

MEMORANDUM OF UNDERSTANDING
For the
TTAB Interlocutory Attorney GS-15 PAP Negotiations

This agreement is entered into by the United States Patent and Trademark Office (USPTO) and the National Treasury Employees Union, Chapter 245. This agreement covers the implementation of the GS-15 Attorney Performance Appraisal Plan (PAP) at the Trademark Trial and Appeal Board (TTAB).

The following are the provisions agreed to:

1. The Performance Appraisal Plan (PAP) will go into effect for rating purposes on October 1, 2008.
2. On October 1, 2008, any motion that is older than twelve (12) weeks but younger than sixteen (16) weeks, will have its ready for decision date reset to twelve (12) weeks.
3. The PAP will only apply to Interlocutory Attorneys with full signatory authority.
4. The Office will comply with any obligations under the Federal Service Labor-Management Relations Statute and any existing collective bargaining agreements to the extent required by law.
5. To ameliorate the adverse impact on a union representative's ability to meet performance standards while performing authorized representational activity as well as the adverse impact on attorneys caused by a representative's inability to perform representational activities without such consideration, management will not place the representative at a disadvantage in appraising performance due to time spent performing such representational activities. Authorized time spent performing union representational functions will not be considered as a negative factor in evaluating any critical or non-critical element.
6. The Office may put as many policies and procedures in writing as practicable.
7. Rating officials may assign a performance rating that is fair and reasonable under the circumstances when the application of the rating system leads to an unfair or unreasonable overall performance rating. When rating any Interlocutory Attorney under performance appraisal plan standards, a supervisor should ensure that special circumstances do not exist which would require adjustments, and that he or she assigns an overall rating that would be fair and reasonable given the Interlocutory Attorney's particular circumstances.
8. Management may consider issuing additional written guidance pertaining to this PAP, such as a Management Implementation Guideline (MIG).

Administration of PAP

9. When an attorney properly submits a written request for adjustment of productivity or timeliness goals using a management-provided form, management will make available its decision on such matters.

Timeliness and Productivity

10. Management will consider all requests for adjustments and may grant reasonable adjustments as appropriate.

11. Upon written request, management may provide adjustments from the timeliness and productivity standards due to attorney participation in discovery conferences.

Timeliness

12. For the purpose of calculating attorney timeliness, the mailing date of an order addressing a contested motion will be the date the Interlocutory Attorney sent the order to the mail queue or to the "Decisions and SJ" mailbox.

13. In the event an Administrative Trademark Judge on a panel reviewing an Interlocutory Attorney's draft of an order or opinion does not respond to the Interlocutory Attorney with comments within three days of circulation of the draft, the failure to respond may be reported to management.

14. In view of the requirement to request adjustments as soon as practicable, the Office may issue written guidance on submitting requests to be excused from the timeliness requirements under extenuating circumstances not enumerated in the PAP.

15. In view of the requirement to calculate timeliness, as soon as practicable the Office may issue written guidance on how to calculate timeliness.

16. For the purpose of calculating attorney timeliness, in any case where the attorney demonstrates that s/he had no reason to know that a motion ready for decision was ready for decision sixteen (16) weeks or longer at the time the attorney first became aware of or should have become aware of the motion, management may consider setting a new timeliness goal from the date when the attorney first knew, or had reason to know, that action was due.

Productivity

17. Upon written request, management may provide adjustments from the productivity standards due to mentoring that the interlocutory attorney has been required to perform.

18. If a lack of work impacts an Interlocutory Attorney's rating for performance at the Fully Successful, Commendable, or Outstanding level in the Productivity element, an

appropriate adjustment shall be considered to enable attorneys to potentially perform at all enumerated performance levels.

19. If a proceeding is withdrawn before an order issues, the completed draft may be forwarded to management with a request for credit.

20. All motions for summary judgment must be forwarded to the Managing Interlocutory Attorney for assignment.

21. As soon as practicable, management may issue written guidance on obtaining extra credit or recognition of work performed under the PAP but which is not required to be logged and reported.

22. In view of the requirement to calculate productivity, as soon as practicable management may issue written guidance on how to calculate productivity.

Quality

23. In the event that an Interlocutory Attorney succeeds in having a finding of error or “unexcused occurrence” reversed, the actual time spent in activities leading to the reversal may be reported to management.

24. Management may take into consideration errors within a file previously handled by another Interlocutory Attorney. If an Interlocutory Attorney takes over a case file previously assigned to another Interlocutory Attorney, the Managing Interlocutory Attorney may consider whether there was an opportunity for the Interlocutory Attorney to take corrective action on any errors. The Managing Interlocutory Attorney also will consider whether the Interlocutory Attorney, when deciding motions in a reassigned case, should have been expected to discover and correct any errors.

25. If a rating official becomes aware of any deficiency or error that will be used in a performance appraisal, he/she may disclose the facts concerning the deficiency to the Interlocutory Attorney as soon as practical, normally within two weeks from when the rating official becomes aware of the deficiency.

26. Management has the discretion to not count as error deficiencies corrected by the Interlocutory Attorney prior to the date the issue came to management’s attention.

27. Management may consider cases brought to its attention by TTAB judges, counsel, or parties participating in inter partes cases for the grant of positive credit.

28. For the purposes of reviewing the quality of orders under the PAP, a computer-generated random sample of three (3) orders from among all orders issued on contested motions for each quarter will be generated for each interlocutory attorney from the motions log.

Awards

29. Each interlocutory attorney rated under this PAP is eligible for Department of Commerce authorized annual awards (departmental award) based solely on the individual interlocutory attorney's overall rating under this PAP. In addition, each interlocutory attorney is eligible for a 2% or 4% award for achieving, respectively, a commendable or outstanding rating under the timeliness factor for element one of the PAP (supplemental award). Eligibility for a supplemental award also is contingent on both (1) the interlocutory attorney achieving an annual rating of at least fully successful in the productivity factor of PAP element one, and in PAP elements two and three, and (2) the TTAB interlocutory attorneys as a group meeting the office's stated pendency goal for deciding contested motions in TTAB inter partes proceedings, both at the mid-year and end of year assessments. Thus, this supplemental award specifically recognizes achievements that contribute to realization of agency goals. Departmental and supplemental awards may not, however, aggregate more than the 10% or \$10,000 departmental cap, and availability of awards is subject to budgetary limitations, as may be manifested in any particular fiscal year.

Transition

30. From the effective date of this agreement through September 30, 2008, the production goals and timeliness deadlines set forth in the PAP will be waived for ratings purposes but may be considered for the purposes of awards.

31. From the effective date of this agreement through September 30, 2008, the quality review of cases described in the new PAP will be for informational purposes and not used in ratings. During this period, the quality review performed will be shared with individual interlocutory attorneys for possible discussion with management.

32. Management will regularly assess and reevaluate the information technology tools available for tracking productivity and timeliness, and will consider suggestions offered by interlocutory attorneys for improvement of those tools.

33. Any error or deficiency finding on work completed, i.e. sent to the mailing queue, before implementation of the new PAP will not count toward the performance rating for an attorney under the new PAP. Those errors or deficiencies can be counted as appropriate under the current PAP for purposes of progress review and can be considered in the final rating for the year.

Signatures

FOR THE AGENCY

David Sams 7-17-08
DATE
David Sams
Chief Administrative Trademark Judge

FOR NTEU

Iryll Ume 7/21/08
DATE
Iryll Ume
National Field Representative

Howard Friedman 7 21 08
DATE
Howard Friedman
President, NTEU 245

**ADDENDUM TO MEMORANDUM OF UNDERSTANDING
For the
TTAB Interlocutory Attorney GS-15 PAP Negotiations**

As an integral component of the Memorandum of Understanding between the United States Patent and Trademark Office (Agency) and the National Treasury Employees Union (Union) regarding the TTAB Interlocutory Attorney GS-15 PAP, and in exchange for agreements contained within the Memorandum of Understanding, the Union further agrees:

1. To withdraw Unfair Labor Practice charge (charge) No. WA-CA-08-0273, regarding the notice and implementation of rule changes pertaining to discovery conferences; and
2. To notify the appropriate regional office of the Federal Labor Relations Authority of its decision to withdraw the charge, in writing, within five (5) business days of the date of this agreement; and
3. To provide the Agency a copy of the written communication by which the charge was withdrawn.

FOR THE AGENCY

David Sams 7-17-08

 David Sams DATE
 Chief Administrative Trademark Judge

FOR NTEU

Iryll Umel 7/21/08

 Iryll Umel DATE
 National Field Representative

Howard Friedman 7 21 08

 Howard Friedman DATE
 President, NTEU 245