

§ 10.1

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AUTHORITY: 5 U.S.C. 500, 15 U.S.C. 1123; 35 U.S.C. 2(b)(2), 31, 32, 41.

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§ 10.1 Definitions.

This part governs solely the practice of patent, trademark, and other law before the Patent and Trademark Office. Nothing in this part shall be construed to preempt the authority of each State to regulate the practice of law, except to the extent necessary for the Patent and Trademark Office to accomplish its Federal objectives. Unless otherwise clear from the context, the following definitions apply to this part:

(a) *Affidavit* means affidavit, declaration under 35 U.S.C. 25 (see §§ 1.68 and 2.20 of this subchapter), or statutory declaration under 28 U.S.C. 1746.

(b) *Application* includes an application for a design, plant, or utility patent, an application to reissue any pat-

ent, and an application to register a trademark.

(c) *Attorney* or *lawyer* means an individual who is a member in good standing of the bar of any United States court or the highest court of any State. A "non-lawyer" is a person who is not an attorney or lawyer.

(d) *Canon* is defined in § 10.20(a).

(e) *Confidence* is defined in § 10.57(a).

(f) *Differing interests* include every interest that may adversely affect either the judgment or the loyalty of a practitioner to a client, whether it be a conflicting, inconsistent, diverse, or other interest.

(g) *Director* means the Director of Enrollment and Discipline.

(h) *Disciplinary Rule* is defined in § 10.20(b).

(i) *Employee of a tribunal* includes all employees of courts, the Office, and other adjudicatory bodies.

(j) *Giving information* within the meaning of § 10.23(c)(2) includes making (1) a written statement or representation or (2) an oral statement or representation.

(k) *Law firm* includes a professional legal corporation or a partnership.

(l) *Legal counsel* means practitioner.

(m) *Legal profession* includes the individuals who are lawfully engaged in practice of patent, trademark, and other law before the Office.

(n) *Legal service* means any legal service which may lawfully be performed by a practitioner before the Office.

(o) *Legal System* includes the Office and courts and adjudicatory bodies which review matters on which the Office has acted.

(p) *Office* means Patent and Trademark Office.

(q) *Person* includes a corporation, an association, a trust, a partnership, and any other organization or legal entity.

(r) *Practitioner* means (1) an attorney or agent registered to practice before the Office in patent cases or (2) an individual authorized under 5 U.S.C. 500(b) or otherwise as provided by this subchapter, to practice before the Office in trademark cases or other non-patent cases. A "suspended or excluded practitioner" is a practitioner who is suspended or excluded under § 10.156. A "non-practitioner" is an individual who is not a practitioner.

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(s) A *proceeding before the Office* includes an application, a reexamination, a protest, a public use proceeding, a patent interference, an *inter partes* trademark proceeding, or any other proceeding which is pending before the Office.

(t) *Professional legal corporation* means a corporation authorized by law to practice law for profit.

(u) *Registration* means registration to practice before the Office in patent cases.

(v) *Respondent* is defined in §10.134(a)(1).

(w) *Secret* is defined in §10.57(a).

(x) *Solicit* is defined in §10.33.

(y) *State* includes the District of Columbia, Puerto Rico, and other Federal territories and possessions.

(z) *Tribunal* includes courts, the Office, and other adjudicatory bodies.

(aa) *United States* means the United States of America, its territories and possessions.

§10.2 Director of Enrollment and Discipline.

(a) *Appointment*. The Commissioner shall appoint a Director of Enrollment and Discipline. In the event of the absence of the Director or a vacancy in the Office of the Director, the Commissioner may designate an employee of the Office to serve as acting Director of Enrollment and Discipline. The Director and any acting Director shall be an active member in good standing of the bar of a State.

(b) *Duties*. The Director shall:

(1) Receive and act upon applications for registration, prepare and grade the examination provided for in §10.7(b), maintain the register provided for in §10.5, and perform such other duties in connection with enrollment and recognition of attorneys and agents as may be necessary.

(2) Conduct investigations into possible violations by practitioners of Disciplinary Rules, with the consent of the Committee on Discipline initiate disciplinary proceedings under §10.132(b), and perform such other duties in connection with investigations and disciplinary proceedings as may be necessary.

(c) *Review of Director's decision*. Any final decision of the Director refusing

to register an individual under §10.6, recognize an individual under §10.9 or §10.14(c), or reinstate a suspended or excluded petitioner under §10.160, may be reviewed by petition to the Commissioner upon payment of the fee set forth in §1.21(a)(5). A petition filed more than 30 days after the date of the decision of the Director may be dismissed as untimely. Any petition shall contain (1) a statement of the facts involved and the points to be reviewed and (2) the action requested. Briefs or memoranda, if any, in support of the petition shall accompany or be embodied therein. The petition will be decided on the basis of the record made before the Director and no new evidence will be considered by the Commissioner in deciding the petition. Copies of documents already of record before the Director shall not be submitted with the petition. An oral hearing on the petition will not be granted except when considered necessary by the Commissioner.

(Approved by the Office of Management and Budget under control number 0651-0012)

§ 10.3 Committee on Enrollment.

(a) The Commissioner may establish a Committee on Enrollment composed of one or more employees of the Office.

(b) The Committee on Enrollment shall, as necessary, advise the Director in connection with the Director's duties under §10.2(b)(1).

§ 10.4 Committee on Discipline.

(a) The Commissioner shall appoint a Committee on Discipline. The Committee on Discipline shall consist of at least three employees of the Office, none of whom reports directly or indirectly to the Director or the Solicitor. Each member of the Committee on Discipline shall be a member in good standing of the bar of a State.

(b) The Committee on Discipline shall meet at the request of the Director and after reviewing evidence presented by the Director shall, by majority vote, determine whether there is probable cause to bring charges under §10.132 against a practitioner. When charges are brought against a practitioner, no member of the Committee on