



DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO-P-2021-0005]

Administrative Updates to the General Requirements Bulletin for Admission to the Examination for Registration to Practice in Patent Cases Before the United States

Patent and Trademark Office

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Request for comments.

SUMMARY: This request for comments seeks public input on proposed administrative updates to the General Requirements Bulletin for Admission to the Examination for Registration to Practice in Patent Cases Before the United States Patent and Trademark Office (GRB). There are three categories of technical and scientific qualifications that may typically make applicants eligible: Category A for specified bachelor's degrees, Category B for other bachelor's degrees with technical and scientific training, and Category C for practical engineering or scientific experience, which may be demonstrated by passing the Fundamentals of Engineering test. The United States Patent and Trademark Office (Office or USPTO) evaluates the criteria for applicants to sit for the registration examination on an ongoing basis. Based on this ongoing evaluation, the USPTO is looking into changing the criteria to: add common Category B degrees to Category A, accept advanced degrees (i.e., master's and doctoral degrees) under Category A, and accept a combination of core sciences under Category B, Options 2 and 4, so long as one of the core science courses has a lab component.

DATES: Comment Deadline Date: Written comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION].

ADDRESSES: For reasons of government efficiency, comments must be submitted through the Federal eRulemaking Portal at www.regulations.gov. To submit comments via the portal, one should enter docket number PTO-P-2021-0005 on the homepage and click “Search.” The site will provide search results listing all documents associated with this docket. Commenters can find a reference to this notice and click on the “Comment” icon, complete the required fields, and enter or attach their comments. Attachments to electronic comments will be accepted in portable document format (PDF) or DOCX format. Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

Visit the Federal eRulemaking Portal for additional instructions on providing comments via the portal. If electronic submission of and access to comments is not feasible due to a lack of access to a computer and/or the internet, please contact the USPTO using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: William Covey, OED Director, by telephone at 571-272-4097 or by email at oed@uspto.gov.

SUPPLEMENTARY INFORMATION:

Summary

In this request for comments, the Office seeks feedback and information regarding proposed administrative updates to the GRB to the criteria of applicants who sit for the registration examination.

Background

The Director of the USPTO is given statutory authority to require a showing by patent practitioners that they possess “the necessary qualifications to render applicants or other persons valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office.” 35 U.S.C. § 2(b)(2)(D). Thus, courts have determined that the USPTO Director bears primary responsibility for protecting the public from unqualified practitioners.

Pursuant to that responsibility, USPTO regulations provide that registration to practice in patent matters before the USPTO requires a practitioner to, *inter alia*, demonstrate possession of scientific and technical qualifications.¹ The role of patent practitioners with scientific and technical backgrounds in providing full and clear patent specifications and claims has long been acknowledged. The USPTO publishes the GRB that sets forth guidance for establishing possession of scientific and technical qualifications. The GRB is available at www.uspto.gov/sites/default/files/documents/OED_GRB.pdf.

The GRB lists three categories of scientific and technical qualifications that typically make one eligible for admission to the registration examination: (1) Category A for specified bachelor’s degrees, (2) Category B for other bachelor’s degrees with technical and scientific training, and (3) Category C for individuals who rely on practical engineering or scientific experience and have passed the Fundamentals of Engineering test. If a candidate for registration does not qualify under any of the categories listed in the GRB, the USPTO will conduct an independent review for compliance with the scientific and technical qualifications.

¹ Legal representation before Federal agencies is generally governed by the provisions of 5 U.S.C. § 500, which effectively defers to the individual States as to who may act as an attorney. That statute, however, provides a specific exception for representation in patent matters before the USPTO. 5 U.S.C. § 500(e). *See* 35 U.S.C. § 2(b)(2)(D) [formerly 35 U.S.C. § 31].

The OED has evaluated, and continues to evaluate, the list of typically qualifying training set forth in the GRB. These evaluations seek to clarify guidance on what will satisfy the scientific and technical qualifications and to identify possible areas of improved administrative efficiency. The following proposals reflect the results of those evaluations.

Request for Public Comments

The Office seeks written comments from the public on proposed administrative updates to the GRB for those who sit for the registration examination. The goal of the proposed updates is to ensure fairness in the application process while also ensuring that patent practitioners who represent inventors are qualified, understand the technology, and are able to communicate effectively with inventors regarding the technical features of the invention.

The Office welcomes any comments from the public on the proposals covered in this notice. The Office also poses specific questions below and invites public feedback on those questions.

Proposal 1: Add Common Category B Degrees to Category A

As explained further in the GRB, bachelor's degrees listed under Category A present prima facie evidence of the requisite technical and scientific qualifications. Currently, the bachelor's degree may be in one of the following subjects: biology, biochemistry, botany, computer science, electronics technology, food technology, general chemistry, marine technology, microbiology, molecular biology, organic chemistry, pharmacology, physics, textile technology, aeronautical engineering, agricultural engineering, biomedical engineering, ceramic engineering, chemical engineering, civil engineering, computer engineering, electrical engineering, electrochemical engineering, engineering physics, general engineering, geological engineering, industrial engineering, mechanical engineering, metallurgical engineering, mining engineering, nuclear engineering, and petroleum engineering.

Acceptable computer science degrees must be accredited by the Computer Science Accreditation Commission of the Computing Sciences Accreditation Board or by the Computing Accreditation Commission of the Accreditation Board for Engineering and Technology on or before the date the degree was awarded.

Starting in early 2020, the OED undertook a review of Category B applications to identify bachelor's degrees that are routinely accepted as demonstrating the requisite scientific and technical qualifications. This review is ongoing. Based on the analysis to date, and understanding that Category A cannot be an exhaustive list of all degrees that would qualify and that current practice is to accept degrees wherein the transcript demonstrates equivalence to a Category A degree (for example, molecular cell biology may be equivalent to biology), the Office proposes expanding the list of Category A degrees to expressly include the following degrees that are routinely accepted: aerospace engineering, bioengineering, biological science, biophysics, electronics engineering, genetic engineering, genetics, marine engineering, materials engineering, materials science, neuroscience, ocean engineering, and textile engineering. Listing these Category B degrees under Category A would improve operating efficiency and streamline the application process for prospective patent practitioners. The USPTO invites comments on the inclusion of any of these degrees in Category A, as well as any additional degrees that should be considered.

Proposal 2: Accept Advanced Degrees Under Category A

Category A does not currently include post-baccalaureate degrees. The USPTO proposes updating the GRB to list possession of a master's or a doctoral degree in a Category A subject as demonstrating acceptable technical and scientific training. The USPTO invites comment on whether to include master's or doctoral degrees in a Category A subject as qualifying technical and scientific training.

Proposal 3: Accept a Combination of Core Sciences Under Category B, Option 4

Category B, Option 4 in the GRB requires a combination of 40 credit hours in acceptable technical and scientific courses, including at least 8 hours in either chemistry with a lab or 8 hours in physics with a lab. Category B, Option 2, which focuses on training in biology and related sciences, has a similar requirement. The requirement for lab-based core science courses is meant to ensure familiarity with the processes involved in conducting valid experiments, the scientific method, and proper analysis of scientific data.

However, it is not clear whether multiple courses in either chemistry or physics alone, with a lab, provide an appreciable benefit over general core science training.

Accordingly, the USPTO proposes revising Category B, Option 4 by changing “8 semester hours in chemistry or 8 semester hours of physics ... obtained in two sequential courses, each containing a lab” to “eight semester hours in a combination of chemistry, physics, and/or biology, with at least one course including a lab.” Category B, Option 2, which already requires training in biology, would be revised to require at least “eight semester hours in a combination of chemistry and physics, with at least one course including a lab.” The USPTO invites comments on whether to change the requirement under Category B, Option 4 from two sequential courses in chemistry or physics, each containing a lab, to that of eight semester hours in a combination of chemistry, physics, and/or biology, with at least one course including a lab, and whether to change the similar requirement under Category B, Option 2 to eight semester hours in a combination of chemistry and physics, with at least one course including a lab.

Questions Regarding Administrative Updates to the General Requirements Bulletin for Admission to the Examination for Registration to Practice in Patent Cases Before the United States Patent and Trademark Office

As noted above, the Office welcomes comments from the public on any portion of the proposed updates to the General Requirements Bulletin for registration to practice in patent matters. The Office is particularly interested in the public's input on the following questions:

1. What additional degrees should qualify under Category A?
2. Should the USPTO include master's or doctoral degrees in a Category A subject as qualifying technical and scientific training?
3. Should the USPTO change the Category B requirement of two sequential courses in chemistry or physics, each containing a lab to that of eight semester hours in a combination of chemistry, physics, and/or biology, with at least one course including a lab for Option 4; and to eight semester hours in a combination of chemistry and physics, with at least one course including a lab for Option 2?

Andrew Hirshfeld,

Commissioner for Patents,

Performing the Functions and Duties of the Under Secretary of Commerce for

Intellectual Property and Director of the United States Patent and Trademark Office.

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