

**Memorandum of Understanding  
Between the  
National Treasury Employees Union, Chapter 245  
And the  
United States Patent and Trademark Office  
Regarding Implementation of a Pilot Award for Comprehensive Excellence (ACE  
Award)**

This Memorandum of Understanding ("MOU" or "Agreement") is made and entered into by and between the National Treasury Employees Union, Chapter 245 ("NTEU 245" or "Union") and the United States Patent and Trademark Office ("Agency", "Office" or "Management") (collectively the "Parties") regarding the implementation of a pilot Award for Comprehensive Excellence ("ACE Award"). The Parties agree as follows:

**A. Eligibility Requirements**

- (1) The individual ACE Award supplements the existing 3% quality bonus. An examining attorney first must qualify for the existing 3% quality award to be considered for the ACE Award.
- (2) Except as otherwise provided in the attached addendum regarding GS-11 and 12 examining attorneys, the ACE award is available to GS-13 or 14 examining attorneys with full signatory authority as of April 1, 2010.
- (3) For purposes of the pilot, if an examining attorney is at least Fully Successful in all three scores for Statutory, Practice and Procedure and Writing Review for work performed from October 1, 2009 through March 31, 2010 and is also either 1) Outstanding in all three scores for work performed from April 1, 2010 through September 30, 2010, or 2) Outstanding in all three scores for work performed for the entire rating year, then the attorney will be eligible to qualify for this added bonus, provided the attorney meets all the other criteria, including qualifying for the existing 3% quality award. For examining attorneys who became GS-13s after January 1, 2010, but prior to April 1, 2010, their Statutory, Practice and Procedure and Writing Review scores from April 1, 2010 through September 30, 2010 will be considered. The Comprehensive Excellence review scores and initial action phone percentage will be considered for all examining attorneys only for work performed from April 1, 2010 through September 30, 2010.

**B. Award Determination**

- (1) To receive an individual ACE Award at Level I, II or III below, an examining attorney must meet each of the five examination requirements for the relevant

level. If the examining attorney does not meet all five requirements for a level, then the attorney's performance will be evaluated to determine if the requirements for the preceding level have been met. An examining attorney will be eligible for only a single award identified below.

	Statutory	P&P	WR	% Comp. Excellence	Initial Ph %	Award
Level I	< 2 errors per 1000 BDs	< 10 errors per 1000 BDs	>= 4.5	60%	>=15.00%	\$500
	< 2 errors per 1000 BDs	< 10 errors per 1000 BDs	>= 4.5	60%	>=19.50%	\$1,000
Level II	< 1.5 errors per 1000 BDs	< 7.5 errors per 1000 BDs	>= 4.63	70%	>=24.50%	\$2,500
Level III	< 1 errors per 1000 BDs	< 5 errors per 1000 BDs	>= 4.75	80%	>=29.50%	\$3,500

- (2) The Initial Action Phone Percentage is based solely upon appropriate use of phone actions during initial examination and is calculated based on Examiner's Amendments, Priority Actions and combination Examiner's Amendments/Priority Actions. Inappropriate use of phone actions, as defined by the TMEP and other written Office guidance, will result in the disqualification of the examining attorney for eligibility for this additional bonus.
- (3) Comprehensive Excellence review – An award will be given to an eligible examining attorney based, in part, on the percentage of the attorney's first actions demonstrating "comprehensive excellence" as set forth in paragraph (6) below. The percentage is drawn from a review of a minimum of ten (10) first actions issued between April 1, 2010 and September 30, 2010.

(4) For purposes of Comprehensive Excellence review, a minimum of ten (10) first actions will be reviewed. If more than ten (10) first actions are reviewed, then all of the reviews will be considered for purposes of determining the percentage of reviews that are "comprehensively excellent". If fewer than ten (10) first actions are reviewed during the normal course of business for the period from April 1, 2010 through September 30, 2010, then additional first actions will be reviewed as necessary to reach the ten (10) case minimum. The final determination of whether a case is "comprehensively excellent" rests with the examining attorney's rating official.

(5) A finding of a Statutory or Practice and Procedure error will cause that individual case not to qualify to be rated "comprehensively excellent" but the examining attorney who committed such error will still be eligible for the ACE Award provided that the attorney reaches the necessary overall percentage of "comprehensively excellent" actions among the ten (10) first actions reviewed together with the other four quality elements. If additional cases are pulled under (4) above to meet the minimum number of ten (10), any Statutory or Practice and Procedure errors found during their review will not count under the Performance Appraisal Plan (PAP). Additionally, no Writing Review scores will be performed for such additional cases. The examining attorney may not request additional cases be pulled for ACE Award purposes.

(6) Criteria for the Comprehensively Excellent First Action:

A first Office action shall be found to demonstrate Comprehensive Excellence if it meets the criteria below. For purposes of clarification, elements (c) and (d) reflect the writing and evidence standards set forth in the Performance Appraisal Plan.

a. The Trademark Examining Attorney has made the correct decisions regarding registrability; and

b. A proper search for conflicting marks has been completed; and

c. The written explanation of refusals and/or requirements is provided in a clear, succinct and concise manner by linking law and evidence to the facts of the case, presents solutions where appropriate, and is written in a format that is targeted to the audience and is easy to read and understand; and

d. When necessary, refusals and/or requirements are supported with properly cited, most appropriate, relevant and feasible, on-point evidence specific to the applicant's mark and goods or services; and

e. If the action is a phone action, the examining attorney followed the TMEP and other written Office guidance on the appropriate use of a phone action.

### C. Implementation

1. No award shall be given under this pilot unless the Trademark Examining Attorney is fully successful in all critical elements of the performance appraisal plan. Additionally, an examining attorney who is subject to a Performance Improvement Plan during the review period is ineligible for this award.

2. The employee must be employed by the Office on the last day of the performance appraisal cycle or productivity award cycle as applicable.

3. Balanced disposals earned during approved overtime and compensatory time hours will be applied towards balanced disposals for the purpose of determining eligibility for awards.

4. This award shall not be given unless the Trademark Examining Attorney produces during April 1, 2010 and September 30, 2010 at least

- a. 350 balanced disposals for a GS-13 attorney, or
- b. 375 balanced disposals for a GS-14 attorney.

If a GS-13 Examining Attorney produces more than 350 balanced disposals but less than 700 balanced disposals during the six month pilot program, the Examining Attorney's award shall be computed as follows:

$$\frac{\text{Number of} \\ \text{Balanced Disposals}}{700} \times \text{Award} = \text{Reduced Award}$$

If a GS-14 Examining Attorney produces more than 375 balanced disposals but less than 750 balanced disposals during the six month pilot program, the Examining Attorney's award shall be computed as follows:

$$\frac{\text{Number of} \\ \text{Balanced Disposals}}{750} \times \text{Award} = \text{Reduced Award}$$

5. This award will only be paid after the end of the FY2010 full annual performance appraisal cycle.

6. This awards program is a pilot program only and it shall not extend past FY2010. However, the results of the pilot will be evaluated in consultation with NTEU 245 after the end of the fiscal year and an extension of the program along with potential modifications may be considered for a new "comprehensive excellence" award program.

7. Guidance will be provided to the examining attorneys with respect to the Comprehensive Excellence quality criteria.

8. Sample offices action demonstrating excellent writing and evidence will be provided to the examining attorneys.

Agreed this 18th day of March, 2010.

FOR THE USPTO

FOR NTEU 245

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Lynne Beresford  
Commissioner for Trademarks

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Howard Friedman  
President, NTEU 245

## Addendum

### Pilot Award for Comprehensive Excellence (ACE Award) for GS-11 and GS-12 Examining Attorneys

To be eligible for an ACE Award, a GS-11 or 12 examining attorney must first satisfy the eligibility requirements in Section A(1) above. Additionally, for purposes of the pilot, if a GS-11 or 12 examining attorney is at least Fully Successful in Quality Review for work performed from October 1, 2009 through March 31, 2010 and is also either 1) Outstanding in Quality Review for work performed from April 1, 2010 through September 30, 2010, or 2) Outstanding in Quality Review for work performed for the entire rating year, then the attorney will be eligible to qualify for this added bonus, provided the attorney meets all the other criteria, including qualifying for the existing 3% quality award. The Comprehensive Excellence review scores and initial action phone percentage will be considered for all examining attorneys only for work performed from April 1, 2010 through September 30, 2010.

To receive an individual "ACE Award" at Level I or II below, a GS-11 or 12 examining attorney must meet all three examination requirements for the level and must meet or exceed the stated percentage of cases submitted for publication review and needing no correction. If the examining attorney does not meet all three requirements for Level II, then the examiner's performance will be evaluated for Level I. An examining attorney will be eligible for only a single award identified below.

GS11/12	QR	% Comp. Excellence	Initial Ph %	Award
Level I	>= 4.63	70%	>14.99%	\$500
Level II	>= 4.75	80%	>19.49%	\$1,000
>89.9% of pubs reviewed between 4/1/10 and 9/30/10 need no correction.				

The provisions outlined in Sections B (2), (3), (4), (5), and (6) and (C) shall govern the application of this award as well.

This award shall not be given unless the GS-11 or 12 examining attorney produces during April 1, 2010 and September 30, 2010 at least

- a. 300 balanced disposals for a GS-11 attorney, or
- b. 325 balanced disposals for a GS-12 attorney.

If a GS-11 Examining Attorney produces more than 300 balanced disposals but less than 600 balanced disposals during the six month pilot program, the Examining Attorney's award shall be computed as follows:

$$\frac{\text{Number of} \\ \text{Balanced Disposals}}{600} \times \text{Award} = \text{Reduced Award}$$

If a GS-12 Examining Attorney produces more than 325 balanced disposals but less than 650 balanced disposals during the six month pilot program, the Examining Attorney's award shall be computed as follows:

$$\frac{\text{Number of} \\ \text{Balanced Disposals}}{650} \times \text{Award} = \text{Reduced Award}$$