

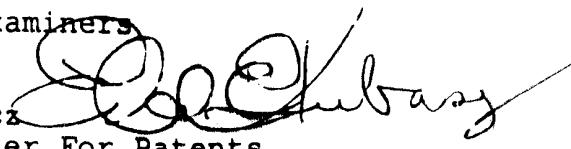


**UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office**

**ASSISTANT SECRETARY AND COMMISSIONER  
OF PATENTS AND TRADEMARKS**  
Washington, D.C. 20231

Date: January 15, 1993

To: All Design Patent Examiners

From: Edward E. Kubasiewicz   
Assistant Commissioner For Patents

Subject: Signatory Authority Program

This memorandum explains what the Signatory Authority Program is, how long it will take to complete it, and what the design examiner must do to successfully complete it. You should review this document and seek guidance with respect to any questions you have about the Program.

To achieve the position of Primary Examiner, a design examiner must complete the Signatory Authority Program. Under this Program, the examiner's work will be evaluated during four separate periods of time to determine if the examiner should be permanently delegated the authority to represent the Commissioner and sign all actions including allowances.

### Policy

It should be recognized that the signing of an Office Action represents the position of the Agency at that point in time. This is particularly significant when a Primary Examiner signs a final action in a case. These types of actions are ordinarily only reviewable by the Board of Patent Appeals and Interferences and/or the Federal Courts. Accordingly, the permanent grant of Signatory Authority should only be given to those design examiners whose performance clearly demonstrates that they are competent to exercise this authority. This is determined by reviewing and evaluating the cases credited to the examiner during a trial period in which the examiner exercises Signatory Authority on a temporary basis. The number and mixture of cases reviewed and evaluated should be such that the quality, quantity, and timeliness of the examiner's work clearly demonstrates the design examiner's ability to exercise a permanent grant of Signatory Authority. The design examiner's work is evaluated based upon the standards in the Performance Appraisal Plan (PAP) for that permanent grant of Signatory Authority. A design examiner has clearly demonstrated the necessary competency when the examiner has achieved the Fully Successful level of performance under the Performance Appraisal Plan (PAP) for the particular permanent authority (partial or full) involved.

Obviously, the exercise of Agency authority, even on a temporary basis, is not a learning program. On the contrary, the evidence reviewed on evaluation of the examiner's work product under this Program must clearly indicate that the examiner has demonstrated the competence and judgement to act on patent applications in a proper and approved manner utilizing approved Agency procedures before any permanent grant is authorized. This level of competency and judgement is achieved by attaining the Fully Successful level of performance under the PAP.

#### Eligibility and Trial Periods

The Signatory Authority Program is a four step process. In the first step, after a design examiner becomes a GS-12, the examiner's performance at that grade will be evaluated for a period of time called the "eligibility period." The eligibility period will be the most recent eleven (11) consecutive pay periods after the examiner becomes a GS-12. Unless an examiner's Supervisor is notified that the examiner declines to accept the temporary grant of Signatory Authority, the grant of temporary authority shall be automatic (that is requiring no action on the part of the examiner) if the examiner has performed at least at the Fully Successful level in all the elements of the examiner's PAP during the eligibility period.

The examiner's decision not to accept the temporary grant of Signatory Authority may be oral but must be confirmed in writing to the Supervisor.

Design examiners who have previously declined the grant of temporary Partial Signatory Authority shall receive the temporary grant of authority with a week's prior written notice to the examiner's Supervisor of the examiner's desire to receive the temporary grant. However, the examiner may chose his/her starting time for and receive the temporary grant of authority only if the examiner's performance is Fully Successful for the most recent ten (10) consecutive pay periods immediately preceding the start of that temporary grant.

A design examiner granted temporary Partial Signatory Authority enters the second step that comprises what is called the "trial period." At the beginning of the trial period, the examiner will receive a copy of the PAP which will set out what is required to be Fully Successful (including the quality, quantity and timeliness requirements). Under this temporary grant the examiner is authorized to sign most non-final actions except those specified in MPEP 1005. The length of the trial period will be at least thirteen (13) consecutive pay periods.

To pass the trial period, the examiner must perform at least at the Fully Successful level in each element in the PAP for an examiner having permanent Partial Signatory Authority. Additionally, the examiner must perform at least 700 hours of actual examining time in paid status as defined in the "Evaluation" section below.

If the examiner passes, the examiner will be so notified and granted permanent Partial Signatory Authority by the Director/Deputy Director. Where potential clear errors which could lead to an adverse decision are found, the examiner will have the option to respond, as detailed in the "Decision" section below. This ends step two.

Grants of any temporary or permanent authority shall begin only at the start of a pay period.

Steps three and four are similar to steps one and two, except that steps one and two relate to Partial Signatory Authority whereas steps three and four relate to Full Signatory Authority. If a design examiner, having permanent Partial Signatory Authority, performs at least at the Fully Successful level for thirty-five (35) consecutive pay periods, the examiner is automatically granted temporary Full Signatory Authority. If a design examiner wishes to decline the grant of temporary Full Signatory Authority, the examiner may decline the temporary grant under the same rules apply as noted above.

Examiners who have declined the grant of temporary Full Signatory Authority shall receive the temporary grant of authority by giving notice in the same manner set forth above for the Partial Signatory Authority. When a design examiner has previously declined the grant of temporary Full Signatory Authority, an evaluation of his/her performance during the eligibility period will be based upon the most recent ten (10) consecutive pay periods for an eligibility period that starts after the first thirty-five (35) consecutive pay periods from the grant of permanent Partial Signatory Authority to the examiner. Any eligibility period ending within the initial forty-four (44) consecutive pay periods after a design examiner is granted permanent Partial Signatory Authority will be thirty-five (35) consecutive pay periods.

During the trial period, the examiner's performance will be evaluated based upon the standards in the Performance Appraisal Plan (PAP) for a design examiner having a permanent grant of Full Signatory Authority. If, at the end of this trial period, the examiner passes, the examiner will be so notified and granted permanent Full Signatory Authority by the Director/Deputy

Director. Where potential errors which could lead to an adverse decision are found, the examiner will have the option to respond as in step two above. Upon successful completion of step four, the examiner is granted the status of Primary Examiner.

With either type of temporary grant, at the end of the trial period, the temporary grant is terminated until a decision is made by the Director/Deputy Director whether to grant the permanent authority. Should the grant of permanent authority be denied in either instance above, the examiner must complete an eligibility period of ten (10) consecutive pay periods from that denial before the examiner may receive another temporary grant of authority.

Any design examiner who is on an approved part-time schedule with a regular tour of duty of at least forty (40) and less than eighty (80) hours per pay period, and has met the eligibility requirements for a grant of either temporary Partial or Full Signatory Authority, may elect to enter a trial period of twenty (20) consecutive pay periods. If the examiner elects to enter the twenty (20) pay period trial period, the examiner must still perform at least 700 hours of actual examining time in paid status during the trial period. Any election to participate in the twenty (20) pay period trial period must be made prior to the issuance of the temporary grant and shall not be changed during the trial period. The election of the examiner to participate in the twenty (20) pay period trial period shall be in writing and signed by the examiner and presented to the examiner's immediate Supervisor or Group Director or the Group Director's designee.

The Office will consider a request by a design examiner, under a part-time schedule, which has previously been approved by the office, who meets the requirements for the eligibility period and desires to enter the trial period under a temporary grant of Signatory Authority to modify the examiner's part-time schedule during the trial period in order to meet the minimum hour requirement. Although normally the request to modify a part-time schedule should be submitted before the trial period begins, the Office will consider such a request at any time during the trial period.

#### Review Procedures

Once a design examiner begins a trial period, any or all of the cases for which the examiner has received credit during the trial period and had the authority to independently sign are subject to review and evaluation. At a minimum, the performance review will include at least 17 cases. The Director/Deputy Director shall direct the mix of cases to be selected and the support staff

shall retrieve the actual cases. Selection of cases shall follow the traditional methods for selection of cases. For an examiner who has temporary Full Signatory Authority, the emphasis will be on finals, allowances, and other actions relating to the exercise of Full Signatory Authority. For an examiner having temporary Partial Signatory Authority, the accent will be on those first actions on the merits which the examiner had the authority to independently sign. In all instances, the actions reviewed and evaluated must have been credited to the examiner during the trial period.

### Evaluation

The evaluation involves a thorough and complete check of the reviewed cases to see whether there were any clear errors as defined by the applicable PAP elements, i.e. Patentability Determination, Action Taking (A/T), and Patent Examining Functions (PEF). At the end of the trial period, an error rate will be calculated for the applicable performance elements. The examiner's performance in each case will be evaluated by the Director/Deputy Director, who will make Management's determination whether there were any clear errors. At the end of the trial period, the examiner must also be performing at least at the Fully Successful quantitative level for an examiner having such Signatory Authority, and at least at the Fully Successful level in Workflow Management. If the examiner has not performed at least at the Fully Successful level in any PAP element during the trial period, the permanent grant will be denied.

For those examiners on the temporary Full Signatory Authority Program, the error rate for Patentability Determination is calculated by counting the number of allowed cases having a clear error and dividing by the number of cases allowed by and credited to the examiner during the trial period. The error rates for Action Taking and Patent Examining Functions are calculated by taking the number of actions having a clear error and dividing by the total number of actions credited to the examiner during the trial period.

For those examiners on the temporary Partial Signatory Authority Program, the error rate for Action Taking is calculated by taking the number of actions having a clear error and dividing by the total number of actions for which the examiner had the authority to independently sign and had received credit during the trial period. For Patent Examining Functions, the error rate will be calculated by taking the number of actions having a clear error and dividing by the total number of actions credited to the examiner during the trial period.

Any design examiner under the grant of temporary Signatory Authority must perform, unless waived by Management (see "Waiver" Section below), at least 700 hours of actual examining time in paid status during the trial period. Failure to perform the minimum 700 hours of actual examining time in paid status during the trial period, unless waived by Management, will result in a denial of a permanent grant of Signatory Authority. Waivers are granted to take into account matters beyond the examiner's control.

Actual examining time in paid status for the purpose of meeting the 700 minimum hour requirement in any trial period under the Signatory Authority Program will consist of hours worked in the following activities and subproject codes reported and approved by the immediate Supervisor on the examiner's bi-weekly time worksheet, form PTO 690E:

<u>Activity</u>	<u>Subproject Code</u>
Examining Time (including paid overtime)	112012/112030
Reexam Time	119051/119052
PCT Time	119024/119025
Restriction Time	112054
APS First Action Search	119084
Protest and Inequitable Conduct Programs	119006
Appeal Conferences	112041
Public Use Proceedings	112053
Other examining duties which produce work product subject to review, e.g. amendment crossing in mail, time spent examining transferred amended application, etc.	112036/any future subproject codes confirming to this criteria
Quality Review Cases	119045
Markush	112025
Extra Time for Examiner's Answer	112050
SIR Processing	112065
Tri-Lateral Search Exchange	119040

### Decision

The grant of temporary Signatory Authority shall terminate at the end of the trial period. Within two pay periods after the end of the trial period, the office will either grant the permanent authority or provide the examiner with written reasons why the

permanent grant is being denied. If any potential clear errors found during the evaluation could lead to an adverse decision, the examiner will be given an opportunity to respond prior to the final decision. Up to a total of eight hours of non-examining time shall be authorized, with appropriate supervisory approval, for the time needed for preparation of the examiner's response. The notice of potential clear errors will be communicated to the examiner no later than ten (10) calendar days before the final decision to grant or deny permanent Signatory Authority is due. The examiner's comments to the Director will be communicated within seven (7) calendar days thereafter. The examiner's comments may be communicated orally or in writing.

If the final decision is a denial of the permanent grant, a written explanation for the denial will be given to the examiner. The written explanation for a denial of signatory authority based upon the quality elements of the examiner's Performance Appraisal Plan shall include the following information:

1. Specific identification of the nature of the error in a specific action of a patent application that has been identified by serial number;
2. Specific identification of the Element of the examiner's Performance Appraisal Plan with respect to which the examiner's action is deficient;
3. In the case of allegations of Patentability Determination errors, specific identification of the claims involved and a full statement of any rejection properly applicable to those claims; and/or
4. In the case of allegations of errors in Action Taking or in the Performance of Patent Examining Functions, a full statement of the deficiency in the action(s) taken by the examiner.

#### Waiver

All design examiners participating in a Signatory Authority trial period are expected to meet the 700 hours of actual examining time in paid status. However, if a design examiner fails to meet this requirement for reasons beyond the examiner's control, the Office will consider, on a case-by-case basis, a request that the requirement be waived. Such a request must be submitted in writing to the examiner's immediate Supervisor during the ten (10) calendar days after the end of the trial period and should include an explanation of the reasons for failing to meet the requirement. Waivers may be requested by examiners working

either a full-time or part-time schedule. A decision on the waiver request will be made in writing to the examiner with a copy being provided to POPA within two (2) pay periods after the end of the trial period.

### Retention

For a design examiner having a permanent grant of Signatory Authority, achievement above the Unsatisfactory level in Patent Examining and Workflow Management under the applicable Performance Appraisal Plan, shall be deemed an acceptable level of performance for retaining the permanent grant of Signatory Authority. There shall be no minimum number of examining hours required for retention of permanent signatory authority. That is, failure to spend time examining patent applications shall not be a basis for removal of permanent signatory authority.



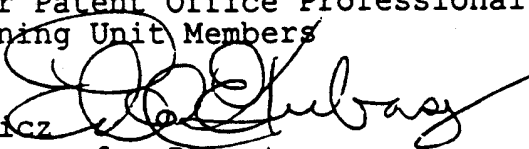


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OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

Date : January 15, 1993

To : All Design Examiner Patent Office Professional  
Association Bargaining Unit Members

From : Edward E. Kubasiewicz   
Assistant Commissioner for Patents

Subject : Highlights of Changes in Signatory Authority  
Program

- Eligibility Criteria
- Pilot Part-time Program
- Minimum Examining Hours

The Agreement on changes in the Signatory Authority Program was signed by the Patent and Trademark Office (PTO) and the Patent Office Professional Association (POPA) on December 1, 1992 and took effect on January 1, 1993.

One of the major changes in the new Signatory Authority Program is the shortening of the eligibility periods. The eligibility period is the time between a promotion to GS-12 and entry onto the Partial Signatory Authority Program trial period (the grant of temporary Partial Signatory Authority), or the time between the grant of permanent Partial Signatory Authority and entry onto the Full Signatory Authority Program trial period (the grant of temporary Full Signatory Authority). The new eligibility periods will be eleven (11) pay periods for a temporary grant of Partial Signatory Authority and thirty-five (35) pay periods for a temporary grant of Full Signatory Authority.

Effective on January 10, 1993, the beginning of the first full pay period after the Agreement took effect, design examiners at the GS-12 level, who have performed at least at the Fully Successful Level in each of the elements of their current Performance Appraisal Plan (PAP) for the last eleven (11) pay periods, shall be granted temporary Partial Signatory Authority automatically unless the examiner declines. Effective on the same date, design examiners at the GS-13 level having permanent Partial Signatory Authority, who have performed at least at the Fully Successful Level in each of the elements of their current Performance Appraisal Plan (PAP) for the last thirty-five (35) pay periods, shall be granted temporary Full Signatory Authority automatically unless the examiner declines.

A design examiner, who is otherwise eligible and desires not to receive the grant of temporary Partial Signatory Authority or the grant of temporary Full Signatory Authority, should notify his/her Supervisor. A design examiner's decision not to accept

the temporary grant of Signatory Authority may be communicated orally, but must be confirmed in writing to the Supervisor.

A second major change involves design examiners who are on a temporary part-time schedule. These examiners will now be permitted to enter the Signatory Authority Program. Clauses in any part-time agreement between a design examiner and his/her Group Director restricting the examiner from entering the Signatory Authority Program are hereby revoked.

A third major change is the requirement for 700 actual examining hours during the trial period. The details of that requirement are in the attached memorandum.



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OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

Date: January 15, 1993

To: Ronald J. Stern  
President, POPA

From: Office of the Assistant Commissioner for Patents

Signatory Authority Program - Management Document

Management has determined that the following performance standards in the management rights area of eligibility for design examiners under the GS-1226 Series Standards will apply in the Signatory Authority Program effective with the implementation of Article 22 of the Collective Bargaining Agreement as amended on January 15, 1993:

Eligibility

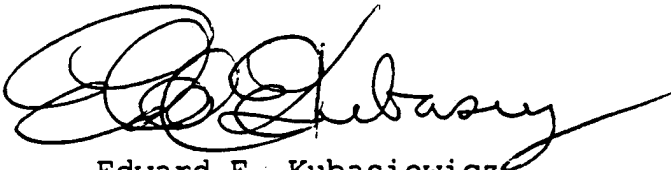
Any GS-12 design examiner without Signatory Authority who has performed, for a minimum of eleven (11) consecutive pay periods (hereinafter designated as the eligibility period), at least at the Fully Successful level in each of the elements in that examiner's current Performance Appraisal Plan (PAP) (or any issued PAP promulgated by the Assistant Secretary and Commissioner of Patents and Trademarks which may be in effect at the start of the eleven (11) consecutive pay periods), shall be granted temporary Partial Signatory Authority. If a design examiner has previously declined the grant of temporary Partial Signatory Authority, he/she shall notify his/her supervisor of his/her intent to receive the temporary grant. When a design examiner has previously declined the grant of temporary Partial Signatory Authority, an evaluation of his/her performance during the eligibility period will be based on his/her performance during the most recent ten (10) consecutive pay periods. Likewise, any design examiner having permanent Partial Signatory Authority who has performed, for a minimum of thirty-five (35) consecutive pay periods, at least at the Fully Successful level in each of the elements in that examiner's current PAP, (or any issued PAP promulgated by the Assistant Secretary and Commissioner of Patents and Trademarks which may be in effect at the start of the thirty-five (35) consecutive pay periods), shall be granted temporary Full Signatory Authority. If a design examiner has previously declined the grant of temporary Full Signatory Authority, he/she shall notify his/her supervisor of

his/her intent to receive the temporary grant. When a design examiner has previously declined the grant of temporary Full Signatory Authority, an evaluation of his/her performance during the eligibility period will be based upon the most recent ten (10) consecutive pay periods for any eligibility period that starts after the first thirty-five(35) consecutive pay periods from the grant of permanent Partial Signatory Authority to the examiner. Any eligibility period ending within the initial forty-four (44) consecutive pay periods after a design examiner is granted permanent Partial Signatory Authority will be thirty-five (35) consecutive pay periods.

Should a grant of permanent authority be denied after the completion of a trial period, the examiner must complete an eligibility period of ten (10) consecutive pay periods from that denial before the examiner may receive another temporary grant of authority.

All other performance standards as set forth in the December 1, 19921 Signatory Authority Program - Management Document (Except Section 1 - Eligibility) are applicable to design examiners under the GS-1226 Series Standards.

Management has the right to change or modify certain aspects of performance appraisal plans and the Signatory Authority Program, the implementation of which is subject to any bargaining obligations which may be imposed by statute and/or the parties' Agreement.

A handwritten signature in black ink, appearing to read 'E. Kubasiewicz', with a large, stylized flourish at the end.

Edward E. Kubasiewicz  
Assistant Commissioner for Patents