

## Office of Government Ethics

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### Letter to a Federal Employee dated April 4, 1991

This is in response to your letter (with its enclosures) of March 25, 1991. By your letter, you ask whether you as an employee of [an executive branch agency] may prosecute patent applications for private parties before the Patent and Trademark Office of the Department of Commerce.

As indicated in the Commerce Department letter to you of September 4, 1990, this is a matter which is subject to the provisions of 18 U.S.C. § 203. Subsection (a) of that provision prohibits compensation to a Federal Government employee--

in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court, court-martial, officer, or any civil, military, or naval commission . . . .

Section 205 prohibits the same activity even if no compensation is received. Both sections apply to full-time employees as well as part-time employees. The application of the prohibitions [is] limited only in the case of "a special Government employee," and then to particular matters [involving specific parties] in which the employee [participated] as a Government employee [and, if the employee has served in the department for more than 60 days,] to those [matters] pending before the department at which he is employed.

Accordingly, in the case of an executive branch employee, while the prosecution of a patent application for a private party for compensation is generally subject to the prohibition of subsection (a), the prohibition will not apply if the employee is "a special Government employee," as defined by 18 U.S.C. § 202(a), except with respect to those particular matters specified by subsection (a). Such an employee is one who is--

employed to perform ... for not to exceed one hundred and thirty days during any period of three hundred and

sixty-five consecutive days, temporary duties either on a full-time or intermittent basis . . . .

Status as a "special Government employee" is determined at the time of appointment.

While you have characterized yourself as a permanent part-time [agency] employee, it is not possible to determine whether you were appointed as a special Government employee. We suggest that you contact the ethics officer at [your agency] for assistance in ascertaining the impact that these statutes have on your situation.

With respect to your views concerning the situation of those [individuals] serving as Reservists, you should note in the case of officers, under the provisions of section 202(a) they are to be considered special Government employees unless called to active duty and serve for more than the threshold period; those of enlisted rank are not deemed subject to sections 203 or 205.

Sincerely,

Stephen D. Potts  
Director