



# United States Patent and Trademark Office

*Under Secretary of Commerce for Intellectual  
Property and Director of the United States Patent  
and Trademark Office*

## DIRECTOR'S MEMORANDUM

**TO:** Management Council

**FROM:** Kathi Vidal *Kathi Vidal*  
Under Secretary of Commerce for Intellectual Property and  
Director of the United States Patent and Trademark Office

**DATE:** April 20, 2022

**RE:** **Procedures for Recusal to Avoid Conflicts of Interest and Delegations of Authority**

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USPTO endeavors to eliminate all actual and apparent conflicts of interest in proceedings before the agency. In furtherance of this objective, this memorandum documents the procedures that the agency will follow in the event of an actual or potential conflict of interest by the Under Secretary of Commerce for Intellectual Property and Director of the USPTO (Director) or Deputy Under Secretary of Commerce and Deputy Director of the USPTO (Deputy Director)<sup>1</sup> relating to matters requiring the Director's or Deputy Director's review, approval, or other involvement. These procedures are intended to make internal USPTO administrative processes transparent, clear, and uniform.

- I. Recusal List
  - a. A recusal list for each Director and Deputy Director will be generated upon the appointment of an individual to either position. These lists will include the names of all entities that pose a conflict of interest for the Director or Deputy Director, and will be developed by the Director or Deputy Director, as appropriate, in consultation with the Department of Commerce Ethics Law and Programs Division and USPTO's Office of General Counsel.
  - b. The recusal lists will be maintained by the Office of the Under Secretary (OUS) and will be updated as needed. The Director's recusal list will be shared with the Deputy Director so that the Deputy Director is aware in advance of matters where the Director is recused.
  - c. When a matter is sent to OUS for action or review by the Director or if the

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<sup>1</sup> References to "Deputy Director" throughout this document apply equally to a person serving in the position of Acting Deputy Director.

Director intends to take action on a matter before OUS, the General Counsel, or his or her designee, will check the Director's recusal list against all parties, counsel, patent(s), and mark(s) involved in the matter. If any matches are found, the General Counsel will check the Deputy Director's recusal list against all parties, counsel, patent(s), and mark(s) involved in the matter. OUS will notify the requesting Business Unit if any conflicts are found. Matters from which the Director is recused are presumptively delegated to the Deputy Director. If the position of the Deputy Director is vacant, or if the Deputy Director also has a conflict, the required action will be taken by the Commissioner for Patents, Commissioner for Trademarks, or General Counsel, as discussed below, if no conflicts exist.

- d. When a matter is sent to OUS for action or review by the Deputy Director, or if a matter sent for action or review by the Director has been delegated to the Deputy Director for reasons unrelated to conflicts of interest, the General Counsel, or his or her designee, will check the Deputy Director's recusal list against all parties and counsel involved in the matter. OUS will notify the requesting Business Unit of any conflicts found. If the position of the Deputy Director is vacant, or if the Deputy Director also has a conflict, the required action will be taken by the Commissioner for Patents, Commissioner for Trademarks, or General Counsel, as discussed below, if no conflicts exist.

## II. Patent Trial and Appeal Board (PTAB) Procedures

### a. Paneling

- i. As described in PTAB Standard Operating Procedure (SOP) 1<sup>2</sup> § I, the Director's authority to designate panels has been delegated non-exclusively to the Chief Administrative Patent Judge. If the Director has a conflict related to the parties, counsel, or patent(s) in a particular case, the Director will not exercise her own statutory authority to designate a panel in that case.
  - ii. Before the Director is assigned to a panel, the General Counsel, or his or her designee, will check the Director's recusal list for conflicts of interest consistent with SOP 1 § III.B.
- b. Precedential Opinion Panel – if the Director has a conflict related to the parties, counsel, or patent(s) in a particular case, authority will be delegated according to PTAB SOP 2<sup>3</sup> § II.B.
  - c. Director Review of PTAB decisions – in instances where the Director's review of a PTAB decision is sought either by parties outside the USPTO, or by the USPTO itself, if the Director has a conflict with parties or counsel in the decision, he or she will be recused and the required action will be taken by the Deputy Director. If the position of the Deputy Director is vacant, or if the Deputy Director also has a conflict, the required action will be taken by the Commissioner for Patents, if no conflicts exist.
  - d. For procedures not specified above, including approval for designating a decision as precedential or informative in accordance with SOP 2 § III.C, if the Director

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<sup>2</sup> Available at <https://www.uspto.gov/sites/default/files/documents/SOP%201%20R15%20FINAL.pdf>

<sup>3</sup> Available at <https://www.uspto.gov/sites/default/files/documents/SOP2%20R10%20FINAL.pdf>

has a conflict, she will be recused and the authority for the required action will be delegated to one of the following individuals, in the following order and based on availability and conflicts of interest: the Deputy Director; the Commissioner for Patents; the Chief Administrative Patent Judge; the Deputy Chief Administrative Patent Judge; or an Operational Vice Chief Administrative Patent Judge in order of seniority.

### III. Trademark Trial and Appeal Board (TTAB) Procedures

- a. Paneling – if the conflict check performed in Section I reveals any conflicts for the Director in connection with an appeal pending before TTAB, the Director will not sit on the panel or be involved with designation of the panel. Similarly, if the conflict check reveals any conflicts for the Deputy Director, the Deputy Director will not sit on the panel or be involved with designation of the panel.
- b. Precedential Decisions – Director review of TTAB decisions being considered for designation as precedential has been delegated to the Solicitor of the USPTO. If the Director were to become personally involved in the review process for a TTAB precedential decision, the general recusal procedures identified in III.d below would be followed.
- c. Director Review of TTAB decisions – in instances where the Director’s review of a TTAB decision is sought either by parties outside the USPTO, or by the USPTO itself, if the Director has a conflict with parties, counsel, or mark(s) in the decision, he or she will be recused and the required action will be taken by the Deputy Director. If the position of the Deputy Director is vacant, or if the Deputy Director also has a conflict, the required action will be taken by the Commissioner for Trademarks, if no conflicts exist.
- d. For procedures not specified above, if the Director has a conflict, she will be recused and the required action will be taken by the Deputy Director. If the position of the Deputy Director is vacant, or if the Deputy Director also has a conflict, the required action will be taken by the Commissioner for Trademarks, if no conflicts exist.

### IV. Other Procedures

- a. If OGC identifies a conflict in a matter requested by a Business Unit other than PTAB or TTAB, the Director will be recused and the required action or review will be taken by the Deputy Director. If the position of the Deputy Director is vacant, or if the Deputy Director also has a conflict, the required action or review will be taken by the General Counsel, if no conflicts exist.
- b. If a conflict exists for a matter in which the Director at his or her own initiative could take action or review, the Director will be recused and the discretionary action or review may be taken by the Deputy Director. If the position of the Deputy Director is vacant, or if the Deputy Director also has a conflict, the discretionary action or review may be taken by the General Counsel, if no conflicts exist.

V. Further Delegation

- a. Any individual to whom authority is delegated through operation of this document may further delegate such authority as long as consistent with applicable law.
- b. If the delegations described above are not possible because of conflicts of the potential delegees, the Director shall delegate the authority to perform the function in question to another individual within USPTO, as long as consistent with applicable law.

These procedures are effective as of the date of this memorandum and remain in effect unless subsequently revoked. Coordination between OUS and OGC for the above described conflict checks will be managed for OUS by the Chief of Staff. Questions should be directed to the USPTO General Counsel, or his or her designees.