Date: October 1, 2020

To: All Utility Patent Examiners

From: Andrew Faile, Deputy Commissioner for Patents

Users, Faile, Andrew Digitally signed by Users, Faile, Andrew Date: 2020.10.06 12:41:14 -04'00'

Subject: Signatory Authority Program

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

To achieve the position of Primary Examiner, an examiner must complete the Signatory Authority Program. To determine if an examiner should be permanently delegated the authority to act on behalf of the Director of the United States Patent and Trademark Office (USPTO) by signing Office actions, including final actions and allowances, an examiner's work will be evaluated at the end of each of two trial periods. Successful completion of the first trial period will result in a grant of permanent Partial Signatory Authority (PSA), and successful completion of the second trial period will result in a grant of permanent Full Signatory Authority (FSA).

Policy

It should be recognized that the signing of an Office Action represents the position of the USPTO at that point in time. This is particularly significant when a Primary Examiner signs a final action in an application. These types of actions are ordinarily only reviewable by the Board of Patent Appeals and Interferences and the Federal Courts. Accordingly, the permanent grant of Signatory Authority should only be given to those examiners whose performance and conduct clearly demonstrate that they are competent and trustworthy to exercise this authority. Performance is determined by reviewing and evaluating a sample of actions completed by the examiner during trial periods in which the examiner exercises Partial or Full Signatory Authority on a temporary basis. The actions reviewed and evaluated must clearly demonstrate the examiner's competence to exercise a permanent grant of Signatory Authority. The examiner's work is evaluated based upon standards in the Performance Appraisal Plan (PAP) for an examiner with a permanent grant of Partial or Full Signatory Authority.

The exercise of USPTO authority, even on a temporary basis, is not a learning program. Thus, an examiner must demonstrate competence at his or her current level of authority before a temporary grant of authority is made.

The evidence reviewed on evaluation of the examiner's work product during this Program must clearly indicate that the examiner has the competence and judgment to act on patent

applications in a timely, proper and approved manner utilizing current USPTO procedures, before a permanent grant is warranted. An examiner has clearly demonstrated the necessary competence when he or she has cumulatively achieved at least the Fully Successful level of performance in all critical elements of the Performance Appraisal Plan (PAP) for the particular permanent authority (Partial or Full) involved. Additionally, with respect to the Quality evaluation specific to the trial period, the evaluation and performance determination during each of the trial periods will focus on the particular major activities accruing to the examiner as a result of the level of signatory authority temporarily granted.

Eligibility and Trial Periods

The Signatory Authority Program is a four step process. Grants of any temporary or permanent authority shall begin only at the start of a pay period. The pay periods referred to herein correspond to the two-week financial pay periods running 14 days from a Sunday through a Saturday.

An examiner must have at least a fully successful rating of record to begin a partial signatory or full signatory trial period.[1]

Examiners are ineligible to begin the Signatory Program if they are on a performance warning under their current PAP.

If an examiner does not receive a permanent grant of authority (either PSA or FSA) after 3 trial periods, the examiner will be ineligible to begin another trial period for a period of 1 year so that the examiner can receive coaching, mentoring, and training.

Step 1:
After a utility examiner becomes a GS-13, or a design examiner becomes a GS-12, the examiner's performance at that grade will be evaluated for a period of time called an "eligibility period." The first eligibility period will be the most recent ten (10) consecutive pay periods after a utility examiner becomes a GS-13, or the most recent eleven (11) pay periods after a design examiner becomes a GS-12. The grant of temporary PSA 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 critical elements of the examiner's PAP during the first eligibility period. Examiners may decline the automatic grant of PSA by notifying their supervisor in writing[2] prior to the end of the eligibility period.

If an examiner's supervisor determines that the examiner's cumulative performance is not at least at the Fully Successful level in any critical element of the PAP for the eligibility period, the examiner will be notified within the first pay period after the eligibility period that he or she is

[1] Certain conduct issues may also prevent an examiner from beginning, continuing, or passing the program. Those issues are explained in detail in Appendix D.
[2] The terms "in writing" and "written" when used herein include e-mail communications.

ineligible to be granted temporary PSA at that time. An examiner must have at least a fully successful rating of record to begin a partial signatory or full signatory trial period.

Examiners who have declined a grant of temporary PSA may elect to receive the temporary grant at a later time by providing advance written notice to their Supervisor. An examiner may choose when he or she will receive the temporary grant, as long as it is requested at least one week in advance and will begin on the first day of a pay period. The examiner's cumulative performance must be at least Fully Successful in all critical elements of the examiner's PAP for the most recent ten (10) consecutive pay periods immediately preceding the request or the most recent eleven (11) consecutive pay periods in the case of a design examiner to receive the temporary grant.

Examiners who have been found ineligible to receive a temporary grant of Signatory Authority should notify their supervisors when they wish to be reconsidered for a temporary grant. The temporary Signatory Authority will be granted as long as it is requested at least one week in advance and will begin on the first day of a pay period, and if the examiner's cumulative performance in all critical elements of the PAP is at least Fully Successful for the most recent ten (10) consecutive pay periods immediately preceding the request to receive the temporary grant, or the most recent eleven (11) consecutive pay periods in the case of a design examiner.

Step 2:
The second step comprises a "trial period" during which the examiner will exercise Partial Signatory Authority by independently signing certain types of office actions. The types of actions an examiner is authorized to sign under the temporary grant of PSA are described in Appendix A.

The length of the trial period will be at least thirteen (13) consecutive pay periods. At the end of the trial period, the temporary grant is terminated until a decision is made by the Technology Center (TC) Director whether to grant permanent authority.

To pass the trial period, the examiner must perform cumulatively at least at the Fully Successful level in Production and Docket Management for an examiner having permanent Partial Signatory Authority. Evaluation of the examiner's performance with respect to the Quality Element is described in the "Evaluation" section below. Additionally, a Utility examiner must be at least Fully Successful in all critical elements of the GS-13 PAP and a Designs examiner must be at least Fully Successful in all critical elements of the GS-12 PAP. With respect to examining hours, 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 TC Director (Additionally, Designs examiners will be promoted to GS-13 and Utility examiners will have his or her position factor raised from 1.15 to 1.25). Where potential 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.

Step 3:
The third step comprises the second eligibility period. Utility examiners who have been granted permanent Partial Signatory Authority are automatically granted temporary Full Signatory Authority if they perform cumulatively at least at the Fully Successful level for the ten (10) consecutive pay periods immediately following the grant of permanent PSA and meet the same additional eligibility criteria listed above for the first eligibility period, except the performance levels are for partial signatory authority examiner. Design examiners who have been granted permanent Partial Signatory Authority are automatically granted temporary Full Signatory Authority thirty-five (35) pay periods after the permanent PSA grant, provided that they have performed cumulatively at least at the Fully Successful level for the ten (10) consecutive pay periods immediately preceding the effective date of the temporary FSA grant. If the examiner wishes to decline or is ineligible for the grant of temporary FSA, the same rules apply as noted above with regard to Step 1.

Step 4:
The fourth step comprises the second trial period and operates identically to Step 2. Under the temporary grant of FSA the examiner is authorized to sign actions as indicated in Appendix B.

The length of the trial period will be at least thirteen (13) consecutive pay periods. At the end of the trial period, the temporary grant is terminated until a decision is made by the TC Director whether to grant permanent authority.

To pass the trial period, the examiner must perform at least at the Fully Successful level in Production and Docket Management for an examiner having permanent Full Signatory Authority. Evaluation of the examiner's performance with respect to the Quality Element is described in the "Evaluation" section below. Additionally, the examiner must be at least Fully Successful in all critical elements of the examiners GS-13 PSA PAP. With respect to hours, the examiner must perform at least 700 hours of actual examining time in paid status as defined in the "Evaluation" section below.

If, at the end of the second trial period, the examiner passes, the examiner will be so notified and granted permanent Full Signatory Authority by the TC Director. Where potential 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. Upon successful completion of Step 4, the examiner is granted the status of Primary Examiner.

Temporary grants of signatory authority will be terminated if the examiner is issued a performance warning in any critical element under the examiner's current PAP standard while on the trial period. In this instance, the appropriate eligibility period detailed in Steps 1 and 3 above will restart and the examiner will need to meet the necessary requirements appropriate to the eligibility period to begin the Signatory program again.

If a temporary grant is terminated, the appropriate eligibility period detailed in Steps 1 and 3 above will restart and the examiner will need to meet the necessary requirements appropriate to the eligibility period to begin the Signatory program again.

Minimum Hours Requirement

Any examiner under the grant of temporary Signatory Authority must perform at least 700 hours of actual examining time in paid status during each trial period. Failure to perform the minimum 700 hours of actual examining time in paid status during a trial period will result in a denial of a permanent grant of Signatory Authority.

All examiners participating in a Signatory Authority trial period are expected to meet the 700 hours of actual examining time in paid status. However, if an examiner fails to meet this requirement for reasons beyond the examiner's control, the USPTO 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 within 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 within two (2) pay periods after the end of the trial period. Since the 700 hour requirement must be met prior to extension of a trial period for insufficient reviewable actions, no waiver of the 700 hour requirement is possible after a trial period has been extended for that reason.

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:

112012 – Examining Time and Overtime, Utility
112030 – Examining Time and Overtime, Design
112024 – Applicant Initiated Interviews
112025 – Markush Searching
112026 – Examiner Initiated Interviews
112041 – Appeals Conference
112054 – Restriction time
112035 – QPIDS path 0
112019 – QPIDS before issue fee
112020 – QPIDS after issue fee
112056 – AFCP Interview Time
112057 – AFCP Consideration Time

Activities not specifically identified above are subject to TC Group Director approval.

Examiners on a Part-Time Work Schedule

Any examiner who is on an approved part-time schedule, 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 either thirteen (13) or twenty (20) consecutive pay periods. These two options are available for both the Partial and Full Signatory Authority portions of the program, and the examiner need not elect the same length trial period for both steps 2 and 4. The duration of the eligibility periods remains the same as above, regardless of the examiner's work schedule. Regardless of the number of pay periods elected, the examiner must still perform at least 700 hours of actual examining time in paid status during the trial period. If a 20 pay period election is not received prior to the beginning of the trial period, the examiner will be on a 13 pay period trial period. The election to participate in a 13 or 20 pay period trial period cannot be changed during the trial period. The election of the examiner to participate in the 20 pay period trial period shall be in writing and transmitted to the examiner's immediate Supervisor, Group Director, or the Group Director's designee.

Examiners who are on an approved part-time schedule may modify their part-time schedule during the trial period in order to meet the 700 hour minimum requirement. Modification of the examiner's part-time schedule must be done in accordance with the POPA Part-Time Program agreement and procedures.

Review Procedures

The performance review during each trial period will include at least 17 "reviewable actions" which have been completed, signed by, and credited to the examiner for the trial period.

For the first (PSA) trial period, reviewable actions consist exclusively of:

- Non-final rejections;
- First Action Interview Pre-Interview Communications; and
- First Action Interview Office actions.

For the second (FSA) trial period, reviewable actions consist exclusively of:

- Allowances; and
- Final actions[3].

At least 17 "reviewable actions" must be completed and credited to the examiner for the trial period. Examiners will be given the opportunity to select up to seven (7) reviewable actions of the types listed above to be reviewed as part of the at least 17 actions. For an examiner on a 13 pay period trial period, the seven actions selected by the examiner must be credited to the examiner for the first seven (7) pay periods of the trial period and identified, by serial number and date of office action, to the examiner's supervisor by the first Friday of the eighth pay

[3] An ex Parte Quayle action is not a reviewable action for either the Partial or Full Signatory Authority Program.

period of the trial period. For a 20 pay period trial period, the seven actions selected by the examiner must be credited to the examiner for the first thirteen (13) pay periods of the trial period and identified, by serial number and date of office action, to the examiner's supervisor by the first Friday of the fourteenth pay period of the trial period. Once an action is identified to the SPE, the selection may not be changed. If 7 reviewable actions have not been identified by the first Friday of the eighth or fourteen pay period, either because the examiner has opted not to select that number, or because at least 7 reviewable actions have not been completed, the remainder of the actions to be reviewed will be selected at the direction of the TC Director.

The remaining selections (at least 10 additional actions) shall be made at the direction of the TC Director, taking into account the need for a representative sample of the examiner's work. In all instances, the actions reviewed and evaluated must have been credited to the examiner for the trial period.

Following the end of each of the first and second trial periods, the examiner will be provided with a list of all applications in which an office action was reviewed as part of the Signatory Review program.

Mid-Point Performance Check

At the mid-point of the trial period under either of the partial or full signatory authority programs, if an examiner's cumulative performance for the trial period is less than fully successful in any critical element of the examiner's current PAP, the examiner shall be removed from the Program and the temporary grant shall be terminated. The mid-point of a trial period shall be:

a) after seven (7) biweeks for a thirteen (13) pay period trial period;
c) after ten (10) biweeks for a twenty (20) pay period trial period.

In this instance, the appropriate eligibility period detailed in Steps 1 and 3 above will restart and the examiner will need to meet the necessary requirements appropriate to the eligibility period to begin the Signatory program again.

Extension of Trial Periods due to Insufficient Reviewable Actions

If at the end of either the first or second trial period, the examiner has not completed, signed, and been credited with 17 reviewable office actions appropriate to the type of signatory authority of the temporary grant, the examiner may elect to extend the trial period for up to two additional pay periods. The election must be made in writing to the examiner's supervisor by the first Tuesday following the end of the 13th pay period. A trial period will not be extended for this reason if the 700 hour minimum requirement has not been met at the end of the unextended trial period, nor if the examiner has performed cumulatively at less than the Fully Successful level appropriate to the level of signatory authority in any critical element for the unextended trial period.

If the necessary number of reviewable cases is not available at the end of the extension, the temporary grant of authority will be terminated and the examiner's participation in the signatory program will be ended.

If a trial period has been ended due to a lack of reviewable actions, the examiner may elect to commence a new trial period without an intervening waiting period. This option is available whether or not the trial period was ended after 13 pay periods or was extended as provided above. In this situation, upon written request to the examiner's supervisor, temporary signatory authority will be granted, as long as it is requested at least one week in advance, and if the examiner's performance is at least Fully Successful for the most recent 10 consecutive pay periods immediately preceding the request to receive the temporary grant and all other eligibility criteria is met. If the new trial period is subsequently terminated due to insufficient reviewable actions, a 10 pay period eligibility period, commencing with the pay period following the termination of the trial period, must be completed before starting another trial period.

Withdrawal from a trial period

Any withdrawal from a signatory authority trial period must occur prior to the end of the trial period. An examiner may withdraw by providing written notice to his or her supervisor. In the event that an examiner withdraws from the signatory program during a trial period for performance reasons the waiting period to restart a trial period is 7 pay periods. The requirement for fully successful performance for the 10 pay periods prior to the start of the trial period also applies in this situation along with the other eligibility criteria. Both these periods begin with the first full pay period after the effective date of the withdrawal.

If the examiner withdraws for a reason not related to performance (e.g. insufficient examining hours, personal reasons) he or she may request waiver of the eligibility period after withdrawal from a trial period. Such requests must be submitted in writing to the examiner's supervisor not later than one week prior to the desired effective date of the new trial period, and will be decided on a case-by-case basis by the TC Director.

Evaluation

The evaluation involves a thorough and complete check of the reviewed cases to see whether there were any errors as defined by the Quality Element of the examiner's Performance Appraisal Plan for the applicable signatory authority level. For the PSA Program, only errors in non-final rejections will be considered. For the FSA Program, only errors in final rejections and allowances will be considered. At the end of the trial period, an error rate will be calculated. The examiner's performance in each case will be evaluated by the TC Director, who will determine whether there are any errors. At the end of the trial period, the examiner must also have performed cumulatively at least at the Fully Successful level in the Production Element for an examiner having the appropriate level of Signatory Authority, and at least at the Fully Successful level in Docket Management and Professionalism for the trial period. If the

examiner has not performed at least at the Fully Successful level in the critical PAP elements of Production, Docket Management, and Professionalism, or has exceeded the error rates specified below for the Quality Major Activity category applicable to the appropriate level of signatory authority during the trial period, the permanent grant will be denied.

For the temporary Partial Signatory Authority trial period, the error rate for the Quality Element Major Activities is calculated by counting the number of reviewable actions (consisting of Non-final rejections, First Action Interview Pilot Program interview summary forms, and First Action Interview Pilot program first non-final rejections) which contain an error, and dividing by the total number of Non-final rejections, First Action Interview Pilot Program interview summary forms, First Action Interview Pilot program first non-final rejections, independently signed by, and credited to the examiner for the trial period. **To pass the trial period, the error rate must not exceed 6.49%**, the examiner must be fully successful in all critical elements as set forth in the examiner's current PAP during the trial period and the rating of record must be at least Fully Successful.

For the temporary Full Signatory Authority trial period, the error rate for the Quality Element Major Activities is calculated by counting the number of reviewable actions (consisting of Final actions and Allowances) which contain an error, and dividing by the number of Final actions and Allowances independently signed by, and credited to the examiner for the trial period. **To pass the trial period, the error rate must not exceed 6.49%**, the examiner must be fully successful in all critical elements as set forth in the examiner's current PAP during the trial period and the rating of record must be at least Fully Successful.

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 endeavor to either grant the permanent authority or provide the examiner with written reasons why the permanent grant is being denied. If any potential 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 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. See Appendix C. The examiner's comments may be communicated orally, in writing, or both. TC Directors may request written or oral responses, or both.

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 error rate for the Quality Element Major Activity 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 Quality Major Activity(ies) of the examiner's Performance Appraisal Plan with respect to which the action is deficient;
3. In the case of allegations of improper allowance of claim(s), specific identification of the claim(s) involved and an explanation of any rejection properly applicable to those claims; and
4. In the case of allegations of improper rejection of claim(s) in a rejection, specific identification of the claim(s) involved and a full statement of the deficiency in the action(s) taken by the examiner.

Appendix A: Partial Signatory Authority

An examiner with temporary or permanent Partial Signatory Authority is authorized to sign:

1) requirements for restriction or election:
2) First Action Interview (FAI) office actions:
3) FAI actions without interview;
4) all other non-final actions **except**:
    a. actions on amendments submitted after final rejection;
    b. actions initiating an interference, involving copied patent claims, or suggesting claims to be copied for the purpose of initiating an interference;
    c. actions reopening prosecution;
    d. actions including a rejection of a previously allowed claim;
    e. actions in reissue applications;
    f. actions based on affidavit or declaration evidence under 37 C.F.R. 1.131 or 1.132;
    g. actions containing a rejection based on double patenting requiring a TC Director's signature; and
5) Notices of abandonment for failure to respond.

Appendix B: Full Signatory Authority

An examiner with temporary or permanent full signatory authority is authorized to sign all office actions and communications, **except** those that require the approval of a Supervisory Patent Examiner or Technology Center Director, which consist of:

1) all petitions except petitions (or requests) to correct inventorship under 37 CFR 1.48;
2) actions in response to amendments filed under 37 CFR 1.312 which embody more than mere correction of formal matters without changing the scope of any claim;
3) actions reopening prosecution after the filing of an appeal brief in order to incorporate any new ground of rejection;
4) actions in response to a request for a Certificate of Correction;
5) actions disapproving entry of preliminary or supplemental amendments;
6) letters to an applicant suggesting claims for purposes of interference, or the submission of Form PTO-850, where one or more claims of one application would differ from corresponding claims of another application; and
7) actions in response to amendments presented after decision in an appeal by the Board of Patent Appeals and Interferences as to which the primary examiner recommends entry as placing the application in condition for allowance.

Appendix C. Timeline for Signatory Program Decisions

		Thursday	
		Friday	
		Saturday	End of Trial Period
Decision Biweek 1	Biweek 1 Week 1	Sunday	
		Monday	
		Tuesday	
		Wednesday	
		Thursday	
		Friday	
		Saturday	
	Biweek 1 Week 2	Sunday	
		Monday	
		Tuesday	
		Wednesday	
		Thursday	
		Friday	
		Saturday	
Decision Biweek 2	Biweek 2 Week 1	Sunday	
		Monday	
		Tuesday	
		Wednesday	Last day to deliver letter of concern
		Thursday	
		Friday	
		Saturday	
	Biweek 2 Week 2	Sunday	
		Monday	
		Tuesday	
		Wednesday	Last day for examiner to respond to letter of concern
		Thursday	
		Friday	
		Saturday	Deliver decision to grant or deny by close of business
		Sunday	Permanent grant of authority effective

Appendix D: Misconduct

Examiners may be ineligible to begin the Signatory Program for misconduct at the Technology Center (TC) Director's discretion based on the following criteria:

(1) For Examination related misconduct if they are under active misconduct investigation, have a pending proposed disciplinary or adverse action, or if they have been suspended or received a letter of reprimand less than 1 year prior to the start of the trial period,
(2) For all other misconduct if they are under active misconduct investigation that is likely to result in a proposed suspension or removal, have a pending proposed suspension or removal or if they have been suspended less than 2 years prior to the start of the trial period.

For ineligibility due to an active misconduct investigation, the ineligibility will last no longer than 100 days from the date on which the examiner would have started the program, unless the issue is referred to the Inspector General or the Department of Justice.

Temporary grants may be terminated for misconduct at the Technology Center (TC) Director's discretion based on the following criteria:

(1) For Examination related misconduct if they receive a proposed disciplinary or adverse action, or if they are suspended or receive a letter of reprimand during the program.
(2) For all other misconduct if they receive a proposed suspension or adverse action during the program.

For an examiner on the program who is the subject of a misconduct investigation, any decision on permanent grant may be delayed up to 100 days from the end of the trial period to determine the result of the investigation. If the investigation results in:

(1) For Examination related misconduct, a proposed disciplinary action or adverse action or
(2) For all other misconduct, a proposed disciplinary action or adverse action,

The results of the program will be held in abeyance until a final decision is rendered. Once the final decision is rendered, an examiner may be denied signatory authority if he or she receives:

(1) For Examination related misconduct a disciplinary action, adverse action or letter of reprimand,
(2) For all other misconduct a disciplinary action or adverse action or
(3) Is the subject of an investigation referred to the Inspector General or the Department of Justice.