

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

SMITHKLINE BEECHAM,)
CORPORATION,)
d/b/a GLAXOSMITHKLINE,)
SMITHKLINE BEECHAM PLC, and)
GLAXO GROUP LIMITED, d/b/a)
GLAXOSMITHKLINE,)

Plaintiffs,)

v.)

CIVIL ACTION NO. 1:07cv1008 (JCC/TRJ)

JON W. DUDAS, in his official capacity as)
Under-Secretary of Commerce for)
Intellectual Property and Director of the)
United States Patent and)
Trademark Office, and)

UNITED STATES PATENT AND)
TRADEMARK OFFICE,)

Defendants.)

DECLARATION OF KAREN M. YOUNG

I, Karen M. Young, make the following declaration based upon my personal knowledge of the facts set forth herein. I hereby testify and declare the following:

1. I hold the position of Group Director in Technology Center 3700 of the U.S. Patent and Trademark Office ("USPTO"). I have held this position since February 19, 2006. Technology Center ("TC") 3700 is one of eight major divisions of the examination corps. TC 3700 employees approximately 700 patent examiners and is focused on the examination of applications related to mechanical engineering, manufacturing, and products.

2. As a Group Director, I exercise administrative and technical authority over patent examination. I am responsible for the comprehensive planning and management functions essential to effective patent examining group operations. I recommend or initiate programs and procedures to implement official policies, and assist in the development of, and maintenance of, quality, timeliness, and quantity performance standards. I perform related duties, which include adjudicating petitions for the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office. I also perform staff functions related to human resource management and manpower utilization, training and career development, patent examining practice and procedures, support for automation and civil rights program goals affecting the Technology Center, and classification and documentation of the technical arts.

3. I was previously employed by the USPTO as the Administrator of the Office of Patent Resources Administration (November 2000 to February 2006), a Supervisory Patent Examiner (January 1996 to November 2000), and a Patent Examiner (March 1987 to January 1996). In total, I have been employed by the USPTO for more than twenty years.

4. I am a member of the team of USPTO personnel responsible for preparing the agency and patent applicants to implement new rules concerning the filing of continuing applications, requests for continued examination, and the examination of claims as set forth in "Changes to Practice for Continued Examination Filings, Patent Applications Containing Patentably Indistinct Claims, and Examination of Claims in Patent Applications," 72 Fed. Reg. 46716 (Aug. 21, 2007) ("Final Rules"). The Final Rules were published in the Federal Register on August 21, 2007, and are effective on November 1, 2007.

5. The implementation team is multi-layered and consists of a Steering Committee, the group of people leading and coordinating the overall implementation; a Primary

Implementation Team; and several sub-teams, for example the automation sub-team and the labor relations sub-team. I am a member of the Steering Committee and the Primary Implementation Team. The Steering Committee consists of six senior level USPTO employees. The Primary Implementation Team presently consists of twenty-seven USPTO employees from across the Patent business area, including members from various Technology Centers, the Office of Patent Legal Administration, the Office of Petitions, the Office of Initial Patent Examination, and representatives from the IT automation area. The Steering Committee and/or the Primary Implementation Team have met three times per week for one to two hours from March 2007 to early October 2007 (three to six hours per week). Starting in mid October 2007, the Primary Implementation Team has met daily for two hours (ten hours per week). In total to date, the Steering Committee and Primary Implementation Team have met for approximately 2,700 hours, planning the implementation of the Final Rules for the agency and for patent applicants.

6. The Primary Implementation Team developed training classes and corresponding written training materials to teach all examiners, managers¹, and Technology Center directors about the Final Rules. The training consists of two parts, the first a high-level overview of the Final Rules (“Overview Training”) followed by a second detailed instruction of how to apply the Final Rules to particular applications (“Detailed Training”). All examiners, managers, and directors have been instructed to take both the Overview Training and the Detailed Training.

7. The Overview Training provided a summary of the Final Rules, introducing the examiners, managers, and directors to the general provisions of the Final Rules. For example, participants were taught that the Final Rules permitted an applicant to file (i) two continuation

¹ The USPTO employs several kinds of managers including: (i) Supervisory Patent Examiners, commonly called “SPEs”; and (ii) Technology Center Quality Assurance Specialists commonly called “T-QASSs.” Both provide assistance for the examiners. SPEs have additional supervisory duties.

applications and/or continuation-in-part applications and one request for continued examination without filing a petition and showing of need; and (ii) five independent claims and twenty-five total claims without submitting an examination support document. The Overview Training lasted for one hour and was taught by members of the Primary Implementation Team using a series of slides. See Ex. A, Claims and Continuation Final Rule Overview Briefing for Examiners. Following the training, participants were provided with an internal Intranet website link to the slides presented during the live lecture. For those examiners, managers, and directors unable to attend the live Overview Training, the Primary Implementation Team prepared a computer-based training (“CBT”) consisting of a taped version of the live session, which the Team made available with the corresponding slides through the internal Intranet web link for employees to view online at their work stations.

8. The Detailed Training, by contrast, provided an explanation of the specific operation of each of the Final Rules. For example, participants were taught what specific steps to take, and items to look for, when they begin to work on a new or an amended application on or after November 1, 2007. The Detailed Training was divided into two segments, an instructional lecture followed by individual study. The instructional lecture lasted for approximately 1.5 hours and incorporated a variety of written training materials available for participants to view on the internal Intranet. See e.g., Ex. B, Examination Flowchart Tool. For managers and directors, the instructional lecture was a live training session, taught using slides and presented by members of the Primary Implementation Team. For examiners, the instructional lecture is a CBT module, which was released on October 24, 2007. Following either the live lecture or CBT module, all participants were given an additional 1.5 hours to study the written training

materials. Thus, in total, the Detailed Training entails three hours of education about the Final Rules.

9. In late August, all managers and directors attended the Overview Training. Thereafter, on selected dates in September 2007 and October 2007, all examiners attended the Overview Training.

10. In mid October 2007, all managers and directors completed the Detailed Training. As of today, examiners have begun to take the Detailed Training, and all examiners have been instructed that they are required to complete it by November 1, 2007. See Ex. C, instructional email from Margaret Focarino, Deputy Commissioner for Patent Operations, regarding Detailed Training.

11. In addition to training managers, directors, and examiners on the Final Rules, the Implementation Team is providing 3 hours of Final Rules training for technical support staff such as paralegals and clerks (“Support Staff Training”). That training provides instruction on new application processing required as a result of the Final Rules. See Ex. D, Changes to TSS Processing.

12. On October 30 and 31, 2007, the Implementation Team will be offering separate, specialized training for a targeted group of about 40 managers who will be reviewing examination support documents (“ESD Training”). The ESD Training will last for 2 hours and will consist of a live lecture, supported with slides, about how to review and process an ESD. See Exs. E, ESD Guidelines for Reviewers; F, ESD Review Checklist.

13. In Summary, during August, September, and October 2007, the Implementation Team provided: (i) four hours of training on the Final Rules to each manager, director, and examiner employed by the USPTO; (ii) two hours of training on the Final Rules to each technical

support employee; and (iii) two hours of specialized examination support document training to select managers. As of September 30, 2007, there were 432 managers, 24 directors, 5477 examiners, and 367 technical support employees employed by the USPTO. Thus, as shown in the table below, the USPTO will have given a total of more than 25,000 hours of training to its 6300 employees about the Final Rules before implementation of those rules on November 1, 2007.

	Type of Training	Number of Employees	Hours of Training	Total Hours of Training Per Type of Employee
Managers	Overview Training	432	1	432
	Detailed Training	432	3	1296
	ESD Training	40	2	80
Directors	Overview Training	24	1	24
	Detailed Training	24	3	72
Examiners	Overview Training	5477	1	5477
	Detailed Training	5477	3	16,431
Support Staff	Support Staff Training	367	3	1101
TOTAL		6300		25,280

15. In training the examiners for 21,908 hours about the Final Rules, the USPTO paid \$1,183,032 in salary and benefits as shown in the table below.

	Average Salary & Benefits Hourly Rate	Total Hours of Training Per Type of Employee	Salary and Benefits Cost of Training
Managers	\$85	1808	\$153,680
Directors	\$93	96	\$8928
Examiners	\$54	21,908	\$1,183,032
Support Staff	\$30	1101	\$22,020
TOTAL		25,280	\$1,367,660

16. Every hour an examiner spends in training equates to an hour less spent working on an application. These “lost work hours” are permanent and cannot be recouped at some later date. In the 21,908 hours that USPTO examiners spent learning about the Final Rules, they could have processed 1033 applications from initial filing to final disposition (21,908 hours of examiner training/21.2 hours on average are spent examining an application). Thus, the Final Rules training “cost” the agency 1033 applications that would otherwise have been examined.

17. When examiners do not work on applications, they do not send communications such as Office actions to applicants, thereby resulting in stalled prosecution and the issuance of fewer patents. Communications generate revenue for the USPTO in terms of extension of time and appeal fees, and patents generate revenue in terms of pre-grant publication, issue, and maintenance fees. Hence, the agency did not earn \$3,128,600 in revenue from the 1033 applications foregone in lieu the Final Rules training, as detailed in the table below.

Year of Fee Reduction	Type of Fee	Amount of Fee
Current year		
	Extension of Times	\$175,460
	Appeals	\$37,780
	Pre-Grant Publication	\$112,800
	Issue	\$624,960
	Current Year Subtotal	\$951,000
4 years out	Maintenance	\$404,000
8 years out	Maintenance	\$780,000
12 years out	Maintenance	\$993,600
	Total Reduction of Fees	\$3,128,600

18. In sum, if an injunction issues preventing the USPTO from implementing the Final Rules on November, 1, 2007, the agency’s revenue for will be reduced by \$3,128,600.

I declare under penalty of perjury pursuant to 18 U.S.C. § 1001 that the foregoing is true and correct.

Karen M. Young
Karen M. Young

October 26, 2007
Date