



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

November 3, 2022

SENT VIA REGULATIONS.GOV

Mr. Will Covey
Deputy General Counsel for Enrollment and Discipline and Director for the Office of Enrollment and Discipline
U.S. Patent and Trademark Office, Department of Commerce

Re: Docket No. PTO-C-2021-0045, Changes to the Representation of Others Before the United States Patent and Trademark Office

Dear Mr. Covey:

On behalf of the Office of the Chairman of the Administrative Conference of the United States (ACUS), I offer the following comments in response to the above-referenced notice issued by the U.S. Patent and Trademark Office (USPTO).

ACUS is an independent agency in the executive branch charged by statute with, among other things, making recommendations to the President, federal agencies, Congress, and the Judicial Conference of the United States to improve rulemaking, adjudication, and other administrative procedures. Its official recommendations are issued by its Assembly, more than half of whose members are government officials appointed by federal agencies. *See* 5 U.S.C. § 591 *et seq.* Recommendations and their accompanying reports appear at www.acus.gov.

In developing policies to improve disciplinary proceedings for representatives, the USPTO may wish to consult [Recommendation 2021-9](#), *Regulation of Representatives in Agency Adjudicative Proceedings*, 87 Fed. Reg. 1721 (Jan. 12, 2022). The Recommendation encourages agencies to consider external resources for the content of disciplinary rules for representatives (Paragraph 2), articulates procedural topics that agencies' disciplinary rules should include (Paragraphs 5–7), and encourages agencies to publish their disciplinary rules (Paragraphs 9, 11, and 12).

In developing policies regarding the use of video hearings, the USPTO may wish to consult [Recommendation 2021-4](#), *Virtual Hearings in Agency Adjudication*, 86 Fed. Reg. 36083 (July 8, 2021), which identifies best practices for improving existing virtual-hearing programs and establishing new ones in accord with principles of fairness and efficiency and with due regard for participant satisfaction.

Finally, in developing policies regarding affidavit requirements that apply when a practitioner files a motion for an extension of time to file certain briefs, the USPTO may wish to consult [Recommendation 2020-3](#), *Agency Appellate Systems*, 86 Fed. Reg. 6618 (Jan. 22, 2021). This Recommendation offers best practices to improve administrative review of hearing-level adjudicative decisions. Examples of best practices include adopting procedural rules to use in

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appellate proceedings; (Paragraph 2); consulting ACUS's *Model Rules of Agency Adjudication* (rev. 2018) (Paragraph 4); and disclosing guidance documents to explain agency decision-making processes (Paragraph 21).

ACUS's Office of the Chairman thanks the USPTO Office of Enrollment and Discipline for this opportunity to comment on its proposed rule. Please contact me at asybo@acus.gov or 202-480-2080 if you have questions or would like further information.

Sincerely,

Alexandra Sybo
Attorney Advisor