

U.S. Patent and Trademark Office, Commerce

§ 41.2

- 41.3 Petitions.
- 41.4 Timeliness.
- 41.5 Counsel.
- 41.6 Public availability of Board records.
- 41.7 Management of the record.
- 41.8 Mandatory notices.
- 41.9 Action by owner.
- 41.10 Correspondence addresses.
- 41.11 *Ex parte* communications in *inter partes* proceedings.
- 41.12 Citation of authority.
- 41.20 Fees.

Subpart B—*Ex Parte* Appeals

- 41.30 Definitions.
- 41.31 Appeal to Board.
- 41.33 Amendments and affidavits or other Evidence after appeal.
- 41.35 Jurisdiction over appeal.
- 41.37 Appeal brief.
- 41.39 Examiner's answer.
- 41.40 Tolling of time period to file a reply brief.
- 41.41 Reply brief.
- 41.45 Appeal forwarding fee.
- 41.47 Oral hearing.
- 41.50 Decisions and other actions by the Board.
- 41.52 Rehearing.
- 41.54 Action following decision.

Subpart C—*Inter Partes* Appeals

- 41.60 Definitions.
- 41.61 Notice of appeal and cross appeal to Board.
- 41.63 Amendments and affidavits or other evidence after appeal.
- 41.64 Jurisdiction over appeal in *inter partes* reexamination.
- 41.66 Time for filing briefs.
- 41.67 Appellant's brief.
- 41.68 Respondent's brief.
- 41.69 Examiner's answer.
- 41.71 Rebuttal brief.
- 41.73 Oral hearing.
- 41.77 Decisions and other actions by the Board.
- 41.79 Rehearing.
- 41.81 Action following decision.

Subpart D—Contested Cases

- 41.100 Definitions.
- 41.101 Notice of proceeding.
- 41.102 Completion of examination.
- 41.103 Jurisdiction over involved files.
- 41.104 Conduct of contested case.
- 41.106 Filing and service.
- 41.108 Lead counsel.
- 41.109 Access to and copies of Office records.
- 41.110 Filing claim information.
- 41.120 Notice of basis for relief.
- 41.121 Motions.
- 41.122 Oppositions and replies.
- 41.123 Default filing times.
- 41.124 Oral argument.

- 41.125 Decision on motions.
- 41.126 Arbitration.
- 41.127 Judgment.
- 41.128 Sanctions.
- 41.150 Discovery.
- 41.151 Admissibility.
- 41.152 Applicability of the Federal Rules of Evidence.
- 41.153 Records of the Office.
- 41.154 Form of evidence.
- 41.155 Objection; motion to exclude; motion in limine.
- 41.156 Compelling testimony and production.
- 41.157 Taking testimony.
- 41.158 Expert testimony; tests and data.

Subpart E—Patent Interferences

- 41.200 Procedure; pendency.
- 41.201 Definitions.
- 41.202 Suggesting an interference.
- 41.203 Declaration.
- 41.204 Notice of basis for relief.
- 41.205 Settlement agreements.
- 41.206 Common interests in the invention.
- 41.207 Presumptions.
- 41.208 Content of substantive and responsive motions.

AUTHORITY: 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 41, 134, 135, and Public Law 112–29.

SOURCE: 69 FR 50003, Aug. 12, 2004, unless otherwise noted.

Subpart A—General Provisions

§ 41.1 Policy.

(a) *Scope.* Part 41 governs appeals and interferences before the Patent Trial and Appeal Board. Sections 1.1 to 1.36 and 1.181 to 1.183 of this title also apply to practice before the Board, as do other sections of part 1 of this title that are incorporated by reference into part 41.

(b) *Construction.* The provisions of Part 41 shall be construed to secure the just, speedy, and inexpensive resolution of every proceeding before the Board.

(c) *Decorum.* Each party must act with courtesy and decorum in all proceedings before the Board, including interactions with other parties.

[69 FR 50003, Aug. 12, 2004, as amended at 77 FR 46630, Aug. 6, 2012]

§ 41.2 Definitions.

Unless otherwise clear from the context, the following definitions apply to proceedings under this part:

§ 41.3

37 CFR Ch. I (7–1–13 Edition)

Affidavit means affidavit, declaration under § 1.68 of this title, or statutory declaration under 28 U.S.C. 1746. A transcript of an *ex parte* deposition may be used as an affidavit in a contested case.

Board means the Patent Trial and Appeal Board and includes:

(1) For a final Board action:

(i) In an appeal or contested case, a panel of the Board.

(ii) In a proceeding under § 41.3, the Chief Administrative Patent Judge or another official acting under an express delegation from the Chief Administrative Patent Judge.

(2) For non-final actions, a Board member or employee acting with the authority of the Board.

Board member means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, the Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office, the Commissioner for Patents, the Commissioner for Trademarks, and the administrative patent judges.

Contested case means a Board proceeding other than an appeal under 35 U.S.C. 134 or a petition under § 41.3. An appeal in an *inter partes* reexamination is not a contested case.

Final means, with regard to a Board action, final for the purposes of judicial review. A decision is final only if:

(1) *In a panel proceeding.* The decision is rendered by a panel, disposes of all issues with regard to the party seeking judicial review, and does not indicate that further action is required; and

(2) *In other proceedings.* The decision disposes of all issues or the decision states it is final.

Hearing means consideration of the issues of record. *Rehearing* means reconsideration.

Office means United States Patent and Trademark Office.

Panel means at least three Board members acting in a panel proceeding.

Panel proceeding means a proceeding in which final action is reserved by statute to at least three Board members, but includes a non-final portion of such a proceeding whether administered by a panel or not.

Party, in this part, means any entity participating in a Board proceeding, other than officers and employees of the Office, including:

(1) An appellant;

(2) A participant in a contested case;

(3) A petitioner; and

(4) Counsel for any of the above, where context permits.

[69 FR 50003, Aug. 12, 2004, as amended at 77 FR 46630, Aug. 6, 2012]

§ 41.3 Petitions.

(a) *Deciding official.* Petitions must be addressed to the Chief Administrative Patent Judge. A panel or an administrative patent judge may certify a question of policy to the Chief Administrative Patent Judge for decision. The Chief Administrative Patent Judge may delegate authority to decide petitions.

(b) *Scope.* This section covers petitions on matters pending before the Board (§§ 41.35, 41.64, 41.103, and 41.205); otherwise, see §§ 1.181 to 1.183 of this title. The following matters are not subject to petition:

(1) Issues committed by statute to a panel, and

(2) In pending contested cases, procedural issues. See § 41.121(a)(3) and § 41.125(c).

(c) *Petition fee.* The fee set in § 41.20(a) must accompany any petition under this section except no fee is required for a petition under this section seeking supervisory review.

(d) *Effect on proceeding.* The filing of a petition does not stay the time for any other action in a Board proceeding.

(e) *Time for action.* (1) Except as otherwise provided in this part or as the Board may authorize in writing, a party may:

(i) File the petition within 14 days from the date of the action from which the party is requesting relief, and

(ii) File any request for reconsideration of a petition decision within 14 days of the decision on petition or such other time as the Board may set.

(2) A party may not file an opposition or a reply to a petition without Board authorization.

[69 FR 50003, Aug. 12, 2004, as amended at 69 FR 58260, Sept. 30, 2004]