POPA NEWS
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POPA and Director Kappos Discuss Patents Future with Commerce Secretary Locke

The welfare of the economy and patent examination are linked in the eyes of the Obama administration, according to Secretary of Commerce Gary Locke, who invited POPA and the USPTO to discuss patent priorities with him at a November meeting.

POPA President Robert Budens and Vice President Howard Locker joined USPTO Director David Kappos to explain the impacts of budget realities on the patent application backlog.

They outlined the harm to patent examination done by diverting patent fees to the general treasury and requiring the USPTO to pay more than $70 million annually for employee retirement benefits. (USPTO and the U.S. Postal Service are the only federal agencies that pay the Office of Personnel Management to cover their retirees' benefits.) These practices contributed to the USPTO budget shortfall, which in turn led to the recent hiring freeze.

Discussing the USPTO's future at a Nov. 30 meeting. (L to R) Under Secretary of Commerce and USPTO Director David Kappos, POPA Vice President Howard Locker, POPA President Robert Budens, Secretary of Commerce Gary Locke.

During the halt in hiring, the USPTO has continued to lose approximately 15-20 examiners each biweek. POPA pointed to an outmoded USPTO culture that has been too ready to fire examiners rather than invest in the training and mentoring needed to improve their performance and retain them. This historically high fire-and-hire cycle has expended big bucks on initial examiner training only to lose many of the recently hired and begin the cycle anew. The hiring freeze stopped this cycle, forcing the agency to reexamine its personnel processes.

(*continued on page 2*)

POPA Sits at Patents Worksharing Roundtable

Speeding patent processing among the world's patent offices has been a hot topic for decades. The USPTO is launching programs to increase worksharing efficiencies and hosted a November 2009 roundtable meeting—including POPA—to discuss the new USPTO processes.

At the meeting of agency officials, U.S. private sector patent attorneys, and representatives from intellectual property organizations, POPA conveyed patent examiners' concerns and perspectives regarding the new programs, dubbed the Patent Prosecution Highway (PPH) and Strategic Handling of Applications for Rapid Examination (SHARE).

The USPTO describes PPH as the "fast track" examination of applications. The program basically would codify that when a patent office allows the claims of an application, a corresponding application filed in a second patent office could be advanced out of turn. Then the office of the second filing (OSF) can use the search and examination results of the office of first filing (OFF) to avoid work duplication and expedite examination in the OSF.

While this sounds simple and productive, POPA pointed up a basic flaw in the process: It would require the USPTO to give full faith and credit to search and/or examination results from other countries.

Differences in patent laws among various countries may result in relevant art not being cited. Examination practices differ among the major patent offices. Some focus examination on broadest claims and don't address all the individual features found in dependent claims.

Relying on others' failure to find relevant prior art is inherently risky. The agency needs to focus on ensuring that

(*continued on page 2*)

Patents Future Discussion

(continued from page 1)

Director Kappos sees the value in revamping the system and has set up a USPTO-POPA task force to tackle an in-depth review of the administration of performance appraisal plans and disciplinary actions, much as the union and agency recently worked together on revising the count system. This will mark the first serious assessment of the examiner performance appraisal plan since it was devised in 1976 and the first time since the mid-1990s that the agency will consider employee input from the union.

The POPA reps also explained the union's viewpoint on worksharing among international patent offices, underscoring the importance of maintaining U.S. search and examination as inherently American sovereign duties.

Why I Joined POPA

"It was POPA that Helped to Get the Promotion Moving"

Thinking back to when I joined the USPTO—I had a friend from grad school who had come to the agency and raved about it. So when I started, I knew just enough to get myself into trouble. But one of the first things my friend did was to advise me to join POPA. This was probably the best advice I received in my first year at the PTO.

POPA was the first to tell me about "other" time—that I'm entitled to time for certain things that are not examining related and how to take that time. When my promotion was held up because someone in HR sat on it rather than contacting my supervisor to let her know it contained an error, it was POPA that helped to get the promotion moving. POPA representatives are ready to assist employees in any way they can.

In 2008 in TC1600, examiners had been instructed incorrectly about which PCT search reports were given a half count and which were given a full count. POPA intervened and we were able to restore 97 PCT half counts back to the examiners at the end of the fiscal year. That equaled almost $28,000 in pay back to examiners. So if you ask, "What has POPA done for me lately?" you really have to ask yourself instead, "What would my job be like today if POPA wasn't here?"

I became active with POPA because I felt the agency had pushed me into a corner one too many times. When I switched from a part-time schedule to full-time, I ran for election as a POPA delegate and won.

Patent professionals should never feel they must put up with unfair or harsh treatment from a supervisor because they are afraid of what their boss will do to them if they stand up for themselves. I find it gratifying that, as a POPA representative, I can help people receive fairer treatment on the job.

—Christine Saoud, Primary Examiner, Art Unit 1647, and POPA Chemical Area Delegate

POPA at Worksharing Roundtable

(continued from page 1)

the claimed subject matter distinguishes over any cited prior art and that any amendments, arguments and/or evidence to overcome rejections in the OFF are submitted to the OSFs. POPA also noted that giving priority to a significant number of patent applications taken out of filing date order will create a problem due to intervening art represented by unpublished and unexamined applications.

The burden of taking appropriate actions to overcome rejections must fall on the applicant. POPA proposed that the applicant should be responsible for taking appropriate action in accordance with the patent laws in each of the patent offices in which an applicant files claims, based on the rejections made by the OFF.

POPA also proposed that the applicant be required to respond to the OFF and OSF before examination would commence in the OSF. This would advance prosecution in the OSF by narrowing the scope of claims or otherwise overcoming rejections set forth by the OFF before prosecution begins in the OSF. This in turn would increase the probability of a timely first action issuing in the OSF and would reduce total pendency.

This process would be risk-free for each country because each patent office would be expected to do a complete search and examination of the application, following applicant's appropriate response to the OFF, in accordance with its own laws and practices.

It also serves the applicant by allowing applicants to amend claims with offices of subsequent filings based on the OFF responses. Fast-tracking or pulling applications out of order wouldn't be necessary. Efficient application-sharing mechanisms and time frames among the various offices worldwide would best serve each office and applicants.

Improving Worksharing Programs

The USPTO's proposed SHARE process would prioritize in the examination queue the applications for which an office is the OFF. The agency expects this would enhance worksharing by increasing the volume of exploitable work product from the OFF. SHARE would dovetail with the PHH program by enabling the OSF to use the OFF work product to the maximum extent.

POPA notes that the PPH problems of taking applications out of order would similarly affect SHARE and ultimately harm examination effectiveness.

If the USPTO decides not to rely on the search or examination results of other offices, worksharing won't reduce work for USPTO examiners. They will still need to search for relevant art applicable under U.S. laws. If the USPTO tells its examiners to rely on foreign searches or examination, then USPTO examiners should not be held accountable for errors resulting from another office's search or examination.

POPA Looks Ahead for 2010

Prognosticating POPA's future is never easy, but POPA leaders gave association members their best forecast for the coming year at the POPA Annual Meeting in December.

The most widespread impact on examiners will come from the successful implementation of the new Count System Initiatives and the start of union-agency talks on revising the performance appraisal plan (PAP) and disciplinary measures. POPA will be closely monitoring how the count system evolves and will be relying on examiners' feedback on any good or bad outcomes. The new count system is a one-year pilot—in summer 2010 the USPTO-POPA task force will reconvene to review the results of the first eight months of use to determine if the count system initiatives should be changed and renewed. A feedback system is already in place on the USPTO Intranet and POPA encourages all employees to use it.

If the talks to work out a new PAP are like those that achieved the new count system, the work ahead for POPA and the USPTO will be arduous, but rewarding for examiners and the agency.

Telework Changes

President Robert Budens reported to the membership that Director Kappos supports POPA's proposal to change the duty station of hoteling examiners to their home offices, thereby negating their requirement to travel to the USPTO campus every week. However, the agency budget currently can't afford to make that duty-station change for employees who live outside of the 50-mile commuting distance—it doesn't have the budget to pay their travel costs. Both Patent Reform bills pending before Congress include provisions for pilot programs to test the duty-station adjustment for long-distance hotelers, but the director acknowledges there's no indication that those bills will be considered in the near future.

Even if the legislative reforms don't come to pass, Budens reported that Director Kappos promised that he will revise the rules to alter the duty stations for hotelers within the 50-mile radius. Those discussions are underway and completion is expected soon.

POPA Service Changes

With POPA's increase in membership in the past year, Budens announced that the union plans to improve its computer system and Web site and named the POPA officials who are now responsible for specific employee services. Note: Their contact information is available on the pull-out page of this newsletter.

Adverse and Disciplinary Actions: POPA Vice President Howard Locker will direct POPA's efforts to advise and respond to employees who experience or anticipate experiencing USPTO adverse and disciplinary actions, e.g., suspensions and removals.

Grievances and Unfair Labor Practices: Employees and POPA delegates seeking assistance with these issues should consult with POPA Assistant Secretary Pamela Schwartz.

Equal Employment Opportunity Issues: POPA Secretary Kathleen Duda will oversee POPA's actions for employees with EEO problems including requests for reasonable accommodation.

POPA to Represent Employees on Commerce and USPTO Labor-Management Councils

President Obama's Dec. 9, 2009, executive order directed all federal agencies to establish labor-management councils that will meet at "nonadversarial" forums that will "allow managers and employees to collaborate in continuing to deliver the highest quality services to the American people," according to the document.

"Management should discuss workplace challenges and problems with labor and endeavor to develop solutions jointly," continued the executive order, "rather than advise union representatives of predetermined solutions to problems and then engage in bargaining over the impact and implementation of the predetermined solutions."

While each department and agency has 90 days to submit its labor-management council plan for review and approval, it's very likely that POPA President Robert Budens will represent patent professionals on the councils established by the USPTO and the Department of Commerce. POPA, representing a bargaining unit of more than 6,500 employees, is the largest single union in Commerce. Other unions likely to sit on the Commerce council include the National Weather Service Employees Organization (NWSEO) and the American Federation of Government Employees (AFGE) representing most employees at the Census Bureau.

In establishing the USPTO council, the executive order states that the agency director "shall allow employees and their union representatives to have pre-decisional involvement in all workplace matters to the fullest extent practicable, without regard to whether those matters are negotiable subjects of bargaining under 5 U.S.C. 7106; provide adequate information on such matters expeditiously to union representatives where not prohibited by law; and make a good-faith attempt to resolve issues concerning proposed changes in conditions of employment, including those involving the subjects set forth in 5 U.S.C. 7106(b)(1), through discussions in its labor-management forums."

The president's order also established a National Council on Federal Labor-Management Relations to be co-chaired by the Office of Personnel Management director and the deputy director for management of the Office of Management and Budget. The national council will include the leaders of the largest federal employee unions and management associations.

POPA Awards Service

POPA's success depends on its members, who offer their time and energy to serve their fellow employees through association activity. With great gratitude for their outstanding service, POPA recognized the following individuals at the 2009 Annual Meeting.

Randy Myers – Lifetime Achievement Award

In appreciation for his leadership, dedication and tireless efforts in effectively representing his fellow patent professionals as Treasurer for nine years, as Secretary for 16 years and as an elected representative for 27 years.

POPA President Robert Budens (left) presents Lifetime Achievement Award to Randy Myers.

David Fenstermacher – Grievance Director's Award

In appreciation of his willingness to use his technical and legal expertise in representing his fellow professionals in grievances, investigations and disciplinary matters.

David Fenstermacher (left) receives his award from POPA Director of Grievances and Unfair Labor Practices Pamela Schwartz.

Listening to Employees

So far the administration of USPTO Director David Kappos has listened and responded respectfully to POPA's concerns, as evidenced by the recent group-printer problem.

To save money, the USPTO planned to remove a group computer printer from each floor of examiners, leaving only one printer for all the employees on each floor to share.

Proving that little things mean a lot, employees reacted very negatively to the idea. POPA approached newly appointed Commissioner of Patents Robert Stoll to point out that the printers are heavily used and show how cutting the numbers to one per floor would decrease productivity. Stoll agreed to keep the approximately 40 printers in use, preventing long print queues and helping employees feel appreciated.

Alan Cariaso – Ronald J. Stern Outstanding Service Award

In appreciation for his technical and patent examining leadership in representing his fellow professionals in the development of the Patent File Wrapper system and other automated tools.

POPA President Robert Budens (left) thanks Alan Cariaso for his outstanding service.

David Reip – Distinguished Service Award

In appreciation for his enthusiasm, dedication and volunteer spirit in representing his fellow professionals in grievances, investigations and disciplinary actions.

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Patent Office Professional Association

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POPA Budget Report
2009-2010

The following report includes 2009 Association income and expenditures through December 31, 2009, and the 2010 Association budget approved by the Executive Committee.

	2009 Actual	2010 Budget
INCOME		
Dues	$ 232,160.00	$ 272,000.00
Interest	$ 631.70	$ 1,000.00
Other	$ 936.39	
Total Income	**$ 233,728.09**	**$ 273,000.00**
EXPENDITURES		
Litigation, Lobbying	$ 78,641.19	$ 160,000.00
Newsletter	$ 20,346.73	$ 33,000.00
National Activities	$ 2,990.00	$ 4,000.00
Training & Conferences	$ 6,764.48	$ 8,000.00
Legal Information Resources	$ 5,482.23	$ 9,000.00
Elections*	$ 0	$ 0
Administrative	$ 13,831.99	$ 23,300.00
Membership Services	$ 0	$ 5,000.00
Membership Meetings	$ 4,427.37	$ 5,000.00
Capital Expenditures	$ 0	$ 15,000.00
Total Expenditures	**$ 132,483.99**	**$ 262,300.00**
Net to Reserve	**$ 101,244.10**	**$ 10,700.00**

* Effective November 2008, Election expenses are incurred every three years.

Notes

National Activities: Membership dues for national organizations such as Public Employees Roundtable and Society of Federal Employee and Labor Relations Professionals.

Administrative: Includes expenses for accounting, secretarial, postage, office supplies and equipment, insurance, miscellaneous and bank fees.

Membership Services: Membership incentives and participation in USPTO Community Day. No Community Day was held in 2009.

POPA Patent Office Professional Association

Executive Committee Roster

	Telephone	Art Unit	Office
Union Office		——	RND-1D61
OFFICERS			
President			
Robert D. Budens	571-272-0897	1648	REM-3A35
Vice President/Director of Adverse Action Challenges			
Howard J. Locker	571-272-0980	1661	REM-2C81
Secretary/Director of EEO Activities			
Dr. Kathleen Duda	571-272-1383	1795	REM-9A65
Assistant Secretary/ Director of Grievances and Unfair Labor Practices			
Pamela R. Schwartz	571-272-1528	1794	REM-10C75
Treasurer			
Randall P. Myers	571-272-7526	2614	KNOX-6B81
CHEMICAL AREA DELEGATES			
Dr. Patricia Duffy	571-272-0855	1645	REM-3B05
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Jennifer Graser	571-272-0858	1645	*hoteling*
Adrienne Johnstone	571-272-1218	1791	REM-7B19
Amy Lewis	571-272-9032	1614	REM -3D30
Ileana Popa	571-272-5546	1633	REM-2C83
Dr. Christine Saoud	571-272-0891	1647	REM-4E81
Geraldina Visconti	571-272-1334	1795	*hoteling*
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Jasmine Clark	571-272-1726	2815	JEF-6D39
Azizul Choudhury	571-272-3909	2445	RND-10D69
Phylesha L. Dabney	571-272-7494	2614	KNOX-6D68
Albert Gagliardi	571-272-2436	3992	JEF-9A31
Kim Lockett	571-272-2067	2837	*hoteling*
Adnan Mirza	571-272-3885	2445	RND-4A89
Dionne Pendleton	571-272-7497	2627	KNOX-8B15
B. James Peikari	571-272-4185	3992	*hoteling*
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Jeff Swearingen	571-272-3921	2445	RND-4A69
Julie Anne Watko	571-272-7597	2627	KNOX-8A75
Howard Weiss	571-272-1720	2814	JEF-5A15
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Ella Colbert	571-272-6741	3696	KNOX-4A21
David Fenstermacher	571-272-7102	3656	KNOX-3B07
Vinh Luong	571-272-7109	3656	KNOX-3C03
Craig Price	571-272-2712	3753	RND-10A75
David Reip	571-272-4702	3993	RND-6B81
David Shay	571-272-4773	3769	RND-7A75
DESIGNS AND OTHERS AREAS DELEGATES			
George Kirschbaum	571-272-4232	2913	REM-5A70
Melanie H. Tung	571-272-2613	2911	REM-5B87