



November 17, 2000

To: Managing Attorneys
Senior Attorneys
Examining Attorneys

From: Anne Chasser (*Signed by Bob Anderson for Anne Chasser*)
Commissioner for Trademarks

I am very pleased to announce the restructuring of the Trademark examining attorney career ladder. This has been accomplished through the partnership efforts of the USPTO and NTEU 245. We believe that the new structure provides employees with greater opportunities for promotion and more ability to plan for their future.

The new career ladder raises the full performance level of an examining attorney to a GS-13 Attorney Advisor (Trademarks) position, rather than the GS-12 position. Significantly, the restructuring also adds the opportunity to attain a GS-14 Attorney Advisor position through an accretion of duties. Previously, GS-14 promotions only could be achieved through a competitive job announcement.

Change in Full Performance Level

The new career ladder for trademark examining attorneys goes from GS-11 to full performance level GS-13. Within this career ladder, employees are promoted to each higher grade by maintaining at least fully successful performance at the prior grade level, demonstrating the potential to perform at the higher level, and by completing one year of experience at the lower grade level.

GS-14 Attorney/Advisors

The GS-14 position is acquired by an accretion of duties. The difficulty of those duties and the level of responsibility given to employees support the promotion to a higher grade. The additional duties required include independent review of the most difficult and complex trademark applications including the following:

- Applications filed in International Classes A, B, and 200
- "Special mark" cases which include difficult, novel and/or complex issues
- Amended dockets of other examining attorneys who have left their position or otherwise can no longer examine their dockets
- Applications that present especially complex issues
- Other duties as assigned

GS-14 attorneys are also expected to provide mentoring to new examining attorneys, as assigned by the managing attorney. GS-14 attorneys are considered to be legal experts in all international classes. They will handle new applications in all classes as needed to achieve balance in new case pendency. Applications in International Class 9, however, will continue to be distributed to all examining attorneys who have received training in that class.

Selection Criteria for GS-14 Attorney/Advisors

Eligible GS-13 attorneys may request promotion to the GS-14 level. The promotion will be based on demonstration of appropriate performance and acquisition of appropriate knowledge and skills, which will be demonstrated through a certification process. Employees requesting promotion must certify that they have met the following requirements:

- 1 year or more in grade at the GS-13 level
- 3600 or more total examining hours (Examining hours include mentoring and examining hours worked while on overtime and compensatory time.)
- Outside relevant experience may be substituted in lieu of the 3600 hours
- Commendable or higher overall rating on the most recent performance appraisal plan (PAP)
- An average of an outstanding rating in the quality elements of the most recent PAP, and, the employee must maintain this standard of performance during the most recent progress review report.¹
- Fully Successful in all PAP elements for the previous 90 day period
- If the employee is not Outstanding on the average of the Quality elements, then the employee may request a pull of 10 cases
- The pull will be reviewed by a Managing Attorney or other appropriate individual. Every effort will be made to ensure that the pull can be done by another individual other than the attorney's own managing attorney.
- To pass the pull no more than one procedural error may be found. There must be no statutory errors.
- If the first pull is unsuccessful, another pull may be conducted by a Managing Attorney or other appropriate individual.
- No more than two pulls every six months, i.e. if the second pull is unsuccessful the employee must wait six months before requesting another pull.
- If the employee disagrees with the Managing Attorney's determination of error, the employee may appeal to their Senior Administrator.

GS-13s may request promotion at any time that they meet the above criteria. Certification forms will be made available for requests following this announcement.

Transition Issues, Adjustments and Assignment of Work

¹ In the case where the GS-14 candidate's eligibility occurs more than six months after a rating on a PAP, the candidate may rely solely on a mid year review. However, this reliance cannot form the basis for a grievance over the rating received on the mid-year review.

Every effort will be made to assure that workloads among GS-14s are assigned in a fair and equitable manner. When balancing workloads, the managing attorney may consider the needs of the law offices, mentoring responsibilities, amended dockets previously assigned, whether the attorney is working at home and the attrition rate on the floor. For example, if the attrition rate on the floor exceeds 12% and there are insufficient GS-14s to handle the workload in a fair way, the managing attorneys may distribute amended cases to GS-14s in law offices on other floors.

The managing attorney may grant reasonable non-production time to examining attorneys handling amended dockets where non-final actions or additional searches are needed because of clear error made by the prior examining attorney. When GS-14s are handling amended dockets or are mentoring more than one trainee and these duties interfere with examining attorneys' ability to do phone actions, the managing attorney will make sure that ratings in the docket management portion of the Performance Appraisal are adjusted to be fair, reasonable, and accurate. Similarly, the managing attorney may adjust the amended docket management deadlines from 21 to 30 days when mentoring or handling additional amended cases from the dockets of others prevent examining attorneys from reasonably meeting the 21 day deadline.

Whenever feasible, office actions saved electronically by a departing examining attorney will be transferred to a shared drive for reference by the examining attorneys who will be handling the departing attorney's docket.

Mentoring

Mentoring assignments are at the discretion of the managing attorney. The managing attorney shall ask for volunteers on the floor who wish to mentor including GS-13s. If an examining attorney volunteers to mentor, due consideration will be given to the request. If the request is not granted, and the examining attorney requests an explanation as to why the person was not chosen, the managing attorney will provide the explanation. The managing attorney will select mentors using the following guidance. First preference may be given to volunteers who are GS-14s and then to volunteers who are GS-13s. If no suitable volunteers are found, the managing attorney may assign the task to GS-14s who do not volunteer.

Mentoring training may be offered to mentors who have never received such training. Every effort will be made to ensure that examining attorney mentors will not be required to mentor more than two new examining attorneys who have not yet received partial signatory authority.

New Case Pendency

Except for Class 9 files which will be handled in all offices, GS-14s will handle new applications from other law offices, in all classes, as needed, so that new case pendency balance is achieved between the law offices.

Reassigned cases from a law office may be assigned to every other Law Office based on the number of GS-14s in those Offices. Reasonable notice of at least one week will be given to 14s when different cases are assigned. When cases are transferred from other dockets for GS-14s to handle, a separate new case docket will be set up for the GS-14s. GS-14s will pull from the

special 14 docket according to their own schedule, but to the extent that the 14 is assigned new cases, such cases will be pulled from the separate GS-14 docket until that docket is completed. At the request of NTEU 245, management will keep track of the number of new cases pulled by the 14s and the 14s will be assigned cases from the 14 docket until they reach the individual amount that is supposed to be pulled, on a pro rata basis. If one new case docket is ahead of other dockets, then the 14s on that floor would be required to pull new cases from other new case dockets and all other attorneys on that floor would have the option of also pulling cases from other dockets, but management may exclude one other new case docket based on pendency.

Procedures will be developed for transferring new cases from other dockets. Examining attorneys will not be required to physically pull new cases.

The procedures and requirements outlined in this memo are not meant to preclude the right of the Office to otherwise assign work among employees and law offices as necessary due to operational concerns.

Awards

Current award programs and policies, including the "Policy Statement for Awards" dated January 30, 1997, remain in effect until further notice. The policy statement is attached.