

Position Classification Standard for Patent Attorney Series, GS-1222

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SERIES DEFINITION

This series includes positions involved with performing professional legal, scientific, and technical work concerning patents including rendering opinions on validity and infringement of patents, negotiation of patent licenses, settlement of patent claims, negotiation of patent clauses in contracts, providing professional legal advice to contracting officers and other procurement personnel on patent matters, and the preparation and/or presentation of briefs and arguments before the Patent Office or before the Federal Courts. Also included in this series are positions which, in addition to the foregoing, may be involved with performing similar professional legal functions regarding trademark. The work of this series requires training equivalent to that represented by graduation (with a degree in one of the scientific or engineering disciplines) from an accredited college or university, in addition to a degree from a recognized law school and admission to the bar.

While the above series definition applies to all Federal Government patent attorneys, these standards apply only to those positions in the Patent Office whose incumbents are concerned with representing the Patent Office in appeals and suits in the Federal courts, in the adjudication of petitions to the Commissioner of Patents, and in the making of a variety of other legal determinations in patent and trademark inter and ex partes proceedings, and in such matters as application for registration to practice before the Patent Office and disciplinary proceedings against attorneys and agents. The standards discuss only the GS-15 grade level but this does not preclude the use of lower levels when the level of responsibility of a patent attorney is not as great or when his cases are not as difficult as those described at the GS-15 level. These standards supersede the Patent Attorney standards issued under the code of P-1235-0 in December 1946 and amended in March 1957.

PATENT ATTORNEY, GS-1222-15

1. Nature of Cases or Legal Endeavor

GS-15 patent attorneys are concerned with cases and legal endeavors of a nature described below:

The cases involve highly technical and controversial scientific, engineering, and legal considerations which require extensive research and analysis, including the eliciting and evaluating of expert testimony.

A significant number of these cases have an important economic and technological impact on a major industry. Often the patent in question is of considerable interest to an applicant because he stands to gain or lose a million dollars or more depending on the final disposition of the case. The patent often involves the possible "opening up" of new technological horizons in a particular industry. As a result, cases of this nature are contested vigorously by extremely capable "outside" legal talent.

Petitions adjudicated by GS-15 patent attorneys require analysis of very complex factual and legal questions and a high order of original and creative legal endeavor in order to obtain a reasonable balance of conflicting interests (e.g., petitions which arise in quasi-judicial inter partes contests conducted in the Patent Office which may require intervention by the Commissioner, and petitions for the institution of public use proceedings).

Other legal endeavors typical of this level are: (1) serving as members of the Committee on Enrollment which receives and acts upon applications for registration to practice before the Patent Office; (2) investigating complaints of alleged unprofessional conduct by registered patent attorneys, agents, and trademark practitioners and, in appropriate instances, initiating and conducting, on behalf of the Solicitor, disciplinary proceedings against patent attorneys, agents, and trademark practitioners; (3) conducting studies of phases of (a) patent and trademark law, (b) regulations promulgated thereunder, or (c) policies or procedures of the Patent Office and making recommendations as to whatever amendments or revisions are needed or drafting proposed Orders affecting the administration of patent and trademark law; (4) conferring with legislative representatives on the probable form and effect of proposed legislation.

2. Level of Responsibility

GS-15 patent attorneys are responsible for the complete preparation, argument, and general conduct of court cases, petitions and other legal endeavors discussed above in 1., Nature of Cases or Legal Endeavor.

a. Supervision and Guidance Received

GS-15 patent attorneys work under the general supervision of the Solicitor. In connection with court assignments and disciplinary proceedings supervision is ordinarily limited to a cursory review (by the Solicitor) of briefs and pleadings for the purpose of determining conformance with general policy. The Solicitor may be consulted occasionally on questions of broad policy. Recommended decisions on petitions, general requests, and inquiries are ordinarily forwarded directly to the Commissioner or Assistant Commissioner without review. All legal work relating to the granting of patents and trademark registrations is excluded from supervisory control of the Department of Commerce legal office.

Guides are statutes, judicial rulings, and other precedents, where available, which relate to the granting of patents and of trademark registrations. Court work requires familiarity with and use of the adjective rules of law and of the courts.

The aforesaid guides usually furnish, however, only a general indication of the factors which govern the procedure to be followed or the decision to be reached. As to most matters coming before incumbents for disposition, there will be no controlling guide which is specifically applicable.

Court assignments at this level may involve the interpretation and exposition of Patent Office views or the development of Patent Office policy on those phases of

patent and trademark law which have been seldom litigated or which are controversial. In addition, other guidelines appropriate to duties at this level are the standards of professional conduct applicable to attorneys practicing before the courts of the United States, procedures and precedents applicable to disciplinary proceedings, the law of property, and the precedents and regulations governing inter partes proceedings.

b. Personal Work Contacts

In addition to the actual argument of cases in court, GS-15 patent attorneys frequently hold pretrial conferences with opposing counsel respecting evidence to be presented in court proceedings. Conferences with the Commissioner of Patents or the Assistant Commissioners are frequently required in connection with recommended decisions and responses to inquiries. GS-15 patent attorneys also confer with legislative and departmental representatives regarding the form and effect of proposed Patent Office legislation.

c. Scope and Effect of Commitments, Conclusions, and Actions Commitments made at this level are those made orally during arguments or submitted in briefs when representing the Patent Office in suits in the Federal Courts. These commitments represent the final binding position of the Patent Office, and the results of the suits frequently turn on these remarks. Commissioner's decisions on petitions and requests prepared by Patent Attorneys GS-15 are essentially final in effect -- efforts to obtain court review on the merits of such decisions being notoriously unsuccessful. Decisions on such petitions and requests, as for the recording of instruments, striking of applications, acceptance of applications, etc., make essentially final disposition of substantial property rights.