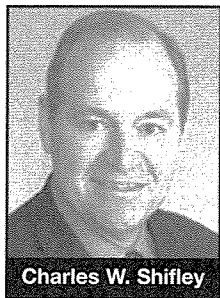


Where in the World Is... My

by Charles W. Shifley

Is it possible that your patent examiner or trademark examining attorney will not be at the Patent Trademark Office (PTO) while working on your important cases? The answer is definitely yes. In 2007, according



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to the PTO, more than 1,000 patent examiners were "hoteling" away from the PTO and about 240 trademark examining attorneys were working at home.

Where are these people? They could be anywhere.

And how is this working for patent and trademark applicants? "Just great," says attorney Lisa Hemmendinger, of Banner & Witcoff, Ltd., regarding her experience with a work-at-home patent examiner. "She was very available and had all the resources she needed to answer my questions."

If you have not yet worked with a work-at-home examiner or examining attorney, chances are you will—soon. The PTO began its Trademark Work-at-Home Program in 1997, found it to be a success, and expanded it greatly. In 2006, the PTO launched its Patent Hoteling Program for Patent Examiners. Both programs are touted by the PTO as award-winning and advantageous. Quoted in a PTO press release, Deputy Under-Secretary Margaret Peterlin claims, "The PTO has demonstrated that telework is a business strategy that benefits our employees, the agency, and the American economy. Our experience shows telework programs result in greater employee productivity, higher levels of sustained

performance, reduced traffic congestion and air pollution, and reduced real estate costs. Our motivated, high-performing employees have shown they can perform their responsibilities regardless of physical location."

The PTO is so pleased with its telework programs that it intends a "USPTO National Workforce." Its goal is to have some employees work full-time at the PTO headquarters, some telecommute one day a week, some "hotel," and some live outside of the metropolitan area of Washington, DC, and "rarely come to headquarters." In casual conversation at the Spring 2008 Federal Circuit Bar Association meeting, Commissioner for Patents John Doll related that examiners

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currently need to be physically present at the PTO once a week, for an hour. Some are doing late

Friday to early Monday appearances so they are at the PTO only twice a month for the briefest of times. Soon the PTO hopes to change this situation, so that examiners will only have to check in physically at the PTO about once a year. Commissioner Doll said the PTO will soon have 5,800 examiners and this "hoteling" and remote work will allow the PTO to expand without outgrowing its buildings. As of the bar meeting, Commissioner Doll said that some examiners work from as far as Washington state and Texas.

The PTO Patent Public Advisory Committee agrees with this strategy. In its November 2007 Annual Report, it asserted a belief that the PTO should "aggressively pursue a full nationwide workforce work plan" of a kind said to be in use at "all

successful global organizations."

According to the committee, people at mid-career with established roots in a location other than the Alexandria, Virginia, area could "look to the PTO as an employer of choice." The committee also recommends "abolishing" the need for examiners to be at the PTO campus for an hour a week, as being a rule "severely limit[ing] the development of a nationwide workforce."

How is this present situation and potential future possible, and is it productive? Again according to Doll, everything is electronic. According to an April 2007 article by Richard Walker at www.FCW.com, the PTO's project team leader for the telework program, Larry Schwartz, asserts that patent examiners who telecommute work longer hours and are motivated toward program success. They are required to have high-speed cable connections or better, arrange for their own Internet service provider, use laptops from the PTO for work only, and access the PTO's databases and programs. According to the blog Patent Docs (www.patentdocs.us/), Deputy Director Peterlin testified in Congress in November 2007 that "the nature of our patent and trademark examination work easily lends itself to employee telecommuting." The blog also reports that the deputy director cited increased productivity as a benefit of remote work because of an "improved work/life-family balance," "hours of 'found time,'" and reduction of "commuting anxiety." An increase in productivity of 10 percent is asserted. The PTO also cites increased employee



Examiner?

retention and the resulting reduced costs of recruiting and training.

Who gets to do this, and how are they appraised? According to a Telework Exchange 2008 Town Hall Meeting report, Patent

Hoteling Program participants must be GS12-level patent examiners, have passed a certification examination, and possess a rating of

success. They are appraised based on the same performance criteria and standards as those examiners not in the program. Starting examiners are GS7 or 9, and can achieve GS12 status and the opportunity to "hotel" in as soon as two years if they gain all available promotions. Exchanges on blogs assert that GS12 examiners with modest overtime can earn about \$100,000.

The implications for this program are interesting, and possibly exciting. The PTO is becoming a nationwide employer and competitor for IP talent, raising the stakes with law firms and

corporations seeking local talent. Some job candidates may find the work-at-home model too good to pass up, for reasons of independence, balancing home and family responsibilities, freedom from the

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time and expenses of commuting, and the like. Some lawyers may do as the PTO Patent Public Advisory Committee contemplates, and change jobs mid-

career to join the PTO while remaining in their home locations. Some may move to places where lower costs of living, scenery, or lifestyle may better please them. Some may stay in existing positions but press for mobility of the sort the PTO national workforce would have. Some seniors may extend their careers. And some recent law school graduates, who want to get into IP but are not getting hired by firms, are already finding they can take examiner jobs in Washington, DC, now, with the potential to soon have the freedom to move wherever they want in the country.

"Just great" or not, if you do not have experience with a patent examiner or trademark examining attorney who is not at the PTO campus when handling your important cases, you soon will. And if you have not considered being a patent examiner or trademark examining attorney because you don't want to move to Washington, DC, think again about whether the PTO might be an "employer of choice." Remote examiners and attorneys are a fact of the present, and all the more likely in the future.

For more information, consult the cited sources and the PTO press release #07-45 found at www1.uspto.gov/go/com/speeches/07-45.htm.

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