

PAP COUNTER PROPOSALS SUBMITTED BY NTEU 245

I. INTRODUCTORY PROPOSALS

A. Before implementation of the agreed upon PAP on an Office wide basis, a pilot of the new PAP will be put into place. This pilot will be made up of Examining Attorneys currently not participating in an e-commerce Office. Rather, the pilot will comprise 50% non-e-commerce Examining Attorneys and 50% of Examining Attorneys in the current Hoteling pilot. This pilot will last for at least 180 days. At the conclusion of this 180 days, the parties will meet to discuss the viability of any or all portions of the proposed PAP. Moreover, based on issues raised during the pilot period, either party is entitled to reopen negotiations on the impact and implementation of any element of the proposed PAP.

B. The PAP will not go into effect until FAST has been satisfactorily functioning for at least 120 consecutive days. Satisfactorily functioning is defined as the FAST system being 100% operational and available to the trained end user for the 120 day period.

C. If more than 2.99% of the Examining Attorneys subject to the proposed PAP falls below fully successful in any element of the PAP on a quarterly basis, negotiations of that element will be reopened.

D. If the PAP contradicts or implicates any agreement currently in effect, the prior agreement controls and remains in full force and effect unless otherwise specified herein.

E. For purposes of this PAP all references to days shall be defined as a work day. Weekend days, holidays, and authorized absences are not work days. Days in which an Examining Attorney is credited with less than 3 hours of actual examining time, due to approved leave, authorized non-production time or the provisions of a flexible schedule are not work days.

F. Within the PAP all references to "date of delivery" shall be interpreted as "date of receipt and acknowledgement of receipt" by the Examining Attorney.

"Acknowledgement of receipt" is defined as the work day following the Examining Attorney's actual acceptance.

G. If any or all portions of the 21st Century Strategic Plan pertaining to Trademarks are implemented, the Union shall have the right to reopen negotiations on the impact and implementation of the PAP. If the Madrid Protocol is passed, the Union will have the right to reopen negotiations on the impact and implementation of the PAP.

H. Supplemental training shall be provided on a regular and timely basis for Examining Attorneys who request it. This training will include, but not necessarily be limited to, independent study for Examining Attorneys who have been away from the examination process for an extended period of time. All Examining Attorneys shall receive non-production time for all supplemental training.

I. The Office shall pay the required bar association dues and fees for mandatory continuing legal education necessary to maintain bar membership for each Examining Attorney. Each Examining Attorney shall receive administrative leave for attendance at CLE classes and for other time away from the Office needed to maintain bar membership.

J. Every year following full implementation of this PAP, a joint labor-management committee will determine the objectivity of units of measurement used by the Office in those performance standards that apply to Examining Attorneys' work. For the first year that the PAP is in full force and effect, this will be done on a quarterly basis.

K. The Office shall be required to consider all directed or authorized performance of functions that do not result in productivity counts when rating Examining Attorneys under the Customer Service and Organizational Effectiveness element (e.g., participation in Office details, office demonstrations, and conducting training).

L. The Office is required to consider all extenuating circumstances in rating Examining Attorneys' performance as set forth in Article 13, Section 1, H, I and J of the parties' present contract.

M. If the Office fails to adhere to its affirmative duties under the PAP, the PAP is immediately deemed null and void. We will revert immediately to the 1997 PAP.

N. Examining Attorneys shall receive appropriate non-production time for all training referenced herein. None of this training time shall count against the 40 hours of allotted training time provided in the parties' present contract as set forth in Article 22, Section 3.

O. The 1997 PAP and July 2001 E-Commerce Agreement and Management Implementation Guidelines shall remain in effect until the parties have reached full agreement on all issues of impact and implementation of the proposed PAP.

II. PENDENCY

- A. For the first fiscal year the PAP is solely in full effect, the following shall apply: any Examining Attorney whose rate of production is at least 100.5% of goal, and achieves a rating of outstanding in all other elements of the PAP, shall achieve an overall rating of outstanding under the PAP.
- B. Reduction in production of 20% shall be given to all Examining Attorneys for the first 9 months that the PAP is in full effect, 15% for months 10-18 and 10% reduction for months 19-40. At the end of the 40 month period, the Union and the Office shall meet to evaluate the reduction in production.
- C. An Examining Attorney's production rate when working overtime or compensatory time will be 1.0 action points per examining hour regardless of grade level.
- D. In addition to the current retro credit system, Examining Attorneys shall receive credit for all classes examined regardless of eventual payment or non-payment of classes by the applicant.
- E. Before implementation of the PAP pilot and the implementation of the PAP office-wide, each Examining Attorney will be offered 8 hours of training in each classification of goods and services. This training shall include, but not necessarily be limited to, classroom training, dissemination of relevant materials and case law, and an opportunity for review and discussion of these materials.
- F. Each Examining Attorney will receive training including, but not limited to, use of all electronic applications and processes available at the time of the full implementation of the PAP. Additionally, each time a new electronic application and/or process is introduced or updated all Examining Attorneys shall receive appropriate training two weeks in advance of the implementation with the ability for Examining Attorneys to begin using the applications prior to the formal implementation date. All training will consist of at least 40 hours of class room, one on one and hands on (desk-top) training. Additionally, the use of all electronic applications will not be mandatory for the first six months of the PAP. At the end of first quarter the Office and Union agree to meet and evaluate the status of all applications and policies that allow electronic examination.
- G. Any electronic software application or database that is separated from the current system due to update or replacement, shall remain accessible to Examining Attorneys for a period of two years from the date of termination.
- H. It is the responsibility of the Office to maintain the computer system in working order. If any electronic application malfunctions or fails to operate properly, e.g., telephone lines, cable, etc., automatic write off shall be given for actual time the system is down in ¼ hour increments.

I. Examining Attorneys shall be given an additional ½ point of credit for all applications approved for publication to account for time spent by the Examining Attorney electronically reviewing the application for the accuracy and completeness of all data, including but not limited to discrepancies between the electronic and paper records, and/or for correcting or providing instruction for the correction of all errors and discrepancies.

K. Any Examining Attorney who currently performs his/her primary examination function via the use of the secretarial support staff shall be allowed to continue examination in that manner.

L. The Office shall provide elective typing classes for every Examining Attorney and provide write-off time for attendance. The Office shall provide ergonomic computers and accessories for both in-house and TWAH Examining Attorneys.

M. Each Examining Attorney shall be given one hour of write-off per bi-week for updating, maintaining and personalizing all electronic tools.

N. In determining the average days of pendency for both new and amended files subsequent to assignment, any weekend, holiday, and authorized leave days will not be included. Work days in which an Examining Attorney is credited with less than 3 hours of actual examining time, due to approved leave, authorized non-production time or the provisions of a flexible schedule will also be excluded from the average pendency calculation.

O. If an application is revived or reinstated, the Examining Attorney's abandonment credit (if any) will not be deleted.

P. If the Examining Attorney is rated fully successful or above in two of the three components for this element and marginal or unacceptable in the third component, then the summary rating for this element shall be the average of the three ratings (weighted accordingly).

III. PRODUCTION

A. All of the following count as two points per class:

Final Office Actions (including when previous final action, abandonment or publication credit has already been taken)

B. All of the following count as one action point per class:

First action (initial examination)

All non-final subsequent actions, including all non-final actions on revived or reinstated cases

Approval for publication (including when final action credit has been taken)

Allowance on the Supplemental Register (including when final action credit has been taken)
Abandonment

C. All of the following count as .5 action points per class:

First action (statement-of-use examination)
Approving an amendment to allege use (initial examination) or disapproving an amendment to allege use (initial examination) but not both
Allowance on the Principal and Supplemental Registers (statement-of-use examination)
Suspension inquiries
Final disposition electronic database review, other than abandonments
All non-final subsequent actions on statement of use examination

D. All of the following count as .25 action points per class:

Suspension checks
On-point searches on revivals and reinstatements
Preliminary review of all responses received electronically for approval or disapproval of proposed amendments

E. Retro credits shall apply to all of the above.

F. All production credit shall be doubled for examination of pro se applications. Pro se means any application filed without an attorney of record at the time a filing date is issued by the Office.

G. One additional point shall be granted for each class of goods/services where the identification exceeds 100 words in length. Said additional point will be claimed through use of the existing retro credit system.

H. A waiver to the 200% production cap shall be automatically given, if the Examining Attorney is performing at least fully successful in 2 out of 3 elements of the PAP.

1. If a waiver is denied, the Examining Attorney will have the right to appeal this denial to a board of three other managers or senior attorneys. If 2 out of 3 managers believe a waiver is appropriate, the waiver shall be granted.

I. A waiver of the 200% production cap shall be automatically given, if there is a TRAM malfunction or change in the TRAM cut-off time in the present or previous bi-week.

1. If a waiver is denied, the Examining Attorney will have the right to appeal this denial to a board of three other managers or senior attorneys. If 2 out of 3 managers believe a waiver is appropriate, the waiver shall be granted.

J. Each manager has the discretion to waive the 200% production cap.

1. If a waiver is denied, the Examining Attorney will have the right to appeal this denial to a board of three other managers or senior attorneys. If 2 out of 3 managers believe a waiver is appropriate, the waiver shall be granted.

I. Production Bonus

1. No award shall be given under this article unless the Examining Attorney is fully successful in all critical elements of the performance appraisal plan.

2. The employee must be employed by the Office on the last day of the performance appraisal cycle or productivity award cycle as applicable unless separated under a Reduction of Force in which case the award will be prorated.

3. Approved overtime and compensatory time hours will be applied towards examination hours for the purpose of determining eligibility for awards.

4. Productivity Awards

a. Any Examining Attorney receiving a rating of "4" in the Critical Element of Production and at least a rating of "3" in every other Critical Element, or any Examining Attorney working at the commendable level of performance in Production as of mid-year and at least working at the fully successful level of performance in every other critical element as of mid-year, will be recommended for an award amount based on the productivity awards scale in Appendix F of the parties' current contract.

- The Union reserves the right to reopen negotiations over the contents of Appendix F of the parties' current contract during the course of the present impact and implementation negotiations.

b. Two productivity awards may be paid each year; after the first six months of the fiscal year and at the end of the fiscal year.

c. Any Examining Attorney who receives a minimum rating of "3" in every other Critical Element shall be recommended for an award. Any Examining Attorney who is working at the fully successful level of performance or better in every critical element as of midyear shall be recommended for an award. If the Examining Attorney examines over 300 examining hours in the six month award period, the recommendation will be the greater of the following:

- i. one half the amount shown on the productivity awards scale in Appendix F of the parties' current contract; or
- ii. ½% of annual salary, if more than 625 hours on primary duties; or
- iii. ½% of annual salary, if less than or equal to 625 hours on primary duties, prorated as follows:

$$\frac{\text{Number of Hours on Primary Duties}}{\text{Reduced Award 625}} \times \frac{1}{2}\% \text{ of salary} =$$

An Examining Attorney must examine at least 300 hours during the six month award period to be eligible for an award under this paragraph.

d. No employee receiving a commendable in production who examines at least 300 examining hours during a six-month award period will be recommended for an award lower than he/she would have been recommended for had the employee been merely fully successful in production.

IV. NEW CASE MANAGEMENT DOCKET

A. The Office shall provide the following, including, but not limited to:

1. Examining Attorneys shall be provided with a daily report of average pendency for new application files, showing how the average pendency was calculated. In the event of a dispute as to the accuracy of the report, the Examining Attorney's calculation shall be presumed correct, and appropriate correction will be promptly entered, unless the managing attorney can demonstrate by clear and convincing documentary evidence that the original report data is correct.
2. The Office shall provide software that will track and calculate the average pendency dates for new case dockets and amended dockets for each Examining Attorney.
3. Each Examining Attorney shall be given one hour of non-production time per bi-week for review of first action pendency reports and for other pendency management related functions.

B. All references to "date of delivery" shall be interpreted as "date of receipt and acknowledgement of receipt" by the Examining Attorney. The "date of receipt and acknowledgement of receipt" is defined as when the Examining Attorney takes physical possession of a file. If files are delivered electronically, "date of receipt and

acknowledgement of receipt” is defined as the time the Examining Attorney acknowledges receipt of a file.

C. The co-pending rule shall be abolished.

D. The current requirement that all files must be placed in the proper mail bin within 3 business days of a TRAM transaction is waived for all Examining Attorneys in the TW@H or Hoteling programs.

E. If an Examining Attorney is handling any portion of another Examining Attorney’s amended docket, the average processing times shall be extended by 7 days and extended an additional 3 days for each additional inherited docket.

F. If an Examining Attorney has a finding of unexcused delay in this docket management element, the Examining Attorney may appeal this decision to a board of 3 managers and/or senior attorneys. If 2 out of 3 members of the board find the delay excusable, it will be deemed excusable.

G. All deadlines are tolled for internal and external customer requests and inquiries, e.g., questions to Commissioner's Office or research requests to library or interns, or removal of files for external customers. The Office shall provide each Examining Attorney with the capability to toll deadlines from their desktop automation systems.

H. If the Examining Attorney has 10 or more occurrences per quarter of unexcused delay where examination of a new application or a new statement of use is not completed within 21 working days after the date of receipt and acknowledgement to the Examining Attorney, then the rating for this component will be "Unacceptable."

V. AMENDED DOCKET MANAGEMENT

A. The Office shall provide the following, including, but not limited to:

1. A daily report of average pendency for amended application files, showing how the average pendency was calculated. In the event of a dispute as to the accuracy of the report, the Examining Attorney’s calculation shall be presumed correct, and appropriate correction will be promptly entered, unless the managing attorney can demonstrate by clear and convincing documentary evidence that the original report data is correct.
2. User-friendly software that will track and calculate the average pendency dates for new case dockets and amended dockets for each Examining Attorney.
3. One hour of non-production time per bi-week for review of amended pendency reports and for other pendency management related functions.

B. The “date of receipt and acknowledgement of receipt” is defined as when the Examining Attorney takes physical possession of a file. If files are delivered

electronically, "date of receipt and acknowledgement of receipt" is defined as the time the Examining Attorney acknowledges receipt of a file. The "date of receipt and acknowledgement of receipt" will be re-set in the event that the Examining Attorney returns the file to the LIE for correction of errors, entry of information omitted from the database and the like.

C. If an Examining Attorney inherits any portion of another Examining Attorney's amended docket, the average processing times shall be extended by 14 days and an additional 5 days for each additional inherited docket.

D. If an Examining Attorney has a finding of unexcused delay in this docket management element, the Examining Attorney may appeal this decision to a board of 3 managers and/or senior attorneys. If 2 out of 3 members of the board find the delay excusable, it shall be deemed excusable.

E. Files returned to Examining Attorneys for corrective action, shall be acted on within 21 working days from "date of receipt and acknowledgement of receipt."

F. Examining Attorneys shall automatically receive actual non-production time for all corrective actions on inherited files.

G. All deadlines are tolled for internal and external customer requests and inquiries, e.g., questions to the Commissioner's Office or research requests to library or interns, or removal of files for external customers. The Office shall provide each Examining Attorney with the capability to toll deadlines from their desktop automation systems.

H. An Examining Attorney's docket shall consist of at least 85% of his/her own work.

I. Examining Attorneys shall request amended cases in the same manner as new cases. If insufficient amended files are available, the Examining Attorney may not be assigned the amended files of another Examining Attorney. Each Examining Attorney's amended files shall be distributed in the order in which they were processed. However, Examiner's Amendments must be distributed before any other processed amendeds.

J. The current requirement that all files must be placed in the proper mail bin within 3 business days of a TRAM transaction is waived for all Examining Attorneys in the TW@H or Hoteling programs.

K. If the Examining Attorney has 10 or more occurrences per quarter of unexcused delay where examination of an amended application is not completed within 30 working days after the date of receipt and acknowledgement to the Examining Attorney, then the rating for this component will be "Unacceptable."

VI. QUALITY

A. For the first three months following full implementation of the PAP, any and all errors under the PAP are waived, including, but not limited to, back-end review for work done in those three months. For months 4 through 6 following full implementation of the PAP, any and all errors made relating to unfamiliar classes shall not be counted.

B. Only performance during the established appraisal period shall be used in determining employees' ratings for that period. The established appraisal period is the current quarter only.

C. The Office shall discuss and negotiate with the Union any and all procedures to be employed by the Office for selecting, reviewing and processing Examining Attorneys' files/work for quality assessment purposes.

D. Only material errors shall be counted against an Examining Attorney. The Office shall bear the initial burden of proof to establish beyond a reasonable doubt that a clear error of a material nature has been committed by an Examining Attorney. All material errors will be reviewed under the clear error standard. A material error is defined as an error:

1. That would warrant a rating of 1 or 2 under the current quality review standards; **or** where the exact identification or classification is in the ID Manual; **and**
2. That would require republication of the mark.

E. Errors made based in any part on a corrupted database shall not be counted against an Examining Attorney. The Office shall keep a database of all changes made to trademark files. This database shall be readily available to all Examining Attorneys on their desktops. This database shall track the dates and identity of all persons who make electronic changes to a file.

F. In determining whether "clear error" has occurred, all reasonable viewpoints must be considered. A finding of error is counted only if no reasonable rationale for the action/inaction can be established under applicable statutes, regulations, precedent or published Office policy statements. However, no finding of "clear error" is counted if the action/inaction of the Examining Attorney is supported by even a minority viewpoint; e.g., the dissenting opinion of a published decision or a valid precedent in any jurisdiction. Also, no finding of "clear error" is counted if the action/inaction of the Examining Attorney is supported by prior Office practice as evidenced by a registration issued by the Office within the previous four years, indicating the same or analogous practice.

G. If, upon application of the above procedures, a clear error finding is entered, written notification of this finding must be promptly transmitted to the Examining Attorney. If clear error is raised, the Office shall provide the following including, but not limited to:

- all relevant evidence and other materials used to determine the clear error finding;
- the opportunity to meet with a reviewing member of the Office regarding the determination of clear error finding, at the Examining Attorney's election;
- non-production time not to exceed 6 hours for preparation for each level of quality error appeal.

No finding of "clear error" may be counted for performance appraisal purposes in the absence of a documented receipt of written notification.

1. The Examining Attorney may initially appeal the determination within 1 month of the written notification to a 3-person panel appointed by the Office. This panel may not include any personnel involved in any way with the initial finding of "clear error". Unanimous agreement of the three panel members is required to sustain a finding of clear error. Failure by the panel to issue a written decision, appropriately documented with supporting legal citations within 60 days of the appeal shall result in a finding of no clear error.

2. If the "clear error" finding is sustained by the Office-appointed appeal panel, a final, second-level appeal may be taken before a four-person appeal tribunal composed of two persons selected by the Office and two persons selected by the Union. Neither of the two persons selected by the Office or the Union may have been involved in any capacity with the prior review of the error finding. Unanimous agreement of the four panel members is required to sustain a finding of clear error. Failure by the panel to issue a written decision, appropriately documented with supporting legal citations within 60 days of the appeal shall result in a finding of no clear error.

H. The Office shall provide to NTEU 245 a monthly report along with supporting documentation showing all initial findings of error as well as the decision of each board member in an appeal process.

I. To promote quality examination, the Office shall provide, but not be limited to:

1. 3.50 hours per bi-week to review case law, statutes, and material for which Examining Attorneys are held accountable.
2. 2 hours of non-production time per week for corrections and entry of data into the electronic trademark files.

- a. All Examining Attorneys will receive 8 hours of training in use of software for entering and correcting data in trademark database files, including but not limited to one-on-one training and hands on training, prior to mandatory implementation. The Office shall also provide a written guide, including a book of all TRAM codes to each Examining Attorney.
 - b. All Examining Attorneys will have training on accessing said software concerning how to obtain data entry information and the prosecution history.
3. Refresher training to all Examining Attorneys who are absent, for any reason, from the Office for at least four consecutive weeks.
 - a. Refresher training shall include, but is not limited to, retraining in Office software applications and Office procedures.
 - b. Examining Attorneys shall also be granted non-production time to review relevant case law and the TMEP.
 - c. All Examining Attorneys who attend the refresher course(s) may claim non-production time for class attendance and up to 5 hours of non-production time for hands-on practice.
4. Every law office shall provide an opportunity for Examining Attorneys to meet once a week to review cases and discuss other related examination issues. Examining Attorneys who attend this meeting shall be granted appropriate non-production time.
5. Hard copies of all relevant statutes, the Code of Federal Regulations, Design Code Manual, applicable case law, TMEP, examination guides and notes or written policies and procedures shall be distributed and made known to the Examining Attorneys in a timely manner. If there are any changes to past practice, the Office shall provide a clear written summary of said changes and their effective dates to each Examining Attorney. Examining Attorneys are not responsible for any material that is not distributed in this manner.
 - a. Consistent with the parties' present contract, the Office shall provide the proper Notice, consult with the Union and engage in the required bargaining and negotiations concerning any and all changes in working conditions.
6. Electronic copies/databases of all relevant statutes, the Code of Federal Regulations, Design Code Manual, applicable case law, TMEP, examination guides and notes or written policies and procedures that have been distributed to the Examining Attorneys and for which the Examining Attorney will be held responsible shall be made available in a prompt and timely manner. This will include all updates. All electronic information shall be distributed on SEARCHABLE USER FRIENDLY databases (e.g. the ability to perform

truncated searches throughout the entire document). If there are any changes to past practice, the Office shall provide a clear written summary of said changes and their effective dates to each Examining Attorney. Examining Attorneys are not responsible for any material that is not distributed in this manner.

a. Consistent with the parties' present contract, the Office shall provide the proper Notice, consult with the Union and engage in the required bargaining and negotiations concerning any and all changes in working conditions.

7. The following quality bonus shall be in effect for each quarter of the fiscal year.

FULLY SUCCESSFUL:	3% of annual salary
COMMENDABLE:	6% of annual salary
OUTSTANDING	9% of annual salary

No award shall be given under this section unless the Examining Attorney has examined at least 150 hours during the rating quarter. If an Examining Attorney examines more than 150 hours but less than 312.5 hours in the rating quarter, the Examining Attorney's award shall be computed as follows:

Number of Hours on Primary Duties x Award = Reduced Award 312.5

J. If electronic examination is made mandatory in any part, the PRINT/DO NOT PRINT requirement will be terminated and separated from Examining Attorneys' responsibilities.

K. Appeal Briefs

1. The rating for appeal briefs shall not be based on generic performance standards but rather an outstanding brief shall: (1) address all issues adequately in a comprehensive fashion, (2) be lucid and well reasoned, (3) contain proper citations and (4) argue the position taken by the Office.

2. Examining Attorneys shall automatically receive 24 hours of non-production time for preparing and writing each appeal brief. Examining Attorneys shall receive additional non-production time for preparation and attendance at each oral argument not to exceed 6 hours for each oral argument.

3. The Office shall provide a 2 hour optional training period per quarter for appellate brief writing and oral arguments preparation and presentation. Appropriate non-production time will be given for attending this training. Examining Attorneys will be given non-production time to attend one pre-approved oral hearing per quarter at the election of the Examining Attorney. Examining Attorneys will get pre-approval from the participating fellow Examining Attorney prior to attendance at any oral hearing. Prior to the

implementation of the proposed PAP, management will provide examples of outstanding quality briefs in both hard copy and electronic form. Such examples include, but are not limited to one example for each type of statutory refusal and for each type of informality.

4. The Examining Attorney will submit appeal briefs to his/her managing attorney not less than three days before the date the brief is due for filing.

L. If the Examining Attorney is rated fully successful or above in two of the three components for this element and marginal or unacceptable in the third component, then the summary rating for this element shall be the average of the three ratings (weighted accordingly).

M. Examining Attorneys shall not be adversely evaluated for any error that the employee corrected prior to evaluation for any reason. Moreover, any errors brought to the Office's attention by non-management personnel shall not be counted against an Examining Attorney.

N. Examining Attorneys shall not be held accountable for the identical clear material error made more than once within the same rating period unless and until the Office provides the Examining Attorney with training in that specific area of examination. Once training is provided, any subsequent material clear errors found against the Examining Attorney in that particular area of examination may be counted against the Examining Attorney if the error clearly occurs after the training period.

O. If at any time during a rating period an Examining Attorney falls below the fully successful level in any element of quality, the Examining Attorney shall be permitted to request that his/her managing attorney review a computer generated random sample of 20 application files assigned to that Examining Attorney. The managing attorney will review these 20 files in the relevant element of examination giving equal weight to appropriate statutory refusals and/or practice and procedure requirements, as well as any clear errors committed by the Examining Attorney. If in a majority of these 20 applications, the examination is deemed to be at least fully successful, the Examining Attorney will be rated at fully successful in the relevant quality element. As such, the Examining Attorney shall be awarded sufficient points to calculate performance at the fully successful level.

VII. CUSTOMER SERVICE

A. To promote quality customer service, the Office shall provide the following, including, but not limited to:

1. Two hours of non-production time per week for carrying out the customer service initiatives;

2. Actual non-production time for preparing and participating in meetings with applicants and outside counsel, whether by telephone, electronic means or in person.

B. TELEPHONE AND E-MAIL USAGE

1. Telephone and e-mail usage is calculated based on the percentage of actions that are completed utilizing the telephone or e-mail to communicate with the applicant, such that the resulting action is either an Examining Attorney's amendment or a priority action. Additionally, any action transmitted electronically will count toward the telephone e-mail percentage calculation.

2. The Office shall stay the pendency clock on each application where the Examining Attorney attempts a telephone call or sends an informal email. The Office shall create or modify a software program to automate this function. For example, the Office could create a TRAM transaction for telephone call attempted/pending.

3. The telephone/email percentages shall be calculated by considering only those applications that are capable of being resolved via the telephone/email. For example, an application filed 1(a) and 1(b) is not capable of being resolved via the telephone/email.

C. MENTORING

1. To promote quality mentoring, the Office shall provide, but is not limited to:

a. 4 hours of training prior to beginning the mentoring process for all mentors. The Office shall provide in electronic and hard copy form all manuals relevant to the mentoring process;

b. at least 3.5 hours of non-production per mentee per day of mentoring for all mentors.

2. Examining Attorneys shall not be required to mentor non-attorney examiners.

3. An Examining Attorney will not be required to mentor more than two Examining Attorneys at any given time.

4. The current mentoring bonus agreement shall remain in effect.

5. The timeliness standards shall be interpreted as follows:

a. In determining the average turnaround days, weekend, holiday, and authorized leave days will not be included. Work days in which an Examining Attorney is credited with less than 3 hours of actual examining

time, due to approved leave, authorized non-production time or the provisions of a flexible schedule will also be excluded from the average turnaround calculation.

b. 24 hours is one work day.

D. ORGANIZATIONAL EFFECTIVENESS

1. Outstanding organizational effectiveness is demonstrated by providing consistent service to internal and external customers in a professional manner, offering suggestions for effective examination and customer service, participating in training programs, legal lectures and continuing legal education programs offered by the Office. Other contributions made, not specifically enumerated above, may be considered in the evaluation of this element.

2. Half way through the rating period, the managing attorney shall provide each Examining Attorney with an oral and written evaluation of his/her progress in this element to date. The report will include a detailed explanation of what would be necessary to earn an outstanding, commendable, or fully successful rating in this element of the PAP.

E. EMPLOYEE RESPONSIBILITIES

1. To be rated “outstanding” in this element, the Examining Attorney must demonstrate all of the following:

a. Cooperates with internal and external customers.

b. Adherence to most procedures made known to him/her in hard and electronic format regarding workflow, internal processes, and application file control procedures.

2. Outstanding customer service is demonstrated by responding to customer telephone calls within 24 hours of receipt on a work day, by informing internal and external customers of the Examining Attorney's availability in voicemail and e-mail messages, and providing law office e-mail addresses, facsimile numbers, and telephone numbers in formal and informal telephone communications upon request.

3. Other contributions made, not specifically enumerated above, may be considered in the evaluation of this element.

4. Examining Attorneys participating in the TW@H program or Hoteling Pilot shall no longer be required to TRAM file locations to home or office.

F. If the Examining Attorney is rated fully successful or above in at least one of the components for this element, then the summary rating for this element will be the average of the ratings (weighted accordingly).

VIII. TRANSITION ISSUES

A. All Examining Attorney employed with the Office on or before September 30, 2002, shall be eligible for promotion to GS-14 under the November 17, 2000 GS 14 Agreement based on the standards set forth in the 1997 Performance Appraisal Plan.

B. For the first fiscal year of the PAP, Examining Attorney shall be rated under the 1997 PAP as well as the new PAP. The Examining Attorney shall be able to choose which year-end rating will be counted as their rating of record.

C. Prior to implementation of the PAP, each Examining Attorney shall have the opportunity to transfer law Offices retaining current status (e.g. TW@H). Placement shall be based on seniority. However, no Examining Attorney will be forced out of his/her current law Office to make room for Examining Attorneys who may request a transfer.

D. For the duration of the new PAP, all Examining Attorneys shall be issued 21" flat screen computer monitors and laser jet printers and the necessary equipment and supplies to assure that they are fully operational and useful.

IX. IF FAST IS IMPLEMENTED:

A. Information / Documentation / Training

*1. The Office shall provide complete advance **documentation** of the new system to all Examining Attorneys. This information will include, but will not be limited to:*

- a. A manual that details the new system and its components (an electronic version that is easily available in printable form will be acceptable).
- b. An electronic version in a searchable format using a non-web based search engine.

*B. The Office shall provide a **basic training class** to all Examining Attorneys. Following the class, each Examining Attorney shall be granted three full days on non-production time to be taken over the course of a two week period, where program knowledgeable persons will be available to assist Examining Attorneys and answer questions. Those on annual leave or other extended absence during this two*

week period will be granted this time upon return to examining. During these three days, all Examining Attorneys will examine solely using the FAST system.

C. Supplemental training shall be provided at least once a quarter for Examining Attorneys who request it. All Examining Attorneys who attend the refresher course may claim non-production time for class attendance and up to 5 hours of non-production time for hands-on practice.

D. Support and Technical Assistance

1. The Office shall implement and maintain a FAST email problem reporting box (or its equivalent) through which users can submit problems and questions regarding use of the system. Answers shall be given within one work day.

2. The Office shall timely notify all Examining Attorneys, via a global email, of all global technical and operational problems regarding FAST. Such notification shall also indicate an estimated time of resolution of the problem.

3. When FAST has been unavailable for 13 minutes and 47 seconds or more, to at least 14.8675% of Examining Attorney computers, all Examining Attorneys shall be given actual non-production time for global and technical operational problems reported. Non-production shall be automatically granted without requesting approval from his/her managing attorney as long as the Examining Attorney alerts the help desk to the issue

4. When FAST does not respond to Examining Attorney attempts to access a file (in other words when the system “locks up” or operates at a speed slower than 15 second access time), Examining Attorneys may take actual non-production time for the operational slowdown in 15 minute increments. Non-production shall be automatically granted without requesting approval from the Office as long as the Examining Attorney alerts the help desk to the issue

5. The Office shall provide to the president of NTEU 245 a monthly summary of all technical and operational problems experienced within the previous month. Such report shall include the total amount of time that the FAST system was down, the potential number of users affected and the current status of the problem, e.g., whether it is a recurring problem or a problem that has been resolved.

6. NTEU 245 will be permitted to provide input in the development and testing of new FAST features before they are rolled out to the Examining Attorneys.

E. Concerns Regarding the Proposed System / Pilot Program

1. Before implementing the system office-wide, the Office shall first conduct a **pilot program** consisting of at least one non-e-commerce, 25 Examining Attorney law office. Among those items to be tested, the Office shall include testing of evidence tabs for attaching a wide variety of evidence from 2(d) cites to dictionary definitions; screen tiling features for viewing multiple windows of a document at the same time; note taking features for both notes-to-the-file and an electronic form of a “sticky note” for Examining Attorneys to keep track of progress on or unresolved issues in a file; means for saving partial work completed on a file; the ability to mark certain file items such as the “Print/Do Not Print” annotations; and documentation of electronic and postal mailing and electronic re-mailing. The speed of the system when it is used by a significant number of Examining Attorneys who may all have multiple files open at one time will also be tested and documented. NTEU reserves the right to bargain over the impact and implementation of the pilot program.

F. Production Adjustment

1. Given the complexity of the system, the fact that it touches all aspects of examining first action files, the fact that e-commerce law offices currently work under a lower production rate, and that the FAST system does not yet appear to be fully operational, the **production goal** for each Examining Attorney who volunteers, or is required by the Office, to use the system shall be lowered by 10% until an agreement is reached with the Examining Attorneys that the system is fully operational. This production adjustment does not constitute, substitute, or encompass any production adjustments due to automation problems or failures.

G. Workflow

1. Examining Attorneys will not be held responsible for electronically created work missing from an electronic file due to electronic system failures. When such failures are found, the Examining Attorneys will be given non-production time to recreate the missing work.

2. As part of a transition to paperless files, it must be recognized that there will exist for an undetermined amount of time files that are in a mixed state. In other words, some files will be partially electronic with some scanned documents available electronically and will also have papers that are not scanned in, and must be accessed and organized by the Examining Attorney. The Office shall give non-production time to the Examining Attorney when such a mixed file exists in both electronic and paper form and must be organized and worked on by the Examining Attorney.

3. The Office shall provide each Examining Attorney with a printable electronic log detailing the status of that Examining Attorney’s files within the FAST

system. Such a log shall include documentation of completed work and track average work days the Examining Attorney has spent on first actions.

H. Notice of Transition to FAST System

1. Written notice of any mandatory transition to the new FAST system shall be distributed to Examining Attorneys within 14 work days of the system being made mandatory, and only after the Office has provided the written documentation and training programs described above.

X. If electronic examination becomes mandatory to any degree, the E-Commerce Agreement and Management Implementation Guidelines from July 2001 are hereby incorporated in their entirety by reference. The Agreement shall apply to all law offices, irrespective of E-Commerce designation.