

BOARD OF PATENT APPEALS AND INTERFERENCES

STANDARD OPERATING PROCEDURE 8

ASSIGNMENT OF JUDGES TO EX PARTE MERITS PANELS

This Standard Operating Procedure (SOP) describes the process by which judges are assigned to merits panels in *ex parte* appeals by the Chief Judge's designee(s).

This Standard Operating Procedure creates internal norms for the administration of the Board of Patent Appeals and Interferences (Board) and complements Standard Operating Procedure 1 (SOP 1), *Assignment of judges to merits panels, motions panels, and expanded panels*. It does not create any legally enforceable rights.

I. Chief Judge's Authority to Delegate

The Director's authority under 35 U.S.C. § 6 to designate panels has been delegated to the Chief Judge. *See Manual of Patent Examining Procedure* § 1002.02(f) (8th ed., rev.6, September 2007).

II. Chief Judge's Designee(s)

A. At the discretion of the Chief Judge, at least one employee, hereinafter designee, may be delegated the task of assigning merits panels (designations under 35 U.S.C. § 6) to *ex parte* appeals at such times as the Chief Judge deems appropriate.

B. Employees selected to serve as designees will be notified of their selection by the Chief Judge.

C. The delegation to a designee of the task of assigning merits panels is a temporary delegation and is for a time period within the discretion of the Chief Judge.

D. Designee(s) will become familiar with the guidance of SOP 1.

E. Designee(s) will follow the assignment guidance provided by the Working Document accompanying this SOP.

F. At all times, the Chief Judge has the discretion to limit or expand the scope of a designee's delegation.

III. Discipline Reviewer

A. The Chief Judge has the discretion of appointing at least one employee to review ex parte appeals in a discipline to facilitate the assignment process, at such times as the Chief Judge deems appropriate.

B. Employees selected to serve as discipline reviewers will be notified of their selection by the Chief Judge.

C. The appointment to serve as a discipline reviewer is temporary and is for a time period within the discretion of the Chief Judge.

D. Discipline reviewers are to become familiar with the issues of interest to the Chief Judge.

E. Designee(s) are to follow the assignment guidance provided by the accompanying Working Document.

F. At all times, the Chief Judge has the discretion to limit or expand the scope of the tasks to be performed by a discipline reviewer.

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WORKING DOCUMENT

Assignment of On Brief Cases

I. Delegations

A. The following employees are designated as Discipline Reviewers for the purposes of reviewing the ex parte appeals:

1. Dale Shaw- Communications/Electrical
2. Paul Edgell- Mechanical/Business methods
3. Krista Zele- Computer
4. Merrell Cashion- Chemical/Biotech

B. The following employees (designees) are delegated the task of assigning merits panels to ex parte appeals:

The Chief Appeals Administrator, Deputy Chief Appeals Administrator, Appeals Manager and Discipline Lead Paralegals under the supervision of the Chief Appeals Administrator

II. Review and Assignment Process

Location of Folders

1. Each discipline will have an “Unassigned” folder located at the S drive containing the electronic Working File for the discipline. The “Unassigned” folder will have two (2) sub-folders:
 - a. “Ready to Assign” folder - where cases that have cleared the high level review are placed for panel assignment
 - b. “For Further Review” folder - where cases that have not cleared the high level review are placed for additional consideration.

REVIEW PROCESS

2. Discipline Reviewer conducts high level review of electronic Working file (eWf) for a given discipline, including a review for Ghuman issues.

ASSIGNMENT PROCESS

3. **If the eWf clears the high level review**, the Discipline Reviewer will place the eWf in the “Ready to Assign” folder.

4. The lead paralegal for the discipline will access the eWf from the “Ready to Assign” folder and determine if a panel needs to be assigned.

5. The lead paralegal performs a cursory review of the eWf.

6. If the eWf clears the cursory review and a panel has not been assigned, the lead paralegal, using the Assignment Sheet for the discipline provided by the Chief Appeals Administrator, will assign a random panel to the eWf.

7. Once the panel is assigned, the lead paralegal completes processing of the eWf to place the assigned eWf in the “Assigned” folder.

8. If the eWf does not clear the cursory review, the lead paralegal will have a remand prepared.

REVIEW PROCESS

9. **If the eWf DOES NOT clear the high level review**, the Discipline Reviewer will place the eWf in the “For Further Review” folder for further consideration.

10. At a time of the Discipline Reviewer’s choosing, he/she will conduct a second review of an eWf placed in the “For Further Review” folder to determine if there are any special issues that merit consideration by the Chief Judge.

11. If a Ghuman issue is present in the eWf, the Discipline Reviewer will do the following:

- a. Note the Ghuman issue by modifying the file name of the eWf to add “Ghuman” at the end of it; and
- b. Place the renamed eWf in the folder “Review for Possible Remand” located at S:\Appeals Processing\Working Files\Unassigned Cases for the Paralegal to prepare a remand.

ASSIGNMENT PROCESS

12. If special issues are **not** identified, the Discipline Reviewer will place the eWf in the “Ready to Assign” folder as a cleared eWf.

13. Repeat Steps 4 through 8.

REVIEW PROCESS

14. If special issues are identified, the Discipline Reviewer will schedule a meeting with the Chief Judge to consider the special issue and discuss a panel assignment.

ASSIGNMENT PROCESS

15. If the Chief Judge determines that no special issue is present, the Discipline Reviewer will place the eWf in the “Ready to Assign” folder as a cleared eWf.

16. Repeat Steps 4 through 8.

REVIEW PROCESS

17. If the Chief Judge determines that a special issue is present, the Chief Judge will designate the panel to be assigned.

ASSIGNMENT PROCESS

18. If the Chief Judge designates the panel, the Discipline Reviewer will enter the panel in ACTS.

19. Once the Discipline Reviewer enters the panel in ACTS, the Discipline Reviewer will place the eWf in the “Ready to Assign” folder as a cleared eWf.

20. Repeat Steps 4 through 8.

SENSITIVE APPLICATION WARNING SYSTEM (SAWS) REVIEW PROCESS

21. Board Contact forwards TC notification of SAWS case to all Discipline Reviewers.

22. Discipline Reviewers ascertain discipline of SAWS case and whether an appeal number has been assigned.

23. If the SAWS case has been assigned an appeal number and the case has been placed in a discipline folder, the Discipline Reviewer will proceed with steps 2-20, as necessary, paying particular attention to the special issues raised by the TC.