



UNITED STATES
PATENT AND
TRADEMARK OFFICE

Patent Office
Professional
Association

**Joint Labor and Management
Count System Task Force
Proposal**

**Update to the Examining Corps
September 30, 2009**



Director's Task Force Objectives

- Do no harm
- 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



Overview of Proposed Package

- **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



Revisions to Count System & Additional Time for Examination



- Revisions to Count System
 - Shift more credit to FAOM to support compact prosecution
 - Reduce counts for RCEs
- Additional Time for Utility and Plant Examiners
 - Start by adding 2 hours to each examiner's FY09 Hrs/BD at their position factor $[(GS-12 \text{ Hrs/BD divided by PF}) + 2]$
 - Determine impact of reduction in RCE counts based on examiner's FY09 RCE mix
 - 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 (Hrs/BD at their position factor)
- Additional Time for Design Examiners
 - Add 0.7 hours to each examiner's FY09 Hrs/BD at their position factor $[(GS-12 \text{ Hrs/BD divided by PF}) + 0.7]$
 - No RCE adjustment required



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

Proposed Count System Original Case (Non-RCE)			1st RCE			2nd & Subsequent RCEs			Proposed 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

In proposed new count system, after an FAOM the examiner gets the remainder of counts (0.75) either by:

- Getting a Disposal (0.75) with no previous Final Rejection, or
- Doing a Final Rejection (0.25) then subsequently getting a Disposal (0.50)



Comparison of Current System to Proposed New System



In FY 09, an Examiner had 1,150 examining hours:

Examiner's FY09 Stats	Current Count System	Proposed Count System
35 Reg. FAOMs (70% Reg FAOM)	35 counts	43.75 counts
15 RCE FAOMs (30% Reg FAOM) 75% 1 st RCEs, 25% 2 nd & subsequent RCEs	15 counts	14.06 counts
50 Finals	0 counts	12.5 counts
50 Disposals	50 counts	25 counts
Total	100 counts (50 BDs)	95.31 counts (47.66 BDs) <i>[reduced total counts]</i>
Goal: HRs/BD at position factor	23.0 HRs/BD	25.08 HRs/BD <i>[adjusted higher Hrs/BD]</i>
% Achievement	100.0%	103.9%



How the Change in RCE Counts Impacts the HRs/BD

If examiner has a mix in FY09 of 70% Reg (Non-RCE) FAOMs, 22.5% 1st RCE FAOMs, and 7.5% 2nd + RCE FAOMs:

	Current Counts	Proposed Counts	Individual Examiner FAOM mix from FY09
Reg/Original (Non-RCE)	2.0	2.0	70% Reg (Non-RCE) FAOMs
1 st RCE	2.0	1.75	22.5% 1 st RCE FAOMs
2nd & subsequent RCEs	2.0	1.50	7.5% 2 nd + RCEs FAOMs

Equivalent HRs/BD impact based on FY09 RCE mix due to count changes:

$$\text{Impact} = \frac{[\text{weighted proposed counts} - \text{current counts}]}{\text{current counts}}$$

$$\text{Impact} = \frac{(((2.0 \times 70\%) + (1.75 \times 22.5\%) + (1.50 \times 7.5\%)) - 2.0)}{2.0}$$

$$\text{Impact} = - 4.69 \%$$

$$\text{Impact} = - 4.69 \% \times 23.0 \text{ HRs/BD [Examiners HRs/BD at their position factor]}$$

$$\text{Impact} = - 1.08 \text{ HRs/BD [Impact to Examiners HRs/BD]}$$



Examples of Calculating Additional Time for Examination

FY09 HRs/BD at Position Factor	Start by Adding 2-hours	Examiner FY09 % Mix of Reg FAOMs – 1 st RCE FAOMs - 2 nd + RCE FAOMs	HRs/BD impact based on FY09 RCE mix due to count changes	Determine if <u>net gain</u> with RCE impact is <u>at least a 1 HR/BD increase</u>	Determine final increase to Current HRs/BD at Position Factor	New HRs/BD at Position Factor
23.0 (HRs/BD)	2.0 (HRs/BD)	90 – 7.5 - 2.5 (low RCEs)	- 0.36	$2.0 - 0.36 = 1.64$ (≥ 1.0 , no adj.)	2.0 (HRs/BD)	25.0 (HRs/BD)
23.0	2.0	73 – 20.3 – 6.8 (Approx. Corps Avg)	- 0.97	$2.0 - 0.97 = 1.03$ (≥ 1.0 , no adj.)	2.0	25.0
23.0 <i>[Example from previous slides]</i>	2.0	70 – 22.5 – 7.5	- 1.08	$2.0 - 1.08 = 0.92$ (< 1.0 , needs adj.)	2.08 $2 + [1.0 - (0.92)] = 2.08$	25.08
23.0	2.0	50 – 37.5 – 12.5	- 1.80	$2.0 - 1.80 = 0.20$ (< 1.0 , needs adj.)	2.8 $2 + [1.0 - (0.20)] = 2.8$	25.8
23.0	2.0	20 – 60 - 20 (high RCEs)	- 2.88	$2.0 - 2.88 = - 0.88$ (< 1.0 , needs adj.)	3.88 $2 + [1.0 - (-0.88)] = 3.88$	26.88



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.
- Regular (Non-RCE) transferred or “inherited” amendments will have 1.5 counts total available for the new examiner.
- RCE transferred or “inherited” amendments will have 1.75 counts total available for the new examiner.
- After the initial action by the new examiner (if it is not a disposal), the remaining counts (for Final and Disposal) are the same as the new count scheme after FAOM.



Standardized Credit for Transferred or “Inherited” Amendments



Regular (Non-RCE) new case

1st action			2nd action		3rd action	Total Counts
FAOM	Final	Allow	Final	All/Abn	All/Abn	
1.25			0.25		0.50	2.00
1.25				0.75		2.00
		2.00				2.00

Transferred or inherited Reg (Non-RCE) amendment

1st action by new examiner			2nd action		3rd action	2nd Examiner Counts
Non-Final	Final	Allow	Final	All/Abn	All/Abn	
0.75			0.25		0.50	1.50
0.75				0.75		1.50
	1.00			0.50		1.50
		1.50				1.50



Standardized Credit for Transferred or “Inherited” Amendments - 1st RCE



1st RCE

1st			2nd action		3rd action	Total Counts
FAOM	Final	Allow	Final	All/Abn	All/Abn	
1.00			0.25		0.50	1.75
1.00				0.75		1.75
		1.75				1.75

Transferred or inherited 1st RCE: No prior action in the RCE

1st action by new examiner			2nd action		3rd action	2nd Examiner Counts
FAOM	Final	Allow	Final	All/Abn	All/Abn	
1.00			0.25		0.50	1.75
1.00				0.75		1.75
		1.75				1.75

Transferred or inherited 1st RCE: A prior action in the RCE by previous examiner

1st action by new examiner			2nd action		3rd action	2nd Examiner Counts
Non-Final	Final	Allow	Final	All/Abn	All/Abn	
1.00			0.25		0.50	1.75
1.00				0.75		1.75
	1.25			0.50		1.75
		1.75				1.75



Standardized Credit for Transferred or “Inherited” Amendments – 2nd + RCEs



2nd & Subsequent RCEs

1st			2nd action		3rd action	Total Counts
FAOM	Final	Allow	Final	All/Abn	All/Abn	
0.75			0.25		0.50	1.50
0.75				0.75		1.50
		1.50				1.50

Transferred or inherited 2nd+ RCE: No prior action in the RCE

1st action by new examiner			2nd action		3rd action	2nd Examiner Counts
FAOM	Final	Allow	Final	All/Abn	All/Abn	
1.00			0.25		0.50	1.75
1.00				0.75		1.75
		1.75				1.75

Transferred or inherited 2nd+ RCE: A prior action in the RCE by previous examiner

1st action by new examiner			2nd action		3rd action	2nd Examiner Counts
Non-Final	Final	Allow	Final	All/Abn	All/Abn	
1.00			0.25		0.50	1.75
1.00				0.75		1.75
	1.25			0.50		1.75
		1.75				1.75



Examiner-Initiated Interviews

- A program for granting non-examining time for substantive examiner-initiated interviews. One hour of non-examining time will be granted for conducting the interview and preparing the post-interview documentation for examiner initiated interviews.
- This time is not intended to be used for routine telephonic restrictions.
- Examiners are to continue to follow guidance in MPEP section 713 regarding interview practice, use the proper interview forms, and document a clear, concise interview summary that ensures the substance of the interview is on the record.
- Examiners are also encouraged to follow the best practices outlined in the Interview Training workshop.
- A newly established program code will be created to record examiner-initiated interviews.



Certification and Recertification

Certification

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

Recertification

- The recertification program will be discontinued. Emphasis will be shifted to front-end quality efforts.



Getting Cases Counted

- Signed actions posted by noon on Count Monday will be counted for the just completed biweek.
- Office actions that require the signature of another must be posted prior to midnight of the second Saturday of the biweek. SPEs may provide guidance regarding a reasonable amount of time they require for a guarantee of review and counting of work.
- Complete Office actions that require the signature of another and are posted for credit prior to midnight of the second Saturday of the biweek will be timely with regard to Workflow Management.



Getting Cases Counted

(continued)

- All examiners are encouraged to complete and post their Office actions throughout the biweek.
- Office actions for which the examiner has the independent authority to sign must be posted by noon on Count Monday to be counted for the just completed biweek. However, at the end of each quarter the cut off time will be 2:30pm.
- If an Office action is returned to an examiner after counting, required corrections must be made (or issues addressed) and the Office action must be returned within two weeks of receipt by the examiner. Failure by the examiner to do so within this time period may result in the withdrawal of the production credit.



Getting Cases Counted

(continued)

Work shall normally be credited/counted during the biweek in which it is first posted/submitted for credit. As such:

- Reviewers are encouraged to promptly provide the appropriate level of review of the work posted to them, and either return the Office action with necessary substantive correction(s) or sign and post the Office action. Piecemeal review either by the same reviewer or multiple reviewers should be avoided.
- Junior examiners are encouraged to promptly make any necessary corrections following review and repost the corrected Office action to the reviewer.
- Reviewers are encouraged to promptly review the corrected Office action, and either sign and post the Office action or return the Office action if the necessary corrections were not made by the junior examiner.



Patentability Determination

- No examiner shall receive an oral warning based upon a single clear error in Patentability Determination.
- No examiner shall be deemed to have failed an oral warning improvement period on the basis of a single clear error in Patentability Determination.
- No examiner shall be deemed to have failed a written warning improvement period (statutory performance improvement period) on the basis of a single clear error in Patentability Determination. However, an examiner may receive an oral warning for multiple clear errors in Patentability Determination over a period of two or more consecutive quarters during a fiscal year.
- An examiner shall not receive a rating of record of less than Fully Successful for a fiscal year based upon a single clear error in Patentability Determination.



Hoteling

- An examiner who receives a rating of record of less than Fully Successful at the end of the fiscal year will be given a period of 6 pay periods to demonstrate Fully Successful performance in all critical elements.
- During the 6 pay periods and upon successful completion thereof, the employee will remain eligible to participate in the hoteling program.
- Achievement of at least Fully Successful performance during the waiver period has no bearing on the grant of a within-grade increase. Performance for the purpose of granting a within-grade increase will be based on government-wide regulations, the Agency's OPM approved Performance Appraisal System, and Agency policy as applied to POPA bargaining unit employees.



Hoteling

(continued)

- Achievement of at least Fully Successful performance during the waiver period has no bearing on the employee's fiscal year rating.
- If the employee's performance is not at least Fully Successful in all critical elements during the waiver period, or if the employee does not have at least 350 examining and examining related hours during the waiver period, the employee will be removed from the PHP. The employee will be given at least two (2) weeks prior written notice of removal from the PHP.



Changes in Docket Management Policies



Regular New Case Docket

- A formal policy of working on the earliest filed applications on your Regular New Case docket first will be established.
- Within a six-month filing date window of the earliest filed application, you may use your professional discretion to work on applications out of order if it leads to efficient examination.
- If the application is beyond the six-month filing date window of your earliest filed application and you believe it should be examined out of turn, you are expected to gain supervisory approval before starting to examine the “newer” application.
- Examples of appropriate reasons for examining applications outside the window include having related applications or clearly related subject matter.

Special New Case Docket

- RCEs filed on or after a date to be determined will be placed on the Special New Case docket.



Production Award Programs

- Special Achievement Award (SAA) remains unchanged at 3% bonus for an average of 110% achievement over any 4 consecutive quarters
- A modified Gainsharing Program will be implemented in FY 2010
 - A 5% incremental system ranging from 110% to 135%
 - This award is subject to a \$10,000 cap in accordance with OPM regulations

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



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



What's Next

- Finalize package and transition details
- Distribute draft of agreement
- Conduct a series of detailed briefings to supervisors, employees and IP community beginning early October
- Hold POPA ratification vote
- Implement
 - Complete necessary IT system changes
- Measure and evaluate
 - Collect feedback internally and from IP community
 - Consider additional adjustments. However, Director Kappos is committed that examiners will nonetheless receive a net increase of at least one hour in time over their FY09 expectancies.