Either party may request the assistance of FMCS at any time prior

to reaching impasse, but such requests shall not delay negotiations without the consent of both parties.

6. If mediation fails to resolve all issues within eight weeks from the request for assistance to FMCS, the parties agree to request release from the mediator and to seek the assistance from the Federal Service Impasses Panel (FSIP) to resolve the matter.

7. **Negotiability:** Any matter in which a declaration of non-negotiability has been issued during negotiations shall be severed from negotiations. If the proposal is later found to be negotiable and the agreement has already gone into effect, the agreement shall be reopened to permit negotiation over the proposal. All other provisions of the agreement shall remain in effect unless the parties mutually agree to revise them.

H. Agreement Execution: The term agreement shall be executed (signed by both parties) no later than fourteen days following agreement on all provisions. During the 14-day time frame, the parties will be responsible for proofreading and making any other clerical or administrative changes necessary for execution of the agreement. In the event that the term agreement or parts thereof is imposed on the parties by the FSIP, the execution date of the agreement shall be the date the Panel order is served on the parties.

I. Agency Head Review: Subject to the provisions of 5 U.S.C. 7114(c), the term agreement must be submitted to the head of the Agency for approval. The thirty-day time limit for agency head review shall commence upon the execution date of the contract, with the day following execution counting as day one. Any provision that is disapproved on agency head review shall be severed from the agreement and all other portions of the agreement shall go into effect.

J. Effective Date of Agreement: The term agreement shall be effective upon the completion of the agency head review period.

ARTICLE 37

DISTRIBUTION OF AGREEMENT

Section 1: Period for Clerical Review

Once the final language has been agreed to, management will generate an electronic version and provide it to the Union. The parties will review the document within fourteen (14) days, clearly marking any suggested changes to text. Suggested changes should only be to correct typographical and grammatical errors. Changes will be made only by mutual consent.

Section 2: Electronic Availability

This Agreement will be available electronically to all bargaining unit members through the Agency's computer network.

ARTICLE 38

SUPPLEMENTAL AND OTHER AGREEMENTS**Section 1: Status of Existing Agreements**

All agreements and Memoranda of Understandings between the parties not included in this agreement are terminated, with the exception of the agreements on the following subjects: (1) transit subsidies; (2) quality initiatives; (3) Patents Telework Program; and (4) non-Patents Telework Program. The agreement between the parties regarding the reassignment of classifiers to the classifier/examiner “hybrid” position remains in effect to the extent that it is not inconsistent with this agreement.

Section 2: Status of Agreements Reached During Midterm Bargaining

All agreements reached during the life of this Agreement will be subject to the roll-over and termination clauses of Article 36 unless a separate termination date is specified in the agreement.

Appendices

Transit Subsidy Agreement
Quality Initiatives
Patents Telework Program
Non-Patents Telework Program
Hybrid Agreement