

From: [David Boundy](#)
To: [FOIA Requests](#); [FOIA Requests](#)
Subject: FOIA request for PTAB PAP Support Document
Date: Tuesday, April 6, 2021 8:17:01 AM
Attachments: [APJ PAP FY 2019 \(excerpts\).pdf](#)

April 6, 2021

Dear FOIA Office –

Attached is the Classification and Performance Management Record for PTAB APJs for FY 2019. At several points (yellow highlight), it refers to a “PAP Support Document.”

Under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 and 37 C.F.R. § 102.4, I hereby request copies of this PAP Support Document, including all versions thereof that have been in effect or that issued from September 2012 to present.

Please provide the requested material in its native electronic form such as Microsoft Word or PDF, preferably by email to DBoundy@CambridgeTechLaw.com, or via some other electronic form that preserves all document integrity.

Thank you.

NEW

I/A: _____

MR#: _____

IP#: _____

CLASSIFICATION AND PERFORMANCE MANAGEMENT RECORD

• Performance Plan • Performance Appraisal • Performance Recognition • Progress Review • Position Description

Employee's Name: _____ Social Security No.: _____

Position Title: Administrative Patent Judge

Pay Plan, Series, Grade/Step: AD-1222-00

- Organization:
- | | |
|--|---|
| 1. <u>US Department of Commerce</u> | 4. <u>Patent Trial and Appeal Board</u> |
| 2. <u>US Patent & Trademark Office</u> | 5. _____ |
| 3. <u>Office of the Under Secretary & Director</u> | 6. _____ |

Rating Period: 10/1/2018 - 9/30/2019

Covered By: Senior Executive Service Other AD
 General Workforce _____

PART A—POSITION DESCRIPTION

POSITION CERTIFICATION—I certify that this is an accurate statement of the major duties and responsibilities of the position and its organization relationships and that the position is necessary to carry out Government functions for which I am responsible. This certification is made with the knowledge that this information is to be used for statutory purposes relating to appointment and payment of public funds and that false or misleading statements may constitute violation of such statute or their implementing regulations.

SUPERVISOR'S SIGNATURE	DATE	SECOND LEVEL SUPERVISOR	DATE
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CLASSIFICATION CERTIFICATION	OFFICIAL TITLE:				
	PP:	SERIES:	FUNC:	GRADE:	I/A: <input type="checkbox"/> YES <input type="checkbox"/> NO

I certify that this position has been classified as required by Title 5, US Code, in conformance with standards published by the OPM or, if no published standard applies directly, consistently with the most applicable published standards.

NAME AND TITLE OF CLASSIFIER	SIGNATURE	DATE
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PART B—PERFORMANCE PLAN

This plan is an accurate statement of the work that will be the basis of the employee's performance appraisal.

NAME AND TITLE OF FIRST LINE SUPERVISOR/RATING OFFICIAL <u>###</u> Lead Administrative Patent Judge	SIGNATURE	DATE
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APPROVAL—I agree with the certification of the position description and approve the performance plan.

NAME AND TITLE OF APPROVING OFFICIAL OR SES APPOINTING AUTHORITY <u>***</u> Vice Chief Administrative Patent Judge	SIGNATURE	DATE
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EMPLOYEE ACKNOWLEDGEMENT —My signature acknowledges discussion of the position description and receipt of the plan, and does not necessarily signify agreement.	SIGNATURE	DATE
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PRIVACY ACT STATEMENT—Disclosure of your social security number on this form is voluntary. The number is linked with your name in the official personnel records system to ensure unique identification of your records. The social security number will be used solely to ensure accurate entry of your performance rating into the automated record system.

Performance Management Record
Continuation Page – Element 2

Employee Name:

Performance Element: Production

Please identify item(s) continued:

(i.e, Item 2. Major Activities, Item 3. Criteria for Evaluation Item, 4. Progress Reviews,
Item 5. Element Rating & Justification)

Item 3. Criteria for Evaluation (continued)

COMMENDABLE performance in this element is demonstrated by the judge making considerable efforts toward production needs of the Board. Production will be of a very high volume, while producing well above the Board's overall rate of production. Very high volume corresponds to earning no fewer than 92 decisional units annually.

FULLY SUCCESSFUL performance in this element is demonstrated by the judge earning no fewer than 84 decisional units annually. Reasonable efforts are made to manage the Board's production needs.

MARGINAL performance in this element is demonstrated by the judge earning at least 75 decisional units annually (but fewer than 84). Efforts to manage the Board's production needs are minimally acceptable.

UNACCEPTABLE performance in this element is demonstrated by the judge earning fewer than 75 decisional units annually. Efforts to manage the Board's production needs are below what is expected.

NOTES:

Crediting. Judges are awarded decisional unit (DU) credit for mailing ex parte appeal, ex parte reexamination proceeding appeal, inter partes reexamination proceeding appeal, interference, AIA proceeding, and derivation decisions. Please see the **PAP Support Document** for detailed information on DU crediting.

Probationary Judges. Judges who are in the first year of their probationary period are not subject to the above productivity standards. In the first year of the probationary period, absent justification, judges must demonstrate ramped up productivity overall on a quarterly basis to indicate that they have the potential to achieve and maintain at least fully satisfactory productivity standards. The ramp up for a judge who is new to the Board is described in more detail in the **PAP Support Document**.

Part-time Judges. Judges who are working a part-time schedule have a production goal that is prorated to correspond to the amount of hours worked relative to that of a judge who is working a full-time schedule.

**Performance Management Record
Continuation Page – Element 2**

Employee Name:

Performance Element: Production

Please identify item(s) continued:

(i.e., Item 2. Major Activities, Item 3. Criteria for Evaluation Item, 4. Progress Reviews,
Item 5. Element Rating & Justification)

Item 3. Criteria for Evaluation (continued)

Deferment. A deferment is a postponement of production for a particular rating period (e.g., a quarter) to account for a judge's atypical usage of annual and/or sick leave during the rating period (i.e., delayed production). The judge must make up the deferred production later in the fiscal year. A deferment is available for atypical usage of annual and/or sick leave and not generally leave that falls under production goal adjustments (e.g., FMLA leave). The judge must make up the deferred production later in the fiscal year.

Examples situations for ADUs, production goal adjustments, and deferments are provided in the **PAP Support Document**.

Process to Request ADUs, Production Goal Adjustments, and Deferments.

Additional decisional units (ADUs). Judges should timely request ADUs from their Lead Judge, but need not do so in advance. When requesting ADUs, judges should be mindful that requests should be commensurate with the number of DUs normally accorded to work as APJ1. As needed, a Lead Judge may consult with a Vice Chief Judge about an ADU request before making a decision. If a judge disagrees with the Lead Judge's decision on the ADU request, then the judge may seek review by a Vice Chief Judge.

Production goal adjustments. Judges must submit a provisional request in advance (unless not possible given the situation) to their Lead Judge for production goal adjustment. The provisional request should anticipate the amount of time to be used for the triggering activity. The Lead Judge should decide the request based upon the anticipated time. After the judge completes the triggering activity, the judge must submit an official production goal adjustment requests to their Vice Chief Judge (copying their Lead Judge) for approval. If advance consultation with a Lead Judge is not possible given the situation, then the judge should consult with the Lead Judge as soon as practicable. If a judge ultimately requires more time than originally anticipated in the provisional request, the judge may revisit the production goal adjustment with the Lead Judge for possible modification when the judge submits the official request to the Vice Chief Judge.

Deferment. A judge should make the deferment request to their Lead Judge before the end of a rating period. As needed, a Lead Judge may consult with a Vice Chief Judge about a deferment request before making a decision on the deferment request. If a judge disagrees with the Lead Judge's decision on the deferment, then the judge may seek review by a Vice Chief Judge.

**Performance Management Record
Continuation Page – Element 2**

Employee Name:

Performance Element: Production

Please identify item(s) continued:

(i.e. Item 2. Major Activities, Item 3. Criteria for Evaluation Item, 4. Progress Reviews,
Item 5. Element Rating & Justification)

Item 3. Criteria for Evaluation (continued)

Production Assessments. Production goals may be measured at any time during the appraisal year, including monthly or quarterly, at which point the judge will be expected to have earned that portion of the expected annual decisional units at least equal to the percentage of the rating period that has been completed. Production goal adjustments and deferrals will be taken into account to determine the expected annual decisional units required. The judge must exhibit at least at marginal performance during that time.

A production assessment is not intended to be a wooden review of production without regard to the nuances of how decision drafting and crediting may occur due to the practicalities and nature of PTAB work. If a judge (1) has completed the work to earn decisional units in a particular rating period, (2) has not yet received credit for the decisional units during the rating period, and (3) will receive the decisional unit credit in the following rating period, then the Lead Judge may take this circumstance into consideration in assessing the judge's production for the rating period. That is, a judge may be below the production goal for a rating period because the judge has not yet received decisional unit credit for completed work. The Lead Judge should take the judge's completed, but yet uncredited work, into account in determining whether the judge's performance meets at least the marginal level. This situation may occur, for example, in the context of AIA trials as the end of a rating period approaches where judges diligently may in drafting decisions, but not receive decisional unit credit until several weeks later after the start of a new rating period.

Example production assessments situations are provided in the **PAP Support Document**.

Production or Crediting Questions. If a judge has questions or concerns regarding production goals or crediting, the judge should contact their Lead Judge, Vice Chief Judge, Deputy Chief Judge, or Chief Judge, as appropriate.