

MEMORANDUM OF UNDERSTANDING REGARDING USPTO POLICY ON TIME AND ATTENDANCE TOOLS, COMMUNICATION, AND COLLABORATION

The parties to this Memorandum of Understanding (“MOU”), the United States Patent and Trademark Office (“USPTO” or “Agency”) and the Patent Office Professional Association (“POPA” or “Union”), have recently completed extensive pre-decisional discussions concerning the Agency’s adoption of the attached USPTO Policy on Time and Attendance Tools, Communication and Collaboration (the “Policy”).

1. The Agency and POPA (together, the “parties”) agree that the Agency has fulfilled all statutory and contractual obligations to provide notice and/or to bargain over the Policy, and that the Agency may implement the Policy with respect to POPA’s bargaining unit members on the Policy’s effective date.
2. The parties agree that the Policy and this MOU supersede in its entirety the June 24, 2013 Memorandum of Understanding between the USPTO and POPA on the Use of Collaboration Tools and Effective Collaboration in the Nationwide Workforce.

Badge-in/Badge-out

3. Consistent with Section IV of the Policy, employees will use their USPTO-provided badges to swipe into and out of all locations with individual badge-in/badge-out capacity for physical access. For any badge-in/badge-out point other than a gate, turnstile, or officer-manned location, the Agency will deploy clearly marked signs instructing employees that they must badge in and out at that access point before requiring badge out at these locations.

Log-in/Log-out

4. The Agency will provide POPA with a list of current participants in the Patents Telework Program (PTP) 20-hour no ERA fob option, and the parties will collaborate to verify the accuracy of that list. Employees on the verified list will be permitted to continue participating in the 20-hour no ERA fob option, and the parties agree that there will be no further enrollment in that program. Employees authorized to continue participating in this program will provide their supervisors with start and stop times for their telework days.
5. The Agency agrees to provide Small Office/Home Office (SOHO) routers to all POPA teleworkers who do not already have them, except for employees on the PTP 10-hour option and the PTP 20-hour no ERA fob option.

Record Sharing Platform

6. Following implementation of the Record Sharing Platform, the Agency will make the badge-in/badge-out, and log-in/log-out data described in the Policy available on the Record Sharing Platform within one (1) business day of the data being collected, barring any IT

complications or necessary downtime for maintenance of the Record Sharing Platform or PTONET.

7. The Agency agrees to collaborate with POPA when developing the Record Sharing Platform, and to collaborate on the system's features, functionality, display, and other design components to the extent permitted by the Platform and budgetary limitations.

8. The Agency agrees to provide training or guidance to all POPA employees who are not exempt from the Fair Labor Standards Act (referred to as "FLSA non-exempt employees") on the requirements of the Fair Labor Standards Act to remind those employees of the prohibition on working voluntary (unpaid) overtime.

Collaboration Tools

9. POPA employees will be provided an opportunity to attend real-time training and meetings in person. POPA employees may be required to participate in video conferences for mandatory training and meetings when they are unable to attend in person. The Agency will not pay travel costs for an employee to attend a meeting or training beyond what is required by an individual's telework agreement.

10. Agency agrees to provide training on how to use the collaboration tools, with an emphasis on the presence indicator, to all POPA employees.

FAQs

11. Within thirty (30) days of the date of this MOU, the parties agree to begin jointly developing a set of Frequently Asked Questions (FAQs) related to the Policy. The FAQs will address the following, in addition to any other issues the parties deem appropriate:

- a. Process for forgotten/lost badges.
- b. Define "individual badge-in/badge-out capacity for physical access" to include all turnstiles, gates, and locations where badges are required to gain access (e.g., Elizabeth Townhouse). Cover Regional Office situation.
- c. What to do when PTONET is unavailable.
- d. Explaining the effect of all Windows functions for terminating connection (lock, sleep, hibernate, etc.), including effect on logging out requirement.
- e. What to do when your UL is not functioning and therefore not unlocking? Call the service desk for assistance and as a best practice record the ticket number in WebTA.
- f. What should an employee do if they believe the platform is displaying inaccurate information? The employee should promptly (before certifying time and attendance for that biweek) bring the apparent inaccuracy to his or her supervisor's attention. Best practice is to note any anomalies in WebTA so they become part of the records. Include discussion of what information an employee should record.

- g. How to track unusual situations (fire drills, etc.) that might skew data in discrete instances.
- h. Discuss ERA fob versus VPN.
- i. Recording in WebTA if you run out of comment space.
- j. What is real time training? Training that is delivered live. In real time training, the trainer delivers the training at the same time the trainee is receiving the training. Real time training does not include pre-recorded training such as Computer Based Training.
- k. What is meant by providing an opportunity to attend real time training or meetings in person? It means that a reasonable room will be provided for the number of employees expected to attend the real time meeting or training in person, even if some or all of the training meeting is being delivered via video teleconference.
- l. Explain "Do Not Disturb" parameters.
- m. Explain Section VIII.B of the Policy, with examples for changes to schedule and the linking of Outlook "out of office" feature to Lync.
- n. Explain Section 4 of this MOU, regarding notification of telework day, start and stop times.
- o. Explain Section V.A of the Policy.
- p. Explain expectations of FLSA non-exempt employees as it relates to hours within the gates.
- q. Explain expectations for responding to instant messages; cover concept that instantaneous response is not required.
- r. Availability for collaboration.

Miscellaneous


12. The parties agree to meet annually, or more often as requested by either party, to discuss issues arising from the Policy's implementation, its effect on POPA employees, its contribution to effective communication and accurate time and attendance reporting, and other related issues of interest to the parties, and to ensure that Union concerns about those issues are heard in a timely and effective fashion.

13. Upon request from the Union, the Agency agrees to share the following without requiring the Union to demonstrate a particularized need: aggregate information on disciplinary and adverse actions taken for time and attendance including numbers, dates and types of actions; aggregate information on disciplinary and adverse actions taken for failure to comply with the Policy including numbers, dates and types of actions; and system-wide inaccuracies in the Record Sharing Platform including numbers, dates and types of inaccuracies. Nothing about this section prohibits the Union from requesting other information pursuant to 5 U.S.C. § 7114(b)(4).

14. If either party believes that changes to the Policy would be useful, the parties will make a good faith effort to expeditiously resolve any issues relative to the proposed changes. Changes will be implemented upon agreement of the parties. If agreement is not reached, then either party may propose changes to the Policy as it applies to members of the Union's bargaining unit.

- a. If the Agency determines to move forward with a change, it will provide notice to the Union and provide an opportunity to bargain to the extent required by law. Following notification, bargaining will be at the Union's request. Bargaining will be conducted in accordance with the parties' mid-term bargaining ground rules, beginning with the clarification meeting (as set forth in Article 14, Section 3.B of the parties' CBA). The USPTO will not implement its proposed policy document(s) with respect to Union employees until resolution of the issue, or the completion of bargaining (including mediation and impasse proceedings), unless permitted by law to implement its proposed changes before this time.
- b. If agreement is not reached over a Union-proposed change and at the Union's request, the parties will negotiate to the extent required by law pursuant to the midterm ground rules, beginning with the Agency's presentation of counter-proposals (as set forth in Article 14, Section 3.D of the parties' CBA) within two weeks of the Union's request. The Agency will not refuse to bargain over a Union-proposed change on the basis that the proposed change is "covered by" the Policy or this MOU.

FOR THE AGENCY

 1/19/17
Andrew Faile DATE
Deputy Commissioner for Patent Operations

FOR THE UNION

 1/19/17
Pamela Schwartz DATE
President, POPA