



UNITED STATES PATENT AND TRADEMARK OFFICE

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COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
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AUG 12 2002

In re

:  
: DECISION ON  
: PETITION FOR REGRADE  
: UNDER 37 CFR 10.7(c)  
:

**MEMORANDUM AND ORDER**

(petitioner) petitions for regrading her answers to questions 2, 8 and 17 of the morning section and questions 6, 27, 33 and 44 of the afternoon section of the Registration Examination held on October 17, 2001. The petition is denied to the extent petitioner seeks a passing grade on the Registration Examination.

**BACKGROUND**

An applicant for registration to practice before the United States Patent and Trademark Office (USPTO) in patent cases must achieve a passing grade of 70 in both the morning and afternoon sections of the Registration Examination. Petitioner scored 66. On February 6, 2002, petitioner requested regrading, arguing that the model answers were incorrect.

As indicated in the instructions for requesting regrading of the Examination, in order to expedite a petitioner's appeal rights, a single final agency decision will be made regarding each request for regrade. The decision will be reviewable under 35 U.S.C. § 32. The Director of the USPTO, pursuant to 35 U.S.C. § 2(b)(2)(D) and 37 CFR 10.2 and 10.7, has delegated the authority to decide requests for regrade to the Director of Patent Legal Administration.

### **OPINION**

Under 37 CFR 10.7(c), petitioner must establish any errors that occurred in the grading of the Examination. The directions state: " No points will be awarded for incorrect answers or unanswered questions." The burden is on petitioners to show that their chosen answers are the most correct answers.

The directions to the morning and afternoon sections state in part:

Do not assume any additional facts not presented in the questions. When answering each question, unless otherwise stated, assume that you are a registered patent practitioner. The most correct answer is the policy, practice, and procedure which must, shall, or should be followed in accordance with the U.S. patent statutes, the USPTO rules of practice and procedure, the Manual of Patent Examining Procedure (MPEP), and the Patent Cooperation Treaty (PCT) articles and rules, unless modified by a court decision, a notice in the Official Gazette, or a notice in the Federal Register. There is only one most correct answer for each question. Where choices (A) through (D) are correct and choice (E) is "All of the above," the last choice (E) will be the most correct answer and the only answer which will be accepted. Where two or more choices are correct, the most correct

answer is the answer that refers to each and every one of the correct choices. Where a question includes a statement with one or more blanks or ends with a colon, select the answer from the choices given to complete the statement which would make the statement true. Unless otherwise explicitly stated, all references to patents or applications are to be understood as being U.S. patents or regular (non-provisional) utility applications for utility inventions only, as opposed to plant or design applications for plant and design inventions. Where the terms "USPTO" or "Office" are used in this examination, they mean the United States Patent and Trademark Office.

Petitioner has presented various arguments attacking the validity of the model answers. All of petitioner's arguments have been fully considered. Each question in the Examination is worth one point.

No credit has been awarded for morning questions 2, 8 and 17 and afternoon questions 6, 27, 33 and 44. Petitioner's arguments for these questions are addressed individually below.

Morning question 2 reads as follows:

2. You are a registered practitioner. Earl, your new associate, has been assigned the task of filing information disclosure statements for patents and publications submitted by a client Tony, who is the named inventor on several patent applications, all of which were filed on or after January 1, 2001. Earl wants to know what information must be included on the information disclosure statements. Which of the following is not accurate with respect to proper USPTO procedure?

(A) If a non-English reference is submitted in an information disclosure statement, the applicant shall include a copy of the translation if a written English- language translation of a non-English- language document, or portion thereof, if it is within the possession, custody, or control of, or is readily available to any individual designated in 37 CFR 1.56(c).

(B) Each U.S. patent listed in an information disclosure statement must be identified by inventor, application number, and issue date.

(C) Each publication listed in an information disclosure statement must be identified by publisher, author (if any), title, relevant pages of the publication, date, and place of publication.

(D) When the disclosures of two or more patents or publications listed in an information disclosure statement are substantively cumulative, a copy of one of the patents or publications may be submitted without copies of the other patents or publications, provided that it is stated that these other patents or publications are cumulative.

(E) A copy of any patent, publication, pending U.S. application or other information listed in an information disclosure statement is required to be provided, even if the patent, publication, pending U.S. application or other information was previously submitted to, or cited by, the Office in an earlier application, unless: (1) the earlier application is properly identified in the information disclosure statement and is relied on for an earlier effective filing date under 35 U.S.C. § 120; and (2) the information disclosure statement submitted in the earlier application is in full compliance with appropriate regulations.

The model answer is selection (B).

The application number of each U.S. patent is not required to be listed by 37 CFR 1.98(b)(1), which provides “(b)(1) Each U.S. patent listed in an information disclosure statement must be identified by inventor, patent number, and issue date.” The elements of (A) are found in 37 CFR 1.98 (a)(3)(ii). The elements of (C) are found in 37 CFR 1.98 (b)(5). The elements of (D) are found in 37 CFR 1.98(c). The elements of (E) are found in 37 CFR 1.98(d).

Petitioner argues that answer (A) is correct. Petitioner contends that the word "if" in the phrase in (A), "[i]f a non-English reference is submitted in an information disclosure statement" is not in 37 C.F.R. § 1.98(a)(3)(ii), and therefore a copy need not be provided if a written English- language translation of a non-English- language document, or portion thereof, is within the possession, custody, or control of, or is readily available to any individual designated in 37 CFR 1.56(c).

Petitioner's arguments have been fully considered but are not persuasive. Contrary to petitioner's statement that the word "if" in the phrase in (A), "[i]f a non-English reference is submitted in an information disclosure statement" is not in 37 C.F.R. § 1.98(a)(3)(ii), and therefore a copy need not be provided if a written English- language translation of a non-English- language document, or portion thereof, is within the possession, custody, or control of, or is readily available to any individual designated in 37 CFR 1.56(c), the word "if" does appear. 37 C.F.R. § 1.98(a)(3)(ii) states "(a) Any information disclosure statement filed under § 1.97 shall include: ... (3)(ii) A copy of the **translation if a written English-language translation** of a non-English-language document, or portion thereof, is within the possession, custody, or control of, or is readily available to any individual designated in § 1.56(c). Accordingly, model answer (B) is correct and petitioner's answer (A) is incorrect.

No error in grading has been shown. Petitioner's request for credit on this question is denied.

Morning question 8 reads as follows:

8. Joan comes to you wanting to know the status of the applications of her competitor Pete. During Joan's previous relationship with Pete she believes she may have been a coinventor on one of the applications filed by Pete. Pete owns Applications A, B, C and D. Application B is a continuation of application A and a redacted copy of application A has been published under 35 U.S.C. § 122(b). Joan is listed as a coinventor on Application C. Pete has an issued patent that claims priority to Application D. Assume only the last six digits of the numerical identifier are available for Application D and Application D is abandoned. Which of the following is not true?

(A) Joan may obtain status information for Application B that is a continuation of an application A since application A has been published under 35 U.S.C. § 122(b).

(B) Joan may be provided status information for Application D that includes the filing date if the eight-digit numerical identifier is not available and the last six digits of the numerical identifier are available.

(C) Joan may obtain status information for Application D since a U.S. patent includes a specific reference under 35 U.S.C. § 120 to Application D, an abandoned application.

Joan may obtain a copy of that application-as-filed by submitting a written request including the fee set forth in 37 CFR 1.19(b)(1).

(D) Joan may obtain status information as to Application C since a coinventor in a pending application may gain access to the application if his or her name appears as an inventor in the application, even if she did not sign the § 1.63 oath or declaration.

(E) Joan may obtain access to the entire Application A by submitting a written request, since, notwithstanding the fact that only a redacted copy of Application A has been published, a member of the public is entitled to see the entire application upon written request.

The model answer is selection (E).

Since a redacted copy of the application was used for publication purposes, 37 CFR 1.14(c)(2) provides that "(2) If a redacted copy of the application was used for the patent application publication, the copy of the specification, drawings, and papers may be limited to a redacted copy." For (A) and (B), see 37 CFR 1.14(b)(2) and 1.14(b)(4). For (C) see 37 CFR 1.14(b)(2) and (c)(1)(i). As to (D), a coinventor is entitled to access to the application independent of whether or not he or she signed the declaration. Note that as stated in 37 CFR 1.41(a)(2), if a declaration or oath is not filed, the inventorship is that inventorship set forth in the application papers.

Petitioner argues that answer (B) is correct. Petitioner contends that if the eight-digit numerical identifier is not available and the last six digits of the numerical identifier are available, then Joan cannot obtain status information.

Petitioner's arguments have been fully considered but are not persuasive. Contrary to petitioner's statement that if the eight-digit numerical identifier is not available and the last six digits of the numerical identifier are available, then Joan cannot obtain status information, this is exactly what answer (B) says, making (B) true rather than false and therefore incorrect because the question asked for the false answer. Accordingly, model answer (E) is correct and petitioner's answer (B) is incorrect.

No error in grading has been shown. Petitioner's request for credit on this question is denied.

Morning question 17 reads as follows:

The following facts apply to Questions 16 and 17.

Claims 1 and 2, fully disclosed and supported in the specification of a patent application having an effective filing date of March 15, 2000, for sole inventor Ted, state the following:

Claim 1. An apparatus intended to be used for aerating water in a fish tank, comprising:

- (i) an oxygen source connected to a tube, and
- (ii) a valve connected to the tube.

Claim 2. An apparatus as in claim 1, further comprising an oxygen sensor connected to the valve.

17. Which of the following, if relied on by an examiner in a rejection of claim 2, can be a statutory bar under 35 U.S.C. § 102 of claim 2?

(A) A U.S. patent to John, issued February 2, 1999, that discloses and claims an apparatus intended to be used for aerating ice cream, having an oxygen source connected to a tube, a valve connected to the tube, and a battery coupled to the oxygen source.

(B) A U.S. patent to John, issued April 6, 1999, that discloses and claims an apparatus intended to be used for aerating water in a fish tank, having an oxygen source connected to a tube, a valve connected to the tube, and an oxygen sensor connected to the tube.

(C) A U.S. patent to Ned, issued February 9, 1999, that discloses, but does not claim, an apparatus intended to be used for aerating ice cream, having an oxygen source connected to a tube, a valve connected to the tube, an oxygen sensor connected to the valve, and a battery coupled to the oxygen source.

(D) A foreign patent to Ted issued April 12, 2000, on an application filed on March 12, 1997. The foreign patent discloses and claims an apparatus intended to be used for aerating water in a fish tank, having an oxygen source connected to a tube, a valve connected to the tube, and an oxygen sensor connected to the tube.

(E) None of the above.

The model answer is selection (C).

35 U.S.C. § 102(b). MPEP § 2111.02 provides that the preamble generally is not accorded patentable weight where it merely recites the intended use of a structure. (A) is incorrect because it does not disclose an oxygen sensor. (B) is incorrect because the patent is not more than one year prior to the date of the Ted's application. (D) is incorrect because the foreign patent application issued after the date of Ted's application.

35 U.S.C. § 102(d). (E) is incorrect because (C) is correct.

Petitioner argues that answer (E) is correct. Petitioner contends that more than one selection may be a bar, depending on additional facts, and there is no selection for multiple other selections, and therefore selection (E), none of the answers, is the best selection. In particular, petitioner argues that (B) or (D) are bars depending on when the cited art was filed or published.

Petitioner's arguments have been fully considered but are not persuasive. Contrary to petitioner's statement that more than one selection may be a bar, depending on additional facts, and there is no selection for multiple other selections, and therefore selection (E), none of the answers, is the best selection, the instructions explicitly direct the examinee to not assume any additional facts. Whether (B) or (D) are better answers than (C) is not relevant to petitioner's arguments because petitioner did not select either of those answers, or any answer that would have included those selections. But in any event, petitioner's argument that (B) may be correct based on filing date is incorrect because 35 USC 102(e) is never a bar and petitioner's argument that (D) may be correct based on publication date is incorrect because publication would have occurred no earlier than October 1999, 18 months after foreign filing, which is less than the one year bar period. Petitioner's selection (E) is incorrect because at least one of the other selections was correct. Accordingly, model answer (C) is correct and petitioner's answer (E) is incorrect.

No error in grading has been shown. Petitioner's request for credit on this question is denied.

Afternoon question 6 reads as follows:

6. An examiner has advanced a reasonable basis for questioning the adequacy of the enabling disclosure in the specification of your client's patent application, and has properly rejected all the claims in the application. The claims in the application are drawn to a computer program system. In accordance with proper USPTO practice and procedure, the rejection should be overcome by submitting \_\_\_\_\_

(A) factual evidence directed to the amount of time and effort and level of knowledge required for the practice of the invention from the disclosure alone.

(B) arguments by you (counsel) alone, inasmuch as they can take the place of evidence in the record.

(C) an affidavit under 37 CFR 1.132 by an affiant, who is more than a routineer in the art, submitting few facts to support his conclusions on the ultimate legal question of sufficiency, i.e., that the system "could be constructed."

(D) opinion evidence directed to the ultimate legal issue of enablement.

(E) patents to show the state of the art for purposes of enablement where these patents have an issue date later than the effective filing date of the application under consideration.

The model answer is selection (A).

MPEP § 2106.02 (Affidavit Practice (37 CFR 1.132)). Factual evidence directed to the amount of time and effort and level of knowledge required for the practice of the invention from the disclosure alone can rebut a prima facie case of nonenablement. See *Hirschfield v. Banner*, Commissioner of Patents and Trademarks, 200 USPQ 276, 281 (D.D.C. 1978). (B) is not correct. MPEP § 2106.02 (Arguments of Counsel), and see *In re Budnick*, 190 USPQ 422, 424 (CCPA 1976); *In re Schulze*, 145 USPQ 716 (CCPA 1965); and *In re Cole*, 140 USPQ 230 (CCPA 1964). (C) is not correct. MPEP § 2106.02 (Affidavit Practice (37 CFR 1.132)), and see *In re Brandstadter*, 179 USPQ 286 (CCPA 1973). (D) is not correct. MPEP § 2106.02 (Affidavit Practice (37 CFR 1.132)), and see *Hirschfield v. Banner*, Commissioner of Patents and Trademarks, 200 USPQ 276, 281 (D.D.C. 1978). (E) is not correct. MPEP § 2106.02, (Referencing Prior Art Documents), and see *In re Budnick*, 190 USPQ 422, 424 (CCPA 1976); and *In re Gunn*, 190 USPQ 402, 406 (CCPA 1976).

Petitioner argues that answer (C) is correct. Petitioner contends that (A) does not and (C) does present evidence of the level of ordinary skill in the art.

Petitioner's arguments have been fully considered but are not persuasive. Contrary to petitioner's statement that (A) does not and (C) does present evidence of the level of ordinary skill in the art, answer (C) discusses those with more than a routineer in the art and submits few facts to support his conclusions on the ultimate legal question of sufficiency, i.e., that the system "could be constructed." This is contrary to petitioner's assertion that selection (C) presents evidence of the level of ordinary skill in the art. Also (C) is not correct because of MPEP § 2106.02 (Affidavit Practice (37 CFR 1.132)), and see *In re Brandstadter*, 179 USPQ 286 (CCPA 1973). Accordingly, model answer (A) is correct and petitioner's answer (C) is incorrect.

No error in grading has been shown. Petitioner's request for credit on this question is denied.

Afternoon question 27 reads as follows:

27. Mary, a legally competent adult inventor, filed provisional application A on January 3, 2000, a nonprovisional application B one year later on January 3, 2001, and nonprovisional application C on February 28, 2001. Nonprovisional application B was abandoned when nonprovisional application C was filed. The provisional application and both nonprovisional patent applications were in Mary's name only, but a declaration has not yet been filed. Mary is living on a remote island in the middle of the Arctic Ocean where the only communication is in the summer months. Sam, the father of Mary, has

been authorized by Mary to sign Mary's name to the § 1.63 declaration and also Sam's name. Sam, unbeknownst to Mary, also wants access to all three application files at the USPTO before he files the declaration to make certain Mary has properly described her invention. Sam acknowledges he is not an inventor but insists he must sign as an inventor so that he may act on behalf of Mary. Which of the following is not in accordance with proper USPTO procedure in relation to applications filed on or after January 1, 2001?

- (A) Sam may not add his name as an inventor since a patent is applied for only in the name or names of the actual inventor or inventors.
- (B) Since no declaration was filed during the pendency of application B, Sam may not see the Application papers for application B since he has not been authorized by Mary to see the application A and Sam is not an inventor.
- (C) Sam is not entitled to access to the provisional application A since he has not been authorized by Mary to see the application A and Sam is not an inventor.
- (D) Sam is precluded from access to the Application B since his name does not appear on the application papers and Sam is not an inventor.
- (E) Sam may sign Mary's name to the declaration since he was authorized by Mary to do so.

The model answer is selection (E).

(E) is incorrect since an oath or declaration must be provided in accordance with 37 CFR 1.64. In 37 CFR 1.64(a) the use of word "made" implies signing or executing and is derived from §1.64. See 37 CFR 1.41(c). (A) contains the elements of 37 CFR 1.41(a). As to (B) the inventorship of a nonprovisional application is that inventorship set forth in the oath or declaration as prescribe by 37 CFR 1.63, except as provided for in 37 CFR § 1.53(d)(4) and 1.63(d). If an oath or declaration as prescribed by § 1.63 is not filed during the pendency of a nonprovisional application, the inventorship is that inventorship set forth in the applications papers filed pursuant to § 1.53(b), unless applicant files a paper, including the processing fee set forth in § 1.17(I), supplying or changing the name or names of the inventor or inventors. Mary has not authorized Sam to inspect application B. Statement (C) is in accordance with 37 CFR 1.41(a)(2). Mary has not given Sam power to inspect the provisional application. (D) is in accordance with 37 CFR 1.41(a)(3). Mary did not authorized Sam to inspect the provisional application.

Petitioner argues that answer (B) is correct. Petitioner contends that (B) is not in accordance because it is incorrect that Sam cannot inspect because no declaration was filed.

Petitioner's arguments have been fully considered but are not persuasive. Contrary to petitioner's statement that (B) is not in accordance because it is incorrect that

Sam cannot inspect because no declaration was filed, if an oath or declaration as prescribed by § 1.63 is not filed during the pendency of a nonprovisional application, the inventorship is that inventorship set forth in the applications papers filed pursuant to § 1.53(b), unless applicant files a paper, including the processing fee set forth in § 1.17(i), supplying or changing the name or names of the inventor or inventors. Mary has not authorized Sam to inspect application B and so selection (B) is in accordance with procedure. Accordingly, model answer (E) is correct and petitioner's answer (B) is incorrect.

No error in grading has been shown. Petitioner's request for credit on this question is denied.

Afternoon question 33 reads as follows:

The following facts pertain to questions 33 and 34.

Applicant Sonny filed a patent application having an effective U.S. filing date of February 15, 2000. The application fully discloses and claims the following:

Claim 1. An apparatus for converting solar energy into electrical energy comprising:

- (i) a metallic parabolic reflector;
- (ii) a steam engine having a boiler located at the focal point of the metallic parabolic reflector; and
- (iii) an electrical generator coupled to the steam engine.

In a non-final Office action dated March 15, 2001, the examiner rejects claim 1 under 35 U.S.C. § 102(d) as anticipated by a patent granted in a foreign country to Applicant Sonny ("Foreign patent"). The Foreign patent was filed February 1, 1999, and was patented and published on January 17, 2000. The examiner's rejection points out that the invention disclosed in the Foreign patent is a glass lens with a steam engine having a boiler at the focal point of the glass lens, and an electrical generator coupled to the steam engine. The rejection states that the examiner takes official notice that it was well known by those of ordinary skill in the art of solar energy devices, prior to Applicant Sonny's invention, to use either a lens or a parabolic reflector to focus solar rays.

33. Sonny informs you that you should not narrow the scope of the claims unless absolutely necessary to overcome the rejection. Which of the following, in reply to the Office action dated March 15, 2001, is best?

(A) Traverse the rejection arguing that the examiner's use of the Foreign patent is improper because an applicant cannot be barred by a foreign patent issued to the same applicant.

(B) Amend claim 1 to further include a feature that is disclosed only in the U.S. application, and point out that the newly added feature distinguishes Sonny's invention over the invention in the Foreign patent.

(C) Traverse the rejection arguing that the examiner does not create a prima facie case of obviousness because the examiner does not show why one of ordinary skill in the art of solar energy devices would be motivated to modify the Foreign patent.

(D) Traverse the rejection arguing that the examiner's rejection under 35 U.S.C. § 102(d) was improper because claim 1 is not anticipated by the Foreign patent.

(E) Traverse the rejection arguing that it was not well known to use either a lens or a parabolic reflector to focus solar rays, and submit an affidavit under 37 CFR 1.132.

The model answer is selection (D).

MPEP § 706.02 points out the distinction between rejections based on 35 U.S.C. §§ 102 and 103. For anticipation under 35 U.S.C. § 102 the reference must teach every aspect of the claimed invention either explicitly or impliedly. (A), (B), (C), and (E) are each incorrect because each response does not address the lack of anticipation by the Foreign patent. (A) is further incorrect because an applicant can be barred under 35 U.S.C. § 102(d). (B) is further incorrect because the facts do not present the necessity of such an amendment. (C) is further incorrect because a prima facie case of obviousness is not necessary in a rejection under 35 U.S.C. § 102.

Petitioner argues that answer (B) is correct. Petitioner contends that (B) would limit the patent to the features disclosed in the US application.

Petitioner's arguments have been fully considered but are not persuasive. Contrary to petitioner's statement that (B) would limit the patent to the features disclosed in the US application, such a limitation would be in direct contravention of Sonny's instructions not to limit the claims unless necessary. Selection (D) is in accordance with Sonny's instruction, unlike selection (B). Petitioner has shown no argument as to how (B) is consistent with Sonny's instructions and therefore has not shown how (B) is the best response. Accordingly, model answer (D) is correct and petitioner's answer (B) is incorrect.

No error in grading has been shown. Petitioner's request for credit on this question is denied.

Afternoon question 44 reads as follows:

44. A condition for patentability is that an inventor is entitled to a patent unless he has abandoned the invention. Your client has engaged in conduct or omissions that may or may not be construed as abandonment of her invention. In which of the following situations would it be proper for a patent examiner to conclude, in an *ex parte* proceeding, that an inventor has abandoned the invention?

(A) From the inventor's inaction, following conception, to do anything over a period of time to develop or patent his or her invention, the inventor's ridicule of another person's attempts to develop that invention, and the inventor's active show of interest in promoting and developing the invention only after successful marketing by another of a device embodying that invention.

(B) When acts of another can be imputed to the inventor as an intent to abandon the invention.

(C) From the inventor's delay alone in filing a first patent application for the invention.

(D) From an inventor's delay in reapplying for patent after abandonment of a previous patent application.

(E) From the inventor's act of disclosing but not claiming the subject matter in a previously issued patent, even though the inventor claims the subject matter in another patent application that is filed within one year after the patent issued.

The model answer is selection (A).

35 U.S.C. § 102(c); MPEP § 2134, and see *Davis Harvester Co., Inc. v. Long Mfg. Co.*, 149 USPQ 420, 435 - 436 (E.D. N.C. 1966). (B) is not correct. 35 U.S.C. § 102(c); MPEP § 2134, and see *Ex parte Dunne*, 20 USPQ2d 1479 (Bd. Pat. App. & Inter. 1991). (C) is not correct. 35 U.S.C. § 102(c); MPEP § 2134, and see *Moore v. U.S.*, 194 USPQ 423, 428 (Ct. Cl. 1977). (D) is not correct. 35 U.S.C. § 102(c); MPEP § 2134, and see *Petersen v. Fee Int'l, Ltd.*, 381 F. Supp. 1071, 182 USPQ 264 (W.D. Okla. 1974). (E) is not correct. 35 U.S.C. § 102(c); MPEP § 2134, and see *In re Gibbs*, 437 F.2d 486, 168 USPQ 578 (CCPA 1971).

Petitioner argues that answer (E) is correct. Petitioner contends that all answers would present proper conclusion as to abandonment depending on the facts, and therefore (E) is correct.

Petitioner's arguments have been fully considered but are not persuasive. Contrary to petitioner's statement that all answers would present proper conclusion as to abandonment depending on the facts, and therefore (E) is correct, (E) is not correct as indicated by 35 U.S.C. § 102(c); MPEP § 2134, and *In re Gibbs*, 437 F.2d 486, 168 USPQ 578 (CCPA 1971). The instructions explicitly direct the examinee to not assume any additional facts, which petitioner argues might be imagined such that (E) would be correct. Petitioner has, further, not indicated what additional facts would make (E) correct. Accordingly, model answer (A) is correct and petitioner's answer (E) is incorrect.

No error in grading has been shown. Petitioner's request for credit on this question is denied.



**ORDER**

For the reasons given above, no points have been added to petitioner's score on the Examination. Therefore, petitioner's score is 66. This score is insufficient to pass the Examination.

Upon consideration of the request for regrade to the Director of the USPTO, it is ORDERED that the request for a passing grade on the Examination is denied.

This is a final agency action.



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Robert J. Spar  
Director, Office of Patent Legal Administration  
Office of the Deputy Commissioner  
for Patent Examination Policy