

Where You Stand

Work at Home: The USPTO incorrectly reported in a January "What's New" message that a "partnership team" agreed to a four month extension of the Work at Home program. The USPTO-POPA Millennium Agreement provides for a permanent Work at Home program. The agreement negates the need for continued agreements to extend the Work at Home program and allows for changes of problems identified. The Work at Home six-month pilot program was just the initial phase of an ongoing program, which can be continually modified per the Millennium Agreement based on problems found in the pilot phase.

At the end of the first six-month pilot, POPA proposed expanding the program to meet the terms of Public Law 106-346 – the Department of Transportation and Related Agencies Appropriations Act of 2001, which states that 50 percent of all eligible federal employees should be offered the option of telecommuting by a year and six months after enactment, which is April 23, 2002. Senior USPTO officials stated that they had thought the deadline was October 2002. They instead wanted only to extend by four months the "evaluation period," originally intended to be limited to one month per the Millennium Agreement, and to restrict the program to only current participants.

The USPTO appears to be attempting to set adverse precedents in expanding Work at Home to other employees.

The agency wants to impose many more conditions on participants from non-patent corps areas, e.g., quality review examiners and CIO employees. These conditions haven't proven necessary for the success of the program for examiners. No cases of abuse of the program have been reported.

As an example of one condition, the USPTO wishes not only to bar from Work at Home employees who have been subjected to disciplinary action within the last five years, but also those simply under investigation for disciplinary action. To allow the placement of such conditions would set a precedent for changing the Work at Home program that is already established for examiners and others.

The agency representatives on the USPTO/POPA Work at Home workgroup have been collaborating with their union counterparts in finding amicable solutions, in contrast to the actions of senior USPTO officials.

Many local members of Congress have a keen interest in maximizing work-at-home options, and believe they are key to a family-friendly workplace and to reduced traffic congestion.

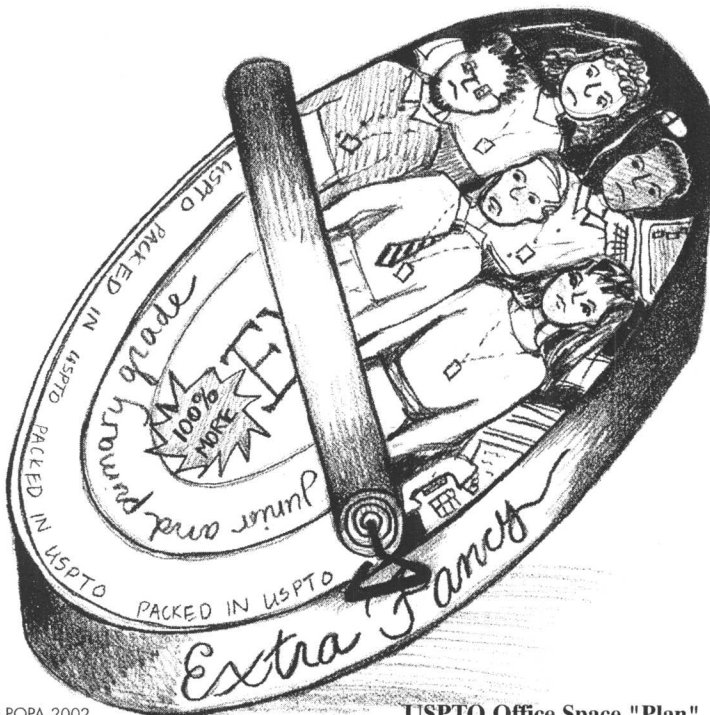
Office Space: The USPTO has doubled into shared offices all GS-13 employees and part-time employees (including part-time GS-14s) in Tech Center 2800. The agency has announced that part-time primary examiners starting next quarter will be doubled. It plans at that time to place most GS-13 employees back into private offices.

By USPTO/POPA agreements and past practice all GS-13 and higher employees have been guaranteed private offices of 150 square feet. The agency reaffirmed in the 1999 Space Agreement its adherence to Article 16, Section 1 of the USPTO/POPA contract which states that all examiners are entitled to private offices whenever possible.

The USPTO has long known that it does not have enough office space for examiners. It plans to hire 750 examiners in fiscal year 2002 for a net examining corps of 3,435, and to hire 950 examiners in FY2003 for a net corps of 3,991. But the agency is not offering to publicly disclose any plan or strategy to adequately accommodate everyone now and in the future.

The agency continues to claim that the move to Carlyle is to save money. However, the projected USPTO workforce at the time of the move will likely be more than 10,000, which cannot fit within the original design at the Carlyle site and will necessitate the additional, unbudgeted leasing of office space. Space will also be needed to accommodate the at least 1,500 contract employees now working at the USPTO. The agency also didn't ask for funds necessary for the cost

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of space needed for a required expansion before the move. The USPTO has the numbers showing what the space needs are now and will be at Carlyle. Any overcrowding and doubling up will occur with the USPTO's knowledge and forethought.

Office Furniture: The USPTO informed POPA that it will not purchase new office furniture for currently employed examiners. The existing furniture, much of it World War II surplus, will be moved to the Carlyle site.

The Bush Administration's 2003 proposed budget for the USPTO is the largest annual increase in the agency's history. Despite this increase and the agency's written commitment in 2000 to provide new office furniture, Deputy Commissioner for Patent Operations Esther Keplinger explained to POPA that she and Commissioner for Patents Nick Godici chose to exclude money for furniture from the USPTO 2003 budget request to the administration.

Special Pay Increase: The USPTO concurred in the Millennium Agreement to seek adjustments from the Office of Personnel Management to "maintain" the agency's special pay rate differentials. The USPTO first submitted its request two months into the new pay year.

Each day of agency delay will mean less money for employees.

In early Dec. 2001 when the 2002 general pay increase was announced, POPA suggested that the USPTO quickly submit its proposal to OPM. The agency delayed. It was mid-February when the USPTO gave to POPA a second draft of a request for the 1.17 percent increase. The union replied within hours with its comments and told the agency to please send the request to OPM.

POPA also suggested that the USPTO request a special rate pay for GS-10, Step 1, which determines the overtime rate cap. Such an increase would raise that specific salary step to enable the statutorily limited overtime rate to rise from approximately \$30.40 per hour to \$35.90 per hour. Increased use of overtime is a cost-effective means to increase productivity. The cost of an overtime hour of examining time is less than half the effective cost of an hour of examining time during regular hours.

The agency included only a cursory mention of an overtime increase request in its submission to OPM.

More Time for Examination: The USPTO promised in writing that it would develop jointly with POPA a proposal to garner funding to increase quality through more examination time. Agency officials have flatly refused to do so.

Senior USPTO officials have stated that the agency cannot ask to fund more time until the USPTO is able to use all of its patent fees, i.e., until Congress and the administration no longer divert patent fees to the general treasury. However, in its budget request to the administration, the USPTO requested an average 20 percent increase in patent fees and still the agency rejects its promise to seek more time for quality examination.

Esther Keplinger said that the patent community's

Economic Justification for Increased Overtime Rates

When evaluating the value of overtime, understanding the real hourly cost of regular-time employment is important. The effective hourly cost of the time actually devoted to patent examination is calculated as follows for a typical full signatory authority examiner:

Yearly salary	\$ 96,000
Retirement	
FERS	10,000
TSP	3,000
Social Security	6,000
Health Insurance	7,000
Office Space	6,000
Supervision	8,000
Subtotal	\$136,000

Expected number of productive hours per annum: 1,664
 $\$136,000 \div 1,664 \text{ hours} = \$82 \text{ per regular time examining hour}$

Considering that the POPA-proposed overtime rate is less than \$36 per hour, this represents a savings of roughly \$46 for each hour of overtime worked.

Considering that examiners currently work approximately 330,000 hours of overtime, the proposed increased overtime rate would add a cost of approximately \$1.65 million for existing overtime. It will take 35,900 hours of additional overtime to offset this cost in productivity gains. This represents a lot less than 1 percent of the total examining hours currently being worked and thus it is likely that increasing the incentives for overtime will produce a significant financial benefit for the agency.

Not only is raising the overtime maximum financially effective, it also will benefit quality. Raising the maximum overtime rate will induce some experienced employees to work overtime, and thus increase the USPTO output of cases acted on by experienced employees.

only concern is "pendency, pendency, pendency." In contrast, the Patent Public Advisory Committee in its November 2001 Annual Report to Congress said the opposite, that quality is more important than pendency:

"The P-PAC continues its support that quality is a priority goal of the USPTO, and at its public meeting resolved that the Director's and USPTO's top priority of putting quality first is supported unanimously by the P-PAC....If there are budget deficiencies, then processing time will increase rather than sacrificing quality."

When asked by POPA about new quality initiatives, Keplinger said that no new quality programs are scheduled for this year and next. The only quality project being considered for expansion is the one that allows for a supervisory second pair of eyes to review patent applications. This USPTO focus implies that the most important quality failures are the fault of examiners. Senior patents management is refusing to consider the possibility that the examination system can be improved to upgrade quality, even though only last year management agreed that more time per case was a worthwhile quality improvement.

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