

MANUAL OF
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EXAMINING
PROCEDURE

3RD EDITION

Rev. 53



U.S. DEPARTMENT OF COMMERCE
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Rev. 53 Complete

Checklist of Pages Needed To Form a Complete Set of the Third Edition as of Revision 50.

DATES OF REVISIONS 35-50

All pages issued in other revisions have been revised.

Rev. No.	Date	Rev. No.	Date
35	Jan. 1973	43	Jan. 1975
36	Apr. 1973	44	Apr. 1975
37	July 1973	45	July 1975
38	Oct. 1973	46	Oct. 1975
39	Jan. 1974	47	Jan. 1976
40	Apr. 1974	48	Apr. 1976
41	July 1974	49	July 1976
42	Oct. 1974	50	Oct. 1976

Page	Revision No.	Page	Revision No.
Title Page (2 sides)	50-50 51 52-52 53-53	48.3-48.4	50-50 50-51 ✓
III	47 51 ✓	48.5	50 51 ✓
V-VI	46-50 46 51 51-51 ✓	49-50	38-40 ✓
VII	50 51 ✓	51-52	40-40 ✓
Introduction		52.1	40 ✓
1-2	49-49 ✓	53-54	41-41 ✓
Chapter 100		54.1	41 ✓
3-4	48-48 ✓	55-56	44-44 ✓
4.1-4.2	48-48 52-52 ✓	56.1	44 ✓
4.3-4.4	48-48 52-52 ✓	57-58	36-36 51-51 ✓
5-6	48-48 ✓	59-60	37-37 52-52 ✓
Chapter 200		60.1-60.2	53-52 ✓
7-8	49-49 ✓	Chapter 700	
9-10	49-49 ✓	61-62	37-48 53-53 ✓
10.1-10.2	49-49 ✓	63-64	48-48 53-53 ✓
10.3-10.4	49-49 ✓	64.1	48 53 ✓
11-12	46-46 53-53 ✓	65-66	49-49 ✓
13-14	46-46 51-51 53-53 ✓	66.1-66.2	49-49 ✓
14.1-14.2	46-46 51-51 53-53 ✓	66.3	49 51 ✓
15-16	46-46 53-53 ✓	67-68	34-48 ✓
16.1-16.2	46-46 53-53 ✓	69-70	48-48 ✓
17-18	46-46 51-51 ✓	70.1-70.2	48-48 ✓
19-20	44-44 51-51 ✓	71-72	48-48 ✓
20.1	46	72.1-72.2	48-48 ✓
Chapter 300		73-74	49-49 ✓
21-22	47-47 ✓	74.1	49 ✓
22.1	47 ✓	75-76	48-48 ✓
Chapter 400		76.1-76.2	48-48 ✓
23-24	50-50 52-52 ✓	76.3-76.4	49-49 ✓
24.1	50 52 ✓	76.5-76.6	48-48 53-53 48 ✓
25-26	47-49 49-49 ✓	77-78	48-48 ✓
27-28	47-47 ✓	78.1-78.2	50-50 52-53 ✓
29-30	49-49 ✓	79-80	40-40 52-52 ✓
30.1-30.2	49-49 ✓	81-82	50-50 ✓
30.3	49 ✓	83-84	36-31 ✓
Chapter 500		85-86	50-50 ✓
31-32	50-50 ✓	87-88	30-30 51-51 ✓
32.1-32.2	50-50 ✓	88.1-88.2	30 51-51 ✓
32.3-32.4	47-50 ✓	89-90	47-47 ✓
32.5-32.6	50-50 52-52 ✓	90.1-90.2	47-47 ✓
32.7-32.8	50-50 52-52 ✓	90.3-90.4	47-47 53-53 ✓
32.9-32.10	50 52-52 ✓	91-92	45-45 ✓
Chapter 600		92.1	45 ✓
33-34	45-45 52-52 ✓	93-94	45-45 ✓
34.1-34.2	50-50 52-52 ✓	94.1-94.2	45-45 ✓
34.3	50 52 ✓	94.3-94.4	45 53-53 ✓
35-36	44-44 51-51 52-52 ✓	95-96	49-49 ✓
37-38	49-49 ✓	96.1-96.2	49-49 ✓
38.1	49 ✓	97-98	46-46 ✓
39-40	35-35 51-51 ✓	98.1	48 ✓
41-42	49-49 ✓	99-100	49-49 ✓
43-44	46-46 52-52 ✓	101-102	39-39 ✓
44.1-44.2	47-47 52-52 ✓	102.1-102.2	47-47 ✓
45-46	50-50 ✓	102.3	47 ✓
46.1	50 ✓	103-104	41-41 53-53 ✓
47-48	50-50 ✓	105-106	41-41 53-53 ✓
48.1-48.2	50-50 ✓	106.1	41 53 ✓
		107-108	35-35 51-51 ✓
		108.1	49 ✓
		109-110	34-42 51-51 ✓
		111-112	44-44 ✓
		112.1	44 ✓

Page	Revision No.	Page	Revision No.
113-114	40-40 ✓	Chapter 1200	
115-116	42-42 52-52 ✓	209-210	43-43 ✓
116.1-116.2	42-48 52-52 ✓	211-212	41-41 ✓
116.3-116.4	43-43 52-52 ✓	213-214	42-42 ✓
<i>116.5-6</i> Chapter 800	45-45 52-52 ✓	214.1	49 ✓
<i>116.7-8</i> 117-118	45-45 ✓	215-216	49-49 51-51 ✓
<i>116.9-10</i> 119-120	45-45 52-52 ✓	216.1	49 51 ✓
120.1-120.2	45-48 53-53 ✓	217-218	50-50 52-52 ✓
120.3	45 53 ✓	218.1-218.2	50 52-52 ✓
121-122	45-45 ✓	219-220	47-47 52-52 ✓
123-124	45-45 ✓	220.1-220.2	48-48 52-52 ✓
125-126	50-50 ✓	220.3-220.4	48-48 52-52 ✓
127-128	45-45 ✓	220.5-220.6	48-48 52-52 ✓
129-130	45-45 ✓	220.7-220.8	48-48 52-52 ✓
131	45 ✓	Chapter 1300	
133-134	45-45 ✓	221-222	46-48 ✓
135-136	45-38 ✓	222.1	46 ✓
Chapter 900		223-224	47-47 ✓
137-138	35-35 53-53 ✓	225-226	47-47 52-52 ✓
138.1-138.2	35-35 53-53 ✓	226.1-226.2	47 52-52 ✓
139-140	48-48 ✓	227-228	48-48 51-51 ✓
140.1	48 ✓	228.1-228.2	48-48 51-51 52-52 ✓
141-142	45-30 ✓	228.3-228.4	48 51 52-52 ✓
143-144	45-45 ✓	Chapter 1400	
145-146	46-46 ✓	229-230	50-50 ✓
147-148	46-46 ✓	231-232	50-50 51 52-52 ✓
149	46 ✓	232.1-232.2	50 51 52-52 ✓
151-152	46-46 ✓	233-234	50-50 ✓
152.1	46 ✓	234.1-234.2	50-50 ✓
153-154	35-35 53-53 ✓	234.3	50 ✓
154.1-154.2	43-43 53-53 ✓	Chapter 1500	
154.3-154.4	43-43 53-53 ✓	235-236	50-50 ✓
155-156	36-46 53-53 ✓	237-238	50-50 51-51 ✓
157-158	46-46 ✓	234.3	50
Chapter 1000		Chapter 1600	
159-160	43-43 ✓	239-240	45-47 ✓
161-162	43-43 51-51 ✓	241-242	41-41 51-51 ✓
162.1-162.2	48-48 51-51 ✓	Chapter 1700	
162.3	48 51 ✓	243-244	49-49 ✓
Chapter 1100		244.1-244.2	49-49 ✓
163-164	48-48 ✓	244.3	46 ✓
165-166	48-48 ✓	245-246	46-46 ✓
166.1	48 ✓	246.1-246.2	46-46 ✓
167-168	42-42 ✓	Appendix I	
169-170	46-46 53-53 ✓	247-248	50-50 ✓
170.1	46 ✓	249-250	50-50 ✓
171-172	40-45 ✓	251	50 ✓
172.1	45 ✓	Appendix II	
173-174	40-40 53-53 ✓	253-254	47-47 ✓
174.1	48 53 ✓	255-256	47-47 ✓
175-176	36-40 51-51 ✓	256.1	47 ✓
176.1-176.2	43-43 51-51 53-51 ✓	Index	
177-178	42-42 ✓	257-258	44-44 ✓
179-180	42-42 ✓	259-260	44-44 ✓
181-182	45-45 53-53 ✓	261-262	44-44 ✓
182.1	45 ✓	263-264	44-44 ✓
183-184	48-48 51-48 ✓	265-266	44-44 ✓
185-186	43-43 51-51 52-52 ✓	267-268	44-44 ✓
186.1	43 51 52 51 ✓	269-270	44-44 ✓
187-188	49-49 53-53 ✓	271-272	44-44 ✓
189	40 ✓	273-274	44-44 ✓
191-192	omitted	275-276	44-44 ✓
193-194	40-47 ✓	277-278	44-44 ✓
194.1	40 ✓	279-280	44-44 ✓
195-196	38-38 ✓	281-282	44-44 ✓
197-198	38-38 ✓	283-284	44-44 ✓
199-200	37-37 ✓	285-286	44-44 ✓
201-202	42-42 ✓	287-288	44-44 ✓
203-204	50-35 ✓	289-290	44-44 ✓
205-206	omitted	291-292	44-44 ✓
207-208	omitted	293-294	44-44 ✓
		295	44 ✓



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MANUAL OF PATENT EXAMINING PROCEDURE
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Instructions Regarding Revision No. 53

The attached revised pages are replacements for those in the Manual having corresponding numbers.



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.

 or 



Line on which change begins.

 or 

Line on which change ends.

 or 

Line on which change both begins and ends.

 or 

Opposite a blank space, indicates deletion of material.

The notation "[R-53]" in the attached pages appears at the title of a section that has been revised.

Louis O. Maassel, Editor
Manual of Patent Examining
Procedure

Particular attention is called to the following sections:

<u>Section</u>	<u>Change</u>
201.13	The list of recognized foreign countries for priority purposes has been updated.
201.14(b)	A new subsection has been added covering the situation where a priority claim is based on the filing of an actual model.
201.14(d)	Application serial number minimum requirements have been updated.
512	Section of Certificate of Mailing practice has been somewhat clarified.
609	Amended to note that copies of prior art are not required if the Office has cited them in a prior application of applicant.
702.01	Amended to note that a number of obviously informal claims should be treated as being a single claim for fee and examination purposes.
711.04(c)	New section on procedures for notifying applicants of abandonment.
901.04	Mention of Design Reissue patents added.
903.08(d)	Note added to indicate that reissue application should be held in Group indicate in O.G. filing notice for 2 months following the notice before making a transfer inquiry.
1106.03	New section on redeclaration of interference after dissolution under §1.231 or §1.237.

List of replacement pages:

<u>Page No.</u>	<u>Rev. No.</u>	<u>Page No.</u>	<u>Rev. No.</u>
Title page	53-53	105-106	53-53
11-12	53-53	106.1	53
13-14	53-53	120.1-120.2	53-53
14.1-14.2	53-53	120.3	53
15-16	53-53	137-138	53-53
16.1-16.2	53-53	138.1-138.2	53-53
*16.3	53	153-154	53-53
32.11	53	154.1-154.2	53-53
60.1-60.2	53-52	154.3-154.4	53-53
61-62	53-53	155-156	53-53
63-64	53-53	169-170	53-53
64.1	53	173-174	53-53
76.5-76.6	53-48	174.1	53
78.1	53	176.1-176.2	53-51
90.3-90.4	53-47	181-182	53-53
94.3-94.4	53-53	187-188	53-53
103-104	53-53	189	53

*Added page

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

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First Edition, November 1949	Revision 23, January 1970
Revision 1, November 1950	Revision 24, April 1970
Revision 2, December 1951	Revision 25, July 1970
Revision 3, May 1952	Revision 26, October 1970
Second Edition, November 1953	Revision 27, January 1971
Revision 1, April 1955	Revision 28, April 1971
Revision 2, June 1956	Revision 29, July 1971
Revision 3, June 1957	Revision 30, October 1971
Revision 4, July 1958	Revision 31, January 1972
Third Edition, November 1961	Revision 32, April 1972
Revision 1, January 1964	Revision 33, July 1972
Revision 2, November 1964	Revision 34, October 1972
Revision 3, January 1965	Revision 35, January 1973
Revision 4, April 1965	Revision 36, April 1973
Revision 5, July 1965	Revision 37, July 1973
Revision 6, October 1965	Revision 38, October 1973
Revision 7, January 1966	Revision 39, January 1974
Revision 8, April 1966	Revision 40, April 1974
Revision 9, July 1966	Revision 41, July 1974
Revision 10, October 1966	Revision 42, October 1974
Revision 11, January 1967	Revision 43, January 1975
Revision 12, April 1967	Revision 44, April 1975
Revision 13, July 1967	Revision 45, July 1975
Revision 14, October 1967	Revision 46, October 1975
Revision 15, January 1968	Revision 47, January 1976
Revision 16, April 1968	Revision 48, April 1976
Revision 17, July 1968	Revision 49, July 1976
Revision 18, October 1968	Revision 50, October 1976
Revision 19, January 1969	Revision 51, January 1977
Revision 20, April 1969	Revision 52, April 1977
Revision 21, July 1969	Revision 53, July 1977
Revision 22, October 1969	

Foreword

This Manual is published to provide Patent and Trademark Office patent examiners, applicants, attorneys, agents, and representatives of applicants with a reference work on the practices and procedures relative to the prosecution of patent applications before the Patent and Trademark 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 a patent application.

A separate manual entitled "Trademark Manual of Examining Procedure" is published by the Patent and Trademark Office as a reference work for trademark cases.

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

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

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

Commissioner of Patents and Trademarks,
Editor, M.P.E.P.
Washington, D.C. 20231

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 and Trademark Office Officials.....	159
1100 Interference.....	163
1200 Appeal.....	209
1300 Allowance and Issue.....	221
1400 Correction of Patents.....	229
1500 Design Patents.....	235
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 51.

DATES OF REVISIONS 35-51

All pages issued in other revisions have been revised.

Rev. No.	Date	Rev. No.	Date
35	Jan. 1973	43	Jan. 1975
36	Apr. 1973	44	Apr. 1975
37	July 1973	45	July 1975
38	Oct. 1973	46	Oct. 1975
39	Jan. 1974	47	Jan. 1976
40	Apr. 1974	48	Apr. 1976
41	July 1974	49	July 1976
42	Oct. 1974	50	Oct. 1976
		51	Jan. 1977

Page	Revision No.	Page	Revision No.
Title Page (2 sides)	51-51	48.3-48.4	50-51
III	51	48.5	51
V-VI	46-51	49-50	38-40
VII	51	51-52	40-40
Introduction		52.1	40
1-2	49-49	53-54	41-41
Chapter 100		54.1	41
3-4	48-48	55-56	44-44
4.1-4.2	48-48	56.1	44
4.3-4.4	48-48	57-58	51-51
5-6	48-48	59-60	37-37
Chapter 200		Chapter 700	
7-8	49-49	61-62	37-43
9-10	49-49	63-64	43-43
10.1-10.2	49-49	64.1	43
10.3-10.4	49-49	65-66	49-49
11-12	46-46	66.1-66.2	49-49
13-14	51-51	66.3	51
14.1-14.2	51-51	67-68	34-48
15-16	49-49	69-70	48-48
16.1-16.2	49-49	70.1-70.2	48-48
17-18	51-51	71-72	48-48
19-20	51-51	72.1-72.2	48-48
Chapter 300		73-74	49-49
21-22	47-47	74.1	49
22.1	47	75-76	48-48
Chapter 400		76.1-76.2	48-48
23-24	50-50	76.3-76.4	49-48
24.1	50	76.5-76.6	48-48
25-26	49-49	77-78	48-48
27-28	47-47	78.1-78.2	50-50
29-30	49-49	79-80	49-49
30.1-30.2	49-49	81-82	50-50
30.3	49	83-84	36-31
Chapter 500		85-86	50-50
31-32	50-50	87-88	51-51
32.1-32.2	50-50	88.1-88.2	51-51
32.3-32.4	47-50	89-90	47-47
32.5-32.6	50-50	90.1-90.2	47-47
32.7-32.8	50-50	90.3-90.4	47-47
32.9	50	91-92	45-45
Chapter 600		92.1	45
33-34	45-45	93-94	45-45
34.1-34.2	50-50	94.1-94.2	45-45
34.3	50	94.3	45
35-36	51-51	95-96	49-49
37-38	49-49	96.1-96.2	49-49
38.1	49	97-98	46-46
39-40	51-51	98.1	43
41-42	49-49	99-100	49-49
43-44	46-46	101-102	39-39
44.1-44.2	47-47	102.1-102.2	47-47
45-46	50-50	102.3	47
46.1	50	103-104	41-41
47-48	50-50	105-106	41-41
48.1-48.2	50-50	106.1	41
		107-108	51-51
		108.1	49
		109-110	51-51
		111-112	44-44

Page	Revision No.	Page	Revision No.
112.1	44	Chapter 1200	
113-114	40-40	209-210	43-43
115-116	42-42	211-212	41-41
116.1-116.2	42-43	213-214	42-42
116.3-116.4	43-43	214.1	49
Chapter 800		215-216	51-51
117-118	45-45	216.1	51
119-120	45-45	217-218	50-50
120.1-120.2	45-45	218.1	50
120.3	45	219-220	47-47
121-122	45-45	220.1-220.2	48-48
123-124	45-45	220.3-220.4	48-48
125-126	50-50	220.5-220.6	48-48
127-128	45-45	220.7-220.8	48-48
129-130	45-45	Chapter 1300	
131	45	221-222	46-46
133-134	45-45	222.1	46
135-136	45-38	223-224	47-47
Chapter 900		225-226	47-47
137-138	35-35	226.1	47
138.1-138.2	35-35	227-228	51-51
139-140	48-48	228.1-228.2	51-51
140.1	48	228.3	51
141-142	45-30	Chapter 1400	
143-144	45-45	229-230	50-50
145-146	46-46	231-232	48-50
147-148	46-46	232.1	51
149	46	233-234	50-50
151-152	46-46	234.1-234.2	50-50
152.1	46	234.3	50
153-154	35-35	Chapter 1500	
154.1-154.2	43-43	235-236	50-50
154.3-154.4	43-43	237-238	51-51
155-156	36-46	Chapter 1600	
157-158	46-46	239-240	45-47
Chapter 1000		241-242	51-51
159-160	43-43	Chapter 1700	
161-162	51-51	243-244	49-49
162.1-162.2	51-48	244.1-244.2	49-49
162.3	51	244.3	46
Chapter 1100		245-246	46-46
163-164	48-48	246.1-246.2	46-46
165-166	48-48	Appendix I	
166.1	48	247-248	50-50
167-168	42-42	249-250	50-50
169-170	46-46	251	50
170.1	46	Appendix II	
171-172	40-45	253-254	47-47
172.1	45	255-256	47-47
173-174	40-40	256.1	47
174.1	43	Index	
175-176	51-51	257-258	44-44
176.1-176.2	51-51	259-260	44-44
177-178	42-42	261-262	44-44
179-180	42-42	263-264	44-44
181-182	45-45	265-266	44-44
182.1	45	267-268	44-44
183-184	51-48	269-270	44-44
185-186	51-51	271-272	44-44
186.1	51	273-274	44-44
187-188	49-49	275-276	44-44
189	40	277-278	44-44
191-194	omitted	279-280	44-44
193-194	40-47	281-282	44-44
194.1	40	283-284	44-44
195-196	38-38	285-286	44-44
197-198	38-38	287-288	44-44
199-200	37-37	289-290	44-44
201-202	42-42	291-292	44-44
203-204	50-35	293-294	44-44
205-206	omitted	295	44
207-208	omitted		

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 and Trademark 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 and Trademark 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 and Trademark 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) reprints the patent code and some additional statutes.

35 U.S.C. 1 Establishment. The Patent and Trademark 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 and Trademarks subject to the

approval of the Secretary of Commerce, to establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent and Trademark Office.

37 CFR 1.351. Amendments to rules will be published. All amendments in this part will be published in the Official Gazette and in the Federal Register.

37 CFR 1.352. Publication of notice of proposed amendments. (a) Whenever required by law, and in other cases whenever practicable, notice of proposed amendments in this part 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 and Trademarks has issued Orders and Notices relating to various specific situations that have arisen in operating the Patent and Trademark Office. Notices and circulars of in-

formation 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 and Trademarks (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 37 CFR 1.181 and 1.191. 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 and Trademark Office relating to patents. Issued each Tuesday, simultaneously with the weekly issuance of patents, it contains a selected figure of the drawings and a claim 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 Indexes. An index of the patents issued each year is published in two volumes, one an alphabetical index of patentees and the other an index by subject matter of inventions. The two parts are sold separately. Price varies from year to year, depending upon size of the publication. An annual Index of Trademarks contains an alphabetical index of trademark registrants, registration numbers, dates published, classification of goods for which registered, and decisions published during the calendar year. Price varies from year to year, depending upon size of the publication.

Guide for Patent Draftsmen. Patent and Trademark Office requirements for patent drawings with illustrations.

Manual of Classification. A loose-leaf volume listing the numbers and descriptive titles of the more than 300 classes and 66,000 subclasses used in the subject classification of patents, with an index to the classifications. Substitute and additional pages, which are

included in the subscription service, are issued from time to time.

Manual of Patent Examining Procedure. A loose-leaf manual which serves primarily as a detailed reference work on patent examining practice and procedure for the Patent and Trademark Office's Examining Corps. Subscription service includes basic manual, quarterly revisions, and change notices.

Patents and Inventions—An Information Aid to Inventors. The purpose of this publication is to aid inventors in deciding whether to apply for patents, in obtaining patent protection, and in promoting their inventions.

Patents: Spur to American Progress. Focuses on the functioning of the patent system, outlining its purpose and practices and charting the "how-to" path to patents. It illustrates how the system nurtures discovery of data and devices on which the American partnership of inventor, industry, and the public builds prosperity. This publication is one of the U.S. Department of Commerce's "Know Your Economic ABC's" series.

The Story of the United States Patent and Trademark Office. Cites important events in the development of the United States patent system and lists chronologically inventions having important effects on the economy.

Patent Laws. Compilation of patent laws in force.

Patent Attorneys and Agents Registered to Practice Before The U.S. Patent and Trademark Office. An alphabetically and a geographically arranged listing of patent attorneys and agents registered to practice before the U.S. Patent and Trademark Office.

Publications Available From the Patent and Trademark Office

Orders should be addressed to Patent and Trademark Office, Washington, D.C. 20231. Remittances should be made payable to Commissioner of Patents and Trademarks. Postage stamps, Superintendent of Documents coupons or other Government coupons are not acceptable in payment of Patent and Trademark Office fees.

Q & A About Patents. Brief, non-technical answers to questions most frequently asked about patents. Free.

Q & A About Plant Patents. Same as above for plant patents. Free.

General Information Concerning Patents. Contains a vast amount of general information concerning the application for and granting of patents, expressed in non-technical language for the layman. Single copy free. Multiple copies available from Superintendent of Documents.

Patents. Copies of the specification and drawings of all patents are available at 50 cents each, except design patents. Design patents are 20 cents each. When ordering, identify the patent by the patent number, or give full name of the inventor and approximate date of issuance of the patent.

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*.