

UNITED STATES OFFICE OF
GOVERNMENT ETHICS



Preventing Conflicts of Interest
in the Executive Branch

Exercise Booklet 207(a)(1)

August 2020

Profile:

Susan M. Johnson, U.S. Patent and Trademark Office

POSITION TITLE: Design Patent Examiner

LEVEL: GS-12

DIVISION / OFFICE: Office of the Commissioner for Patents

DUTIES OF CURRENT POSITION:

- ▶ Review patent applications to determine if they comply with Federal law and regulations
 - Conduct extensive reviews of a large body of technical information which regularly includes detailed drawings
 - Decide whether the claimed design is in fact novel and meets the standards of patentable invention
 - Determine whether the components of a design must be considered separately for patentability
 - Determine whether two individual claims are enough alike that only one patent can be issued and whether an issue of fact arises as to who was the first inventor.
- ▶ Draft counter briefs ("Examiner's Answer on Appeal") in appeals of rejected applications

Proposed Post-Government Employment Position and Information:

| |
|---|
| PROSPECTIVE EMPLOYER: Dunlap Grubb Weaver LLC |
|---|

PROSPECTIVE POSITION / DUTIES:

1. Assist clients in preparing and processing applications for design patents.
2. Assist attorneys in representing clients in appeals of PTO's denial of applications and other patent litigation.

207(a)(1)--Questions Relating to Susan Johnson's Post Employment

Specific Party Matters

With respect to which duties does Susan possibly have a 207(a)(1) bar?

If applicable, how long would the bar last?

Personal and Substantial Participation

Did Susan substantially participate in all patent applications and appeals she was assigned?

Did Susan personally and substantially assist with other examiner's cases?

Same Matters (Prospective cursory analysis only)

Is Susan prohibited from working on any/all design patent applications for Dunlap clients?

Might any of Dunlap clients' appeals of USPTO's denial of an application involve applications or appeals Susan worked on?

Communications, Appearances & Behind-the-Scenes Assistance

What types of activities might be involved in assisting clients?

Are communications/appearances with the Government likely?

What would behind the scenes assistance look like?

Can Susan, prepare documents, provide points of contact, attend internal meetings with Dunlap staff to discuss the applications/appeals?

Can she share information she learned while at USPTO?

Intent to Influence

Are there permissible communications/appearances with the Government Susan could make (e.g. no intent to influence?)

- Requests for publicly available information?
- Requests for status updates?
- Social calls?

Who besides Susan should be counseled on prohibited post employment communications by former employees?

On Behalf of Any Other Person

If Susan is not an “attorney” does she have to worry about communicating or appearing on behalf of another?

May Susan respond to phone calls and other communications initiated by USPTO without communicating on behalf of another?

To or Before an Employee of the US

Is Susan restricted only as to communications/appearances with USPTO?

May Susan communicate/appear before Congress?

Same Particular Matter in a Different Form

Would litigation involving a patent application that Susan approved be the same specific party matter?

Exceptions

Would 2641.301(e) allow Susan to communicate with USPTO on behalf of her clients to provide scientific or technological information?

Would 2641.301(f) allow Susan to serve as an expert witness on behalf of Dunlap?

18 U.S.C. 207 Post Employment Analysis Worksheet

Employee Name:

| 18 U.S.C. 207(a)(1) and (a)(2) | | | |
|--|--|---|--|
| | Yes | No | |
| 1. Did employee's duties involve any specific party matters? (If yes, list them below.) | | No restrictions apply | |
| 2. List of specific party matters. <i>For each indicate whether the employee either participated personally and substantially in the matter, or (if a supervisor or manager) had the matter pending under his/her official responsibility during the last year of service.</i> | Personal and substantial participation (a)(1) | Pending under official responsibility (during last year) (a)(2) | |
| | | | |
| 3. Identify employee's post government employment (if known). | | | |
| | | | |
| Post employment matters--For any matters identified indicate whether they are the same particular matters as any listed above. If the same, decide whether any proposed activities would involve a prohibited communication/appearance. | Communication Appearance with Intent to Influence | To or Before U.S. | On Behalf of 3rd Party |
| <i>Same particular matter</i> Yes No 1. 2. 3. | | | |
| 4. Is there an exception? (list activity) | 5 CFR 2641.301 | | |
| | | | |
| | | | |
| | | | |