POPA NEWS
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POPA Seeks Protections for 200 More USPTO Employees

About 200 USPTO patent employees not currently classified as POPA bargaining unit employees—mostly patent attorneys and/or attorney advisors as well as other professionally-graded employees—could receive full union protection if a recently submitted POPA request is granted.

POPA filed a clarification of unit petition in August 2010 asking the Federal Labor Relations Authority (FLRA) Office of General Counsel to determine the proper bargaining unit status of these employees. The USPTO disagrees with POPA and maintains that the jobs are exempt from the bargaining unit and union representation.

When POPA was formally recognized as an employee union in Sept. 1965, its bargaining unit included all professional employees at the USPTO with the following exclusions:

- All Trademark professionals—Trademark professionals are covered by a separate professional union, National Treasury Employees Union Local 245;
- Supervisors—those who actually supervise and rate employees, not just a team leader or other employee who may advise a rating supervisor on an employee's performance;
- Management officials who make USPTO policy—advising management on policy decisions without actually making policy does not exclude an employee from POPA;
- Confidential employees—employees who make USPTO labor relations/employee relations decisions and those who provide support services for those who make such decisions, e.g., an assistant to a group director or an executive assistant for a senior USPTO manager.
- Employees who do federal personnel work in other than a purely clerical function; and
- All non-professional employees—technical support personnel, who are covered by a separate union, NTEU Local 243.

Since 1965, two major clarification of unit petitions changed POPA's bargaining unit, adding patent attorneys in the Office of the Solicitor and excluding a personnel psychologist and examiners-in-chief, now called administrative patent judges.

The current petition applies to employees in the following business cost centers at the USPTO:

- Office of the Solicitor;
- Board of Appeals and Interferences (not including administrative patent judges);
- Office of General Law, other than those employees specifically engaged in personnel work;
- Office of Enrollment and Discipline;
- Office of External Affairs;

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The USPTO-POPA Count System Task Force received a Department of Commerce Silver Medal for Leadership from Commerce Secretary Gary Locke. Left to right: Secretary Locke; Technology Center Director Kathy Matecki; Assistant Deputy Commissioner Bruce Kisliuk; Information Technology Specialist Maria Holtmann; POPA Assistant Secretary Pamela Schwartz; POPA President Robert Budens; POPA Secretary Kathleen Duda; Deputy Commissioner for Patents Peggy Focarino; Assistant Deputy Commissioner Andy Faile; Program Analyst Susie Huson; POPA Vice President Howard Locker; Under Secretary of Commerce and USPTO Director David Kappos.

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Performance Appraisal Initiatives Ratified, Enacted

The POPA membership voted to adopt the recently negotiated Performance Appraisal Plan Initiatives package with 89 percent of the votes in favor and 11 percent opposed. Based on those results, USPTO Director David Kappos, POPA President Robert Budens and USPTO Deputy Commissioner for Patents Peggy Focarino met on Oct. 22, 2010, to sign the joint PAP Task Force Memorandum of Understanding and other documents, which cleared the way for implementation of the new system.

POPA thanks its members for their continued support and involvement in improving the USPTO workplace.

POPA Seeks Protections for More

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- Office of Congressional Affairs;
- International Liaison staff;
- Office of Petitions;
- Office of Patent Cooperation Treaty Legal Administration;
- Office of Patent Quality Assurance;
- Patent employees identified as supervisory patent examiners but who are no longer assigned to supervise employees;
- Patent employees designated as Training Quality Assurance Specialists or Special Programs Examiners; and
- Search and Information Resources Administration.

The disagreement between POPA and USPTO is a legal one, relating to the interpretation of federal labor law and the actual duties performed by each particular employee's position. It relates not at all to employees' performance appraisals or the relative importance of any affected employee's position to the mission of the USPTO.

An FLRA hearing officer may request testimony from affected employees during a hearing process that begins on Nov. 29 and 30 and then resumes on Dec. 13. Before then, an attorney from the USPTO Office of General Law or a POPA representative may ask to meet with affected employees to learn more about the work of their positions.

POPA and the USPTO have entered into settlement discussions regarding this clarification of unit petition. The final results of those settlement discussions were not known as this newsletter went to press.

Employees with questions may contact POPA officers Robert Budens at robert.budens@uspto.gov or Pamela Schwartz at pamela.schwartz@uspto.gov. Employees may also contact USPTO attorneys David Shewchuk, ext. 23480; Rachel Irish, ext. 25365; or Suzanne Quersher, ext. x22756.

POPA-USPTO Task Force Awarded Silver Medal

The USPTO-POPA Count System Task Force received a Department of Commerce Silver Medal for Leadership at a ceremony at the Ronald Reagan Building in Washington, D.C., on Oct. 19. The award cited the group for "developing and implementing the first significant changes to the patent examiner work credit system in more than 30 years. This joint union and management task force developed initiatives that focus on quality work upfront in the process, provide more time overall for examination of applications and incentives for identifying allowable subject matter earlier in prosecution and rebalanced internal and external incentives in order to decrease rework. The work of the task force sets the foundation for long-term improvements in efficiency of examination."

Secretary of Commerce Gary Locke presented the award to the task force members.

Part-time Program Changes Announced

Building on the continued success of the part-time program for employees within the POPA bargaining unit, the USPTO and POPA announced changes to the program in late October. The changes allow more employees to participate in the various part-time program components and enhance flexibility for part-time employees participating in the Patents Hoteling Program.

- Effective Oct. 10, 2010, the minimum number of hours a part-time employee may work in a biweek and participate in hoteling changed from 60 to 40 hours per pay period. Accordingly, part-time employees may set a work schedule containing a minimum of 40 and a maximum of 64 hours per pay period and hotel as long as they have been separately approved for hoteling.
- For part-time employees who do not hotel, the minimum work schedule an employee may set remains at 32 hours per pay period.

Increased Number of Part-time Slots

The part-time program has two components, Childcare/Eldercare and Retention. Before this agreement, 100 part-time slots were allocated for Childcare/Eldercare and 50 slots for Retention. To maximize the availability of slots, POPA and the USPTO agreed to add 50 slots that may be allocated interchangeably across the part-time program components.

Please see the POPA part-time program for more details and specific eligibility requirements for each part-time component. Go to *www.popa.org*, click on Useful Info, then Agreements. Employees may also refer to the USPTO Part-Time Help Guide for more information about the program and on how to apply using the part-time request form. Employees may e-mail John Cabeca, the USPTO part-time administrator, at john.cabeca@uspto.gov or POPA Secretary Kathleen Duda at kathleen.duda@uspto.gov.

Sick Leave Definition Expanded

Federal employees may now use their sick leave to care for individuals related by affinity and close association, in addition to family relations.

The Office of Personnel Management recently issued final regulations expanding the definitions of "family member and immediate relative" to include: spouse and parents thereof; children (biological, adopted, stepchildren) and spouses thereof; parents; siblings and spouses thereof; and any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship. Examples include stepparents, grandparents, grandchildren, in-laws, aunt, uncle, and same-sex or opposite-sex domestic partners and parents thereof.

The new definitions for a family member do not apply to the Family and Medical Leave Act.

For additional information, contact POPA Secretary Kathleen Duda at kathleen.duda@uspto.gov.

Show Compassion, Give Through CFC

It is in the power of every individual to do that which the community as a whole is powerless to effect.
—William Thomas Stead, journalist, 1849-1912

Consider donating this season to the Combined Federal Campaign.

POPA and the USPTO support the CFC, but your decision to participate is wholly your own. You choose who gets your donation; only the charities you designate will receive your money. And you may spread tax-deductible payments over the year through payroll deduction or contribute a one-time check.

Charitable giving through the CFC is your personal choice. POPA and the USPTO have negotiated safeguards to your confidentiality. The collective bargaining agreement states in Article 4, Section 14 (F):

> "…Solicitors shall not divulge information regarding an individual's contribution or allotment to anyone other than a person designated by, and acting on behalf of, the Personnel Processing Division, other charitable campaigns or the U.S. Bond Drive."

Please consider the hundreds of worthwhile organizations in the CFC catalog and take advantage of your opportunity to help.

POPA and Agency Negotiate Rights for Reinstated Annuitants

POPA and the USPTO agreed in late August on rights and protections for retired employees who are reinstated as part-time patent examiners.

The agency is hiring reinstated annuitants, as they're called, to help reduce the patents backlog. Office of Personnel Management regulations govern an annuitant's eligibility for returning to federal work. The USPTO-POPA agreement covers the reinstated annuitants' work schedule, holidays, overtime, awards, training and workplace activities, and participation in examiner programs such as the laptop program and telework and hoteling.

To review the details of the agreement, go to *www.popa.org*, click on Useful Info, then on Agreements.

Know Your Rights

Ensure Your Production is Well Rounded

Many examiners question whether USPTO supervisors or managers can round their production achievement figures. The answer is, "Yes."

Unchanged in the new Performance Appraisal Plan (PAP) is the fact that performance in the critical "Production" element (formerly the "Production Goal Achievement" element) shall be rounded to the nearest whole number.

To find this provision of the Examiner PAP on your work computer, launch the USPTO Weekly Home Page by clicking on the Internet Explorer icon. On the right side of the screen, click on the large "Patent Examiner PAP" Task Force button. After the Task Force PAP page opens, click on the "FY2011 PAP" button and then click on the PAP specific to your grade. Scroll through the PAP to the Production element and then to the box labeled "Item 3. Criteria for Evaluation." There it states, "All percentages shall be rounded to the nearest whole number (i.e., 109.49 rounds to 109% and 109.50 rounds to 110%)."

Please note that if your fiscal year rating is Marginal or Unacceptable in any individual critical element, your overall fiscal year performance rating can be no higher than Marginal or Unacceptable. This is irrespective of whether you have accumulated sufficient rating points (0-500 points possible) for a higher overall performance rating.

Contact a POPA representative if you have questions regarding this or any aspect of performance appraisal or if you think you may have a performance issue. The sooner you contact POPA, the greater the possibility of assisting you. See the list of POPA representatives at *www.popa.org* —click on Contact, then Officers and Delegates.

Thanks for USPTO Health Initiative

For some time, and for no particular reason, I've been curious about my blood pressure levels. However, I never acted on obtaining them. Then, during a lunch break at the USPTO Roundhouse Café, I saw one of those self-monitoring blood pressure machines located in the alcove opposite to the PTO Credit Union ATM. So there was my do-it-yourself opportunity to obtain a blood pressure reading.

To my surprise, my blood pressure values were in the hypertension stage 2 range, which is indicated by a reading above 160/100. This prompted a doctor's appointment, which resulted in treatment that eventually managed my blood pressure to normal levels.

Kudos to the USPTO's health initiative for installing this machine, and the convenience it offers.

—An Anonymous Employee

Avoid Trouble: Get Prior Approval for All Leave

To avoid questions regarding your leave requests, as well as a possible charge of being absent without leave, always try to request leave in advance. If you wait until the end of the pay period to request and record sick or annual leave on your WebTA, without a separate prior leave request to your supervisor, you are not requesting leave in a timely manner. Your leave may still be granted, but you are taking a risk.

POPA bargaining unit members need to request both sick leave and annual leave in advance whenever reasonably possible. Make the request to your immediate supervisor or to the supervisor's designee(s) if the supervisor is absent. With either type of leave, the key is to request leave "in advance."

If the need for sick leave is not known in advance, request leave as soon as reasonably possible thereafter. You may make your request via phone or e-mail. If you can't request the leave yourself, you may have someone else request it for you. If you can't reach your supervisor or the supervisor's designee, you can leave a message with the request and with a way for the supervisor to contact you.

Timeliness is key.

Your actions in requesting leave should be reasonable. If you realize in the middle of the night that you won't be able to come in the next day, you may call in your request to use leave, but also leave a way for the supervisor to reach you the next day or call back the next day at a time when you are more likely to reach the supervisor directly. You are also required to request additional sick leave for each day you are absent unless leave for an extended illness has been previously approved.

It is a good idea to have the phone number of your supervisor and his/her designees handy in the event you need to call to request either sick or annual leave.

One last caveat: while you may be on annual leave and performing work at the office or at home, the same is not permissible while on sick leave. Sick leave is only to be used for appropriate purposes, such as your own illness, care of a family member who is ill or for medical appointments.

If you have any questions regarding annual leave or sick leave, talk with your supervisor or contact POPA Secretary Kathleen Duda at kathleen.duda@uspto.gov or POPA Assistant Secretary Pamela Schwartz at pamela.schwartz@uspto.gov

Attend the

POPA ANNUAL MEETING

Thursday, December 9
Noon – 1 pm
Madison Auditorium

Hear about:

* The state of your union
* Reports from POPA's officers
* Status of Millennium pay grievances
* Issues facing employees in 2011

and more!

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Patent Office Professional Association

Robert D. Budens, *President,* (571) 272-0897

Howard J. Locker
Vice President/Director of Adverse Action Challenges
(571) 272-0980

Dr. Kathleen Duda
Secretary/Director of EEO Activities
(571) 272-1383

Pamela R. Schwartz, *Assistant Secretary/ Director of Unfair Labor Practices*
(571) 272-1528

Randy Myers, *Treasurer,* (571) 272-7526

David Fenstermacher, *Director of Grievances,* (571) 272-7102

Letters from readers are welcome. Address to:
The Editor, Patent Office Professional Association,
P.O. Box 25287, Alexandria, VA 22313

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