export classified information is not required (22 CFR part 125).

[62 FR 53205, Oct. 10, 1997]

§ 5.19 Export of technical data.

(a) Under regulations (15 CFR 770.10(j)) established by the Department of Commerce, a license is not required in any case to file a patent application or part thereof in a foreign country if the foreign filing is in accordance with the regulations (§§ 5.11 through 5.25) of the Patent and Trademark Office.

(b) An export license is not required for data contained in a patent application prepared wholly from foreign-origin technical data where such application is being sent to the foreign inventor to be executed and returned to the United States for subsequent filing in the U.S. Patent and Trademark Office (15 CFR 779A.3(e)).

[62 FR 53205, Oct. 10, 1997]

§ 5.20 Export of technical data relating to sensitive nuclear technology.

Under regulations (10 CFR 810.7) established by the United States Department of Energy, an application filed in accordance with the regulations (§§ 5.11 through 5.25) of the Patent and Trademark Office and eligible for foreign filing under 35 U.S.C. 184, is considered to be information available to the public in published form and a generally authorized activity for the purposes of the Department of Energy regulations.

[62 FR 53205, Oct. 10, 1997]

§ 5.25 Petition for retroactive license.

(a) A petition for a retroactive license under 35 U.S.C. 184 shall be presented in accordance with § 5.13 or § 5.14(a), and shall include:

(1) A listing of each of the foreign countries in which the unlicensed patent application material was filed,

(2) The dates on which the material was filed in each country,

(3) A verified statement (oath or declaration) containing:

(i) An averment that the subject matter in question was not under a secrecy order at the time it was filed aboard, and that it is not currently under a secrecy order,

(ii) A showing that the license has been diligently sought after discovery of the proscribed foreign filing, and

(iii) An explanation of why the material was filed abroad through error and without deceptive intent without the required license under § 5.11 first having been obtained, and

(4) The required fee (§ 1.17(h)).

The above explanation must include a showing of facts rather than a mere allegation of action through error and without deceptive intent. The showing of facts as to the nature of the error should include statements by those persons having personal knowledge of the acts regarding filing in a foreign country and should be accompanied by copies of any necessary supporting documents such as letters of transmittal or instructions for filing. The acts which are alleged to constitute error without deceptive intent should cover the period leading up to and including each of the proscribed foreign filings.

(b) If a petition for a retroactive license is denied, a time period of not less than thirty days shall be set, during which the petition may be renewed. Failure to renew the petition within the set time period will result in a final denial of the petition. A final denial of a petition stands unless a petition is filed under § 1.181 within two months of the date of the denial. If the petition for a retroactive license is denied with respect to the invention of a pending application and no petition under § 1.181 has been filed, a final rejection of the application under 35 U.S.C. 185 will be made.

[49 FR 13463, Apr. 4, 1984, as amended at 56 FR 1929, Jan. 18, 1991; 62 FR 53206, Oct. 10, 1997]

GENERAL

§§ 5.31–5.33 [Reserved]

PART 6—CLASSIFICATION OF GOODS AND SERVICES UNDER THE TRADEMARK ACT

EDITORIAL NOTE: Part 6 is placed in the separate grouping of parts pertaining to trademarks regulations. It appears on page 321 of this volume.

PART 7 [RESERVED]