as a disclaimer by the applicant of the invention defined by the suggested claim. At the time the suggested claim is presented, the applicant may also call the examiner's attention to other claims already in the application or presented with the suggested claim and explain why the other claims would be more appropriate to be designated to correspond to a count in any interference which may be declared.

(b) The suggestion of a claim by the examiner for the purpose of an interference will not stay the period for response to any outstanding Office action. When a suggested claim is timely presented, *ex parte* proceedings in the application will be stayed pending a determination of whether an interference will be declared.

[49 FR 48455, Dec. 12, 1984, as amended at 60 FR 14519, Mar. 17, 1995]

§ 1.606 Interference between an application and a patent; subject matter of the interference.

Before an interference is declared between an application and an unexpired patent, an examiner must determine that there is interfering subject matter claimed in the application and the patent which is patentable to the applicant subject to a judgment in the interference. The interfering subject matter will be defined by one or more counts. The application must contain, or be amended to contain, at least one claim that is patentable over the prior art and corresponds to each count. The claim in the application need not be, and most often will not be, identical to a claim in the patent. All claims in the application and patent which define the same patentable invention as a count shall be designated to correspond to the count.

[65 FR 70490, Nov. 24, 2000]

§ 1.607 Request by applicant for interference with patent.

(a) An applicant may seek to have an interference declared between an application and an unexpired patent by,

(1) Identifying the patent,

(2) Presenting a proposed count,

(3) Identifying at least one claim in the patent corresponding to the proposed count,

(4) Presenting at least one claim corresponding to the proposed count or identifying at least one claim already pending in its application that corresponds to the proposed count, and, if any claim of the patent or application identified as corresponding to the proposed count does not correspond exactly to the proposed count, explaining why each such claim corresponds to the proposed count, and

(5) Applying the terms of any application claim,

(i) Identified as corresponding to the count, and

(ii) Not previously in the application to the disclosure of the application.

(6) Explaining how the requirements of 35 U.S.C. 135(b) are met, if the claim presented or identified under paragraph (a)(4) of this section was not present in the application until more than one year after the issue date of the patent.

(b) When an applicant seeks an interference with a patent, examination of the application, including any appeal to the Board, shall be conducted with special dispatch within the Patent and Trademark Office. The examiner shall determine whether there is interfering subject matter claimed in the application and the patent which is patentable to the applicant subject to a judgment in an interference. If the examiner determines that there is any interfering subject matter, an interference will be declared. If the examiner determines that there is no interfering subject matter, the examiner shall state the reasons why an interference is not being declared and otherwise act on the application.

(c) When an applicant presents a claim which corresponds exactly or substantially to a claim of a patent, the applicant shall identify the patent and the number of the patent claim, unless the claim is presented in response to a suggestion by the examiner. The examiner shall notify the Commissioner of any instance where an applicant fails to identify the patent.

(d) A notice that an applicant is seeking to provoke an interference with a patent will be placed in the file of the patent and a copy of the notice

will be sent to the patentee. The identity of the applicant will not be disclosed unless an interference is declared. If a final decision is made not to declare an interference, a notice to that effect will be placed in the patent file and will be sent to the patentee.

[24 FR 10332, Dec. 22, 1959, as amended at 53 FR 23735, June 23, 1988; 58 FR 54511, Oct. 22, 1993; 60 FR 14520, Mar. 17, 1995]

§ 1.608 Interference between an application and a patent; prima facie showing by applicant.

(a) When the effective filing date of an application is three months or less after the effective filing date of a patent, before an interference will be declared, either the applicant or the applicant's attorney or agent of record shall file a statement alleging that there is a basis upon which the applicant is entitled to a judgment relative to the patentee.

(b) When the effective filing date of an application is more than three months after the effective filing date of a patent, the applicant, before an interference will be declared, shall file evidence which may consist of patents or printed publications, other documents, and one or more affidavits which demonstrate that applicant is *prima facie* entitled to a judgment relative to the patentee and an explanation stating with particularity the basis upon which the applicant is *prima facie* entitled to the judgment. Where the basis upon which an applicant is entitled to judgment relative to a patentee is priority of invention, the evidence shall include affidavits by the applicant, if possible, and one or more corroborating witnesses, supported by documentary evidence, if available, each setting out a factual description of acts and circumstances performed or observed by the affiant, which collectively would *prima facie* entitle the applicant to judgment on priority with respect to the effective filing date of the patent. To facilitate preparation of a record (§ 1.653(g)) for final hearing, an applicant should file affidavits on paper which is 21.8 by 27.9 cm. (8½ x 11 inches). The significance of any printed publication or other document which is self-authenticating within the meaning of Rule 902 of the Federal Rules of Evidence or § 1.671(d) and any patent shall be discussed in an affidavit or the explanation. Any printed publication or other document which is not self-authenticating shall be authenticated and discussed with particularity in an affidavit. Upon a showing of good cause, an affidavit may be based on information and belief. If an examiner finds an application to be in condition for declaration of an interference, the examiner will consider the evidence and explanation only to the extent of determining whether a basis upon which the application would be entitled to a judgment relative to the patentee is alleged and, if a basis is alleged, an interference may be declared.

[60 FR 14520, Mar. 17, 1995]

§ 1.609 [Reserved]

§ 1.610 Assignment of interference to administrative patent judge, time period for completing interference.

(a) Each interference will be declared by an administrative patent judge who may enter all interlocutory orders in the interference, except that only the Board shall hear oral argument at final hearing, enter a decision under § 1.617, 1.640(e), 1.652, 1.656(i) or 1.658, or enter any other order which terminates the interference.

(b) As necessary, another administrative patent judge may act in place of the one who declared the interference. At the discretion of the administrative patent judge assigned to the interference, a panel consisting of two or more members of the Board may enter interlocutory orders.

(c) Unless otherwise provided in this subpart, times for taking action by a party in the interference will be set on a case-by-case basis by the administrative patent judge assigned to the interference. Times for taking action shall be set and the administrative patent judge shall exercise control over the interference such that the pendency of the interference before the Board does not normally exceed two years.

(d) An administrative patent judge may hold a conference with the parties to consider simplification of any issues, the necessity or desirability of amendments to counts, the possibility of obtaining admissions of fact and