

MANUAL OF  
PATENT  
EXAMINING  
PROCEDURE



PROPERTY OF THE UNITED STATES GOVERNMENT

U. S. DEPARTMENT OF COMMERCE

Patent Office

Washington

MANUAL OF PATENT EXAMINING PROCEDURE

Third Edition

Supplemental Instructions Regarding Revision No. 1

The attached revised pages are to be substituted for those in the Manual having corresponding page numbers. The list of the attached Revision Notice No. 1 is to be checked to make certain that the set of pages received is complete.

Information and instructions published in Change Notices 1 - 1 through 1 - 19 have been included in these revised pages. Accordingly, these Change Notices should be removed and discarded. However, those of the 2-1, and 2-2 series should be retained.

Ernest A. Faller  
Editor, MPEP

Important changes in procedure appear in the following sections:

- 604.01 States not requiring Notary's Seal
- 608.02(a) New Drawing Requirements in Allowable Cases
- 608.02(c) Drawing (or Print) Available for Interference Search
- 707.05(e) Citation of Publications
- 707.07 Specification Differs from Art Terminology
- 708.01 "Special" Cases
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- 1004 Actions Submitted to Directors
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- 1101.01 Defer Interference Until One Case Allowable
- 1101.01(b) Applicants of Commonly Assigned Cases Notified of Interference Election
- 1101.02 Interference with Patent - Broadest Claim to be a Count

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- 1101.02(a) Patent Claims Copied - More Complete Affidavit Required
- 1105.06 Decisions on Interference Motions - Use of Soft Copies
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- 1302.06 "None" entered on File Wrapper if No Foreign Priority
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- 1302.12 German Allowed Applications listed under "Other References"
- 1308.01 Action Following Quality Control Review

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MANUAL OF PATENT EXAMINING PROCEDURE

Third Edition

Instructions Regarding Revision No. 2

The attached revised pages are to be substituted for those in the Manual having corresponding page numbers. The page numbers are listed on the reverse of this page to provide a means for determining that your set is complete.

Information and instructions published in Change Notices 2-1 through 2-10 have been included in these revised pages. Accordingly, these Change Notices should be removed and discarded.

ERNEST A. FALLER  
*Editor, MPEP*

Your attention is especially directed to the changes referred to below:

107.01	Security Cases
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PATENT OFFICE

WASHINGTON, D.C. 20231

MANUAL OF PATENT EXAMINING PROCEDURE  
Third Edition

Instructions Regarding Revision No. 3

The attached revised pages are to be substituted for those in the Manual having corresponding page numbers. A list is provided on the reverse side and may be checked to make certain that the set of pages received is complete.

Information and instructions published in Change Notices 2 - 11 through 2 - 18 have been included in these revised pages. Accordingly, these Change Notices should be removed and discarded.

Ernest A. Faller  
Editor, MPEP

Important changes in procedure appear in the following sections:

102	Status Information
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707.05 (e)	Specify Portion of Foreign Patent which is Relied Upon.
707.08	Negotiation Authority Indicated in Office Action
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905.01	Orders for Photocopies
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1302.12 }

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The attached revised pages are to be substituted for those in the Manual having corresponding page numbers. The page numbers listed on the reverse of this page provide a means for determining that your set is complete.

Information and instructions published in Change Notice 2 - 19, 2 - 20, 2 - 21 and 2 - 23 through 2 - 31 have been included in these revised pages. Accordingly, these Change Notices should be removed and discarded.

Ernest A. Faller  
Editor, MPEP

Your attention is especially directed to:

- 602.04(a) Declaration in Lieu of Oath  
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- 608.02(x) Drawing Correction -- OG Figure
- 702.01 "Foreign Type" Case
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MANUAL OF PATENT EXAMINING PROCEDURE  
Instructions Regarding Revision No. 5

The attached revised pages are to be substituted for those in the Manual having corresponding page numbers. Chapter 1100 has been replaced as a unit because of the extensive changes in interference practice based on new Rules of Practice effective July 1, 1965.

Former Chapter 1100 should NOT be discarded. It should be transferred to the back of the Manual and will continue to govern interferences declared prior to July 1, 1965. Change Notice 2 - 22 dealing with hearings on motions should be retained and will be in force with respect to such interferences.

Change Notices 5 - 1 and 5 - 2 should be discarded. In 1101.03, the text differs from 5 - 2 with respect to the sealing of affidavits.

Ernest A. Faller  
Editor, MPEP

The page numbers listed on the reverse of this sheet provide a means for determining that your set is complete.

(Over)

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MANUAL OF PATENT EXAMINING PROCEDURE

Instructions Regarding Revision No. 6

Submitted herewith is Revision No. 6 of the Manual of Patent Examining Procedure, Third Edition.

The revised pages are to be substituted for those in the Manual having corresponding page numbers.

This revision incorporates certain revised practices embodied in Change Notices 5-3 and 6-1 through 6-5, as well as certain changes in the Rules of Practice and changes in the Statutes. Note should be made of pages which reproduce or refer to the new Rules and Statutes, for the pages superseded thereby may still be pertinent to applications filed before October 25, 1965.

For the guidance of all users of the Manual the changes are recapitulated as follows:

The term "final fee" has been changed to -- issue fee -- on those pages where other changes have been made. See 203.04 (page 19) and 307 (page 22). These are exemplary only. A new page has not been reproduced where this changed term would constitute the only change to be made. The words "examining divisions," "supervisory examiner" and "principal examiner" have been changed to -- examining groups --, -- Group Manager -- and -- Supervisory Primary Examiner --, respectively, on those pages where other changes have been incorporated. See 203.08 (page 20), 707.02 (page 77) and 707.02 (a) (page 77), for example. See also 1005. A new page has not been reproduced where a single term or designation of this nature would constitute the only change to be made.

203.07 has been rewritten in line with the new issue fee provisions affecting allowed applications which became effective October 25, 1965. 203.08 has been revised to indicate the modified handling of "status letters" and to set forth in the last paragraph an additional type of inquiry relating to pending applications. 304 has been corrected to remove an obvious typographical error in the heading.

602.03 has been rewritten in its entirety to incorporate the substance of the Notice of July 22, 1965, (Series No. 6-1). 607 and 607.01 have been modified in accordance with the new law effective October 25, 1965. 608.02 (i), 608.02 (k) and 608.02 (l) have been modified to set forth the procedure for transferring drawings between applications, in accordance with the Notice of September 9, 1965. 706.03 (n) now includes a further instruction where "new matter" may be involved, as contained in the Notice of August 13, 1965. 706.07 (e) sets forth current practice following final rejections as contained in the Notice of August 11, 1965. 707.02 now specifies certain Examiner's Answers on appeal in the list of actions which require the attention of the Primary Examiner. 710.02 (b) lists the shortened periods for response to be set in different types of office actions in accordance with the current practice.

712 has been rewritten to set forth new Rules 316 and 317 and to explain further the status of an application which has become abandoned for failure to pay the issue fee. 713.01, 713.05 and 713.09 have been substantially expanded to reflect the present practice in the conduct of interviews in the general case, in special situations, after final rejection and after issue.

714.02 adds the substance of the Notice of August 13, 1965 and a further instruction in facilitating the prosecution. 714.10 states the effect of the new fee law in submitting excess claims. A new first paragraph has been added to 715.01 relating to the effective date of a U. S. patent, especially as applicable to a Rule 131 situation. 717.03 explains the advantage in maintaining certain pencil notes on the drawing and file wrapper. (Notice of July 22, 1965, Series No. 6-2).

903.07 adds the substance of the Notice of June 18, 1965, relating to the processing of applications being passed to issue. 1005 has been revised by eliminating one of the categories (old No. 2) and by adding a further explanatory paragraph. A revision has also been made in 1208.01 involving certain approval to be obtained in making a new rejection in the Examiner's Answer on appeal. 1302.04 adds the substance of the Notice of August 18, 1964, and also includes a change in the Examiner's Amendment practice. See also 1302.12. 1302.10 restates the portion relating to certain notations on drawings referred to in 717.03. The short

paragraph comprising 1302.13 has been revised. 1308 substitutes new Rule 313. 1308.02 has been eliminated and 1308.03 has been renumbered as 1308.02. The last paragraph of 1309.02 has been eliminated and the provision of the new fee law regarding issue fees for reissue applications is set forth. 1505 has been revised in accordance with new fee law.

Certain changes have also been made in the index pages, as well as in the "table of contents" pages at the beginning of certain chapters.

Within the size limitations of Revision No. 6, many pages have not been substituted which would contain solely changes of a minor nature or errors in typography which have come to the Editor's attention. It is anticipated that these will be embodied in subsequent revisions.

W. B. Penn, Editor  
Manual of Patent Examining Procedure

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Errata Regarding Revision No. 6

A corrected page 78 is hereby submitted to replace the one erroneously inserted in Revision No. 6.

New pages 108.1 and 113 are hereby submitted to remove the obvious printer's defect of carrying out the last three lines of former page 108 onto page 113.

In 706.07(a), line 14, "six" should be ---- four ----.

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Instructions Regarding Revision No. 7

Submitted herewith is the group of pages constituting Revision No. 7 of the Manual of Patent Examining Procedure, Third Edition. Proper substitution for those pages in the Manual having corresponding page numbers may be made forthwith.

This revision incorporates certain changes embodied in Notices and memoranda as indicated below.

For the guidance of all users of the Manual the changes may be recapitulated as follows:

In Chapter 200, the term "forfeited" has been superseded by the new terminology -- abandonment for failure to pay issue fee --- See the Chapter heading and 203.04 and 203.07.

In 201.06, fifth paragraph, and 201.11, page 10, column 2, certain exceptions are noted in the category of those applications which should be indicated as divisional and continuing applications.

In 608.01 (n) language has been clarified regarding dependent claims.

In 608.02 explanatory matter has been added to the paragraph "Illustration Subsequently Required." Also, a new paragraph "Waiving of Corrections" (Change Notice 7-3) has been added to this section. The text of 608.02 (b) has been rewritten. In 608.02 (x) the paragraph "New Drawings Prepared by Patent Office" has been rewritten to embody Change Notice 7-4.

Page 62, the heading 714.13 has been modified.

Page 65, "Supervisory Examiner" has been changed to --- Group Manager ---. Other changes of a similar nature have been made on appropriate pages where major revisions appear.

In 706.01 language has been clarified. In 706.02 (page 67) reference has been made to a pertinent decision of the U. S. Supreme Court.

In 706.03 (c) a new sentence has been added to the second paragraph of 35 U. S. C. 112 as approved July 24, 1965.

Page 79, a slight revision has been made in the sample letter.

The text has been slightly revised in 707.05.

In 708.02 the new Special Examining Procedure for Certain New Applications has been added.

Language changes appear in 708.03.

710.01 (a), 710.02, 710.02 (b) and 710.02 (c) have been modified to delineate more clearly the categories of time limit actions and actions in which Shortened Statutory Periods are set.

In 711.02 (c) final fee has been changed to --- issue fee ---. 711.03 and 711.03 (d) have been rewritten. Minor corrections have been made in 711.06 and 712.

In 714.13, reference is made to the new procedure to be followed in treating amendments after final.

901.05 (b) now incorporates the statement of the use of German Utility Models as references as noted in Change Notice 7-1.

Additional text material has been added to 1109 and 1109.01.

1208 has been expanded to include the procedure to be followed in saving time in preparing the Examiner's Answer on appeal. Change Notice 7-2.

1302.04 has been revised to explain the procedure in citing references on allowance of an application (Change Notice 7-5).

1302.05 has been amplified by referring back to the new procedure 608.02.

1302.12 has been revised to explain more clearly the procedure in listing references at time of allowance. A sentence has been added to 1302.13.

Several index pages have also been modified in line with changes in the text.

The last change notice in Series 7 is Change Notice 7-5.

The Editor is cognizant of numerous other changes still to be made in matters of a minor nature and in matters involving perfecting language and improvement in typography, indexing and the like. It is anticipated that these will be incorporated in future revisions.

The cooperation of numerous professionals both in and out of the Office in recommending improvements on the Manual is noted with appreciation and is further solicited.

W. B. Penn, Editor  
Manual of Patent Examining Procedure

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Instructions Regarding Revision No. 8

Submitted herewith is Revision No. 8 of the Manual of Patent Examining Procedure, Third Edition. The accompanying pages may be inserted in the Manual forthwith to replace those pages having corresponding page numbers and as further indicated below.

For the guidance of all users of the Manual the following brief explanations are submitted:

201.07 headed "Continuation" now incorporates the Commissioner's Memorandum relating to the filing of "Continuation" applications using the same drawings and specification of the pending application.

Some modifications have been made in 710.02 (b) relating to Shortened Statutory Periods. Also, "One Month" has been changed to --- Thirty Days ---. 710.02 (c) now adds (f) and (g) time limit situations. 713.02 and 713.09 cross references are noted to other sections. 714.13 has been extensively revised to incorporate the new procedure in treating amendments after final action.

Page 117, new index heading 812.01 has been added to indicate the new paragraph on page 128 setting forth the telephone practice in restriction and election of species situations. 809 adds portions of the memorandum "Prosecution after Final Action" relating to handling of linking claims. 809.03 refers to 809. 813 and 817 have been extensively revised. The sample restriction letter on pages 130 - 131 has been deleted.

Page 159 has been corrected to refer to --- Group Managers ---. 1004 and 1005 have additional listings in the matters to be submitted to the Directors and Group Managers, respectively.

Chapter 1100 on Interference has been revised in several sections, e.g. 1101.01 (l) where the correct Rules are now noted; 1101.01 (o) where the last portion of the final portion has been rewritten; 1101.02 (a) where extensive additions have been made; 1101.02 (c) where paragraph (4) has been rewritten and also 1101.02 (f), 1101.01 (a), 1105.03 and 1107 where significant changes in text have been made. "Docket Branch" has been replaced by --- Interference Service Branch --- in several sections.

1207 has added thereto the current procedure in treating amendments after final action during the appeal and post-appeal stages. 1208.01, 1208.02 and 1214.07 have added text material.

1302.04 is now revised to incorporate the procedure set forth in the Notice of February 24, 1966 relating to Examiner's amendments to cite new references.

The Index has also been extensively revised in an attempt to bring it up to date. Numerous other changes are still to be made.

With this Revision the contents of all Change Notices from Series 1 through Series 8, insofar as they reflect current practice, are now incorporated in the text of the Manual. Accordingly, the Change Notice sheets Series 1 through 8 need no longer be appended to the Manual.

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**PATENT**  
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Rev. 8, April 1966

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Revision 3, May 1952  
Second Edition, November 1953  
Revision 1, April 1955  
Revision 2, June 1956  
Revision 3, June 1957  
Revision 4, July 1958  
Third Edition, November 1961  
Revision 1, January 1964  
Revision 2, November 1964  
Revision 3, January 1965  
Revision 4, April 1965  
Revision 5, July 1965  
Revision 6, October 1965  
Revision 7, January 1966  
Revision 8, April 1966

Rev. 8, April 1966

## Foreword

This Manual is published to provide examiners in the Patent Office with a reference work on the practice and procedure within the Office as it relates to their duties and operations. It contains instructions to examiners, as well as other material in the nature of information and interpretation, and generally outlines the current procedure which the examiners are required or authorized to follow in appropriate cases in the normal examination of applications.

Examiners will continue to be governed as in the past by the applicable statutes, the Rules of Practice, decisions, and orders and instructions issued by the Commissioner, the Director, Patent Examining Operation, or the Supervisory Examiners. Orders and Notices still in force which relate to the subject matter included in this Manual are incorporated and identified as such. Orders and Notices, or portions thereof, relating to the examiners' duties and functions included in this Manual 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.

DAVID L. LADD  
*Commissioner.*

NOVEMBER 15, 1961.

## 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.