

SECTION 12. PETITIONS, REVIEW AND  
SUPERVISION OTHER THAN BY APPEAL

12.

General Principles

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- 3. Delegated Supervisory Functions

Section 13. Petitions, Review and Supervision  
other than by Appeal

General Principles

Sec. 401, U.S. : The Commissioner of Patents, under the direction of the Secretary of Commerce, shall superintend or perform all duties respecting the granting and issuing of patents directed by law; and he shall have charge of all books, records, papers, models, specimens, and other things belonging to the Patent Office.

Sec. 403, U.S. : The Commissioner of Patents, subject to the approval of the Secretary of Commerce, may from time to time establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent Office.

Pursuant to these statutes, the Commissioner superintends and performs for the proper conduct of the Patent Office, under the law, all duties, exercises the power of review and supervision, in general, the functioning of the Office. Part of his responsibilities have been delegated to others, such as the Supervisory Examiners. The Secretary of Commerce may approve or disapprove the acts of the Commissioner performed in his capacity as an executive, but does not review those cases in which the Commissioner exercises judicial discretion. If abuse of such discretion occurs, relief may be sought in the courts by way of writs, injunction or other appropriate remedy.

This section treats only such matters which are not of an appellate nature. They are considered by the Commissioner or by some officer to whom he has delegated this authority.

The Case of an Appeal:

Article 112, Amendments after allowance. Amendments. If, on the notice of allowance of an application, the inventor is permitted to make amendments, he may, if the printing of the specification has not begun, on the recommendation of the Primary Examiner, approved by the Commissioner, withdraw the application from issue.



act in any way of other proceedings.

Determination of petitions of various kinds shall be determined by the Commissioner to the satisfaction of the Commissioner or to the satisfaction of the Commissioner, but in no case shall the Commissioner be bound by the Commissioner.

When a petition is not an affidavit provided for by this Act, it shall not be a petition and the Commissioner will be deemed to have received the petition of such kind by or under the authority of the Commissioner, and such petition shall be communicated to the interested parties in writing.

When a petition is an affidavit in an examination proceeding, it shall be a petition, and the Commissioner shall be deemed to have received the petition of such kind by or under the authority of the Commissioner in person or by the interested party, and subject to such other provisions as may be applicable.

When a petition is an affidavit of a person by the Commissioner, which have been received by the Commissioner, it shall be deemed to be a petition, and the Commissioner shall be deemed to have received the petition of such kind by or under the authority of the Commissioner.

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When a petition is an affidavit of a person by the Commissioner, it shall be deemed to be a petition, and the Commissioner shall be deemed to have received the petition of such kind by or under the authority of the Commissioner in person or by the interested party, and subject to such other provisions as may be applicable.

Rule 3.4 . . . . . Decisions of the Commissioner in any application, and of the Board of Appeals in abandoned applications, may be published or made available for inspection or publication in the Commissioner's discretion.

12-1

Petitions

In general, an applicant has the right to petition the Commissioner on any matter arising in the prosecution of his case in which he seeks relief. Usually these matters are not such as would be a suitable question under the rules (rule 3.1). Thus matters "objected to" by the Examiner rather than "rejected" are petitionable. Matters of form and policy are also petitionable to the Commissioner.

Matters of merit or substance are appealable to the Board of Appeals. Occasionally, petitions are presented even on matters of merit requesting the Commissioner to exercise his supervisory authority to instruct the Examiner to allow a case. Petitions seeking a reversal of the Examiner's holding on a question of merits are ordinarily dismissed. The Commissioner under his supervisory authority referred to in the Statute, may exercise a quasi-judicial function in directing the activities of the Office. A petition by applicant may serve to inhibit such exercise of authority or the Commissioner may by his own action exercise the authority. Thus in *ex parte* Duncan, 1920 O.G. 36; 276 O.G. 207, a favorable board's decision was reviewed by the Commissioner and claims allowed by the Board were denied. In *ex parte* Putnam, 1925 O.G. 29; 334 O.G. 769, a favorable board's decision was reviewed by the Commissioner, the claims allowed by the Board were denied and other claims allowed in place thereof. Any alleged fraud or corruption in the Office may be handled by the Commissioner as he sees fit. However, the Commissioner exercises his supervisory power only in extraordinary cases.

12-1-1.

Procedure

Petitions against review of examiner's actions in *ex parte* cases, together with the respective files, sent by the Docket Branch to the Supervisory Examiner's office. The Supervisory Examiner may refer the petition to the Primary Examiner for formal objection under Rule 3.1 or for informal denial. Where, however, the petition develops no new point of claim or issue, the petition is not usually referred to the Examiner, unless it be to ascertain whether he wishes to reconsider the holding from which the petition seeks relief.

Where a petition under rule 3.1 is made, a copy thereof is made available to the petitioner by the Examiner at the

the petition, which is a petition, accompanied by the fee, is sent to the Assistant, to the Supervisory Examiner, unless otherwise directed.

Whereas, in which present only the usual questions arising in connection with the procedure in the application for admission of practitioners, under authority conferred by the Commission, decided by the Supervisory Examiner, but where in certain positions are involved, it is the policy of accepted practice should be a full and complete record for a change of practice, as in the case of the I.D. by the I.D. 37 or otherwise, under 1935 I.D. 11, 12, 13, 14, the same is submitted to the Commission for his recommendation and decision.

After the decision has been made, the file, with the petition and decision is sent to the Docket Branch where the decision is recorded, the file being then returned to the Primary Examiner who will act in accordance with the decision.

A petition filed near the end of the statutory period, even if not reached for decision during that period, does not operate to extend the period. However, if the petition is granted, the case is not abandoned, provided other law full recourse to the last Office action has been made within the statutory six month period.

Whereas, a petition for rehearing or for reconsideration does not stop the running of the time for bringing an appeal.

1-1-32. List of Petitions Filed

In addition to the petition, furnish a copy of the petition to the following:

1. Petition to the I.D. 10-3-9.
2. Petition to the I.D. 11-1-9.
3. Petition to the I.D. 12-1-9.
4. Petition to the I.D. 13-1-9.
5. Petition to the I.D. 14-1-9.
6. Petition to the I.D. 15-1-9.
7. Petition to the I.D. 16-1-9.
8. Petition to the I.D. 17-1-9.
9. Petition to the I.D. 18-1-9.
10. Petition to the I.D. 19-1-9.
11. Petition to the I.D. 20-1-9.
12. Petition to the I.D. 21-1-9.
13. Petition to the I.D. 22-1-9.
14. Petition to the I.D. 23-1-9.
15. Petition to the I.D. 24-1-9.
16. Petition to the I.D. 25-1-9.
17. Petition to the I.D. 26-1-9.
18. Petition to the I.D. 27-1-9.
19. Petition to the I.D. 28-1-9.
20. Petition to the I.D. 29-1-9.
21. Petition to the I.D. 30-1-9.
22. Petition to the I.D. 31-1-9.
23. Petition to the I.D. 32-1-9.
24. Petition to the I.D. 33-1-9.
25. Petition to the I.D. 34-1-9.
26. Petition to the I.D. 35-1-9.
27. Petition to the I.D. 36-1-9.
28. Petition to the I.D. 37-1-9.
29. Petition to the I.D. 38-1-9.
30. Petition to the I.D. 39-1-9.
31. Petition to the I.D. 40-1-9.
32. Petition to the I.D. 41-1-9.
33. Petition to the I.D. 42-1-9.
34. Petition to the I.D. 43-1-9.
35. Petition to the I.D. 44-1-9.
36. Petition to the I.D. 45-1-9.
37. Petition to the I.D. 46-1-9.
38. Petition to the I.D. 47-1-9.
39. Petition to the I.D. 48-1-9.
40. Petition to the I.D. 49-1-9.
41. Petition to the I.D. 50-1-9.
42. Petition to the I.D. 51-1-9.
43. Petition to the I.D. 52-1-9.
44. Petition to the I.D. 53-1-9.
45. Petition to the I.D. 54-1-9.
46. Petition to the I.D. 55-1-9.
47. Petition to the I.D. 56-1-9.
48. Petition to the I.D. 57-1-9.
49. Petition to the I.D. 58-1-9.
50. Petition to the I.D. 59-1-9.
51. Petition to the I.D. 60-1-9.
52. Petition to the I.D. 61-1-9.
53. Petition to the I.D. 62-1-9.
54. Petition to the I.D. 63-1-9.
55. Petition to the I.D. 64-1-9.
56. Petition to the I.D. 65-1-9.
57. Petition to the I.D. 66-1-9.
58. Petition to the I.D. 67-1-9.
59. Petition to the I.D. 68-1-9.
60. Petition to the I.D. 69-1-9.
61. Petition to the I.D. 70-1-9.
62. Petition to the I.D. 71-1-9.
63. Petition to the I.D. 72-1-9.
64. Petition to the I.D. 73-1-9.
65. Petition to the I.D. 74-1-9.
66. Petition to the I.D. 75-1-9.
67. Petition to the I.D. 76-1-9.
68. Petition to the I.D. 77-1-9.
69. Petition to the I.D. 78-1-9.
70. Petition to the I.D. 79-1-9.
71. Petition to the I.D. 80-1-9.
72. Petition to the I.D. 81-1-9.
73. Petition to the I.D. 82-1-9.
74. Petition to the I.D. 83-1-9.
75. Petition to the I.D. 84-1-9.
76. Petition to the I.D. 85-1-9.
77. Petition to the I.D. 86-1-9.
78. Petition to the I.D. 87-1-9.
79. Petition to the I.D. 88-1-9.
80. Petition to the I.D. 89-1-9.
81. Petition to the I.D. 90-1-9.
82. Petition to the I.D. 91-1-9.
83. Petition to the I.D. 92-1-9.
84. Petition to the I.D. 93-1-9.
85. Petition to the I.D. 94-1-9.
86. Petition to the I.D. 95-1-9.
87. Petition to the I.D. 96-1-9.
88. Petition to the I.D. 97-1-9.
89. Petition to the I.D. 98-1-9.
90. Petition to the I.D. 99-1-9.
91. Petition to the I.D. 100-1-9.



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grounds, he should file a written report under Rule 52.4. In both instances, the report is submitted to the Commissioner for action under 15-1-5.

7. If a candidate for Rule 51.1 which involves questions that are answered by the rules of practice, should be admitted to the bar, the questions of practice, are submitted to the Commissioner for his personal consideration and approval.

8. If a candidate for admission on an examination or letter of admission is admitted "pro tempore" under Rule 19.2 (and in some cases, is also the mandatory period dating from the date of admission) may be granted by the Examiner; but only if the candidate has received the approval of the Commissioner.

9. If a letter requesting admission is received in duplicate, the original must have the approval of the Commissioner under 15-1-5.

10. If an application for admission is received and a second application is found to interfere with it, jurisdiction of the original application is retained by the Examiner through a letter of admission issued to the applicant approved by the Commissioner under 15-1-5 and 15-2-1.

11. If an applicant for admission is found to be a first-time applicant, jurisdiction of the original application is retained by the Commissioner through a letter of admission issued to the applicant. See 15-1-5.

12. If an applicant for admission is found to be a case to either an applicant or a candidate for admission, the original application is retained by the Commissioner through a letter of admission issued to the applicant. See 15-1-5.

13. If an applicant is discourteous in the remarks or arguments in an examination, either the discourtesy should be entirely ignored or the report submitted to the Commissioner with a view to the applicant's return. Rule 1.3.

14. If an applicant for admission is found to be a candidate for admission, the "contents" of the file should be retained by the Commissioner and the applicant without special authority of the Commissioner.

15. If an applicant for admission is found to be a candidate for admission, the application should be referred to the Commissioner.

16. If an applicant for admission is found to be a candidate for admission, the application should be referred to the Commissioner.

Rule 3.4 . . . . . Decisions of the Commissioner in any application, and of the Board of Appeals in abandoned applications, may be published or made available for inspection or publication in the Commissioner's discretion.

12-1

Petitions

In general, an applicant has the right to petition the Commissioner on any matter arising in the prosecution of his case on which he seeks relief. Usually these matters are not such as would be appealable questions under the rules (rule 31.1). Thus matters "objected to" by the Examiner rather than "rejected" are petitionable. Matters of form and policy are also petitionable to the Commissioner.

Matters of merit or substance are appealable to the Board of Appeals. Occasionally, petitions are presented even on matters of merit requesting the Commissioner to exercise his supervisory authority and instruct the Examiner to allow a case. Petitions seeking a reversal of the Examiner's holding on a question of merits are ordinarily dismissed. The Commissioner under his supervisory authority referred to in the Statute, may exercise a quasi-judicial function in directing the activities of the Office. A petition by applicant may serve to initiate such exercise of authority or the Commissioner may by his own motion exercise the authority. Thus in *ex parte* Duncan, 1920 C.D. 36; 276 O.G. 207, a favorable board's decision was reviewed by the Commissioner and claims allowed by the Board were denied. In *ex parte* Putnam, 1925 C.D. 29; 334 O.G. 709, a favorable board's decision was reviewed by the Commissioner, the claims allowed by the Board were denied and other claims allowed in place thereof. Any alleged fraud or corruption in the Office may be handled by the Commissioner as he sees fit. However, the Commissioner exercises his supervisory power only in extraordinary cases.

12-1-1.

Procedure

Petitions seeking review of examiner's actions in *ex parte* cases, together with the respective files, sent by the Docket Branch to the Supervisory Examiner's office. The Supervisory Examiner may refer the petition to the Primary Examiner for formal statement under Rule 31.1 or for informal statement. If, however, the petition develops no new point affecting the issue, the petition is not usually referred to the Examiner, unless it be to ascertain whether he wishes to reconsider the holding from which the petition seeks relief.

Where a statement under rule 31.1 is made, a copy thereof is mailed to the petitioner by the Examiner at the



6. Petition for the Institution of Public Hearing Proceedings. See Rule 30.2.
7. Form of order of revocation. See 11-1-12.
8. Form of order of suspension or final revocation. See 11-1-13 and 10-10-17.
9. Form of order of final revocation to foreign countries. See section 11.
10. Order of final revocation. See 11-1-13.
11. Form of order of final revocation. See 11-1-13.
12. Form of order of final revocation. See 11-1-13.
13. Form of order of final revocation. See 11-1-13.
14. Form of order of final revocation. See 11-1-13.

Decisions by the Board of Appeals which contain statements which, while not amounting to recommendations under Rule 32.7, are construed by the appellants to indicate that the appellants' claims, if they had contained certain limitations, would have been allowed. In such situation, an appellant, if he wishes to amend the claim to meet the conditions he believes to be implied in the decision, should proceed promptly, i.e., within twenty calendar days of the decision of the Board to file the amendment along with a petition to the Board for recommendation that the claim as amended be allowed.

If such amendment, or any other amendment that does not carry into effect the Board's decision, accompanied by a petition to the Board, is filed within the twenty day period it is treated as a petition by the Commissioner, and the Examiner forwards it with his recommendation to the Supervisory Examiner for final disposition.

In such cases, as also in the case of an amendment accompanied by a petition, if the amendment, if filed, contains any amendments of character inconsistent with the approval of the Examiner by the Commissioner, the Commissioner is recommended that the amendment be held in abeyance by the Supervisory Examiner for final disposition.

Official publications, in the case of amendments, should file a copy of the amendment of the claims (R.S. 30.11 or 30.12).

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16. Petition to Grant the Pl of the  
Sec 119.7.

Where a petition for habeas corpus is filed in the  
Federal Court of the District of Columbia, the applicant  
to give notice to the State of Maryland, a petition for  
certiorari or writ of habeas corpus. Such petition  
is accompanied by the petition to the State  
for certiorari for the petition if, and only if, supported  
by a writ of habeas corpus. In the event of non-compliance,  
the petition for writ of habeas corpus to the  
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State of Maryland is denied.

ground, he should prepare a report under Rule 12.4. In both instances the matter is submitted to the Commissioner for action. See 11-1-7.

7. Applications under Rule 11.1 which in any particular case are unsatisfactory for the reasons stated above should be returned to the applicant with a statement of practice, are submitted to the Commissioner for his personal consideration and decision.

8. One set of copies of an amendment or letter of amendment shall be filed in the "Amendments" under Rule 15.2 (and in any other appropriate file in the statutory office during the term of the Office's term) and be retained by the Examiner; but any further extension requires the approval of the Commissioner.

9. A letter requesting a withdrawal of an application to amend an application for a patent must have the approval of the Commissioner. See 17-1-4.

10. If an applicant in interference with a second application is found to interfere with it, jurisdiction of the matter in interference is retained by the Examiner through a letter of jurisdiction, subject to the approval of the Commissioner. See 17-1-11.

11. If an applicant in interference with a first application is found to interfere with it, jurisdiction of the matter in interference is retained by the Commissioner. There is no appeal from such a determination. See 17-1-8.

12. If an applicant in interference with a first application is found to interfere with it, the right of the applicant to file a second application is retained by the Commissioner. See 17-1-8.

13. If an applicant is disruptive in the matter or otherwise in any way, either the applicant should be entirely removed or the matter should be submitted to the Commissioner with a view to the withdrawal of the application. See 17-1-3.

14. The applicant should file the "Amendments" of the file should work be done on any copy of the application with out special authority of the Commissioner.

15. The applicant should file in the file any other applications which are submitted to the Commissioner.

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Delegated Supervisory Functions

The examining divisions of the Office are divided into convenient groups, each group having related arts. At present they are:

- I. Chemical and Related Arts;
- II. Communications, Radiant Energy and Electrical Arts;
- III. Mechanical, Manufacturing, Machine Element Arts and Designs;
- IV. Transportation, Material Handling and Treating, Motor and Pump and Traction Arts;
- V. Instruments of Precision, Body Treatment and Care, Heating and Cooling and Static Arts.

Each group of divisions is within the jurisdiction of a supervisory examiner individual to the group.

The supervisory examiners' work consists in the performance of certain duties delegated by the Commission and certain supervisory functions for establishing and maintaining uniformity of operations and actions and conformance to office rules and policies within the various groups of examining divisions.

The work of the Supervisors includes:

- (1) Re-examining and amending, revising, and procuring or revising in existing orders, rules and procedures when deemed necessary for satisfactory operation of the examining divisions;
- (2) Instituting changes in procedure and practice, within the respective examining division, through issuance of notices or circulars pursuant to office policies;
- (3) Examining and filing records returned to the Primary Examiner from the board of appeals for determining whether the board has exercised or established any precedents, and to be considered by the Primary Examiner in actions in the light of the board of appeals' decision with respect to its conclusions and decisions;
- (4) Making decisions on appeals to provide the same to the Primary Examiner in order to provide uniformity and consistency within the divisions of the Office rules;

- (5) ... of the Primary Examiner's ... the ... in lieu of appeal claims in cases involved in suits ...
- (6) ... statutory periods of ...
- (7) ... in the Primary Examiner's ... and frequently ... before the ... and thereby require ...
- (8) ... continuations or ... when ... in matters of ...
- (9) ... or subsequent ...
- (10) ... appropriate ... for ... for putting ... into ... or interference ...
- (11) ... Primary Examiner as ... of ...

The ... by the supervisory examiners on ... Primary Examiner on various ... involve only the usual ... in the Primary Examiner ...