



**UNITED STATES PATENT AND TRADEMARK OFFICE**

Deputy Commissioner for Patent Operations

**MEMORANDUM**

**Date:** April 1, 2013

**To:** All Patent Employees

**From:** Andrew Faile

Deputy Commissioner for Patent Operations

**Subject:** Changes to the Performance Appraisal Plan and Related Issues

Based on discussions between management and the Patent Office Professional Association (POPA), I am happy to announce that the Pendency Award has been extended. Changes in the Pendency Award program are included in an agreement between the parties which can be found here ([MOU](#)).

While I am glad that we can continue this award, we have seen the number of cases that exceed the ceiling increase dramatically over the last year. Our ability to continue the award depends on reducing this total. This is an important aspect of our jobs because each case that exceeds the ceiling will likely result in an adjustment to the term of the patent, creating uncertainty in the market place and negatively impacting the public notice function that patents provide.

To help alleviate these problems and in addition to extending the Pendency Award, management is making several changes to the Docket Management element of the patent examiner performance appraisal plan. These changes are as follows:

**Docket Management Plans (DMP)** – Beginning April 7, 2013, we will add one case to the current docket management plan calculation (DMP+1) as shown in the table below. If the current DMP calculation equals zero, round to the nearest whole number which will satisfy the DMP+1 calculation.

<b>Current DMP Calculation*</b>	<b>DMP+1</b>
<b>.50 - .99</b>	1
<b>1.00 -1.99</b>	2
<b>2.0 – 2.99</b>	3
<b>ETC...</b>	

\* Calculations of .49 or below remain at 0

- Cases placed on Docket Management Plans will be separately identified and memorialized for future reference.

**Asterisk Applications for Meeting New and Continuing New Case Requirements** -

Beginning with the next full pay period, the six asterisk cases will be redistributed so that there will be three regular new and three continuing new asterisk cases. If there are less than 4 continuing new cases on the docket available for selection, however, asterisks will revert back to 4 on the regular new and 2 on the continuing new dockets.

**Reducing the Number of Cases Exceeding the Ceiling** - Beginning in FY-14, if one (or more) regular amended case goes to the ceiling exceeded portion of the docket, all asterisk cases will be removed and no new asterisked cases will be designated until the number of regular amended cases which exceeded the ceiling beginning in FY 14 has been reduced to zero.

**FY 13 Transition** - The number of regular amended ceiling exceeded cases at the beginning of the 3<sup>rd</sup> quarter must be reduced to zero or by 20, for those who have more than 20, by the end of 4<sup>th</sup> Qtr. FY 2013 or asterisks will be removed until all ceiling exceeded regular amendments are completed.

**Double Score for Regular Amended Ceiling Exceeded** - Beginning in FY14, regular amended cases that exceed the ceiling, which remains at 98 days, will be given a Docket Management component score of double the ceiling score (one score of 196 days will be entered into the system when an amendment goes into the ceiling).

**28 or More Day Pause** - If an employee returns to the office for 6 hours or less of examining or examining related activities during a week, this time will not restart the time clock.

**Other Related Initiatives**

Although the vast majority of examiners are doing well under the Docket Management element, we want to make sure that all SPEs and examiners fully understand how docket management works to help the examiner determine which work to do to satisfy the evaluation standards set out in the performance appraisal plan. As such, we will be doing the following to help improve the understanding of this critical element:

- General Training – optional training for all examiners highlighting DM change information (Auditorium sessions) and answering questions about the element.
- Targeted Training for examiners with 10 or more ceiling exceeded cases (including face-to-face discussions)
- Additional training materials will be provided on the examiner PAP task force intranet site as they become available.
- Consultation – While your SPE remains your primary point of contact for all PAP issues, including docket management, each TC will appoint a POC to provide additional consultation or answer questions on how to manage your docket. A list of your TC POCs will be made available.

### **Changes to 3/6 Month Dockets and RCEs**

For the last two quarters of FY13, all RCEs will be worth two counts. They will have the same distribution of work credit as other new cases. This will be accomplished by adjusting the first action on the merits (FAOM) credit on RCEs submitted during the 3<sup>rd</sup> and 4<sup>th</sup> quarters to 1.25, retroactively beginning on Tuesday, March 26, 2013. During this period, 3 Month/6 Month dockets may be a combination of Regular New, Special New & Continuing New provided that there is at least two months' worth of Regular New cases on the examiner's docket.