

MEMORANDUM

DATE: July 21, 2008

TO: Cindy B. Greenbaum, Managing Interlocutory Attorney

CC: Interlocutory Attorneys

FROM: J. David Sams, Chief Administrative Trademark Judge

SUBJECT: Management Implementation Guidelines

The Performance Appraisal Plan (PAP) goes into effect on July 21, 2008, and goes into effect for rating purposes on October 1, 2008.

I. TRANSITION

- 1) Changes to any policies and procedures dealing with the issuance of orders or the handling of discovery telephone conferences will be set forth in writing whenever practicable.
- 2) For each interlocutory attorney currently participating in the work at home program and who has a landline telephone, management will maintain such landline telephone service so long as budgetary considerations allow or until appropriate alternative service is determined to be of suitable quality. For interlocutory attorneys who are participating in the work at home program but do not have a landline telephone connection, and for those who begin participating in the work at home program after the date of this memo, management will consider seeking additional landlines if the alternative telephone arrangements (e.g., VOIP service) prove unsatisfactory, so long as budgetary considerations allow. All interlocutory attorneys working at home and having any alternative telephone service must notify the USPTO CIO helpline and the TTAB manager when service is unsatisfactory and request helpline service in improving the service.
- 3) Management will continue with its existing effort to deploy dual monitors for use by interlocutory attorneys whether in a home office or at the USPTO. The schedule for deployment is dependent on budgetary considerations and on USPTO CIO scheduling.
- 4) Management will continue with existing efforts and system requirements planning that will seek to change the TTABIS system to:
 - create a contested motions log within TTABIS that may allow interlocutory attorneys to generate work processing reports and pending work reports for each interlocutory attorney and that may aid in better tracking of cases under the timeliness and pendency guidelines set forth in the PAP;

- allow parties to inter partes cases to request through ESTTA participation by a Board professional in a settlement and discovery planning conference [discovery conference] and to route such requests directly to attorney queues;
- create a log within TTABIS for logging both ESTTA-filed and telephone requests by parties for participation by a Board professional in discovery conferences and for recording subsequent issuance of orders resulting from the conference and data about the conference; and
- to utilize an icon or some visual device for distinguishing in TTABIS queues inter partes cases commenced October 31, 2007 or earlier from cases commenced November 1, 2007 or later.

5) Management will investigate the cost and efficacy of seeking changes in ESTTA that would enable parties to indicate whether the filing is potentially dispositive of the proceeding. Management will also undertake training of interlocutory attorneys in the use of the existing contested motions log, the anticipated new contested motions log to be deployed in TTABIS, and in the use of the comments field in TTABIS as a tool for monitoring the number of potentially dispositive motions pending in an attorney's queue and the ready for decision dates of those motions, whether or not designated as such by parties who file them.

6) The managing interlocutory attorney may direct that an interlocutory attorney assigned to participate in a conference prepare for the conference in consultation with an administrative trademark judge or another interlocutory. The managing interlocutory attorney may participate in preparation for conferences or in conferences, as necessary in the view of the managing interlocutory attorney.

7) Any interlocutory attorney may request, through the managing interlocutory attorney, that an administrative trademark judge, the managing interlocutory attorney, or another interlocutory attorney sit in on a discovery telephone conference. The individual judge, manager or interlocutory attorney who sits in on a discovery conference will provide oral feedback to the interlocutory attorney conducting the telephone conference at the conclusion of the conference for training and efficiency purposes. Management will continue to discuss with interlocutory attorneys the best mechanisms for sharing the lessons learned and critiques that result from conference observation and feedback.

8) On or before October 1, 2008, management will request general observations and suggestions, from interlocutory attorneys, volunteer coaches, and conference observers, on how to participate effectively in discovery conferences. Management will compile the

responses into a single document that will be shared with all of the interlocutory attorneys.

9) During the period from July 21, 2008, through September 30, 2008, cases pulled for quality review will be taken from all orders issued on contested motions, and samples of good quality and lesser quality orders will, if privacy considerations allow, be shared with the interlocutory attorneys.

II. WORKLOAD DISTRIBUTION

1) Each motion for summary judgment must be forwarded to the managing interlocutory attorney for assignment as soon as the pendency of the motion is discovered, and the managing interlocutory attorney will report on a quarterly basis how many have been assigned to each interlocutory attorney.

2) Within two weeks of the end of any quarter, any interlocutory attorney who did not have at least four (4) cases in which they could have issued panel orders, may notify the managing interlocutory attorney of this fact in writing and request more such cases if any are available.

3) Within two weeks of the end of any quarter, any interlocutory attorney who did not participate in at least one (1) case discovery conference may notify the managing attorney of this fact in writing and request more such cases, if any are available.

III. MEASURES FOR TIMELINESS

1) In extraordinary situations, the interlocutory attorney may recognize or anticipate a need for additional time to issue a substantive order on a case involving one or more contested motions. The interlocutory attorney may request in advance that such pending motion be excused from being considered overdue and that the processing time for such pending motion may be extended on a case-by-case basis. The managing interlocutory attorney may grant such requests if sufficient cause is provided.

2) The managing interlocutory attorney may consider the following as potentially valid reasons for extending the processing times for issuing orders on contested motions, on a case-by-case basis:

- A manager directs the interlocutory attorney to perform other duties that prevented him/her from timely issuing an order on a contested motion.

- The interlocutory attorney's mentoring responsibilities have interfered with his/her ability to complete the application in a timely fashion.
- The interlocutory attorney is handling significant portions of the dockets of other interlocutory attorneys in addition to his/her own docket.

3) Before making a determination of unexcused delay as to a particular case, the managing interlocutory attorney should seek input from the interlocutory attorney before reaching any conclusion. If and when the manager concludes that a delay will not be excused, written notification of that finding will be given to the attorney.

4) In the case of two separate findings of unexcused delay, the managing interlocutory attorney will conduct a counseling conference if requested by the interlocutory attorney. The manager may also conduct a counseling conference when the manager deems it appropriate.

5) If an interlocutory attorney is assigned by the managing interlocutory attorney to review the work of a junior interlocutory attorney, other than as a mentor, the reviewing interlocutory attorney may report the actual time spent on review of the junior attorney's work, at the end of each quarter, and request an appropriate adjustment to the reviewing attorney's processing measures.

6) The managing interlocutory attorney will consider requests from interlocutory attorneys for adjustments to timeliness standards when the interlocutory attorney is working at the fully successful level in the productivity factor of PAP element one and: the interlocutory attorney has been directed by the managing interlocutory attorney to review the work of a junior attorney or detailee; or the interlocutory attorney is handling significant portions of the dockets of other interlocutory attorneys in addition to his/her own docket; or the interlocutory attorney's mentoring responsibilities have interfered with his/her ability to complete orders in a timely fashion; or the interlocutory attorney is balancing their oldest cases with newer ones in the ratio necessary to achieve the fully successful level in the timeliness factor of PAP element one, but will still have more than three (3) cases that require a three judge panel in a particular quarter that would be older than sixteen (16) weeks; or the interlocutory attorney is on approved leave due to illness, incapacity or personal emergency or electronic systems required to complete the action are unavailable such that a fourth (4th) case in a particular quarter would be older than sixteen (16) weeks. All such requests must be made in writing no later than the last business day of the eighth (8th) week of a quarter except for requests made relating to absences due to illness, incapacity or personal emergency or to electronic system

unavailability that occur after that date. Those requests must be made on the next business day that the interlocutory attorney is in duty status.

IV. MENTORING

[See separate MIG relating to Mentoring.]

V. QUALITY

- 1) Errors are instances in which appropriate policies and procedures set forth in the TBMP, TMEP, written policy guidelines, the Trademark Rules, applicable federal rules, case law, or any other policies and procedures that an interlocutory attorney is expected to know, according to the position description, have not been applied or have been misapplied.
- 2) Errors will not be counted against the interlocutory attorney if the attorney can produce documentation indicating that the error resulted from the deliberate choice of the involved panel of ATJs or was directed by the managing interlocutory attorney.
- 3) Errors will not be counted against the interlocutory attorney if the error is technical and does not require corrective action.
- 4) Errors in captions to orders involving the parties' names, application serial number, registration number or case proceeding numbers will be held as errors.
- 5) During quarterly quality review, if a repeating error is discovered in multiple case files, the interlocutory attorney may be counseled regarding the repeated error but the error will only be counted once. For the purpose of completing quality review, the managing interlocutory attorney may review one or more other files to replace the file or files that revealed the repeating error.
- 6) The managing interlocutory attorney will 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 will 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.

7) The managing interlocutory attorney has the discretion to not count as errors those deficiencies corrected by the interlocutory attorney prior to the date the error came to the Office's attention.

8) If a rating official becomes aware of any deficiency or error that will be used in a performance appraisal, he/she must 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.

VI. AWARDS

[See proposed Awards Addendum to PAP.]

VII. MISCELLANEOUS

1) The managing interlocutory attorney will provide each interlocutory attorney with any statistics used in his/her evaluation under the PAP, normally within two weeks from when the evaluation takes place.

2) For all time approved for union representational duties, an interlocutory attorney's productivity and timeliness goals will be given a prorated adjustment as follows:

New productivity Goal = PAP Goal x (2080 – union time adjustment)/2080

New timeliness Goal = PAP Goal + (100% of standard - ((2080 - union time adjustment)/2080))

In effect, the interlocutory attorney is treated as the equivalent of a part-time employee for the hours when not performing union representational duties. Any additional adjustments received by a union representative for other reasons will be adjusted separately as indicated in (3) below.

3) The managing attorney will normally provide adjustments to production goals and/or timeliness requirements for the following types of activities:

Supervision of detailees

Supervision of attorneys engaged in special work projects

Extended absence (including intermittent absences) from the Office where sick leave or FMLA-related leave is used, or there is otherwise an absence due to maternity/paternity, illness, injury, or disability
Approved leave without pay
Union representational duty time
Details and work projects
Military leave
Jury duty