

§ 1.34

37 CFR Ch. I (7-1-02 Edition)

address has not been specified, correspondence will be held with the last attorney or agent made of record.

(d) A “correspondence address” or change thereto may be filed with the Patent and Trademark Office during the enforceable life of the patent. The “correspondence address” will be used in any correspondence relating to maintenance fees unless a separate “fee address” has been specified. See § 1.363 for “fee address” used solely for maintenance fee purposes.

[36 FR 12617, July 2, 1971, as amended at 46 FR 29181, May 29, 1981; 49 FR 34724, Aug. 31, 1984; 50 FR 5171, Feb. 6, 1985; 62 FR 53184, Oct. 10, 1997; 65 FR 54661, Sept. 8, 2000]

§ 1.34 Recognition for representation.

(a) When a registered attorney or agent acting in a representative capacity, pursuant to § 1.31, appears in person or signs a paper in practice before the United States Patent and Trademark Office in a patent case, his or her personal appearance or signature shall constitute a representation to the United States Patent and Trademark Office that under the provisions of this subchapter and the law, he or she is authorized to represent the particular party in whose behalf he or she acts. In filing such a paper, the registered attorney or agent should specify his or her registration number with his or her signature. Further proof of authority to act in a representative capacity may be required.

(b) When a registered attorney or agent shall have filed his or her power of attorney, or authorization, duly executed by the person or persons entitled to prosecute an application or a patent involved in a reexamination proceeding, pursuant to § 1.31, he or she is a principal registered attorney or agent of record in the case. A principal registered attorney or agent, so appointed, may appoint an associate registered attorney or agent who shall also then be of record.

[65 FR 54662, Sept. 8, 2000]

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

A power of attorney or authorization of agent, pursuant to § 1.31, may be revoked at any stage in the proceedings

of a case, and a registered attorney or agent may withdraw, upon application to and approval by the Commissioner. A registered attorney or agent, except an associate registered attorney or agent whose address is the same as that of the principal registered attorney or agent, will be notified of the revocation of the power of attorney or authorization, and the applicant or patent owner will be notified of the withdrawal of the registered 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 a registered attorney or agent of the assignee’s own selection. See § 1.613(d) for withdrawal in an interference.

[65 FR 54662, Sept. 8, 2000]

WHO MAY APPLY FOR A PATENT

§ 1.41 Applicant for patent.

(a) A patent is applied for in the name or names of the actual inventor or inventors.

(1) The inventorship of a nonprovisional application is that inventorship set forth in the oath or declaration as prescribed by § 1.63, except as provided for in §§ 1.53(d)(4) and 1.63(d). If an oath or declaration as prescribed by § 1.63 is not filed during the pendency of a nonprovisional application, the inventorship is that inventorship set forth in the application papers filed pursuant to § 1.53(b), unless applicant files a paper, including the processing fee set forth in § 1.17(i), supplying or changing the name or names of the inventor or inventors.

(2) The inventorship of a provisional application is that inventorship set forth in the cover sheet as prescribed by § 1.51(c)(1). If a cover sheet as prescribed by § 1.51(c)(1) is not filed during the pendency of a provisional application, the inventorship is that inventorship set forth in the application papers filed pursuant to § 1.53(c), unless applicant files a paper including the processing fee set forth in § 1.17(q), supplying or changing the name or names of the inventor or inventors.

(3) In a nonprovisional application filed without an oath or declaration as

prescribed by §1.63 or a provisional application filed without a cover sheet as prescribed by §1.51(c)(1), the name, residence, and citizenship of each person believed to be an actual inventor should be provided when the application papers pursuant to §1.53(b) or §1.53(c) are filed.

(4) The inventorship of an international application entering the national stage under 35 U.S.C. 371 is that inventorship set forth in the international application, which includes any change effected under PCT Rule 92*bis*. See §1.497(d) and (f) for filing an oath or declaration naming an inventive entity different from the inventive entity named in the international application, or if a change to the inventive entity has been effected under PCT Rule 92*bis* subsequent to the execution of any declaration filed under PCT Rule 4.17(iv) (§1.48(f)(1) does not apply to an international application entering the national stage under 35 U.S.C. 371).

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

(c) Any person authorized by the applicant may physically or electronically deliver an application for patent to the Office on behalf of the inventor or inventors, but an oath or declaration for the application (§1.63) can only be made in accordance with §1.64.

(d) A showing may be required from the person filing the application that the filing was authorized where such authorization comes into question.

(35 U.S.C. 6, Pub. L. 97-247)

[48 FR 2708, Jan. 20, 1983; 48 FR 4285, Jan. 31, 1983, as amended at 62 FR 53184, Oct. 10, 1997; 65 FR 54662, Sept. 8, 2000; 67 FR 523, Jan. 4, 2002]

§ 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 make the necessary oath or declaration, and apply for and ob-

tain the patent. Where the inventor dies during the time intervening between the filing of the application and the granting of a patent thereon, the letters patent may be issued to the legal representative upon proper intervention.

(35 U.S.C. 6, Pub. L. 97-247)

[48 FR 2709, Jan. 20, 1983]

§ 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 make the necessary oath or declaration, and apply for and obtain the patent.

(35 U.S.C. 6, Pub. L. 97-247)

[48 FR 2709, Jan. 20, 1983]

§ 1.44 [Reserved]

§ 1.45 Joint inventors.

(a) Joint inventors must apply for a patent jointly and each must make the required oath or declaration: 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) Inventors may apply for a patent jointly even though

(1) They did not physically work together or at the same time,

(2) Each inventor did not make the same type or amount of contribution, or

(3) Each inventor did not make a contribution to the subject matter of every claim of the application.

(c) If multiple inventors are named in a nonprovisional application, each named inventor must have made a contribution, individually or jointly, to the subject matter of at least one claim of the application and the application will be considered to be a joint application under 35 U.S.C. 116. If multiple inventors are named in a provisional application, each named inventor must have made a contribution, individually or jointly, to the subject