




UNITED STATES PATENT AND TRADEMARK OFFICE

Deputy Commissioner for Patents

MEMORANDUM

Date: August 31, 2010

To: Patent Examining Corps

From: 
Peggy Focarino,
Deputy Commissioner for Patents

Subject: FY 2011 Changes in Docket Management Policies

This memo replaces the November 3, 2009, memo regarding examiner docket management policies which was included in the 2010 Count System Initiatives Package. Based on the Task Force's evaluation since implementation of the previous policy, the "6 month window" policy for acting on new applications is modified as set forth below. The practice of placing RCEs on the Special New Case docket established in the prior memo will continue.

The timely examination of applications remains a critical part of the mission of the Office and is of increasing importance to our customers. Applicants file an application with the expectation that an examination will be done generally in the order that it was received by the USPTO, or in other words on a "first-in, first-out" basis.

Regular New Case Docket 6 Month Inventory

MPEP 708 sets forth "*Nonprovisional applications shall be taken up for examination by the examiner to whom they have been assigned in the order in which they have been filed except for those applications in which examination has been advanced pursuant to 37 CFR 1.102.*" Accordingly, examiners should generally not be examining cases far enough out of order as to essentially accord a "special" status to an application that has not otherwise been formally granted such a status.

It is recognized that efficient management of an examiner's workload may lead to applications being taken up for examination out of date order. For example, an examiner may have related applications with overlapping fields of search such that examination as a group is more efficient, or may have a number of applications which are subject to restriction requirement.

Recognizing the need to provide examiners with enough applications on their docket to allow them to work in an efficient manner, supervisors will monitor each examiner's docket on a biweekly basis and maintain on each docket at least the number of regular new applications typically acted upon by the examiner in a six month period, provided that there are enough regular new applications available in the examiner's normal/assigned docket area. The number will be based on the examiner's expectancy at his or her current grade, 75% examining time (60 hours per pay period for a full time examiner), and assumes that half of the examiner's production is FAOMs in regular new applications. Within the six month inventory of the oldest regular new applications on your docket, the examiner may use his or her professional discretion to work on applications out of order if it leads to efficient examination.

If a sufficient number of available regular new applications in your normal/assigned docket area is not available to fill the 6 month inventory, the inventory may be less than 6 months, but in no case shall the inventory of regular new cases be maintained at less than 3 months utilizing the formula above.

If you have a regular new application which is not included in your six month inventory of regular new applications and believe it should be examined out of turn, you are expected to gain supervisory approval before starting to examine the "newer" application. Examples of appropriate reasons for examining applications include having related applications or clearly related subject matter.

Designs

It is recognized that it is a routine and necessary practice for design examiners to work on applications outside a 3-6 month inventory of oldest regular new cases and that multiple applications are routinely searched together.

Therefore, design examiners may continue this practice without needing to notify the SPE each biweek that they are doing so.

Special New Case Docket

The practice of placing RCEs on an examiner's Special New Case docket will continue. All RCEs filed on or after November 15, 2009, have been placed on the Special New Case docket rather than the Regular Amended Case docket. Any remaining RCEs filed prior to November 15, 2009, will remain on the Regular Amended Case docket until acted upon.

This change provides you with increased flexibility in managing your RCE workload by providing you with greater flexibility to select the applications you work on. There is no change to the PAP relating to examination of special new cases.

Examiners are free to exercise professional discretion to work on a mix of regular new and RCE applications. Consistent with the Agency's interest in reducing the

backlog of new applications, SPEs should avoid instructing examiners to work on a greater number of RCEs than necessary for managing their dockets under the Examiner PAP without a business reason to do so.

These policies are intended to balance fairness to our applicants with our examiners' need to manage their dockets for efficient examination. If you have any questions about this memo please consult your SPE.