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(c) The complaint should fairly summarize the action of the invention promoter about which the person complains. Additionally, the complaint should include names and addresses of persons believed to be associated with the invention promoter. Complaints, and any replies, must be addressed to Office of Independent Inventor Programs, U.S. Patent and Trademark Office, Washington, D.C. 20231.

(d) Complaints that do not provide the information requested in paragraphs (b) and (c) of this section will be returned. If complainant's address is not provided, the complaint will be destroyed.

(e) No originals of documents should be included with the complaint.

(f) A complaint can be withdrawn by the complainant or the named customer at any time prior to its publication.

§ 4.4 Invention promoter reply.

(a) If a submission appears to meet the requirements of a complaint, the invention promoter named in the complaint will be notified of the complaint and given 30 days to respond. The invention promoter's response will be made available to the public along with the complaint. If the invention promoter fails to reply within the 30-day time period set by the Office, the complaint will be made available to the public. Replies sent after the complaint is made available to the public will also be published.

(b) A response must be clearly marked, or otherwise identified, as a response by an invention promoter. The response must contain:

(1) The name and address of the invention promoter;

(2) A reference to a complaint forwarded to the invention promoter or a complaint previously published;

(3) The name of the individual signing the response; and

(4) The title or authority of the individual signing the response.

§ 4.5 Notice by publication.

If the copy of the complaint that is mailed to the invention promoter is returned undelivered, then the Office will publish a Notice of Complaint Received in the Official Gazette, the FEDERAL

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REGISTER, or on the Office's Internet home page. The invention promoter will be given 30 days from such notice to submit a reply to the complaint. If the Office does not receive a reply from the invention promoter within 30 days, the complaint alone will become publicly available.

§ 4.6 Attorneys and agents.

Complaints against registered patent attorneys and agents will not be treated under this section, unless a complaint fairly demonstrates that invention promotion services are involved. Persons having complaints about registered patent attorneys or agents should contact the Office of Enrollment and Discipline at the U.S. Patent and Trademark Office, Box OED, Washington, D.C. 20231, and the attorney discipline section of the attorney's state licensing bar if an attorney is involved.

PART 5—SECURITY OF CERTAIN INVENTIONS AND LICENSES TO EXPORT AND FILE APPLICATIONS IN FOREIGN COUNTRIES

SECURITY ORDERS

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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.

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(b) Any request for compensation as provided in 35 U.S.C. 183 must not be made to the Patent and Trademark Office, but directly to the department or agency which caused the secrecy order to be issued.

(c) An application disclosing any significant part of the subject matter of an application under a secrecy order pursuant to paragraph (a) of this section also falls within the scope of such secrecy order. Any such application that is pending before the Office must be promptly brought to the attention of Licensing and Review, unless such application is itself under a secrecy order pursuant to paragraph (a) of this section. Any subsequently filed application containing any significant part of the subject matter of an application under a secrecy order pursuant to paragraph (a) of this section must either be hand-carried to Licensing and Review or mailed to the Office in compliance with §5.1(a).

[24 FR 10381, Dec. 22, 1959, as amended at 62 FR 53203, Oct. 10, 1997; 65 FR 54683, Sept. 8, 2000]

§5.3 Prosecution of application under secrecy orders; withholding patent.

Unless specifically ordered otherwise, action on the application by the Office and prosecution by the applicant will proceed during the time an application is under secrecy order to the point indicated in this section:

(a) National applications under secrecy order which come to a final rejection must be appealed or otherwise prosecuted to avoid abandonment. Appeals in such cases must be completed by the applicant but unless otherwise specifically ordered by the Commissioner will not be set for hearing until the secrecy order is removed.

(b) An interference will not be declared involving national applications under secrecy order. However, if an applicant whose application is under secrecy order seeks to provoke an interference with an issued patent, a notice of that fact will be placed in the file wrapper of the patent. (See §1.607(d))

(c) When the national application is found to be in condition for allowance except for the secrecy order the applicant and the agency which caused the secrecy order to be issued will be noti-

fied. This notice (which is not a notice of allowance under §1.311 of this chapter) does not require reply by the applicant and places the national application in a condition of suspension until the secrecy order is removed. When the secrecy order is removed the Patent and Trademark Office will issue a notice of allowance under §1.311 of this chapter, or take such other action as may then be warranted.

(d) International applications under secrecy order will not be mailed, delivered or otherwise transmitted to the international authorities or the applicant. International applications under secrecy order will be processed up to the point where, if it were not for the secrecy order, record and search copies would be transmitted to the international authorities or the applicant.

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

[43 FR 20470, May 11, 1978, as amended at 53 FR 23736, June 23, 1988; 62 FR 53203, Oct. 10, 1997]

§5.4 Petition for rescission of secrecy order.

(a) A petition for rescission or removal of a secrecy order may be filed by, or on behalf of, any principal affected thereby. Such petition may be in letter form, and it must be in duplicate.

(b) The petition must recite any and all facts that purport to render the order ineffectual or futile if this is the basis of the petition. When prior publications or patents are alleged the petition must give complete data as to such publications or patents and should be accompanied by copies thereof.

(c) The petition must identify any contract between the Government and any of the principals, under which the subject matter of the application or any significant part thereof was developed, or to which the subject matter is otherwise related. If there is no such contract, the petition must so state.

(d) Appeal to the Secretary of Commerce, as provided by 35 U.S.C. 181, from a secrecy order cannot be taken until after a petition for rescission of the secrecy order has been made and denied. Appeal must be taken within sixty days from the date of the denial, and the party appealing, as well as the

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department or agency which caused the order to be issued, will be notified of the time and place of hearing.

[24 FR 10381, Dec. 22, 1959, as amended at 62 FR 53204, Oct. 10, 1997]

§ 5.5 Permit to disclose or modification of secrecy order.

(a) Consent to disclosure, or to the filing of an application abroad, as provided in 35 U.S.C. 182, shall be made by a "permit" or "modification" of the secrecy order.

(b) Petitions for a permit or modification must fully recite the reason or purpose for the proposed disclosure. Where any proposed disclosee is known to be cleared by a defense agency to receive classified information, adequate explanation of such clearance should be made in the petition including the name of the agency or department granting the clearance and the date and degree thereof. The petition must be filed in duplicate.

(c) In a petition for modification of a secrecy order to permit filing abroad, all countries in which it is proposed to file must be made known, as well as all attorneys, agents and others to whom the material will be consigned prior to being lodged in the foreign patent office. The petition should include a statement vouching for the loyalty and integrity of the proposed disclosees and where their clearance status in this or the foreign country is known all details should be given.

(d) Consent to the disclosure of subject matter from one application under secrecy order may be deemed to be consent to the disclosure of common subject matter in other applications under secrecy order so long as not taken out of context in a manner disclosing material beyond the modification granted in the first application.

(e) Organizations requiring consent for disclosure of applications under secrecy order to persons or organizations in connection with repeated routine operation may petition for such consent in the form of a general permit. To be successful such petitions must ordinarily recite the security clearance status of the disclosees as sufficient for

the highest classification of material that may be involved.

[24 FR 10381, Dec. 22, 1959, as amended at 62 FR 53204 Oct. 10, 1997]

§§ 5.6-5.8 [Reserved]

LICENSES FOR FOREIGN EXPORTING AND FILING

§ 5.11 License for filing in a foreign country an application on an invention made in the United States or for transmitting an international application.

(a) A license from the Commissioner of Patents and Trademarks under 35 U.S.C. 184 is required before filing any application for patent including any modifications, amendments, or supplements thereto or divisions thereof or for the registration of a utility model, industrial design, or model, in a foreign patent office or any foreign patent agency or any international agency other than the United States Receiving Office, if the invention was made in the United States and:

(1) An application on the invention has been on file in the United States less than six months prior to the date on which the application is to be filed, or

(2) No application on the invention has been filed in the United States.

(b) The license from the Commissioner of Patents and Trademarks referred to in paragraph (a) would also authorize the export of technical data abroad for purposes relating to the preparation, filing or possible filing and prosecution of a foreign patent application without separately complying with the regulations contained in 22 CFR parts 121 through 130 (International Traffic in Arms Regulations of the Department of State), 15 CFR part 779 (Regulations of the Office of Export Administration, International Trade Administration, Department of Commerce) and 10 CFR part 810 (Foreign Atomic Energy Programs of the Department of Energy).

(c) Where technical data in the form of a patent application, or in any form, is being exported for purposes related to the preparation, filing or possible filing and prosecution of a foreign patent application, without the license from the Commissioner of Patents and

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Trademarks referred to in paragraphs (a) or (b) of this section, or on an invention not made in the United States, the export regulations contained in 22 CFR parts 120 through 130 (International Traffic in Arms Regulations of the Department of State), 15 CFR parts 768-799 (Export Administration Regulations of the Department of Commerce) and 10 CFR part 810 (Assistance to Foreign Atomic Energy Activities Regulations of the Department of Energy) must be complied with unless a license is not required because a United States application was on file at the time of export for at least six months without a secrecy order under § 5.2 being placed thereon. The term “exported” means export as it is defined in 22 CFR part 120, 15 CFR part 779 and activities covered by 10 CFR part 810.

(d) If a secrecy order has been issued under § 5.2, an application cannot be exported to, or filed in, a foreign country (including an international agency in a foreign country), except in accordance with § 5.5.

(e) No license pursuant to paragraph (a) of this section is required:

(1) If the invention was not made in the United States, or

(2) If the corresponding United States application is not subject to a secrecy order under § 5.2, and was filed at least six months prior to the date on which the application is filed in a foreign country, or

(3) For subsequent modifications, amendments and supplements containing additional subject matter to, or divisions of, a foreign patent application if:

(i) A license is not, or was not, required under paragraph (e)(2) of this section for the foreign patent application;

(ii) The corresponding United States application was not required to be made available for inspection under 35 U.S.C. 181; and

(iii) Such modifications, amendments, and supplements do not, or did not, change the general nature of the invention in a manner which would require any corresponding United States application to be or have been available for inspection under 35 U.S.C. 181.

(f) A license pursuant to paragraph (a) of this section can be revoked at

any time upon written notification by the Patent and Trademark Office. An authorization to file a foreign patent application resulting from the passage of six months from the date of filing of a United States patent application may be revoked by the imposition of a secrecy order.

[49 FR 13461, Apr. 4, 1984, as amended at 56 FR 1928, Jan. 18, 1991; 62 FR 53204, Oct. 10, 1997]

§ 5.12 Petition for license.

(a) Filing of an application for patent for inventions made in the United States will be considered to include a petition for license under 35 U.S.C. 184 for the subject matter of the application. The filing receipt will indicate if a license is granted. If the initial automatic petition is not granted, a subsequent petition may be filed under paragraph (b) of this section.

(b) A petition for license must include the fee set forth in § 1.17(h) of this chapter, the petitioner’s address, and full instructions for delivery of the requested license when it is to be delivered to other than the petitioner. The petition should be presented in letter form.

(35 U.S.C. 6, Pub. L. 97-247)

[48 FR 2714, Jan. 20, 1983, as amended at 49 FR 13462, Apr. 4, 1984; 62 FR 53204, Oct. 10, 1997; 65 FR 54683, Sept. 8, 2000]

§ 5.13 Petition for license; no corresponding application.

If no corresponding national or international application has been filed in the United States, the petition for license under § 5.12(b) must also be accompanied by a legible copy of the material upon which a license is desired. This copy will be retained as a measure of the license granted.

[62 FR 53204, Oct. 10, 1997]

§ 5.14 Petition for license; corresponding U.S. application.

(a) When there is a corresponding United States application on file, a petition for license under § 5.12(b) must also identify this application by application number, filing date, inventor, and title, but a copy of the material upon which the license is desired is not required. The subject matter licensed

will be measured by the disclosure of the United States application.

(b) Two or more United States applications should not be referred to in the same petition for license unless they are to be combined in the foreign or international application, in which event the petition should so state and the identification of each United States application should be in separate paragraphs.

(c) When the application to be filed or exported abroad contains matter not disclosed in the United States application or applications, including the case where the combining of two or more United States applications introduces subject matter not disclosed in any of them, a copy of the application as it is to be filed in the foreign country or international application which is to be transmitted to a foreign international or national agency for filing in the Receiving Office, must be furnished with the petition. If however, all new matter in the foreign or international application to be filed is readily identifiable, the new matter may be submitted in detail and the remainder by reference to the pertinent United States application or applications.

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

[43 FR 20471, May 11, 1978, as amended at 49 FR 13462, Apr. 4, 1984; 62 FR 53204, Oct. 10, 1997]

§ 5.15 Scope of license.

(a) Applications or other materials reviewed pursuant to §§ 5.12 through 5.14, which were not required to be made available for inspection by defense agencies under 35 U.S.C. 181, will be eligible for a license of the scope provided in this paragraph. This license permits subsequent modifications, amendments, and supplements containing additional subject matter to, or divisions of, a foreign patent application, if such changes to the application do not alter the general nature of the invention in a manner which would require the United States application to have been made available for inspection under 35 U.S.C. 181. Grant of this license authorizing the export and filing of an application in a foreign country or the transmitting of an international application to any foreign patent agency or international patent

agency when the subject matter of the foreign or international application corresponds to that of the domestic application. This license includes authority:

(1) To export and file all duplicate and formal application papers in foreign countries or with international agencies;

(2) To make amendments, modifications, and supplements, including divisions, changes or supporting matter consisting of the illustration, exemplification, comparison, or explanation of subject matter disclosed in the application; and

(3) To take any action in the prosecution of the foreign or international application provided that the adding of subject matter or taking of any action under paragraphs (a)(1) or (2) of this section does not change the general nature of the invention disclosed in the application in a manner which would require such application to have been made available for inspection under 35 U.S.C. 181 by including technical data pertaining to:

(i) Defense services or articles designated in the United States Munitions List applicable at the time of foreign filing, the unlicensed exportation of which is prohibited pursuant to the Arms Export Control Act, as amended, and 22 CFR parts 121 through 130; or

(ii) Restricted Data, sensitive nuclear technology or technology useful in the production or utilization of special nuclear material or atomic energy, dissemination of which is subject to restrictions of the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978, as implemented by the regulations for Unclassified Activities in Foreign Atomic Energy Programs, 10 CFR part 810, in effect at the time of foreign filing.

(b) Applications or other materials which were required to be made available for inspection under 35 U.S.C. 181 will be eligible for a license of the scope provided in this paragraph. Grant of this license authorizes the export and filing of an application in a foreign country or the transmitting of an international application to any foreign patent agency or international patent agency. Further, this license includes authority to export and file all

duplicate and formal papers in foreign countries or with foreign and international patent agencies and to make amendments, modifications, and supplements to, file divisions of, and take any action in the prosecution of the foreign or international application, provided subject matter additional to that covered by the license is not involved.

(c) A license granted under § 5.12(b) pursuant to § 5.13 or § 5.14 shall have the scope indicated in paragraph (a) of this section, if it is so specified in the license. A petition, accompanied by the required fee (§ 1.17(h)), may also be filed to change a license having the scope indicated in paragraph (b) of this section to a license having the scope indicated in paragraph (a) of this section. No such petition will be granted if the copy of the material filed pursuant to § 5.13 or any corresponding United States application was required to be made available for inspection under 35 U.S.C. 181. The change in the scope of a license will be effective as of the date of the grant of the petition.

(d) In those cases in which no license is required to file the foreign application or transmit the international application, no license is required to file papers in connection with the prosecution of the foreign or international application not involving the disclosure of additional subject matter.

(e) Any paper filed abroad or transmitted to an international patent agency following the filing of a foreign or international application which changes the general nature of the subject matter disclosed at the time of filing in a manner which would require such application to have been made available for inspection under 35 U.S.C. 181 or which involves the disclosure of subject matter listed in paragraphs (a)(3)(i) or (ii) of this section must be separately licensed in the same manner as a foreign or international application. Further, if no license has been granted under § 5.12(a) on filing the corresponding United States application, any paper filed abroad or with an international patent agency which involves the disclosure of additional subject matter must be licensed in the same manner as a foreign or international application.

(f) Licenses separately granted in connection with two or more United States applications may be exercised by combining or dividing the disclosures, as desired, provided:

(1) Subject matter which changes the general nature of the subject matter disclosed at the time of filing or which involves subject matter listed in paragraph (a)(3) (i) or (ii) of this section is not introduced, and

(2) In the case where at least one of the licenses was obtained under § 5.12(b), additional subject matter is not introduced.

(g) A license does not apply to acts done before the license was granted. See § 5.25 for petitions for retroactive licenses.

[49 FR 13462, Apr. 4, 1984, as amended at 56 FR 1928, Jan. 18, 1991; 62 FR 53204, Oct. 10, 1997]

§§ 5.16–5.17 [Reserved]

§ 5.18 Arms, ammunition, and implements of war.

(a) The exportation of technical data relating to arms, ammunition, and implements of war generally is subject to the International Traffic in Arms Regulations of the Department of State (22 CFR parts 120 through 130); the articles designated as arms, ammunitions, and implements of war are enumerated in the U.S. Munitions List (22 CFR part 121). However, if a patent applicant complies with regulations issued by the Commissioner of Patents and Trademarks under 35 U.S.C. 184, no separate approval from the Department of State is required unless the applicant seeks to export technical data exceeding that used to support a patent application in a foreign country. This exemption from Department of State regulations is applicable regardless of whether a license from the Commissioner is required by the provisions of §§ 5.11 and 5.12 (22 CFR part 125).

(b) When a patent application containing subject matter on the Munitions List (22 CFR part 121) is subject to a secrecy order under § 5.2 and a petition is made under § 5.5 for a modification of the secrecy order to permit filing abroad, a separate request to the Department of State for authority to

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export classified information is not required (22 CFR part 125).

[62 FR 53205, Oct. 10, 1997]

§ 5.19 Export of technical data.

(a) Under regulations (15 CFR 770.10(j)) established by the Department of Commerce, a license is not required in any case to file a patent application or part thereof in a foreign country if the foreign filing is in accordance with the regulations (§§ 5.11 through 5.25) of the Patent and Trademark Office.

(b) An export license is not required for data contained in a patent application prepared wholly from foreign-origin technical data where such application is being sent to the foreign inventor to be executed and returned to the United States for subsequent filing in the U.S. Patent and Trademark Office (15 CFR 779A.3(e)).

[62 FR 53205, Oct. 10, 1997]

§ 5.20 Export of technical data relating to sensitive nuclear technology.

Under regulations (10 CFR 810.7) established by the United States Department of Energy, an application filed in accordance with the regulations (§§ 5.11 through 5.25) of the Patent and Trademark Office and eligible for foreign filing under 35 U.S.C. 184, is considered to be information available to the public in published form and a generally authorized activity for the purposes of the Department of Energy regulations.

[62 FR 53205, Oct. 10, 1997]

§ 5.25 Petition for retroactive license.

(a) A petition for a retroactive license under 35 U.S.C. 184 shall be presented in accordance with § 5.13 or § 5.14(a), and shall include:

(1) A listing of each of the foreign countries in which the unlicensed patent application material was filed,

(2) The dates on which the material was filed in each country,

(3) A verified statement (oath or declaration) containing:

(i) An averment that the subject matter in question was not under a secrecy order at the time it was filed aboard, and that it is not currently under a secrecy order,

(ii) A showing that the license has been diligently sought after discovery of the proscribed foreign filing, and

(iii) An explanation of why the material was filed abroad through error and without deceptive intent without the required license under § 5.11 first having been obtained, and

(4) The required fee (§ 1.17(h)).

The above explanation must include a showing of facts rather than a mere allegation of action through error and without deceptive intent. The showing of facts as to the nature of the error should include statements by those persons having personal knowledge of the acts regarding filing in a foreign country and should be accompanied by copies of any necessary supporting documents such as letters of transmittal or instructions for filing. The acts which are alleged to constitute error without deceptive intent should cover the period leading up to and including each of the proscribed foreign filings.

(b) If a petition for a retroactive license is denied, a time period of not less than thirty days shall be set, during which the petition may be renewed. Failure to renew the petition within the set time period will result in a final denial of the petition. A final denial of a petition stands unless a petition is filed under § 1.181 within two months of the date of the denial. If the petition for a retroactive license is denied with respect to the invention of a pending application and no petition under § 1.181 has been filed, a final rejection of the application under 35 U.S.C. 185 will be made.

[49 FR 13463, Apr. 4, 1984, as amended at 56 FR 1929, Jan. 18, 1991; 62 FR 53206, Oct. 10, 1997]

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§§ 5.31–5.33 [Reserved]

PART 6—CLASSIFICATION OF GOODS AND SERVICES UNDER THE TRADE-MARK ACT

EDITORIAL NOTE: Part 6 is placed in the separate grouping of parts pertaining to trademarks regulations. It appears on page 321 of this volume.

PART 7 [RESERVED]