

MANUAL OF
PATENT
EXAMINING
PROCEDURE

3RD EDITION

Rev. 4/6



U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

REEL NUMBER 1

BOOK NUMBERS 1205



Public Law 89-83
89th Congress, H. R. 4185
July 24, 1965

An Act

79 STAT. 259.

To fix the fees payable to the Patent Office, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the items numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, respectively, in subsection (a) of section 41, title 35, United States Code, are amended to read as follows:

Patent fees.
66 Stat. 796.

"1. On filing each application for an original patent, except in design cases, \$65; in addition, on filing or on presentation at any other time, \$10 for each claim in independent form which is in excess of one, and \$2 for each claim (whether independent or dependent) which is in excess of ten. Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner.

"2. For issuing each original or reissue patent, except in design cases, \$100; in addition, \$10 for each page (or portion thereof) of specification as printed, and \$2 for each sheet of drawing.

"3. In design cases:

"a. On filing each design application, \$20.

"b. On issuing each design patent: For three years and six months, \$10; for seven years, \$20; and for fourteen years, \$30.

"4. On filing each application for the reissue of a patent, \$65; in addition, on filing or on presentation at any other time, \$10 for each claim in independent form which is in excess of the number of independent claims of the original patent, and \$2 for each claim (whether independent or dependent) which is in excess of ten and also in excess of the number of claims of the original patent. Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner.

"5. On filing each disclaimer, \$15.

"6. On appeal for the first time from the examiner to the Board of Appeals, \$50; in addition, on filing a brief in support of the appeal, \$50.

"7. On filing each petition for the revival of an abandoned application for a patent or for the delayed payment of the fee for issuing each patent, \$15.

"8. For certificate under section 255 or under section 256 of this title, \$15.

"9. As available and if in print: For uncertified printed copies of specifications and drawings of patents (except design patents), 50 cents per copy; for design patents, 20 cents per copy; the Commissioner may establish a charge not to exceed \$1 per copy for patents in excess of twenty-five pages of drawings and specifications and for plant patents printed in color; special rates for libraries specified in section 13 of this title, \$50 for patents issued in one year. The Commissioner may, without charge, provide applicants with copies of specifications and drawings of patents when referred to in a notice under section 132.

"10. For recording every assignment, agreement, or other paper relating to the property in a patent or application, \$20; where the document relates to more than one patent or application, \$3 for each additional item."

Sec. 2. Section 41 of title 35, United States Code, is further amended by adding the following subsection:

"(c) The fees prescribed by or under this section shall apply to any other Government department or agency, or officer thereof, except that the Commissioner may waive the payment of any fee for services

or materials in cases of occasional or incidental requests by a Government department or agency, or officer thereof."

Sec. 3. Section 31 of the Act approved July 5, 1946 (ch. 540, 60 Stat. 427; U.S.C., title 15, sec. 1113), as amended, is amended to read as follows:

"(a) The following fees shall be paid to the Patent Office under this Act:

"1. On filing each original application for registration of a mark in each class, \$35.

"2. On filing each application for renewal in each class, \$25; and on filing each application for renewal in each class after expiration of the registration, an additional fee of \$5.

15 USC 1058.

"3. On filing an affidavit under section 5(a) or section 8(b) for each class, \$10.

"4. On filing each petition for the revival of an abandoned application, \$15.

"5. On filing opposition or application for cancellation for each class, \$25.

"6. On appeal from the examiner in charge of the registration of marks to the Trademark Trial and Appeal Board for each class, \$25.

"7. For issuance of a new certificate of registration following change of ownership of a mark or correction of a registrant's mistake, \$15.

"8. For certificate of correction of registrant's mistake or amendment after registration, \$15.

"9. For certifying in any case, \$1.

"10. For filing each disclaimer after registration, \$15.

"11. For printed copy of registered mark, 20 cents.

"12. For recording every assignment, agreement, or other paper relating to the property in a registration or application, \$20; where the document relates to more than one application or registration, \$3 for each additional item.

15 USC 1062.

"13. On filing notice of claim of benefits of this Act for a mark to be published under section 12(c) hereof, \$10.

"(b) The Commissioner may establish charges for copies of records, publications, or services furnished by the Patent Office, not specified above.

"(c) The Commissioner may refund any sum paid by mistake or in excess."

66 Stat., 803.

Sec. 4. Section 151 of title 35, United States Code, is amended to read as follows:

"§ 151. Issue of patent

"If it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant. The notice shall specify a sum, constituting the issue fee or a portion thereof, which shall be paid within three months thereafter.

"Upon payment of this sum the patent shall issue, but if payment is not timely made, the application shall be regarded as abandoned.

"Any remaining balance of the issue fee shall be paid within three months from the sending of a notice thereof and, if not paid, the patent shall lapse at the termination of this three-month period. In calculating the amount of a remaining balance, charges for a page or less may be disregarded.

"If any payment required by this section is not timely made, but is submitted with the fee for delayed payment within three months after the due date and sufficient cause is shown for the late payment, it may be accepted by the Commissioner as though no abandonment or lapse had ever occurred."

July 24, 1965

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Pub. Law 89-83

79 STAT. 261

SEC. 5. Section 154 of title 35, United States Code, is amended by inserting the words "subject to the payment of issue fees as provided for in this title," after the words "seventeen years."

SEC. 6. The analysis of chapter 14 of title 35, United States Code, immediately preceding section 151, is amended in the first item thereof by striking out the words "Time of issue of patent" and inserting in lieu thereof "Issue of patent".

SEC. 7. (a) This Act shall take effect three months after its enactment. Effective date.

(b) Items 1, 3, and 4 of section 41(a) of title 35, United States Code, as amended by section 1 of this Act, do not apply in further proceedings in applications filed prior to the effective date of this Act.

(c) Item 2 of section 41(a), as amended by section 1 of this Act, and section 4 of this Act do not apply in cases in which the notice of allowance of the application was sent, or in which a patent issued, prior to the effective date; and, in such cases, the fee due is the fee specified in this title prior to the effective date of this Act.

(d) Item 3 of section 31 of the Trademark Act, as amended by section 3 of this Act, applies only in the case of registrations issued and registrations published under the provisions of section 12(c) of the Trademark Act on or after the effective date of this Act.

SEC. 8. Section 266 of title 35, United States Code, is repealed.

The chapter analysis of chapter 27 of title 35, United States Code, is amended by striking out the following item:

"266. Issue of patents without fees to Government employees."

SEC. 9. Section 112 of title 35, United States Code, is amended by adding to the second paragraph thereof the following sentence: "A claim may be written in independent or dependent form, and if in dependent form, it shall be construed to include all the limitations of the claim incorporated by reference into the dependent claim."

SEC. 10. Section 282 of title 35, United States Code, is amended by deletion of the first paragraph thereof and substituting therefor the following paragraph: Patents, validity.

"A patent shall be presumed valid. Each claim of a patent (whether in independent or dependent form) shall be presumed valid independently of the validity of other claims; dependent claims shall be presumed valid even though dependent upon an invalid claim. The burden of establishing invalidity of a patent or any claim thereof shall rest on the party asserting it."

Approved July 24, 1965.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 113 (Comm. on the Judiciary).

SENATE REPORT No. 301 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 111 (1965):

Mar. 17: Considered and passed House.

June 15: Considered and passed Senate, amended.

July 12: House concurred in Senate amendments.

USCOMM--DC

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* Added page

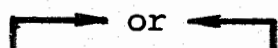
U.S. DEPARTMENT OF COMMERCE
 Patent and Trademark Office
 Washington, D. C. 20231

MANUAL OF PATENT EXAMINING PROCEDURE
 Third Edition

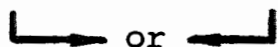
Instructions regarding Revision No. 46

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

Arrows are printed in the margin of pages to indicate material changed, deleted, or added by this revision. Where insertion of new material results in shifting of unchanged material onto following pages, no arrows appear on such pages but the revision number is cited at the bottom of each page.



Line on which change begins.



Line on which change ends.



Line on which change both begins and ends.



Opposite a blank space, indicates deletion of material.

The notation "[R-46]" in the attached pages appears either at the title or at the end of a section that has been revised.

Louis O. Maassel
 Editor, Manual of Patent
 Examining Procedure

The terms "Patent Office" and "Commissioner of Patents" have been changed to --Patent and Trademark Office-- and --Commissioner of Patents and Trademarks-- respectively wherever they occur on the revised pages in accordance with Public Law 93-596.

Particular attention is called to the following sections:

<u>Section</u>	<u>Change</u>
Checklist	List of current pages updated through Rev. 46.
201.13	List of countries updated.
511	New section on Postal Emergency Contingency Plan.
607	Note added that unentered claims are not counted when calculating fee due in subsequent amendments.
712	Includes new rules for acceptance of late issue fees.
713.02	Incorporates permission to hold interviews before the first action in continuing applications.
901.09	New Procedure for ordering missing patent copies.
903.02(e)	New section on establishing unofficial subclasses.
905.02	Soft copy ordering procedure revised.
1214.04	Section on reconsideration by Board of Appeals revised.
1505	Revised rule 155 on design issue fees included.
1704	Examining group records section revised.
1705	Section on examiner's work report revised to follow new forms.
1710- 1710.02	Sections indicate termination of German search exchange.
1712	Indicates termination of Swedish-U.S. search exchange.

MANUAL OF
P A T E N T
E X A M I N I N G
P R O C E D U R E

Original Third Edition, dated November 1961

Latest Revision October 1975



U.S. DEPARTMENT OF COMMERCE • PATENT AND TRADEMARK OFFICE

Rev. 46, Oct. 1975

The Patent and Trademark 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

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Commissioner of Patents and Trademarks
Attn: Customer Services Division
Washington, D.C. 20231

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 and Trademarks. Requests must identify the specific pages required and the number of copies of each page.

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

First Edition, November 1949	Revision 19, January 1969
Revision 1, November 1950	Revision 20, April 1969
Revision 2, December 1951	Revision 21, July 1969
Revision 3, May 1952	Revision 22, October 1969
Second Edition, November 1953	Revision 23, January 1970
Revision 1, April 1955	Revision 24, April 1970
Revision 2, June 1956	Revision 25, July 1970
Revision 3, June 1957	Revision 26, October 1970
Revision 4, July 1958	Revision 27, January 1971
Third Edition, November 1961	Revision 28, April 1971
Revision 1, January 1964	Revision 29, July 1971
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Revision 15, January 1968	Revision 43, January 1975
Revision 16, April 1968	Revision 44, April 1975
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Revision 18, October 1968	Revision 46, October 1975

Foreword

This Manual is published to provide Patent Office examiners, applicants, attorneys, agents, and representatives of 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 application.

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.

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

Commissioner of Patents,
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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 provision of the Constitution, Congress has over the years 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.

By an Act of Congress approved July 19, 1952, which came into effect on January 1, 1953, the patent laws were revised and codified into their present form. 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 96 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 patent code the citation is given, for example, as, 35 U.S.C. 31. The pamphlet "Patent Laws" (available from the Superintendent of Documents for 75 cents) reprints the patent code and some additional statutes.

35 U.S.C. 1 Establishment. The Patent Office shall continue as an office in the Department of Commerce, where records, books, drawings, specifications, and other papers and things pertaining to patents and to trademark registrations shall be kept and preserved, except as otherwise provided by law.

Rules of Practice

One of the sections of the patent statute, namely, 35 U.S.C. 6, authorizes the Commissioner of Patents, subject to the approval of the Secretary of Commerce, to establish regula-

tions, not inconsistent with law, for the conduct of proceedings in the Patent Office.

Rule 351. Amendments to rules will be published. All amendments to these rules will be published in the Official Gazette and in the Federal Register.

Rule 352. Publication of notice of proposed amendments. (a) Whenever required by law, and in other cases whenever practicable, notice of proposed amendments to these rules will be published in the Official Gazette and in the Federal Register. If not published with the notice, copies of the text will be furnished to any person requesting the same. All comments, suggestions, and briefs received within a time specified in the notice will be considered before adoption of the proposed amendments which may be modified in the light thereof.

(b) Oral hearings may be held at the discretion of the Commissioner.

These rules and the various amendments were published in the Federal Register. In the Federal Register and in the Code of Federal Regulations these rules are Part 1 of Title 37, Patents, Trademarks and Copyrights, and the individual rules, there called sections, are numbered with the Part number and a decimal point prefixed to the numbers to the rule number; thus section 1.33 in the Federal Register and the Code of Federal Regulations is the same as rule 33. A booklet entitled "37 Code of Federal Regulations," published by the Office of the Federal Register, contains all of the patent rules and forms, as well as trademark rules and forms and copyright rules. Persons desiring a copy of the patent rules should order a copy of "37 Code of Federal Regulations" from the Superintendent of Documents.

The primary 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. 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 other Office Officials 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. Applicants dissatisfied with an examiner's action may have it reviewed. In general, that portion of the examiner's action pertaining to objections on formal matters may be reviewed by petition to the Commissioner of Patents (see § 1002) and that portion of the examiner's action pertaining to the rejection of claims on the merits, may be reviewed by appeal to the Board of Appeals (see § 1201). The distinction is set forth in rules 181 and 191. In citing decisions as authority for his actions, the examiner should cite the decision in the manner set forth in § 707.06.

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