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101 General

Extract from Rule 14 Application preserved in secrecy. (a) Pending 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 these rules.

[Old Rule 15]

Examiners, while holding interviews with attorneys and applicants, should be careful to prevent exposures of files and drawings of other applicants. (Notice of June 12, 1918, Revised.)

102 Information as to Status of an Application

The office will give information to any member of the public as to the present status of an application in the matter of its being patented or abandoned where that application is:

(A) a prior application of which a patented application was a continuation or division.

(B) an application referred to in a U. S. patent.

Such information can be had on written request to the Commissioner of Patents.

103 Right of Public to Inspect Patent Files and Some Application Files

Rule 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.

[Old Rule 16]

Upon publication of an abstract, the entire application becomes available to the public for inspection and obtaining copies. See 619 O. G. 258.

As a continuation, continuation-in-part or a division patent relies on the filing date of an earlier filed application, the public is entitled to see that portion of the earlier filed application relied upon even though the earlier filed application is still pending. Also the public is entitled to see what prosecution, if any, of the subject matter of the patent claim of a continuation, continuation-in-part, or division patent was had in the parent case. In such situations where the parent application is still pending, the usual procedure is for the interested party to file a petition in duplicate to the Commissioner for access to the parent application. The duplicate copy is sent by the law examiner to the owner of the parent application, who is given a limited period, as ten days, within which to state any objection he may have to the granting of the petition. If no objection is raised, the petition is approved by the law examiner; otherwise a decision is rendered by the Commissioner. If the applicant does not object the petitioner is permitted to see the entire parent application. If the applicant does object to the petitioner seeing the entire application the petitioner is given a certified copy of only that portion of the parent application that relates to the common subject matter.

Extract from Rule 14. (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.

104 Power to Inspect Application

No person except the applicant, the assignee, whose assignment is of record, or the attorney of record will be permitted to have access to the file of any application, except as provided for under

the interference rules, unless written authority from the applicant, assignee, or attorney, identifying the application to be inspected, is filed in the case to become a part of the record thereof, or upon the written order of the Commissioner, which will also become a part of the record of the case. (Order No. 1271)

Every power to inspect must be approved in writing by the Examiner in charge of the division to which the application is assigned before permission to inspect is granted with the exception that the Attorneys' and Record Room and the Manuscript and Lithographic Branch may approve such powers. This authority of the Examiner extends also to the period between allowance and issue.

Power to inspect or to make copies presented at the Attorneys' and Record Room or to the Manuscript and Lithographic Branch must be approved in writing by the head of the Attorneys' and Record Room or the Manuscript and Lithographic Branch, both of whom are hereby authorized to permit inspection or supply copies to authorized persons. (Extract from Commissioner's Administrative Order No. 10, Dec. 16, 1946)

Powers to inspect allowed applications may be approved by the Head of the Issue and Gazette Branch.

If the application is under a "Secrecy Order" (see 107), a power to inspect said application must be submitted to Div. 70. (Extract from Notice of August 22, 1949.)

Div. 70 does not pass upon the authority of the attorney.

Where an applicant relied upon his application as a means to interfere with a competitor's business or customers, permission to inspect the application may be given the competitor by the Commissioner. (Ex Parte Bonnie-B Co. Inc., 1923 C. D. 42; 313 O. G. 453.)

An unrestricted power to inspect given by an applicant is, under existing practice, recognized as good until and unless rescinded. The same is true in the case of one given by the attorney or assignee so long as such attorney or assignee retains his connection with the application.

Permission to inspect given by the Commissioner, however, is not of a continuing nature, since the conditions that justified the permit to inspect when given may not obtain at a later date.

Orders for copies of "Secrecy Order" applications should be approved and endorsed in Div. 70 before copies are supplied. (Extract from Notice of August 22, 1949.)

105 Disbarred Attorney Cannot Inspect

Patent Office employees are forbidden to hold either oral or written communication with a disbarred attorney regarding an application

unless it be one in which said attorney is the applicant. Power to inspect given a disbarred attorney will not be accepted by the Examiner.

106 Control of Inspection by Assignee

The assignee of the entire interest in an application may intervene in the prosecution of the case, appointing an attorney of his own choice. (See Rule 32.) Such intervention, however, does not exclude the inventor from access to the application to see that it is being prosecuted properly, unless the assignee makes specific request to that effect. Even when such request is made, the applicant may be permitted to inspect the case on sufficient showing why such inspection is necessary to conserve his rights.

106.01 Rights of Assignee of Part Interest

While it is only the assignee of the entire interest who can intervene in the prosecution of an application or interference to the exclusion of the applicant, an assignee of a part interest or a licensee of exclusive right is entitled to inspect the application. But compare 409.

107 "Secrecy Order" Cases

Public Law 256, approved Feb. 1, 1952, 66 Stat. 3 provides, in part, that any invention in which the Government does not have a property interest, and whose publication or disclosure by the granting of a patent might, in the opinion of the Secretary of Commerce, be detrimental to the national security, shall be made available to the defense agencies. Upon notification by the defense agencies, the Secretary of Commerce is directed to order that such inventions be kept secret and to withhold the grant of a patent for such period as the national interest requires. Where the Government has a property interest, the interested Government agency determines whether to notify the Secretary of Commerce to keep the invention secret.

Under Public Law 256, a license is required to file applications in foreign countries if such filing takes place within six months after filing in the United States. The powers and duties conferred on the Secretary of Commerce by this act are delegated to the Commissioner of Patents (656 O. G. 8).

107.01 "Review" of Applications for Secrecy Order

Under Public Law 256, the obligation is directly on the Patent Office to appreciate the possible interest of the defense agencies in pending applications and to take steps to make them available to such agencies. In order for desired controls to be effective against foreign

filing; these steps must be taken at the time the application is received in the examining division as a new application. See Executive Examiner's Notice of Feb. 5, 1942.

It is the responsibility of the Primary Examiner to see that all applications are screened for this purpose and that the applications selected for "review" are promptly forwarded to Division 70.

The defense agencies also make known to the Patent Office specified technical fields or categories in which they have a particular interest. These are transmitted by Division 70 to the divisions directly concerned. The Primary Examiners are responsible for submitting all applications within these fields or categories to Division 70 for review. When an application has been so "reviewed" the Primary Examiner is relieved of responsibility in the event any protest based on security breach follows from the issuance of a patent.

Applications in which the Government has an interest need not be reviewed under Public Law 256 in the Patent Office. Unusual situations should be brought to the attention of Division 70. (For treatment of security markings see Sec. 109.)

Applications in the process of being reviewed by Division 70 may be borrowed by the examiner when reached for action. If applications are submitted for review as soon after filing as possible, they will ordinarily be returned in time for examination purposes. Where an application holding the division date, in which review has not been completed, is found to be allowable, the situation should be called to the attention of Division 70. When the security status of the application cannot be promptly decided, Division 70 will report the progress that has been made to the Supervisory Examiner. Any action to be taken in the case, for the purpose of advancing said division date, must be arranged through the Supervisory Examiner.

107.02 Prosecution of "Secrecy Order" Cases

"Secrecy Order" Cases are examined as in other cases, but may not be passed for issue; nor does an interference involving one or more secret cases proceed beyond the approval of

the preliminary statements.

In case of a final rejection, while such action must be properly responded to within the six months' period, an appeal, if filed, will not be set for hearing by the Board of Appeals; for if the appeal were heard and adversely passed on, appellant in order to preserve his rights would have to go into open court with his case.

In the case of an Interference involving a "Secrecy Order" Case, see 1111.04.

When a "Secrecy Order" Case is in condition for allowance a notice of allowability [Form D-10] is issued, thus closing the prosecution. Any amendments received thereafter are treated as are amendments filed after final rejection in an ordinary case; i. e., they may be entered if found free from objection; otherwise they are denied admission. The applicant will not ordinarily be advised of their nonentry, and the reasons therefor until the application is released from the "Secrecy Order."

108 Applications Relating to Atomic Energy

Applications relating to atomic energy as recited in Rule 14 (c) must be promptly submitted to Division 70.

109 Security Markings

Under Executive Order 10,290; 16 Federal Register Number 188, page 9795, standards are prescribed for the marking, handling, and care of official information which requires safeguarding in the interest of security.

Papers marked as prescribed in the Executive order, and showing that such marking is applied by, or at the direction of, a Government Agency, are accepted in patent applications. All applications or papers in the Patent Office bearing words such as "Secret," "Confidential," or "Restricted" must be promptly referred to Division 70 for clarification or security treatment. Under no circumstances can any such application, drawing, exhibit, or other paper be placed in public records, such as the Patented Files, until all security markings have been considered and declassified or otherwise explained.