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**PART VI**



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## **DEPARTMENT OF COMMERCE**

**Patent and Trademark Office**



### **PATENT CASES**

**Examining and Appeal Procedures**

Title 37—Patents, Trademarks and  
Copyrights

CHAPTER 1—PATENT AND TRADEMARK  
OFFICE, DEPARTMENT OF COMMERCE

PART 1—RULES OF PRACTICE IN PATENT  
CASES

Patent Examining and Appeal Procedures

On October 4, 1976 notice was given in the FEDERAL REGISTER (41 FR 43729) of a proposal to amend sixteen sections of Title 37 of the Code of Federal Regulations relating to patent examining and appeal procedures. Interested persons were invited to comment on the proposal by December 7, 1976. One hundred seventy-five written letters and statements were submitted. A hearing was held in Arlington, Virginia on December 7, 1976 at which 21 persons testified orally. Careful consideration has been given to all comments received, and the proposal is being adopted with certain changes.

The regulations adopted involve all sections that were proposed to be revised, amended or added—namely, §§ 1.11, 1.14, 1.52, 1.56, 1.65, 1.69, 1.97, 1.98, 1.99, 1.109, 1.175, 1.194, 1.196, 1.291, 1.292, and 1.346. Amendments also are being made in two sections which were not included in the published proposal—§§ 1.51 and 1.176. Since amendments to these sections are closely related to the substance of matters which were contained in the published proposal, separate notice and public comment on these amendments are deemed unnecessary.

In addition, amendments are being adopted which were published for comment in two earlier, much less extensive proposals that concerned availability of certain files for public inspection. A notice of a proposed amendment to § 1.14(b) was published on June 4, 1974 (39 FR 19786). A notice of a proposed amendment to § 1.11(a) was published on September 17, 1974 (39 FR 33376). No negative comments were submitted with respect to either of these proposals and both are being adopted without change.

The text of the rules will be reproduced in the Patent and Trademark Office Official Gazette in about a month with additions indicated by arrows and deletions indicated by brackets to help readers identify the changes. A transcript of the hearing, the letters and written statements received, and a summary and analysis of the comments are available for public inspection in Room 11E10 of Crystal Plaza Building 3, 2021 Jefferson Davis Highway, Arlington, Virginia.

PURPOSE OF RULES

The purpose of the rules that are being adopted is to improve the quality and reliability of issued patents by strengthening patent examining and appeal procedures. It is desirable that patents be as dependable as possible, so as to enhance the incentives provided by the patent system to make inventions, to invest in research and development, to put new or improved products on the market, and to disclose inventions that

otherwise would be kept as trade secrets. It is believed that the rules being adopted will help to maintain strong patent incentives.

The rules afford patent owners an opportunity, through the filing of a reissue application, to obtain a ruling from an examiner on the pertinence of additional prior art after a patent has been issued. The rules also broaden the public's opportunity for participation in the patent examining process, consistent with the limitations of statute, the protection of trade secrets, and the need to avoid making it unduly expensive to obtain a patent.

The rules set forth the duty of candor and good faith which applicants have to the Patent and Trademark Office and encourage them to provide information about the prior art in a way that will make it more useful to examiners. A provision for foreign language oaths by individuals who do not understand English is intended to make them more aware of their representations and of their obligations.

Under the rules more Patent and Trademark Office decisions that could have important precedent value will be available to the public, and some additional files will be available for inspection. Proceedings before the Board of Appeals are modified to help avoid the issuance of invalid patents. The rules encourage examiners to see that persons inspecting the file history of issued patents will be able to tell why the case was allowed.

REISSUE APPLICATIONS

Amended § 1.175 permits a patent owner to have new prior art considered by the Office by way of a reissue application without making any changes in the claims or specification. It is adopted with no change from the proposal. The requirement for an oath or declaration alleging that the reissue applicant believes "the original patent to be wholly or partly inoperative or invalid. . . ." is dispensed with in § 1.175(a)(1) unless the applicant believes that to be the case. Section 1.175(a)(4) recognizes that reissues may be filed to have the patentability of the original patent considered in view of prior art or other information relevant to patentability which was not previously considered by the Office.

Thus, a patentee may file a reissue if he believes his patent is valid over prior art not previously considered by the Office but would like to have a reexamination. The procedure may be used at any time during the life of a patent. During litigation, a federal court may, if it chooses, stay proceedings to permit new art to be considered by the Office.

If a reissue application is filed as a result of new prior art with no changes in the claims or specification and the examiner finds the claims patentable over the new art, the application will be rejected as lacking statutory basis for a reissue, since 35 USC 251 does not authorize reissue of a patent unless it is deemed wholly or partly inoperative or invalid. However, the record of prosecu-

tion of the reissue will indicate that the prior art has been considered by the examiner.

A substantial majority of the comments received favored amended § 1.175 as a means for improving the reliability of patents and avoiding unnecessary litigation costs. The negative comments generally questioned the statutory authority of the Commissioner to adopt this section. Authority for § 1.175 is believed to exist in 35 U.S.C. 6, which is the Commissioner's rulemaking authority, and in 35 U.S.C. 251. The latter section of the statute requires that the patent be deemed wholly or partly inoperative or invalid before a reissue may be granted, but does not require such a belief by the patentee before a reissue application may be filed. The case law does not suggest that the approach of new § 1.175(a)(4) is inconsistent with 35 U.S.C. 251.<sup>1</sup> Inasmuch as 35 U.S.C. 251 is a remedial provision,<sup>2</sup> it is believed that a liberal interpretation is justified and that adequate authority exists for the amended section.

Amended § 1.11(b) opens all reissue applications to inspection by the general public. Section 1.11(b) also provides for announcement of the filings of reissue applications in the Official Gazette. This announcement will give interested members of the public an opportunity to submit to the examiner information pertinent to patentability of the reissue application. The announcement will include at least the filing date, reissue application and original patent numbers, title, class and subclass, name of the inventor, name of the owner of record, name of the attorney or agent of record, and examining group to which the reissue application is assigned. Section 1.11(b) is amended from the proposal to so indicate. Reissue applications already on file on the effective date of the section will not be automatically open to inspection and will not be announced in the Official Gazette. However, a liberal policy will be followed in granting petitions for access to individual applications already on file.

In order that members of the public may have time to review the reissue application and submit pertinent information to the Office before the examiner's action, § 1.176 is amended to provide that reissue applications will not be acted on sooner than two months after the Official Gazette announcement of filing.

A substantial majority of the comments received favored adoption of § 1.11(b). The only opposition was based upon a suggestion that no statutory authority exists. However, since reissue applications contain no new disclosure, and therefore no trade secrets or confidential information, they are considered to present a "special circumstance" within the meaning of 35 U.S.C. 122.

<sup>1</sup> See *In re Clark*, 522 F.2d 623, 187 USPQ 209 (CCPA 1975), at footnote 4 where the court declined to decide whether it is proper to seek reissue merely to disclose unciated prior art. See also *In re Altenpohl*, 500 F.2d 1151, 183 USPQ 38 (CCPA 1974).

<sup>2</sup> See *In re Oda*, 443 F.2d 1200, 170 USPQ 268 (CCPA 1971).

The insertion of "all" as the fifth word of the first sentence of § 1.11(b) is for clarity. The word "furnished" is changed to "obtained" in § 1.11 for clarity.

**PROTESTS AND PUBLIC USE PROCEEDINGS**

Amended §§ 1.291 and 1.292 give greater recognition to the value of written protests and public use petitions in avoiding the issuance of invalid patents.

A substantial majority of the comments favored these sections and viewed them as improving the quality of issued patents. Entry of protests has been upheld in court.<sup>3</sup>

Section 1.291(a) provides that public protests against pending applications will be entered in the application file and will, if they meet stated requirements, be considered by the examiner. To guarantee consideration by the examiner, protests must be accompanied by copies of prior art documents relied upon, although protests without copies will not necessarily be ignored. This is similar to the requirement of new § 1.98 that copies of patents and publications accompany prior art statements. Section 1.291 does not contemplate permitting a protester to participate as a party in further proceedings. In the case of applications available to the public, such as reissue applications, the protester may file papers rebutting statements made by the applicant. The examiner at his discretion may request a protester to submit additional written information or may provide extra time for comments by a protester to be filed.

To ensure consideration by the examiner, all protests must be timely submitted. Protests will generally be considered timely submitted if they are filed before final rejection or allowance of the application by the examiner. The consideration given to protests filed after final rejection or allowance of the application by the examiner will depend upon the relevance of the prior art documents submitted and the point in time at which they are submitted. Obviously, if the prior art documents anticipate or clearly render obvious one or more claims they will not knowingly be ignored. It must be recognized, however, that the likelihood of consideration by the examiner decreases as the patent date approaches. Accordingly, protests must be filed early in order to ensure their consideration.

The first sentence of § 1.291(a) is deleted as unnecessary. Section 1.291(a) also is changed from the proposal to make clear that it applies to pending applications and that all protests will be referred to the examiner having charge of the subject matter involved.

Section 1.291(b) incorporates the existing Office policy of permitting persons to submit prior art citations or copies of prior art after a patent has been granted. The section is changed from the proposal by the addition of the words "any papers related thereto"

to recognize that statements as to the pertinence of prior art may be submitted. Both the citations and the related papers are to be entered without comments. The material submitted is not examined by the Office but is available to members of the public inspecting Office records.

Some suggestions were received for major modifications of § 1.291. It was suggested that an advisory opinion of the examiner be placed in the patent file when protests were received after issuance of the patent. Several persons supported a suggestion for examiners to state whether a "new issue" was raised by prior art cited by a protester. Another suggestion was that a procedure similar to that used in the recent Trial Voluntary Protest Programs<sup>4</sup> be adopted on a continuing basis. These suggestions were carefully considered, but are not adopted. The suggestions extend substantially beyond § 1.291 as proposed, and their benefits do not appear sufficient to justify the added cost at this time.

Materials submitted to the Office under §§ 1.291 and 1.292 are to be served upon the applicant, patentee, attorney or agent when possible. The term "patentee" is used in its ordinary sense as defined in 35 USC 100(d). If service is not possible, materials are to be submitted in duplicate so that the Office can attempt to send the duplicate copy. The proposal is changed by adding the words "with the Office" after "filed" in §§ 1.291(c) and 1.292(b) for clarity.

In § 1.292, the requirement that petitioner bear the Office's expenses in conducting the public use proceeding is deleted. Section 1.292 is also amended to ensure that the existence of public use proceedings is recorded in the application file wrapper. Notice of a petition for a public use proceeding will be entered in the file in lieu of the petition itself when the petition and the accompanying papers are too bulky to accompany the file. Any public use papers not physically entered in the file will be publicly available whenever the application file wrapper is available.

**DUTY OF DISCLOSURE**

Amended § 1.56 defines the duty to disclose information to the Office and the criteria for striking an application when that duty is violated. The wording of the section is changed in several respects from the proposal, but the purpose and general scope are the same as in the proposal. The section codifies the existing Office policy on fraud and inequitable conduct, which is believed consistent with the prevailing case law in the federal courts. The expanded wording of the section is intended to be helpful to individuals who are not expert in the judicially developed doctrines concerning fraud. The section should have a stabilizing effect on future decisions in the Office and may afford guidance to courts as well.

A majority of comments received favored § 1.56 as proposed or with mod-

ifications. Persons opposed expressed concern over the imprecise definition of the duty of disclosure and the possibility that the proposal would substantially increase the burden on patent applicants. Some stated that there would be increased litigation as a result of the proposal. Several suggestions were received on better ways to define the individuals who should disclose information and the kinds of information that should be disclosed.

The first sentence of § 1.56(a) is changed from the proposal by adding the word "substantively," so that individuals having a duty of disclosure are limited to those who are "substantively involved in the preparation or prosecution of the application." This change is intended to make clear that the duty does not extend to typists, clerks, and similar personnel who assist with an application. This phrase, when taken with the last sentence of § 1.56(a), is believed to provide an adequate indication of the individuals who are covered by the duty of disclosure. The word "with" is inserted in the first sentence of § 1.56(a) before "the assignee" and before "anyone to whom there is an obligation to assign" to make clearer that the duty applies only to individuals, not to organizations.

Numerous comments concerned the term "relevance" that was used in the proposal. In response to the comments, language is substituted in § 1.56 and related sections which is believed to establish a clearer standard for determining whether information need be disclosed to the Office. "Relevant" is replaced by "material" because the latter term connotes something more than a trivial relationship. It appears to be more commonly used in court opinions. In addition, the third sentence of § 1.56, which defines materiality, is rewritten. The sentence now states that information is material "where there is a substantial likelihood that a reasonable examiner would consider it important in deciding whether to allow the application to issue as a patent." The sentence paraphrases the definition of materiality used by the Supreme Court in its recent decision in *TSC Industries v. Northway*.<sup>5</sup> Although in that case the court was concerned with rules promulgated by the Securities and Exchange Commission, the Court's articulation of materiality is believed consistent with the prevailing concept that has been applied by lower courts in recent patent cases.

The definition of materiality in § 1.56 will have to be interpreted in the context of patent law rather than securities law. Principles followed by courts in securities cases should not be translated to patent cases automatically. It is noteworthy, however, that in formulating the definition of materiality in *TSC Industries* the Supreme Court considered some of the same matters over which concern was expressed in the public

<sup>3</sup> *International Paper Co. v. Fibreboard Corp.*, 63 F.R.D. 88, 181 USPQ 740 (D. Del. 1974).

<sup>4</sup> 923 O.G. 2; 930 O.G. 1454; 938 O.G. 945

<sup>5</sup> 426 U.S. —, 48 L. Ed. 2d 767, 96 S. Ct. 2126, 44 U.S.L.W. 4862, decided June 14, 1976.

comments on proposed § 1.56. The Court noted that the standard of materiality should not be so low that persons would be "subjected to liability for insignificant omissions or misstatements," or so low that the fear of liability would cause management "simply to bury the shareholder in an avalanche of trivial information—a result that is hardly conducive to informed decision making."<sup>6</sup>

Although the third sentence of § 1.56 (a) refers to decisions of an examiner, it is intended that the duty of disclosure would apply in the same manner in the less common instances where the official making a decision on a patent application is someone other than an examiner—e.g., a member of the Board of Patent Interferences or the Board of Appeals. This is implicit in the duty "of candor and good faith" toward the Office that is specified in the first sentence of § 1.56(a).

Comments and questions were received concerning the term "information" used in the second and third sentences of § 1.56(a) and elsewhere. It means all of the kinds of information required to be disclosed under current case law. In addition to prior art patents and publications, it includes information on prior public uses, sales, and the like. It is not believed practicable to define information in the text of the rule at this time. However, the rule is not intended to require disclosure of information favorable to patentability—e.g., evidence of commercial success of the invention. Neither is it meant to require disclosure of information concerning the level of skill in the art for purposes of determining obviousness.

Several comments were received concerning the duty to disclose information the patent applicant regards as confidential, including information the applicant has received from another party under an injunction of secrecy. This problem has existed prior to amendment of § 1.56. The Patent and Trademark Office, of course, keeps information disclosed by applicants confidential until a patent is issued. It has been suggested that the Office should develop a mechanism for continuing to hold information in confidence after issuance of a patent if in the judgment of the examiner the information is not material to the examination of the application. The feasibility of offering a rule for public comment on this topic at a later date will be considered.

New § 1.56(b) is added to make clear that information may be disclosed to the Office through an attorney or agent of record or through a pro se inventor, and that other individuals may satisfy their duty of disclosure to the Office by disclosing information to such an attorney, agent or inventor. Information that is not material need not be passed along to the Office.

Proposed sections 1.56 (b) and (c) have been revised and shortened and appear at §§ 1.56 (c) and (d). The proposal was

criticized for leaving it open to the Office to apply a different standard of materiality from the one set forth in § 1.56.<sup>7</sup> Section 1.56(d) as adopted states that an application "shall" be stricken when the criteria set forth are met. Thus § 1.56(d) as adopted establishes a single standard for striking applications.

The term "inequitable conduct" is dropped from § 1.56(d) as covering too great a spectrum of conduct to be subject to mandatory striking. Inequitable conduct that is equivalent to fraud is intended to come within the definition of fraud. The Court of Customs and Patent Appeals already has interpreted "fraud" in existing § 1.56 to encompass conduct of this sort.<sup>8</sup> Moreover, § 1.56(d) as adopted calls for striking an application either for fraud or for a violation of the duty of disclosure.

In § 1.56(d) "bad faith" is substituted for the term "deliberate" that was used in the proposal. This change is to make clear that an intent to deceive (or gross negligence equivalent to such an intent) must be shown before an application will be stricken. Bad faith is not present if information is withheld as a result of an error in judgment or inadvertence.

Several comments concerned whether attorneys and agents could represent their clients' interests and at the same time comply with § 1.56. Similar comments were directed to §§ 1.97 to 1.99. It is of course in the interest of the client to have a valid patent and this cannot be obtained without disclosure of known material facts. It is not inconsistent for an attorney or agent to fulfill his duty of candor and good faith to the Office and to act as an advocate for his client. The submission of information under § 1.56 does not preclude the submission of arguments that such information does not render the subject matter of the application unpatentable.

In § 1.65 a new third sentence is added to require the patent applicant to acknowledge the duty of disclosure. The language is changed from the proposal to be consistent with changes made in § 1.56. To allow time for the Office and applicants to revise printed oath and declaration forms now in use, the mandatory acknowledgement of the duty of disclosure in amended § 1.65 does not become effective until January 1, 1978. Applicants at their option may include the new language in oaths and declarations filed prior to the effective date. The Office will publish a separate notice in the FEDERAL REGISTER adding a sentence acknowledging the duty of disclosure to appropriate forms in 37 CFR Part 3, "Forms for Patent Cases."

The word "statement" is deleted from the title of § 1.65 to avoid confusion with the prior art statement of §§ 1.97 through 1.99.

Amended § 1.346 emphasizes that there must be a reasonable basis to support

<sup>6</sup> See discussion accompanying proposed rules in FEDERAL REGISTER of October 4, 1976, page 43731, first sentence.

<sup>8</sup> *Norton v. Curtiss*, 493 F.2d 779, 792, 167 USPQ 532, 543 (CCPA 1970).

every allegation of improper conduct made by a registered practitioner in any Office proceeding. The language that was proposed is clarified in the section as adopted. Although § 1.346 is limited to papers filed in Office proceedings, the amendment to § 1.346 is not intended to imply that disciplinary action never will be taken against a registered practitioner under § 1.348 for a groundless allegation of improper conduct in a court proceeding.

#### PRIOR ART STATEMENTS

New §§ 1.97, 1.98 and 1.99 deal with prior art statements and provide a mechanism by which patent applicants may comply with the duty of disclosure provided in § 1.56. The sections have been substantially changed from the proposal, in response to comments received.

Unlike the corresponding part of the proposal, the sections as adopted are not mandatory, though applicants are strongly encouraged to follow the procedures described in them. Applications will be examined whether or not a prior art statement is filed and whether it complies with the rules or is defective. It is nevertheless believed that applicants will find that the use of prior art statements complying fully with the requirements of §§ 1.97 through 1.99 will be the best way to satisfy the duty of disclosure. The Patent and Trademark Office cannot assure that prior art disclosed in other ways will be considered by the examiner.

Sections 1.97 through 1.99 do not prescribe the content of what materials should be submitted in the prior art statement; this is for the applicant and the attorney or agent to decide in the light of the duty of disclosure expressed in § 1.56. The only criterion contained in §§ 1.97 through 1.99 as to content of the art cited is in § 1.97(b). This subsection indicates that the statement will be construed as a representation that the prior art listed includes what the submitter considers to be the closest art of which he is aware. The submitter need not decide which particular items of prior art are the closest or identify any items as such; the representation is simply that he is not withholding known prior art which he considers closer than that which is submitted. Section 1.97(b) makes clear that the prior art statement is not a representation that a search has been made or that no better art exists.

In § 1.97(a) the time for filing the prior art statement is extended from the two months of the original proposal to three months. In most cases prior art submitted within three months will be available to the examiner before he takes up the case for action, though it will be helpful if citations are made as promptly as possible.

Section 1.98 lists the elements of the prior art statement: a listing of the art, a concise explanation of the relevance of each listed item, and copies of the art or the pertinent portions thereof.

The prior art statement resembles somewhat the "patentability statement"

<sup>6</sup> 426 U.S. at —, 48 L. Ed. 2d at 765, 96 S. Ct. at 2132, 44 U.S.L.W. at 4855.

of the proposal and the "patentability brief" proposed elsewhere.<sup>9</sup> The name has been changed to reflect a change in the requirements of § 1.98(a). Unlike the proposed version of this paragraph, which called for an explanation of why the claimed invention is believed patentable over the cited art, the paragraph as adopted calls only for a concise explanation of the relevance of each listed item. This may be nothing more than identification of the particular figure or paragraph of the patent or publication which has some relation to the claimed invention. It might be a simple statement pointing to similarities between the item of prior art and the claimed invention. It is permissible but not necessary to discuss differences between the prior art and the claims. It is thought that the explanation of relevance will be essentially as useful to the examiner as the formerly proposed explanation of patentability, and should be significantly less burdensome for the applicant to prepare.

Section 1.98 requires a copy of each patent or publication cited, including U.S. patents, to accompany the prior art statement. Several comments questioned the need for burdening the applicant to supply copies of materials that are present in the Office's files. However, substantial time and effort often is needed to locate a document in the Office's files. Since the person submitting the prior art statement generally has available a copy of the item being cited, it is believed that expense and effort can be minimized by having that person supply the copy in all cases. Consideration has been given to proposals to allow the applicant to submit an order for copies of the patents along with his statement instead of actually submitting copies. This will be further studied, but to date no way has been found to assure that the copies will be available to the examiner by the first action unless the applicant submits them with the prior art statement.

Other changes to §§ 1.97 through 1.99 from the proposal eliminate unnecessary language and clarify the requirements.

A notice published in 1974<sup>10</sup> contained guidelines for the citation of prior art by applicants. Many of those guidelines are repeated or superseded by §§ 1.97 through 1.99. In order to allow applicants, attorneys and agents time to adjust their procedures to comply with the requirements for prior art statements, the effective date of §§ 1.97 through 1.99 will be July 1, 1977. Until these new sections become effective, applicants should continue to follow the 1974 guidelines. Issuance of a revised notice, to take effect July 1, 1977, is under study.

A survey conducted by the Office in 1976 concludes that many applicants have not been citing prior art to the Office.<sup>11</sup> It is hoped that with the duty

of disclosure expressly set forth in § 1.56, applicants will perceive that it is to their advantage to use the procedures of §§ 1.97 through 1.99.

Section 1.51 is amended by designating the existing rule as § 1.51(a) and adding new § 1.51(b) which contains a reference to §§ 1.97 through 1.99.

#### FOREIGN LANGUAGE OATHS

Amended § 1.52 and new § 1.69 are adopted as proposed.

Section 1.69 requires that oaths and declarations be in a language which is understood by the individual making the oath or declaration, i.e., a language which the individual comprehends. If the individual comprehends the English language, he must use it. If the individual cannot comprehend the English language, any oath or declaration must be in a language which the individual can comprehend. If an individual uses a language other than English for an oath or declaration, the oath or declaration must include a statement that the individual understands the content of any documents to which the oath or declaration relates. If the documents are in a language the individual cannot comprehend, the documents may be explained to him so that he is able to understand them.

The Office will provide approved translations for as many of the oath or declaration forms which appear in Part 3 of Title 37 of the Code of Federal Regulations as practicable, and in as many languages as practicable, probably using a side-by-side English/foreign language format. The availability of the foreign language forms will be announced in the Official Gazette at a later date.

The change in § 1.52, providing for an exception to the requirement that oaths and declarations be in the English language, is necessitated by the adoption of § 1.69.

Although very few persons opposed §§ 1.52 and 1.69, several suggested that the philosophy behind the change be extended to the specification, requiring the specification to be in a language which the applicant understands, accompanied by an English translation. This suggestion was not considered feasible because of the obvious burdens on the applicant and the danger to the applicant and the public if the translation is not literally correct. Also, if a large number of applications were filed in a foreign language, there would be significant administrative burdens on the Office. Attention is directed to the Manual of Patent Examining Procedure, § 608.1, which permits non-English language applications to be filed in certain limited circumstances.

Other suggested modifications of the proposed rule included: (1) using an English language oath or declaration with one additional clause in a language understood by the person making the oath or declaration, the clause stating that the person understands all the documents to which the oath or declaration relates; and (2) extending the two month grace period for filing an English translation of an oath or declaration filed under § 1.65.

After due consideration, suggestion (1) was believed not to accomplish the objectives of the rule as well as the adopted rule. Suggestion (2) would cause unsatisfactory delays in the initial processing of applications.

#### DECISIONS AND FILES MADE PUBLIC

Section 1.14(d) makes more explicit the conditions under which significant decisions of the Patent and Trademark Office will be made available to the public, and includes reference to decisions of the Board of Patent Interferences, in addition to decisions of the Board of Appeals and the Commissioner.

A large majority of the comments received were favorable. Several commentators felt that more decisions would be made available as a result of the proposed section and that it would assist in publicizing aspects of Office procedure which may not have been available previously.

Some negative comments were based on the view that the Freedom of Information Act<sup>12</sup> required all decisions of the Office to be made publicly available. A greater number of those opposing the proposed section, however, felt that applicants should have an absolute right to have their applications maintained in confidence and that no information should be made public without specific authorization from them. One commentator felt that rulemaking on this subject should be deferred until currently pending litigation<sup>13</sup> under the Freedom of Information Act was finally resolved.

The section as adopted is applicable to decisions deemed by the Commissioner to involve an interpretation of patent laws or regulations that would be of significant precedent value, where such decisions are contained in either pending or abandoned applications or in interference files not otherwise open to the public. It is applicable whether or not the decision is a final decision of the Patent and Trademark Office.

The parenthetical phrase in the first sentence of the proposed section, which cited other provisions of the rules under which decisions are open to public inspection, is deleted as unnecessary and possibly confusing. Also, in view of several comments received, the period of time during which an applicant or party in interest may object to having a decision made public is extended from one month to two months. At least twenty days is given to request reconsideration and seek court review before a decision is made public over an objection.

Section 1.14(d) is considered to place a duty on the Patent and Trademark Office to identify significant decisions and to take the steps necessary to inform the public of such decisions, by publication of such decisions, in whole or in part. It is anticipated, however, that no more than a few dozen decisions per year will be deemed of sufficient importance to warrant publication under the authority of this section.

<sup>9</sup> 5 USC 552.

<sup>12</sup> *Irons v. Gotschalk*, Slip Opinion, No. 74-1365 (D.C. Cir., October 21, 1976).

<sup>9</sup> E.g., FEDERAL REGISTER of September 9, 1968, 34 FR 14176, 866 O.G. 1402; S. 2255, 94th Congress, § 131(b).

<sup>10</sup> Notice of August 12, 1974, 926 O.G. 2.

<sup>11</sup> BNA's Patent, Trademark and Copyright Journal, No. 301, October 28, 1976, page D-1.

Amended § 1.14(b) allows public inspection of abandoned applications referred to in defensive publications. The comments received on the proposed amendment on this topic in 1974 expressed no opposition and the proposal is adopted without change.

The amendment is intended to encourage use of the defensive publication program provided under § 1.139. The objective of that program is to make available to the public the technical disclosure of applications in which the owner prefers to publish an abstract in lieu of obtaining an examination. Existing §§ 1.11(b) and 1.139 open the complete defensive publication application to inspection by the general public upon publication of the abstract. With the amendment, an abandoned application referred to in a defensive publication application will likewise be open to public inspection, avoiding any need to repeat its contents in the defensive publication application. Thus, public availability of the applications involved should be of benefit both to the applicant and the public.

A suggestion was made that the section be extended still further to include abandoned applications referred to in foreign patents. This suggestion, however, goes too far beyond the proposal that was published and has too uncertain an impact to be adopted at this time.

Amended § 1.11(a) provides earlier access to the file of an interference which involved a patent or an application on which a patent has issued. All comments that were submitted on the 1974 proposal on this topic were favorable and two commentators felt the proposal should be extended further. The proposal is being adopted without change.

Under present practice, access to the file of an interference is not permitted until judicial review of the decision of the Board of Patent Interferences has been exhausted. The amended section allows access to the file after final decision of the Board of Patent Interferences if that decision is an award of priority as to all parties. It is believed that such earlier access will be of benefit to members of the public by making available information relevant to the issuance of the patent whether or not the interference decision is still being adjudicated.

#### PATENT APPEALS

Section 1.194 clarifies the circumstances in which oral hearings should be requested, provides for oral arguments by or on behalf of examiners in certain appeals, and reduces the time permitted for oral arguments.

Comments relating to this section were favorable by a very substantial majority, although there were several reservations to the effect that § 1.194(a) tended to discourage or downgrade oral arguments. Participation by examiners was considered to be desirable not only from the standpoint of improving the overall presentation of the argument, particularly in complex cases, but also

for the educational and experience benefits to the examiners themselves.

The only opposition to the section was based on the feeling that oral hearings would be discouraged. The rule is intended to discourage oral hearings only to the same extent as the Office's 1975 Official Gazette notice on the subject.<sup>14</sup> Section 1.194(a) indicates that oral hearings should not be requested as a matter of course in every appeal, but only in those circumstances where the appellant feels that such a hearing will be of material assistance to the proper presentation of the appeal. The section expressly provides that equal consideration will be accorded in deciding all appeals, whether or not an oral hearing is held.

In appeals where the appellant has requested an oral hearing, § 1.194(b) provides for oral argument by, or on behalf of, the primary examiner, if such argument is considered to be helpful by either the primary examiner or the Board. This provision incorporates the present practice of permitting examiners to present an oral argument before the Board.<sup>15</sup> It gives the Board additional discretionary authority to request presentation of an oral argument by, or on behalf of the examiner to ensure that all issues are fully and accurately presented.

Section 1.194(c) provides, as does existing § 1.194, that appeals will be assigned for consideration and decision without an oral hearing where none has been requested by the appellant. Where an oral hearing has been requested, a day of hearing will be set, and both appellant and the primary examiner will be notified. A provision for notice to the examiner is added to the proposed version. Additionally, § 1.194(c) reflects the present practice of limiting oral argument on behalf of the appellant to twenty minutes.<sup>16</sup> The time permitted for argument by the examiner has been shortened from twenty minutes, as proposed, to fifteen minutes. The examiner, unlike the appellant, will not ordinarily need time to present the facts of the case or for rebuttal.

In any appeal where oral argument is to be presented by, or on behalf of, the primary examiner, the appellant will be given due notice of that fact.

Proposed § 1.196(b) would have authorized the Board of Appeals to reject allowed claims, in cases before it, whenever the Board had knowledge of grounds for so doing.

While a majority of those commenting on this section favored in principle the concept of allowing the Board to have this right, significant concern was voiced that there was no statutory authority for the Board to actually reject allowed claims. Further, the question of proper authority for judicial review of such action by the Board was a matter of concern. Other reasons advanced in opposi-

tion to the section were that applicants would be inhibited from appealing by the risk of having allowed claims rejected and that the proposal would create a higher presumption of validity in cases reviewed by the Board. A significant number commented that it would be more appropriate for the Board to remand the case to the primary examiner for consideration of the grounds raised by the Board. This would afford the applicant an opportunity to demonstrate the patentability of the claims and would remove any question as to statutory authority.

In view of the comments received, existing § 1.196(b) will not be modified, but a new § 1.196(d) is added providing express authority for the Board of Appeals to include, in its decision, a statement of any grounds for rejecting any allowed claim that it believes should be considered by the primary examiner. Section 1.196(d) provides that the Board may remand the case to the examiner for such consideration, and that the applicant shall have an opportunity to respond to the grounds set forth by the Board prior to consideration by the examiner. If the previously allowed claims are rejected by the examiner, the rejection may be appealed to the Board.

The new section further provides that a decision of the Board which includes a remand will not be considered as a final decision in the case, but that the Board, following conclusion of the proceedings before the primary examiner, will either adopt its earlier decision as final or will render a new decision based on all appealed claims, as it considers appropriate. In either case, final action by the Board will give rise to the existing alternatives available to an appellant following a decision by the Board.

In situations where the primary examiner concludes after consideration of all the evidence and argument that the remanded claims should be allowed, the new rule dealing with reasons for allowance (§ 1.109) provides an appropriate mechanism for him to explain, on the record, his reasoning for coming to this conclusion, notwithstanding the grounds set forth by the Board in its statement.

Promulgation of new § 1.196(d) does not affect the Board's existing authority to remand a case to the primary examiner without rendering a decision in appropriate circumstances. Section 1.196(d) is not intended as an instruction to the Board to reexamine every allowed claim in every appealed application. It is, rather, intended to give the Board express authority to act when it becomes apparent, during the consideration of rejected claims, that one or more allowed claims may be subject to rejection on either the same or on different grounds from those applied against the rejected claims.

#### REASONS FOR ALLOWANCE

New § 1.109 is intended to emphasize and formalize the examiner's authority to state his reasoning for allowing a claim or claims. The authority is discretionary with the examiner and is only to

<sup>14</sup> See notice of March 20, 1975, 933 O.G. 1010.

<sup>15</sup> MPEP, § 1209.

<sup>16</sup> See notice of March 20, 1975, 933 O.G. 1010.

be used when the record does not otherwise reveal the reasons for allowance.

A majority of the comments received favored the rule as proposed because it would tend to provide courts and others who were reviewing the patent with a clearer record. Those who opposed the rule most often gave the reason that the examiner might fail to state all the reasons or the strongest reasons why a claim was allowed, which could place unnecessary limitations on the claims or create an estoppel in subsequent litigation or licensing.

To help insure that the examiner's statement of his reasoning in allowing a claim will not unnecessarily limit the claims or create an estoppel, a final sentence is added to the proposal which states that failure of the applicant to comment upon or rebut the examiner's reasoning "shall not give rise to any implication that the applicant agrees with or acquiesces in the reasoning of the examiner."

Several commenters suggested that stricter enforcement of §§ 1.111 and 1.133 would eliminate the need for a new rule concerning reasons for allowance. Situations exist, however, where a statement of reasons for allowance could be helpful, for example when an examiner withdraws a rejection for reasons not suggested by the applicant; when an applicant submits several arguments for allowing a claim and the examiner finds not all of them persuasive; when an examiner allows a claim on the first Office action after citing very close prior art; and when the examiner allows a claim after remand from the Board of Appeals (see new § 1.196(d)).

The first sentence of the proposed rule is changed to define more precisely the circumstances in which an examiner's statement is appropriate, as well as to define more precisely the content of the statement. The statement will include the examiner's "reasoning." The examiner may state his reasoning whenever he "believes that the record of the prosecution as a whole does not make clear his reasons for allowing a claim or claims."

Several persons commented that the rule should provide a procedure for appeal from the examiner's statement of his reasoning. The rule does permit applicants to comment upon the examiner's reasoning. If the applicant does not wish to comment, he may reserve for a later proceeding, without prejudice, any rebuttal.

TEXT OF RULES ADOPTED

After consideration of the comments received and pursuant to the authority contained in § 6 of Title 35 of the United States Code, Part 1 of Title 37 of the Code of Federal Regulations is amended as set forth below.

1. Section 1.11 is revised to read as follows:

§ 1.11 Files open to the public.

(a) After a patent has been issued, the specification, drawings, and all papers relating to the case in the file of

the patent are open to inspection by the general public, and copies may be obtained upon paying the fee therefor. After an award of priority by the Board of Patent Interferences as to all parties, the file of any interference which involved a patent, or an application on which a patent has issued, is similarly open to public inspection and procurement of copies. See § 2.27 for trademark files.

(b) All reissue applications and all applications in which the Office has accepted a request filed under § 1.139, and related papers in the application file, are open to inspection by the general public, and copies may be obtained upon paying the fee therefor. The filing of reissue applications will be announced in the *Official Gazette*. The announcement shall include at least the filing date, reissue application and original patent numbers, title, class and subclass, name of the inventor, name of the owner of record, name of the attorney or agent of record, and examining group to which the reissue application is assigned.

2. In § 1.14 paragraphs (b) and (d) are revised to read as follows:

§ 1.14 Patent applications preserved in secrecy.

(b) Except as provided in § 1.11(b) abandoned applications are likewise not open to public inspection, except that if an application referred to in a U.S. patent, or in an application which is open to inspection pursuant to § 1.139, is abandoned and is available, it may be inspected or copies obtained by any person on written request, without notice to the applicant. Abandoned applications may be destroyed after 20 years from their filing date, except those to which particular attention has been called and which have been marked for preservation. Abandoned applications will not be returned.

(d) Any decision of the Board of Appeals or the Board of Patent Interferences, or any decision of the Commissioner on petition, not otherwise open to public inspection shall be published or made available for public inspection if:

(1) The Commissioner believes the decision involves an interpretation of patent laws or regulations that would be of important precedent value; and (2) the applicant, or any party involved in the interference, does not, within two months after being notified of the intention to make the decision public, object in writing on the ground that the decision discloses a trade secret or other confidential information. If a decision discloses such information, the applicant or party shall identify the deletions in the text of the decision considered necessary to protect the information. If it is considered the entire decision must be withheld from the public to protect such information, the applicant or party must explain why. Applicants or parties will be given time, not less than twenty days, to request reconsideration and seek court review before any portions of decisions are made

public over their objection. See § 2.27 for trademark applications.

3. Section 1.51 is revised to read as follows:

§ 1.51 General requisites of an application.

(a) Applications for patents must be made to the Commissioner of Patents and Trademarks. A complete application comprises:

(1) A specification, including a claim or claims, see §§ 1.71 to 1.77.

(2) An oath or declaration, see §§ 1.65 and 1.68.

(3) Drawings, when necessary, see §§ 1.81 to 1.88.

(4) The prescribed filing fee. (See 35 USC section 41 for filing fees.)

(b) Applicants are encouraged to file a prior art statement at the time of filing the application or within three months thereafter. See §§ 1.97 through 1.99.

4. In § 1.52 paragraph (a) is revised to read as follows:

§ 1.52 Language, paper, writing, margins.

(a) The specification and oath or declaration must be in the English language except as provided in § 1.69. All papers which are to become a part of the permanent records of the Patent and Trademark Office must be legibly written or printed in permanent ink or its equivalent in quality. All of the application papers must be presented in a form having sufficient clarity and contrast between the paper and the writing or printing thereon to permit the production of readily legible copies in any number by use of photographic, electrostatic, photoffset, and microfilming processes. If the papers are not of the required quality, substitute typewritten or printed papers of suitable quality may be required.

5. Section 1.56 is revised to read as follows:

§ 1.56 Duty of disclosure; striking of applications.

(a) A duty of candor and good faith toward the Patent and Trademark Office rests on the inventor, on each attorney or agent who prepares or prosecutes the application and on every other individual who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application. All such individuals have a duty to disclose to the Office information they are aware of which is material to the examination of the application. Such information is material where there is a substantial likelihood that a reasonable examiner would consider it important in deciding whether to allow the application to issue as a patent. The duty is commensurate with the degree of involvement in the preparation or prosecution of the application.

(b) Disclosures pursuant to this section may be made to the Office through an attorney or agent having responsibility for the preparation or prosecution of the application or through an inventor who is acting in his own behalf. Disclosure to such an attorney, agent or

inventor shall satisfy the duty, with respect to the information disclosed, of any other individual. Such an attorney, agent or inventor has no duty to transmit information which is not material to the examination of the application.

(c) Any application may be stricken from the files if: (1) Signed or sworn to in blank, or without actual inspection by the applicant; or

(2) Altered or partly filled in after being signed or sworn to.

(d) An application shall be stricken from the files if it is established by clear and convincing evidence that any fraud was practiced or attempted on the Office in connection with it or that there was any violation of the duty of disclosure through bad faith or gross negligence.

6. In the heading preceding § 1.65 "STATEMENT;" is deleted.

7. In § 1.65 the heading and paragraph (a) are revised to read as follows:

**§ 1.65 Oath or declaration.**

(a) (1) The applicant, if the inventor, must state that he verily believes himself to be the original and first inventor or discoverer of the process, machine, manufacture, composition of matter, or improvement thereof, for which he solicits a patent; that he does not know and does not believe that the same was ever known or used in the United States before his invention or discovery thereof, and shall state of what country he is a citizen and where he resides and whether he is a sole or joint inventor of the invention claimed in his application. In every original application the applicant must distinctly state that to the best of his knowledge and belief the invention has not been in public use or on sale in the United States more than one year prior to his application or patented or described in any printed publication in any country before his invention or more than one year prior to his application, or patented or made the subject of an inventor's certificate in any foreign country prior to the date of his application on an application filed by himself or his legal representatives or assigns more than twelve months prior to his application in this country. He must acknowledge a duty to disclose information he is aware of which is material to the examination of the application. He shall state whether or not any application for patent or inventor's certificate on the same invention has been filed in any foreign country, either by himself, or his legal representatives or assigns. If any such application has been filed, the applicant shall name the country in which the earliest such application was filed, and shall give the day, month, and year of its filing; he shall also identify by country and by day, month, and year of filing, every such foreign application filed more than twelve months before the filing of the application in this country.

(2) This statement (i) must be subscribed to by the applicant, and (ii) must either (a) be sworn to (or affirmed) as provided in § 1.66, or (b) include the personal declaration of the applicant as

prescribed in § 1.68. See § 1.153 for design cases and § 1.162 for plant cases.

8. Section 1.69 is added to read as follows:

**§ 1.69 Foreign language oaths and declarations.**

(a) Whenever an individual making an oath or declaration cannot understand English, the oath or declaration must be in a language that such individual can understand and shall state that such individual understands the content of any documents to which the oath or declaration relates.

(b) Unless the text of any oath or declaration in a language other than English is a form provided or approved by the Patent and Trademark Office, it must be accompanied by a verified English translation, except that in the case of an oath or declaration filed under § 1.65, the translation may be filed in the Office no later than two months after the filing date.

9. The heading "PRIOR ART STATEMENT" is added following § 1.95 and preceding § 1.97.

10. Section 1.97 is added to read as follows:

**§ 1.97 Filing of prior art statement.**

(a) As a means of complying with the duty of disclosure set forth in § 1.56, applicants are encouraged to file a prior art statement at the time of filing the application or within three months thereafter. The statement may either be separate from the specification or may be incorporated therein.

(b) The statement shall serve as a representation that the prior art listed therein includes, in the opinion of the person filing it, the closest prior art of which that person is aware; the statement shall not be construed as a representation that a search has been made or that no better art exists.

11. Section 1.98 is added to read as follows:

**§ 1.98 Content of prior art statement.**

(a) Any statement filed under § 1.97 or § 1.99 shall include: (1) A listing of patents, publications or other information and (2) a concise explanation of the relevance of each listed item. The statement shall be accompanied by a copy of each listed patent or publication or other item of information in written form or of at least the portions thereof considered by the person filing the statement to be pertinent.

(b) When two or more patents or publications considered material are substantially identical, a copy of a representative one may be included in the statement and others merely listed. A translation of the pertinent portions of foreign language patents or publications considered material should be transmitted if an existing translation is readily available to the applicant.

12. Section 1.99 is added to read as follows:

**§ 1.99 Updating of prior art statement.**

If prior to issuance of a patent an applicant, pursuant to his duty of disclosure under § 1.56, wishes to bring to the attention of the Office additional patents, publications or other information not previously submitted, the additional information should be submitted to the Office with reasonable promptness. It may be included in a supplemental prior art statement or may be incorporated into other communications to be considered by the examiner. Any transmittal of additional information shall be accompanied by explanations of relevance and by copies in accordance with the requirements of § 1.98.

13. Section 1.109 is added to read as follows:

**§ 1.109 Reasons for allowance.**

If the examiner believes that the record of the prosecution as a whole does not make clear his reasons for allowing a claim or claims, the examiner may set forth such reasoning. This shall be incorporated into an Office action rejecting other claims of the application or be the subject of a separate communication to the applicant. The applicant may file a statement commenting on the reasons for allowance within such time as may be specified by the examiner. Failure to file such a statement shall not give rise to any implication that the applicant agrees with or acquiesces in the reasoning of the examiner.

14. In § 1.175 paragraph (a) is revised to read as follows:

**§ 1.175 Reissue oath or declaration.**

(a) Applicants for reissue, in addition to complying with the requirements of the first sentence of § 1.65, must also file with their applications a statement under oath or declaration as follows:

(1) When the applicant verily believes the original patent to be wholly or partly inoperative or invalid, stating such belief and the reasons why.

(2) When it is claimed that such patent is so inoperative or invalid "by reason of a defective specification or drawing," particularly specifying such defects.

(3) When it is claimed that such patent is inoperative or invalid "by reason of the patentee claiming more or less than he had a right to claim in the patent," distinctly specifying the excess or insufficiency in the claims.

(4) When the applicant is aware of prior art or other information relevant to patentability, not previously considered by the Office, which might cause the examiner to deem the original patent wholly or partly inoperative or invalid, particularly specifying such prior art or other information and requesting that if the examiner so deems, the applicant be permitted to amend the patent and be granted a reissue patent.

(5) Particularly specifying the errors or what might be deemed to be errors relied upon, and how they arose or occurred.



(6) Stating that said errors, if any, arose "without any deceptive intention" on the part of the applicant.

15. Section 1.176 is revised to read as follows:

**§ 1.176 Examination of reissue.**

An original claim, if re-presented in the reissue application, is subject to re-examination, and the entire application will be examined in the same manner as original applications, subject to the rules relating thereto, excepting that division will not be required. Applications for reissue will be acted on by the examiner in advance of other applications, but not sooner than two months after announcement of the filing of the reissue application has appeared in the Official Gazette.

16. Section 1.194 is revised to read as follows:

**§ 1.194 Oral hearing.**

(a) An oral hearing should be requested only in those circumstances in which the appellant considers such a hearing necessary or desirable for a proper presentation of his appeal. An appeal decided without an oral hearing will receive the same consideration by the Board of Appeals as appeals decided after oral hearing.

(b) If appellant requests an oral hearing, an oral argument may be presented by, or on behalf of, the primary examiner if considered desirable by either the primary examiner or the Board.

(c) If no request for oral hearing has been made by the appellant, the appeal will be assigned for consideration and decision. If the appellant has requested an oral hearing, a day of hearing will be set, and due notice thereof given to the appellant and to the primary examiner. Hearing will be held as stated in the notice, and oral argument will be limited to twenty minutes for the appellant and fifteen minutes for the primary examiner unless otherwise ordered before the hearing begins.

17. Section 1.196 is amended by adding new paragraph (d) to read as follows:

**§ 1.196 Decision by the Board of Appeals.**

(d) Although the Board of Appeals normally will confine its decision to a

review of rejections made by the primary examiner, should it have knowledge of any grounds for rejecting any allowed claim that it believes should be considered, it may include in its decision a statement to that effect and remand the case to the primary examiner for consideration thereof. In such event, the Board shall set a period, not less than one month, within which the applicant may submit to the primary examiner an appropriate amendment, or a showing of facts or reasons, or both, in order to avoid the grounds set forth in the statement of the Board of Appeals. If the primary examiner rejects the previously allowed claim or claims on the basis of such statement, the applicant may appeal to the Board of Appeals from the rejection. Whenever a decision of the Board of Appeals includes a remand, that decision shall not be considered as a final decision in the case, but the Board of Appeals shall, upon conclusion of the proceedings before the primary examiner on remand, either adopt its decision as final or render a new decision on all of the claims on appeal, as it may deem appropriate.

18. Section 1.291 is revised to read as follows:

**§ 1.291 Protests and prior art citations by public.**

( ) Protests against pending applications will be acknowledged and referred to the examiner having charge of the subject matter involved. A protest specifically identifying the application to which the protest is directed will be entered in the application file and, if timely submitted and accompanied by a copy of each prior art document relied upon, will be considered by the examiner.

(b) Citations of prior art and any papers related thereto may be entered in the patent file after a patent has been granted, at the request of a member of the public or the patentee. Such citations and papers will be entered without comment by the Patent and Trademark Office.

(c) Protests and prior art citations by the public and any accompanying papers should either (1) reflect that a copy of the same has been served upon the applicant or patentee or upon his attorney or agent of record; or (2) be filed with

the Office in duplicate in the event service is not possible.

19. In § 1.292 paragraph (b) is revised to read as follows:

**§ 1.292 Public use proceedings.**

(b) The petition and accompanying papers should either (1) reflect that a copy of the same has been served upon the applicant or upon his attorney or agent of record; or (2) be filed with the Office in duplicate in the event service is not possible. The petition and accompanying papers, or a notice that such a petition has been filed, shall be entered in the application file.

20. Section 1.346 is revised to read as follows:

**§ 1.346 Signature and certificate of attorney.**

Every paper filed by an attorney or agent representing an applicant or party to a proceeding in the Patent and Trademark Office must bear the signature of such attorney or agent, except papers which are required to be signed by the applicant or party in person (such as the application itself and affidavits or declarations required of applicants). The signature of an attorney or agent to a paper filed by him, or the filing or presentation of any paper by him, constitutes a certificate that the paper has been read; that its filing is authorized; that to the best of his knowledge, information, and belief, there is good ground to support it, including any allegations of improper conduct contained therein; and that it is not interposed for delay.

Effective date: These amendments become effective on March 1, 1977, except for §§ 1.51, 1.97, 1.98, and 1.99 which become effective on July 1, 1977, and §§ 1.65 and 1.69 which become effective on January 1, 1978.

Dated: January 18, 1977.

**C. MARSHALL DANN,**  
*Commissioner of Patents  
and Trademarks.*

Approved: January 19, 1977.

**BETSY ANCKER-JOHNSON,**  
*Assistant Secretary for  
Science and Technology.*

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