

IMPLEMENTATION OF INCREASED EXAMINATION TIME, PORTFOLIO-BASED ROUTING, AND NEW UTILITY EXAMINER PERFORMANCE APPRAISAL PLAN

The parties to this agreement, the United States Patent and Trademark Office (“USPTO” or “agency”) and the Patent Office Professional Association (“POPA” or “union”), agree to the following terms with respect to the agency’s implementation of Increased Examination Time, Portfolio-Based Routing, and the new Utility Examiner Performance Appraisal Plan (PAP), collectively referred to as the “Package”:

I. MANAGEMENT’S DETERMINATIONS

Following extensive pre-decisional discussion with POPA, the USPTO has determined to increase examination time, institute portfolio-based routing, and change the utility examiner PAP as described in this Section. Section II of this document details the parties’ agreements with respect to the impact and implementation of these changes.

A. Increased Examination Time

The agency has determined that a total increase of examination time of roughly 9% apportioned in a way that correlates with examination complexity is a responsible use of stakeholder fees. This increase applies to Utility applications, and will be applied as described below.

1. Using CPC Conversion to Increase Examination Time

The agency’s increase of examination time begins with a process that converts USPC expectancies¹ (using rebaselined USPC expectancy assigned to each USPC class/sub-class) to Cooperative Patent Classification (CPC) expectancies (with an expectancy assigned to each CPC sub-group). A “CPC subgroup” will be referred to as a “CPC symbol” throughout this document.

a. Adjusting USPC inputs as part of CPC conversion.

Before applying the steps below, for purposes of CPC conversion, all USPC class/subclass GS-12 expectancies below 19 hours/BD will be raised to 19 hours/BD.

¹ All references to “expectancies” are to GS-12 expectancies, which will continue to be modified for higher and lower grades through use of the existing position factors (e.g., GS-12 expectancy is divided by .9 to determine a utility examiner’s GS-11 expectancy, and divided by 1.15 to determine a utility examiner’s GS-13 expectancy, etc.), except as noted in I.A.1.d.

b. Converting USPC expectancies to CPC expectancies.

As examiners know from the CPC adoption, many USPC subclasses feed into multiple CPC symbols, and many CPC symbols comprise multiple USPC subclasses. The agency will create a single expectancy for each CPC symbol by averaging the USPC expectancies for every US patent and pre-grant publication within the given CPC symbol. In this averaging, the USPC expectancies will be weighted based on the number of documents from each USPC subclass within the CPC symbol to reflect the respective prevalence of that particular USPC subclass within the CPC symbol.

c. Rounding to the next highest “x.0” or “x.5”.

The newly created GS-12 expectancies for each CPC symbol will be rounded up to reach the next highest “x.0” or “x.5” (e.g., 21.2 will be rounded to 21.5; 21.5 will be rounded to 22.0). This rounding up reduces obsolete distinctions between similarly-complex arts.

d. Adding an additional 3.5 hours.

3.5 hours will be added to each CPC symbol in place of the current RCE adjustment. Examiners who currently have a position factor greater than 1.35 will have their position factor changed to 1.35.

An example of this process, utilizing steps a.-d. above, is attached as Attachment 1.

2. Applying CPC Symbol Time to a Specific Application

To account for converging technologies and interdisciplinary inventions, the expectancy for a patent application will be determined by averaging the CPC expectancies of all CPC symbols with a claim indicator (“C-star” or “C*”) which appear on that application.

A C* is applied to an allocated symbol from the classification picture² on an application when that symbol represents at least one concept that is claimed. Symbols that do not represent at least one concept that is claimed will not have a C*.

² Under CPC, each application is allocated one or more symbols corresponding to the CPC symbol(s) which cover subject matter claimed or disclosed in the application, in accordance with CPC guidance. That collection of symbols constitutes the application’s “classification picture.”

A C* can be applied to an allocated symbol (including Y10T) regardless of type (any of F, I and A). There is no limit to the number of symbols on an application from the classification picture that can receive a C*.

B. Portfolio-Based Routing

Portfolio-based routing describes assigning each application to an examiner using Cooperative Patent Classification (CPC) subgroup designations associated with the application and each examiner's examination experience.

1. Using CPC to Determine Qualifications

The first aspect of portfolio-based routing is determining which CPC symbols each examiner is currently designated as "qualified" to examine for purposes of executing CPC routing.

An initial "Examiner Portfolio" will be created for every examiner by assessing the classification pictures of applications they examined between October 1, 2013³ and the C* implementation date⁴. Each examiner's portfolio is a tally of the CPC symbols found on applications in which that examiner has completed at least one action⁵.

As close to the implementation of portfolio-based routing as feasible, examiners will review their portfolio and make appropriate modifications, as described in the pre-implementation portfolio preparation section five below.

The classification picture for each application classified after the C* implementation date will contain CPC symbols and C* designations.

After each examiner's portfolio is defined, the portfolio will be analyzed to determine which symbols with a C* designation have a tally of five or greater. This is the "qualification threshold": if an examiner's tally of a CPC symbol with a C* designation is equal to or greater than five, then that Examiner is considered "qualified" in that symbol; if an examiner's tally of a CPC symbol with a C* designation is less than five, that examiner is not yet considered qualified in that symbol. The tally counts of CPC symbols without a C* designation are not considered when determining an examiner's qualification in a CPC symbol.

³ "Expert" CPC classification began on October 1, 2013.

⁴ The date on which a newly filed application's classification picture comprises CPC symbols and C* designations.

⁵ For the initial portfolio assessment, the agency used the following actions taken by each examiner since October 1, 2013: non-final rejections, final rejections, allowances, ex Parte Quayle actions, First Action Interview Pilot Step 1, First Action Interview Pilot Step 2, and Examiner's Answers.

2. Using Qualifications to Match Examiners to Applications

When identifying which examiner to assign a given application to under Portfolio-Based Routing, the Agency will apply the following factors as illustrated in Attachment 2:

- a. The size of each examiner's new application docket.

Each examiner will be assigned applications to their new and special new docket management categories to account for at least 120 hours of combined work credit based on FAOM values for the applications. Each examiner's docket will be replenished to at least the 120-hour level of combined new- and special new-category applications at least once every seven (7) days. Specifically, only examiners with dockets below the 120 hour threshold will be eligible to receive new applications through the replenishment. For examiners who have over 120 hours of RCEs, a minimum of two new, unexamined applications (i.e. non-RCE) will be replenished once per biweek. RCEs will go on an examiner's docket as soon as processed regardless of the 120 hour level.

In certain circumstances, such as when an examiner is on extended leave or detail, an examiner's new and special new docket management categories may fall below 120 combined hours. Prior to the examiner's return, these categories will be replenished to at least the 120 hour combined level.

- b. The examiner's symbol percent qualification.

For each undocketed application, all eligible examiners will be evaluated to determine how well the application matches each examiner's qualifications as determined by their portfolio. This determination will be performed by comparing the number of symbols with a C* designation on an application for which the examiner has reached the qualification threshold to the total number of symbols with a C* designation on that application.

For purposes of assigning applications under portfolio-based routing, eligible examiners will be considered based on how many of the undocketed application's symbols with a C* designation match each examiner's established qualifications. This will be expressed through one of four qualification groups:

- qualified in 75% or more of the application's symbols with a C* designation;

- qualified in 50%-74% of the application's symbols with a C* designation;
- qualified in 25%-49% of the application's symbols with a C* designation; and
- qualified in less than 25% of the application's symbols with a C* designation.

Applications will be assigned to eligible examiners in the highest available qualification group.

- c. The number of other applications in the unassigned backlog for which an examiner has symbol qualification.

Among the eligible examiners in the highest available qualification group, examiners can be further grouped based on the number of other undocketed applications for which each examiner has 75%-100% symbol qualification. This further grouping will be based on the number of eligible examiners for the application and the volume of other available work for each eligible examiner.

- d. Similarity between an examiner's portfolio and the classification picture on an application.

Examiners will be prioritized within the groups defined by factors 1-3 above based on other considerations of similarity, such as cosine similarity, Euclidian distance, raw tallies or a similar method of evaluating similarity.

In circumstances – such as when management determines that an examiner will examine different art than previously (e.g., to address short dockets, or when an examiner transfers to a new art) or when patent documents are reclassified after a revision – the Agency may manually adjust the examiner's portfolio and/or deviate from the application of the factors above. For example, when an examiner first joins the agency, his/her docket will be populated – as it is today – based on an assessment of the agency's workload needs, the examiner's background, the expertise of the primary examiner(s) responsible for training the new examiner, etc. Similarly, in the unlikely event that application of the four factors described above yields unintended consequences (e.g., increased pendency, suboptimal matching of applications with examiners who are accustomed to working in that art) the agency may propose additional/different factors which would be discussed through the "Continuing Discussion" section, below.

3. Learning Curves

The agency will offer both learning curves and transition adjustments (see II.B.3) in certain circumstances as portfolio-based routing is implemented.

As briefly mentioned above, there may be limited instances in which an examiner who is not in the 75%-100% qualification group for a particular application is, nonetheless, assigned that application. In those instances, examiners with more than two years of examining experience will receive a learning curve scaled to the examiner's symbol percent qualification according to the following table:

Symbol % Qualification	FAOM Time Adjustment
75%-100%	+0
50%-74%	+1 hour
25%-49%	+3 hours
0%-24%	+6 hours

These qualification-based learning curves are intended to be a permanent feature of portfolio-based routing.⁶

C. New Utility Examiner Performance Appraisal Plan and Signatory Authority Program Memorandum

The agency has decided to implement a new PAP for utility examiners, as well as a revised signatory authority program.

1. New Utility Examiner PAP

The new utility examiner PAP is attached as Attachment 3. In addition to the changes reflected in the document, the agency has made several other determinations regarding issues related to the PAP.

a. Search.

Under the "Planning Field of Search" activity, an error may be charged for failing to provide an actual search history or providing a search, when viewed as a whole, that is clearly incorrect or incomplete without the need

⁶ However, during the transition period described in Section II.B.3 (while the agency has USPC *class/subclass* applied to each application), if an examiner with *more* than two years of examining experience is docketed an application directed to subject matter/technology that matches his/her pre-transition USPC docket, no *qualification*-based learning curve will be granted.

for the reviewer to provide as evidence a better reference than that provided by the examiner.

Under the “Conducting Search” activity, an error can be charged in the case when the examiner makes a §103 rejection if the supervisor provides a §102 reference, or provides a §103 which reduces the number of differences between the claimed invention and the prior art and/or provides a better teaching of how the references are combinable. Additionally, an error may be charged when 1) the reviewer cites a reference that is equally applicable as one used by the examiner, but which comes from the same field of endeavor as the invention, while the examiner only used one that does not or 2) the reviewer cites a reference that meets the claim limitations as they are defined in the specification while the examiner’s only reference merely meets the literal wording of the claims interpreted in a way different than what the applicant intended. In each of these cases, the reviewer will provide the search strategy used to find the cited reference.

b. Waiver of certain errors.

For the first quarter of the new PAP’s implementation, errors will be waived in the Quality Major Activities (QMA) for conducting search (QMA 3), planning search (QMA 5), restrictions (QMA 8), and determining where the appropriate line of patentable distinction is maintained between applications and/or patents (QMA 10). Identified errors in these QMAs will still be documented, and the examiner will receive coaching and mentoring.

c. Counting.

In assigning production credit for work, there are two significant moments, which may be in different biweeks: when the work is submitted for credit, and when the work is approved by a primary and/or supervisor.

The agency has determined to change the end of counting for any bi-week to the actual end of the pay period (second Saturday at 11:59 p.m. (ET)). All junior examiners who submit work that is subsequently reviewed and approved by a primary and/or supervisor will receive production credit for that work in the biweek in which the work was last submitted. Actions not returned or approved within fourteen days of submission will be counted and credited to the biweek of submission.

Thus, production credit will be tied to when correct work is submitted, as opposed to when it is approved. Crediting of the work to the biweek of

last submission will be accomplished upon signing or the passage of 14 days from the submission without return. GS-12 and GS-13 (non-PSA) examiners will no longer receive "autocount" as in the current construct.

2. Revised Signatory Authority Program

The revised signatory authority program is set forth in the memorandum attached as Attachment 4.

II. AGREEMENTS WITH RESPECT TO IMPACT AND IMPLEMENTATION

This Section contains the parties' agreements as to negotiable procedures, appropriate arrangements, and other lawful agreements concerning the USPTO's decisions to increase examination time, institute portfolio-based routing, and change the utility examiner PAP.

A. Agreements Regarding Increased Examination Time

1. Examiner Requests for Additional Time

At any point during the prosecution of an application, if the examiner believes additional time is needed for examination (including additional time for an application or prosecution feature that already receives an attribute-based adjustment in the new utility examiner PAP), the examiner may request additional time from his or her supervisor (SPE). The SPE will determine if additional time should be granted on a case-by-case basis.

2. Post-Implementation Process

For a period of two years following the implementation of portfolio-based routing, USPTO and POPA will meet regularly to distribute, analyze, and evaluate data and information. Consistent with the 9% total increase of examination time, the goal of the post-implementation process is to make adjustments (e.g. to GS-12 expectancies assigned to the CPC symbols, to application attributes, etc.) to mitigate losses of examination time identified during the transition period for any examiner in comparison to time provided under USPC.

The process will have inputs or "triggers" for analysis, including: examiner feedback, growing prior art, expansive search, comparison to other technologies / areas in the scheme, comparison of time assigned to an application or examiner using CPC-based time and pre-transition USPC-based time, previous CPC analysis (e.g. efforts to form groups of related CPC symbols), scheme data, and other data, as available. The evaluation of

requests for modifications to time assigned to a CPC symbol and analysis of the input will be performed to determine an appropriate resolution.

B. Agreements Regarding Portfolio-Based Routing

1. Ensuring an Adequate Supply of Work

Maintaining a supply of work for examiners is a shared interest of the agency and POPA. It is anticipated that weekly refreshes of an examiner's 120-hour new case docket will provide ample work throughout the week for the vast majority of examiners. The agency will, however, provide mechanisms by which an examiner who has two or fewer applications that are in condition to have First Action on the Merits (FAOM) completed on their new and special new Docket Management categories before the next scheduled refresh may obtain additional new cases. These mechanisms may include notifying his or her SPE or TC/workgroup point of contact (POC) and requesting that the SPE or POC trigger a refresh or other refresh mechanisms that are developed in the future.

The agency will gather data and information to determine if there are impacts of the 120 hour new application docket.

2. Pre-Implementation Portfolio Preparation and USPC Docket Validation

Prior to the implementation of portfolio-based routing, examiners will review their portfolio and make appropriate modifications, subject to management oversight. The pre-implementation portfolio preparation will be a one-time event, over an established date range, and will establish a baseline for an examiner's portfolio.

Examiners will identify symbols in their portfolio that do not represent the claimed subject matter they examine. The remaining symbols will have a C* designation.

Additionally, examiners may elect to:

- Remove application numbers (and the tallies for the CPC symbols on the applications) from their portfolio in instances where atypical applications were assigned as part of an agreement to meet a specific management objective (e.g., COPA, at a SPE's specific request, where an examiner contemplated but did not culminate a transfer to a new art, or where a supervisor made an express assurance to an examiner that the examiner would not be affiliated with work voluntarily performed in a new area; but *not* including instances where an examiner has agreed to work in a new

area to maintain overtime eligibility or received accommodations as part of a deliberate broadening or refocusing of skill).

- Add symbols to their portfolio that best represent the claimed subject matter they examine. The added symbols will have a C* designation.

In addition to the portfolio preparation, examiners will review and validate their USPC docket.

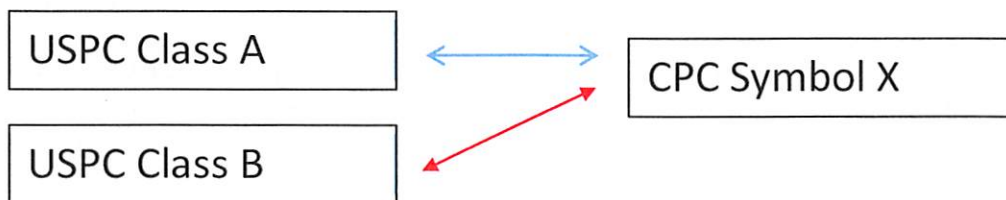
Instruction, guidance, and oversight will be provided for pre-implementation portfolio preparation and USPC docket validation. Additionally, an appropriate amount of non-production time will be approved for these activities.

3. Transitional Adjustments

Beginning on the date of portfolio-based routing's implementation, a set of transitional adjustments will last for a two-year period. During the transition period, the agency will have a USPC class/subclass on each application. Additionally, prior to the start of the transition period, the agency will identify a pre-transition USPC docket for each examiner consisting of the USPC class/subclass which each examiner currently examines.

During the transition period, examiners with more than two years of examining experience will receive an additional hour of time when they are docketed an application via portfolio-based routing as detailed in this document that is directed to subject matter/technology that does not match his/her pre-transition USPC docket. This will be determined by comparing an application's USPC class/subclass to an examiner's pre-transition USPC docket (as validated pursuant to Section II.B.2, above) and, when they do not match, adding one (1) hour to the application, unmodified by position factor and count value.

Example of Transition Time: The example below illustrates a situation when transition time will be granted. In this situation, applications will have been classified under pre-transition USPC routing rules as either class/subclass A or class/subclass B. Under CPC classification rules, all of the applications are classified under CPC symbol X.



If, during the transition period, an examiner whose pre-transition USPC docket encompasses only USPC class/subclass A, were to be docketed an application with CPC symbol X and this application is a USPC class/subclass B application the examiner would receive one (1) additional hour.

Conversely, if the examiner whose pre-transition USPC docket encompasses only USPC class/subclass A, were to be docketed an application with CPC symbol X and this application is a USPC class/subclass A application, no additional time would be added to the application.

4. Two-Year "No-Loss" Period and Revision Commitment

During the transition period described in II.B.3, above, while any remaining irregularities in USPC/CPC conversion are identified and resolved, the parties seek to ensure that **no application** loses time. Accordingly, applications will be assigned the higher of 1) the new CPC-based time or 2) the pre-transition USPC-based time.

Also, during this period, CPC symbols (i.e. subgroups) that are identified and approved for a CPC revision project (e.g., multi-disciplinary symbols) will be routed based on the application's USPC class/subclass and an examiner's USPC docket (as validated pursuant to Section II.B.2, above). Any CPC symbols that are approved for a revision project during the two-year transition period will be routed based on the application's USPC class/subclass until the revision project is completed. The agency commits to expeditiously review identified symbols for revision and, where revision is determined to be appropriate, to work in concert with POPA to attempt to obtain the desired revision.

5. C* Data Sharing

As the agency acquires C* functionality, the agency agrees to share with POPA portfolio preparation data and application specific data as the data becomes available, and to discuss the impacts of that data.

C. Agreements Regarding New Utility Examiner PAP

1. Consistency of OPESS Processing

The agency agrees to take measures required to ensure that amendments forwarded from OPESS to examiners are not “batched” in a manner that creates unreasonable boluses of forwarded work.

2. Advisory Opinions

For the first quarter of the new PAP’s implementation, all examiners – including those who would otherwise be required to submit work in final form – may submit office actions to their supervisor to obtain an advisory opinion as to whether the SPE would identify an error in one or more of Quality Major Activities (QMA) for conducting search (QMA 3), planning search (QMA 5), restrictions (QMA 8), and determining where the appropriate line of patentable distinction is maintained between applications and/or patents (QMA 10).

3. Restrictions

The agency agrees to develop training memorializing its position that QMA 8, regarding restrictions, requires examiners to make a legitimate attempt to place each group of restricted claims in the correct CPC sub-group where applicable, and does not require exact placement of each group of restricted claims in the precisely correct sub-group.

4. Non-Waiver

Nothing in this agreement shall be construed as POPA’s agreement to the contents or legal validity of the new utility examiner PAP, which is being implemented as a management prerogative, nor shall it preclude any employee from challenging the legality or application of the PAP in an appropriate proceeding.

D. Continuing Discussion

1. For a three-year period following full implementation of the components of the Package, the parties agree to meet informally at the request of either party to discuss issues related to the implementation of the Package. In these meetings, the parties commit to making a good-faith effort to resolve any concerns or issues identified by either party.
2. If an issue is not resolved through these informal meetings, either party may invoke formal bargaining at any time, and the parties will bargain to the extent required by law.

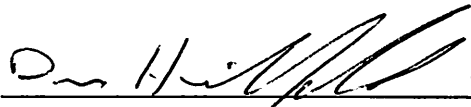
- a. If an agency-raised issue is not resolved through informal meetings, the agency may invoke bargaining over its proposed change(s):
 - i. The agency will present its proposed action to the union in writing and shall include the reasons for the action and copies of relevant statutes, regulations, and other relevant supporting background materials.
 - ii. Within one week thereafter, the parties shall meet to explain, clarify, and answer questions regarding the proposals.
 - iii. For agency-initiated proposals, POPA will be granted the opportunity to meet with affected employees to discuss the proposed action within one week after the completion of clarification. POPA will be granted physical space, to the maximum extent available, and whatever remote conferencing capacity is required to permit meeting with all affected employees at reasonable times, in light of the nationwide distribution of the POPA workforce. At POPA's election, participants shall be granted up to two hours of official time to attend such meetings; if a meeting lasts sixty minutes or less, then not more than one hour of official time will be granted.
 - iv. Within two weeks after the last meeting with affected employees, POPA shall present its counterproposals and bargaining will begin within one week.
 - v. All other ground rules as to the course, length, and conduct of negotiation will be provided by the parties' collective bargaining agreement.
- b. If a union-raised issue is not resolved through informal meetings, the union may invoke bargaining over impact and implementation proposals:
 - i. The union will present its proposed action to the agency in writing and shall include the reasons for the action and copies of relevant statutes, regulations, and other relevant supporting background materials.
 - ii. Within one week thereafter, the parties shall meet to explain, clarify, and answer questions regarding the proposals.
 - iii. Within one week thereafter, the agency shall present its counterproposals and bargaining will begin within one week.
 - iv. All other ground rules as to the course, length, and conduct of negotiation will be provided by the parties' collective bargaining agreement.

E. Implementation


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1. The parties agree that this agreement fulfills the agency's obligations with respect to notice and bargaining over the Package.
2. Prior to implementation, the agency and POPA commit to further discussions on the following issues, and any other mutually agreed-upon topic:
 - a. C* implementation, including creating a process by which examiners may challenge the classification picture of an application and creating a revision process as described in II.B.4, above.
 - b. Transitioning examiners from their current docket size to the 120-hour dockets described in I.B.2.a, above, including the feasibility and desirability of a pilot or incremental phase-in of the 120-hour docket.
 - c. Transition process from the current utility examiner PAP to the new utility examiner PAP, including the handling of performance warnings, maintenance periods, and last-chance agreements; the creation of any documentation necessary for examiners to apply the PAP; and the creation of a design examiner PAP consistent with the new utility examiner PAP.
 - d. Information technology required to support the Package components.
 - e. Developing transition training, support, and FAQs.
3. The agency may implement the Package upon its determination that supporting information technology, training, contract support, and other prerequisites have been resolved. Implementation will occur no sooner than October 1, 2019. The agency will notify POPA, in writing, thirty days in advance of the Package implementation.

4. In the event that the discussions contemplated by Section II.E.2 have not resulted in final agreement on a listed topic by the time that the agency is authorized to implement the Package, the agency may nonetheless implement the Package, as well as the agency's latest proposals on the subjects in II.E.2. Following implementation, the union may move to formal negotiations on any topic(s) listed in II.E.2 on which the parties have not reached agreement, utilizing the process set forth in II.D.2, above.

 1/24/19

FOR THE AGENCY Date
Drew Hirshfeld
Commissioner for Patents

 1/24/19

FOR THE UNION Date
Pamela Schwartz
President, POPA

Attachment 1

An Example of Adding Time Through USPC/CPC Conversion

CPC symbol X comprises USPC subclasses 1, 2, and 3 with the following current USPC expectancies. CPC symbol X currently comprises 45 USPC documents, apportioned as follows:

USPC Subclass	Current Expectancy	Document Count
1	16.4	15
2	19.2	10
3	20.6	20

First, the current expectancies will be rebaselined to a minimum of 19 hours/BD.

USPC Subclass	Current Expectancy	Rebaselined Expectancy	Document Count
1	16.4	19.0	15
2	19.2	19.2	10
3	20.6	20.6	20

Second, the three rebaselined expectancies will be averaged, weighted by document count, to produce $((19.0 \times 15) + (19.2 \times 10) + (20.6 \times 20)) / (15 + 10 + 20) = 19.8$ hours/BD, which becomes the starting expectancy for CPC symbol X.

Third, that starting expectancy of 19.8 hours/BD will be rounded up to the next highest "x.0" or "x.5," bringing the expectancy to 20.0 hours/BD.

Finally, 3.5 hours will be added, yielding a GS-12 expectancy for sub-group X of 23.5, based on starting USPC expectancies of 16.4, 18.2, and 19.0.

A list of all CPC symbols and their calculated GS-12 expectancies using the methodology above will be provided.

Attachment 2

An Example of Portfolio-Based Routing

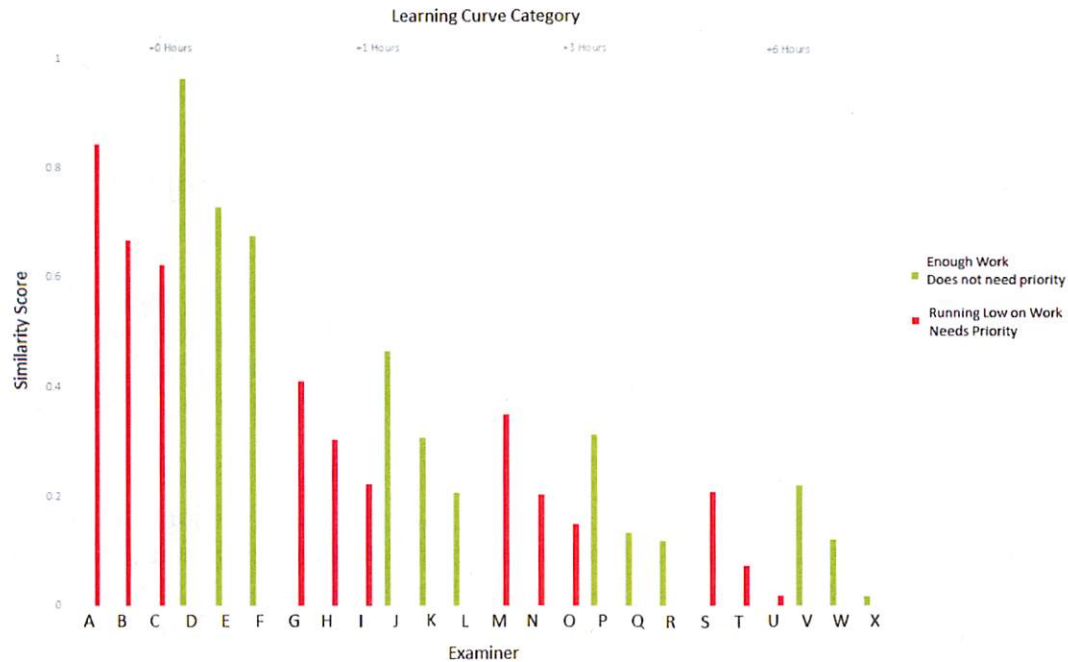
The following example graphically represents a methodology, utilizing the factors above for sorting of examiners for a single application.

Per the factors above, the pool of examiners is limited to only those that have available space (i.e., less than 120 first-action hours' worth of applications) on their new case, special new case, and RCE docket categories. In this example, we have 24 examiners agency-wide with available space. Those examiners, labeled A through X, are on the x-axis of the graph below.

Each of those examiners' portfolios are compared to the classification picture of the application. The extent of the match between the application's classification picture and each eligible examiner's qualifications are then expressed as either 75%-100% matching, 50%-74% matching, 25-49% matching, or 0%-24% matching. In this example examiners A through F have reached the qualification threshold for at least 75% of the symbols with a C* designation on this application. Examiners G through L are between 74% and 50%; Examiners M through R are between 49% and 25%; and Examiners S through X are 24% or below. The application will be assigned to an examiner with the best match between their qualifications and the application's classification picture (in the graph below, the left-most group); in this example: Examiners A through F. In the rare event that there are no eligible examiners with qualification in at least 75% of the symbols with a C* designation in the application's classification picture, then the application will be assigned to an eligible examiner in the next qualification range, **and that examiner will receive a qualification-based learning curve to complete the application** (see Section I.B.3, above).

Additionally, the examiners who share the best-possible qualification matching are sorted by the number of additional applications from the current unassigned backlog for which the examiner would also have 75%-100% qualification in the symbols with a C* designation. In the example below, examiners A through F share the best-possible qualification, but examiners A-C have been identified as running low on other 75%-100% symbol matching applications.

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Examiners in the highest qualification group may all have a substantially large number of additional applications from the current unassigned backlog. When this occurs, the agency will look at the similarity between each similarly-situated examiner's portfolio and the classification picture of the application and select an examiner with the closest similarity. For example, the agency may use cosine similarity, Euclidian distance, raw tallies or another such method of evaluating the similarity. In this example, examiner A has the highest similarity score from among those examiners with available docket space, comparable symbol proficiency, and a similar number of other applications that could be examined at high proficiency; Examiner A is therefore docketed the application.

PTO-516 -516 (10-2018)		US PATENT AND TRADEMARK OFFICE	
<h2 style="margin: 0;">CLASSIFICATION AND PERFORMANCE MANAGEMENT RECORD</h2>		NEW	
		I/A:	
		MR#:	
		IP#:	
<input type="checkbox"/> Performance Plan <input type="checkbox"/> Performance Appraisal <input type="checkbox"/> Performance Recognition <input type="checkbox"/> Progress Review <input type="checkbox"/> Position Description			
Employee's Name:			
Position Title: Patent Examiner			
Pay Plan, Series, Grade/Step: GS-1224, Grades 5-15			
Organization:	1. Department of Commerce		4. Patent Examining Groups
	2. Patent & Trademark Office	5. Technology Center	
	3. Deputy Commissioner for Patent Operations	6. Art Unit	
Rating Period:			
Covered by	<input type="checkbox"/>	Senior Executive Service	<input type="checkbox"/> Demonstration Project
	<input checked="" type="checkbox"/>	General Workforce	<input type="checkbox"/> Other:
PART A - POSITION DESCRIPTION			
POSITION CERTIFICATION – I certify that this is an accurate statement of the major duties and responsibilities of the position and its organization relationships and that the position is necessary to carry out Government functions for which I am responsible. This certification is made with the knowledge that this information is to be used for statutory purposes relating to appointment and payment of public funds and that false or misleading statements may constitute violation of such statute or their implementing regulations.			
SUPERVISOR'S SIGNATURE		DATE	SECOND LEVEL SUPERVISOR
CLASSIFICATION CERTIFICATION	OFFICIAL TITLE:		
	PP:	SERIES:	FUNC:
		GRADE:	I/A:
		YES	NO
I certify that this position has been classified as required by Title 5, US Code, in conformance with standards published by the OPM or, if no published standard applies directly, consistently with the most applicable published standards.			
NAME & TITLE OF CLASSIFIER		SIGNATURE	DATE
PART B - PERFORMANCE PLAN			
This plan is an accurate statement of the work that will be the basis of the employee's performance appraisal.			
NAME & TITLE OF FIRST LINE SUPERVISOR/RATING OFFICIAL		SIGNATURE	DATE
APPROVAL – I agree with the certification of the position description and approve the performance plan.			
NAME & TITLE OF APPROVING OFFICIAL OR SES APPOINTING AUTHORITY		SIGNATURE	DATE
EMPLOYEE ACKNOWLEDGMENT – My signature acknowledges discussion of the position description and receipt of the plan, and does not necessarily signify agreement.		SIGNATURE	DATE
PRIVACY ACT STATEMENT – Disclosure of your social security number on this form is voluntary. The number is linked with your name in the official personnel records system to ensure unique identification of your records. The social security number will be used solely to ensure accurate entry of your performance rating into the automated record system.			

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Item 1. Performance Element and Objective (Identify as Critical or Non-critical, and if it being tracked at the department level)

☒ Critical ☐ Non-critical ☐ Management-by-Objectives (MBO)

Element: **I. Production**

Objective: To achieve assigned expectancy.

Weighting Factor: (Weights reflect the amount of time devoted to accomplishing the element and/or its importance. Weight for performance plans must total 100.)

Enter Weight for this element in the adjacent box:

30

Item 2. Major Activities (Identify activities or results that need to be accomplished in support of the performance element.)

The examiner examines assigned patent applications from first action to final disposition within an assigned amount of time.

Item 3. Criteria for Evaluation (Use generic performance standards printed in Appendix A. Supplemental performance standards may also be specified below.)

The supplemental performance standards for evaluation of Production are as follows:

Achievement in the Production element shall be measured as the ratio of *Calculated Production Hours* to *Total Examining Hours*, expressed as a percentage:

$$\text{Production achievement} = \left(\frac{\text{Calculated Production Hours}}{\text{Total Examining Hours}} \right) \times 100$$

An examiner shall be assigned a rating with respect to this element as follows:

110% or above	Outstanding
103% - 109%	Commendable
95% - 102%	Fully Successful
88% - 94%	Marginal*
below 88%	Unacceptable

*Note: Continued or repetitive performance at this level adversely impacts upon the efficiency of the service under this performance element.

All percentages shall be rounded off to the nearest whole number (i.e, 109.49% rounds to 109% and 109.50% rounds to 110%).

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Calculated Production Hours equals the summation of the hours assigned to each action credited to the examiner during a rating period:

$$\text{Calculated Production Hours} = \sum \text{Assigned Action Hours for all actions credited}$$

Assigned Action Hours are calculated as follows:

$$\left[\frac{\text{application expectancy} \times \text{count value}}{2 \times \text{examiner's position factor}} \right] + \text{application attributes} + \text{learning curve} + \text{prosecution attributes}$$

Where:

Application expectancy (hours) is determined based on the classification markings on the application.

Attribute adjustments (hours) are additional amounts of time allotted to an action based on characteristics of the application or prosecution.

Application attribute values are assigned based on initial filing of the application. **For example:**

- Claims = 1 hour, when an application has 4 or more independent claims OR 25 or more total claims
- Pro se = 1 hour, when an application is filed pro se
- Specification size = 1 hour, when an application has 150 pages or more, not including sequence listings

Prosecution attribute values are assigned as they occur. **For example:**

- Interviews = 1 hour, when, during prosecution, the examiner conducts an interview
- Restrictions = 1 hour, when, during prosecution, the examiner mails a written restriction (this includes written restrictions with elections as part of an FAOM)
- IDS = 1 Hour, when, during prosecution, the listing of documents in a single IDS is 10 or more pages

Examiner position factors are assigned based on the examiner's grade and extra credit items defined in the position description, and are shown in Production-Table 1. If the examiner's **position factor** changes during a rating period, the **Assigned Action Hours** for each action will be calculated using the position factor applicable at the time that the action is counted.

Count values available for actions are listed in Production-Table 2.

Learning curve (hours) is an adjustment applied to the time assigned for the first action on the merits done by the examiner, based on the examiner's experience and knowledge in the technology of the application.

The *application expectancy* and *attribute adjustments* for each action will be provided to the examiner at the time that the application is placed on the examiner's docket for action.

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Production - Table 1

Position Factors	Grade Level										
	GS 5	GS 7	GS 9	GS 11	GS 12	GS 13	GS 13/14 PSA	GS 14 FSA	GS 15 Generalist	GS 15 Senior	GS 15 Expert
Utility Examiner	0.55	0.7	0.8	0.9	1.0	1.15	1.25	1.35	1.35	1.35	1.35
Design Examiner	0.48	0.64	0.8	0.88	1.0	1.14	1.14	1.24	n/a	n/a	n/a

Production - Table 2

Count Values	Action by same examiner as previous action				Initial action done by a different examiner than previous action	
	- Regular new, - CON, - DIV, - CIP, or - reissue, in which no RCE has been filed, and		RCE: - Regular new, - CON, - DIV, - CIP, or - reissue, in which at least one RCE has been filed.		These values are only available if the immediately previous action is an action on the merits done by the previous examiner.	
	Total credit available = 2.0 counts		Total credit available = 1.75 counts		Total credit available for new examiner = 1.5 counts	Total credit available for new examiner = 1.75 counts
	Before Final	After Final	Before Final	After Final		
Action:	Counts:				Counts:	
Restriction	0.00	0.00	0.00	0.00	0.00	0.00
FAOM Non-final Rejection	1.25	N/A	1.00	N/A	N/A	1.00
FAOM Allowance	2.00	N/A	1.75	N/A	1.50	1.75
FAOM ex parte Quayle	1.50	N/A	1.25	N/A	1.00	1.25
Ex parte Quayle (not FAOM)	0.25	0.00	0.25	0.00	1.00	1.25
FAOM Final Rejection	1.50	N/A	1.25	N/A	1.00	1.25
Non-Final Rejection (not FAOM)	0.00	0.00	0.00	0.00	0.75	1.00
Final Rejection	0.25	0.00	0.25	0.00	1.00	1.25
Advisory Action	N/A	0.00	N/A	0.00	0.75	1.00
Allowance	0.75	0.50	0.75	0.50	1.50	1.75
Abandonment- Express or failure to respond	0.75	0.50	0.75	0.50	N/A	N/A
RCE Disposal Credit	N/A	0.50	N/A	0.50	N/A	N/A
Examiner's Answer, Interference	0.75	0.50	0.75	0.50	1.50	1.75
Interview Summary	0.00	0.00	0.00	0.00	0.00	0.00
Rule 1.05 Request	0.00	0.00	0.00	0.00	0.00	0.00
Non-compliant and Non-responsive notices	0.00	0.00	0.00	0.00	0.00	0.00

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Item 1. Performance Element and Objective (Identify as Critical or Non-critical, and if it being tacked at the department level)

[X] Critical [] Non-critical [] Management-by-Objectives (MBO)

Element: II. Quality

Objective: To formulate or recommend appropriate action in the examination of patent applications.

Weighting Factor: (Weights reflect the amount of time devoted to accomplishing the element and/or its importance. Weight for performance plans must total 100.)

Enter Weight for this element in the adjacent box:

30

Item 2. Major Activities (Identify activities or results that need to be accomplished in support of the performance element.)

The examiner formulates or recommends action with respect to applicable major quality activities and submits Office actions in the proper form after receiving a level of instruction appropriate with the examiner grade level and delegated Signatory Authority (See M.P.E.P 1004).

The appropriate level of instruction and form of office action are defined in Table 1. The applicable major quality activities are grade and Signatory Authority dependent and are defined in Table 2.

Quality - Table 1									
Evaluation Basis	Grade Level								
	GS 5	GS 7	GS 9	GS 11	GS 12	GS 13	GS 13 PSA GS 14 PSA	GS 14 FSA	GS 15
Applicable Major Quality Activities and level of instruction	Basic activities 1-3, with specific and detailed preliminary instruction	Basic activities 1-6, with preliminary instruction	Basic activities 1-6, with no preliminary instruction	Basic activities 1-6, Advanced activities 7-9, with no preliminary instructions, and Legal activity 10, after preliminary instruction.	Basic activities 1-6, Advanced activities 7-9, with no preliminary instructions, and Legal activities 10-13, after preliminary instruction.	Basic activities 1-6, Advanced activities 7-9, and Legal activities 10-13, with no preliminary instruction	Basic activities 1-6, Advanced activities 7-9, and Legal activities 10-16, with no preliminary instruction	Basic activities 1-6, Advanced activities 7-9, and Legal activities 10-19, with no preliminary instruction	
Form of Office Action	All actions are in DRAFT form when initially submitted. After review, actions are resubmitted in FINAL form with necessary corrections			All non-final Office actions are in FINAL form when initially submitted, except for actions containing advanced and/or legal functions which are in DRAFT form when initially submitted. After review, actions are resubmitted in FINAL form with necessary corrections.	All actions are in FINAL form when initially submitted.				

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The examiner will be assigned a rating using the criteria set forth below with respect to the quality major activities assigned to the examiner's grade based on the work products submitted in final form during the period under consideration.

Quality - Table 2

Quality Major Activities and Applicable Evaluation Standards and Responsibility	Activity Level	Responsible Grade Level								
		GS5	GS7	GS9	GS11	GS12	GS13	GS13 PSA GS14 PSA	GS14 FSA	GS15
1. Checking applications for (a) compliance with formal requirements of patent statutes and rules and (b) technological accuracy	Basic	Non-error based assessment								
2. Treating disclosure statements and claims of priority	Basic	Non-error based assessment								
3. Conducting search	Basic	Error based assessment								
4. Analyzing disclosure and claims for compliance with 35 USC 112	Basic		Error based assessment							
5. Planning field of search	Basic		Error based assessment							
6. Making proper rejections under 35 USC 102 and 103 with supporting rationale, or determining how claims(s) distinguish over the prior art	Basic		Error based assessment							
7. Determining whether amendment introduces new matter	Advanced				Error based assessment					
8. Appropriately formulating restriction requirements, where application could be restricted	Advanced				Error based assessment					
9. Determining whether claimed invention is in compliance with 35 USC 101	Advanced				Error based assessment					
10. Determining where appropriate line of patentable distinction is maintained between applications and /or patents	Advanced				Error based assessment					
11. Evaluating/applying case law as necessary	Legal					Non-error based assessment				
12. Evaluating sufficiency of affidavits/declarations	Legal					Non-error based assessment				
13. Evaluating sufficiency of reissue oath/declaration	Legal					Non-error based assessment				
14. Promoting compact prosecution by including all reasonable grounds of rejections, objections, and formal requirements: (M.P.E.P. 707.07(g), etc)	Legal							Non-error based assessment		
15. Making the record, taken as a whole, reasonably clear and complete	Legal							Non-error based assessment		
16. Properly treating all matters of substance in applicant's response	Legal							Error based assessment		
17. Formulating and independently signing final determinations of patentability (final rejections, allowance, examiner answers and advisory actions)	Legal								Error based assessment	
18. Properly closing prosecution: makes no premature final rejection	Legal								Error based assessment	
19. Properly rejecting all rejectable claims in a final rejection; properly allowing all claims in an allowance	Legal								Error based assessment	

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Item 3. Criteria for Evaluation (Use generic performance standards printed in Appendix A. Supplemental performance standards may also be specified below.)

Clear error under this element will be deemed to have occurred where the examiner's office action(s) or office communication(s):

does not reasonably comply with the major activities set forth in table 2 and could not have been permitted at the time and under the circumstances that the action was taken.

Clear error is not an honest and legitimate difference of opinion as to what action should have been taken. If the action taken by the examiner is reasonable and the action preferred by the SPE is reasonable, this constitutes an honest and legitimate difference of opinion and the action taken by the examiner is free of clear error.

The error rate will be computed by dividing the number of errors charged by the total number of actions submitted in final form for the evaluation period. When multiple errors are charged in a single office action or communication submitted in final form, a single error will be used in the computation of the error rate. Error rate computations are truncated to the second decimal to determine the final error rate. For example, an error rate of 6.4975% is truncated to 6.49%. The types of actions or communications included in the error rate calculation are:

1. Non-final rejection
2. Requirement for restriction/election
3. Pilot – First action interview Office Action
4. Pilot – First action without FA Interview
5. Pilot Pre Interview Communication
6. Notice of Allowability
7. Final rejection
8. Examiner's Answer (including supplemental)
9. Advisory Action
10. Ex Parte Quayle
11. Misc. Action with SSP

At grades GS-11 and below, as shown in Quality Table 3, performance is determined by a non-error-rate based assessment to the extent to which the examiner's actions submitted in final form during the period under consideration comply with office requirements, including statutory compliance, and the indicia listed below.

Indicia 1: Search and Prior Art: The examiner's search and the prior art found encompass the inventive concept as defined in the disclosure for the examined invention. The examiner may demonstrate compliance with this indicia when office actions, or prosecution histories taken as a whole, include some or all of the exemplary activities listed below, as appropriate, or any additional activities or characteristics not listed below that support a comprehensive search:

- a) Searching the inventive concept as defined at the time of the first action on the merits.
- b) Consulting with an expert in the art when the examiner lacks expertise.
- c) Citing prior art on the record which is pertinent to significant though unclaimed features of the defined invention or directed to state of art.
- d) Providing a brief description in the office action for relevant prior art that was cited but not applied.

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Indicia 2: Clarity of the Record: The examiner's written prosecution record promotes clarity of the record. The examiner may demonstrate compliance with this indicia when office actions, or prosecution histories taken as a whole, include some or all of the exemplary activities listed below, as appropriate, or any additional activities or characteristics not listed below that support a complete and clear record of the prosecution:

- a) Including proper reasons for allowance when necessary.
- b) Documenting the examiner's interpretation on the record of claim language that is functional, expresses an intended use/result, or is non-functional descriptive material, or means for language. Such documenting may include but is not limited to the interpretation of claims under 112(f) using the appropriate form paragraphs.
- c) Providing annotations that reasonably indicate where each claim limitation is met by the reference.
- d) Recording the substance of the interview thoroughly and accurately on the record.
- e) Documenting proposed claim amendments discussed during the interview.
- f) Indicating whether or not proposed claimed amendments discussed during an interview overcome the prior art of record or rejection.
- g) Avoiding unnecessary duplicative rejections.
- h) Providing written communication that is clear, concise, and effective.

Indicia 3: Compact Prosecution: The examiner's written prosecution record promotes compact prosecution. The examiner may demonstrate compliance with this indicia when office actions, or prosecution histories taken as a whole, include some or all of the exemplary activities listed below, as appropriate, or any additional activities or characteristics not listed below:

- a) Checking applications for (a) compliance with formal requirements of patent statutes and rules and (b) technological accuracy at the earliest possible time.
- b) Providing suggestions for applicants to overcome rejections when possible.
- c) Drafting Office actions that are complete, correct, and clear such that, absent some unexpected consideration, prosecution proceeds without additional non-final or reopening actions.
- d) Completing a substantive Office action even when minor informalities exist in either the original application or the applicant's response.
- e) Treating information disclosure statements and claims of priority as early as is reasonable in prosecution.
- f) Making a complete restriction/election requirement in the initial restriction/election requirement.
- g) Resolving issues proactively by reaching out to applicants using interview practice.
- h) Indicating allowable subject matter, as appropriate.
- i) Performing a thorough search for the claimed invention as defined in the application at the time of first action.

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The examiner's work product in the assigned major activities will be evaluated using the generic standards and the criteria as set forth below:

Quality Table 3									
Criteria for Evaluation	Grade Level								
	GS 5	GS 7	GS 9	GS 11	GS 12	GS 13	GS 13 PSA GS 14 PSA	GS 14 FSA	GS 15
Outstanding	<p>The examiner's oral and written expressions normally convey the examiner's position effectively. Normally the work product is complete and complies with Office requirements, including statutory compliance, requiring only minor revision, and</p> <p>Except for rare occurrences, the examiner complies with each of the three indicia listed above.</p>				<p>The examiner's error rate is 0% - 6.49%, and</p> <p>Except for rare occurrences, the examiner complies with each of the three indicia listed above.</p>				
Commendable	<p>The examiner's oral and written expressions normally convey the examiner's position effectively. Normally the work product is complete and complies with Office requirements, including statutory compliance, requiring only minor revision, and</p> <p>In the majority of all actions, the examiner complies with each of the three indicia listed above.</p>				<p>The examiner's error rate is 0% - 6.49%; and;</p> <p>In the majority of all actions, the examiner complies with each of the three indicia listed above.</p>				
Fully Successful	<p>The examiner's oral and written expressions normally convey the examiner's position effectively. Normally the work product is complete and complies with Office requirements, including statutory compliance, requiring only minor revision.</p>				<p>The examiner's error rate is 0% - 6.49%.</p>				
Marginal * Continued or repetitive performance at this level adversely impacts upon the efficiency of the service under this performance element	<p>The examiner's oral and written expressions normally convey the examiner's position, but are commonly impaired by ambiguity, faulty reasoning, or other flaws. Normally the work product is complete and complies with Office requirements, including statutory compliance; minor revisions are frequently required and major revisions may be infrequently required.</p>				<p>The examiner's error rate is 6.50% - 7.49%.</p>				
Unacceptable	<p>Performance is not adequate for the position. In numerous instances, oral or written expressions do not effectively convey the examiner's position. In numerous instances, the work product is incomplete or inaccurate, and often requires major revision.</p>				<p>The examiner's error rate is greater than or equal to 7.50%.</p>				

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Item 1. Performance Element and Objective (identify as Critical or Non-critical, and if it being tacked at the department level)
☒ Critical ☐ Non-critical ☐ Management-by-Objectives (MBO)
Element: **III. Docket Management**

Objective: To conduct examining activities within prescribed timeframes.

Weighting Factor: (Weights reflect the amount of time devoted to accomplishing the element and/or its importance. Weight for performance plans must total 100.)

Enter Weight for this element in the adjacent box:

30

Item 2. Major Activities (Identify activities or results that need to be accomplished in support of the performance element.) Except where the SPE, Director, or other appropriate authority has waived, excused, or directed otherwise, the examiner:

- Handles applications and proceedings awaiting action in accordance with the time period or Special handling instructions prescribed by current Office policy;
- Forwards work for processing and/or handling promptly or in accordance with prescribed time period.

An examiner will not be held responsible for an application that has been forwarded for action prematurely such that it is not ready for examination. Circumstances that would pause, suspend or restart a clock are described below. See DM-Table 1 below for specific categories and time periods:

DM - Table 1						
Cat.	Component (Action Types)	Expected Average Days	Ceiling Control (Days)	Ceiling Exceeded Penalty	Clock Start Dates	Clock Stop Dates
1	Amendments –e.g. response to non-final OA, Appeal Briefs	56	83	168	Day 0 is the start of the biweek ¹ after application is placed on examiner's docket.	A clock will stop when an action is posted for credit or when it exceeds the ceiling control days
2	Special New - e.g. PPH, Accelerated Examination, Petitions to Make Special, Track 1, PCT, Reexam, Reissues, etc.	14	27	42	Day 0 is the start of the biweek ¹ after the previous application is completed or exceeds the ceiling control days	
3	New - e.g. Regular New, Continuations in Part (CIPs), Continuations, Divisionals, RCEs	28	55	84	Day 0 is the start of the biweek ¹ after the previous application is completed or exceeds the ceiling control days	
4	Expedited - e.g. After Finals, Responses under 37 CFR 1.312, PUBs Cases (Printer Rushes), Other amendments (such as PPH, Accelerated Examination, Petitions to Make Special, Track 1), Board Decisions/Remands, QPIDS	14	28	42	Day 0 is the day the application is placed on examiner's docket except for board decisions which will start on the 70 th day after the board decision date.	

¹ For Docket Management purposes biweeks are equivalent to two-week financial pay periods which start on 1st Sunday at 12:00 AM ET and end on 2nd Saturday at 11:59 PM ET. Holidays and other schedule changes do not impact start or stop dates unless otherwise announced to the corps. For all categories, the count cut-off at the end of the fiscal year does not affect the "start of the biweek".

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Item 3. Criteria for Evaluation (Use generic performance standards printed in Appendix A. Supplemental performance standards may also be specified below.)

Evaluation of this element will be based on an overall document management score determined as set forth below. Based on that score, an examiner shall be assigned a rating for this element as follows:

110% or above	Outstanding
103% - 109%	Commendable
95% - 102%	Fully Successful
88% - 94%	Marginal*
below 88%	Unacceptable

*Continued or repetitive performance at this level adversely impacts upon the efficiency of the service under this performance element.

Each DM Category has an expected average days to complete and a Ceiling Control (see DM - Table 1). The number of days the examiner has taken to complete each action is used to calculate a percentage score for each category that is based on the average actual number of days to complete actions compared to the expected average number of days for that type of action.

$$\text{Category Score Percentage (CS)} = \left(\left(\frac{wf_0 - wf_1}{wf_0} \right) + 1 \right) \times 100$$

Where: **wf₀** is the number of expected average days for the particular category; and **wf₁** is the average number of days the examiner has taken to post for credit all approved actions in that particular category.

The Category scores are weighted based on the number of actions in each Category to form a contributing score for that Category. The total docket management score is the sum of each of the contributing scores as illustrated in DM-Table 2.

DM - Table 2						
Cat.	Action Types	Expected Average Days <i>wf₀</i>	Number of Cases <i>n_o</i>	Average Days <i>wf₁</i>	Category Score $\left(\left(\frac{wf_0 - wf_1}{wf_0} \right) + 1 \right) * 100$ <i>CS₁</i>	Contributing Score $(n_o / \text{Sum}(n_o)) * CS_1$
1	Amendments	56	100	42	125.00%	73.53%
2	Special New	14	1	12	114.29%	0.67%
3	New	28	12	21	125.00%	8.82%
4	Expedited	14	57	10	128.57%	43.11%
			Sum(<i>n_o</i>)= 170			
						Overall % Score 126.13%

All percentages shall be rounded to the nearest whole number (i.e. 109.49% rounds to 109% and 109.50% rounds to 110%.)

No score will be entered into the Docket Management calculation until the action is approved or the application exceeds the ceiling. Scores for approved actions will be assessed as of the date of the most recent post-for-credit.

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Returns

Once an Office action is returned, if the action is resubmitted within 14 days no score is generated. If the action is not resubmitted in the 14 days, 14 days will be added to the total days in the category from which the action originated (e.g. a returned amendment will have 14 days added to the amendment score total days). After that, the return is placed in Ceiling Exceeded Status.

Ceiling Exceeded Status

For all categories, if an action isn't posted before midnight on the Ceiling Control date, a penalty score equal to three times the expected average days is entered and the application is moved into Ceiling Exceeded status.

Docket Management Plan

Patent applications that exceed the ceiling control days will be assigned using a Docket Management Plan (DMP). DMP applications are prioritized over all other applications. Up to 3 applications are assigned at the beginning of the biweek and are due at the end of counting for the biweek (2nd Saturday at 11:59 PM ET). Examiners who work between 30-39 examining hours in the pay period will be required to post-for-credit 2 DMP applications. Examiners who work between 20-29 examining hours in the pay period will be required to post-for-credit 1 DMP application. Examiners working fewer than 20 examining hours in a pay period will not be responsible for posting-for-credit a DMP application in that pay period.

Examiners on a part-time schedule who work 32 or more examining hours in the pay period will be required to post for credit 2 DMP applications. Examiners on a part-time schedule who work between 20-31 examining hours in the pay period will be required to post for credit 1 DMP application. Examiners on a part-time schedule working fewer than 20 examining hours will not be responsible for posting-for-credit a DMP application in that pay period.

For all applications in DMP status, failure to post-for-credit a required application within the allotted biweek will result in entry of a penalty score in the category from which the application originated (e.g., an amended case will have the penalty score entered in the amendments). The score entered will escalate after each failure to post for credit as shown in DM-Table 3.

DM - Table 3								
				DMP Charge to Score at end of PP				
Category	Reaches Ceiling at	Ceiling Exceeded Penalty	While on Ceiling Status	DMP - PP1 (Days)	DMP - PP2 (Days)	DMP - PP3 (Days)	DMP - PP4 (Days)	DMP >= PP5
1	83 Days	168	Holding - No Clock	168	182	196	210	N+14 Days
2	27 Days	42	Holding - No Clock	42	56	70	84	N+14 Days
3	55 Days	84	Holding - No Clock	84	98	112	126	N+14 Days
4	27 Days	42	Holding - No Clock	42	56	70	84	N+14 Days

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Docket Management adjustments are outlined below. For all types of situations, applications may be reassigned if there is a reasonable expectation that they would have exceeded the ceiling during the time that the examiner is absent or for other business needs. For all types of pauses, if the work or hours requirements of the pause are not met, then the pause will be negated and clocks will be reset to run as if the pause had never occurred.

Docket Management Adjustments:***Pauses***

7+ Day Pause: applications in all Categories will be paused for absences of ≥ 7 consecutive days (excludes AWOL). Restart of clocks for Category 1 amendments received during 14 consecutive days or more pause for **FMLA or FMLA-related** reasons or an extended Military pause will be staggered so that clocks start at the same rate as they were forwarded to the examiner during the absence.

Military Pause: For those on military leave, applications in all categories, applications that have been returned to the examiner for correction, and DMP will be paused for the duration of the absence.

Part time Pause:

Fourteen day clocks for Expedited cases on a part time examiner's docket will be at zero for 6 days. The clock for these cases will turn one on day 7. This adjustment will not interfere with or replace the pause for 7 or more consecutive days of approved absence. Where the 6 day holding period overlaps with a clock pause for approved absence, the holding period will run concurrently with the pause.

Detail Pause: For 51-80% Details, applications in categories 2-3 and applications originating from those categories that have been returned to the examiner for correction will be paused. For Details greater than 80%, applications in all categories, and applications that have been returned to the examiner for correction, and DMP will be paused. An examiner on a greater than 80% detail will be removed from DM every quarter while on detail. As with the part time pause, expedited cases will be at zero for 6 days.

Optional Initial Block

Emp.

Date

Supv.

Date

SECTION 1 – PERFORMANCE PLAN, PROGRESS REVIEW AND APPRAISAL RECORD

Name	Date	Sheet No. ____ OF ____
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Other Adjustments

Supplemental amendments filed in Category 1 Amendments will restart the DM clock such that day 1 is the receipt date of the supplemental amendment.

Any Special New application in Category 2, without a clock, posted-for-credit by the examiner will be credited with a zero day score.

For 14 day Special New cases, the examiner is expected to move the oldest case for each qualifying pay period. A qualifying pay period is one in which the examiner has at least 40 examining hours.

When an application is assigned based on the USPC symbol: A proper Transfer Inquiry entry will pause the DM clock until the Transfer Inquiry is closed. If the Transfer Inquiry results in transfer of the application no score will be entered. If the application is not transferred, the clock will resume. When routing by CPC: A proper symbol challenge will pause the DM clock while the classification picture is validated. If the symbol challenge results in transfer of the application, no score will be entered. If the application is not transferred, the clock will resume.

Entry of a pending Terminal Disclaimer (TD) into PALM will pause the DM clock. The clock will restart from where it left off when the decision is entered into PALM.

Any undecided Critical Petitions or noncompliant preliminary amendments will result in a suspension in the docket management clock. The application is hidden from view on the examiner's docket during the suspension period. The docket management period is restarted from where it left off when the suspension period is over.

DM adjustments will be made in situations when an appeal conference is not scheduled and conducted due to management delay within 14 days after the examiner's request for a conference. Clocks will not be paused, instead, a manual adjustment will be made after the action is counted equivalent to the number of days required to schedule and conduct the conference in excess of 14 days from the request. A written request establishes the date for the purpose of this adjustment. Examiners must contact their SPEs to get this adjustment. Examiner delay or rescheduling due to an examiner being unprepared for the conference does not result in a DM adjustment.

Optional Initial Block

Emp.	Date	Supv.	Date
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SECTION 1 – PERFORMANCE PLAN, PROGRESS REVIEW AND APPRAISAL RECORD

Name	Date	Sheet No. ____ OF ____
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Item 1. Performance Element and Objective (Identify as Critical or Non-critical, and if it being tacked at the department level)

☒ Critical ☐ Non-critical ☐ Management-by-Objectives (MBO)

Element: **IV. Professionalism and Stakeholder Interaction**

Objective: To provide appropriate service to stakeholders.

Weighting Factor: (Weights reflect the amount of time devoted to accomplishing the element and/or its importance. Weight for performance plans must total 100.)

Enter Weight for this element in the adjacent box:

10

Item 2. Major Activities (Identify activities or results that need to be accomplished in support of the performance element.)

Treat internal/external stakeholders with courtesy and act with professionalism by:

1. Reviewing messages a few times throughout the day, and responding, if necessary, by any appropriate means.
2. Returning messages from stakeholders, within the following parameters or as soon as possible thereafter:
 - a. From Management or Trainer - Upon becoming aware, next order of business.
 - b. From others – Generally within one business day of becoming aware. Legitimate attempts should be made to reach the stakeholder in order to address the inquiry.
3. Providing voicemail and internal email notice of planned absences of two or more business days.
4. Directing external stakeholders to appropriate office or person, in accordance with a list provided or posted by Management.
5. Conducting interviews (virtual or in person) and other contacts with external stakeholders as scheduled with adequate preparation, in a courteous manner. Further, interviews or other contacts are not arbitrarily or capriciously refused by the examiner.
6. While conducting USPTO business, displaying proper decorum to internal stakeholders in oral and written communications (e.g. art unit meetings, individual and group training).
7. Using agency-provided collaboration tools appropriately and when available, including the presence indicator and camera.
8. Addressing administrative matters within designated timeframes (e.g. administrative matters are timesheets, recertification of telework agreements, returning broken/outdated equipment as directed, moving as directed, financial disclosure, providing schedules; addressing includes good faith effort to do administrative matters correctly).
9. Providing search consultation and other assistance to the public and peers.
10. Completing assigned training within designated timeframes.
11. Normally submitting amounts of work consistent with examining hours throughout the quarter and fiscal year.
The submission of work may not be reflective of production. Variations are expected biweek to biweek.

Optional Initial Block

Emp.	Date	Supv.	Date
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SECTION 1 – PERFORMANCE PLAN, PROGRESS REVIEW AND APPRAISAL RECORD

Name	Date	Sheet No. ____ OF ____				
<p>Item 3. Criteria for Evaluation (Use generic performance standards printed in Appendix A. Supplemental performance standards may also be specified below.)</p> <p>The examiner's performance of the major activities will be evaluated based on the criteria set forth below.</p> <p>Consideration may be given for examiners who voluntarily perform additional duties that support the mission of the Agency (e.g. training, reviewing Office Actions, classification functions, leading QEMs, CFC keyworker) or who voluntarily participate in training activities to increase their professional expertise and knowledge.</p> <p>Outstanding - Except for rare exceptions, all major activities identified are performed in a timely and courteous manner.</p> <p>Commendable - In substantially all circumstances, all major activities identified are performed in a timely and courteous manner.</p> <p>Fully Successful - All major activities identified are normally performed in a timely and courteous manner.</p> <p>Marginal - Demonstrates some contribution to the element. However, a significant number of documented deficiencies in at least one of the major activities have been identified to the examiner.</p> <p>Unacceptable - Performance is not adequate for the position, failing to meet the Marginal level. Numerous instances of documented deficiency in at least one of the major activities have been identified to the examiner.</p> <p>"Business Day" - Monday through Friday except Federal holidays.</p> <p>"Business Hours" - 8:30 A.M. to 5:00 P.M.</p>						
Optional Initial Block		<table border="1"><tr><td>Emp.</td><td>Date</td><td>Supv.</td><td>Date</td></tr></table>	Emp.	Date	Supv.	Date
Emp.	Date	Supv.	Date			

SECTION II – PERFORMANCE SUMMARY AND RATING

Name:

ITEM 1. INSTRUCTIONS:

1. List each element in the performance plan; indicate whether it is critical/non-critical and what weight has been assigned to it.
2. Assign a rating level for each element: **(5) Outstanding (4) Commendable (3) Fully Successful (2) Marginal/Minimally Satisfactory (SES) (1) Unacceptable/Unsatisfactory. (SES)**
3. Score each element by multiplying the weight by the rating level.
4. After each element has been scored, compute total score by summing all individual scores. Total score can range from 100 to 500.

Performance Element	Critical or Non-critical (C or NC)	MBO	Individual Weights (Sum must total 100)	Element Rating (1-5)	Score
I. Production	C		30%		
II. Quality	C		30%		
III. Docket Management	C		30%		
IV. Professionalism and Stakeholder Interaction	C		10%		
			100%	Total Score	

For SES turn to reverse side and continue with Item 3.

ITEM 2. PERFORMANCE RATING: (Based on total score *except that if any critical element is less than fully successful the rating can be no higher than the lowest critical element rating.*)

☐ Outstanding (460-500)
 ☐ Commendable (380-459)
 ☐ Fully Successful (290-370)
 ☐ Marginal (200-289)
 ☐ Unacceptable (100-199)

Rating Official's Signature	Title	Date:
Approving Official's Signature	Title	Date:
Employee's Signature (Indicates appraisal meeting held)	Employee Comments Attached? <input type="checkbox"/> YES <input type="checkbox"/> NO	Date:

SECTION III – PERFORMANCE RECOGNITION (General Workforce Only)

<input type="checkbox"/> Gainsharing Award \$ (%) Appropriation No. <input type="checkbox"/> SAA Award \$ (%) Appropriation No. <input type="checkbox"/> DM Award \$ (%) Appropriation No. <input type="checkbox"/> QSI (Outstanding Rating Required, SF-52 is attached)	For performance awards: Has employee been promoted during the appraisal cycle? <input type="checkbox"/> YES <input type="checkbox"/> NO	
Rating Official's Signature	Title	Date:
Approving Official's Signature	Title	Date:
Final Approving Authority's Signature		Date:
Payment Authorized By Personnel Office		Date:

Instructions for Completing the Performance Management Record

A. Performance Planning. Complete Items 1, 2, and 3 of Section I by following these seven steps:

Step 1. Identify the performance elements of the employee's job (Item 1). Performance elements are brief, two or three word descriptions of the major responsibilities. (Fill out a separate Section 1 for each performance element.)

Step 2. Identify each element as critical or non-critical. Specify whether it is management by objective (MBO). (if so, it must be designated as critical.)

Step 3. State the objective of the element by writing a brief statement that defines what the element is intended to accomplish; focus on the overall result. An example of an objective is "To carry out organizational responsibilities by developing and implementing effective administrative procedures."

Step 4. Assign a weight to the element to show the time devoted to accomplishing the element and/or its importance. The total weight of all performance elements in the plan must equal 100.

Step 5. Identify the major activities (Item 2) or results needed to accomplish the performance element, e.g. develop an operating budget for the office, complete performance plans for all staff.

Step 6. Complete Item 3, "Criteria for Evaluation" by listing any performance standards that will be used to supplement the Generic Performance Standards (GPS) listed in Appendix A. The GPS must be used to evaluate employee performance. Supplemental standards must be included if they (a) apply to a particular element and (b) will be used to evaluate the employee's performance of the element.

Step 7. On the cover page of this form: (a) the rating official must certify as to the accuracy of the employee's position description (p.d.) and authorize the performance plan; (b) the approving official or SES appointing authority must approve the p.d. certification and the performance plan; and (c) the employee must acknowledge discussion of the p.d. and receipt of the performance plan.

B. Progress Review. At least once, near the mid-point of the appraisal period, the rating official must conduct a progress review with the employee by completing the following three steps:

Step 1. For each element in the performance plan, discuss: (a) The employee's progress toward accomplishing the element; (b) The need for any changes to the plan; and (c) any performance deficiencies noticed, along with recommendations on how to improve them.

Step 2. Complete Item 4, "Progress Review" of Section 1, noting the areas discussed in step 1.

Step 3. Initial and date the appropriate block in Item 4 (for each performance element) and have the employee do the same to indicate that the progress review took place.

C. Performance Appraisal. Near the end of the appraisal period,

the employee's performance during the year must be appraised formally on the basis of the performance plan by completing the following steps:

Step 1. The rating official formally notifies the employee of the date and time for the appraisal meeting.

Step 2. The employee may participate in a pre-appraisal meeting with the rating official to present his/her assessment of his/her performance during the appraisal period.

Step 3. The rating official complete Item 5, "Element Rating and Justification," of Section 1 for each performance element, noting specific accomplishments resulting from the employee's performance and relating them to the appropriate rating level (5-Outstanding, 4-Commendable, 3-Fully Successful, 2-Marginal, (Minimally Successful for SES) 1-Unacceptable (Unsatisfactory for SES)). Note: Element ratings of Fully Successful do not require written documentation unless employee requests it. To assign a Fully Successful element rating, the rating official need only document that: (a) the fully successful standards were met and; (b) that the rating was discussed with the employee.

Step 4. The rating official completes Item 1 of Section II, "Performance Summary and Rating," by transferring the appropriate rating information from each performance element to the summary sheet.

Step 5. Item 2, "Performance Rating," of Section II is completed by the rating official and signed by the approving official before the rating is discussed with the employee. NOTE: If any critical element is rated less than fully successful, the final rating can be no higher than the lowest critical element rating.

Step 6. All the information documented in Steps 3-5 above is discussed with the employee at the formal appraisal meeting and a copy of the rating is given the employee. The employee signs the form acknowledging that an appraisal meeting was held.

Step 7. The employee may comment in writing to the approving official on his/her summary rating within 5 days of receipt. The approving official must respond in writing to any comments within 10 days of receipt. If the approving official changes a rating, he/she must document the reasons in Item 5.a. of 396A. A copy of the final rating must be given to the employee.

Step 8. For SES Employees Only - The rating official completes Item 3 and submits the entire form (and any employee comments) to the appropriate Performance Review Board (PRB) for its review and recommendations. The PRB chair signs the correct block in Item 3 and forwards the recommendations and the form to the SES Appointing Authority who then assigns the final rating by completing Item 3.4. A copy of the final rating must be given to the employee.

Step 9. For general workforce employees only - The rating official completes any recommendations for performance awards in Section III, and forwards through the approving official, to the proper channels for processing the award.

APPENDIX A

GENERIC PERFORMANCE STANDARDS

INSTRUCTIONS

The generic performance standards (GPS) are the primary basis for assigning element ratings in the Department of Commerce. The GPS are to be applied to each critical (and non-critical) element in the performance plan. (Summary ratings are assigned by using a point scale after each element has been rated.)

When evaluating an element, the rater should:

- 1 Read carefully each performance standard level beginning with the fully successful one (it is considered the base level standard.)
- 2 Determine which level best describes the employee's performance on the element. (Each and every criterion in the standards does not have to be met by the employee in absolute terms for the rater to assign a particular rating level. The sum of the employee's performance of the element must, in the rater's judgment, meet the assigned level's criteria.)
- 3 Provide in writing, on the appraisal form, specific examples of accomplishments which support the assigned rating level.

Element ratings of fully successful do not require full written documentation unless the employee requests it. To assign a fully successful element rating the rating official need only document in writing that (1) the fully successful standards were met, and (2) that the rating was discussed in detail with the employee.

Occasionally, when rating some elements, a rating official may determine that an employee's performance on an element was not consistent. For example, the employee may have performed at the commendable level on several major activities within a critical element and at the marginal level on several others. In such a case, the rating official must consider the overall effect of the employee's work on the element and make a judgment as to the appropriate rating he/she will assign. The rationale for the decision must be documented on the rating form citing specific accomplishments which support the decision.

Any additional standards that are included in the performance plan must also be considered by the rating official. Such standards are included in performance plans to supplement GPS, not to supplant them. Rating officials should consider such standards within the context of the GPS and rate elements accordingly.

OUTSTANDING

SES

This is a level of rare high-quality performance. The employee has performed so well that organizational goals have been achieved that would not have been otherwise. The employee's mastery of the technical skills and thorough understanding of the mission have been fundamental to the completion of program objectives.

The employee has exerted a major positive influence on management practices, operating procedures, and program implementation, which has contributed substantially to organizational growth and recognition. Preparing for the unexpected, the employee has planned and used alternate ways of reaching goals. Difficult assignments have been handled intelligently and effectively. The employee has produced an exceptional quantity of work often ahead of established schedules and with little supervision.

In writing and speaking, the employee presents complex ideas clearly in a wide range of difficult communications situations. Desired results are attained.

GENERAL WORK FORCE

This is level of rare, high-quality performance. The quality and quantity of the employee's work substantially exceed fully successful standards and rarely leave room for improvement. The impact of the employee's work is of such significance that organizational objectives were accomplished that otherwise would not have been. The accuracy and

thoroughness of the employee's work on this element are exceptionally reliable. Application of technical knowledge and skills goes beyond that expected for the position. The employee significantly improves the work processes and products for which he or she is responsible. Thoughtful adherence to procedures and formats, as well as suggestions for improvement in these areas, increase the employee's usefulness.

This person plans so that work follows the most logical and practical sequence; inefficient backtracking is avoided. He or she develops contingency plans to handle potential problems and adapts quickly to new priorities and changes in procedures and programs without losing sight of the longer-term purposes of the work. These strengths in planning and adaptability result in early or timely completion of work under all but the most extraordinary circumstances. Exceptions occur only when delays could not have been anticipated. The employee's planning skills result in cost-savings to the government.

In meeting element objectives, the employee handles interpersonal relationships with exceptional skill, anticipating and avoiding potential causes of conflict and actively promoting cooperation with clients, co-workers, and his or her supervisor.

The employee seeks additional work or special assignments related to this element at increasing levels of difficulty. The quality of such work is high and is done on time without disrupting regular work. Appropriate problems are brought to the supervisor's attention, most problems are dealt with routinely and with exceptional skill.

The employee's oral and written expression are exceptionally clear and effective. They improve cooperation among participants in the work and prevent misunderstandings. Complicated or controversial subjects are presented or explained effectively to a variety of audiences so that desired outcomes are achieved.

SUPERVISORY

The employee is a strong leader who works well with others and handle difficult situations with dignity and effectiveness. The employee encourages independence and risk-taking among subordinates, yet takes responsibility for their actions. Open to views of others, the employee promotes cooperation among peers and subordinates, while guiding, motivating, and stimulating positive responses. The employee's work performance demonstrates a strong commitment to fair treatment, equal opportunity, and the affirmative action objectives of the organization.

COMMENDABLE

SES

This is a level of unusually good performance. It has exceeded expectations in critical areas and shows sustained support of organizational goals. The employee has shown a comprehensive understanding of the objectives of the job and procedures for meeting them.

The effective planning of the employee has improved the quality of management practices, operating procedures, task assignments, or program activities. The employee has developed or implemented workable and cost-effective approaches to meeting organizational goals.

The employee has demonstrated an ability to get the job done well in more than one way, while handling difficult and unpredicted problems. The employee produces a high quantity of work, often ahead of established schedules with less than normal supervision.

The employee writes and speaks clearly on difficult subjects to a wide range of audiences.

GENERAL WORK FORCE

This is a level of unusually good performance. The quantity and quality of work under this element are consistently above average. Work products rarely

require even minor revision. Thoroughness and accuracy of work are reliable. The knowledge and skill the employee applies to this element are clearly above average, demonstrating problem-solving skill and insight into work methods and techniques. The employee follows required procedures and supervisory guidance so as to take full advantage of existing systems for accomplishing the organization's objectives.

The employee plans the work under this element so as to proceed in an efficient, orderly sequence that rarely requires backtracking and consistently leads to completion of the work by established deadlines. He or she use contingency planning to anticipate and prevent problems and delays. Exceptions occur when delays have causes outside the employee's control. Cost savings are considered in the employee's planning.

The employee works effectively on this element with co-workers, clients, as appropriate, and his or her supervisor, creating a highly successful cooperative effort. He or she seeks out additional work or special assignments that enhance accomplishment of this element and pursues them to successful conclusion without disrupting regular work. Problems which surface are dealt with; supervisory intervention to correct problems occurs rarely.

The oral and written expression applied to this element are noteworthy for their clarity and effectiveness, leading to improved understanding of the work by other employees and clients of the organization. Work products are generally given sympathetic consideration because they are well presented.

SUPERVISORY

The employee is a good leader, establishes sound working relationships and shows good judgment in dealing with subordinates, considering their views. He/she provides opportunities for staff to have a meaningful role in accomplishing organizational objectives and makes special efforts to improve each subordinate's performance.

FULLY SUCCESSFUL

SES

This is the level of good, sound performance. The employee has contributed positively to organizational goals. All critical element activities that could be completed are. The employee effectively applies technical skills and organizational knowledge to get the job done.

The employee successfully carries out regular duties while also handling any difficult special assignments. The employee plans and performs work according to organizational priorities and schedules.

The employee also works well as a team member supporting the group's efforts and showing an ability to handle a variety of interpersonal situations.

The employee communicates clearly and effectively. All employees at this level and above have followed a management system by which work is planned, tasks are assigned, and deadlines are met.

GENERAL WORK FORCE

This is the level of good, sound performance. The quality and quantity of the employee's work under this element are those of a fully competent employee. The performance represents a level of accomplishment expected of the great majority of employees. The employee's work products fully meet the requirements of the element. Major revisions are rarely necessary; most work requires only minor revision. Tasks are completed in an accurate, thorough, and timely way. The employee's technical skills and knowledge are applied effectively to specific job tasks. In completing work assignments, he or she adheres to procedures and format requirements and follows necessary instructions from supervisors.

The employee's work planning is realistic and results in completion of work by established deadlines.

Priorities are duly considered in planning and performing assigned responsibilities. Work reflects a consideration of cost to the government, when possible.

In accomplishing element objectives, the employee's interpersonal behavior toward supervisors, co-workers, and users promotes attainment of work objectives and poses no significant problems.

The employee completes special assignments so their form and content are acceptable and regular duties are not disrupted. The employee performs additional work as his/her workload permits. Routine problems associated with completing assignments are resolved with a minimum of supervision.

The employee speaks and writes clearly and effectively.

SUPERVISORY

The employee is a capable leader who works successfully with others and listens to suggestions.

The employee rewards good performance and corrects poor performance through sound use of performance appraisal systems performance-based incentives and when needed, adverse actions, and selects and assigns employees in ways that use their skills effectively.

The employee's work performance shows a commitment to fair treatment, equal opportunity, and the affirmative action objectives of the organization.

MARGINAL

SES

This level of performance, while demonstrating some positive contributions to the organization, shows notable deficiencies. It is below the level expected for the position and requires corrective action. The quality, quantity or timeliness of the employee's work is less than Fully Successful, jeopardizing attainment of the element's objective. The employee's work under this element is at a level which may result in removal from the position.

There is much in the employee's performance that is useful. However problems with quality, quantity or timeliness are too frequent or too serious to ignore. Performance is inconsistent and problems caused by deficiencies counterbalance acceptable work. These deficiencies cannot be overlooked since they create adverse consequences for the organization or create burdens for other personnel. When needed as input into another work process, the work may not be finished with such quality, quantity and timeliness that other work can proceed as planned.

Although the work products are generally of useable quality, too often they require additional work by other personnel. The work products do not consistently and/or fully meet the organization's needs. Although mistakes may be without immediate serious consequences, over time they are detrimental to the organization.

A fair amount of work is accomplished, but the quantity does not represent what is expected of Fully Successful employees. Output is not sustained consistently and/or higher levels of output usually result in decreased quality. The work generally is finished within expected timeframes but significant deadlines too often are not met.

The employee's written and oral communications usually consider the nature and complexity of the

subject and the intended audience. They convey the central points of the information important to accomplishing the work. However, too often the communications are not focused, contain too much or too little information, and/or are conveyed in a tone that hinder achievement of the purpose of the communications. The listener or reader must question the employee at times to secure complete information or avoid misunderstandings.

GENERAL WORK FORCE

This level of performance, while demonstrating some positive contributions to the organization, shows notable deficiencies. It is below the level expected for the position, and requires corrective action. The quality, quantity or timeliness of the employee's work is less than Fully Successful, jeopardizing attainment of the element's objective.

There is much in the employee's performance that is useful. However problems with quality, quantity or timeliness are too frequent or too serious to ignore. Performance is inconsistent and problems caused by deficiencies counterbalance acceptable work. These deficiencies cannot be overlooked since they create adverse consequences for the organization or create burdens for other personnel. When needed as input into another work process, the work may not be finished with such quality, quantity and timeliness that other work can proceed as planned.

Although the work products are generally of useable quality, too often they require additional work by other personnel. The work products do not consistently and/or fully meet the organization's needs. Although mistakes may be without immediate serious consequences, over time they are detrimental to the organization.

A fair amount of work is accomplished, but the quantity does not represent what is expected of Fully Successful employees. Output is not sustained consistently and/or higher levels of output usually result in decreased quality. The work generally is finished within expected timeframes but significant deadlines too often are not met.

The employee's written and oral communications usually consider the nature and complexity of the subject and the intended audience. They convey the central points of the information important to accomplishing the work. However, too often the communications are not focused, contain too much or too little information, and/or are conveyed in a tone that hinder achievement of the purpose of the communications. In communications to coworkers, the listener or reader must question the employee at times to secure complete information or avoid misunderstandings.

SUPERVISORY

Inadequacies surface in performing supervisory duties. Deficiencies in areas of supervision over an extended period of time affect adversely employee productivity or morale or organizational effectiveness. The marginal employee does not provide strong leadership or take the appropriate initiative to improve organizational effectiveness. For example, he/she too often fails to make decisions or fulfill supervisory responsibilities in a timely manner to provide sufficient direction to subordinates on how to carry out programs, to give clear assignments and/or

performance requirements, and/or to show an understanding of the goals of the organization or subordinates' roles in meeting those goals.

UNSATISFACTORY

SES

This is the level of unacceptable performance. Work products do not meet the minimum requirements of the critical element.

Most of the following deficiencies are typically, but not always, characteristic of the employee's work:

- * Little or no contribution to organizational goals;
- * Failure to meet work objectives;
- * Inattention to organizational priorities and administrative requirements;
- * Poor work habits resulting in missing deadlines, incomplete work products;
- * Strained work relationships;
- * Failure to respond to client needs; and/or
- * Lack of response to supervisor's corrective efforts.

GENERAL WORK FORCE

The quantity and quality of the employee's work under this element are not adequate for the position. The employee's work products fall short of requirements of the element. They arrive late or often require major revision because they are incomplete or inaccurate in content. The employee fails to apply adequate technical knowledge to complete the work of this element. Either the knowledge applied cannot produce the needed products, or it produces technically inadequate products or results. Lack of adherence to required procedures, instructions, and formats contributes to inadequate work products.

Because the employee's work planning lacks logic or realism, critical work remains incomplete or is unacceptably late. Lack of attention to priorities causes delays or inadequacies in essential work, the employee has concentrated on incidental matters.

The employee's behavior obstructs the successful completion of the work by lack of cooperation with clients, supervisor, and/or co-workers, or loss of credibility due to irresponsible speech or work activities.

In dealing with special projects, the employee either sacrifices essential regular work or fails to complete projects. The employee fails to adapt to changes in priorities, procedures, or program direction and therefore, cannot operate adequately in relation to changing requirements.

The oral and written expression the employee uses in accomplishing the work of this element lacks necessary clarity for successful completion of required tasks. Communication failures interfere with completion of work.

SUPERVISORY

Most of the following deficiencies are typical, but not always, common, characteristics of the employee's work:

- * Inadequate guidance to subordinates;
- * Inattention to work progress; and
- * Failure to stimulate subordinates to meet goals.

***Supervisory standards must be applied to SES and General Work Force supervisors.**

First Year Addendum

The performance of all newly hired patent examiners (including rehired examiners with prior patent examining experience) will be evaluated as described below.

- Evaluation of performance in Element I. Production, Element III. Docket Management, and Element IV. Professionalism and Stakeholder Interaction, will be based on the criteria for evaluation set forth in the PAP for the appropriate grade.
- The following weighting factors will be applicable for each element of the PAP:

First Year Addendum Table 1			
	Element	Weighting Factors	
		First 6 months	Second 6 months
Examiners with no patent examining experience	I. Production	0%	0%
	II. Quality	60%	60%
	III. Docket Management	30%	30%
	IV. Professionalism and Stakeholder Interaction	10%	10%
Examiners with patent examining experience	I. Production	0%	30%
	II. Quality	60%	30%
	III. Docket Management	30%	30%
	IV. Professionalism and Stakeholder Interaction	10%	10%

- Evaluation of performance in Element II. Quality will be based on the generic performance standards with respect to the examiner's demonstrated ability to:
 - 1) learn and independently perform the assigned functions, and
 - 2) accept instruction and incorporate feedback with respect to the performance of these functions.
- The assigned functions for Element II. Quality for each grade throughout the first year are shown in the table below. Quality Major Activities are shown in PAP Quality Table 2.

First Year Addendum Table 2		
	Assigned Functions	
	First 6 months	Second 6 months
GS-5 Examiners with no patent examining experience	Quality Major Activities 1-3	
GS-7 Examiners with no patent examining experience	Quality Major Activities 1-3	Quality Major Activities 1-6
GS-9-11 Examiners with no patent examining experience	Quality Major Activities 1-3	Quality Major Activities 1-10
All Examiners with patent examining experience	Quality Major Activities 1-6	All Quality Major Activities assigned to the examiners' current grade.

After 12 months all examiners are evaluated based on their actual grade for all assigned functions as described in the PAP.

Date:

To: All Utility and Design Patent Examiners

From: Deputy Commissioner for Patents

Subject: Signatory Authority Program

This memorandum explains what the Signatory Authority Program is, how long it will take to complete, and what an examiner must do to successfully complete it. You should review this entire document and seek guidance from your supervisor with respect to any questions you have about the Signatory Authority Program.

To achieve the position of Primary Examiner, an examiner must complete the Signatory Authority Program. To determine if an examiner should be permanently delegated the authority to act on behalf of the Director of the United States Patent and Trademark Office (USPTO) by signing Office actions, including final actions and allowances, an examiner's work will be evaluated at the end of each of two trial periods. Successful completion of the first trial period will result in a grant of permanent Partial Signatory Authority (PSA), and successful completion of the second trial period will result in a grant of permanent Full Signatory Authority (FSA).

Policy

It should be recognized that the signing of an Office Action represents the position of the USPTO at that point in time. This is particularly significant when a Primary Examiner signs a final action in an application. These types of actions are ordinarily only reviewable by the Board of Patent Appeals and Interferences and the Federal Courts. Accordingly, the permanent grant of Signatory Authority should only be given to those examiners whose performance and conduct clearly demonstrate that they are competent and trustworthy to exercise this authority. Performance is determined by reviewing and evaluating a sample of actions completed by the examiner during trial periods in which the examiner exercises Partial or Full Signatory Authority on a temporary basis. The actions reviewed and evaluated must clearly demonstrate the examiner's competence to exercise a permanent grant of Signatory Authority. The examiner's work is evaluated based upon standards in the Performance Appraisal Plan (PAP) for an examiner with a permanent grant of Partial or Full Signatory Authority.

The exercise of USPTO authority, even on a temporary basis, is not a learning program. Thus, an examiner must demonstrate competence at his or her current level of authority before a temporary grant of authority is made.

The evidence reviewed on evaluation of the examiner's work product during this Program must clearly indicate that the examiner has the competence and judgment to act on patent

applications in a timely, proper and approved manner utilizing current USPTO procedures, before a permanent grant is warranted. An examiner has clearly demonstrated the necessary competence when he or she has cumulatively achieved at least the Fully Successful level of performance in all critical elements of the Performance Appraisal Plan (PAP) for the particular permanent authority (Partial or Full) involved. Additionally, with respect to the Quality evaluation specific to the trial period, the evaluation and performance determination during each of the trial periods will focus on the particular major activities accruing to the examiner as a result of the level of signatory authority temporarily granted.

Eligibility and Trial Periods

The Signatory Authority Program is a four step process. Grants of any temporary or permanent authority shall begin only at the start of a pay period. The pay periods referred to herein correspond to the two-week financial pay periods running 14 days from a Sunday through a Saturday.

An examiner must have at least a fully successful rating of record to begin a partial signatory or full signatory trial period.¹

Examiners are ineligible to begin the Signatory Program if they are on a performance warning under their current PAP.

If an examiner does not receive a permanent grant of authority (either PSA or FSA) after 3 trial periods, the examiner will be ineligible to begin another trial period for a period of 1 year so that the examiner can receive coaching, mentoring, and training.

Step 1:

After a utility examiner becomes a GS-13, or a design examiner becomes a GS-12, the examiner's performance at that grade will be evaluated for a period of time called an "eligibility period." The first eligibility period will be the most recent ten (10) consecutive pay periods after a utility examiner becomes a GS-13, or the most recent eleven (11) pay periods after a design examiner becomes a GS-12. The grant of temporary PSA shall be automatic (that is, requiring no action on the part of the examiner) if the examiner has performed at least at the Fully Successful level in all the critical elements of the examiner's PAP during the first eligibility period. Examiners may decline the automatic grant of PSA by notifying their supervisor in writing² prior to the end of the eligibility period.

If an examiner's supervisor determines that the examiner's cumulative performance is not at least at the Fully Successful level in any critical element of the PAP for the eligibility period, the examiner will be notified within the first pay period after the eligibility period that he or she is

¹ Certain conduct issues may also prevent an examiner from beginning, continuing, or passing the program. Those issues are explained in detail in Appendix D.

² The terms "in writing" and "written" when used herein include e-mail communications.

ineligible to be granted temporary PSA at that time. An examiner must have at least a fully successful rating of record to begin a partial signatory or full signatory trial period.

Examiners who have declined a grant of temporary PSA may elect to receive the temporary grant at a later time by providing advance written notice to their Supervisor. An examiner may choose when he or she will receive the temporary grant, as long as it is requested at least one week in advance and will begin on the first day of a pay period. The examiner's cumulative performance must be at least Fully Successful in all critical elements of the examiner's PAP for the most recent ten (10) consecutive pay periods immediately preceding the request or the most recent eleven (11) consecutive pay periods in the case of a design examiner to receive the temporary grant.

Examiners who have been found ineligible to receive a temporary grant of Signatory Authority should notify their supervisors when they wish to be reconsidered for a temporary grant. The temporary Signatory Authority will be granted as long as it is requested at least one week in advance and will begin on the first day of a pay period, and if the examiner's cumulative performance in all critical elements of the PAP is at least Fully Successful for the most recent ten (10) consecutive pay periods immediately preceding the request to receive the temporary grant, or the most recent eleven (11) consecutive pay periods in the case of a design examiner.

Step 2:

The second step comprises a "trial period" during which the examiner will exercise Partial Signatory Authority by independently signing certain types of office actions. The types of actions an examiner is authorized to sign under the temporary grant of PSA are described in Appendix A.

The length of the trial period will be at least thirteen (13) consecutive pay periods. At the end of the trial period, the temporary grant is terminated until a decision is made by the Technology Center (TC) Director whether to grant permanent authority.

To pass the trial period, the examiner must perform cumulatively at least at the Fully Successful level in Production and Docket Management for an examiner having permanent Partial Signatory Authority. Evaluation of the examiner's performance with respect to the Quality Element is described in the "Evaluation" section below. Additionally, a Utility examiner must be at least Fully Successful in all critical elements of the GS-13 PAP and a Designs examiner must be at least Fully Successful in all critical elements of the GS-12 PAP. With respect to examining hours, the examiner must perform at least 700 hours of actual examining time in paid status as defined in the "Evaluation" section below.

If the examiner passes, the examiner will be so notified and granted permanent Partial Signatory Authority by the TC Director (Additionally, Designs examiners will be promoted to GS-13 and Utility examiners will have his or her position factor raised from 1.15 to 1.25). Where potential errors which could lead to an adverse decision are found, the examiner will have the option to respond, as detailed in the "Decision" section below.

Step 3:

The third step comprises the second eligibility period. Utility examiners who have been granted permanent Partial Signatory Authority are automatically granted temporary Full Signatory Authority if they perform cumulatively at least at the Fully Successful level for the ten (10) consecutive pay periods immediately following the grant of permanent PSA and meet the same additional eligibility criteria listed above for the first eligibility period, except the performance levels are for partial signatory authority examiner. Design examiners who have been granted permanent Partial Signatory Authority are automatically granted temporary Full Signatory Authority thirty-five (35) pay periods after the permanent PSA grant, provided that they have performed cumulatively at least at the Fully Successful level for the ten (10) consecutive pay periods immediately preceding the effective date of the temporary FSA grant. If the examiner wishes to decline or is ineligible for the grant of temporary FSA, the same rules apply as noted above with regard to Step 1.

Step 4:

The fourth step comprises the second trial period and operates identically to Step 2. Under the temporary grant of FSA the examiner is authorized to sign actions as indicated in Appendix B.

The length of the trial period will be at least thirteen (13) consecutive pay periods. At the end of the trial period, the temporary grant is terminated until a decision is made by the TC Director whether to grant permanent authority.

To pass the trial period, the examiner must perform at least at the Fully Successful level in Production and Docket Management for an examiner having permanent Full Signatory Authority. Evaluation of the examiner's performance with respect to the Quality Element is described in the "Evaluation" section below. Additionally, the examiner must be at least Fully Successful in all critical elements of the examiners GS-13 PSA PAP. With respect to hours, the examiner must perform at least 700 hours of actual examining time in paid status as defined in the "Evaluation" section below.

If, at the end of the second trial period, the examiner passes, the examiner will be so notified and granted permanent Full Signatory Authority by the TC Director. Where potential errors which could lead to an adverse decision are found, the examiner will have the option to respond as detailed in the "Decision" section below. Upon successful completion of Step 4, the examiner is granted the status of Primary Examiner.

Temporary grants of signatory authority will be terminated if the examiner is issued a performance warning in any critical element under the examiner's current PAP standard while on the trial period. In this instance, the appropriate eligibility period detailed in Steps 1 and 3 above will restart and the examiner will need to meet the necessary requirements appropriate to the eligibility period to begin the Signatory program again.

If a temporary grant is terminated, the appropriate eligibility period detailed in Steps 1 and 3 above will restart and the examiner will need to meet the necessary requirements appropriate to the eligibility period to begin the Signatory program again.

Minimum Hours Requirement

Any examiner under the grant of temporary Signatory Authority must perform at least 700 hours of actual examining time in paid status during each trial period. Failure to perform the minimum 700 hours of actual examining time in paid status during a trial period will result in a denial of a permanent grant of Signatory Authority.

All examiners participating in a Signatory Authority trial period are expected to meet the 700 hours of actual examining time in paid status. However, if an examiner fails to meet this requirement for reasons beyond the examiner's control, the USPTO will consider, on a case-by-case basis, a request that the requirement be waived. Such a request must be submitted in writing to the examiner's immediate Supervisor within ten (10) calendar days after the end of the trial period and should include an explanation of the reasons for failing to meet the requirement. Waivers may be requested by examiners working either a full-time or part-time schedule. A decision on the waiver request will be made in writing to the examiner within two (2) pay periods after the end of the trial period. Since the 700 hour requirement must be met prior to extension of a trial period for insufficient reviewable actions, no waiver of the 700 hour requirement is possible after a trial period has been extended for that reason.

Actual examining time in paid status for the purpose of meeting the 700 minimum hour requirement in any trial period under the Signatory Authority Program will consist of hours worked in the following activities and subproject codes reported and approved by the immediate Supervisor on the examiner's bi-weekly time worksheet:

- 112012 – Examining Time and Overtime, Utility
- 112030 – Examining Time and Overtime, Design
- 112024 – Applicant Initiated Interviews
- 112025 – Markush Searching
- 112026 – Examiner Initiated Interviews
- 112041 – Appeals Conference
- 112054 – Restriction time
- 112035 – QPIDS path 0
- 112019 – QPIDS before issue fee
- 112020 – QPIDS after issue fee
- 112056 – AFCP Interview Time
- 112057 – AFCP Consideration Time

Activities not specifically identified above are subject to TC Group Director approval.

Examiners on a Part-Time Work Schedule

Any examiner who is on an approved part-time schedule, and has met the eligibility requirements for a grant of either temporary Partial or Full Signatory Authority, may elect to enter a trial period of either thirteen (13) or twenty (20) consecutive pay periods. These two options are available for both the Partial and Full Signatory Authority portions of the program, and the examiner need not elect the same length trial period for both steps 2 and 4. The duration of the eligibility periods remains the same as above, regardless of the examiner's work schedule. Regardless of the number of pay periods elected, the examiner must still perform at least 700 hours of actual examining time in paid status during the trial period. If a 20 pay period election is not received prior to the beginning of the trial period, the examiner will be on a 13 pay period trial period. The election to participate in a 13 or 20 pay period trial period cannot be changed during the trial period. The election of the examiner to participate in the 20 pay period trial period shall be in writing and transmitted to the examiner's immediate Supervisor, Group Director, or the Group Director's designee.

Examiners who are on an approved part-time schedule may modify their part-time schedule during the trial period in order to meet the 700 hour minimum requirement. Modification of the examiner's part-time schedule must be done in accordance with the POPA Part-Time Program agreement and procedures.

Review Procedures

The performance review during each trial period will include at least 17 "reviewable actions" which have been completed, signed by, and credited to the examiner for the trial period.

For the first (PSA) trial period, reviewable actions consist exclusively of:

- Non-final rejections;
- First Action Interview Pre-Interview Communications; and
- First Action Interview Office actions.

For the second (FSA) trial period, reviewable actions consist exclusively of:

- Allowances; and
- Final actions³.

At least 17 "reviewable actions" must be completed and credited to the examiner for the trial period. Examiners will be given the opportunity to select up to seven (7) reviewable actions of the types listed above to be reviewed as part of the at least 17 actions. For an examiner on a 13 pay period trial period, the seven actions selected by the examiner must be credited to the examiner for the first seven (7) pay periods of the trial period and identified, by serial number and date of office action, to the examiner's supervisor by the first Friday of the eighth pay

³ An ex Parte Quayle action is not a reviewable action for either the Partial or Full Signatory Authority Program.

period of the trial period. For a 20 pay period trial period, the seven actions selected by the examiner must be credited to the examiner for the first thirteen (13) pay periods of the trial period and identified, by serial number and date of office action, to the examiner's supervisor by the first Friday of the fourteenth pay period of the trial period. Once an action is identified to the SPE, the selection may not be changed. If 7 reviewable actions have not been identified by the first Friday of the eighth or fourteen pay period, either because the examiner has opted not to select that number, or because at least 7 reviewable actions have not been completed, the remainder of the actions to be reviewed will be selected at the direction of the TC Director.

The remaining selections (at least 10 additional actions) shall be made at the direction of the TC Director, taking into account the need for a representative sample of the examiner's work. In all instances, the actions reviewed and evaluated must have been credited to the examiner for the trial period.

Following the end of each of the first and second trial periods, the examiner will be provided with a list of all applications in which an office action was reviewed as part of the Signatory Review program.

Mid-Point Performance Check

At the mid-point of the trial period under either of the partial or full signatory authority programs, if an examiner's cumulative performance for the trial period is less than fully successful in any critical element of the examiner's current PAP, the examiner shall be removed from the Program and the temporary grant shall be terminated. The mid-point of a trial period shall be:

- a) after seven (7) biweeks for a thirteen (13) pay period trial period;
- c) after ten (10) biweeks for a twenty (20) pay period trial period.

In this instance, the appropriate eligibility period detailed in Steps 1 and 3 above will restart and the examiner will need to meet the necessary requirements appropriate to the eligibility period to begin the Signatory program again.

Extension of Trial Periods due to Insufficient Reviewable Actions

If at the end of either the first or second trial period, the examiner has not completed, signed, and been credited with 17 reviewable office actions appropriate to the type of signatory authority of the temporary grant, the examiner may elect to extend the trial period for up to two additional pay periods. The election must be made in writing to the examiner's supervisor by the first Tuesday following the end of the 13th pay period. A trial period will not be extended for this reason if the 700 hour minimum requirement has not been met at the end of the unextended trial period, nor if the examiner has performed cumulatively at less than the Fully Successful level appropriate to the level of signatory authority in any critical element for the unextended trial period.

If the necessary number of reviewable cases is not available at the end of the extension, the temporary grant of authority will be terminated and the examiner's participation in the signatory program will be ended.

If a trial period has been ended due to a lack of reviewable actions, the examiner may elect to commence a new trial period without an intervening waiting period. This option is available whether or not the trial period was ended after 13 pay periods or was extended as provided above. In this situation, upon written request to the examiner's supervisor, temporary signatory authority will be granted, as long as it is requested at least one week in advance, and if the examiner's performance is at least Fully Successful for the most recent 10 consecutive pay periods immediately preceding the request to receive the temporary grant and all other eligibility criteria is met. If the new trial period is subsequently terminated due to insufficient reviewable actions, a 10 pay period eligibility period, commencing with the pay period following the termination of the trial period, must be completed before starting another trial period.

Withdrawal from a trial period

Any withdrawal from a signatory authority trial period must occur prior to the end of the trial period. An examiner may withdraw by providing written notice to his or her supervisor. In the event that an examiner withdraws from the signatory program during a trial period for performance reasons the waiting period to restart a trial period is 7 pay periods. The requirement for fully successful performance for the 10 pay periods prior to the start of the trial period also applies in this situation along with the other eligibility criteria. Both these periods begin with the first full pay period after the effective date of the withdrawal.

If the examiner withdraws for a reason not related to performance (e.g. insufficient examining hours, personal reasons) he or she may request waiver of the eligibility period after withdrawal from a trial period. Such requests must be submitted in writing to the examiner's supervisor not later than one week prior to the desired effective date of the new trial period, and will be decided on a case-by-case basis by the TC Director.

Evaluation

The evaluation involves a thorough and complete check of the reviewed cases to see whether there were any errors as defined by the Quality Element of the examiner's Performance Appraisal Plan for the applicable signatory authority level. For the PSA Program, only errors in non-final rejections will be considered. For the FSA Program, only errors in final rejections and allowances will be considered. At the end of the trial period, an error rate will be calculated. The examiner's performance in each case will be evaluated by the TC Director, who will determine whether there are any errors. At the end of the trial period, the examiner must also have performed cumulatively at least at the Fully Successful level in the Production Element for an examiner having the appropriate level of Signatory Authority, and at least at the Fully Successful level in Docket Management and Professionalism for the trial period. If the

examiner has not performed at least at the Fully Successful level in the critical PAP elements of Production, Docket Management, and Professionalism, or has exceeded the error rates specified below for the Quality Major Activity category applicable to the appropriate level of signatory authority during the trial period, the permanent grant will be denied.

For the temporary Partial Signatory Authority trial period, the error rate for the Quality Element Major Activities is calculated by counting the number of reviewable actions (consisting of Non-final rejections, First Action Interview Pilot Program interview summary forms, and First Action Interview Pilot program first non-final rejections) which contain an error, and dividing by the total number of Non-final rejections, First Action Interview Pilot Program interview summary forms, First Action Interview Pilot program first non-final rejections, independently signed by, and credited to the examiner for the trial period. **To pass the trial period, the error rate must not exceed 6.49%**, the examiner must be fully successful in all critical elements as set forth in the examiner's current PAP during the trial period and the rating of record must be at least Fully Successful.

For the temporary Full Signatory Authority trial period, the error rate for the Quality Element Major Activities is calculated by counting the number of reviewable actions (consisting of Final actions and Allowances) which contain an error, and dividing by the number of Final actions and Allowances independently signed by, and credited to the examiner for the trial period. **To pass the trial period, the error rate must not exceed 6.49%**, the examiner must be fully successful in all critical elements as set forth in the examiner's current PAP during the trial period and the rating of record must be at least Fully Successful.

Decision

The grant of temporary Signatory Authority shall terminate at the end of the trial period. Within two pay periods after the end of the trial period, the Office will endeavor to either grant the permanent authority or provide the examiner with written reasons why the permanent grant is being denied. If any potential errors found during the evaluation 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 the time needed 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. The examiner's comments to the Director will be communicated within seven (7) calendar days thereafter. See Appendix C. The examiner's comments may be communicated orally, in writing, or both. TC Directors may request written or oral responses, or both.

If the final decision is a denial of the permanent grant, a written explanation for the denial will be given to the examiner. The written explanation for a denial of signatory authority based upon the error rate for the Quality Element Major Activity shall include the following information:

1. Specific identification of the nature of the error in a specific action of a patent application that has been identified by serial number;
2. Specific identification of the Quality Major Activity(ies) of the examiner's Performance Appraisal Plan with respect to which the action is deficient;
3. In the case of allegations of improper allowance of claim(s), specific identification of the claim(s) involved and an explanation of any rejection properly applicable to those claims; and
4. In the case of allegations of improper rejection of claim(s) in a rejection, specific identification of the claim(s) involved and a full statement of the deficiency in the action(s) taken by the examiner.

Appendix A: Partial Signatory Authority

An examiner with temporary or permanent Partial Signatory Authority is authorized to sign:

- 1) requirements for restriction or election;
- 2) First Action Interview (FAI) office actions;
- 3) FAI actions without interview;
- 4) all other non-final actions **except**:
 - a. actions on amendments submitted after final rejection;
 - b. actions initiating an interference, involving copied patent claims, or suggesting claims to be copied for the purpose of initiating an interference;
 - c. actions reopening prosecution;
 - d. actions including a rejection of a previously allowed claim;
 - e. actions in reissue applications;
 - f. actions based on affidavit or declaration evidence under 37 C.F.R. 1.131 or 1.132;
 - g. actions containing a rejection based on double patenting requiring a TC Director's signature; and
- 5) Notices of abandonment for failure to respond.

Appendix B: Full Signatory Authority

An examiner with temporary or permanent full signatory authority is authorized to sign all office actions and communications, **except** those that require the approval of a Supervisory Patent Examiner or Technology Center Director, which consist of:

- 1) all petitions except petitions (or requests) to correct inventorship under 37 CFR 1.48;
- 2) actions in response to amendments filed under 37 CFR 1.312 which embody more than mere correction of formal matters without changing the scope of any claim;
- 3) actions reopening prosecution after the filing of an appeal brief in order to incorporate any new ground of rejection;
- 4) actions in response to a request for a Certificate of Correction;
- 5) actions disapproving entry of preliminary or supplemental amendments;
- 6) letters to an applicant suggesting claims for purposes of interference, or the submission of Form PTO-850, where one or more claims of one application would differ from corresponding claims of another application; and
- 7) actions in response to amendments presented after decision in an appeal by the Board of Patent Appeals and Interferences as to which the primary examiner recommends entry as placing the application in condition for allowance.

Appendix C. Timeline for Signatory Program Decisions

		Thursday	
		Friday	
		Saturday	End of Trial Period
Decision Biweek 1	Biweek 1 Week 1	Sunday	
		Monday	
		Tuesday	
		Wednesday	
		Thursday	
		Friday	
		Saturday	
	Biweek 1 Week 2	Sunday	
		Monday	
		Tuesday	
		Wednesday	
		Thursday	
		Friday	
		Saturday	
Decision Biweek 2	Biweek 2 Week 1	Sunday	
		Monday	
		Tuesday	
		Wednesday	Last day to deliver letter of concern
		Thursday	
		Friday	
		Saturday	
	Biweek 2 Week 2	Sunday	
		Monday	
		Tuesday	
		Wednesday	Last day for examiner to respond to letter of concern
		Thursday	
		Friday	
		Saturday	Deliver decision to grant or deny by close of business
		Sunday	Permanent grant of authority effective

Appendix D: Misconduct

Examiners may be ineligible to begin the Signatory Program for misconduct at the Technology Center (TC) Director's discretion based on the following criteria:

- (1) For Examination related misconduct if they are under active misconduct investigation, have a pending proposed disciplinary or adverse action, or if they have been suspended or received a letter of reprimand less than 1 year prior to the start of the trial period,
- (2) For all other misconduct if they are under active misconduct investigation that is likely to result in a proposed suspension or removal, have a pending proposed suspension or removal or if they have been suspended less than 2 years prior to the start of the trial period.

For ineligibility due to an active misconduct investigation, the ineligibility will last no longer than 100 days from the date on which the examiner would have started the program, unless the issue is referred to the Inspector General or the Department of Justice.

Temporary grants may be terminated for misconduct at the Technology Center (TC) Director's discretion based on the following criteria:

- (1) For Examination related misconduct if they receive a proposed disciplinary or adverse action, or if they are suspended or receive a letter of reprimand during the program.
- (2) For all other misconduct if they receive a proposed suspension or adverse action during the program.

For an examiner on the program who is the subject of a misconduct investigation, any decision on permanent grant may be delayed up to 100 days from the end of the trial period to determine the result of the investigation. If the investigation results in:

- (1) For Examination related misconduct, a proposed disciplinary action or adverse action or
- (2) For all other misconduct, a proposed disciplinary action or adverse action,

The results of the program will be held in abeyance until a final decision is rendered. Once the final decision is rendered, an examiner may be denied signatory authority if he or she receives:

- (1) For Examination related misconduct a disciplinary action, adverse action or letter of reprimand,
- (2) For all other misconduct a disciplinary action or adverse action or
- (3) Is the subject of an investigation referred to the Inspector General or the Department of Justice.