

(c) A published application as used in this chapter means an application for patent which has been published under 35 U.S.C. 122(b).

(d)–(f) [Reserved]

(g) For definitions in interferences see § 1.601.

(h) A *Federal holiday within the District of Columbia* as used in this chapter means any day, except Saturdays and Sundays, when the Patent and Trademark Office is officially closed for business for the entire day.

(i) National security classified as used in this chapter means specifically authorized under criteria established by an Act of Congress or Executive Order to be kept secret in the interest of national defense or foreign policy and, in fact, properly classified pursuant to such Act of Congress or Executive Order.

(Pub. L. 94–131, 89 Stat. 685; 35 U.S.C. 6, Pub. L. 97–247; 15 U.S.C. 1113, 1123)

[43 FR 20461, May 11, 1978, as amended at 47 FR 40139, Sept. 10, 1982; 47 FR 43275, Sept. 30, 1982; 49 FR 48451, Dec. 12, 1984; 60 FR 20220, Apr. 25, 1995; 61 FR 56447, Nov. 1, 1996; 62 FR 53181, Oct. 10, 1997; 65 FR 54657, Sept. 8, 2000; 65 FR 57051, Sept. 20, 2000]

§ 1.10 Filing of correspondence by “Express Mail.”

(a)(1) Any correspondence received by the U.S. Patent and Trademark Office (USPTO) that was delivered by the “Express Mail Post Office to Addressee” service of the United States Postal Service (USPS) will be considered filed with the USPTO on the date of deposit with the USPS, except for documents described in the following paragraphs (a)(1)(i) and (ii) of this section:

(i) Trademark applications filed under section 1 or 44 of the Trademark Act, 15 U.S.C. 1051 and 1126.

(ii) Other documents for which a Trademark Electronic Application System (TEAS) form exists:

(A) Amendment to allege use under section 1(c) of the Trademark Act, 15 U.S.C. 1051(c);

(B) Statement of use under section 1(d) of the Trademark Act, 15 U.S.C. 1051(d);

(C) Request for extension of time to file a statement of use under section

1(d) of the Trademark Act, 15 U.S.C. 1051(d);

(D) Affidavit of continued use under section 8 of the Trademark Act, 15 U.S.C. 1058;

(E) Renewal request under section 9 of the Trademark Act, 15 U.S.C. 1059; and

(F) Requests to change or correct addresses.

(2) The date of deposit with USPS is shown by the “date in” on the “Express Mail” label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the USPTO receipt date as the filing date. See § 1.6(a).

(b) Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the “Express Mail” mailing label with the “date-in” clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an “Express Mail” drop box) do so at the risk of not receiving a copy of the “Express Mail” mailing label with the desired “date-in” clearly marked. The paper(s) or fee(s) that constitute the correspondence should also include the “Express Mail” mailing label number thereon. See paragraphs (c), (d) and (e) of this section.

(c) Any person filing correspondence under this section that was received by the Office and delivered by the “Express Mail Post Office to Addressee” service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the “date-in” on the “Express Mail” mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the “date-in” on the “Express Mail” mailing label or other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the “Express Mail” mailing label was placed on the

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paper(s) or fee(s) that constitute the correspondence prior to the original mailing by “Express Mail;” and

(3) The petition includes a true copy of the “Express Mail” mailing label showing the “date-in,” and of any other official notation by the USPS relied upon to show the date of deposit.

(d) Any person filing correspondence under this section that was received by the Office and delivered by the “Express Mail Post Office to Addressee” service of the USPS, who can show that the “date-in” on the “Express Mail” mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the “Express Mail” mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by “Express Mail”; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the “Express Mail Post Office to Addressee” service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the “Express Mail Post Office to Addressee” service of the USPS.

(e) Any person mailing correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the “Express Mail Post Office to Addressee” service of the USPS but not received by the Office, may petition the Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided that:

(1) The petition is filed promptly after the person becomes aware that

the Office has no evidence of receipt of the correspondence;

(2) The number of the “Express Mail” mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by “Express Mail”;

(3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the “Express Mail” mailing label thereon, a copy of any returned postcard receipt, a copy of the “Express Mail” mailing label showing the “date-in,” a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the “date-in” on the “Express Mail” mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the “Express Mail Post Office to Addressee” service prior to the last scheduled pickup for that day; and

(4) The petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the copy of the “Express Mail” mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original “Express Mail” mailing label, returned postcard receipt, and official notation entered by the USPS.

(f) The Office may require additional evidence to determine if the correspondence was deposited as “Express Mail” with the USPS on the date in question.

[61 FR 56447, Nov. 1, 1996 as amended at 62 FR 53181, Oct. 10, 1997; 67 FR 36101, May 23, 2002]

RECORDS AND FILES OF THE PATENT AND TRADEMARK OFFICE

§ 1.11 Files open to the public.

(a) The specification, drawings, and all papers relating to the file of an