

§ 41.3 Petitions.

(a) *Deciding official.* Petitions must be addressed to the Chief Administrative Patent Judge. A panel or an administrative patent judge may certify a question of policy to the Chief Administrative Patent Judge for decision. The Chief Administrative Patent Judge may delegate authority to decide petitions.

(b) *Scope.* This section covers petitions on matters pending before the Board (§§ 41.35, 41.64, 41.103, and 41.205); otherwise, see §§ 1.181 to 1.183 of this title. The following matters are not subject to petition:

- (1) Issues committed by statute to a panel, and
- (2) In pending contested cases, procedural issues. See § 41.121(a)(3) and § 41.125(c).

(c) *Petition fee.* The fee set in § 41.20(a) must accompany any petition under this section except no fee is required for a petition under this section seeking supervisory review.

(d) *Effect on proceeding.* The filing of a petition does not stay the time for any other action in a Board proceeding.

(e) *Time for action.* (1) Except as otherwise provided in this part or as the Board may authorize in writing, a party may:

- (i) File the petition within 14 days from the date of the action from which the party is requesting relief, and
- (ii) File any request for reconsideration of a petition decision within 14 days of the decision on petition or such other time as the Board may set.

(2) A party may not file an opposition or a reply to a petition without Board authorization.

[69 FR 50003, Aug. 12, 2004, as amended at 69 FR 58260, Sept. 30, 2004]

EFFECTIVE DATE NOTE: At 73 FR 32973, June 10, 2008, § 41.3 was amended by revising paragraphs (a) and (b), effective December 10, 2008. For the convenience of the user, the revised text is set forth as follows:

§ 41.3 Petitions.

(a) *Deciding official.* A petition authorized by this part must be addressed to the Chief Administrative Patent Judge. The Chief Administrative Patent Judge may delegate authority to decide petitions.

(b) *Scope.* This section covers petitions on matters pending before the Board, petitions authorized by this part and petitions seeking

relief under 35 U.S.C. 135(c); otherwise see §§ 1.181 to 1.183 of this title. The following matters are not subject to petition:

- (1) Issues committed by statute to a panel.
- (2) In pending contested cases, procedural issues. See § 41.121(a)(3) and § 41.125(c).

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§ 41.4 Timeliness.

(a) *Extensions of time.* Extensions of time will be granted only on a showing of good cause except as otherwise provided by rule.

(b) *Late filings.* (1) A late filing that results in either an application becoming abandoned or a reexamination prosecution becoming terminated under § 1.550(d) or § 1.957(b) of this title or limited under § 1.957(c) of this title may be revived as set forth in § 1.137 of this title.

(2) A late filing that does not result in either an application becoming abandoned or a reexamination prosecution becoming terminated under § 1.550(d) or § 1.957(b) of this title or limited under § 1.957(c) of this title will be excused upon a showing of excusable neglect or a Board determination that consideration on the merits would be in the interest of justice.

(c) *Scope.* This section governs all proceedings before the Board, but does not apply to filings related to Board proceedings before or after the Board has jurisdiction, such as:

- (1) Extensions during prosecution (see § 1.136 of this title),
- (2) Filing of a brief or request for oral hearing (see §§ 41.37, 41.41, 41.47, 41.67, 41.68, 41.71 and 41.73), or
- (3) Seeking judicial review (see §§ 1.301 to 1.304 of this title).

[69 FR 50003, Aug. 12, 2004, as amended at 72 FR 18907, Apr. 16, 2007]

EFFECTIVE DATE NOTE: At 73 FR 32973, June 10, 2008, § 41.4 was amended by revising paragraphs (b) and (c), effective December 10, 2008. For the convenience of the user, the revised text is set forth as follows:

§ 41.4 Timeliness.

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(b) *Late filings.* (1) A request to revive an application which becomes abandoned or a reexamination proceeding which becomes terminated under §§ 1.550(d) or 1.957(b) or (c)

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of this title as a result of a late filing may be filed pursuant to §1.137 of this title.

(2) A late filing that does not result in an application becoming abandoned or a reexamination proceeding becoming terminated under §§1.550(d) or 1.957(b) or limited under §1.957(c) of this title may be excused upon a showing of excusable neglect or a Board determination that consideration on the merits would be in the interests of justice.

(c) *Scope.* Except to the extent provided in this part, this section governs proceedings before the Board, but does not apply to filings related to Board proceedings before or after the Board has jurisdiction (§41.35), such as:

(1) Extensions during prosecution (*see* §1.136 of this title).

(2) Filing of a notice of appeal and an appeal brief (*see* §§41.31(c) and 41.37(c)).

(3) Seeking judicial review (*see* §§1.301 to 1.304 of this title).

§41.5 Counsel.

While the Board has jurisdiction:

(a) *Appearance pro hac vice.* The Board may authorize a person other than a registered practitioner to appear as counsel in a specific proceeding.

(b) *Disqualification.* (1) The Board may disqualify counsel in a specific proceeding after notice and an opportunity to be heard.

(2) A decision to disqualify is not final for the purposes of judicial review until certified by the Chief Administrative Patent Judge.

(c) *Withdrawal.* Counsel may not withdraw from a proceeding before the Board unless the Board authorizes such withdrawal. *See* §10.40 of this title regarding conditions for withdrawal.

(d) *Procedure.* The Board may institute a proceeding under this section on its own or a party in a contested case may request relief under this section.

(e) *Referral to the Director of Enrollment and Discipline.* Possible violations of the disciplinary rules in part 10 of this title may be referred to the Office of Enrollment and Discipline for investigation. *See* §10.131 of this title.

§41.6 Public availability of Board records.

(a) *Publication—(1) Generally.* Any Board action is available for public inspection without a party's permission if rendered in a file open to the public pursuant to §1.11 of this title or in an application that has been published in

accordance with §§1.211 to 1.221 of this title. The Office may independently publish any Board action that is available for public inspection.

(2) *Determination of special circumstances.* Any Board action not publishable under paragraph (a)(1) of this section may be published or made available for public inspection if the Director believes that special circumstances warrant publication and a party does not, within two months after being notified of the intention to make the action public, object in writing on the ground that the action discloses the objecting party's trade secret or other confidential information and states with specificity that such information is not otherwise publicly available. If the action discloses such information, the party shall identify the deletions in the text of the action considered necessary to protect the information. If the affected party considers that the entire action must be withheld from the public to protect such information, the party must explain why. The party will be given time, not less than twenty days, to request reconsideration and seek court review before any contested portion of the action is made public over its objection.

(b) *Record of proceeding.* (1) The record of a Board proceeding is available to the public unless a patent application not otherwise available to the public is involved.

(2) Notwithstanding paragraph (b)(1) of this section, after a final Board action in or judgment in a Board proceeding, the record of the Board proceeding will be made available to the public if any involved file is or becomes open to the public under §1.11 of this title or an involved application is or becomes published under §§1.211 to 1.221 of this title.

§41.7 Management of the record.

(a) The Board may expunge any paper directed to a Board proceeding, or filed while an application or patent is under the jurisdiction of the Board, that is not authorized under this part or in a Board order, or that is filed contrary to a Board order.