

(4) *Opposition; reply.* Neither an opposition nor a reply to a request for rehearing may be filed without Board authorization.

(5) *Panel rehearing.* If a decision is not a panel decision, the party requesting rehearing may request that a panel rehear the decision. A panel rehearing a procedural decision will review the decision for an abuse of discretion.

§ 41.126 Arbitration.

(a) Parties to a contested case may resort to binding arbitration to determine any issue in a contested case. The Office is not a party to the arbitration. The Board is not bound and may independently determine questions of patentability, jurisdiction, and Office practice.

(b) The Board will not authorize arbitration unless:

(1) It is to be conducted according to Title 9 of the United States Code.

(2) The parties notify the Board in writing of their intention to arbitrate.

(3) The agreement to arbitrate:

(i) Is in writing,

(ii) Specifies the issues to be arbitrated,

(iii) Names the arbitrator, or provides a date not more than 30 days after the execution of the agreement for the selection of the arbitrator, and

(iv) Provides that the arbitrator's award shall be binding on the parties and that judgment thereon can be entered by the Board.

(4) A copy of the agreement is filed within 20 days after its execution.

(5) The arbitration is completed within the time the Board sets.

(c) The parties are solely responsible for the selection of the arbitrator and the conduct of proceedings before the arbitrator.

(d) Issues not disposed of by the arbitration will be resolved in accordance with the procedures established in this subpart.

(e) The Board will not consider the arbitration award unless it:

(1) Is binding on the parties,

(2) Is in writing,

(3) States in a clear and definite manner each issue arbitrated and the disposition of each issue, and

(4) Is filed within 20 days of the date of the award.

(f) Once the award is filed, the parties to the award may not take actions inconsistent with the award. If the award is dispositive of the contested subject matter for a party, the Board may enter judgment as to that party.

§ 41.127 Judgment.

(a) *Effect within Office*—(1) *Estoppel.* A judgment disposes of all issues that were, or by motion could have properly been, raised and decided. A losing party who could have properly moved for relief on an issue, but did not so move, may not take action in the Office after the judgment that is inconsistent with that party's failure to move, except that a losing party shall not be estopped with respect to any contested subject matter for which that party was awarded a favorable judgment.

(2) *Final disposal of claim.* Adverse judgment against a claim is a final action of the Office requiring no further action by the Office to dispose of the claim permanently.

(b) *Request for adverse judgment.* A party may at any time in the proceeding request judgment against itself. Actions construed to be a request for adverse judgment include:

(1) Abandonment of an involved application such that the party no longer has an application or patent involved in the proceeding,

(2) Cancellation or disclaiming of a claim such that the party no longer has a claim involved in the proceeding,

(3) Concession of priority or unpatentability of the contested subject matter, and

(4) Abandonment of the contest.

(c) *Recommendation.* The judgment may include a recommendation for further action by the examiner or by the Director. If the Board recommends rejection of a claim of an involved application, the examiner must enter and maintain the recommended rejection unless an amendment or showing of facts not previously of record is filed which, in the opinion of the examiner, overcomes the recommended rejection.

(d) *Rehearing.* A party dissatisfied with the judgment may file a request for rehearing within 30 days of the entry of the judgment. The request must specifically identify all matters