

(b) *Patentee*. A patentee cannot suggest an interference under this section but may, to the extent permitted under § 1.291 of this title, alert the examiner of an application claiming interfering subject matter to the possibility of an interference.

(c) *Examiner*. An examiner may require an applicant to add a claim to provoke an interference. Failure to satisfy the requirement within a period (not less than one month) the examiner sets will operate as a concession of priority for the subject matter of the claim. If the interference would be with a patent, the applicant must also comply with paragraphs (a)(2) through (a)(6) of this section. The claim the examiner proposes to have added must, apart from the question of priority under 35 U.S.C. 102(g):

(1) Be patentable to the applicant, and

(2) Be drawn to patentable subject matter claimed by another applicant or patentee.

(d) *Requirement to show priority under 35 U.S.C. 102(g)*. (1) When an applicant has an earliest constructive reduction to practice that is later than the apparent earliest constructive reduction to practice for a patent or published application claiming interfering subject matter, the applicant must show why it would prevail on priority.

(2) If an applicant fails to show priority under paragraph (d)(1) of this section, an administrative patent judge may nevertheless declare an interference to place the applicant under an order to show cause why judgment should not be entered against the applicant on priority. New evidence in support of priority will not be admitted except on a showing of good cause. The Board may authorize the filing of motions to redefine the interfering subject matter or to change the benefit accorded to the parties.

(e) *Sufficiency of showing*. (1) A showing of priority under this section is not sufficient unless it would, if un rebutted, support a determination of priority in favor of the party making the showing.

(2) When testimony or production necessary to show priority is not available without authorization under

§ 41.150(c) or § 41.156(a), the showing shall include:

(i) Any necessary interrogatory, request for admission, request for production, or deposition request, and

(ii) A detailed proffer of what the response to the interrogatory or request would be expected to be and an explanation of the relevance of the response to the question of priority.

[69 FR 50003, Aug. 12, 2004, as amended at 77 FR 42174, July 17, 2012]

#### § 41.203 Declaration.

(a) *Interfering subject matter*. An interference exists if the subject matter of a claim of one party would, if prior art, have anticipated or rendered obvious the subject matter of a claim of the opposing party and vice versa.

(b) *Notice of declaration*. An administrative patent judge declares the patent interference on behalf of the Director. A notice declaring an interference identifies:

(1) The interfering subject matter;

(2) The involved applications, patents, and claims;

(3) The accorded benefit for each count; and

(4) The claims corresponding to each count.

(c) *Redeclaration*. An administrative patent judge may redeclare a patent interference on behalf of the Director to change the declaration made under paragraph (b) of this section.

(d) A party may suggest the addition of a patent or application to the interference or the declaration of an additional interference. The suggestion should make the showings required under § 41.202(a) of this part.

#### § 41.204 Notice of basis for relief.

(a) *Priority statement*. (1) A party may not submit evidence of its priority in addition to its accorded benefit unless it files a statement setting forth all bases on which the party intends to establish its entitlement to judgment on priority.

(2) The priority statement must:

(i) State the date and location of the party's earliest corroborated conception,

(ii) State the date and location of the party's earliest corroborated actual reduction to practice,