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EXAMINING
PROCEDURE

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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:

Commissioner of Patents,
Washington, D.C. 20231

WILLIAM E. SCHUYLER, JR.,
Commissioner.

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Introduction

Constitutional Basis

The Constitution of the United States provides:

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

Statutes

Pursuant to the 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 35 cents) reprints the patent code and some additional statutes.

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

These rules are set forth in a Patent Office booklet entitled "Rules of Practice of the United States Patent Office in Patent Cases" (available from the Superintendent of Documents for 55 cents). 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. 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. 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

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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.