

**Performance Plan, Progress Review and Appraisal Record
Interlocutory Attorney With Full Signatory Authority, Trademark Trial and Appeal
Board (OGC)**

ELEMENT ONE

Item 1 Performance Element and Objective (Critical)

Element: Timeliness and Productivity

Weighting Factor: 40%

Objective: To support TTAB goals by taking timely action on a full complement of contested interlocutory matters and by promoting the efficient handling of litigation before the TTAB.

Item 2 Major Activities

- Issuing decisions in an efficient and timely manner on a wide range of contested motions in inter partes proceedings before the TTAB.
- Managing docket to ensure that cases are processed on a schedule that meets TTAB processing goals.
- Expediting cases where practicable with telephone conferences or other techniques to ensure that matters are resolved quickly, including participation in discovery telephone conferences when requested by any party.
- Maintaining motions logs in a timely and accurate manner.
- Issuing decisions in an efficient and timely manner on a wide range of uncontested motions and concurrent use cases in inter partes proceedings before the TTAB.

Item 3 Criteria for Evaluation

Timeliness and productivity will each be weighted as 50% of the rating in this element and may be prorated for extended absences.

If an interlocutory attorney is outstanding in either timeliness or productivity, and commendable in the other, the final rating for this element may be no higher than commendable.

If an interlocutory attorney is outstanding in either timeliness or productivity, and fully successful in the other, the final rating for this element may be no higher than commendable.

If an interlocutory attorney is commendable in either timeliness or productivity, and fully successful in the other, the final rating for this element may be no higher than fully successful.

If the interlocutory attorney is marginal in either timeliness or productivity, the final rating for this element may be no higher than marginal.

If the interlocutory attorney is unsuccessful in either timeliness or productivity, the final rating for this element will be unsuccessful.

TIMELINESS

Weighting Factor – 50%.

The manager will evaluate interlocutory work for timeliness using the generic performance standards and the following supplemental standards: timeliness for issuance of orders resolving contested motions will be calculated as the average time from the date on which a case is ready for decision to the mailing date, or, if the manager reassigns a case, the average time from the date of reassignment to the mailing date. Timeliness will be monitored on at least a quarterly basis.

Timeliness goals for issuing decisions on contested motions will be rounded to the nearest tenth, and are as follows:

Outstanding—10 weeks or fewer on average

Commendable—10.1 through 11.5 weeks average

Fully Successful—11.6-12 weeks on average

Marginal—12.1 through 14 weeks on average

Unsuccessful—more than 14 weeks on average

An interlocutory attorney may receive the next higher timeliness goal rating as long as he/she meets the fully successful level as set forth above with 3 or fewer pending contested motions older than 16 weeks, and none older than 6 months, at the end of each quarter, unless excused by the manager. However, an interlocutory attorney may receive the next lower goal rating if he/she has more than 3 pending contested motions older than 16 weeks, or any older than 6 months, at the end of any quarter.

The manager may excuse an interlocutory attorney from the timeliness standards set forth in this element if, for example, the manager finds that the pending contested motion required extensive research, resulted in a precedential order or involved an issue of first impression, or could not be decided because the record is incomplete. All requests for excuse from these standards should be communicated to the manager in writing within 5 business days from the date on which the order is completed.

PRODUCTIVITY

Weighting Factor – 50%.

The manager will evaluate interlocutory performance for productivity using the generic performance standards and the following supplemental standards: Productivity will be calculated by reference to the number of orders resolving contested motions. Orders primarily addressing a contested motion to compel, a contested motion for summary judgment, or any contested motion handled by telephone conference (except a contested motion to compel) will earn 1.5 productivity credits. Precedential orders and contested motions to compel handled by telephone conference will earn 2.0 productivity credits. All other substantive orders issued on contested motions will earn 1.0 productivity credits.

Interlocutory attorneys will earn up to 1.0 productivity credits for each discovery telephone conference as follows: .5 productivity credits for participating in the conference and entering required data on a spreadsheet/log, and .5 productivity credits for discovery conferences in which the parties reach any agreements intended to make the Board proceeding more efficient and economical, as memorialized in a substantive order issued by the interlocutory attorney.

If the Chief Administrative Judge assigns a final decision on the merits, he/she will determine appropriate credit(s) based on the size of the record and the complexity of the legal issues presented, but in no event will such decisions earn fewer than one productivity credit for an ex parte appeal, and no fewer than two productivity credits for an inter partes final on the merits.

Mentors will receive complete credit for all orders resolving contested motions authored by an attorney without full signatory authority.

Productivity will be monitored on at least a quarterly basis.

Productivity goals are:

Outstanding—116+ credits

Commendable—106-115 credits

Fully Successful—95-105 credits

Marginal—80-94 credits

Unsuccessful—below 80 credits

If an interlocutory attorney has participated at an exceptional level in training, professional education, scholarly writing, TTAB administrative activities, or trademark systems improvements, or if an interlocutory attorney has reviewed and/or drafted an exceptional number of orders on uncontested motions or drafted orders on exceptionally difficult concurrent use cases, the manager may adjust the attorney's rating for this element to a higher level than that to which the attorney would have been entitled based strictly on numerical production.

ELEMENT TWO

Item 1 Performance Element and Objective (Critical)

Element: Quality of Orders Issued

Weighting Factor: 40%

Objective: To issue accurate, clear, concise and consistent orders in contested, uncontested and concurrent use cases, based on review and evaluation of the proceeding file.

Item 2 Major Activities

- Issuing decisions on a wide range of contested, uncontested, and concurrent use inter partes proceedings before the TTAB. Conducting research and, where desirable, consulting with other Board attorneys and judges in preparing decisions on motions.
- Managing docket of cases such that orders are issued expeditiously and correctly.

- Preparing orders on interlocutory motions that are correctly reasoned and well written and researched.
- Reviewing work by paralegals and junior interlocutory attorneys to ensure compliance with laws, rules and TTAB practice.

Item 3 Criteria for Evaluation

The manager will evaluate interlocutory work for quality using the generic performance standards and the following supplemental standards:
 For each quarter, the manager will evaluate at least 3 randomly selected files in which orders resolving contested motions were issued, as well as any case brought to his/her attention (Note: the manager will evaluate at least 3 files per month for new interlocutory attorneys for the first 6 months after they receive full signatory authority). The manager will review the orders for lack of clarity of writing and misapplication of or failure to apply appropriate Rules, statutes, case law or Board procedures. The manager will rate the interlocutory attorney on the total number of errors found over the course of the fiscal year as follows:

- No cases with errors Outstanding
- 1 case with error(s) Commendable
- 2 cases with error(s) Fully Successful
- 3 cases with error(s) Marginal
- 4+ cases with error(s) Unsatisfactory

The manager may grant a positive credit to an interlocutory attorney if, during the review process, the manager finds an order of exceptional quality or an order that demonstrates exceptional case management skills. The positive credit may offset an error, and if there are no errors to be offset, or all errors have been offset, then an excess accumulation of positive credits may have additional positive impact in rating under this element.

The manager may increase the number and frequency of files reviewed where problems are found. The manager may prorate the number of files reviewed if an attorney is absent for an extended period of time in a particular quarter. The manager also may consider input from judges in cases where the attorney prepared orders for judges' signatures.

If an interlocutory attorney disagrees with an error finding, the interlocutory attorney may appeal the finding to the manager within 10 days of receiving the error finding. If the manager does not revoke the error finding, the interlocutory attorney may then appeal the finding to the Chief Administrative Judge within 10 days of receiving notice that the appeal has been denied.

ELEMENT THREE

Item 1 Performance Element and Objective (Critical)

Element: Special projects, Organizational Effectiveness, Professionalism; Public Inquiries

Weighting Factor: 20%

Objective: To foster effective prosecution of Board cases and understanding of Board procedures by responding to all manner of inquiries from litigants, potential litigants, or the public. Public assistance, public education, TTAB assistance and education, and improvement of the TTAB and the trademark system. To promote the highest level of service and professionalism to internal and external customers; and to promote TTAB, OGC and Office goals.

Item 2 Major Activities

- Answering, in a timely, clear and accurate manner, oral or written questions from litigants, the bar and the public relating to the particular pending case, the Trademark Rules of Practice, and/or current Board practice and procedure.
- Returning phone calls and internal e-mails and responding to other queries within 1 business day.
- Undertaking, as needed, the necessary research and consultation with Board judges or other USPTO officials to fully respond to inquiries from internal and external sources.
- Assisting in customer service by providing training or assistance to other TTAB employees as needed.
- Keeping up to date on trademark law and TTAB practice and procedure.
- Undertaking special research, writing, speaking, and/or other initiatives, the aim of which is to improve TTAB rules, procedures, processing, policies or public understanding of TTAB litigation practice.
- Working closely with paralegals, junior interlocutory attorneys, and/or detailees, and providing ongoing direction and mentoring of paralegals.
- Providing feedback to the supervisory paralegals over the course of the year and, as directed, formal feedback for consideration by the supervisory paralegals in preparing evaluations of paralegal work.
- Attending, participating in, and leading group discussions and meetings regarding TTAB practice, policy and procedure, USPTO policies and procedures, and other projects within the TTAB, OGC and any or all other areas of the USPTO as needed.
- Volunteering for activities such as evaluation panels for new hires and the Lefkowitz Moot Court Competition.
- Conducting appropriate phone conferences on uncontested matters.

- Demonstrating a commitment to customer service when dealing with internal and external customers.
- Submitting written suggestions for improvement.
- Utilizing USPTO resources to assist in improving productivity and efficiency.
- Adhering to stated TTAB and USPTO practices and procedures.
- Other significant and relevant contributions made during office hours, not specifically enumerated above.

Item 3 Criteria for Evaluation

Generic performance standards.

ADDENDUM

The following reduced timeliness and productivity standards will apply to all interlocutory attorneys for the first six months after they are granted full signatory authority:

Timeliness goals for issuing decisions on contested motions are:

Outstanding—less than 10 weeks average

Commendable—10.1-12.5 weeks average

Fully Successful—12.6-13 weeks average

Marginal—13.1-14 weeks average

Unsuccessful—more than 14 weeks average

Productivity goals are:

Outstanding—47+ credits

Commendable—43-46 credits

Fully Successful—37-42 credits

Marginal—32-36 credits

Unsuccessful—below 32 credits

AWARDS

In addition to the award structure currently in place, and subject to budgetary considerations and a limit of 10% of salary up to \$10,000 for the fiscal year, an interlocutory attorney may earn a supplemental award if he/she achieves a final rating of at least fully successful in each critical element, and the TTAB meets its stated pendency goals at the end of the fiscal year. The percentage will be graduated based upon the interlocutory attorney's final rating.