

U.S. Patent and Trademark Office, Commerce

§ 5.2

GENERAL

5.31-5.33 [Reserved]

AUTHORITY: 35 U.S.C. 2(b)(2), 41, 181-188, as amended by the Patent Law Foreign Filing Amendments Act of 1988, Pub. L. 100-418, 102 Stat. 1567; the Arms Export Control Act, as amended, 22 U.S.C. 2751 *et seq.*; the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*; the Nuclear Non Proliferation Act of 1978, 22 U.S.C. 3201 *et seq.*; and the delegations in the regulations under these Acts to the Commissioner (15 CFR 370.10(j), 22 CFR 125.04, and 10 CFR 810.7).

SOURCE: 24 FR 10381, Dec. 22, 1959, unless otherwise noted.

SECURITY ORDERS

§ 5.1 Applications and correspondence involving national security.

(a) All correspondence in connection with this part, including petitions, should be addressed to "Commissioner for Patents (Attention Licensing and Review), Washington, D.C. 20231."

(b) Application as used in this part includes provisional applications filed under 35 U.S.C. 111(b) (§1.9(a)(2) of this chapter), nonprovisional applications filed under 35 U.S.C. 111(a) or entering the national stage from an international application after compliance with 35 U.S.C. 371 (§1.9(a)(3)), or international applications filed under the Patent Cooperation Treaty prior to entering the national stage of processing (§1.9(b)).

(c) Patent applications and documents relating thereto that are national security classified (see §1.9(i) of this chapter) and contain authorized national security markings (*e.g.*, "Confidential," "Secret" or "Top Secret") are accepted by the Office. National security classified documents filed in the Office must be either hand-carried to Licensing and Review or mailed to the Office in compliance with paragraph (a) of this section.

(d) The applicant in a national security classified patent application must obtain a secrecy order pursuant to §5.2(a). If a national security classified patent application is filed without a notification pursuant to §5.2(a), the Office will set a time period within which either the application must be declassified, or the application must be placed under a secrecy order pursuant to §5.2(a), or the applicant must submit

evidence of a good faith effort to obtain a secrecy order pursuant to §5.2(a) from the relevant department or agency in order to prevent abandonment of the application. If evidence of a good faith effort to obtain a secrecy order pursuant to §5.2(a) from the relevant department or agency is submitted by the applicant within the time period set by the Office, but the application has not been declassified or placed under a secrecy order pursuant to §5.2(a), the Office will again set a time period within which either the application must be declassified, or the application must be placed under a secrecy order pursuant to §5.2(a), or the applicant must submit evidence of a good faith effort to again obtain a secrecy order pursuant to §5.2(a) from the relevant department or agency in order to prevent abandonment of the application.

(e) An application will not be published under §1.211 of this chapter or allowed under §1.311 of this chapter if publication or disclosure of the application would be detrimental to national security. An application under national security review will not be published at least until six months from its filing date or three months from the date the application was referred to a defense agency, whichever is later. A national security classified patent application will not be published under §1.211 of this chapter or allowed under §1.311 of this chapter until the application is declassified and any secrecy order under §5.2(a) has been rescinded.

(f) Applications on inventions made outside the United States and on inventions in which a U.S. Government defense agency has a property interest will not be made available to defense agencies.

[65 FR 54682, Sept. 8, 2000, as amended at 65 FR 57060, Sept. 20, 2000]

§ 5.2 Secrecy order.

(a) When notified by the chief officer of a defense agency that publication or disclosure of the invention by the granting of a patent would be detrimental to the national security, an order that the invention be kept secret will be issued by the Commissioner of Patents and Trademarks.