

# MANAGEMENT IMPLEMENTATION GUIDELINES FOR THE USPTO E-COMMERCE LAW OFFICE PILOT PROGRAM

## **Section 1. Background**

### **1.1 Implementation**

The USPTO E-Commerce Law Office Pilot Program (Pilot or Program) is being implemented in partnership with the National Treasury Employees Union, Chapter 245.

### **1.2 Partnership Working Group**

Procedures and processes necessary for the functioning of the Pilot will be developed and recommended by the E-Commerce Law Office Pilot Program Partnership Working Group (Working Group). For example, the Working Group will devise communication and application procedures in preparation for the implementation of the Pilot. The Working Group shall be comprised of the B-Commerce Coordinator, who is a management representative, one additional management representative, and two representatives of NTEU 245, unless otherwise agreed to by the parties. During the initial planning and implementation phase, the Working Group shall include one additional management representative and one additional union representative.

The duration of the Pilot will extend under the terms of this agreement until September 30, 2001. Management reserves the right to terminate the program at any time due to operational needs. Extension, modification or termination of the B-Commerce Law Office Pilot Program will occur only after consultation with the Union. Neither party waives its rights as a result of this provision.

On issues that arise potentially impacting both NTEU Chapter 245 and 243 employees, the parties may convene a group session with Chapter 243 representatives present or may meet with a corresponding work group.

## **Section 2. Scope**

### **2.1 Applicability of Provisions**

The provisions of this document apply to all Chapter 245 bargaining unit members participating in the Pilot.

### **2.2 Non-Discrimination Statement**

Participants will be selected without regard to race, color, gender, religion, national origin, marital status, age, sexual orientation and/or physical ability.

## **2.3 Ethical Standards**

All standards governing ethical behavior remain in effect.

## **2.4 Federal Statutes**

Nothing under this agreement will abrogate an individual's rights under existing and future federal laws, including, but not limited to, the American's with Disabilities Act, the Family Medical Leave Act, the Rehabilitation Act, etc.

## **Section 3. Employee Participation**

### **3.1 Participation**

Law Offices 102 and 112 shall become the E-Commerce Law Offices. For the purposes of continuity, it is recommended that the current managing attorneys and senior attorneys be retained, unless an individual chooses to opt out of participation.

A maximum of twenty-five (25) examining attorneys on the floor may choose to opt out of participation in the Pilot. At the commencement of the time allotted to examining attorneys for either opting out of the Pilot or volunteering for participation, the managing and senior attorneys slotted to manage the pilot offices will be announced. Examining attorneys who choose to opt out will be reassigned to other offices based on availability of openings and seniority. Each examining attorney who opts out will be given an opportunity to indicate in writing the law office(s) to which he/she prefers to be reassigned. Wherever possible, the examining attorney's preference for reassignment will be taken into account. Every effort will be made to prevent an examining attorney from being assigned to an office managed by a managing attorney whose office the examining attorney voluntarily left at a previous point in time, unless the examining attorney has no objection to such an assignment.

In the event that fewer than ten (10) examining attorneys opt out, it will be necessary to transfer one or more attorneys involuntarily. Management has determined that a maximum of 10 examining attorneys will be involuntarily transferred out of the E-Commerce Program. Selection for involuntary transfer will be made on the basis of reverse seniority by grade on the floor. Each examining attorney who is involuntarily transferred will be given an opportunity to indicate in writing the law office(s) to which he/she prefers to be reassigned. Wherever possible, the examining attorney's preference for reassignment will be taken into account. Every effort will be made to prevent an examining attorney from being assigned to an office managed by a managing attorney whose office the examining attorney voluntarily left at a previous point in time, unless the examining attorney has no objection to such an assignment.

Examining attorney positions left vacant through either opt outs or involuntary transfers will be filled by volunteers from other law offices. Any vacancies in Law Offices 102

and 112 as of the date of the signing of this agreement will be counted as vacancies that may be filled by volunteers from other law offices. Management has determined that examining attorneys hired in the interim and assigned to Law Offices 102 and 112 will be reassigned upon implementation of the pilot unless there is a shortage of volunteers to fill the vacancies.

The Working Group will develop application forms for attorneys to formally express an interest in participating or to formally express an interest in opting out. The Working Group will also develop the criteria for identifying volunteers. The Working Group will identify volunteers to be selected based on seniority while seeking to maximize expertise in multiple classes of goods, and maintaining a grade ratio per office. The overall grade ratio of GS 13s/14s to GS 11s/12s shall remain fifty (50) percent floor wide.

In the event the number of volunteers is greater than the number of positions available, a waiting list will be established and maintained by the Working Group. Those persons involuntarily transferred out of the Pilot who had previously expressed formal interest in participation in the Pilot will be given priority on the waiting list.

### **3.2 Trademark Work at Home**

All assignments and reassignments of examining attorneys resulting from implementation of the Pilot will have no impact on the currently designated participants for the Trademark Work at Home program.

### **3.3 Details, Work Projects and Related Events**

Attorney advisors may participate in any career development details, work projects, etc., pursuant to NTEU 245 agreements, while participating in the Pilot. In the event that the number of attorneys participating in details, projects, etc. has a negative impact on the Pilot, then the Working Group will recommend ways to minimize such impact.

### **3.4 Examining Attorney Work Schedules**

Examining attorneys participating in the Pilot may elect any work schedule that is available to examining attorneys in the non-Pilot Law Offices.

## **Section 4. Scope of Examination and Examination Practices**

### **4.1 Classes of Goods and Services to be Examined**

The examining attorneys participating in the E-Commerce Law Office Program will be required to examine all classes of goods and services.

### **4.2 Use of Electronic Communication**

Participants in the E-Commerce Office will be expected to communicate with applicants via e-mail, both formally and informally. Formal e-mail communication will include the

electronic mailing of Office actions. The Working Group will recommend guidance on this type of e-mail usage.

In the Pilot, there will be mandatory use of electronic communication for formal communication whenever practicable. The Working Group will recommend the conditions under which the use of such e-mail communication is to be considered mandatory.

### **4.3 Encouraging Electronic Filing**

Management has determined that the Working Group may consider devising and recommending strategies to advertise and promote the E-teas application process. Such strategies may include, but are not limited to, the addition of a form paragraph and/or amendments to the PTO website regarding the electronic filing process. In addition, the Working Group will develop recommended form e-mails for use by the examining attorneys when dealing with particular customer service needs or issues, and will develop guidelines for the level of responsiveness required. The Working Group in developing its recommendations will consider the need to avoid piecemeal prosecution, the need to avoid repetitive e-mails, and the impact on pendency and production while meeting customer needs. The Working Group will also take into consideration that there are transitional issues pertaining to the use of the global communications network and use of e-mail which need to be addressed. The Working Group will recommend e-mail guidelines for customers to reduce the problems of piecemeal prosecution and repetitive e-mails, and to generally facilitate the electronic application process; for example, requiring a complete e-mail address, and authorizing acceptance of e-mail communications from the Program law offices.

Seminars may be held for the outside Bar and/or other external customers and may be conducted by Pilot participants.

### **4.4 Co-pending/Conflicting Policy**

For the purposes of the Pilot, management has determined that the co-pending/conflicting policy is suspended. Specifically, co-pending applications will neither be sent out to other law offices from the Pilot offices, nor will such applications be received by the Pilot law offices. The Working Group will communicate procedures for implementation of the suspension of this policy.

The Working Group, in conjunction with the Office of the Commissioner, will monitor the impact of waiving the existing copending policy. In the event that the limited waiver of this policy results in customer service complaints, the Working Group may recommend the reinstatement of the policy.

#### **4.5 Use of Tradeups by Examining Attorneys**

Examining attorneys will have access to the data entry system, Tradeups. Use of Tradeups by the attorneys to enter examiner's amendments or to correct the database, or for any other purpose, is voluntary.

#### **4.6 Use of Technology by the Participating Law Offices**

The Working Group will oversee the implementation of the following technologies and/or tools into the respective Pilot law offices for use by the examining attorneys, as the use of such tools is deemed practicable: desk-top faxing; law office scanning/optical character recognition (OCR); dedicated automation resources allocated to the Program; revised E-teas forms and formats; amendment cover sheet to promote the filing of amendments electronically; fax cover sheet; e-mail warehouse/back-up system; pre-set formats to facilitate electronic responses by applicants; designation of certain e-mail address(es) for the receipt of amendments and/or responses only; electronic attachment of evidence; printer/scanner/fax capabilities on each desktop; TICRS retrieval in the Program law offices; and the ability to upload office action.

### **Section 5. Training**

#### **5.1 Class Related Training**

Examining attorneys participating in the Pilot will receive training in those classes of goods they are not currently examining because the examining attorneys are required to examine all classes of goods or services filed electronically. Such training will be performed in a classroom environment. Written materials and guidelines on class-specific examination, as well as a current list of experts in each particular class of goods, will be distributed in conjunction with the training.

Regular law office and/or Pilot-wide meetings with participants to ensure training consistency throughout the Pilot and to implement changes in the processes will be conducted. Similarly, participating examining attorneys will be provided opportunities to provide formal feedback to management and the Working Group. The Working Group may recommend that on-going training or specific issue seminars be conducted.

#### **5.2 Co-pending/Conflicting Policy Training**

All examining attorneys will receive training and written guidelines outlining any changes to the co-pending/conflicting policy.

#### **5.3 Tradeups Training**

All examining attorneys participating in the Pilot will receive training on using the Tradeups data system either prior to or soon after the commencement of the Pilot.

## **5.4 Impact of Training on Bonuses**

Initial formal e-commerce related training hours conducted in FY 2000 will be counted toward bonus hours in FY 2000.

## **Section 6. Performance Impact**

### **6.1 Performance**

Examining attorney's job performance will be evaluated on standards set forth in the employee's Performance Appraisal Plan, subject to the following modifications.

For the first quarter' of the Pilot, all quality review ratings under the Performance Appraisal Plan are waived, including back-end review for work done in the first quarter. For the purposes of training only, an evaluation of files in unfamiliar classes will be conducted. However, regular quality review will be performed for those attorneys who have not received six months of review for Fiscal Year 2000 and for those attorneys who have been reviewed for more than six months but are less than outstanding. This review will be of classes previously examined by the attorney.

The telephone action requirement in the Performance Appraisal Plan is waived for the duration of the Pilot.

### **6.2 Production**

A production adjustment of 10% will be given to attorneys participating in the Pilot. The Working Group will evaluate this figure and may recommend adjustments during the course of the pilot. Management will consider such recommendations and, if accepted, communicate the new standards to the participating examining attorneys before they become effective. The Pilot examining attorneys will not have a higher standard of production than the non-Pilot examining attorneys.

The production adjustment for the Pilot does not constitute, encompass or substitute for any non-production adjustments due to automation problems or failures.

### **6.3 Pendency**

The Performance Appraisal Plan requirements of acting on all new cases within fourteen calendar days and acting on all amended cases within twenty-one calendar days of the date of delivery to the attorney are applicable to the Pilot.

## **Section 7. Space**

Given the relative flexibility of space within the South Tower, the law offices located on the fifth floor of that building were selected for the Pilot. As certain functions from the Trademark Services area are incorporated into the law offices as part of the Pilot, it will

be necessary to utilize the existing space in new ways. The Working Group will discuss space issues. In the event the Working Group cannot agree on a space issue, then both Management and the Union reserve their rights. In the creation of the Pilot, every attempt will be made to avoid doubling examining attorneys who are not currently doubled.

In addressing space issues, the Working Group may consider recommending changing the size of the Pilot, limiting the number of attorneys initially involved in the Pilot or expanding the Pilot to additional offices. In general, the Working Group will be responsible for developing recommendations regarding proposed expansions of the Pilot. In the event that the Working Group is unable to reach agreement regarding the possible expansion of the Pilot, then both Management and the Union reserve their rights.

### **Section 8. Labor Relations and Employee Grievance Rights**

Any disputes regarding the interpretation or application of the USPTO B-Commerce Law Office Pilot Program shall be resolved in accordance with the parties' negotiated labor-management agreement. For the purpose of clarification, the wording "management has determined" means that management may modify these decisions subject to the union's right to impact and implementation bargaining where that right is applicable.

### **Section 9. Evaluation**

The Pilot will be periodically evaluated by the Working Group to determine the success of the Program.