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11. PRIOR ART, CLASSIFICATION, SEARCH

11-1. Prior Art

For a statement on the following topics pertaining to this subject, see:

Topic	Section
Double Patenting	9.
Unpatentable Subject Matter	10-8-2
Public Use	10-8
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11-1a. Canceled Matter In U.S. Patent File

Canceled matter in a U. S. patent application is not available as a reference after the application has become a patent. See *Fessenden v. Wilson et al.* 1931 C.D. 419; 410 O.G. 815.

11-1-1. U. S. Patents

The following different series of U. S. patents are being, or in the past have been issued. The date of patenting given on the face of each copy is the date that it is effective as a reference.

X - Series. These are the approximately 10,000 patents issued between 1790 and July 4, 1836. They were not originally numbered, but were arbitrarily assigned numbers in the sequence in which they were issued at the time of initial printing, about 1868. When copies are ordered, in addition to the x number the patentee's name and date of issue must be given, since copies in stock are filed alphabetically.

Reissue Series. Reissued patents have been given a separate series of numbers, preceded by Re. In citing the letters must be given, e.g. Re 1776. The date that it is effective as a reference, is the date of original patenting, not the reissue patent date.

A. I. Series. From 1838 to 1861, patents covering an inventor's improvement on his own patented device were given a separate series of numbers, preceded by A. I. to indicate additional improvement. In citing, the letters must be given, e.g. A. I. 313.

Plant Patent Series. When the statutes were amended to provide for patenting certain types of plants (see R.S. 4886) these patents were given a separate series of numbers. In citing, the letters P.P. must be given, e.g. P.P.13.

Design Patents. Patents for designs are issued under a separate series of numbers. In citing, the letters Des. must be given, e.g. Des. 140,000.

11-1-3. Foreign Patents

For a comprehensive list of the patent publications officially issued by foreign governments and detailed instructions for their use see "Manual of Foreign Patents" by Belknap Severance, 361 pages, published 1935 by the Patent Office Society.

A pamphlet entitled "Guide to the Search Department of the (British) Patent Office Library," is published by the British Patent Office. A copy of this pamphlet is in the Scientific Library. Appendix I of this pamphlet consists of a concordance of British, United States and German classes. The information therein is invaluable and should be used in the search for English and German references. The Examiner should have a typewritten copy of such parts thereof as relate to the class he examines.

Austria, Denmark, Netherlands, Norway, and Sweden follow the German Classification.

11-1-5. Countries Alphabetically Arranged

Complete copies of patents issued by the following countries have been received in the past, and except for Russia, are now being received.

Australia. Patents were formerly published by Queensland (1860-88), Victoria (1877-1902), New Zealand (1861-78), New South Wales.

In Australia, the publication of the previously printed specification is completed by a notice published within two or three weeks from the date of acceptance of the complete specification, which date is printed on the face of the patent. It does not become effective as a patent until sealed. The time interval between publication and sealing date varies according to opposition, extension, etc. The date of acceptance of the complete specification should be cited.

Austria. The publication date, which should be cited is indicated by "Ausgegeben."

Canada. The issue date should be cited.

The Canadian Patent Office issues illustrated briefs in its Official Journal. These Briefs are sent to the appropriate divisions for such use as can be made of them. Those that it is desired to file for future reference purposes are labeled with their classification number and sent to the paste-room to be mounted, those not needed being discarded.

Czecho-Slovakia. The publication date which should be cited is indicated by "Vydáno."

Denmark. The publication date which should be cited is indicated by "Offentliggjort."

France. The date of publication is indicated by "Publié" and the patent date by "Delivré."

Ordinarily the publication date is the date cited; but in the case of French patents, it is preferable to use the "Delivré" date, since on that date the patent is accessible to the public in the Patent Office at Paris.

French additions should be cited as such along with the serial number of the prior patent to which the addition is related.

The files of French patents are incomplete in that Patents Nos. 262,738 to 284,608, inclusive (1897-1898) were not published. Of the Patents Nos. 284,609 to 302,569 (1899-1900) only certain ones were published, and of patents Nos. 302,363 to 317,501 (1900-1901) none were published.

Germany. The Ausgegeben date is the one used in the Patent Office as the patent date.

A pamphlet entitled "Alphabetical Index to the Classification of German patents," and a set of German patents bound in classes, are kept in the Scientific Library. The German "Auszüge" are in weekly installments. Mr. Lovett's translation of the Manual of Classification of the German Patent Office (Edition of 1910) is also in the Scientific Library.

Great Britain. British patents cover England, Scotland, Wales, Northern Ireland, and the Isle of Man.

In Great Britain the publication of the previously-printed specification is completed by a notice published

within two or three weeks from the date of acceptance of the complete specification, which date is printed on the face of the patent. It does not become effective as a patent until sealed. The time interval between publication and sealing date varies according to opposition, extension, etc.

British specifications have printed in large heavy type at the head of the first page a number and year, as 1451 A.D. 1912. This, together with the name, as required by the rules, is always the proper citation of the patent. The year given at the head of the specification is always the year of filing or the year of acceptance, but it is the official designation of the patent.

The year printed on the drawing is not always the year for correct designation of the patent. Where it is not, the correct year is shown by small superior number or exponent placed to the right and above the serial number of the patent, as--

1910--No. 499¹¹
1912--No. 1942¹³

In instances of this kind the patent should be cited as No. 499 of 1911 or No. 19421 of 1913.

British patents applied for subsequent to January 1, 1916 are numbered in a continuous series. Hence for these patents the year is not necessary for identification and the date of acceptance may be used as giving a much closer approximation to the date of sealing.

The British Patent Office publishes "Specification Abridgements" of the patents issued by that office. These Abridgements are arranged in classes, with all of the patents of a class for a given year bound in a single volume. The bound volumes of these abridgements are to be found in the Scientific Library.

In the case of applications filed in Great Britain under the International Convention, claiming the benefit of an earlier filed foreign application, no provisional specification is permitted and under the Patents Act of 1907, the complete specifications are open to inspection 18 months after the Convention date claimed.

Hungary. The publication date which should be cited, is indicated by "Megjelent."

India. Patents of India bear application date and acceptance date. The acceptance date should be cited.

11-1-6. Countries Not Sending Complete Copies

The following countries publish patents by abstracts, or abridgements only: Argentina, Belgium, Brazil (only 1908-09 and 1924-26 in Library), Canada (Avr., issue date appears), Finland, Yugoslavia (Kingdom of Serbs, Croats and Slovenes), Portugal, Spain, Chile.

Of these the patent publications of Portugal and Spain are not received in the Scientific Library. The data published by Mexico and Cuba are merely the number and date of the patent, the title of the invention and name of inventor.

Briefs of patents are received from Belgium.

There are some Sardinian patents.

11-1-7. Duplicates

An Examiner should be on the alert to note foreign patents which are exact duplicates of domestic patents, or duplicates of other foreign patents. Except in the case of the foreign duplicate having the earliest filing date, such duplicates should not be placed in the shoe cases, as they needlessly increase the number of patents to be inspected in making a search.

The data of the foreign patents discarded may be written on the one retained or on the U. S. patent of which they are duplicates.

11-1-8. Obtaining Copies

Prints of foreign patents classified in arts in other divisions can be had by an Examiner if he thinks the patents would be of frequent use in his own class. Otherwise, he can borrow from the other division the patent needed for a particular case.

11-1-9. Translation

A translator in the Scientific Library is available to assist the Examiner with the specifications in any language with which he is not familiar. Typed translations can be had if necessary, of any material to be used.

11-1-10. Non-Patent Publications

All publications may be used as references, the date to be cited being the publication date.

Italy. The patent date, indicated by "Rilasciato" should be cited.

The Italian Patent Office sent full copies of specifications and plates until the end of 1892. For the next two years briefs of the specifications were sent. Since the beginning of 1895, the Italian Bulletin has been received here. This gives the titles of inventions and names of inventors. The Italian Patent Office later sent complete copies, having resumed publication thereof October 1, 1925. Only those patents after No. 248,000 are published in serial order.

Japan. The Japanese patents as received in the U. S. Patent Office are grouped in booklet form with the date of publication (which should be cited) appearing in English on the front page of the booklet. The patent date in Japanese appears on the face of each of the patents included in the booklet.

The Japanese method of assembling a number of patents in booklet form, above referred to, makes it impracticable to distribute Japanese patents among the examining divisions.

Netherlands. The publication date, which should be cited, is indicated by "Uitgegeven," the patent date being indicated by "Dagteekening."

Norway. The date to be cited is indicated by "Offentliggjort."

Poland. The date of publication of the Polish patent to be cited appears in the upper right hand corner of the face of the patent following the word "Warsaw." The word "Udzielono" indicated patent date.

Russia. The publication date to be cited is indicated by "Opublikovano."

The date of the Russian patent, as also that of the publication, appears in the caption immediately preceding the beginning of the specification.

Sweden. The publication date to be cited is indicated by "Publicerat," while "Beviljat" indicates patent date.

Switzerland. Patents are published in three languages, the publication date to be cited being indicated:

In
German
French
Italian

By
Veröffentlicht
Public
Pubblicato

There are some publications kept in every division and each assistant Examiner should ascertain what they are in his division and whether or not any of them is likely to bear on the class assigned to him.

11-1-11. Scientific Library

The Scientific Library of the Patent Office has, in numerical and classified order, a large collection of volumes, including scientific and technical books and periodicals and bound volumes of U. S. and foreign patents. These books and periodicals are for the most part in the field of applied science and technology, and especially chemistry, physics and engineering. The books and periodicals are used in the search of the prior art, and for that reason usually the best of them are to be found in the examining divisions concerned.

The Examiner should acquaint himself with this library sufficiently to know when it is likely to afford him assistance in his examination of an application.

11-1-14. Requests for Obtaining

Whenever it is deemed necessary to obtain catalogues, bulletins, or other literature, the request clears through the Scientific Library. A letter for this purpose is addressed to the Librarian, requesting that he order or obtain the needed material. Upon receipt of the same the Librarian distributes the literature to the division requiring it.

11-1-17. Arrangement of
Art in Examining Divisions

In the examining divisions the U. S. patents are arranged in shoes bearing appropriate labels, each showing the class, sub-class, and usually the lowest and highest numbered patents put in the respective shoe. The patents should be arranged in numerical order and be always thus kept when in the shoe. Patents taken out of the shoes in the course of the examination of an application should be returned thereto as soon as the examination of the application is finished. The putting away of the reference patents is the work of the file clerk.

Some U. S. copies are marked "Cross Reference." These are patents which are classified in other classes but which have disclosure pertinent to the class in which they are placed as cross-references. If numerous, the cross-references may be kept in shoes used for cross-references only, and so labeled.

Copies of foreign patents are usually kept in shoes separate from the U. S. and are usually arranged by country, the shoes being labeled with the proper class and subclass number and being adjacent to the shoes holding U. S. patents for the same subclass.

Non-patent publications containing disclosures for particular subclasses are similarly arranged.

11-1-18.

Borrowing References

The search files in each examining division should at all times be complete. Where they are incomplete, the examiners using such files and relying upon their completeness may miss valuable references. References removed from the files whether for use in the division or otherwise should, of course, be promptly replaced.

1. The following is established as the uniform Office practice in borrowing references (domestic and foreign patents and publications):

- a. References may be borrowed and charged for a maximum of two days. In all possible instances, the references should be returned in less than two days, preferably in a few hours. It is the responsibility of the chief of the borrowing division to see that all borrowed references are returned within the time indicated.
- b. The file clerk of each division shall review the charges each morning, select all charges over two days old and collect the corresponding borrowed references. The file clerk shall report to his chief for appropriate action and failure to obtain overdue references and any instances where it is necessary repeatedly to collect overdue references.
- c. In the case of domestic patents, when it appears that they will be needed for more than two days, particularly where future use is indicated, soft copies should be ordered, but the references may be borrowed for immediate use, if this will facilitate an action. The Patent Copy Sales Branch gives reasonably prompt service on Examiners' orders for soft copies.

11-1-19.

Missing Copies - Replacement

When the original copy of a reference is missing from the Examiner's files, a soft copy should be at once substituted and marked - "Keep until original is found." When it definitely appears that the original is lost, the Classification Division should be notified and requested to supply a mounted copy. When received this is substituted for the soft copy.

11-2.

Publications and Indices

The Manual of Classification is published in loose leaf form, and supplementary sheets for all major changes are issued from time to time to replace the original sheets.

All changes are published currently in classification orders printed in the Official Gazette. As these changes are published, each examiner should enter them in his manual, so that his manual will at all times be complete and up-to-date. As supplementary sheets are issued, the old sheets should be removed, and the new sheets substituted therefor.

There are at present 302 classes of utility inventions. The classes each bear a class number ranging from 1 through 346 (there being 44 blank numbers). Each class has a title, and each class is subdivided into a number of subclasses which each have a number. A complete identification of a subclass requires both the class and subclass number, the class number appearing first and the subclass number second, e.g. 13-13 identifies Class 13 Subclass 13.

The Manual of Classification has the following parts:

A Brief Statement on the Use of the Manual. Immediately following the flyleaf is a brief statement on how to use the manual.

Classes Arranged by Related Subjects. Next are tables of classes, in which the classes are arranged in five major subject groups, with the classes listed under each group by relationship of subject matter. This tabulation of the classes is for the purpose of assisting the user in finding the main class pertinent to his search.

Classes Arranged by Examining Division. Next is a table of classes arranged in groups by the examining division to which they are assigned, the examining divisions being numerically arranged, with the design division last.

Where a single class is divided between two or more examining divisions, the particular subclass as assigned to a division are listed.

Classes Listed Alphabetically. Next the classes are listed alphabetically in accordance with class title, this list giving on the left the class number and on the right the examining division to which assigned. Those classes that are divided among two or more divisions, have the subclasses listed by groups and the examining division to which each group is assigned indicated.

Classes Listed Numerically. Next the classes are listed in numerical sequence by class number, this list also giving the class title, and the examining division to which assigned, and in the case of divided classes the division to which each subclass group is assigned.

Subclass Schedules. Next are the complete subclass schedules for each class, the utility classes appearing first in numerical sequence of class numbers, and then the design classes in numerical sequence of design class numbers. Design class alphabetical sequence by class names corresponds to numerical sequence. This is not true of the utility classes.

Alphabetical Index. There is an alphabetical index to the manual, in which words and phrases (frequently called titles) identifying various characters of patentable subjects are arranged in alphabetical order, with the citation of a class or both class and subclass in which subject matter identified by the title will be found.

The preface to the index should be read.

11-2-2.

Definitions

All of the utility classes (i.e. classes devoted to technology) except 12 have definitions. None of the design classes have definitions.

Such definitions state much more explicitly than it is possible to state in short class and subclass titles, the subject matter that is found in each defined class and subclass.

Each examining division has a set of definitions. There are several sets in the Public Search Room.

Search Notes

The definitions have search notes as a part thereof, namely notes giving information as to where subject matter

related to the class will be found (such notes appearing after the class definition), and also notes as to where subject matter pertinent to the subclass will be found (appearing after the subclass definition). These notes are intended to indicate both the relationship and the difference between the separately classified subjects.

Such search notes are not exhaustive and should be looked upon as suggestive of additional fields of search, but not as limiting the search.

Search Cards

In each defined subclass in both the examining divisions and the Public Search Room are "Search Cards" having the definitions of the subclass and the search notes if any.

11-2-3.

U. S. Patent Indices

The following indices of U. S. Patents are available:

Numerical. A numerical index of the original classification of domestic patents is on file in the Public Search Room and the Service Branch of the Classification Group.

A numerically arranged punch card index of both original and officially cross-referenced domestic patents is on file in the Machine Tabulating Branch of the Administrative Services Division.

Blue Slips. The "blue slips", starting with patent number 1987,000, Re. 19,228 and Des. 126,796, and for all subsequently issued patents, and containing the original classification and cross-references ordered at time of issue are in file in the Service Branch, Classification Group.

In each of the above, there is a separate index for each series, x, 1836, A1, Re, P.P. and Des.

For the original or cross-reference classification of a domestic patent such indices may be consulted.

Subclass Lists. The classification of all U. S. patents, listed by class and subclass are available in punch card form in the Machine Tabulating Branch of the Administrative Services Division.

Tabulated lists for each subclass can be obtained, one list for originals and one list for cross-references

Count. In the Service Branch, Classification Group, is maintained a subclass "count," giving the number of U. S. patents originally classified in each class and subclass, and a corresponding "count" for cross-referenced U. S. patents.

11-2-4. Classification Orders and Bulletins

Classification Orders are issued from time to time giving all changes in the classification that have officially been made, including every change to be made in the Manual of Classification or in the definition books.

Photolithographed copies are distributed to all examining divisions for immediate use.

Each order is subsequently printed in the Official Gazette.

These orders are from time to time collected and issued as a Classification Bulletin. As Class schedules and definitions are extensively amended to take care of developments subsequent to original classification, they are republished in amended form in Classification Bulletins.

11-3. Classification

New and Revised Classes

The establishment of new classes or sub-classes and the revision of old classes are done under the supervision of an Examiner of Classification.

When an old class is to be revised, or a new class formed, any assistant examiner who has been examining applications in the art involved is usually transferred from the examining division to a Classification Division for the reclassifying work. After the lines marking the confines of the new or revised class and its sub-classes have been determined, and appropriate definitions drawn, all subject to the supervision and approval of an Examiner of Classification and to the final approval by the Commissioner, the Examiner's and the draftsman's copies of the patents included in the new class are collected, arranged and stamped conformably to the new classification. Official cross-references are also prepared and appropriately stamped.

The patents comprised in the new class are entered upon the numerical and sub-class indices.

Notification of the new class or sub-class is published in the Official Gazette, and Supplementary sheets

necessary to correct the loose leaf Manual of Classification are published.

Definitions of all revised classes and sub-classes are found in the Classification Bulletins.

These classification bulletins, serially numbered, are published as required.

11-3-1. Act of June 10, 1898; 30 Stat. L. 440

The statutory authority for establishing and maintaining a classification is given in the above identified statute, which states:

"For the purpose of determining with more readiness and accuracy the novelty of inventions for which applications for letters patent are or may be filed in the United States Patent Office, and to prevent the issuance of letters patent of the United States for inventions which are not new, the Commissioner of Patents is hereby authorized and directed to revise and perfect the Classification, by subjects matter, of all letters patent and printed publications in the United States Patent Office which constitute the field of search in the examination as to the novelty of invention for which applications for patents are or may be filed."

11-3-2. Basis and Principles of Classification

The basis of classification used in the U. S. Patent Office, the principles followed, and the reasons why such principles were adopted are set forth in two pamphlets:

Classification of Patents, 2nd revision
History of Classification.

These are available to every Examiner on request addressed to the Classification Group. Since the classification is the basic tool of every Examiner, these pamphlets and the classification as it at present exists should be studied carefully.

11-3-3. Types of Subject Matter

R. S. 4886 and 4929 divide patentable subject matter into the following groups:

Art
Machine
Manufacture
Composition of Matter
Improvement thereof
Plant (of restricted types)
Design

11-3-4.

Plant Patents

Classification is on the basis of variety, see class 47 Plant Husbandry, sub-class 59 through 62.

11-3-5.

Designs Patents

The classification of design patents evolved along different lines from that of utility patents due to the different characteristics of the design law which present a different search problem. Under design law patents are granted to the inventor of "any new, original and ornamental design for an article of manufacture", R. S. 4929. The subject matter of the patent deals with the non-utilitarian features of the article of manufacture that improve its appearance and render it more attractive to the purchaser for that reason, as by imparting a more attractive configuration, or by feature of ornamentation.

Thus the primary basis of classification is the type of manufacture, with the secondary basis dealing with configuration and ornamentation.

11-3-6.

Utility Patents

As applied to technological inventions, the subject matter of R. S. 4886 may be classified into the following groups:

- (1) Manufacture (product produced by a process)
- (2) Art (process) by which made
- (3) Apparatus (machine) for practicing the process
- (4) Starting material (composition, compound, intermediate, blank) used or operated upon to make the manufacture.
- (5) Non-manufacturing art (process)
- (6) Non-manufacturing apparatus (machine) for its practice.

Relative to manufacturing, what constitutes (1) and what constitutes (4) must be determined by the disclosure of the particular case, since it is clear that (4) in turn has its manufacturing process and apparatus.

Further, relative to each character of subject matter, there may be

- A. Combination - the total of all process, steps, apparatus features, etc.
- B. Subcombination - the various parts of the total combination.

Combined Features in Addition to Basic for Some Added Purpose. Features may be added to the basic subject matter for some additional purpose or function, as distinguished from perfecting the basic subject matter for its intended purpose, e.g. combined with a stone crusher may be a classifier which receives the crushed stone and classifies it in accordance to size groups.

Similarly combinations of one type of basic subject matter with features for some additional purpose may be a reference for a second type of basic subject matter with combined features for the same purpose, as a stone crusher-classifier combination may be a reference for a vegetable comminutor-classifier combination. All places in the classification must be found that contain combinations of the same genreal character.

Subcombinations Specialized to Basic Subject Matter. Each type of basic subject matter may have subcombinations specialized to use therewith, e.g. the crushing element of a stone crusher.

Determine if there are any characters of subject matter that are sufficiently analogous to be useful as references, e.g. the balls of ball mills 241-134 and the tumbling shapes for tumbling abrasors 51-164.5 are frequently references for each other.

Of General Utility. Each type of basic subject matter may have subcombinations of utility with other and different types of subject matter, e.g. the machine elements of a stone crusher.

Determine in each instance where they are classified.

11-3-7. Classification of Foreign Patents

It would be advisable for the classification examiners to classify foreign patents, but there has never been a corps large enough to do it. The present procedure is that the Scientific Library distributes the foreign patent copies to the Examining divisions, and the patent Examiners classify the same.

Time spent in classifying foreign patents is allowed in computing an Examiner's output subject, however, to the condition that the total time allowed for each division for any six months period (October through March and April through September) shall not exceed a number of days equal to one-half the number of Examiners in the division The method used in classifying foreign patents and the assignment of such work among the Examiners of the division

Each of the above types of subject matter can be further analyzed as follows:

Basic Subject Matter. The features necessary and essential to the fundamental character of the subject matter treated, e.g. a stone crusher requires a minimum number of features as essential before it can function as such.

All classifications should be studied by the patent examiner to determine certain factors as applied to the subject matter under his jurisdiction.

What types are classified in the class under his jurisdiction? What other types are there, where are they classified, and are they sufficiently related to require search? For example motors are in many classes in accordance with broad types, e.g. electric, turbine, fluid current, internal combustion, etc., and further are subdivided in each class by other type characteristics, e.g. class 121 motors, expansible chamber type, moving cylinder, rotary piston, etc.

What classes have types of subject matter that may be analogous (as to the invention granted) to the class under consideration? For example pumps are frequently analogous to the corresponding type of motor and thus must be cross searched, e.g. classes 103 pumps, 230 Gas Pumps and Fans, 121 motors Expansible Chamber type.

Combined Features to Perfect the Basic Subject Matter. Features may be added to the basic subject matter which do not change the character thereof, but do perfect it for its intended purpose, e.g. an overload release means tends to perfect a stone crusher by providing means to stop it on overload and thus prevent ruining the machine. However, this perfecting combined feature adds to the basic character of the machine.

Combinations of basic subject matter with features to perfect it for its intended purpose are usually classified in the same class with the type of basic subject matter to which applied. But the classification must be studied to determine where are other types of basic subject matter having similar perfecting features, since anticipating combinations may be found in other classes, e.g. overload release means used with one type of basic subject matter may be useful as reference for overload release means for a quite different type of subject matter.

are left to the Primary Examiner of the division. The time spent by each Examiner on this work will be reported in days on the monthly work report in the column under "Remarks."

11-3-8. Transfer of U. S. Patents

The transfer of official copies of U. S. patents either original or cross-reference, from one class or subclass to another requires the approval of an Examiner of Classification.

Unauthorized transfers render the subclass in the attorney's room no longer duplicates of those in the Examiner's rooms, and also render incorrect the official numerical index and subclass lists.

Examiner's should submit to the Classification Group all questions of transfer of patents.

All transfers of patents are recorded in the numerical and subclass indices.

When an Examiner desires to transfer domestic patents from one class or sub-class to another, he should have the patents listed on triplicate transfer blanks (566), as explained in section 51 of the Clerical Operations Manual stating thereon what class and sub-class the respective patents are in, and the class and sub-class to which they are to be transferred. Transfers of original patents and of cross references should be on separate blanks. All patents listed on a blank must involve transfer from a single class to a single class. This blank is forwarded with the Examiner's copies of the patents to the Classification Division. If the transfer is approved, the class and sub-class designations on the patents are changed, and the classification indices are changed to agree with the new classification.

When it becomes necessary in the course of a transfer to remove copies from the files in the attorney's rooms, a red dummy a little longer than a patent copy is substituted therefor, and the identification data of the patents withdrawn are written thereon. This dummy is amended as the patents are returned, and when all are returned the dummy is removed.

11-3-9. Practice to be Followed in
Ordering Official Cross References

The following three alternatives are available for obtaining official cross reference copies of United States patents.

In many instances, U. S. patents are found which contain disclosure that the searcher believes should be cross referenced. Such patents should be brought to the attention of the Classification Group for consideration in any of the following ways:

- a. Call extension 4087, identify the patent and give the class and subclass to which it is thought it should be cross referenced.
- b. Send to the Classification Group a list of patents and relative to each patent, indicate the class and subclass in which it is thought each should be cross referenced.
- c. The preferred mode of ordering a cross reference where the Examiner has a soft copy with the pertinent portion marked, is to indicate on the marked soft copy the class and subclass in which it is thought it should be cross referenced. Such soft copy should be forwarded to the Classification Group where it will be promptly inspected, the necessary action taken and the soft copy returned within two days of its receipt.

Information as to
Classification of Cross References

Relative to Patent No. 1,987,000, Reissue No. 19,228 and Design No. 126,796 and all patents bearing higher numbers, the classification of the cross references ordered at the time of issuance, may be obtained by calling extension 4087.

In addition to the cross-references officially designated, valuable references are often to be found by an inspection by the Examiner of the Official Gazette each week. Such patents may be placed as soft copies in the Examiner's digest. However, if they contain disclosure properly classifiable in an official subclass they should, with the approval of the Classification Examiner, be given the status of official cross-references, copies of the patents being mounted and placed in the appropriate sub class, in accordance with the practices enumerated above.

11-3-10.

Classifying and Cross-
Referencing at Time of Issue

Careful attention should be given by Examiners to the classification of all applications pending in their

respective divisions. It is the duty of each Primary Examiner to personally revise the classification and cross-referencing made by the assistant of every application passed for issue.

The classification of pending applications and the drawings thereof will have been indicated in pencil by the Primary Examiner.

An application, properly classified at the start of examination, may be improperly classified when it is ready for issue. The claims as allowed should be reviewed, in order to determine the subject matter covered thereby. It is the disclosed subject matter covered by the allowed claims that determines the original classification of U. S. patents.

Note the correct official classification on the file and drawing of each application when passed for issue. Unofficial subclasses (not established by classification order) should not be indicated on the file wrapper or drawing.

The Examiner fills out a blue slip (form No. 574) to indicate the class and subclass in which the patent should be classified and also the classes in which it should be placed as a cross reference. The blue slip is attached to the left hand corner of the drawing, being careful to insert the pin or staple outside of the margin line, (or if no drawing to the outside of the file wrapper) to be forwarded to the Issue Division.

The classification of all applications which have been passed to issue, which would be changed by any changes made in the official classification by classification order, are corrected by the Examiner having custody of such applications as soon as possible after promulgation of the order.

To effect the correction for the classification of applications that have been passed for issue but are awaiting payment of final fee, the Examiner (1) corrects the class and subclass numbers; (2) writes a letter to the Chief of the Issue and Gazette Division listing the applications, the classification of which has been changed, by name of applicant and serial number, with the class and subclass to which each has been reassigned.

11-3-12.

Issuing in Another
Division Without Transfer

Where a prospective patent is to be classified in a division other than the one which is sending the application to issue, the Examiner after indicating on the

blue issue slip the class and subclass number in which the patent is to appear designates in red ink on the blue slip the division to which the patent is to be sent. For example, the third line of the blue issue slip, in such cases will read:

Class 18 subclass 51 (div. 15)

The division passing the case to issue will insert its own number as usual in the space provided in the lower left hand corner. (When the patent issues, the Classification Division will, as a matter of routine, send the necessary notices to the divisions involved).

The indiscriminate sending of cases to issue from one division and assigning them to classes in another division without formal transfer is not encouraged; it is to be restricted to those situations where both Examiners concur in the proposed classification of the patent which must be shown by the concurring Examiner initialing the slip, or where there has been a ruling by the Classification Examiner who must initial the slip.

The drawing should be retained in the division that sent the case to issue.

11-3-13. Cross References; Systematic Notes On

Throughout the examination of the case, systematic notes should be kept as to cross-references needed either due to claimed or unclaimed disclosure. The several Examiners handling related subject matter should be consulted during prosecution, (whether they handle larger unclaimed combinations or claimed or unclaimed, but disclosed sub-combinations and asked if cross-references are needed. If needed, systematically note the proper class and subclass.

All of these should be inserted on the blue slip at time of issue.

When the application becomes a patent, the original drawing and the form 574, referred to, together with the copies for the Examiner and the Search Room, are forwarded by the Issue and Gazette Branch to the Classification Group to be stamped and for review and recording.

After they are so stamped and recorded, the photolithographic copies are retained in the respective classes in the divisions and no changed in the classification or in the arrangement of the copies will be permitted except with the approval of the Classification Division.

11-3-14. Number of Patent Copies Printed

The number of copies printed of each patent is:--

One on bond paper, accompanying the patent grant for the inventor.

Three on heavy paper, one for the Examiner, and one for the Attorneys' Room, and one for reproduction.

One hundred soft copies (in very active classes, two hundred) distributed as follows--about twenty-seven copies for foreign exchange; fifteen copies for sale to libraries subscribing to the same, one copy for the patented file, one copy for the bound volumes of patents; one copy temporary volumes kept until permanent volumes are bound; and the balance delivered to the Patent Copy-Sales Branch for sale and official use.

11-4. Applications: Assignment and Transfer

Applications are assigned originally by the Application Division, accepted by the examining divisions, or transferred to other divisions, if acceptable, as explained in 7-2-2. If not acceptable, the applications of questionable assignment are submitted to the classification groups for assignment.

11-4-7. Transfer Procedure

Submission of Applications for Classification.

In order to lessen the Examiner time required for submission of applications for classification, all should be submitted in one of the following two ways:

1. Where Examiners in different divisions are in agreement that an application is properly assignable to one of the divisions but are in disagreement as to which one should receive it, the Examiners involved present their positions orally to the appropriate Classification Examiner for verbal decision. This is generally termed informal submission.

2. In all other instances, including those instances where the Classification Examiner feels that additional evidence is necessary, applications are submitted for classification as follows: The Examiner having jurisdiction thereof submits a memorandum listing the division or divisions and the classes therein in which he believes the case may be classifiable and makes a search both in his own class and the class to which he thinks the case should be transferred and cites the most pertinent art relative to

are left to the Primary Examiner of the division. The time spent by each Examiner on this work will be reported in days on the monthly work report in the column under "Remarks."

11-3-8.

Transfer of U. S. Patents

The transfer of official copies of U. S. patents either original or cross-reference, from one class or subclass to another requires the approval of an Examiner of Classification.

Unauthorized transfers render the subclass in the attorney's room no longer duplicates of those in the Examiner's rooms, and also render incorrect the official numerical index and subclass lists.

Examiners should submit to the Classification Group all questions of transfer of patents.

All transfers of patents are recorded in the numerical and subclass indices.

When an Examiner desires to transfer domestic patents from one class or sub-class to another, he should have the patents listed on triplicate transfer blanks (566), as explained in section 51 of the Clerical Operations Manual stating thereon what class and sub-class the respective patents are in, and the class and sub-class to which they are to be transferred. Transfers of original patents and of cross references should be on separate blanks. All patents listed on a blank must involve transfer from a single class to a single class. This blank is forwarded with the Examiner's copies of the patents to the Classification Division. If the transfer is approved, the class and sub-class designations on the patents are changed, and the classification indices are changed to agree with the new classification.

When it becomes necessary in the course of a transfer to remove copies from the files in the attorney's rooms, a red dummy a little longer than a patent copy is substituted therefor, and the identification data of the patents withdrawn are written thereon. This dummy is amended as the patents are returned, and when all are returned the dummy is removed.

11-3-9.

Practice to be Followed in
Ordering Official Cross References

The following three alternatives are available for obtaining official cross reference copies of United States patents.

In many instances, U. S. patents are found which contain disclosure that the searcher believes should be cross referenced. Such patents should be brought to the attention of the Classification Group for consideration in any of the following ways:

- a. Call extension 4087, identify the patent and give the class and subclass to which it is thought it should be cross referenced.
- b. Send to the Classification Group a list of patents and relative to each patent, indicate the class and subclass in which it is thought each should be cross referenced.
- c. The preferred mode of ordering a cross reference where the Examiner has a soft copy with the pertinent portion marked, is to indicate on the marked soft copy the class and subclass in which it is thought it should be cross referenced. Such soft copy should be forwarded to the Classification Group where it will be promptly inspected, the necessary action taken and the soft copy returned within two days of its receipt.

Information as to
Classification of Cross References

Relative to Patent No. 1,987,100, Design No. 12,228 and Design No. 128,795 and all patents bearing higher numbers, the classification of the cross references ordered at the time of issuance, may be obtained by calling extension 4087.

In addition to the cross references officially designated, valuable references are often to be found by an inspection by the Examiner of the Official Gazette each week. Such patents may be placed as soft copies in the Examiner's digest. However, if they contain disclosures properly classifiable in an official subclass they should, with the approval of the Classification Examiner, be given the status of official cross references, copies of the patents being mounted and placed in the appropriate subclass in accordance with the practice enumerated above.

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Classifying and Cross-
referencing at Time of Issue

Careful attention should be given by Examiners to the classification of all applications pending in their

respective divisions. It is the duty of each Primary Examiner to personally revise the classification and cross-referencing made by the assistant of every application passed for issue.

The classification of pending applications and the drawings thereof will have been indicated in pencil by the Primary Examiner.

An application, properly classified at the start of examination, may be improperly classified when it is ready for issue. The claims as allowed should be reviewed in order to determine the subject matter covered thereby. It is the disclosed subject matter covered by the allowed claims that determines the original classification of U. S. patents.

Note the correct official classification on the file and drawing of each application when passed for issue. Unofficial subclasses (not established by classification order) should not be indicated on the file wrapper or drawing.

The Examiner fills out a blue slip (Form No. 374) to indicate the class and subclass in which the patent should be classified and also the classes in which it should be placed as a cross reference. The blue slip is attached to the left hand corner of the drawing, being careful to insert the pin or staple outside of the margin line, (or if no drawing to the outside of the file wrapper) to be forwarded to the Issue Division.

The classification of all applications which have been passed to issue, which would be changed by any changes made in the official classification by classification order, are corrected by the Examiner having custody of such applications as soon as possible after promulgation of the order.

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Division Without Transfer

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blue issue slip the class and subclass number in which the patent is to appear designates in red ink on the blue slip the division to which the patent is to be sent. For example, the third line of the blue issue slip, in such cases will read:

Class 18 subclass 51 (div. 15)

The division passing the case to issue will insert its own number as usual in the space provided in the lower left hand corner. (When the patent issues, the Classification Division will, as a matter of routine, send the necessary notices to the divisions involved).

The indiscriminate sending of cases to issue from one division and assigning them to classes in another division without formal transfer is not encouraged; it is to be restricted to those situations where both Examiners concur in the proposed classification of the patent which must be shown by the concurring Examiner initialing the slip, or where there has been a ruling by the Classification Examiner who must initial the slip.

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11-3-13. Cross References; Systematic Notes On

Throughout the examination of the case, systematic notes should be kept as to cross-references needed either due to claimed or unclaimed disclosure. The several Examiners handling related subject matter should be consulted during prosecution, whether they handle larger unclaimed combinations or claimed or unclaimed, but disclosed sub-combinations and asked if cross-references are needed. If needed, systematically note the proper class and subclass.

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When the application becomes a patent, the original drawing and the form 574, referred to, together with the copies for the Examiner and the Search Room, are forwarded by the Issue and Gazette Branch to the Classification Group to be stamped and for review and recording.

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11-3-14. Number of Patent Copies Printed

The number of copies printed of each patent is:--

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11-4. Applications; Assignment and Transfer

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11-4-7. Transfer Procedure

Submission of Applications for Classification.

In order to lessen the Examiner time required for submission of applications for classification, all should be submitted in one of the following two ways:

1. Where Examiners in different divisions are in agreement that an application is properly assignable to one of the divisions but are in disagreement as to which one should receive it, the Examiners involved present their positions orally to the appropriate Classification Examiner for verbal decision. This is generally termed informal submission.

2. In all other instances, including those instances where the Classification Examiner feels that additional evidence is necessary, applications are submitted for classification as follows: The Examiner having jurisdiction thereof submits a memorandum listing the division or divisions and the classes therein in which he believes the case may be classifiable and makes a search both in his own class and the class to which he thinks the case should be transferred and cites the most pertinent art relative to

the question of classification. He should not take time to write either an analysis of the art or an argument. He forwards the file, together with his memorandum, to the Examiner of another division involved. He also fills out blank Form 573 and has it receipted by such Examiner and retains the receipted form as a charge. Each other Examiner involved similarly makes a search and cites art without taking the time to write either an art analysis or an argument. The time involved in making such searches is not lost, since the cited art may be of value to the Examiner to whom the case is assigned. Each Examiner in turn makes a prompt report and the last forwards the file and all papers to the Classification Group. This practice eliminates the time consumed in evaluating the art and expounding reasons for proposed assignments; it is all that is required by the general rules governing the assignment of applications for examination. See particularly Rules 4 and 10.

This is generally termed "usual submission."

11-4-9. General Rules Governing the Assignment of Applications for Examination

The fact should be borne in mind that the following rules are only general guides, and exceptions frequently arise because of some unusual condition. The fact should also be kept in view that the Classification Examiners as well as the Patent Examiners are concerned with an already existing classification, made up of newly revised classes, those revised years ago and which have somewhat outgrown their definitions and limits, and still others made a generation ago and never changed. Also, these classes are based on different theories and plans, some on art, some on structure, some on functions, some on the material worked upon, and some apparently on no theory or plan at all. The Classification Examiners cannot change this existing condition as each application comes up for assignment but must seek to dovetail the cases into the patchwork and try to get the applications where they will be best handled. To do this often violates the Classification Examiner's views as to what constitutes a really proper classification.

1. The assignment of applications follows, as far as possible, the rules or principles governing the classification of patents. (See the bulletins: "Plan of Classification" 1900, "The Classification of Patents" 2nd Revision, 1946 and "History of Classification of Patents.")

2. The most comprehensive claim that is the claim to the most extensive combination governs, and this is true whether there is only one such claim and a large number of other claims, or whether the sets of claims are more

evenly divided. It is regarded as just as vital that one complex claim be searched and adjudicated by an Examiner skilled in the art as that a group of such claims be so searched and adjudicated.

3. The claims and statement of invention are generally taken as they read, since any attempt of Classification Examiner to go behind the record and decide the case upon what is deemed the "real invention" would, it is believed, introduce more errors than such action would cure. The Classification Examiners cannot possess the specific knowledge of all the classes that the Patent Examiners collectively possess. Further, such questions are matters of merit for the Examiners to determine and are often open to argument and are subject for appeal.

4. The location of the patents constituting the prior art is generally controlling over all else. (Note: Where time permits, obvious misplacements of the patents constituting the prior art are corrected, but to straighten all lines as the cases come up for assignment would require the time of several men and would often involve a reclassification of an entire class.)

5. Ordinarily an application cannot be assigned to a class which includes one element or part only, of several claimed in combination. The claim is treated in its entirety. The question of aggregation is not reviewed by the Classification Examiners.

6. The Examiners of Classification are authorized in all cases where they evaluate the facts as warranting it to assign applications for examination to the division best able to examine the same. Since assignment for examination on this basis will at times be contrary to classification of patents containing the same character of claims, the Examiners of Classification will indicate proper classification of the patent if such claims are allowed.

7. When an application has been taken up by an Examiner for action and a division is found necessary, a part of the claims being directed to matter classifiable in the division where the case is being examined, an action requiring division should be made without seeking a transfer of the case to another division. The action of the applicant in response to the requirement of division may result in making a transfer of the application unnecessary.

8. Ordinarily where a claim is for an article made of a specific composition or an alloy and there exists a class of such articles, the application will be assigned to such class unless a question as to the novelty of the composition or alloy broadly is raised in which case the

application should go to the division having the class of composition of matter or of alloys to determine the question of novelty of material.

9. A class of cases exists in which either no art or a divided art is found and in which no rule or principle is involved. Such cases are placed where, in the judgment of the Classification Examiner they will be best searched and adjudicated. It is often impossible to so explain a decision in this class of cases as to satisfy or in any way aid the Examiners interested. Indeed the reasons for or against sending such cases one place or another are so evenly balanced that no reason of any value can be given.

10. An Examiner seeking the transfer of a case should make a search, both of his own class and the class to which he thinks the case should be transferred, and the Examiner in charge of the division exhibit the result of such search to the Classification Group. This is the only way to utilize the expert knowledge of the Examiners involved.

11-4-10. Classification Examiner Decision

The Examiner of the Classification Group decides the question of the proper classification of the application, and returns the application to the division which submitted it enclosing a statement of the grounds of his decision.

11-4-11. Transfer to Another Examining Division

If the application is to remain in the Division which submitted it for classification, no further procedure is necessary. If assigned to another Division, the clerk processes the case as described in section 7-1.1 of the Clerical Operations Manual.

11-5. How to Search

Having obtained a thorough understanding of the subject matter disclosed and claimed in the application, the Examiner then searches the prior art as disclosed in patents and other printed documents. Any such document used in the rejection of a claim is called a "reference."

11-5-1. Analysis of Claims

The breadth of claim should always be carefully noted; that is, the Examiner should be fully aware of what the claim does not call for, as well as what it does require. For, there is always danger of reading into the claim limitations imported from the specification or drawing.

11-5-2.

Variety Embodiments
WITHIN SCOPE OF CLAIM

Substantially every claim includes within its breadth or scope of definition one or more variety embodiments not disclosed by applicant which would anticipate the terms of the definition. The claim must be so analyzed and understood that any such variety encountered during the search will be recognized and selected.

11-5-3.

Sketch Claim to Determine

In each type of subject matter capable of such treatment, (e.g. a machine or other apparatus) the subject matter as defined by the claim should be sketched in order to clearly delineate the limitations of the claim. Two or more sketches each of which is as divergent from the particular disclosure as is permitted by claim recitation, will assist the Examiner in determining the claim's actual breadth or scope.

11-5-4.

Equivalents

Also all subject matter that is the patentable equivalent of the subject matter as defined in the claim, even though specifically different from the claim's definitions, must be considered.

11-5-5.

Analogous Arts

Not only must the art with which the invention claimed is classifiable be searched, but also all analogous arts regardless of where classified.

The determination of when arts are analogous is at times difficult. It depends upon the necessary essential function or utility of the subject matter covered by the claims, and not what it is called.

For example, a soil mixer and a concrete mixer are for the same art namely the mixing art, this being the necessary function of each. Similarly a brick cutting machine and a biscuit cutting machine have the same necessary function.

11-5-6.

Outlying Field of Search

In outlining a field of search the Examiner should note every class and subclass that may have material pertinence to the subject matter as claimed, or that may in the future properly be claimed in that case. Listed should be every subclass pertinent to each type of invention claimed, from the lowest combination through the various

subcombinations to the most elementary part needed to anticipate any disclosure properly claimable in that case. It should be kept in mind that a combination reference is necessary to anticipate a claim drawn to an old or exhausted combination; that a combination reference is valuable as a basic reference for elements, of which may be substituted elements of a secondary reference; that a convincing aid to a rejection on the grounds of old combination is the citation of references showing the subcombinations to have been already recognized as features of practical and more general utility; that combination claims can often be anticipated by combining separately classified subcombinational elements; and that in the rejection of a claim on the grounds of aggregation the citation of references showing the individual utility of the elements may better prove that the aggregative structure is no more than the sum of the features shown by the several elemental patents.

11-5-7. Noting Search in Fact Made

In each action by an Examiner upon an application he makes an initialed endorsement in ink on the left hand page of the open file wrapper, stating the classes and subclasses of domestic and foreign patents, and the publications in which search for references was made and also the date of the search.

In subsequent actions, if further search is made, notation of the additional field covered is also endorsed on the file wrapper.

11-5-8. Selecting Pertinent References

It is a prerequisite to a speedy and just determination of the issues involved in the examination of an application that a careful and exhaustive search be made in the first action. It is not enough that the claims alone be searched, especially if they be broad in their scope; but the search should, in so far as possible, cover the entire claimable subject matter in the case.

It thus results that the Examiner finds references that, while not needed for testing the claims before him, would be useful in forestalling the possible presentation of claims to other subject matter disclosed by applicant but shown to be old by these references. To that end it is not unusual for an Examiner to cite at the beginning of his letter two groups of references, one under the heading, "References applied," and the other under the heading, "References further showing the state of the art."

In selecting the references to be cited the Examiner should carefully compare one reference with one another

and with the applicant's disclosure to avoid the citation of an unnecessary number. The Examiner is not called on to cite all the references that may be available, but only the "best." (Rule 14.6). Multiplying references, any one of which is as good as, but no better than, the others, adds to the burden and cost of prosecution and should therefore be avoided. However, if doubt exists as to the inclusion of a reference, it is better to err in citing too much art rather than too little.

While the best reference should always be the one used, yet if this is of a date less than one year prior to the filing date of the application, a second reference, though inferior but not thus open to being overcome under Rule 18.1, if such reference is to be found, should be cited and the claims additionally rejected thereon.

In all references, including non-patent, foreign patents and domestic patents, the Examiner should refer to the description for every feature in the drawing he does not thoroughly understand.

11-6. Miscellaneous

11-6-1. Orders for Photostats to be Signed by Primary Examiner

All orders for photostats or film photoprints sent to the Manuscript and Litographic Branch from the Examining Divisions must be signed by the Primary Examiner or in his absence by the Assistant Chief.

11-6-4. Returning Soft Copies

All soft copies which are in perfect condition and unmarked and which are not deemed useful for cross reference or other purposes should be returned to the Patent Copy-Sales Branch from time to time, who will replace them on the shelves.

11-6-6. Return of Patented and Abandoned Files

All patented files taken from the Patented Files Unit must be changed to the party obtaining them and are not to be kept longer than thirty days without renewing the charge. Where the file is needed for the purpose of release or interference, this information should be given to Mr. Stoner in the Record Room upon obtaining the file and as soon as the interference is decided or the release granted, the file should be returned to the Patented Files Unit.

When an interference is involved between a patent and an application and the interference is forwarded to

the Examiner of Interferences, the clerk in charge of the Patented Files Unit should be informed in order that the charge may be changed and the location of the file known at all times.

11-6-7. Marking Examiners Copies of Patents

When the Examiner's copies of patents are sent to their respective divisions to be filed, the assistant Examiners who examined the application should mark on the face of the drawings, or the specifications, where there are no drawings, such features as may be deemed advantageous in aiding understanding of the patents in future searches.