

1 **6-26.3 MINIMUM STANDARDS**

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3 **(a) Minimum Period of Practice.** The applicant shall have been engaged in the practice of
4 law for at least 5 years immediately preceding the date of application. Notwithstanding the
5 definition of “practice of law” in rule 6-3.5(c)(1), practicing “patent application prosecution,” as
6 defined in section 6-26.2(a), before the USPTO as a registered patent attorney or registered
7 patent agent shall be deemed to constitute the practice of law for purposes of the 5-year practice
8 requirement.

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10 **(b) Substantial Involvement.** Substantial involvement means at least ~~30~~ 50 percent of the
11 applicant’s practice during the 3 years immediately preceding application has been devoted to
12 matters involving intellectual property law.

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14 **(c) Experience.** During the 5 years immediately preceding application, the applicant must
15 comply with the experience requirements in at least 1 of the following categories:

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17 (1) *Patent Application Prosecution.* The applicant must have handled with senior-level
18 responsibility a minimum of 40 patent matters that involved representation of a client. The
19 quality of the applicant’s work and the nature of the issues involved shall be a factor in
20 determining eligibility for certification. Demonstration of compliance with this requirement
21 shall be made initially through a form of questionnaire approved by the intellectual property
22 law certification committee, but written or oral supplementation (including copies of work
23 product) may be required. For good cause shown, for satisfaction in part of the 40 patent
24 matters that involved representation of a client, verified substantial involvement in patent
25 matters at a government agency may be considered. Verified substantial involvement in
26 other areas of intellectual property law may also be considered to demonstrate overall
27 proficiency.

28
29 (2) *Patent Infringement Litigation.* The applicant must have handled with senior-level
30 responsibility a minimum of 5 contested matters in litigation or on appeal in which there was
31 an adjudicated decision. Additionally, applicants shall have devoted a minimum of 800 hours

32 per year to litigation matters generally, at least 300 hours per year of which shall have been
33 devoted to patent infringement litigation; and applicant shall have, within the last 10 years,
34 tried a patent infringement litigation matter to the close of testimony, verdict, or judgment.
35 The applicant shall submit work product samples and a transcript (if available) in each such
36 contested matter. For good cause shown, for satisfaction in part of the minimum
37 requirements, verified substantial involvement in patent infringement litigation at a
38 government agency may be considered. Verified substantial involvement in other areas of
39 intellectual property law may also be considered to demonstrate overall proficiency.

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41 (3) *Trademark Law.* The applicant must have handled with senior-level responsibility
42 either a minimum of 6 contested matters or 25 responses to substantive refusals, or a
43 combination of the 2. Substantive refusals on which the applicant relies shall not have
44 involved merely technical corrections, insignificant matters, or abandonment. The applicant
45 shall submit work product samples and a transcript (if available) in each such contested
46 matter. In addition, applicant must have engaged in at least 300 hours each year in the
47 practice of law in which the applicant has had substantial senior-level participation in legal
48 matters involving trademark law. Three contested matters involving in the aggregate no less
49 than 50 hours of in-session hearing or trial shall satisfy the requirement of 6 contested
50 matters. For good cause shown, for satisfaction in whole or in part of the requirement of 6
51 contested matters or 25 responses to substantive refusals, verified substantial involvement in
52 a combination of contested matters and responses to substantive refusals shall be considered.
53 For good cause shown, for satisfaction in part of the minimum requirements, verified
54 substantial involvement in trademark matters at a government agency may be considered in
55 lieu of representation of clients. Verified substantial involvement in other areas of
56 intellectual property law may also be considered to demonstrate overall proficiency.

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58 (4) *Copyright Law.* The applicant must have handled with senior-level responsibility a
59 minimum of 40 substantive matters that involved representation of a client, with a minimum
60 of 300 hours per year devoted to such matters. The ministerial preparation of a copyright
61 registration is not considered a substantive matter for purposes of certification. The applicant
62 shall submit work product samples and, if the applicant also relies upon participation in

63 contested matters, the applicant shall submit transcripts (if available) in each such contested
64 matter. For good cause shown, for satisfaction in part of the minimum requirements, verified
65 substantial involvement in copyright matters at a government agency may be considered in
66 lieu of representation of clients. Verified substantial involvement in other areas of
67 intellectual property law may also be considered to demonstrate overall proficiency.
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69 **(d) Peer Review.** The applicant shall select and submit the names and addresses of at least
70 6 lawyers or judges, who neither are relatives nor current associates, partners, or who otherwise
71 practice law in an of-counsel relationship with the applicant, to serve as references. Such
72 references will be contacted and requested to attest to the applicant's special competence and
73 substantial involvement in intellectual property law, as well as to the applicant's character,
74 ethics, and reputation for professionalism. Individuals submitted as references shall be
75 substantially involved in intellectual property law and shall be familiar with the applicant's
76 practice. In addition, other attorneys, judges, employees at government agencies, or other
77 persons likely to be familiar with the applicant may be contacted as deemed necessary by the
78 intellectual property law certification committee and the board of legal specialization and
79 education.
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81 **(e) Education.** The applicant must demonstrate that during the 3-year period immediately
82 preceding the filing of an application, the applicant has met the continuing legal education
83 requirements necessary for intellectual property law certification. The required number of hours
84 shall be established by the board of legal specialization and education and shall in no event be
85 less than 45 hours. Accreditation of educational hours shall be subject to policies established by
86 the intellectual property law certification committee or the board of legal specialization and
87 education and may be satisfied by participation in 1 or more of the following activities:
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89 (1) attendance at continuing legal education seminars for which intellectual property law
90 certification credit has been approved;

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92 (2) teaching a course in intellectual property law;
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94 (3) participation as a panelist or speaker in a symposium or similar program on
95 intellectual property law;

96
97 (4) authorship of a book, chapter, or article on intellectual property law, published in a
98 professional publication or journal;

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100 (5) completing such home study programs as may be approved by the board of legal
101 specialization and education or the intellectual property law certification committee, subject
102 to the limitation that no more than 50 percent of the required number of hours of education
103 may be satisfied through home study programs; and

104
105 (6) such other methods as may be approved by the board of legal specialization and
106 education and the intellectual property law certification committee.

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108 **(f) Examination.** The applicant must pass an examination applied uniformly to all
109 applicants to demonstrate sufficient knowledge, proficiency, and experience in intellectual
110 property law sufficient to justify certification of special competence to the legal profession and
111 the public. The examination will be comprehensive in scope and each applicant will be required
112 to demonstrate at least some knowledge in each specific subject tested. Applicants, however,
113 will be given the opportunity to emphasize special knowledge in 1 or more specific subject areas.

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115 **(g) Exemption.** An applicant may qualify for an exemption from the examination, or a
116 portion thereof, as follows:

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118 (1) an applicant currently a registered patent attorney in good standing with the USPTO
119 shall not be required to take the section(s) of the examination on topics defined in rule 6-
120 26.2(a), but must demonstrate knowledge of substantive law pertaining to intellectual
121 property;

122

123 (2) an applicant currently certified by The Florida Bar in civil trial or business litigation
124 shall not be required to take the section of the examination on the litigation process, but must
125 demonstrate knowledge of substantive law pertaining to intellectual property;

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127 (3) an applicant who has been substantially involved in intellectual property law for a
128 minimum of 20 years, in accordance with the standards set forth in rule 6-3.5(d), and who
129 can demonstrate compliance with the experience requirements under rule 6-26.3(c),
130 subdivisions (1), (2), (3), or (4) within a 10-year time frame, shall be exempt from the
131 examination if all other requirements for certification are met. This exemption shall be
132 applicable only to those applicants who apply by October 31, 2009.

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