

MANUAL OF  
**PATENT**  
**EXAMINING**  
**PROCEDURE**

3<sup>RD</sup> EDITION

Rev. 44



U.S. DEPARTMENT OF COMMERCE  
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REEL NUMBER 1

BOOK NUMBERS 2

**Checklist of Pages Needed To Form a Complete Set of the Third Edition as of  
Revision 42.**

**DATES OF REVISIONS 30-42**

All pages issued in other revisions have been revised.

Rev. No.	Date	Rev. No.	Date
30	Oct. 1971	37	July 1973
31	Jan. 1972	38	Oct. 1973
<del>32</del>	<del>Apr. 1972</del>	39	Jan. 1974
33	July 1972	40	Apr. 1974
34	Oct. 1972	41	July 1974
35	Jan. 1973	42	Oct. 1974
36	Apr. 1973		

Page	Revision No.	Page	Revision No.
Title Page (2 sides)	42-42 <del>43-43</del> 44-44	49-50	38-40
III	33	51-52	40-40
V-VI	34-42	52.1	40
VII	42	53-54	41-41
Introduction		54.1	41
1-2	41-41	55-56	<del>32-32</del> 44-44
Chapter 100		56.1	<del>32-</del> 44
3-4	35-39	57-58	36-36
4.1-4.2	39-42	59-60	37-37
4.3	39	Chapter 700	
5-6	42-42	61-62	<del>37-37</del> 37-37
Chapter 200		63-64	41-41 43-43
7-8	39-39	64.1	41- 43
9-10	39-40	65-66	31-33
10.1-10.2	39-39	66.1-66.2	34-34
10.3-10.4	41-41	67-68	34-34
11-12	37-41	69-70	40-40
13-14	41-41	70.1-70.2	40-40
14.1-14.2	41-41	71-72	40-40
15-16	39-39	72.1-72.2	40-40
16.1-16.2	39-39 43-39	73-74	34-32
17-18	31-36	74.1	34
19-20	31-31 44-44	75-76	67-64 43-43
20.1	31- 44	76.1-76.2	34-34 43-43
Chapter 300		76.3-76.4	36-36 43-43
21-22	30-30- 43-43	77-78	42-42
22.1	30- 43	78.1-78.2	42-42
Chapter 400		79-80	41-41
23-24	37-37	81-82	36-36
25-26	41-41	83-84	36-31
27-28	37-37	85-86	31-31
29-30	37-37	87-88	39-39
30.1-30.2	37-37	88.1	39
30.3	37	89-90	34-34
Chapter 500		90.1-90.2	34-34
31-32	39-39	90.3	34
32.1-32.2	42-42	91-92	38-39
32.3-32.4	42-42	92.1	39
Chapter 600		93-94	35-35
33-34	38-39	94.1-94.2	42-42
34.1-34.2	38-35 44-44	94.3	42
35.3	35 44	95-96	37-37
35-36	40-40 44-44	96.1-96.2	41-41
37-38	31-21	97-98	42-42 43-43
39-40	31	98.1	42- 43
41-42	35-35	99-100	36-39
43-44	35-35	101-102	39-39
45-46	41-41	102.1-102.2	39-36
47-48	41-41	102.3	39
49-50	35-35	103-104	41-41
51-52	35-35	105-106	41-41
53-54	41-41	106.1	41
55-56	41-41	107-108	35-35
57-58	35 44	108.1	35
59-60	38-38	109-110	34-42
61-62	38-38	111-112	34-34- 44-44
63-64	39-39	112.1	34- 44
65-66	39	113-114	40-40
67-68	39	115-116	42-42
69-70	39	116.1-116.2	42-42 43-43

Page	Revision No.	Page	Revision No.
Chapter 800		213-214	42-42
117-118	38-38	214.1	42
119-120	41-41	215-216	42-42
120.1-120.2	41-41	216.1	42
120.3	41	217-218	36-36
121-122	38-38	218.1	39
123-124	38-38	219-220	39-28
125-126	38-38	220.1-220.2	42-39
127-128	38-34	220.3-220.4	42-42
129-130	38-38	220.5-220.6	42-42
131	38	220.7	42
133-134	38-38	Chapter 1300	
135-136	38-38	221-222	30-31
Chapter 900		223-224	41-41
137-138	35-35	225-226	41-41
138.1-138.2	35-35	226.1	41
139-140	30-30	227-228	41-41 43-43
141-142	30-30	228.1-228.2	41-41 43-43
143-144	30-30	Chapter 1400	
145-146	42-42	229-230	41-41
147-148	38-38	231-232	41-41
149	38	232.1	41
151-152	23-23 43-43	233-234	37-37 44-44
152.1	33 43	234.1-234.2	37-37 44-44
153-154	35-35	Chapter 1500	
154.1-154.2	35-35 43-43	235-236	35-35
154.3-154.4	35-35 43-43	237-238	35-42
155-156	36-36	Chapter 1600	
157-158	42-42	239-240	29-30
158.1	42	241-242	31-31
Chapter 1000		Chapter 1700	
159-160	32-32 43-43	243-244	40-40
161-162	32-32 43-43	244.1-244.2	40-40
162.1-162.2	32-32 43-43	244.3	40
162.3	30 43	245-246	40-40
Chapter 1100		246.1-246.2	40-40
163-164	31-31	246.3	40
165-166	33-33	Appendix I	
166.1	33	247-248	40-40 43-43
167-168	42-42	249-250	40-40 43-43
169-170	40-40 43-43	251	40 43
171-172	40-40	Appendix II	
172.1	40	253-254	36-36
173-174	40-40 43	255-256	36-36
174.1	40	Index	
175-176	36-40	257-258	38-38 44-44
176.1-176.2	40-40 43-43	259-260	33-33
177-178	42-42	261-262	33-33
179-180	42-42	263-264	33-33
181-182	37-37	265-266	33-33
183-184	40-40	267-268	33-33
185-186	40-40 43-43	269-270	33-33
186.1	40 43	271-272	33-33
187-188	31-31	273-274	33-33
189	40	275-276	33-33
191-192	omitted	277-278	33-33
193-194	40-40	279-280	33-33
194.1	40	281-282	33-33
195-196	38-38	283-284	33-33
197-198	38-38	285-286	33-33
199-200	37-37	287-288	33-33
201-202	42-42	289-290	33-33
203-204	35-35	291-292	33-33
205-206	omitted	293-294	33-33 44-44
207-208	omitted	Chapter 1200	
Chapter 1200		209-210	41-41 43-43
209-210	41-41	211-212	41-41

Page	Revision No.	Page	Revision No.
<b>Chapter 800</b>		<b>213-214</b>	
117-118	38-38	214.1	42
119-120	41-41	215-216	42-42
120.1-120.2	41-41	216.1	42
120.3	41	217-218	36-36
121-122	38-38	218.1	39
123-124	38-38	219-220	39-28
125-126	38-38	220.1-220.2	42-39
127-128	38-34	220.3-220.4	42-42
129-130	38-38	220.5-220.6	42-42
131	38	220.7	42
133-134	38-38	<b>Chapter 1300</b>	
135-136	38-38	221-222	30-31
<b>Chapter 900</b>		223-224	41-41
137-138	35-35	225-226	41-41
138.1-138.2	35-35	226.1	41
139-140	30-30	227-228	<del>36-41</del> 43-43
141-142	30-30	228.1-228.2	<del>41-41</del> 43-43
143-144	30-30	<b>Chapter 1400</b>	
145-146	42-42	229-230	41-41
147-148	38-38	231-232	41-41
149	38	232.1	41
151-152	<del>23-23</del> 43-43	233-234	<del>37-37</del> 44-44
152.1	<del>33</del> 43	234.1-234.2	<del>37-37</del> 44-44
153-154	35-35	<b>Chapter 1500</b>	
154.1-154.2	<del>35-35</del> 43-43	235-236	35-35
154.3-154.4	<del>35-35</del> 43-43	237-238	35-42
155-156	36-36	<b>Chapter 1600</b>	
157-158	42-42	239-240	29-30
158.1	42	241-242	31-31
<b>Chapter 1000</b>		<b>Chapter 1700</b>	
159-160	<del>32-32</del> 43-43	243-244	40-40
161-162	32-32	244.1-244.2	40-40
162.1-162.2	<del>32-32</del> 43-43	244.3	40
162.3	<del>30</del> 43	245-246	40-40
<b>Chapter 1100</b>		246.1-246.2	40-40
163-164	31-31	246.3	40
165-166	33-33	<b>Appendix I</b>	
166.1	33	247-248	<del>40-40</del> 43-43
167-168	42-42	249-250	<del>40-40</del> 43-43
169-170	<del>40-40</del> 43-43	251	<del>40</del> 43
171-172	40-40	<b>Appendix II</b>	
172.1	40	253-254	36-36
173-174	40-40	255-256	36-36
174.1	<del>40</del> 43	<b>Index</b>	
175-176	36-40	257-258	<del>33-33</del> 44-44
176.1-176.2	<del>40-40</del> 43-43	259-260	33-33
177-178	42-42	261-262	33-33
179-180	42-42	263-264	33-33
181-182	37-37	265-266	33-33
183-184	40-40	267-268	33-33
185-186	<del>40-40</del> 43-43	269-270	33-33
186.1	<del>40</del> 43	271-272	33-33
187-188	31-31	273-274	33-33
189	40	275-276	33-33
191-192	omitted	277-278	33-33
193-194	40-40	279-280	33-33
194.1	40	281-282	33-33
195-196	38-38	283-284	33-33
197-198	38-38	285-286	33-33
199-200	37-37	287-288	33-33
201-202	42-42	289-290	33-33
203-204	35-35	291-292	33-33
205-206	omitted	293-294	<del>33</del> 44-44
207-208	omitted	<b>Chapter 1200</b>	
<b>Chapter 1200</b>		209-210	<del>41-41</del> 43-43
209-210	<del>41-41</del> 43-43	211-212	41-41
211-212	41-41		

List of replacement pages:

<u>Page No.</u>	<u>Rev. No.</u>	<u>Page No.</u>	<u>Rev. No.</u>
Title page	39-39	88.1	39
3-4	35-39	91-92	38-39
4.1-4.2	39-39	*92.1	39
4.3	39	99-100	36-39
7-8	39-39	101-102	39-39
9-10	39-39	102.1-102.2	39-36
10.1-10.2	39-39	102.3	39
*10.3	39	119-120	38-39
13-14	37-39	120.1-120.2	39-39
14.1	39	145-146	39-39
15-16	39-39	*146.1	39
16.1-16.2	39-39	157-158	39-39
31-32	39-39	162.3	39
32.1-32.2	39-39	218.1	39
32.3-32.4	39-39	219-220	39-28
48.3-48.4	39-39	220.1-220.2	39-39
48.5	39	220.3-220.4	39-39
87-88	39-39	220.5-220.6	39-39
		220.7	39

\* Added page

P 141-142 R. 30

List of replacement pages

143-144 R. 30

217-218 R. 36

218.1 R. 39

219-220 R. 39

239-240 R. 30

250.1-250.5

Article page  
3-4  
4.1-4.2  
4.3  
7-8  
9-10  
10.1-10.2  
10.3  
11-14  
14.1  
15-16  
16.1-16.2  
17-18  
18.1-18.2  
19.1-19.2  
20.1-20.2  
21.1-21.2  
22.1-22.2  
23.1-23.2  
24.1-24.2  
25.1-25.2  
26.1-26.2  
27.1-27.2  
28.1-28.2  
29.1-29.2  
30.1-30.2  
31.1-31.2  
32.1-32.2  
33.1-33.2  
34.1-34.2  
35.1-35.2  
36.1-36.2  
37.1-37.2  
38.1-38.2  
39.1-39.2  
40.1-40.2  
41.1-41.2  
42.1-42.2  
43.1-43.2  
44.1-44.2  
45.1-45.2  
46.1-46.2  
47.1-47.2  
48.1-48.2  
49.1-49.2  
50.1-50.2  
51.1-51.2  
52.1-52.2  
53.1-53.2  
54.1-54.2  
55.1-55.2  
56.1-56.2  
57.1-57.2  
58.1-58.2  
59.1-59.2  
60.1-60.2  
61.1-61.2  
62.1-62.2  
63.1-63.2  
64.1-64.2  
65.1-65.2  
66.1-66.2  
67.1-67.2  
68.1-68.2  
69.1-69.2  
70.1-70.2  
71.1-71.2  
72.1-72.2  
73.1-73.2  
74.1-74.2  
75.1-75.2  
76.1-76.2  
77.1-77.2  
78.1-78.2  
79.1-79.2  
80.1-80.2  
81.1-81.2  
82.1-82.2  
83.1-83.2  
84.1-84.2  
85.1-85.2  
86.1-86.2  
87.1-87.2  
88.1-88.2  
89.1-89.2  
90.1-90.2  
91.1-91.2  
92.1-92.2  
93.1-93.2  
94.1-94.2  
95.1-95.2  
96.1-96.2  
97.1-97.2  
98.1-98.2  
99.1-99.2  
100.1-100.2

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MANUAL OF PATENT EXAMINING PROCEDURE  
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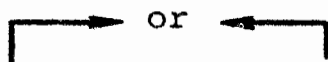
Instructions regarding Revision No. 44

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

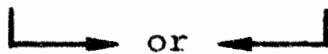
On an experimental basis, arrows are printed in the margin of pages to indicate material changed, deleted, or added by this revision. Where insertion of new material results in shifting of unchanged material onto following pages, no arrows appear on such pages but the revision number is cited at the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

The notation "[R-44]" in the attached pages appears either at the title or at the end of a section that has been revised.

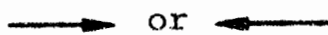
Louis O. Maassel  
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Examining Procedure



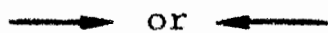
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(Arrows have not been applied to changes in the index.)

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

Particular attention is called to the following sections:

<u>Section</u>	<u>Change</u>
202.04	Reference to inventor's certificate included.
602	Revised rule 65 included, reference to earlier applications for inventor's certificate now required in application oath or declaration.
603	Revised rule 67 included.
608.01(h)	Office position on "Best Mode" clarified.
715.08	Line between petition and appeal review of rule 131 affidavits clarified.
901.05(b)	Additional information included relative to patent documents of the Federal Republic of Germany.
1402.01) 1402.02)	Certificate of Correction practice revised.
Index	Completely updated.

List of replacement pages (all bearing Revision No. 44):

Title page	*140.1	275-276
19-20	233-234	277-278
20.1	234.1-234.2	279-280
34.1-34.2	257-258	281-282
34.3	259-260	283-284
35-36	261-262	285-286
46.1	263-264	287-288
55-56	265-266	289-290
56.1	267-268	291-292
111-112	269-270	293-294
112.1	271-272	*295
139-140	273-274	

\* Added page



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**First Edition, November 1949**

Revision 1, November 1950  
Revision 2, December 1951  
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  
Revision 9, July 1966  
Revision 10, October 1966  
Revision 11, January 1967  
Revision 12, April 1967  
Revision 13, July 1967  
Revision 14, October 1967  
Revision 15, January 1968  
Revision 16, April 1968  
Revision 17, July 1968

Revision 18, October 1968

Revision 19, January 1969

Revision 20, April 1969

Revision 21, July 1969

Revision 22, October 1969

Revision 23, January 1970

Revision 24, April 1970

Revision 25, July 1970

Revision 26, October 1970

Revision 27, January 1971

Revision 28, April 1971

Revision 29, July 1971

Revision 30, October 1971

Revision 31, January 1972

Revision 32, April 1972

Revision 33, July 1972

Revision 34, October 1972

Revision 35, January 1973

Revision 36, April 1973

Revision 37, July 1973

Revision 38, October 1973

Revision 39, January 1974

Revision 40, April 1974

Revision 41, July 1974

Revision 42, October 1974

Revision 43, January 1975

Revision 44, April 1975

# Foreword

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

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

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

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

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All pages listed in other revisions have been revised.

Rev. No.	Date	Rev. No.	Date
30	Apr. 1972	42	Oct. 1972
31	Jan. 1973	43	Jul. 1973
32	Jul. 1973	44	Jan. 1974
33	Jul. 1973	45	Apr. 1974
34	Jul. 1973	46	Jul. 1974
35	Jul. 1973	47	Oct. 1974
36	Jul. 1973	48	Jul. 1974
37	Jul. 1973	49	Jul. 1974
38	Jul. 1973	50	Jul. 1974
39	Jul. 1973	51	Jul. 1974
40	Jul. 1973	52	Jul. 1974
41	Jul. 1973	53	Jul. 1974

# Contents

	Page
Checklist of Pages.....	vi
Introduction.....	1
Chapter 100 Secrecy and Access.....	3
200 Types, Cross-Noting, and Status of Applications.....	7
300 Ownership and Assignment.....	21
400 Representative of Inventor or Owner.....	23
500 Receipt and Handling of Mail and Papers.....	31
600 Parts, Form and Content of Application.....	33
700 Examination of Applications.....	61
800 Restriction; Double Patenting.....	117
900 Prior Art, Classification, Search.....	137
1000 Matters Decided by Various Patent Office Officials.....	159
1100 Interference.....	163
1200 Appeal.....	209
1300 Allowance and Issue.....	221
1400 Correction of Patents.....	229
1500 Design Patents.....	233
1600 Plant Patents.....	239
1700 Miscellaneous.....	243
Appendix I Partial List of Trademarks.....	247
Appendix II List of Decisions Cited.....	253
Index.....	257

**Checklist of Pages Needed To Form a Complete Set of the Third Edition as of  
Revision 42.**

**DATES OF REVISIONS 30-42**

All pages issued in other revisions have been revised.

<i>Rev. No.</i>	<i>Date</i>	<i>Rev. No.</i>	<i>Date</i>
30	Oct. 1971	37	July 1973
31	Jan. 1972	38	Oct. 1973
32	Apr. 1972	39	Jan. 1974
33	July 1972	40	Apr. 1974
34	Oct. 1972	41	July 1974
35	Jan. 1973	42	Oct. 1974
36	Apr. 1973		

<i>Page</i>	<i>Revision No.</i>	<i>Page</i>	<i>Revision No.</i>
Title Page (2 sides)	42-42	49-50	38-40
III	33	51-52	40-40
V-VI	34-42	52.1	40
VII	42	53-54	41-41
Introduction		54.1	41
1-2	41-41	55-56	32-32
Chapter 100		56.1	32
3-4	35-39	57-58	36-36
4.1-4.2	39-42	59-60	37-37
4.3	39	<b>Chapter 700</b>	
5-6	42-42	61-62	37-37
Chapter 200		63-64	41-41
7-8	39-39	64.1	41
9-10	39-40	65-66	31-33
10.1-10.2	39-39	66.1-66.2	34-34
10.3-10.4	41-41	67-68	34-34
11-12	37-41	69-70	40-40
13-14	41-41	70.1-70.2	40-40
14.1-14.2	41-41	71-72	40-40
15-16	39-39	72.1-72.2	40-40
16.1-16.2	39-39	73-74	34-32
17-18	31-36	74.1	34
19-20	31-31	75-76	37-34
20.1	31	76.1-76.2	34-34
Chapter 300		76.3-76.4	36-36
21-22	30-30	77-78	42-42
22.1	36	78.1-78.2	42-42
Chapter 400		79-80	41-41
23-24	37-37	81-82	36-36
25-26	41-41	83-84	36-31
27-28	37-37	85-86	31-31
29-30	37-37	87-88	39-39
30.1-30.2	37-37	88.1	39
30.3	37	89-90	34-34
Chapter 500		90.1-90.2	34-34
31-32	39-39	90.3	34
32.1-32.2	42-42	91-92	38-39
32.3-32.4	42-42	92.1	39
Chapter 600		93-94	35-35
33-34	38-29	94.1-94.2	42-42
34.1-34.2	38-35	94.3	42
34.3	35	95-96	37-37
35-36	40-40	96.1-96.2	41-41
37-38	31-31	97-98	42-42
38.1	31	98.1	42
39-40	35-35	99-100	36-39
41-42	35-35	101-102	39-39
43-44	35-35	102.1-102.2	39-36
44.1-44.2	41-41	102.3	30
45-46	41-41	103-104	41-41
46.1	35	105-106	41-41
47-48	38-38	106.1	41
48.1-48.2	38-38	107-108	35-35
48.3-48.4	39-39	108.1	35
48.5	39	109-110	34-42
		111-112	34-34
		112.1	34
		113-114	40-40
		115-116	42-42
		116.1-116.2	42-42

Page	Revision No.	Page	Revision No.
Chapter 800		213-214	42-42
117-118	38-38	214.1	42
119-120	41-41	215-216	42-42
120.1-120.2	41-41	216.1	42
120.3	41	217-218	36-36
121-122	38-38	218.1	39
123-124	38-38	219-220	39-28
125-126	38-38	220.1-220.2	42-39
127-128	38-34	220.3-220.4	42-42
129-130	38-38	220.5-220.6	42-42
131	38	220.7	42
133-134	38-38	Chapter 1300	
135-136	38-38	221-222	30-31
Chapter 900		223-224	41-41
137-138	35-35	225-226	41-41
138.1-138.2	35-35	226.1	41
139-140	30-30	227-228	36-41
141-142	30-30	228.1-228.2	41-41
143-144	30-30	Chapter 1400	
145-146	42-42	229-230	41-41
147-148	38-38	231-232	41-41
149	38	232.1	41
151-152	33-33	233-234	37-37
152.1	33	234.1-234.2	37-37
153-154	35-35	Chapter 1500	
154.1-154.2	35-35	235-236	35-35
154.3-154.4	35-35	237-238	35-42
155-156	36-36	Chapter 1600	
157-158	42-42	239-240	29-30
158.1	42	241-242	31-31
Chapter 1000		Chapter 1700	
159-160	32-32	243-244	40-40
161-162	32-32	244.1-244.2	40-40
162.1-162.2	32-32	244.3	40
162.3	39	245-246	40-40
Chapter 1100		246.1-246.2	40-40
163-164	31-31	246.3	40
165-166	33-33	Appendix I	
166.1	33	247-248	40-40
167-168	42-42	249-250	40-40
169-170	40-40	251	40
171-172	40-40	Appendix II	
172.1	40	253-254	36-36
173-174	40-40	255-256	36-36
174.1	40	Index	
175-176	36-40	257-258	33-33
176.1-176.2	40-40	259-260	33-33
177-178	42-42	261-262	33-33
179-180	42-42	263-264	33-33
181-182	37-37	265-266	33-33
183-184	40-40	267-268	33-33
185-186	40-40	269-270	33-33
186.1	40	271-272	33-33
187-188	31-31	273-274	33-33
189	40	275-276	33-33
191-192	omitted	277-278	33-33
193-194	40-40	279-280	33-33
194.1	40	281-282	33-33
195-196	38-38	283-284	33-33
197-198	38-38	285-286	33-33
199-200	37-37	287-288	33-33
201-202	42-42	289-290	33-33
203-204	35-35	291-292	33-33
205-206	omitted	293	33
207-208	omitted	Chapter 1200	
Chapter 1200		209-210	41-41
209-210	41-41	211-212	41-41
211-212	41-41		

# Introduction

## Constitutional Basis

The Constitution of the United States provides:

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

## Statutes

Pursuant to the provision of the Constitution, Congress has over the years passed a number of statutes under which the Patent Office is organized and our patent system is established. The provisions of the statutes can in no way be changed or waived by the Patent Office.

Prior to January 1, 1953, the law relating to patents consisted of various sections of the Revised Statutes of 1874, derived from the Patent Act of 1870 and numerous amendatory and additional acts.

By an Act of Congress approved July 19, 1952, which came into effect on January 1, 1953, the patent laws were revised and codified into their present form. With certain exceptions applying to applications filed and patents issued before January 1, 1953, this law governs all cases in the Patent Office. The patent law is Title 35 of the United States Code, which contains 96 sections numbered from 1 to 293, with gaps in the numbering between various chapters of the title. In referring to a particular section of the patent code the citation is given, for example, as, 35 U.S.C. 31. The pamphlet "Patent Laws" (available from the Superintendent of Documents for 75 cents) reprints the patent code and some additional statutes.

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

## Rules of Practice

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

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

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

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

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

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

The primary function of the Rules of Practice is to advise the public of the regulations which have been established in accordance with the statutes and which must be followed before the Office. The Rules of Practice govern the examiners, as well as applicants and their attorneys.

## Commissioner's Orders and Notices

From time to time, the Commissioner of Patents has issued Orders and Notices relating to various specific situations that have arisen in operating the Patent Office. Notices and circulars of information or instructions have also been issued by other Office Officials under authority of the Commissioner. Orders and

Notices have served various purposes including directions to the examiners giving them instruction, information, interpretations and the like. Some may be for the information of the public, advising what the Office will do under specified circumstances.

### Decisions

In addition to the statutory regulations, the actions taken by the examiner in the examination of applications for patents are to a great extent governed by decisions on prior cases. Applicants dissatisfied with an examiner's action may have it reviewed. In general, that portion of the examiner's action pertaining to objections on formal matters may be reviewed by petition to the Commissioner of Patents (see § 1002) and that portion of the examiner's action pertaining to the rejection of claims on the merits, may be reviewed by appeal to the Board of Appeals (see § 1201). The distinction is set forth in rules 181 and 191. In citing decisions as authority for his actions, the examiner should cite the decision in the manner set forth in § 707.06.

### Publications Available from Superintendent of Documents

Orders should be addressed and remittances made payable to Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

*Patent Official Gazette.* The official journal of the Patent Office relating to patents. Issued each Tuesday, simultaneously with the weekly issuance of patents. It contains a selected figure of the drawings and an abstract of each patent granted, indexes of patents, list of patents available for license or sale, and general information such as orders, notices, changes in rules, and changes in classification. Annual subscription \$211.00 (\$52.75 additional for foreign mailing). Single copy \$4.10.

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*Classification Definitions.* Contain the changes in classification of patents as well as definitions of new and revised classes and sub-classes. Price is based upon size of publication, minimum price 10 cents.

*Weekly Class Sheets.* Lists showing classification of each patent in the weekly issue of the *Patent Official Gazette*. Annual subscription, \$5.