

USPTO Joint Labor and Management Count System Task Force



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Director's Task Force Objectives (Why)

- Provide examiners with incentives to:
 - Address issues early in the examination process
 - Reach out to applicants
- Reduce rework
- Deliver net gain for all stakeholders
- Improve working conditions
- Develop initial plan and institute an iterative process for improvement
- **Do no harm**



Overview of Proposed Package (*What*)

- **Combination of count system changes and more time for examiners**
 - More time overall (increase in Hrs/BD)
 - More time for FAOM (shift in counts so FAOMs get more credit)
 - Provide time for examiner-initiated interviews
 - Diminish credit for RCEs
 - Consistent credit for transferred or “inherited” amendments
- **Revised Production Award Program**
- **Process changes**
 - Increase work credit certainty for examiners
 - Increase fairness to applicants by implementing a more disciplined examination order
 - Balance the load on IT systems by encouraging earlier submission and review of work
- **Improved working conditions**
 - Reduce examiner reluctance to allow applications
 - Shift resources from a focus on Examiner Recertification to front end quality improvements



Implementation Timeline (When)

- Monday, November 9, 2009:
 - Time for Examiner-Initiated Interviews
 - Changes in Timing for Examiner's Submitting Work
 - Changes in Docket Management Policies
 - Patentability Determination and Hoteling Waiver
 - Certification and Recertification
- Sometime in early calendar year 2010:
 - Examiner Count Changes and Additional Examining Time



On-Going Assessment

- Over the course of FY 2010, the Task Force will be measuring the effects of these changes:
 - gathering internal and public feedback,
 - meeting on a regular basis to monitor progress, and
 - consider additional improvements.



Expiration

- Changes will expire automatically at end of FY 2010 unless Agency and Union agree otherwise.
 - Will meet regularly to evaluate and determine if further changes are needed and/or continuing into FY2011.
- Agency may terminate program at any time if necessary for “proper functioning of the Agency”.
- If the program is terminated, examiners will get one additional hour for examination.



Revisions to Count System

| Current Count System Original Case (Non-RCE) | | | 1st RCE | | | 2nd & Subsequent RCEs | | | Current Counts | |
|---|-------|---------|---------|-------|---------|-----------------------|-------|---------|----------------|-----------------------|
| FAOM | Final | All/Abn | FAOM | Final | All/Abn | FAOM | Final | All/Abn | | |
| 1.00 | | 1.00 | | | | | | | 2 | Original |
| 1.00 | | 1.00 | 1.00 | | 1.00 | | | | 2 | 1st RCE |
| 1.00 | | 1.00 | 1.00 | | 1.00 | 1.00 | | 1.00 | 2 | 2nd & Subsequent RCEs |

| New Count System Original Case (Non-RCE) | | | 1st RCE | | | 2nd & Subsequent RCEs | | | New Counts | |
|---|-------|---------|---------|-------|---------|-----------------------|-------|---------|------------|-----------------------|
| FAOM | Final | All/Abn | FAOM | Final | All/Abn | FAOM | Final | All/Abn | | |
| 1.25 | 0.25 | 0.5 | | | | | | | 2.00 | Original |
| 1.25 | 0.25 | 0.5 | 1.00 | 0.25 | 0.5 | | | | 1.75 | 1st RCE |
| 1.25 | 0.25 | 0.5 | 1.00 | 0.25 | 0.5 | 0.75 | 0.25 | 0.5 | 1.50 | 2nd & Subsequent RCEs |



Additional Time for Examination

- Additional Time for Utility and Plant Examiners
 - Start by adding 2 hours to each examiner's FY09 expectancy (Hrs/BD at their position factor)
 - Determine impact of reduction in RCE counts based on examiner's RCE mix of work in FY09
 - Add additional time, if necessary, to account for reduction in RCE counts so that every examiner gets at least 1 net additional hour over their FY09 expectancy.



Standardized Credit for Transferred or “Inherited” Amendments

- The initial or first Office Action done by the new examiner on the transferred or “inherited” amendment will get a set amount of counts.

Benefits:

- Provides incentive and compensation for examiners to take the needed time to get up-to-speed and take ownership of an “inherited” case.



Examiner-Initiated Interviews

- New policy gives examiners “other time” for substantive Examiner-initiated interviews.
- Equivalent to the time given for Applicant-initiated interviews.
- Includes time for preparing for the interview, conducting the interview, and completing the post-interview documentation.
- Examiners are also encouraged to follow the interview “best practices” outlined in the recent Corps-wide Interview Training workshops.

Benefits:

- Supports Compact Prosecution practice by encouraging examiners to be proactive in prosecution and work with Applicants.
- Encourages examiners to identify allowable subject matter earlier in the examination process.



Changes in Docket Management Policies - Regular New Cases

Regular New Case Docket

- A formal policy of working on the earliest filed applications on Examiner's Regular New Case docket.
- Within a six-month filing date window of the earliest filed application, examiners may use their professional discretion to work on applications out of order if it leads to efficient examination.

Benefit:

- Intended to balance fairness to applicants with an examiner's need to manage their dockets for efficient examination.



Changes in Docket Management Policies - RCEs

RCEs

- RCEs filed on or after November 15, 2009 will be placed on the examiner's Special New Case docket (instead of an examiner's Amended Docket).

Benefit:

- Provide examiners more docket management flexibility to handle RCEs.
- Intended to balance fairness to applicants with an examiner's need to manage their dockets for efficient examination.



Changes in Docket Management Policies - RCEs

Additional Considerations Regarding RCEs:

- One of the purposes of the new examiner production system is to reduce the instances in which it is necessary for an applicant to file an RCE.
- The new count system provides incentives to examiners to follow compact prosecution principles and conduct early interviews with applicants in the hope that RCE filings will become less necessary in many cases.
- The new examiner production system provides comparatively less credit for RCEs.
- USPTO will monitor the effects of RCE handling under the new production system, and in combination with the other USPTO initiatives, and will reevaluate the program and make any changes needed to ensure it best balances the needs of applicants and operation of the Office.



Getting Cases Counted

- Modified the timing and guidelines for the submitting, processing, and counting of examiner's work (outgoing Office Actions).

Benefits:

- Provides more clarity and consistency for examiners and supervisors.
- Reduces end-of-biweek "surge" that impacts automation systems.
- Provides adequate time to review junior examiner's work.



Patentability Determination Errors

- Examiner's Performance Appraisal Plan (PAP) includes elements covering quality, productivity, and timeliness.
- One of the elements in a Primary Examiner PAP is Patentability Determination.
- Due to some areas having relatively low allowance rates, a single Patentability error could sometimes cause a performance evaluation problem.
- Modified criteria so a single error would not trigger a performance evaluation problem.

Benefit:

- Hope to remove a potential barrier in the system to encourage examiners to work towards allowability when appropriate.



Certification and Recertification

Certification Exam (for promotion to GS-13)

- Information and preparatory tools for the certification exam will be consolidated and made more readily available to examiners.

Benefit:

- Examiners being better prepared for increased responsibilities required as part of promotions

Recertification

- The recertification program will be discontinued.

Benefit:

- Allows resources to be placed in front-end quality efforts to shifted to emphasis to doing it right the first time (first actions).



Production Award Programs

A modified Production Award Program is being implemented in FY 2010 to provide examiners additional 5% incremental steps ranging from 110% to 135%.

| | | | | | | |
|------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Production | 110% | 115% | 120% | 125% | 130% | 135% |
| Award | 2% | 3% | 4% | 5% | 6% | 7% |



Patent Examiner's Telework or Hoteling Program

- One requirement of the Hoteling Program is a rating of record of at least Fully Successful.
- Modified to allow a grace period to improve performance if this requirement is not met before removing employee from the Hoteling Program.

Benefit:

- Since telework is growing and will play a larger role in the future, looking for ways to make telework a more standard and transparent part of the Agency's operations.



Safety Nets

- The Agency will maintain PALM functionality for the old count system so an examiner's performance will be able to be calculated under both old and new count systems.
- For performance issues including ratings, performance actions, promotions, and awards, production shall be calculated using both the old and new system.

Benefit:

- Provides a transition from old to new and the heart of the “do no harm” philosophy.



Potential Risks

- Increase in Pendency
 - Net increase in time for examination could result in less examiner output
- Decrease in Revenue
 - Less examiner output translates into reduction in fee income (e.g. issue fees, maintenance fees, extensions of time, etc.)
- *It is believed the combination of initiatives in this package will work to mitigate the risks.*



Anticipated Results

- Set the foundation for long-term pendency improvements
- Focus on quality work up-front by increasing production credit for first action and more overall time
 - Increase in customer satisfaction
- Identify allowable subject matter earlier in prosecution
 - Increase in examiner-initiated interviews
 - Decrease in actions per disposal due to compact prosecution
- Rebalance incentives both internally and externally resulting in decreased rework
- Support examiner ownership of transferred or inherited cases by providing consistency in production credit
- Increase examiner morale leading to reduced attrition



Closing Points

- These changes reinforce compact prosecution by incentivizing decisions early in the process and supporting quality decision making by giving examiners more time to do their work while at the same time does no harm to employees.
- Since these are the first significant changes to this count system in more than 30 years, intend for this to be an iterative process.
- Will closely monitor and evaluate the changes and are prepared to propose further adjustments as warranted should the changes not yield the anticipated results.