

933), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of tangelos, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of tangelos, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on December 1, 1959, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; necessary supplemental information for consideration in connection with such regulation was not available until December 15, 1959; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such tangelos; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth; and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used in this section, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, standard pack, and standard box as used in this section, shall have the same meaning as is given to the respective term in the amended United States Standards for Florida Oranges and Tangelos (§§ 51.1140 to 51.1186 of this title).

(2) Tangelo Regulation 19 (§ 933.996; 24 F.R. 10058) is hereby terminated effective at 12:01 a.m., e.s.t., December 23, 1959.

(3) During the period beginning at 12:01 a.m., e.s.t., December 23, 1959, and ending at 12:01 a.m., e.s.t., December 30, 1959, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico, any tangelos, grown in the production area.

(4) During the period beginning at 12:01 a.m., e.s.t., December 30, 1959, and ending at 12:01 a.m., e.s.t., January 11, 1960, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any tangelos, grown in the production area, which do not grade at least U.S. No. 1 Bronze; or

(ii) Any tangelos, grown in the production area, which are of a size smaller than $2\frac{1}{16}$ inches in diameter, except that a tolerance of 10 percent, by count, of tangelos smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in the United States Standards for Florida Oranges and Tangelos (§§ 51.1140 to 51.1186 of this title).

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: December 17, 1959.

S. R. SMITH,
Director, Fruit and Vegetable
Division, Agricultural Mar-
keting Service.

[F.R. Doc. 59-10800; Filed, Dec. 21, 1959;
8:46 a.m.]

[Tangerine Reg. 214]

PART 933—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS, GROWN IN FLORIDA

Limitation of Shipments

§ 933.999 Tangerine Regulation 214.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of tangerines, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date

of this section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of tangerines, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on December 1, 1959; such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; necessary supplemental information for consideration in connection with such regulation was not available until December 15, 1959; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such tangerines; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth; and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, and standard pack, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Tangerines (§§ 51.1810 to 51.1836 of this title).

(2) Tangerine Regulation 213 (§ 933.993; 24 F.R. 9654) is hereby terminated effective at 12:01 a.m., e.s.t., December 23, 1959.

(3) During the period beginning at 12:01 a.m., e.s.t., December 23, 1959, and ending at 12:01 a.m., e.s.t., December 30, 1959, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico, any tangerines, grown in the production area.

(4) During the period beginning at 12:01 a.m., e.s.t., December 30, 1959, and ending at 12:01 a.m., e.s.t., January 11, 1960, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any tangerines, grown in the production area, that do not grade at least U.S. No. 1; or

(ii) Any tangerines, grown in the production area, that are of a size smaller than the size that will pack 210 tangerines, packed in accordance with the requirements of a standard pack, in a half-standard box (inside dimensions 9½ x 9½ x 19½ inches; capacity 1,726 cubic inches).

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: December 17, 1959.

S. R. SMITH,
Director, Fruit and Vegetable
Division, Agricultural Mar-
keting Service.

[F.R. Doc. 59-10801; Filed, Dec. 21, 1959;
8:46 a.m.]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER B—COOPERATIVE CONTROL AND ERADICATION OF ANIMAL DISEASES

PART 53—FOOT-AND-MOUTH DIS- EASE, PLEUROPNEUMONIA, RIN- DERPEST, AND OTHER CONTA- GIOUS OR INFECTIOUS ANIMAL DISEASES WHICH CONSTITUTE AN EMERGENCY AND THREATEN THE LIVESTOCK INDUSTRY OF THE COUNTRY

Determination of Existence of Disease; Agreements With States

Pursuant to the provisions of section 3 of the Act of May 29, 1884, 23 Stat. 32, as amended, section 11 of the Act of May 29, 1884, 58 Stat. 734, as amended, and section 2 of the Act of February 2, 1903, 32 Stat. 792, as amended (21 U.S.C. 114, 114a, 111), paragraph (e) of § 53.3 of the regulations pertaining to payment of indemnities for animals destroyed because of foot-and-mouth disease, pleuropneumonia, rinderpest, and other contagious and infectious animal diseases (9 CFR Part 53), is hereby deleted.

(Sec. 11, 58 Stat. 734, as amended; 21 U.S.C. 114a)

Effective date. The foregoing amendment shall become effective upon issuance.

Paragraph (e) of § 53.3 is deleted by this amendment because the requirements set forth therein are no longer applicable due to the adoption of certain new forms to be used in connection with the requirements of Part 53.

It is believed the amendment will facilitate the processing of indemnity claims for animals destroyed under the provisions of this part and will therefore be of benefit to affected persons. Accordingly, under section 4 of the Administrative Procedure Act (5 U.S.C. 1003), it is found upon good cause that notice and other public procedure with

respect to the amendment are impracticable and contrary to the public interest, and the amendment may be made effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 17th day of December 1959.

M. R. CLARKSON,
Acting Administrator,
Agricultural Research Service.

[F.R. Doc. 59-10811; Filed, Dec. 21, 1959;
8:47 a.m.]

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 2—FILLING COMPETITIVE POSITIONS

Certification Without Regard to Sex

Paragraph (c) of § 2.204 is amended as set out below.

§ 2.204 Certification for appointment.

(c) *Certification without regard to sex.* Certification shall be made without regard to sex, unless the appointing officer, in accordance with the right conferred upon him by law, requests eligibles of a specified sex. However, non-veterans of the specified sex will not be certified for positions restricted to veterans so long as veteran eligibles of either sex are available, unless the position is in a class or group for which the Commission has determined that only eligibles of a particular sex can effectively perform the duties. Such determinations may be based upon agencies' requests or may be made on the Commission's own initiative in response to a demonstrated need. (R.S. 165; 5 U.S.C. 33, 352; 58 Stat. 388.)

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERV-
ICE COMMISSION,
[SEAL] WM. C. HULL,
Executive Assistant.

[F.R. Doc. 59-10821; Filed, Dec. 21, 1959;
8:47 a.m.]

Title 12—BANKS AND BANKING

Chapter II—Federal Reserve System

[Reg. U]

PART 221—LOANS BY BANKS FOR THE PURPOSE OF PURCHASING OR CARRYING REGISTERED STOCK

Form To Be Used in Reporting Securi- ties Credit Extended by Lender Other Than a Bank or Broker

1. Effective December 15, 1959, the following new center heading "Forms" and new § 221.51 were added to Part 221 to read as follows:

FORMS

§ 221.51 Form to be used in reporting securities credit extended by lender other than a bank or broker.

Pursuant to authority conferred on the Board of Governors of the Federal Reserve System by the Securities Exchange Act of 1934 (15 U.S.C. Chapter 2B; 48 Stat. 881) and in accordance with § 221.3(j), the Board has, effective December 15, 1959, adopted Form FR 728,¹ to be used by persons (other than banks, as defined in § 221.3(k), and creditors, as defined in § 220.2(b) (Reg. T)) who are engaged in the business of extending credit and who, in the ordinary course of business, extend credit for the purpose of purchasing or carrying securities registered on a national exchange. Persons whose activities as of December 15, 1959 bring them within the scope of the above definition must return the filled-in form to the Federal Reserve Bank in their district on or before March 15, 1960. Persons who were not extending credit on or before December 15, 1959 for the said purpose, but whose activities at any time or from time to time thereafter bring them within the scope of the above definition, must file filled-in forms within 90 days after the first extension of credit for such purpose. Requests for extensions of time for filing must be made in writing, setting forth the reasons for the request, addressed to the Federal Reserve Bank in the District of the person requesting the extension.

2. (a) The amendment is issued pursuant to the Securities Exchange Act of 1934, particularly section 17(b) thereof. The purpose of this action is to implement § 221.3(j) as amended June 15, 1959 (24 F.R. 3867) by the adoption of a form in order to obtain information concerning credit extended by persons other than banks and creditors, as defined above, for the purpose of purchasing or carrying securities registered on a national securities exchange.

(b) The notice, public participation, and deferred effective date described in section 4 of the Administrative Procedure Act are not followed in the connection with this amendment for the reasons and good cause found as stated in § 262.2 (e) of the Board's rules of procedure (Part 262), and especially because in connection with this amendment such procedures are unnecessary as they would serve no useful purpose. The reporting requirement contained herein has been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1932.

(Sec. 23, 48 Stat. 901; 15 U.S.C. 78w. Interprets or applies sec. 17(b), 48 Stat. 897; 15 U.S.C. 78q)

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,

[SEAL] MERRITT SHERMAN,
Secretary.

[F.R. Doc. 59-10815; Filed, Dec. 21, 1959;
8:47 a.m.]

¹ Filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington 25, D.C., or to any Federal Reserve Bank.

Title 37—PATENTS, TRADE-MARKS, AND COPYRIGHTS

Chapter I—Patent Office, Department of Commerce

Republication of Regulations

The regulations of the Patent Office which have appeared in the FEDERAL REGISTER from time to time are herewith republished for the purpose of having the official publication of the regulations in one place. The regulations as now republished supersede all previous publications of these regulations.

Some typographical and obvious errors in language have been corrected and minor editorial changes have been made. In the forms for patent cases, Part 3, the wording of some of the forms has been revised to match the wording as it appears in the Rules of Practice in Patent Cases, published by the Patent Office, and additional forms which appeared in the Patent Office publication and did not previously appear in the FEDERAL REGISTER have been added. No other changes have been made.

Part

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- 2 Rules of practice in trademark cases.
- 3 Form for patent cases.
- 4 Forms for trademark cases.
- 5 Secrecy of certain inventions and licenses to file applications in foreign countries.
- 6 Classification of goods and services under the Trademark Act.
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AUTHORITY: §§ 1.1 to 1.352 issued under 35 U.S.C. 6. Statutory provisions interpreted or applied and additional authority are cited to text.

NOTE: In Patent Office publications and usage the part number is omitted from the numbers of §§ 1.1 to 1.352 and the numbers to the right of the decimal point correspond with the respective rule numbers.

GENERAL INFORMATION AND
CORRESPONDENCE

§ 1.1 All communications to be addressed to Commissioner of Patents.

All letters and other communications intended for the Patent Office must be addressed to "Commissioner of Patents," Washington 25, D. C. When appropriate, a letter may be marked for the attention of a particular officer or individual.

NOTE: §§ 1.1 to 1.26 are applicable to trademark cases as well as to patent cases except for provisions specifically directed to patents.

§ 1.2 Business to be transacted in writing.

All business with the Patent Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent Office is unnecessary. The action of the Patent Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

§ 1.3 Business to be conducted with decorum and courtesy.

Applicants and their attorneys or agents are required to conduct their business with the Patent Office with decorum and courtesy. Papers presented in violation of this requirement will be submitted to the Commissioner and will be returned by his direct order. Complaints against examiners and other employees must be made in communications separate from other papers.

§ 1.4 Nature of correspondence.

(a) Correspondence with the Patent Office comprises (1) correspondence relating to services and facilities of the Office, such as general inquiries, requests for publications supplied by the Office, orders for printed copies of patents or trademark registrations, orders for copies of records, transmission of assignments for recording, and the like, and (2) correspondence in and relating to a particular application or other proceeding in the Office. See particularly the rules relating to the filing and prosecution of applications or other proceedings (§§ 1.31 to 1.352 and §§ 2.11 to 2.189).

(b) Since each application file should be complete in itself, a separate copy of every paper to be filed in an application should be furnished for each application to which the paper pertains, even though the contents of the papers filed in two or more applications may be identical.

(c) Since different matters may be considered by different branches or sections of the Patent Office, each distinct subject, inquiry or order should be contained in a separate letter to avoid confusion and delay in answering letters dealing with different subjects.

§ 1.5 Identification of application, patent or registration.

(a). When a letter concerns an application for patent, it should state the

name of the applicant, the title of the invention, the serial number of the application, the date of filing the same, and, if known, the division to which it has been assigned (see § 1.55).

(b) When the letter concerns a patent, it should state the number and date of issue of the patent, the name of the patentee, and the title of the invention.

(c) A letter relating to a trademark application should identify it as such and by the name of the applicant and the serial number and filing date of the application. A letter relating to a registered trademark should identify it by the name of the registrant and by the number and date of the certificate.

§ 1.6 Receipt of letters and papers.

(a) Letters and other papers received in the Patent Office are stamped with the date of receipt. No papers are received in the Patent Office on Saturdays, Sundays or holidays within the District of Columbia.

(b) Mail placed in the Patent Office pouch up to midnight on weekdays, excepting Saturdays and holidays, by the post office at Washington, D. C., serving the Patent Office, is considered as having been received in the Patent Office on the day it was so placed in the pouch.

(c) In addition to being mailed or delivered by hand during office hours, letters and other papers may be deposited up to midnight in a box provided at the guard's desk at the Fourteenth and E Street entrance of the Patent Office on weekdays except Saturdays and holidays, and all papers deposited therein are considered as received in the Patent Office on the day of deposit.

§ 1.7 Times for taking action; expiration on Saturday, Sunday or holiday.

Whenever periods of time are specified in this part in days, calendar days are intended. When the day, or the last day, fixed by statute or by or under this part for taking any action or paying any fee in the Patent Office falls on Saturday, Sunday, or on a holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding day which is not a Saturday, Sunday, or a holiday. See § 1.304 for time for appeal or for commencing civil action.

RECORDS AND FILES OF THE PATENT OFFICE

§ 1.11 Patent files open to the public.

After a patent has been issued, the specification, drawings, and all papers relating to the case in the file of the patent are open to inspection by the general public, and copies may be furnished upon paying the fee therefor. The file of any terminated interference involving a patent, or an application on which a patent has subsequently issued, is similarly open to public inspection and procurement of copies. See § 2.27 for trademark files.

§ 1.12 Assignment records open to public inspection.

The assignment records, including digests and indexes, are open to public inspection and copies of any instrument recorded may be obtained upon payment

of the fee therefor. An order for a copy of an assignment should give the identification of the record. If identified only by the name of the patentee, and number of the patent, or in the case of a trademark registration by the name of the registrant and number of the registration, or by name of the applicant and serial number of the application, an extra charge will be made for the time consumed in making a search for such assignment.

§ 1.13 Copies and certified copies.

(a) Copies of patents and trademark registrations and of any records, books, papers, or drawings belonging to the Patent Office and open to the public, will be furnished by the Patent Office to any person, and copies of other records or papers will be furnished to persons entitled thereto, upon payment of the fee therefor.

(b) Such copies will be authenticated by the seal of the Patent Office and certified by the Commissioner, or in his name attested by an officer of the Patent Office authorized by the Commissioner, upon payment of the fee for the authentication certificate in addition to the fee for the copies.

(35 U.S.C. 10)

§ 1.14 Patent applications preserved in secrecy.

(a) Pending patent applications are preserved in secrecy. No information will be given by the Office respecting the filing by any particular person of an application for a patent, the pendency of any particular case before it, or the subject matter of any particular application, nor will access be given to or copies furnished of any pending application or papers relating thereto, without written authority of the applicant, or his assignee or attorney or agent, unless it shall be necessary to the proper conduct of business before the Office or as provided by this part.

(b) Abandoned applications are likewise not open to public inspection, except that if an application referred to in a United States patent is abandoned and is available, it may be inspected or copies obtained by any person on written request, without notice to the applicant. Abandoned applications may be destroyed after twenty years from their filing date, except those to which particular attention has been called and which have been marked for preservation. Abandoned applications will not be returned.

(c) Applications for patents which disclose, or which appear to disclose, or which purport to disclose, inventions or discoveries relating to atomic energy are reported to the Atomic Energy Commission and the Commission will be given access to such applications, but such reporting does not constitute a determination that the subject matter of each application so reported is in fact useful or an invention or discovery or that such application in fact discloses subject matter in categories specified by secs. 151 (c) and 151(d) of the Atomic Energy Act of 1954, 68 Stat. 919; 42 U.S.C. 2181.

See § 2.27 for trademark applications.

FEEs AND PAYMENT OF MONEY

§ 1.21 Patent and miscellaneous fees and charges.

In addition to the fees prescribed by statute, the following fees and charges are established by the Patent Office:

- | | |
|---|--------|
| (a) For typewritten manuscript copies of records, for every 100 words or fraction thereof..... | \$0.10 |
| (b) For photocopies or other reproductions of records or printed material, per page of material copied..... | .30 |
| (c) For photo prints of drawings, for each sheet of drawing..... | .30 |
| (d) For certified copies of patents if in print:
For specification and drawing, per copy..... | .25 |
| For the certificate..... | 1.00 |
| For the grant..... | 1.00 |
| (e) For abstracts of title to each patent or application:
For the search, one hour or less, and certificate..... | 3.00 |
| Each additional hour or fraction thereof..... | 1.50 |
| For each brief from the digest of assignments, of 200 words or less..... | 1.00 |
| Each additional 100 words or fraction thereof..... | .10 |
| (f) For title reports required for Office use..... | 1.00 |
| (g) For translations from foreign languages into English, made only of references cited in applications or of papers filed in the Patent Office insofar as facilities may be available:
Written translations, for every 100 words of the original language, or fraction thereof..... | 3.00 |
| Oral translations (dictation or assistance), for each one-half hour or fraction thereof that service is rendered..... | 4.00 |
| (h) On admission to practice as an attorney or agent..... | 5.00 |
| (i) For certificate of good standing as an attorney or agent..... | 1.00 |
| (j) For making patent drawings, when facilities are available, the cost of making the same minimum charge per sheet..... | 25.00 |
| (k) For correcting patent drawings, the cost of making the correction, minimum charge..... | 3.00 |
| (l) For the mounting of unmounted drawings and photoprints received with patent applications, provided they are of approved permanency..... | 1.00 |
| (m) For photographic prints of patent models, building facilities, etc., if available:
For 5 x 7 photographic print..... | .50 |
| For 8 x 10 photographic print..... | .75 |
| (n) Search of Patent Office records for purposes not otherwise specified in this section, per hour of search or fraction thereof..... | 3.00 |
| (o) [Deleted] | |
| (p) Subscription order for printed copies of patents as issued: Annual service charge for entry of order and one subclass, \$2.00, and 20 cents for each additional subclass included; amount to be deposited (for price of copies supplied), as determined with respect to each order. | |
| (q) List of U.S. Patents:
All patents in a subclass, per sheet (containing 100 patent numbers or less)..... | .30 |
| Patents in a subclass limited by date or patent number, per sheet (containing 50 numbers or less)..... | .30 |

- (r) Local delivery box rental, annual. \$12.00
 (s) For publication in the Official Gazette of a notice of the availability of a patent for licensing or sale, each patent. 3.00
 (t) For expediting service on orders for patent copies, in addition to the charge for the patent copy, for each patent number ordered. .25

(35 U.S.C. 41b)

§ 1.22 Fees payable in advance.

Fees and charges payable to the Patent Office are required to be paid in advance, that is, at the time of making application for any action by the Office for which a fee or charge is payable.

§ 1.23 Method of payment.

All payments of money required for Patent Office fees should be made in United States specie, Treasury notes, national bank notes, post office money orders, or by certified checks. If sent in any other form, the Office may delay or cancel the credit until collection is made. Money orders and checks must be made payable to the Commissioner of Patents. Remittances from foreign countries must be payable and immediately negotiable in the United States for the full amount of the fee required. Money sent by mail to the Patent Office will be at the risk of the sender; letters containing money should be registered.

§ 1.24 Coupons.

Coupons in denominations of ten cents and twenty-five cents are sold by the Patent Office for the convenience of regular purchasers of printed copies of patents, designs and trademark registrations; these coupons may also be used for small remittances. The ten-cent coupons are sold individually and in pads of 20 for \$2.00 and books of 100 with stubs for record for \$10.00. The twenty-five cent coupons are sold individually and in pads of 20 for \$5.00 and in books of 100 with stubs for record for \$25.00. These coupons are good until used; they may be transferred but cannot be redeemed.

NOTE: Public document coupons issued by the Superintendent of Documents cannot be used in the Patent Office, nor can the coupons issued by the Patent Office be used at the Government Printing Office or elsewhere.

§ 1.25 Deposit accounts.

(a) For the convenience of attorneys, agents and the general public, in ordering services offered by the Office, copies of records, etc., special deposit accounts may be established in the Patent Office. A minimum deposit of \$25 or more, depending on the activity of the individual account, is required. At the close of each month's business, a statement will be rendered. A remittance must be made promptly upon receipt of the statement to cover the value of items or services charged to the account and thus restore the account to its established normal deposit value. An amount sufficient to cover all services, copies, etc., requested must always be on deposit.

(b) Filing, final, appeal, and petition fees will not be charged against these accounts.

§ 1.26 Refunds.

Money paid by actual mistake or in excess, such as a payment not required by law, will be refunded, but a mere change of purpose after the payment of money, as when a party desires to withdraw his application or to withdraw an appeal, will not entitle a party to demand such a return. Amounts of ten cents or less will not be returned unless specifically demanded, within a reasonable time, nor will the payer be notified of such amount; amounts over ten cents but less than one dollar may be returned in postage stamps, and other amounts by check.

(35 U.S.C. 42)

PROSECUTION OF APPLICATION AND APPOINTMENT OF ATTORNEY OR AGENT**§ 1.31 Applicants may be represented by an attorney or agent.**

An applicant for patent may file and prosecute his own case, or he may be represented by an attorney or agent authorized to practice before the Patent Office in patent cases. The Patent Office cannot aid in the selection of an attorney or agent.

§ 1.32 Prosecution by assignee.

The assignee of record of the entire interest in an application for patent is entitled to conduct the prosecution of the application to the exclusion of the inventor.

§ 1.33 Correspondence when no attorney or agent.

When no attorney or agent has been appointed, all notices, official letters and other communications in the case will be sent to the applicant, or to the assignee of the entire interest if the applicant or such assignee so request, or to the assignee of an undivided part if the applicant so request, at the post office address of which the Office has been notified in the case. Amendments and other papers filed in the application must be signed by the applicant, or if there is an assignee of an undivided part interest, by the applicant and such assignee, or if there is an assignee of the entire interest, by such assignee.

§ 1.34 Power of attorney or authorization.

Before any attorney or agent, original or associate, will be allowed to inspect papers or take action of any kind in any application or proceeding, a written power of attorney or authorization, from the person or persons entitled to prosecute the application or from the principal attorney or agent in the case of an associate attorney or agent, must be filed in that particular application or proceeding.

§ 1.35 Correspondence held with attorney.

When an attorney or agent shall have filed his power of attorney, or authorization, duly executed, the correspondence will be held with him; notices, official letters and other communications in the case intended for the applicant will be sent to the attorney or agent at the address

of which notice shall have been given in the case, and replies to Office actions, or other actions in the case, will be received from him. Double correspondence with an applicant and his attorney or agent, or with two representatives, will not be undertaken. If more than one attorney or agent be appointed, correspondence will be held with the one last appointed unless otherwise requested.

§ 1.36 Revocation of power of attorney or authorization; withdrawal of attorney or agent.

A power of attorney or authorization of agent may be revoked at any stage in the proceedings of a case, and an attorney or agent may withdraw, upon application to and approval by the Commissioner; and when it is so revoked, or the attorney or agent so withdrawn, the Office will communicate directly with the applicant, or with such other attorney or agent as he may appoint. An attorney or agent, except an associate attorney or agent whose address is the same as that of the principal attorney or agent, will be notified of the revocation of his power of attorney or authorization and the applicant will be notified of the withdrawal of the attorney or agent. An assignment will not of itself operate as a revocation of a power or authorization previously given, but the assignee of the entire interest may revoke previous powers and be represented by an attorney or agent of his own selection.

WHO MAY APPLY FOR A PATENT

AUTHORITY NOTE: §§ 1.41 to 1.47 interpret or apply 35 U.S.C. 111, 116, 117, 118.

§ 1.41 Applicant for patent.

(a) A patent must be applied for and the application papers must be signed and the necessary oath executed by the actual inventor in all cases, except as provided by §§ 1.42, 1.43, and 1.47. (See § 1.147.)

(b) Unless the contrary is indicated, the word "applicant" when used in these sections refers to the inventor, joint inventors who have applied for a patent, or to the person mentioned in §§ 1.42, 1.43, or 1.47 who has applied for a patent in place of the inventor.

§ 1.42 When the inventor is dead.

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may sign the application papers and make the necessary oath, and apply for and obtain the patent. Where the inventor dies during the time intervening between the filing of his application and the granting of a patent thereon, the letters patent may be issued to the legal representative upon proper intervention by him.

§ 1.43 When the inventor is insane or legally incapacitated.

In case an inventor is insane or otherwise legally incapacitated, the legal representative (guardian, conservator, etc.) of such inventor may sign the application papers and make the necessary oath, and apply for and obtain the patent.

§ 1.44 Proof of authority.

In the cases mentioned in §§ 1.42 and 1.43, proof of the power or authority of the legal representative must be recorded in the Patent Office or filed in the application before the grant of a patent.

§ 1.45 Joint inventors.

(a) Joint inventors must apply for a patent jointly and each must sign the application papers and make the required oath; neither of them alone, nor less than the entire number, can apply for a patent for an invention invented by them jointly, except as provided in § 1.47.

(b) If an application for patent has been made through error and without any deceptive intention by two or more persons as joint inventors when they were not in fact joint inventors, the application may be amended to remove the names of those not inventors upon filing a statement of the facts verified by all of the original applicants, and an oath as required by § 1.65 by the applicant who is the actual inventor, provided the amendment is diligently made. Such amendment must have the written consent of any assignee.

(c) If an application for patent has been made through error and without any deceptive intention by less than all the actual joint inventors, the application may be amended to include all the joint inventors upon filing a statement of the facts verified by, and an oath as required by § 1.65 executed by, all the actual joint inventors, provided the amendment is diligently made. Such amendment must have the written consent of any assignee.

§ 1.46 Assigned inventions and patents.

In case the whole or a part interest in the invention or in the patent to be issued is assigned, the application must still be made by the inventor or one of the persons mentioned in §§ 1.42, 1.43, or 1.47. However, the patent may be issued to the assignee or jointly to the inventor and the assignee as provided in § 1.334.

§ 1.47 Filing by other than inventor.

(a) If a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the application may be made by the other inventor on behalf of himself and the omitted inventor. Such application must be accompanied by proof of the pertinent facts and must state the last known address of the omitted inventor. The Patent Office shall forward notice of the filing of the application to the omitted inventor at said address. Should such notice be returned to the Office undelivered, or should the address of the omitted inventor be unknown, notice of the filing of the application shall be published in the Official Gazette. The omitted inventor may subsequently join in the application on filing an oath of the character required by § 1.65. A patent may be granted to the inventor making the application, upon a showing satisfactory to the Commissioner, subject to the same rights which the omitted inventor would have had if he had been joined.

(b) Whenever an inventor refuses to execute an application for patent, or cannot be found or reached after diligent effort, a person to whom the inventor has assigned or agreed in writing to assign the invention or who otherwise shows sufficient proprietary interest in the matter justifying such action may make application for patent on behalf of and as agent for the inventor. Such application must be accompanied by proof of the pertinent facts and a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage, and must state the last known address of the inventor. The assignment, written agreement to assign or other evidence of proprietary interest, or a verified copy thereof, must be filed in the Patent Office at the time of filing the application. The Office shall forward notice of the filing of the application to the inventor at the address stated in the application. Should such notice be returned to the Office undelivered, or should the address of the inventor be unknown, notice of the filing of the application shall be published in the Official Gazette. The inventor may subsequently join in the application on filing an oath of the character required by § 1.65. A patent may be granted to the inventor upon a showing satisfactory to the Commissioner.

THE APPLICATION**§ 1.51 General requisites of an application.**

Applications for patents must be made to the Commissioner of Patents. A complete application comprises:

- (a) A petition or request for a patent, see § 1.61.
- (b) A specification, including a claim or claims, see §§ 1.71 to 1.77.
- (c) An oath, see § 1.65.
- (d) Drawings, when necessary, see §§ 1.81 to 1.88.
- (e) The prescribed filing fee, (See § 1.21 for filing fees.)

§ 1.52 Language, paper, writing, margins.

(a) The petition, specification, and oath must be in the English language. All papers which are to become a part of the permanent records of the Patent Office must be legibly written or printed in permanent ink.

(b) The specification and claims, and also papers subsequently filed, must be plainly written on but one side of the paper. A wide margin must be reserved on the left-hand side and on the top of each page and the lines must not be crowded too closely together. Legal paper, 8 to 8½ by 12½ to 13 inches, typewritten and double spaced with margins of one and one-half inches on the left-hand side and top is deemed preferable. Typewritten or printed papers suitable for use by the Office may be required if the papers originally filed are not correctly, legibly and clearly written.

(c) Any interlineation, erasure or cancellation or other alteration made before the application was signed and sworn to should be clearly referred to in a marginal note or footnote on the same sheet of paper, and initialed or signed and

dated by the applicant to indicate such fact. (See § 1.56.)

§ 1.53 Application accepted and filed for examination only when complete.

(a) An application for a patent will not be accepted and placed upon the files for examination until all its required parts, complying with the rules relating thereto, are received, except that certain minor informalities may be waived subject to subsequent correction whenever required.

(b) If the papers and parts are incomplete, or so defective that they cannot be accepted as a complete application for examination, the applicant will be notified; the papers will be held six months for completion and, if not by then completed, will thereafter be returned or otherwise disposed of; the fee, if submitted, will be refunded.

§ 1.54 Parts of application to be filed together.

It is desirable that all parts of the complete application be deposited in the Office together; otherwise a letter must accompany each part, accurately and clearly connecting it with the other parts of the application.

§ 1.55 Serial number and filing date of application.

(a) Complete applications are numbered in regular order, and the applicant will be informed of the serial number and filing date of the application by a filing receipt. The filing date of the application is the date on which the complete application, acceptable for placing on the files for examination, is received in the Patent Office; or the date on which the last part completing such application is received in the case of an incomplete or defective application completed within six months.

(b) An applicant may claim the benefit of the filing date of a prior foreign application under the conditions specified in 35 U. S. C. 119. The claim to priority need be in no special form and may be made by the attorney or agent if the foreign application is referred to in the oath as required by § 1.65. The claim for priority and the certified copy of the foreign application specified in the second paragraph of 35 U. S. C. 119 must be filed in the case of interference when specified in §§ 1.216 and 1.224; when necessary to overcome the date of a reference relied upon by the examiner; or when specifically required by the examiner; and in all other cases they must be filed not later than the date the final fee is paid. If the papers filed are not in the English language, a translation need not be filed except in the three particular instances specified in the preceding sentence, in which event a sworn translation or a translation certified as accurate by a sworn or official translator must be filed.

(35 U.S.C. 119)

§ 1.56 Improper applications.

Any application signed or sworn to in blank, or without actual inspection by the applicant, and any application altered or partly filled in after being signed or sworn to, and also any application fraudulently filed or in connection with

which any fraud is practiced or attempted on the Patent Office, may be stricken from the files.

§ 1.57 Signature.

The application must be signed by the applicant in person. The signature to the oath will be accepted as the signature to the application provided the oath is attached to and refers to the petition, specification and claim to which it applies. Full names must be given, including the full first name without abbreviation, and the middle initial or name if any.

§ 1.59 Papers of complete application not to be returned.

The papers in a complete application will not be returned for any purpose whatever. If applicants have not preserved copies of the papers, the Office will furnish copies at the usual cost. See § 1.87 for return of drawing.

PETITION

§ 1.61 Petition.

(a) The petition must be addressed to the Commissioner of Patents and request the grant of a patent. The residence, and post office address of the petitioner must appear in the petition if not stated elsewhere in the application. The petition need not be separately signed when part of and attached to the specification and oath, otherwise it must be signed by the petitioner.

(b) The power of attorney or authorization of agent may be incorporated in the petition.

THE OATH

§ 1.65 Oath of applicant.

(a) The applicant, if the inventor, must make oath or affirmation that he does verily believe himself to be the original and first inventor or discoverer of the process, machine, manufacture, composition of matter, or improvement thereof, for which he solicits a patent; that he does not know and does not believe that the same was ever known or used before his invention or discovery thereof, and shall state of what country he is a citizen and where he resides, and whether he is a sole or joint inventor of the invention claimed in his application. In every original application the applicant must distinctly state under oath that to the best of his knowledge and belief the invention has not been in public use or on sale in the United States for more than one year prior to his application, or patented or described in any printed publication in any country before his invention or more than one year prior to his application, or patented in any foreign country prior to the date of his application on an application filed by himself or his legal representatives or assigns more than twelve months prior to his application in this country. The oath shall state whether or not any application for patent on the same invention has been filed in any foreign country, either by the applicant or by his legal representatives or assigns. If any such application has been filed, the applicant shall name the country in which the earliest such application was filed, and shall give the day, month,

and year of its filing; he shall also identify by country and by day, month, and year of filing, every such foreign application filed more than twelve months before the filing of the application in this country. This oath must be subscribed to by the affiant. See § 1.153 for oath in design cases and § 1.162 for oath in plant patent applications.

(b) If the application is made as provided in §§ 1.42, 1.43, or 1.47, the oath shall state the relationship of the affiant to the inventor and, upon information and belief, the facts which the inventor is required by this section to make oath to.

(c) An additional oath may be required if the application has not been filed in the Patent Office within a reasonable time after the execution of the original oath.

(35 U.S.C. 115)

§ 1.66 Officers authorized to administer oaths.

(a) The oath or affirmation may be made before any person within the United States authorized by law to administer oaths, or, when made in a foreign country, before any diplomatic or consular officer of the United States authorized to administer oaths, or before any officer having an official seal and authorized to administer oaths in the foreign country in which the applicant may be, whose authority shall be proved by a certificate of a diplomatic or consular officer of the United States, the oath being attested in all cases in this and other countries, by the proper official seal of the officer before whom the oath or affirmation is made. Such oath or affirmation shall be valid as to execution if it complies with the laws of the State or country where made. When the person before whom the oath or affirmation is made in this country is not provided with a seal, his official character shall be established by competent evidence, as by a certificate from a clerk of a court of record or other proper officer having a seal.

(b) When the oath is taken before an officer in a country foreign to the United States, all the application papers, except the drawings, must be attached together and a ribbon passed one or more times through all the sheets of the application, except the drawings, and the ends of said ribbon brought together under the seal before the latter is affixed and impressed, or each sheet must be impressed with the official seal of the officer before whom the oath is taken. If the papers as filed are not properly ribboned or each sheet impressed with the seal, the case will be accepted for examination, but before it is allowed, duplicate papers, prepared in compliance with the foregoing sentence, must be filed.

(35 U.S.C. 115)

§ 1.67 Supplemental oath for matter not originally claimed.

(a) When an applicant presents a claim for matter originally shown or described but not substantially embraced in the statement of invention or claim originally presented, he shall file a sup-

plemental oath to the effect that the subject matter of the proposed amendment was part of his invention; that he does not know and does not believe that the same was ever known or used before his invention or discovery thereof, or patented or described in any printed publication in any country before his invention or discovery thereof, or more than one year before his application, or in public use or on sale in the United States for more than one year before the date of his application, that said invention has not been patented in any foreign country prior to the date of his application in this country on an application filed by himself or his legal representatives or assigns more than twelve months prior to his application in the United States, and has not been abandoned. Such supplemental oath should accompany and properly identify the proposed amendment, otherwise the proposed amendment may be refused consideration.

(b) In proper cases the oath here required may be made on information and belief by an applicant other than inventor.

SPECIFICATION

AUTHORITY NOTE: §§ 1.71 to 1.79 interpret or apply 35 U.S.C. 112.

§ 1.71 Detailed description and specification of the invention.

(a) The specification must include a written description of the invention or discovery and of the manner and process of making and using the same, and is required to be in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which the invention or discovery appertains, or with which it is most nearly connected, to make and use the same.

(b) The specification must set forth the precise invention for which a patent is solicited, in such manner as to distinguish it from other inventions and from what is old. It must describe completely a specific embodiment of the process, machine, manufacture, composition of matter or improvement invented, and must explain the mode of operation or principle whenever applicable. The best mode contemplated by the inventor of carrying out his invention must be set forth.

(c) In the case of an improvement, the specification must particularly point out the part or parts of the process, machine, manufacture, or composition of matter to which the improvement relates, and the description should be confined to the specific improvement and to such parts as necessarily cooperate with it or as may be necessary to a complete understanding or description of it.

§ 1.72 Title of the invention.

The title of the invention, which should be as short and specific as possible, should appear as a heading on the first page of the specification, if it does not otherwise appear at the beginning of the application.

§ 1.73 Summary of the invention.

A brief summary of the invention indicating its nature and substance, which may include a statement of the object

of the invention, should precede the detailed description. Such summary should, when set forth, be commensurate with the invention as claimed and any object recited should be that of the invention as claimed.

§ 1.74 Reference to drawings.

When there are drawings, there shall be a brief description of the several views of the drawings and the detailed description of the invention shall refer to the different views by specifying the numbers of the figures and to the different parts by use of reference letters or numerals (preferably the latter).

§ 1.75 Claim.

(a) The specification must conclude with a claim particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention or discovery.

(b) More than one claim may be presented provided they differ substantially from each other and are not unduly multiplied.

(c) When more than one claim is presented, they may be placed in dependent form in which a claim may refer back to and further restrict a single preceding claim.

(d) The claim or claims must conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description.

See §§ 1.141 to 1.147 as to claiming different inventions in one application.

§ 1.76 Signature to the specification.

When the oath is attached to and refers to the petition, specification and claim to which it applies, the specification need not be signed. Otherwise it must be signed by the applicant in person.

§ 1.77 Arrangement of specification.

The following order of arrangement should be observed in framing the specification:

- (a) Title of the invention; or a preamble stating the name, citizenship and residence of the applicant and the title of the invention may be used.
- (b) Brief summary of the invention.
- (c) Brief description of the several views of the drawing, if there are drawings.
- (d) Detailed description.
- (e) Claim or claims.
- (f) Signature. (See § 1.76).

§ 1.78 Cross-references to other applications.

(a) When an applicant files an application claiming an invention disclosed in a prior filed copending application of the same applicant, the second application must contain or be amended to contain a reference in the specification to the prior application, identifying it by serial number and filing date and indicating the relationship of the applications, if the benefit of the filing date of

the prior application is claimed; if no such reference is made the prior application must be referred to in a separate paper filed in the later application. Cross-references to other related applications may be made when appropriate. (See § 1.14(b).)

(b) Where two or more applications filed by the same applicant, or owned by the same party, contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention in more than one application.

§ 1.79 Reservation clauses not permitted.

A reservation for a future application of subject matter disclosed but not claimed in a pending application will not be permitted in the pending application, but an application disclosing unclaimed subject matter may contain a reference to a later filed application of the same applicant or owned by a common assignee disclosing and claiming that subject matter.

THE DRAWINGS

AUTHORITY NOTE: §§ 1.81 to 1.88 interpret or apply 35 U.S.C. 113.

§ 1.81 Drawings required.

The applicant for patent is required by statute to furnish a drawing of his invention whenever the nature of the case admits of it; this drawing must be filed with the application. Illustrations facilitating an understanding of the invention (for example, flow sheets in cases of processes, and diagrammatic views) may also be furnished in the same manner as drawings, and may be required by the Office when considered necessary or desirable.

§ 1.82 Signature to drawing.

Signatures are not required on the drawing if it accompanies and is referred to in the other papers of the application, otherwise the drawing must be signed. The drawing may be signed by the applicant in person or have the name of the applicant placed thereon followed by the signature of the attorney or agent as such.

§ 1.83 Content of drawings.

The drawing must show every feature of the invention specified in the claims. When the invention consists of an improvement on an old machine the drawing must when possible exhibit, in one or more views, the improved portion itself, disconnected from the old structure, and also in another view, so much only of the old structure as will suffice to show the connection of the invention therewith.

§ 1.84 Standards for drawings.

The complete drawing is printed and published when the patent issues, and a copy is attached to the patent. This work is done by the photolithographic process, the sheets of drawings being reduced about one-third in size. In addition, a reduction of a selected portion of the drawings of each application is published in the Official Gazette. It is there-

fore necessary for these and other reasons that the character of each drawing be brought as nearly as possible to a uniform standard of execution and excellence, suited to the requirements of the reproduction process and of the use of the drawings, to give the best results in the interests of inventors, of the Office, and of the public. The following regulations with respect to drawings are accordingly prescribed:

(a) *Paper and ink.* Drawings must be made upon pure white paper of a thickness corresponding to two-ply or three-ply Bristol board. The surface of the paper must be calendered and smooth and of a quality which will permit erasure and correction. India ink alone must be used for pen drawings to secure perfectly black solid lines. The use of white pigment to cover lines is not acceptable.

(b) *Size of sheet and margins.* The size of a sheet on which a drawing is made must be exactly 10 by 15 inches. One inch from its edges a single marginal line is to be drawn, leaving the "sight" precisely 8 by 13 inches. Within this margin all work must be included. One of the shorter sides of the sheet is regarded as its top, and, measuring down from the marginal line, a space of not less than 1 1/4 inches is to be left blank for the heading of title, name, number, and date, which will be applied subsequently by the Office in a uniform style.

(c) *Character of lines.* All drawings must be made with drafting instruments or by photolithographic process which will give them satisfactory reproduction characteristics. Every line and letter (signatures included) must be absolutely black. This direction applies to all lines however fine, to shading, and to lines representing cut surfaces in sectional views. All lines must be clean, sharp, and solid, and fine or crowded lines should be avoided. Solid black should not be used for sectional or surface shading. Freehand work should be avoided wherever it is possible to do so.

(d) *Hatching and shading.* (1) Hatching should be made by oblique parallel lines, which may be not less than about one-twentieth inch apart.

(2) Heavy lines on the shade side of objects should be used except where they tend to thicken the work and obscure reference characters. The light should come from the upper left hand corner at an angle of 45°. Surface delineations should be shown by proper shading, which should be open.

(e) *Scale.* The scale to which a drawing is made ought to be large enough to show the mechanism without crowding when the drawing is reduced in reproduction, and views of portions of the mechanism on a larger scale should be used when necessary to show details clearly; two or more sheets should be used if one does not give sufficient room to accomplish this end, but the number of sheets should not be more than is necessary.

(f) *Reference characters.* The different views should be consecutively numbered figures. Reference numerals (and letters, but numerals are preferred) must be plain, legible and carefully formed, and not be encircled. They

should, if possible, measure at least one-eighth of an inch in height so that they may bear reduction to one-twenty-fourth of an inch; and they may be slightly larger when there is sufficient room. They must not be so placed in the close and complex parts of the drawing as to interfere with a thorough comprehension of the same, and therefore should rarely cross or mingle with the lines. When necessarily grouped around a certain part, they should be placed at a little distance, at the closest point where there is available space, and connected by lines with the parts to which they refer. They should not be placed upon hatched or shaded surfaces but when necessary, a blank space may be left in the hatching or shading where the character occurs so that it shall appear perfectly distinct and separate from the work. The same part of an invention appearing in more than one view of the drawing must always be designated by the same character, and the same character must never be used to designate different parts.

(g) *Symbols, legends.* Graphical drawing symbols for conventional elements may be used when appropriate, subject to approval by the Office. The elements for which such symbols are used must be adequately identified in the specification. While descriptive matter on drawings is not permitted, suitable legends may be used, or may be required, in proper cases, as in diagrammatic views and flow sheets or to show materials. Arrows may be required, in proper cases, to show direction of movement. The lettering should be as large as, or larger than, the reference characters.

(h) *Location of signature and names.* The signature of the applicant, or the name of the applicant and signature of the attorney or agent, may be placed in the lower right-hand corner of each sheet within the marginal line, or may be placed below the lower marginal line.

(i) *Views.* The drawing must contain as many figures as may be necessary to show the invention; the figures should be consecutively numbered if possible in the order in which they appear. The figures may be plan, elevation, section, or perspective views, and detail views of portions or elements, on a larger scale if necessary, may also be used. Exploded views, with the separated parts of the same figure embraced by a bracket, to show the relationship or order of assembly of various parts are permissible. When necessary, a view of a large machine or device in its entirety may be broken and extended over several sheets. If there is no loss in facility of understanding the view (the different parts should be identified by the same figure number but followed by the letters, a, b, c, etc., for each part). The plane upon which a sectional view is taken should be indicated on the general view by a broken line, the ends of which should be designated by numerals corresponding to the figure number of the sectional view and have arrows applied to indicate the direction in which the view is taken. A moved position may be shown by a broken line superimposed upon a suitable figure if this can be done without crowding, otherwise a separate

figure must be used for this purpose. Modified forms of construction can only be shown in separate figures. Views should not be connected by projection lines nor should center lines be used.

(j) *Arrangement of views.* All views on the same sheet must stand in the same direction and should, if possible, stand so that they can be read with the sheet held in an upright position. If views longer than the width of the sheet are necessary for the clearest illustration of the invention, the sheet may be turned on its side. The space for a heading must then be reserved at the right and the signatures placed at the left, occupying the same space and position on the sheet as in the upright views and being horizontal when the sheet is held in an upright position. One figure must not be placed upon another or within the outline of another.

(k) *Figure for Official Gazette.* The drawing should, as far as possible, be so planned that one of the views will be suitable for publication in the Official Gazette as the illustration of the invention.

(l) *Extraneous matter.* An agent's or attorney's stamp, or address, or other extraneous matter, will not be permitted upon the face of a drawing, within or without the marginal line, except that the title of the invention and identifying indicia, to distinguish from other drawings filed at the same time, may be placed below the lower margin.

(m) *Transmission of drawings.* Drawings transmitted to the Office should be sent flat, protected by a sheet of heavy binder's board, or may be rolled for transmission in a suitable mailing tube; but must never be folded. If received creased or mutilated, new drawings will be required.

(See § 1.152 for design drawing, § 1.165 for plant drawings, and § 1.174 for re-issue drawings.)

§ 1.185 Informal drawings.

The requirements of § 1.84 relating to drawings will be strictly enforced. A drawing not executed in conformity thereto may be admitted for purpose of examination, but in such case the drawing must be corrected or a new one furnished, as required. The necessary corrections will be made by the Office upon applicant's request and at his expense. (See § 1.21.)

§ 1.186 Draftsman to make drawings.

(a) Applicants are advised to employ competent draftsmen to make their drawings.

(b) The Office may furnish the drawings at the applicant's expense as promptly as its draftsmen can make them, for applicants who can not otherwise conveniently procure them. (See § 1.21.)

§ 1.187 Return of drawings.

(a) The drawing of an accepted application will not be returned to the applicant except for signature.

(b) A photographic print is made of the drawing of an accepted application.

§ 1.188 Use of old drawings.

If the drawings of a new application are to be identical with the drawings of

a previous application of the applicant on file in the Office, or with part of such drawings, the old drawings or any sheets thereof may be used if the prior application is, or is about to be, abandoned, or if the sheets to be used are cancelled in the prior application. The new application must be accompanied by a letter requesting the transfer of the drawings, which should be completely identified.

MODELS, EXHIBITS, SPECIMENS

AUTHORITY NOTE: §§ 1.91 to 1.95 interpret or apply 35 U.S.C. 114.

§ 1.91 Models not generally required as part of application or patent.

Models were once required in all cases admitting a model, as a part of the application, and these models became a part of the record of the patent. Such models are no longer generally required (the description of the invention in the specification, and the drawings, must be sufficiently full and complete, and capable of being understood, to disclose the invention without the aid of a model), and will not be admitted unless specifically called for.

§ 1.92 Model or exhibit may be required.

A model, working model, or other physical exhibit, may be required if deemed necessary for any purpose on examination of the application.

§ 1.93 Specimens.

When the invention relates to a composition of matter, the applicant may be required to furnish specimens of the composition, or of its ingredients or intermediates, for the purpose of inspection or experiment.

§ 1.94 Return of models, exhibits or specimens.

Models, exhibits, or specimens in applications which have become abandoned, and also in other applications on conclusion of the prosecution, may be returned to the applicant upon demand and at his expense, unless it be deemed necessary that they be preserved in the Office. Such physical exhibits in contested cases may be returned to the parties at their expense. If not claimed within a reasonable time, they may be disposed of at the discretion of the Commissioner.

§ 1.95 Copies of exhibits.

Copies of models or other physical exhibits will not ordinarily be furnished by the Office, and any model or exhibit in an application or patent shall not be taken from the Office except in the custody of an employee of the Office specially authorized by the Commissioner.

EXAMINATION OF APPLICATIONS

AUTHORITY NOTE: §§ 1.101 to 1.108 interpret or apply 35 U.S.C. 131, 132.

§ 1.101 Order of examination.

(a) Applications filed in the Patent Office and accepted as complete applications (§§ 1.53 and 1.55) are assigned for examination to the respective examining divisions having the classes of inventions to which the applications relate. Applications shall be taken up for exam-

ination by the examiner to whom they have been assigned in the order in which they have been filed.

(b) Applications which have been acted upon by the examiner, and which have been placed by the applicant in condition for further action by the examiner (amended applications) shall be taken up for such action in the order in which they have been placed in such condition (date of amendment).

§ 1.102 Advancement of examination.

(a) Applications will not be advanced out of turn for examination or for further action except as provided by this part, or upon order of the Commissioner to expedite the business of the Office, or upon a verified showing which, in the opinion of the Commissioner, will justify so advancing it.

(b) Applications wherein the inventions are deemed of peculiar importance to some branch of the public service and the head of some department of the Government requests immediate action for that reason, may be advanced for examination.

§ 1.103 Suspension of action.

(a) Suspension of action by the Office will be granted at the request of the applicant for good and sufficient cause and for a reasonable time specified. Only one suspension may be granted by the primary examiner; any further suspension must be approved by the Commissioner.

(b) If action on an application is suspended when not requested by the applicant, the applicant shall be notified of the reasons therefor.

(c) Action by the examiner may be suspended by order of the Commissioner in the case of applications owned by the United States whenever publication of the invention by the granting of a patent thereon might be detrimental to the public safety or defense, at the request of the appropriate department or agency.

§ 1.104 Nature of examination; examiner's action.

(a) On taking up an application for examination, the examiner shall make a thorough study thereof and shall make a thorough investigation of the available prior art relating to the subject matter of the invention sought to be patented. The examination shall be complete with respect both to compliance of the application with the statutes and rules and to the patentability of the invention as claimed, as well as with respect to matters of form, unless otherwise indicated.

(b) The applicant will be notified of the examiner's action. The reasons for any adverse action or any objection or requirement will be stated and such information or references will be given as may be useful in aiding the applicant to judge of the propriety of continuing the prosecution of his application.

§ 1.105 Completeness of examiner's action.

The examiner's action will be complete as to all matters, except that in appropriate circumstances, such as misjoinder of invention, fundamental de-

fects in the application, and the like, the action of the examiner may be limited to such matters before further action is made. However, matters of form need not be raised by the examiner until a claim is found allowable.

§ 1.106 Rejection of claims.

(a) If the invention is not considered patentable, or not considered patentable as claimed, the claims, or those considered unpatentable will be rejected.

(b) In rejecting claims for want of novelty or for want of invention, the examiner must cite the best references at his command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not obvious, must be clearly explained and each rejected claim specified.

§ 1.107 Citation of references.

If domestic patents be cited, their numbers and dates, the names of the patentees, and the classes of inventions must be stated. If foreign patents be cited, their nationality or country, numbers and dates, and the names of the patentees must be stated, and such other data must be furnished as may be necessary to enable the applicant to identify the patents cited. In citing foreign patents, the number of pages of specification and sheets of drawing must be specified, and in case part only of the patent be involved, the particular pages and sheets containing the parts relied upon must be identified. If printed publications be cited, the author (if any), title, date, pages or plates, and place of publication, or place where a copy can be found, shall be given. When a rejection is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by the affidavit of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.

§ 1.108 Abandoned and forfeited applications not cited.

Abandoned and forfeited applications as such will not be cited as references.

ACTION BY APPLICANT AND FURTHER CONSIDERATION

AUTHORITY NOTE: §§ 1.111 to 1.113 interpret or apply 35 U.S.C. 132.

§ 1.111 Reply by applicant.

(a) After the office action, if adverse in any respect, the applicant, if he persist in his application for a patent, must reply thereto and may request re-examination or reconsideration, with or without amendment.

(b) In order to be entitled to re-examination or reconsideration, the applicant must make request therefor in writing, and he must distinctly and specifically point out the supposed errors in the examiner's action; the applicant must respond to every ground of objection and rejection in the prior Office action (ex-

cept that request may be made that objections or requirements as to form not necessary to further consideration of the claims be held in abeyance until a claim is allowed), and the applicant's action must appear throughout to be a bona fide attempt to advance the case to final action. A general allegation that the claims define invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section.

(c) In amending an application in response to a rejection, the applicant must clearly point out the patentable novelty which he thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. He must also show how the amendments avoid such references or objections. (See §§ 1.135 and 1.136 for time for reply.)

§ 1.112 Re-examination and reconsideration.

After response by applicant (§ 1.111) the application will be re-examined and reconsidered, and the applicant will be notified if claims are rejected, or objections or requirements made, in the same manner as after the first examination. Applicant may respond to such Office action, in the same manner provided in § 1.111, with or without amendment, but any amendments after the second Office action must ordinarily be restricted to the rejection or to the objections or requirements made, and the application will be again considered, and so on repeatedly, unless the examiner has indicated that the action is final.

§ 1.113 Final rejection or action.

(a) On the second or any subsequent examination or consideration, the rejection or other action may be made final, whereupon applicant's response is limited to appeal in the case of rejection of any claim (§ 1.191), or to amendment as specified in § 1.116. Petition may be taken to the Commissioner in the case of objections or requirements not involved in the rejection of any claim (§ 1.181). Response to a final rejection or action must include cancellation of, or appeal from the rejection of, each claim so rejected and, if any claim stands allowed, compliance with any requirement or objection as to form.

(b) In making such final rejection, the examiner shall repeat or state all grounds of rejection then considered applicable to the claims in the case, clearly stating the reasons therefor.

AMENDMENTS

AUTHORITY NOTE: §§ 1.115 to 1.127 interpret or apply 35 U.S.C. 132.

§ 1.115 Amendment by applicant.

The applicant may amend before or after the first examination and action, and also after the second or subsequent examination or reconsideration as specified in § 1.112 or when and as specifically required by the examiner.

§ 1.116 Amendments after final action.

(a) After final rejection or action (§ 1.113) amendments may be made

cancelling claims or complying with any requirement of form which has been made, and amendments presenting rejected claims in better form for consideration on appeal may be admitted; but the admission of any such amendment or its refusal, and any proceedings relative thereto, shall not operate to relieve the application from its condition as subject to appeal or to save it from abandonment under § 1.135.

(b) If amendments touching the merits of the application be presented after final rejection, or after appeal has been taken, or when such amendment might not otherwise be proper, they may be admitted upon a showing of good and sufficient reasons why they are necessary and were not earlier presented.

(c) No amendment can be made as a matter of right in appealed cases. After decision on appeal, amendments can only be made as provided in § 1.198, or to carry into effect a recommendation under § 1.196.

§ 1.117 Amendment and revision required.

The specification, claims and drawing must be amended and revised when required, to correct inaccuracies of description and definition or unnecessary prolixity, and to secure correspondence between the claims, the specification and the drawing.

§ 1.118 Amendment of disclosure.

In original applications, all amendments of the drawings or specifications, and all additions thereto, must conform to at least one of them as it was at the time of the filing of the application. Matter not found in either, involving a departure from or an addition to the original disclosure, cannot be added to the application even though supported by a supplemental oath, and can be shown or claimed only in a separate application.

§ 1.119 Amendment of claims.

The claims may be amended by cancelling particular claims, by presenting new claims, or by amending the language of particular claims (such amended claims being in effect new claims). The requirements of § 1.111 must be complied with by pointing out the specific distinctions believed to render the claims patentable over the references in presenting arguments in support of new claims and amendments.

§ 1.121 Manner of making amendments.

Erasures, additions, insertions, or alterations of the papers and records must not be made by the applicant. Amendments are made by filing a paper (which should conform to § 1.52), directing or requesting that specified amendments be made. The exact word or words to be stricken out or inserted in the application must be specified and the precise point indicated where the deletion or insertion is to be made.

§ 1.122 Entry and consideration of amendments.

(a) Amendments are "entered" by the Office by making the proposed

deletions by drawing a line in red ink through the word or words cancelled, and by making the proposed substitutions or insertions in red ink, small insertions being written in at the designated place and larger insertions being indicated by reference.

(b) Ordinarily all amendments presented in a paper filed while the application is open to amendment are entered and considered, subsequent cancellation or correction being required of improper amendments. Untimely amendatory papers may be refused entry and consideration in whole or in part.

§ 1.123 Amendments to the drawing.

(a) No change in the drawing may be made except by permission of the Office. Permissible changes in the construction shown in any drawing may be made only by the Office. A sketch in permanent ink showing proposed changes, to become part of the record, must be filed. The paper requesting amendments to the drawing should be separate from other papers. The drawing may not be withdrawn from the Office except for signature.

(b) Substitute drawings will not ordinarily be admitted in any case unless required by the Office.

§ 1.124 Amendment of amendments.

When an amendatory clause is to be amended, it should be wholly rewritten and the original insertion canceled, so that no interlineations or deletions shall appear in the clause as finally presented. Matter canceled by amendment can be reinstated only by a subsequent amendment presenting the canceled matter as a new insertion.

§ 1.125 Substitute specification.

If the number or nature of the amendments shall render it difficult to consider the case, or to arrange the papers for printing or copying, the examiner may require the entire specification or claims, or any part thereof, to be rewritten. A substitute specification will ordinarily not be accepted unless it has been required by the examiner.

§ 1.126 Numbering of claims.

The original numbering of the claims must be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When claims are added by amendment or substituted for canceled claims, they must be numbered by the applicant consecutively beginning with the number next following the highest numbered claim previously presented (whether entered or not). When the application is ready for allowance, the examiner, if necessary, will renumber the claims consecutively in the order in which they appear or in such order as may have been requested by applicant.

§ 1.127 Petition from refusal to admit amendment.

From the refusal of the primary examiner to admit an amendment, in whole or in part, a petition will lie to the Commissioner under § 1.181.

AFFIDAVITS OVERCOMING REJECTIONS

§ 1.131 Affidavit of prior invention to overcome cited patent or publication.

(a) When any claim of an application is rejected on reference to a domestic patent which substantially shows or describes but does not claim the rejected invention, or on reference to a foreign patent or to a printed publication, and the applicant shall make oath to facts showing a completion of the invention in this country before the filing date of the application on which the domestic patent issued, or before the date of the foreign patent, or before the date of the printed publication, then the patent or publication cited shall not bar the grant of a patent to the applicant, unless the date of such patent or printed publication be more than one year prior to the date on which the application was filed in this country.

(b) The showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from said date to a subsequent reduction to practice or to the filing of the application. Original exhibits of drawings or records, or photocopies thereof, must accompany and form part of the affidavit or their absence satisfactorily explained.

(35 U.S.C. 132)

§ 1.132 Affidavits traversing grounds of rejection.

When any claim of an application is rejected on reference to a domestic patent which substantially shows or describes but does not claim the invention, or on reference to a foreign patent, or to a printed publication, or to facts within the personal knowledge of an employee of the Office, or when rejected upon a mode or capability of operation attributed to a reference, or because the alleged invention is held to be inoperative or lacking in utility, or frivolous or injurious to public health or morals, affidavits traversing these references or objections may be received.

(35 U.S.C. 132)

INTERVIEWS

§ 1.133 Interviews.

(a) Interviews with examiners concerning applications and other matters pending before the Office must be had in the examiners' rooms at such times, within office hours, as the respective examiners may designate. Interviews will not be permitted at any other time or place without the authority of the Commissioner. Interviews for the discussion of the patentability of pending applications will not be had before the first official action thereon. Interviews should be arranged for in advance.

(b) In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant.

An interview does not remove the necessity for response to Office actions as specified in §§ 1.111, 1.135.

(35 U.S.C. 132)

TIME FOR RESPONSE BY APPLICANT; ABANDONMENT OF APPLICATION

AUTHORITY NOTE: §§ 1.135 to 1.138 interpret or apply 35 U.S.C. 133.

§ 1.135 Abandonment for failure to respond within time limit.

(a) If an applicant fails to prosecute his application within six months after the date when the last official notice of any action by the Office was mailed to him, or within such shorter time as may be fixed (§ 1.136), the application will become abandoned.

(b) Prosecution of an application to save it from abandonment must include such complete and proper action as the condition of the case may require. The admission of an amendment not responsive to the last official action, or refusal to admit the same, and any proceedings relative thereto, shall not operate to save the application from abandonment.

(c) When action by the applicant is a bona fide attempt to advance the case to final action, and is substantially a complete response to the examiner's action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, opportunity to explain and supply the omission may be given before the question of abandonment is considered.

(d) Prompt ratification or filing of a correctly signed copy may be accepted in case of an unsigned or improperly signed paper.

(See § 1.7.)

§ 1.136 Time less than six months.

(a) An applicant may be required to prosecute his application in a shorter time than six months, but not less than thirty days, whenever such shorter time is deemed necessary or expedient. Unless the applicant is notified in writing that response is required in less than six months, the maximum period of six months is allowed.

(b) The time for reply, when a time less than six months has been set, will be extended only for good and sufficient cause, and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action by the applicant is due, but in no case will the mere filing of the request effect any extension. Only one extension may be granted by the primary examiner in his discretion; any further extension must be approved by the Commissioner. In no case can any extension carry the date on which response to an action is due beyond six months from the date of the action.

§ 1.137 Revival of abandoned application.

An application abandoned for failure to prosecute may be revived as a pending application if it is shown to the satisfaction of the Commissioner that the delay was unavoidable. A petition to revive an abandoned application must be accompanied by a verified showing of the causes of the delay, by the proposed

response unless it has been previously filed, and by the petition fee.

§ 1.138 Express abandonment.

An application may be expressly abandoned by filing in the Patent Office a written declaration of abandonment, signed by the applicant himself and the assignee of record, if any, and identifying the application.

JOINDER OF INVENTIONS IN ONE APPLICATION; RESTRICTION

AUTHORITY NOTE: §§ 1.141 to 1.147 interpret or apply 35 U.S.C. 121.

§ 1.141 Different inventions in one application.

Two or more independent and distinct inventions may not be claimed in one application, except that more than one species of an invention, not to exceed five, may be specifically claimed in different claims in one application, provided the application also includes an allowable claim generic to all the claimed species and all the claims to each species in excess of one are written in dependent form (§ 1.75) or otherwise include all the limitations of the generic claim.

§ 1.142 Requirement for restriction.

(a) If two or more independent and distinct inventions are claimed in a single application, the examiner in his action shall require the applicant in his response to that action to elect that invention to which his claim shall be restricted, this official action being called a requirement for restriction (also known as a requirement for division). If the distinctness and independence of the inventions be clear, such requirement will be made before any action on the merits; however, it may be made at any time before final action in the case, at the discretion of the examiner.

(b) Claims to the invention or inventions not elected, if not canceled, are nevertheless withdrawn from further consideration by the examiner by the election, subject however to reinstatement in the event the requirement for restriction is withdrawn or overruled.

§ 1.143 Reconsideration of requirement.

If the applicant disagrees with the requirement for restriction, he may request reconsideration and withdrawal or modification of the requirement, giving the reasons therefor. (See § 1.111.) In requesting reconsideration the applicant must indicate a provisional election of one invention for prosecution, which invention shall be the one elected in the event the requirement becomes final. The requirement for restriction will be reconsidered on such a request. If the requirement is repeated and made final, the examiner will at the same time act on the claims to the invention elected.

§ 1.144 Petition from requirement for restriction.

After a final requirement for restriction, the applicant, in addition to making any response due on the remainder of the action, may petition the Commissioner to review the requirement. Petition may be deferred until after final action on or allowance of claims to the

invention elected, but must be filed not later than appeal. A petition will not be considered if reconsideration of the requirement was not requested. (See § 1.181.)

§ 1.145 Subsequent presentation of claims for different invention.

If, after an office action on an application, the applicant presents claims directed to an invention distinct from and independent of the invention previously claimed, the applicant will be required to restrict the claims to the invention previously claimed if the amendment is entered, subject to reconsideration and review as provided in §§ 1.143 and 1.144.

§ 1.146 Election of species.

In the first action on an application containing a generic claim and claims restricted separately to each of more than one species embraced thereby, the examiner, if of the opinion after a complete search on the generic claims that no generic claim presented is allowable, shall require the applicant in his response to that action to elect that species of his invention to which his claims shall be restricted if no generic claim is finally held allowable. However, if such application contains claims directed to more than five species, the examiner may require restriction of the claims to not more than five species before taking any further action in the case.

§ 1.147 Separate application for invention not elected.

The non-elected inventions, those not elected after a requirement for restriction (§ 1.142), may be made the subjects of separate applications, which must conform to the rules applicable to original applications and which will be examined in the same manner as original applications. However, if such an application is filed before the patenting or abandonment of or termination of proceedings on the original application, and if the drawings are identical and the application papers comprise a copy of the original application as filed, prepared and certified by the Patent Office, together with a proposed amendment canceling the irrelevant claims or other matter signing and execution by the applicant may be omitted.

DESIGN PATENTS

§ 1.151 Rules applicable.

The rules relating to applications for patents for other inventions or discoveries are also applicable to applications for patents for designs except as otherwise provided.

(35 U.S.C. 171)

§ 1.152 Drawing.

The design must be represented by a drawing made in conformity with the rules laid down for drawings of mechanical inventions and must contain a sufficient number of views to constitute a complete disclosure of the appearance of the article. Appropriate surface shading must be used to show the character or contour of the surfaces represented.

(35 U.S.C. 113, 171)

§ 1.153 Title, description and claim, oath.

(a) The title of the design must designate the particular article. No description, other than a reference to the drawing, is ordinarily required. The claim shall be in formal terms to the ornamental design for the article (specifying name) as shown, or as shown and described. More than one claim is neither required nor permitted.

(b) The oath required of the applicant must comply with § 1.65 except that the period of twelve months specified therein with respect to foreign applications is six months in the case of designs.

§ 1.154 Arrangement of specification.

The following order of arrangement should be observed in framing design specifications:

- (a) Preamble, stating name of the applicant and title of the design.
- (b) Description of the figure or figures of the drawing.
- (c) Description, if any.
- (d) Claim.
- (e) Signature of applicant. (See § 1.57.)

(35 U.S.C. 171)

§ 1.155 Term of design patent.

(a) The petition for a design patent should specify the term, 3½, 7, or 14 years, for which a design patent is sought; but if no term is specified, or if the term specified is greater than that covered by the fee paid, the application will be accepted as filed for a term corresponding to the fee received, and the applicant so notified.

(b) Where the applicant initially requests that the patent issue for one of the shorter terms, he may, at any time before the application is allowed and passed to issue, upon the payment of the additional sum necessary, amend his application by requesting that the patent be issued for a longer term. In order to afford the applicant an opportunity for making such an amendment and paying the additional sum, the Office may notify him before the application is allowed and passed to issue unless otherwise directed, but failure of the Office to send or of the applicant to receive such notification will not warrant any change in the term requested after the application is allowed and passed to issue.

(35 U.S.C. 173)

PLANT PATENTS**§ 1.161 Rules applicable.**

The rules relating to applications for patent for other inventions or discoveries are also applicable to applications for patents for plants except as otherwise provided.

§ 1.162 Applicant, oath.

The applicant for a plant patent must be the person who has invented or discovered and asexually reproduced the new and distinct variety of plant for which a patent is sought (or as provided in §§ 1.42, 1.43, and 1.47). The oath required of the applicant, in addition to the averments required by § 1.65, must state that he has asexually reproduced

the plant. Where the plant is a newly found plant the oath must also state that it was found in a cultivated area.

(35 U.S.C. 161)

§ 1.163 Specification.

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

(b) Two copies of the specification (including the claim) must be submitted, but only one need be signed and executed; the second copy may be a legible carbon copy of the original.

(35 U.S.C. 112, 162)

§ 1.164 Claim.

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

(35 U.S.C. 162)

§ 1.165 Drawings.

(a) Plant patent drawings are not mechanical drawings and should be artistically and competently executed. Figure numbers and reference characters need not be employed unless required by the examiner. The drawing must disclose all the distinctive characteristics of the plant capable of visual representation.

(b) The drawing may be in color and when color is a distinguishing characteristic of the new variety, the drawing must be in color. Two copies of color drawings must be submitted. Color drawings may be made either in permanent water color or oil, or in lieu thereof may be photographs made by color photography or properly colored on sensitized paper. The paper in any case must correspond in size, weight and quality to the paper required for other drawings.

(35 U.S.C. 113, 161)

§ 1.166 Specimens.

The applicant may be required to furnish specimens of the plant, or its flower or fruit, in a quantity and at a time in its stage of growth as may be designated, for study and inspection. Such specimens, properly packed, must be forwarded in conformity with instructions furnished to the applicant. When it is not possible to forward such specimens, plants must be made available for official inspection where grown.

(35 U.S.C. 114, 161)

§ 1.167 Examination.

(a) Applications may be submitted by the Patent Office to the Department of Agriculture for study and report.

(b) Affidavits from qualified agricultural or horticultural experts regarding the novelty and distinctiveness of the

variety of plant may be received when the need of such affidavits is indicated.

(35 U.S.C. 161, 164; E.O. 5464 Oct. 17, 1930)

REISSUES

AUTHORITY NOTE: §§ 1.171 to 1.179 interpret or apply 35 U.S.C. 251.

§ 1.171 Application for reissue.

An application for reissue must contain the same parts required for an application for an original patent, complying with all the rules relating thereto except as otherwise provided, and in addition, must comply with the requirements of the rules relating to reissue applications. The application must be accompanied by a certified copy of an abstract of title or an order for a title report, to be placed in the file, and by an offer to surrender the original patent (§ 1.178).

§ 1.172 Applicants, assignees.

(a) Reissue applications must be signed and sworn to by the inventors except as otherwise provided (see §§ 1.42, 1.43, 1.47), and must be accompanied by the written assent of all assignees, if any, owning an undivided interest in the patent, but a reissue application may be made and sworn to by the assignee of the entire interest if the application does not seek to enlarge the scope of the claims of the original patent.

(b) A reissue will be granted to the original patentee, his legal representatives or assigns as the interest may appear.

§ 1.173 Specification.

The specification of the reissue application must include the entire specification and claims of the patent, with the matter to be omitted by reissue enclosed in square brackets; and any additions made by the reissue must be underlined, so that the old and the new specifications and claims may be readily compared. Claims should not be renumbered and the numbering of claims added by reissue should follow the number of the highest numbered patent claim. No new matter shall be introduced into the specification.

§ 1.174 Drawings.

(a) The drawings upon which the original patent was issued may be used in reissue applications if no changes whatsoever are to be made in the drawings. In such cases, when the reissue application is filed, the applicant must submit a temporary drawing which may consist of a copy of the printed drawings of the patent or a photoprint of the original drawings securely mounted by pasting on sheets of drawing board of the size required for original drawing, or an order for the same.

(b) Amendments which can be made in a reissue drawing, that is, changes from the drawing of the patent, are restricted.

§ 1.175 Reissue oath.

(a) Applicants for reissue, in addition to complying with the requirements of the first sentence of § 1.65, must also file with their applications a statement under oath as follows:

(1) That applicant verily believes the original patent to be wholly or partly inoperative or invalid, and the reasons why.

(2) When it is claimed that such patent is so inoperative or invalid "by reason of a defective specification or drawing," particularly specifying such defects.

(3) When it is claimed that such patent is inoperative or invalid "by reason of the patentee claiming more or less than he had a right to claim in the patent," distinctly specifying the excess or insufficiency in the claims.

(4) Particularly specifying the errors relied upon, and how they arose or occurred.

(5) That said errors arose "without any deceptive intention" on the part of the applicant.

(b) Corroborating affidavits of others may be filed and the examiner may, in any case, require additional information or affidavits concerning the application for reissue and its object.

§ 1.176 Examination of reissue.

An original claim, if re-presented in the reissue application, is subject to re-examination, and the entire application will be examined in the same manner as original applications, subject to the rules relating thereto, excepting that division will not be required. Applications for reissue will be acted on by the examiner in advance of other applications.

§ 1.177 Reissue in divisions.

The Commissioner may, in his discretion, cause several patents to be issued for distinct and separate parts of the thing patented, upon demand of the applicant, and upon payment of the required fee for each division. Each division of a reissue constitutes the subject of a separate specification descriptive of the part or parts of the invention claimed in such division; and the drawing may represent only such part or parts, subject to the provisions of §§ 1.83 and 1.84. On filing divisional reissue applications, they shall be referred to the Commissioner. Unless otherwise ordered by the Commissioner, all the divisions of a reissue will issue simultaneously; if there be any controversy as to one division, the others will be withheld from issue until the controversy is ended, unless the Commissioner shall otherwise order.

§ 1.178 Original patent.

The application for a reissue must be accompanied by an offer to surrender the original patent. The application should also be accompanied by the original patent, or if the original is lost or inaccessible, by an affidavit to that effect. The application may be accepted for examination in the absence of the original patent or the affidavit, but one or the other must be supplied before the case is allowed. If a reissue be refused, the original patent will be returned to applicant upon his request.

§ 1.179 Notice of reissue application.

When an application for a reissue is filed, there will be placed in the file of the original patent a notice stating that an application for reissue has been filed. When the reissue is granted or the reissue

sue application is otherwise terminated, the fact will be added to the notice in the file of the original patent.

PETITIONS AND ACTION BY THE COMMISSIONER

§ 1.181 Petition to the Commissioner.

(a) Petition may be taken to the Commissioner (1) from any action or requirement of any examiner in the ex parte prosecution of an application which is not subject to appeal to the Board of Appeals or to the court; (2) in cases in which a statute or the rules specify that the matter is to be determined directly by or reviewed by the Commissioner; and (3) to invoke the supervisory authority of the Commissioner in appropriate circumstances.

(b) Any such petition must contain a statement of the facts involved and the point or points to be reviewed and the action requested. Briefs or memoranda, if any, in support thereof should accompany or be embodied in the petition; and where facts are to be proven, the proof in the form of affidavits (and exhibits, if any) must accompany the petition.

(c) When a petition is taken from an action or requirement of an examiner in the ex parte prosecution of an application, it may be required that there have been a proper request for reconsideration (§ 1.111) and a repeated action by the examiner. The examiner may be directed by the Commissioner to furnish a written statement, within a specified time, setting forth the reasons for his decision upon the matters averred in the petition, supplying a copy thereof to the petitioner.

(d) No fee is required for a petition to the Commissioner except in the case of a petition to revive an abandoned application (§ 1.137) or for the delayed payment of a final fee (§ 1.317).

(e) Oral hearing will not be granted except when considered necessary by the Commissioner.

(f) The mere filing of a petition will not stay the period for replying to an examiner's action which may be running against an application, nor act as a stay of other proceedings.

(g) Determination of petitions of various kinds may be delegated by the Commissioner to the Supervisory Examiners or to the Solicitor and Law Examiners.

§ 1.182 Questions not specifically provided for.

All cases not specifically provided for in the regulations of this part will be decided in accordance with the merits of each case by or under the authority of the Commissioner, and such decision will be communicated to the interested parties in writing.

§ 1.183 Suspension of rules.

In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Commissioner in person on petition of the interested party, subject to such other requirements as may be imposed.

§ 1.184 Reconsideration of cases decided by former Commissioners.

Cases which have been decided by one Commissioner will not be reconsidered by his successor except in accordance with the principles which govern the granting of new trials.

APPEAL TO THE BOARD OF APPEALS

AUTHORITY NOTE: §§ 1.191 to 1.198 interpret or apply 35 U.S.C. 134.

§ 1.191 Appeal to Board of Appeals.

(a) Every applicant for a patent or for reissue of a patent, any of the claims of which have been twice rejected, or who has been given a final rejection (§ 1.113), may, upon the payment of the fee required by law, appeal from the decision of the primary examiner to the Board of Appeals within the time allowed for response.

(b) The appeal must identify the rejected claim or claims appealed, and must be signed by the applicant or his duly authorized attorney or agent.

(c) Except as otherwise provided by § 1.206, appeal when taken must be taken from the rejection of all claims under rejection which applicant proposes to contest. Questions relating to matters not affecting the merits of the invention may be required to be settled before an appeal can be considered.

§ 1.192 Appellant's brief.

(a) The appellant shall, within sixty days from the date of the appeal, or within the time allowed for response to the action appealed from if such time is later, file a brief of the authorities and arguments on which he will rely to maintain his appeal, including a concise explanation of the invention which should refer to the drawing by reference characters, and a copy of the claims involved, at the same time indicating if he desires an oral hearing. Two extra copies of the brief are required if an oral hearing is requested.

(b) On failure to file the brief within the time allowed, the appeal shall stand dismissed.

§ 1.193 Examiner's answer.

(a) The primary examiner may, within such time as may be directed by the Commissioner, furnish a written statement in answer to the appellant's brief including such explanation of the invention claimed and of the references and grounds of rejection as may be necessary, supplying a copy to the appellant. If the primary examiner shall find that the appeal is not regular in form or does not relate to an appealable action, he shall so state and a petition from such decision may be taken to the Commissioner as provided in § 1.181.

(b) The appellant may file a reply brief directed only to such new points of argument as may be raised in the examiner's answer, within twenty days from the date of such answer. However, if the examiner's answer states a new ground of rejection appellant may file a reply thereto within sixty days from the date of such answer; such reply may include any amendment or material appropriate to the new ground.

§ 1.194 Hearing.

If no request for oral hearing has been made by the appellant, the appeal will be assigned for consideration and decision. If the appellant has requested an oral hearing, a day of hearing will be set, and due notice thereof given to the appellant. Hearing will be held as stated in the notice, and oral argument will be limited to one-half hour unless otherwise ordered before the hearing begins.

§ 1.195 Affidavits after appeal.

Affidavits or exhibits submitted after the case has been appealed will not be admitted without a showing of good and sufficient reasons why they were not earlier presented.

§ 1.196 Decision by the Board of Appeals.

(a) The Board of Appeals, in its decision, may affirm or reverse the decision of the primary examiner in whole or in part on the grounds and on the claims specified by the examiner. The affirmance of the rejection of a claim on any of the grounds specified constitutes a general affirmance of the decision of the primary examiner on that claim, except as to any ground specifically reversed.

(b) Should the Board of Appeals have knowledge of any grounds not involved in the appeal for rejecting any appealed claim, it may include in its decision a statement to that effect with its reasons for so holding, which statement shall constitute a rejection of the claims. The appellant may submit an appropriate amendment of the claims so rejected or a showing of facts, or both, and have the matter reconsidered by the primary examiner. The statement shall be binding upon the primary examiner unless an amendment or showing of facts not previously of record be made which, in the opinion of the primary examiner, avoids the additional ground for rejection stated in the decision. The applicant may waive such reconsideration before the primary examiner and have the case reconsidered by the Board of Appeals upon the same record before them. Where request for such reconsideration is made the Board of Appeals shall, if necessary, render a new decision which shall include all grounds upon which a patent is refused. The applicant may waive reconsideration by the Board of Appeals and treat the decision, including the added grounds for rejection given by the Board of Appeals, as a final decision in the case.

(c) Should the decision of the Board of Appeals include an explicit statement that a claim may be allowed in amended form, applicant shall have the right to amend in conformity with such statement, which shall be binding on the primary examiner in the absence of new references or grounds of rejection.

§ 1.197 Action following decision.

(a) After decision by the Board of Appeals, the case shall be returned to the primary examiner, subject to the applicant's right of appeal or other review, for such further action by the applicant or by the primary examiner, as the condi-

tion of the case may require, to carry into effect the decision.

(b) Any request or petition for rehearing or reconsideration, or modification of the decision, must be filed within thirty days from the date of the original decision, unless that decision is so modified as to become, in effect, a new decision, and the Board of Appeals so states.

(c) When an appeal is or stands dismissed, or when the time for appeal to the court or review by civil action (§ 1.304) has expired and no such appeal or civil action has been filed, proceedings in the application are considered terminated as of the dismissal or expiration date except in those applications in which claims stand allowed or in which the nature of the decision requires further action by the examiner. If an appeal to the court or a civil action has been filed, proceedings in the application are similarly considered terminated when the appeal or civil action is terminated.

§ 1.198 Reopening after decision.

Cases which have been decided by the Board of Appeals will not be reopened or reconsidered by the primary examiner, except under the provisions of § 1.196, without the written authority of the Commissioner, and then only for the consideration of matters not already adjudicated, sufficient cause being shown.

INTERFERENCES: DEFINITION, PREPARATION, DECLARATION

AUTHORITY NOTE: §§ 1.201 to 1.212 Interpret or apply 35 U.S.C. 135.

§ 1.201 Definition, when declared.

(a) An interference is a proceeding instituted for the purpose of determining the question of priority of invention between two or more parties claiming substantially the same patentable invention and may be instituted as soon as it is determined that common patentable subject matter is claimed in a plurality of applications or in an application and a patent.

(b) An interference will be declared between pending applications for patent, or for reissue, of different parties when such applications contain claims for substantially the same invention, which are allowable in the application of each party, and interferences will also be declared between pending applications for patent, or for reissue, and unexpired original or reissued patents, of different parties, when such applications and patents contain claims for substantially the same invention which are allowable in all of the applications involved, in accordance with the provisions of the regulations in this part.

(c) Interferences will not be declared, nor continued, between applications or applications and patents owned by the same party unless good cause is shown therefor. The parties shall make known any and all right, title, and interest affecting the ownership of any application or patent involved or essential to the proceedings, not recorded in the Patent Office, when an interference is declared, and of changes in such right, title, or interest, made after the declaration of the interference and before the expira-

tion of the time prescribed for seeking review of the decision in the interference.

§ 1.202 Preparation for interference between applications; preliminary inquiry of junior applicant.

In order to ascertain whether any question of priority arises between applications which appear to interfere and are otherwise ready to be prepared for interference, any junior applicant may be called upon to state in writing under oath the date and the character of the earliest fact or act, susceptible of proof, which can be relied upon to establish conception of the invention under consideration for the purpose of establishing priority of invention. The statement filed in compliance with this section will be retained by the Patent Office separate from the application file and if an interference is declared will be opened simultaneously with the preliminary statement of the party filing the same. In case the junior applicant makes no reply within the time specified, not less than thirty days, or if the earliest date alleged is subsequent to the filing date of the senior party, the interference ordinarily will not be declared.

§ 1.203 Preparation for interference between applications; suggestion of claims for interference.

(a) Before the declaration of interference, it must be determined that there is common patentable subject matter in the cases of the respective parties, patentable to each of the respective parties, subject to the determination of the question of priority. Claims in the same language, to form the counts of the interference, must be present or be presented, in each application.

(b) When the claims of two or more applications differ in phraseology, but relate to substantially the same patentable subject matter, the examiner shall, if it has been determined that an interference should be declared, suggest to the parties such claims as are necessary to cover the common invention in the same language. The parties to whom the claims are suggested will be required to make those claims (i. e., present the suggested claims in their applications by amendment) within a specified time, not less than 30 days, in order that an interference may be declared. The failure or refusal of any applicant to make any claim suggested within the time specified, shall be taken without further action as a disclaimer of the invention covered by that claim unless the time be extended.

(c) The suggestion of claims for purpose of interference will not stay the period for response to an office action which may be running against an application, unless the claims are made by the applicant within the time specified for making the claims.

(d) When an applicant presents a claim in his application (not suggested by the examiner as specified in this section) which is copied from some other application, either for purpose of interference or otherwise, he must so state, at the time he presents the claim and identify the other application.

§ 1.204 Interference with a patent; affidavit by junior applicant.

(a) The fact that one of the parties has already obtained a patent will not prevent an interference. Although the Commissioner has no power to cancel a patent, he may grant another patent for the same invention to a person who, in the interference, proves himself to be the prior inventor.

(b) When the filing date or effective filing date of an applicant is subsequent to the filing date of a patentee, the applicant, before an interference will be declared, shall file an affidavit that he made the invention in controversy in this country, before the filing date of the patentee, or that his acts in this country with respect to the invention were sufficient under the law to establish priority of invention relative to the filing date of the patentee; and, when required, the applicant shall file an affidavit (of the nature specified in § 1.131) setting forth facts which would prima facie entitle him to an award of priority relative to the filing date of the patentee.

§ 1.205 Interference with a patent; copying claims from patent.

(a) Before an interference will be declared with a patent, the applicant must present in his application, copies of all the claims of the patent which also define his invention and such claims must be patentable in the application. If claims cannot be properly presented in his application owing to the inclusion of an immaterial limitation or variation, an interference may be declared after copying the claims excluding such immaterial limitation or variation.

(b) Where an applicant presents a claim copied or substantially copied from a patent, he must, at the time he presents the claim, identify the patent, give the number of the patented claim, and specifically apply the terms of the copied claim to his own disclosure, unless the claim is copied in response to a suggestion by the Office. The examiner will call to the Commissioner's attention any instance of the filing of an application or the presentation of an amendment copying or substantially copying claims from a patent without calling attention to that fact and identifying the patent.

§ 1.206 Interference with a patent; claims improperly copied.

(a) Where claims are copied from a patent and the examiner is of the opinion that the applicant can make only some of the claims so copied, he shall notify the applicant to that effect, state why he is of the opinion the applicant cannot make the other claims and state further that the interference will be promptly declared. The applicant may proceed under § 1.233, if he desires to further contest his right to make the claims not included in the declaration of the interference.

(b) Where the examiner is of the opinion that none of the claims can be made, he shall state in his action why the applicant can not make the claims and set a time limit, not less than 30 days, for reply. If, after response by the applicant, the rejection is made final, a similar time limit shall be set for appeal.

Failure to respond or appeal, as the case may be, within the time fixed will, in the absence of a satisfactory showing, be deemed a disclaimer of the invention claimed.

§ 1.207 Preparation of interference notices and statements.

(a) When an interference is found to exist and the applications are in condition therefor, the primary examiner shall forward the files to the examiners of interferences together with notices of interference to be sent to all the parties (as specified in § 1.209) disclosing the name and residence of each party and those of his attorney or agent, and of any assignee, and, if any party be a patentee, the date and number of the patent. The notices shall also specify the issue of the interference, which shall be clearly and concisely defined in only as many counts as may be necessary to define the interfering subject matter (but in the case of an interference with a patent all the claims of the patent which can be made by the applicant should constitute the counts), and shall indicate the claim or claims of the respective cases corresponding to the count or counts. If the application or patent of a party included in the interference is a division or continuation of a prior application and the examiner has determined that it is entitled to the filing date of such prior application, the notice to such party shall so state.

(b) The primary examiner shall also forward a statement for the Examiners of Interferences disclosing the applications involved in interference, fully identified, arranged in the inverse chronological order of the filing of the completed applications, and also disclosing the count or counts in issue and the originals of the corresponding claims, the name and residence of any assignee, and the names and addresses of all attorneys or agents, both principal and associate.

§ 1.208 Conflicting parties having same attorney.

Whenever it shall be found that two or more parties whose interests appear to be in conflict are represented by the same attorney or agent, the examiner shall notify each of said principal parties and the attorney or agent of this fact, and shall also call the matter to the attention of the Commissioner. If conflicting interests exist, the same attorney or agent or his associates will not be recognized to represent either of the parties whose interests are in conflict without the consent of the other party or in the absence of special circumstances requiring such representation, in further proceedings before the Patent Office involving the matter or application or patent in which the conflicting interests exist.

§ 1.209 Declaration of interference; mailing of notices.

(a) When the notices of interference are in proper form, an examiner of interferences shall assign a number to the interference and add to the notices a designation of the time within which the preliminary statements required by § 1.215 must be filed, and

shall, pro forma, institute and declare the interference by forwarding the notices to the several parties to the proceeding.

(b) The notices of interference shall be forwarded by the examiner of interferences to all the parties, in care of their attorneys or agents; a copy of the notices will also be sent the patentees in person and, if the patent in interference has been assigned, to the assignees.

(c) When the notices sent in the interest of a patent are returned to the Office undelivered, or when one of the parties resides abroad and his agent in the United States is unknown, additional notice may be given by publication in the Official Gazette for such period of time as the Commissioner may direct.

§ 1.211 Jurisdiction of interference.

(a) Upon the institution and declaration of the interference, as provided in § 1.209, the examiners of interferences will take jurisdiction of the same, which will then become a contested case.

(b) The primary examiner will retain jurisdiction of the case until the declaration of interference is made. (See § 1.237 (b).)

§ 1.212 Suspension of ex parte prosecution.

On declaration of the interference, ex parte prosecution of an application is suspended, and amendments and other papers received during the pendency of the interference will not be entered or considered without the consent of the Commissioner, except as provided by the regulations in this part. Proposed amendments directed toward the declaration of an interference with another party will be considered to the extent necessary. Ex parte prosecution as to specified matters may be continued concurrently with the interference, on order from or with the consent of the Commissioner.

INTERFERENCES: PRELIMINARY STATEMENT

AUTHORITY NOTE: §§ 1.215 to 1.227 interpret or apply 35 U.S.C. 135.

§ 1.215 Preliminary statement required.

Each party to the interference will be required to file a concise preliminary statement giving certain facts and dates, on or before a date fixed by the Office. The preliminary statement must be signed and sworn to by the inventor but in appropriate circumstances, as when the inventor is dead or a showing is made of inability to obtain a statement from the inventor, the preliminary statement may be made by the personal representative or assignee or by someone authorized or entitled to make the statement and having knowledge of the facts.

§ 1.216 Contents of the preliminary statement.

The preliminary statement must state that the applicant made the invention set forth by each count of the interference, and whether the invention was made in the United States or abroad.

(a) When the invention was made in the United States the preliminary statement must set forth as to the invention defined by each count the following facts

relating to conception of the invention, and reduction of the invention to practice:

(1) The date upon which the first drawing of the invention was made; if a drawing of the invention has not been made prior to the filing date of the application, it must be so stated.

(2) The date upon which the first written description of the invention was made; if a written description of the invention has not been made prior to the filing date of the application, it must be so stated.

(3) The date upon which the invention was first disclosed to another person; if the invention was not disclosed to another person prior to the filing date of the application, it must be so stated.

(4) The date of the first act or acts susceptible of proof (other than acts of the character specified in subparagraphs (1), (2), and (3) of this paragraph) which, if proven, would establish conception of the invention, and a brief description of such act or acts; if there have been no such acts it must be so stated.

(5) The date of the actual reduction to practice of the invention; if the invention has not been actually reduced to practice before the filing date of the application, it must be so stated.

(6) The date after conception of the invention when active exercise of reasonable diligence toward reducing the invention to practice began.

(b) The preliminary statement in every case must also set forth:

(1) The serial number and filing date of any prior co-pending application in the United States by the same applicant, not specified by the examiner in the notice of interference, disclosing the invention set forth by the counts of the interference, the benefit of the filing date of which application may be claimed as the effective filing date of the application or patent involved.

(2) The filing date and country (and number, if known) of any application for the same invention in a foreign country, the filing date of which may be claimed under 35 U.S.C. 119.

(c) If a party intends to rely solely on a prior application, domestic or foreign, and on no other evidence, the preliminary statement may so state and may then consist only of the identification of the prior application and need not be signed or sworn to by the inventor.

§ 1.217 Contents of the preliminary statement; invention made abroad.

(a) When the invention was made abroad the facts specified by § 1.216 (a) (1) to (6) are not required, and in lieu thereof there should be stated:

(1) When the invention was introduced into this country by or on behalf of the party, giving the circumstances with the dates connected therewith which are relied upon to establish the fact and, when appropriate, including allegations of activity in this country of the nature of that represented by § 1.216 (a) (1) to (6).

(2) If a party is entitled to the benefit of the second sentence of 35 U.S.C. 104, he must so state and his preliminary statement must include allegations of

activity abroad corresponding to those required by § 1.216 (a) (1) to (6).

§ 1.218 Time for filing preliminary statement.

The time for filing the preliminary statement is ordinarily specified in the notices of interference mailed to the parties (§ 1.209). If either party require a postponement of the time for filing his preliminary statement, he shall present a motion, duly served on the other parties, with his reasons therefor, and such motion should be made, if possible, prior to the day previously set. But an examiner of interferences may, in his discretion, extend the time on ex parte request, on stipulation, or upon his own motion.

§ 1.219 Statements sealed before filing.

The statement must be filed in a sealed envelope bearing the name of the party filing it and the number and title of the interference. The envelope should contain nothing but this statement and if mailed should be enclosed in an outer envelope. The statements may be opened only by an examiner of interferences.

§ 1.221 Defective statements.

(a) If, on examination, a statement is found to be defective in any particular, the party may be notified of the defects, and a time assigned within which he must cure the same by an amended statement or be restricted in a specified manner; but in no case will the original or amended statement be returned to the party after it has been filed.

(b) If a party shall fail or refuse to file an amended statement, he shall be restricted in the further proceedings in the interference as specified in the notice of the defects.

§ 1.222 Correction of statement on motion.

In case of material error arising through inadvertence or mistake, the statement may be corrected on motion (see § 1.243), upon a satisfactory showing that the correction is essential to the ends of justice. The motion to correct the statement must be made, if possible, before the taking of any testimony, and as soon as practicable after the discovery of the error.

§ 1.223 Effect of statement.

(a) The preliminary statement should be carefully prepared, as each of the parties by whom or on whose behalf it is made will be strictly held in his proofs to the dates set forth therein. This includes joint applicants or patentees; a new preliminary statement will not be received in the event the application is amended or the patent is corrected to remove the names of those not inventors nor will a preliminary statement alleging different dates be received if an application is amended or a patent is corrected to include a joint inventor, except by motion under § 1.222.

(b) If a party proves any date earlier than alleged in his preliminary statement, such proof will be held to establish the date so alleged and none earlier.

(c) If a party to an interference fails to file a statement, testimony will not be received subsequently from him to prove that he made the invention at a date prior to the filing date of his application.

(d) The preliminary statement can in no case be used as evidence in behalf of the party making it.

§ 1.224 Reliance on prior application.

A party will not be permitted to rely on a prior application to obtain the benefit of its filing date unless the prior application is specified in the notice of interference or is set forth in the preliminary statement. A prior foreign application cannot be relied upon unless the necessary papers to prove a date of priority under 35 U.S.C. 119, including a translation (§ 1.55) are filed within three months, or within such extension of time as may be granted, from the filing of the preliminary statement, if they have not previously been filed. A motion to amend the preliminary statement to recite a prior application may be brought under § 1.222 but a copy of such prior application must be served on the opposing party with the motion.

§ 1.225 Failure of junior party to file statement or to overcome filing date of senior party.

If a junior party to an interference fails to file a statement, or if his statement fails to overcome the prima facie case made by the filing date of the application of a senior party, such junior party shall be notified by an examiner of interferences that judgment upon the record will be rendered against him at the expiration of a time fixed by the examiner of interferences, not less than thirty days, unless cause be shown why such action should not be taken. Within this period any of the motions permitted by §§ 1.231 to 1.236 may be brought, except that motions to dissolve (§ 1.232) must be limited to such matters as may be considered at final hearing (§ 1.258), but if a patent is not involved such junior party may file a statement as to his reasons for considering such claim or claims unpatentable, which statement shall be given due consideration by the primary examiner after the termination of the interference before acting on the application of the successful party. If a motion is denied by the primary examiner, the party under order to show cause may, within twenty days from the decision, request that final hearing be set to consider such matters as may be reviewed under § 1.258.

§ 1.226 Notice and access to applications.

(a) After the preliminary statements have been received and approved, or the time for filing them has expired, the parties will be notified, and given the serial numbers and filing dates of the applications of each adverse party, including any applications which the parties may be entitled to inspect, and the parties will be permitted to see or obtain copies of each other's applications, except copies of affidavits filed under §§ 1.131 and 1.202 and affidavits under § 1.204 of the nature specified in § 1.131 which shall be and remain sealed until

preliminary statements are opened under § 1.227. The preliminary statements are resealed by an examiner of interferences and shall not be revealed to the opposing parties except as provided in § 1.227.

(b) The notices will also ordinarily specify the motion period (§ 1.231) and may also include an order to show cause (§ 1.225).

§ 1.227 Access to preliminary statements.

(a) The preliminary statements shall not be opened to the inspection of the opposing parties until after all motions under §§ 1.231 to 1.236 and proceedings respecting the same have been finally disposed of or the time for filing such motions has expired without such a motion having been filed, and the case is in condition for taking of testimony.

(b) A junior party who fails to file a preliminary statement or a party who alleges no date in his preliminary statement earlier than the filing date of the application of another party shall not have access to the preliminary statement of said other party.

(c) If the interference be terminated by dissolution before the preliminary statements have been opened to the inspection of the parties, the preliminary statements will remain sealed.

(d) Unopened statements will be removed from interference files and preserved by the Office, and in no case will such statements be open to the inspection of the opposing party without authority from the Commissioner.

INTERFERENCES: MOTION PERIOD, DISSOLUTION, REFORMATION

AUTHORITY NOTE: §§ 1.231 to 1.238 interpret or apply 35 U.S.C. 135.

§ 1.231 Motion period.

After the preliminary statements have been received and approved, or the time for filing them has expired, a period will be fixed within which the various motions specified in §§ 1.232 to 1.236 may be brought by the parties. The period, not less than thirty days, will be fixed by an examiner of interferences in the notice referred to in § 1.226. In the case of a junior party under order to show cause (§ 1.225) the period specified for answer to the order is the motion period and such motions may be brought as constitute an answer to the order.

§ 1.232 Motions to dissolve.

(a) Motions to dissolve an interference may be brought on the ground (1) that there has been such informality in declaring the same as will preclude the proper determination of the question of priority of invention, or (2) that the claims forming the counts of the interference are not patentable, or are not patentable to a particular applicant, while being patentable to another party, or (3) that a particular party has no right to make the claims, or (4) that there is no interference in fact if the interference involves a design or plant patent or application, or if the interference involves a patent, a claim of which has been copied in modified form.

(b) When one of the parties to the interference is a patentee, no motion to

dissolve may be brought by any party on the ground that the subject matter of a count is unpatentable to all parties or is unpatentable to the patentee, except that a motion to dissolve as to the patentee may be brought which is limited to such matters as may be considered at final hearing (§ 1.258).

(c) Motions to dissolve on the ground that the counts are unpatentable, or are unpatentable to the party bringing the motion, must be accompanied by a proposed amendment to the application of the moving party canceling the claims forming the counts of the interference, which amendment shall be entered by the primary examiner to the extent the motion is not denied, after the interference is terminated.

§ 1.233 Motions to amend.

(a) Motions may be brought to amend the interference to put in issue any claims which should be made the basis of interference between the moving party and any other party. When a patent is involved, such claims must be claims of the patent (as provided by § 1.205). If the claims are not already in the application of the moving party, the motion must be accompanied by a proposed amendment adding the claims to the application. The preliminary statement for the proposed counts may be required before the motion is considered.

(b) Such motions must, if possible, be made within the time set, but if a motion to dissolve the interference has been brought by another party, such motions may be made within thirty days from the filing of the motion to dissolve. In case of action by the primary examiner under § 1.237 (a), such motions may be made within thirty days from the date of the primary examiner's decision on motion wherein an action under § 1.237 (a) was incorporated or the date of the communication giving notice to the parties of the proposed dissolution of the interference.

(c) Where a party opposes the addition of such claims in view of prior patents or publications, full notice of such patents or publications, applying them to the proposed counts, must be given to all parties at least twenty days prior to the date of the hearing.

(d) The proposed claims must be indicated to be patentable in the opinion of the moving party in each of the applications involved in the motion and must, unless they stand allowed, be distinguished from the prior art of record or sufficient other reason for their patentability given. The reason why an additional count is necessary must be stated and when more than one count is proposed, the motion must point out wherein they differ materially from each other and why each proposed count is necessary to the interference. The proposed claims must also be applied to the disclosure of each application involved in the motion, except as to an application in which the claims already appear and the claims identified as originating therein.

(e) On the granting of such motion and the adoption of the claims by the other parties within a time specified, and

after the expiration of the time for filing any new preliminary statements, the primary examiner shall redeclare the interference or shall declare such other interferences as may be necessary to include said claims. A preliminary statement as to the added claims need not be filed if a party states he intends to rely on the original statement and such a declaration as to added claims need not be signed or sworn to by the inventor in person. A second motion period will not be set and subsequent motions with respect to such matters as could have been raised during the motion period will not be considered.

§ 1.234 Motion to include another application.

(a) Any party to an interference may bring a motion to add (subject to the provisions of § 1.201 (c)) or substitute any other application owned by him, as to the existing issue; or to include any other application or patent owned by him as to any subject matter disclosed in his application or patent involved in the interference and in an opposing party's application or patent in the interference which should be made the basis of interference between himself and such other party.

(b) Such motions are subject to the same conditions and the procedure in connection therewith is the same, so far as applicable, as set forth in § 1.233 for motions to amend.

§ 1.235 Motions relating to burden of proof.

Any party may bring a motion to shift the burden of proof on the ground that he is entitled to the benefit of the filing date of an earlier domestic or foreign application, or on the ground that an opposing party is not entitled to the benefit of an earlier application of which he has been given the benefit in the declaration. (See § 1.224.)

§ 1.236 Hearing and determination of motions.

(a) The motions specified must contain a full statement of the grounds therefor, and any briefs or memoranda in support thereof or in opposition thereto shall, except as hereinafter provided, be filed in the Patent Office not less than ten days prior to the date of hearing and, if not so filed, consideration thereof may be refused.

(b) If, in the opinion of an examiner of interferences, such motions, and motions of a similar character, be in proper form, they will be set for hearing before the primary examiner, due notice of the day of hearing being given by the Office to all parties. Appearance at the hearing is not required; any party may waive oral hearing and, in lieu of appearance at the hearing, file a reply brief no later than three days following the date of the hearing provided he has filed the principal brief referred to in paragraph (a) of this section. If, in the opinion of the examiner of interferences, the motion be not in proper form, or if it be not brought within the time specified and no satisfactory reason given for the delay, it will not be considered and the parties will be so notified. Consid-

eration of matters raised by motion which can be considered at final hearing may, as directed by the Commissioner, be deferred to final hearing.

(c) Setting a motion brought under the provisions of §§ 1.231 to 1.235 for hearing will act as a stay of proceedings pending the determination of the motion.

(d) In the determination of a motion to dissolve an interference between an application and a patent, the prior art of record in the patent file may be referred to for the purpose of construing the issue.

§ 1.237 Dissolution on motion of examiner.

(a) If, during the pendency of an interference, a reference or other reason be found which, in the opinion of the primary examiner, renders all or part of the counts unpatentable, the attention of the examiners of interferences shall be called thereto unless the interference is before the primary examiner for determination of a motion. The interference may be suspended and referred to the primary examiner for his determination of the question of patentability, in which case the interference shall be dissolved or continued in accordance with such determination. The consideration of such reference or reason by the primary examiner shall be *inter partes* as in the case of a motion to dissolve. If such reference or reason be found while the interference is before the primary examiner for determination of a motion, decision thereon may be incorporated in the decision on the motion, but the parties shall be entitled to reconsideration or rehearing if they have not been heard on the matter. (See § 1.236.)

(b) Prior to the approval of the preliminary statements and notification of the parties thereof (§ 1.226), an interference may be withdrawn at the request of the primary examiner, in which event the interference shall be considered as not having been declared.

§ 1.238 Addition of new party by examiner.

If, during the pendency of an interference, another case appears, claiming substantially the subject matter in issue, the primary examiner may request the suspension of the interference for the purpose of adding said case. Such suspension will be granted as a matter of course by an examiner of interferences if no testimony has been taken. If, however, any testimony may have been taken, a notice for the proposed new party, disclosing the issue in interference and the names and addresses of the interferences and of their attorneys or agents, and notices for the interferences disclosing the name and address of the said party and his attorney or agent shall be prepared by the primary examiner and forwarded to the examiner of interferences, who shall mail said notices and set a time for stating any objections and at his discretion a time of hearing on the question of the admission of the new party. If an examiner of interferences be of the opinion that the interference should be suspended and the new party

added, he shall prescribe the terms for such suspension.

INTERFERENCES: MISCELLANEOUS PROVISIONS

AUTHORITY NOTE: §§ 1.241 to 1.248 interpret or apply 35 U.S.C. 135.

§ 1.241 Copies of part of application.

When an application is involved in an interference in which a part only of the invention is included in the issue, the applicant may file certified copies, one for the record and one for each opposing party, of the part or parts of the specification and drawings, and other papers in the file, which exclude merely the noninterfering disclosure, and such copies may be used in the proceedings in place of the complete application.

§ 1.242 Prosecution by assignee.

When on motion duly made and upon satisfactory proof, it shall be shown that, by reason of the inability or refusal of the inventor to take suitable action in an interference, or from other cause, the ends of justice require that an assignee of an undivided interest in the invention be permitted to prosecute the same, it may be so ordered.

§ 1.243 Motions before the Examiners of Interferences.

Motions of a character other than specified in §§ 1.232 to 1.236 will be determined by an examiner of interferences or the Board of Patent Interferences, as may be deemed appropriate. Such motions shall be made in writing and shall contain a full statement of the action sought and the grounds therefor, and satisfactory proof of any facts required, if necessary, must accompany the motion. Oral hearings will not be held except on order of the examiner of interferences or Board of Patent Interferences. Briefs or memoranda in support of such motions shall accompany the motion. Any reply to the motion, together with any brief or memorandum in support thereof, shall be filed within ten days unless some other date is set by the examiner of interferences.

§ 1.244 Motions; miscellaneous provisions.

(a) Typewritten briefs may be used in connection with all motions. By stipulation of the parties subject to approval or by order of the tribunal before whom the motion is pending, briefs may be received if filed otherwise than as prescribed.

(b) In oral hearings on motions, the moving parties shall have the right to make the opening and closing arguments. Unless otherwise ordered before the hearing begins, oral arguments will be limited to one-half hour for each party.

(c) Petitions for reconsideration or modification of the decision must be filed within twenty days after the date of the decision and any reply thereto must be filed within ten days from the filing of the petition.

(d) There is no appeal from decisions rendered on motions, either of the primary examiners or of the examiners of interferences, but the Commissioner may consider on petition any matter involv-

ing abuse of discretion or the exercise of his supervisory authority, or such other matters as he may deem proper to consider. Any such petition must comply with § 1.181 and, if not filed within twenty days from the decision complained of, may be dismissed as untimely. Any reply thereto must be filed within ten days from the filing of the petition.

§ 1.245 Extensions of time.

Extensions of time in any case not otherwise provided for may be had by stipulation of the parties, subject to approval, or on motion duly brought, sufficient cause being shown for such extension.

§ 1.246 Stay of proceedings.

Except as provided in § 1.236, to effect a stay of proceedings, motion should be made before the tribunal having jurisdiction of the interference, who will, sufficient ground appearing therefor, order a suspension of the interference pending the determination of such motion.

§ 1.247 Service of papers.

Every paper filed in the Patent Office in interference cases must be served upon the other parties as provided in § 1.248, except the following: (a) The application involved and any papers therein prior to the time the other party has the right of access thereto (§ 1.226), and any application referred to by the examiner in the notice of interference (§ 1.207) or by the party in a timely filed preliminary statement, (b) preliminary statements, (c) *ex parte* requests for extension of time to file preliminary statements (§ 1.218), (d) documentary exhibits introduced at the taking of a deposition, (e) original transcripts of testimony (but copies of the record must be served (§ 1.253)), (f) statutory disclaimers under 35 U.S.C. 253 and (g) disclaimers, concessions of priority or abandonments of the invention under § 1.262. The specification in certain rules that a designated paper must be served does not imply that other papers, not enumerated above, need not be served. However, the requirement for service of designated papers may be waived under particular circumstances and service may be required of other designated papers which need not ordinarily be served. Proof of such service must be made before the paper will be considered in the interference by the Office. A statement of the attorney, attached to or appearing in the original paper when filed, clearly stating the time and manner in which service was made will be accepted as *prima facie* proof of service.

§ 1.248 Service of papers; manner of service.

Service of papers must be on the attorney or agent of the party if there be such or on the party if there is no attorney or agent, and may be made in either of the following ways: (a) By delivering a copy of the paper to the person served; (b) by leaving a copy at the usual place of business of the person served with some one in his employment; (c) when the person served has no usual place of business, by leaving

a copy at his residence, with a member of his family over 14 years of age and of discretion; (d) transmission by first class mail which may also be certified or registered. Whenever it shall be satisfactorily shown to the Commissioner that none of the above modes of obtaining or serving the paper is practicable, service may be by notice published in the Official Gazette.

INTERFERENCES: TRIAL

AUTHORITY NOTE: §§ 1.251 to 1.259 interpret or apply 35 U.S.C. 135.

§ 1.251 Assignment of times for taking testimony.

(a) Times will be assigned in which the junior party shall complete his testimony in chief, and in which the other party shall complete the testimony on his side, and a further time in which the junior party may take rebutting testimony, but he shall take no other testimony. If there be more than two parties to the interference, the times for taking testimony will be so arranged that each shall have an opportunity to prove his case against prior parties and to rebut their evidence, and also to meet the evidence of junior parties.

(b) The time for taking testimony will ordinarily be assigned in notices sent to the parties after motions under §§ 1.232 to 1.235 have been determined or, if no such motions have been filed, after the close of the motion period (§ 1.231). The date for final hearing will ordinarily be set in the same notices.

(c) Testimony shall be taken during the times assigned in accordance with §§ 1.271 to 1.286.

§ 1.252 Failure of junior party to take testimony.

Upon the filing of a motion for judgment by any senior party to an interference stating that the time for taking testimony on behalf of any junior party has expired and that no testimony has been taken and no other evidence offered by said junior party, an order shall be entered that the junior party show cause within a time set therein, not less than ten days, why judgment should not be rendered against him, and in the absence of a showing of good and sufficient cause, judgment shall be so rendered.

§ 1.253 Copies of the testimony.

(a) In addition to the original transcript of the testimony (§§ 1.275 to 1.278), three true copies of the record of each party must be filed, for the use of the Patent Office, and one true copy of the record must be served upon each of the opposing parties.

(b) These copies of the record may be submitted either in printed or in typewritten form.

(c) These records, whether printed or typewritten, must include the testimony presented by the party filing the same. A copy of the counts of the interference and the preliminary statement required by §§ 1.215 to 1.227 must be included. Each record must contain an index of the names of the witnesses, giving the pages where their examination and cross-examination begin, and an index of the ex-

hibits, briefly describing their nature and giving the pages at which they are introduced and offered in evidence, and also the pages where copies of exhibits are shown when such exhibits are copied in the record. The names of the witnesses must appear at the top of the pages over their testimony, and the pages must be consecutively numbered.

(d) The copies of the record for the junior party or parties must be filed and served not less than seventy days before the day for final hearing, and in the case of the senior party not less than fifty days before the day for final hearing, unless otherwise specified by the examiner of interferences.

(e) When the copies of the record are submitted in printed form, they shall be printed in 11-point type and adequately leaded; the paper must be opaque and unglazed; the size of the page shall be 7 $\frac{1}{2}$ by 10 $\frac{1}{4}$ inches; the size of the printed matter shall be 4 $\frac{1}{2}$ by 7 $\frac{1}{2}$ inches; and they shall be bound to lie flat when opened. Twenty-five additional copies for the United States Court of Customs and Patent Appeals, should appeal be taken, may also be filed; if no such appeal be taken, the twenty-five copies will be returned to the party filing them.

(f) When the copies of the record are submitted in typewritten form, they must be clearly legible copies on opaque, unglazed, durable paper approximately 8 $\frac{1}{2}$ by 11 inches in size (letter-size) and one of the three copies for the Office must be a ribbon copy. (See § 1.277.) The typing shall be on one side of the paper, in not smaller than pica type; and double-spaced with a margin of 1 $\frac{1}{2}$ inches on the left-hand side of the page. The sheets shall be bound at their left edges, in such manner to lie flat when opened, in a volume or volumes of convenient size (approximately 100 pages per volume is suggested) provided with covers. Multigraphed or otherwise reproduced copies conforming to the standards specified will be accepted.

(g) The testimony of any party failing to supply copies of his record as specified may be refused consideration.

§ 1.254 Briefs at final hearing.

Briefs at final hearing before the Board of Patent Interferences shall be submitted in printed form, except that when not in excess of fifty legal-size double-spaced typewritten pages, or the equivalent thereof, and in any other case where satisfactory reason therefor is shown, they may be submitted in typewritten form. If submitted in printed form, they shall be the same in size and the same as to page and print as is specified for printed copies of testimony. Typewritten briefs shall conform to the requirements for typewritten copies of testimony, except that legal size paper may be used and the binding and covers specified are not required. Three copies of each brief must be filed. Unless other dates are set by an examiner of interferences, the brief of the junior party or parties shall be filed not less than forty days, and that of the senior party not less than twenty days, prior to the hearing. Reply briefs, if filed, shall be due not less than ten days before the hearing.

§ 1.255 Request for findings of fact and conclusions of law.

Either party may, in his brief, submit concise proposed findings of fact, supported by specific references to and analysis of the record, and conclusions of law, supported by citation of authorities. The opposing party may, in his brief in reply thereto, accept any such proposed findings, or reject any proposed findings giving the reasons therefor, and may likewise submit proposed findings. The Board of Patent Interferences may, in its discretion, adopt the proposed findings in whole or in part.

§ 1.256 Final hearing.

(a) Final hearings will be held by the Board of Patent Interferences on the day appointed at the designated time. If either party appear at the proper time, he will be heard. After the day of hearing, the case will not be taken up for oral argument except by consent of all parties. If the Board of Patent Interferences be prevented from hearing the case at the time specified, a new assignment will be made, or the case will be continued from day to day until heard. Unless it shall be otherwise ordered before the hearing begins, oral arguments will be limited to not more than one hour for each party. After a contested case has been argued, nothing further relating thereto will be heard unless upon request of the Board of Patent Interferences.

(b) Any request or petition for rehearing or reconsideration, or modification of the decision, must be filed within thirty days from the date of the original decision, unless that decision is so modified as to become, in effect, a new decision, and the Board of Patent Interferences so states. Any reply thereto must be filed within fifteen days from the filing of the petition. (See § 1.304.)

§ 1.257 Burden of proof.

(a) The parties to an interference will be presumed to have made their inventions in the chronological order of the filing dates of their applications for patents involved in the interference or the effective filing dates which such applications have been accorded; and the burden of proof will rest upon the party who shall seek to establish a different state of facts.

(b) The termination of the interference by dissolution under §§ 1.232 or 1.237, without an award of priority, or by an award of priority based solely upon ancillary matters, shall not disturb this presumption, and a party under these circumstances enjoying the status of a senior party with respect to any subject matter of his application shall not be deprived of any claim to such subject matter solely on the ground that such claim was not added to the interference by amendment under § 1.233.

§ 1.258 Matters considered in determining priority.

(a) In determining priority of invention, the Board of Patent Interferences will consider only priority of invention on the evidence submitted. Questions of patentability of a claim generally will not

be considered in the decision on priority; and neither will the patentability of a claim to an opponent be considered, unless the nonpatentability of the claim to the opponent will necessarily result in the conclusion that the party raising the question is in fact the prior inventor on the evidence before the Office, or relates to matters which have been determined to be ancillary to priority and must be considered, but a party shall not be entitled to raise such nonpatentability unless he has duly presented and prosecuted a motion under § 1.232 for dissolution upon such ground or shows good reason why such a motion was not presented and prosecuted.

(b) The matters raised on a motion relating to the burden of proof (§ 1.235) may be reviewed at final hearing.

(c) At final hearing between an application and a patent the prior art of record in the patent file may be referred to for the purpose of construing the issue.

§ 1.259 Recommendation by Board of Patent Interferences.

The Board of Patent Interferences may, either before or concurrently with their decision on the question of priority, but independently of such decision, direct the attention of the Commissioner to any matter not relating to priority which may have come to their notice, and which in their opinion establishes the fact that no interference exists, or that there has been irregularity in declaring the same, or which amounts to a bar to the grant of a patent to either of the parties for the claim or claims in interference. The Commissioner may suspend the interference and remand the case to the primary examiner for his consideration of the matters to which attention has been directed if such matters have not been considered before by the examiner, or take other appropriate action. If the case is not so remanded, the primary examiner will, after judgment on priority, consider such matters, unless the same shall have been previously disposed of by the Commissioner.

INTERFERENCES: TERMINATION

AUTHORITY NOTE: §§ 1.261 to 1.267 interpret or apply 35 U.S.C. 135.

§ 1.261 Termination of interference.

An interference will be terminated by judgment of priority after final hearing (§§ 1.251 to 1.259), or by judgment on the record as provided by § 1.225 or § 1.252, or by dissolution as provided by § 1.232 or § 1.237, or as otherwise provided.

§ 1.262 Disclaimer, concession, abandonment.

(a) An applicant or a patentee involved in an interference may, at any time, file a written disclaimer or concession of priority, or abandonment of the invention, signed by the inventor in person with the written consent of the assignee when there has been an assignment. Upon the filing of such an instrument by any party, judgment shall be rendered against him.

(b) An applicant, except an applicant for reissue having a claim or claims from his patent in the interference, may at any time prior to the taking of testimony,

and at any time thereafter with the consent of all of the other parties involved, avoid the continuance of the interference as to all counts by filing a written abandonment of the contest or of the application, signed by the inventor in person with the written consent of the assignee when there has been an assignment. Upon the filing of such abandonment of the contest or of the application, the interference shall be dissolved as to that party, but such dissolution shall in subsequent proceedings have the same effect with respect to the party filing the same as an adverse award of priority.

(c) Upon a showing of sufficient cause, the disclaimer, or abandonment of the invention, or abandonment of the contest or of the application, above referred to, may be executed and filed by the assignee of the entire interest. A concession of priority may not be made by an assignee.

(d) Such disclaimer, concession of priority, abandonment of the invention, or abandonment of the contest shall operate without further action as a direction to cancel the claims involved from the application of the party making the same on termination of the interference on the basis thereof.

§ 1.263 Statutory disclaimer by patentee.

The disclaimer referred to in § 1.262, when made by a patentee in interference is not a disclaimer under 35 U.S.C. 253. If a disclaimer under the statute (see § 1.321) cancelling claims involved in the interference from the patent, is made by the patentee, including all assignees as shown by the records of the Patent Office, the interference will be dissolved pro forma as to such claims.

§ 1.264 Reissue filed by patentee.

If a patentee in interference files an application for reissue during the interference, omitting the claims involved (for the purpose of avoiding the interference), the application will be examined and such examination will include the question of patentability over the issue of the interference and over the application of the other party. The interference will not be terminated unless a reissue is granted excluding claims to the conflicting subject matter, whereupon the interference will be dissolved. If a reissue application is filed for other purposes, it may be held subject to the outcome of the interference. An application for reissue will not be included in the interference on the basis of new claims presented by the reissue unless a motion to that effect is brought during the motion period or any delay adequately explained.

§ 1.265 Status of claims of defeated applicant after interference.

Whenever an award of priority has been rendered in an interference proceeding and the limit of appeal from such decision has expired, the claim or claims constituting the issue of the interference in the application of the defeated or unsuccessful applicant or applicants stand finally disposed of without further action by the examiner and are not open to further ex parte prosecution.

§ 1.266 Action after interference.

(a) After the termination of the interference, the primary examiner will promptly take such action in each of the applications involved as may be necessary. Amendments presented during the interference shall not be entered except as otherwise provided; amendments required to accompany motions to amend shall be entered only to the extent the motion was granted (matter not entered may be subsequently presented by the applicant, subject to the sections relating to amendments, provided the prosecution of the application is not otherwise closed). The examiner will act on any matter requiring action and call for response to any examiner's action unresponded to.

(b) After judgment of priority, the application of any party may be held subject to further examination, including interference with other applications.

§ 1.267 Second interference.

A second interference between the same parties will not be declared upon another application for patent for the same invention filed by either party.

TESTIMONY IN INTERFERENCES AND OTHER CONTESTED CASES

AUTHORITY NOTE: §§ 1.271 to 1.286 interpret or apply 35 U.S.C. 23, 135.

§ 1.271 Evidence must comply with rules.

Evidence touching the matter at issue which shall not have been taken and filed in compliance with this part will not be considered in determining the interference or other proceeding.

§ 1.272 Manner of taking testimony of witnesses.

(a) The testimony of witnesses shall be taken by depositions on oral examination in accordance with the regulations in this part.

(b) If the parties so stipulate in writing, deposition may be taken before any person authorized to administer oaths, at any place, upon any notice, and in any manner, and when so taken may be used like other depositions. By agreement of the parties, provided the Commissioner consent, testimony may be taken before an officer or officers of the Patent Office under such terms and conditions as the Commissioner may prescribe.

(c) By agreement of the parties, the testimony of any witness or witnesses of any party, may be submitted in the form of an affidavit by such witness or witnesses. The parties may stipulate what a particular witness would testify to if called, or the facts in the case of any party may be stipulated.

§ 1.273 Notice of examination of witnesses.

(a) Before the depositions of witnesses shall be taken by a party, due notice in writing shall be given to the opposing party or parties, as provided in § 1.248, of the time when and place where the depositions will be taken, of the cause or matter in which they are to be used, and the name and address of each witness to be examined; if the name of a

witness is not known a general description sufficient to identify him or the particular class or group to which he belongs, together with a satisfactory explanation, may be given instead. The opposing party shall have full opportunity, either in person or by attorney, to cross-examine the witnesses. If the opposing party shall attend the examination of witnesses not named in the notice, and shall either cross-examine such witnesses or fail to object to their examination, he shall be deemed to have waived his right to object to such examination for want of notice. Neither party shall take testimony in more than one place at the same time, nor so nearly at the same time that reasonable opportunity for travel from one place of examination to the other cannot be had.

(b) The notice for taking testimony must be served (unless otherwise stipulated in an instrument in writing filed in the case) upon the attorney of record, if there be one, or, if there be no attorney of record, upon the adverse party. Reasonable time must be given therein for such adverse party to reach the place of examination. Such notice shall, with a statement signed by the attorney as to the fact, time, and mode of service thereof, be attached to the deposition or depositions, whether the opposing party shall have cross-examined or not.

§ 1.274 Persons before whom depositions may be taken.

(a) Within the United States, or within a territory or insular possession of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

(b) No such officer who is a relative or employee of either of the parties, or of their attorneys or agents, or interested, directly or indirectly, in the matter in controversy, either as counsel, attorney, agent or otherwise, shall be competent to take depositions, unless with the written consent of all the parties.

§ 1.275 Examination of witnesses.

(a) Each witness before testifying shall be duly sworn according to law by the officer before whom his deposition is to be taken.

(b) The testimony shall be taken in answer to interrogatories, with the questions and answers recorded in their regular order by the officer, or by some other person (who shall be subject to the provisions of § 1.274(b)), in the presence of the officer except when his presence is waived on the record by agreement of the parties. The testimony shall be taken stenographically and transcribed, unless the parties present agree otherwise.

(c) In the absence of all opposing parties and their attorneys or agents, testimony may be taken in longhand, typewriting, or stenographically.

(d) All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party,

and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections.

(e) When the testimony has been transcribed, the deposition shall be carefully read over by the witness, or by the officer to him, and shall then be signed by the witness in the presence of the officer unless the reading and the signature be waived on the record by agreement of all parties.

§ 1.276 Certification and filing by officer.

The officer shall annex to the deposition his certificate showing: (a) Due administration of the oath by the officer to the witness before the commencement of his testimony; (b) the name of the person by whom the testimony was taken down, and whether, if not taken down by the officer, it was taken down in his presence; (c) the presence or absence of the adverse party; (d) the place, day, and hour of commencing and taking the deposition; (e) that the deposition was read by or to the witness before he signed the same, and that he signed the same in the presence of the officer; and (f) the fact that the officer was not disqualified as specified in § 1.274. If any of the foregoing requirements are waived, the certificate shall so state. The officer shall sign the certificate and affix thereto his seal of office, if he have such seal. Unless waived on the record by agreement, he shall then, without delay, securely seal in an envelope all the evidence, notices, and paper exhibits, inscribe upon the envelope a certificate giving the number and title of the case, the name of each witness, and the date of sealing, address the package, and forward the same to the Commissioner of Patents. If the weight or bulk of an exhibit shall exclude it from the envelope, it shall, unless waived on the record by agreement of all parties, be authenticated by the officer and transmitted in a separate package, marked and addressed as provided in this section.

§ 1.277 Form of deposition.

(a) The pages of each deposition must be numbered consecutively, and the name of the witness plainly and conspicuously written at the top of each page. The testimony may be written on legal-size or letter-size paper, with a wide margin on the left-hand side of the page, and with the writing on one side only of the sheet. The questions propounded to each witness must be consecutively numbered and each question must be followed by its answer.

(b) In order to have a ribbon copy of the record available as required by § 1.253(f), a carbon copy of the deposition may be executed by the witnesses and the officer and filed as required by § 1.276.

(c) Exhibits must be numbered or lettered consecutively and each must be marked with the number and title of the case and the name of the party offering the exhibit. Entry and consid-

eration may be refused to improperly marked exhibits.

§ 1.278 Depositions must be filed.

All depositions which are taken must be duly filed in the Patent Office. On refusal to file, the Office at its discretion will not further hear or consider the contestant with whom the refusal lies; and the Office may, at its discretion, receive and consider a copy of the withheld deposition, attested by such evidence as is procurable.

§ 1.279 Inspection of testimony.

After testimony is filed in the Office, it may be inspected by any party to the case, but it cannot be withdrawn for the purpose of printing. It may be printed by someone specially designated by the Office for that purpose, under proper restrictions.

§ 1.281 Additional time for taking testimony.

If either party shall be unable to procure the testimony of a witness or witnesses within the time limited and said time has expired or is about to expire, and desires additional time for such purpose, he must file a motion, accompanied by a statement under oath setting forth specifically the cause of such inability, the name or names of the witness or witnesses, the facts expected to be proved by such witness or witnesses, the steps which have been taken to procure such testimony, and the dates on which efforts have been made to procure it. (See § 1.245 for extensions of time.)

§ 1.282 Official records and printed publications.

(a) Official records and any special matter contained in a printed publication, if competent evidence and pertinent to the issue, may be introduced in evidence by filing in the Patent Office a notice to that effect, before the closing of the time for taking the testimony of the party (before the time for taking the testimony in chief if such matters are not in rebuttal), specifying the record or the printed publication, the page or pages thereof to be used, indicating generally its relevancy, and accompanied by the record or authenticated copy, or the printed publication or a copy. The notice and copies of the record or publication must be served on each of the other parties.

(b) In the case of prior applications, the filing date of which is claimed, compliance with the requirements of §§ 1.216 and 1.224 is sufficient notice under this section.

§ 1.283 Testimony taken in another interference or action.

Upon motion duly made and granted, testimony taken in another interference proceeding, or testimony taken in a suit between the same parties or those in interest, may be used in an interference proceeding, so far as relevant and material, subject, however, to the right of any contesting party to recall or demand the recall of witnesses whose testimony has been taken, and to take other testimony in rebuttal of the testimony.

§ 1.284 Testimony taken in foreign countries.

Upon motion duly made and granted, testimony may be taken in foreign countries, upon complying with the following requirements:

(a) The motion must designate a place for the examination of the witnesses at which an officer duly qualified to take testimony under the laws of the United States in a foreign country shall reside, and it must be accompanied by a statement under oath that the motion is made in good faith, and not for the purposes of delay or of vexing or harassing any party to the case; it must also set forth the names of the witnesses, the particular facts to which it is expected each will testify, and the grounds on which is based the belief that each will so testify.

(b) It must appear that the testimony desired is material and competent, and that it can not be taken in this country at all, or can not be taken here without hardship and injury to the moving party greatly exceeding that to which the opposite party will be exposed by the taking of such testimony abroad.

(c) Upon the granting of such motion, a time will be set within which the moving party shall file in duplicate the interrogatories to be propounded to each witness, and serve a copy of the same upon each adverse party, who may, within a designated time, file, in duplicate, cross-interrogatories. Objections to any of the interrogatories or cross-interrogatories may be filed at any time before the depositions are taken, and such objections will be considered and determined upon the hearing of the case.

(d) As soon as the interrogatories and cross-interrogatories are decided to be in proper form, the Commissioner will cause them to be forwarded to the proper officer, with the request that, upon payment of, or satisfactory security for, his official fees, he notify the witnesses named to appear before him within a designated time and make answer thereunder oath; and that he reduce their answers to writing, and transmit the same, under his official seal and signature, to the Commissioner of Patents with the certificate prescribed in § 1.276.

(e) By stipulation of the parties the requirements of paragraph (c) of this section as to written interrogatories and cross-interrogatories may be dispensed with, and the testimony may be taken before the proper officer upon oral interrogatories by the parties, their attorneys or their agents.

(f) Unless false swearing in the giving of such testimony before the officer taking it shall be punishable as perjury under the laws of the foreign state in which it shall be taken, it will not stand on the same footing in the Patent Office as testimony duly taken in the United States; but its weight in each case will be determined by the tribunal having jurisdiction of such case.

§ 1.285 Effect of errors and irregularities in depositions.

Notice will not be taken of merely formal or technical objections which shall not appear to have wrought a substantial injury to the party raising them; and in case of such injury it must be

made to appear that, as soon as the party became aware of the ground of objection, he gave notice thereof.

(a) *As to notice.* All errors and irregularities in the notice for taking a deposition are waived unless objection is promptly made and served in writing upon the party giving the notice.

(b) *As to disqualification of officer.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(c) *As to taking of deposition.* (1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of the parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(d) *As to completion and return of deposition.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

§ 1.286 Objections to admissibility.

Subject to the provisions of § 1.285, objection may be made to receiving in evidence any deposition or part thereof, or any other evidence, for any reason which would require the exclusion of the evidence according to the established rules of evidence, which will be applied strictly by the Office.

PROTESTS AND PUBLIC USE PROCEEDINGS**§ 1.291 Protests to the grant of a patent.**

The patent statutes do not provide for opposition to the grant of a patent on the part of the public. Protests to the grant of a patent are ordinarily merely acknowledged, and filed after being referred to the examiner having charge of the subject matter involved for his information.

§ 1.292 Public use proceedings.

(a) When a petition for the institution of public use proceedings, supported by affidavits, is filed by one having information of the pendency of an application and is found, on reference to the primary examiner, to make a prima facie showing that the invention involved in an interference or claimed in an application believed to be on file had been in public use or on sale one year before the filing of the application, or before the date alleged by an interfering party

in his preliminary statement or the date of invention established by such party, a hearing may be had before the Commissioner to determine whether a public use proceeding should be instituted. If instituted, times may be set for taking testimony, which shall be taken as provided by §§ 1.271 to 1.286. The petitioner will be heard in the proceedings but after decision therein will not be heard further in the prosecution of the application for patent.

(b) The petition and accompanying papers should be filed in duplicate, or served upon the applicant, his attorney or agent of record, and petitioner should offer to bear any expense to which the Office may be put in connection with the proceeding.

REVIEW OF PATENT OFFICE DECISIONS BY COURT**§ 1.301 Appeal to U.S. Court of Customs and Patent Appeals.**

Any applicant dissatisfied with the decision of the Board of Appeals, and any party to an interference dissatisfied with the decision of the Board of Patent Interferences, may appeal to the U.S. Court of Customs and Patent Appeals. The appellant must take the following steps in such an appeal: (a) In the Patent Office give notice to the Commissioner and file the reasons of appeal (see §§ 1.302 and 1.304); (b) in the court, file a petition of appeal and a certified transcript of the record within a specified time after filing the reasons of appeal, and pay the fee for appeal, as provided by the rules of the court. The transcript will be transmitted to the Court by the Patent Office on order of and at the expense of the appellant.

(35 U.S.C. 141, 142, 143)

§ 1.302 Notice and reasons of appeal.

(a) When an appeal is taken to the U.S. Court of Customs and Patent Appeals, the appellant shall give notice thereof to the Commissioner, and file in the Patent Office, within the time specified in § 1.304, his reasons of appeal specifically set forth in writing.

(b) In interferences and other contested cases, the notice and reasons must be served as provided in § 1.248.

(35 U.S.C. 142)

§ 1.303 Civil action under 35 U.S.C. 145, 146.

(a) Any applicant dissatisfied with the decision of the Board of Appeals, and any party dissatisfied with the decision of the Board of Patent Interferences, may, instead of appealing to the U. S. Court of Customs and Patent Appeals (§ 1.301), have remedy by civil action under 35 U. S. C. 145 and 146 respectively. Such civil action must be commenced within the time specified in § 1.304.

(b) If an applicant in an ex parte case has taken an appeal to the U. S. Court of Customs and Patent Appeals, he thereby waives his right to proceed under 35 U. S. C. 145.

(c) If a defeated party to an interference proceeding has taken an appeal to the U. S. Court of Customs and Patent Appeals, and any adverse party to the

interference shall, within twenty days after the appellant shall have filed notice of the appeal to the court (§ 1.302), file notice with the Commissioner that he elects to have all further proceedings conducted as provided in 35 U. S. C. 146, certified copies of such notices will be transmitted to the U. S. Court of Customs and Patent Appeals for such action as may be necessary. The notice of election must be served as provided in § 1.248.

(35 U.S.C. 141, 145, 146)

§ 1.304 Time for appeal or civil action.

The time for filing the notice and reasons of appeal to the U. S. Court of Customs and Patent Appeals (§ 1.302) or for commencing a civil action (§ 1.303) is sixty days from the date of the decision of the Board of Appeals or the Board of Patent Interferences. If a petition for rehearing or reconsideration is filed within thirty days after the date of the decision of the Board of Appeals or Board of Patent Interferences, the time is extended to thirty days after action on the petition. No petition for rehearing or reconsideration filed outside the time specified herein after such decision, nor any proceedings on such petition shall operate to extend the period of sixty days hereinabove provided. The times specified herein are calendar days. If the last day of the time specified for appeal or commencing a civil action falls on a Saturday, Sunday or legal holiday, the time is extended to the next day which is neither a Saturday, Sunday nor a holiday. If a defeated party to an interference has taken an appeal to the U. S. Court of Customs and Patent Appeals and an adverse party has filed notice under 35 U. S. C. 141 that he elects to have all further proceedings conducted under 35 U. S. C. 146 (§ 1.303 (c)), the time for filing a civil action thereafter is specified in 35 U. S. C. 141.

(35 U.S.C. 141, 142, 145, 146)

ALLOWANCE AND ISSUE OF PATENT

§ 1.311 Notice of allowance.

If, on examination, it shall appear that the applicant is justly entitled to a patent under the law, a notice of allowance will be sent him, his attorney or his agent, calling for the payment of the final fee within six months from the date of such notice of allowance. Upon the receipt of the fee within the time fixed by law, the patent will be prepared for issue. In cases in which no final fee is due (designs, reissues, and patents issued under 35 U.S.C. 266), the patent will be prepared for issue in due course after the notice of allowance is sent.

(35 U.S.C. 151)

§ 1.312 Amendments after allowance.

Amendments after the notice of allowance of an application will not be permitted as a matter of right, but may be made, if the printing of the specification has not begun, on the recommendation of the primary examiner, approved by the Commissioner, without withdrawing the case from issue.

§ 1.313 Withdrawal from issue.

After the notice of allowance of an application is sent, the case will not be withdrawn from issue except by approval of the Commissioner, and if withdrawn for further action on the part of the Office, a new notice of allowance will be sent if the application is again allowed. When the final fee has been paid, and the patent to be issued has received its date and number, the application will not be withdrawn from issue on account of any mistake or change of purpose of the applicant, his attorney or his agent, nor for the purpose of enabling the inventor to procure a foreign patent, nor for any other reasons except mistake on the part of the Office, or because of fraud or illegality in the application, or for interference. Express abandonment of the application (§ 1.138) may not be recognized by the Office unless it is actually received by appropriate officials in time to act thereon before the date of issue.

§ 1.314 Issuance of patent.

Every patent shall issue within a period of three months from the date of the payment of the final fee, which fee shall be paid not later than six months from the date on which the application was allowed and the notice of allowance sent; and if the final fee be not paid within that period, the patent shall be withheld. In the absence of request to suspend issue of the patent up to three months, the patent will issue in regular course in the order in which the final fee is paid.

(35 U.S.C. 151)

§ 1.315 Delivery of patent.

The patent will be delivered or mailed on the day of its date to the attorney or agent of record, if there be one; or if the attorney or agent so request, to the patentee or assignee of an interest therein; or, if there be no attorney or agent, to the patentee or to the assignee of the entire interest, if he so request.

(35 U.S.C. 151)

§ 1.316 Forfeited application.

(a) A forfeited application is one upon which a patent has been withheld for failure to pay the final fee within the prescribed time. (See § 1.314.)

(b) A forfeited application is not considered as pending while forfeited, and, if the final fee is not subsequently paid and accepted as provided in § 1.317, the application is abandoned, as of the date it became forfeited.

(35 U.S.C. 151)

§ 1.317 Delayed payment of final fee.

The Commissioner of Patents may, in his discretion, receive the final fee if paid within one year after the six months' period for payment has passed and the patent shall issue as specified in § 1.314. Each petition for the delayed payment of the final fee shall be accompanied by the final fee and the petition fee, and a verified showing (as for example that the delay was unavoidable) in support of the petition.

(35 U.S.C. 151)

DISCLAIMER

§ 1.321 Statutory disclaimer in patent.

A disclaimer under 35 U.S.C. 253 must identify the patent and the claim or claims which are disclaimed, and be signed by the person making the disclaimer, who shall state therein the extent of his interest in the patent. A disclaimer not a disclaimer of a complete claim or claims may be refused recordation. A notice of the disclaimer is published in the Official Gazette and attached to the printed copies of the specification. In like manner any patentee or applicant may disclaim or dedicate to the public the entire term, or any terminal part of the term, of the patent, granted or to be granted. See § 1.21 for fee.

CORRECTION OF ERRORS IN PATENT

§ 1.322 Certificate of correction of Office mistake.

(a) A certificate of correction under 35 U.S.C. 254 may be issued at the request of the patentee or his assignee and endorsed on the patent itself. Such certificate will not be issued at the request or suggestion of anyone not owning an interest in the patent, nor on motion of the Office, without first notifying the patentee (including any assignee of record) and affording him an opportunity to be heard.

(b) If the nature of the mistake on the part of the Office is such that a certificate of correction is deemed inappropriate in form, the Commissioner may issue a corrected patent in lieu thereof as a more appropriate form for certificate of correction, without expense to the patentee.

(35 U.S.C. 254)

§ 1.323 Certificate of correction of applicant's mistake.

Whenever a mistake of a clerical or typographical nature or of minor character which was not the fault of the Office, appears in a patent and a showing is made that such mistake occurred in good faith, the Commissioner may, upon payment of the required fee, issue a certificate of correction, which shall be endorsed on the patent itself, if the correction does not involve such changes in the patent as would constitute new matter or would require re-examination.

(35 U.S.C. 255)

§ 1.324 Correction of error in joining inventor.

Whenever a patent is issued and it appears that there was a misjoinder or nonjoinder of inventors and that such misjoinder or omission occurred by error and without deceptive intention, the Commissioner may, on application of all the parties and the assignees and satisfactory proof of the facts, or on order of a court before which such matter is called in question, issue a certificate deleting the misjoined inventor from the patent or adding the non-joined inventor to the patent.

(35 U.S.C. 256)

§ 1.325 Other mistakes not corrected.

Mistakes other than those provided for in §§ 1.322, 1.323, 1.324, and not affording legal grounds for reissue will not be corrected after the date of the patent.

ASSIGNMENTS AND RECORDING**§ 1.331 Recording of assignments.**

(a) Assignments, including grants and conveyances, of patents or applications for patents under 35 U.S.C. 261, will be recorded in the Patent Office. Other instruments affecting title to a patent or application for patent, and licenses, even though the recording thereof may not serve as constructive notice under 35 U.S.C. 261, will be recorded as provided in this section or in the discretion of the Commissioner.

(b) No instrument will be recorded which is not in the English language and which does not amount to an assignment, grant, mortgage, lien, incumbrance, or license, or which does not affect the title of the patent or invention to which it relates, and which does not identify the patent or application to which it relates, except as ordered by the Commissioner.

(c) An instrument relating to a patent should identify the patent by number and date (the name of the inventor and title of the invention as stated in the patent should also be given); an instrument relating to an application should identify the application by serial number and date of filing (the name of the inventor and title of the invention as stated in the application should also be given) but if an assignment is executed concurrently with or subsequent to the execution of the application but before the application is filed or before its serial number and filing date are ascertained, it should adequately identify the application, as by its date of execution and name of the inventor and title of the invention; so that there can be no mistake as to the patent or application intended.

(35 U.S.C. 261)

§ 1.332 Receipt and recording.

Assignments are recorded in regular order as promptly as possible, and then transmitted with the date and identification of the record stamped thereon to the persons entitled to them. The date of the record is the date of the receipt of the assignment at the Office in proper form and accompanied by the full legal fee for recording.

(35 U.S.C. 261)

§ 1.333 Conditional assignments.

Assignments which are made conditional on the performance of certain acts or events, as the payment of money or other condition subsequent, if recorded in the Office are regarded as absolute assignments for Office purposes until cancelled with the written consent of both parties or by the decree of a competent court. The Office has no means for determining whether such conditions have been fulfilled.

(35 U.S.C. 261)

§ 1.334 Issue of patent to assignee.

In case of an assignment of the entire interest in the invention and application,

or of the entire interest in the patent to be granted, the patent will normally issue to the assignee; and if the assignee hold an undivided part interest, the patent will normally issue jointly to the inventor and the assignee; if it is desired that the patent so issue the assignment in either case must first have been recorded, and at a day not later than the date of the payment of the final fee; in the case of an application for reissue, the assignment must be recorded before the case is allowed; in the case of an application for a design patent, the assignment must be recorded at least ten days before the case is allowed.

(35 U.S.C. 152, 261)

RECOGNITION OF ATTORNEYS AND AGENTS

AUTHORITY NOTE: §§ 1.341 to 1.348 interpret or apply 35 U.S.C. 31, 32.

§ 1.341 Registration of attorneys and agents.

A register of attorneys and a register of agents are kept in the Patent Office on which are entered the names of all persons recognized as entitled to represent applicants before the Patent Office in the preparation and prosecution of applications for patent. Registration in the Patent Office under the provisions of the regulations in this part shall only entitle the persons registered to practice before the Patent Office.

(a) *Attorneys at law.* Any attorney at law in good standing admitted to practice before any United States Court or the highest court of any State or Territory of the United States who fulfills the requirements and complies with the provisions of these rules may be admitted to practice before the Patent Office and have his name entered on the register of attorneys.

(b) *Agents.* Any citizen of the United States not an attorney at law who fulfills the requirements and complies with the provisions of these rules may be admitted to practice before the Patent Office and have his name entered on the register of agents.

NOTE: All persons registered prior to November 15, 1938, were registered as attorneys, whether they were attorneys at law or not, and such registrations have not been changed.

(c) *Requirements for registration.* No person will be admitted to practice and registered unless he shall apply to the Commissioner of Patents in writing on a prescribed form supplied by the Commissioner and furnish all requested information and material; and shall establish to the satisfaction of the Commissioner that he is of good moral character and of good repute and possessed of the legal and scientific and technical qualifications necessary to enable him to render applicants for patents valuable service, and is otherwise competent to advise and assist them in the presentation and prosecution of their applications before the Patent Office. In order that the Commissioner may determine whether a person seeking to have his name placed upon either of the registers has the qualifications specified, satisfactory proof of good moral character and repute, and of sufficient basic training in scientific and technical matters must be submitted and an ex-

amination which is held from time to time must be taken and passed. The taking of an examination may be waived in the case of any person who has actively served for four years in the examining corps of the Patent Office.

(d) *Registration of firms.* Any firm, the individual members of which are each registered on the register of attorneys, may have its name entered upon the register of attorneys. Any firm, one of the individual members of which is registered on the register of agents and each of the remaining individual members are registered either on the register of attorneys or the register of agents, may have its name entered on the register of agents. If the membership of the firm is changed, application must be made for registration of the firm as changed.

(e) *Foreign patent attorneys and agents.* Any foreign patent attorney or agent not a resident of the United States who shall file proof to the satisfaction of the Commissioner that he is registered and in good standing before the patent office of the country in which he resides and practices, and is possessed of the qualifications stated in paragraph (c) of this section, may be registered on the register of agents as entitled to represent applicants located in such country before the United States Patent Office in the presentation and prosecution of applications: *Provided,* That the patent office of such country allows substantially reciprocal privileges to those admitted to practice before the United States Patent Office. Such registration shall continue only during the period that the conditions specified obtain.

(f) *Government employees.* Officers and employees of the United States who are disqualified by statute (18 U. S. C. 281) from practicing as attorneys or agents in proceedings or other matters before Government departments or agencies, may not be registered, and if any registered attorney or agent becomes such an officer or employee, his name on the register shall be endorsed as inactive during the period of such employment, but officers or employees whose official duties require the preparation and prosecution of applications for patent may be registered (on compliance with the regulations in this part) or recognized to practice, to the extent necessary to carry out their official duties.

(g) *Former examiners.* No person who has served in the examining corps of the Patent Office will be registered after termination of his services, nor, if registered before such service, be reinstated, unless he undertakes (1) not to prosecute or aid in any manner in the prosecution of any application pending in any examining division in which he served, on the date he left said division; and (2) not to prepare or prosecute nor to assist in any manner in the preparation or prosecution of any application of another filed within two years after the date he left such division, and assigned to such division, without the specific authorization of the Commissioner. Associated and related classes in other divisions may be required to be included in the undertaking or designated classes may be excluded. In case application for registration or reinstatement is made after resig-

nation from the Office, the applicant will not be registered, or reinstated, if he has prepared or prosecuted, or assisted in the preparation or prosecution of any such application as indicated in this paragraph.

(h) *Oath and registration fee.* Before his name may be entered on the register of attorneys or on the register of agents, every applicant for registration must, after his application is approved, subscribe and swear to an oath prescribed by the Commissioner of Patents and pay the prescribed registration fee.

(i) *Committee on Enrollment.* The Commissioner may establish a Committee on Enrollment to receive and act upon applications for registration to practice before the Patent Office, to conduct and supervise the examinations provided for in paragraph (c) of this section, to maintain the registers and to perform such other duties in connection with enrollment and recognition of attorneys and agents as may be necessary; or such functions may be performed by designated officials of the Patent Office. Any action of such committee or official may be reviewed by the Commissioner.

NOTE: See § 2.12 for practice in trademark cases.

§ 1.342 Limited recognition.

Any person not registered and not entitled to be recognized under § 1.341 as an attorney or agent to represent applicants generally may, upon a showing of circumstances which render it necessary or justifiable, be recognized by the Commissioner to prosecute as attorney or agent a specified application or applications, but this limited recognition shall not extend further than the application or applications specified.

§ 1.343 Persons not registered or recognized.

No person or firm not registered or specifically recognized as provided in § 1.342 will be permitted to prosecute applications of others before the Patent Office.

§ 1.344 Professional conduct.

Attorneys and agents appearing before the Patent Office must conform to the standards of ethical and professional conduct generally applicable to attorneys before the courts of the United States.

§ 1.345 Advertising.

(a) The use of advertising, circulars, letters, cards, and similar material to solicit patent business, directly or indirectly, is forbidden as unprofessional conduct, and any person engaging in such solicitation, or associated with or employed by others who so solicit, shall be refused recognition to practice before the Patent Office or may be suspended, excluded or disbarred from further practice.

(b) The use of simple professional letterheads, calling cards, or office signs, simple announcements necessitated by opening an office, change of association, or change of address, distributed to clients and friends, and insertion of listings in common form (not display) in a classified telephone or city directory,

and listings and professional cards with biographical data in standard professional directories shall not be considered a violation of this rule.

(c) No agent shall, in any material specified in paragraph (b) of this section or in papers filed in the Patent Office, represent himself to be an attorney, solicitor or lawyer.

NOTE: At 23 F. R. 8622, Nov. 5, 1958, the date on which § 1.345, as set forth above, was to take effect was extended to May 1, 1959, and at 24 F. R. 1419, Feb. 26, 1959 was further extended to July 1, 1959, with the stipulation that until that date, former § 1.345 was effective.

§ 1.346 Signature and certificate of attorney.

Every paper filed by an attorney or agent representing an applicant or party to a proceeding in the Patent Office must bear the signature of such attorney or agent, except papers which are required to be signed by the applicant or party in person (such as the application itself and affidavits required of applicants). The signature of an attorney or agent to a paper filed by him, or the filing or presentation of any paper by him, constitutes a certificate that the paper has been read; that its filing is authorized; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. When an applicant or party is represented by a registered firm, such papers must carry the signature of the firm, or the signature of an individual member of the firm or an individual registered attorney or agent employed by the firm and duly authorized to sign on behalf of the firm in addition to the firm name, and the certification constituted by the signing or presentation of the paper shall be a certification by and on behalf of the firm and by the individual.

§ 1.347 Removing names from registers.

Attorneys, agents, and firms, registered to practice before the Patent Office, should notify the Office of any change of address for entry on the register, by letter separate from any notice of change of address filed in individual applications. The Office may address a letter to any person or firm on the registers, at the address of which separate notice for the register was last received, for the purpose of ascertaining whether such person or firm desires to remain on the register. The name of any person or firm failing to reply and give the information requested within a time limit specified will be removed from the register, and the names so removed published in the Official Gazette. Any name so removed may be reinstated, either on the register of attorneys or the register of agents, as may be appropriate.

§ 1.348 Suspension or disbarment proceedings.

Except as otherwise provided, proceedings for suspension, disbarment, or exclusion from practice are before a Commissioner.

(a) *Investigating and prosecuting officer.* The duties of investigation, preparing charges, collecting and presenting testimony, and presenting a case for sus-

pension, exclusion from practice or disbarment shall be performed by the Solicitor of the Patent Office or, at his direction, by a designated law examiner or other person, and neither the Solicitor nor such law examiner or other person shall participate in any manner in the decision of the case. If, upon investigation of a complaint or other information concerning an attorney or agent, it shall appear to the Solicitor that grounds for suspension, exclusion from practice, or disbarment exist, he shall prepare and forward the necessary notice and statement.

(b) *Notice of proceedings.* Proceedings for suspension or disbarment shall be instituted by the Solicitor by mailing to, or otherwise serving on, the respondent a notice of such proceeding with a statement of the charges against him, at the same time forwarding a copy to the Commissioner. It shall be the duty of the respondent to answer the charges as specified in paragraph (c) of this section.

(c) *Answer.* The respondent's answer shall be filed in writing with the Commissioner within thirty days from the time the notice is served on the respondent, or within such extension of time as may be allowed by the Commissioner for good cause shown. The answer shall be under oath. Failure to answer within the time allowed will be taken as an admission of the charges. The respondent in his answer should specifically admit or deny every material allegation of fact in the statement of charges; every allegation not denied shall be deemed admitted, unless the respondent states that he has no knowledge thereof sufficient to form a belief, which statement shall be considered a denial. Any special matters of defense shall be stated affirmatively in the answer. False statements in the answer may be made the basis of supplemental charges.

(d) *Hearing.* (1) Unless the Commissioner finds the answer sufficient to dispose of the charges, he will set the case for hearing before him, notifying the respondent and the Solicitor of the place, day and time of commencement of the hearing. Evidence as to the matters in issue may be submitted at the hearing, the testimony of witnesses being presented orally, under oath and reported.

(2) The hearing may be advanced and continued by the Commissioner, as far as may be deemed convenient and proper.

(3) Depositions for use at the hearing in lieu of personal appearance of witnesses may be taken by either the Solicitor or the respondent on application to and with the written consent of the Commissioner within such times and under such conditions as the Commissioner may prescribe.

(e) *Hearing officer.* The Commissioner may, in his discretion, delegate the conduct of the hearing to a hearing or trial examiner who shall be the presiding officer and who shall make a recommended decision.

(f) *Administrative Procedure Act.* Proceedings shall be governed, in matters not specifically set forth herein, by the provisions of the Administrative Procedure Act, 60 Stat. 237; 5 U. S. C. 1001-1011, which may be applicable.

AMENDMENT OF RULES

§ 1.351 Amendments to rules will be published.

All amendments to the regulations in this part will be published in the Official Gazette and in the FEDERAL REGISTER.

§ 1.352 Publication of notice of proposed amendments.

(a) Whenever required by law, and in other cases whenever practicable, notice of proposed amendments to the regulations in this part will be published in the Official Gazette and in the FEDERAL REGISTER. If not published with the notice, copies of the text will be furnished to any person requesting the same. All comments, suggestions, and briefs received within a time specified in the notice will be considered before adoption of the proposed amendments which may be modified in the light thereof.

(b) Oral hearings may be held at the discretion of the Commissioner.

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AUTHORITY: §§ 2.1 to 2.189 issued under sec. 41, 60 Stat. 440, 66 Stat. 793; 15 U. S. C. 1123, 35 U. S. C. 6. Statutory provisions interpreted or applied are cited to text.

§ 2.1 Sections of Part I applicable.

Sections 1.1 to 1.26 of this chapter are applicable to trademark cases except such parts thereof which specifically refer to patents. Other sections of Part I incorporated by reference or referred to in particular sections of this part are also applicable to trademark cases.

§ 2.6 Trademark fees.

In addition to the fees prescribed by statute, the following fees and charges are established by the Patent Office for trademark cases:

(a) For each printed copy of a registration with data entered of record as of date of mailing, relating to renewal, cancellation, publication under section 12 (c) of the 1946 Trademark Act and affidavits under sections 8 and 15 of such act.....	\$0.50
(b) For photocopies or other reproductions of records or printed material, per page of material copied.....	0.30
(c) For photoprints of drawings.....	0.30
(d) For making drawings, when facilities are available, the cost of making the same, minimum charge per sheet.....	10.00
(e) For correcting drawings, the cost of making the correction plus a photoprint of the uncorrected drawing, minimum charge.....	3.30

See § 1.21 for patent and miscellaneous fees.

REPRESENTATION BY ATTORNEYS AND AGENTS

AUTHORITY NOTE: §§ 2.11 to 2.19 interpret or apply 35 U.S.C. 31, 32.

§ 2.11 Applicants may be represented by an attorney.

The owner of a trademark may file and prosecute his own application for registration of such trademark, or he may be represented by an attorney or other person authorized to practice in trademark cases. The Patent Office cannot aid in the selection of an attorney or agent.

§ 2.12 Persons who may practice before the Patent Office in trademark cases.

(a) Attorneys at law: Any person who is a member in good standing of the bar of the Supreme Court of the United States or of the highest court of any State, Territory, or the District of Columbia, and is not under any order of any court suspending, enjoining, restraining, disbaring, or otherwise restricting him in the practice of law, may represent others before the Patent Office in trademark cases. No application for recognition to practice in trademark cases by attorneys at law is required.

(b) Non-lawyers: Persons who are not attorneys at law as specified in paragraph (a) of this section are not recognized to practice before the Patent Office in trademark cases, except that persons not attorneys at law who were recognized to practice before the Patent Office under this chapter prior to January 1, 1957, will be recognized as agents to continue practice in trademark cases in the Patent Office.

(c) Foreign attorneys and agents: Any foreign attorney or agent not a resident of the United States who shall file proof to the satisfaction of the Commissioner that he is registered and in good standing before the patent or trademark office of the country in which he resides and practices, may be recognized to represent applicants located in such country before the United States Patent Office in the presentation and prosecution of trademark applications: *Provided*, That the patent or trademark office of such country allows substantially reciprocal privileges to those permitted to practice in trademark cases before the United States Patent Office. Such recognition shall continue only during the period that the conditions specified obtain.

(d) Recognition of any person under this section is not to be construed as sanctioning or authorizing the performance of any acts regarded in the jurisdiction where performed as the unauthorized practice of law.

(e) No persons other than those mentioned in paragraphs (a), (b), and (c) of this section will be permitted to practice before the Patent Office in trademark cases. Any person may appear for himself, or for a firm of which he is a member, or for a corporation or association of which he is an officer and which he is authorized to represent, if such person, firm, corporation, or association is a party to the proceeding.

(f) Persons otherwise entitled to be recognized to practice under this section may, nevertheless, be refused recognition for cause.

§ 2.13 Professional conduct.

Attorneys and other persons appearing before the Patent Office in trademark cases must conform to the standards of ethical and professional conduct generally applicable to attorneys before the courts.

§ 2.14 Advertising.

(a) The use of display advertising, circulars, letters, cards, and similar material to solicit trademark business, directly or indirectly, is forbidden as unprofessional conduct, and any person engaging in such solicitation, or associated with or employed by others who so solicit, shall be refused recognition to practice before the Patent Office or suspended or excluded from further practice.

(b) The use of simple professional letterheads, calling cards, or office signs; simple announcements necessitated by opening an office, change of association, or change of address, distributed to clients and friends, and insertion of professional cards, listings in common form (not display) in a classified telephone or city directory, and listings and professional cards with biographical data in standard professional directories are not prohibited.

(c) No agent shall, in any material specified in paragraph (b) of this section or in papers filed in the Patent Office, represent himself to be an attorney, solicitor or lawyer.

§ 2.15 Signature and certificate of attorney or agent.

(a) Every paper filed by an attorney at law or other person representing an applicant or party to a proceeding in the Patent Office must bear the signature of such attorney at law or other person except those papers which are required to be signed by the applicant or party (such as the application itself and verifications required of applicants, registrants or others). The signature of an attorney at law or such other person to a paper filed by him, or the filing of any paper by him, constitutes a certificate that the paper has been read; that its filing is authorized; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.

(b) When an applicant or party is represented by a firm composed of attorneys at law, papers may carry the signature or name of the firm, with the signature of a member or associate of the firm.

(c) When an applicant or party is represented by a firm (registered in accordance with § 1.341 (d) of this chapter) which includes one or more nonlawyers, papers may carry the signature or name of the firm, but in any case, they must carry the signature of an individual member of the firm or of an individual employee of the firm who is registered in the Patent Office and who is authorized to sign on behalf of the firm, and the certification referred to in paragraph (a) of this section shall, in either case, be a certification by and on behalf of the firm and by the individual.

§ 2.16 Suspension or exclusion from practice.

The Commissioner of Patents may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Patent Office any person, attorney, or agent shown to be incompetent or disreputable, or guilty of unethical or unprofessional conduct or gross misconduct, or who refuses to comply with the rules and regulations, or who shall, with intent to defraud in any manner, deceive, mislead, or threaten any applicant or prospective applicant or other person having immediate or prospective business before the Patent Office, by word, circular, letter, or in any other manner. The reasons for any such suspension or exclusion shall be duly recorded. Proceedings for suspension, disbarment or exclusion from practice are conducted as provided in § 1.348. (See 35 U. S. C. 1952, sec. 32 for review of the Commissioner's action by the District Court of the United States for the District of Columbia.)

§ 2.17 Recognition for representation.

(a) When an attorney at law acting in a representative capacity appears in person or signs a paper in practice before the Patent Office in a trademark case, his personal appearance or signature shall constitute a representation to the Patent Office that under the provisions of these rules and the law he is authorized to practice.

ized, and qualified under § 2.12 (a), to represent the particular party in whose behalf he acts. Further proof of authority to act in a representative capacity may be required.

(b) Before any non-lawyer will be allowed to take action of any kind in any application or proceeding, a written authorization from the applicant, party to the proceeding, or other person entitled to prosecute such application or proceeding must be filed therein.

§ 2.18 Correspondence held with attorney or agent.

Correspondence will be held with the attorney at law, or other recognized person who shall have filed his written authorization, representing the applicant or party to a proceeding. Double correspondence will not be undertaken, and if more than one attorney at law appears or more than one agent is authorized, correspondence will be held with the one last appearing or appointed, as the case may be, unless otherwise requested.

§ 2.19 Revocation of power of attorney or authorization of agent.

Authority to represent an applicant or a party to a proceeding may be revoked at any stage in the proceedings of a case upon notification to the Commissioner; and when it is so revoked, the Office will communicate directly with the applicant or party to the proceeding or with such other qualified person as may be authorized. The Patent Office will notify the person affected of the revocation of his authorization.

APPLICATION FOR REGISTRATION

AUTHORITY NOTE: §§ 2.21 to 2.47 Interpret or apply sec. 1, 60 Stat. 427; 15 U. S. C. 1051.

§ 2.21 Parts of application.

A complete application for registration comprises:

- (a) A written application (see §§ 2.31 to 2.47);
- (b) A drawing of the mark (see §§ 2.51 to 2.55);
- (c) Five specimens or facsimiles (see §§ 2.56 to 2.58);
- (d) The required filing fee;
- (e) A certified copy of the registration in the country of origin if the application is based on such foreign registration pursuant to section 44 (e) of the act (see § 2.39).

§ 2.22 Application must be complete to receive filing date.

An application will not be considered filed unless all the required parts specified in § 2.21, complying with the rules relating thereto, are received, but minor informalities may be waived subject to subsequent correction. If the papers are incomplete or so defective that they cannot be accepted, the applicant will be notified and the papers and fee held six months for completion. If the application is not completed within such time, the papers and fee will be returned to the applicant or otherwise disposed of; the drawing or fee of an unaccepted application may be transferred to a later application.

§ 2.23 Serial number and filing date.

Complete applications will be numbered as received, and the applicant will be informed of the serial number and filing date of the application. The filing date of the application is the date on which the complete application is received in the Patent Office in acceptable form.

§ 2.24 Designation of representative by foreign applicant.

If the applicant is not domiciled in the United States, he must designate by a written document filed in the Patent Office the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. If this document does not accompany or form part of the application, it will be required and registration refused unless it is supplied. Official communications of the Patent Office will be addressed to the domestic representative unless the application is being prosecuted by an attorney at law or other qualified person duly authorized. The mere designation of a domestic representative does not authorize the person designated to prosecute the application unless qualified under § 2.12(a), or qualified under paragraph (b) or (c) of § 2.12 and authorized under § 2.17(b).

§ 2.25 Papers not returnable.

After an application is filed the papers will not be returned for any purpose whatever; but the Office will furnish copies to the applicant upon request and payment of the fee.

§ 2.26 Use of old drawing in new application.

In an application filed in place of an abandoned or rejected application, or in an application for reregistration (§ 2.158), a new complete application is required, but the old drawing, if suitable, may be used. The application must be accompanied by a request for the transfer of the drawing, and by a permanent photographic copy, or an order for such copy, of the drawing to be placed in the original file. A drawing so transferred, or to be transferred, cannot be amended.

§ 2.27 Pending application index; access to applications.

(a) An index of pending applications including the name and address of the applicant, a reproduction or description of the mark, the goods or services with which the mark is used, the class number, the dates of use, and the serial number and filing date of the application will be available for public inspection as soon as practicable after filing. Access to files of pending trademark applications will not be given prior to publication under § 2.81 without the written authority of the applicant, or unless, in the opinion of the Commissioner, good cause has been shown for such access. Decisions of the Commissioner in applications and proceedings relating thereto are published or available for inspection or publication.

(b) After a mark has been registered, or published for opposition, the file of

the application and all proceedings relating thereto are available for public inspection and copies of the papers may be furnished upon paying the fee therefor.

THE WRITTEN APPLICATION

§ 2.31 Application must be in English.

The application must be in the English language and plainly written on but one side of the paper. Legal size paper, typewritten double spaced, with at least a one and one-half inch margin on the left-hand side and top of the page, is deemed preferable.

§ 2.32 Application to be signed and sworn to by applicant.

(a) The application must be made to the Commissioner of Patents and must be signed and verified (sworn to) by the applicant or by a member of the firm or an officer of the corporation or association applying.

(b) Re-executed papers or a verified statement of continued use of the mark may be required when the application has not been filed in the Patent Office within a reasonable time after the date of execution.

(c) The signature to the application must be the correct name of the applicant, since the name will appear in the certificate of registration precisely as it is signed to the application. The name of the applicant, wherever it appears in the papers of the application, will be made to agree with the name as signed.

§ 2.33 Requirements for application.

(a) (1) The application shall include a request for registration and shall specify:

- (i) The name of the applicant;
- (ii) The citizenship of the applicant; if the applicant be a partnership, the names and citizenship of the general partners or, if the applicant be a corporation or association, the state or nation under the laws of which organized;
- (iii) The domicile and post office address of the applicant;
- (iv) That the applicant has adopted and is using the mark shown in the accompanying drawing;
- (v) The particular goods on or in connection with which the mark is used;
- (vi) The class of merchandise according to the official classification, if known to the applicant;
- (vii) The date of applicant's first use of the mark as a trademark on or in connection with goods specified in the application (see § 2.38);
- (viii) The date of applicant's first use in commerce of the mark as a trademark on or in connection with goods specified in the application, specifying the nature of such commerce (see § 2.38);
- (ix) The mode, manner or method of applying, affixing or otherwise using the mark on or in connection with the goods specified.

(2) If more than one item of goods is specified in the application, the dates of use required in subparagraph (1) (vii) and (viii) of this paragraph need be for only one of the items specified, provided the particular item to which the dates apply is designated.

(3) The word "commerce" as used throughout this part means commerce which may lawfully be regulated by Congress, as specified in section 45 of the act.

(b) The application must also include averments to the effect that the applicant or other person making the verification believes himself or the firm, corporation, or association in whose behalf he makes the verification to be the owner of the mark sought to be registered; that the mark is in use in commerce, specifying the nature of such commerce; that no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use such mark in commerce, either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive; that the specimens or facsimiles show the mark as actually used in connection with the goods; and that the facts set forth in the application are true.

§ 2.34 [Reserved]

§ 2.35 Description of mark.

A description of the mark, which must be acceptable to the Examiner of Trademarks, may be included in the application, and must be included if required by the examiner. If the mark is displayed in color or a color combination, the colors should be described in the application.

§ 2.36 Identification of prior registrations.

Prior registrations of the same or similar marks owned by the applicant should be identified in the application.

§ 2.37 Authorization for representation; U.S. representative.

The authorization of a qualified person to represent applicant (§ 2.17(b)) and the appointment of a domestic representative (§ 2.24) may be included as a paragraph or paragraphs in the application.

§ 2.38 Use by predecessor or by related companies.

(a) If the first use, the date of which is required by paragraph (a) (1) (vii) or (viii) of § 2.33, was by a predecessor in title, or by a related company (sections 5 and 45 of the act), and such use inures to the benefit of the applicant, the date of such first use may be asserted with a statement that such first use was by the predecessor in title or by the related company as the case may be.

(b) If the mark is not in fact being used by the applicant but is being used by one or more related companies whose use inures to the benefit of the applicant under section 5 of the act, such facts must be indicated in the application.

(c) The Office may require such details concerning the nature of the relationship and such proofs as may be necessary and appropriate for the purpose of showing that the use by related companies inures to the benefit of the applicant and does not affect the validity of the mark.

(Sec. 5, 60 Stat. 429; 15 U. S. C. 1055)

§ 2.39 Omission of allegation of use by foreign applicants.

(a) The allegations of use, required by § 2.33, and the statements of the dates of the applicant's first use, required by § 2.33 (a) (1) (vii) and (viii), may be omitted in the case of an application, filed pursuant to section 44(e) of the act, for registration of a mark duly registered in the country of origin of a foreign applicant, provided the application when filed is accompanied by a certificate of the trademark office of the foreign country showing that the mark has been registered in the country of origin of the applicant and also showing the mark, the goods for which registered and that said registration is then in full force and effect. If the certificate is not in the English language, a translation is required.

(b) Such allegations and statements may also be omitted in the case of an application claiming the benefit of a prior foreign application in accordance with section 44 (d) of the act. The application in such case shall state the date and country of the first foreign application and, before the application can be considered as allowable, there must be filed a certificate of the trademark office of the foreign country showing that the mark has been registered in the country of origin of the applicant and also showing the mark, the goods for which registered and the date of filing of the application. In such cases the specification of goods shall not exceed the scope of that covered by the foreign registration or application.

(Sec. 44, 60 Stat. 441; 15 U. S. C. 1126)

§ 2.41 Proof of distinctiveness under section 2(f).

(a) When registration is sought of a mark which would be unregistrable by reason of section 2(e) of the act but which is said by applicant to have become distinctive in commerce of the goods set forth in the application, applicant may, in support of registrability, submit with the application, or in response to a request for evidence or to a refusal to register, affidavits, depositions, or other appropriate evidence showing duration, extent and nature of use and advertising expenditures in connection therewith (identifying types of media and attaching typical advertisements), and affidavits, letters or statements from the trade or public, or both, or other appropriate evidence tending to show that the mark distinguishes such goods.

(b) In appropriate cases, ownership of one or more prior registrations on the Principal Register or under the act of 1905 of the same mark may be accepted as prima facie evidence of distinctiveness. Also, if the mark is said to have become distinctive of applicant's goods by reason of substantially exclusive and continuous use thereof by applicant for the five years next preceding the application filing date, a showing by way of verified statements in the application may, in appropriate cases, be accepted as prima facie evidence of distinctiveness. In each of these situations, however, further evidence may be required.

§ 2.42 Concurrent use.

(a) When an application to register is based on concurrent lawful use, the applicant shall state in the application, to the extent of his knowledge, the concurrent lawful use of the mark by others, setting forth their names and addresses; registrations issued to, or applications filed by, such others, if any; the areas of such use; the goods on or in connection with which such use is made; the mode of such use; the periods of such use; and the area, the goods, and the mode of use for which the applicant seeks registration.

(b) The verification shall be made with the stated exceptions.

(Sec. 2, 60 Stat. 428; 15 U. S. C. 1052)

§ 2.43 Service mark.

In an application to register a service mark, the application shall specify and contain all the elements required by the preceding sections for trademarks, but shall be modified to relate to services instead of to goods wherever necessary.

(Sec. 3, 60 Stat. 429; 15 U. S. C. 1053)

§ 2.44 Collective mark.

In an application to register a collective mark, the application shall specify and contain all applicable elements required by the preceding sections for trademarks, but shall, in addition, specify the class of persons entitled to use the mark, indicating their relationship to the applicant, and the nature of the applicant's control over the use of the mark.

(Sec. 4, 60 Stat. 429; 15 U. S. C. 1054)

§ 2.45 Certification mark.

In an application to register a certification mark, the application shall specify and contain all applicable elements required by the preceding sections for trademarks. It shall, in addition, specify the manner in which and the conditions under which the certification mark is used; it shall allege that the applicant exercises legitimate control over the use of the mark and that he is not himself engaged in the production or marketing of the goods or services to which the mark is applied. See § 2.86.

(Sec. 4, 18, 60 Stat. 429, 434; 15 U. S. C. 1054, 1068)

§ 2.46 Principal Register.

All applications will be treated as seeking registration on the Principal Register unless otherwise stated in the application. Service marks, collective marks, and certification marks, registrable in accordance with the applicable provisions of section 2 of the act, are registered on the Principal Register.

§ 2.47 Supplemental Register.

In an application to register on the Supplemental Register, the application shall so indicate and shall specify that the mark has been in continuous use in commerce, specifying the nature of such commerce, by the applicant for the preceding year, if the application is based on such use. When an applicant requests registration without a full year's use of the mark, in accordance with the last

paragraph of section 23 of the act of 1946, the showing required must be separate from the application.

(Sec. 23, 60 Stat. 435; 15 U. S. C. 1091)

DRAWING

AUTHORITY NOTE: §§ 2.51 to 2.55 interpret or apply sec. 1, 60 Stat. 427; 15 U. S. C. 1051.

§ 2.51 Drawing required.

(a) The drawing of the trademark shall be a substantially exact representation thereof as actually used on or in connection with the goods.

(b) The drawing of a service mark shall be a substantially exact representation of the mark as used in the sale or advertising of the services. The drawing of a service mark may be dispensed with in the case of a mark not capable of representation by a drawing, but in any such case the application must contain an adequate description.

(c) In the case of an application for registration on the Supplemental Register, the drawing, when appropriate and necessary (section 23, third paragraph, of the act), may be the drawing of a package or configuration of goods.

(d) If the application is for the registration only of a word, letter or numeral, or any combination thereof, not depicted in special form, the drawing may be the mark typed in capital letters on paper, otherwise complying with the requirements of § 2.52.

§ 2.52 Requirements for drawings.

(a) **Character of drawing.** All drawings, except as otherwise provided, must be made with the pen or by a process which will give them satisfactory reproduction characteristics. A photolithographic reproduction or printer's proof copy may be used if otherwise suitable. Every line and letter must be black. This direction applies to all lines, however fine, and to shading. All lines must be clean, sharp, and solid, and they must not be too fine or crowded. Surface shading, when used, should be open. The requirements of this paragraph are not necessary in the case of drawings permitted and filed in accordance with paragraph (d) of § 2.51.

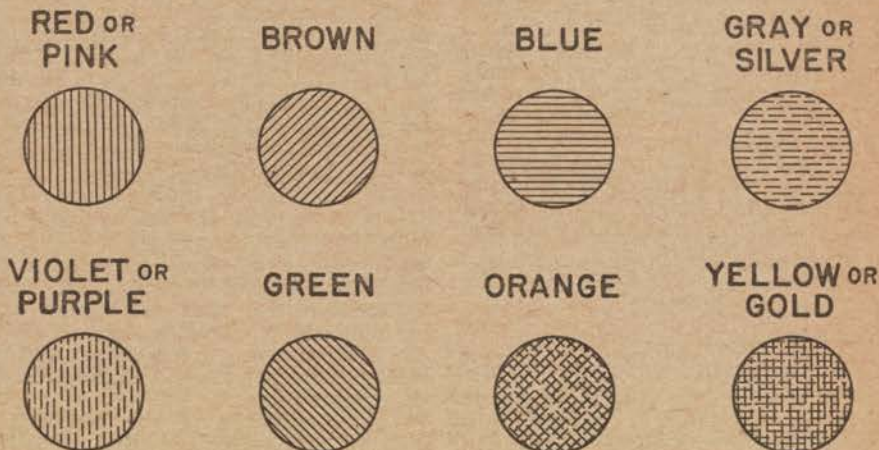
(b) **Paper and ink.** The drawing must be made upon pure white durable paper, the surface of which is calendered and smooth. A good grade of bond paper is suitable. India ink alone must be used for pen drawings to secure perfectly black solid lines. The use of white pigment to cover lines is not acceptable.

(c) **Size of paper and margins.** The size of the sheet on which a drawing is made must be 8 inches wide and 11 to 13 inches long. One of the shorter sides of the sheet should be regarded as its top. When the figure is longer than the width of the sheet, the sheet should be turned on its side with the top at the right. The size of the mark must be such as to leave a margin of at least one inch on the sides and bottom of the paper and at least one inch between it and the heading.

(d) **Heading.** Across the top of the drawing, beginning one inch from the top edge and not exceeding one-fourth of the sheet, there should be placed a heading, listing in separate lines, appli-

cant's name, applicant's post office address, the dates of first use, and the goods or services recited in the application (or typical items of the goods or services if a number are recited in the application). This heading may be typewritten.

(e) **Linings for color.** Where color is a feature of a mark, the color or colors employed may be designated by means of conventional linings as shown in the following color chart:



§ 2.53 Transmission of drawings.

Drawings transmitted to the Patent Office, other than those typed in accordance with § 2.51 (d), should be sent flat, protected by a sheet of heavy binder's board, or should be rolled for transmission in a suitable mailing tube to prevent mutilation or folding.

§ 2.54 Informal drawings.

A drawing not in conformity with the foregoing rules may be accepted for purpose of examination, but the drawing must be corrected or a new one furnished, as required, before the mark can be published or the application allowed. The necessary corrections will be made by the Patent Office upon applicant's request and at his expense. Substitute drawings will not be accepted unless they have been required by the examiner or correction of the original drawing would require that the mark be substantially entirely redrawn.

§ 2.55 Patent Office may make drawings.

The Patent Office, at the request of applicants and at their expense, will make drawings if facilities permit.

SPECIMENS

AUTHORITY NOTE: §§ 2.56 to 2.58 interpret or apply sec. 1, 60 Stat. 427; 15 U. S. C. 1051.

§ 2.56 Specimens.

The five specimens of a trademark shall be specimens of the trademark as actually used on or in connection with the goods in commerce, and shall be duplicates of the actually used labels, tags, or containers, or the displays associated therewith or portions thereof, when made of suitable material and capable of being arranged flat and of a size not larger than the size of the drawing.

§ 2.57 Facsimiles.

When, due to the mode of applying or affixing the trademark to the goods, or to the manner of using the mark on the goods, or to the nature of the mark, specimens as above stated cannot be furnished, five copies of a suitable photograph or other acceptable reproduction, not larger than the size specified for the drawing and clearly and legibly showing the mark and all matter

used in connection therewith, shall be furnished.

§ 2.58 Specimens or facsimiles in the case of a service mark.

(a) In the case of service marks, specimens or facsimiles as specified in §§ 2.56 and 2.57, of the mark as used in the sale or advertising of the services shall be furnished unless impossible because of the nature of the mark or the manner in which it is used, in which event some other representation acceptable to the Commissioner must be submitted.

(b) In the case of service marks not used in printed or written form, three single face, unbreakable, disc recordings will be accepted. The speed at which the recordings are to be played must be specified thereon. If facilities are not available to the applicant to furnish recordings of the required type, the Patent Office may arrange to have made, upon request, and at applicant's expense, the necessary disc recordings from any type of recording the applicant submits.

EXAMINATION OF APPLICATION AND ACTION BY APPLICANTS

AUTHORITY NOTE: §§ 2.61 to 2.69 interpret or apply sec. 12, 60 Stat. 432; 15 U. S. C. 1062.

§ 2.61 Action by Examiner.

(a) Applications for registration will be examined or caused to be examined by the Examiner of Trademarks, and, if the applicant is found not entitled to registration for any reason, he will be so notified and advised of the reasons therefor and of any formal requirements or objections.

(b) The examiner may require the applicant to furnish such information and exhibits as may be reasonably necessary to the proper examination of the application.

§ 2.62 Period for response.

The applicant has six months from the date of mailing of any action by the Patent Office to respond thereto. Such response may be made with or without amendment and must include such proper action by the applicant as the nature of the action and the condition of the case may require.

§ 2.63 Re-examinations.

After response by the applicant, the application will be re-examined or reconsidered, and if the registration is again refused or formal requirements insisted upon, but not stated to be final, the applicant may respond again.

§ 2.64 Final action.

On the first or any subsequent re-examination or reconsideration the refusal of the registration or the insistence upon a requirement may be stated to be final, whereupon applicant's response is limited to an appeal or to a compliance with any requirement.

§ 2.65 Abandonment.

If an applicant fails to respond, or to respond completely, within six months after the date an action is mailed, the application shall be deemed to have been abandoned.

§ 2.66 Revival of abandoned applications.

An application abandoned for failure to respond may be revived as a pending application if it is shown to the satisfaction of the Commissioner that the delay was unavoidable. A petition to revive an abandoned application must be accompanied by a verified showing of the causes of the delay, and by the proposed response, unless the same has been previously filed.

§ 2.67 Suspension of action by Patent Office.

(a) Action by the Patent Office may be suspended for a reasonable time specified upon request of the applicant for good and sufficient cause. Only one suspension will be granted by the examiner, and any further suspension must be approved by the Commissioner. No such suspension can extend any time fixed by statute for a response by the applicant.

(b) If registration is refused solely on the basis of a prior registration and the applicant files a petition to cancel the reference registration, such action upon notice thereof being placed in the application file by the applicant within the time for reply, shall be taken as a response to the refusal, and further action by the Office shall, at applicant's request, be suspended pending the termination of the cancellation proceeding.

§ 2.68 Express abandonment.

An application may be expressly abandoned by filing in the Patent Office a written declaration of abandonment signed by the applicant or, if assigned, by the assignee.

§ 2.69 Compliance with other laws.

When the sale or transportation of any product for which registration of a trademark is sought is regulated under

an Act of Congress, the Office may, before allowance, make appropriate inquiry as to compliance with such act for the sole purpose of determining lawfulness of the commerce recited in the application.

AMENDMENT OF APPLICATION

AUTHORITY NOTE: §§ 2.71 to 2.75 interpret or apply sec. 12, 60 Stat. 432; 15 U. S. C. 1062.

§ 2.71 Amendments to application.

(a) The application may be amended to correct informalities, or to avoid objections made by the Patent Office, or for other reasons arising in the course of examination. No amendments to the dates of use will be permitted unless such changes are supported by affidavit by the applicant and by such showing as may be required by the examiner.

(b) Additions to the specification of goods or services will not be permitted unless the mark was in actual use on all of the goods or services proposed to be added by the amendment at the time the application was filed and unless the amendment is accompanied by additional specimens (or facsimiles) and by a supplemental affidavit by the applicant in support thereof.

(c) Amendment of the verification will not be permitted. If that filed with the application be faulty or defective, a substitute or supplemental verification must be filed.

§ 2.72 Amendments to description or drawing.

Amendments to the description or drawing of the mark may be permitted only if warranted by the specimens (or facsimiles) as originally filed, or supported by additional specimens (or facsimiles) and a supplemental affidavit alleging that the mark shown in the amended drawing was in actual use prior to the filing date of the application. Amendments may not be made if the nature of the mark is changed thereby.

§ 2.73 Amendment to recite concurrent use.

An application may be amended in the examiner's discretion so as to be treated as an application for a concurrent registration, provided the application as amended satisfies the requirements of § 2.42.

§ 2.74 Form of amendment.

(a) In every amendment the exact word or words to be stricken out or inserted in the application must be specified and the precise point indicated where the deletion or insertion is to be made. Erasures, additions, insertions, or mutilations of the papers and records must not be made by the applicant or his attorney or agent.

(b) When an amendatory clause is amended, it must be wholly rewritten so that no interlineation or erasure will appear in the clause, as finally amended, when the application is passed to registration. If the number or nature of the amendments shall render it otherwise difficult to consider the case or to arrange the papers for printing or copying, or when otherwise desired to clarify the record, the examiner may require the entire statement to be rewritten.

§ 2.75 Amendment to change application to different register.

An application for registration on the Principal Register may be changed to an application for registration on the Supplemental Register and vice versa by amending the application to comply with the rules relating to the requirements for registration on the appropriate register, as the case may be. The original filing date may be considered for the purpose of proceedings in the Patent Office provided the application as originally filed was sufficient for registration on the register to which amended. Otherwise, the filing date of the amendment will be considered the filing date of the application so amended.

PUBLICATION AND ALLOWANCE**§ 2.81 Publication in Official Gazette.**

If, on examination or re-examination of an application for registration on the Principal Register, it appears that the applicant is entitled to have his mark registered, the mark will be published in the Official Gazette for opposition.

§ 2.82 Allowance of application.

If no notice of opposition is filed within the time permitted (§§ 2.101 and 2.102), or if filed and dismissed, and if no interference is declared, the examiner will sign the application file to indicate allowance and the application will be prepared for issuance of the certificate of registration as provided in § 2.151.

§ 2.83 Marks on Supplemental Register published only upon registration.

In the case of an application for registration on the Supplemental Register the mark will not be published for opposition but if it appears, after examination or re-examination, that the applicant is entitled to have the mark registered, the examiner will sign the application file to indicate allowance and prepare the application for issuance of the certificate of registration as provided in § 2.151. The mark will be published in the Official Gazette when registered.

§ 2.84 Jurisdiction over published or allowed applications.

(a) After publication or allowance the examiner may exercise jurisdiction over an application by special authority from the Commissioner.

(b) Amendments may be made after the allowance of an application if the certificate has not been printed, on the recommendation of the examiner approved by the Commissioner, without withdrawing the allowance.

CLASSIFICATION

AUTHORITY NOTE: §§ 2.85 to 2.88 interpret or apply sec. 30, 60 Stat. 436; 15 U. S. C. 1112.

§ 2.85 Classification of goods and services.

There is established, for convenience of administration, the classification of goods and services set forth in Part 6 of this Chapter. Such classification shall not limit or extend the applicant's rights.

§ 2.86 Plurality of goods or services comprised in single class may be covered by single application.

A single application may recite a plurality of goods, or a plurality of services, comprised in a single class, provided the particular identification of each of the goods or services be stated and the mark has actually been used on or in connection with all of the goods or in connection with all of the services specified.

§ 2.87 Original application must be limited to goods or services comprised in a single class.

When a single application is filed to register a mark for both goods and services or for goods or services in different classes, registration will be refused, and the applicant will be required to restrict the application to goods or services comprised in a single class.

§ 2.88 Applications may be combined.

(a) When several applications have been filed by the same applicant for registration on the same register of a mark shown in identical form on the drawings for goods in different classes, or services in different classes, and each of the applications has been allowed, a single certificate based on such several applications may be issued. A request for the issuance of a consolidated certificate must be made of record in each of the applications involved prior to the allowance of any of the applications.

(b) The issuance of any original certificate may be suspended upon request of the applicant, for a period not exceeding six months, to permit such consolidation.

INTERFERENCES

AUTHORITY NOTE: §§ 2.91 to 2.99 interpret or apply secs. 16, 17, 60 Stat. 434; 15 U. S. C. 1059, 1067.

§ 2.91 Interferences.

(a) Whenever application is made for registration on the Principal Register of a mark which so resembles a mark previously registered by another, or for the registration of which another has previously made application, as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion or mistake or to deceive purchasers, an interference may be declared to exist.

(b) An interference will not be declared between two applications unless a date of use prior to the filing date of the earlier filed application is asserted in the later filed application.

(c) An interference will not be declared between an application and a registration unless the date of use asserted in the application is prior to the filing date of the application which resulted in the registration, but in any case an interference will not be declared between an application and a registration issued prior to the filing date of the application except upon specific authorization of the Commissioner.

(d) Registrations and applications to register on the Supplemental Register, registrations under the act of 1920, and registrations of marks the right to the

use of which has become incontestable are not subject to interference.

§ 2.92 Preliminary to interference.

(a) Before the declaration of an interference, the marks which are to form the subject matter of the controversy must have been decided to be registrable by each party except for the interfering mark.

(b) The Examiner of Trademarks may require an applicant to put his application in condition for publication, within a time specified, not less than thirty days, in order that an interference may be declared. If any such applicant fails to put his application in condition for publication within the time specified, the declaration of interference will not necessarily be delayed.

(c) Whenever it shall be found that two or more parties whose interests are in conflict are represented by the same attorney, the Examiner of Trademarks shall notify each of said parties and also the attorney of this fact.

§ 2.93 Declaration of interference.

An interference is declared and instituted by the mailing of a notice of interference to the parties. The notice shall be sent to each applicant, in care of his attorney or agent of record, if any, and if one of the parties is a registrant, the notice shall be sent to him or his assignee of record. The notice shall give the name and address of the adverse party and of his attorney or agent, if any, together with the serial number and date of filing and publication, if published, of each of the applications or registrations involved.

§ 2.94 Interference motions.

(a) Motions to dissolve an interference may be brought on the ground (1) that no interference in fact exists, (2) that there has been such irregularity in declaring the same as will preclude a proper determination of the interference, or (3) that an applicant's mark is not registrable.

(b) Any party may bring a motion to add to the interference any other conflicting application which he may own.

(c) Motions under paragraph (a) or (b) of this section shall be made not later than forty days after the notice of interference is mailed and shall contain a full statement of the grounds relied upon. Such motions, if in proper form, will be transmitted to the Examiner of Trademarks for determination. Such transmittal will act as a stay of proceedings pending the determination of the motion. If the motion is not in proper form or if it is not brought within the time specified and no good cause is shown for the delay, it will not be considered, and the parties will be so notified. Any brief in support of a motion shall be embodied in or accompany the motion and any statement or brief in opposition to a motion shall be filed within twenty days after service of the motion; if not so filed, consideration thereof may be refused. Oral hearings will be held only at the request of any of the parties.

§ 2.95 Decision on motion to dissolve.

Appeal may be taken to the Trademark Trial and Appeal Board in the manner provided in §§ 2.141 and 2.142 from a decision granting a motion to dissolve. No appeal may be had from a decision denying such a motion, but the question may be reviewed by the Trademark Trial and Appeal Board in its final decision in the interference.

§ 2.96 Issues; burden of proof.

The issue in an interference between applications shall be the respective rights of the parties to registration on the applications presented, on the basis of priority of adoption and use. The issue in an interference between an application and a registration shall be the same, including, in the case of the registrant, the right to maintain the registration on the same basis, and if the final judgment is adverse to the registrant, the registration will be canceled unless good and sufficient reasons are presented for other action. The party whose application or registration involved in the interference has the latest filing date (the junior party) will be regarded as having the burden of proof.

§ 2.97 Enlargement of issues.

Any party to an interference may, within fifty days after the notice of interference is mailed, file a pleading setting forth affirmatively any matter, other than the issue specified in § 2.96 on the basis of which, if proved, the other party would not be entitled to prevail or would not be entitled to obtain or maintain a registration. Such pleading may request affirmative relief by way of cancellation of a registration involved, but no defense attacking the validity of such registration may be otherwise raised in the proceeding. A reply to such request for affirmative relief is required within twenty days after service thereof, but no reply need be filed to other affirmative defenses.

§ 2.98 Adding party to interference.

If, during the pendency of an interference, another case appears involving substantially the same registrable subject matter, the Examiner of Trademarks may request the suspension of the interference for the purpose of adding said case. Such suspension will be granted as a matter of course if no testimony has been taken. If, however, any testimony has been, or is about to be, taken the case will not be added except upon approval of a member of the Trademark Trial and Appeal Board. If the case is not so added, the Examiner of Trademarks may suspend action on such case pending termination of the interference proceeding, following which an interference may be instituted between such case and the case of the party prevailing in the first interference.

§ 2.99 Application to register as concurrent user.

(a) An application for registration as a lawful concurrent user will be examined in the same manner as other applications for registration. When it is determined that the mark is ready

for publication or allowance, except for questions relating to concurrent registration, the applicant may be required to furnish as many copies of his written application, specimens and drawing, as may be necessary. The Examiner of Trademarks shall prepare notices for the applicant and for each applicant, registrant, or user specified in the application for registration as a concurrent user. Such notices for the specified parties shall give the name and address of the applicant and of his attorney or agent, if any, together with the serial number and filing date of the application.

(b) The notices shall be sent to each of the parties, in care of their attorneys or agents, if they have attorneys or agents of record, and if one of the parties is a registrant, a notice shall also be sent to him or his assignee of record. A copy of the application shall be forwarded with the notices to the parties specified in the application. An answer to the notice is not required in the case of an applicant or registrant whose application or registration is specified in the application to register as concurrent user but a statement, if desired, may be filed within forty days after the mailing of the notice; in the case of other parties specified in the application to register as concurrent user, answer must be filed within forty days after the mailing of the notice.

(c) The procedure shall follow the practice in interference proceedings insofar as it is applicable and the time limitations prescribed in such practice shall be applicable herein.

(Sec. 2, 18, 60 Stat. 428, 434; 15 U. S. C. 1052, 1068)

OPPOSITION

AUTHORITY NOTE: §§ 2.101 to 2.106 interpret or apply secs. 13, 17, 60 Stat. 433, 434; 15 U. S. C. 1063, 1067.

§ 2.101 Time for filing notice of opposition.

Any person who believes that he would be damaged by the registration of a mark upon the Principal Register may, upon payment of the required fee, oppose the same by filing a verified notice of opposition in the Patent Office within thirty days after the publication (§ 2.81) of the mark sought to be registered.

§ 2.102 Extension of time.

A request to extend the time for filing a notice of opposition must be received in the Patent Office before the expiration of thirty days from the date of publication, and should be accompanied by a showing of good cause for the extension requested and specify the period of extension desired. In the event circumstances do not permit submission of such showing of good cause with the request, it should be furnished as promptly as possible and, in any event, within ten days after submission of such request.

§ 2.103 Notice filed by attorney or agent.

An unverified notice of opposition may be filed by a duly authorized attorney or agent. The unverified notice and the required fee must be filed in the Patent Office within thirty days after

publication (§ 2.81) of the mark sought to be registered, but such opposition will be null and void unless verified by the opposer and the verification or verified notice filed in the Patent Office within thirty days after such filing, or within such further time after such filing as may be fixed by the Commissioner upon request made before the expiration of said thirty days.

§ 2.104 Contents of notice of opposition.

The notice of opposition must allege facts tending to show why the opposer would be damaged by the registration of the opposed mark and state the specific grounds for opposition. A duplicate copy of the notice of opposition including exhibits shall be filed.

§ 2.105 Institution of opposition.

(a) When a notice of opposition is filed, the Examiner of Trademarks shall transmit the same, if regularly filed, to the Trademark Trial and Appeal Board.

(b) A notice shall be prepared, identifying the title and number of the proceeding and the application involved, and designating a time, not less than thirty days from the mailing date of such notice, within which answer must be filed. Copies of this notice shall be forwarded by the Trademark Trial and Appeal Board to the parties in care of their attorneys or agents, if they have attorneys or agents of record. The duplicate copy of the notice of opposition and exhibits shall be forwarded with the notice to the applicant.

§ 2.106 Answer.

(a) If no answer is filed within the time set, the opposition may be decided as in case of default.

(b) An answer may contain any affirmative defense, including a request for affirmative relief by way of cancellation of a registration pleaded in the notice of opposition, but no defense attacking the validity of such registration may be otherwise raised in the proceeding. A reply to such a request for affirmative relief is required within twenty days after service thereof, but no reply need be filed to other affirmative defenses.

(c) The notice of opposition may be withdrawn without prejudice before the answer is filed. After answer is filed the notice may not be withdrawn without prejudice except with the consent of the applicant.

CANCELLATION

AUTHORITY NOTE: §§ 2.111 to 2.114 interpret or apply secs. 14, 17, 24, 60 Stat. 433, 434, 436; 15 U. S. C. 1064, 1067, 1069.

§ 2.111 Time for filing petition for cancellation.

Any person who believes that he is or will be damaged by a registration may, upon payment of the required fee, apply to the Commissioner to cancel said registration. Such petition may be made at any time in the case of registrations on the Supplemental Register or under the act of 1920, or registration under the act of 1881 or the act of 1905 which have not been published under section 12 (c) of the act (§ 2.153), and in cases involving the ground speci-

fied in section 14 (c) and (d) of the act. In all other cases such petition must be made within five years from the date of registration of the mark under the act of 1946 or from the date of publication under section 12 (c) of the act.

§ 2.112 Petition for cancellation.

The petition to cancel, which must be verified, must allege facts tending to show why the petitioner believes he is or will be damaged by the registration, state the specific grounds for cancellation, and indicate the respondent party to whom notice shall be sent. A duplicate copy of the petition, including exhibits, and an order for a title report for Office use (or an abstract of title) of the mark sought to be canceled shall be filed with the petition. Applications to cancel different registrations owned by the same party may be joined in one petition when appropriate, but the fee for each application to cancel a registration must accompany the petition.

§ 2.113 Notice of filing petition.

(a) When a petition for cancellation is filed, it shall be transmitted to the Trademark Trial and Appeal Board, which shall make examination thereof to determine if it is formally correct. If the petition is found to be defective as to form, the party filing the same shall be so advised and allowed a reasonable time for correcting the informality.

(b) When the petition is correct as to form a notice shall be prepared, identifying the title and number of the proceeding and the registration involved, and designating a time, not less than thirty days from the mailing date of such notice, within which answer must be filed. Copies of this notice shall be forwarded to the parties in care of their attorneys or agents, if they have attorneys or agents of record. The duplicate copy of the petition and exhibits shall be forwarded with the notice to the registrant.

§ 2.114 Answer.

(a) If no answer is filed within the time set, the petition may be decided as in case of default.

(b) An answer may contain any affirmative defense, including a request for affirmative relief by way of cancellation of a registration pleaded in the petition, but no defense attacking the validity of such registration may be otherwise raised in the proceeding. A reply to such a request for affirmative relief is required within twenty days after service thereof, but no reply need be filed to other affirmative defenses.

(c) The petition for cancellation may be withdrawn without prejudice before the answer is filed. After the answer is filed the petition may not be withdrawn without prejudice except with the consent of the registrant.

PROCEDURE IN INTER PARTES PROCEEDINGS

AUTHORITY NOTE: §§ 2.117 to 2.136 interpret or apply sec. 17, 60 Stat. 434; 15 U. S. C. 1067.

§ 2.117 Federal Rules of Civil Procedure.

(a) Except as otherwise provided, procedure and practice in inter partes

proceedings shall be governed by the Rules of Civil Procedure for the District Courts of the United States wherever considered applicable and appropriate.

(b) The party having the latest filing date in an interference, the opposer in an opposition proceeding, the petitioner in a cancellation proceeding, and the applicant to register as a concurrent lawful user (or such applicant having the latest filing date), shall be deemed to be in the position of plaintiff, and the other parties to such proceedings shall be deemed to be in the position of defendants.

(c) The notice of opposition and the petition to cancel, and the answers thereto, correspond to complaint and answer in court proceedings. Such pleadings as may be filed in interference and concurrent registration proceedings will be treated as complaints or affirmative defenses, depending upon the party filing, but the filing of a pleading in such proceedings shall not operate to change the position of the parties as set forth in the preceding paragraph.

(d) The assignment of testimony periods corresponds to setting a case for trial in court proceedings.

(e) The taking of depositions during the assigned testimony periods corresponds to the trial in court proceedings.

(f) Oral hearing corresponds to oral summation in court proceedings.

§ 2.118 Undelivered Office notices.

When the notices sent by the Patent Office to any registrant are returned to the Office undelivered, or when one of the parties resides abroad and his representative in the United States is unknown, additional notice may be given by publication in the Official Gazette for such period of time as the Commissioner may direct.

§ 2.119 Service of papers.

(a) Every paper filed in the Patent Office in inter partes cases, including appeals, must be served upon the other parties as provided by § 1.248 except the notices of interference (§ 2.93), the notice of opposition (§ 2.105), the petition for cancellation (§ 2.113), and the notices of a concurrent use proceeding (§ 2.99), which are mailed by the Patent Office. Proof of such service must be made before the paper will be considered by the Office. A statement signed by the attorney or agent, attached to or appearing on the original paper, when filed clearly stating the time and manner in which service was made will be accepted as prima facie proof of service.

(b) When service is made by mail, the date of mailing will be considered the date of service. Whenever a party is required to take some action within a prescribed period after the service of a paper upon him by another party and the paper is served by mail, five days shall be added to the prescribed period.

§ 2.120 Discovery procedure.

The provisions of the Federal Rules of Civil Procedure relating to discovery are inapplicable in inter partes trademark cases except as specifically set forth in this section.

(a) *Depositions for discovery.* (1) Any party to an opposition, interference,

cancellation or concurrent use proceeding may, at any time not later than thirty days prior to the date for taking testimony of any party as set by initial or subsequent Office action, take the deposition of any person, including a party, for the purpose of discovery. Such depositions may be taken upon oral examination in the manner prescribed by §§ 1.273, 1.274 and 1.275 of this chapter, or upon written interrogatories in the manner prescribed by § 2.124.

(2) *Scope of examination.* The deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of the examining party or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts. It is not ground for objection that the testimony would be inadmissible at the trial if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence.

(3) *Use of discovery depositions.* Discovery depositions may be used in accordance with Rule 26 (d) (1), (2) and (4) and (f) of the Federal Rules of Civil Procedure, provided the party offering the deposition, or any part thereof, in evidence files the same before the close of his testimony period and also files a notice of reliance thereon. Objections, including any made during the examination, will be considered only if made or renewed at the hearing.

(b) *Request for admission.* (1) Any party to an opposition, interference, cancellation or concurrent use proceeding may, within the time specified for taking depositions for discovery, serve upon any adverse party a written request for admission by the latter of the genuineness of any relevant document described in and attached to the request (a photocopy may be attached provided the original thereof is made available for inspection), or of the truth of any facts which are material and relevant to the issues and which are believed to be within the knowledge of both the parties serving and the parties served. Each matter in respect of which an admission is requested shall be considered as admitted unless, within fifteen days after service thereof, the party to whom the request is directed serves upon the party requesting the admission a sworn statement denying specifically the matter in respect of which admission is requested, or setting forth in detail the reasons why he cannot truthfully either admit or deny the same, or objects thereto.

(2) *Effect of admissions.* No admission shall be considered as part of the record in the case unless a party files, before the close of his testimony period, a notice of reliance thereon and a copy of the admission and request therefor. Any objections noticed will be considered only if made at the hearing.

(c) *Motion to produce documents, etc., for inspection and copying.* Upon motion showing good cause therefor,

made prior to the date for taking testimony of any party as set by initial or subsequent Office action, an order may be entered requiring a party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated books, documents or other tangible things, not privileged, the existence of which has been pleaded or otherwise asserted, and which constitute or contain material within the scope of inquiries permitted in depositions for discovery and which are in his possession, custody or control. The order shall specify a time for compliance therewith, and may prescribe such terms and conditions as may be just.

(d) *Refusal to make discovery.* If any party fails or refuses to answer proper questions in taking discovery depositions or fails or refuses to comply with an order to produce and permit the inspection and copying or photographing of designated things, the Trademark Trial and Appeal Board may strike out all or any part of any pleading of that party, or dismiss the action or proceeding or any part thereof, or enter a judgment as by default against that party, or take such other action as may be deemed appropriate.

(e) *Examination and cross-examination.* A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party, and interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross-examined by the adverse party only upon the subject matter of his examination in chief.

§ 2.121 Assignment of times for taking testimony.

(a) Times will be assigned for the taking of testimony in behalf of each of the parties, and no testimony shall be taken except during the times assigned. If there be more than two parties to an interference, the times for taking testimony will be so arranged that each shall have an opportunity to prove his case against prior parties, to rebut their evidence, and to meet the evidence of junior parties.

(b) The times will ordinarily be assigned in the notices sent by the Patent Office in interferences and in concurrent use proceedings, and in a notice sent after the answers have been filed in cases of opposition and cancellation.

§ 2.122 Matters in evidence.

(a) The files of the applications or registrations specified in the declaration of interference or in the notice in case of concurrent registration proceedings, of the application against which a notice of opposition is filed, and of the registration against which a petition for cancellation or an affirmative defense requesting cancellation is filed, form part of the record of the proceeding without any action by

the parties, and may be referred to for any relevant and competent purpose.

(b) A registration of the opposer or petitioner pleaded in a notice of opposition or petition to cancel will be received in evidence and made part of the record if two copies of the printed registration accompany the notice or petition. The Office will take notice of the fact shown by its records of renewal of such registrations, the publication thereof under section 12 (c), the filing of affidavits under section 8, and the filing of affidavits under section 15, and such matters need not be proven by the parties. Notice will also be taken of a recorded assignment identified in a notice of opposition or petition to cancel or other pleading, and such pleaded recorded paper need not be otherwise proved by the parties.

§ 2.123 Testimony in inter partes cases.

(a) Testimony of witnesses in inter partes cases may be taken (1) by depositions on oral examination in accordance with §§ 1.273 to 1.281, 1.283, 1.285, 1.286 of this chapter; or (2) by written questions as provided by §§ 2.124 and 2.124a.

(b) If the parties so stipulate in writing, depositions may be taken before any person authorized to administer oaths, at any place, upon any notice, and in any manner, and when so taken may be used like other depositions. By agreement of the parties, the testimony of any witness or witnesses of any party, may be submitted in the form of an affidavit by such witness or witnesses. The parties may stipulate what a particular witness would testify to if called, or the facts in the case of any party may be stipulated.

(c) Printed publications, such as books and periodicals, available to the general public in libraries or of general circulation, and official records, may be introduced as provided in § 1.282 of this chapter. When a copy of an official record of the Patent Office is filed, it need not be a certified copy.

(d) Evidence not obtained and filed in compliance with these sections will not be considered.

(35 U.S.C. 23)

§ 2.124 Testimony by written questions.

(a) A party may take the testimony of a witness by written questions to be propounded by an officer before whom depositions may be taken, § 1.274 of this chapter. The questions shall be served upon the other party within ten days after the opening date set for taking the testimony of the party submitting the questions, together with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within ten days thereafter a party so served may serve cross questions upon the party proposing to take the deposition. Within five days thereafter the latter may serve redirect questions upon a party who has served cross questions. Within three days after being served with redirect questions, a party may serve recross questions upon the

party proposing to take the depositions. Written objections to questions may be served on the party propounding the questions, within the time allowed the objector for serving further questions, and in response thereto substitute questions may be served, within three days.

(b) A copy of the notice and copies of all questions served shall be delivered by the party taking the testimony to the officer designated in the notice, who shall proceed to take the testimony of the witness in response to the questions and to prepare, certify, and file the deposition, attaching thereto the copy of the notice and the questions received by him. Such depositions are subject to the same rules for filing and serving copies as other depositions.

(c) On motion made within ten days after service of the notice and written questions, it may be ordered, for good cause shown, that the testimony be not taken in accordance with this section but by oral examination of the witness.

§ 2.124a. Testimony taken in foreign countries.

Upon motion duly made and granted, testimony may be taken in foreign countries, upon complying with the following requirements:

(a) The motion must designate a place for the examination of the witnesses at which an officer duly qualified to take testimony under the laws of the United States in a foreign country shall reside, and it must be accompanied by a statement under oath that the motion is made in good faith, and not for the purposes of delay or of vexing or harassing any party to the case; it must also set forth the names of the witnesses, the particular facts to which it is expected each will testify, and the grounds on which is based the belief that each will so testify.

(b) It must appear that the testimony desired is material and competent, and that it cannot be taken in this country at all, or can not be taken here without hardship and injury to the moving party greatly exceeding that to which the opposite party will be exposed by the taking of such testimony abroad.

(c) Upon the granting of such motion, the Trademark Trial and Appeal Board will execute and forward to the moving party a commission authorizing the appropriate consular or other officer to take the depositions, and a time will be set within which the moving party shall serve in duplicate on each adverse party the interrogatories to be propounded to each witness, and such adverse party may, within a designated time, serve in duplicate, on the moving party cross-interrogatories. Objections to any of the interrogatories may be served with, or prior to service of, cross-interrogatories and objections to any of the cross-interrogatories may be served at any time before the depositions are taken, and testimony will be taken subject to the objections. Such objections will be considered and determined upon the hearing of the case if renewed at that time.

(d) As soon as the cross-interrogatories are served, the moving party will forward the interrogatories, the cross-

interrogatories, the commission, and security for official fees to the proper officer, with the request that he notify the witnesses named to appear before him within a designated time and make answer thereto under oath; and that he reduce their answers to writing and transmit the same, under his official seal and signature to the Commissioner of Patents with the certificate prescribed in § 1.276 of this chapter. The letter of transmittal of the moving party should direct attention of the consular or other officer to the instructions on the reverse side of the commission and should indicate that any insufficiency or excess of the security for official fees should be directed to the attention of the said party; and in view of the requirements of §§ 1.253 and 2.125 of this chapter for filing and serving copies of testimony, the desired number of copies of the testimony should be requested by the moving party.

(e) By stipulation of the parties the requirements of paragraph (c) of this section as to written interrogatories and cross-interrogatories may be dispensed with, and the testimony may be taken before the proper officer upon oral interrogatories by the parties, their attorneys or their agents.

(f) Unless false swearing in the giving of such testimony before the officer taking it shall be punishable as perjury under the laws of the foreign state in which it shall be taken, it will not stand on the same footing in the Patent Office as testimony duly taken in the United States; but its weight in each case will be determined by the tribunal having jurisdiction of such case.

§ 2.125 Copies of testimony.

(a) One copy of the transcript of testimony (taken in accordance with §§ 1.275 to 1.278 of this chapter or § 2.124), together with copies of documentary exhibits shall be served on each adverse party within thirty days after completion of the taking of such testimony. The original transcript and exhibits and one copy of the transcript, shall be filed in the Patent Office as promptly as possible.

(b) Each transcript and the copies thereof shall comply with § 1.253 of this chapter as to arrangement, indexing and form.

§ 2.126 Allegations in application not evidence on behalf of applicant.

The allegation of dates of use in the application for registration of the applicant or registrant cannot be used as evidence in behalf of the party making the same nor are exhibits attached to pleadings, or specimens in application and registration files, considered as evidence of use on behalf of the party who filed them, unless identified and introduced in evidence as other exhibits.

§ 2.127 Motions.

(a) Motions shall be made in writing and shall contain a full statement of the grounds therefor. Any brief or memorandum in support of a motion shall accompany or be embodied in the motion. Briefs in opposition to a motion shall be filed within fifteen days from the date of service of the motion unless

another time is specified by the Trademark Trial and Appeal Board or the time is extended on request. Oral hearings will not be held on motions except on order of the Trademark Trial and Appeal Board.

(b) Any petition for reconsideration or modification of a decision must be filed within ten days after the decision or, if the decision is appealable, before the time for appeal expires.

(c) Interlocutory motions, requests, and other matters not finally determinative in the proceeding may be acted upon by a member of the Trademark Trial and Appeal Board.

§ 2.128 Final hearing and briefs.

(a) The brief of a party in the position of plaintiff shall be filed not later than sixty days after the closing date set for rebuttal testimony; the brief of a party in the position of defendant not later than thirty days after the due date of the first brief; a reply brief by a party in the position of plaintiff, if filed, shall be due fifteen days after the due date of the brief to which it is a reply. Three copies of all briefs should be filed.

(b) Briefs may be submitted in type-written or printed form, except that where they are in excess of thirty type-written pages, they shall be printed in conformity with § 1.254 of this chapter. Typewritten briefs may be written on letter or legal size paper and shall be double-spaced. Each brief shall contain an alphabetical index of cases cited therein.

(c) If a party desires an oral hearing, he shall so state by a separate notice filed not later than his brief, and the time for such hearing will be set in a notice sent to each party by the Office. If no request for oral hearing is made, the case will be decided on the record and briefs.

§ 2.129 Oral argument.

(a) Oral arguments will be heard by at least three members of the Trademark Trial and Appeal Board at the time stated in the notice. If any party appears at the specified time, he will be heard. If the Board is prevented from hearing the case at the time specified, a new assignment will be made, or the case will be continued from day to day until heard. Unless otherwise permitted, oral arguments will be limited to one-half hour for each party. Any petition for rehearing, reconsideration, or modification of a decision must be filed within thirty days from the date thereof.

(b) Hearings may be advanced or adjourned, as far as is convenient and proper, to meet the wishes of the parties and their attorneys or agents.

§ 2.130 New matter suggested by Examiner of Trademarks.

If, during the pendency of an inter partes case, facts appear which, in the opinion of the Examiner of Trademarks, render the mark of any applicant involved unregistrable, the attention of the Trademark Trial and Appeal Board shall be called thereto. The board may suspend the proceeding and refer the application to the Examiner of Trademarks for his determination of the question of registrability, following the final deter-

mination of which the application shall be returned to the board for such further inter partes action as may be appropriate. The consideration of such facts by the Examiner of Trademarks shall be ex parte, but a copy of the action of the examiner will be furnished to the parties to the inter partes proceeding.

§ 2.131 Ex parte matter in an inter partes case.

If, in considering an inter partes case involving an application, facts appear which, in the opinion of the Trademark Trial and Appeal Board render the mark of the applicant unregistrable on one or more ex parte grounds, the board shall in its decision on the inter partes issues in the case recommend that if the applicant finally prevails in the case, registration be withheld pending a reexamination by the Examiner of Trademarks of the application in the light of such facts. If, upon such reexamination following termination of the inter partes case, the Examiner of Trademarks finally refuses registration to applicant, appeal may be taken as provided in §§ 2.141 and 2.142.

§ 2.132 Failure to take testimony.

(a) Upon the filing of a statement by any party in the position of defendant, that the time for taking testimony on behalf of any party in the position of plaintiff has expired and that no testimony has been taken by him and no other evidence offered, an order may be entered that such party show cause within a time set therein, not less than ten days, why judgment should not be rendered against him, and in the absence of a showing of good and sufficient cause judgment may be rendered as by default.

(b) If no evidence other than Patent Office records is offered by the party in the position of plaintiff, any party in position of defendant, without waiving his right to offer evidence in the event the motion is denied, may move for dismissal on the ground that upon the law and the facts the party in the position of plaintiff has shown no right to relief. The party in the position of plaintiff shall be allowed fifteen days after service of the motion to file his argument in opposition to the motion. Judgment may be rendered against the party in position of plaintiff, or the Trademark Trial and Appeal Board may decline to render judgment until all the evidence is in. In the latter event, testimony periods will be reset for the party in position of defendant and for rebuttal.

§ 2.133 Amendment of application or registration during proceedings.

An application involved in a proceeding may not be amended, nor may a registration be amended or disclaimed in part, except with the written consent of the other party or parties and the approval of the Trademark Trial and Appeal Board, or except upon motion duly filed and considered.

§ 2.134 Surrender or cancellation of registration.

If a registrant involved in a proceeding applies to surrender or cancel his registration or files a disclaimer in whole of his mark under section 7(d) of the act, the proceeding may be dismissed.

§ 2.135 Abandonment of application, abandonment, concession of priority.

If, in a proceeding an applicant files a written abandonment of the application or of the mark, or a party to an interference files a written concession of priority, judgment shall be entered against such applicant or party.

§ 2.136 Status of application on termination of proceeding.

On termination of a proceeding involving an application, the application, if the judgment is not adverse, returns to the status it had before the institution of the proceeding. If the judgment is adverse to the applicant, the application stands refused without further action and all proceedings thereon are considered terminated.

APPEALS

§ 2.141 Ex parte appeals from the Examiner of Trademarks.

Every applicant for the registration of a mark may, upon final refusal by the Examiner of Trademarks, appeal to the Trademark Trial and Appeal Board upon payment of the prescribed fee. A second refusal on the same grounds may be considered as final by the applicant for purpose of appeal.

§ 2.142 Time and manner of ex parte appeals.

(a) Such appeal must be taken within sixty days from the date of the final refusal, or, if the refusal was not made final by the examiner, within the time for response to the examiner's action. Appeal is taken simply by filing a notice of appeal and payment of the appeal fee.

(b) The appellant's brief shall be filed within sixty days after the date of appeal. If the brief is not filed within the time allowed, the appeal may be dismissed. The examiner may, within such time as may be directed by the Commissioner, furnish a written statement in answer to appellant's brief, supplying a copy to the appellant. The appellant may file a reply brief within twenty days from the date of such answer.

(c) The appellant shall indicate, not later than at the time of filing his brief, if he desires an oral hearing. If no request for oral hearing has been made, the appeal will be considered on brief. If the appellant has requested an oral hearing, a day of hearing will be set, and due notice thereof given. Hearings will be held as stated in the notice and oral argument will be limited to one-half hour unless otherwise permitted.

(d) Applications which have been considered and decided on appeal will not be reopened except by order of the Commissioner, and then only for consideration of matters not already adjudicated, sufficient cause being shown.

§ 2.144 Reconsideration of decision on appeal.

Any request or petition for rehearing or reconsideration, or modification of the decision, must be filed within thirty days from the date of the decision.

§ 2.145 Appeal to court.

Any applicant for registration or any party to an inter partes proceeding who is dissatisfied with the decision of the Trademark Trial and Appeal Board, or any registrant who has filed an affidavit under section 8 of the act who is dissatisfied with the decision of the Commissioner, may appeal to the United States Court of Customs and Patent Appeals or may proceed under 35 U. S. C. 145 or 146, as in the case of applicants for patents, under the same conditions, rules and procedure as are applicable in the case of patent appeals or proceedings. (See §§ 1.301 to 1.304 of this chapter and rules of the United States Court of Customs and Patent Appeals.)

(Sec. 21, 60 Stat. 435, as amended; 15 U. S. C. 1071)

**PETITIONS AND ACTION BY THE
COMMISSIONER**

§ 2.146 Petition to the Commissioner.

(a) Petition may be taken to the Commissioner (1) from any repeated action or requirement of the Examiner of Trademarks, not subject to appeal under § 2.141, in the ex parte prosecution of an application; (2) in cases in which the statute or the rules specify that the matter is to be determined directly by or reviewed by the Commissioner; and (3) to invoke the supervisory authority of the Commissioner in appropriate circumstances.

(b) Any such petition must contain a statement of the facts involved and the point or points to be reviewed and the action requested. Any brief in support thereof should accompany or be embodied in the petition; in contested cases any brief in opposition shall be filed within fifteen days after service of the petition. Where facts are to be proved in ex parte cases (as in a petition to revive an abandoned application), the proof in the form of affidavits (and exhibits, if any) must accompany the petition.

(c) An oral hearing will not be held except when considered necessary by the Commissioner.

(d) The mere filing of a petition will not stay the period for replying to an examiner's action, nor stay other proceedings.

(e) Authority to act on a petition may, when appropriate, be delegated by the Commissioner.

(f) No fee is required for a petition to the Commissioner.

§ 2.147 Cases not specifically defined.

All cases not specifically defined and provided for by the rules in this part will be decided in accordance with the merits of each case under the authority of the Commissioner, and such decision will be communicated to the interested parties in writing.

§ 2.148 Commissioner may suspend certain rules.

In an extraordinary situation, when justice requires and no other party is injured thereby, any requirement of the rules in this part not being a requirement of the statute may be suspended or waived by the Commissioner.

CERTIFICATE**§ 2.151 Certificate.**

When the requirements of the law and of the rules have been complied with, and the Patent Office has adjudged a mark registrable, a certificate will be issued to the effect that the applicant has complied with the law and that he is entitled to registration of his mark on the Principal Register or on the Supplemental Register as the case may be. The certificate will state the date on which the application for registration was filed in the Patent Office, the act under which the mark is registered, the date of issue and the number of the certificate. Attached to the certificate and forming a part thereof will be a reproduction of the drawing of the mark and pertinent data from the application. A notice of the affidavit requirement of section 8 (a) of the act (§ 2.161) will be printed on the certificate.

**PUBLICATION OF MARKS REGISTERED UNDER
1905 ACT**

AUTHORITY NOTE: §§ 2.153 to 2.156 interpret or apply sec. 12, 60 Stat. 432; 15 U. S. C. 1062.

§ 2.153 Publication requirements.

A registrant of a mark registered under the provisions of the acts of 1881 or 1905 may, at any time prior to the expiration of the period for which the registration was issued or renewed, upon the payment of the prescribed fee, file an affidavit setting forth those goods stated in the registration on which said mark is in use in commerce, specifying the nature of such commerce, and stating that the registrant claims the benefits of the Trademark Act of 1946. An order for a title report for Office use (or an abstract of title) shall accompany the affidavit.

§ 2.154 Publication in Official Gazette.

A notice of the claim of benefits under the act of 1946 and a reproduction of the mark will then be published in the Official Gazette as soon as practicable. The published mark will retain its original registration number.

§ 2.155 Notice of publication.

A notice of such publication of the mark and of the requirement for the affidavit specified in section 8 (b) of the act (§ 2.161) will be sent to the registrant.

§ 2.156 Not subject to opposition; subject to cancellation.

The published mark is not subject to opposition on such publication in the Official Gazette, but is subject to petitions to cancel as specified in § 2.111 and to cancellation for failure to file the affidavit specified in § 2.161.

**REREGISTRATION OF MARKS REGISTERED
UNDER PRIOR ACTS**

§ 2.158 Reregistration of marks registered under acts of 1881, 1905, and 1920.

Trademarks registered under the act of 1881, the act of 1905 or the act of 1920 may be reregistered under the act of 1946, either on the Principal Register, if

eligible, or on the Supplemental Register, but a new complete application for registration must be filed complying with the rules relating thereto, and such application will be subject to examination and other proceedings in the same manner as other applications filed under the act of 1946. See § 2.26 for use of old drawing.

CANCELLATION FOR FAILURE TO FILE AFFIDAVIT DURING SIXTH YEAR

AUTHORITY NOTE: §§ 2.161 to 2.165 interpret or apply sec. 8, 60 Stat. 431; 15 U. S. C. 1058.

§ 2.161 Cancellation for failure to file affidavit during sixth year.

Any registration under the provisions of the act of 1946 and any registration published under the provisions of section 12 (c) of the act (§ 2.153) shall be cancelled at the end of six years following the date of registration or the date of such publication, unless within one year next preceding the expiration of such six years the registrant shall file in the Patent Office an affidavit showing that said mark is still in use or showing that its nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.

§ 2.162 Requirements for affidavit.

(a) The affidavit required by § 2.161 must:

(1) Be executed by the registrant after expiration of the five-year period following the date of registration or publication under section 12 (c);

(2) Identify the certificate of registration by the certificate number and date of registration;

(3) Recite sufficient facts to show that the mark described in the registration is still in use, specifying the nature of such use, or recite sufficient facts to show that its nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark; and

(4) Be accompanied by an order for a title report for Office use (or an abstract of title).

(b) A specimen or facsimile showing the mark as currently used should be submitted with and referred to in the affidavit.

§ 2.163 Notice to registrant.

If no affidavit is filed within a reasonable time prior to expiration of the sixth year, the registrant may be notified that the registration will be cancelled by the Commissioner at the end of such sixth year unless the owner files in the Patent Office the affidavit of use or excusable nonuse required by section 8. Failure to notify the registrant does not, however, relieve the registrant of the responsibility of filing the affidavit within the period required by statute.

§ 2.164 Acknowledgement of receipt of affidavit.

The registrant will be notified by the Examiner of Trademarks of the receipt of the affidavit and, if satisfactory, of its acceptance.

§ 2.165 Reconsideration of affidavit.

(a) If the affidavit is insufficient, the registrant will be notified of the reasons

by the examiner. Reconsideration of such refusal may be requested within six months from the date of the mailing of the notice. The request for reconsideration must state the reasons therefor; a supplemental or substitute affidavit required by section 8 of the act cannot be considered unless it is received before the expiration of six years from the date of the registration, or from the date of publication under section 12 (c).

(b) If the registrant is dissatisfied with the action of the examiner holding the affidavit insufficient, he may request the Commissioner to review the action under § 2.146. The decision of the Commissioner on such a request constitutes the final action of the Patent Office. If there is no review by the Commissioner, the Commissioner will notify the registrant of the insufficiency of the affidavit after the expiration of the sixth year, which notice will constitute such final action. See § 2.145 for appeal to or review by court.

§ 2.166 Time of cancellation.

If no affidavit is filed within the sixth year following registration or publication under section 12 (c) of the act, the registration will be cancelled forthwith by the Commissioner. If the affidavit is filed but is refused, cancellation of the registration will be withheld pending further proceedings.

AFFIDAVIT UNDER SECTION 15

§ 2.167 Affidavit under section 15.

The affidavit provided by section 15 of the act for acquiring incontestability for a mark registered on the Principal Register or a mark registered under the act of 1881 or 1905 and published under section 12 (c) of the act (§ 2.153) must:

- (a) Be signed by the registrant;
- (b) Identify the certificate of registration by the certificate number and date of registration;
- (c) Recite the goods or services stated in the registration on or in connection with which the mark has been in continuous use in commerce for a period of five years subsequent to the date of registration or date of publication under section 12 (c) of the act, and is still in use in commerce, specifying the nature of such commerce;
- (d) Specify that there has been no final decision adverse to registrant's claim of ownership of such mark for such goods or services, or to registrant's right to register the same or to keep the same on the register;
- (e) Specify that there is no proceeding involving said rights pending in the Patent Office or in a court and not finally disposed of;
- (f) Be filed within one year after the expiration of any five-year period of continuous use following registration or publication under section 12 (c).

The registrant will be notified of the receipt of the affidavit.

(Sec. 15, 60 Stat. 433; 15 U. S. C. 1065)

§ 2.168 Combined with other affidavits.

(a) The affidavit filed under section 15 of the act may also be used as the affidavit required by section 8, provided it also complies with the requirements

and is filed within the time limit specified in §§ 2.161 and 2.162.

(b) In appropriate circumstances the affidavit filed under section 15 of the act may be combined with the affidavit required for renewal of a registration (see § 2.183).

CORRECTION, DISCLAIMER, SURRENDER, ETC.

§ 2.171 New certificate on change of ownership.

In case of change of ownership of a registered mark, upon request of the assignee, a new certificate of registration may be issued in the name of the assignee for the unexpired part of the original period. The assignment must be recorded in the Patent Office, and the request for the new certificate must be signed by the assignee and accompanied by the required fee and by an order for title report for Office use (or abstract of title). The original certificate of registration, if available, must also be submitted.

(Sec. 7, 60 Stat. 430, as amended; 15 U. S. C. 1057)

§ 2.172 Surrender for cancellation, disclaimer in whole.

Upon application by the registrant, the Commissioner may permit any registration to be surrendered for cancellation or any registered mark to be disclaimed in whole. Application for such action must be signed by the registrant and must be accompanied by the required fee, and by an order for a title report for Office use (or an abstract of title) and, if not lost or destroyed, by the original certificate of registration.

(Sec. 7, 60 Stat. 430, as amended; 15 U. S. C. 1057)

§ 2.173 Amendment and disclaimer in part.

(a) Upon application by the registrant, the Commissioner may permit any registration to be amended or any registered mark to be disclaimed in part. Application for such action must specify the amendment or disclaimer and be signed and verified by the registrant, and must be accompanied by the required fee and by an order for a title report for Office use (or an abstract of title). If the amendment involves a change in the mark, new specimens showing the mark as used in connection with the goods or services, and a new drawing of the amended mark must be submitted. The certificate of registration or, if said certificate is lost or destroyed, a certified copy thereof, must also be submitted in order that the Commissioner may make appropriate entry thereon and in the records of the Office. The registration when so amended must still contain registrable matter and the mark as amended must be registrable as a whole, and such amendment or disclaimer must not involve such changes in the registration as to alter materially the character of the mark.

(b) Changes in the identification of goods other than in the nature of deletions will not be permitted except under the provisions of § 2.175. No amendment seeking the elimination of a disclaimer will be permitted.

(c) A printed copy of the amendment or disclaimer shall be attached to each printed copy of the registration.

(Sec. 7, 60 Stat. 430, as amended; 15 U. S. C. 1057)

§ 2.174 Correction of Office mistake.

Whenever a material mistake in a registration, incurred through the fault of the Patent Office, is clearly disclosed by the records of the Office, a certificate stating the fact and nature of such mistake, signed by the Commissioner and sealed with the seal of the Patent Office, shall be issued without charge and recorded, and a printed copy thereof shall be attached to each printed copy of the registration certificate. Such corrected certificate shall thereafter have the same effect as if the same had been originally issued in such corrected form, or in the discretion of the Commissioner a new certificate of registration may be issued without charge. The certificate of registration or, if said certificate is lost or destroyed, a certified copy thereof, must be submitted in order that the Commissioner may make appropriate entry thereon.

(Sec. 7, 60 Stat. 430, as amended; 15 U. S. C. 1057)

§ 2.175 Correction of mistake by registrant.

(a) Whenever a mistake has been made in a registration and a showing has been made that such mistake occurred in good faith through the fault of the applicant, the Commissioner may issue a certificate of correction, or in his discretion, a new certificate upon the payment of the required fee, provided that the correction does not involve such changes in the registration as to require republication of the mark.

(b) Application for such action must specify the mistake for which correction is sought and the manner in which it arose, show that it occurred in good faith, be signed and verified by the applicant, and be accompanied by the required fee and by an order for a title report for Office use (or an abstract of title). The certificate of registration or, if said certificate is lost or destroyed, a certified copy thereof, must also be submitted in order that the Commissioner may make appropriate entry thereon.

(c) A printed copy of the certificate of correction shall be attached to each printed copy of the registration.

(Sec. 7, 60 Stat. 430, as amended; 15 U. S. C. 1057)

§ 2.176 Consideration of above matters.

The matters in §§ 2.171 to 2.175 will be considered in the first instance by the Examiner of Trademarks. If the action of the Examiner of Trademarks is adverse, registrant may request the Commissioner to review the action under § 2.146. If response to an adverse action of the examiner is not made by the registrant within six months, the matter will be considered abandoned.

TERM AND RENEWAL

AUTHORITY NOTE: §§ 2.181 to 2.184 interpret or apply sec. 9, 60 Stat. 431; 15 U. S. C. 1059.

§ 2.181 Term of original registrations and renewals.

(a) Registrations issued under the act of 1946, whether on the Principal Register or on the Supplemental Register, remain in force for twenty years, and may be renewed for periods of twenty years from the expiring period unless previously cancelled, disclaimed in whole, or surrendered.

(b) Registrations issued under the acts of 1905 and 1881 remain in force for their unexpired terms and may be renewed in the same manner as registrations under the act of 1946.

(c) Registrations issued under the act of 1920 cannot be renewed unless renewal is required to support foreign registrations and in such case may be renewed on the Supplemental Register in the same manner as registrations under the act of 1946.

§ 2.182 Period within which application for renewal must be filed.

An application for renewal may be filed by the registrant at any time within six months before the expiration of the period for which the certificate of registration was issued or renewed, or it may be filed within three months after such expiration on payment of the additional fee required.

§ 2.183 Requirements of application for renewal.

(a) The application for renewal must be accompanied by:

(1) An affidavit by the registrant stating that the mark is still in use in commerce, specifying the nature of such commerce. This affidavit must be executed not more than six months before the expiration of the registration.

(2) The required fee, including the additional fee required in the case of a delayed application for renewal.

(b) The affidavit and the fee must accompany the application for renewal and therefore must be filed within the period provided for applying for renewal. If defective or insufficient, they cannot be completed after the period for applying for renewal has passed; if completed after the initial six months period has expired but before the expiration of the three months delay period, the application can be considered only as a delayed application for renewal.

(c) The application for renewal must also include:

(1) An order for a title report for Office use (or an abstract of title).

(2) If the applicant is not domiciled in the United States, the designation of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark.

(3) If the mark is registered under the act of 1920, a verified showing that renewal is required to support foreign registrations.

§ 2.184 Refusal of renewal.

(a) If the application for renewal is incomplete or defective, the renewal will be refused by the Examiner of Trademarks. The application may be completed or amended in response to a re-

fusal, subject to the provisions of §§ 2.62 and 2.183.

(b) If the registrant is dissatisfied with the action of the examiner considering the application for renewal incomplete or defective, he may request the Commissioner to review the action under § 2.146. If response to an adverse action of the examiner is not made within six months, the application for renewal will be considered abandoned.

ASSIGNMENT OF MARKS

§ 2.185 Requirements for assignments.

(a) Assignments under section 10 of the act of registered marks, or marks for which an application for registration has been filed, will be recorded in the Patent Office. Other instruments which may relate to such marks may be recorded in the discretion of the Commissioner. No assignment will be recorded, except as may be ordered by the Commissioner, unless it has been executed and unless:

(1) The certificate of registration is identified in the assignment by the certificate number (the date of registration should also be given), or, the application for registration shall have been first filed in the Patent Office and the application is identified in the assignment by serial number (the date of filing should also be given);

(2) It is in the English language or, if not in the English language, accompanied by a sworn translation;

(3) The fee for recording is received; and

(4) An appointment of a resident agent is made in case the assignee is not domiciled in the United States. The appointment must be separate from the assignment and there must be a separate appointment for each registration or application assigned in one instrument.

(b) The address of the assignee should be recited in the assignment, otherwise it must be given in a separate paper.

(c) The date of record of the assignment is the date of the receipt of the assignment at the Patent Office in proper form and accompanied by the full fee for recording.

(Sec. 10, 60 Stat. 431; 15 U. S. C. 1060)

§ 2.186 Action may be taken by assignee of record.

Any action which may or must be taken by a registrant or applicant may be taken by the assignee, provided the assignment has been recorded.

§ 2.187 Certificate of registration may issue to assignee.

The certificate of registration may be issued to the assignee of the applicant if the assignment is recorded in the Patent Office at least ten days before the application is allowed, and the address of the assignee appears in the record. See § 2.82.

AMENDMENT OF RULES

§ 2.189 Amendments to rules.

(a) All amendments to this part will be published in the Official Gazette and in the FEDERAL REGISTER.

(b) Whenever required by law, and in other cases whenever practicable, notice of proposed amendments to these rules

will be published in the FEDERAL REGISTER and in the Official Gazette. If not published with the notice, copies of the text will be furnished to any person requesting the same. All comments, suggestions, and briefs received within a time specified in the notice will be considered before adoption of the proposed amendments which may be modified in the light thereof. Oral hearings may be held at the discretion of the Commissioner.

PART 3—FORMS FOR PATENT CASES

Sec.

- 3.1 Petition for patent; by a sole inventor.
- 3.2 Petition for patent; by a sole inventor, for himself and assignee.
- 3.3 Petition for patent; by a sole inventor, with power of attorney.
- 3.4 Petition for patent; by joint inventors.
- 3.5 Petition for patent; by an administrator.
- 3.6 Petition for patent; by an executor.
- 3.7 Petition for patent; by the guardian of an insane person.
- 3.11 Oath to accompany application for patent.
- 3.12 Oath to accompany application for patent, by an administrator (or executor).
- 3.13 Oath not accompanying application.
- 3.14 Supplemental oath for amendment presenting claims for matter disclosed but not originally claimed.
- 3.16 Combined petition, oath and specification (single signature form); sole inventor.
- 3.17 Oath in division or continuing application.
- 3.18 Oath in division or continuing application containing additional subject matter.
- 3.21 Design patent application; petition.
- 3.22 Design patent application; specification.
- 3.23 Design patent application; oath.
- 3.25 Plant patent application; petition.
- 3.26 Plant patent application; oath.
- 3.28 Reissue application, petition; by the inventor.
- 3.29 Reissue application, petition; by the assignee.
- 3.31 Reissue application, oath; by the inventor.
- 3.32 Reissue application, oath; by assignee.
- 3.33 Oath as to loss of letters patent.
- 3.36 Power of attorney or authorization of agent, not accompanying application.
- 3.37 Revocation of power of attorney or authorization of agent.
- 3.39 Amendment.
- 3.41 Appeal from the Principal Examiner to the Board of Appeals.
- 3.43 Disclaimer in patent.
- 3.44 Interference; preliminary statement of domestic inventor.
- 3.45 Interference; preliminary statement of foreign inventor.
- 3.46 Interference; disclaimer during interference.
- 3.47 Interference; notice of taking testimony.
- 3.48 Interference; form of deposition.
- 3.49 Interference; certificate of officer.
- 3.61 Symbols for draftsmen.

AUTHORITY: §§ 3.1 to 3.61 issued under 35 U.S.C. 6.

NOTE: The following forms illustrate the manner of preparing various papers to be filed in the Patent Office. Applicants and other parties will find their business facilitated by following them. In special situations such alterations as the circumstances may render necessary may be made provided they do not depart from the requirements of Part 1 of this chapter or of the

statute. Before using any form the pertinent sections of Part 1 and sections of the statute should be studied carefully.

§ 3.1 Petition for patent; by a sole inventor.

To the Commissioner of Patents:

Your petitioner, _____, a citizen of the United States and a resident of _____, State of _____ (or subject, etc.), whose post-office address is _____, prays that letters patent may be granted to him for the improvement in _____, set forth in the following specification.

(The specification and oath follow the petition.)

§ 3.2 Petition for patent; by a sole inventor, for himself and assignee.

To the Commissioner of Patents:

Your petitioner, _____, a citizen of the United States and a resident of _____, State of _____ (or subject, etc.), whose post-office address is _____, prays that letters patent may be granted to himself and _____, a citizen of the United States and a resident of _____, State of _____, whose post-office address is _____, as his assignee, for the improvement in _____, set forth in the following specification.

(The specification and oath follow the petition.)

§ 3.3 Petition for patent; by a sole inventor, with power of attorney.

To the Commissioner of Patents:

Your petitioner, _____, a citizen of the United States and a resident of _____, State of _____ (or subject, etc.), whose post-office address is _____, prays that letters patent may be granted to him for the improvement in _____, set forth in the following specification; and he hereby appoints _____, of _____, (Registration No. _____), his attorney (or agent), to prosecute this application and to transact all business in the Patent Office connected therewith.

(The specification and oath follow the petition.)

§ 3.4 Petition for patent; by joint inventors.

To the Commissioner of Patents:

Your petitioners, _____, citizens of the United States and residents, respectively, of _____, State of _____, and of _____, State of _____ (or subjects, etc.), whose post-office addresses are, respectively, _____, and _____, pray that letters patent may be granted to them, as joint inventors, for the improvement in _____, set forth in the following specification.

(The specification and oath follow the petition.)

§ 3.5 Petition for patent; by an administrator.

To the Commissioner of Patents:

Your petitioner, A _____ B _____, a citizen of the United States and a resident of _____, State of _____ (or subject, etc.), whose post-office address is _____, administrator of the estate of C _____ D _____, late a citizen of the United States and resident of _____, State of _____, deceased (as by reference to the duly certified copy of letters of administration, hereto annexed, will more fully appear), prays that letters patent may be granted to him for the invention of the said C _____ D _____ for an improvement in _____, set forth in the following specification.

(The specification and oath follow the petition.)

§ 3.6 Petition for patent; by an executor.

To the Commissioner of Patents:

Your petitioner, A _____ B _____, a citizen of the United States and a resident of _____, State of _____ (or subject, etc.), whose post-office address is _____, executor of the last will and testament of C _____ D _____, late a citizen of the United States and resident of _____, State of _____, deceased (as by reference to the duly certified copy of letters testamentary, hereto annexed, will more fully appear), prays that letters patent may be granted to him for the invention of the said C _____ D _____ for an improvement in _____, set forth in the following specification.

(The specification and oath follow the petition.)

§ 3.7 Petition for patent; by the guardian of an insane person.

To the Commissioner of Patents:

Your petitioner, A _____ B _____, a citizen of the United States and a resident of _____, State of _____ (or subject, etc.), whose post-office address is _____, and who has been appointed guardian (or conservator or representative) of C _____ D _____ (as by reference to the duly certified copy of the order of court, hereto annexed, will more fully appear), prays that letters patent may be granted to him for the invention of the said C _____ D _____ for an improvement in _____, set forth in the following specification.

(The specification and oath follow the petition.)

§ 3.11 Oath to accompany application for patent.

(The petition and specification precede the oath.)

_____ ss.

(1) _____, the above-named petitioner, being sworn (or affirmed), depose and say that _____ citizen of the United States (2) and resident of _____, that _____ verily believe (3) _____ to be the original, first, and (4) _____ inventor of the improvement in (5) _____ described and claimed in the annexed specification; that (7) _____ do not know and do not believe that the same was ever known or used before (8) _____ invention thereof, or patented or described in any printed publication in any country before (8) _____ invention thereof, or more than one year prior to this application, or in public use or on sale in the United States more than one year prior to this application; that said invention has not been patented in any country foreign to the United States on an application filed by (9) _____ or (8) _____ legal representatives or assigns more than twelve months prior to this application; and that no application for patent on said invention has been filed by (9) _____ or (8) _____ representatives or assigns in any country foreign to the United States, except as follows: (10) _____

Inventor's full name. (11) _____ (Signature)
Sworn to and subscribed before me this _____ day of _____, 19____
[SEAL] _____ (Signature of notary or officer)
(12) _____ (Official character)

NOTES: See §§ 1.65 and 1.66.

(1) Name of inventor; if the invention is joint, the names of all the joint inventors.

(2) If the applicant be an alien, state of what foreign country he is a citizen or subject.

(3) Give city and state, or if a foreign resident, city and country, of residence. If more than one inventor give residences of each inventor if different. Street address need not be given here as it appears elsewhere.

(4) "Himself", in the case of a sole inventor; "themselves" in the case of joint inventors.

(5) "Sole" in the case of a sole inventor; "joint" in the case of joint inventors.

(6) Title of the invention.

(7) "He" in the case of a sole inventor; "they" in the case of joint inventors.

(8) "His" in the case of a sole inventor; "their" in the case of joint inventors.

(9) "Him" in the case of a sole inventor; "them" in the case of joint inventors.

(10) If no application has been filed in a foreign country strike out the words "except as follows:". If one or more applications have been filed in foreign countries, the first application and each application more than twelve months old (six months in design cases) must be recited. The country and date of filing the foreign application must be given and the number of the application or other identifying data may also be stated. The claim for priority under 35 U.S.C. 119 (see § 1.55) may be made here. The following examples illustrate various situations.

(a) Only one prior foreign application filed: state "in (country) on (date)." If the right of priority is also claimed add "the right of priority of which application is claimed."

(b) More than one prior foreign application: state "in (country) on (date)" and in other countries on subsequent dates." The country and date do not need to be recited except for the first filed application and each application more than twelve months old (six months in design cases).

(11) All oaths must bear the signature of the affiant.

(12) See § 1.66 for officers who may administer oaths, and for oaths executed in foreign countries.

§ 3.12 Oath to accompany application for patent, by an administrator (or executor).

A _____ B _____, the above-named petitioner, being sworn (or affirmed), deposes and says that he is a citizen of the United States of America and a resident of _____, that he is the administrator of the estate (or executor of the last will and testament) of C _____ D _____, deceased, late a citizen of the United States and resident of _____, that he verily believes the said C _____ D _____ to be the original, first and sole inventor of the improvement in _____ described and claimed in the foregoing specification; that he does not know and does not believe that the same was ever known or used before the invention thereof by the said C _____ D _____, or patented or described in any printed publication in any country before the said invention thereof, or more than one year prior to this application, or in public use or on sale in the United States more than one year prior to this application; that said invention has not been patented in any country foreign to the United States on an application filed by the said C _____ D _____ or his legal representatives or assigns more than twelve months prior to this application; and that no application for patent on said invention has been filed by the said C _____ D _____ or his representatives or assigns in any country foreign to the United States, except as follows:

A ----- B -----
 (Signature)
 Administrator, etc.
 ss:
 Sworn to and subscribed before me this
 day of -----, 19--
 [SEAL]
 (Signature of notary or officer)
 (Official character)

§ 3.13 Oath not accompanying application.

----- ss:
 -----, being sworn (or affirmed), deposes and says that he is a citizen of the United States of America and resident of -----, that on -----, 19--, he filed application for patent Serial No. ----- in the United States Patent Office, that he verily believes himself to be the original, first and sole inventor of the improvement in ----- described and claimed in the specification of said application for patent; that he does not know and does not believe that the same was ever known or used before his invention thereof, or patented or described in any printed publication in any country before his invention thereof, or more than one year prior to the date of said application, or in public use or on sale in the United States more than one year prior to the date of said application; that said invention has not been patented before the date of said application in any country foreign to the United States on an application filed by him or his legal representatives or assigns more than twelve months prior to the date of said application; and that no application for patent on said invention has been filed by him or his representatives or assigns in any country foreign to the United States, except as follows:

Inventor's full name: -----
 Sworn to and subscribed before me this
 day of -----, 19--
 [SEAL]
 (Signature of notary or officer)
 (Official character)

§ 3.14 Supplemental oath for amendment presenting claims for matter disclosed but not originally claimed.

----- ss:
 -----, whose application for letters patent for an improvement in -----, Serial No. -----, was filed in the United States Patent Office on or about the ----- day of -----, 19--, being duly sworn (or affirmed) deposes and says that the subject matter of the foregoing (1) amendment was part of his invention, was invented before he filed his original application, above identified, for such invention; that he does not know and does not believe that the same was ever known or used before his invention thereof, or patented or described in any printed publication in any country before his invention thereof, or more than one year before his application, or in public use or on sale in the United States more than one year before the date of his application, that said invention has not been patented in any foreign country before the date of his application on an application filed by himself or his legal representatives or assigns more than twelve months prior to his application in the United States, and has not been abandoned.

(Signature)

Sworn to and subscribed before me this
 day of -----, 19--
 [SEAL]
 (Signature of notary or officer)
 (Official character)

NOTE: (1) If the supplemental oath does not accompany the amendment, the amendment should be identified. See § 1.67.

§ 3.16 Combined petition, oath and specification (single signature form); sole inventor.

[Title of Invention]
 [Specification]

Being duly sworn, I, -----, depose and say that I am a citizen of -----, residing at -----; that I have read the foregoing specification and claims and I verily believe I am the original, first, and sole inventor of the invention in ----- described and claimed therein; that I do not know and do not believe that this invention was ever known or used before my invention thereof, or patented or described in any printed publication in any country before my invention thereof, or more than one year prior to this application, or in public use or on sale in the United States for more than one year prior to this application; that this invention has not been patented in any country foreign to the United States on an application filed by me or my legal representatives or assigns more than twelve months before this application; and that no application for patent on this invention has been filed by me or my representatives or assigns in any country foreign to the United States, except as follows:

And I hereby appoint ----- Registration No. -----, my attorney (or agent) to prosecute this application and to transact all business in the Patent Office connected therewith.

Wherefore I pray that Letters Patent be granted to me for the invention or discovery described and claimed in the foregoing specification and claims, and I hereby subscribe my name to the foregoing specification and claims, oath, power of attorney, and this petition.

Inventor -----
 First name Middle Initial Last name
 Post office address: -----

State of ----- ss:
 County of -----

Before me personally appeared -----, to me known to be the person described in the above application for patent, who signed the foregoing instrument in my presence, and made oath before me to the allegations set forth therein as being under oath, on the ----- day of -----, 19--.

[SEAL]
 (Notary Public or Officer)

NOTE: This form may be executed only when attached to a complete application as the last page thereof.

§ 3.17 Oath in division or continuing application.

[This form of oath may be used with an application disclosing and claiming only subject matter disclosed in a prior copending application of the same inventor.]

-----, the above-named petitioner, being sworn (or affirmed), deposes and says that he is a citizen of the United States and resident of -----, that he verily believes himself to be the original, first and sole inventor of the improvement in ----- described and claimed in the foregoing specification; that this application discloses and claims only subject matter disclosed in

his pending application, Serial No. -----, filed -----; that he does not know and does not believe that the said invention was ever known or used before his invention thereof, or patented or described in any printed publication in any country before his invention thereof, or more than one year prior to said application, or in public use or on sale in the United States more than one year prior to said application; that said invention has not been patented before the date of said application in any country foreign to the United States on an application filed by him or his legal representatives or assigns more than twelve months prior to said application; and that no application for patent on said invention has been filed by him or his representatives or assigns in any country foreign to the United States, except as follows:

Inventor's full name: -----
 (Signature)

----- ss:
 Sworn to and subscribed before me this
 day of -----, 19--
 [SEAL]
 (Signature of notary or officer)
 (Official character)

§ 3.18 Oath in division or continuing application containing additional subject matter.

[This form of oath may be used with an application disclosing and claiming subject matter disclosed in a prior copending application of the same inventor and also disclosing additional subject matter.]

-----, the above-named petitioner, being sworn (or affirmed), deposes and says that he is a citizen of the United States and resident of -----, that he verily believes himself to be the original, first and sole inventor of the improvement in ----- described and claimed in the foregoing specification; that this application in part discloses and claims subject matter disclosed in his earlier filed pending application, Serial No. -----, filed -----; that, as to the subject matter of this application which is common to said earlier application he does not know and does not believe that the same was ever known or used before his invention thereof or patented or described in any printed publication in any country before his invention thereof or more than one year prior to said earlier application, or in public use or on sale in the United States more than one year prior to said earlier application; that said common subject matter has not been patented before the date of said earlier application in any country foreign to the United States on an application filed by him or his legal representatives or assigns more than twelve months prior to said application; and that no application for patent on said invention has been filed by him or his representatives or assigns in any country foreign to the United States, except as follows:

that, as to the subject matter of this application which is not common to said earlier application, he does not know and does not believe that the same was ever known or used before his invention thereof or patented or described in any printed publication in any country before his invention thereof or more than one year prior to the date of this application, or in public use or on sale in the United States more than one year prior to the date of this application, and that said subject matter has not been patented in any country foreign to the United States on an application filed by him or his legal representatives or assigns more than twelve months prior to the date of this application; and that no application for patent on said invention has been filed by him

or his representatives or assigns in any country foreign to the United States, except as follows:

Inventor's full name: _____

(Signature)

ss:

Sworn to and subscribed before me this _____ day of _____, 19____

[SEAL]

(Signature of notary or officer)

(Official character)

§ 3.21 Design patent application; petition.

To the Commissioner of Patents:

Your petitioner, _____, a citizen of the United States and a resident of _____ State of _____ (or subject, etc.), whose post-office address is _____, prays that letters patent may be granted to him for the term of three and one-half years (or seven years, or fourteen years) for the new and original design for _____, set forth in the following specification. (The specification and oath follow the petition.)

§ 3.22 Design patent application; specification.

Be it known that I, _____, have invented a new, original, and ornamental design for (1) _____, of which the following is a specification, reference being had to the accompanying drawing, forming a part hereof.

Fig. 1 is a (2) _____

Fig. 2 is (2) _____

I claim:

The ornamental design for a (1) _____ as shown.

(Signature)

NOTES: (1) Insert specific name of article. (2) Insert brief description of figure or figures of the drawing.

§ 3.23 Design patent application; oath.

_____, the above-named petitioner, being sworn (or affirmed), depose and say that _____ citizen of _____ and resident of _____, that _____ verily believe _____ to be the original, first and _____ inventor of the design for _____ described and claimed in the foregoing specification; that _____ do not know and do not believe that the same was ever known or used before _____ invention thereof, or patented or described in any printed publication in any country before _____ invention thereof, or more than one year prior to this application, or in public use or on sale in the United States for more than one year prior to this application; that said design has not been patented in any country foreign to the United States on an application filed by _____ or _____ legal representatives or assigns more than six months prior to this application; and that no application for patent on said design has been filed by _____ or _____ representatives or assigns in any country foreign to the United States, except as follows:

Inventor's full name: _____

Sworn to and subscribed before me this _____ day of _____, 19____

[SEAL]

(Signature of notary or officer)

(Official character)

NOTE: See applicable notes under § 3.11.

§ 3.25 Plant patent application; petition.

Your petitioner, _____, a citizen of the United States and a resident of _____ in the State of _____ (or subject, etc.), whose post-office address is _____, prays that letters patent may be granted to him for the new and distinct variety of _____, set forth in the following specification. (The specification and oath follow the petition.)

§ 3.26 Plant patent application; oath.

_____, the above-named petitioner, being sworn (or affirmed) deposes and says that he is a citizen of the United States of America and resident of _____, that he verily believes himself to be the original, first, and sole inventor of the new and distinct variety of _____ described and claimed in the foregoing specification; that he has asexually reproduced the said new and distinct variety; that he does not know and does not believe that the same was ever known or used before his invention thereof, or patented or described in any printed publication in any country before his invention thereof, or more than one year prior to this application, or in public use or on sale in the United States more than one year prior to this application; that said invention has not been patented in any country foreign to the United States on an application filed by him or his legal representatives or assigns more than twelve months prior to this application; and that no application for patent on said new and distinct variety of plant has been filed by him or his representatives or assigns in any country foreign to the United States, except as follows:

Inventor's full name: _____

ss:

Sworn to and subscribed before me this _____ day of _____, 19____

[SEAL]

(Signature of notary or officer)

(Official character)

§ 3.28 Reissue application, petition; by the inventor.

To the Commissioner of Patents:

Your petitioner, _____, a citizen of the United States and a resident of _____ State of _____ (or subject, etc.), whose post-office address is _____, prays that he may be allowed to surrender the letters patent for an improvement in _____, No. _____ granted to him _____, 19____, whereof he is now sole owner (or whereof _____, on whose behalf and with whose assent this application is made, is now sole owner, by assignment), and that letters patent may be reissued to him (or the said _____) for the same invention upon the following amended specification. With this petition is filed an abstract of title, duly certified (or an order for a title report), as required in such cases.

[Assent of assignee to reissue]

The undersigned, assignee of the entire (or of an undivided) interest in the above-mentioned letters patent, hereby assents to the accompanying application.

(Signature)

§ 3.29 Reissue application, petition; by the assignee.

To the Commissioner of Patents:

Your petitioner, _____, a citizen of the United States and a resident of _____ State of _____ (or subject, etc.), whose post-office address is _____, prays that he may be allowed to surrender the letters patent for an improvement in _____, No. _____ granted _____, 19____, to _____, now deceased, whereof

he is now owner, by assignment of the entire interest, and that the letters patent may be reissued to him for the same invention, upon the following amended specification. With this petition is filed an abstract of title (or an order for a title report).

(Signature)

NOTE: To be used when the inventor is dead; may also be used with appropriate changes when the reissue application does not seek to enlarge the claims of the original patent.

§ 3.31 Reissue application, oath; by the inventor.

_____, the above-named petitioner, being duly sworn (or affirmed), deposes and says that he is a citizen of the United States of America, and a resident of _____ in the State of _____; that he verily believes himself to be the original, first and sole inventor of the invention described and claimed in letters patent No. _____ and in the foregoing specification and for which improvement he solicits a patent; that he does not know and does not believe that said improvement was ever known or used before his invention thereof, that (continue with the allegations and facts required by § 1.175) _____

Inventor's full name: _____

ss:

Subscribed and sworn to before me this _____ day of _____, 19____

[SEAL]

(Signature of notary or officer)

(Official character)

§ 3.32 Reissue application, oath; by assignee.

A _____ B _____, the above-named petitioner, being duly sworn (or affirmed), deposes and says that he is a citizen of the United States and resident of _____ in the State of _____; that the entire title of letters patent No. _____, for _____, granted on _____ to C _____ D _____, is vested in him; that he verily believes the said C _____ D _____ to be the original, first and sole inventor of the invention described and claimed in the aforesaid letters patent and in the foregoing specification; that he does not know and does not believe that said invention was ever known or used before the invention thereof by the said C _____ D _____; that (continue with the allegations and facts required by § 1.175) _____

Assignee's

full name: _____

ss:

Sworn to and subscribed before me this _____ day of _____, 19____

[SEAL]

(Signature of notary or officer)

(Official character)

NOTE: May be used only when the reissue application does not seek to enlarge the claims of the original patent.

§ 3.33 Oath as to loss of letters patent.

_____, being duly sworn (or affirmed), depose and say that the letters patent No. _____ granted to him, and bearing date on the _____ day of _____, 19____, has been either lost or destroyed; that he has made diligent

search for the said letters patent in all places where the same would probably be found, if existing, and that he has not been able to find it.

(Signature)
Subscribed and sworn to before me this
day of _____, 19____.
[SEAL]
(Signature of notary or officer)
(Official character)

§ 3.36 Power of attorney or authorization of agent, not accompanying application.

[If the power of attorney or authorization of agent be given at any time other than that of making application for letters patent, it will be in substantially the following form:]

To the Commissioner of Patents:

The undersigned having, on or about the _____ day of _____, 19____, made application for letters patent for an improvement in _____ serial number _____, hereby appoints _____ of _____, State of _____, Registration No. _____ his attorney (or agent), to prosecute said application, and to transact all business in the Patent Office connected therewith.

(Signature)

§ 3.37 Revocation of power of attorney or authorization of agent.

To the Commissioner of Patents:

The undersigned having, on or about the _____ day of _____, 19____, appointed _____ of _____, State of _____, his attorney (or agent) to prosecute an application for letters patent which application was filed on or about the _____ day of _____, 19____, for an improvement in _____ serial number _____, hereby revokes the power of attorney (or authorization of agent) then given.

(Signature)

§ 3.39 Amendment.

Applicant: _____
Ser. No. _____ (Date)
Filed _____ Div. _____
For _____

To the Commissioner of Patents:

In response to the office letter of _____ 19____, please amend as follows:

Page _____, line _____, change "_____" to _____

Page _____, line _____, after "_____" insert _____

Page _____, line _____, to end, cancel.

Claim _____, cancel lines _____ and _____ and substitute _____

Cancel claims _____ inclusive.

Add the following claims:

Remarks

(Here state nature and purpose of the amendments and make all explanations necessary for a response to the rejections and objections of record, etc. See §§ 1.111, 1.115-1.126, 1.135.)

Respectfully,

Applicant
By _____
His Attorney (or Agent)

§ 3.41 Appeal from the Principal Examiner to the Board of Appeals.

In re application of _____
Serial Number _____
Title _____
Filed _____
Division Number _____

To the Commissioner of Patents:

Sir: Applicant hereby appeals to the Board of Appeals from the decision of the principal examiner finally rejecting claims _____

(Signature)

§ 3.43 Disclaimer in patent.

To the Commissioner of Patents:

Your petitioner, _____, residing at _____, in the county of _____ and State of _____, represents that he is (here state the exact interest of the disclaimant; if assignee, set out liber and page, or reel and frame, where assignment is recorded) of letters patent of the United States No. _____, granted to _____ on the _____ day of _____, 19____, for _____ and that he has reason to believe that without any deceptive intention claims of said letters patent are too broad or invalid. Your petitioner, therefore, hereby disclaims claim _____ of said patent.

Signed at _____, State of _____ this _____ day of _____, 19____.

(Signature)

§ 3.44 Interference; preliminary statement of domestic inventor.

PRELIMINARY STATEMENT OF _____

v. _____ } Interference No. _____
_____ } ss. _____

_____, being duly sworn (or affirmed), deposes and says that he is a party to the above identified interference, that he made the invention set forth by the counts of the interference in the United States; that

(1) The first drawing of the invention was made on _____, 19____.

(2) The first written description of the invention was made on _____, 19____.

(3) The invention was first disclosed to others on _____, 19____.

(4) The date of the first act or acts susceptible of proof, other than acts of the character specified in (1), (2), and (3) which, if proven, would establish conception of the invention, and a brief description of such act or acts are [e. g. the making of a non-operating model on _____, 19____]

(5) The invention was actually reduced to practice on _____, 19____.

(6) Active exercise of reasonable diligence toward reducing the invention to practice began on _____, 19____.

(7) The serial number and filing date of any prior application in the United States disclosing the invention set forth by the counts of the interference are Serial No. _____, filed _____.

(8) The filing date, country, and number of any application for the same invention in a foreign country, the filing date of which may be claimed under the second paragraph of 35 U.S.C. 119 are No. _____, filed _____ in _____.

(Signature of inventor)

Subscribed and sworn to (or affirmed) before me this _____ day of _____, 19____.

[SEAL]

(Signature of notary public or officer)

(Official character)

¹ If there was no act corresponding to this allegation prior to the filing date of the application, it must be so stated. Note, however, date of completion of application drawing and specification, date of disclosure to person preparing the application, and diligence in preparing the application.

§ 3.45 Interference; preliminary statement of foreign inventor.

PRELIMINARY STATEMENT OF _____

v. _____ } Interference No. _____
_____ } ss. _____

_____, being duly sworn (or affirmed), deposes and says that he is a party to the above identified interference, that he made the invention set forth by the counts of the interference in _____; that

Knowledge of such invention was introduced into the United States under the following circumstances: On _____, 19____, the said _____ wrote a letter to _____, residing at _____, State of _____, describing such invention and soliciting his services in procuring a patent therefor in the United States. This letter, he is informed and believes, was received by the said _____ on _____, 19____. Also _____, 19____, he wrote a letter to the firm of _____, of _____, State of _____, describing such invention and requesting their assistance in manufacturing and putting it on the market, which letter, he is informed and believes, was received by them on _____, 19____. (If the invention has not been introduced into the United States otherwise than by the application papers, it should be so stated, and the date at which such papers were received in the United States alleged.)

The serial number and filing date of any prior application in the United States disclosing the invention set forth by the counts of the interference are Serial No. _____, filed _____.

The filing date, country, and number of any application for the same invention in a foreign country, the filing date of which may be claimed under the second paragraph of 35 U.S.C. 119 are

No. _____, filed _____ in _____.

(Signature of inventor)

Subscribed and sworn to (or affirmed) before me this _____ day of _____, 19____.

[SEAL]

(Signature of notary public or officer) (1)

(Official character)

NOTE: (1) The authority of a foreign notary public must be authenticated by a diplomatic or consular certificate.

When acts were performed in the United States corresponding to the allegations (1) through (6), in the preliminary statement of a domestic inventor (§ 3.44) these acts should be included by appropriate allegations in the preliminary statement of a foreign inventor.

§ 3.46 Interference; disclaimer during interference.

v. _____ } Interference No. _____

In the matter of the above identified interference, under the provisions of and for the purpose set forth in § 1.262, I hereby disclaim the subject matter of all the counts of said interference.

(Signature of inventor)

Date _____

_____, Company, Inc., assignee of the entire right, title, and interest in the application of _____, Serial No. _____

filed _____, hereby assents to the foregoing disclaimer.
[Corporate seal]

By _____ Company, Inc.
(Signature of officer and
nature of office)

Date _____

§ 3.47 Interference; notice of taking testimony.

v. _____ Interference No. _____
_____, 19____

(Name of opposing attorney)

(Address of opposing attorney)

SM: You are hereby notified that on _____, 19____, at _____ o'clock in the forenoon at the office of _____ Street, _____, I shall proceed to take testimony on behalf of the party _____ in the above identified interference.

The witnesses to be examined are:

(Name of witnesses) _____ (Residences of witnesses) _____

The examination will continue from day to day until completed. You are invited to attend and cross-examine.

(Signature of attorney)

Proof of Service

ss. _____ being duly sworn (or affirmed) deposes and says that he served the above notice upon _____ the attorney of the party _____ by mailing a copy of said notice by registered mail addressed as follows: _____ Street _____

Subscribed and sworn to (or affirmed) before me this _____ day of _____, 19____.

[SEAL]

(Signature of notary public or officer)

(Official character)

§ 3.48 Interference; form of deposition. IN THE UNITED STATES PATENT OFFICE

v. _____ Interference No. _____

Depositions of witnesses examined on behalf of _____ pursuant to the annexed notice, at the office of _____ Street, _____, on _____, 19____.

Present: _____, on behalf of _____
_____, on behalf of _____
_____, being duly sworn (or affirmed) deposes and says, in answer to interrogatories proposed to him by _____, counsel for _____, as follows:

Q. 1. What is your name, age, occupation, and residence?
A. My name is _____; I am _____ years of age; I am a manufacturer of _____, and reside at _____, in the State of _____.

No. 248—7

Q. 2, etc. _____

And in answer to cross-interrogatories proposed to him by _____, counsel for _____, he says:

X Q. 1. _____?
A. _____

(Signature)

§ 3.49 Interference; certificate of officer.

I, _____, a notary public within and for the county of _____ and State of _____ (or other officer, as the case may be), do hereby certify that the foregoing depositions of _____ and _____ were taken on behalf of _____ in pursuance of the notice hereto annexed, before me, at the office of _____ Street, _____, in the city of _____, and said county, on the _____ day (or days) of _____, 19____; that said witnesses were by me duly sworn (or affirmed) before the commencement of their testimony; that the testimony of said witnesses was written out by myself (or by _____ in my presence); that the opposing party, _____, was present (or absent or represented by counsel) during the taking of said testimony; that said testimony was taken at the aforementioned place and was commenced at _____ o'clock _____, on the _____ of _____, 19____, and was continued pursuant to adjournment on the _____ (etc.) and was concluded on the _____ day of _____, 19____, at _____ o'clock _____; that the depositions were read by, or to, each witness before he signed the same and that each witness signed the same in my presence; that I am not related to or employed by either of the parties, or their attorneys or agents, or

interested directly or indirectly, in the matter in controversy, either as counsel, attorney, agent or otherwise. (If any of the foregoing requirements are waived, the certificate shall so state.)

In testimony whereof I have hereunto set my hand and affixed my seal of office at _____, in said county, this _____ day of _____, 19____.

[SEAL]

(Signature of notary public or officer)

(Official Character)

NOTE: The notary public or other officer will then append to the depositions the notice under which it is taken and will seal up all the evidence, notices, and paper exhibits and direct them to the Commissioner of Patents, placing upon the envelope a certificate in substance as follows:

I hereby certify that the within depositions of _____ and _____, relating to the matter of Interference No. _____ v. _____, were taken, sealed up, and addressed to the Commissioner of Patents by me this _____ day of _____, 19____.

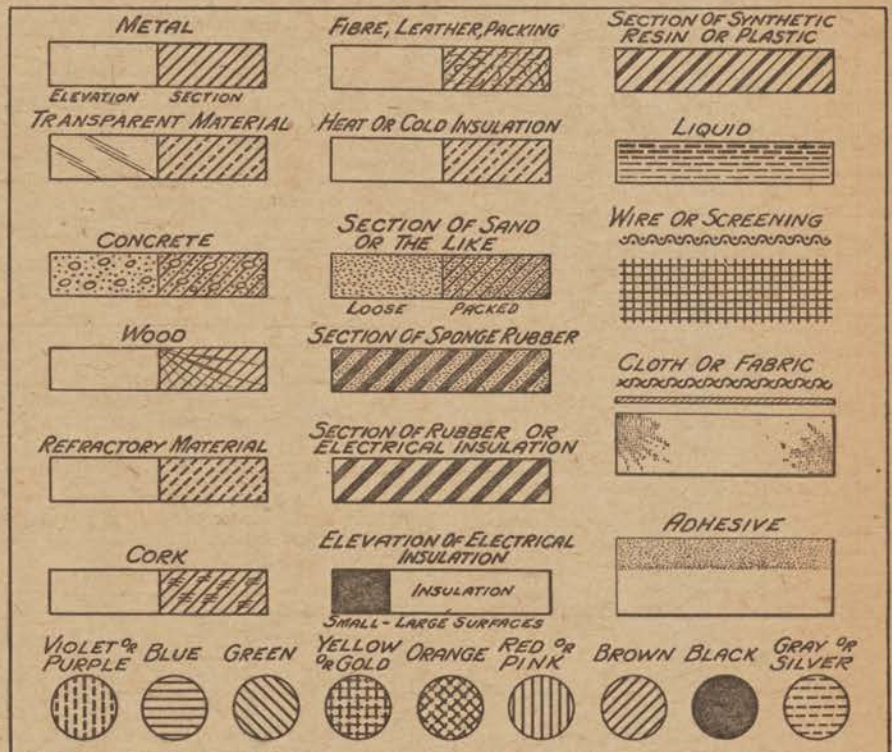
[SEAL]

(Signature of notary public or officer)

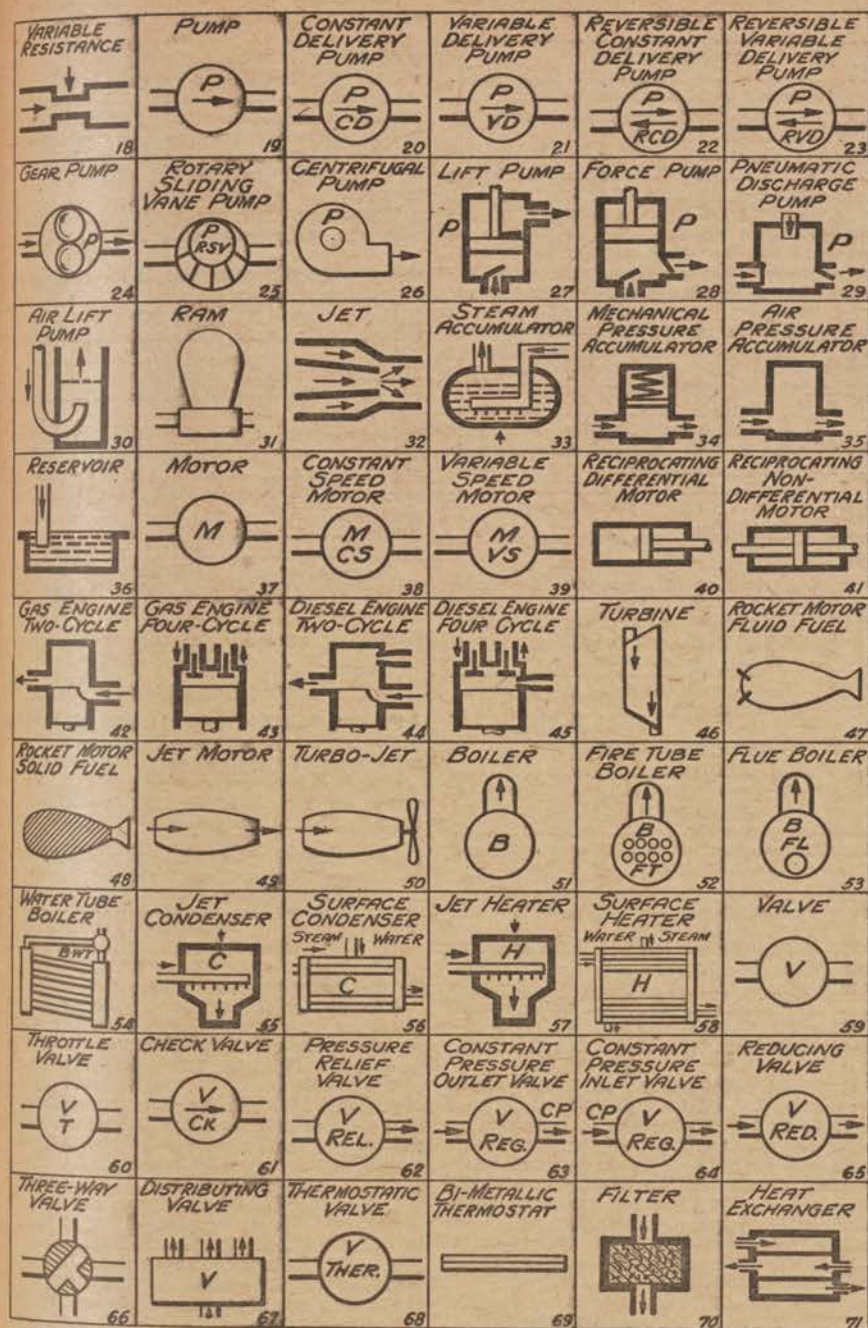
(Official Character)

§ 3.61 Symbols for Draftsmen.

Section 1.84(g) states that graphical symbols for conventional elements may be used on the drawing when appropriate, subject to approval by the Office. The symbols and other conventional devices which follow have been and are approved for such use.



Mechanical Symbols - continued



PART 4—FORMS FOR TRADEMARK CASES

- Sec. 4.1 Trademark application by an individual; Principal Register.
- 4.2 Power of attorney accompanying application.
- 4.3 Authorization of agent accompanying application.
- 4.4 Appointment of domestic representative accompanying application.
- 4.5 Trademark application by a firm; Principal Register.
- 4.6 Trademark application by a corporation; Principal Register.
- 4.7 Service mark application; Principal Register.
- 4.8 Collective mark application; Principal Register.
- 4.9 Certification mark application; Principal Register.

- Sec. 4.10 Application based on concurrent use; Principal Register.
- 4.11 Application to register on Supplemental Register.
- 4.12 Application based on foreign application or registration.
- 4.13 Application for renewal.
- 4.14 Affidavit for publication under section 12 (c).
- 4.15 Affidavit required by section 8.
- 4.16 Affidavit under section 15 (a).
- 4.17 Notice of opposition in the United States Patent Office.
- 4.18 Petition to cancel a registration in the United States Patent Office.
- 4.19 Ex parte appeal from Examiner of Trademarks in the United States Patent Office.
- 4.21 Assignment of application.
- 4.22 Assignment of registration.

AUTHORITY: §§ 4.1 to 4.22 issued under sec. 41, 60 Stat. 440; 15 U. S. C. 1123. Interpret or apply sec. 1, 60 Stat. 427; 15 U. S. C. 1051.

NOTE: The following forms illustrate the manner of preparing applications for registration of marks and various papers in trademark cases, to be filed in the Patent Office. Applicants and other parties will find their business facilitated by following them. These forms should be used in cases to which they are applicable. A sufficient number of representative forms are given which, with the variations indicated by the notes, should take care of all the usual situations. In special situations such alterations as the circumstances may render necessary may be made provided they do not depart from the requirements of Part 2 of this chapter or the statute. Before using any forms the pertinent rules and sections of the statute should be studied carefully.

§ 4.1 Trademark application by an individual; Principal Register.

Mark _____
(Identify the mark)

Class No. _____
(If known)

To the COMMISSIONER OF PATENTS:

(Name of applicant and trade style, if any)

(Business address, including street, city and State)

(Residence address, including street, city and State)

(Citizenship of applicant)

The above identified applicant has adopted and is using the trademark shown in the accompanying drawing (1) for _____

(Common, usual or ordinary name of goods) and requests that said mark be registered in the United States Patent Office on the Principal Register established by the act of July 5, 1946.

The trademark was first used on the goods (2) on _____; was first used in _____ (Date)

_____ commerce (3) on _____ (Date)

_____ and is now in use in such commerce (4).

The mark is used by applying it to _____ (5) and five specimens showing the mark as actually used are presented herewith.

State of _____ ss.
County of _____

_____, being sworn,
(Name of applicant)

states that: he believes himself to be the owner of the trademark sought to be registered; to the best of his knowledge and belief no other person, firm, corporation or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as might be calculated to deceive; and the facts set forth in this application are true.

(Signature of applicant)

Subscribed and sworn to before me this _____ day of _____, 19____

(Notary Public) (6)

POWER OF ATTORNEY OR AUTHORIZATION OF AGENT

(See §§ 4.2 and 4.3) (7)

NOTES: (1) If registration is sought for a word or numeral mark not depicted in any special form, the drawing may be the mark typed in capital letters on letter-size bond paper; otherwise, the drawing shall comply with § 2.52.

(2) If more than one item of goods is set forth and the dates given apply to only one

of the items listed, insert the name of the item to which the dates apply.

(3) Type of commerce should be specified as "interstate," "territorial," "foreign," or such other specified type of commerce as may be lawfully regulated by Congress. Foreign applicants relying upon use must specify "commerce with the United States."

(4) If the mark is other than a coined, arbitrary or fanciful mark which is claimed to have acquired a secondary meaning, insert whichever of the following paragraphs is applicable:

(a) The mark has become distinctive of applicant's goods as a result of substantially exclusive and continuous use in commerce for the five (Type of commerce) years next preceding the date of filing of this application.

(b) The mark has become distinctive of applicant's goods as evidenced by the showing submitted separately.

(5) Insert the manner or method of using the mark with the goods, i. e., "the goods," "the containers for the goods," "displays associated with the goods," "tags or labels affixed to the goods," or such other appropriate method as may be used.

(6) The notary's seal or stamp or other evidence of authority in the jurisdiction of execution must be affixed.

(7) If the applicant is not domiciled in the United States, a domestic representative must be appointed. See § 4.4.

§ 4.2 Power of attorney accompanying application.

Applicant hereby appoints _____ (8) member of the bar of the (Address)

State of _____ to prosecute this application to register, to transact all business in the Patent Office in connection therewith, and to receive the certificate of registration.

NOTE: (8) If the name of the law firm is used, the names of the members of the firm and their States of admission to the bar shall be set forth.

§ 4.3 Authorization of agent accompanying application.

Applicant hereby appoints _____ (9) with offices at _____ (Street, city, and State)

Patent Office Registration No. _____ to prosecute this application to register, to transact all business in connection therewith, and to receive the certificate of registration.

NOTE: (9) Authorization of an agent must be an individual authorization, and names of firms of agents will not be recognized.

§ 4.4 Appointment of domestic representative accompanying application.

_____, whose postal (Name of representative) address is _____, is (Street, city, and State)

hereby designated applicant's representative upon whom notices or process in proceedings affecting the mark may be served. (10)

NOTE: (10) The appointment of a domestic representative must be separate from a Power of Attorney or Authorization of Agent.

§ 4.5 Trademark application by a firm; Principal Register.

Mark _____ (Identify the mark)

Class No. _____ (If known)

To the COMMISSIONER OF PATENTS:

(Firm name and names of members comprising firm)

(Business address, including street, city and State)

(Domicile of firm)

(Citizenship of members of firm)

(Body of application form is same as § 4.1) State of _____ } ss.
County of _____

_____, being (Name of member of firm)

sworn, states that he is a member of the applicant firm; he believes said firm to be the owner of the mark sought to be registered; to the best of his knowledge and belief no other person, firm, corporation or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as might be calculated to deceive; and the facts set forth in this application are true.

(Signature of member of firm)

Subscribed and sworn to before me this _____ day of _____, 19__

(Notary Public) (6)

POWER OF ATTORNEY OR AUTHORIZATION OF AGENT

(See §§ 4.2 and 4.3)

§ 4.6 Trademark application by a corporation; Principal Register.

Mark _____ (Identify the mark)

Class No. _____ (If known)

To the COMMISSIONER OF PATENTS:

(Corporate name and State or country of incorporation) (11)

(Business address, including street, city and State)

(Situs of corporation, including street, city and State)

(Body of application form is same as § 4.1) State of _____ } ss.
County of _____

_____, being sworn, (Name of corporate officer)

states that: he is _____ (Official title) of applicant corporation and is authorized to execute this affidavit on behalf of said corporation; he believes said corporation to be the owner of the mark sought to be registered; to the best of his knowledge and belief no other person, firm, corporation or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as might be calculated to deceive; and the facts set forth in this application are true.

(Corporate name)

By _____ (Signature and official title)

Subscribed and sworn to before me this _____ day of _____, 19__

(Notary Public) (6)

POWER OF ATTORNEY OR AUTHORIZATION OF AGENT

(See §§ 4.2 and 4.3)

NOTE: (11) If applicant is an association or other collective group, the word "association" or other appropriate designation should be substituted for "corporation."

§ 4.7 Service mark application; Principal Register.

Mark _____ (Identify the mark)

Class No. _____ (If known)

To the COMMISSIONER OF PATENTS:

(Insert appropriate identification of applicant in accordance with § 4.1, 4.5 or 4.6) The above identified applicant has adopted and is using the service mark shown in the accompanying drawing (12) for

(Common, usual or ordinary name of service) and requests that said mark be registered in the United States Patent Office on the Principal Register established by the Act of July 5, 1946.

The service mark was first used in connection with the services on _____ (Date)

was first used in the sale or advertising of services rendered in (3) _____ (Type of commerce)

commerce on _____ (Date) now in use in such commerce.

The mark is used by _____ (State method of using the mark in connection with the services)

and five _____ (13) showing the mark as actually used are presented herewith.

State of _____ } ss.
County of _____

(Insert appropriate verification from § 4.1, 4.5 or 4.6, changing the word "goods" to "services.")

POWER OF ATTORNEY OR AUTHORIZATION OF AGENT

(See §§ 4.2 and 4.3)

NOTES: (12) See Note (1), and if drawing is not practicable, insert description of the mark instead of reference to the drawing.

(13) Insert "specimens" or "facsimiles," or state the nature of the representation of the mark which is furnished.

§ 4.8 Collective mark application; Principal Register.

Mark _____ (Identify the mark)

Class No. _____ (If known)

To the COMMISSIONER OF PATENTS:

(Insert identification of applicant in accordance with § 4.6, changing "corporation" to "association," "cooperative," or other appropriate designation of the collective group or organization.)

The above identified applicant has adopted and is exercising legitimate control over the use of the collective mark shown in the accompanying drawing (1) for _____

(Common, usual or ordinary name of goods or services)

to indicate _____ (14) and requests that said mark be registered in the United States Patent Office on the Principal Register established by the act of July 5, 1946.

The collective mark was first used on the _____ (Insert "goods" or "services")

by members of applicant on _____ (Date)

was first used by said members in _____ (3) commerce (Type of commerce)

on _____ (Date); and is now in use in such commerce.

The mark is used by applying it to _____ (5) and five specimens (13) of the mark as actually used are presented herewith.

State of _____ } ss.
County of _____

(Insert verification of § 4.6, changing "corporation" to "association," "cooperative," or other appropriate identification of the collective group or organization.)

POWER OF ATTORNEY OR AUTHORIZATION OF AGENT

(See §§ 4.2 and 4.3)

NOTE: (14) Insert "the goods of the members of applicant," "the services rendered by the members of applicant," "membership in applicant," or other appropriate statement.

§ 4.9 Certification mark application; Principal Register.

Mark _____
(Identify the mark)

Class No. _____
(If known)

To the COMMISSIONER OF PATENTS:
(Insert appropriate identification of applicant in accordance with § 4.1, 4.5 or 4.6.)

The above identified applicant has adopted and is exercising legitimate control over the use of the certification mark shown in the accompanying drawing (12) for _____ and requests

(Insert "goods" or "services") that said mark be registered in the United States Patent Office on the Principal Register established by the act of July 5, 1946.

The certification mark is used by persons authorized by applicant to certify _____; (15) said mark was first used under the authority of applicant on _____; was first used

(Date)

in _____ commerce on _____;
(Type of commerce) (Date)

and is now in use in such commerce.

The mark is used by applying it to _____, (5) and five specimens showing the mark as actually used are presented herewith.

Applicant is not engaged in the production or marketing of any goods or services to which the mark is applied.

State of _____ } ss.
County of _____ }
(Insert appropriate verification from § 4.1, 4.5 or 4.6, and add after the word "association" the words "other than those authorized by applicant.")

POWER OF ATTORNEY OR AUTHORIZATION OF AGENT

(See §§ 4.2 and 4.3)

NOTE: (15) Insert the appropriate statement that the mark certifies regional or other origin; material; mode of manufacture; quality; accuracy or other characteristic of the goods; or that the work or labor on the goods or in the performance of the services was performed by members of applicant.

§ 4.10 Application based on concurrent use; Principal Register.

Mark _____
(Identify the mark)

Class No. _____
(If known)

To the COMMISSIONER OF PATENTS:
(Insert appropriate identification of applicant in accordance with § 4.1, 4.5 or 4.6.)

Use § 4.1, and add at the end of the first paragraph: "for the area comprising _____";

(List States for which registration is sought) and add as final paragraph of application "The following exception(s) to applicant's right to exclusive use are:

By _____, doing business at _____, who is using the mark

(Identify mark and Reg. No. or Ser. No., if any)

for _____
(Common, usual, or ordinary name of goods or services)

in the States of _____ by applying the mark to _____ (5)

from _____
(Earliest date of such use)

to the present."
(Insert appropriate verification in § 4.1, 4.5 or 4.6 and add after the word "association" the words "other than (are) (is) specified in the application".)

POWER OF ATTORNEY OR AUTHORIZATION OF AGENT

(See §§ 4.2 and 4.3)

§ 4.11 Application to register on Supplemental Register.

Mark _____
(Identify the mark)

Class No. _____
(If known)

To the COMMISSIONER OF PATENTS:
(Insert appropriate identification of applicant in accordance with § 4.1, 4.5 or 4.6.)

For application for trademark registration (16), use § 4.1, 4.5 or 4.6, whichever is appropriate, changing the word "Principal" to "Supplemental", and adding a final paragraph in the application as follows:

"The mark sought to be registered has been in lawful use in _____ commerce in connection with the goods for the year preceding the date of filing of this application." (17)

State of _____ } ss.
County of _____ }

(Insert appropriate verification from § 4.1, 4.5 or 4.6.)

POWER OF ATTORNEY OR AUTHORIZATION OF AGENT

(See §§ 4.2 and 4.3)

NOTES: (16) Service mark, collective mark and certification mark applications on the Supplemental Register should conform to § 4.7, 4.8 or 4.9, whichever is applicable, with the change and addition indicated herein.

(17) If the mark has not been in use for the year next preceding the filing date, but use in foreign commerce has been commenced and registration in the United States is required as a basis for obtaining foreign protection of the mark, the following statement should be substituted for the last phrase:

"and applicant has begun the use of such mark in commerce between the United States and _____"

(Name of foreign country)

In this instance, applicant may be required to make a showing that U. S. registration is required as a basis of foreign protection of the mark.

§ 4.12 Application based on foreign application or registration.

Mark _____
(Identify the mark)

Class No. _____
(If known)

To the COMMISSIONER OF PATENTS:
(Insert appropriate identification of applicant in accordance with § 4.1, 4.5 or 4.6.)

The above identified applicant has registered (1) the trademark shown in the accompanying drawing (2) in _____ for _____
(Name of country of origin)

(Common, usual, or ordinary name of goods)

(3) and requests that said mark be registered in the United States Patent Office on the _____ Register ("Principal" or "Supplemental") established by the act of July 5, 1946.

The trademark was registered in _____ (Country

of origin), Registration No. _____ on the

day of _____, 19____, and said registration is now in full force and effect.

Certificate of such registration is presented herewith. (4) (5)

DESIGNATION OF DOMESTIC REPRESENTATIVE (§ 4.4)

POWER OF ATTORNEY OR AUTHORIZATION OF AGENT

(§§ 4.2 and 4.3)

CONSULAR CERTIFICATE

NOTES: (1) If the right of priority is claimed, in accordance with the International Convention and section 44 (d) of the act, the first sentence of the application should, instead of referring to the mark having been registered in the country of origin, state: "filed application for registration of the trademark shown in the accompanying drawing"; and the first sentence of the final paragraph should be changed to state: "The application to register in _____ was filed on the _____

(Country of origin) day of _____, 19____.

(2) See Note 1, § 4.1.

(3) The identification of goods may not be broader than that listed in the foreign registration.

(4) If the registration in the country of origin has not issued at the time the United States application is filed, this sentence should read: "Certificate of such registration will be presented upon issue." (Registration in the United States will not issue until such certificate is presented.)

(5) No verification of the application is required when the certificate of registration accompanies the application. If certificate is not attached use § 4.2 or § 4.3.

§ 4.13 Application for renewal.

Mark _____
(Identify the mark)

Reg. No. _____
Class No. _____

To the COMMISSIONER OF PATENTS:
(Insert appropriate identification of registrant in accordance with § 4.1, 4.5 or 4.6.)

The above identified registrant requests that Registration No. _____ granted to _____ (Name

of original registrant) on _____ (Date of issuance)

which he now owns as evidenced by the accompanying title report (1) be renewed in accordance with the provisions of section 9 of the Act of July 5, 1946.

The renewal fee is presented herewith. (2)

State of _____ } ss.
County of _____ }

(Name of registrant or person authorized to sign for it)

being sworn, states that _____

(Insert "he" or name of registrant) owns Registration No. _____; that the mark shown therein is in use in _____

(Type of commerce) (3) commerce.

(Signature, and if a corporation or other organization, the official title)

Subscribed and sworn to before me this _____ day of _____, 19____

(Notary Public) (6)

POWER OF ATTORNEY OR AUTHORIZATION OF AGENT

(See §§ 4.2 and 4.3) (4)

NOTES: (1) An order for title report, and the fee of \$1.00 therefor must accompany the application for renewal, and if record title is not in the applicant for renewal, satisfactory showing of ownership must accompany the application.

(2) The fee for renewal sought prior to expiration is \$25.00; and for delayed renewal filed within three months after expiration, an additional \$5.00.

(3) Type of commerce should be specified as "interstate," "foreign," "territorial," or such other specified type of commerce as may be regulated by Congress. Foreign registrants must specify: "commerce with the United States."

(4) If applicant for renewal is not domiciled in the United States, a domestic representative must be designated. See § 4.4.

§ 4.14 Affidavit for publication under section 12(c).

Mark _____
(Identify the mark)
Reg. No. _____
Date of issue _____
To: _____
(Name of original registrant)
State of _____ ss.
County of _____
(Name of registrant or person authorized to sign for it)
being sworn, states that _____
(Insert "he" or
owns Registration
name of registrant)
No. _____, as evidenced by the accompanying
title report; (1) that said registration is now
in force; that the mark shown therein is in
use in _____ (2) commerce
(Type of commerce)
on each of the following goods recited in the
registration _____; and that the bene-
fits of the Act of July 5, 1946 are hereby
claimed for said registration.

(Signature, and if a cor-
poration or other or-
ganization, the official
title)

(JURAT) (3)

POWER OF ATTORNEY OR AUTHORIZATION OF AGENT

(See §§ 4.2 and 4.3)

NOTES: (1) An order for title report and the fee of \$1.00 therefor must accompany the affidavit, and if record title is not in the person filing the affidavit, satisfactory showing of ownership must be made.

(2) Type of commerce should be specified as "interstate," "territorial," "foreign," or such other specified type of commerce as may be lawfully regulated by Congress. Foreign registrants must specify "commerce with the United States."

(3) Use Jurat from § 4.1.

§ 4.15 Affidavit required by section 8.

Mark _____
(Identify the mark)
Reg. No. _____
Class No. _____
State of _____ ss.
County of _____
(Name of registrant or person authorized to sign for it)
being sworn, states that _____
(Insert "he" or name of registrant)
owns Registration No. _____ issued _____
(Date)
(1) as evidenced by the accompanying title report; (2) and that the mark shown therein is still in use (3) as evidenced by _____
(4)
(Signature, and if a corporation or other organization, the official title)

(JURAT) (5)

POWER OF ATTORNEY OR AUTHORIZATION OF AGENT

(See §§ 4.2 and 4.3)

NOTES: (1) If the registration issued under a prior act and has been published under section 12 (c), add: "and published under section 12 (c) on _____"

(Date)

(2) An order for title report and the fee of \$1.00 therefor must accompany the affidavit, and if record title is not in the person filing the affidavit, satisfactory showing of ownership must be made.

(3) If the mark is not in use at the time of filing the affidavit, but there is no intention to abandon the mark, sufficient facts must be recited to show that the nonuse is due to special circumstances which excuse the nonuse.

(4) Insert "the attached specimen showing the mark as currently used"; or recite sufficient facts as to sales or advertising, or both, as to show that the mark is in current use.

(5) Use Jurat from § 4.1.

§ 4.16 Affidavit under section 15(a).

Mark _____
(Identify the mark)
Reg. No. _____
Class No. _____
State of _____ ss.
County of _____
(Name of registrant or person authorized to sign for it)
being sworn, states that _____
(Insert "he" or name of registrant)
owns Registration No. _____ issued _____
(Date)
(1) as evidenced by the accompanying title report; (2) that the mark shown therein has been in continuous use in _____
(Type of commerce)
(3) commerce for five consecutive years from _____ (4) to the present on each
(Date)
of the following goods recited in the registration: _____; that said mark
(List the goods)
is still in use in _____ com-
(Type of commerce)
merce; that there has been no final decision adverse to registrant's claim of ownership of said mark to (his) (its) right to register the same or maintain it on the register, and that there is no proceeding involving any of said rights pending and not disposed of either in the Patent Office or in the courts.

(Signature, and if a corporation or other organization, the official title)

(JURAT) (5)

POWER OF ATTORNEY OR AUTHORIZATION OF AGENT

(See §§ 4.2 and 4.3)

NOTES: (a) This form may be used as a combined affidavit under Sections 8 and 15, provided it contains sufficient facts as to sales or advertising, or both, as to show that the mark is in current use or is accompanied by a verified specimen showing current use of the mark.

(1) If the registration issued under a prior act and has been published under Section 12 (c), add: "and published under Section 12 (c) on _____"

(Date)

(2) An order for title report and the fee of \$1.00 therefor must accompany the affidavit, and if record title is not in the person filing the affidavit, satisfactory showing of ownership must be made.

(3) Type of commerce must be specified as "interstate," "territorial," "foreign," or such other commerce as may be regulated by

Congress. Foreign registrants must specify "commerce with the United States."

(4) The beginning of the five year period immediately preceding the filing of the affidavit, provided such date is subsequent to the registration under the act of 1946 or publication under Section 12 (c), as the case may be.

(5) Use Jurat from § 4.1.

§ 4.17 Notice of opposition in the United States Patent Office.

In the matter of application Serial No. _____
Published in the Official Gazette on _____
(Date)

(Name of opposer)
v.

(Name of applicant)

Opposition No. _____
(To be inserted by Patent Office)

(Name of opposer) (Identity
(1) located and doing business
of opposer)

at _____
(Street, city, and State)

believes that it will be damaged by registra-
tion of the mark shown in Serial No. _____
and hereby opposes the same.

As grounds of opposition, it is alleged that:
(Numbered paragraphs should state the
grounds and recite facts tending to show why
opposer believes it will be damaged.)

(Name of corporation or
other organization, if
any)

By _____
(Signature, and official
title, if any)

State of _____ ss.
County of _____

(Name of opposer or person authorized to
sign for it)

being sworn, states that he is the (person
named in the foregoing notice of opposition)

of _____ (Name of firm, corpora-
(Official title)

_____ that he has read
tion or other organization)

and signed the notice and knows the con-
tents thereof; and that the allegations are
true, except as to the matters stated therein
to be upon information and belief, and as to
those matters he believes them to be true.

(Signature)

Subscribed and sworn to before me this
day of _____, 19__.

(Notary Public) (6)

POWER OF ATTORNEY

NOTE: (1) If an individual, state: "an individual trading as _____" If a firm, state: "a firm composed of _____" If a corporation, association or other organization, state "a corporation (or other organization) organized and existing under the laws of _____"

§ 4.18 Petition to cancel a registration in the United States Patent Office.

In the matter of Registration No. _____
Date of Issue _____

(Name of petitioner)
v.

(Name of registrant)

Cancellation No. _____
(To be inserted by
Patent Office)

(Name of petitioner)

a(n) _____
(Identity of petitioner)

(1) located and doing business at _____
(Street, city, and State)

believes that it is or will be damaged by
Registration No. _____ and hereby petitions
to cancel the same.

As grounds therefor, it is alleged that:
(Numbered paragraphs should state the
grounds and recite facts tending to show
why petitioner believes that it is or will be
damaged.)

(Name of corporation or
other organization, if
any)

By _____
(Signature, and official
title, if any)

(Insert affidavit in accordance with § 4.17)

POWER OF ATTORNEY

Note: (1) See note (1) in § 4.17.

§ 4.19 Ex parte appeal from Examiner
of Trademarks in the United States
Patent Office.

(Name of applicant)

(Serial number of appli-
cation)

To the Trademark Trial and Appeal Board:
Applicant hereby appeals to the Trade-
mark Trial and Appeal Board from the deci-
sion of the Examiner of Trademarks refusing
registration.

(Signature)

§ 4.21 Assignment of application.

State of _____ } ss
County of _____ }
Whereas _____ of
(Name of assignor)

(Street, city, and State)
has adopted and is using a mark for which
he has filed application in the United States
Patent Office for registration, Serial No. _____;
and

Whereas _____ of
(Name of assignee)

(Street, city, and State)
is desirous of acquiring said mark;
Now, therefore, for good and valuable
consideration, receipt of which is hereby
acknowledged, said _____

(Name of assignor)
does hereby assign unto the said _____

(Name of assignee)

_____ all rights, title and interest in and
to the said mark, together with the good
will of the business symbolized by the mark,
and the application for registration thereof.
The Commissioner of Patents is requested
to issue the certificate of registration to
said assignee. (1)

(Name of assignor)

By _____
(Official title)

Subscribed and sworn to before me this
_____ day of _____, 19____

(Notary Public) (6)

Note: (1) If the postal address of the as-
signee is not given either in the instrument
or in the accompanying paper, the registra-
tion will not issue to the assignee.

§ 4.22 Assignment of registration.

State of _____ } ss
County of _____ }
Whereas _____ of
(Name of assignor)

(Street, city, and State)
has adopted, used and is using a mark which
is registered in the United States Patent
Office, Registration No. _____, dated _____;
and

Whereas _____ of
(Name of assignee)

(Street, city, and State)
is desirous of acquiring said mark and the
registration thereof;

Now, therefore, for good and valuable
consideration, receipt of which is hereby
acknowledged, said _____

(Name of assignor)
does hereby assign unto the said _____

(Name of assignee)

_____ all rights, title and interest in and
to the said mark, together with the good
will of the business symbolized by the mark,
and the registration thereof, No. _____

(Name of assignor)

By _____
(Official title)

Subscribed and sworn to before me this
_____ day of _____, 19____

(Notary Public) (6)

Note: If the postal address of the as-
signee is not given either in the instrument
or in an accompanying paper, recording may
be delayed by the Patent Office pending re-
ceipt of such address.

PART 5—SECRECY OF CERTAIN IN- VENTIONS AND LICENSES TO FILE APPLICATIONS IN FOREIGN COUN- TRIES

SECRECY ORDERS

- Sec.
- 5.1 Defense inspection of certain applica-
tions.
 - 5.2 Secrecy order.
 - 5.3 Prosecution of application under se-
crecy order; withholding patent.
 - 5.4 Petition for rescission of secrecy order.
 - 5.5 Permit to disclose or modification of
secrecy order.
 - 5.6 General and group permits.
 - 5.7 Compensation.
 - 5.8 Appeal to Secretary.

LICENSES FOR FOREIGN FILING

- 5.11 License for filing application in foreign
country.
- 5.12 Petition for license.
- 5.13 Petition for license; no corresponding
U. S. application.
- 5.14 Petition for license; corresponding
U. S. application.
- 5.15 Scope of license.
- 5.16 Effect of secrecy order.
- 5.17 Who may use license.
- 5.18 Arms, ammunition, and implements of
war.

GENERAL

- 5.21 Effect of modification, rescission or li-
cense.
- 5.22 Papers in English language.
- 5.23 Correspondence.

AUTHORITY: §§ 5.1 to 5.23 issued under
35 U.S.C. 6, 188. Interpret or apply 35 U.S.C.
181-187.

SECRECY ORDERS

§ 5.1 Defense inspection of certain ap- plications.

In accordance with the provisions
of 35 U. S. C., section 181, applications
for patent containing subject matter
the disclosure of which might be detri-
mental to the national security are
made available for inspection by defense
agencies as specified in said section.
Only applications obviously relating to
national security, and applications
within fields indicated to the Patent
Office by the defense agencies as so re-
lated, are made available. Such inspec-
tion must be at the Patent Office and by
responsible representatives of the agency
who are required to sign a dated ac-
knowledgment of such access accepting
the condition that information obtained
from the inspection will be used for no
other purpose than in the administra-
tion of sections 181-188 of Title 35, U. S.
Code. Applications relating to atomic
energy are made available to the Atomic
Energy Commission as specified in § 1.14
of this chapter.

§ 5.2 Secrecy order.

(a) When notified by the chief officer
of a defense agency that publication or
disclosure of the invention by the grant-
ing of a patent would be detrimental to
the national security, an order that the
invention be kept secret will be issued by
the Commissioner of Patents.

(b) The secrecy order is directed to
the applicant, his successors, any and all
assignees, and their legal representa-
tives; hereinafter designated as princi-
pals.

(c) A copy of the secrecy order will be
forwarded to each principal of record in
the application and will be accompanied
by a receipt, identifying the particular
principal, to be signed and returned.

(d) The secrecy order is directed to
the subject matter of the application.
Where any other application in which a
secrecy order has not been issued dis-
closes a significant part of the subject
matter of the application under secrecy
order, the other application and the com-
mon subject matter should be called to
the attention of the Patent Office. Such
a notice may include any material such
as would be urged in a petition to
rescind secrecy orders on either of the
applications.

§ 5.3 Prosecution of application under secrecy order; withholding patent.

Unless specifically ordered otherwise,
action on the application by the Office
and prosecution by the applicant will
proceed during the time an application
is under secrecy order to the point indi-
cated in this section:

(a) Applications under secrecy order
which come to a final rejection must
be appealed or otherwise prosecuted to
avoid abandonment. Appeals in such
cases must be completed by the appli-
cant but unless otherwise specifically
ordered by the Commissioner will not be
set for hearing until the secrecy order
is removed.

(b) Interferences may be declared involving an application under secrecy order but unless otherwise specifically ordered or permitted such interferences are suspended after the approval of the preliminary statements.

(c) When the application is found to be in condition for allowance except for the secrecy order, the applicant and the agency which caused the secrecy order to be issued will be notified. This notice (which is not a notice of allowance under § 1.311 of this chapter) does not require response by the applicant and places the application in a condition of suspension until the secrecy order is removed. When the secrecy order is removed the Patent Office will issue a notice of allowance under § 1.311 of this chapter, or take such other action as may then be warranted.

§ 5.4 Petition for rescission of secrecy order.

(a) A petition for rescission or removal of a secrecy order may be filed by, or on behalf of, any principal affected thereby. Such petition may be in letter form, and it must be in duplicate. The petition must be accompanied by one copy of the application or an order for the same, unless a showing is made that such a copy has already been furnished to the department or agency which caused the secrecy order to be issued.

(b) The petition must recite any and all facts that purport to render the order ineffectual or futile if this is the basis of the petition. When prior publications or patents are alleged the petition must give complete data as to such publications or patents and should be accompanied by copies thereof.

(c) The petition must identify any contract between the Government and any of the principals, under which the subject matter of the application or any significant part thereof was developed, or to which the subject matter is otherwise related. If there is no such contract, the petition must so state.

(d) Unless based upon facts of public record, the petition must be verified.

§ 5.5 Permit to disclose or modification of secrecy order.

(a) Consent to disclosure, or to the filing of an application abroad, as provided in 35 U. S. C. 182, shall be made by a "permit" or "modification" of the secrecy order.

(b) Petitions for a permit or modification must fully recite the reason or purpose for the proposed disclosure. Where any proposed disclosee is known to be cleared by a defense agency to receive classified information, adequate explanation of such clearance should be made in the petition including the name of the agency or department granting the clearance and the date and degree thereof. The petition must be filed in duplicate and be accompanied by one copy of the application or an order for the same, unless a showing is made that such a copy has already been furnished to the department or agency which caused the secrecy order to be issued.

(c) In a petition for modification of a secrecy order to permit filing abroad, all countries in which it is proposed to file

must be made known, as well as all attorneys, agents and others to whom the material will be consigned prior to being lodged in the foreign patent office. The petition should include a statement vouching for the loyalty and integrity of the proposed disclosees and where their clearance status in this or the foreign country is known all details should be given.

(d) Consent to the disclosure of subject matter from one application under secrecy order may be deemed to be consent to the disclosure of common subject matter in other applications under secrecy order so long as not taken out of context in a manner disclosing material beyond the modification granted in the first application.

(e) The permit or modification may contain conditions and limitations.

§ 5.6 General and group permits.

(a) Organizations requiring consent for disclosure of applications under secrecy order to persons or organizations in connection with repeated routine operation may petition for such consent in the form of a general permit. To be successful such petitions must ordinarily recite the security clearance status of the disclosees as sufficient for the highest classification of material that may be involved.

(b) Where identical disclosees and circumstances are involved, and consent is desired for the disclosure of each of a specific list of applications, the petitions may be joined.

§ 5.7 Compensation.

Any request for compensation as provided in 35 U. S. C. 183 must not be made to the Patent Office but should be made directly to the department or agency which caused the secrecy order to be issued. Upon written request persons having a right to such information will be informed as to the department or agency which caused the secrecy order to be issued.

§ 5.8 Appeal to Secretary.

Appeal to the Secretary of Commerce, as provided by 35 U. S. C. 181, from a secrecy order cannot be taken until after a petition for rescission of the secrecy order has been made and denied. Appeal must be taken within 60 days from the date of the denial, and the party appealing, as well as the department or agency which caused the order to be issued will be notified of the time and place of hearing. The appeal will be heard and decided by the Secretary or such officer or officers as he may designate.

LICENSES FOR FOREIGN FILING

§ 5.11 License for filing application in foreign country.

(a) When no secrecy order has been issued under § 5.2, a license from the Commissioner of Patents under 35 U. S. C. 184 is required before filing any application for patent or for the registration of a utility model, industrial design, or model, in a foreign country, or causing or authorizing such filing, with respect to an invention made in the United States, if:

(1) The foreign application is to be filed or its filing caused or authorized before an application for patent is filed in the United States, or

(2) The foreign application is to be filed, or its filing caused or authorized, prior to the expiration of six months from the filing of the application in the United States.

(b) When there is no secrecy order in effect, a license under 35 U. S. C. 184 is not required if:

(1) The invention was not made in the United States, or

(2) The foreign application is to be filed, or its filing caused or authorized, after the expiration of six months from the filing of the application in the United States.

(c) When a secrecy order has been issued under § 5.2, an application cannot be filed in a foreign country in any case except in accordance with § 5.5.

§ 5.12 Petition for license.

Petitions for license under 35 U. S. C. 184 may be presented in letter form and should include petitioner's address, and full instructions for delivery of the requested license when it is to be delivered to other than the petitioner.

§ 5.13 Petition for license; no corresponding U.S. application.

Where there is no corresponding United States application, the petition for license must be accompanied by a legible copy of the material upon which license is desired. This copy will be retained as the measure of the license granted. For assistance in the identification of the subject matter of each license so issued, it is suggested that the petition or requesting letter be submitted in duplicate and provide a title and other description of the material. The duplicate copy of the petition will be returned with the license or other action on the petition.

§ 5.14 Petition for license; corresponding U.S. application.

(a) Where there is a corresponding United States application on file the petition for license must identify this application by serial number, filing date, inventor, and title, and a copy of the material upon which the license is desired is not required. The subject matter licensed will be measured by the disclosure of the United States application. Where the title is not descriptive, and the subject matter is clearly of no interest from a security standpoint, time may be saved by a short statement in the petition as to the nature of the invention.

(b) Two or more United States applications should not be referred to in the same petition for license unless they are to be combined in the foreign application, in which event the petition should so state and the identification of each United States application should be in separate paragraphs.

(c) Where the application to be filed abroad contains matter not disclosed in the United States application or applications, including the case where the combining of two or more United States applications introduces subject matter

not disclosed in any of them, a copy of the application as it is to be filed in the foreign country must be furnished with the petition. If, however, all new matter in the application to be filed is readily identifiable, the new matter may be submitted in detail and the remainder by reference to the pertinent United States application or applications.

§ 5.15 Scope of license.

(a) A license to file an application in a foreign country, when granted, includes authority to forward all duplicate and formal papers to the foreign country and to make amendments and take any action in the prosecution of the application, provided subject matter additional to that covered by the license is not involved. In those cases in which no license is required to file the foreign application, no license is required to file papers in connection with the prosecution of the foreign application not involving disclosure of additional subject matter. Any paper filed abroad following the filing of a foreign application, which involves the disclosure of additional subject matter must be separately licensed in the same manner as an application.

(b) Licenses separately granted in connection with two or more United States applications may be exercised by combining or dividing the disclosures, as desired, provided additional subject matter is not introduced.

(c) A license does not apply to acts done before the license was granted unless the petition specifically requests and describes the particular acts and the license is worded to apply to such acts.

§ 5.16 Effect of secrecy order.

Any license obtained under 35 U. S. C. 124 is ineffective if the subject matter is under a secrecy order, and a secrecy order prohibits the exercise of or any further action under the license unless separately specifically authorized by a modification of the secrecy order in accordance with § 5.5.

§ 5.17 Who may use license.

Licenses may be used by anyone interested in the foreign filing for or on behalf of the inventor or his assigns.

§ 5.18 Arms, ammunition, and implements of war.

(a) The exportation of technical data relating to arms, ammunition, and implements of war is subject to the licensing jurisdiction of the Department of State, as set forth in its pertinent regulations (22 CFR 121.1 to 128.2). The articles designated as arms, ammunition, and implements of war are enumerated in 22 CFR 121.21, this list being known as the United States Munitions List. The exportation of technical data relating to articles on this list with any application for foreign patent is generally subject to the licensing requirements of the Secretary of State, 22 CFR 125.13.

(b) When a petition for license is received by the Commissioner, during the time in which a license from the Commissioner is required (see § 5.11a), and it is determined that the subject matter involved also falls under the ju-

isdiction of the Secretary of State, the applicant will be so notified and given whatever information may be deemed appropriate. The petition for license will be referred by the Patent Office to the Department of State for its action. Action by the Patent Office on the petition will be deferred pending the Department of State consideration.

(c) If an application for patent for subject matter on the Munitions List (22 CFR 121.21) is subject to a secrecy order under § 5.2 and a petition under § 5.5 for a modification of the secrecy order to permit filing abroad is made, compliance with Department of State regulation 22 CFR 125.4 is also required.

(d) When no license from the Commissioner is required, see § 5.11 (b), relating to the exportation of such technical data with applications for foreign patents, the specific provisions of the regulations issued by the Secretary of State cited above must be complied with.

GENERAL

§ 5.21 Effect of modification rescission or license.

Any consent, rescission or license under the provisions of this part does not lessen the responsibilities of the principals in respect to any Government contract or the requirements of any other Government agency.

§ 5.22 Papers in English language.

All papers submitted in connection with petitions must be in the English language, or be accompanied by an English translation and a translator's certificate as to the true, faithful and exact character of the translation.

§ 5.23 Correspondence.

All correspondence in connection with this part, including petitions, should be addressed to "Commissioner of Patents (Attention Patent Security Division), Washington 25, D. C."

PART 6—CLASSIFICATION OF GOODS AND SERVICES UNDER THE TRADE-MARK ACT

Sec.

- 6.1 Schedule of classes of goods and services.
- 6.2 Schedule for certification marks.
- 6.3 Schedule for collective membership marks.

AUTHORITY: §§ 6.1 to 6.3 issued under sec. 41, 60 Stat. 440; 15 U. S. C. 1123. Interpret or apply sec. 30, 60 Stat. 436; 15 U. S. C. 1112.

§ 6.1 Schedule of classes of goods and services.

Class	Title
1	Raw or partly prepared materials.
2	Receptacles.
3	Baggage, animal equipments, portfolios, and pocket books.
4	Abrasives and polishing materials.
5	Adhesives.
6	Chemicals and chemical compositions.
7	Cordage.
8	Smokers' articles, not including tobacco products.
9	Explosives, firearms, equipments, and projectiles.
10	Fertilizers.
11	Inks and inking materials.
12	Construction materials.

Goods—Continued

Class	Title
13	Hardware and plumbing and steam-fitting supplies.
14	Metals and metal castings and forgings.
15	Oils and greases.
16	Protective and decorative coatings.
17	Tobacco products.
18	Medicines and pharmaceutical preparations.
19	Vehicles.
20	Linoleum and oiled cloth.
21	Electrical apparatus, machines, and supplies.
22	Games, toys, and sporting goods.
23	Cutlery, machinery, and tools, and parts thereof.
24	Laundry appliances and machines.
25	Locks and safes.
26	Measuring and scientific appliances.
27	Horological instruments.
28	Jewelry and precious-metal ware.
29	Brooms, brushes, and dusters.
30	Crockery, earthenware, and porcelain.
31	Filters and refrigerators.
32	Furniture and upholstery.
33	Glassware.
34	Heating, lighting, and ventilating apparatus.
35	Belting, hose, machinery packing, and nonmetallic tires.
36	Musical instruments and supplies.
37	Paper and stationery.
38	Prints and publications.
39	Clothing.
40	Fancy goods, furnishings, and notions.
41	Canes, parasols, and umbrellas.
42	Knitted, netted, and textile fabrics, and substitutes therefor.
43	Thread and yarn.
44	Dental, medical, and surgical appliances.
45	Soft drinks and carbonated waters.
46	Foods and ingredients of foods.
47	Wines.
48	Malt beverages and liquors.
49	Distilled alcoholic liquors.
50	Merchandise not otherwise classified.
51	Cosmetics and toilet preparations.
52	Detergents and soaps.

SERVICES

- 100 Miscellaneous.
- 101 Advertising and business.
- 102 Insurance and financial.
- 103 Construction and repair.
- 104 Communication.
- 105 Transportation and storage.
- 106 Material treatment.
- 107 Education and entertainment.

§ 6.2 Schedule for certification marks.

In the case of certification marks, all goods and services are classified in two classes as follows:

- A. Goods.
- B. Services.

§ 6.3 Schedule for collective membership marks.

All collective membership marks are classified as follows:

- | Class and Title |
|----------------------------|
| 200 Collective Membership. |

PART 7—REGISTER OF GOVERNMENT INTERESTS IN PATENTS

Sec.

- 7.1 Requirements.
- 7.2 Assignments.
- 7.3 Licenses.
- 7.4 Abbreviated copy.
- 7.5 Instruments already on record.
- 7.6 Access to register.
- 7.7 Secret register.

AUTHORITY: §§ 7.1 to 7.7 issued under E. O. 9424, Feb. 18, 1944, 9 F.R. 1959; 3 CFR 1943-1948 Comp.

§ 7.1 Requirements.

Executive Order 9424 (3 CFR 1943-1948 Comp.) requires the several departments and other executive agencies of the Government, including Government-owned or Government-controlled corporations, to forward promptly to the Commissioner of Patents for recording all licenses, assignments, or other interests of the Government in or under patents or applications for patents.

§ 7.2 Assignments.

The original of an assignment or other instrument which conveys to the Government only the title to a patent or to an application for patent shall be forwarded to the Commissioner of Patents. The instrument will be recorded, endorsed, and returned.

§ 7.3 Licenses.

A copy of any license or instrument other than an assignment which conveys to or gives the Government any interest in or under a patent or an application for patent shall be forwarded for recording. The copy will be retained by the Patent Office but, when desired, the original will be endorsed and returned.

§ 7.4 Abbreviated copy.

If an instrument deals with matters in addition to rights and interests in patents or in applications for patents, or in inventions disclosed therein, a copy of only those portions of the instrument dealing with such rights and interests need be forwarded. In such case, a statement giving the general nature of the entire instrument, the parties involved, the date of the instrument, the place where it is usually filed, and any docket or identifying number, must be attached to the copy.

§ 7.5 Instruments already on record.

Instruments which have been recorded prior to the adoption of §§ 7.1 to 7.7 and are on the general assignment records of the Patent Office need not be forwarded again for recording.

§ 7.6 Access to register.

The register will not be open to public inspection. It will be available for examination and inspection by duly authorized representatives of the Government, subject to the provisions of § 7.7. Public examination will be restricted to those instruments which the department or agency of origin has so authorized in writing.

§ 7.7 Secret register.

Any instrument to be recorded will be placed on a secret record or register at the request of the department or agency submitting the same. No information will be given concerning any instrument in such record or register, and no examination or inspection thereof or of the index thereto will be permitted, except on the written authority of the head of the department or agency which submitted the instrument and requested secrecy, and the approval of such authority by

the Commissioner of Patents. No instrument or record other than the one specified may be examined, and the examination must take place in the presence of a designated official of the Patent Office. When the department or agency which submitted an instrument no longer requires secrecy with respect to that instrument, it will be recorded or registered anew in the appropriate part of the register which is not secret.

ROBERT C. WATSON,
Commissioner of Patents.

[F.R. Doc. 59-10874; Filed, Dec. 21, 1959;
8:49 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 2031]

[Juneau 011092]

ALASKA

Partially Revoking Public Land Order No. 567 of February 25, 1949

By virtue of the authority vested in the President, and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. Public Land Order No. 567 of February 25, 1949, which reserved public lands in Alaska for use of the Forest Service, Department of Agriculture, as an addition to the Juneau Administrative Site, is hereby revoked so far as it affects the following-described lands:

Beginning at Corner No. 3, U.S. Survey 2306, thence

S. 51°07' W., 4.39 chains

N. 40°50' W., 3.16 chains

N. 51°07' E., 7.04 chains

South, 4.05 chains to point of beginning.

The tract described contains 1.80 acres.
2. The lands are located on the eastern shore of Gastineau Channel, approximately two miles northwest of Juneau.

3. Subject to any valid existing rights, and the requirements of applicable law, the lands are hereby opened to filing of applications, selections, and locations in accordance with the following:

a. Until 10:00 a.m. on March 16, 1960, the State of Alaska shall have a preferred right of application to select the lands in accordance with and subject to the provisions of the act of July 28, 1956 (70 Stat. 709; 48 U.S.C. 46-3b), and sections 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, Public Law 85-508).

b. All valid applications under the nonmineral public land laws other than any coming under subparagraph a above, presented at or before 10:00 a.m. on January 20, 1960, will be considered as simultaneously filed at that hour. Any rights under such applications filed thereafter will be governed by the time of filing.

c. Applications under subparagraphs a and b above, shall be subject to those

from persons having prior existing valid settlement rights, preference rights conferred by existing law, and equitable claims subject to allowance and confirmation.

4. The lands have been occupied by Gudmond O. Winther, who has constructed valuable improvements thereon, and who claims an equitable right or interest in the lands and the improvements.

Inquiries concerning the lands should be addressed to the Manager, Land Office, Bureau of Land Management, Juneau, Alaska.

ROGER ERNST,
Assistant Secretary of the Interior.

DECEMBER 15, 1959.

[F.R. Doc. 59-10796; Filed, Dec. 21, 1959;
8:46 a.m.]

Title 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 2—DOMESTIC MAIL SERVICE

PART 13—ADDRESSES

PART 15—MATTERS MAILABLE UNDER SPECIAL RULES

PART 18—POSTAL DELIVERY ZONE SYSTEM

PART 22—SECOND CLASS

PART 24—THIRD CLASS

PART 27—FEDERAL GOVERNMENT MAIL AND FREE MAIL

PART 31—STAMPS, ENVELOPES, AND POSTAL CARDS

PART 32—PRECANCELED STAMPS

PART 33—METERED STAMPS

PART 34—PERMIT IMPRINTS

PART 41—SERVICE IN POST OFFICES

PART 43—MAIL DEPOSIT AND COLLECTION

PART 44—CONDITIONS OF DELIVERY

PART 46—RURAL SERVICE

PART 51—REGISTRY

PART 54—PAYMENT FOR LOSSES

PART 55—CERTIFICATES OF MAIL

PART 58—CERTIFIED MAIL

PART 61—MONEY ORDERS

PART 63—POSTAL SAVINGS

Miscellaneous Amendments

Regulations of the Post Office Department are amended as follows:

§ 2.1 [Amendment]

I. Section 2.1 *Domestic mail service*, as amended by Federal Register Document 59-5314, 24 F.R. 5302, is further amended by striking out "Hawaii" where it appears in the list of territories and possessions therein.