

§ 1.311

District of Columbia, the time is extended to the next day which is neither a Saturday, Sunday nor a Federal holiday.

(c) If a defeated party to an interference has taken an appeal to the U.S. Court of Appeals for the Federal Circuit and an adverse party has filed notice under 35 U.S.C. 141 electing to have all further proceedings conducted under 35 U.S.C. 146 (§1.303(c)), the time for filing a civil action thereafter is specified in 35 U.S.C. 141. The time for filing a cross-action expires 14 days after service of the summons and complaint.

[54 FR 29553, July 13, 1989, as amended at 58 FR 54502, Oct. 22, 1993; 62 FR 53198, Oct. 10, 1997; 65 FR 76774, Dec. 7, 2000; 68 FR 71007, Dec. 22, 2003; 69 FR 50001, Aug. 12, 2004]

ALLOWANCE AND ISSUE OF PATENT

§ 1.311 Notice of allowance.

(a) If, on examination, it appears that the applicant is entitled to a patent under the law, a notice of allowance will be sent to the applicant at the correspondence address indicated in §1.33. The notice of allowance shall specify a sum constituting the issue fee which must be paid within three months from the date of mailing of the notice of allowance to avoid abandonment of the application. The sum specified in the notice of allowance may also include the publication fee, in which case the issue fee and publication fee (§1.211(e)) must both be paid within three months from the date of mailing of the notice of allowance to avoid abandonment of the application. This three-month period is not extendable.

(b) An authorization to charge the issue fee or other post-allowance fees set forth in §1.18 to a deposit account may be filed in an individual application only after mailing of the notice of allowance. The submission of either of the following after the mailing of a notice of allowance will operate as a request to charge the correct issue fee or any publication fee due to any deposit account identified in a previously filed authorization to charge such fees:

(1) An incorrect issue fee or publication fee; or

37 CFR Ch. I (7-1-10 Edition)

(2) A fee transmittal form (or letter) for payment of issue fee or publication fee.

[65 FR 57060, Sept. 20, 2000, as amended at 66 FR 67096, Dec. 28, 2001; 69 FR 56545, Sept. 21, 2004]

§ 1.312 Amendments after allowance.

No amendment may be made as a matter of right in an application after the mailing of the notice of allowance. Any amendment filed pursuant to this section must be filed before or with the payment of the issue fee, and may be entered on the recommendation of the primary examiner, approved by the Director, without withdrawing the application from issue.

[65 FR 14873, Mar. 20, 2000]

§ 1.313 Withdrawal from issue.

(a) Applications may be withdrawn from issue for further action at the initiative of the Office or upon petition by the applicant. To request that the Office withdraw an application from issue, applicant must file a petition under this section including the fee set forth in §1.17(h) and a showing of good and sufficient reasons why withdrawal of the application from issue is necessary. A petition under this section is not required if a request for continued examination under §1.114 is filed prior to payment of the issue fee. If the Office withdraws the application from issue, the Office will issue a new notice of allowance if the Office again allows the application.

(b) Once the issue fee has been paid, the Office will not withdraw the application from issue at its own initiative for any reason except:

(1) A mistake on the part of the Office;

(2) A violation of §1.56 or illegality in the application;

(3) Unpatentability of one or more claims; or

(4) For interference.

(c) Once the issue fee has been paid, the application will not be withdrawn from issue upon petition by the applicant for any reason except:

(1) Unpatentability of one of more claims, which petition must be accompanied by an unequivocal statement that one or more claims are

unpatentable, an amendment to such claim or claims, and an explanation as to how the amendment causes such claim or claims to be patentable;

(2) Consideration of a request for continued examination in compliance with § 1.114; or

(3) Express abandonment of the application. Such express abandonment may be in favor of a continuing application.

(d) A petition under this section will not be effective to withdraw the application from issue unless it is actually received and granted by the appropriate officials before the date of issue. Withdrawal of an application from issue after payment of the issue fee may not be effective to avoid publication of application information.

[65 FR 14873, Mar. 20, 2000, as amended at 65 FR 50105, Aug. 16, 2000]

§ 1.314 Issuance of patent.

If applicant timely pays the issue fee, the Office will issue the patent in regular course unless the application is withdrawn from issue (§ 1.313) or the Office defers issuance of the patent. To request that the Office defer issuance of a patent, applicant must file a petition under this section including the fee set forth in § 1.17(h) and a showing of good and sufficient reasons why it is necessary to defer issuance of the patent.

[65 FR 54677, Sept. 8, 2000]

§ 1.315 Delivery of patent.

The patent will be delivered or mailed upon issuance to the correspondence address of record. See § 1.33(a).

[61 FR 42807, Aug. 19, 1996]

§ 1.316 Application abandoned for failure to pay issue fee.

If the issue fee is not paid within three months from the date of the notice of allowance, the application will be regarded as abandoned. Such an abandoned application will not be considered as pending before the Patent and Trademark Office.

[62 FR 53198, Oct. 10, 1997]

§ 1.317 Lapsed patents; delayed payment of balance of issue fee.

If the issue fee paid is the amount specified in the notice of allowance, but a higher amount is required at the time the issue fee is paid, any remaining balance of the issue fee is to be paid within three months from the date of notice thereof and, if not paid, the patent will lapse at the termination of the three-month period.

[62 FR 53198, Oct. 10, 1997]

§ 1.318 [Reserved]

DISCLAIMER

§ 1.321 Statutory disclaimers, including terminal disclaimers.

(a) A patentee owning the whole or any sectional interest in a patent may disclaim any complete claim or claims in a patent. In like manner any patentee may disclaim or dedicate to the public the entire term, or any terminal part of the term, of the patent granted. Such disclaimer is binding upon the grantee and its successors or assigns. A notice of the disclaimer is published in the *Official Gazette* and attached to the printed copies of the specification. The disclaimer, to be recorded in the Patent and Trademark Office, must:

(1) Be signed by the patentee, or an attorney or agent of record;

(2) Identify the patent and complete claim or claims, or term being disclaimed. A disclaimer which is not a disclaimer of a complete claim or claims, or term will be refused recordation;

(3) State the present extent of patentee's ownership interest in the patent; and

(4) Be accompanied by the fee set forth in § 1.20(d).

(b) An applicant or assignee may disclaim or dedicate to the public the entire term, or any terminal part of the term, of a patent to be granted. Such terminal disclaimer is binding upon the grantee and its successors or assigns. The terminal disclaimer, to be recorded in the Patent and Trademark Office, must:

(1) Be signed:

(i) By the applicant, or