

§ 1.248

other than as provided in paragraph (a) of this section must be filed within two months from the date of the patent application publication. This period is not extendable.

MISCELLANEOUS PROVISIONS

§ 1.248 Service of papers; manner of service; proof of service in cases other than interferences.

(a) Service of papers must be on the attorney or agent of the party if there be such or on the party if there is no attorney or agent, and may be made in any of the following ways:

(1) By delivering a copy of the paper to the person served;

(2) By leaving a copy at the usual place of business of the person served with someone in his employment;

(3) When the person served has no usual place of business, by leaving a copy at the person's residence, with some person of suitable age and discretion who resides there;

(4) Transmission by first class mail. When service is by mail the date of mailing will be regarded as the date of service;

(5) Whenever it shall be satisfactorily shown to the Director that none of the above modes of obtaining or serving the paper is practicable, service may be by notice published in the *Official Gazette*.

(b) Papers filed in the Patent and Trademark Office which are required to be served shall contain proof of service. Proof of service may appear on or be affixed to papers filed. Proof of service shall include the date and manner of service. In the case of personal service, proof of service shall also include the name of any person served, certified by the person who made service. Proof of service may be made by:

(1) An acknowledgement of service by or on behalf of the person served or

(2) A statement signed by the attorney or agent containing the information required by this section.

(c) See § 41.106(e) of this title for service of papers in contested cases before the Board of Patent Appeals and Interferences.

[46 FR 29184, May 29, 1981, as amended at 49 FR 48454, Dec. 12, 1984; 69 FR 50000, Aug. 12, 2004; 69 FR 58260, Sept. 30, 2004]

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§ 1.251 Unlocatable file.

(a) In the event that the Office cannot locate the file of an application, patent, or other patent-related proceeding after a reasonable search, the Office will notify the applicant or patentee and set a time period within which the applicant or patentee must comply with the notice in accordance with one of paragraphs (a)(1), (a)(2), or (a)(3) of this section.

(1) Applicant or patentee may comply with a notice under this section by providing:

(i) A copy of the applicant's or patentee's record (if any) of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding (except for U.S. patent documents);

(ii) A list of such correspondence; and

(iii) A statement that the copy is a complete and accurate copy of the applicant's or patentee's record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding (except for U.S. patent documents), and whether applicant or patentee is aware of any correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding that is not among applicant's or patentee's records.

(2) Applicant or patentee may comply with a notice under this section by:

(i) Producing the applicant's or patentee's record (if any) of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding for the Office to copy (except for U.S. patent documents); and

(ii) Providing a statement that the papers produced by applicant or patentee are applicant's or patentee's complete record of all of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding (except for U.S. patent documents), and whether applicant or patentee is aware of any correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding that is not among applicant's or patentee's records.

(3) If applicant or patentee does not possess any record of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding, applicant or patentee must comply with a notice under this section by providing a statement that applicant or patentee does not possess any record of the correspondence between the Office and the applicant or patentee for such application, patent, or other proceeding.

(b) With regard to a pending application, failure to comply with one of paragraphs (a)(1), (a)(2), or (a)(3) of this section within the time period set in the notice will result in abandonment of the application.

[65 FR 69451, Nov. 17, 2000]

§ 1.265 Examination support document.

(a) An examination support document as used in this part means a document that includes the following:

(1) A statement that a preexamination search in compliance with paragraph (b) of this section was conducted, including an identification of the field of search by United States class and subclass and the date of the search, where applicable, and, for database searches, the search logic or chemical structure or sequence used as a query, the name of the file or files searched and the database service, and the date of the search;

(2) A listing of the reference or references deemed most closely related to the subject matter of each of the claims (whether in independent or dependent form) in compliance with paragraph (c) of this section;

(3) For each reference cited, an identification of all of the limitations of each of the claims (whether in independent or dependent form) that are disclosed by the reference;

(4) A detailed explanation particularly pointing out how each of the independent claims is patentable over the cited references; and

(5) A showing of where each limitation of each of the claims (whether in independent or dependent form) finds support under the first paragraph of 35 U.S.C. 112 in the written description of the specification. If the application claims the benefit of one or more appli-

cations under title 35, United States Code, the showing must also include where each limitation of each of the claims finds support under the first paragraph of 35 U.S.C. 112 in each such priority or benefit application in which such support exists.

(b) The preexamination search referred to in paragraph (a)(1) of this section must involve U.S. patents and patent application publications, foreign patent documents, and non-patent literature, unless the applicant justifies with reasonable certainty that no references more pertinent than those already identified are likely to be found in the eliminated source and includes such a justification with the statement required by paragraph (a)(1) of this section. The preexamination search referred to in paragraph (a)(1) of this section must be directed to the claimed invention and encompass all of the limitations of each of the claims (whether in independent or dependent form), giving the claims the broadest reasonable interpretation.

(c) The listing of references required under paragraph (a)(2) of this section as part of an examination support document must include a list identifying each of the cited references in compliance with paragraphs (c)(1) and (c)(2) of this section, a copy of each reference if required by paragraph (c)(3) of this section, and each English language translation if required by paragraph (c)(4) of this section.

(1) The list of cited references must itemize U.S. patents and U.S. patent application publications (including international applications designating the U.S.) in a section separate from the list of other references. Each page of the list of the cited references must include:

(i) The application number, if known, of the application in which the examination support document is being filed;

(ii) A column that provides a space next to each cited reference for the examiner's initials; and

(iii) A heading that clearly indicates that the list is part of an examination support document listing of references.

(2) The list of cited references must identify each cited reference as follows: