

**Supporting Document to Administrative Patent Judge Performance  
Appraisal Plan FY2017**

**Element 1: Quality**

[Placeholder-nothing to add here.]

## **Element 2: Production**

### **Item 2. Supporting information related to Major Activities**

Crediting for decisions and orders in AIA trial proceedings is currently undergoing evaluation. Should any changes in methodology in assigning credit to decisions and orders be recommended for implementation during the course of the fiscal year, Judges will be notified well in advance, and provided the opportunity to give comments and feedback on any proposed changes.

In performing the major activities described in the Performance Appraisal Plan, judges will normally seek efficiency gains and utilize available resources to enhance annual production. Such efficiency gains include effective use of collaboration tools, administrative resources, and any additional resources available as a result of other Board programs (e.g., Detailee program).

### **Item 3. Supporting information related to Criteria for Evaluation**

The previous Fully Successful and Marginal goals for decisional units produced annually reflected a current-year plus one (+1) adjustment for non-first year judges in view of the challenges faced by the Board in the current fiscal year. Such goal adjustments may be necessary in future Performance Appraisal Plan revisions to deal with unusual or extraordinary challenges facing the Board.

There is no particular ramp up number in productivity for new judges in a probationary period. The new judge should focus on building relationships with their colleagues and basic decision writing concepts. The progress made by a new judge toward hitting the fully successful productivity goal is evaluated on a case-by-case basis based on the individual needs of the new judge through discussion with that new judge's Lead Judge as a result of feedback from the new judge's mentoring judges and direct observations by the Lead Judge.

Regarding production adjustments for extended medical leave and special projects, judges should keep their Lead Judge informed of an ongoing event, so that the Lead Judge is aware and any appropriate documentation (such as Doctor's notes, etc.) can be gathered as appropriate. Any adjustments in production will be reasonable in view of the individual circumstances. Judges who have a potentially disproportionate amount of APJ2 and APJ3 work as a result of mentoring or docket imbalance should inform their Lead Judge as soon as possible, so that the issue(s) may be addressed.

Judges will be provided the opportunity to explain and justify low decisional units earned and unusual patterns of case mailing.

### **Element 3: Supporting the Mission of the Board/Leadership**

#### **Item 2. Supporting information related to Major Activities**

Activities related to the attributes described include:

- Shares efficient processes and methods with other internal stakeholders.
  - leading section, ex parte appeals, or trial meetings
  - preparing or presenting material at section, ex parte appeal, or trial meetings
  - preparing or presenting training or continuing legal education material
- Puts organizational objectives before personal interests.
  - participating in hiring efforts
  - volunteers willingly for organizational activities when opportunities become available.
- Inspires and empowers other internal stakeholders by example and by encouragement to think positively about work related challenges

and to seek constructive solutions, to achieve organizational goals and objectives, and to achieve higher levels of performance.

-mentoring newer judges or patent attorneys

- Contributes significantly to the design and implementation of organizational methods and strategies that maximize internal stakeholder potential and which contribute to organizational objectives.
  - participating on Board committees that further the mission of the Board
  - preparing or presenting training or continuing legal education material
  - development of rules or policies
- Where change is required to better meet organizational objectives, adapts well to change (role model) and helps other internal stakeholders adapt and professionally thrive in a new and changing organizational environment.

#### **Element 4: Internal/External Stakeholder Interactions**

Internal stakeholders include Board co-workers (e.g., subordinates, other judges, and superiors), other USPTO employees, and USPTO contractors.

With respect to the circulation and mailing of decisions, it is expected that there may be some circumstances that impact the ability of a judge to advance a matter through the circulation process (such as workload, the impact of vacations for that judge or other judges on the panel, pressing special projects). However, judges should make every effort to respect the

time of their colleagues in maintaining an even workflow and to allow other judges a sufficient amount for review taking into account that there may be other pressures on a reviewing judge's time.

**Supporting Document to Administrative Patent Judge Performance**  
**Appraisal Plan FY2018**

**Element 1: Quality**

ARC comments are not binding, but instead suggestions that a panel may consider in preparing decisions.

**Element 2: Production**

**Item 2. Supporting information related to Major Activities**

Crediting for decisions and orders in AIA trial proceedings is currently undergoing evaluation. Should any changes in methodology in assigning credit to decisions and orders be recommended for implementation during the course of the fiscal year, Judges will be notified well in advance, and provided the opportunity to give comments and feedback on any proposed changes.

In performing the major activities described in the Performance Appraisal Plan, judges will normally seek efficiency gains and utilize available resources to enhance annual production. Such efficiency gains include effective use of collaboration tools, administrative resources, and any additional resources available as a result of other Board programs (e.g., Detailee program).

**Item 3. Supporting information related to Criteria for Evaluation**

There is no particular ramp up number in productivity for new judges in a probationary period. The new judge should focus on building relationships with their colleagues and basic decision writing concepts. The progress made by a new judge toward hitting the fully successful productivity goal is evaluated on a case-by-case basis based on the individual needs of the

new judge through discussion with that new judge's Lead Judge as a result of feedback from the new judge's mentoring judges and direct observations by the Lead Judge.

Regarding production adjustments for extended medical leave and special projects, judges should keep their Lead Judge informed of an ongoing event, so that the Lead Judge is aware and any appropriate documentation (such as Doctor's notes, etc.) can be gathered as appropriate. Any adjustments in production will be reasonable in view of the individual circumstances. Judges who have a potentially disproportionate amount of APJ2 and APJ3 work as a result of mentoring or docket imbalance should inform their Lead Judge as soon as possible, so that the issue(s) may be addressed.

Judges will be provided the opportunity to explain and justify low decisional units earned and unusual patterns of case mailing.

### **Element 3: Supporting the Mission of the Board/Leadership**

#### **Item 2. Supporting information related to Major Activities**

Activities related to the attributes described include:

- Shares efficient processes and methods with other internal stakeholders.
  - leading section, ex parte appeals, or trial meetings
  - preparing or presenting material at section, ex parte appeal, or trial meetings
  - preparing or presenting training or continuing legal education material

- Puts organizational objectives before personal interests.
  - participating in hiring efforts
  - volunteers willingly for organizational activities when opportunities become available.
- Inspires and empowers other internal stakeholders by example and by encouragement to think positively about work related challenges and to seek constructive solutions, to achieve organizational goals and objectives, and to achieve higher levels of performance.
  - mentoring newer judges or patent attorneys
- Contributes significantly to the design and implementation of organizational methods and strategies that maximize internal stakeholder potential and which contribute to organizational objectives.
  - participating on Board committees that further the mission of the Board
  - preparing or presenting training or continuing legal education material
  - development of rules or policies
- Where change is required to better meet organizational objectives, adapts well to change (role model) and helps other internal stakeholders adapt and professionally thrive in a new and changing organizational environment.



#### **Element 4: Internal/External Stakeholder Interactions**

Internal stakeholders include Board co-workers (e.g., subordinates, other judges, and superiors), other USPTO employees, and USPTO contractors.

With respect to the circulation and mailing of decisions, it is expected that there may be some circumstances that impact the ability of a judge to advance a matter through the circulation process (such as workload, the impact of vacations for that judge or other judges on the panel, pressing special projects). However, judges should make every effort to respect the time of their colleagues in maintaining an even workflow and to allow other judges a sufficient amount for review taking into account that there may be other pressures on a reviewing judge's time.

Statutory deadline cases should be circulated at least 12 business days in advance of the deadline to the panel and at least 6 business days in advance to ARC. Additionally, reexam and reissue appeals should be handled with special dispatch and reviewed before ex parte appeals.

**Supporting Document to Administrative Patent Judge Performance**  
**Appraisal Plan FY2019**

**Element 1: Quality**

**ARC Comments.** ARC comments are not binding, but instead suggestions that a panel may consider in preparing decisions.

**Element 2: Production**

**Item 2. Supporting information related to Major Activities**

**Crediting.** Decisional units (DUs) associated with *ex parte* appeals, *ex parte* reexamination proceeding appeals, *inter partes* reexamination proceeding appeals, and AIA proceedings are credited as follows in the table below. Decisional units associated with interference and derivation decisions should be discussed with a Lead Judge.

<b>Activity</b>	<b>Credit</b>	<b>Exceptions</b>	<b>Notes</b>
<i>Ex parte</i> Appeal Decision	1.0 DUs	<i>Ex parte</i> Appeal Decision prepared with assistance of Patent Attorney = 0.5 DUs	--
<i>Ex parte</i> Appeal Rehearing Decision	1.0 DUs	--	--
<i>Ex parte</i> Reexamination Decision	2.5 DUs	--	--
<i>Inter partes</i> Reexamination Decision	4.0 DUs	Decisions issued under 37 C.F.R. § 41.77(f) will be awarded 2.5 DUs.	--
Reexamination Rehearing Decision	1.0 DUs	--	--

<i>Ex parte and Reexamination hearing Under 35 U.S.C. § 134</i>	0.3 DUs per APJ per hearing day	--	Credit assigned per hearing day scheduled, not based on the number of hearings that actually occur on the hearing day.
AIA Trial Institution Decision for <i>Inter Partes</i> Reviews (IPR DI)	5.0 DUs	Joinder Institution Decisions will be awarded 1.0 DUs for the underlying decision and 0.5 DUs for the Motion Decision.	AIA Institution Decision credit includes credit for the associated scheduling order.
AIA Trial Institution Decision for Covered Business Method Reviews and Post-Grant Reviews (CBM / PGR DI)	5.5 DUs	Joinder Institution Decisions will be awarded 1.0 DUs for the underlying decision and 0.5 DUs for the Motion Decision.	AIA Institution Decision credit includes credit for the associated scheduling order.
AIA Trial Final Written Decision for <i>Inter Partes</i> Reviews (IPR FWD)	6.0 DUs	--	AIA Final Written Decision credit DOES NOT include credit for the associated motions to amend and motions to exclude, which are credited separately.
AIA Trial Final Written Decision for Covered Business Method Reviews and Post-Grant Reviews (CBM /PGR FWD)	7.0 DUs	--	AIA Final Written Decision credit DOES NOT include credit for the associated motions to amend and motions to exclude, which are credited separately.
AIA Trial Rehearing Decision	1.0 DUs	--	--
AIA Trial Decision on Motion to Amend	1.0 DUs	--	--
AIA Trial Decision on Motion to Exclude	0.2 DUs	--	--
AIA Trial Order/Motion Decision	0.5 DUs	Orders that involve solely ministerial recordkeeping will be awarded 0.1 DUs. Examples of such orders include: Pro Hac Vice orders; orders authorizing withdrawal of an attorney; orders revising scheduling orders; orders included in <i>initial</i> conference call summaries; conference call summaries that do not include an order; and orders to expunge documents, correct clerical errors, or allow additional	This includes any other paper that is not an Institution Decision, Final Written Decision, or Rehearing Decision.

		pages in a paper. If the panel deems it appropriate, such orders may be issued as single judge orders.	
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By default, the authoring Judge is assigned the entire amount of credit due for a decision. Panel members may divide the credit for a decision amongst themselves, so long as they indicate in the mailing email how much credit each member will receive of the standard total credit for the decision. Panels may wish to designate authorship of such decisions as “Per Curiam.”

If a Judge works on a concurrence, dissent, or decision on remand, the Judge may submit a request for ADUs, if appropriate, depending on the nature of the concurrence, dissent, or decision on remand and the amount of work involved.

Decisional credit is not awarded more than once for the same (or virtually the same) decision going out in more than one case. This includes Order/Motion Decisions, Decisions to Institute, and Rehearing Decisions. This does not include Final Written Decisions, except Final Written Decisions that address multiple joined petitions in the same paper. Authoring judges are required to indicate in the mailing email if the same decision is going out in more than one case.

Should any crediting changes be recommended for implementation during a fiscal year, Judges will be notified in advance, and provided the opportunity to give comments and feedback.

**Production resources**. In performing the major activities described in the Performance Appraisal Plan, Judges will normally seek efficiency gains and utilize available resources to enhance annual production. Such efficiency gains include effective use of collaboration tools, administrative resources, and any additional resources available as a result of other Board programs (e.g., Detailee program).

### **Item 3. Supporting information related to Criteria for Evaluation**

**Probationary Judges**. The productivity goals are not applied to Judges who are in their first year of the probationary period, relative to their start date. However, a Judge should work toward ramped-up production that ultimately reaches the level of at least the fully successful production level by the end of the ninth month from the start of the Judge's first probationary year. Although some deviation is expected, a new Judge's production might ramp-up as follows (relative to the number of months from the probationary year start date):

- Months 1-3: 30% of Fully Successful goal (6.3 DUs for the quarter);
- Months 4-6: 50% of Fully Successful goal (10.5 DUs for the quarter);
- Months 7-9: 70% of Fully Successful goal (14.7 DUs for the quarter); and
- Months 10-12: 100% of Fully Successful goal (21 DUs for the quarter).

In addition, the new Judge should maintain at least the fully successful production levels throughout the second probationary year. Also, during

the probationary period, the Judge should focus on building relationships with their colleagues and basic decision writing concepts. Throughout the probationary period, the new Judge's Lead Judge should collect feedback from the new Judge's mentoring Judges and directly observe the new Judge to aid the new Judge in reaching and maintaining at least the fully successful production goal. If a Lead Judge identifies any concerns with a new Judge's prospect of reaching and maintaining at least the fully successful production goal, then the Lead Judge should discuss the situation with the new Judge and develop a strategy to address any impediments that is preventing the new Judge from attaining the fully successful production goal. The Lead Judge also should alert a Vice Chief Judge of the situation so that appropriate remediation can be done.

**Examples of Situations for Additional Decisional Units, Production Goal Adjustments, and Deferment.** Judges may request additional decisional units (ADUs), a production goal adjustment, or a deferment of production in managing their production during the fiscal year.

*Additional Decisional Units.* ADUs are awarded for uncredited or under-credited time spent drafting and mailing a decision. For instance, if a Judge spends 200 hours working on a decision to institute in an AIA trial because the case involves an inordinate number of grounds, issues, and pre-DI motions, the Judge may seek ADUs for the time spent on the decision to institute given its complexity.

*Production Goal Adjustment.* A production goal adjustment involves a reduction in the total number of DUs require to reach a certain production

goal. For example, if a Judge spends 150 hours on a rulemaking special project, the Judge may request a production goal adjustment of 110 hours after subtracting a 40 hour base deductible. As another example, if a Judge is on extended medical leave for 320 hours as an extenuating circumstance, the Judge may request a production goal adjustment of 320 hours.

*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. For example, if, during the first quarter of the fiscal year, a Judge uses a combination of annual and sick leave totaling 150 hours, which is many hours more than the Judge has earned at this point in the fiscal year, the Judge may request the Lead Judge to grant a deferment of 150 hours of production when evaluating the Judge's quarterly performance.

**Example Production Assessment Situations.** Production goals may be measured at any time during the fiscal year, including monthly or quarterly, and an APJ is 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, and the APJ must be at least at marginal performance. For all calculations, decisional units will be rounded up, and production goals will be rounded down, to the nearest whole number. For example, if the annual goal is to achieve 75 DUs for a rating above unsatisfactory and an APJ's production is assessed for a particular quarter of the fiscal year, the APJ would be expected to have earned at least 18 DUs ( $75 \text{ DUs required} * 25\% = 18.75 \text{ DUs}$ , rounded down to 18 DUs

required) for that quarter to achieve a rating above unsatisfactory. Similarly, if the annual goal is to achieve 75 DUs for a rating above unsatisfactory and an APJ's production is assessed for a particular month of the fiscal year, the APJ would be expected to have earned at least 6 DUs ( $75 \text{ DUs required} * 0.08\% = 6.25 \text{ DUs}$ , rounded down to 6 DUs required) for that month to achieve a rating above unsatisfactory.

**Miscellaneous.** Judges who have a potentially disproportionate amount of APJ2 and APJ3 work as a result of mentoring or docket imbalance should inform their Lead Judge as soon as possible, so that the issue(s) may be addressed.

Judges will be provided the opportunity to explain and justify low decisional units earned and unusual patterns of case mailing.

### **Element 3: Supporting the Mission of the Board/Leadership**

#### **Item 2. Supporting information related to Major Activities**

Activities related to the attributes described include:

- Shares efficient processes and methods with other internal stakeholders. For example:
  - leading meetings such as section meetings; and
  - preparing or presenting training or continuing legal education material



- Puts organizational objectives before personal interests. For example:
  - participating in hiring efforts; and
  - volunteering for organizational activities when opportunities become available.
- Inspires and empowers other internal stakeholders by example and by encouragement to think positively about work related challenges and to seek constructive solutions, to achieve organizational goals and objectives, and to achieve higher levels of performance. For example:
  - mentoring newer judges or patent attorneys.
- Contributes significantly to the design and implementation of organizational methods and strategies that maximize internal stakeholder potential and which contribute to organizational objectives. For example:
  - participating on Board committees that further the mission of the Board;
  - preparing or presenting training or continuing legal education material; and
  - helping to develop rules or policies.
- Where change is required to better meet organizational objectives, adapts well to change (role model) and helps other internal stakeholders adapt and professionally thrive in a new and changing organizational environment.

## **Element 4: Internal/External Stakeholder Interactions**

**Definition of Internal Stakeholders.** Internal stakeholders include Board co-workers (e.g., subordinates, other judges, and superiors), other USPTO employees, and USPTO contractors.

**Decision Circulation and Mailing.** With respect to the circulation and mailing of decisions, there may be some circumstances that impact the ability of a Judge to advance a matter through the circulation process (such as workload, the impact of vacations for that judge or other judges on the panel, pressing special projects). However, Judges should make every effort to respect the time of their colleagues in maintaining an even workflow and to allow other Judges a sufficient amount for review taking into account that there may be other pressures on a reviewing Judge's time.

Statutory deadline cases should be circulated at least 12 business days in advance of the deadline to the panel and at least 6 business days in advance to ARC. Additionally, reexam and reissue appeals should be handled with special dispatch and reviewed before ex parte appeals.

## **Supporting Document to Administrative Patent Judge<sup>1</sup> Performance Appraisal Plan**

### **Statement of Policy for Interpreting the Performance Appraisal Plan.**

Because the work at the Board differs from Judge to Judge in terms of subject matter and jurisdiction, the Performance Appraisal Plan will be applied as appropriate in order to take into account the work and activities performed by a particular Judge throughout the year. The Performance Appraisal Plan is intended to be applied holistically so that the raters achieve uniform application for equivalent contributions.

Board Management will strive to provide consistency in application of the Performance Appraisal Plan.

Judges are rated against the standards set forth in the Performance Appraisal Plan, and are not rated by comparison to other Judges. This Supporting Document is intended to provide additional transparency for Judges as to the standards and activities mentioned in the applicable Performance Appraisal Plan.

### **Element 1: Quality**

**ARC Comments.** ARC comments are not binding, but instead suggestions that a panel may consider in preparing decisions.

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<sup>1</sup> The description in Elements 1 and 2 of this document are also used as supporting documentation for the Lead Administrative Patent Judge Performance Appraisal Plan (LAPJ PAP). The description in Elements 3 and 4 do not apply to the LAPJ PAP. The Performance Appraisal Plans shall be interpreted based upon a reasonable person standard.

**Decision Circulation and Mailing.** With respect to the circulation and mailing of decisions, there may be some circumstances that impact the ability of a Judge to advance a matter through the circulation process (such as workload, the impact of vacations for that judge or other judges on the panel, pressing special projects). However, Judges should make every effort to respect the time of their colleagues in maintaining an even workflow and to allow other Judges a sufficient amount for review taking into account that there may be other pressures on a reviewing Judge's time.

Statutory deadline cases should be circulated at least 12 business days in advance of the deadline to the panel and at least 6 business days in advance to ARC. Additionally, reexam and reissue appeals should be handled with special dispatch and reviewed before *ex parte* appeals.

## **Element 2: Production**

### **Item 1. Supporting information related to Major Activities**

**Crediting.** Decisional units (DUs) associated with *ex parte* appeals, *ex parte* reexamination proceeding appeals, *inter partes* reexamination proceeding appeals, and AIA proceedings are credited as follows in the table below. Decisional units associated with interference and derivation decisions should be discussed with a Lead Judge.

Activity	Credit	Exceptions	Notes
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<i>Ex parte</i> Appeal Decision	1.1 DUs	<i>Ex parte</i> Appeal Decision prepared with assistance of Patent Attorney = 0.6 DUs	--
<i>Ex parte</i> Appeal Decision addressing 35 U.S.C. § 101	1.6 DUs	<i>Ex parte</i> Appeal Decision addressing 35 U.S.C. § 101 prepared with assistance of Patent Attorney = 0.8 DUs	--
<i>Ex parte</i> Reexamination Decision	2.5 DUs	--	--
<i>Inter partes</i> Reexamination Decision	4.0 DUs	Decisions issued under 37 C.F.R. § 41.77(f) will be awarded 2.5 DUs.	--
Reexamination Rehearing Decision	1.0 DUs	--	--
<i>Ex parte</i> and Reexamination hearing Under 35 U.S.C. § 134	0.3 DUs per APJ per hearing day	--	Credit assigned per hearing session scheduled, not based on the number of hearings that actually occur during the hearing session.
AIA Trial Institution Decision for <i>Inter Partes</i> Reviews (IPR DI)	5.5 DUs	Joinder Institution Decisions (including decisions denying institution) will be awarded 1.0 DUs for the underlying decision and 0.5 DUs for the Motion Decision.	AIA Institution Decision credit includes credit for the associated scheduling order. AIA DI Decision credit DOES NOT include credit for associated motions, which are credited separately.
AIA Trial Institution Decision for Covered Business Method Reviews and Post-Grant Reviews (CBM / PGR DI)	6.0 DUs	Joinder Institution Decisions will be awarded 1.0 DUs for the underlying decision and 0.5 DUs for the Motion Decision.	AIA Institution Decision credit includes credit for the associated scheduling order. AIA DI Decision credit DOES NOT include credit for associated motions, which are credited separately.
AIA Trial Final Written Decision for <i>Inter Partes</i> Reviews (IPR FWD)	6.5 DUs	--	Final Written Decision on the merits. AIA Final Written Decision credit DOES NOT include credit for associated motions, which are credited separately.
AIA Trial Final Written Decision for Covered Business Method Reviews and Post-Grant Reviews (CBM /PGR FWD)	7.5 DUs	--	Final Written Decision on the merits. AIA Final Written Decision credit DOES NOT include credit for associated motions, which are credited separately.
AIA Trial Rehearing Decision	1.0 DUs	--	--

AIA Trial Decision on Motion to Amend – Preliminary Guidance	1.0 DUs	--	--
AIA Trial Final Written Decision on Revised Motion to Amend	1.5 DUs	--	A Final Written Decision on a Motion to Amend where no Revised Motion to Amend was filed is awarded 1.0 DUs, as indicated below.
AIA Trial Final Written Decision on Motion to Amend (no Revised Motion filed)	1.0 DUs	--	--
AIA Trial Decision on Motion to Exclude or Motion to Strike	0.2 DUs	--	--
AIA Trial Order/Motion Decision	0.5 DUs	Orders that involve solely ministerial recordkeeping will be awarded 0.1 DUs. Examples of such orders include: Pro Hac Vice orders; orders authorizing withdrawal of an attorney; orders revising scheduling orders; orders included in <i>initial</i> conference call summaries; conference calls satisfying the Motion to Amend conference requirement; conference; conference call summaries that do not include an order; and orders to expunge documents, correct clerical errors, or allow additional pages in a paper. If the panel deems it appropriate, such orders may be issued as single judge orders.	This includes any other paper that is not an Institution Decision, Final Written Decision, or Rehearing Decision.

By default, the authoring Judge is assigned the entire amount of credit due for a decision. Panel members may divide the credit for a decision amongst themselves, so long as they indicate in an email to crediting ([PTABAppealsCrediting@uspto.gov](mailto:PTABAppealsCrediting@uspto.gov) or [PTABAIACrediting@uspto.gov](mailto:PTABAIACrediting@uspto.gov))

how much credit each member will receive of the standard total credit for the decision. Panels may wish to designate authorship of such decisions as “Per Curiam.”

If a Judge works on a concurrence, dissent, or decision on remand, the Judge may submit a request for Additional Decisional Units (“ADUs”), if appropriate, depending on the nature of the concurrence, dissent, or decision on remand and the amount of work involved.

Decisional credit is not awarded more than once for the same (or virtually the same) decision going out in more than one case. This includes Order/Motion Decisions, Decisions to Institute, and Rehearing Decisions. This does not include Final Written Decisions, except Final Written Decisions that address multiple joined petitions in the same paper. Authoring judges are required to indicate in the mailing email if the same decision is going out in more than one case.

Limitations on crediting specified above for joinder decisions do not affect consolidated cases.

An ex parte hearing session typically consists of one to six hearings. Two hearing sessions typically are scheduled each hearing day. It is possible that a judge may preside over two hearing sessions in one day.

A final written decision on the merits does not include terminations upon request for adverse judgement (37 C.F.R. § 42.73(b)) or under 37 C.F.R. § 42.72.

Should any crediting changes be recommended for implementation during a fiscal year, Judges will be notified in advance, and provided the opportunity to give comments and feedback.

**Production resources.** In performing the major activities described in the applicable Performance Appraisal Plan, Judges will normally seek efficiency gains and utilize available resources to enhance annual production. Such efficiency gains include effective use of collaboration tools, administrative resources, and any additional resources available as a result of other Board programs (e.g., Detailee program).

## **Item 2. Supporting information related to Criteria for Evaluation**

**Probationary Judges.** The productivity goals are not applied to Judges who are in their first year of the probationary period, relative to their start date. However, a Judge should work toward ramped-up production that ultimately reaches the level of at least the fully successful production level by the end of the ninth month from the start of the Judge's first probationary year. Although some deviation is expected, a new Judge's production might ramp-up as follows (relative to the number of months from the probationary year start date and with a Fully Successful goal of no fewer than 84 for the FY for non-probationary Judges):

- Months 1-3: 30% of Fully Successful goal (6.3 DUs for the quarter);
- Months 4-6: 50% of Fully Successful goal (10.5 DUs for the quarter);
- Months 7-9: 70% of Fully Successful goal (14.7 DUs for the quarter); and



- Months 10-12: 100% of Fully Successful goal (21 DUs for the quarter).

In addition, the new Judge should maintain at least the fully successful production levels throughout the second probationary year. Also, during the probationary period, the Judge should focus on building relationships with their colleagues and basic decision writing concepts. Throughout the probationary period, the new Judge's Lead Judge should collect feedback from the new Judge's mentoring Judges and directly observe the new Judge to aid the new Judge in reaching and maintaining at least the fully successful production goal. If a Lead Judge identifies any concerns with a new Judge's prospect of reaching and maintaining at least the fully successful production goal, then the Lead Judge should discuss the concerns with the new Judge and develop a strategy to address any impediments that are preventing the new Judge from attaining the fully successful production goal. The Lead Judge also should notify a Vice Chief Judge of the concerns so that appropriate assistance can be provided.

**Part-time Judges.** Judges working a part-time schedule have a production goal that is prorated to correspond to the number of hours worked relative to a Judge working a full-time schedule.

### **Item 3. Supporting Information Related to Production Management Tools.**

In managing their production during the fiscal year, Judges may seek (1) additional decisional units (ADUs); (2) a production goal adjustment (PGA); or (3) a deferment of production.

**Additional Decisional Units.** ADUs are credits that may be authorized for work associated with drafting and mailing a particular decision (i.e., uncredited or under-credited time given the circumstances of the decision). For example, ADUs may be authorized where a decision is drafted but not mailed because, for example, the parties to an *inter partes* case settle their dispute, or a patent applicant files a Request for Continued Examination. ADUs also may be authorized where the case is extraordinarily complex, causing the Judge to spend significantly more time than normally required to draft and mail a routine decision.

**Production Goal Adjustment.** Production goal adjustments involve a reduction in the total number of DUs required to reach a certain production goal. Production goal adjustments are not made for the extra work associated with a particular decision, but instead are awarded to account for (1) extenuating circumstances (e.g., FMLA leave); or (2) special projects.

**Extenuating Circumstances.** Production goals may be adjusted for extenuating circumstances including, but not limited to: (1) extended sick leave, defined as sick leave in excess of 8 days (i.e., 64 hours) per fiscal year; (2) extended annual leave, defined as annual leave in excess of 20 days (i.e., 160 hours) per fiscal year; (3) FMLA approved leave (whether annual and/or sick leave is substituted for leave without pay or not); (4) approved leave without pay; (5) military leave; (6) jury duty; and (7) religious compensatory time (where

production was counted during the earning of the compensatory hours).

*Special Projects.* Production goals also may be adjusted for assisting the Board with special projects, such as rulemaking, committee participation, details, and acting in managerial capacity (e.g., as an Acting Lead Judge), that exceed a total of 40 hours (i.e., 40 hour deductible).

Production goal adjustments will be made on an hour-for-hour basis based upon the amount of time expected for each decisional unit as APJ1. For all calculations, decisional units will be rounded up, and production goals will be rounded down, to the nearest whole number. Any adjustments in production goals will be reasonable in view of the circumstances.

**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, unless a Production Goal Adjustment is subsequently authorized.

**Process to Request ADUs, Production Goal Adjustments, and Deferments.** Judges are encouraged to request ADUs, PGAs, and deferments when appropriate, and no such requests, whether granted or denied, will be viewed negatively for performance appraisal purposes.

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. For PGA requests based on sick leave and annual leave, Judges (1) may only make up to two requests per year; and (2) may only make requests after August 1 of each fiscal year. Judges must provide all documentation necessary to validate the PGA request to their Lead Judge, including copies of earnings and leave statements if the PGA relates to extended leave. The documentation should be adequate to support the Judge's calculation of leave taken since the previous fiscal year ended (i.e., a calculation of leave taken since October 1<sup>st</sup> of the previous year).

For PGA requests other than extended leave, Judges should submit a provisional request in advance (unless not possible given the situation) to their Lead Judge. 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 should submit official production goal adjustment requests to their Lead Judge (copying their Vice Chief 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.

Advance approval for PGAs may also be excused if the request is based on a special project that exceeded the anticipated scope indicated at the outset of the project, provided that the Judge in charge of the project approves of the amount of time spent on the project that is the subject of the PGA request. Similarly, a Judge may seek a PGA without prior approval for a combination of special projects that do not, when viewed in isolation, meet the 40-hour “deductible,” but exceed the 40-hour threshold when viewed in combination, provided that the hours spent on each project are consistent with the expectations of the projects in question.

*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.

**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 decisional units required. The Judge must exhibit at least at marginal performance during the rating period specified.

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 are diligent in drafting decisions, but will not receive decisional unit credit until several weeks later after the start of a new rating period. This situation may also occur when decisions are submitted to a paralegal with a sufficient amount of time to review prior to the end of the rating period, but the paralegal is unable to return the reviewed decision with sufficient time remaining in the rating period to allow the decision to mail prior to the end of the rating period. Other reasonable delays outside of the Judge's control will also be taken into consideration,

e.g., management review, a case being considered for precedential or informative designation, etc.

**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.

**Examples of Situations for Additional Decisional Units, Production Goal Adjustments, and Deferment.**

As a general guideline for use in calculating how many ADUs/PGAs to request, Judges should assume that 1 DU correlates to about 20 hours of work. The 20 hours/DU is only a guide for ADU/PGA requests, and there may be situations where the time spent does not adequately correlate to a given DU amount (e.g., the time on a case was spent inefficiently, or on work only indirectly related to the case in question, and the ADU request should not correspond to the hours guideline).

*Additional Decisional Units.* ADU requests should consider the extent to which the time involved in mailing a decision exceeds the average time necessary to complete a decision, and compare that excess amount of time to the 20 hours/DU guideline. ADU requests of less than .5 DUs are not permitted because variations of 10 hours or less from an average case are viewed as normal case-to-case variation.

*Production Goal Adjustment.* PGA requests should use the same 20 hours/DU guide when determining how much of an adjustment to request.

For example, if a Judge spends 150 hours on a rulemaking special project, the Judge may request a PGA based on 110 hours, after subtracting a 40-hour base deductible. The 110 hours corresponds to a PGA of 5.5 DUs using the 20 hours/DU metric as a guide ( $110/20 = 5.5$ ).

A Judge may also seek a PGA for extended sick leave or annual leave. Extended sick leave is defined as total leave in excess of 8 days (64 hours) for a full-time Judge. Extended annual leave is defined as total annual leave in excess of 20 days (160 hours) for a full-time Judge. These leave thresholds are prorated for part-time Judges. PGAs are available for leave taken above these thresholds, subject to the requirements noted above in the process section. As an example, if a Judge uses 12 days (96 hours) of sick leave, to determine the amount of extended sick leave available for a PGA, the Judge subtracts the 8 day threshold from the 12 days of sick leave taken. The result is 4 days, or 32 hours ( $12 \text{ days} - 8 \text{ days} = 4 \text{ days} = 32 \text{ hours}$ ) available for a PGA request. To determine the amount of DUs that correspond to the 4 days/32 hours of extended sick leave, the Judge should divide the 4 days by the 20 hours/DU threshold. In this case, the PGA request would be 1.6 DUs (32 hours divided by 20 hours/DU). Similar calculations can be made for PGAs stemming from using more than 20 days (160 hours) of annual leave. Judges may receive PGAs for both sick leave and annual leave if the Judge exceeds both thresholds. As noted above, the PGA request can only be made after August 1, and the Judge must provide adequate documentation to support the calculation of leave taken.

*Deferment.* Deferments are separate from PGA requests, and can be requested at the end of any quarter. 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. For example, if, during the first quarter of the fiscal year, a Judge uses a combination of annual and sick leave totaling 150 hours, which is many hours more than the Judge has earned at this point in the fiscal year, the Judge may request the Lead Judge to grant a deferment of 150 hours of production when evaluating the Judge's quarterly performance.

**Example Production Assessment Situations.** Production goals may be measured at any time during the fiscal year, including monthly or quarterly, and an APJ is 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, and the APJ must be at least at marginal performance. For all calculations, decisional units will be rounded up, and production goals will be rounded down, to the nearest whole number. For example, if the annual goal is to achieve 75 DUs for a rating above unsatisfactory and an APJ's production is assessed for a particular quarter of the fiscal year, the APJ would be expected to have earned at least 18 DUs ( $75 \text{ DUs required} / 12 \text{ months} = 6.25 \text{ DUs per month}$ ;  $6.25 \text{ DUs per month} * 3 \text{ months} = 18.75 \text{ DUs}$ , rounded down to 18 DUs required) for that quarter to achieve a rating above unsatisfactory.

As noted above, PGAs involve a reduction in the total number of DUs required to reach a certain production goal, which applies to the DU thresholds set forth in the PAP. For example, based on an annual fully successful DU requirement of 84 DUs, a full-time judge with 3.5 approved PGAs over the fiscal year based on a combination of special projects and

leave must achieve 71.5 DUs for a rating above unsatisfactory, 80.5 for a rating of fully successful, 88.5 for a rating of commendable, and 96.5 for a rating of outstanding.

**Miscellaneous**. Judges who have a potentially disproportionate amount of APJ2 and APJ3 work as a result of mentoring or docket imbalance should inform their Lead Judge as soon as possible, so that the issue(s) may be addressed.

Judges will be provided the opportunity to explain and justify low decisional units earned and unusual patterns of case mailing.

The same activity can count for more than one element in certain circumstances, not limited to the following examples. As an example, participation in the AIA Review Committee can count toward both Production and Supporting the Mission of the Board. Further, excess production and volunteering for quarterly closeout appeals can count toward Production and may also count towards Supporting the Mission of the Board.

### **Element 3: Supporting the Mission of the Board**

#### **Item 1. Supporting information related to Major Activities**

Generally, Judges who successfully perform their judicial responsibilities in connection with decision writing will earn at least a Fully Successful rating for Supporting the Mission of the Board. Performing additional activities supporting the Board's mission, such as those described in this section, can augment a Judge's rating in this element. Certain activities traditionally associated with Production, such as excess

production and volunteering for quarterly closeout appeals, may also count toward this element. On the other hand, engaging in activities detrimental to the Board's mission may cause a Judge to drop below a Fully Successful rating in this element.

The totality of a Judge's contributions to supporting the mission of the Board will be used to determine the Judge's overall rating in this element. In this regard, the Board will determine whether the Judge nearly always, usually, more often than not, infrequently, or very rarely or never, performs one or more of the following activities: i.e., supporting PTAB statutory duties and policies, supporting effective decision making, supporting effective PTAB functioning, serving as a role model, and supporting PTAB educational efforts. For reviews, each Judge is responsible for providing their Lead Judge sufficient detail, in writing, describing their contributions to this element (e.g., description of activity, time commitment, and/or level of participation).

Recognition will be given for volunteering for activities supporting the Board's mission, whether or not the Judge was actually selected to participate. Any special circumstances (e.g., extended leave, probationary judge, ARC member) will be taken into account in evaluating a Judge's contribution to supporting the mission of the Board.

### **Lists of examples**

The following lists are provided as examples of the various activities a Judge may perform to support the mission of the Board. The lists are merely illustrative and are not exhaustive. Judges are encouraged to bring to the attention of their Lead Judge any other activities that the Judge believes supports the Board's mission, along

with a brief explanation as to how the activity contributes to Supporting the Mission of the Board.

[a] **Supports PTAB Statutory Duties and Policies**. Example activities include:

- Participating in rulemaking
- Serving on ARC
- Keeping current with the law/cases
- Following applicable laws, regulations, and Office/Board policies
- Attending training sessions
- Assisting in the application of, and the development of policies related to, an aspect of the law, e.g., 35 U.S.C. § 101
- Reviewing and providing comments on decisions nominated for precedential designation
- Maintaining a neutral appearance in proceedings

[b] **Supports Effective Decision Making**. Example activities include:

- Volunteering for quarterly close-out/end-of-year *ex parte* cases
- Prioritizing older over newer cases
- Sending cases for prompt processing and mailing
- Taking on additional *ex parte* cases with an AIA docket
- Meeting deadlines
- No unexplained end-loading

[c] **Supports Effective PTAB Functioning**. Example activities include:

- Volunteering for committee work (even if not necessarily accepted)
- Serving on a committee (PAP, JAC, Training Committee, etc.)
- Assisting in hiring
- Participating in All-Hands activities
- Participating in Regional Office activities
- Traveling for a hearing (Regional Office or Alexandria) while on TEAPP

- Volunteering to take another judge's place in a trial or *ex parte* case
- Volunteering to work on the Combined Federal Campaign (CFC)
- Attending PTAB lunches (Regional Office, Alexandria, Shirlington, TEAPP)
- Responding promptly to inquiries/correspondence
- Utilizing the "Issues of Interest Checklist" to notify management of issues of interest

[d] **Serves as a Role Model.** Example activities include:

- Mentoring new and/or fellow judges, both formally and informally
- Working with and/or supervising law clerks
- Working with and/or supervising patent attorneys
- Working with and/or supervising summer interns
- Working with and/or supervising detailees from other offices
- Participating in panel discussions and providing constructive feedback

[e] **Supports PTAB Educational Efforts.** Example activities include:

- Speaking engagements
- Serving as a Technology Center (TC) group contact
- Teaching/training the examining corps
- Public relations
- Presenting at Training Tuesday
- Attending conference(s) (e.g., PTAB Bench & Bar, AIPLA, PTAB Bar Association, PLI, ChIPs)
- Volunteering at the PTAB Community Day Table

Judges may also support effective PTAB functioning and serve as a role model by performing the following activities:

- Inspiring and empowering others by example and by encouragement to think positively about work related challenges and to seek constructive solutions, to achieve organizational goals and objectives, and to achieve higher levels of performance.

- Where change is required to better meet organizational objectives, adapting well to change (role model) and helping others adapt and professionally thrive in a new and changing organizational environment.

**Decision Circulation and Mailing.** With respect to the circulation and mailing of decisions, there may be some circumstances that impact the ability of a Judge to advance a matter through the circulation process (such as workload, the impact of vacations for that judge or other judges on the panel, pressing special projects). However, Judges should make every effort to respect the time of their colleagues in maintaining an even workflow and to allow other Judges a sufficient amount for review taking into account that there may be other pressures on a reviewing Judge's time.

Statutory deadline cases should be circulated at least 12 business days in advance of the deadline to the panel and at least 6 business days in advance to ARC. Additionally, reexam and reissue appeals should be handled with special dispatch and reviewed before ex parte appeals.

## **Item 2. Supporting information related to Criteria for Evaluation**

The rating official shall consider satisfaction of this element based upon a reasonable person standard.

#### **Element 4: Professionalism**

##### **Item 1. Supporting information related to Criteria for Evaluation**

The rating official shall consider satisfaction of this element based upon a reasonable person standard.

## **Supporting Document to Administrative Patent Judge<sup>1</sup> Performance Appraisal Plan**

### **Statement of Policy for Interpreting the Performance Appraisal Plan.**

Because the work at the Board differs from Judge to Judge in terms of subject matter and jurisdiction, the Performance Appraisal Plan will be applied as appropriate in order to take into account the work and activities performed by a particular Judge throughout the year. The Performance Appraisal Plan is intended to be applied holistically so that the raters achieve uniform application for equivalent contributions.

Board Management will strive to provide consistency in application of the Performance Appraisal Plan.

Judges are rated against the standards set forth in the Performance Appraisal Plan, and are not rated by comparison to other Judges. This Supporting Document is intended to provide additional transparency for Judges as to the standards and activities mentioned in the applicable Performance Appraisal Plan.

### **Element 1: Quality**

**ARC Comments.** ARC comments are not binding, but instead suggestions that a panel may consider in preparing decisions.

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<sup>1</sup> The description in Elements 1, 2, and 4 of this document are also used as supporting documentation for the Lead Administrative Patent Judge Performance Appraisal Plan (LAPJ PAP), with differences noted below. The description in Element 3 does not apply to the LAPJ PAP. The Performance Appraisal Plans shall be interpreted based upon a reasonable person standard.



**Decision Circulation and Mailing.** With respect to the circulation and mailing of decisions, there may be some circumstances that impact the ability of a Judge to advance a matter through the circulation process (such as workload, the impact of vacations for that judge or other judges on the panel, pressing special projects). However, Judges should make every effort to respect the time of their colleagues in maintaining an even workflow and to allow other Judges a sufficient amount for review taking into account that there may be other pressures on a reviewing Judge's time.

Statutory deadline cases should be circulated at least 12 business days in advance of the deadline to the panel and at least 6 business days in advance to ARC. Additionally, reexam and reissue appeals should be handled with special dispatch and reviewed before *ex parte* appeals.

## **Element 2: Production**

### **Item 1. Supporting information related to Major Activities**

**Crediting.** Decisional units (DUs) associated with *ex parte* appeals, *ex parte* reexamination proceeding appeals, *inter partes* reexamination proceeding appeals, and AIA proceedings are credited as follows in the table below. Decisional units associated with interference and derivation decisions should be discussed with a Lead Judge.<sup>2</sup>

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<sup>2</sup> Throughout this document, if the document instructs a Judge to discuss an issue with or consult with a Lead Judge, if the Judge is a Lead Judge, that instruction should be construed as a similar instruction for the Lead Judge to discuss the issue or consult with their Vice Chief Judge.

<b>Activity</b>	<b>Credit</b>	<b>Exceptions</b>	<b>Notes</b>
<i>Ex parte</i> Appeal Decision	1.1 DUs	<i>Ex parte</i> Appeal Decision prepared with assistance of Patent Attorney = 0.6 DUs	--
<i>Ex parte</i> Appeal Decision addressing 35 U.S.C. § 101	1.6 DUs	<i>Ex parte</i> Appeal Decision addressing 35 U.S.C. § 101 prepared with assistance of Patent Attorney = 0.8 DUs	--
<i>Ex parte</i> Reexamination Decision	2.5 DUs	--	--
<i>Inter partes</i> Reexamination Decision	4.0 DUs	Decisions issued under 37 C.F.R. § 41.77(f) will be awarded 2.5 DUs.	--
Reexamination Rehearing Decision	1.0 DUs	--	--
<i>Ex parte</i> and Reexamination hearing Under 35 U.S.C. § 134	0.3 DUs per APJ per hearing day	--	Credit assigned per hearing session scheduled, not based on the number of hearings that actually occur during the hearing session.
AIA Trial Institution Decision for <i>Inter Partes</i> Reviews (IPR DI)	5.5 DUs	Joinder Institution Decisions (including decisions denying institution) will be awarded 1.0 DUs for the underlying decision and 0.5 DUs for the Motion Decision.	AIA Institution Decision credit includes credit for the associated scheduling order. AIA DI Decision credit DOES NOT include credit for associated motions, which are credited separately.
AIA Trial Institution Decision for Covered Business Method Reviews and Post-Grant Reviews (CBM / PGR DI)	6.0 DUs	Joinder Institution Decisions will be awarded 1.0 DUs for the underlying decision and 0.5 DUs for the Motion Decision.	AIA Institution Decision credit includes credit for the associated scheduling order. AIA DI Decision credit DOES NOT include credit for associated motions, which are credited separately.
AIA Trial Final Written Decision for <i>Inter Partes</i> Reviews (IPR FWD)	6.5 DUs	--	Final Written Decision on the merits. AIA Final Written Decision credit DOES NOT include credit for associated motions, which are credited separately.
AIA Trial Final Written Decision for Covered Business Method Reviews and Post-Grant Reviews (CBM	7.5 DUs	--	Final Written Decision on the merits. AIA Final Written Decision credit DOES NOT include credit for associated motions, which are credited

/PGR FWD)			separately.
AIA Trial Rehearing Decision	1.0 DUs	--	--
AIA Trial Decision on Motion to Amend – Preliminary Guidance	1.0 DUs	--	--
AIA Trial Final Written Decision on Revised Motion to Amend	1.5 DUs	--	A Final Written Decision on a Motion to Amend where no Revised Motion to Amend was filed is awarded 1.0 DUs, as indicated below.
AIA Trial Final Written Decision on Motion to Amend (no Revised Motion filed)	1.0 DUs	--	--
AIA Trial Decision on Motion to Exclude or Motion to Strike	0.2 DUs	--	--
AIA Trial Order/Motion Decision	0.5 DUs	Orders that involve solely ministerial recordkeeping will be awarded 0.1 DUs. Examples of such orders include: Pro Hac Vice orders; orders authorizing withdrawal of an attorney; orders revising scheduling orders; orders included in <i>initial</i> conference call summaries; conference calls satisfying the Motion to Amend conference requirement; conference; conference call summaries that do not include an order; and orders to expunge documents, correct clerical errors, or allow additional pages in a paper. If the panel deems it appropriate, such orders may be issued as single judge orders.	This includes any other paper that is not an Institution Decision, Final Written Decision, or Rehearing Decision.

By default, the authoring Judge is assigned the entire amount of credit due for a decision. Panel members may divide the credit for a decision amongst themselves, so long as they indicate in an email to crediting

([PTABAppealsCrediting@uspto.gov](mailto:PTABAppealsCrediting@uspto.gov) or [PTABAIACrediting@uspto.gov](mailto:PTABAIACrediting@uspto.gov))

how much credit each member will receive of the standard total credit for the decision. Panels may wish to designate authorship of such decisions as “Per Curiam.”

If a Judge works on a concurrence, dissent, or decision on remand, the Judge may submit a request for Additional Decisional Units (“ADUs”), if appropriate, depending on the nature of the concurrence, dissent, or decision on remand and the amount of work involved.

Decisional credit is not awarded more than once for the same (or virtually the same) decision going out in more than one case. This includes Order/Motion Decisions, Decisions to Institute, and Rehearing Decisions. This does not include Final Written Decisions, except Final Written Decisions that address multiple joined petitions in the same paper. Authoring judges are required to indicate in the mailing email if the same decision is going out in more than one case.

Limitations on crediting specified above for joinder decisions do not affect consolidated cases.

An ex parte hearing session typically consists of one to six hearings. Two hearing sessions typically are scheduled each hearing day. It is possible that a judge may preside over two hearing sessions in one day.

A final written decision on the merits does not include terminations upon request for adverse judgement (37 C.F.R. § 42.73(b)) or under 37 C.F.R. § 42.72.

Should any crediting changes be recommended for implementation during a fiscal year, Judges will be notified in advance, and provided the opportunity to give comments and feedback.

**Production resources**. In performing the major activities described in the applicable Performance Appraisal Plan, Judges will normally seek efficiency gains and utilize available resources to enhance annual production. Such efficiency gains include effective use of collaboration tools, administrative resources, and any additional resources available as a result of other Board programs (e.g., Detailee program).

## **Item 2. Supporting information related to Criteria for Evaluation**

**Probationary Judges**. The productivity goals are not applied to Judges who are in their first year of the probationary period, relative to their start date. However, a Judge should work toward ramped-up production that ultimately reaches the level of at least the fully successful production level by the end of the ninth month from the start of the Judge's first probationary year. Although some deviation is expected, a new Judge's production might ramp-up as follows (relative to the number of months from the probationary year start date and with a Fully Successful goal of no fewer than 84 for the FY for non-probationary Judges):

- Months 1-3: 30% of Fully Successful goal (e.g., 6.3 DUs for the quarter);
- Months 4-6: 50% of Fully Successful goal (e.g., 10.5 DUs for the quarter);
- Months 7-9: 70% of Fully Successful goal (e.g., 14.7 DUs for the quarter); and

- Months 10-12: 100% of Fully Successful goal (e.g., 21 DUs for the quarter).

In addition, the new Judge should maintain at least the fully successful production levels throughout the second probationary year. Also, during the probationary period, the Judge should focus on building relationships with their colleagues and basic decision writing concepts. Throughout the probationary period, the new Judge's Lead Judge should collect feedback from the new Judge's mentoring Judges and directly observe the new Judge to aid the new Judge in reaching and maintaining at least the fully successful production goal. If a Lead Judge identifies any concerns with a new Judge's prospect of reaching and maintaining at least the fully successful production goal, then the Lead Judge should discuss the concerns with the new Judge and develop a strategy to address any impediments that are preventing the new Judge from attaining the fully successful production goal. The Lead Judge also should notify a Vice Chief Judge of the concerns so that appropriate assistance can be provided.

**Part-time Judges.** Judges working a part-time schedule have a production goal that is prorated to correspond to the number of hours worked relative to a Judge working a full-time schedule.

### **Item 3. Supporting Information Related to Production Management Tools.**

In managing their production during the fiscal year, Judges may seek (1) additional decisional units (ADUs); (2) a production goal adjustment (PGA); or (3) a deferment of production.

**Additional Decisional Units.** ADUs are credits that may be authorized for work associated with drafting and mailing a particular decision (i.e., uncredited or under-credited time given the circumstances of the decision). For example, ADUs may be authorized where a decision is drafted but not mailed because, for example, the parties to an *inter partes* case settle their dispute, or a patent applicant files a Request for Continued Examination. ADUs also may be authorized where the case is extraordinarily complex, causing the Judge to spend significantly more time than normally required to draft and mail a routine decision.

**Production Goal Adjustment.** Production goal adjustments involve a reduction in the total number of DUs required to reach a certain production goal. Production goal adjustments are not made for the extra work associated with a particular decision, but instead are awarded to account for (1) extenuating circumstances (e.g., FMLA leave); or (2) special projects.

*Extenuating Circumstances.* Production goals may be adjusted for extenuating circumstances including, but not limited to: (1) extended sick leave, defined as sick leave in excess of 8 days (i.e., 64 hours) per fiscal year; (2) extended annual leave, defined as annual leave in excess of 20 days (i.e., 160 hours) per fiscal year; (3) FMLA approved leave (whether annual and/or sick leave is substituted for leave without pay or not); (4) approved leave without pay; (5) military leave; (6) jury duty; and (7) religious compensatory time (where

production was counted during the earning of the compensatory hours).

*Special Projects.* Production goals also may be adjusted for assisting the Board with special projects, such as rulemaking, committee participation, details, and acting in managerial capacity (e.g., as an Acting Lead Judge), that exceed a total of 40 hours (i.e., 40 hour deductible).

Production goal adjustments will be made on an hour-for-hour basis based upon the amount of time expected for each decisional unit as APJ1. For all calculations, decisional units will be rounded up, and production goals will be rounded down, to the nearest whole number. Any adjustments in production goals will be reasonable in view of the circumstances.

For Lead Judges, Vice Chief Judges will weigh the needs of the Board in determining appropriate production goals.

**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, unless a Production Goal Adjustment is subsequently authorized.

**Process to Request ADUs, Production Goal Adjustments, and Deferments.** Judges are encouraged to request ADUs, PGAs, and



deferments when appropriate, and no such requests, whether granted or denied, will be viewed negatively for performance appraisal purposes.

*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.* For PGA requests based on sick leave and annual leave, Judges (1) may only make up to two requests per year; and (2) may only make requests after August 1 of each fiscal year. Judges must provide all documentation necessary to validate the PGA request to their Lead Judge, including copies of earnings and leave statements if the PGA relates to extended leave. The documentation should be adequate to support the Judge's calculation of leave taken since the previous fiscal year ended (i.e., a calculation of leave taken since October 1<sup>st</sup> of the previous year).

For PGA requests other than extended leave, Judges should submit a provisional request in advance (unless not possible given the situation) to their Lead Judge. 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 should submit official production goal adjustment requests to their Lead Judge (copying their Vice Chief 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. Lead Judges are expected to spend significant time on special projects and need not submit provisional requests in advance of working on special projects. Instead, a Lead Judge will consult with their Vice Chief Judge to determine the appropriate production goals in light of the circumstances and Board need.

Advance approval for PGAs may also be excused if the request is based on a special project that exceeded the anticipated scope indicated at the outset of the project, provided that the Judge in charge of the project approves of the amount of time spent on the project that is the subject of the PGA request. Similarly, a Judge may seek a PGA without prior approval for a combination of special projects that do not, when viewed in isolation, meet the 40-hour “deductible,” but exceed the 40-hour threshold when viewed in combination, provided that the hours spent on each project are consistent with the expectations of the projects in question.

*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.

**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 decisional units required. The Judge must exhibit at least at marginal performance during the rating period specified. A Lead Judge will consult with their Vice Chief Judge to determine the appropriate production goals for a particular point in time in light of the circumstances, including special project work, section management responsibilities, and Board need.

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 are diligent in drafting decisions, but will not receive decisional unit credit until several weeks later after the start of a new rating period. This situation may also occur when decisions are submitted to a paralegal with a sufficient amount of time to review prior to the end of the rating period, but the paralegal is unable to return the reviewed decision with sufficient time remaining in the rating period to allow the decision to mail prior to the end of the rating period. Other reasonable delays outside of the Judge's control will also be taken into consideration, e.g., management review, a case being considered for precedential or informative designation, etc.

**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.

**Examples of Situations for Additional Decisional Units, Production Goal Adjustments, and Deferment.**

As a general guideline for use in calculating how many ADUs/PGAs to request, Judges should assume that 1 DU correlates to about 20 hours of work. The 20 hours/DU is only a guide for ADU/PGA requests, and there may be situations where the time spent does not adequately correlate to a given DU amount (e.g., the time on a case was spent inefficiently, or on work only indirectly related to the case in question, and the ADU request should not correspond to the hours guideline).

Additional Decisional Units. ADU requests should consider the extent to which the time involved in mailing a decision exceeds the average time necessary to complete a decision, and compare that excess amount of time to the 20 hours/DU guideline. ADU requests of less than .3 DUs are not permitted because variations of 6 hours or less from an average case are viewed as normal case-to-case variation.

Production Goal Adjustment. PGA requests should use the same 20 hours/DU guide when determining how much of an adjustment to request. For example, if a Judge spends 150 hours on a rulemaking special project, the Judge may request a PGA based on 110 hours, after subtracting a 40-hour base deductible. The 110 hours corresponds to a PGA of 5.5 DUs using the 20 hours/DU metric as a guide ( $110/20 = 5.5$ ).

A Judge may also seek a PGA for extended sick leave or annual leave. Extended sick leave is defined as total leave in excess of 8 days (64 hours) for a full-time Judge. Extended annual leave is defined as total annual leave in excess of 20 days (160 hours) for a full-time Judge. These leave thresholds are prorated for part-time Judges. PGAs are available for leave taken above these thresholds, subject to the requirements noted above in the process section. As an example, if a Judge uses 12 days (96 hours) of sick leave, to determine the amount of extended sick leave available for a PGA, the Judge subtracts the 8 day threshold from the 12 days of sick leave taken. The result is 4 days, or 32 hours ( $12 \text{ days} - 8 \text{ days} = 4 \text{ days} = 32 \text{ hours}$ ) available for a PGA request. To determine the amount of DUs that correspond to the 4 days/32 hours of extended sick leave, the Judge

should divide the 4 days by the 20 hours/DU threshold. In this case, the PGA request would be 1.6 DUs (32 hours divided by 20 hours/DU). Similar calculations can be made for PGAs stemming from using more than 20 days (160 hours) of annual leave. Judges may receive PGAs for both sick leave and annual leave if the Judge exceeds both thresholds. As noted above, the PGA request can only be made after August 1, and the Judge must provide adequate documentation to support the calculation of leave taken.

*Deferment.* Deferments are separate from PGA requests, and can be requested at the end of any quarter. 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. For example, if, during the first quarter of the fiscal year, a Judge uses a combination of annual and sick leave totaling 150 hours, which is many hours more than the Judge has earned at this point in the fiscal year, the Judge may request the Lead Judge to grant a deferment of 150 hours of production when evaluating the Judge's quarterly performance.

**Example Production Assessment Situations.** Production goals may be measured at any time during the fiscal year, including monthly or quarterly, and an APJ is 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, and the APJ must be at least at marginal performance. For all calculations, decisional units will be rounded up, and production goals will be rounded down, to the nearest whole number. For example, if the annual goal is to achieve 75 DUs for a rating above unsatisfactory and an APJ's production is assessed for a particular quarter

of the fiscal year, the APJ would be expected to have earned at least 18 DUs (75 DUs required / 12 months = 6.25 DUs per month; 6.25 DUs per month \* 3 months = 18.75 DUs, rounded down to 18 DUs required) for that quarter to achieve a rating above unsatisfactory.

As noted above, PGAs involve a reduction in the total number of DUs required to reach a certain production goal, which applies to the DU thresholds set forth in the PAP. For example, based on an annual fully successful DU requirement of 84 DUs, a full-time judge with 3.5 approved PGAs over the fiscal year based on a combination of special projects and leave must achieve 71.5 DUs for a rating above unsatisfactory, 80.5 for a rating of fully successful, 88.5 for a rating of commendable, and 96.5 for a rating of outstanding.

**Miscellaneous.** Judges who have a potentially disproportionate amount of APJ2 and APJ3 work as a result of mentoring or docket imbalance should inform their Lead Judge as soon as possible, so that the issue(s) may be addressed. Section Lead Judges are expected to be paneled with members of their section as part of section management responsibilities. Thus, Section Lead Judges may have a higher proportion of APJ2 and APJ3 work compared to non-Section Lead Judges.

Judges will be provided the opportunity to explain and justify low decisional units earned and unusual patterns of case mailing.

The same activity can count for more than one element in certain circumstances, not limited to the following examples. As an example,

participation in the AIA Review Committee can count toward both Production and Supporting the Mission of the Board. Further, excess production and volunteering for quarterly closeout appeals can count toward Production and may also count towards Supporting the Mission of the Board.

### **Element 3: Supporting the Mission of the Board**

#### **Item 1. Supporting information related to Major Activities**

Generally, Judges who successfully perform their judicial responsibilities in connection with decision writing will earn at least a Fully Successful rating for Supporting the Mission of the Board. Performing additional activities supporting the Board's mission, such as those described in this section, can augment a Judge's rating in this element. Certain activities traditionally associated with Production, such as excess production and volunteering for quarterly closeout appeals, may also count toward this element. On the other hand, engaging in activities detrimental to the Board's mission may cause a Judge to drop below a Fully Successful rating in this element.

The totality of a Judge's contributions to supporting the mission of the Board will be used to determine the Judge's overall rating in this element. In this regard, the Board will determine whether the Judge nearly always, usually, more often than not, infrequently, or very rarely or never, performs one or more of the following activities: i.e., supporting PTAB statutory duties and policies, supporting effective decision making, supporting effective PTAB functioning, serving as a role model, and supporting PTAB educational efforts. For reviews, each Judge is responsible for providing their Lead Judge sufficient detail, in writing, describing their contributions to



this element (e.g., description of activity, time commitment, and/or level of participation).

Recognition will be given for volunteering for activities supporting the Board's mission, whether or not the Judge was actually selected to participate. Any special circumstances (e.g., extended leave, probationary judge, ARC member) will be taken into account in evaluating a Judge's contribution to supporting the mission of the Board.

### **Lists of examples**

The following lists are provided as examples of the various activities a Judge may perform to support the mission of the Board. The lists are merely illustrative and are not exhaustive. Judges are encouraged to bring to the attention of their Lead Judge any other activities that the Judge believes supports the Board's mission, along with a brief explanation as to how the activity contributes to Supporting the Mission of the Board.

[a] **Supports PTAB Statutory Duties and Policies**. Example activities include:

- Participating in rulemaking
- Serving on ARC
- Keeping current with the law/cases
- Following applicable laws, regulations, and Office/Board policies
- Attending training sessions
- Assisting in the application of, and the development of policies related to, an aspect of the law, e.g., 35 U.S.C. § 101
- Reviewing and providing comments on decisions nominated for precedential designation
- Maintaining a neutral appearance in proceedings

[b] **Supports Effective Decision Making**. Example activities include:

- Volunteering for quarterly close-out/end-of-year *ex parte* cases
- Prioritizing older over newer cases
- Sending cases for prompt processing and mailing
- Taking on additional *ex parte* cases with an AIA docket
- Meeting deadlines
- No unexplained end-loading

[c] **Supports Effective PTAB Functioning**. Example activities include:

- Volunteering for committee work (even if not necessarily accepted)
- Serving on a committee (PAP, JAC, Training Committee, etc.)
- Assisting in hiring
- Participating in All-Hands activities
- Participating in Regional Office activities
- Traveling for a hearing (Regional Office or Alexandria) while on TEAPP
- Volunteering to take another judge's place in a trial or *ex parte* case
- Volunteering to work on the Combined Federal Campaign (CFC)
- Attending PTAB lunches (Regional Office, Alexandria, Shirlington, TEAPP)
- Responding promptly to inquiries/correspondence
- Utilizing the "Issues of Interest Checklist" to notify management of issues of interest

[d] **Serves as a Role Model**. Example activities include:

- Mentoring new and/or fellow judges, both formally and informally
- Working with and/or supervising law clerks
- Working with and/or supervising patent attorneys
- Working with and/or supervising summer interns
- Working with and/or supervising detailees from other offices

- Participating in panel discussions and providing constructive feedback

[e] **Supports PTAB Educational Efforts**. Example activities include:

- Speaking engagements
- Serving as a Technology Center (TC) group contact
- Teaching/training the examining corps
- Public relations
- Presenting at Training Tuesday
- Attending conference(s) (e.g., PTAB Bench & Bar, AIPLA, PTAB Bar Association, PLI, ChIPs)
- Volunteering at the PTAB Community Day Table

Judges may also support effective PTAB functioning and serve as a role model by performing the following activities:

- Leading and encouraging employees to think positively about work related challenges and to seek constructive solutions, to achieve organizational goals and objectives, and to achieve higher levels of performance.
- Where change is required to better meet organizational objectives, adapting well to change (role model) and helping others adapt and professionally thrive in a new and changing organizational environment.

**Decision Circulation and Mailing**. With respect to the circulation and mailing of decisions, there may be some circumstances that impact the ability of a Judge to advance a matter through the circulation process (such as workload, the impact of vacations for that judge or other judges on the panel, pressing special projects). However, Judges should make every effort to respect the time of their colleagues in maintaining an even workflow and to allow other Judges a sufficient amount for review taking into account that there may be other pressures on a reviewing Judge's time.

Statutory deadline cases should be circulated at least 12 business days in advance of the deadline to the panel and at least 6 business days in advance to ARC. Additionally, reexam and reissue appeals should be handled with special dispatch and reviewed before ex parte appeals.

**Item 2. Supporting information related to Criteria for Evaluation**

The rating official shall consider satisfaction of this element based upon a reasonable person standard.

**Element 4: Professionalism**

**Item 1. Supporting information related to Criteria for Evaluation**

The rating official shall consider satisfaction of this element based upon a reasonable person standard.