Position Classification Standard for Design Patent Examining Series, GS-1226

Table of Contents

SERIES DEFINITION

This series includes all classes of positions the duties of which are to supervise or perform professional, technical and legal work involved in the granting or denial of applications for design patents. Such work involves the employment of basic concepts of the natural sciences, techniques of the industrial arts, fundamentals of aesthetic and functional design, and the application of statutes and precedent procedures in design patent matters.

SERIES COVERAGE AND TITLE STRUCTURE

This standard supersedes and is to be substituted for the standard for the Design Patent Examining Series, GS-1226, issued in November 1946, under the code P-1210-0. Positions in this series are located organizationally in the U.S. Patent Office.

This standard applies to nonsupervisory Design Patent Examiner positions. In addition to the performance of examining assignments, some nonsupervisory positions at the higher levels in this series include incidental responsibility for control or review of the work of others.

Supervisory positions are identified by the addition of the term, "Supervisory" at the beginning of the basic title, thus, "Supervisory Design Patent Examiner."

BACKGROUND INFORMATION

Design Patent Examining is specifically excluded from the coverage of the Patent Examining Series, GS-1224, because it is considered sufficiently different from other patent examining to be treated as a separate series. Patent examining exclusive of Design Patent Examining is referred to for convenience in these standards as utility patent examining.

The difference in subject-matter coverage between design and utility patents can be illustrated by the exposed elements of search radar equipment on luxury ocean liners, which are designed for beauty and sleekness of appearance as well as for performance, even to the extent of putting false funnels on diesel ships. It is for form and appearance reasons that the radar reflectors on the superstructure are curved, streamlined shapes with visual appeal rather than the series of flat, staggered reflectors that would be more efficient and less sightly. A design patent examiner would reject the series of flat reflectors as the antenna design logically implied by the radar system, which would be properly within the area of utility patents.

Similarly, if the openings in an automobile grille are positioned in such a way that greater cooling of the radiator is possible than had been true, a utility patent may be issued; if, however, the primary concern of the positioning of such openings is one of aesthetics, only a design patent may be sought.
A utility patent for a refrigerator door might be concerned with weight distribution and counterbalancing in order to obtain a sure closing action; a design patent however would be

concerned with proportion and lines of the door. In this example, either patent would be concerned with aspects of size and shape of the door.

A design patent is different in scope and purpose from a utility patent. The claims of a design patent must be directed to the form and appearance of the invention, while those of a utility patent must be directed to its structure and function. When the two are indistinguishable and manifestly the result of the same inventive idea, only one patent may be issued.

In the design application there is but one formal claim which refers to the drawing in standard terminology for virtually the entire description of the invention. In a utility application there may be any number of separate claims, each differing from the others in terminology, in scope, and perhaps in type.

In a design patent application, the basis of the inventor's claim resides in a drawing which contains enough views for complete representation of the invention. It identifies the object with a title and describes the figures of the drawings as to views represented. It may contain description of the appearance but not of manner of construction nor of the function of the object. In a utility patent application, the basis of the inventor's claim is defined by the wording of a series of appended claims, illustrated rather than limited by related drawings.

The approach in the examination of both kinds of applications is basically the same, and much of the knowledge applied and judgment used is similar. However, the determinations of novelty or equivalence made by Design Patent Examiners are based on a discrete subject-matter area of design precepts and principles. A separate body of legal precedent applies, with its own limitations, uncertainties, and contradictions. Design Patent Examining does not require the range and depth of technological and scientific analysis which are basic to evaluation of novelty and equivalence in some complex areas of utility patent examining.

It will be evident from the above explanation that the terminology of patent examining does not have the same implications in Design Patent Examining, GS-1226, as in utility Patent Examining, GS-1224. For example, the principal element of a design patent application is the drawing, which constitutes the claim, without separate specification or other formal statement.

Novelty, patentability, and infringement are judged on the basis of the drawing. In comparison, a utility patent application includes a specification, a drawing if the invention can be illustrated, and is judged on the scope of the formal statements of claim which define the distinctive features of the claimed invention.

Within its broad responsibility for encouraging industrial research and development activities and promoting commerce, the U.S. Patent Office is charged with the evaluation of the products of the nation's designers and the protection, in terms of patent rights, of those designs which prove to be novel and inventive. The novelty and invention residing in a design is assessed in the Patent Office by a Design Patent Examiner. In making determinations as to patentability, the Design Patent Examiner considers the problems and rights of the inventor on one hand and the general public on the other. He is, in effect, an attorney for the public, negotiating with applicant's counsel to insure that the applicant does not gain the right to exclude the public for a

period of years from enjoying freely the benefits of something for which he deserves no patent protection. At the same time, the Design Patent Examiner must be cautious not to preclude the applicant from receiving patent protection for his own valuable contribution.

The Design Patent Examiner searches utility patent arts in order to preclude double patenting of the same invention, and makes patent searches in many of the same technical reference areas employed by utility Patent Examiners. Based on the specifications and claims of a utility patent of application, the Design Patent Examiner determines whether the functional as opposed to the visual aspects of the subject under evaluation are dominant. When this is found to be true, the design application is rejected.

The direct application of utility references to reject design applications is commonplace and the Design Patent Examiner searches the utility arts to insure that he has all pertinent references, for, as the courts have said: "It is well established that a mechanical patent may anticipate a design patent application or vice versa."

For administrative convenience, the design patent classification system divides design patents into classes according to the item of manufacture involved. The resulting classes of design patents (e.g., brushing and scrubbing tools, builders hardware, harrows and diggers, locks and latches, steam valves, etc.) vary in size and scope, including any number of subclasses. Incoming design patent applications are tentatively classified on receipt and assigned to the examiner who has been designated to handle the class. Design Patent Examiner assignments normally include several related classes with some common features (i.e., a group of related categories of design patents such as statuary and medallions in the field of fine arts).

CLASSIFYING POSITIONS IN THIS SERIES

Grade levels of positions in this series can be determined by reference to two broad criteria, i.e., (1) Nature and Extent of Performance of Examining Functions, and (2) Contact and Commitment Authority.

Factor I -- *Nature and extent of performance of examining functions*

This factor is made up of two elements: (a) the level of difficulty of design patent examining functions assigned, and (b) the extent of supervisory assistance and review received.

The three levels of difficulty of design patent examining functions are:

1. **Basic**. -- These are functions which must be learned by all examiners at trainee levels and which are a routine part of all design patent examinations.

2. **Advanced**. -- These are more difficult functions which (a) can be independently performed only by experienced examiners, and (b) require a thorough mastery of "Basic" functions for their comprehensive and application.

3. **Legal**. -- These are functions which require (a) a thorough mastery of "Basic" and"Advanced" functions, and, in addition, (b) a sound understanding of those aspects of procedural and substantive law generally, and of the statutory and case law applied to patents specifically, which are applicable to the design patent examining process.

Typical functions in each group are discussed in detail in Section VI.

Supervisory guidance and review are concerned with (1) the extent of preliminary advice and discussion of work in progress, and (2) the nature of review of completed work.

-- Preliminary guidance and advice on work in progress are received on all work performed at the GS-5 and GS-7 levels. As the examiner progresses, he receives guidance on only the more difficult aspects of assigned applications. Preliminary guidance is rarely required on any aspect of work at grade GS-12 and above.

-- The review of work completed at the GS-7 level consists of a complete study and discussion with the examiner of the basis of any recommendation. At intermediate levels, the depth of review is selectively related to the experience of the examiner and the complexity of the issues presented by the application. An examiner is considered to be making decisions independently when the supervisor normally limits review to merely reading the letters of action he initiates without referring to the attached file to review the basis of action.

-- Any examiner's area of assignment will normally produce a wide range of complexity of cases. For this reason, the level of any particular position is reflected primarily in the level of decision he may make independently.

Factor II -- *Contact and commitment authority*

This factor takes into account (1) the purpose and nature of the examiner's contacts with applicants and their attorneys, and (2) the extent of the examiner's authority to commit the Patent Office to any agreements reached.

At the lower grades, the examiner sits in meetings with his supervisor to listen or to participate by raising questions; at intermediate levels he has authority to discuss issues, e.g., make explanations to attorneys who come in for clarification of an examiner's action; at higher grades he independently conducts interviews and makes commitments subject to confirmation by his supervisor.

USING THE STANDARD

The grade-level descriptions in Section VII apply the two factors discussed above to analyze the characteristics of design patent examining work at each level. At each higher grade there is an increase both in the scope of independent action measured by Factor I and in the authority to make commitments measured by Factor II. This reflects the typical pattern of delegation in the

occupation, i.e., that growth and independence in performance of the examining functions are associated with the increasing authority to conduct negotiations and make oral commitments. The standard is to be applied by analyzing a position in terms of the level of difficulty under each factor and evaluating the total demands of the position against the concept of the level as a whole. Unless a position fully meets the level characteristics considered under both factors, it normally would not be properly allocable at that grade of design patent examining work. For example, the delegation of authority to discuss issues with applicants and attorneys, or to make commitments in writing, is not of itself an index of level without reference to the scope and complexity of the technical and legal issues involved.

DESIGN PATENT EXAMINING FUNCTIONS

Basic design patent examining functions

Checking patent applications. -- In this step, the examiner determines whether the formal requirements of the patent statutes and rules are met with respect to the form of application.

Reviewing and analyzing drawings for adequacy. -- This involves determining what object is being described; whether the drawings show the design as described in the title; whether the limits of the design are clearly shown; and whether the claim is adequately presented in the drawings.

Analyzing claims. -- This involves determining (a) whether the claim concerns primarily the functional or the ornamental aspects of the invention, (b) whether it concerns a class of subject matter recognized in the statute as patentable, and (c) whether it particularly points out and distinctly claims the invention.

Planning a field of search. -- This is one of the most significant of the basic examining functions. Designs usually receive a preliminary screening against the prior art by the applicant or his attorney and ordinarily only those which they feel are patentable are filed officially in the Patent Office. Each examiner is required to so plan his search that his time is used to the best possible advantage.

Conducting a search. -- This involves comparing the appearance, structure, or arrangement in each reference searched with that of the claimed subject matter to determine specific points of similarity.

Applying references. -- In this step, the examiner decides whether the claimed design is in fact novel and meets the standards of patentable invention. This includes determining (a) whether any existing reference already shows the claimed design, and/or (b) whether a reference in some other field -- or a number of references, employed collectively -- show that the alleged improvement would actually be, to one skilled in the art, merely an obvious consequence or adaptation of already-patented material.

Evaluating amendments during prosecution. -- This involves determining (a) whether applicant's proposed amendments meet formal requirements and (b) whether they comply with requests or overcome objections of the examiner.

Preparing a case for issue. -- This involves editing an allowed application; ordering small changes in drawings on own initiative; determining need for title changes; selecting the drawing to be published in the Official Gazette of the Patent Office to illustrate the patented design.

Advanced design patent examining functions

Determining that an application involves an aggregation of elements. -- This involves determining that although the applicant is claiming a design for a product, in this instance the components must be considered separately for patentability (for example, that a new shape of office machine is not patentable as a whole when the only new element of the case is the base, even though it may have the effect of giving the whole machine a streamlined appearance). While it is true that some aggregations of elements would be obvious, these are not apt to occur due to the screening of the applicant's attorney. The determination is considered an advanced technical function because it is one of the areas of review of the claim which must be entrusted to an experienced examiner.

Recognizing and developing probable interferences. -- Different individuals frequently develop similar designs at about the same time. When each of such individuals subsequently makes application for patent, the examiner must determine whether the claims are enough alike that only one patent can be issued, and whether an issue of fact arises as to who was the first inventor.

Requiring a supplemental oath. -- In the course of consideration of his case, an applicant is given an opportunity to correct the form of his application and to revise his drawings in order to meet formal requirements and for other reasons. If these corrections change the scope or otherwise make a significant change in his original claim, it is necessary to require a supplemental oath to protect the original filing date, which can be critical if an interfering application has been filed later. To decide that the original application has been modified enough to require a supplemental oath is an advanced technical decision, related to the design concept involved.

Classifying allowed design patent applications. -- This involves determining to what class and subclass a case should be assigned and determining what cross-references to related arts should be established.

Determining whether to give consideration to amendments when a case is in its final stages. -- This involves reviewing the significance of proposed changes and the justification for including them at a time when small changes can affect the whole tenor of the case and the final action to accept or reject the application. Such amendments might be accepted if they would satisfy a requirement made by the examiner or put the case in better form for appeal and would not unduly expand the scope of the application or force the examiner to make a further search.

Evaluating a petition to suspend action. -- This involves determining whether the facts stated show good and sufficient cause for deferring the date of action on a case and whether the applicant has shown his plight to be such as to call for delayed action on the part of the Patent Office.

Evaluating breadth and scope of special titles. -- This involves determining whether a descriptive title incorporated into a claim tends to give the applicant undue protection by broadening the claim beyond the limitations of the subject or the design.

Composing "Examiner's Answer on Appeal.@ -- When an appeal is made from a final rejection of an application by the examiner, the attorney files a legal brief with the Patent Office Board of Appeals. It is the responsibility of the examiner to file a counter brief, known as the "Examiner's Answer on Appeal," in which he sets forth all grounds of rejection and reasons therefore, answers all of the attorney's arguments, and cites the pertinent precedent cases. He may also give a full and informative presentation on the development and present state of the subject-matter field involved.

Determining whether applicant should be required to restrict his claims to a single invention, rather than a plurality of claimed inventions. -- Each patent must cover one and only one invention. The determination that a given application actually covers more than one invention is another situation in which decisions are close and difficult. (Evaluating requests for reconsideration of a requirement for restriction also falls in this category.)

Legal design patent examining functions

Applying legal precedents. -- Examiner conducts legal research to determine the state of the law with respect to unusual legal issues which might develop in the prosecution of an application. This is difficult in part due to the fact that annotations and other legal search aids are not as extensive or comprehensive in the field of patent law as in other fields of law. Evaluates the precedent cases found and determines their applicability to the case at hand.

Determining whether a double patenting situation exists. -- A single applicant may not, under law, receive more than one patent on the same invention. It is the responsibility of the examiner to determine, in situations where several applications appear to cover the same invention, whether the distinction drawn by the applicant is adequate to enable him to avoid the legal objection. The examiner must also determine whether certain actions taken by the applicant to avoid the objection are sufficient in light of the statutory requirements.

Evaluating petitions to the Commissioner of Patents. -- A variety of requests are made to the Commissioner of Patents that he take special action or overrule prior actions of his subordinates. The examiner is called upon to evaluate certain types of these petitions in terms of the legal sufficiency of evidence submitted to prove the points contended, the presence of a showing of a good reason why the action requested should be taken, or the responsiveness of an answer made by the applicant to the objections of the examiner.

Evaluating affidavits as to patentable equivalence. -- In some cases, examiners may decide that a claimed design is not patentable, on the grounds that a previous patent (cited by the examiner as a reference) has already been issued on an equivalent invention. In such a case, an applicant may contest the examiner's conclusion by submitting affidavits from expert witnesses stating that, in their opinion, persons skilled in the art would not consider the claimed design and the subject shown in the reference as being equivalent. The examiner must determine the legal sufficiency of such submissions. The Design Patent Examiner must make these determinations of equivalence both with references to analogous design patents and with reference to any utility patent that envisions the design and therefore precludes a design patent.

Determining sufficiency of applicant's claims as to dates. -- The dates on which the applicant conceives of the design and on which he reduces it to tangible form are extremely important in determining certain rights under patent law. The examiner is responsible for determining admissibility and weight to be given evidence presented to prove the dates in question and that the applicant was reasonably diligent in pressing his case and had not, in effect, abandoned the attempt.

Rendering decisions on interference motions. -- As in a court of law, the applicant whose application is placed in interference may make certain requests, in the form of motions to have particular actions taken or privileges granted. Each of these must be based on the grounds and proposed in the form specified by the statutes. The rights of parties with respect to matters involved in these motions must be adjudicated before the final determinations with respect to the interference can be made. It is the responsibility of the examiner to determine the sufficiency of the grounds, evaluate attorneys' briefs, listen to oral arguments, and formulate a determination which will become a part of the legal record of the interference.

Determining treatment of co-pending applications. -- After the decision in an interference, if the losing party has other applications which are also pending in the Patent Office and which are based, in part, on the application which was in interference, it is the responsibility of the examiner to evaluate such other applications in order to determine whether the interference decision applies equally to them.

Determining legality of reissue oaths. -- When an applicant wishes that his patent be reissued, due to error on his own part which has caused the patent he originally received to be inaccurate, he must clearly set forth wherein his mistake lay and how it arose, and affirm that the error was due to his inadvertence and arose without deceptive intent. It is the examiner's responsibility to evaluate applicant's statements and proof and determine whether all requirements for a reissue oath have been met.

Rendering the decision on a public use proceeding. -- The patent laws requires that no patent be issued where the subject matter of an application has been in public use for more than one year prior to the filing of the application. When a question as to prior public use arises in the prosecution of an application, the examiner evaluates attorneys' briefs, conducts hearings, considers requests for special privileges, and renders the decision as to whether there is a showing of public use.

GRADE-LEVEL DESCRIPTIONS

DESIGN PATENT EXAMINER, GS-1226-05

Positions at this level are limited to training assignments performed under continuing guidance and instruction.

Nature and extent of performance of examining functions

The examiner performs various design patent examining tasks of a simple nature. These tasks are primarily for training purposes. Work assignments are intended to orient employees in the application of theory and basic principles to design patent examining work and to ascertain the examiner's interests and aptitudes. The examiner receives specific and detailed guidance and training in all aspects of work assignment.

Contact and commitment authority

The examiner may sit in on interviews conducted by his supervisor or another examiner but does not enter into the discussion.

DESIGN PATENT EXAMINER, GS-1226-07

This is the first level at which the basic design patent examining functions are performed. All work is closely supervised.

Nature and extent of performance of examining functions

The examiner receives extensive prior instruction in the solution of problems of patentability arising in connection with basic design patent examining functions. Before the examiner is allowed to draft his official Office action, his approach, his field of search, the reference he intends to apply, and the conclusions he expects to draw are discussed with a supervisor or an experienced examiner. Typically, work is reviewed both in its formative states and in final form.

Contact and commitment authority

The examiner sits in on interviews conducted by his supervisor and enters into the discussion with respect to points on which he desires to receive or impart information.

DESIGN PATENT EXAMINER, GS-1226-09

This is the first level at which the basic design patent examining functions are performed independently. At this level, advanced design patent examining work is closely supervised.

Nature and extent of performance of examining functions

The examiner receives no preliminary instructions in the solution of most problems of patentability arising in connection with basic design patent examining functions, although certain determinations, such as the scope of the claim, receive rather close review. Prior instructions are received in the performance of advanced design patent examining functions. Letters written by the examiner are submitted in draft form. Typically the references relied on for rejection are submitted to the reviewing authority for determination as to their value in substantiating the position of the examiner.

Contact and commitment authority

The examiner conducts his own interviews and arrives at issues with the attorney, but usually in the presence of a supervisor or of an expert examiner who alone may make commitments.

Examples of work:

A design patent examiner at this level, whose assignment included the class, optical instruments, would review an application for a design patent on a new shape of microscope table in terms of such formal requirements as the presence of oath, adequacy of drawings, and such basic technical questions as definiteness and clarity of claim. If, for example, he found the title of the claim to be narrower than the drawing, as when the drawing showed an entire microscope or, included the shaft and base, he would propose to his supervisor that the Patent Office require amendment of the application by revision of either the drawing or the title, to claim either a table or the combined microscope and table. If his review showed the application to be in order, he would check manufacturer's supply catalogs and both design and utility patent files for microscope designs that present evidence that such a microscope table has already been developed. He would check designs of other items than microscopes that he could visualize as conflicting with the claim in the application. A more experienced examiner would review the coverage of this search and suggest additional related fields such as tables of shop machinery, if necessary. At some higher level, a reviewer would need to know whether the fact that a similar table had been designed for a power press should be considered relevant, and whether any court decision would be a precedent that shop machinery is too far removed from optical equipment to present design conflicts.

DESIGN PATENT EXAMINER, GS-1226-11

This is the first level at which *advanced* design patent examining functions are performed independently. At this level *legal* design patent examining work is closely supervised.

Nature and extent of performance of examining functions

The examiner receives no preliminary instructions in the solution of problems of patentability arising in connection with basic or advanced design patent examining functions, nor do determinations affecting either normally receive close review. Official Patent Office actions are submitted in final form. Typically, references relied on are submitted at the discretion of the examiner and always on final rejection of an application. Prior instructions are received in the performance of legal design patent examining functions, with determinations receiving close review.

Contact and commitment authority

The examiner independently conducts his own interviews, normally not in the presence of a supervisor, and arrives, with the attorney or applicant, at issues or points of agreement which are then submitted to the supervisor for his concurrence.

Examples of work:

A Design Patent Examiner GS-11, whose assignment included the class, optical instruments, would review an application for a design patent on a new shape of microscope table in terms of formal requirements, basic technical questions, and such advanced technical questions as the scope of the claim. In the instance of the conflict of title and drawing cited at GS-9, an examiner at the GS-11 level would determine the proper scope of the claim to be the table, because other parts of the microscope were too generic to be claimed in combination, and would write an action to require that either (1) the drawing be redone to show only the microscope table in solid lines, with the microscope suggested in broken lines (which constitutes a legal disclaimer), or (2) a feature clause directed solely to the table be inserted in the specification. This decision would receive only cursory supervisory review.

At this level the examiner would be expected to cover all pertinent fields of search. If he questioned the bearing of a precedent in a close case (such as the existence of a similar table on a toy) he would consult his supervisor for advice.

In discussing the case with the applicant, or his attorney, the examiner at this level would (1) explain the reason for limiting the claim to the table, and (2) reach agreement with the attorney as to whether a legal disclaimer or a verbal limitation would be employed. (If the latter, the verbal limitation would have to be checked by the supervisor when received.) If the examiner and the attorney arrived at an issue, for example, a difference of opinion as to whether the toy referred to above could be considered analogous, the issue would be referred to the supervisor.

DESIGN PATENT EXAMINER, GS-1226-12

This is the first level at which *legal* design patent examining functions are performed independently. Only completed actions are subject to review.

Nature and extent of performance of examining functions

Neither preliminary instructions nor close review are received in the solution of problems of patentability arising in connection with any design patent examining function, including those which require considerable legal background to perform with relative independence. The examiner's work product is normally reviewed at the time final action (allowance or final rejection) is proposed; but this rarely involves a re-evaluation of the references or other factors on which the recommended action was based. The principal purpose of this review is to insure consistency of treatment and to bring to bear any applicable knowledge of actions and precedents from the reviewer's familiarity with decisions of various courts which have jurisdiction in patent cases. Work of this level requires an extensive knowledge of applicable legal precedents and policies as well as the ability to analyze testimony, to apply agency and court decisions, and to phrase final decisions with legal precision.

Contact and commitment authority

Full authority is delegated to the examiner to negotiate with applicants, agents, and attorneys in connection with their cases. This delegation includes authority to reach agreement with these parties upon the acceptability, interpretation, or effect of language or illustrations in design patent applications.

Examples of work:

In the same example cited earlier, if the design patent examiner's search uncovered a utility patent by the same applicant directed to the utilitarian and structural features of the microscope table (e.g., drop leaf for easier storing, molded in one piece, etc.), which also contained a claim directed to the proportions and configuration of the table, an examiner at the GS-12 level would be expected to decide whether a double-patenting situation existed. Such a situation would preclude a design patent and the GS-12 examiner would recommend rejection based on statutory requirements against double patenting. This decision would receive only cursory review. (An examiner at the GS-11 level would recognize a possible question of double patenting, and would refer the problem to his supervisor for determination as to proper handling.)

At the GS-12 level, if the design patent examiner's search turned up another application defining the same microscope table in combination with a different microscope, he might recommend that the microscopes in each application be legally disclaimed to set up an interference, (i.e., in order that a trial could be had of the issues as to the first inventor of the table.) If one applicant brought a motion to dissolve the interference (e.g., on the ground that the microscope table was not patentable to the opposing party in view of a publication on the subject which predated the opponents application) a GS-12 examiner would attend the hearing and be expected to formulate

a decision based on the supervisor's determination. (Formulating a decision involves writing up the decision including documentation of the supporting evidence, resolution of subordinate issues, authorities for the decision, etc.)

DESIGN PATENT EXAMINER, GS-1226-13

This is the level at which an examiner is recognized as an authority in a broad field of design patents. Actions taken at this level are normally unreviewed.

Nature and extent of performance of examining functions

The examiner at this level is delegated technical responsibility for all design patent examining functions performed, either by himself or by other examiners in a broad subject-matter field. As mentioned earlier, a Design Patent Examiner assignment normally includes several classes of products (a group of related arts). Land vehicles are a subject-matter area typical of the scope of Design Patent Examiner assignments below the GS-13 level. Other groups of arts in the broad subject-matter field of transportation media are (a) ships and boats, and (b) aircraft, including space stations and refueling vehicles. The whole field of transportation media, including air, sea, and land vehicles might come within the scope of an assignment at the GS-13 level.

This delegation of technical responsibility is based on the examiner's extensive experience in a wide variety of design subjects which has provided corresponding experience in related utility patents and has made him an authority, for the purposes of design patent operations, with respect to such matters as (1) deciding the effect of previous designs and developments on the patentability of an item that has wide application (e.g., a potentially controversial decision that a dispenser-and-brush head for a rug shampoo attachment of a power cleaner will be considered a design precedent in conflict with a claim of a dispenser-and-applicator top for a cosmetic squeeze bottle); (2) deciding in a close and involved instance (e.g., the ship's radar antenna design cited in the background material) whether utilitarian or aesthetic considerations are of paramount importance, etc. Within the area of technical responsibility, the examiner is regularly called upon to handle special cases (a) which involve difficult technical or legal problems or (b) which have become complicated as a result of extended prosecution. Indications of expertness characteristic of this level include the following:

(a) The examiner has been recognized by authorities in the Patent Office as having made a substantial contribution to the field of Design Patent Examining. This may be evidenced by such accomplishments as having developed a number of clear-cut criteria for determining design equivalence (for example the equivalence of handle designs across such product areas as machine tools, kitchen tools, construction tools, garden tools) which are not only technically applicable but are recognizable to the average consumer, and are of such merit as to have been accepted and generally employed by other design patent examiners.

(b) The examiner is consulted by other experienced and mature patent examiners for authoritative determinations on technical design patent problems which they have been

unable to resolve (e.g., the relevance to and bearing on the case in hand of a design in a questionably related product category or a series of partial references in different product categories). He is further relied on by patent attorneys outside the Patent Office for suggestions etc.
(c) The examiner is held personally responsible for the maintenance of a system of classification for design patent arts within the area of his assignment. He is expected to analyze the past development of the art; anticipate the direction of future growth; determine what structural, functional, or design characteristics will be most significant; and work these into the existing system or completely re-design the system to bring it up to date. He works independently in carrying out this function and his final product is approved virtually without review.

Contact and commitment authority

The examiner at the GS-13 level is officially authorized to make and to effect wholly independent determinations with respect to Patent Office action on design patent applications in his subject-matter field. The presence of at least partial signatory authority is characteristic of examining work at this level. /2/ Actions coming under this authority, once signed by the examiner, are not subject to review of any sort (other than a spot check basis) by any supervisory authority. "Partial" signatory authority is partial only in the sense that it does not finally preclude further consideration of the application by the Patent Office. The distinction between partial and full signatory authority is in the degree of finality of Patent Office action, not in the kind of examining decisions involved. When an examiner with partial signatory authority decides the evidence is such that an application should be rejected, he prepares the decision and notifies the attorney for the applicant in writing. If the attorney fails to respond, the case is closed. If the attorney responds with additional argument, the Patent Office may decide to reverse the original rulings and make a final decision to allow the patent.

At this level, partial signatory authority would extend to the work product of examiners assigned to the incumbent for training and development and to the work of any other examiner whose regular assignments are in the arts falling within the incumbent's subject-matter field.

Delegation of partial signatory authority presupposes a high degree of confidence on the part of supervisory personnel in the ability of the examiner to know, interpret, and apply virtually all Patent Office policies relating to the prosecution of an application. At this level, the examiner's judgment in both technical and legal matters is heavily relied upon by his superiors and his opinion is sought when matters or policy of legal interpretation are under consideration.

/1/ This standard was prepared by the Patent Office and the Office of Personnel Management.

/2/ Partial signatory authority of itself does not support this level unless the recognized authority of the examiner fully meets the range and independence of decision represented by Factor I above.