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EXAMINING
PROCEDURE

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CHAINS OF CONTINUING APPLICATIONS

In view of a recent decision of an enlarged panel of the Board of Appeals the practice involving applications which claim the benefit of earlier filing dates, under 35 U.S.C. 120, shall be as follows:

When an applicant has filed a plurality of applications disclosing common subject matter, a later filed application can only obtain the benefit of the filing date of an earlier filed copending application or of one copending with the earlier filed application. For example, in a chain of four successively file applications wherein no more than two were copending at any one time, the last filed application is not entitled to the benefit of the date of the first filed application.

The Group Manager should be informed and keep a record of situations wherein an applicant is refused the benefit of an earlier filing date in accordance with this notice.

Richard A. Wahl
Assistant Commissioner

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MANUAL OF

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287-490 O - 68 - 2

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Foreword

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

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

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

DAVID L. LADD
Commissioner.

NOVEMBER 15, 1961.

Acknowledgments

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The Supervisory Examiners, Isaac G. Stone, Norman H. Evans, Burnham Yung Kwai, Sam Spintman, John S. Hull, Thomas F. Murphy, Harvey E. Kauffman and George A. Gorecki took an active part in this work, especially in rewriting Chapter 700.

Others who assisted were Pasquale J. Federico, Hyman B. Freehof, Examiners-in-Chief; Joseph Schimmel, Deputy Solicitor; Samuel Levin, LaVerne L. Williams, Interference Examiners; and Florence A. Hoffman, Division Clerk.

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

Commissioner of Patents,
Washington, D.C. 20231

DATE OF REVISIONS 1-14

Date	Rev. No.	Date	Rev. No.
Apr. 1968	1	Jan. 1968	1
Jul. 1968	2	Nov. 1968	2
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Jan. 1969	4	Apr. 1969	4
Apr. 1969	5	Jul. 1969	5
Jul. 1969	6	Oct. 1969	6
Oct. 1969	7	Jan. 1970	7

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 Submitted to Commissioner, Directors and Group Managers.....	159
1100 Interference.....	163
1200 Appeal.....	209
1300 Allowance and Issue.....	221
1400 Correction of Patent.....	229
1500 Design Patents.....	235
1600 Plant Patents.....	239
1700 Miscellaneous.....	243
Appendix I Table of Orders and Notices.....	247
Appendix II List of Decisions Cited.....	253
Appendix III Form Paragraphs.....	255.1
Index.....	257

**Checklist of Pages Needed To Form a Complete Set of the Third Edition of the M.P.E.P.
Through Revision 14**

DATES OF REVISIONS 1-14

<i>Rev. No.</i>	<i>Date</i>	<i>Rev. No.</i>	<i>Date</i>
1	Jan. 1964	8	Apr. 1966
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5	July 1965	12	Apr. 1967
6	Oct. 1965	13	July 1967
7	Jan. 1966	14	Oct. 1967

<i>Page</i>	<i>Revision No.</i>	<i>Page</i>	<i>Revision No.</i>
Title Page (2 sides)	14-14	Chapter 700	
III-IV	Unrevised	61-62	13-13
V-VI	14-14	63-64	14-13
VII		65-66	7-7
Introduction	Unrevised	67-68	12-7
1-2		69-70	5-5
Chapter 100		71-72	12-11
3-4	11-13	72.1	12
5-6	5-5	73-74	12-12
Chapter 200		75-76	12-12
7-8	13-14	77-78	14-14
8.1	14	80.1-80.2	13-13
9-10	14-14	81-82	14-14
10.1-10.2	14-14	83-84	13-13
11-12	14-10	85-86	13-13
12.1	10	87-88	12-12
13-14	1-1	89-90	12-13
14.1	1	90.1-90.2	13-14
15-16	2-unrevised	91-92	13-13
17-18	1-13	93-94	13-13
19-20	13-13	95-96	13-13
Chapter 300		97-98	11-11
21-22	13-12	98.1	11
Chapter 400		99-100	8-8
23-24	Unrevised	101-102	11-11
25-26	Unrevised-2	102.1-102.2	14-14
26.1	11	102.3	14
27-28	Unrevised	103-104	13-13
29-30	Unrevised	105-106	14-14
Chapter 500		107-108	4-12
31-32	11-11	108.1	12
Chapter 600		109-110	Unrevised
33-34	11-11	111-112	1-1
34.1	10	113-114	13-13
35-36	14-13	115-116	12-12
37-38	12-12	Chapter 800	
39-40	13-13	117-118	12-2
41-42	11-13	119-120	12-12
42.1	13	120.1	12
43-44	11-11	121-122	12-12
45-46	14-14	123-124	12-12
47-48	14-14	125-126	12-12
48.1-48.2	14-14	127-128	14-14
49-50	14-14	129-130	12-12
51-52	14-14	131	12
53-54	14-14	133-134	12-unrevised
54.1	12	135-136	11-11
55-56	12-12	Chapter 900	
57-58	4-7	137-138	13-13
59-60	12-12	138.1-138.2	13-13
		139-140	13-13
		141-142	1-1
		143-144	1-unrevised
		145-146	4-4

Page	Revision No.	Page	Revision No.
147-148	9-9	Chapter 1700	
149-150 (one page)	1	243-244	11-11
151-152	6-6	245-246	14-14
153-154	9-9	Chapter 1100 (old)	
155-156	10-10	163-164	Unrevised
157	13	165-166	2-2
Chapter 1000		167-168	Unrevised
159-160	8-12	169-170	2-2
161	14	171-172	2-3
Chapter 1100 (new)		172.1	3
163-164	12-12	173-174	Unrevised-1
165-166	9-9	175-176	2-2
166.1	9	176.1	2
167-168	5-5	177-178	1-1
169-170	5-8	179-180	Unrevised
171-172	8-8	181-182	Unrevised
172.1	5	183-184	Unrevised
173-174	9-9	185-186	2-2
175-176	8-8	187-188	Unrevised
176.1	8	189-190	2-4
177-178	9-9	191-192	2-2
179-180	9-8	192.1	2
181-182	8-9	193-194	3-Unrevised
183-184	8-8	195-196	1-1
185-186	5-5	196.1	1
187-188	12-12	197-198	Unrevised
189-190	5-blank page	199-200	3-3
193-194	7-7	201-202	Unrevised
194.1	7	203-204	1-1
195-196	5-5	204.1	1
197-198	5-8	205-206	Unrevised
199-200	11-5	207-208	Unrevised
201-202	5-5	Appendix I	
203-204	5-5	247-248	2-7
205	5	249-250	7-3
Chapter 1200		251-252	10-10
209-210	12-12	Appendix II	
211-212	14-14	253-254	11-11
213	11	255	11
213.1-214	8-1	Appendix III	
215-216	Unrevised	255.1-255.2	} (Revision number not on these pages—distributed with Revision 3)
217-218	12-12	255.3-255.4	
219	12	255.5-255.6	
Chapter 1300		Index	
221-222	12-12	257-258	8-Unrevised
222.1	14	259-260	Unrevised-8
223-224	13-13	261-262	7-Unrevised
225-226	13-13	263-264	Unrevised
227-228	6-6	265-266	Unrevised
Chapter 1400		267-268	Unrevised
229-230	Unrevised-1	269-270	Unrevised-7
231-232	1-unrevised	271-272	8-7
233-234	13-13	273-274	5-8
Chapter 1500		275-276	2-* Unrevised
235-236	2-2	277-278	Unrevised
236.1	2	279-280	Unrevised
237-238	6-10	281-282	Unrevised
Chapter 1600		283-284	8-8
239-240	Unrevised	285-286	8-8
241-242	Unrevised	287-288	8-8
		Change Sheet	12-8
		Change Sheet	15-1

*Revision number does not appear on this page—distributed with Revision 2.

Introduction

Constitutional Basis

The Constitution of the United States provides:

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

Statutes

Pursuant to the foregoing provision of the Constitution, Congress has passed a number of statutes under which the Patent Office is organized and our patent system is established. The provisions of the statutes can in no way be changed or waived by the Patent Office. Prior to January 1, 1953, the law relating to patents consisted of various sections of the Revised Statutes of 1874, derived from the Patent Act of 1870 and numerous amendatory and additional acts. These statutes, as well as old Title 35 of the United States Code, were compiled and reprinted several times prior to January 1, 1953, in a pamphlet entitled "Patent Laws".

By an Act of Congress approved July 19, 1952, which came into effect on January 1, 1953, the patent laws were revised and codified. With certain exceptions applying to applications filed and patents issued before January 1, 1953, this law governs all cases in the Patent Office. The patent law is Title 35 of the United States Code, which contains 95 sections numbered from 1 to 293, with gaps in the numbering between various chapters of the title. In referring to a particular section of the new patent code the citation is given, for example, as, 35 U.S.C. 31. The current edition of the pamphlet "Patent Laws" reprints the patent code and some additional statutes. The pamphlet also contains tables showing where subject matter comparable to present title 35 may be found in prior statutes, and where subject matter of prior statutes will be found in new title 35.

Rules of Practice

One of the sections of the patent statute, namely, 35 U.S.C. 6, authorizes the Commis-

sioner of Patents, subject to the approval of the Secretary of Commerce, to establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent Office. These regulations are set forth in a Patent Office booklet entitled "Rules of Practice of the United States Patent Office in Patent Cases". The Rules of Practice have a long history, going back to pamphlets of general information to the public first issued in 1836. The content has been determined by history, tradition and other factors. Primarily the function of the Rules of Practice is to advise the public of the regulations which have been established in accordance with the statutes and which must be followed before the Office. But the Patent Office Rules of Practice have always additionally included, as numbered rules, informational material, copies of sections of the patent statutes, purely internal procedure, and the like. It goes without saying that the Rules of Practice govern the Examiners, as well as applicants and their attorneys.

Commissioner's Orders and Notices

From time to time, the Commissioner of Patents has issued Orders and Notices relating to various specific situations that have arisen in operating the Patent Office. Notices and circulars of information or instructions have also been issued by the Supervisory Examiners under authority of the Commissioner. Orders and Notices have served various purposes including directions to the examiners giving them instruction, information, interpretations and the like. Some may be for the information of the public, advising what the Office will do under specified circumstances.

Decisions

In addition to the statutory regulations, the actions taken by the Examiner in the examination of applications for patents are to a great extent governed by decisions on prior cases. Those dissatisfied with an Examiner's action may have it reviewed. In general, it may be stated that from that portion of the Examiner's action pertaining to objections on formal matters, a petition for review may be taken to the Commissioner of Patents (1002) and

MANUAL OF PATENT EXAMINING PROCEDURE

from that portion of the Examiner's action pertaining to the rejection of claims on the merits, an appeal may be taken to the Board of Appeals (1201). The distinction is set forth in Rules 181 and 191. The decision of the Commissioner on formal matters is final

but the decision of the Board of Appeals on questions passed on by it may be carried to the courts. See 1216. In citing decisions as authority for his actions, the Examiner should cite the decision in the manner set forth in 707.06.