

Manual of Patent Examining Procedure, narrative guidelines, and other narratives containing new information the Office wants to deliver. The function of the program would be to assure that licensed practitioners, like patent examiners, have read and absorbed key content of these publications. The USPTO is planning to institute similar education of patent examiners.

Unlike traditional continuing legal education courses that must be taken at particular times and places, because the self-assessment update program would be available on the Internet, it could be taken when and where the practitioner selects. Paper copies of the questions and narratives would be made available to practitioners lacking access to the Internet. A licensed practitioner could take the program and complete it, or take part and store it until he or she has more time to complete it. The practitioner also would have the option to take it repeatedly and as often as desired until all questions are correctly answered. It would not be necessary for practitioners to take courses, such as continuing legal education courses offered by other parties, in order to complete the program.

A practitioner would have the option of obtaining the education from a USPTO pre-approved sponsor. The practitioner would be responsible for paying any fees charged by the sponsor for the program. The sponsor or the practitioner taking the program from the sponsor would be responsible for obtaining continuing legal education credit from a state bar. The Office would not seek such credit for the sponsor or the practitioner taking a course given by a sponsor.

The self-assessment program offered by the Office would include multiple choice and/or true/false questions. Narrative material, such as a guideline or policy announcement, would either precede the question, or links to the narrative material would be embedded in the questions. To complete a required education program, all questions must be correctly answered. A licensed practitioner would have to complete the program within the dates set by the USPTO Director. Taking a USPTO pre-approved course that is offered by a USPTO pre-approved sponsor providing comparable education also could complete the required education program. Licensed practitioners failing to complete the program would be administratively suspended from practice before the Office. The results from the USPTO Web-based program would be instantly available, and electronically recorded in the Office.

The education program requirement would not be onerous, since the self-assessment program would be self-administered and available on the Internet, and it would either contain or be linked to USPTO publications on its Web site that would provide the answers. Currently, forty states provide for or require continuing legal education for attorneys licensed in their respective jurisdictions. The Office will be communicating with the appropriate authorities in each of the states in an effort to have them accept the USPTO's education program as meeting their respective continuing legal education requirements.

*Paragraph (c) of § 11.12* would provide four exemptions from completing the education. One exemption would be for newly registered practitioners during the fiscal year he or she is first registered. Another exemption would be for a practitioner who becomes inactive as a result of being employed by the Office if, while so employed, the practitioner passes all recertification programs required for patent examiners during the practitioner's employment at the Office and appropriate to practitioner's grade and position in the Office.

The same paragraph permits completion of the education to be delayed for a specified time for "good cause shown." The cause may be shown in conjunction with illness, hospitalization, or such other matters as determined by the OED Director. Good cause would not be shown by representations that a medical condition makes attendance only difficult or uncomfortable, that a practitioner is outside the United States, that a practitioner finds it most difficult to complete the program, that the practitioner obtains education by observing other practitioners, or that a practitioner is in advanced years.

*Paragraph (d)(1) of § 11.12* would provide that persons seeking reinstatement after they resigned pursuant to § 11.11(d), after their names were transferred to disability inactive status, or upon seeking reinstatement after being suspended or excluded must furnish the OED Director with proof that he or she has completed all education programs required by the USPTO Director during the fiscal year(s) the practitioner was inactive, suspended or excluded, or during the practitioner's resignation. Thereafter, the person would have the same education program requirement as other licensed practitioners.

*Section 11.13* would provide procedures for sponsors to be approved as offering a pre-approved mandatory

continuing education program, as well as for practitioners receiving credit for completing the pre-approved program offered by either the USPTO or by a USPTO pre-approved sponsor. Practitioners will not receive credit for completion of the required education by attending a program that is not pre-approved by the OED Director as providing the legal, procedural and policy subject matter identified by the USPTO Director as being required to satisfy the mandatory continuing education program.

*Section 11.14*, like current § 10.14, continues to set forth who may practice before the Office in trademark and other non-patent matters. The present procedure under § 10.14 would continue, except that the definition of attorney is changed. See the discussion above under § 11.1. The change in the definition of attorney is believed necessary in view of 5 U.S.C. 500(b), and the fact that an individual may be an attorney in good standing in a state even though suspended or disbarred in another state. In other non-patent matters, e.g., disciplinary proceedings or *inter partes* or *ex partes* patent or trademark matters, a party could be represented only by an attorney.

*Paragraph (a) of § 11.14(a)* would contain a sentence making clear that registration as a patent attorney does not entitle an individual to practice before the Office in trademark matters. On occasion in the past, an attorney suspended or disbarred by the highest court of a state continued to practice before the Office in trademark matters. The sentence would provide such individuals with notice that they may not rely on registration as a patent attorney to practice in trademark matters.

*Paragraph (f) of § 11.14* would provide that an individual seeking reciprocal recognition under paragraph (c) must apply in writing for the recognition, and pay the fees required by §§ 1.21(a)(1)(i) and (a)(6) of this subchapter.

*Section 11.15* would provide that practitioners (individuals who practice before the Office in patent, trademark, or other non-patent matters) could be suspended or excluded. The USPTO Director has authority under 35 U.S.C. 32 to suspend or exclude practitioners registered to practice before the Office in patent matters. See also 5 U.S.C. 500(e). The USPTO Director also has authority to suspend or exclude practitioners who practice before the Office in trademark and other non-patent matters. See 5 U.S.C. 500(d)(2); *Herman v. Dulles*, 205 F.2d 715 (D.C. Cir. 1953); and Attorney General's