
From: Dennis Crouch <dcrouch@gmail.com>
Sent: Thursday, November 08, 2012 11:54 AM
To: Ethics Rules Comments
Subject: Comment on Proposed Changes to the USPTO Ethics Rules

Thank you for your work on the proposed ethics rules. I agree that it will be beneficial to more closely align PTO ethics rules with the standards set by most state bar associations. However, in this process care should be taken (1) to ensure that PTO responsibilities are not abdicated in favor of state bar control and (2) to ensure that the rules do not unduly focus on the experience of patent attorneys at the expense of patent agents. This issue comes up in particular with reference to the thousands of registered patent agents who are not governed by any state's bar association or attorney registration rules. Unlike attorneys, patent agents may have never taken a course on legal ethics, typically did not attend law school where legal ethics is an element of every course, and have no have no state CLE requirements regarding legal ethics. Most attorneys will likely agree that their initial legal ethics courses were not a practice in intuitive morality. Rather, the rules of legal ethics require some amount of study and learning before they can be fully understood. In addition, a large number of patent agents work in either solo-practice or within a corporation apart from other patent practitioners. These factors all come together to suggest that, rather than ignoring the existence of patent agents, that the OED should be taking special care to facilitate this group's continued professionalism and professional growth. One option that the majority of state bar associations have chosen is that of annual CLE requirements that always include a section on legal ethics. These courses cover critical information, including financial relationships with clients, confidentiality, advocacy, identifying the client, when withdrawal is suggested or required, etc. More generally, however, the OED should review each portion of the rules that rely upon a background of state bar association enforcement and consider how agents fit into that equation.

In addition, although the AIA expressly calls on the USPTO to promote pro bono patent work, the OED has chosen to not even suggest in the rules that pro bono work is an obligation of all patent practitioners. Rather, in the comments the PTO once again falls back upon a mistaken reliance on state bar associations.

Thank you,
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