

Image File Wrapper Hurts Examiners' Health and Production

POPA Submits Examiners' Sworn Statements in Attempt to Negotiate on Harmful IFW Impacts

At least a dozen examiners have filed affidavits with the Federal Labor Relations Authority about the severely negative impact on their work lives of the USPTO's fully electronic examination system, the Image File Wrapper (IFW).

The IFW often forces examiners to use 30-60 minutes more per action, causes repetitive motion injuries and eye problems, and requires examiners to print reams of documents that they can't adequately examine on screen. Examiners need to review every document to find misclassified paper. Because nonpatent literature and foreign patents are indexed only by generic names or titles, examiners often must type in authors' names and document titles to individually identify dozens of prior art documents.

The examiners' affidavits illustrate to the FLRA POPA's need to negotiate with the USPTO over the impact and implementation of IFW. POPA has filed an unfair labor practice charge against the USPTO to bring the agency to the negotiating table.

One Extra Hour = Unsatisfactory Rating

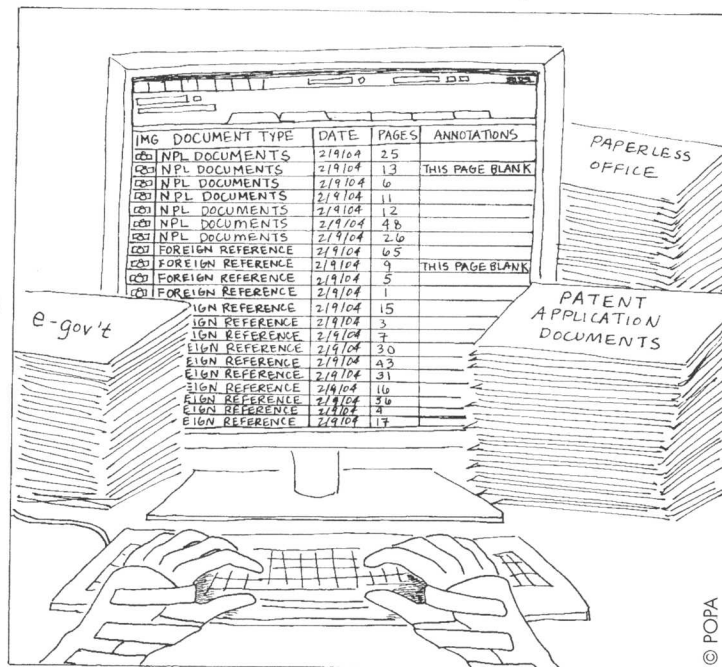
Many examiners unfortunately have discovered that IFW's imposition of even a relatively small time increase to the examination of every application can drag examiners' production from an outstanding to a fully successful rating or from fully successful to unsatisfactory. Because bonuses only go to those achieving an outstanding rating and an unsatisfactory rating can result in termination, an hour extra per action can make the difference between receiving a performance award or not, and receiving a fully successful rating or a disciplinary action.

As one examiner's affidavit stated, "implementation of the IFW system is resulting in either examiners unable to make their production goal or having to work significant amounts of voluntary overtime in order to maintain their production at pre-IFW levels. To work at the commendable

or outstanding levels to obtain monetary awards requires even more voluntary overtime, and becomes impossible to those unable to work voluntary overtime due to family or other responsibilities outside the workplace."

Several examiners' sworn statements demonstrate the problem. One 13-year primary examiner, who had received outstanding performance ratings for at least the last eight consecutive years, wrote: "At the end of fiscal year 2003, my production was 133 percent of my goal. Since starting to use the IFW system in November, my production has slowly and

continuously dropped to the point where at midyear FY04 my production is only 110 percent... Because of the additional printing chores as well as the numerous corrections of poor scanning, tracking down missing or late documents and numerous other clerical functions that have been transferred from the technical support staff to examiners, it is taking me about two to three hours of additional time for each patent application that I do. I have not been compensated for this time and no adjustment to my production goal has been made to accommodate the additional duties required by the IFW system."



IFW: Fast or Half-fast?

Another primary examiner, a 16-year USPTO employee, wrote: "The instructor I had for training was not sufficiently familiar with the patent examination process to adequately answer my questions or the questions of other examiners in the training class. Thus I was left to learn the use of the IFW system essentially by trial and error.

"The IFW system does not adequately identify the content or type of document in the table of contents. It is extremely difficult and time consuming to check an application for completeness or to identify references that may be relevant to the patentability... As a primary examiner, I only have approximately 19 hours to completely prosecute a patent application and I now have to spend an additional one to two hours per application just to identify and print out needed documents." (continued on page 2)

Image File Wrapper *(continued from page 1)*

From a GS-15, senior primary examiner, who has worked more than 27 years at the USPTO, earning outstanding ratings for at least the last 11 years:

"My percentage of production goal achievement for the first quarter of fiscal year 2004 was 147 percent. During the second quarter I had to use IFW for most of the applications I examined. Because of the additional time needed to open and consider documents in electronic form, to print out paper copies of documents, and to locate and print the prior art references for each case, it took me significantly longer to perform my duties. Consequently, my percentage of production goal achievement for the second quarter was only 105 percent."

IFW Triggers Physical Ailments

Constant mouse and monitor use can and is affecting the physical well-being of examiners. POPA is seeking to negotiate with the USPTO on ways to improve the physical impacts of working with the IFW. Otherwise the IFW will continue to sideline productive examiners, harming them individually and the agency's efforts overall.

"Within three weeks of my starting to work exclusively with the IFW system, I began experiencing discomfort in my right forearm near the elbow," stated a primary examiner

who has received outstanding performance ratings for at least the last six of her eight years with the USPTO. "[My physician] indicated that this condition was associated with the need to click the computer mouse repeatedly in the new software program (IFW). The physician indicated that... I would not be able to continue working on the computer using IFW without a reasonable accommodation such as voice-operated systems and that it is probable that I will no longer be able to work if the agency does not provide a reasonable accommodation.

"Because of the continuing pain in my forearm and administrative delays by the agency to make a final determination on a reasonable accommodation, I am currently using a combination of annual leave and sick leave to reduce the number of hours that I must work with the IFW system."

From another examiner's affidavit:

"I have suffered for many years from rheumatoid arthritis in my spine. Prior to implementation of the IFW system, I could routinely shift my physical position so that I could examine a patent application without sitting right at my desk in front of the computer screen. Now, because IFW requires the continuous use of the computer, I have to spend much more time sitting directly at my desk in front of the computer. This is aggravating my rheumatoid arthritis to the point where I have continuous back pain and am not sure how much longer I will be able to do my job."

Fast Facts for Nonexaminers

IFW Formula for Failure

The rating scheme for examiners is:

- Outstanding rating = 110+% of goal achieved
- Commendable = 105-109% of goal achieved
- Fully successful = 95-104% of goal achieved
- Marginal = 90-94% of goal achieved
- Unsatisfactory = Below 90% of goal achieved

For a GS-14 primary examiner:

- A typical docket is 20 hours examination time per case at the GS-12 level
- The position factor* = 1.35
- 100% of production goal = 14.8 hours per case

If a primary examiner needs 30 minutes more per action, then with an officewide average of 2.2 actions per case:

- 0.5 hours x 2.2 = 1.1 more hours needed per case
- 1.1 hours divided by 14.8 hours of production goal = 7.4% loss in productivity**
- **7.4% loss may take examiners down two rating levels**

* "Position factors" reflect an examiner's experience and signatory authority. To calculate an individual examiner's production goal, the GS-12 production goal for the examiner's technology is divided by the individual's position factor. A primary examiner with full signatory authority has a position factor of 1.35.

** The fewer hours to complete an examination, the higher the examiner's job rating

Defeating the Purpose of E-Gov

The eyestrain caused by close and constant use of even the best and largest monitors can induce many examiners to switch to paper. Because the examiners' paper files have been destroyed, they now must print out most documents themselves. As one examiner wrote: "Because working directly from the computer screen gave me significant eye-strain, I requested working folders for all of my applications. Shortly after implementation, however, the agency changed the procedure so that working folders only contained the original specification, claims, drawings and abstract. No other papers were provided thereby requiring me to spend significant amounts of my time just printing out all of the numerous other documents and prior art necessary to examine my applications. ...I am finding that it now takes me two to three hours longer to prosecute a patent application."

The USPTO's paper document scanning services cannot keep pace with the demand, causing needless duplication of examiners' efforts and wasted time. As one examiner stated: "A problem that is just now beginning to come to light is the number of allowed applications that are being returned from our printing contractor with documents that had been filed by the applicant but were not scanned prior to my acting on the application and allowing it to become a patent. Consequently, I am now being inundated with 'printer rush' applications requiring considerable additional work with no allocation of time for that work."

Wrote another examiner: "Most of the time, my official docket reports did not correspond with the availability of
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