

faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

(1) Prior art cited in search reports of a foreign patent office in a counterpart application, and

(2) The closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

(1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or

(2) It refutes, or is inconsistent with, a position the applicant takes in:

(i) Opposing an argument of unpatentability relied on by the Office, or

(ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

(1) Each inventor named in the application;

(2) Each attorney or agent who prepares or prosecutes the application; and

(3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

[57 FR 2034, Jan. 17, 1992]

§ 1.57 [Reserved]

§ 1.58 Chemical and mathematical formulae and tables.

(a) The specification, including the claims, may contain chemical and mathematical formulas, but shall not contain drawings or flow diagrams. The description portion of the specification may contain tables; claims may contain tables either if necessary to conform to 35 U.S.C. 112 or if otherwise found to be desirable.

(b) [Reserved]

(c) Chemical and mathematical formulae and tables must be presented in compliance with § 1.52 (a) and (b), except that chemical and mathematical formulae or tables may be placed in a landscape orientation if they cannot be presented satisfactorily in a portrait orientation. Typewritten characters

used in such formulae and tables must be chosen from a block (nonscript) type font or lettering style having capital letters which are at least 0.21 cm. (0.08 inch) high (*e.g.*, elite type). A space at least 0.64 cm. (¼ inch) high should be provided between complex formulae and tables and the text. Tables should have the lines and columns of data closely spaced to conserve space, consistent with a high degree of legibility.

(Pub. L. 94-131, 89 Stat. 685)

[43 FR 20463, May 11, 1978, as amended at 61 FR 42803, Aug. 19, 1996]

§ 1.59 Papers of application with filing date not to be returned.

Papers in an application which has received a filing date pursuant to § 1.53 will not be returned for any purpose whatever. If applicants have not preserved copies of the papers, the Office will furnish copies at the usual cost of any application in which either the required basic filing fee (§ 1.16) or, if the application was filed under § 1.53(b)(1), the processing and retention fee (§ 1.21(1)) has been paid. See § 1.618 for return of unauthorized and improper papers in interferences.

[60 FR 20224, Apr. 25, 1995]

§ 1.60 Continuation or divisional application for invention disclosed in a prior nonprovisional application.

(a) [Reserved]

(b) An applicant may omit signing of the oath or declaration in a continuation or divisional application (filed under the conditions specified in 35 U.S.C. 120 or 121 and § 1.78(a)) if:

(1) The prior application was a nonprovisional application and a complete application as set forth in § 1.51(a)(1);

(2) Applicant indicates that the application is being filed pursuant to this section and files a true copy of the prior complete application as filed including the specification (with claims), drawings, oath or declaration showing the signature or an indication it was signed, and any amendments referred to in the oath or declaration filed to complete the prior application;

(3) The inventors named in the continuation or divisional application are the same or less than all the inventors named in the prior application; and

(4) The application is filed before the patenting, or abandonment of, or termination of proceedings on the prior application. The copy of the prior application must be accompanied by a statement that the application papers filed are a true copy of the prior complete application. Such statement must be by the applicant or applicant's attorney or agent and must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office. Only amendments reducing the number of claims or adding a reference to the prior application (§ 1.78(a)) will be entered before calculating the filing fee and granting the filing date. If the continuation or divisional application is filed by less than all the inventors named in the prior application, a statement must accompany the application when filed requesting deletion of the names of the person or persons who are not inventors of the invention being claimed in the continuation or divisional application. Except as provided in paragraph (d) of this section, if a true copy of the prior application as filed is not filed with the application or if the statement that the application papers are a true copy is omitted, the application will not be given a filing date earlier than the date upon which the copy and statement are filed, unless a petition with the fee set forth in § 1.17(i) is filed which satisfactorily explains the delay in filing these items.

(c) If an application filed pursuant to paragraph (b) of this section is incomplete for reasons other than those specified in paragraph (d) of this section, applicant will be notified and given a time period within which to complete the application in order to obtain a filing date as of the date of filing the omitted item provided the omitted item is filed before the patenting or abandonment of or termination of proceedings on the prior application. If the omission is not corrected within the time period set, the application will be returned or otherwise disposed of; the fee, if submitted, will be refunded less the handling fee set forth in § 1.21(n).

(d) If an application filed pursuant to paragraph (b) of this section is otherwise complete, but does not include the appropriate filing fee or a true copy of