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Sent: Wednesday, May 06, 2015 1:04 PM
To: WorldClassPatentQuality
Cc: Gaudry, Kate; Kitces, Matt; Franklin, Thomas; Gianola, Adam; Almon, Rich
Subject: Patent-Quality Comment: In-Person Interview Capability with All Examiners

To Whom It May Concern:

Thank you for accepting comments as part of your Quality Initiative. Please see the attached comment. This particular comment specifically corresponds proposal 6: In-Person Interview Capability with All Examiners. Please let me know if you have any questions.

Yours,
Arrienne "Angel" Lezak



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In-Person Interview Capability with All Examiners

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A high priority for the USPTO and for Stakeholders is to promote compact prosecution – that is, to reach a final disposition (i.e., allowance or abandonment) as quickly as possible – while preserving quality of examination. Efficient prosecution requires effective communication (e.g., in-person interviews), between the Examiner and the Stakeholder. Effective communication leads to the issuance of better quality patents and greater Stakeholder satisfaction. The most effective type of communication is one-on-one in-person communication where each party has the other parties undivided attention. The technology (e.g., Video Conferencing and WebEx) that was meant to be a substitute for in-person interviewing results in an ineffective, unreliable and frustrating experience a majority of the time.

Types and Prevalence of Teleworking

Currently, 84% of USPTO Examiners are teleworking.¹ The USPTO offers several teleworking options via a corresponding program. The main difference between these programs is the amount of time that an Examiner is allowed to work remotely from the USPTO headquarters in Alexandria.

The **Patents Telework Program 2013 (PTP)** allows Examiners to work from home for a designated number of hours. Examiners must have at least one year of continuous USPTO service to qualify for the program. Examiners at a level of GS 9 or 11 are eligible to telework for up to 10 hours per bi-week; those at a level of GS 12 and above are eligible to telework 20 hours per bi-week; and those at a level FS 12 and above are eligible to telework 32 hours per bi-week.² 4,388 Examiners were enrolled in this program in fiscal year 2014.¹

Under the **Patents Hoteling Program (PHP)**, Examiners can work at home full-time and have limited bi-weekly reporting requirements, Particularly, Examiners are expected to work using Office hotel work space one day per week for a duration between 1-10 hours. To be eligible for this programs, an Examiner must have and maintain a Fully Successful rating of record; not currently be under an oral or written warning improvement period, demonstrate ability to work remotely, and meet several other eligibility criteria.³ 4,455 Examiners were enrolled in this program in fiscal year 2014.¹

In recent years, a new **Telework Enhancement Act Pilot Program (TEAPP)** program was established that eliminated the weekly reporting requirement of the PHP program for those enrolled in the pilot program. More specifically, Examiners enrolled in TEAPP must only report back to the office for a limited number of trips each year (e.g., to attend training, pick up supplies, repair equipment or participate in performance reviews). To qualify for the program, Examiners must reside more than 50 miles from the Alexandria office and must meet all USPTO program and performance plan requirements.⁴ In the fourth quarter of 2014, 1,571 Examiners were participating in TEAPP.¹

¹ <http://www.uspto.gov/sites/default/files/documents/TeleworkAnnualReport2014-508.pdf>

² http://popa.org/wp-content/uploads/Patents-Telework-2013-Agreement_05-30-2013.pdf

³ <http://popa.org/pdf/agreements/PatentsHotelingFinal.pdf>

⁴ http://www.governmentattic.org/6docs/USPTO-TeleworkPolicy_2011.pdf

The agency reports that TEAPP improves employee retention (estimating that 24 Examiners did not leave the USPTO due to full-time telework opportunities), that it improves continuity of operations despite weather conditions, and that it reduces the USPTO's environmental impact. Finally, the agency estimates that TEAPP provides a \$61.5 million benefit to the USPTO.¹

A **SPE/MQAS Full-Time Telework Program** is another new pilot program that allows supervisory Examiners and management quality assurance specialists an opportunity to telework full-time. To be eligible, a SPE/MQAS must have at least one year experience as a SPE/MQAS, demonstrate ability work remotely, have at least a fully successful rating of record, and meet other requirements.⁵ Initially, the program was capped so to accept no more than 20% of SPEs/MQASs, though the cap has been raised.

Problems

Examiners enrolled in TEAPP have very limited requirements to visit a USPTO office. Further, these Examiners are positioned so as to be discouraged from visiting an office. Many of the TEAPP Examiners live well beyond the 50-mile radius: 861 Examiners were reported to live in a state other than one having or being near a USPTO office.¹ (The count did not include the 1225 Examiners living in Maryland or the District in Columbia, given the proximity to Alexandria.) Further, Examiners are required to pay their own travel expenses when they do visit an office.

Accordingly, it is very unlikely that Stakeholders will be able to meet with these Examiners in person. Within the eight listed exemplary reasons as to why a TEAPP Examiner may be required to return to the USPTO campus, none of these relate to the Stakeholder (and instead refer to training, picking up supplies, power issues, repairing equipment, etc.).⁴ In fact, the U.S. Patent and Trademark Office (USPTO) Telework Policy never once mentions the word "Stakeholder", "Applicant" or "interview".

Thus, Stakeholders may be faced with a disengaged Examiner and yet have no opportunity to meet with the Examiner in-person. Moreover, currently many PHP and TEAPP Examiners claim that they do not have to come into the office for an interview. As noted above, this is currently permitted under the TEAPP **pilot** program only. The TEAPP **pilot** program includes 1,571 Examiners, a subset of the 4,455 Examiners in the PHP program. Thus, only a limited number of PHP Examiners can currently claim that they do not have to come into the USPTO because they are a TEAPP Examiner. Examiners who are not in the TEAPP program are essentially being dishonest and unfairly difficult with Stakeholders when claiming that the PHP program allows them to avoid in-person interviews at the PTO.

In the past, Stakeholders have been told that they could request that a SPE familiar with the case host an interview in-person if an Examiner was unwilling or unable to attend in person, and that the Examiner could then join by webex. In addition to the not infrequent pushback to requesting such arrangements, the increased prevalence of SPE teleworking further decreases the workability of this option.

Solutions

As described above, we believe that in-person communication is important for achieving compact prosecution. Webex and/or teleconference technology can create a barrier between two parties in an interview, that can inhibit being able to respond to non-verbal communication; reduce the ability to establish a productive relationship; and make it more difficult for one party to understand the words and statements of another (e.g., due to noise, distance from microphone, etc.).

⁵ http://popa.org/wp-content/uploads/SPE-MQAS-FT-Telework_05-30-2013.pdf

Stakeholders have varying viewpoints on the value of in-person interviewing. Some (such as the author) find such interactions important to effectively and efficiently prosecute each application. Others prefer to selectively in-person interview particular types of office actions. Still others, prefer not to in-person interview.

We propose that provisions be made so as to ensure that – at least for non-discretionary interviews – an in-person interview will be granted when requested. Below, we identify several potential approaches for achieving this end.

Potential Approach 1: Ending the current TEAPP and SPE/MQAS Full-Time Telework **pilot programs.**

The TEAPP and SPE/MQAS programs very minimally benefit only the USPTO and they are a great detriment to Stakeholders wishing to interact with Examiners in person. Ending these pilot programs would ensure that each Examiner would be returning to a USPTO office at least once a week. Stakeholders would then be able to coordinate schedules so as to be able to meet with an Examiner while the Examiner is on campus.

Potential Approach 2: Requiring Examiners to come to the PTO in Alexandria, VA one week a month.

Given a schedule of when Examiners will be "in residence" in Alexandria, Stakeholders can schedule several interviews at the same time around Examiner availability. The costs could be absorbed by the Examiners. Alternatively, the costs can be shared by the USPTO and the Stakeholders (e.g., the Stakeholder pays an in-person interview fee when they file an application and any costs not covered by the fee are adsorbed by the USPTO). Additionally, Stakeholders would be more inclined to pay an in-person interview fee if several in-person interviews could be scheduled in the same location (e.g., Alexandria, VA). The single location allows the Stakeholder to save on costs by allowing a Stakeholder to travel to a single location to in-person interview multiple cases rather than traveling to multiple locations to interview multiple cases.

Potential Approach 3: Requiring Examiners to come to a satellite PTO Office for one week a month.

Interviews may also be conducted at the fully operational USPTO Satellite Offices (currently, Detroit and Denver) for those Examiners stationed at those Offices and for those Examiners hoteling within the local commuting areas of those Offices (e.g., within 50 miles). As noted above, given a schedule of when Examiners will be "in residence" in a satellite PTO Office, Stakeholders can schedule several interviews at the same time around Examiner availability. The costs could be absorbed by the Examiners. Alternatively, the costs can be shared by the USPTO and the Stakeholders (e.g., the Stakeholder pays an in-person interview fee when they file an application and any costs not covered by the fee are adsorbed by the USPTO). Additionally, Stakeholders would be more inclined to pay an in-person interview fee if several in-person interviews could be scheduled in the same location (e.g., Alexandria, VA). Meeting in a single location, rather than multiple satellite offices, allows the Stakeholder to save on costs by allowing a Stakeholder to travel to the single location to in-person interview multiple cases rather than traveling to multiple locations to interview multiple cases. Thus, this approach is less desirable than others.

Potential Approach 4: Requiring Examiners to come to a local location upon request of Stakeholder.

It has been suggested that in-person interviews could be conducted at additional locations, such as federal government facilities with adequate security measures in place or regional libraries across the country that have partnered with the USPTO to serve as repositories for patent materials, for example, the Boston Public Library, Chicago Public Library, and Los Angeles Public Library. Upon a request for an in-person interview with a specific Examiner, the USPTO would designate an acceptable remote

interview location nearest to that Examiner's official duty station and provide arrangements for that Examiner to travel to the interview location and conduct the interview. The upside is that this proposal would ensure the availability of in-person interviews for all applications as the USPTO refines its telework program and leverages other USPTO affiliated locations. The downside is that this proposal would be prohibitively expensive (e.g., Stakeholders having to travel long distances to in-person interview a single case), and thus **this is not a very desirable or feasible solution.**

Potential Approach 5: Assigning Applications to Examiners in DC or who are willing to travel to DC for in-person interviews.

As a related alternative approach, Stakeholders could be allowed to request that an application be assigned to an Examiner willing to in-person interview in DC. Applications can be assigned to Examiners working in the Alexandria PTO Office or hoteling Examiners who have indicated a willingness to travel to or be in-residence in Alexandria, VA for a period of time or upon request.

Potential Approach 6: Assigning Applications to Examiners at a Satellite PTO Office or an Examiner willing to Travel to a Satellite PTO Office for in-person interviews.

As noted above, Stakeholders could be provided the opportunity to request that applications be assigned to Examiners willing to travel to or be “in-residence” at a satellite PTO location for a period of time sufficient to schedule multiple interviews. Again, applications can be assigned to Examiners who have indicated a willingness to travel to or be in-residence at a particular USPTO Satellite office for a period of time or upon request. Most of the Examiner Corp resides near the Alexandria office. Therefore, it seems unlikely that Examiner assignment could be coordinated so as to identify examiners that are both qualified to examine any given application and willing to participate in an interview at a particular Satellite PTO Office.

In summary, three potential approaches appear to be feasible and offer interested Stakeholders an opportunity to engage in in-person interviewing with their Examiners: ending the TEAPP program (Potential Approach 1); revising the TEAPP program so as to require Examiners to periodically return to the Alexandria campus (Potential Approach 2); or allowing Stakeholders to request that an application be assigned to an Examiner willing to participate in in-person interviews at the Alexandria campus (Potential Approach 5). Any of these approaches would provide a structure to allow Stakeholders to meet with decision-makers face-to-face. Without reforming the system, Stakeholders will be unable to consistently depend on the ability to communicate in this manner and may be faced with denial of the opportunity even in the most important of circumstances.

Thank you for your consideration.

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Proposal also supported by: Kate Gaudry, Tom Franklin, Adam Gianola, Matt Kitces, and Rich Almon