

MANUAL OF
PATENT
EXAMINING
PROCEDURE

ORIGINAL EDITION



U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

REEL NUMBER 2

BOOK NUMBERS 17

U. S. DEPARTMENT OF COMMERCE
Patent Office
Washington, D. C. 20231

MANUAL OF PATENT EXAMINING PROCEDURE
Third Edition

Instructions Regarding Revision No. 15

The attached revised pages are replacements for those in the Manual having corresponding numbers, or additional pages to be placed in appropriate numerical sequence.

Change Notices 12-8 and those subsequent to 15-3 are the only ones which should be retained.

All MPEP holders, whether employees of the Patent Office or members of the general public, are referred to the back of the MPEP title page for information on how to obtain manuals, replacement pages, notices and revisions.

F. Barry Shay
Acting Editor, MPEP

Particular attention is called to the following:

- | | |
|-----------|--|
| 103 | New Rule 15 added. |
| 202.02 | Change 15-3 ("Patent Headings") added in full. The other sections involved were not changed, since all of them refer the reader to 202.02. |
| 408 | First paragraph rewritten to reflect current practice on initiation of telephone interviews by the Examiner. |
| 608.01(j) | Amended Rule 126 inserted. |
| 707.05(a) | Change 15-2 ("Reference Citations in Continuation Applications") added in full. |
| 714.02 | Amended Rule 119 inserted. |
| 714.12 | Last few sentences canceled as unnecessary. |
| 714.22 | Amended Rule 121 inserted. |
| 1208.01 | First part amended to state that addition of a new rejection, objection or reference to the Examiner's Answer on Appeal must be first approved by the Group Manager. Last paragraph canceled as not reflecting current practice. |
| 1212 | First portion amended to reflect current practice on treatment by the Examiner of affidavits filed after final and/or after appeal. |

(over)

pp. 79 and 80

These replace the old pages bearing numbers 80.1 and 80.2. The new page 80.1 is an added page.

pp. 214 and 214.1

These replace the old pages bearing numbers 213.1 and 214.

LIST TO DETERMINE WHETHER REVISION 15 PAGES ARE COMPLETE

(Note: The complete checklist, on pages VI-VIII of MPEP, is only revised annually. Those who wish to keep their checklist current should retain this sheet, or use it to bring the complete checklist up-to-date).

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*added page

**214 replaces old 213.1

214.1 " " 214

(3-01 change) rewritten notices - (w) 707.007
Section rewritten (change 16-6) - (s) 707.007
Section rewritten - now includes matter
from 707.007(c)

U. S. DEPARTMENT OF COMMERCE
Patent Office
Washington, D. C. 20231

MANUAL OF PATENT EXAMINING PROCEDURE
Third Edition

Instructions Regarding Revision No. 16

The attached revised pages are replacements for those in the Manual having corresponding numbers, or additional pages to be placed in appropriate numerical sequence.

Change Notices 12-8 and those subsequent to 16-6 are the only ones which need be retained.

All MPEP holders, whether employees of the Patent Office or members of the general public, are referred to the back of the MPEP title page for information on how to obtain manuals, replacement pages, notices and revisions.

F. Barry Shay *Barry Shay*
Acting Editor, MPEP

In the attached pages the notation "(R-16)" appears either at the title or at the end of sections that have been in any way altered. (Except the instances where neither the beginning nor the end of the amended section appears in the revised pages. In these instances the customary notation at the bottom of the page is the only notation of revision). Particular attention is called to the following alterations:

- 201.07 - Second paragraph rewritten (change 16-6)
- 201.11 - Last two sentences canceled (change 16-6)
- 608.01(b) - Fourth and fifth paragraphs new;
item 3 expanded (changes 16-2, 3)
- 608.01(g) - Third paragraph new (change 16-2)
- 608.01(o) - Last paragraph new (change 16-2)
- 608.01(v) - Sentence preceding TM list broadened
- 706 - Fourth paragraph new
- 706.02 - Second paragraph new; third rewritten
- 706.03(j) - Second and last two paragraphs new
- 706.03(q) - Second paragraph new
- 706.03(r) - Whole section new

- 706.03(w) - Section rewritten (change 16-6)
- 707.07(a) - Section rewritten - now includes matter from 707.07(c)
- 707.07(c) - All matter placed in 707.07(a)
- 707.07(d) - Last paragraph canceled - matter placed in 706.02
- 707.07(g) - Rewritten; last six paragraphs new
- 708.01 - Item (e) added (change 16-5)
- 708.02 - Second and third paragraphs rewritten to correct
- 711 - Item 1(b) amplified
- 711.01 - Third sentence canceled and replaced by two new paragraphs at end (to correct)
- 711.05 - All after first sentence rewritten to correct
- 714.01(a) - Second and third paragraphs new - matter from 714.01(b) incorporated
- 714.01(b) - Canceled-part placed in 714.01(a)
- 714.01(c) - Rewritten to reflect changes
- 714.02 - Fourth, fifth and ninth paragraphs new (change 16-1)
- 714.22 - Last paragraph new (change 16-1)
- 804 - Last paragraph canceled (matter covered in 804.02)
- 804.02 - Second paragraph new (change 16-4)
- 804.03 - First sentence amended and third new (stems from change 12-1)
- 903.08(g) - Second paragraph new (change 16-5)
- 1101.02(g) - Second paragraph new
- 1103 - Third paragraph new
- 1111.05 - Third paragraph new
- 1205 - Last paragraph canceled and replaced by two new paragraphs
- 1208.02 - Last paragraph new
- 1210 - Section rewritten to correct and amplify
- 1302.04 - First paragraph of page 222.1 new (change 16-2)

LIST TO DETERMINE WHETHER REVISION 16 PAGES ARE COMPLETE
(Note: The complete checklist, on pages VI-VIII of MPEP,
is only revised annually).

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*added page

**added page on reverse side of old page

MANUAL OF PATENT EXAMINING PROCEDURE, 3rd. Ed.

Change Notice

Reference: MPEP 608.01(a)

SERIES NO. 17-2
(Follows Change 17-1)

June 4, 1968

TRIAL MULTIPLE DEPENDENT CLAIM PRACTICE

For the trial period running from July 1, 1968 through December 31, 1968, all applications and amendments to applications filed in the Patent Office will be permitted to include multiple dependent claims which refer back to any of the preceding claims in the alternative whether independent or dependent. In this manner a claim may have a single number but would effectively be considered and treated as a plurality of claims. Entry into this program will require (1) the filing of a written request in which the applicant agrees to abide by the conditions of the program, and (2) the filing of appropriate fees and a showing of the fee calculation. Although the trial period terminates December 31, 1968, the prosecution of all applications placed in this program will continue under the program guidelines.

A claim dependent upon any of a plurality of preceding claims will be considered in acceptable form and entered provided it is otherwise acceptable and does not (1) cross statutory classes with any of its parent claims, or (2) depend from any other multiple dependent claim, or (3) refer back to preceding claims in the conjunctive rather than the disjunctive form (e.g., "The tool as defined in any one of claims 1, 2, and 4 . . ." is acceptable, but "The tool as defined in claims 1 and 2 . . ." is not acceptable. Likewise, "The tool as defined in claims 1, 2, or 4 . . ." is acceptable, whereas "The tool as defined in claims 1, 2 and/or 4 . . ." is not acceptable). Should any dependent claim include a claim association that violates any of the above prohibitions the claim will be rejected as indefinite for failure to comply with 35 U.S.C. 112 and will not be further treated with regard to any other claim association. Also, multiple dependent claims will not be considered for entry after final rejection. Further, during this trial period, for the applications involved in this program the total numbered claims may not exceed ten. Non-compliance with this condition will result in applicant being given one month to reduce the total numbered claims to ten. In newly filed cases, the failure to comply within the one month period will result in loss of filing date. In all other cases the entire amendment will not be entered in the absence of compliance with this requirement.

It is suggested that the claims be arranged in order of narrowing scope whereby the first claim presented is the broadest. Claims dependent upon the broad claim should come next, followed by claims which are dependent upon any of the plurality of preceding claims.

Practice and Rejections

When acting on a multiple dependent claim, the examiner will consider the patentability of the various claim associations encompassed by said claim and apply any pertinent prior art in the usual manner. Each of these associations should be compared with the prior art, exactly as if it were presented as an independent claim. If a claim having multiple dependency should include both patentable and unpatentable claim associations, the Examiner will identify each of the patentable claim associations and identify and specifically reject each of the unpatentable claim associations. However, mere failure to reject a claim association does not give rise to a presumption of allowability.

For fee purposes every claim which refers to any of the preceding claims will be considered effectively as a dependent claim for each association of claims that it represents, thereby effectively increasing the number of claims in the case. Therefore, in these cases the additional fees required for claims in excess of ten will be two dollars (\$2.00) times the total effective number of claims in excess of ten. This fee is based on the fact that such a claim is, in substance and so far as the work of examination is concerned, equivalent to a number of dependent claims each based on a single preceding claim.

(over)

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In applications not under this program but having multiple dependent claims, it will be assumed that applicant intends these claims as effectively only a single claim. Accordingly, such claims will be considered alternative and therefore indefinite under 35 U. S. C. 112.

Rule 75(c) is hereby suspended for the duration of the trial period in those cases presenting multiple dependent claims under this program insofar as conflict exists between the requisites of the rule and the proposed practice.

Richard A. Wahl
Assistant Commissioner

Published 851 O. G.
6/25/68

MANUAL OF PATENT EXAMINING PROCEDURE, 3rd. Ed.
 Change Notice

References: MPEP 809.03 814
 806.05(b) 808.02 809.04 816
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SERIES NO. 17 - 5
 (Follows Change 17 - 4)

June 20, 1968

RESTRICTION BETWEEN INVENTIONS

Combination claims (other than genus claims linking species claims), whether allowable, allowed, or not, will no longer automatically be permitted to serve as a basis for joining claimed inventions which otherwise would be properly the subject of a restriction requirement. In other words, applicant will be required to elect one of the claimed inventions which are the subject of a proper restriction requirement. Combination claims, formerly considered linking claims, should be grouped as a separate invention. Rejoinder of the divided inventions, should any combination claim be allowed, however, also will no longer automatically be permitted. The statutory criteria for distinctness will be satisfied if the subcombinations and/or combinations involved are shown to be separately classified, or to have acquired a separate status in the art, or to involve different fields of search.

Richard A. Wahl
 Assistant Commissioner

Published 852 O.G.
 July 16, 1968

MANUAL OF PATENT EXAMINING PROCEDURE

Third Edition (in 1961)

Instructions Regarding Revision No. 11

The attached revised pages are replacements for those in the Manual having corresponding numbers or additional pages to be placed in appropriate numerical sequence.

Change Notice 12-6, Claims of Contingent Applications, has been revoked and the retention of the change notice is no longer necessary.

Change Notices 17-2, Trial Multiple Dependent Claim Practice; 17-5, Restriction Between Inventions, and all those subsequent to 17-5 should be retained since the subject matter of the respective Change Notices, has not been incorporated in the text of the Manual.

All MPEP holders, whether employees of the Patent Office or members of the general public, are referred to the back of the MPEP title page for instructions concerning correspondence and orders relating to the Manual, and distribution of notices, revisions and replacement pages.

The listing of Page 216.1 in the instructions regarding Revision No. 16 of the Manual of Patent Examining Procedure, Third Edition, was in error, since there is no Page 216.1. The error is regretted.

Samuel W. Engle
Acting Editor, MPEP

The notation "[R-17]" in the attached pages appears either at the title or at the end of a section that has been altered in any way. Where neither the beginning nor the end of an amended section appears in the revised page the customary notation at the bottom of the page is the only indication of revision.

- 101 - First paragraph, new, amended to be consistent
- 103 - Second paragraph, new, Rule 11, new rule 11(b) added; first sentence of paragraph new, Rule 11, amended to provide for Rule 11(b).
- 104 - First paragraph, exception for Rule 11(b) added.
- 201.03 - Last paragraph new, Change Notice 17-1; Change of Inventors.
- 605.02 - Illustration Subsequently Required, amended to specifically require a station or permanent print prior to indication of allowable subject matter.
- 705.03(y) - Fourth paragraph, new, alternative verification of proper Marking group.
- 707.05 - Second paragraph, new, citation of prior art.
- 708.02 - Rule 101(a) amended to provide for Rule 139; last paragraph new to provide for Rule 139.
- 708.03 - Special Examining Procedure for Certain New Applications, (b) portion of first paragraph amended, Change Notice 17-1, Special Examining Procedure.
- 709.02 - Rule 103, new paragraph (d) to provide for Rule 139.
- 711.06 - Defensive Publications, new addition to the section.
- 711.06(a) - Abstracts and Abbreviations rewritten; Defensive Publications, new.
- 821.01 - Sixth paragraph, new, Change Notice 17-1, Non-elected Claims.
- 901.02 - Rule 108 amended to provide for Rule 139.
- 901.03 - Section rewritten to provide for Rules 11(b) and 139.
- 901.05(b) - Last two paragraphs, new, to provide for pertinent information of French and Swiss patents.
- 901.06(a) - Section rewritten to include Defensive Publications.
- 1151.12 - Canceled.
- 1302.07 - Rule 14(b) amended to provide for Rule 11(b).

James W. ...
 ...

The number "11-1" in the left-hand margin of the title of a section has been inserted in any way where the beginning of the section appears in the revised page. The number "11-1" in the left-hand margin of the title of a section has been inserted in any way where the beginning of the section appears in the revised page. The number "11-1" in the left-hand margin of the title of a section has been inserted in any way where the beginning of the section appears in the revised page.

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(Note: The complete checklist pages VI-VIII of this
is only revised annually.)

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MANUAL OF

PATENT

EXAMINING

PROCEDURE

Third Edition, November 1961



U.S. DEPARTMENT OF COMMERCE • PATENT OFFICE

Rev. 17, July 1963

The Patent Office does not handle the sale of the Manual, distribution of notices and revisions or change of address of those on the subscription list.

Correspondence relating to any of the above items should be sent to the Superintendent of Documents at the following address:

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Washington, D.C. 20013

Orders for individual replacement pages not amounting to a complete revision of the Manual should be sent to the following address:

Commissioner of Patents
Washington, D.C. 20231
Attn.: Document Services Branch

The cost per page will be 30¢ (see rules 13(a), 21(b), and 21(t) Rules of Practice).

Charges may be made to deposit accounts if the requester is an account holder in good standing at the time the request is received. Checks or money orders should be made payable to the Commissioner of Patents. Requests must identify the specific pages required and the number of copies of each page.

Employees of the Patent Office should direct their orders for the Manual, replacement pages, notices, and revisions to the Scientific Library.

First Edition, November 1949

Revision 1, November 1950

Revision 2, December 1951

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Revision 1, January 1964

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Revision 16, April 1968

Revision 17, July 1968

Foreword

This Manual is published to provide Patent Office patent examiners, patent applicants, and representatives of patent applicants with a reference work on the practices and procedures relative to the prosecution of applications before the Patent Office. It contains instructions to examiners, as well as other material in the nature of information and interpretation, and outlines the current procedures which the examiners are required or authorized to follow in appropriate cases in the normal examination of applications.

Examiners will be governed by the applicable statutes, the Rules of Practice, decisions, and orders and instructions issued by the Commissioner and the Assistant Commissioners. Orders and Notices still in force which relate to the subject matter included in this Manual are incorporated in the text. Orders and Notices, or portions thereof, relating to the examiners' duties and functions which have been omitted or not incorporated in the text may be considered obsolete. Interference procedure not directly involving the Primary Examiner is not included in this Manual and, therefore, Orders and Notices relating thereto remain in force.

Subsequent changes in practice and other revisions will be incorporated in the form of substitute or additional pages for the Manual.

EDWARD J. BRENNER,
Commissioner.

Acknowledgments

Preparation of the text of the Third Edition was directed by Ernest A. Faller, Editor, under the supervision of Manuel C. Rosa, Director, Patent Examining Operation.

The Supervisory Examiners, Isaac G. Stone, Norman H. Evans, Burnham Yung Kwai, Sam Spintman, John S. Hull, Thomas F. Murphy, Harvey E. Kauffman and George A. Gorecki took an active part in this work, especially in rewriting Chapter 700.

Others who assisted were Pasquale J. Federico, Hyman B. Freehof, Examiners-in-Chief; Joseph Schimmel, Deputy Solicitor; Samuel Levin, LaVerne L. Williams, Interference Examiners; and Florence A. Hoffman, Division Clerk.

Suggestions for improving the form and content of the Manual are always welcome. They should be addressed to:

Commissioner of Patents,
Washington, D.C. 20231

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Introduction

Constitutional Basis

The Constitution of the United States provides:

"ART. 1, SEC. 8. The Congress shall have power . . . To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

Statutes

Pursuant to the foregoing provision of the Constitution, Congress has passed a number of statutes under which the Patent Office is organized and our patent system is established. The provisions of the statutes can in no way be changed or waived by the Patent Office. Prior to January 1, 1953, the law relating to patents consisted of various sections of the Revised Statutes of 1874, derived from the Patent Act of 1870 and numerous amendatory and additional acts. These statutes, as well as old Title 35 of the United States Code, were compiled and reprinted several times prior to January 1, 1953, in a pamphlet entitled "Patent Laws".

By an Act of Congress approved July 19, 1952, which came into effect on January 1, 1953, the patent laws were revised and codified. With certain exceptions applying to applications filed and patents issued before January 1, 1953, this law governs all cases in the Patent Office. The patent law is Title 35 of the United States Code, which contains 95 sections numbered from 1 to 293, with gaps in the numbering between various chapters of the title. In referring to a particular section of the new patent code the citation is given, for example, as, 35 U.S.C. 31. The current edition of the pamphlet "Patent Laws" reprints the patent code and some additional statutes. The pamphlet also contains tables showing where subject matter comparable to present title 35 may be found in prior statutes, and where subject matter of prior statutes will be found in new title 35.

Rules of Practice

One of the sections of the patent statute, namely, 35 U.S.C. 6, authorizes the Commis-

sioner of Patents, subject to the approval of the Secretary of Commerce, to establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent Office. These regulations are set forth in a Patent Office booklet entitled "Rules of Practice of the United States Patent Office in Patent Cases". The Rules of Practice have a long history, going back to pamphlets of general information to the public first issued in 1836. The content has been determined by history, tradition and other factors. Primarily the function of the Rules of Practice is to advise the public of the regulations which have been established in accordance with the statutes and which must be followed before the Office. But the Patent Office Rules of Practice have always additionally included, as numbered rules, informational material, copies of sections of the patent statutes, purely internal procedure, and the like. It goes without saying that the Rules of Practice govern the Examiners, as well as applicants and their attorneys.

Commissioner's Orders and Notices

From time to time, the Commissioner of Patents has issued Orders and Notices relating to various specific situations that have arisen in operating the Patent Office. Notices and circulars of information or instructions have also been issued by the Supervisory Examiners under authority of the Commissioner. Orders and Notices have served various purposes including directions to the examiners giving them instruction, information, interpretations and the like. Some may be for the information of the public, advising what the Office will do under specified circumstances.

Decisions

In addition to the statutory regulations, the actions taken by the Examiner in the examination of applications for patents are to a great extent governed by decisions on prior cases. Those dissatisfied with an Examiner's action may have it reviewed. In general, it may be stated that from that portion of the Examiner's action pertaining to objections on formal matters, a petition for review may be taken to the Commissioner of Patents (1002) and

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from that portion of the Examiner's action pertaining to the rejection of claims on the merits, an appeal may be taken to the Board of Appeals (1201). The distinction is set forth in Rules 181 and 191. The decision of the Commissioner on formal matters is final

but the decision of the Board of Appeals on questions passed on by it may be carried to the courts. See 1216. In citing decisions as authority for his actions, the Examiner should cite the decision in the manner set forth in 707.06.