

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 into substantially its present form. The patent law is Title 35 of the United States Code which governs all cases in the USPTO. In referring to a particular section of the patent code the citation is given, for example, as, 35 U.S.C. 1. Title 35 of the United States Code is reproduced in Appendix L of the Manual of Patent Examining Procedure (MPEP). A copy of the consolidated patent laws is available on the U S P T O w e b s i t e a t www.uspto.gov/web/offices/pac/mpep/consolidated_laws.pdf.

35 U.S.C. 1 Establishment.
35Establishment.

(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

One of the sections of the patent statute, namely, 35 U.S.C. 2, authorizes the USPTO, 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.

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, 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 the patent rules as well as trademark rules and copyright rules. Persons desiring a copy of this booklet should order a copy from the Superintendent of Documents. A copy of the consolidated patent rules is available on the U S P T O w e b s i t e a t www.uspto.gov/web/offices/pac/mpep/consolidated_laws.pdf.

The primary function of the rules is to advise the public of the rules which have been established in accordance with the statutes and which must be followed before the USPTO. The

MANUAL OF PATENT EXAMINING PROCEDURE

rules govern the examiners, as well as applicants and their attorneys and agents. The rules pertaining to patent practice appear in the MPEP as Appendix R.

Director's Orders and Notices

From time to time, the 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.

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 (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 Board of Patent Appeals and Interferences (see MPEP § 1201). The distinction is set forth in 37 CFR 1.181 and 1.191. In citing decisions as authority for his or her actions, the examiner should cite the decision in the manner set forth in MPEP § 707.06.

Publications Available from the U.S. Government Printing Office

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

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

Patent and trademark related products and services available from the USPTO are described in the Products and Services Catalog, available on the USPTO's web site (www.uspto.gov/products/catalog).

Call 800-786-9199 for information on Patent, Trademark, and General Products. Customer Service Representatives are available Monday through Friday (except Federal holidays) from 8:30 a.m. to 8:00 p.m.

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See MPEP § 1730 for additional information sources.