

APPEAL BRIEF CHECK LIST FOR APPEAL CENTER

This checklist is for notices of appeal and appeal briefs filed on or after December 10, 2008.

Notice of Appeal Filed: _____ **Timely:** Yes No Fee paid Signed (S-signature is acceptable)

Appeal Brief Filed: _____ **Timely:** Yes No Fee paid Signed (S-signature is acceptable)

If any of the boxes below is checked, please send appellant a notice of non-compliant appeal brief (PTO-462).

1. **The items are not in the order indicated** – Do not hold the brief non-compliant if this is the only non-compliance. Check the box if there is at least one other defect in the brief and the required items in the brief are not in the order indicated.

Statement of the real party in interest – If the heading and/or content is missing, do not hold the brief defective. The Office will assume that the named inventors are the real party in interest.

Statement of related cases – If the heading and/or content is missing, do not hold the brief defective. The Office will assume there are no related cases.

2. **Jurisdictional Statement** – Check the box if the heading or content is missing.
3. **Table of Contents** – Check the box if the heading or content is missing. The table of contents may be placed after the title page, and it may be combined with the table of contents for the evidence section of the appendix.
4. **Table of Authorities** – Check the box if the heading or content is missing.
5. **Status of Amendments** – Check the box if: (1) there is at least one after-final amendment that has been entered or denied entry, and (2) the heading or content is missing, or the status of the amendment is incorrect.

The Appeal Center should check PALM or IFW to see whether appellant filed an after-final amendment and determine whether the amendment has been entered or denied entry. If there is at least one after-final amendment, the appeal brief must contain this section and indicate whether each after-final amendment has been entered or denied entry, unless the examiner has not yet indicated whether the amendment has been entered.

6. **Grounds of Rejection to be Reviewed on Appeal** – Check the box if: (1) the heading or content is missing, or (2) the “grounds of rejection to be reviewed on appeal” section is inconsistent with the “argument” section of the brief.

For example, if the appellant in this section identified that the grounds of rejection to be reviewed is the rejection under 35 USC 102(e) as to claims 1-4, but the argument section presented arguments as to claims 5-10, the Appeal Center should check the box and send appellant a notice of non-compliant appeal brief.

7. **Statement of Facts** – Check the box if the heading or content is missing.
8. **Argument** – Check the box if the heading or content is missing.

Appeal Center Review Check List for Appeal Briefs ...continued

Appendix:

9. **Claims section** – Check the box if: (1) the heading or content is missing, or (2) the claims are not correct (e.g., a claim is missing or wrong set of claims has been included).

The rule requires an accurate clean copy in numerical order of all claims pending in the application or reexamination proceeding on appeal. A cancelled claim need not be reproduced.

- 9a. **Status identifiers** – Check the box if any of the status identifiers is incorrect and provide the claim number(s) on the notice of non-compliant appeal brief. The status of every claim shall be set out after the claim number and in parentheses (e.g., 1 (rejected), 2 (withdrawn), 3 (objected to), 4 (cancelled), and 5 (allowed)). Appellant cannot use: (1) “cancelled” for a claim that has not been previously canceled by an amendment; and (2) “withdrawn from appeal” (or a similar identifier) to withdraw a claim from appeal.

10. **Claims support and drawing analysis section** – Check the box if the heading or content is missing.

Means or step plus function analysis section – If the heading and/or content is missing, do not hold the brief defective. The Office will assume that there is no means or step plus function limitation.

Evidence section – If the heading and/or content is missing, do not hold the brief defective. The Office will assume that there is no evidence.

11. **Table of contents for the evidence section** – Do not send out a notice of non-compliant appeal brief if this is the only non-compliance. Check the box, if there is at least one other defect in the brief, and if: (1) the appeal brief contains an evidence section; (2) the evidence section contains two or more affidavits or declarations; and (3) the table of contents for the evidence section is missing. The table of contents for the evidence section can be combined with the table of contents for the appeal brief (see box 3).

12. **Related cases section** – Check the box if: (1) appellant identifies a related case in the “statement of related cases” section of the appeal brief; and (2) fails to provide a copy of the related case in this section, or the heading and/or content is missing.

Appeal Brief Format Requirements – The brief must comply with the following format requirements (if not, check the appropriate box):

13. **Page numbering** – Check the box if the pages of the appeal brief are not numbered consecutively.

The pages of the appeal brief, including all sections in the appendix, shall be consecutively numbered using Arabic numerals beginning with the first page of the appeal brief, which shall be numbered page 1.

14. **Double spacing** – Check the box if the line spacing is not double space, except in headings, tables of contents, tables of authorities, signature blocks, and certificates of service. Block quotations must be indented and can be one and one half or double spaced.

15. **Font** – Check the box if the font size is not (e.g., smaller than) **14 point**, including the font for block quotations and footnotes.

16. **Length of appeal brief** – Check the box if the appeal brief exceeds the page limit. Appeal Center must check the file to determine whether any petition under § 41.3 requesting to exceed the 30-page limit has been granted. If such a petition has been granted, check whether the appeal brief exceeds the new page limit.

An appeal brief **may not exceed 30 pages (unless a petition under § 41.3 requesting to exceed the 30-page limit has been granted)**, counting only the following sections: grounds of rejection to be reviewed, statement of facts, and argument (do not count the pages of the following sections: any statement of the real party in interest, statement of related cases, jurisdictional statement, table of contents, table of authorities, status of amendments, signature block, and appendix). An appeal brief may not incorporate another paper by reference. A request to exceed the page limit shall be made by petition under § 41.3 filed at least **ten** calendar days prior to the date the appeal brief is due.

Appeal Center Review Check List for Appeal Briefs ...continued

17. **Signature block** – Check the box if the signature block, the name of the appellant (or appellant’s representative), or correspondence address is missing.

- Notice of Non-Compliant Appeal Brief Mailing Date:** _____
- The appeal brief appears compliant with the requirements.**
- At least one IDS has not been considered by the examiner.**
- At least one after-final amendment has not been entered or denied entry by the examiner.**

FEES – If there are any fees that were not charged, please charge the authorized fees.

Reviewer’s initials: _____ **Date of the review:** _____