

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 U.S. Patent and Trademark Office (USPTO) is organized and our patent system is established. The provisions of the statutes can in no way be changed or waived by the USPTO.

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 in Title 35 of the United States Code. In referring to a particular section of the patent code the citation is given, for example, as, 35 U.S.C. 1. The United States Code is available online at <http://uscode.house.gov/>. Upon occasion, additional provisions pertaining to patents are set forth in a Public Law but are not codified. Examples are some sections of the Leahy-Smith America Invents Act (AIA), Public Law 112-29, 125 Stat. 284. The Public Laws are available at www.congress.gov/public-laws.

Title 35 of the United States Code and sections 14, 18, and 33 of the AIA are reproduced in Appendix L of the Manual of Patent Examining Procedure (MPEP), however the Public Laws are the authoritative source and should be consulted if a need arises to verify the authenticity of the language reproduced in the MPEP. A copy of the consolidated patent laws that incorporates any statutory revisions that became effective subsequent to the latest revision of the MPEP is available on the USPTO

website at www.uspto.gov/web/offices/pac/mpep/consolidated_laws.pdf.

35 U.S.C. 1 Establishment.

(a) ESTABLISHMENT.— The United States Patent and Trademark Office is established as an agency of the United States, within the Department of Commerce. In carrying out its functions, the United States Patent and Trademark Office shall be subject to the policy direction of the Secretary of Commerce, but otherwise shall retain responsibility for decisions regarding the management and administration of its operations and shall exercise independent control of its budget allocations and expenditures, personnel decisions and processes, procurements, and other administrative and management functions in accordance with this title and applicable provisions of law. Those operations designed to grant and issue patents and those operations which are designed to facilitate the registration of trademarks shall be treated as separate operating units within the Office.

(b) OFFICES.— The United States Patent and Trademark Office shall maintain its principal office in the metropolitan Washington, D.C., area, for the service of process and papers and for the purpose of carrying out its functions. The United States Patent and Trademark Office shall be deemed, for purposes of venue in civil actions, to be a resident of the district in which its principal office is located, except where jurisdiction is otherwise provided by law. The United States Patent and Trademark Office may establish satellite offices in such other places in the United States as it considers necessary and appropriate in the conduct of its business.

(c) REFERENCE.— For purposes of this title, the United States Patent and Trademark Office shall also be referred to as the “Office” and the “Patent and Trademark Office”.

Rules

The USPTO is authorized by statute, subject to the policy direction of the Secretary of Commerce, to establish regulations, not inconsistent with law, for the conduct of proceedings in the USPTO. The rules govern examiners and other Office personnel, applicants, patent practitioners, and third parties.

These regulations or rules and amendments thereto are published in the *Federal Register* and in the *Official Gazette*. In the *Federal Register* and in the Code of Federal Regulations, the rules pertaining to patents are in Parts 1, 3, 4, 5, 11, 41, 42, and 90 of Title 37, Patents, Trademarks, and Copyrights. In referring to a particular section of the rules the citation is given, for example, as 37 CFR 1.31. A booklet entitled “Code of Federal Regulations, Title 37, Patents, Trademarks, and Copyrights,” published by the Office of the Federal Register, contains all of

MANUAL OF PATENT EXAMINING PROCEDURE

the patent rules as well as trademark rules and copyright rules. Persons desiring a copy of this booklet should order a copy from the U.S. Government Online Bookstore at <https://bookstore.gpo.gov/CFR>. The Electronic Code of Federal Regulations (e-CFR), available at www.ecfr.gov, is a currently updated version of the Code of Federal Regulations (CFR), although it is not an official legal edition of the CFR. The *Federal Register* is available online at www.federalregister.gov/.

The rules pertaining to patents are reproduced in Appendix R of the MPEP, however, the Federal Register is the authoritative source and should be consulted if a need arises to verify the authenticity of the language reproduced in the MPEP. A copy of the consolidated patent rules that incorporates any regulatory revisions that became effective subsequent to the latest revision of the MPEP is available on the USPTO website at www.uspto.gov/web/offices/pac/mpep/consolidated_rules.pdf.

Director's Orders and Notices

From time to time, the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, formerly the Commissioner of Patents and Trademarks, has issued Orders and Notices relating to various specific situations that have arisen in operating the USPTO. Notices and circulars of information or instructions have also been issued by other USPTO officials under authority of the Director. Orders and Notices have served various purposes including giving examiners instruction, information, interpretations, and the like. Others have been for the information of the public, advising what the USPTO will do under specified circumstances. Notices published in the *Official Gazette*, the official journal of the USPTO, are available online at www.uspto.gov/learning-and-resources/official-gazette.

Decisions

In addition to the statutes and rules, 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 Director of the USPTO under [37 CFR 1.181](#) (see [MPEP § 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 Patent Trial and Appeal Board in accordance with 37 CFR Part 41, subpart B (see also [MPEP Chapter 1200](#)). In citing decisions as authority for the examiner's actions, the examiner should cite the decision in the manner set forth in [MPEP § 707.06](#).

Publications Available from the U.S. Government Publishing Office

For current price and availability information, visit the U.S. Government Publishing Office (GPO) web site (<http://bookstore.gpo.gov>), call the GPO Order Desk (202-512-1800 or 1-866-512-1800), or send a fax to 202-512-2104.

Products and Services Available From the U.S. Patent and Trademark Office

General information about patents, trademarks, products and services offered by the USPTO is available at www.uspto.gov or by calling the USPTO Contact Center at:

800-PTO-9199 or 571-272-1000

(TTY) 800-877-8339.

An automated message system is available 7 days a week, 24 hours a day providing informational responses to frequently asked questions and the ability to order certain documents. Customer service representatives are available from 8:30 a.m. - 8:00 p.m. ET, Monday-Friday excluding federal holidays.

Patent and trademark related bulk data products available from the USPTO are described on the electronic data products page of the USPTO's website (www.uspto.gov/learning-and-resources/bulk-data-products).

For further information on electronic information products, contact:

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Electronic Information Products Division

Postal:

USPTO

EIPD, RSQ-5C00

P.O. Box 1450

Alexandria, VA 22313

FedEx:

USPTO

EIPD, RSQ-5C00

2800 S. Randolph Street

Arlington, VA 22206

Telephone: 571-272-5600

Fax: 571-273-0110

E-mail: ipd@uspto.gov

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See [MPEP § 1730](#) for additional information sources.