

§5.2

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(e) An application will not be published under §1.211 of this chapter or allowed under §1.311 of this chapter if publication or disclosure of the application would be detrimental to national security. An application under national security review will not be published at least until six months from its filing date or three months from the date the application was referred to a defense agency, whichever is later. A national security classified patent application will not be published under §1.211 of this chapter or allowed under §1.311 of this chapter until the application is declassified and

any secrecy order under §5.2(a) has been rescinded.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; 68 FR 14338, Mar. 25, 2003; 69 FR 29880, May 26, 2004]

§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 for Patents.

(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: