

bases of possible enforcement actions, and to maintain the integrity of the law enforcement process.

**§ 102.34 Specific exemptions.**

(a)(1) Some systems of records under the Act which are maintained by USPTO contain, from time-to-time, material subject to the exemption appearing at 5 U.S.C. 552a(k)(1), relating to national defense and foreign policy materials. The systems of records published in the FEDERAL REGISTER by USPTO which are within this exemption are: COMMERCE/PAT-TM-6, COMMERCE/PAT-TM-7, COMMERCE/PAT-TM-8, COMMERCE/PAT-TM-9.

(2) USPTO hereby asserts a claim to exemption of such materials wherever they might appear in such systems of records, or any systems of records, at present or in the future. The materials would be exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) to protect materials required by Executive order to be kept secret in the interest of the national defense and foreign policy.

(b) The specific exemptions determined to be necessary and proper with respect to systems of records maintained by USPTO, including the parts of each system to be exempted, the provisions of the Act from which they are exempted, and the justification for the exemption, are as follows:

(1)(i) Exempt under 5 U.S.C. 552a(k)(2). The systems of records exempt (some only conditionally), the sections of the Act from which exempted, and the reasons therefor are as follows:

(A) Investigative Records—Contract and Grant Frauds and Employee Criminal Misconduct—COMMERCE/DEPT-12, but only on condition that the general exemption claimed in §102.33(b)(3) is held to be invalid;

(B) Investigative Records—Persons Within the Investigative Jurisdiction of USPTO—COMMERCE/DEPT-13;

(C) Litigation, Claims and Administrative Proceeding Records—COMMERCE/DEPT-14;

(D) Attorneys and Agents Registered to Practice Before the Office—COMMERCE/PAT-TM-1;

(E) Complaints, Investigations and Disciplinary Proceedings Relating to

Registered Patent Attorneys and Agents—COMMERCE/PAT-TM-2; and

(F) Non-Registered Persons Rendering Assistance to Patent Applicants—COMMERCE/PAT-TM-5.

(ii) The foregoing are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The reasons for asserting the exemption are to prevent subjects of investigation from frustrating the investigatory process, to insure the proper functioning and integrity of law enforcement activities, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources and law enforcement personnel. Special note is taken of the fact that the proviso clause in this exemption imports due process and procedural protections for the individual. The existence and general character of the information exempted will be made known to the individual to whom it pertains.

(2)(i) Exempt under 5 U.S.C. 552a(k)(5). The systems of records exempt (some only conditionally), the sections of the act from which exempted, and the reasons therefor are as follows:

(A) Investigative Records—Contract and Grant Frauds and Employee Criminal Misconduct—COMMERCE/DEPT-12, but only on condition that the general exemption claimed in §102.33(b)(3) is held to be invalid;

(B) Investigative Records—Persons Within the Investigative Jurisdiction of USPTO—COMMERCE/DEPT-13; and

(C) Litigation, Claims, and Administrative Proceeding Records—COMMERCE/DEPT-14.

(ii) The foregoing are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f). The reasons for asserting the exemption are to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information, to avoid endangering these sources and, ultimately, to facilitate proper selection or continuance of the best applicants

**Index III**

**§ 104.1**

or persons for a given position or contract. Special note is made of the limitation on the extent to which this exemption may be asserted. The existence and general character of the infor-

mation exempted will be made known to the individual to whom it pertains. (c) At the present time, USPTO claims no exemption under 5 U.S.C. 552a(k) (3), (4), (6) and (7).

**APPENDIX TO PART 102—SYSTEMS OF RECORDS NOTICED BY OTHER FEDERAL AGENCIES<sup>1</sup> AND APPLICABLE TO USPTO RECORDS AND APPLICABILITY OF THIS PART THERETO**

Category of records	Other federal agency
Federal Personnel Records .....	Office of Personnel Management. <sup>2</sup>
Federal Employee Compensation Act Program .....	Department of Labor. <sup>3</sup>
Equal Employment Opportunity Appeal Complaints .....	Equal Employment Opportunity Commission. <sup>4</sup>
Formal Complaints/Appeals of Adverse Personnel Actions .....	Merit Systems Protection Board. <sup>5</sup>

<sup>1</sup>Other than systems of records noticed by the Department of Commerce. Where the system of records applies only to USPTO, these regulations apply. Where the system of records applies generally to components of the Department of Commerce, the regulations of that department attach at the point of any denial for access or for correction or amendment.  
<sup>2</sup>The provisions of this part do not apply to these records covered by notices of systems of records published by the Office of Personnel Management for all agencies. The regulations of OPM alone apply.  
<sup>3</sup>The provisions of this part apply only initially to these records covered by notices of systems of records published by the U.S. Department of Labor for all agencies. The regulations of that department attach at the point of any denial for access or for correction or amendment.  
<sup>4</sup>The provisions of this part do not apply to these records covered by notices of systems of records published by the Equal Employment Opportunity Commission for all agencies. The regulations of the Commission alone apply.  
<sup>5</sup>The provisions of this part do not apply to these records covered by notices of systems of records published by the Merit Systems Protection Board for all agencies. The regulations of the Board alone apply.

**PART 104—LEGAL PROCESSES**

**Subpart E—Tort Claims**

**Subpart A—General Provisions**

- Sec.
- 104.1 Definitions.
- 104.2 Address for mail and service; telephone number.
- 104.3 Waiver of rules.
- 104.4 Relationship of this Part to the Federal Rules of Civil and Criminal Procedure.

- 104.41 Procedure for filing claims.
- 104.42 Finality of settlement or denial of claims.

AUTHORITY: 35 U.S.C. 2(b)(2), 10, 23, 25; 44 U.S.C. 3101, except as otherwise indicated.  
 SOURCE: 66 FR 47389, Sept. 12, 2001, unless otherwise noted.

**Subpart B—Service of Process**

**Subpart A—General Provisions**

- 104.11 Scope and purpose.
- 104.12 Acceptance of Service of Process.

**§ 104.1 Definitions.**

*Demand* means a request, order, or subpoena for testimony or documents for use in a legal proceeding.

**Subpart C—Employee Testimony and Production of Documents in Legal Proceedings**

*Director* means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (see §1.9(j)).

- 104.21 Scope and purpose.
- 104.22 Demand for testimony or production of documents.
- 104.23 Expert or opinion testimony.
- 104.24 Demands or requests in legal proceedings for records protected by confidentiality statutes.

*Document* means any record, paper, and other property held by the Office, including without limitation, official letters, telegrams, memoranda, reports, studies, calendar and diary entries, maps, graphs, pamphlets, notes, charts, tabulations, analyses, statistical or informational accumulations, any kind of summaries of meetings and conversations, film impressions, magnetic tapes, and sound or mechanical reproductions.

**Subpart D—Employee Indemnification**

- 104.31 Scope.
- 104.32 Procedure for requesting indemnification.